

HINCKLEY  
JOURNAL  
— *of* —  
POLITICS



HINCKLEY  
INSTITUTE  
UNIVERSITY OF UTAH

2020 | VOLUME 21

Copyright © 1998 by the Hinckley Institute of Politics  
and the University of Utah





*The Hinckley Journal of Politics* is published annually by the Hinckley Institute of Politics for students, public officials, university officials, and the public. The opinions expressed herein are not necessarily those of the University of Utah, the Hinckley Institute of Politics, the Student Media Council, or the editorial board. Please direct your correspondence to the Journal Editors, Hinckley Institute of Politics, 260 S. Central Campus Drive, Gardner Commons, Room 2018, Salt Lake City, Utah 84112, (801) 581-8501, or email: [info@hinckley.utah.edu](mailto:info@hinckley.utah.edu).

---

# HINCKLEY JOURNAL OF POLITICS — 2020 EDITORIAL BOARD

---

|                               |  |
|-------------------------------|--|
| <b>Director</b>               | Jason P. Perry   |
| <b>Associate Director</b>     | Dr. Morgan Lyon Cotti  |
| <b>Editor</b>                 | Miranda Jones  |
| <b>Editor</b>                 | Jacqueline Mumford   |
| <b>Faculty Editor/Advisor</b> | Dr. Tobias Hoffman, Political Science Department<br>Dr. John Francis, Political Science Department   |
| <b>Student Board Members</b>  | Malea Bauer<br>Preston Brightwell<br>KC Ellen Cushman<br>Helen Dodson<br>Sheely Edwards<br>Jack Jowers<br>Olivia Kuehn<br>Nelson Lotz<br>Tucker Lovell<br>Sierra Marty<br>Josh Petersen<br>Natalie Van Orden |
| <b>Printing</b>               | Presto Print   |
| <b>Online Publishing</b>      | J. Willard Marriott Library  |
| <b>Funding</b>                | Student Media Council<br>Hinckley Institute of Politics  |
| <b>Publication Production</b> | Brooke Doner<br>Kyle Tucker  |



**STUDENT RESEARCH PAPERS**

The Influence of Neoliberalism Upon  
Environmental Regulation in the U.S. and Chile.....Piper Christian.....1

Barriers and Solutions to Adult Immunization  
Compliance and Equity: Analysis of Federal,  
State, and Local Programs.....Noelle M. Huhn.....13

“Negative News” Isn’t Always Negative:  
Utah Journalists Reflect on News Values and  
Audience Engagement in the Digital Age.....Elise Saarela.....23

Hate Speech in 21st Century Jurisprudence:  
An Analysis of the Current Interpretation of the First  
Amendment and the Compelling Need for Judicial Action.....Anthony Scoma.....39

Subsidized Child Care Policy and Its Implications  
for Low-Income Families.....Maia L. Southwick.....53

**PUBLIC OFFICIAL OPINION ESSAYS**

Census 2020: Counting the  
Population during a Pandemic.....Pamela S. Perlich and Mallory Bateman.....63

---

## A WORD FROM THE DIRECTOR

---

As director of the Hinckley Institute of Politics, I am pleased to introduce the 2020 Hinckley Journal of Politics.

This edition marks the 21st year the Hinckley Institute has published this student-led journal, a truly noteworthy endeavor. For more than two decades, the Hinckley Institute has worked with students and professors to feature the top research papers written by undergraduate students at the University of Utah. This year, our team worked through the extraordinary circumstances brought on by the public health and economic crises caused by the COVID-19 pandemic. We are proud that our students and staff worked to ensure the publication of the important research of our students and community partners.

This compilation could not have been produced without the diligence of its 2020 co-editors Miranda Jones and Jacqueline Mumford and their wonderful student editorial board members. Additionally, I would like to recognize our partnership with the Political Science Department and the important contributions of faculty editors and advisors Professor James Curry and Professor Eunbin Chung. The journal would also not be possible without the hard work and dedication of Hinckley staff, especially director of marketing Brooke Doner, program coordinator Kyle Tucker, and associate director Morgan Lyon Cotti.

Through the various transformative opportunities provided by the Hinckley Institute, University of Utah students can apply the theories and concepts they learn in the classroom to real-world experiences. To date, the Hinckley Institute has placed and supported over 8,000 interns in internships throughout Utah, Washington, DC, and in more than 50 countries on six continents. In addition to the substantive work they perform as interns, students complete research papers on issues pertinent to their internships, reflecting on practical ideas and drawing conclusions about the significant political questions of the day. The research completed by these students was the original inspiration for the creation of the Hinckley Journal of Politics and the Journal still includes some of the best and most compelling of these papers.

We hope you enjoy reading the 2020 Hinckley Journal of Politics and appreciate your continued support of the Hinckley Institute of Politics.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason P. Perry". The signature is stylized with a large, sweeping initial "J" and a long, horizontal tail.

Jason P. Perry  
Hinckley Institute of Politics



---

## A LETTER FROM THE EDITORS

---

Our Esteemed Readers,

The hardest part about producing the Hinckley Journal of Politics was selecting only five articles amongst the countless, competitive articles we reviewed. With the guidance of our Editorial Board members, we picked the following articles that we are proud to publish in the Journal. We also would like to thank Mallory Bateman and Pam Perlich from the Kem C. Gardner Policy Institute for writing a vital, topical piece about the Census and the added challenges brought forward by the COVID-19 pandemic.

It is our hope that these articles serve as not only an interesting read, but a gateway to further education and conversations, in both our personal and professional lives, about these topics. Now is the time, if you have not already started, to engage in conversations with people you may have never talked to before, invest more value in the voices of others, and uplift voices unfamiliar to you.

At the Hinckley Institute of Politics, we are guided by the words of our founder Robert H. Hinckley who shared that his goal was to “teach students respect for practical politics and the principle of citizen involvement in government.” More than ever, we are witnessing a shift of an increased consciousness of the average person, in the United States of America and around the world. As students and residents of the United States, we recognize the importance of civic engagement and advocating for an equitable and just society while holding our elected officials accountable. We also acknowledge the many leaders, role models, and voices that came before us.

An informed public is a crucial component of every democracy. We believe that the first step in building an engaged and politically active society should be first with education. In the following papers, we hope you are inspired to research, understand, discuss and continue the work these students have started.

Best,



Miranda Jones  
Co-Editor



Jacqueline Mumford  
Co-Editor

---

## EDITORS' NOTES

---

### **HINCKLEY JOURNAL OF POLITICS' MISSION STATEMENT**

The *Hinckley Journal of Politics* is one of the only undergraduate-run journal of politics in the nation and strives to publish scholarly papers of exceptional caliber from University of Utah students in the fields of politics and public policy as well as opinion essays from local, state, and national public officials. Contributing research articles and opinion essays should address relevant issues by explaining key problems and potential solutions. Student research papers should adhere to the highest standards of research and analysis. The *Journal* covers local, national, and global issues and embraces diverse political perspectives. With this publication, the Hinckley Institute hopes to encourage reader involvement in the world of politics.

### **STUDENT RESEARCH PAPER SUBMISSION GUIDELINES**

The *Hinckley Journal of Politics* welcomes research paper submissions from University of Utah students of all academic disciplines, as well as opinion essays from Utah's public officials. Any political topic is acceptable. The scope can range from University issues to international issues. Research papers should adhere to submission guidelines found on the *Hinckley Journal* web site: [hinckley.utah.edu/journal](http://hinckley.utah.edu/journal).

### **STUDENT RESEARCH PAPER REVIEW AND NOTIFICATION PROCEDURES**

Research paper submissions will be reviewed by the *Journal* editors, members of the editorial board, and faculty advisors. Submission of a research paper does not guarantee publication. Papers that do not adhere to submission and style guidelines will not be considered for publication. Acceptance to the *Journal* is competitive. The co-editors will notify potential authors when the decision has been made regarding which papers have been selected for publication.

### **SUBMISSION GUIDELINES FOR PUBLIC OFFICIAL OPINION ESSAYS**

The *Journal* will consider for publication opinion essays written by national, state, and local public officials and community leaders. The opinions expressed by public officials are not necessarily those of the University of Utah, the Hinckley Institute of Politics, the Student Media Council, the editors, faculty advisor, or the Editorial Board. Officials should contact the *Journal* editors for additional information.

### **CORRESPONDENCE MAY BE SENT TO:**

University of Utah  
Hinckley Institute of Politics  
260 S. Central Campus Drive  
Gardner Commons, Room 2018  
Salt Lake City, Utah 84112

Phone: (801) 581-8501  
Fax: (801) 581-6277  
Email: [info@hinckley.utah.edu](mailto:info@hinckley.utah.edu)

---

## ABOUT THE HINCKLEY INSTITUTE OF POLITICS

---

*The Hinckley Institute of Politics at the University of Utah is a bipartisan institute dedicated to engaging students in governmental, civic, and political processes; promoting a better understanding and appreciation of politics; and training ethical and visionary students for service in the American political system. Robert H. Hinckley founded the Hinckley Institute of Politics in 1965 with the vision to “teach students respect for practical politics and the principle of citizen involvement in government.” Since its founding, the Hinckley Institute has provided a wide range of programs for students, public school teachers, and the general public including: internships, courses, forums, scholarships, and mentoring. The Hinckley Institute places emphasis on providing opportunities for practical experience in politics.*

### **INTERNSHIP PROGRAM**

A nationally recognized program and the heart of the Hinckley Institute, the Hinckley internship program places more than 300 students every year in political and government offices, non-profits, campaigns, and think tanks. The Institute provides internships opportunities to students from all majors for academic credit in Washington, D.C., at the Utah Legislature, in local offices and campaigns, and in more than 50 countries.

### **CAMPAIGN MANAGEMENT MINOR**

The Hinckley Institute of Politics is proud to offer one of the nation’s only minors in Campaign Management. The program is designed to provide undergraduate students the opportunity to learn the theory and practices that will allow them to be effective participants in election and advocacy campaigns. Students are required to complete a political internship and an interdisciplinary series of courses in areas such as campaign management; interest groups and lobbying; voting, elections, and public opinion; media; and other practical politics.

### **PUBLIC FORUMS AND EVENTS**

The Hinckley Institute hosts weekly Hinckley Forums where several political speakers address public audiences in the Hinckley Caucus Room. Hinckley Forums enable students, faculty, and community members to discuss a broad range of political concepts with local,

national, and international politicians, ambassadors, activists, and academics. Past guests include Presidents Bill Clinton and Gerald Ford; Senators Orrin Hatch, John McCain, Harry Reid, and Joe Lieberman; Utah Governors Michael Leavitt, Jon Huntsman, Jr., and Gary Herbert; Governor Mitt Romney; and many other notable politicians and professionals. The forums are reaired on KUER 90.1 FM and video recordings are archived on the Hinckley Institute website.

### **SCHOLARSHIPS AND LOANS**

The Hinckley Institute provides more than \$600,000 in financial support to students annually. The Hinckley Institute is also the University of Utah’s representative for the Harry S. Truman Congressional Scholarship – one of America’s most prestigious scholarships.

### **HUNTSMAN SEMINAR FOR TEACHERS**

The Huntsman Seminar in Constitutional Government for Teachers is a week-long seminar sponsored by the Huntsman Corporation. The primary focus of the seminar is to improve the quality of civic education in Utah schools by bringing Utah educators together with political experts and visiting politicians to discuss current events in Utah and American politics. The Huntsman Seminar is truly a unique opportunity for teachers to gain an in-depth understanding of local and national political issues.

### **DEPARTMENT OF POLITICAL SCIENCE**

The Hinckley Institute values its relationship with the Department of Political Science. The Institute’s programs provide students the opportunity to enrich their academic studies with experiences in practical politics, which complement the academic offerings of the Political Science Department. Courses are available in five subfields of the discipline: American Politics, International Relations, Comparative Politics, Political Theory, and Public Administration. If you have questions about the Department and its programs, please visit [poli-sci.utah.edu](http://poli-sci.utah.edu) or call (801) 581-7031.

---

## ROBERT H. HINCKLEY

---



A man of vision and foresight, a 20th-century pioneer, a philanthropist, an entrepreneur, and an untiring champion of education and of the American political system—all are apt descriptions of Robert H. Hinckley, a Utah native and tireless public servant. Robert H. Hinckley began his political career as a state legislator from Sanpete County and a mayor of Mount Pleasant. Hinckley then rose to serve as the Utah director for the New Deal program under President Franklin D. Roosevelt.

