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Letter from the Co-Editors in Chief

Welcome to our twelfth issue of the Michigan Journal of Public Affairs.

We are happy to present our selection of submissions for this year: three articles and three notes covering topics from immigration, climate change, mental health, and development policy. We hope this issue provides you with an ample dose of intellectual stimulation, as well as added insight into solving some of today's pressing policy issues.

In the first section of this issue, we present three academic articles. These articles comprehensively tackle complex issues in the public policy arena, yet each article is unique both in topic and approach.

Patrick Balke uses quantitative analysis to better understand how the burden of childcare can affect parental mental health, especially among low-income households. Marc Edward Jácome provides a legal and historiological analysis of how current immigration law in the United States is a result of a long history of xenophobic policies that have expanded the scope and power of deportation authority. Finally, Collin Gannon explores the role of the insurance industry, alongside modern environmental law in mitigating the consequences of climate change.

At the Michigan Journal of Public Affairs, we believe that addressing complex policy problems necessitates rigorous study and in depth analysis. These three articles are fine examples for the standard we set for our journal in exploring policy issues.

In the subsequent section, we present three academic notes. While they draw upon distinct areas within public policy, they are united in their efforts to offer a nuanced perspective that challenges normalized policy discourses.

Patricia P. Padilla draws upon the post-conflict context in Colombia to argue for an inclusive approach to development policy. Christopher Palmer reviews the history of United States drug policy and provides a framework for how it is intricately connected to gang violence and the United States immigration policy. Finally, Miguel Bonilla-Zarrazaga and Nathan Gire utilize Geographic Informational Systems to analyze the demographic shifts in migration within Michigan and Detroit to reveal a puzzling phenomenon: growth amid decline.

The Michigan Journal of Public Affairs believes academic notes are vital for advancing policy discourse. These three pieces, while focused and narrow in their approach and topic, offer a great contribution toward solving modern national and international policy crises.

We are delighted to share this issue of the Michigan Journal of Public Affairs with you.

Enjoy!

MJPA Co-Editors in Chief,
Ahmed Abdullah Alawami & *Prabhdeep Singh Kehal*

One

Head Start and Parental Mental Health: Differentiated Impacts of Head Start by Cohort and Comparison Group

Patrick Balke

Abstract
The burden of childcare can affect parental mental health, an important determinant of early childhood environmental quality. This is especially true for low-income households. Head Start provides free and public childcare for low-income families that can potentially ameliorate the burdens of childcare by improving parental health. This paper uses random assignment under the Head Start Impact Study to test for Head Start's causal impact on parental mental health. Head Start's impact is found to differ across cohorts, with positive results found only for the three-year-old cohort in 2003, the first year of the study and this cohort's only year in the program. Further, this paper examines differences in childcare-seeking behavior to identify changes between cohorts and across time, and identifies contamination of the control group as a possible explanation for these mixed results.

Patrick Balke graduated from the University of Michigan with a B.A. in Economics in December 2014. This paper started as part of his honors thesis, advised by Professor Martha Bailey. Balke's research interests are primarily related to public policy, specifically focused on low-income populations.

Introduction

Child psychology research has demonstrated the importance of the early childhood family environment in shaping child development, with diverse effects in the near- and long-term (Heckman 2008; Shonkoff and Phillips 2000).Observing substantial disparities in early childhood environments along racial and class lines, research has identified that interventions that attempt to level the playing field for children entering school may have substantial returns (Heckman 2011). As a result, early childhood interventions are potentially important tools in combating issues such as poverty and income inequality.

The primary federal early childhood education program is Head Start, which provides free, public childcare to low-income families. Born under President Lyndon Johnson's Great Society, Head Start was envisioned as a holistic intervention to decrease early childhood environmental disparities through academic programs and support services to the communities and families it serves (Gibbs, Ludwig and Miller 2013).Having grown and evolved significantly since its inception, Head Start now serves about one million children from birth to age five with over 120,000 staff members (Aguiar 2012; U.S. Department of Health and Human Services 2010).

Head Start's scale, in addition to the importance of early childhood education, has prompted researchers to attempt to evaluate its impact throughout its existence. Evaluation studies thus far have arrived at different conclusion, primarily because these evaluations have utilized methodological techniques, such as variance in choice of comparison group and choice in which outcomes are measured. Consequently, findings have shown results ranging from slightly positive short-term gains in test scores that quickly fade out (U.S. Department of Health and Human Services 2010) to significant long-term improvements in graduation and incarceration rates (Ludwig and Phillips 2007; Deming 2009).While Head Start is mandated primarily with providing an enriching environment to children during their participation in the program, these studies, especially those that focus on short-term academic outcomes, often ignore how Head Start interacts with children's home environments.

Childcare may be a significant burden for low-income parents. The provision of free childcare could remove this source of stress, which benefits both parents, via reduced anxiety, and children, via less-burdened parents. This study examines Head Start's impact on *parental mental health*. The paper hypothesizes that Head Start improves parental mental health by providing reliable, low-cost public childcare to families, an effect that improves the home environment for the children it serves. This study posits that through this additional channel of parental mental health, research may better explain and predict how Head Start benefits its participants in the long-term.

Using data from the Head Start Impact Study (HSIS), this paper tests Head Start's causal impact on parental mental health. HSIS was a congressionally mandated study of Head Start that randomized access to Head Start across a nationally representative sample of programs, and collected a variety of data, such as test scores and parent and teacher questionnaires, over five years. The randomization of access allows researchers to estimate the causal impact of Head Start. Whereas previous studies have analyzed academic and health outcomes, this paper examines nine self-reported measures of mental health taken from the parent questionnaires while the children were potentially enrolled in Head Start

This paper finds a positive and significant impact of Head Start on a composite measure of parental mental health for children age three who entered Head Start in 2003, the first year of HSIS. However, for the four-year-old cohort in 2003, as well as the three-year-old cohort in 2004, the results are imprecise. Furthermore, after disaggregating the composite mental health measure into its individual components and testing Head Start's impact on each of these mental health component outcomes, the results are similar between cohort and year to those of the generalized composite measure, but are not statistically significant. This paper then analyzes differences in child-care seeking behavior between these groups as a possible explanation for the different findings among the cohorts. The data show households in the four-year-old cohort in 2003 within the control group were both more likely to pay for care and to seek out center-based childcare, suggesting that introducing comparable childcare into the control group might have reduced Head Start's observed impact.

This paper proceeds in six parts. First, I summarize the existing literature on Head Start, childcare, and parental mental health in Section I. Section II outlines the theoretical framework from which this paper derives its hypothesis of a positive impact of Head Start on parental mental health. The methods of analysis and empirical specifications used to estimate Head Start's impact are provided in Section III. This paper's findings are presented in Section IV; these findings are discussed in Section V. and its conclusions are detailed in Section VI.

Literature Review

Evaluations of early childhood interventions tend to focus on the child. Research has focused on a program's ability to close the gaps in child test scores or health, especially for low-income children from disadvantaged backgrounds, as they enter school. James Heckman (2008) surveyed existing research on gaps in academic outcomes, such as in test scores and skills of sociability and self-regulation, and these academic gaps emerge early and often before children enter school. These gaps between advantaged and disadvantaged children persist and grow through the child's lifetime. They reflect the differential circumstances under which children are brought up and diverse socioeconomic or household conditions (Shonkoff and Phillips 2000; Heckman 2008).Through these studies, there appears to be a role for early childhood interventions in mediating the adverse effects of the conditions in which some children grow up.

Head Start is one such intervention. The literature is inconclusive as to Head Start's true impact and the extent to which it succeeds. The Head Start Impact Study (2010), a federal study that utilized random assignment of qualifying families[1]to identify a causal relationship between Head Start and a variety of outcomes, identified significant initial gains for Head Start-participating children relative to other children. In terms of cognitive test scores, the study found these gains faded out entirely within a few years of schooling, casting doubt on Head Start's lasting impact.

Focusing on cognitive test scores and the immediate impact of Head Start may miss the many ways in which Head Start impacts children, however. Longitudinal studies on early cohorts of

[1] The study identified qualifying families from the waitlists of the nationally representative sample of Head Start programs chosen for the study.

Head Start have identified the program's favorable long-term effects on life outcomes, such as increasing educational attainment and decreasing incarceration rates (Ludwig and Phillips 2007, Deming 2009).This evidence is limited by the fact that the program has evolved over its lifespan; thus, a longitudinal study of historical participants may bear less relevance for children enrolled in Head Start today. However, these findings suggest Head Start's effects may not be captured solely through cognitive test scores and may indicate a need to explore other channels through which Head Start impacts students.

Some research indicates that parenting and quality of a child's early relationships may be one such channel. Herbst and Tekin (2012) examined the relationship between federal childcare subsidies, which have included a work requirement for parents, and parental health and behavior since 1996.Using three nationally representative datasets and regression analyses, Herbst and Tekin identified a correlation between an individual's ability to receive these subsidies and the individual's poorer maternal physical and mental health, as well as detrimental impacts on parental interactions with children. While successful at promoting maternal employment, this research identified that requiring maternal employment may bring an added burden on a child's home life, an unintended consequence of these work mandates.

These policy interventions into childcare may have important impacts on children, primarily through their impacts on parental interactions and health. Research in the field of child development and economics reveal the critical importance of early life environments for children. Parenting plays a fundamentally important role in developing skills, such as conscientiousness and self-control, which have been shown to predict higher earnings (Heckman 2008, 2011).Similarly, parental mental health, including episodes of depression, anxiety, and stress, is an important determinant of the responsiveness and quality of parental behavior. Additionally, these mental health conditions contribute independently to the quality of environment in which a child develops.

As a result, parental mental health is a critical component of the early childhood environment, which has been shown to shape a child's stress responsiveness, self-control, and social competence (Anthony et al 2005, Champagne and Curley 2005). In a sweeping review of the existing literature on childhood development, Shonkoff and Phillips of the National Research Council (2000) found that households that already face chronic stressors like poverty and crime are particularly at risk. Maternal depression and anxiety compounded with the difficultly of raising a child have been shown to correlate highly with reporting a child as difficult, distanced and inconsistent parenting, and even child-abuse.

It is critical then, to understand the impact early childhood interventions have on parental behavior and mental health. Little research has been done on this aspect of Head Start's impact. One recent study by Gelber and Isen (2013) used data from the Head Start Impact Study to identify the impact of Head Start on parental behavior. They found significant evidence that Head Start had a positive impact on the quality of parental interactions, measured as self-reported parenting style and other productive behaviors (e.g., the number of times reading with the child).The researchers, however, did not test Head Start's impact on the parental mental health factors included in the dataset.

Conceptual Framework

This paper builds upon the framework of Gelber and Isen's (2013) work to investigate the causal impact of Head Start on parental mental health. As in their paper, this analysis takes advantage of the fact that the HSIS utilizes random assignment in determining access to Head Start. While compliance is not perfect,[2] this randomization allows researchers such as the original HSIS (2010) and Gelber and Isen (2013) to use intent-to-treat (ITT) analysis to identify Head Start's causal impact on outcomes of interest

The success of a child's development is a function of many inputs, including schooling, resources, and parental investment. Focusing on parental mental health, this paper adds to previous research by suggesting parental investment is influenced, in part, by early childhood interventions. Parents are the primary providers of their children's early life environment and relationships, which have been found to be crucial in developing and predicting a child's success both early on and throughout life (Heckman 2008).Early childhood interventions, by impacting parental investment, can modify the quality of a child's early life environment in both positive and negative ways. Through this channel of parental mental health, parents may influence child outcomes that are traditionally the focus of analyses in these interventions.

This paper posits that parental stress and mental health are critical contributing factors to the early life environment of children, especially in low income and vulnerable families. To that effect, this paper tests the following hypothesis:

H1: If a parent has a child participating in Head Start, the parental mental health composite score will increase.

Furthermore, this paper will disaggregate the parental mental health composite score to see if there is a change in any of the individual component measures of parental mental health. This allows the paper to test Head Start's impact on specific contributing factors of parental mental health. Consequently, this paper also tests:

H2: If a parent has a child participating in Head Start, the individual component outcome score will increase.

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[2]Compliance with the results of randomization was about 84% in the first year of the study and 61% in the second year.61% in the second year.

Methods

Data

The dataset employed by this study's analysis is taken from HSIS (U.S. Department of Health and Human Services 2010). Mandated by Congress to examine Head Start's causal impacts on a variety of outcomes, this study was carried out from 2002 to 2006. From a nationally representative sample of Head Start programs, HSIS researchers randomly assigned access to Head Start for families of three- and four-year-old children. In particular, the randomization enables the estimation of the causal effect of being offered a position in the Head Start program.

HSIS gathered information on its respondents from a variety of sources, including test scores, parental and teacher surveys, and researcher observations. In fall of 2002, baseline survey data were collected from the participants, and subsequent data were collected each spring from 2003 through 2006. The three-year-old cohort attended Head Start in 2003 and 2004, while the four-year-old cohort attended in 2004. As a result, the study includes observations during and after the child's time in Head Start, recording student test score performance, family income, and a variety of other student and family factors. This paper focuses on outcomes related to parental mental health, which are taken from the parent questionnaires. The specific measures of parental mental health used in this study are listed in the top row of Table 3, and their responses are recorded as categorical variables taking on values between one (least healthy) and four (most healthy).

For the purposes of this study, the sample is restricted to respondents with non-missing values for the outcome variables at baseline as well as in the first wave of questionnaires (2003). This subsample includes 2,920 respondents out of the original 4,667, of which 1,616 are in the three-year-old cohort and 1,304 of are in the four-year-old cohort. The randomization utilized in the study suggests there is no asymptotic bias toward non-responses in between the test groups. Therefore, despite the omitted observations, this paper still does not expect to find systematic differences between the treatment and control group, which is supported by Table 1.

Table 1 presents a balancing table of means of eleven key baseline characteristics between the treatment and the control groups for this subsample. While the difference between the proportion of White mothers in the control and treatment group was found to be statistically significant, the remaining differences in key demographic variables were not found to be statistically different from zero. While this significant difference should be considered while viewing the results, the results in this table show this difference does not translate into any systemic differences between treatment and control, especially in key characteristics like income or single motherhood. This suggests that despite the omitted observations, the randomization remained largely successful and observed differences between the treatment and control groups are mostly absent.

This study focuses on parents' mental health outcomes collected only while the child is possibly in Head Start. Consequently, for the three-year-old cohort, outcomes for 2003 and 2004 are included, while for the four-year-old cohort, only outcomes for 2003 are included. These years are when Head Start could be expected to influence parental mental health for each cohort.

Empirical Strategy

This paper focuses on nine self-reported outcomes for parental mental health related to depression and anxiety. The outcomes in the study are often related to similar symptoms of negative mental health (feeling depressed vs. feeling "the blues), which suggests a need to create a method for aggregating the outcomes in a way that allows the measurement of overall mental health. To that end, this study creates a summary index for mental health, similar to the summary indices created in Kling, Liebman and Katz (2007) and Gelber and Isen (2013).The process went as follows: the outcome variables of interest were first recoded so that increases in the recorded values of each variable correlate with positive mental health outcomes. For instance, a question asking parents to indicate how often they experience restless sleep with a response of 1 indicates the highest frequency of restless sleep, while a 4 indicates the lowest frequency. Next, the z-scores of each outcome variable were created by subtracting the control group mean in each respective year and cohort from each observation and dividing it by the control group's standard deviation. These z-scores were then summed into the mental health index. This strategy enables this analysis to draw more general inferences about Head Start's impact on mental health; it also improves statistical power. For comparison, Head Start's impact on individual outcomes is also estimated.

Table 1: Balancing Table of Key Demographic Characteristics at Baseline (2002)

Variables	Observations	Treatment	Control	Difference	p-value
Black	2920	0.306	0.289	0.017	0.331
Hispanic	2920	0.376	0.355	0.021	0.265
White	2920	0.292	0.330	-0.039	0.029**
Single mother	2920	0.496	0.476	-.02	0.299
Working mother	2920	0.485	0.493	0.008	0.674
Mother age	2920	28.63	28.63	-0.001	0.976
Father age	2920	31.66	31.48	0.177	0.542
Child age	2920	3.73	3.73	-0.001	0.969
English at home	2920	0.687	0.697	0.01	0.589
Mother born in USA	2920	0.679	0.681	-0.002	0.894
Monthly income	2920	1427.08	1436.50	-9.38	0.806

Notes: This table shows the means for various key demographic categories within the treatment and control group (columns 3 and 4), the differences between them (column 5), and the p-value of the two-tailed t-test of statistical significance of the difference (column 6).The race variables are for the mother. All variables are measured at the baseline interview from fall 2002.The table shows there are generally no statistically significant differences between the treatment and control group, with the lone exception being a statistically significant greater percentage of white mothers in the control group. ** indicates statistical significance for p = 0.05.

Further, this study seeks to account for differences between programs and cohorts throughout its analyses. To accomplish this, the analysis begins by clustering standard errors at the program level in each regression. This enables the estimates to account for unobserved correlations between individuals at the program level. Further, the analyses account for differentiated effects between cohorts by running regressions both pooled across cohorts and for each individual cohort. Given the differences in circumstances between a three-year-old with two years of potentially participating in Head Start before school starts, and four-year-old in his or her last year of potentially participating in Head Start before entering school, it is reasonable to infer that the compliance with the outcome of the randomization and alternative childcare options would differ in families between these cohorts.

The primary analysis focuses on estimating the ITT effects of Head Start access on mental health outcomes using ordinary-least-squares (OLS). The utilization of a randomized controlled trial by HSIS (2010) enables this study to use ITT analysis to find unbiased estimates for the causal effects of Head Start on the outcomes of interest using the model detailed below.

$$Y_{ipt} = \alpha_0 + \alpha_1 T_{ipt} + \boldsymbol{X_{ipt}}\boldsymbol{\alpha} + \varepsilon_{ipt} \quad (1)$$

Y_{ipt} represents the positive mental health summary index for each individual, *i*, observed in the relevant year, *t*, in the program in which the individual's child was enrolled, *p*. $\boldsymbol{X_{ipt}}$is a vector of control variables, including baseline measurements of the outcome variable, mother's age and educational attainment as well as dummy variables for teen mothers, immigrant mothers, mother's employment status in year *t*, and whether English is spoken at home. These are the same control variables as were used in HSIS. $T_{ipt}$is a dummy variable equal to 1 for respondent's randomly assigned into the treatment group and 0 for the control group; α_1 is the expected point estimate of the ITT effect of Head Start access on the positive mental health index. It is important to note that since the outcome variable is a normalized summary index, the values it assumes represents standard deviations from the mean.

Estimating the ITT effect allows this analysis to take full advantage of the randomization in HSIS. However, a number of members of the control group were able to enroll in some Head Start program, and some members of the treatment group did not ultimately enroll in Head Start. Thus, the ITT effect, while unbiased, does not capture the entire effect of Head Start on individuals who enrolled.

This study attempts to provide suggestive evidence, in light of imperfect compliance with randomization, of the impact of Head Start among "the enrollers" by following Gelber and Isen's (2013) model of an instrumental variable (IV) procedure to find the treatment-on-the-treated (TOT) effect:

$$HS_{ipt} = \delta_0 + \delta_1 T_{ipt} + \boldsymbol{X_{ipt}}\boldsymbol{\delta} + \varepsilon_{ipt} \quad (2)$$

$$Y_{ipt} = \beta_0 + \beta_1 HS_{ipt} + \boldsymbol{X_{ipt}}\boldsymbol{\beta} + u_{ipt} \quad (3)$$

where (2) is the first-stage equation and (3) is the second stage equation. HS_{ipt} is a dummy variable indicating Head Start enrollment; δ_1 is the first-stage coefficient of random assignment on the likelihood of enrollment in Head Start; β_1 is the two-stage leastsquare estimate of the impact of Head Start among children who enrolled, or the people in the treatment group that attended Head Start relative to the people in the control group who did not attend. This is the TOT effect of Head Start on the mental health index. The other variables are as described above. Results from these analyses will address hypothesis 1.

Finally, this paper includes analyses of the individual mental health component outcome variable (refer to first row of Table 3). This paper estimates the effect of treatment on these ordered categorical outcomes through the use of ordered probit regressions. The estimated equation is identical to equation (1), however the outcome variables are the nine individual mental health categories that comprise the positive mental health index. These ordinal categorical outcome variables are recoded so that positive gains are associated with positive mental health outcomes. The coefficients on treatment for each variable indicate the ITT effects of randomization into Head Start access on the probability of the respondent attaining the next highest category. Results from these analyses will address hypotheses 2.

Results

Head Start's Effect on Overall Mental Health

The primary analysis of this paper tests the hypothesis that Head Start has a beneficial impact on overall parental mental health (hypothesis 1). By providing reliable, public childcare with a range of services to the families and communities it serves, this paper posits that Head Start reduces the stresses and demands childcare would normally place on low-income families and improves their overall mental health. Consequently, this paper expects to find positive coefficients on the OLS estimate of Head Start's impact and slightly larger positive coefficients for the two-stage-least-squares estimates in support of hypothesis (1).

Table 2, shown below, presents the findings for the effects of treatment on these summary indices. For outcomes measured in 2003, the end of the first year of treatment, this paper finds a positive ITT effect of almost 0.25 standard deviations for the sample pooled across both the three- and four-year-old cohorts. The two-stage-least-squares estimate of the treatment-on-treated (TOT) effect is even larger, above 0.35 standard deviations. However, these coefficients are not statistically different from zero. These findings are potentially economically significant such that they suggest a positive trend for the potential effects of Head Start on the mental health of its participating children's parents, which could translate beneficially to the early childhood environment. Positive effects of this magnitude, if found conclusively, would be expected to contribute to improvements in a variety of long-term outcomes for their children through this improvement in early childhood environment.

Interesting results emerge, however, when cohorts are broken down in the 2003 findings. It is important to remember that for the three-year-old cohort, the children have another year until they enter school, and for the control group, they have the renewed possibility of entering Head Start the next year. For the four-year-old cohort, however, this is the last year before they enter school and do not have another chance of entering Head Start.

In 2003, the ITT estimate on Head Start randomization solely among the three-year-old cohort finds a larger coefficient on treatment of 0.48, just under 0.5 standard deviations, that is statistically significant at the $p = 0.1$ level. The TOT estimate is even larger at .685, just below 0.7 standard deviations, and is similarly statistically significant at the $p = 0.1$ level. These effects are relatively large, showing a distinctly positive and substantial improvement in parental mental health for the parents of the three-year-old cohort, supporting hypothesis (1).This paper would expect distinctly large improvements in long-term outcomes for children within this three-year-old cohort compared to the control group.

The results differ for the four-year-old cohort, however. The ITT and TOT estimates are negative, but are very small (less than -0.05 and -0.07standard deviations, respectively) and statistically insignificant. These results contrast substantially with those of the three-year-old cohort and prompt further analysis into the distinction between the three- and four-year-old cohorts.

In contrast to the 2003 findings, the ITT estimates on treatment for the three-year-old cohort in 2004 are small and statistically insignificant (less than 0.05).By design, members of the three-year-old cohort's control group were able to reapply to Head Start in the second year of the study. While the TOT estimates show a larger effect (at 0.19), the decreased coefficient on treatment in the first-stage equation (to 0.189) indicates that randomization and treatment had a smaller role in determining childcare decisions in 2004. These structural characteristics of HSIS are very influential in shaping the findings for this particular year.

Head Start's Effects on Individual Outcomes

An important limitation of this study is the possible mismatch between the outcome variables and the method of analysis. The constructed mental health index is an aggregate of normalized outcome variables, however the outcome variables used in this study are ordered categorical variables, making this functional form and the interpretation of its results awkward since the outcome variables are not continuous. However, this method benefits from increased statistical power and a greater sensitivity to overall impacts in one direction. Thus, while these results are suggestive of an *impact* on overall mental health, the *interpretation* of this effect is made difficult by the method employed.

Table 3 presents the ordered probit coefficients on Head Start randomization on each individual outcome variables in an attempt to match the measured ordered categorical outcome variables with a more fitting functional form of estimation. Through this analysis, these results may shed light on the specific channels, if any, through which Head Start primarily impact overall parental mental health. These ordered probit coefficients represent the ITT impact of Head Start on the probability of attaining the next highest category in each respective outcome. In other words, they signify the probability of attaining a more positive result in the respective outcome. For instance, a positive estimate of Head Start's impact on the measure of feeling less depressed would

Table 2: ITT and TOT Effects of Treatment on Summary Index of Positive Mental Health

	TT	2nd Stage Least Squares (TOT)	First Stage	Observations
Positive Mental Health Summary	0.243	0.354	0.686***	
Index –Both cohorts (2003)	(0.215)	(0.310)	(0.014)	2920
R^2	0.2387	0.2386	398.5	
Positive Mental Health Summary	0.481*	0.685*	0.702***	
Index – 3-year-old cohort (2003)	(0.270)	(0.376)	(0.018)	1616
R^2	0.2440	0.2433	247.3	
Positive Mental Health Summary	-0.045	-0.067	0.666***	
Index – 4-year-old cohort (2003)	(0.287)	(0.425)	(0.022)	1304
R^2	0.2353	0.2352	158.0	
Positive Mental Health Summary	0.042	0.199	0.189***	
Index – 3-year-old cohort (2004)	(0.036)	(0.189)	(0.026)	1458
R^2	0.1503	0.1409	10.85	

Notes: This table shows coefficients of regressions of the summary index of mental health, constructed as an aggregate of z-scores for nine mental health variables, on randomized Head Start access. Rows 1 – 4 indicate the subsample (meaning the specific year and cohort) on which the regression is run. Measurements are taken in the spring of 2003 and 2004, meaning at the end of the program year. Only the three-year-old cohort is eligible for the program in 2004.Values reported as coefficient on Head Start treatment indicator, standard error in parenthesis, and R^2 below. Column 1 represents the OLS estimate of the ITT effect of randomization on the mental health index from equation (1).Column 2 represents the two-stage-least-squares estimate of the TOT effect on randomization on the mental health index among the compliers from equations (3).Column 3 provides the first stage results of the instrumental variable procedure, with the first-stage coefficient of treatment on Head Start participation listed at the top, the standard error of this estimate in the second row, and the F-statistic listed on bottom. Standard errors are clustered at the program level.* indicates statistical significance for p = 0.1, *** indicates statistical significance for p = 0.01.These findings provide economically significant support for the hypothesis that Head Start has a beneficial impact on parental mental health, though the pooled estimates in 2003 are statistically insignificant. Estimates of Head Start's impact for the three-year-old cohort, however are large and statistically significant.

indicate a positive likelihood that Head Start participation reduces self-reported feelings of depression. In doing so, however, this method sacrifices the increased statistical power associated with pooling these measurements into a summary index, which makes detecting any statistically significant impact difficult. For comparison, the ITT effects on the summary index are repeated in the first column.

The coefficients reported in Table 3 are broken down similarly to the coefficients for the summary indices: by cohort and year as presented in Table 2. Pooled across cohorts in 2003 (row 1), the coefficients are small and statistically insignificant. Broken down by cohort (row 2 and 3), the findings in 2003 differ in a manner similar to the previous analysis. Coefficients on treatment for the three-year-old cohort are generally greater than those for the pooled sample and for the four-year-old cohort, often much more so. For this cohort, the coefficient on treatment for feeling less fearful is statistically significant at the $p < 0.1$ level.

Table 3: Ordered Probit Coefficients on Individual Positive Mental Health Outcome

	Positive Mental Health Index	Felt the "Blues" Less	Felt Bothered Less	Felt Depressed Less	Felt Fearful Less	Felt Lonely Less	Had No Appetite Less	Had Restless Sleep Less	Felt Sad Less	Daily Tasks an "Effort" Less
Both cohorts (2003)	0.243 (0.215)	0.006 (0.056)	-0.002 (0.052)	0.007 (0.058)	0.036 (0.061)	0.055 (0.051)	0.006 (0.052)	0.029 (0.044)	0.04 (0.051)	0.029 (0.05)
Pseudo-R^2	0.2387	0.0616	0.0381	0.0897	0.0476	0.0871	0.0611	0.0703	0.0721	0.093
3-year-old cohort (2003)	0.481 (0.270)*	0.045 (0.072)	0.019 (0.069)	0.051 (0.078)	0.126 (0.074)*	0.108 (0.074)	0.008 (0.062)	0.094 (0.059)	0.046 (0.079)	0.046 (0.061)
Pseudo-R^2	0.2440	0.0607	0.0403	0.0913	0.0419	0.0929	0.0622	0.068	0.0647	0.0923
4-year-old cohort (2003)	-0.045 (0.287)	-0.053 (0.073)	-0.022 (0.07)	-0.043 (0.074)	-0.083 (0.087)	-0.011 (0.073)	0.021 (0.072)	-0.053 (0.068)	0.037 (0.062)	0.008 (0.074)
Pseudo-R^2	0.2353	0.0647	0.0379	0.0928	0.0573	0.0835	0.0641	0.0748	0.0857	0.0941
3-year-old cohort (2004)	0.042 (0.036)	0.05 (0.074)	0.049 (0.072)	0.075 (0.078)	-0.047 (0.094)	0.058 (0.072)	-0.004 (0.086)	0.069 (0.063)	0.024 (0.075)	0.015 (0.069)
Pseudo-R^2	0.1503	0.0427	0.0321	0.0741	0.0202	0.0665	0.0305	0.0721	0.0485	0.0730

Notes: This table reports the ordered probit estimates of causal effects of assignment to Head Start on self-reported measures of mental health. Outcome variables are the column headings and are ordinal categorical variables, taking on values from 1 – 4, that have been re-coded so that increases in the number correspond to positive outcomes, where the lowest value reflects "always feeling bad" and the highest indicates "never feeling this symptom." Coefficients are interpreted as the causal impact of treatment on the likelihood of reporting original outcomes less often. The ITT effect of treatment on summary index from Table 2 is repeated for reference. The top value is the point estimate on treatment, with the standard error below it, and the pseudo-R^2 on bottom, except in the case of the summary index, which is just an R^2.The observations are omitted from the table because they are identical to those in the previous table (2,920 respondents for both cohorts in 2003; 1,616 respondents for the 3-year-old cohort in 2003; 1,304 respondents for the 4-year-old cohort in 2003; 1,458 respondents for the 3-year-old cohort in 2004). * indicates statistical significance for p = 0.1.

For the four-year-old cohort, the findings are generally negative and statistically indistinct from zero. The mixed results persist in 2004 for the three-year-old cohort for in their second year of the study (row 4). These results are not statistically distinct from zero. In general, the differentiated results by cohort and year are similar to those of the pooled analyses and are consistent with the observed contamination of the control group.

Discussion

A common question raised by these results is why Head Start's impact appears to be differentiated between the two cohorts? The two-stage-least squares estimates on the TOT effects, which in the long run would control for differences in the success of randomization between the cohorts, only provides further support, though statistically insignificant, for the existence of mixed results. This paper offers the following explanation of the mixed results: differences in the behavior of the control group *between the cohorts* may create two distinct comparison groups for Head Start.

Specifically, the mixed results suggest that parents in HSIS of children closer to school-age, the four-year-olds in this case, are more inclined to seek out center-based care than to allow their children to stay at home. Hypothesis (1) tests whether Head Start uniquely offers positive mental health benefits, and it is possible that parents in the control group for four-year-olds are selecting into alternative forms of center-based childcare that provide positive mental health benefits in the same direction as Head Start. This differential contamination of the control group by respondents gaining similar benefits to those of treatment reflects the distinct circumstances and pressures faced by families as their child approaches school age.

However, the four-year-old cohort's parents would be expected to pursue center-based childcare more rigorously, and possibly be more willing to pay for this service, as this year is their last opportunity to find this support for their kids before they enter school. The parents of the three-year-old cohort in its first year would be expected to face less of these pressures, both because they have an additional year until their children enroll in school, and the study allows them to reapply for enrollment in Head Start the following year. Consequently, the three-year-old cohort in the following year would be expected to enroll in Head Start, in addition to pursuing alternative center-based childcare, at a greater rate than in the previous year.

The data offer preliminary support for this supposition. Among the control group, 63.3% of parents in the three-year-old cohort reported their children were primarily cared for at their own home during the week, compared with just 55.4% in the four-year-old cohort, a difference that is significant at the $p < 0.05$ level of significance. As expected, parents in the four-year-old cohort used center-based childcare more than parents in the three-year-old cohorts: 32.2% compared with 23.7% respectively, with a difference significant at the $p < 0.01$ level. There is also evidence that the four-year-old cohort was more inclined to pay for childcare in 2003: 56% of parents in this cohort reported paying for childcare, compared to only 42% of the three-year-old cohort, which is also significant at the $p < 0.01$ level.

These preliminary analyses on childcare decisions between the cohorts within HSIS offer an important perspective on the findings in this section. Head Start's effect, pooled between the cohorts, is less significant; when isolating this effect among the four-year-old cohort, the effect appears non-existent or even negative. However, it is reasonable to expect that motivated parents that select into non-Head Start center-based childcare, as is often the case with four-year-old control parents, would reap significant mental health gains from that decision. Using this comparison group does not appear to support hypothesis (1), that Head Start provides positive mental health gains for its participants. Yet, for parents who would otherwise leave their children at home, as the control parents of the three-year-old cohort in this study appears more inclined to do, there does appear to be evidence of a positive impact from Head Start participation on mental health.

While this paper hypothesizes that Head Start would have general positive mental health benefits, without specifying which precise aspect of parental mental health Head Start impacts, the results of this analysis will remain mixed. The results on individual mental health outcomes suggest Head Start may offer more security to parents in knowing where their child will be, the benefit of a connection to their community, and increased knowledge on the resources available to them due to Head Start. Alternatively, it is possible that for low-income parents with significant obstacles to obtaining high-quality childcare, their children's safety may be a common concern. For parents that keep their children at home or with a neighbor, it is reasonable to expect parents to worry more than if they were with a trusted professional whose sole job was the child's safety. In providing a safe space for childcare, Head Start may alleviate parental fears and positively benefit parents' mental health.

Conclusion

This paper tests the hypothesis that Head Start may benefit its participants through a positive impact on parental mental health. Given its public nature and low-cost, this paper suggested Head Start could uniquely provide low-income families with a sense of security in their childcare source. Through this positive benefit on parental mental health, this paper suggested Head Start contributes to an improved early childhood environment, both in program and at home, which facilitates Head Start's desired long-term outcomes.

This paper used HSIS data to test Head Start's causal impact on a summary index of mental health factors as well as individual mental health outcomes. No evidence of a statistically significant positive impact was found across cohorts in 2003, though the estimated impact on the summary index was positive and potentially economically significant in magnitude. Broken down by cohort, however, Head Start was found to have a statistically significant and large positive impact on the summary mental index, in addition to parents reporting feeling fearful less often within the three-year-old cohort. No statistically significant evidence for an impact was found for the four-year-old cohort, nor for the three-year-old cohort measured in 2004.

Assessing the differences between the control groups in the three- and four-year-old cohorts, this paper finds Head Start has a more positive and significant impact when the comparison group is less likely to seek out other center-based care. In this study, parents in the three-year-old cohort in the control group were found to be more likely to provide their own childcare, rather than seek out alternative center-based care. Head Start's impact was found to be positive and significant in comparison to these families. This study provides evidence that Head Start does provide a positive benefit for those who would not otherwise be likely to take advantage of center-based childcare.

These findings suggest further research be done to test whether Head Start's impacts are large in areas where childcare options are less plentiful. While the impact was largest for the three-year-old cohort in this study, it may be the case that Head Start has a positive effect regardless of cohort as long as the alternatives to it are either home-based care or difficult to attain center-based care. Head Start's positive impact on mental health for these parents may act through its easing of parents' fears, removing the threats to their children's safety that may exist if the child were given care at home or in a neighbor's home. As state provided pre-K programs rise in numbers, it may be the case that fewer communities exist where families have few affordable options for childcare. However, further research would be beneficial to determine the quality and quantity of childcare options across the nation, as this study suggests that communities with few childcare options and alternatives may benefit disproportionately from Head Start.

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Deportation in the United States: A Historical Analysis and Recommendations

Marc Edward Jácome

Abstract
Since September 11th, 2001, the United States has relied on the deportation of noncitizens as a central component of its national security strategy. Over the past decade, the deportation system has expanded the scope of noncitizens deportable by law while simultaneously restricting the rights of those noncitizens to challenge their deportation. The recent surge in deportation is part of a longer history of xenophobic[3] politics that have facilitated the creation of an exceptionally rigid system existing outside of traditional judicial checks and balances. This paper traces the history of xenophobic deportation policies and explores the critical legal decisions that have expanded the scope and power of deportation authority. In light of this history, the United States should create a more democratically accountable system that guarantees judicial review and reverses past policies influenced by xenophobia.

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[3] For the purpose of this paper, xenophobia refers to fear or prejudice directed towards those perceived as 'foreign' or 'other'. Although xenophobia is distinct from racism, they are both interconnected and the discussion of xenophobia in this paper will often also involve a discussion of race. Policies that are xenophobic or racialized refer both to the prejudice and bias that influence the policies, as well as their disparate effect among non-white or foreign populations.

Introduction

As a result of post 9/11 policies, the rate of deportation has steadily increased every year, with official statistics having yet to show a reversal of this general trend. For example, in 2013, the United States deported 438,421 immigrants, a number that is well over twice the amount of deportees a decade ago (Gonzalez-Barrera and Manuel-Krogstad 2014). In total, the Obama administration has deported over 2 million immigrants, more than any other president in United States history (Gonzalez-Barrera and Manuel-Krogstad 2014). If one were to factor in 'voluntary departures', those who leave on their own accord, the United States expels far more immigrants than it admits annually (Parker 2012, 188).[4]

Deportation is not limited to undocumented immigrants; rather, it targets the immigrant population as a whole. Hundreds of thousands of noncitizens with legal immigration status are deported for minor criminal offenses such as drug possession and petty larceny (Kanstroom 2014, 213). Of the over 400,000 individuals deported in 2013, 198,000 were criminal offenders Gonzalez-Barrera and Manuel-Krogstad 2014). Often, these individuals are lifetime American residents stripped from their families and deported to foreign countries where they do not speak the language and have little, if any, family (Kanstroom 2014, 214-215).

What is most striking is not only the growth of the deportation system, but also the unchecked legal authority that the system wields. Although deportation is classified as an administrative procedure, rather than a criminal one, the distinction between the two serves as a legal fiction. In criminal and deportation law, features such as indefinite detention, the issuing of warrants, and court proceedings are nearly identical (Moloney 2012, 16). However, deportation's classification as administrative law allows the government to bypass typical judicial safeguards associated with criminal trials. If arrested, immigrants are provided few of the democratic rights guaranteed under the Constitution. A noncitizen under immigration proceedings will not be protected from unreasonable search and seizures, will not be read 'Miranda rights', and will never have the right to a jury trial (Kanstroom 2007, 3-4). If a noncitizen has been targeted due to their race, religion or political opinion, they will not be able to raise a 'selective prosecution' defense in court (Kanstroom 2007, 3-4).[5]

In order to understand how the United States has built such a system, this paper presents a historical analysis of immigration law and deportation. The most recent surge in deportation has been the direct result of policies enacted in the post-9/11 security environment. However, this expansion of deportation is a culmination of policies that have normalized an undemocratic and unchecked treatment of noncitizens. The United States' decision to capitalize on the deportation system as a component of national security is not an anomaly, but the logical extension of the

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[4] A 'voluntary departure' refers to immigrants in removal proceedings who depart on their own accord instead of waiting for a judge to order their deportation. If an immigrant is deported, they are automatically inadmissible from the United States for a set number of years in accordance with the '3-10 years bar of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. A voluntary departure is preferable to many immigrants because it will not automatically trigger this bar.

[5] Selective prosecution is a procedural defense in which a defendant argues that the prosecutor's decision to bring charges was an act of discrimination based on the defendant's race, gender, age, etc.

expansive deportation powers the United States has asserted for decades. The problem with deportation law is not simply a set of specific policies enacted after 9/11, but the legal framework and norms that guide deportation.

A Legal History of Deportation

The growth of the American deportation system can in part be attributed to the ambiguous status of immigration law in the Constitution. Although the Constitution empowers Congress "to establish an uniform Rule of Naturalization," it says nothing about admission or deportation of noncitizens (U.S. Const. Art i Sec 8). A similar problem arises when assessing the rights of noncitizens vis-à-vis citizens, a distinction only touched upon in the Constitution. The only instance in which the Constitution does distinguish between the rights of citizens and noncitizens is in the right to vote and the right to run for a federally elected position, both of which are reserved to citizens (Cole 2003, 370-375). With a lack of clearly defined rights and with ambiguous limits to government power, America's first deportation laws set long-lasting precedents in deportation policy.

Early Deportation: From Forced Migration to Sovereign Control (1798-1899)

The earliest forms of deportation established strong powers for the federal government to forcibly remove noncitizen populations. The first laws claiming the power to deport were the *Alien and Sedition Acts* of 1798, a series of laws enacted only a decade after the Constitution. Wary of foreign influence in the United States, the *Alien and Sedition Acts* empowered the president to deport foreigners "dangerous to peace and safety of the United States" without trial (Alien Friends Act 1798). Vigorous political debates ensued over the legitimacy of these acts, and although some viewed these far-reaching deportation powers as undemocratic, this policy was ultimately accepted because, as noncitizens, foreigners could easily be denied constitutional protection (Cole 2003, 371-372). In addition to establishing expansive powers for the federal government to deport noncitizens, the *Alien and Sedition Acts* also legitimized a status-based distinction between citizens and noncitizens that could deny noncitizens the liberties that the Constitution guaranteed to all (Kanstroom 2007, 82-83).