Hinckley went on to serve in various capacities in Washington, DC, from 1938 to 1946 and again in 1948. During those years he established and directed the Civilian Pilot Training Program, served as Assistant Secretary of Commerce for Air, and directed the Office of Contract Settlement after WWII. In these positions,

Hinckley proved to be, as one of his colleagues stated, “One of the real heroes of the Second World War.” Also in 1946, Hinckley and Edward Noble jointly founded the American Broadcasting Company (ABC), and over the next two decades helped to build this company into the major television network it is today.

Spurred by the adverse political climate of the ’40s, ’50s, and ’60s, Hinckley recognized the need to demonstrate that politics was “honorable, decent, and necessary,” and to encourage young people to get involved in the political process. After viewing programs at Harvard, Rutgers, and the University of Mississippi, Hinckley believed the time was right for an institute of politics at the University of Utah. So in 1965, through a major contribution of his own and a generous bequest from the Noble Foundation, Robert H. Hinckley established the Hinckley Institute of Politics to promote respect for practical politics and to teach the principle of citizen involvement in government.

Hinckley’s dream was to make “Every student a politician.” The Hinckley Institute of Politics strives to fulfill that dream by sponsoring internships, scholarships forums, mentoring, and a minor in Campaign Management. Today, nearly 55 years later, Hinckley’s dream is a reality. More than 7,800 students have participated in programs he made possible through the Hinckley Institute of Politics. Many of these students have gone on to serve as legislators, members of Congress, government staffers, local officials, and judges. All participants have, in some measure, become informed, active citizens. Reflecting on all of his accomplishments, Robert H. Hinckley said, “The Hinckley Institute is one of the most important things I will have ever done.”

# STUDENT RESEARCH PAPERS



# The Influence of Neoliberalism Upon Environmental Regulation in the U.S. and Chile

By Piper Christian

University of Utah

*Since its growth and popularization in the 1970's and 1980's, Neoliberalism has undermined efforts to regulate environmental contamination caused by corporations in United States and Chile. Under neoliberalist policies, when a corporation contaminates the environment, adequate environmental protection typically only occurs when the corporation involved can reap benefits from environmental compliance. When regulated corporations have little to gain, environmental policies fail to provide communities with long-term protection against contamination, or merely institute small scale, short-term solutions. This phenomenon will be illustrated by examining the parallel histories of the Bingham Canyon Copper Mine in Utah, and the El Salvador Copper Mine in Northern Chile. I will examine these mine's growth over the twentieth century and the contamination they disposed upon surrounding communities. Next, I will discuss landmark environmental policies that prompted these mines to begin remediating their pollution. Finally, I will explore how neoliberalism has impacted environmental remediation efforts both within these mining communities and the US and Chile as a whole.*

## **The Influence of Neoliberalism upon Environmental Regulation in the U.S. and Chile**

When global markets faced an economic crisis in the 1970s, neoliberalism appeared to offer promising solutions. As economist Milton Friedman remarked, "When the time came that you had to change ... there was an alternative ready there to be picked up" (Monbiot, 2016). David Harvey, a Professor at the Graduate Center of the City University of New York defines neoliberalism as, "a theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade" (Harvey, 2019). Since its advent, neoliberalism has influenced economies all over the world. However, neoliberalism can have severe negative impacts upon efforts to protect the environment.

Two of the world's largest open-pit copper mines, the Bingham Canyon Mine in Utah, and the El Salvador Mine in Northern Chile, provide revealing case studies for examining the impacts of free-market capitalism and neoliberalism upon the environment. The opportunities for comparison between the Bingham Canyon and Salvador mines are abundant. Both mines have been owned by multinational corporations for large parts of their histories. Both mines were found to be

releasing great quantities of contaminants into the surrounding groundwater in the 1980s. Both mines were governed by early landmark environmental policies which came about through persistent activist efforts.

While such landmark environmental policies appear to be effective in principle, the neoliberal economic policies that prevailed in the United States and Chile in subsequent years greatly limited their regulatory force and implementation. The stories of these mines demonstrate that under neoliberalist policies, adequate environmental protection typically only occurs when the corporation involved can reap benefits from environmental compliance. When regulated corporations have little to gain, these environmental policies fail to provide communities with long-term protection against contamination, or merely institute small scale, short-term solutions. To support this thesis, I first examine the parallel histories of these two mines, with a particular emphasis on their environmental impacts and their association with the advent of neoliberalism. I then examined the landmark environmental policies which provided promising solutions to the contamination created by these mines. Lastly, I carefully examine the impact of neoliberalism upon regulatory efforts in the communities surrounding these sites.

## **From Small Beginnings to Global Giants: The Origins of the Kennecott and Anaconda Copper Corporations**

To understand how the Bingham Canyon and Salvador mines' histories intertwine, we must start in the Oquirrh Mountains of Utah, where the story of the Bingham Canyon Mine began. While ore was discovered in this area as early as 1848 and the mine changed ownership numerous times through the turn of the century, the most critical actor to join the scene was Kennecott Corporation. Kennecott was owned by the Guggenheims, an entrepreneurial Swiss family who had made their entry into the mining industry in the late 1870's. The Guggenheims began to finance Bingham Canyon's operations in 1906, and with growing momentum, Kennecott Copper Corporation bought out the mine in 1936 (Ege, 2005).

The technological and business successes at the early Bingham Canyon Mine laid the groundwork for American exploitation of foreign copper reserves for the coming century. It was at Bingham Canyon that nonselective mining techniques, or "the mechanization of functions previously carried out by hand labor," grew in prominence (O'Brien, 1989). This made it possible to transition many mining tasks from skilled to unskilled laborers. Additionally, new smelting technologies were tested at Bingham Canyon. When combined with mechanization technology, this made the mine immensely profitable. These successes transformed the Guggenheims into finance capitalists, refining their mining ventures to focus on copper, and seeking out foreign ore bodies to expand their reach. Chile presented a perfect opportunity to accomplish such goals.

Chile possessed a wealth of copper reserves but lacked the mining technology burgeoning in the United States. As a result, the government of Chile allowed foreign investors to operate in the mining sector virtually tax-free (O'Brien, 1989). Additionally, by utilizing the nonselective mining techniques developed in the states, American capitalists could employ unskilled laborers in Chilean mines for one-third of the cost of unskilled laborers in the United States. According to Thomas F. O'Brien of the Harvard History Review, "By 1918, American Interests accounted for 87% of Chile's Copper output," with Kennecott as the central player in such success (O'Brien, 1989).

As Kennecott spread its influence into the reaches of Northern Chile, another copper company was growing as a global power. In 1880, an Irish entrepreneur named Marcus Daly formed Anaconda Gold and Silver Mining Company near Butte Montana with a group of investors. By the end of

the 19th century, Anaconda had shifted its focus to copper, acquiring numerous mines throughout the US, and eventually setting its sights on Northern Chile (Augustyn, Bauer, Duignan, Eldridge, & Gregersen, 2019). In 1916, Andes Copper Company, a subsidiary of Anaconda, purchased the Potrerillos mine in Chile's Atacama Desert, just 120 km northwest of the community of Chañaral. Copper production began in Potrerillos in 1927 (Vergara, 2002). Not long after opening, illegal and environmentally unsafe practices came to light. Alfonso Sepulveda Perez, an employee at the national park near Chañaral, stated, "In 1938, the retention ponds used to capture the contaminated mud from the Potrerillos mine started overflowing. The Andes Copper Company used the Rio Salado to siphon away the mine's waste into the Pacific Ocean" (Maltese, 2013).

Anaconda developed a monopoly in the Chilean copper market in years to come (Hawley, 2014). As the quality of the copper ore at the Potrerillos mine began to dwindle in the 1950s, new copper reserves were discovered at a site called Indio Muerto. In 1959, the mine at Potrerillos was closed, and the Andes Copper Company began operations at Indio Muerto, renamed "El Salvador" or "The Savior" because of the fruitful prospects of the deposit. As Anaconda expanded its reach with the acquisition of the Salvador mine, environmental contamination continued unchecked. Rafeal Asenjo reported in the Georgetown International Environmental Law Review, "The company continued to deposit copper tailing wastes directly into the Salado River--a process that ultimately 'altered the geomorphological and biological characteristics of the Chañaral beaches' (Asenjo, 1989).

At roughly the same time, similar environmental abuses were occurring at Bingham Canyon. By the early 1980s, private, state, and federal investigations into the Bingham Canyon Mine uncovered large-scale environmental contamination as a result of its operations. For example, investigators found that over a 26-year period, one of the mine's wastewater reservoirs leaked over 9 billion gallons of water laced with lead, arsenic, and other toxins (Lemmons, 2014), creating a 72-square-mile plume of contaminated groundwater (Choate-Nielsen, 2011).

### **Chilean attempts to grow State Control over the Copper Industry**

In the years to come, the Chilean government worked steadily towards achieving greater autonomy over the copper industry. Such efforts climaxed in 1970, when the Socialist leader Salvador Allende was elected as President. Even before his inauguration, Allende's proposal for nationalization of the copper mines was in the works. On July 11, 1971, less



than a year after his election, the constitutional amendment concerning nationalizing the copper mines was unanimously ratified by Congress and signed into law. By 1972, the Salvador mine was expropriated from Anaconda by the Chilean government, and the Chilean state-owned company *Corporación Nacional del Cobre de Chile (CODELCO)* assumed management.

While nationalization granted Chile autonomy over their country's mineral resources, it also meant that they inherited the environmental wreckage left by their American corporate predecessors. Worse yet, the foreign mining enterprises believed that they were inadequately compensated by the Chilean government for the nationalization of their assets. Therefore, rather than force Anaconda to pay for the environmental damage it had caused, the Chilean government had to compensate the company for its losses (Fleming, 1973). Nonetheless, the state owners of the mine made the first efforts to redirect contaminants away from the city of Chañaral. According to Rafael Asenjo, "In 1975, the Chilean government built a canal to deviate the course of the Salado, moving the mouth of the River to Caleta Palitos, ten kilometers North of the Port of Chañaral" (Asenjo, 1989).

Nationalization greatly expanded the country's ability to garner all of the fruits of their own resources. Naturally, this came with major losses to the Anaconda and Kennecott corporations. A *New York Times* article in 1971 read, "The nationalization that Dr. Allende wants will eliminate the 49 percent interest of Kennecott and Anaconda in the big mines of El Teniente, Chuquicamata and El Salvador as well as Anaconda's 75 percent interest in the Exotica mine and Cerro's 70 percent ownership of the Andina mine. These mines produce 90 percent of Chile's copper exports yield and sales approximating \$750 million" (Onis, 1971). In the future, the United States government would take significant steps to re-secure economic influence within Chile.

### **The Rise of Pinochet and Implementation of Neoliberalism**

Chilean nationalization of the mines occurred at the height of Nixon's presidency. During his five and a half years in office, Nixon actively undermined Chile's efforts to gain greater oversight of their own economic affairs and their move towards a more powerful central government. In Chile's 1970 election, for example, the US used covert funds in a failed attempt to prevent Allende from taking office (Department of State Office of the Historian, 2016). Nixon and his National Security Advisor, Henry Kissinger, advised the CIA director to intervene in Allende's rise to power, stating that they wished to take political action that would "make the [Chilean]

economy scream" (Central Intelligence Agency, 2013).

Within a few short years, the United States would find new avenues to influence Chilean politics in such a way that would maintain American business interests abroad. Some context is necessary to understand how this was achieved. In 1956, a group of Chilean students received a grant to study economics at the University of Chicago under the professors Milton Friedman and Arnold Harberger. These professors fervently promoted neoliberalism, the theory which contends that a free-market with minimal state intervention is the most efficient means of allocating resources and achieving economic growth. According to journalist and filmmaker Carola Fuentes, "This [student] exchange was part of the State Department's investment plan to expand their influence in Latin America, in a moment when they were concerned about the growth of Soviet ideas in the region" (Opazo, 2016). Returning to Chile, these students, dubbed the "Chicago Boys," were eager to bolster neoliberalism within their country. Following Allende's election, the US became aware that a Chilean military coup was imminent. Accordingly, the CIA gave the Chicago Boys funds "for such research efforts as a 300-page economic blueprint that was given to military leaders before the coup" (Letelier, 2016). In 1973, Augusto Pinochet, a right-wing military general, overthrew Allende. Many of the Chicago Boys actively aided Pinochet's ascension to power, and would go on to occupy cabinet and ministerial positions within the regime with continued support from the US.