Although forced expulsion under the *Alien and Sedition Acts* is akin to deportation, it differs in that these powers existed outside of any relation to immigration law. Until the mid-19th century, immigration was a matter of state authority. Various states enacted laws regulating immigration in order to prevent entry of undesirable populations – the poor, the sick, and the criminal – into their respective states (Chacon 2014, 3-4). States chose to impose taxes on immigrants until, in a series of court cases, the judicial system began to challenge their power to do so. In one of the first cases concerning these taxes, the Supreme Court struck down a New York statute as a usurpation of the congressional power to regulate commerce (Chacon 2014, 3-4). When the federal government attempted to create its own taxes, the Supreme Court unanimously decided that Congress has exclusive power to regulate immigration pursuant to the commerce clause, thus ending state involvement in immigration (Kanstroom 2007, 94-95).

However, as the federal government expanded its presence in immigration law, a new justification for this authority gained popularity: one based in sovereign authority rather than the commerce clause. This shift in legal authority had long-lasting consequences on how immigration law would function. In the Supreme Court case *Chae Chan Ping v. United States* (1889), the court determined that "the power of exclusion of foreigners [was] an incident of sovereignty belonging to the federal government," and that this power could not be "restrained on behalf of anyone" (Chae Chan Ping v. U.S. 1889). According to this 'plenary power doctrine,' the Supreme Court granted the political branches of government exclusive authority in immigration affairs and would defer ruling on executive or congressional action. As a matter of sovereign authority, the power to deport was not subject to the same judicial checks that restrained the government in other areas of law. Through this logic, deportation would be treated as an administrative procedure rather than criminal law, thus excluding noncitizens from constitutional rights normally guaranteed in a criminal trail (Gardner 1981, 398-403).

Yet the plenary power doctrine alone cannot explain the explosive growth of deportation. Even in the late 1800s, deportation was still a comparatively small enterprise that deported at most a few thousand immigrants annually (Parker 2012, 188-189). However, with immigration law existing outside of judicial review, immigration policy could expand the scope and power of deportation without the constitutional limitations that constrain other areas of policy. The next turning point in deportation law concerned a shift in the function and purpose of deportation itself.

Beyond the Border: Deportation as Social Control (1900-1999)

As it was originally conceived, deportation acted as a mechanism of extended border control, enforcing laws that excluded certain noncitizens from entering the United States. Deportation under the Chinese Exclusion Act (1882), for example, was concerned with removing those noncitizens the law had barred from entry. Beginning in the 20th century, deportation acquired a new function. Instead of simply regulating illegal entry, the United States used deportation in order to regulate behavior among immigrants who were already within the United States' borders. The United States began to create laws permitting the deportation of 'unfit,' criminal noncitizens legally residing in the United States. The first of these laws was a 1910 statute that deported any noncitizen found to be a prostitute (Kanstroom 2007, 126). Over the course of the century, the idea of deporting criminal noncitizens grew in popularity. In the 1920's, a series of laws expanded the number of deportable crimes to include espionage, explosives, wartime offenses and crimes involving 'moral turpitude' (Kanstroom 2007, 134).

In this sense, deportation was no longer limited to unwelcome foreigners. Any noncitizen who had already been admitted into the United States now faced the possibility of deportation. The threat of deportation itself marginalized immigrant populations, encouraging them to become silent in politics out of a fear of being targeted (Moloney 2012, 10). In the early 20th century, 10 percent of the United States' population was foreign born, meaning millions of Americans now feared their own expulsion (Moloney 2012, 11). By employing deportation as a tool of the criminal justice system, the United States created the conditions for the dramatic expansion in the scope and power of the deportation system.

Although post-entry social control is more readily analogized to criminal punishment, this shift in deportation law did not alter the court's opinion as to whether deportation necessitated basic due process. In *Bugajewitz v. Adams* (1913), a case related to the aforementioned prostitution statute, the Court held that even though deportation was now based on criminal conduct, this did not make deportation proceedings criminal (Kanstroom 2007, 126). In what could have been a critical turning point in immigration law, the Court instead deferred to the status quo. Deportation law continued to exist as administrative law, ensuring that noncitizen rights in deportation were minimal.

The second half of the 20th century witnessed dramatic liberal reforms in immigration law. In the post-World War II political environment, liberal intellectuals and activists created broad coalitions that demanded the elimination of the racialized quota based system that had governed immigration law since the 1920's (Ngai 2004, 241). This system of visa distribution had allotted nearly 70 percent of all slots to white European immigrations, attempting to solidify the racial homogeneity of American society (Campi 2014). After years of political debate, the Immigration Act of 1965 proved to be a watershed moment in American history by replacing quotas with a preference system that prioritized family unity and high skilled labor (Kanstroom 2007, 225).

Nevertheless, the development of deportation law was an important exception to this liberal trend. Throughout this period, policymakers continued to focus on the issue of 'criminal aliens.' In the late 1980s, the fear of criminal aliens culminated in several historic pieces of immigration legislation. The first of these was the Anti-Drug Abuse Act of 1988, a law that created a list of 'aggravated felony' crimes that subjected a noncitizen to immediate deportation. At this point, only the most serious offenses, such as murder, drug trafficking, and firearms trafficking, were included (Kanstroom 2007, 227). However in 1996, the tough on crime mentality pushed Congress to pass two dramatic reforms to immigration law. The Anti-Terrorism and Effective Death Penalty Act (AEDP) and the Illegal Immigration Reform and Responsibility Act (IIRRA) expanded the list of deportable crimes to include nonviolent misdemeanors such as shoplifting or drug possession (Miller 2004, 81-84).

These reforms not only expanded the criteria for deportation, they also pushed the legal and constitutional limits of deportation authority. Although deportation proceedings had few judicial safeguards prior to 1996, these reforms virtually eliminated the ones that remained. Those convicted of an 'aggravated felony' were subject to immediate deportation without any traditional avenues of relief offered in other deportation hearings (Miller 2004, 81-84). Prior to 1996, immigration judges could exercise compassion by offering probation in lieu of a conviction. In the 1996 immigration reforms, Congress legally redefined the scope of 'conviction' so that even if a judge offered probation, the noncitizen would still be deportable (Cook 2003, 307-309). One of the most striking elements of these reforms was their retroactive application, meaning that any noncitizen previously convicted of a crime now faced imminent deportation (Miller 2004, 81-84). Many criticized this provision as an ex-post facto law prohibited by the Constitution. However, because immigration law was still conceived of as administrative rather than criminal law, the courts have regularly upheld Congress' authority to retroactively apply these measures (Miller 2004, 84-85).

The War on Terrorism: Deportation Expanded (2000-Present)

By September 11th, 2001, the United States had already created an expansive system of deportation that could easily be deployed for national security. Over the past two centuries, the deportation system had been established as a tool to expel 'threatening' noncitizens. After September 11th, the United States capitalized on deportation as a mechanism for crime control in order to respond to a new form of crime, international terrorism. Once deportation became an issue of national security rather than traditional crime, the United States asserted unprecedented power in responding to potential noncitizen threats. For example, the PATRIOT Act, signed in October 2001, included sections that allowed the deportation of any "alien" for wholly innocent associational activity with a terrorist organization (Cole 2002, 966). The act expands the definition of "terrorist activity" to include virtually any use (or threat of use) of a weapon and gives the Secretary of State unreviewable authority to designate a "terrorist organization" (Cole 2002, 966-970). Combined, these provisions have the power to subject virtually any noncitizen to arbitrary deportation.

In addition to expanding the federal government's power to deport, Congress also ensured that authorities would have the resources necessary to carry out these deportations. In 2002, the United States created the Department of Homeland Security. This agency, whose "primary mission…is to prevent terrorist attacks," was granted the authority to oversee immigration law enforcement (Homeland Security Act 2002). The two agencies that deal with deportation – Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) – have received billions of dollars in order to ramp up deportation of noncitizens (Gonzalez-Barrera and Manuel-Krogstad 2014). In fiscal year 2012 alone, the federal government spent 18 billion dollars on federal immigration enforcement, 24 percent more than all other forms of criminal law enforcement combined (Meissner et al. 2014).

This long history of deportation policy, dating as far back as 1798, is what allowed the conditions for the unprecedented growth in the deportation regime that we see today. Early policies established the authority to deport and soon after asserted this authority as a form of irrefutable sovereign power. Free from traditional judicial checks, the deportation regime expanded, acquiring a new function as a tool for the post-entry social control of immigrants. The policies thereafter dramatically expanded the criteria for deportable noncitizens, leading to large spikes in deportation. In 1995, the year before the AEDP and the IIRRA were enacted, less than 50,000 immigrants were deported annually. That number increased to over 100,000 in 1997 (The Economist 2014). In 2003, one year after the Department of Homeland Security was formed, the annual number of deportations increased to 211,000 (The Economist 2014). As a result of these policies, millions of immigrants have been deported over the course of a few years.

Sociological Context

The legal history of deportation law in the United States runs counter to the liberal democratic narrative of progress that Americans espouse. Over time, the deportation system has grown in size and in power, became decidedly less democratic, and secured fewer rights for noncitizens to challenge their deportation. To understand this trend, this section advances a sociological history to accompany the preceding legal analysis. The development of deportation law cannot be separated from the racial and xenophobic attitudes that have pervaded American society. Xenophobia has not only prompted the deportation of certain racialized populations; it has also facilitated their exclusion from proper democratic consideration. As noncitizens these populations have been placed on the periphery, becoming the target of governmental power instead of earning its protection. As subjects marginalized from political participation, noncitizens have been deported in the name of "national interest."

At its inception, the United States was remarkably homogeneous, in culture, religion, and race. In 1790, 75 percent of the population had roots in the English-speaking states of the British Isles (Steinberg 1981, 10). Although there was some degree of ethnic diversity in select parts of the United States, British Protestants enjoyed political and cultural dominance in American society and numerically outnumbered any other demographic (Steinberg 1981, 10). Perhaps because of this ethnic homogeneity, xenophobic fears had a powerful influence on U.S. policy, including the initial development of deportation powers under the *Alien and Seditions Act*. The power to deport was in fact established as a solution to the fear of French influence in the United States. From 1789 to 1799, the French Revolution invoked fear of political upheaval and anarchy in the United States, a fear coupled with racial stereotypes of the French as brute and threatening (Kanstroom 2007, 52-53). The French were perceived as alien, a "colored breed" that threatened the political and physical security of the United States (Kanstroom 2007, 52-53).

In this light, the power to deport and the power to secure the nation's racial cultural and religious homogeneity were effectively one and the same. Other forms of forced deportations like the *Indian Removal Act* (1830) or the *Fugitive Slave Act* (1850) leveraged the precedent created by the *Alien and Sedition Acts* in order to target entire noncitizen populations for deportation (Kanstroom 2007, 83). The logic that justified the forced removal of threatening noncitizens was extended in the forced migrations of indigenous and slave populations (Kanstroom 2007, 63-80). In each case, migration and movement of these nonwhite populations were controlled and regulated in order to secure social and political order. These deportations reinforced the social and political divisions between 'citizens' and 'aliens,' racialized divisions that segregated those included and those excluded from American society (Peutz and De Genova 2010, 4).

Although the development of immigration law under sovereign authority was by no means inevitable, it coincides with the same logic that has guided deportation policy since its inception. Deportation itself reaffirms state sovereignty and territoriality by invoking an irrefutable state right to expel undesirable, threatening noncitizens (Peutz and De Genova 2010, 7). So irrefutable, in fact, that even judicial review would not hinder this power.

Following historical precedents, the widespread desire to control and restrict foreign influence facilitated the expansion of governmental power to deport in the late 1880's. This was the case when the Supreme Court ultimately held in *Chae Chan Ping v. United States* that the political branches would have unreviewable authority to set immigration law. At this time, xenophobic sentiments were especially powerful in the West where there were a great number of Chinese immigrants. Although the Chinese were originally welcomed, a surge in their population led to hostility, racial stereotyping, and outright violence: in 1850 there were approximately 7,500 Chinese immigrants nationwide, while in 1880 that number had risen to 105,000 (Kanstroom 2007, 98). Chinese immigration soon became a national 'problem', prompting Congress to pass the Scott Act, a law that prohibited the reentry of all Chinese laborers. When Chae Chan Ping attempted to return to the United States after a visit to China, he was denied entry and chose to challenge the law in court. It was only then, in a case intimately connected with anti-Chinese racism, that the Supreme Court affirmed the plenary power of the federal government in immigration (Kanstroom 2007, 98).

When deportation became concerned with regulating noncitizen behavior within the United States, sovereign power became articulated as a justification to not only secure state borders and territory, but also as a justification to cleanse American society of unfit, undesirable noncitizens. As a tool of the criminal justice system, deportation was used to target 'criminal aliens.' Again, xenophobia played an important role in the development of these deportation policies and in the very way that policymakers constructed the problem of 'criminal aliens' in the United States.

The flurry of legislation that facilitated the deportation of noncitizens throughout the 20th century was justified by a perceived increase in immigrant crime rates, although a review of the data shows that no such increase occurred (Cook 2003, 305). These policies more so reflected anti-immigrant sentiment of the time. Many Americans were inherently unsettled by the changing ethnic composition of modern immigrants, who were increasingly non-white and did not readily embrace assimilation like their earlier counterparts (Cook 2003, 306). Accordingly, the American public largely believed immigrants were to blame for the ills of American society, such as drug abuse, crime and unemployment (Marley 1998, 857).

Through these policies, policymakers blurred the division between noncitizens and criminals by treating them as one and the same. The post-entry deportation laws that created such a rigid system were grounded in the assumption that noncitizens were predisposed to crime and that deportation was the most efficient way to deal with this threat (Miller 2004, 120). The conflation between noncitizens and criminals was a product of the discourse policymakers employed. The very idea of the 'criminal alien' discursively linked the two concepts – criminal and alien – together in order to construct a national problem in need of intervention (Lytle 2003).

The same discursive tactics employed against 'criminal aliens' were later applied and perfected in the War on Terror. Instead of being labeled as 'deviant criminals', every noncitizen is now considered a potential terrorist and a potential threat to national security. The consolidation of counterterrorism and immigration under the Department of Homeland Security is emblematic of this trend. In this frame, immigration is always an issue intimately linked to national security. Under the auspices of national security, deportation agencies target the noncitizen population as a whole, including undocumented immigrants and 'criminal aliens' deportable under the 1996 reforms. Through this linkage, all noncitizens have borne the consequences of post-9/11 counterterrorism policies, whether physically or psychologically by nature of their precarious situation.

Enforcement of deportation has become increasingly discriminatory in the 21st century, reflecting the same xenophobic fears that prompted Congress to expand the government's powers to deport noncitizens in the 1700's (Miller 2004, 84 and Golash-Bozaa 2013, 11).[6] In the name of national security, the PATRIOT Act gives almost unreviewable authority to deport any 'threatening' noncitizen, and in light of the trauma caused by the September 11th terrorist attacks, American citizens have been more willing to accept these xenophobic policies. Whereas before September 11th, circa 2000, about 80 percent of the American public considered racial profiling wrong, polls taken immediately after 9/11 reported that nearly 60 percent of the public then supported these measures given the current security environment (Cole 2002, 974-975).

Such toleration of xenophobic policy is indicative of the ways in which deportation has been influenced since the late 1700's. The legal history of deportation law displays the many critical junctures that influenced future policy, but only by combining this with sociological analysis can we understand exactly how the deportation system has evolved into its present iteration. Xenophobic fears have allowed policymakers to justify unprecedented increases in governmental power targeted at marginalized populations. Any recommendations moving forward must reflect on both of these analyses in order to create a more democratically accountable system of deportation.

Recommendations

The United States' deportation system has long existed outside the process of judicial review in order to circumvent noncitizen's rights. This has largely been the product of pervasive xenophobia that has influenced critical legal decisions in the United States. In order to create a more just system, we must first align deportation with judicial review and reverse the growth of the system itself.

The first step forward must alter the legal framework of immigration law by ending the plenary powers doctrine. This doctrine has allowed Congress and the executive branch to wield unchecked powers in excluding noncitizens from the United States. In the current legal framework, policymakers will continue to expand the scope and authority of deportation without any constitutional limits. The policies passed after 9/11 are only the most recent example of the unchecked power that the federal government has exercised. Furthermore, the plenary powers doctrine has constructed deportation as administrative law, thus excluding noncitizens from judicial review of the deportation process itself. Noncitizens are denied essential constitutional rights because of this distinction. Particularly now that deportation is tied with criminal proceedings, this distinction only serves those who wish to deny noncitizens the right to challenge their deportation.

In addition, we must reverse the policies that have been part of this long history of unchecked deportation policy. Absent judicial review, policymakers have been able to pass legislation subjecting more and more noncitizens (e.g. 'criminal aliens', 'terrorists', etc.) to unchecked

[6] The different systems of racial profiling involved in deportation enforcement have been written about extensively. The DOJ has primarily targeted Arab and Muslim noncitizens in their pursuit of terrorist suspects, often detaining them for investigation and later deporting them if possible (See Miller). The DHS has primarily targeted Latinos suspected to be unauthorized immigrants (See Golash-Bozaa). While these are both separate issues, they are related in demonstrating the discriminatory nature in the enforcement of deportation.

deportation. These policies have been historically informed by xenophobia and do not reflect an accurate analysis of necessary deportation.

This is not to say that all deportation policies should be rescinded. Rather, we must revisit and refine the policies that guide deportation today. The Anti-Terrorism and Effective Death Penalty Act (AEDP) and the Illegal Immigration Reform and Responsibility Act (IIRRA) are still operational and allow the deportation of long-time permanent legal residents for committing a petty misdemeanor. Few would agree that this policy serves the United States' national interests. Similarly, we must re-examine the legislation passed in the wake of September 11th to objectively analyze the current relevance of policies like the PATRIOT Act and the Homeland Security Act. Furthermore, we must be cognizant of the longer history of deportation law in the United States moving forward and resist the temptation to rely on deportation as an unchecked power to deport 'threatening' noncitizens.

In the past few years, the Obama administration has taken multiple executive actions granting 'deferred action' to categories of deportable immigrants, functionally allowing these groups to reside in the United States for the near future.[7] Yet while these actions are significant, they do not address the underlying problems with the deportation system. In June of 2012, the administration announced Deferred Action for Childhood Arrivals (DACA), an initiative that would grant deferred action to certain undocumented youth (Nepolitano 2012). In total, this program has relieved over 650,000 unauthorized immigrants from deportation (USCIS 2014). In November 2014, the administration announced that it would expand eligibility for DACA as well as implement another program called Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), now extending the same benefit to the parents to which its title references (Johnson 2014).

Although the program has yet to be implemented, current estimates show as many as 3.7 million unauthorized immigrants nationwide are eligible. While these numbers are significant, executive actions are only temporary solutions that do not reverse past policies, or change the juridical framework surrounding immigration. Any future president can rescind these orders, easily reversing any progress made over the past few years. Moreover, current legal battles challenging the legitimacy of his most recent executive order are stalling implementation (Chishti and Hipsman 2015).

However, the legal pushback that has surrounded the Obama administration's current actions is however telling of the obstacles that any true reform will face. Moreover, Congress's inability to pass any form of immigration reform in recent years implicates deportation as well. In this light, executive action on deportation might be a necessary and proper short-term solution. The public is evenly divided over whether the recent increase of deportation is 'good' or 'bad' (Pew Research 2014). Nevertheless, gradual reform is possible and modestly scaling back both the size and power of the deportation regime can be a pragmatic push towards ultimately creating a just, and more accountable deportation system.

[7] 'Deferred Action' is the political term used to describe the executive's branch use of 'prosecutorial discretion' in order to deprioritize low priority categories of immigrants. This legal justification of prosecutorial discretion relies on the argument that the executive branch should be allowed to focus attention on 'high priority' individuals that do not pose a threat to national interests.

Conclusion

From a broad perspective, the question of whether to offer noncitizens a more democratically accountable system of deportation relates to the long-standing tension between liberty and security. In this case, it is noncitizens' liberties that are being threatened. Deportation policy's history should demonstrate that our xenophobic fears, particularly in times of crisis, often easily lead us to compromise liberties for the sake of security. Again, a more sober analysis of deportation policy can help us find a more proper balance between liberty and security. Placing immigration under judicial review is by no means abnormal; it is simply aligning our deportation policy with the basic democratic values the United States espouses. Deportation must have its constitutional limits and be reviewable by the judiciary. Neither of these standards unduly restricts counterterrorism operations, most of which have nothing to do with deportation. However, by doing this we can create a more just system of deportation that checks arbitrary government power and guarantees noncitizens basic legal rights.

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U.S. Const. Art i, Sec. 8, Cl. 4

Three

Actively Managing Risky Behavior: How the Insurance Industry Should Address a Changing Climate

Collin Gannon

Abstract
On March 13, 2015 the BBC reported a category-5 cyclone that ripped through the South Pacific island nation of Vanuatu, damaging up to 90% of capital city Port Vila's buildings and housing infrastructure. Just months earlier, the New Zealand Immigration and Protection Tribunal flirted with the idea of recognizing the world's first "climate refugees," thereby granting refugee status to a family fleeing the effects of climate change in the island nation of Tuvalu (McAdam 2014). Even here at home, Governor Brown of California ordered mandatory water use restrictions in response to a winter of record-low snowfall following a four-year period of drought (Nagourney 2015, April 1). Whatever the cause may be, the effects of a changing climate are proving to be costly, life threatening, and a major cause for concern for policymakers worldwide.

This paper will briefly present the far-reaching consequences of climate change, particularly natural disasters, and the state of modern environmental law seeking to mitigate climate change. I will then argue that climate change mitigation requires a multi-faceted approach and in this respect, the insurance industry, through policy construction and litigation, can play a substantial role in both reducing greenhouse emissions and mitigating the destructive effects of climate change. Several recent cases are presented that demonstrate effective strategies and potential best practices for insurers in developed and developing nations alike.

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A Changing Climate – Both Legally and Environmentally

The latest report by the United Nations Intergovernmental Panel on Climate Change (IPCC), the leading international body for the assessment of climate change, explains that human influence on the world climate system is indisputable and that recent anthropogenic greenhouse gas emissions, which are at the highest levels in human history, have substantially impacted both human and natural systems. The IPCC report asserts that the effects of increased greenhouse gas concentrations in the atmosphere are "extremely likely" to have been the dominant cause of climatic warming since the 1950s (IPCC 2014).

Irrespective of cause, the impact of climate change, including the damage from extreme weather and climate events over the past half-century, indicates the "sensitivity of natural and human systems to changing climate" (IPCC 2014). The IPCC report concludes that the risk of abrupt and irreversible climate change increases as the magnitude of warming increases. The complexity and extent of the risks posed by climate change in the coming decade will depend in large part on the actions taken, or not taken, by society today to decrease greenhouse gas emissions. Any viable pathway toward restoring pre-industrial atmospheric greenhouse gas levels must involve substantial reductions in emissions over the next few decades, and near zero emissions by the end of the century.

The IPCC report suggests that many policy options can help address climate change, but no single strategy will be sufficient. However, environmentalist efforts to advocate for climate change policy have been narrowly focused on only a handful of policies. In a 2004 essay titled, "The Death of Environmentalism," Michael Shellenberger and Ted Norhaus argue that the environmentalist strategies of the 1970s, which involved an intense focus on legislative implementation of technical fixes like cap and trade systems, carbon pollution taxes, and vehicle mileage standards, fall woefully short of slowing down climate change. They argue that progress toward attaining a sustainable society with low carbon-emissions has also been stifled by the tendency of modern environmental advocates to assume that the "protect the environment" framing of the issue, which was successful in previous decades, still supplies political currency for pro-environment movements (Shellenberger and Norhaus 2009, 126). Based on Shellenberger and Norhaus' analysis, efforts to combat climate change must embrace new and innovative avenues for reducing carbon emissions. One such alternative is to leverage the global insurance industry to mitigate both carbon emissions and the exposure to climate change related risks.

Enter the Insurance Industry

When misfortune befalls policyholders, the insurer will bear the burden. Insurers are thus motivated to minimize risk by limiting the extent of their coverage liability, coercing behavioral changes on the part of policyholders, or shifting the burden of financial responsibility onto other entities that are capable of protecting policyholders from damage or loss. Before discussing the ways insurers can mitigate risks and damages arising from climate change, it is useful to understand the scope of those risks.

In the past 30 years there have been $4 trillion in pecuniary losses to natural disaster, in addition to 2.5 million lost lives. In the 1980s, the average annual economic loss to natural disaster was approximately $50 billion. That number has grown to an average of approximately $200 billion a year in the past decade (World Bank 2013). In 2012, Hurricane Sandy's 14-foot storm surge alone caused $50 billion in direct damages, and contributed to global losses of $165 billion. The following year global losses totaled nearly $125 billion. The combined effects of urbanization and climate change are responsible for this growth in annual loss due to natural disasters (Messervy, McHale, and Spivey 2014).

Not only is the impact of climate change felt due to natural disasters, but extreme weather has also contributed significantly to a sharp rise in damages. For example, the Federal Crop Insurance Program (FCIP) made a record payout of $17.3 billion for crop loss due to drought and extreme temperature in 2012. Supply chains are also significantly affected by climate change. In 2011, floods in Thailand caused $15-20 billion in losses, greatly hindering the profitability of large corporations, like Ford and Toyota, which are reliant on a steady stream of parts and supplies (Messervy, McHale, and Spivey 2014).

Large corporations are not only the victims of climate change but also the agent, thus putting insurers in a unique position to mitigate the effects of climate change as will be explained below. The world's 3,000 largest public companies have caused an estimated $1.5 trillion in environmental damages as a direct result of their carbon emissions (UNEP FI and PRI 2010, 25). Approximately 60% of the adverse impacts are attributed to the following sectors: electricity, oil and gas, industrial metals and mining, food production, and construction and materials industry – each sector being heavily reliant on insurance to support risky and profitable ventures (UNEP FI and PRI 2010, 27). Because these sectors all contribute to global greenhouse gas emissions and rely on insurance policies to reduce operational risk, the insurance industry possesses substantial leverage over large stakeholders. With growing scientific and political attention on climate policy in the United States, the insurance industry has a unique opportunity to influence global climate policy. Climate change is a complex issue having variable impact across regions and localities, with developing countries bearing more risk than developed countries. Ian Kirk, Chief Executive of the Santam Insurance Group, believes the globally connected insurance industry – cutting "across regions, nations, individuals, businesses, and industries to pool the funds from many insured entities to pay for the losses that some may incur" – is uniquely positioned to become an important contributor to climate-risk management strategies. Moreover, the insurer's capacity to pool risks across regions helps to lessen the gap in climate management between developed and developing countries (Kirk 2012). To realistically combat climate change, the insurance industry is capable of influencing the behavior of corporate and individual actors. Litigation is one tool for doing so. By challenging insured greenhouse gas emitters and governments that fail to invest in climate-change related damage prevention, insurers can incentivize specific climate-change mitigating behaviors.

The virtue of climate litigation is that it ascribes a cost to the harmful effects of pollutants emitted by insured industries. By shifting the costs or risks of pollution onto industries, litigation can encourage risk and emissions reducing behaviors. In light of the aforementioned risks to life and property caused by climate change, the insurance industry can strategically conduct climate-related litigation so as to encourage a change in the behavior of its carbon-emitting policyholders by shifting more risk onto those policyholders. Insurers can accomplish this by using litigation to reduce the insurer's liability under commercial general liability (CGL) insurance and commercial executive's insurance (CEI) policies, and through subrogation lawsuits designed to motivate municipal governments to maintain adequate investments in infrastructure.

Commercial General Liability Insurance

Commercial general liability (CGL) insurance policies protect businesses from the costs of personal injury and property damage suits that arise from business operations. A common provision of CGL policies gives the insurer a duty to defend the policyholder in such suits. Narrowing the scope of CGL insurance policies so that they do not cover suits that arise as a result of carbon emissions would force a policyholder to bear the costs of accidents resulting from emissions.

The Virginia Supreme Court was the first state high court to consider an insurance coverage lawsuit in AES Corp. v. Steadfast Ins. Co. (725 S.E. 2d 532 (Va. 2012)). The insurer's argument was that it did not have a duty to defend the insured in a suit related to the adverse effects of climate change because the policyholder intentionally emitted greenhouse gases. The dispute stemmed from claims lodged in federal court by the Native Village of Kivalina in *Native Village of Kivalina v. ExxonMobil Corporation*, 696 F.3d 849 (9th Cir. 2012), *cert denied* 133 S. Ct. 2390 (2013). The underlying dilemma was whether the joint defendants - constituting coal-burning utilities, coal producers, and energy companies - could be liable for damages that were allegedly related to their carbon emissions. The Village of Kivalina asserted that climate change was adversely affecting their community by causing the increased melting of Arctic sea ice (*AES* 2012). They complained that the break down of Arctic sea ice removes the ice barrier that protects the Village from disastrous winter storms (Messervy, McHale, and Spivey 2014, 13). While the case was ultimately dismissed at the Supreme Court[8], a subsequent dispute between one of the *Kivalina* defendants and its insurer over the costs of the federal litigation was litigated in the Virginia state courts (See *Am. Elec. Power Co. v. Connecticut* (2011)). This latter dispute introduced a new precedent obligating the insurer to defend in cases involving carbon emissions and damages from climate change.

That Virginia state case involved the nature of CGL insurance policies issued by Steadfast Insurance to AES Corporation. The AES Corporation, holding multiple CGL insurance contracts with Steadfast Insurance, sought legal defense in the aforementioned *Kivalina* case. Steadfast Insurance denied coverage and filed a declaratory judgment action in Virginia state court claiming that AES Corporation intentionally emits carbon dioxide and "knew or should have known of the impacts" of those emissions (*AES* 2012, 533). Therefore, the CGL insurance contracts between AES and Steadfast did not require Steadfast to provide coverage in the form of a legal defense because, by the terms of the CGL policy itself, there had been no "occurrence"—or accident—on which AES could base its claim for coverage. In other words, Steadfast Insurance claimed that the damages claimed in *Kivalina* were not the result of an accident, and thus defense was not required

[8] The federal case was dismissed on the basis that damages are not available under federal common law for such a claim by consequence of the displacement of federal common law by the Clean Air Act legislation,

because AES had intentionally emitted carbon dioxide and should have known the consequences of their actions.

The Virginia Supreme Court ultimately sided with Steadfast, holding that an insurer has no duty to defend an insured policyholder in a nuisance case based on the effects of climate change because there is no accident or occurrence under an insurance policy where the insured is guilty of intentionally emitting greenhouse gasses (*AES* 2012, 532; Messervy, McHale, and Spivey 2014, 14). The AES Corporation's argument was that since the claims in the *Kivalina* case involved a charge of negligence, Steadfast's duties under the CGL policies were triggered because negligence claims typically trigger the duty to defend in insurance liability cases. However, the language used in the Steadfast Insurance CGL policy was fatal to the AES Corporation's argument because it required Steadfast to defend AES against claims for damages of bodily injury or property damage caused by an "occurrence" (Boyd 2011).

Thus, the way the Court construes the word "occurrence" as used in Steadfast's CGL policies is instrumental to this case. By the terms of the policy, an occurrence is "an accident, including continuous, repeated exposure to substantially the same general harmful condition" (*AES* 2012, 536). An accident, moreover, is "an event which creates an effect which is not the natural or probable consequence of the means employed . . . If a result is the natural or probable consequence of an insured's intentional act, it is not an accident" (*AES* 2012, 538). Again, since the complaint in *Kivalina* was that AES intentionally emitted carbon, and knew or should have known the impact of such emission on a coastal village like Kivalina, it did not matter that the disastrous effects were unintentional because "whether or not AES's intentional act constitutes negligence, the natural and probable consequence of that intentional act is not an accident under Virginia law" (*AES* 2012, 537). As such, for relevant insurance coverage to be triggered under Virginia law, the allegations in a complaint must claim damages from a fortuitous event or accident, and not from the natural and probable consequences of an intentional act such as emitting greenhouse gasses into the atmosphere (Boyd 2011).

The *AES* lawsuit demonstrates the importance of the precise wording of policies and the wording used in allegations by the plaintiff. When insurers are concerned about potential economic losses, whether they result from direct damages action against the insured – as would be awarded in a typical state claim seeking damages (See *Am. Elec. Power Co. v. Connecticut* (2011)) – or from providing the fees for legal defense on behalf of an insured policyholder (like at issue in *AES*), there is opportunity to drive public policy change in the courts. In state courts where the intentional emission of greenhouse gasses disqualifies a policyholder from coverage, policyholders will have an incentive to alter their behavior and reduce carbon emissions. Thus, the Virginia Supreme Courts in *AES* set an example for how the Court's role in the interpretation of CGL policies and the CGL policies themselves can all be part of an innovative strategy to mitigate climate change.

By construing the contents of these CGL contracts in the same manner as the *AES* court, courts complement the efforts of insurance companies to restructure their existing policies in order to decrease the risky behavior of the insured, as mentioned above (Vincent 2014). These innovative insurance policies are discussed later in this paper, primarily in the context of developing nations. Given the dissemination of IPCC reports and common knowledge about the dangers of climate change, courts can view greenhouse gas emission as an intentional act with reasonably foreseeable consequences and hold insured emitters accountable for their actions. By removing insurance protections and attributing a heavier cost to behavior that leads to climate change and by shifting the burden of paying for the impact of climate change to the primary actor rather than the insurer, the courts and the insurance industry can encourage climate-risk management through litigation.

Commercial Executive's Insurance

Insurers could use litigation to similarly limit their liability in commercial executive's insurance (CEI) plans. Such plans are purchased to protect commercial executives from damages resulting from alleged or actual wrongful acts that might be committed in their positions as a commercial executive. Limiting the scope of such products could force the executives of carbon-emitting corporations to bear the full consequence of carbon emitting conduct.

In May 2014, Greenpeace, the World Wildlife Fund, and the Center for International Environmental Law sent inquiries to leading global insurers to ask whether director and officer liability insurance products would provide coverage for financial damage premised on climate change disaster (Messervy, McHale, and Spivey 2014, 14). This might be another instance where an insurance company's policy could discourage negligent behavior of an executive at an emitting firm, such as misleading the public about the impact of the firm's carbon emissions on the environment. Statements from Swiss Re and Allianz Se indicate that the insurance companies are likely to provide coverage under CEI polices except in the case of an intentional or illegal act (Swiss Re 2014; Allianz 2014).

Some insurance lawyers, in light of the *Steadfast* decision, suggest that any insurance policy for directors and officers would not provide coverage to an executive being sued for damages arising from climate change (Messervy, McHale, and Spivey 2014, 14). However, Munich Re, a large multinational reinsurance company, disagrees, saying instead "in the case of losses only indirectly related to climate change – perhaps resulting from a failure to meet consultancy obligations because policyholders such as engineers, architects or consultants have not considered the consequences of climate change... [s]uch losses are not based on climate change itself but on the fact that someone has neglected to give the subject sufficient consideration in his or her professional activity... [and] [t]hese losses are not untypical of liability insurance" (Ebert and Funk 2014). Should a suit like this arise, which is likely given the increasing frequency of climate litigation, the outcome will depend on the corporate law of the state litigating the suit. Some laws will recognize negligence with respect to carbon emissions as an intentional act that does not warrant coverage while others, similar to Munich RE's logic, may see it as an indirect oversight that is protected by the insurance policy. Like litigation over the terms of CGL insurance policies, CEI policies provide a similar opportunity for insurers to create powerful incentives for corporate officers to reduce emissions, embodying another viable option in a climate mitigation portfolio.

Insurer's Use of Subrogation Lawsuits Against Municipalities

Another insurer strategy to shift financial costs back to the insured party that is polluting was explored through subrogation lawsuits in response to weather events in Chicago, Illinois in 2013. Subrogation is the right for an insurer to pursue a third party that caused an insurance loss to an insured, done as a means of recovering from the third party the amount of the claim paid to the insured for a loss. An insurer's threat of subrogation lawsuit against a municipality might cause the municipality to invest in improved infrastructure and climate-change reducing behavior. In 2014, Farmers Insurance, a subsidiary of the Zurich Financial Group, initiated a class action lawsuit against 200 Chicago communities for essentially failing to upgrade city infrastructure in accordance with the increased risks of climate change disaster. This action, taking the form of subrogation against a municipality, was a response to intense flooding in Chicago in the spring of 2013 (Messervy, McHale, and Spivey 2014, 14). Farmers Insurance claimed that the city's failure to adequately prepare city sewers and storm water drains was the proximate cause of the sewage water rising into people's homes. This water damage, Farmers Insurance further claimed, could have been avoided had the city of Chicago upgraded its storm water management plans. They argued that implementing an upgraded storm water management plan was the city's obligation because Chicago officials "knew climate change in the past 40 years has brought rains of greater volume, greater intensity, and greater duration than pre-1970 rainfall history". Public Chicago agencies should have been prepared to handle the record-flooding, and could have taken preventative measures such as emptying reservoirs or employing more sandbags and inflatable flood barriers (McCoppin 2014). Thus, on behalf of more than 600 property owners affected by the floodwaters, Farmers Insurance sought to recoup from local governments the money the insurer had paid out based on those actionable Chicago homeowner's policies. In other words, an insurance company sought to use the court to shift the financial responsibility for damages arising from natural disasters to governments that fail to adequately prepare for climate change.

Ultimately, Farmers Insurance withdrew the lawsuit just months after it was filed, but spokespersons explained that company officials were optimistic that the threat of lawsuit under these circumstances would encourage city and county governments to prepare their infrastructure in accordance with the foreseeable impacts of a changing climate, like the risk of more intense and frequent flooding. A Farmers Insurance spokesman said that the company "believe[s] our lawsuit brought important issues to the attention of respective cities and counties, and that our policyholders' interests will be protected by the local governments going forward" (McCoppin 2014).

Climate litigation, in which the government is a defendant, can be a burden on the taxpayers. Margo Ely, a counsel for 55 suburbs named in the Farmers Insurance suit and the executive director of the Intergovernmental Risk Management Agency, called the Farmers Insurance lawsuit withdrawal "a good legal decision and a good business decision," because "any liability was tenuous at best" and "the impact would have fallen on [Farmers Insurance's] own customers as property taxpayers" (McCoppin 2014).

While an insurance company would not want a reputation of passing the financial burden of disaster back to its own policyholders, the threat of suit at least puts the onus on government actors to diligently and fully inform the voting public about the municipality's inadequate disaster planning with respect to the threats of climate change. Responsible civic leaders might also be motivated by the threat of lawsuit to invest in infrastructural improvement rather than risk legal costs and pay potential damages in a successful subrogation action. For example, though the Farmers Insurance lawsuit was withdrawn, it still prompted a Chicago-area village named in the suit, Glenview Village, to approve a plan in the fall of 2014 geared at preventing flooding and protecting close to 1,500 homes (McCoppin 2014).

Indirect motivation through the risk of legal costs might be all that insurer-initiated lawsuits against a government for subrogation can accomplish. State law tort immunity generally protects government from lawsuits, which is why Michael Gerrard, leading environmental and insurance law expert at the Center for Climate Change Law at Columbia Law School, called the Farmers Insurance suit "bold and ambitious . . . and an uphill climb" (McCoppin 2014). The city of Chicago has taken commendable steps to curb emissions —it has shut down two coal plants, decreased the amount of traffic, and actively seeks to invest in public transit— but continued pressure is still necessary, especially for cities in general. According to Howard Learner, Director of the Environmental Law and Policy Center, a city is not a business entity like the insurance industry. While a company is overly concerned about its yearly profits, a government is most worried about how to use its money to protect its citizens today even if that comes with substantial long-term costs, meaning governments are unlikely to take swift action without outside motivation.

As such, there is a significant role for insurers to play in climate-based litigation. Aggressive litigation that seeks to remove climate-change related events from the protection of insurance policies held by large carbon emitting companies effectively places a price on carbon emissions. Such litigation, though, is a strategy confined to developed nations that have robust legal systems. Further, climate litigation is generally retrospective, in that it provides a remedy to damage that has been done, and will only prevent future infractions when liability out-prices profit. As such, comprehensive climate mitigation and adaptation would further benefit from insurer initiatives that focus on the current and future behavior of insured actors. Developing nations, it turns out, provide a suitable platform to launch such innovative insurance products that could limit carbon emissions and climate-change related damages.

Innovative Insurance Products for Developing Nations

In the face of more intense and frequent weather events, sea-level rise, desertification and decrease in freshwater, developing countries are generally more exposed to the risks from climate change, as well as less capable of absorbing potential losses, due to a lack of resources and infrastructure (Goldberg 2012). While the preceding sections of this paper discuss climate mitigation strategies involving litigation, those strategies are limited in many developing nations. This section discusses potential adaptation strategies for developing nations.

Many citizens in developing countries depend on small-scale agriculture for both subsistence and income. Such smallholding agriculture, which consists of small farms that rely mainly on family labor, also contributes substantially to the GDP of many developing nations, and as a result developing countries face increased risk of loss from drought, flooding, and other extreme weather events (Baarsch, Huppert, and Tewes-Gradl 2013; IFPRI 2014).

Agricultural insurance and microinsurance services can be a valuable component of a climate-risk management strategy in developing nations. According to two think tanks, Climate Analytics and Enterprise Solutions for Development (Endeva), microinsurance is "the protection of low-income people against specific perils in exchange for regular payments proportionate to the likelihood and cost of the risk involved," and has been used increasingly as a tool to motivate smallholding farmers to manage their risks and invest in agricultural productivity (as opposed to rebuilding in the wake of an agricultural loss) (Baarsch, Huppert, and Tewes-Gradl 2013, 6). The products achieve this goal through a contract that incentivizes risk-reducing behavior, by granting direct payment for risk reduction and preventative pre-disaster payouts.

Contractual Incentives for Risk-Reducing Behavior

One way the insurance industry can help developing nations prevent extreme climate change is by rewarding risk-reducing behavior with incentives built into the microinsurance policy scheme. One such scheme is embodied in the agricultural insurance product "Kilimo Salama" - offered through a cooperative venture by Syngenta Foundation for Sustainable Agriculture, UAP Insurance, and Safaricom - which helps "Kenyan farmers... cope with risks from changing weather patterns by providing insurance for agricultural inputs, such as certified seeds," and requires farmers to adopt Disaster Risk Reducing (DRR) measures in order to gain access to insurance (Baarsch, Huppert, and Tewes-Gradl 2013, 8). In practice, smallholding farmers who wish to purchase coverage must implement sufficient DRR measures and purchase specifically certified drought-resistant seeds; only then, after proper purchase, can farmer's crops be insured under Kilimo Salama. Thus, purchasing farmers have invested in climate-adaptation through insurance-product based incentives.