Under the economic leadership of the Chicago Boys, Pinochet's regime transformed the government to reflect an extreme neoliberal economic approach. He drastically withdrew state interference from economic affairs, thus launching the "Latin American trajectory of privatization, deregulation, fiscal austerity, capital mobility, export-promotion and anti-inflationary stabilisation" (Carruthers, 2001). The legacies of such measures had lasting effects for environmental regulation.

### **Environmental Legal Success for the Chañaral Community**

After Pinochet forcibly took power, his government enacted a single policy that provided support to the community of Chañaral in their efforts to curb mining contamination. When Pinochet's military government drafted the Chilean Constitution of 1980, they included the country's first environmental provisions. Article 19 of the Constitution affirmed "the right to live in an environment free of contamination" (Hopkins, 1995). In order to enforce this Article, an appeal mechanism called "protection action" was

provided.

In 1987, citizens from the town of Chañaral used the “protection action” clause to sue the Salvador Copper Mine. A group called the Ad Hoc Citizens Committee for the Protection of Environment and Development in Chañaral accused the Salvador mine of contaminating nearby beaches and rivers with waste, destroying the marine ecosystem that Chañaral depended upon for their fishing economy. Alyson Warhurst wrote in her book *Mining and the Environment*, “The court in Copiapó ordered the company to construct a new tailings dam. In 1989, the Supreme Court ratified the decision, and CODELCO was forced to build a tailings dam, which has now entered into operation” (Warhurst, 2014). Furthermore, “The tailings deposition through the natural Rio Salado (the salty river) ceased in 1989 because of the court decision” (Warhurst, 2014).

While this lawsuit was a significant step in addressing pollution from El Salvador Mine, it did not lead to remediation of the existing contamination near Chañaral. A 4.5-kilometer-long beach north of Chañaral remains highly contaminated by past tailings. Daniel G. Neary and Pablo Garcia-Chevesich write, “Biological stabilization of the sand dunes is complicated by the arid climate and toxicity of the sands” (Garcia-Chevesich & Neary, 1970). They further state, “The coastal winds transport the heavy metals attached to sand grains over the town of Chañaral” (Garcia-Chevesich & Neary, 1970). A barrier was erected near the houses along the beach to protect them from heavy metals, but “the aerodynamic characteristics of the barrier increases wind velocities just above the dune surface, producing even more sediment wind transport” (Garcia-Chevesich & Neary, 1970). Thus, the ecosystem surrounding Chañaral remained in critical condition, and community members continued to be exposed to dangerous toxins.

### **The Lasting Legacy of Neoliberalism on Environmental Regulatory Efforts in Chile**

Given that Pinochet had environmental provisions within Article 19 of his constitution, and Chañaral used these provisions to bring about environmental action, one might assume that Pinochet had inclinations for environmental protection. In reality, the court case in Chañaral was highly anomalous, and more attributable to the efforts of a burgeoning environmental movement within Chile. Miguel A. Altieri at the University of California, Berkeley explains, “During the period of consolidation of the liberal economic model, public awareness of environmental issues grew considerably due to the criticism made by non-governmental organizations and some environmentally concerned scientific groups about

specific cases of environmental degradation. The persistent activism of the environmental movement began to bear some fruit by the end of the 1980s when, under pressure, some courts of justice issued decisions in favor of environmental protection. Such cases, however, were exceptional” (Altieri and Rojas, 1999).

When we examine Pinochet’s presidency as a whole, it is evident that the neoliberal economic doctrines he implemented sidelined environmental protection in an effort to bolster economic growth. For example, rather than force past multinational corporations to pay for the environmental damage they caused in Chañaral, Pinochet enacted a series of laws to make Chile an attractive place for international investment and enterprise. Through the passage of Decree Law (DL) 600 of 1974, the Constitutional Organic Law for Mining Concessions of 1981 (Law 18.097), and the 1983 reform of the Mining Code, Chile became a nation with “a flexible legislation on environmental matters, which allowed Chile to be seen as an attractive country for investment by international large-scale mining companies (Smart, 2017), (Machado Araoz, 2009).” Altieri summarizes this phenomenon, stating, “It could be argued that throughout the authoritarian regime (1973–1989), not only was there no environmental policy, but its absence was also considered an advantage in attracting foreign capital to Chile” (Altieri & Rojas, 1999).

After Pinochet left office, the efforts of successive governments to produce a meaningful environmental policy framework have been tainted by his American-backed regime’s legacy of laissez-faire capitalism. The administrations of Patricio Aylwin (1990-94) and Eduardo Frei (1994-2000) sought to create an “impressive and sophisticated body of norms, procedures, and institutions, addressing virtually every major area of environmental concern. The framework law is infused with idealistic norms of prevention, participation, gradualism and the ‘polluter pays’ principle” (Carruthers, 2001). Unfortunately, further studies on the implementation of the “polluter pays principle” demonstrate that corporations influence efforts to enforce this measure so that they aren’t held responsible for their pollution. Ezio Costa Cordella, a professor at the Central University of Chile, Santiago, states, “Even when the [PPP] system has a hierarchical design, the will of the authority has been mostly laissez-faire, where the measures of mitigation, compensation and reparation proposed by the project owners stand with little or no alteration, matching some of the logic of the individualistic perspective, at least in what regards the tendency to put individual before collective benefit” (Cordella, 2018).

One of the greatest achievements of the Aylwin and Frei administrations was the creation of a general environmental framework law in 1994, which created the National Environmental Commission (CONAMA), “A decentralized body comprised of a central directorate and a set of regional

commissions (the COREMAS)” (Maxwell, 2016). This institution mandated that when new economic projects were proposed, the national or regional environmental commissions must review the project and create a Declaration of Environmental Impacts (DIA) or Study of Environmental Impacts (SIA) for larger projects. Unfortunately, this measure has similarly been undermined by the neoliberal economic framework in Chile. The regulatory body remains chronically limited in funding and deprived of political clout, and when regulatory efforts are at odds with profit generation, business interests usually prevail. For example, Alejandro Rojas at the University of British Columbia states “CONAMA has no mandate to ensure strict compliance with environmental regulations, a circumstance that many private industries and international corporations exploit to their maximum advantage” (Altieri & Rojas, 1999) Jewellord Nem Singh at Leiden University further demonstrates environmental regulatory weakness in Chile, stating, “While private firms accept state interventions to make extraction more efficient and cost effective, such as strengthening private property regimes and transparency in contract bidding, they resist state decisions that are anti-business, such as additional royalty taxes and rigid rules on environmental or social licenses” (Singh, 2013).

The impacts of this weak environmental governance have left the community of Chañaral chronically defenseless against the legacy of waste dumping and toxin exposure. While the community has repeatedly made efforts to gain government assistance in curbing pollution, little progress has been made. Zik Igbadi Boniwe, in his book *Sustainable Extractive Sector Management: Issues and Prospects*, stated, “In December 2003, the President of Chile at the time, Ricardo Lagos, in staged performance to prove that the water was clean and safe, went for a swim in the bay of Chañaral; a marketing strategy to ensure CODELCO could get an environmental certification.” He further states, “The 2009 report by a group of deputies challenged the president of Chile at the time to evaluate the risks and the consequences for the wellbeing of the Chañaral community. However, no actions were taken to follow up with the report” (Boniwe, 2018).

This lack of protection has resulted in grave consequences for Chañaral. In a 2016 study of urinary metals in a sample of Chañaral adults, researchers found, “Of the total subjects, 67.5%, 30.4%, 29.4%, 16.9%, 13.2 and 9.3% presented with high levels of copper, nickel, total arsenic, inorganic arsenic, mercury and lead, respectively” (Cortés, Lagos, Burgos, Adaros, & Ferreccio, 2016). In a health study conducted by Servicio de Salud de Atacama, researchers found that from 1990 to 2007 the main cause of death in Chañaral were tumors (24%), circulatory diseases (21%) and respiratory problems (13%). The mortality rate associated with tumors was 128.3 per 1000 inhabitants. By comparison,

in a similar study conducted in France, the tumor mortality rate was 2.4 per 1000 inhabitants (Maltese, 2013).

## **Neoliberalism Gains Legitimacy in the United States**

Before Pinochet transformed the economic and political structure of Chile, many dismissed neoliberalism as mere “academic scribbles” with little proof of being a feasible economic doctrine in the real world. Such a hands-off political approach to managing economic affairs was deemed risky and radical by many. For example, Greg Ip and Mark Whitehouse of the Wall Street Journal stated, “A half century ago, Milton Friedman's advocacy of free markets over government intervention and his prescription for inflation-fighting by central banks were treated as fringe notions by many economists” (Ip & Whitehouse, 2006). Thus, the political and economic transition of Chile became a test case for neoliberalism, lending historical experience to the theories of neoliberal economists. Alexander D. Barder, a professor at the University of Beirut, states, “The experimental implementation of economic orthodoxy- the deregulation of state power, financialization, or the unrestrained practice of financial and trading markets, privatization and the destruction of forms of social solidarity such as trade unions- established Chile as the first large-scale neoliberal laboratory. It is the implementation and experience of neoliberal revolution that proved crucial for its normalization as a valid or “tried and true” theory for subsequent implementation in the United States” (Barder, 2013).

In the 1970s, the combination of years of academic groundwork and political opportunity brought neoliberalism into mainstream US politics. George Monbiot of the Guardian states, “In the 1970s, when Keynesian policies began to fall apart and economic crises struck on both sides of the Atlantic, neoliberal ideas began to enter the mainstream. With the help of sympathetic journalists and political advisers, elements of neoliberalism, especially its prescriptions for monetary policy, were adopted by Jimmy Carter’s administration in the US and Jim Callaghan’s government in Britain. After Margaret Thatcher and Ronald Reagan took power, the rest of the package soon followed: massive tax cuts for the rich, the crushing of trade unions, deregulation, privatization, outsourcing and competition in public services” (Monbiot, 2016).

## The Growth of US Environmentalism and Remediation at Bingham Canyon

By the late 1960s, pollution and environmental degradation across America had grown too great to ignore. In 1969, with the center of Lake Erie growing too oxygen-depleted to support life, the Cuyahoga River catching fire outside of Cleveland due to its saturation of chemicals, and an oil spill coating 400 miles of California coast in black slime (Rothman, 2017), the public demanded government action to protect the environment (Madrigal, 2010).

In July 1970, Reorganization Plan No. 3 was signed by President Nixon, which effectively created the United States Environmental Protection Agency, a unified regulatory body designed to expand the government's scope of enforcement to protect the environment. Then, in 1970, the story of the Love Canal broke national headlines, when citizens of Niagara, New York protested the Hooker Chemical company dumping 22,000 tons of hazardous waste into local water bodies, severely endangering human health (Schons, 2011). In response to public outcry, President Jimmy Carter signed the Comprehensive Environmental Response, Compensation, and Liability Act into law on December 11th, 1980, which created the national Superfund Program. Under this program, the relatively young United States Environmental Protection Agency could "place contaminated landscapes on the National Priorities List (NPL) for cleanup, and hold companies responsible for the contamination and liable for that cleanup. While EPA requires that private parties responsible for the waste conduct their cleanup, when responsible parties cannot be found or cannot afford to pay for the cleanup, costs may be covered by Superfund" (Environmental Protection Agency, 2006).

Following the passage of CERCLA, the State of Utah assessed Kennecott properties for environmental contaminants under the auspices of the Superfund. While Utah initially wished to prosecute Kennecott without federal interference, the state's solid and hazardous waste laws contained exemptions for mining that made litigation difficult. Therefore, in 1990, the state joined forces with the federal government, threatening to put Kennecott on the National Priorities List (NPL) if inaction continued. While the company had been largely uncooperative in remediating contamination up until this point, the threat of the NPL motivated Kennecott to initiate extensive cleanup efforts. At last, the EPA agreed to hold a Memorandum of Understanding (MOU) in which it would delay listing Kennecott on the NPL unless they failed to satisfactorily clean up the damage.

In 1991, negotiations began between the EPA, the State of Utah, and Kennecott for a state-wide cleanup consent decree. Through these negotiations, stakeholders agreed

"1) to develop standard sampling and analysis procedures to be used site wide; 2) to use standard remedies based on characterization results; 3) to have a committee structure that would bring local governments and citizens into the process; and 4) to develop a site-wide risk assessment which would be a function of land use and habitat" (Environmental Protection Agency, 2006).

Next, negotiators were tasked with determining to what extent Kennecott would be held financially liable for the cleanup. Initially, the EPA, Utah Department of Environmental Quality, and Kennecott reached an overarching "Agreement in Principle". Fearing that they were signing a blank check to assume an unknown level of costs, Kennecott turned down this agreement in 1993. Therefore, a new agreement was struck in which regulators would develop consent decrees that addressed various segments of the site, rather than the property as a whole, which made it more feasible for Kennecott to anticipate costs. Kennecott consented to this new approach.

In the years that followed, Kennecott paid over \$370 million in cleanup costs, removing over 25 million tons of lead and arsenic-polluted mining wastes, remediating contaminated groundwater, and placing sludge from the refinery and contaminated soils in an on-site repository. In 2004, the Kennecott Utah Copper Sustainable Development Report stated, "Kennecott Utah Copper earned the International Standards Organization (ISO) 14001 certification for its environmental management system (EMS). The ISO 14001 certification signifies that a company has met rigorous international environmental criteria" (Environmental Protection Agency, 2006).

While Kennecott took aggressive action to curb environmental damage, many members of the communities surrounding the mines still feel that they were left behind. In a *Deseret News* article published in 2011, Nelda Lisonbee, a resident of West Jordan, spoke about the high rates of cancer among the family and friends who live on her street. The article reports, "While neighbors estimate 15 people on the street have had the disease, at least eight different cases from six families are certain — including Earl Lisonbee, Nelda Lisonbee's husband" (Choate-Nielsen, 2011). No robust health study has been carried out to link these unusually high rates of cancer to the toxins left by Kennecott, so the families remain uncompensated for their losses. For other community members, the mine's pollution stole their livelihoods. The article states, "During the scramble to rescue residential properties in West Jordan and Herriman from ultra-high levels of lead in the early 1990s, non-residential properties were left untouched" (Choate-Nielsen, 2011). The impacts of such choices are deeply felt by farmers like Clyde Butterfield. Rather than remediate the 25 acres where he once raised pigs and cows, the government cut off the water supply to his land because it was deemed too toxic. Therefore, as



Kennecott continues to profit immensely from the property they own, just five miles south of their holdings, Butterfield's land is practically worthless. "What kind of a deal is that?" Butterfield lamented in his interview. "It isn't fair. It isn't right" (Choate-Nielsen, 2011).

### **The Underside of the Bingham Canyon Success Story**

While Kennecott Corporation made commendable advancements to remediate environmental damage at the Bingham Canyon Mine, when we examine this case study against the backdrop of the Superfund Program's progress as a whole, some troubling realities become evident. Kathryn M. Steffy at the Virginia Polytechnic Institute and State University states, "With economic considerations largely contributing to policy construction and decisions to regulate, the needs and desires of businesses in quests to be profitable is often reflected within the Environmental Protection Agency's performance, frequently compromising the Agency's mission and purpose" (Steffy, 2016). The Bingham Canyon remediation demonstrates that under a neoliberal economic system, environmental compliance is largely achieved when the corporation may reap benefits from obeying regulatory demands.

When Kennecott's CEO was asked why his company chose to cooperate with the EPA in the remediation efforts, he shared that with the 2002 Olympics approaching, "He feared that if the site were put on the Superfund National Priorities List, it would endanger the Olympic bid" (Environmental Protection Agency, 2006). He further stated, "NPL listing might affect the cost of capital needed to finance the modernization of the mining operation" (Environmental Protection Agency, 2006). But a deeper dig into Kennecott's story reveals that the company had motives beyond simply saving face.

In a surprising twist, Kennecott realized that cleaning up Bingham Canyon would grant their company a profitable entryway into the real estate market. Over the history of their mining operations, Kennecott had acquired over 144 square miles of land in Western Salt Lake Valley. This property "ranks as the largest piece of land anywhere in the United States that's under the control of a single, private owner and next to a major metropolis" (Associated Press, 2006). This land constitutes half of the remaining developable land in Salt Lake Valley, and as Utah's population continues to boom, the public's appetite for new housing developments appears insatiable. As one journalist described it, "Kennecott Land is sitting on a gold mine — of real estate" (Lemmons, 2014). When Kennecott commissioned the David Eccles School of Business to estimate the economic potential of their property

holdings, "The study concluded that an estimated \$12 billion in taxes and fees from the construction alone will be made by local governments. When the project is completed, it is estimated that the west bench area will generate \$480 million annually in local tax revenue" (Lemmons, 2014).

While the co-opting of environmental regulation in order to gain corporate profit may have led to largely positive outcomes at Bingham Canyon, in most cases, Superfund intervention does not generate revenue for corporations. As a result, on the whole Neoliberalism has undermined the primary provisions of the Superfund Law, leading to weak and ineffective environmental regulation. This can be demonstrated by examining the chronic undermining the different mechanisms CERCLA has used for cleaning up environmental damage since the inception of the program.

The first mechanism was to charge the party who created the contamination with cleaning up the sight. By the mid 2000's, corporations increasingly skirted their financial responsibilities to remediate. According to a report from the Center for Public Integrity, the startup rate of Superfund projects was three times higher from 1995 to 2000 than from 2001 to 2006. The report further stated that as of 2006, "During the last six years, an average of 42 sites a year reached what the EPA calls 'construction complete,' compared with an average of 79 sites a year in the previous six years. Construction complete is reached when all the cleanup remedies have been installed at a site" (Sapien, Mullins, & Narayanswamy, 2007). Underlying this loss of momentum is the fact that corporations are paying less and less for the environmental damage they've caused. This is illustrated in the Center for Public Integrity's findings. They state, "The amount of money the agency recovered from companies has fallen by half [from 2001 to 2006], compared with the previous six years, 1995 through 2000" (Sapien, Mullins, & Narayanswamy, 2007).

The creators of CERCLA anticipated that polluting companies may be unable to pay for the contamination they caused, or in some cases, no responsible party could be found. For example, the company who created a contaminated site may no longer exist, leaving what is known as "orphaned sites." In these cases, the EPA paid for cleanup from a trust fund. This is how this initiative gained its namesake as the Superfund Program. David G. Taylor at the UCLA Luskin School of Public Affairs explains, "The federal government financed cleanups of orphaned sites with the tax on the chemical and oil industries. Revenue from this tax went into a trust fund that the EPA could use to clean up the sites" (Taylor, 2011). While this tax generated billions of dollars for the fund in the first fifteen years of the program, in 1995, after aggressive lobbying from extractive industries, Congress allowed the tax to expire. Taylor laments, "By 2003, the Superfund's coffers were empty. As a result, orphaned site

cleanups are now financed through taxpayer dollars. The loss of industry tax revenues led to a decline in performance. In 1999, for example, the EPA cleaned up 89 orphaned sites. By 2009, the number dropped to 19” (Taylor, 2011).

## **The Path Forward**

As the global economy undergoes efforts to decarbonize in the coming century, copper demand is predicted to grow immensely. For example, Nicholas Beuret, a professor at the University of Essex wrote, “The Labour Party’s Green New Deal motion calls for a program of total electrification of the rail and road fleets. For the UK to meet only its electric car targets by 2050... half of the world’s copper production would all be required” (Beuret, 2019).

Both the United States and Chile will be crucially involved in the rise in copper demand. According to the World Bank, the United States and Chile currently possess 33 million and 200 million metric tons of copper reserves, respectively. Chile has been described by the World Bank as being “in an excellent position to supply the global climate-friendly energy transition” (Arrobas, Hund, McCormick, Jagabanta, & Richard, 2017). While such reserves present robust economic opportunity, expanding mining could be ruinous to existing ecosystems.

The parallel stories of the Bingham Canyon and El Salvador Mines demonstrate that the neoliberal economic systems within the United States and Chile significantly influence environmental laws and agencies. While environmental regulation may be sufficiently implemented when it can benefit corporations, it fails to protect threatened ecosystems and communities when corporations have little to gain from compliance. If neoliberal systems continue, environmental protections are needed for those situations in which clean up does not profit the industries involved. This is especially necessary given the projected growth of the copper industries within the United States and Chile.

## References

- ALTIERI M., & ROJAS A. (1999). ECOLOGICAL impacts Of CHILE'S neoliberal policies, with special emphasis on AGROECOSYSTEMS. *Environment, Development and Sustainability*, 55-72.
- Araoz, M. (2009). Auge minero y dominación neocolonial en América Latina. *Ecología política de las transformaciones socioterritoriales neoliberales*. Retrieved 2009, from <http://cdsa.academica.org/000-062/1107.pdf>
- Arrobas, D., Hund, K. L., McCormick, M. S., Jagabanta, N. D., & Richard, J. (2017). *The Growing Role of Minerals and Metals for a Low Carbon Future* (English) (pp. 1-112, Working paper No. 117581). World: The World Bank.
- Asenjo R. (1989). *Innovative Environmental Litigation in Chile: The Case of Chañaral*. Retrieved May 06, 2020, from <https://heinonline.org/HOL/LandingPage?handle=hein.journals%2Fgintnrlr2&div=-13&id=&page=>
- Associated Press. (2006, April 9). Utah Mining Company Building a Megasuburb. *NBC News*. Retrieved May 06, 2020, from [http://www.nbcnews.com/id/12206777/ns/business-oil\\_and\\_energy/t/utah-mining-company-building-megasuburb/#.XrMqUVNKjQ](http://www.nbcnews.com/id/12206777/ns/business-oil_and_energy/t/utah-mining-company-building-megasuburb/#.XrMqUVNKjQ)
- Augustyn, A., Bauer, P., Duignan, B., Eldridge, A., & Gregersen, E. (2019). *Anaconda*. In *Britannica*. Retrieved May 6, 2020, from <https://www.britannica.com/editor/The-Editors-of-Encyclopaedia-Britannica/4419>
- Barder D. (2013). American hegemony comes home. *Alternatives: Global, Local, Political*, 38(2), 103-121. doi:10.1177/0304375413486331
- Beuret, N. (2019, October 24). A Green New Deal Between Whom and For What? *Viewpoint Magazine*. Retrieved May 6, 2020, from <https://www.viewpointmag.com/2019/10/24/green-new-deal-for-what/>
- BONIWE, Z. I. (2018). *Sustainable extractive sector management: Issues and prospects*. Bloomington, Indiana: AUTHORHOUSE.
- Carruthers. (2001). Environmental politics in chile: Legacies of dictatorship and democracy. *Third World Quarterly*, 22(3), 343-358. doi:10.1080/01436590120061642
- Central Intelligence Agency. (2013, June 19). *CIA activities in Chile*. Retrieved May 06, 2020, from <https://www.cia.gov/library/reports/general-reports-1/chile/>
- Choate-Nielsen, A. (2011, August 20). The danger down below: Cancer cluster raises questions about legacy of toxic waste in Utah soil. *Deseret News*. Retrieved May 06, 2020, from <https://www.deseret.com/2011/8/21/20210851/the-danger-down-below-cancer-cluster-raises-questions-about-legacy-of-toxic-waste-in-utah-soil>
- Cordella E. (2018). Public interest regulation? The polluter-pays principle in environmental impact assessments: A case of “bipolar” regulatory failure. *Environmental Policy and Law*, 47(5-6), 169-181. doi:10.3233/epl-170037
- Cortés, Lagos, L. D., Burgos, S., Adaros, H., & Ferreccio, C. (2016). Urinary metal levels in a CHILEAN Community 31 years after the dumping of mine tailings. *Journal of Health and Pollution*, 6(10), 19-27. doi:10.5696/2156-9614-6-10.19
- Department of State Office of the Historian. (2016). *The Allende Years and the Pinochet Coup, 1969–1973*. Retrieved May 06, 2020, from <https://history.state.gov/milestones/1969-1976/allende>
- Ege, C. L. (2005). *Selected mining districts of Utah* (p. 10) (United States, Utah Geological Survey, Utah Department of Natural Resources). Salt Lake City, Utah: Utah Geological Survey.
- Environmental Protection Agency. (2006). *Kennecott Mining Site: Transformation through Collaboration at a Superfund Alternative Site* (Rep.). Washington, D.C.: Government Printing Office.
- Fleming, J. (1973). The Nationalization of Chile's Large Copper Companies in Contemporary Interstate Relations. *Villanova Law Review*, 18(4).
- Garcia-Chevesich, P., & Neary, D. G. (1970, January 01). Hydrology and EROSION impacts of mining derived coastal sand dunes, Chanaral Bay, Chile. Retrieved May 06, 2020, from <https://www.fs.usda.gov/treearch/pubs/30858>
- Harvey, D. (2019). *A brief history of neoliberalism*. Johanneshov, Stockholm: MTM.
- Hawley C. (2014). *A Kennecott story: THREE Mines, four men, and one hundred YEARS, 1887-1997*. Salt Lake City, Utah: University of Utah Press.
- Hopkins, J. W. (1995). The Chañaral Case. In *Policymaking for conservation in Latin America: National parks, reserves, and the environment* (pp. 114-115). Westport, CT: Praeger.
- Ip, G., & Whitehouse, M. (2006, November 17). How Milton Friedman Changed Economics, Policy and Markets. *The Wall Street Journal*. Retrieved May 06, 2020, from <https://www.wsj.com/articles/SB116369744597625238>
- Lemmons, K. K. (2014). *Salt Lake City's Urban Growth and Kennecott Utah Copper: A Geographical Analysis of Urban Expansion into a Previously Proposed Superfund Site Adjacent to the World's Largest Copper Mine* (Master's thesis, University of Massachusetts Amherst, 2014) (p. 60). Amherst.
- Letelier, O. (2016, September 21). The ‘Chicago Boys’ in Chile: Economic Freedom's Awful Toll. *The Nation*. Retrieved May 06, 2020, from <https://www.thenation.com/article/archive/the-chicago-boys-in-chile-economic-freedoms-awful-toll/>
- Madrigal, A. (2010, December 03). *Gallery: Why Nixon Created the EPA*. *The Atlantic*. Retrieved May 06, 2020, from <https://www.theatlantic.com/technology/archive/2010/12/gallery-why-nixon-created-the-epa/67351/>
- Maltese L. (2013, July 29). Chañaral's agonising last breath. Retrieved May 06, 2020, from <http://ocean71.com/economy/chanaral-chile-pollution-copper-metal-mine-beach-pacific/>
- Maxwell. (2016, December 15). We may be here for a while: Chile's environmental impact review process. Retrieved May 06, 2020, from <https://www.nrdc.org/experts/amanda-maxwell/we-may-be-here-while-chiles-environmental-impact-review-process>
- Monbiot, G. (2016, April 15). Neoliberalism – the ideology at the root of all our problems. *The Guardian*. Retrieved May 06, 2020, from <https://www.theguardian.com/books/2016/apr/15/neoliberalism-ideology-problem-george-monbiot>
- O'Brien F. (1989). “Rich beyond the dreams of AVARICE”: The Guggenheims in Chile. *Business History Review*, 63(1), 122-159. doi:10.2307/3115428