Comparably, the "Red Hairy Caterpillar Insurance" product offered by People Mutuals in India is also designed to encourage smallholding farmers to implement DRR measures. The approach of People Mutuals of India was to lower the value of insurance premiums when policyholders took certain DRR measures. That is, an individual policyholder's premium was adjusted to their actual risk exposure and since their exposure decreased as a result of DRR measures, the premium decreased as well. For example, smallholding farmers would pay a lower premium on insurance for caterpillar damages to crops if they plowed their fields in the summer, when fewer caterpillars are necessary, thus motivating policyholders to make sustainable decisions (Baarsch, Huppert, and Tewes-Gradl 2013, 8).

Direct Payment for Policy-Specific Risk Reduction

Direct payment by microinsurers for DRR implementation is another strategy to manage climate-change. Here the insurer directly provides smallholding farmers with required goods and services like training on water management, as carried out by People Mutuals of India; the option to implement DRR or adaptation measures in place of a premium payment as made famous by the Rural Resilience Initiative Harita; or simply provide reimbursement for DRR measures analogous to preventative health care (Baarsch, Huppert, and Tewes-Gradl 2013, 9).

One People Mutuals strategy has been to base their policies on rainfall indices and offer them exclusively to members of so-called "farming federations". Within these farming federations, member-farmers are trained on climate change, drought, and water management issues in an attempt to "stimulate demand and build capacity". People Mutuals will even support localized risk sharing amongst the farming federation members. For example, automatic rain gauge data from relevant localities will be used to determine a level of risk retention for the insured (Baarsch, Huppert, and Tewes-Gradl 2013, 9). As such, the policy achieves sustainability by encouraging certain community behaviors.

The Rural Resilience Initiative Harita (R4)—a risk management framework being used in Ethiopia (implemented by organizations like Oxfam America, Swiss Re, and the World Food Programme)—uses a combination of what Climate Analytics and Endeva call "improved risk management (risk reduction), insurance (risk transfer), microcredit (prudent risk taking) and savings (risk reserves)" to encourage smallholding farmers to improve agricultural security and sustainability (Baarsch, Huppert, and Tewes-Gradl 2013, 10). An intriguing component of the R4 strategy is the mechanism by which smallholding farmers can pay off their insurance policy premiums in the form of labor by working on local projects geared towards improving infrastructural capacity (like updating irrigation). Therefore, in this contractual strategy, the insurance provider and insured both essentially pay for and contribute to DRR measures. The strategy has been a success across Ethiopia, attracting 75,000 smallholding farmer policyholders, and inspiring similar programs in Senegal. The insurance company, then, is succeeding in inspiring climate-change adaptation and improving sustainability by offering a mutually beneficial policy.

Contractually Bargained and Preventative Pre-Disaster Policy Payouts

Insurers can also strategically influence the behavior of smallholding farmers by providing predictive information about expected events. One such insurance product is the Livelihood Protection Policy in St. Lucia, whereby the German Ministry for the Environment (through the Munich Climate Insurance Initiative) provides vulnerable smallholding farmers an index-based insurance scheme. Under the scheme, policy payouts are triggered by rainfall and wind speed indices that pass a certain threshold. The insurer facilitates preventative DRR measures by warning policyholders via text message (a DRR method itself) about a likely storm (Baarsch, Huppert, and Tewes-Gradl 2013, 10).

Taking the index-based strategy further, the El Niño-Southern Oscillation (ENSO) Business Interruption Index triggers payouts in anticipation of extreme weather so that policyholders can have additional financial means to make loss-prevention arrangements (Baarsch, Huppert, and Tewes-Gradl 2013, 11). This Peruvian insurance product, offered by La Positiva and GlobalAgRisk, Inc., provides indemnities to policyholders when the Pacific Ocean water temperature variations in the spring hit certain index points that generally forecast the high likelihood of an El Niño event – inspiring proactive (and cheap) responses to natural disasters, as opposed to costly retrospective and remedial payouts.

In sum, it is practical and feasible for a microinsurance firm to induce risk-reducing behaviors through the construction of its contract and policy. A variety of strategies have been successful in multiple national contexts and should continue to be implemented. These microinsurance products are proving to be a cost-effective mechanism to support climate change adaptation in developing countries. Continued innovation in structuring microinsurance policies, thus, saves money, lives, and livelihoods in developing nations.

Conclusion

Continued carbon emissions threaten to exacerbate climate-related destruction that has been ongoing in recent decades. On a brighter note, Munich Re reported that 83% percent of Americans believe that climate change is occurring (Munich Re 2014). Munich Re's survey is important because it demonstrates the insurance industries' intimate engagement with the issue of climate change and because consumer attitude is important in precipitating action. The changing tide in public opinion, then, could signal growing support for viable solutions to the climate problem, and insurers like Munich Re are paying attention.

Given the multi-faceted and complex nature of the climate problem, policymakers should seek to address the problem with similarly complex and multi-faceted solutions. As I have argued, both innovative means of bundling and marketing insurance products for sale in developing nations and the use of climate litigation to decrease insurer protection for greenhouse gas emitters in developed nations like the United States represent feasible components of a multi-faceted solution. By structuring or restructuring insurance contracts, the behavior of the insured can be influenced in such a way that the impacts of climate change are sustainably managed. Given the pervasive presence of the insurance industry in the global economy, insurers can accordingly play a decisive role in global climate-risk management. I argue that this role must be active, strategic, and robust, and that the cases presented here demonstrate a set of viable strategies for insurers to take such an active role.

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Four

Building a Lasting Peace in Colombia: Recommendations for Social and Political Transformation

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Introduction

Colombia has suffered more than two centuries of violence that has affected its people in many ways, including the country's economic growth. However, recently Colombia has shifted towards a path where economic and social prosperity is possible. One of the main factors for this change was the 1991 Constitution, which introduced two major changes: a legal framework to expand citizens' rights and an institutional framework to change the economic model at the time. On the one hand, the model of economic liberalization introduced by the constitution requires a less interventionist state whose main purpose is to protect property rights. On the other hand, a bigger state is needed in order to provide more rights to its citizens. For example, a state requires a greater bureaucracy to respond to increased citizen demands and to provide new public goods, among others. These two—seemingly contradictory—models coexist in Colombia, and in most western economies like the U.S. However, the coexistence of two contradictory models introduces social tensions when the institutional system favors one over the other. In the case of Colombia, more often than not, the favored model has been economic liberalization and a smaller state. Moreover, in Colombia, these tensions are stronger given the country's already exclusionary institutional system.

Historically, the Colombian institutional system has been designed as a response to violence. Violence in Colombia has affected everyone in the country one way or another. Yet, there are significant differences in how different groups have related to violence. The effect of continual violence on the poor forces them to disproportionally experience the long-run consequences of violence. On the other hand, the elites, a great majority of whom are living in big cities, have been traditionally separated from the violence, and only during the peaks of violence have they been significantly affected. It is during these peaks that the elites have "contributed" to much needed resolutions. Agreements reached by the elite, such as the National Front, while effective in decreasing physical violence, have also excluded the needs of some segments of the population who were not represented by the two traditional elite-dominated parties.

After almost two centuries of violence, effort was made to terminate physical violence and the rise and disappearance of different armed parties. In 2012 the Colombian government started peace negotiations with the major left wing guerrilla group in the country: the Revolutionary Armed Forces of Colombia (FARC). The peace negotiation process represents a historical opportunity to end physical violence in the country. However, while the magnitude and complexity of the armed conflict deserves government attention, physical violence is not the only challenge in the country. The current expansion of extractive economic activities, with their environmental impacts and poor labor conditions, are still a major concern, especially for the poor. Therefore, the current peace process is not only a historical opportunity to end physical violence; it can also be the start of an inclusive collaboration to tackle issues beyond violence.

The purpose of this article is to analyze the dynamics that create and perpetuate violence in Colombia, as well as to identify opportunities for social transformation. First, I present a historical background of the violence in Colombia and describe how this violence has been altered, but not ended, by the creation of a new constitution and by multiple exclusionary agreements between the warring parties. Second, I analyze the tensions inside the new development model proposed in the 1991 constitution. Third, I argue that the current peace negotiations with FARC are a window of opportunity to promote a more inclusive political framework in the country. This article identifies some of the elements that are fundamental to creating peace in the long run in Colombia. The final section offers recommendations to move towards a lasting peace.

The History of An Exclusionary Political Framework

The history of Colombia in the 19th century is one of inconclusive wars (Sanchez, 2008). According to the author, with very few exceptions, the 14 wars that the country experienced throughout this century: (i) started as a continuation of a previous war, (ii) involved significant portions of the population—particularly the poor—who did not necessarily fight for personal causes and ideologies but rather as patronage for a chief, and (iii) reflected the social hierarchy of the military, where landowners, merchants and professionals were at the top of military leadership instead of those who had more military experience. In addition, the wars often ended with agreements among the elite members in dispute that included amnesties, a major political reform, or the creation of a new constitution (Sanchez Gomez 2008). By the end of the 19th century the country had more than six constitutions. Colombia's turmoil in its first century as an independent nation ended up with a constitution and an environment conducive to the use of violence as a political tool, like the Thousand Days' War (1899-1902) in which liberals were claiming political space from the conservatives in government.

Political violence still played a fundamental role in the design of the country's institutional system during the 20th century. Starting in the 1930's, the country experienced a period of renewed clashes between members of the Liberal and Conservative parties over political power. This period of violence, commonly known as "La Violencia", reached its peak in 1948 when a popular Liberal Party presidential candidate was murdered. Even though a formal war was never declared, the country witnessed a high death toll. In 1958, both party leaders at last agreed to put an end to the violence by taking turns to assume the presidential seat over a span of 16 years. This agreement—known as the National Front—was effective in ending violence, but it left out other political parties and ideological groups from the decision-making process.

While agreements among elites may have temporarily stopped the violence, they were not successful in building the foundations of an enduring state. These agreements were reactive to specific circumstances of violence. This ad hoc approach, in turn, shaped the institutional development of the country. Formation of the nation-state was limited to the strengthening of two traditional political parties while failing to address other fundamental questions. For example, in 1908 full pardon was conceded to militants involved in the Thousand Days' War as a quick end to the violence but little attention was given to justice (Aguilera 2001). Given that these agreements were reached between the leaderships of the parties involved, they did not incorporate the perspective from the rest of the population in terms of social welfare. Moreover, the post-conflict negotiations generally focused on amnesties rather than proposing changes to the structural conditions that generated violence in the first place, e.g. the concentration of land among few owners and the predominance of extractive economic activities (Galindo, Restrepo and Sánchez 2009). Cycles of violence, and the exclusionary negotiations, lead to the creation of a precarious state and a highly segregated country.

The 1991 Constitution: An Attempt at Inclusionary Political Framework

The 1991 Constitution was a response to yet another escalation of violence in the country. By the end of the 1980's Colombia experienced multiple forms of violence. The country had a governance crisis and drug lords increasingly turned to terrorism techniques to influence policy decisions. Additionally, clashes between government and guerrillas groups increased, and three presidential candidates were murdered. In the midst of this hostile political environment, however, the government was able to negotiate with the M19, a guerilla group, leading to its demobilization. During this period, the idea to reform the constitution gained momentum and efforts were made toward incorporating the demobilized groups into the political system (Junguito, Cardenas and Pachon 2006). Therefore, similar to the National Front, the 1991 Constitution was conceived as a mechanism to resolve violence. It was also a mechanism for long-term peace-building, because, for the first time, the Constitution was the result of a participatory process in which none of the traditional political parties prevailed (Hurtado 2006). Despite major insurgent parties, like the FARC and ELN—The National Liberation Army—not participating in developing the new Constitution, this was a major democratic achievement that gave the hope of a new social order (Gaviria 1991). The Constitution's dual purposes to establish a new economic model and to expand citizens' rights created tensions. The Constitution included articles on market liberalization and privatization of public goods—under a mostly neo-liberal framework. It also incorporated political, economic, and social rights as well as new mechanisms for citizens' participation in public matters like referenda and plebiscites. It also opened the channels for a wider political spectrum and allowed for the creation of additional political parties besides the Conservatives and Liberals.

The expansion of citizens' rights requires an increased bureaucracy to respond to citizen demands and the state provision of public goods. Yet, the economic model introduced by the constitution calls for a smaller state whose main purpose is to protect property rights and correct some market failures. These two seemingly contradictory models coexist in most Western economies but these two conflicting priorities introduce social tensions when the institutional design of the country favors one objective over the other. In Colombia, these tensions run deep given the country's already exclusionary institutional system. From the perspective of economic development, the model has proven to be successful. According to the World Development Indicators of the World Bank (2014), Colombia is now an upper-middle income country after two decades of positive economic growth. The goal of expanding citizens' rights, however, has been less successful. Colombia's wealth distribution is highly unequal. Granted some significant improvement in both social and welfare policies, authorities continue to focus on achieving economic growth, hoping it might solve other issues including the huge challenge of inequality. This hope has not been realized and all forms of wealth in Colombia remain very concentrated. Unequal access to land, a key input for income generation in an economy that is dependent on extraction and plantations, explains the high Gini coefficient of 0.75 in 2006 (Galindo, Restrepo and Sánchez 2009).[9]

The Reproduction of Violence After the 1991 Constitution

High wealth and income inequality, combined with ongoing-armed conflict, creates two different trajectories for Colombia's citizens: one of prosperity for those who gain from the new economic system and one of economic hardship for those who cannot. The former group has access to services comparable to any high-income country; it also has avenues to claim civil rights

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[9] According to the World Factbook (CIA 2015) Colombia is the 10th most unequal country in the world.

and has the means to isolate itself from the armed conflict. The latter are systematically affected by the armed conflict. The conflict has produced at least six million victims of physical and psychological violence (Centro Nacional de Memoria Historica 2013) among which Colombia's poor are disproportionally affected (Galindo, Restrepo and Sánchez 2009). Violence forces the poor into deeper poverty, increases their dependence on state provision of social services, and restrains their ability to demand and exercise their rights as citizens. In sum, achieving both the economic and social objectives of the 1991 Constitution has been compromised by violence.

Even though the armed conflict deserves government attention, there are additional manifestations of violence that require equal attention. Perhaps one of the most relevant manifestations of economic violence is the historical land inequality: 80% of the land is still owned by 14% of the population (Oxfam 2013). Land redistribution efforts will require a significant intervention by the government, as the neo-liberal model has not been able to decrease land inequality. Instead, under high levels of inequality, a neo-liberal economic model is more likely to increase inequality.

Currently, the economy of the country depends heavily on energy and mining exports (CIA World Factbook 2015). Official policy encourages the growth of the mining industry in Colombia, now one of Latin America's largest mineral producers. Yet, historically, mining has been closely associated with precarious labor conditions and human rights violations. For this reason, while a thriving mining industry is desirable for economic growth, it also increases the vulnerability of the poor and their probability of playing an active role in the conflict. Therefore, one should not only focus on current violence but also try to understand the factors that foster further social conflict in the country and breed violence.

Peace Negotiations with FARC: A Window of Opportunity to Build an Inclusive Social Order

In 2012, Colombia's government started a peace process with the FARC, the oldest and largest leftist guerrilla organization in the country. Historically the FARC has challenged the government to establish a communist social order in the country. Reaching an agreement between these two parties could mark the "end" of armed conflict in Colombia. However, several peace negotiation processes in the past have barely altered the social order that was leading to violence in Colombia. For instance, the most recent peace negotiation with paramilitary groups in 2006 resulted in a massive demobilization of their members, but also in the creation of new criminal groups all over the country (CNRR 2007). Several factors will determine whether this new commitment to terminate violence translates into lasting peace in the country or into a temporary calm until the next eruption of violence.

One factor of concern is the failure to incorporate key parties in reaching this agreement. The ELN is still not part of the negotiation process, even though the group stated its desire to take part (El Universal 2015, Jan 26). Although, it is not necessary that peace agreements be reached simultaneously with both groups, the national reconciliation process can be undermined if victimization of some groups continues after the conflict.

A second concern stems from a shortsighted approach to the current reconciliation efforts. The history of the country has been one of war and violence. Therefore a genuine peace process should not only aim to resolve the last 50 years of conflict with the FARC and left wing guerrillas, but it should also be carefully crafted to ensure that violence will not erupt again. Assuming that peace can be instantaneously achieved and sustained is not only naïve but it could also discourage the design of policies and interventions that sustain long-run peace. Given the long history of violence in the country, constructing an environment in which basic social interactions are not marked by violence is a major challenge.

A third concern is the assumption that, once an agreement is reached, economic growth will ameliorate the other social grievances. As previously discussed, the current economic model could deepen the vulnerabilities of those already living in impoverished conditions in the country. Therefore, achieving peace will rely on reconciling the tension between the economic and social aims of the Constitution.

Finally, we should be concerned about the absence of civil society groups and victims in the reconciliation process. During the last two decades, civil society groups in Colombia have been working with actual and potential victims of the conflict to develop alternative avenues for support. For example, they provide information on access to social programs and educate people on their rights as citizens. Civil society groups have also engaged victims in designing policies for their local communities. Incorporating their voices into the reconciliation process makes use of victims' insights, and allows for the creation of inclusive policies that are crucial to mitigating the tensions between the social and economic aims of the Constitution.

Conclusions

Overcoming the armed conflict in Colombia will entail more than clamping down on violence. Ending a history of more than two centuries of war and exclusionary policies requires an understanding of the country beyond the framework of violence in order to attain peace. In the current peace negotiation process with the FARC, several elements must be accounted for to achieve this purpose and to avoid the continuation of violence.

In this paper we identify key recommendations for the current peace process. First, the government should seek to incorporate other armed groups as part of the process while taking precautions against the creation of new victims. Second, governmental efforts should address reconciliation efforts to attain long term peace. Third, it is relevant to acknowledge that main sources of vulnerability for the population do not come exclusively from the armed conflict; there are tensions between the social and economic model currently in place. It is necessary to explore alternative mechanisms to mitigate this tension, especially when it is disproportionately affecting impoverished segments of the population. Finally, the peace process should incorporate the civil society that has been working with victims during the last two decades. All these considerations should be made to serve the purpose of reconciliation and to generate inclusive policies, which have fallen short in past settlements, so that lasting peace can be achieved.

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Five

Drug Trafficking, Gang Violence, and the U.S. Immigration Crisis

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Introduction

Between 2010 and 2015, thousands of unaccompanied minors migrated to the United States in an attempt to escape the growing violence in their home countries in Central America (Park, 2014). The Central American and Caribbean region have eight of the top ten highest homicide rates by country in the world, as ranked by the United Nations (Bisogno et al., 2013). This violence can be attributed to growing gang activity in the region. The United Nations High Commission for Refugees recently released the story of a young boy named "Alfonso" and his reasons for leaving El Salvador to immigrate to the United States:

"The problem was that where I studied there were lots of M-18 gang members, and where I lived was under control of the other gang, the MS-13. The M-18 gang thought I belonged to the MS-13. They had killed the two police officers who protected our school. They waited for me outside the school. It was a Friday, the week before Easter, and I was headed home. The gang told me that if I returned to school, I wouldn't make it home alive. The gang had killed two kids I went to school with, and I thought I might be the next one" (Velez, 2014).

Gangs, such as MS-13 and M-18, as well as cartels and insurgent groups, including Los Zetas and Fuerzas Armadas Revolucionarias de Colombia (FARC), gained a substantial amount of their power from funds obtained through trafficking drugs to the United States (Kilmer 2014). The illicit drug market in the United States accounts for billions of dollars in sales, most of which is collected directly by these illegal organizations (Kilmer, 2014). The domestic demand for these illegal substances has only increased over the past thirty years (National Institute on Drug Abuse, 2014). In an effort to supply illegal substances for American consumption, gangs have begun to shift their trafficking routes from the Caribbean to overland routes across Central America and Mexico to avoid detection (Bunck, 2012). A report issued by the FBI claimed that MS-13 established a "new formalized structure to open new drug distribution channels facilitated by cartel alliances and bloodshed" from South America to the United States (Federal Bureau of Investigation, 2014). One *Washington Post* article described how "experts traced the renewed activity to the gang's leadership in El Salvador trying to create a more disciplined and structured organization in order to rejuvenate its ability to make money" (Jouvenal 2014). Funds from drug trafficking are then used to corrupt officials, buy weapons, and intimidate rivals in Central America in an effort to maintain their drug trafficking routes.