- Onis. (1971, February 11). Chilean Senate gives ALLENDE power to Nationalize U.S. Copper Interests. Retrieved May 06, 2020, from <https://www.nytimes.com/1971/02/11/archives/chilean-senate-gives-allende-power-to-nationalize-us-copper.html>
- Opazo T. (2016, January 12). The Boys Who Got to Remake an Economy. Slate Magazine. Retrieved May 06, 2020, from <https://slate.com/business/2016/01/in-chicago-boys-the-story-of-chilean-economists-who-studied-in-america-and-then-remade-their-country.html>
- Rothman, L. (2017, March 22). Here's Why the Environmental Protection Agency Was Created. Time. Retrieved May 06, 2020, from <https://time.com/4696104/environmental-protection-agency-1970-history/>
- Sapien, J., Mullins, R., & Narayanswamy, A. (2007, May 10). Superfund today. Retrieved May 06, 2020, from <https://publicintegrity.org/environment/superfund-today/>
- Schons, M. (2011). Superfund. National Geographic Magazine. Retrieved May 06, 2020, from <https://www.nationalgeographic.org/article/superfund/>
- Singh T. (2013). Towards POST-NEOLIBERAL Resource Politics? The international political ECONOMY (ipe) of oil and copper in Brazil and Chile. *New Political Economy*, 19(3), 329-358. doi:10.1080/13563467.2013.779649
- Smart S. (2017). RESISTANCE AGAINST MINING EXTRACTIVISM IN CHILE. *UCLA Critical Planning*, 23, 63-64.
- Steffy, K. M. (2016). Neoliberalism, the Environmental protection agency, and the Chesapeake Bay (Master's thesis, Virginia Polytechnic Institute and State University, 2016) (p. 2). Blacksburg.
- Taylor, D. G. (2011, July 1). The obameter. Retrieved May 06, 2020, from <https://www.politifact.com/truth-o-meter/promises/obameter/promise/318/restore-superfund-program-so-that-polluters-pay-fo/>
- Vergara A. (2002). The Beginning of Potrerillos. Retrieved May 06, 2020, from <http://losandinos.com/Potrerillos%20Beginning.htm>
- Warhurst, A. (2014). Impacts on Rivers. In *Mining and the Environment: Case studies from the Americas* (p. 107). Ottawa, Ontario: International Development Research Centre.







# Barriers and Solutions to Adult Immunization Compliance and Equity: Analysis of Federal, State, and Local Programs

By Noelle M. Huhn

University of Utah

## Introduction

Serious gaps in adult immunization have been identified over the last decade. Compliance and equity are met with serious systemic barriers that can be solved by looking at bidirectional methods, strategically timing medical visits to couple with needed immunizations, in smaller communities that have proved effective in increasing the number of adults receiving annual and routine immunizations. This paper analyzes the gap in immunization compliance among adults aged 18-65, highlighting barriers to immunization for many American adults. It then takes a close look at innovative state and local approaches to increase adult immunization in order to understand how we might improve compliance among this under-served population.

When focusing on large public health issues, the most vulnerable populations in our communities—infants, children, and adults over 65—receive robust attention. Though many of these issues often disproportionately affect these groups, a gap exists for adults aged 18-65. The focus on the groups of “extreme” ends of the age spectrum, while warranted, has slowed progress in mitigating important public health issues for those aged 18 to 65.

Compliance with specific health measures remains

consistently low for this group of individuals, especially immunization compliance and equity. Poor immunization compliance means that adults are receiving vaccinations at much lower rates than other populations (Dabestani, 2019). While a number of vaccines may be available, these vaccines may not be accessible to the entirety of the adult population (Prins, 2017). In this way, low equity may be a driving factor of poor compliance and coverage. Expanding avenues to access can improve adult immunization equity, and thus, compliance.

Over the last few decades, childhood vaccination rates have exceeded 90% in the U.S. *Healthy People 2020*. Midcourse data indicates a 3.2% increase in children receiving recommended doses of Tdap, polio, MMR, and other vaccines from 2012-2014 (HealthyPeople 2020). In contrast, adult vaccination coverage rates remain consistently low despite growing evidence of the safety and effectiveness of new vaccines (Tan, 2018). Even with the seasonal influenza vaccination, which regularly attracts significant media coverage and is often provided in many worksites, coverage for adults hovers at low rates. According to *Healthy People 2020* data, the number of adults vaccinated against seasonal influenza has hovered around 36% for the last 5 years, far from the *Healthy People 2020* target goal of 70%. The CDC estimates that between 12,000 and 56,000 people die each year from influenza or its complications (NCSL). Of those eligible to receive vaccines per the ACIP guidelines in 2014, the

vaccination rate for influenza was only 42% during the 2013-2014 flu season (Wehbi, 2019). This rate is low considering the intense media coverage given to the seasonal influenza vaccine each year. Adult immunization compliance is a multi-tiered issue stemming from numerous barriers, particularly regarding the lack of vaccine delivery infrastructure and low vaccine confidence (Ventola, 2016).

Many successful structural and systemic interventions have proven to increase immunization rates in the pediatric population (Ventola, 2016). These interventions may inform approaches to the adult patient population to reduce the serious gaps that remain in vaccine delivery and coverage for measles, HPV, influenza, and Tdap (tetanus, diphtheria, pertussis). Strengthening adult immunization infrastructure involves mobilization of resources among governmental and nongovernmental partners. Solutions also require innovative thinking to bring together pediatric as well as specific state interventions that have proven successful. These steps are imperative in creating new approaches to vaccine coverage assessment and administration.

## Background

In 1796, Edward Jenner successfully demonstrated that inoculation of material from cowpox created immunity to smallpox. His experiments, amongst those of other scientists, ushered in the vaccine era, later leading to the complete eradication of smallpox. Since then, many vaccines have been developed, making notable public health impacts. The development of new vaccines and enhanced research on safety and efficacy encouraged state and local organizations to make immunization a requirement for school entry. These actions date back to the 1850s in Massachusetts, where vaccination was required to prevent smallpox transmission (Malone, 2003). Since then, all states have enacted requirements for school entrance. In an effort to eradicate measles, states welcomed the largest wave of requirements during the 1960s and 1970s.

In 1986, Congress passed the National Childhood Vaccine Injury Act (NCVIA), requiring health care providers who administer vaccines to provide a vaccine information statement (VIS) to the person receiving the vaccine or their guardian (CDC, 2015). The act also requires that health care providers report adverse effects occurring after immunization to the Vaccine Adverse Event Reporting system. The NCVIA also established the National Vaccine Program in the U.S. Department of Health and Human Services (HHS). The National Vaccine Program is responsible for coordinating all vaccine research and development, vaccine-safety monitoring, and vaccination activities. In 2019, Rep. Kim Schrier of Washington introduced the VACCINES Act (H.R. 2862). This bill is still in the first stage of the legislative

process, but aims to “amend the Public Health Service Act to provide for a national system for surveillance of vaccine rates, to authorize research on vaccine hesitancy, to increase public understanding of the benefits of immunizations” (H.R. 2862). Under this act, the national system for surveillance is authorized to integrate data from existing systems to measure vaccine confidence over time and variations across time as well as geography. This bill chiefly addresses opposition to vaccination which has sparked new outbreaks of measles in the last year in New York and Washington.

## Adult vs. Pediatric Immunization

The Advisory Committee on Immunization Practices (ACIP) recommends immunizations for four major vaccine preventable diseases (VPDs) for adults: influenza, pneumococcal disease, herpes zoster, and pertussis. These diseases significantly impact unvaccinated adults age 18 and older through direct medical costs and indirect societal costs for treating VPDs as well as non-medical costs such as lost future income and value of years of life lost. The issue of poor adult immunization compliance not only affects the unvaccinated individual, but also individuals and populations who are unable to be immunized such as young children and immunocompromised adults (McLaughlin, 2015). Therefore, the low rate of adult vaccination remains a problem not only for adults directly, but for surrounding communities as well who are more susceptible to these infections.

TABLE 1:  
VACCINATION COVERAGE AMONG U.S. ADULTS (Bluml, et al, 2018)

| Vaccine                               | Age Stratification (Years)  | Coverage Rate (%) | Healthy People 2020 Goal (%) |
|---------------------------------------|-----------------------------|-------------------|------------------------------|
| Pneumococcal                          | >65                         | 61.3              | 90                           |
| Tetanus, Diphtheria, Pertussis (TDap) | >19                         | 20.1              | Not Set                      |
| Hepatitis A                           | >19                         | 9                 | Not Set                      |
| Hepatitis B                           | >19                         | 24.5              | Not Set                      |
| Herpes Zoster                         | >60                         | 27.9              | 30                           |
| Human Papillomavirus                  | 19-26 Female;<br>19-26 Male | 40.2; 8.2         | 80;80                        |

For children, there are many pathways to vaccination. The strong pediatric immunization program in the U.S. branches from the social norm ACIP created to prevent children from VPDs including requirements for school attendance beginning in pre-school and kindergarten, and continuing into high school and college. On the international scale, the World Health Organization (WHO) established many pediatric immunization programs with a commitment to protect children from the devastating impacts of VPDs. These efforts have been successful in reducing VPDs, reducing deaths by an estimated 3 million per year (Tan, 2018).

Following new CDC childhood vaccine recommendations published in 1991 for Hepatitis B and 1996 for Hepatitis A, pediatric vaccination rates experienced a sharp increase (CDC 2017 Surveillance Report). These periods witnessed a decrease in rates of acute hepatitis A and hepatitis B infections that ultimately led to more efforts to increase pediatric immunization compliance for additional vaccines. The resurgence of measles in the U.S. between 1989 and 1991 also generated strong responses for the pediatric population. In response to the outbreak, the Omnibus Budget Reconciliation Act created the Vaccines for Children (VFC) program in 1993. VFC made vaccines free and accessible to eligible children: those uninsured, Medicaid-eligible, American Indian/Alaska Native, or underinsured (those whose health insurance doesn't cover the full cost of immunizations). Coverage for existing and new vaccines significantly increased with the onset of VFC. During 1994-2013, after the creation of VFC, routine pediatric immunization prevented an estimated 322 million illnesses and 21 million hospitalizations (Whitney, C.G., 2014). This also prevented immense direct and indirect healthcare costs. The VFC program reduced many barriers to essential pediatric care with early immunization intervention. Interventions like these, along with the general focus on the pediatric population for public health issues, are unrecognizable in the adult population. A similar public health infrastructure that supports mass vaccination of adults does not exist, posing multiple barriers for those seeking vaccinations.