This paper argues that the United States needs to reduce violence caused by drug trafficking in Central America in order to address the unaccompanied minor immigration crisis. Recent policy proposals, including President Obama's executive actions from 2012 to 2015 and The Border Security, Economic Opportunity, and Immigration Modernization Act, follow historical U.S. policy trends, which alter domestic policy to address the influx of new groups of people. Traditionally, U.S. policymakers have either created laws that prohibited certain groups from becoming citizens or have promoted permissive policies that gradually relaxed barriers to gaining citizenship. However, these policy trends fail to address the major cause of the immigration crisis: gang violence (Velez 2014). Additional military and economic support to Central and South America should strengthen governmental institutions and subsequently reduce the high rates of violence. This paper will first examine the approach the United States has taken regarding the illicit drug trade and how these policies have affected the Central American and Caribbean region. From this perspective, domestic drug control policies and the market for illegal drugs in the United States will be discussed. I will then highlight the link between gang violence and trafficking of drugs through Central America. Finally, I will comment on both President Obama's and Congress's proposed policies and their potential effects.

Current Drug Policy

President Reagan set the precedent for U.S. domestic and international illicit drug policies. He was responsible for shaping "the contours of drug policy, expand[ing] the drug bureaucracy at home, and [he] took the drug war abroad" (Shahidullah, 2008), Shahid M. Shahidullah, the author of *Crime Policy in America: Laws Institutions, and Programs*, characterized President Reagan's approach to drug use when he wrote, "Reagan, like Nixon, deeply believed and theorized that the war on crime and the war on drugs are essentially a culture war" (Shahidullah, 2008); thus, Reagan believed that that drug related activities were a failure of morality. Many of the policies Reagan pursued regarding the "war on drugs" were focused primarily on reducing the supply and trafficking of illegal substances to the United States, as well as increasing enforcement measures on people who abused these substances domestically. In the next two sections I will discuss how this approach to drug policy has had adverse effects in the Central American and Caribbean region and how these domestic policies have failed to reduce the demand for illicit substances across the United States.

International Drug Policy

Some of the U.S. policies implemented to reduce the international drug supply and drug trafficking had unintended consequences. In the 1970s and early 1980s, Columbian cartels and insurgent groups preferred the Caribbean route to traffic cocaine, heroin, and marijuana to the black market in the United States (Bunck, 2012). The U.S. quickly began monitoring and increasing enforcement measures in this region to ramp up pressure on drug traffickers. Cartels, eager to retain control of their market share in the United States, began to use land routes to export illegal drugs. This had a drastic impact on the evolution of drug trafficking. Cocaine imports transported via the Central America route to the United States increased "by one-third of the total in 1989, to more than half in 1992, and to 80 percent by century's end" (Bunck, 2012). Shifting trade routes through Central America destabilized governmental institutions. Violence, bribes, and intimidation were all used by increasingly powerful drug smuggling cartels and gangs in order to continue their illicit activities (Bunck, 2012). Youngers and Rosin (2003) noted that the drug trade had "corrupted and further weakened local governments, judiciaries, and police forces" and, "drug-trafficking-related corruption has influenced the actions of [regional] politicians across the spectrum". Thus, the United States' intervention in the Caribbean is the major reason for the shift in trafficking routes.

In another set of international policies, the U.S. government gradually increased military and economic support to Central America and the Caribbean in an attempt to address the drug-trafficking problem over the past two decades. The U.S. Government has spent $20 billion from 2002 to 2012 on military support in the region deploying "U.S. Army troops, Air Force pilots and Navy ships outfitted with Coast Guard counter-narcotics teams" (Youngers, 2004). A recent article from *USA Today* claimed that there are ongoing operations in Central America and the Caribbean requiring 4,000 U.S. troops, four U.S. Naval ships and law enforcement agents from at least 10 different U.S. agencies (Youngers, 2004).

The U.S. has also provided training to Central and South American military and police forces. One particular operation in Columbia has proven to be very effective. Plan Colombia, a $9 billion operation "has helped Colombian forces kill at least two dozen rebel leaders" (Priest, 2013). This operation provided Colombian troops with equipment and training to combat the leftist insurgency group. Plan Colombia left FARC, "once considered the best-funded insurgency in the world, at its smallest and most vulnerable state in decades" (Priest, 2013). The strengthened Colombian Government and Military forced FARC into peace negotiations last year, potentially ending a 60-year conflict. Additionally, the United States has ensured long lasting stability by providing additional assistance in a number of key sectors including governance, agriculture, and reconciliation between combatants (U.S. Agency for International Development, 2015). The United States Agency for International Development is ensuring that people living in rural areas are given the same economic opportunities by returning land to its rightful owners and granting title to this land (U.S. Agency for International Development, 2015). This simple policy provides the lowest income earners in this country with a livelihood they would not have had otherwise. These initiatives demonstrate the coordinated military and other assistance can strengthen a country and deter violence and the drug trade.

Domestic Policy

Despite this success in Colombia, this aggressive approach to drug enforcement inside the United States has failed to reduce the demand for illegal drugs. Illicit drug use has only increased over the past 40 years. A report released by the National Institute of Health "estimated the 23.9 million Americans aged 12 and above – or 9.2 percent of the population had used an illicit drug" in 2012 (National Institute on Drug Abuse, 2014). This number is up from 2002 when it was estimated that 8.3 percent of the population had used a drug (National Institute on Drug Abuse, 2014). A vast majority of the increase in drug use can be attributed to a higher percentage of the population using marijuana before it became legalized in several states (about 7.3 percent, or about 18.9 million Americans, currently use marijuana) (National Institute on Drug Abuse, 2014). It is estimated that marijuana and cocaine sales in the United States amount to $40.6 and $28.3 billion, respectively, in 2010 (Kilmer, 2014). The global drug trade was estimated to generate $321.6 billion in 2003, with most of this money going to drug smuggling cartels (Pollard, 2005).

Domestically, the U.S. federal government has attempted to reduce the supply of these drugs by targeting several drug-trafficking gangs. In a 2013 crackdown on MS-13 gang members "236 gang members were arrested and "10 kilograms of marijuana, 123 grams of cocaine, over 770 grams of heroin and about $22,400 in cash" were seized (Bothelho, 2013). In another raid the Federal Bureau of Investigations (FBI), Drug Enforcement Administration (DEA), and the bureau of Alcohol Tobacco and Firearms (ATF) targeted the trafficking routes of heroin from the Dominican Republic and Guatemala to Providence, Rhode Island (Federal Bureau, 2014). This joint investigation resulted in the seizure of "more than 23 kilograms of heroin, including the largest single seizure in Rhode Island, as well as the seizure of over 100 grams of cocaine, 15 firearms, more than $400,000 in cash, and 12 vehicles" (Federal Bureau, 2014). These incidences demonstrate MS-13's coordinated efforts to traffic and sell drugs to specific markets in the United States. On November 1, 2014 the Attala County Sheriff's office in Mississippi, along with the Mississippi Bureau of Narcotics, seized 118 pounds of cocaine and over $1 million in cash (Thompson, 2014). This operation "began with undercover street level drug buys and morphed into a multi-agency investigation of a drug-trafficking organization with a distribution network all over Mississippi connected to Texas" (Thompson, 2014).

Drug Trafficking and Gang Violence in Central America

While the U.S.'s international policies have attempted to reduce the supply and trafficking of illegal substances, and domestic policies have failed to reduce the demand for these substances, crime due to drug trafficking over the past decade continues to plague the Central American and Caribbean region. Officials in El Salvador's anti-narcotics task force captured 1,036 gang members for drug related crimes in 2013, a substantial increase from 590 in 2012 (Cawley, 2014). Additionally, there were 29 drug trafficking structures dismantled in 2013, including the transport group known as the Texis Cartel, indicating the existence of a well-structured trafficking infrastructure (Cawley, 2014). In July 2014, InSight Crime released an article containing a warning from El Salvador's drug enforcement agency (DAN), which stated street level gangs are beginning to control drug trafficking routes (Camilo, 2014). Many larger organized crime syndicates, such as Los Zetas in Mexico or FARC in Columbia, align themselves with these street level gangs, such as MS-13 and M-8, to transport and sell their products. Douglas Farah, a senior fellow at the International Assessment and Strategy Center, wrote that "these [gangs] can and do take a variety of positions *vis-à-vis* dealings with the transport networks working on behalf of Mexican drug trafficking organizations such as *Los Zetas* and the Sinaloa cartel, protection of cocaine loads moving through Central America" (Koplowitz, 2013).

Many of these street level gangs regularly engage in acts of violence to retain, capture, or defend their control of a drug trafficking route. For example, in Central America, the 18th Street Gang, known as Mara-18, and Mara Salvatrucha or MS-13, along with several others, regularly battle for control of entire cities to ensure stable transshipment routes for narcotics to the United States. Ana Arna, a writer for *Foreign Policy Magazine,* described the gang wars in El Salvador,
"Today, the gangs regularly battle each other and the police for control of working-class neighborhoods and even entire cities. Fifteen municipalities in El Salvador are believed to be effectively ruled by the maras. Soyapango, a gritty working-class neighborhood of San Salvador that

was once home to leftist guerrillas, is now the subject of a fierce turf war between M-18 and MS-13" (Arana, 2005).

These and other gang wars have made Central America one of the most dangerous regions in the world. The Central American and Caribbean region have eight of the top ten highest homicide rates by country, Honduras and Venezuela are ranked first and second in these rankings with regards to homicide rates of 90.4 and 53.7 murders per 100,000 people, respectively (Bisogno, 2013). To put this in perspective, during times of conflict at the height of the 2007 U.S. presence in Iraq, the civilian casualty rate was 62.2 per 100,000 people (Center for American Progress, 2014); thus, Honduras and Venezuela have homicide rates that are comparable to war-time causality rates. Further, while not as high as Honduras or Venezuela, other countries in the region ranked among the top ten including Belize, El Salvador, Guatemala, Jamaica, and Colombia (Center for American Progress, 2014). These homicide and causality rates indicate the high levels of violence present throughout the region due to gang violence. Thus, gang violence due to the drug trade is a major contributing factor in the current unaccompanied minor immigration crisis.

Current Immigration Crisis

Over the past century, the demographics for migrants crossing the Mexican-American border have changed considerably. Before 1980, a majority of the immigrants were Mexican men seeking work between the ages of 15 and 35. Robinson and Gilbertson (1986) characterized this group of immigrants as remaining in the United States, with and without documentation, only temporarily until a worker made "enough money, [then] he [would] return to his native country where U.S. currency has greater purchasing power." After 1980 and over the past 30 years, an increasing number of people began arriving from Central American countries, such as El Salvador, Guatemala and Honduras, to escape the violence in their home countries. One 1987 *New York Times* article entitled "Salvadorians Stream into U.S., fleeing Poverty and Civil War" recorded part of the changing demographics in their statistic that more than 400,000 Salvadorans had entered the United States illegally since 1982 (Lemoyne, 1987). The shift in immigration demographics suggests that the ongoing gang violence in Central America and the Caribbean played a major role in explaining why immigration motives changed from finding work to finding refuge.

One unanticipated change in these immigration demographics was a spike in the number of unaccompanied minors from Central America between 2009 and 2014. U.S. officials encountered 19,418 unaccompanied minors in 2009, and this number increased by 167% to 52,000 in 2014 (Kaplan, 2014). Tom Dart, a reporter for *The Guardian,* commented, "that the vast majority of the arrivals are fleeing poverty and violence in Central America, where gangs are endemic and murder rates are among the highest in the world" (Houston, 2014). Leslie Velez (2014), senior protection officer of the U.N. High Commission for Refugees, explained, "These people aren't coming here for economic opportunity. They are fleeing for their lives." Terrence McCoy (2014) a writer from the *Washington Post* described the recent crisis, "unlike millions of undocumented workers before, who furtively cross the border for economic opportunity, many of these immigrants have immediately turned themselves in to authorities under the belief that, because they're children and mothers,

they'll be allowed to stay." A total of 58% of the children they interviewed "were forcibly displaced because they suffered or faced harm that indicated a potential or actual need for international protection" (United Nations High Commission for Refugees, 2014). McCoy also noted that 66% of the survey participants from El Salvador left their home countries because they were "threatened with or were victims of violence" (United Nations High Commission for Refugees, 2014). One graphic account given by a girl named Maritza described the extent of the violence there:
"I am here because I was threatened by the gang. One of them "liked" me. Another gang member told my uncle that he should get me out of there because the guy who liked me was going to do me harm. In El Salvador they take young girls, rape them and throw them in plastic bags. My uncle told me it wasn't safe for me to stay there and I should go to the United States" (United Nations High Commission for Refugees, 2014).

The illicit drug trade has had drastic negative effects on Central America and the Caribbean. It is likely that the level of gang violence currently present would not exist without the effects of the drug trade on the region. Subsequently, the demographics of immigrants traveling to the United States would also be different. In order to adequately address the immigration crisis it is necessary to reduce gang violence and the drug trade.

Current Immigration Policy Initiatives

United States immigration policy has followed two major trends: policymakers have either created laws that prohibited certain groups from becoming citizens, or have promoted permissive policies that gradually relaxed barriers to gain citizenship. U.S. policymakers have not attempted to address the current immigration crisis by reducing extreme violence, including homicide, rape, and assault, in the Central America and Caribbean Region because they have focused on either *relaxing* restrictions barring entry into the United States or *preventing* certain groups from obtaining citizenship, as evidenced through executive action and proposed legislation. President Obama's executive actions between 2012 and 2015 would augment existing domestic policy to create an easier path to citizenship for undocumented immigrants already in the U.S. The Border Security, Economic Opportunity, and Immigration Modernization Act would increase the number of border enforcement agents, as well as grant citizenship to a large number of undocumented immigrants, but would leave international policy concerning Central America largely untouched. These immigration policies follow the same historical trends established in the U.S. over the past century. For example, the Immigration and Nationality Act of 1965 and Immigration Act of 1990 reduced citizenship restrictions and led to unprecedented migration to the United States. The Immigration Act of 1917 and the Emergency Quota Act of 1921 were designed to prevent certain ethnic groups, including Eastern Europeans and Africans, from entering the country. These permissive and restrictive policy trends will never address the major cause of the immigration crisis: crime due to drug trafficking.

Policy Recommendation

Domestic

In order to adequately reduce the growing demand for illicit substances throughout the United States, there needs to be a shift in the way drug abuse is perceived. Addiction is still widely viewed as a moral failure rather than a medical condition. Some people are genetically predisposed to have dependency concerns. Rather than *treating* people with these addictions, *incarceration* has become far too common. Approximately 65% of the prison population in the United States meets the medical criteria for a substance abuse addiction (Sack, 2014). Of those addicted to an illegal substance in prison, only 11% received the treatment they need (Sack, 2014). It is recommended that treatment for drug dependency is expanded to drug offenders and the prison population. It has been demonstrated that medical treatment for substance abuse reduces dependency, relapse, and withdrawal (National Institute on Drug Abuse, 2009). Treatment would therefore, reduce the demand for these substances in these populations (National Institute on Drug Abuse, 2009). Millions of dollars of investment would be needed for the construction of treatment facilities and training of medical professionals. However, the return on this investment could be substantial. Incarceration rates should fall, and there could be less money flowing from the United States to illegal organizations in Latin America.

International

A policy intervention similar to Plan Colombia would benefit the Central American and Caribbean region for a number of reasons. Plan Colombia provided military training, supplies, and advice to the Colombian Government to fight the FARC. Providing similar resources for Central American and Caribbean countries would strengthen local governments and establish a sustainable knowledge base to combat gang violence. It is suggested that the countries with the highest rates of violent crime, gang activity, and immigrants travelling to the United States, such as Honduras, Guatemala, and El Salvador, should be provided with a similar program. This policy note advocates for the provision of military advisers to these countries, while having no U.S. troops engaged in military operations. Providing these Central American countries with the weapons and supplies, as well as counter-narcotics training, should amplify the effect of the currently existing military and police forces throughout the region. Moreover economic development in the agricultural sector should provide people in this region with opportunities to earn a living outside of criminal activity; people should be less likely to join or be forced to join these organizations if there are alternative means to earn a living. Providing farmers in rural communities the ability to purchase or gain the title for the land they reside on would provide a livelihood for a large number of people. This holistic policy alternative would in turn reduce the flow of unaccompanied minors immigrating to the U.S. by making their home countries a better place in which to live. Other direct interventions by the United States or United Nations involving the deployment of troops would leave this region with a *temporary* solution to a *long-term* problem. The troops would reduce gang violence and drug-trafficking in the short term, but would fail to strengthen regional governments. It is likely that these governments would face renewed violence after United States or United Nations troops are removed.

Conclusion

The United States needs to develop policies to reduce violent crime in the Central American and Caribbean Region in order to adequately address the current immigration crisis. The current immigration policies proposed in the United States largely follow the same trends established over a hundred years ago. These policies fail to address the causal relationship between drug trafficking, gang violence, and the current immigration crisis. The surge of unaccompanied minors travelling to the United States has been caused by the extremely high homicide rates, which have been caused by gangs fighting to control drug trafficking routes. The United States could provide further assistance in the form of economic and military aid, which would include arming and training the various armed forced of Central America, to address illegal immigration US military and economic aid will strengthen local governments and enable them to fight gangs, cartels, and other organizations in a sustainable manner. Economic development will provide people in this region with the means to support themselves outside of the drug trade. These two policies should drastically reduce the levels of crime currently present throughout the region and subsequently reduce illegal immigration arising from gang violence to the United States.

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Six

Growth Amid Decline: A Spatial Analysis of the Hispanic Population Change in Michigan and Detroit

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Introduction

Michigan is a state with a contradictory population change: unlike the decrease of the habitants for the overall population, the population of Hispanic people has increased in past years. According to some leaders of the Hispanic community and current literature, the change in Hispanic population is due to natural growth of the population as opposed to increased immigration. In a period of long-term mass immigration to the United States (US) and a particularly sharp decline in Michigan's population, this fact introduces concerns for policymaking. Using in-person interviews and spatial analysis techniques, we will analyze trends in the Hispanic population in Michigan and Wayne County in order to formulate a hypothesis on the growth characteristics of the Hispanic population in Michigan and in particular Wayne County, where Detroit is located.

We will start describing relevant literature to understand the phenomena in other parts of the country. Then, we will test the narrative of increased immigration and overall population decrease in both Michigan and within Wayne County, which contains a substantial portion of Detroit. As a further step, using data from the US Census Bureau from 1990 to 2010, we will describe state-level changes in population and how that maps to the expectations of interviewed experts of the Hispanic population of Michigan. Next, we will focus on Wayne County, which contains much of Detroit, including the area known colloquially as Mexicantown.

Literature Review: Hispanic migration to the US and Michigan

The US and Latin-America face a number of common challenges, and the decisions of local policymakers can impact the lives of people born or raised on either side of the border. For instance, an important issue for the political agenda is the status of people living in the US without immigration documents. Mexican people are an illustrative case: around 12 million undocumented immigrants are living in the US, and about seven million of them are of Mexican descent. The number of Mexican undocumented immigrant population leveled in 2011 for many reasons, primarily due to the economic crisis of 2008, and the security concerns at the US-Mexico border (Pew Hispanic Center, 2014). This is in contrast to the steady immigration of Mexicans and Central Americans before and during the 1990s. During the 1980s and 90s, almost every Latin American country faced economic crises, and the US dollar appreciated compared to the local currencies, spurring a prolonged wave of immigration toward the US (Passel, 2012). After 2001, crossing the border became significantly more difficult for both documented and undocumented. The region has since achieved relative macroeconomic stability, but continuing promises of jobs and higher wages fueled the ongoing migration at least until the financial crisis.

What motivates people to migrate? Douglas et al. (1997) suggest the main reasons are associated with social capital formation, human capital formation, and market consolidation. While the social stigma of undocumented immigration in the US is quite negative, many immigrants still chose to cross the border in order to send remittances back home to family (Pew Hispanic Center 2014). Passel et al. (2011) explain that the increase of Hispanic populations in the US was due to better wages, educational opportunities, and entrepreneurship opportunities; or to join family members that had migrated before.

From a public policy perspective, it is relevant to study the Hispanic population change because of its magnitude and size. There are more than 50 million people in the US who identify themselves as Hispanics, representing 16.3% of the population. The change in Hispanics represented the greatest increase for the country's population growth from the 2000 Census to 2010 (Passel et al., 2011). This change in population has been widely studied in areas with mostly Hispanic people. For instance, Kochhar et al. (2005) found that in some southern counties in the US, the Hispanic growth from 1990 to 2000 exceeded 1000%, which is most likely explained by immigration. The Latino population is expected to continue growing at least until 2050, and according to Suro et al., (2003): "the growth rate for the second generation has already gained sufficient momentum that it will remain higher than the first generation's even if immigration flows accelerate." This study also estimates that one in seven new students enrolling in the US education system are second-generation Hispanic immigrants. It has also been found that the population is gaining a significant share in smaller metropolitan cities (Singer, 2004), less densely settled small towns and rural areas in the South and Midwest (Lichter et al., 2006).

The growth of the Hispanic population may be explained by a natural increase of the population rather than an influx from other countries. The gap between net migration and natural increase were analyzed spatially for differentiating urban and rural areas (Lichter, 2008) using data from the National Center for Health Statistics (NCHS) with tabulations of Hispanic births and deaths per county. Brown et al. (2013) developed a detailed spatial analysis from the distribution of the Latino population using both Census Data and the American Community Survey. However, this work does not represent how the change occurred by decades or what are the policy implications for Michigan.

Michigan represents a unique case because it is the only state where the total population declined from 2000 to 2010 but the Hispanic/Latino population grew (Passel et al., 2011). To our knowledge, this path has not yet been analyzed in detail. In the past, several studies have been conducted about the migration in this area, a few especially centered on Mexicantown in Wayne County (Cotera, 2007; Balderrama, 2006). Alvarado et al. (2003) states that the migration of the Hispanic/Latino population to Detroit started in 1920, which created several destination communities that started powerful local community organizations. In the abandoned city of Detroit, Lara (2012) argues that Mexicantown is an example of how "Latino communities can revitalize retail corridors and improve both the economy and quality of the public realm for its residents and visitors." Lara (2012) found that Latino immigrants were the owners of 85% of 212 Latino-oriented businesses in Mexicantown and that most of those business were second or third generation of immigrants.

Methodology

This study began with personal interviews with cultural experts in Wayne County to gain a top-level perspective on Hispanic issues in the Detroit area, especially regarding undocumented immigrants. The informants had years of expertise working with the Latino community in the area, as well as with some public offices. The observations of these local experts aligned with the assertions of the literature: undocumented residents from Latin America are still coming to the US, but the main population growth of this demographic in Michigan comes from natural population growth, namely, current residents having children. This prompted us to produce maps to further explore the direction of growth, positive or negative, at both the county level in Michigan and the census tract level of Detroit, to gather a better understanding of the changing populations to see if these assertions held with data concerning Michigan.

For the state-level analysis, we used the decennial Census undertaken by the US Census Bureau, which acts as a snapshot of population makeup in the year it is taken. We used the 1990 census as baseline to measure the changes from the 2000 and 2010. Data was aggregated by the Pew Research Center to the county level, with self-reported numbers of people of Mexican descent, because it would be expectable that the biggest change would occur among that population. Using ArcGIS software we combined the publicly-available TIGER (Topographically Integrated Geographic Encoding and Referencing) geographic shapefiles with the data aggregated by Pew Research Center for visualization and analysis.

To study Wayne County's changing population, we utilized the American Community Surveys' (ACS) 5-year-estimates and measured the changes between demographic figures: Hispanic/Latino identity, Mexican origin, and overall figures, for 60 months prior to the labeled year. For example, the 2013 ACS 5-year would estimate current demographics and indicators using data collected over 60 months: from January 2009 to December of 2013. We used the 2010 and 2012 ACS 5-year estimates, which means our estimates overlapped years of coverage within these 5-year measurement times, presenting a potential problem of statistical rigor. However, in looking at the differences between the two estimates, we are focusing on the change in the estimated population for these periods and the trend that is being seen in the population of Detroit - this would lead to a different conclusion if we were attempting to make statements regarding quantitative analysis. However, looking at trends to qualify the qualitative analysis conducted, we find that the maps add context. The collusion of these maps with the qualitative analysis is where we can find value, not in magnitude of difference. There was also a concern about addressing the provided margins of error with these estimates, which we chose not to address considering our main motive was directional computation and not magnitude. More robust analyses can be conducted should the margins of error be addressed in the figures provided for the estimates, but for our purposes the estimates were enough to gain trends for observed populations.

It must be noted that Census data is prone to possible errors when measuring population statistics, especially for identity. Hispanic and Latino are not racial designations, as being a Spanish-speaker (Hispanic) or from Latin America (Latino). It does not qualify as a racial designation, but an ethnic one. Thus, comparing between races is particularly hard when Hispanic identity is added to the variables of interest. This problem could be solved by testing for national origin within the data set: however, all data is self-reported, and thus require that someone identify themselves ethnically by what language they speak or what country or region they are from. The ACS is the best measure of population the US has, and while it is limited, we must trust this dataset with our calculations simply due to a lack of a better dataset that is less subjective, not self-reported, more inclusive of identity, and can also reach undocumented immigrants to inquire about their demographics. While it is entirely possible that undocumented immigrants are undercounted in this study, undocumented immigrants have no dangers from answering because the legal status is not required, but also may fear repercussions of including their personal information on official federal forms. Theoretically, because of the random nature of dispersal over the course of 60 months, all populations have a population-proportional chance of being selected for the survey.

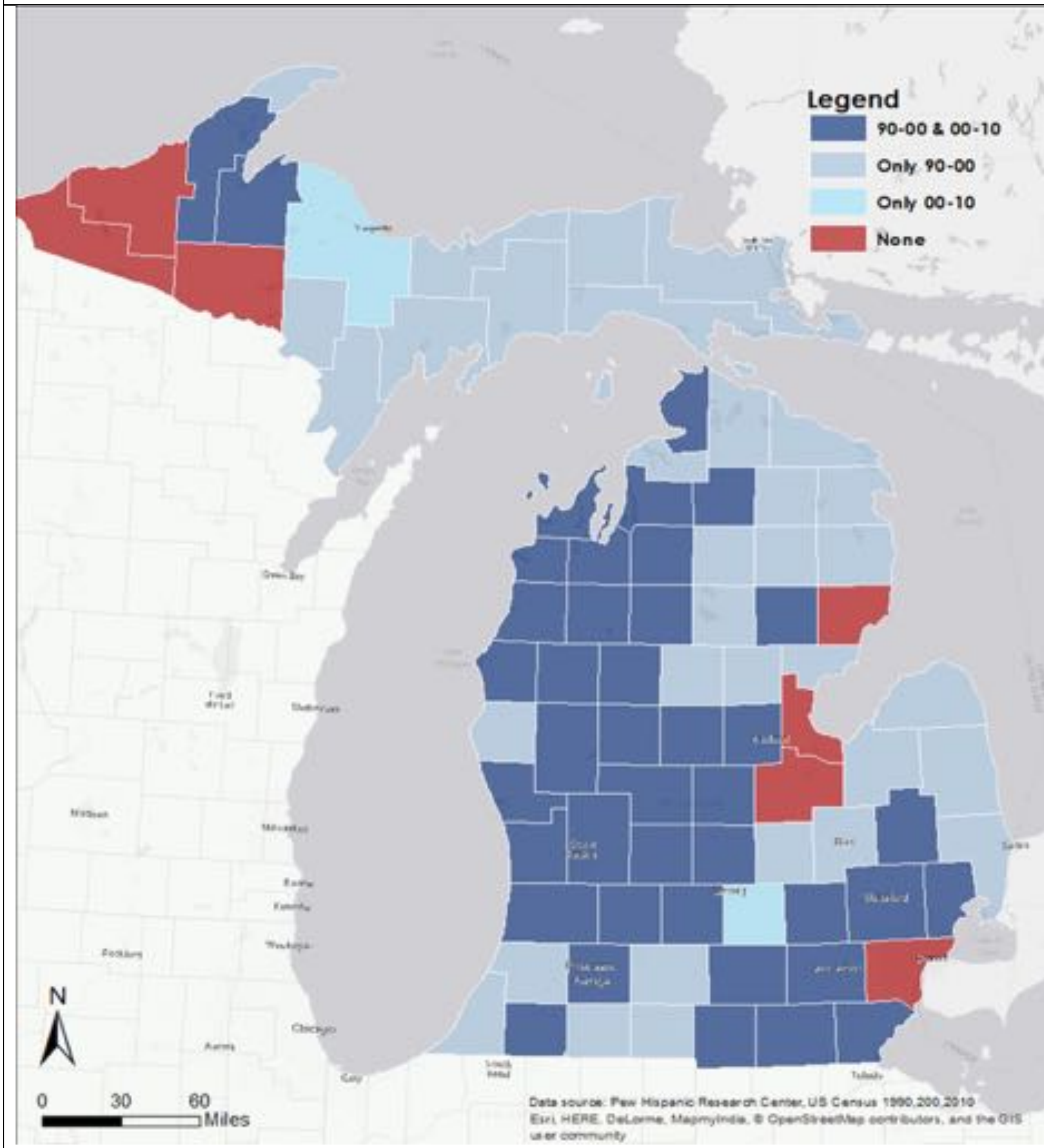
For the remainder of this paper, we use the term "Hispanic/Latino" to be inclusive of our population of interest, especially where the data is ambiguous in distinguishing the groups apart, and where one or the other is explicitly mentioned means we have verified for what particular population the data speaks for. For instance, in Figures 3-5, Hispanics are the observed population because the data was presented as such, and the inclusion of Latino or different identities is uncertain.
One potential advantage of the ACS is that the survey is a randomly mailed sample set to a certain number of people within each census tract area, meaning that theoretically we are capturing undocumented immigrants within our sample since random selection should lead to a randomly distributed sample, but this requires complete compliance, accurate self-reporting, and no attrition in order to be representative of the population and its subsets, including undocumented immigrants. The survey is anonymously coded and thus means there is no basis to disregard the entire sample for these limiting factors. Being aware of the dataset's limitations simply limits the confidence with which we can generalize our findings, and many researchers use the ACS in order to generalize their findings to the whole of the US population.

Results

Michigan State-Level

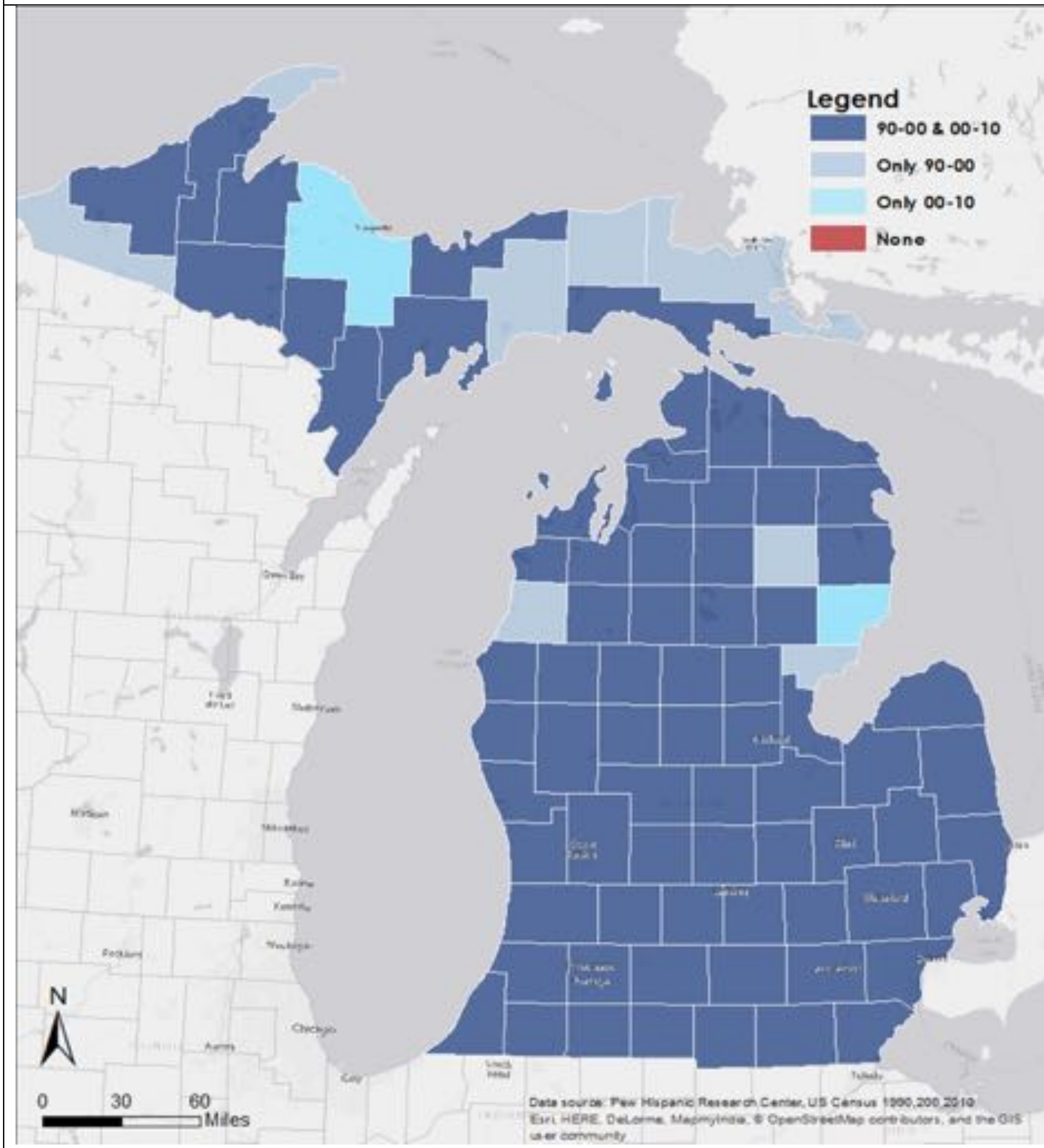
In Michigan, Hispanic/Latino population increased in every Michigan County. In the city of Detroit, for example, the total population decreased 24.97 percentage points from 2000 to 2010, but the people of Hispanic/Latino origin increased in 3.20 percentage points (Census Viewer 2010). Figure 1 presents the absolute change of the overall population in each Michigan County. In the state of Michigan, seven counties have a decrease in the general population over the period of the last two Censuses, yet unlike the rest of the population, in the last 20 years the Hispanic population experienced growth in every county over the span of three decennial censuses, as seen in Figure 2. Looking at Wayne County across both maps, the total population did not increase over the course of the three census periods, but the Hispanic population increased in all decades.

Figure 1: Decadal Population Growth, by County.



Note: This map shows counties that have grown in population over the course of different decades according to Pew Research Center. The darkest blue signifies population growth within a county between 1990 and 2000 and 2000 and 2010. All other colors signify no growth or growth in only one of the mentioned decades. The term Hispanic here refers specifically to the data taken at this level, which identifies the survey respondents as Hispanic.

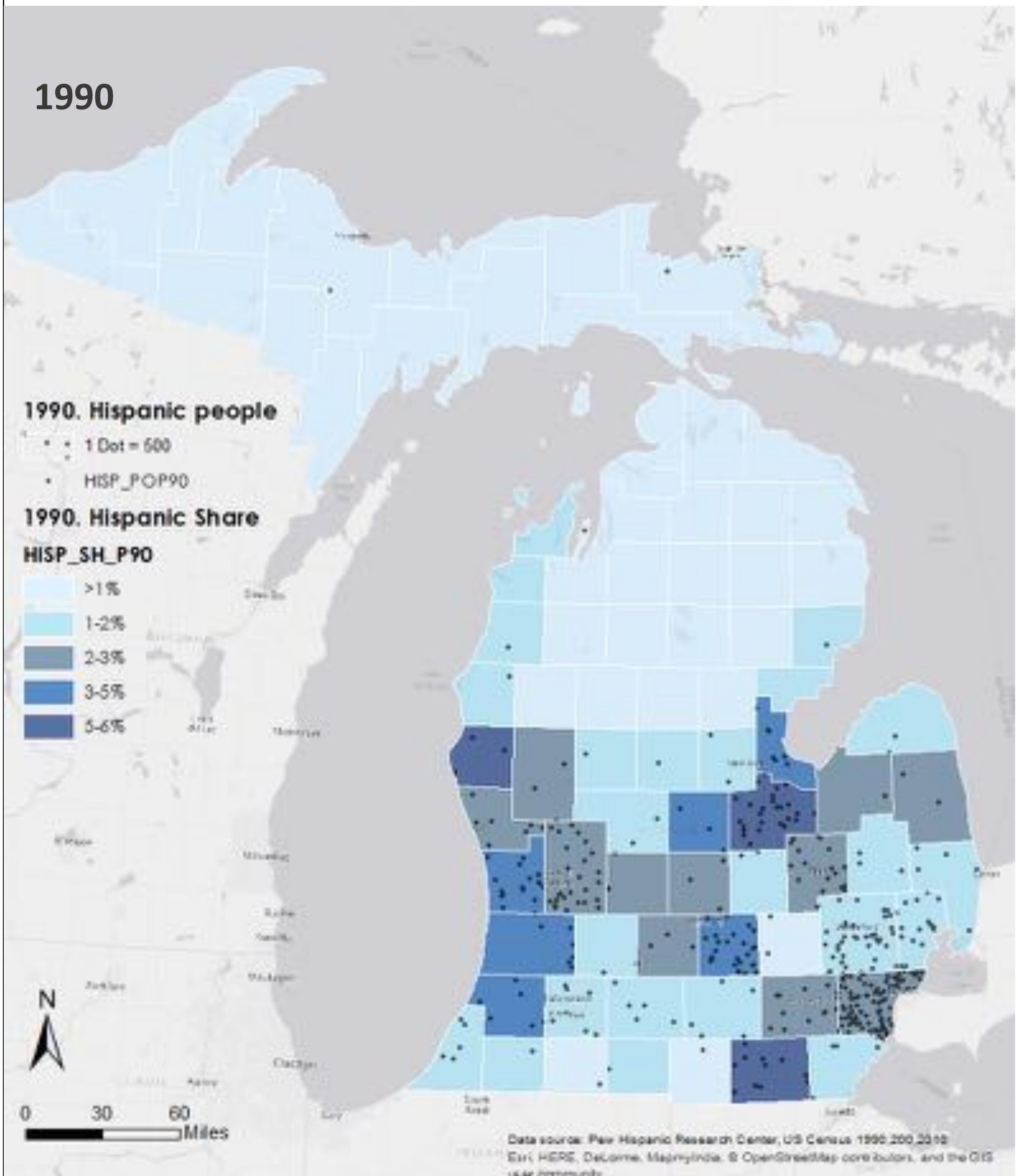
Figure 2: Decadal Population Growth of Hispanic people, by County.



Note: This map shows counties that have grown in Hispanic population over the course of different decades according to Pew Research Center. The darkest blue signifies population growth within a county between 1990 and 2000 and 2000 and 2010. All other colors signify no growth or growth in only one of the mentioned decades. Notice here that significantly more counties saw increases in Hispanic population during both decade periods compared to overall population growth. The term Hispanic here refers specifically to the data taken at this level, which identifies the survey respondents as Hispanic.

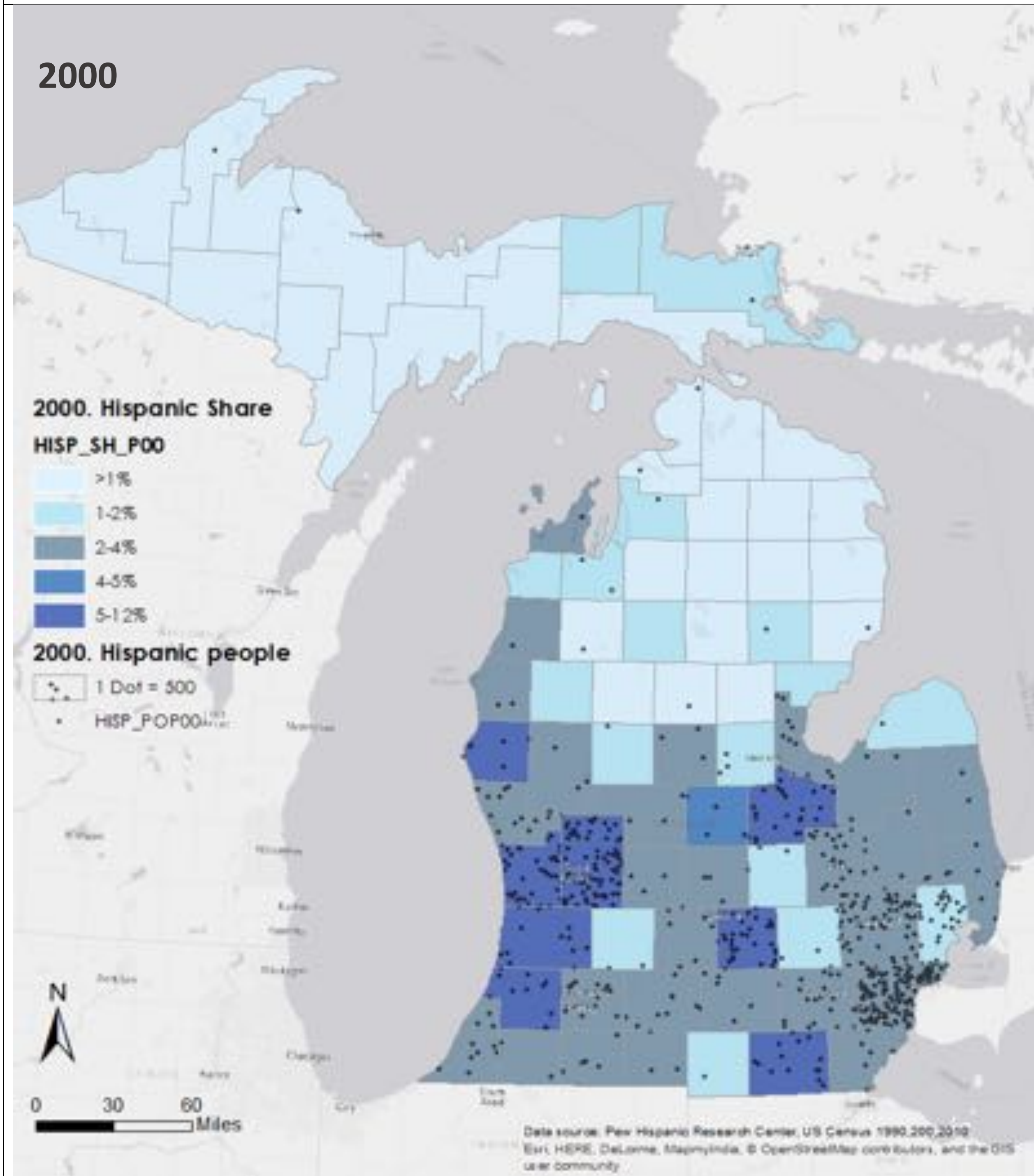
Figures 3 through 5 show the changes in both relative and absolute terms. For the Hispanic share of the county population, the scale ranges from lowest (light blue) to highest (dark blue) share of the population. Dot density is mapped over the graphs to show absolute Hispanic population distribution across the State of Michigan in reference to total share of the population. The average of Hispanic people per county increased from 2,428 people in 1990, to 3,902 in 2000, to 5,257 in 2010. The average Hispanic population percentage per county has also increased from 1.5% in 1990, to 2.2%, and to almost 3% in 2010. According to the Census, people who self-identified as Hispanic were 200,000 in 1990, 320,000 in 2000, and 436,000 in 2010. In every decade, Keweenaw County has been the place with the least number of Hispanic people. Wayne County has held the biggest concentration of this population, and the overall population of Michigan, for the last twenty years.