### **Barriers to Adult Immunization Compliance**

Many barriers to adult immunization compliance have been identified as missed opportunities by providers and issues of access (Wehbi, 2019). The U.S. Public Health Service, the National Vaccine Advisory Committee, and other professional and state public health agencies observe the following areas of noncompliance:

#### *Vaccination is a Low Priority*

The current system for immunization lacks an effective adult vaccine delivery system. While schools often require

proof of vaccination, employers other than health care settings rarely require such proof as a condition of employment. Additionally, many primary care physicians have reported patients' belief that a healthy person does not need to be vaccinated or come in for regular wellness check-ups (Ventola, 2016). Forty-five percent of young adults (18-29 year-olds) don't have a primary care provider and prefer urgent care clinics over the wait times of a primary care facility (Kaiser Health News, 2018). This fragmented style of care causes miscommunication about immunization. Prioritization of immunization may come last in addressing a patient's medical needs in an urgent care clinic or similar quick-care facilities.

#### *Lack of Information*

Many adults 18 years and older report that they are not aware they need vaccinations. In a survey of more than 2,000 adults 19-74 years old, 90 to 96% were aware that influenza and tetanus were available vaccines, however, only 36% knew that adults should receive a tetanus booster every ten years (Ventola, 2016). Currently, no structured reminders exist for vaccines in adult medical care. Immunization information systems (IIS) for documenting vaccination histories and identifying patients due for vaccinations are underutilized. A knowledge gap often exists between patients and healthcare professionals, preventing effective communication about necessary preventative services like influenza vaccination. Communicating immunization needs in a digestible format may be a challenge for physicians working in certain communities. Changes in the adult immunization schedule may also not be clear to providers, creating managerial burden in primary care clinics. Additionally, an overall lack of public knowledge exists around the adult immunization schedule, risks and impacts of vaccine-preventable diseases, and adult vaccines other than the influenza vaccines

#### *Fear and Opposition*

In the last few years, growing fear towards vaccines has incited concerns about their effects in infants as well as adults. The World Health Organization (WHO) defines vaccine hesitancy as "delay in acceptance or refusal of vaccines despite availability of vaccination services" (WHO, 2017). Many of the drivers of vaccine hesitancy lack substantial evidence, but have made people believe that vaccines are dangerous and many individuals refuse to receive them at all. Growing skepticism of vaccine safety has resulted in a 30% rise in measles cases worldwide, creating new challenges for protecting vulnerable, immunocompromised individuals from these dangerous diseases (WHO, 2017). In Washington State, vaccination rates are among the lowest in the country. Until July 2019, the state was one of seventeen to allow philosophical exemptions for the MMR vaccine (Wamsley,

2019). Philosophical exemptions allow parents to exempt their children from school vaccine requirements if it contradicts their personal beliefs, aside from merely spiritual or religious beliefs (NCSL, 2019). Between January and March 2019, there were 73 confirmed cases of measles, including 5 adult cases, in Clark County creating many challenges for tracking close contacts of these cases and protecting vulnerable individuals who cannot receive vaccines.

### *Lack of Access*

Access is a multi-faceted issue not only involving cost, but also transportation, language, incomplete records, and other social or systemic barriers. Many individuals are unable to pay for vaccines because of lack of insurance or variable coverage for recommended vaccinations. Almost 85% of uninsured people fall in the 19-64 age group (census.gov). Medicare covers influenza and pneumococcal vaccines for adults aged 65 or older, but no federal programs exist to help adults who do not have access to good medical care or who cannot afford the recommended vaccines. Travel time to acute care centers may also discourage patients from seeking immunization services. Among the quarter of rural Americans whose travel time to the nearest hospital is the longest, it takes an average of 34 minutes for them to get to the nearest acute care facility (Lam, Broderick, 2018).

### *Systemic Barriers*

On the provider level, systemic barriers to providing vaccination services continue to grow. Direct and indirect costs, storage needs, and barriers to current immunization records overload health systems (Ventola, 2016). Providers have concerns about reimbursement and vaccine administration fees paid by health insurers. The Affordable Care Act (ACA) improved access to adult vaccines by removing co-payments for recommended vaccines, but it did not address whether the payment to providers for administering these vaccines is acceptable or appropriate (Tan, 2016). Without incentives to immunize, some providers may reduce their efforts to do so and focus on other areas of their practice.

### **Vulnerable Adult Populations**

Subsets within the 18-65 age group may be disproportionately affected by these barriers because of stigma associated with their specific health conditions or prioritization of care. Persons living with HIV historically experience low vaccination coverage rates. Further, new evidence suggests that an increasing number of pregnant individuals are not receiving influenza and Tdap vaccines.

### *Persons Living with HIV*

There are distinctive systemic barriers to immunization for persons living with HIV. Many HIV specialists do not have the structural capacity to provide regular immunization services to patients. Additionally, some insurers may require recommended-vaccines be administered by a primary care provider.

People living with HIV have an increased risk of VPDs due to impaired host defenses. They are also at higher risk because of their frequent contact with the medical environment. Despite these elevated risks, coverage rates among persons living with HIV remain low. A study with seasonal influenza vaccines found that only 42% of individuals living with HIV in the U.S. were vaccinated for influenza. HIV clinics may lack essential infrastructure to provide all the necessary vaccines to their patients. Barriers may also exist through some insurers, requiring that vaccines be administered by the patient's primary care provider, rather than the HIV specialist. These barriers have severe impacts on the health of those living with HIV. These patients have an increased risk of morbidity and mortality from influenza infection. Knowing this, these patients should be advised to get an annual vaccination with the inactivated influenza vaccine (IIV) (Crum-Cianflone, 2014).

While there is a clear benefit of the influenza vaccine for individuals living with HIV, some immune responses after the vaccination are poorer than among those not living with HIV. Given this information, improving antibody responses to the vaccine among immunocompromised persons is of great clinical interest. One potential strategy is using vaccines with greater doses of antigen, which has proven to increase seroprotection rates among adults living with HIV (Crum-Cianflone, 2014). This strategy will require more data on additional immunogenic influenza vaccines to allow for improved initial and sustainable antibody responses in these patients. With individuals living with HIV, delaying vaccination can increase the risk of infection. Missed opportunities for vaccination may occur with lost follow-up so administration of vaccines should occur at initial HIV visits. Specifically, with the influenza vaccine, administration should not be delayed as persons living with HIV can quickly develop responses (Crum-Ciaflone, 2014).

Along with gathering more data on these responses, innovative thinking on solutions is essential and may reverse the low coverage rates of all recommended vaccines in persons living with HIV. This could include a more robust technology platform to connect IIS data, HIV specialists, and primary care providers to share patient immunization history and provide recommendations for collaboration on education for needed vaccines and administration.

### *People Experiencing Pregnancy*



In CDC's October 2019 Vital Signs report, Dr. Anne Schuchat, CDC's Principal Deputy Director, reported that only 35% of people experiencing pregnancy received both the flu and Tdap vaccines (Schuchat, 2019). This report came from data collected between August 2018 and April 2019, reflecting what occurred during the 2018 flu vaccination season. Among these individuals, 75% said their health care provider either offered to give them these vaccines or provided a referral. However, among those that did receive a message or a referral, about one-third did not get vaccinated for either vaccine. Lack of awareness of vaccines needed during pregnancy was the main reason cited for not receiving these immunizations. Although Tdap was a CDC-recommended vaccine for pregnant individuals since 2010, many people experiencing pregnancy didn't think they needed the Tdap vaccine if they had previously received it (Schuchat, 2019). This issue lands on two barriers previously discussed in this paper: low priority and lack of information. The knowledge gap between patients and healthcare professionals hinders effective communication about necessary preventative actions for people experiencing pregnancy and those planning to become pregnant.

Clinicians must discuss the risks associated with VPDs with patients, as pregnant individuals may experience consequences not only impacting themselves but their newborn as well. Schuchat reported that the "flu shot reduces a pregnant [person's] risk of hospitalization from influenza by 40%...[and] the risk of [their] baby being hospitalized for influenza by about 72%". This information needs to be shared in prenatal appointments and counseling. Fear associated with vaccines has impacted vaccine coverage in general, but particularly among people experiencing pregnancy who fear that vaccinations are unsafe for their babies. Clinicians should emphasize the large body of scientific evidence supporting the safety of both the seasonal influenza and Tdap vaccines in pregnant individuals and their babies. When pregnant individuals receive these vaccines, they pass protective antibodies to their developing babies, keeping them safe from these diseases during their first few months of life (Schuchat, 2019).

Schuchat suggested clinicians tell people the risks of not vaccinating, but also welcome a more open conversation on these preventive measures. Clinicians should ask patients about their concerns and questions in order to build trust and respect. Schuchat also recommends starting these conversations earlier with pregnant individuals to ensure that there are no missed opportunities for discussion of vaccines as the pregnancy progresses. Early conversations about vaccines can help them be prepared by the second or third trimester. This provides them more time to ask questions and read between their appointments if they desire to learn more about each specific vaccine they will be receiving.

## **National Adult Immunization Plan (NAIP)**

The low vaccination coverage rates among these populations of adults and the barriers discussed demonstrate that passively offering vaccines to adults is not a viable solution to improving compliance. The National Adult Immunization Plan (NAIP) was created to address these barriers by strengthening adult immunization infrastructure, improving access to adult vaccines, increasing community demand for adult immunizations, and fostering innovation in adult vaccine development. Goal 2 of the NAIP is Improve Access to Adult Vaccines. While many barriers to access are discussed in the background of the plan, Objective 2.3 plans to expand the adult immunization provider network, suggesting many possible strategies.

As mentioned in the introduction, advances in pediatric immunization coverage utilizing specific settings to increase opportunity to receive vaccines in an environment unique to children have proven successful. While adults are not as centralized in a system like schools or daycares, some state level programs as well as global programs have come up with innovative ideas to access the 18-65 population. Strategy 2.3.7 of the NAIP proposes assessing the impact of providing immunization services in complementary settings on vaccination coverage, cost-effectiveness and health outcomes. With a constantly evolving policy landscape, existing programs with innovative models for mitigating the consequences associated with poor adult vaccine compliance can provide insight as well as opportunities to expand coverage of vaccines for persons living with HIV and people experiencing pregnancy.

## **Innovative State and Local Programs**

### *Pharmacies and State Registries*

The perception of the flu vaccine as merely a preventative public health measure must shift to an understanding of the true value the vaccine can have in a community. This shift will open up alternative avenues to improved immunization compliance in the adult population. One innovative strategy was implemented in community pharmacies in Iowa and Nebraska. In these implementation sites, community and grocery store-based pharmacies used a new technology platform that connected "technology used by pharmacists... [and] respective state registries" (Wehbi, 2019). This platform was used as part of a study between October 2016 and September 2017. Iowa and Nebraska experienced improved immunization rates in the adult population as pharmacists were now able to identify patients who needed immunizations

and specific immunizations patients needed through the state registry data so that pharmacists could offer on-site vaccinations or refer patients to a provider. This strategy resulted in a 37% increase in vaccinations for influenza from the previous year.

The community pharmacies engaged in the study also used a bidirectional link to increase non-influenza vaccination rates. When patients came in for seasonal influenza vaccines, the platform provided personalized on-screen recommendations within the four targeted adult vaccines. This created an opportunity for pharmacists to facilitate a discussion with patients regarding necessary vaccines during the smaller window of seasonal flu vaccinations. With this method, there was a 12% increase in Herpes Zoster vaccinations after implementation of the bidirectional link. The pertussis vaccination counts increased by 74% with the link as well.