Figure 3: Hispanic Population per Michigan County. 1990



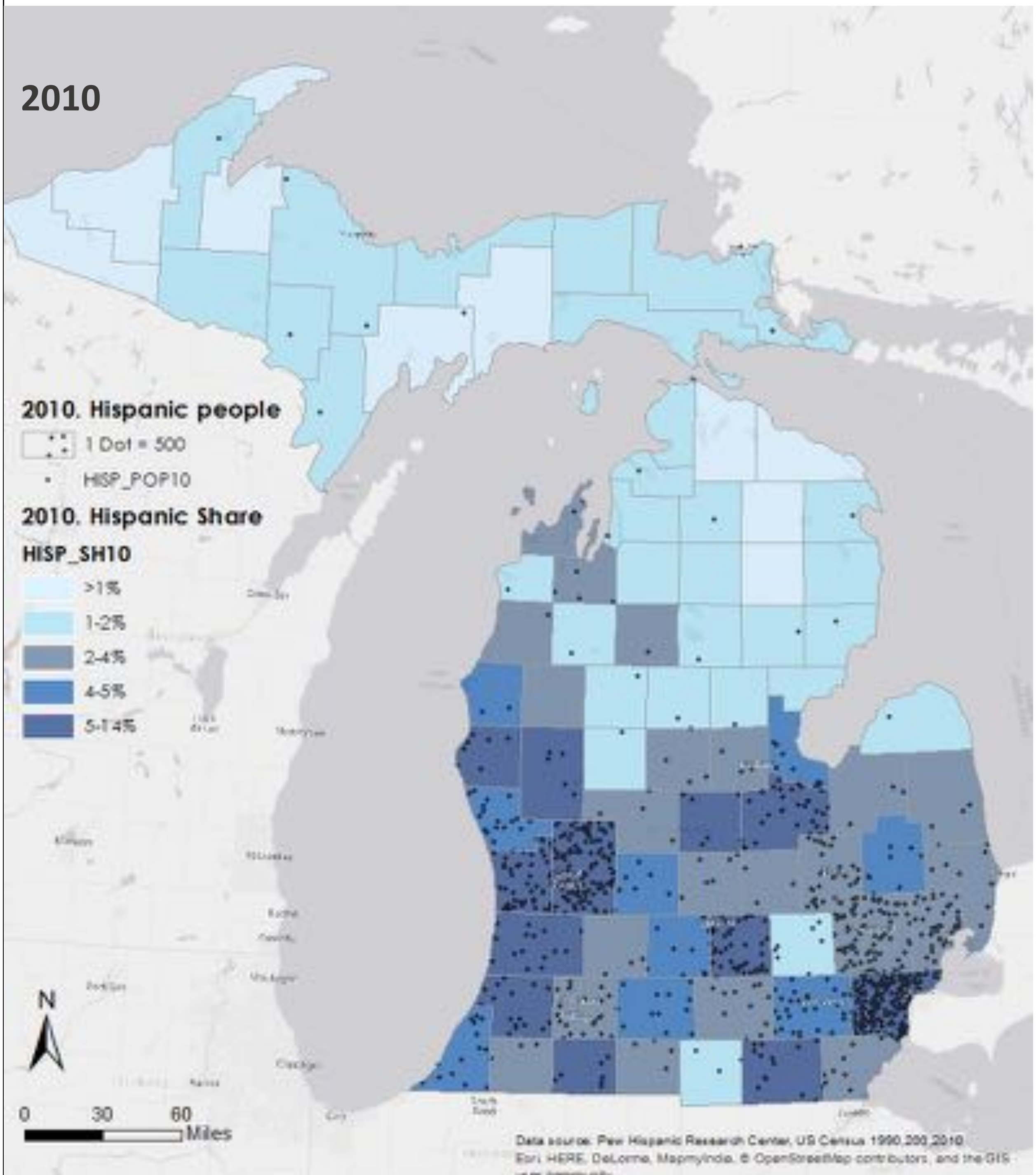
Hispanic Population per Michigan County, Relative to Total Population of each county, with Dot Density layer showing overall concentration of Hispanic people. The term Hispanic here refers specifically to the data taken at this level, which identifies the survey respondents as Hispanic.

Figure 4: Hispanic Population per Michigan County. 2000



Hispanic Population per Michigan County, Relative to Total Population of each county, with Dot Density layer showing overall concentration of Hispanic people. The term Hispanic here refers specifically to the data taken at this level, which identifies the survey respondents as Hispanic.

Figure 5: Hispanic Population per Michigan County. 2000



Hispanic Population per Michigan County, Relative to Total Population of each county, with Dot Density layer showing overall concentration of Hispanic people. The term Hispanic here refers specifically to the data taken at this level, which identifies the survey respondents as Hispanic.

As expected, the growth has not been homogeneous across counties. In ten counties the Hispanic share of the population has remained less than 1%; most of these counties are located in the Upper Peninsula and the northern part of the Lower Peninsula. Oscoda County, which is closer to the bridge to the Upper Peninsula than to Bay City, is the southernmost county in those counties. The regions with the largest population increases are located in Southwest Michigan. Oceana County has among the largest shares of the Hispanic/Latino population in the entire State for 2010. These maps suggest that Hispanic/Latino people might be more visible in Grand Rapids than in Detroit, for example. The four counties with higher Hispanic/Latino shares of the population were from 8 to 14% of the population. Oceana County experienced the biggest change because in 1990 the Hispanic population represented 6% and twenty years later it was 14%. The county of Van Buren increased from 3.2%, to 7.3% in 2000, to 10.17% in 2010. Also, Kent rose from 2.9% in 1990 to 6.9% ten years later to 9.69% in the last census.

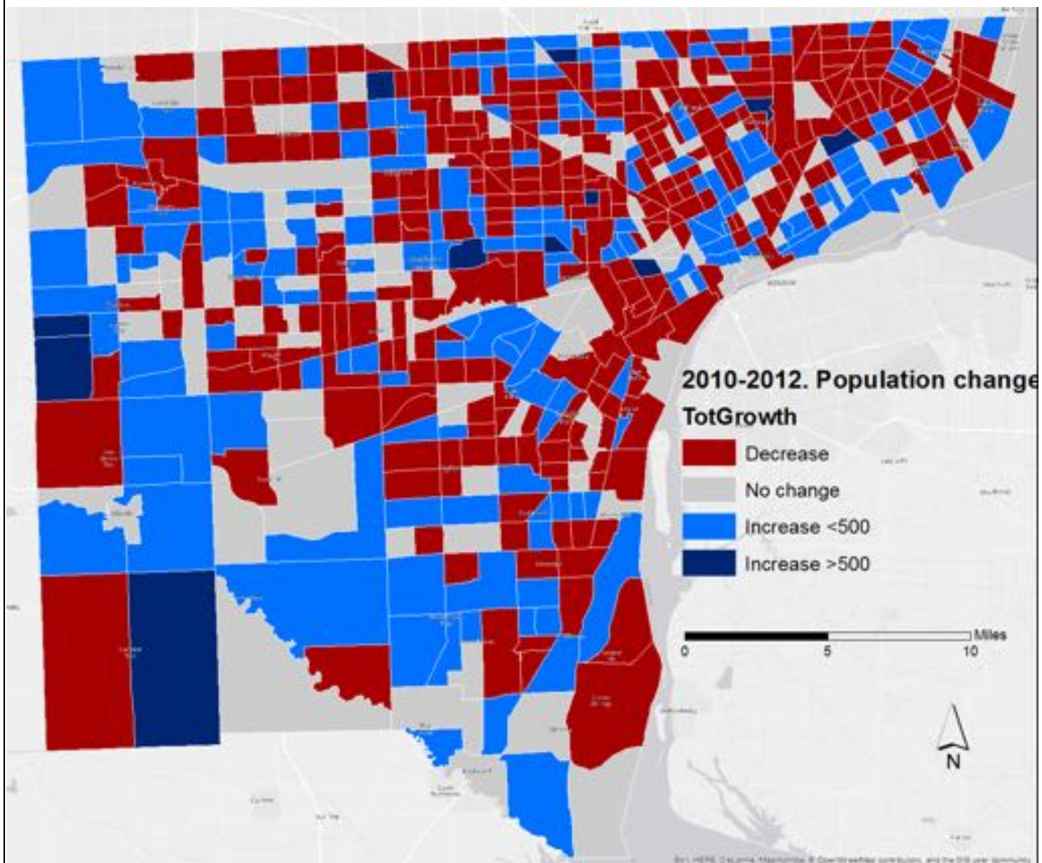
Two hypothetical implications can be raised from our findings. First, the Hispanic population has experienced an increase in almost every Michigan county, and this is quite observable at the county level. Second, the Hispanic/Latino representation has become bigger in the areas located in Michigan's south, especially the southwestern and south-central parts of the State, even though Detroit and Wayne County still hold the biggest concentration of Hispanic population.

Wayne County

As shown in Figure 6, Detroit's population change is a mixed story. Census tracts show decreases and no population changes more often than they show positive movement of any magnitude. Figure 7, on the other hand, shows where the Hispanic/Latino population has grown throughout Wayne County, compared to the changes in total population. For the historic Mexicantown area, outlined in black within Figure 7, the story is not clear on how some areas have growth while others have declined in total population. The majority of heavily Hispanic-populated areas are experiencing a growth in population, even if the overall population is falling.

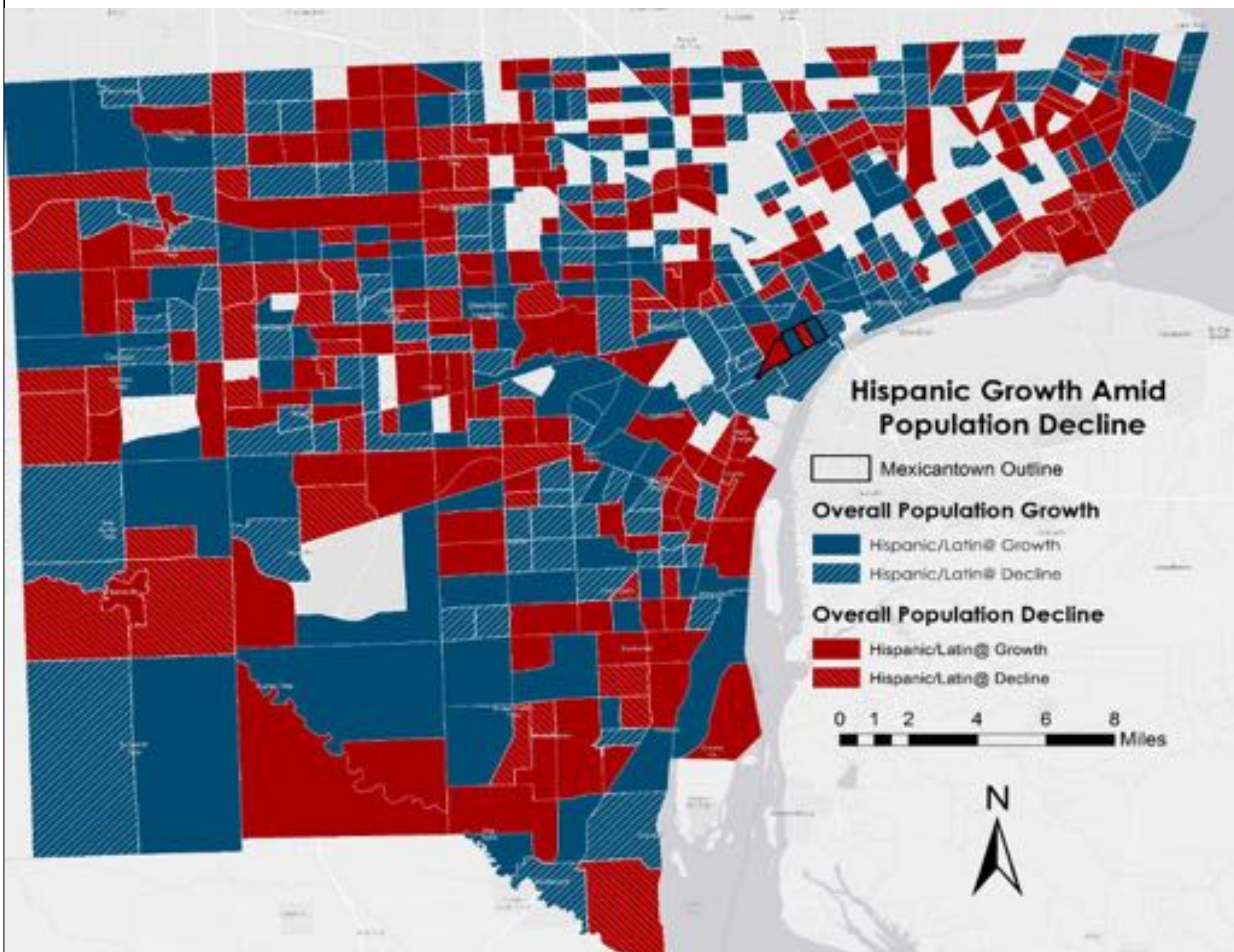
As discussed earlier in *Methodology*, since this is a random sampling of the population over two 60-month sampling periods, we can generalize to the whole of Wayne County, including undocumented residents. To understand if the growth of populations rests on immigration or on natural population growth, we look to the ACS's age data and place of birth indicators to understand the primary status of children in Wayne County regarding their nationality. For the Mexicantown area, immigrant children under five are outpacing the growth of state born children while Hispanic population grows in half of the districts; the other half is split into either growth or decline in Hispanic/Latino population and displays prevalence of Michigan-born growth. The growing Hispanic areas around Mexicantown also do not seem to conform to a single narrative, wherein all of them have increasing Hispanic/Latino populations but vary between Michigan-born and Foreign-born prevalence in children under five.

Figure 6: Overall Population Growth, Wayne County



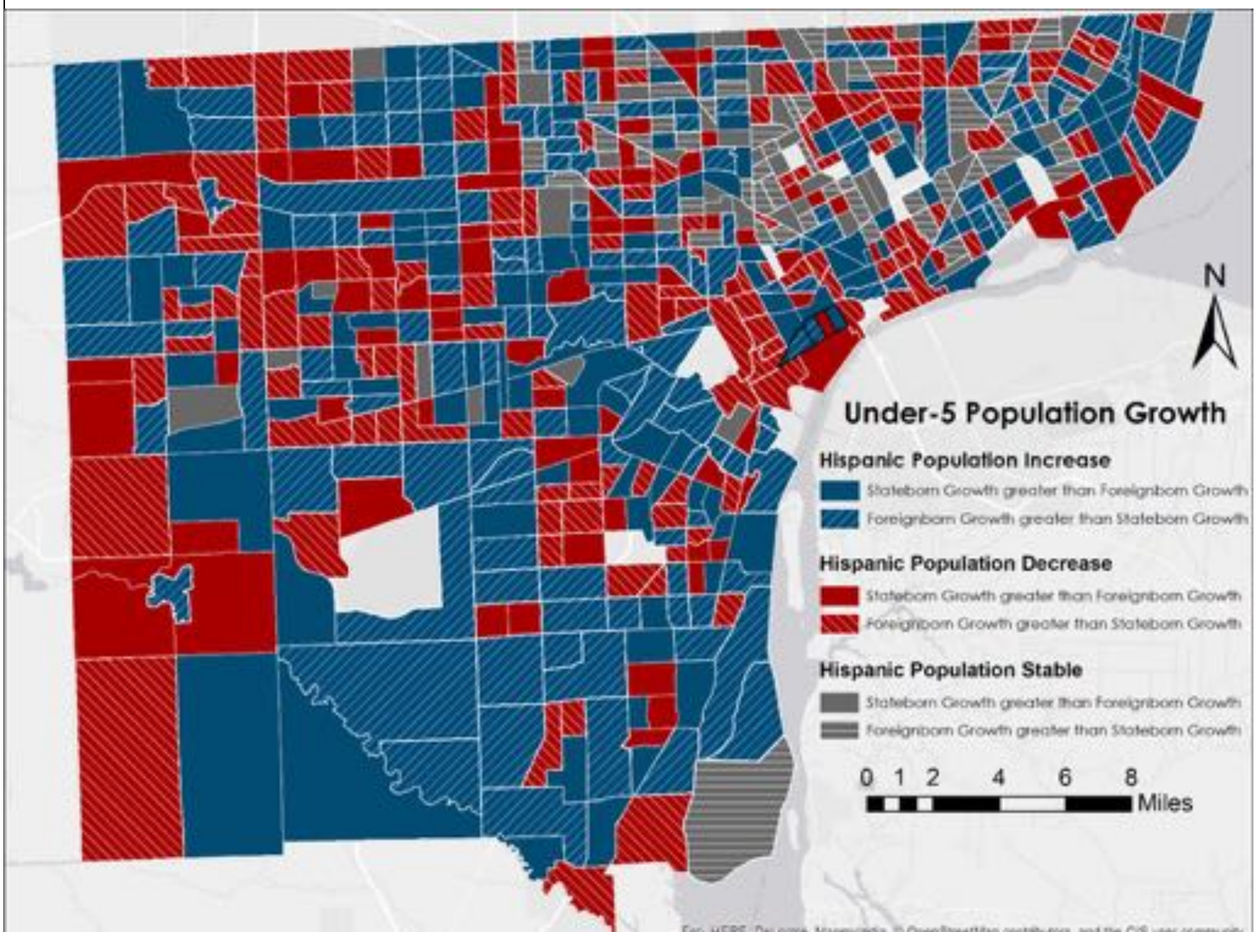
Overall Population Growth by Census Tract, Wayne County, Michigan. A majority of census tracts show no change or decrease in total number of people between the estimated periods given by 2010 and 2012 ACS estimates.

Figure 7: Hispanic change across population change



Hispanic/Latino Growth Amid Population decline. Color indicates total population movement, blue for increasing population and red for decreasing, while added textured hatching indicates where Hispanic and Latino population is declining: solid colors indicate that Hispanic and Latinos in that tract are increasing in total number.

Figure 8: Hispanic/Latino Children Under Age 5 and State-born vs. Foreign-born growth per census tract



Colors indicate Hispanic/Latino growth in terms of children under the age of 5: blue where population of Hispanic/Latino children increase, red where they decrease, grey where the population has not changed. Solid colors indicate that more children of this age bracket were born within the State of Michigan as opposed to being foreign-born, while textured hatching indicates that more children were born outside of the United States compared to children whose birthplace is Michigan.
The gray areas of the map tend to be areas where there was minimal Hispanic/Latino residence in earlier analyses, as well as areas of industry with no residences whatsoever.

Without a cohesive narrative formulating within the trends, it is obvious that more in-depth analysis needs to be done to determine whether the growth is from immigration or from natural population growth. The County-level visualizations need more context and data to explain the observed trends.

Conclusion

There is growth in the Hispanic/Latino population of Michigan in terms of raw numbers and direction, while Wayne County and Mexicantown defy a single overarching narrative. Detroit may be shrinking in terms of overall population still to this day, but for whom it is actually shrinking remains unclear. Yet the common narrative of Detroit shrinking and Michigan population growing is challenged by our findings. There are enough divisions for us to see that Wayne County has population shifts even within Mexican and Hispanic/Latino communities, with general population growth. The most densely populated areas of Detroit, including Mexicantown, are seeing growth in the Hispanic population, and the trends from the decennial census show us that is likely to remain the case.

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Maps and data were gathered from the following sources: American Community Surveys, 2010, 2011, and 2012; TIGER Shapefiles, US Census Bureau; Pew Research Center aggregation of 1990, 2000, and 2010 Census Data; City of Detroit GIS Portal.

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