TABLE 2:  
ADULT IMMUNIZATION RATES IN NEBRASKA (NE) AND IOWA (IA)  
BEFORE AND AFTER IMPLEMENTATION OF THE BIDIRECTIONAL LINK

| Vaccine Type  | Number of Vaccinations Before Implementing Link | Number of Vaccinations After Implementing Link |        |         | Percent Change Over Prior Year |
|---------------|---|--|--------|---------|--------------------------------|
|               |   | NE   | IA     | TOTAL   |                                |
| Influenza     | 144,415   | 103,999  | 94,238 | 198,237 | +37%                           |
| Pneumococcal  | 12,062  | 4,397  | 5,776  | 10,173  | -16%                           |
| Herpes Zoster | 5,146   | 2,947  | 2,822  | 5,769   | +12%                           |
| Pertussis     | 1,733   | 1,678  | 1,337  | 3,015   | +74%                           |

These results demonstrated that the bidirectional link improved access and immunization status for these communities in Iowa and Nebraska. It emphasizes the value of the vaccine as more than protecting an individual from one strain of the flu during one season. It creates opportunities to see the flu vaccine as a mechanism for initiating conversation about and receiving additional recommended vaccines.

This study also highlighted the role of community-based pharmacies as a convenient and efficient option for delivery immunization services. The technology platform used in this model eliminated the need for manual entry of immunization records into the state registry as well as improved the reporting process to the registries on newly acquired patient vaccinations. Overall, this study illuminated the potential of community-based and local pharmacies to provide these services and expand access to needed immunizations. These pharmacies usually have extended hours of operation,

remaining open longer than physicians' offices, hospitals, and some community health clinics. With time being one barrier to access, technologies like those implemented in this study should be tested in more settings to expand the number of immunization providers.

A similar, bidirectional program study was conducted in 8 community pharmacy practices in Washington State between October 2015 and March 2016. The Project IMPACT Immunizations pilot engaged with a variety of community pharmacy types and geographic locations to ensure that the model could be successfully implemented across variable pharmacy practice environments. Pharmacists at these sites were trained to implement this innovative model. In the model, patients requested an influenza vaccination from the pharmacy and at this initial engagement, pharmacists accessed the patient's immunization record from the state's immunization information system (IIS) using a new technology interface. The interface provided clinical decision support for the pharmacist and generated a vaccination forecast specific to the patient at the point of care (Blumbl, 2018). The forecast used the 2015 Advisory Committee on Immunization Practices (ACIP) adult vaccine recommendations to predict what vaccines are due for that specific patient based on their IIS record. The pharmacist could then educate the patient on needed vaccines and administer the vaccines if the patient consents.

TABLE 3:  
UP-TO-DATE VACCINATION RATES FOR ROUTINELY RECOMMENDED  
VACCINES AT BASELINE AND END OF STUDY

|                                       | Baseline Up-To-Date | End of Study Up-To-Date | McNemar Test        |
|---------------------------------------|---------------------|-------------------------|---------------------|
| Vaccine                               | N; %                | N; %                    | P                   |
| Pneumococcal-PCV                      | 111; 21.3           | 377; 72.5               | <0.001 <sup>a</sup> |
| Pneumococcal-PPSV                     | 534; 97.4           | 528; 98.2               | 0.125               |
| Tetanus, diphtheria, pertussis (Tdap) | 505; 51.5           | 609; 61.6               | <0.001 <sup>a</sup> |
| Herpes Zoster                         | 296; 48.9           | 361; 59.7               | <0.001 <sup>a</sup> |
| Human Papillomavirus (HPV)            | 11; 40.7            | 12; 44.4                | 1.000               |

The data analysis included patients at least 18 years of age. The participating individuals were eligible for and received an influenza vaccine at one of these sites during the study period. The number of non-influenza vaccines administered increased by 41.4% using this innovative process. The real-time access to IIS immunization records and clinical decision-support technology made it more efficient for pharmacists to assess the immunization status of over 1000 patients during the study. According to the vaccination forecasts, more than 1500 vaccines were due in the 1000 patients receiving influenza vaccines (Blumbl, 2018). These results emphasize



that even those seeking influenza vaccines are unaware of their additional vaccination needs. It also illuminates the importance of assessing a patient's immunization history on a more consistent basis to avoid missed opportunities. Implementation of this model in more pharmacies expands the number of opportunities available to assess vaccination needs. It is essential to explore how best to integrate programs like this streamlined approach into existing pharmacy practices and for other health care providers as well. This model emphasizes the need to capitalize on point-of-care data to engage and educate patients in order to improve adult vaccination rates.

### **Future Directions**

The innovative programs previously discussed emphasize nontraditional approaches to achieving vaccination and public health goals. Outside of these specific programs, a large body of work suggests alternative venues for immunization.

#### *Short-Term*

Some of these venues focus on leveraging existing health centers or offices that provide routine health services, or community health clinics. These settings could expand availability of walk-in visits or hours so patients can seek vaccinations during their lunch hour or after work. Expanded hours not only for walk-in visits but also routine office appointments could open up more opportunities for adults to have access to vaccines outside of the work-day. Evidence suggests retail pharmacy-based immunizations have the capability to expand access to more patients within certain hours of the day (Ventola, 2016). These immunizations may also be a more affordable option for those whose insurance does not cover all recommended vaccines or those unable to access a primary care provider.

One frequently cited recommendation is incentivized employer-based vaccination. In this design, employees collect incentive bonuses for receiving seasonal influenza immunizations. While this approach is appealing to many individuals, legal and ethical concerns exist. Deciphering whether this approach is protection or possible discrimination poses a challenge (Baxter, 2017). A number of legal and ethical implications may exist for those who cannot receive specific immunizations due to existing medical conditions that may be exacerbated by a vaccination. Employers have an additional challenge with verifying which employees have been vaccinated and those who have not (Baxter, 2017). Logistically, this approach may present additional challenges. Focusing more aggressively on educating employees about the benefits of vaccination provides a better solution. Peer-generated resources with other employees as part of routine staff or company meetings is one way to achieve this. A

general workplace wellness initiative could also communicate this important information.

On the provider level, there are a number of suggestions for increasing adult immunization compliance. Implementing electronic medical record systems (EMRs) for documenting vaccine administration could also include clinical decision support systems that prompt providers to determine the immunization needs of their patient and initiate those conversations at the point of care (Ventola, 2016). Clinic or specialty care providers that may not provide recommended vaccines could formalize procedures for referring patients to complementary vaccine providers. HIV specialty clinics that don't provide primary care services may benefit from this approach with initial point-of-care health assessments or interviews. A check-in procedure that has a short question prompt about vaccines on the adult immunization schedule may encourage patients to seek immunizations.

#### *Long-Term*

Some researchers recommend the creation of long-term, clear guidance for vaccination of adults with missing or incomplete vaccination histories. A committee of public health officers, scientists, physicians, and other healthcare professionals should convene to determine the best course of action for assessing immunization needs of these patients and creating a low-risk system. Standing orders that authorize nurses, pharmacists, or other trained health care professionals to assess a patient's immunization status and administer vaccines open a window of opportunity for improving vaccine administration. Standing orders could improve immunization coverage rates in many different settings including long-term-care facilities, hospitals, clinics, and workplaces (Ventola, 2016).

Another option to improve adult immunization compliance and coverage may involve widening the pool of individuals who can administer vaccines (NCSL). Training certified nursing assistants (CNAs), medical assistants (MAs), and health care assistants (HCAs) to administer vaccines in a hospital or clinic setting may provide more options for adult patients to receive needed immunizations. Coverage and compliance for persons living with HIV may also improve. Utilizing nursing assistant staff care within HIV specialist sites would help to coordinate routine vaccines with check-ups and appointments.

While there is not a single solution to vaccine hesitancy, it may be valuable to shift to a larger view of its consequences. There is often so much concern focused on the individual or "Patient Zero". Rather than focusing on one individual who has elected to opt-out of vaccinations, more focus should be generated for considering the work of herd immunity. In order for individuals, who by their medical condition or genetic

factors cannot receive vaccinations, to stay protected, the majority of surrounding individuals must receive vaccinations for herd immunity to work. Herd immunity works in the following way: if only some of the population gets vaccinated, contagious diseases like influenza will spread to some of the population. Herd immunity should not be a reason for choosing to not get vaccinated. It should be emphasized as a tool for protecting those who do not have a choice to get vaccinated or not.

Finally, it is imperative to mitigate these issues of vaccine hesitancy in the adult population as choices to vaccinate oneself may impact their decision to vaccinate their children. As discussed prior, poor adult immunization compliance does not just impact the adult population or the single individual. While pediatric immunization coverage is at much higher rates, we must continue to educate adults on the safety and effectiveness of recommended vaccines for adults and children to continuously improve on these rates.

### **Planning for the next NVP and NAIP**

Addressing disparities of coverage in specific subpopulations of the adult populations will require more innovation and creativity, particularly with developing cultural competencies amongst health care providers. The 2030 National Vaccine Plan (NVP) and National Adult Immunization Plan (NAIP) should include strategies for addressing immunization coverage of persons living with HIV in its objectives or strategies. Goals should be cognizant of the factors stacked against this population in order to effectively communicate immunization needs. Including these patients in the conversations used to build both of these plans is essential to ensuring that all coverage needs are met.

To successfully implement NVP and NAIP programs, overseeing agencies must ensure that strong systems are in place to sustain changes in vaccine coverage. In recent outbreaks, including measles outbreaks in Washington state, communities were not appropriately equipped with resources to adapt to new changes in vaccination policy. If schools are tasked with tracking which students are and are not vaccinated, more staffing may be needed outside of a school nurse to support that task. The next NVP needs to consider these structural networks.

Finally, the 2030 NAIP should consider bidirectional models like the program implemented in Nebraska and Iowa and the IMPACT program. As part of the plan, more research could be done in this area to consider a bidirectional approach to improving immunization rates of people experiencing pregnancy utilizing prenatal screenings and appointments.

## **Conclusion**

In conclusion, a promising number of innovative solutions are proposed to improve adult immunization compliance and equity. The true key to closing the gap of coverage between infants and the elderly, however, is recognizing the true value of the services provided to the adult age group. For the value of the vaccine, not only does a single vaccine prevent a potentially life-harming disease or illness, but utilizing one vaccine to initiate conversation about other preventative immunizations has an immense public health impact. Using these models and bidirectional methods will bridge the gap and include specific subsets of the adult population, persons living with HIV and pregnant mothers. Along with community efforts, the next editions of the NVP and NAIP should consider these models as jumping points for further innovation and consider ways to increase immunization administration at the point-of-care for all patients. With these innovations, a gap still persists in addressing the lack of vaccine information and vaccine confidence. The next NVP and NAIP should consider opportunities for innovation in these areas.

## References

- Baxter, T. D. (2017). Employer-Mandated Vaccination Policies: Different Employers, New Vaccines, and Hidden Risks. *Utah Law Review*, 2017(5).
- Bluml, B. B. (2018). Evaluation of the impact of an innovative immunization practice model designed to improve population health: results of the project impact immunizations pilot. *Population health management*, 21(1), 55-62.
- CDC Vital Signs-Maternal Vaccination October 9th, 2019
- Crum-Cianflone, N. W. (2014). Vaccination in HIV-infected adults. *AIDS patient care and STDs*, 28(8), 397-410.
- Dabestani, N. L. (2019). A review of the cost-effectiveness of adult influenza vaccination and other preventive services. *Preventive medicine*.
- Lam, O., Broderick, B. (2018). How far Americans live from the closest hospital differs by community type. Pew Research Center.
- Malone, K. H. (2003). Vaccination Mandates: The Public Health Imperative and Individual Rights. *Law in public health practice*, 262-284.
- McLaughlin, J. M. (2015). Estimated Human and Economic Burden of Four Major Adult Vaccine Preventable Diseases in the United States. *The Journal of Primary Prevention*, 36(4), 259-273.
- NCSL. Immunizations policy issues overview (2019). Available at: <http://www.ncsl.org/research/health/immunizations-policy-issues-overview.aspx>
- NPR, Wamsley (2019)
- Prins, W. B. (2017). Improving adult immunization equity: where do the published research literature and existing resources lead. *Vaccine*, 35(23), 3020-2025.
- Tan, L. (2016). Vaccine Financing, the Affordable Care Act (ACA), and Immunizations. Immunization Action Coalition.
- Tan, L. (2018). A review of the key factors to improve adult immunization coverage rates: What can the clinician do? *Vaccine*, 36(36), 5373-5378.
- VACCINES ACT OF 2019- HR 2862-House Energy and Commerce Committee
- Ventola, C. (2016). Immunization in the United States: recommendations, barriers and measures to improve compliance: part 2: adult vaccinations. *Pharmacy and Therapeutics*, 41(8), 492.
- Wehbi, N. ., (2019). Impact of implementing a technology platform in community pharmacies to increase adult immunization rates. *Vaccine*, 37(1), 56-60.
- Whitney, C.G., Z. F. (2014). Benefits from immunization during the vaccines for children program era-United States. *Morbidity and mortality weekly report*, 63(16), 352.



# "Negative News" Isn't Always Negative: Utah Journalists Reflect on News Values and Audience Engagement in the Digital Age

By Elise Saarela

University of Utah

*The purpose of this research article is to explain the general notion of negativity in the news and how journalists perceive both their professional and personal standards. Eight journalists from eight different news media sources in Utah were interviewed to provide insight into the ethical values that they consciously draw upon during their work, how they perceive the current news climate, and how they view their obligations to, and relationship with, the public. This article will also suggest alternatives for making the news more responsive and positive based on both the interviews and previous scholarly work.*

*After analyzing the interviews with journalists and academic research on journalism, it is clear that there are shortcomings in the practice today. Perhaps most notably, there is a disconnect between the public and news media. This, in turn, causes a feeling of separation from people and the press, creates simplistic, two-sided story narratives that are characterized by speed instead of accuracy, and, most concerningly, reinforces an overall negativity in news coverage and the interpretation of it.*

*Based off this research, in order to improve public perception of attitudes of journalists and news coverage, it is vital for the public to understand:*

1. *Negative news is oftentimes necessary news;*
2. *Journalism's intent is to inform, not to ridicule*
3. *The public can and should improve their relationships with journalists.*

*Simultaneously, journalists should invite the public into their reporting and writing processes; understand how their audience feels; and continue to fulfill the purpose of informing by incorporating all types of stories in the news media.*

## Introduction

On a sunny Saturday morning in late June of 2019, the Java Cows coffee shop filled with the regular locals in need of their daily caffeine boost. Amongst them was Park City's local radio station's (KPCW) reporter, Emily Means, who could show her smile through the radio. I sat down with Means at one of the busiest tables of the coffee shop, feeling properly nestled into the local Park City environment. Means' office was a two-minute walk away, and she was getting ready for another day at the station. Her latest pieces focused on the people within her cozy, close-knit community, and the story that she is most excited about centered around an artist who is painting a mural at the city's local and infamous "White Barn." As we discussed what her job in radio journalism entailed, Means' face lit up with genuine passion; she was a storyteller, and she loved having the ability to connect and share stories of the people in her community.

Flash forward to an early Thursday morning in August,

where a meeting on the sixth-floor conference room of *The Salt Lake Tribune* was just starting. Young journalists furiously typed away with their eyes glued to their computer screens, quickly looking up to see my unfamiliar face as I passed by, then returning to their deadline-driven work. In the conference room, about eight or so executives of the paper discussed what they wanted to put in their content feed for the day, both in the print edition and the digital product. Ideas were tossed around about stories regarding politics, breaking news, and scandals in the Salt Lake Valley, often detailing the harsh realities of today; one reporter even suggested a story on kids buying bulletproof backpacks because parents are afraid of mass shootings in their schools. Everyone was actively listening to their co-workers, but the feeling of anxiety filled the room as they tapped their pens, plucked at their keypads, and darted their eyes to the clock to see when they could get to their individual work once again. Among them was senior editor Matt Canham, a journalist who expressed his "watchdog role" as being necessary to the functioning of society. Like many other journalists, Canham feels a duty to report imbalances in the community.

Despite the different work settings, publishing platforms, and career stages, Canham and Means share many core values and opinions. Most notably, both journalists admit that much of the news today is considered “negative” by the public. In fact, almost by definition, the majority of the day’s news is negative because it shows the disparities that occur in a typically “well-functioning” society. Why does the public have this mindset towards the news? How are journalists reacting in their practice in order to improve upon their relationship with the public? What ethical considerations are taking place in journalists’ minds?

After reading and analyzing various texts describing what journalists value, as well as texts explaining how journalism as a practice has changed and evolved over time, it has become apparent that there are shortcomings in journalism today. Perhaps most notably, there is a disconnect between the public and news media. This, in turn, causes a feeling of separation from people and the press, creates two-sided story narratives that are promoted by speed instead of accuracy, and, most concerningly, reinforces an overall negativity in news coverage and the interpretation of it.

This article will address the reality and perception of negativity through the lenses of public journalism, a concept that promotes revitalizing democracy and regaining citizens’ respect and engagement. Through empathetic practices, explanation of coverage, and an emphasis on shared values and inclusiveness, journalists and the public can progress journalism and lead to more productive, compassionate, and positive news coverage.

Beginning with reviewing scholarly and professional literature about the state of journalism and how it should progress, the article will briefly present methodology and research questions, and then explore findings from interviews with Utah journalists about their work. It will conclude by arguing that generally, journalists in Utah adhered to traditional notions of news, including negative news, while embracing the need for closer dialogue with their audiences.

### **The Values of Journalism**

News in America has evolved and changed drastically over the course of history. Its humble origins, which began with the first published newspaper in the American colonies in 1690, have flourished into a distinguished field of work with thousands of different media outlets. Newspapers, radio, TV channels, and online media continue to grow and disseminate information to the public every day. Its prominence in American culture is unquestionable, for it educates the public on what is occurring in society and gives them the necessary

information to form opinions, as well as assists in evolving society.

Despite the importance of news coverage, it can be argued that the field of journalism contains notable shortcomings today. One prominent shortcoming is the disconnect between the public and the news media, which will be discussed with multiple Utah journalists. Journalism values have changed to encourage neutrality and disconnect while covering issues, which in turn have curated the feeling of separation between the people and journalists, ultimately advancing the overall negativity of news coverage. In order to understand how the profession got to this point, as well as understand the responses given by the journalists interviewed, it is necessary to analyze the values, issues, constraints, and norms of journalism throughout history.

There are five proposed categories of journalistic norms that can help describe challenges to the field: intellectual, historical, ethical, societal, and functional norms. For the purposes of this research article, only ethical, hegemonic, and functional norms will be explored to further explore the perception of negativity in the news and how Utah journalists specifically address it. Once these norms and values are identified, the steps towards moving forward in journalism will be analyzed. Public or civic journalism, which can be defined as a version of journalism that encourages the participation of citizens in creating public debate and news rather than simply informing them, will be analyzed to see how negativity in news can be reduced. Utah journalists will then be asked to comment on public journalism, as well as other values in their work, to determine its current relevance in society. Works from key authors, such as Howard Garner, Jack Fuller, and Thomas Bivins, will be analyzed to specifically detail the evolution of news and journalistic values.

### **Ethical Norms**

The ethical values of journalism have evolved throughout history. As is the case in a multitude of other fields, journalism has been influenced by profitability. When mass media became a larger part of society, corporations decided to become involved and support certain news organizations via financial means. This evolved into an entire way of being in which news media focuses on profits, ratings, and financial results rather than focusing on the quality and content of pieces. Howard Gardner, author of *Good Work* (2011), argues that current society is not in the golden age of journalism due to the emphasis on profits, and that there has been a permanent shift, for most news organizations, from family to corporate ownership. In addition to this shift, there has been an increase in the speed of news. With the evolution of technology and the internet, journalists have been taught to value rapidity over accuracy. “Speedier technologies have crippled the



profession's mission of truth telling beyond recognition, since conveying the truth means placing events into perspective" (Gardner, 2001, p.141).

Multiple Utah journalists commented on this intense shift and how it impacted their priorities as a news organization. Thomas Bivins, author of *Mixed Media: Moral Distinctions in Advertising, Public Relations, and Journalism* (2003), also highlights the issue of structural biases in the news, including commercial, temporal, good vs. bad, narrative, and fairness. These occur from the actions of framing, agenda setting, and other non-traditional practices that have become common in journalism. Despite these shortcomings, however, ethical values in journalism are still present and are expressed through the interviews conducted with Utah journalists. Professionalism, informing the public, empowering the powerless, supporting democracy, promoting social change, truthfulness, and fairness are the central ethical themes Gardner describes. He emphasized the importance of the public being informed of what is happening, as well as being fair, truthful, and professional in practice.

Referring back to Bivins (2003), there are five noteworthy obligations of modern media from the Hutchins Commission on Freedom of the Press: providing truthful, comprehensive, and intelligent account of the days' events; to serve as a forum for comment and criticism; to cultivate a representative image of different groups within society; to be accountable for the clarification and understanding of society's goals; and to provide full access of the day's intelligence (2003, p. 268). Both Gardner and Bivins highlight the ethical value of truthfulness and sharing with the public. With these ethical standards at the forefront of journalism, the connection between the press and the people will strengthen and the news will reflect a more productive, engaging, and positive society.

### Societal Norms

Understanding what journalism is and how it operates for the purpose of the people is impossible without conceptualizing what news actually is for society. Journalists have traditionally generated stories that are centered around conflict, moderatism, order or disorder, and leadership figures. The Utah journalists that belong to larger, more mainstream news organizations will agree that their content focuses on violations. According to Herbert Gans in *Deciding What's News: A Study of CBS Evening News, NBC Nightly News, Newsweek, and Time* (1979), "much news is about the violation of values. Crime and disasters are reported because these phenomena are desirable, which is why journalists and audiences speak of bad news" (1979, p. 50). Exploring this concept with the journalists interviewed is one of the catalysts of this research article. Order and disorder are similarly valued in what consumers desire to read, especially in regards

to social, natural, technological, and moral disorders. Stories of moral disruption via protesting, of natural disorder due to natural disasters, technology malfunctions with important systems, and stories that disrupt the peace of society in general are emphasized more than stories that show the social, natural, and moral order of society.

Finally, news coverage on leadership figures in society is highly valued. News tends to divide the country into leaders and followers. Those who are skillful in politics, inspire others, or have authority in social issues are often covered in the news. President Donald Trump, for example, dominated the coverage and was on the news more than any other candidate. Rather than focusing on the policies, the potential positives to Trump's campaigns, and most of all, how the people felt about him, journalists focused on his persona, his diction, and his unorthodox actions. These constituents of news play a large role in the separation of the press and the people, as the press focuses on negative disorder, social issues that will likely gain attention, and authority figures who do not properly represent the rest of the nation's population. This defeats journalism's main purpose of connecting the news to the people. Buzz Merritt, author of *Public Journalism and Public Life* (1998), argues that journalists are supposed to help citizens become a united public, "but journalists cannot do that if we do not ourselves see things from a public point of view" (Merritt, 1998, p. 23).

Rather than signaling to citizens that they do not have a role in public life, journalists need to emphasize their inclusion, their importance, and the significance of stories revolving around positive, productive parts of society.

### Functional Norms

From a functional view of journalism's role in society, there are various requirements that must be fulfilled in order for journalistic practices to be considered ethical. Jack Fuller, the author of *News Values*, argues that at the most fundamental values are objectivity, accuracy, authority, and a specific rhetoric of news. Objectivity commonly refers to remaining separated from the issues being reported on. According to Fuller, the demand for objectivity is high because it helps show readers why they can trust journalists and ensures loyalty. The ideal journalist is conscious of their bias, attempts to avoid it, and does not hide any of the facts (Fuller, 1996, p. 16). Other scholars believe that objectivity is outdated and unachievable by journalists. *Mixed Media: Moral Distinctions in Advertising, Public Relations, and Journalism* describes the concept of dialogical ethics, which describes objectivity as negative due to its call for "authentic disclosure wherein the complexities of society and culture can be fully accounted for only through the involvement of community and its varied voices" (Bivins, 2003, p. 275).

Instead, journalists should desire to be fully transparent and accept the notion of a reality that can be “identified and described accurately” (p. 275). Regardless, most scholars agree that neutrality and separation from story content are beneficial and ideal for quality journalism. Accuracy refers to getting facts correct, doing research in order to verify information, and cultivating a standard of truth. Authority refers to journalists and their duty to report on authority figures and the actions they are performing. Reporting on the actions of a president, for example, allows the public to make informed decisions. The rhetoric of news is a final functional ethical value in journalism. The rhetoric of news refers to the concept that words convey meaning imperfectly, and that it is up to the journalist to understand their audience in order to choose vernacular that fits. We will see how Utah journalists adhere to these functional requirements of journalism.

### Public Journalism

To combat the ethical issues that have arisen in the field of journalism, the concept of public, or civic journalism was created. This form of journalism was created in the 1990s with the purpose of revamping newsrooms’ relationships with their communities and with the public. According to Geneva Overholser on the Democracy Fund website, civic journalism supporters felt that journalism was “failing our democracy in important ways, and detachment from community was part of the reason” (2016, August). A strong connection with community members would ideally assist journalists in producing the most effective and beneficial news. According to Merritt in *Public Journalism and Public Life*, journalists need to shift from merely describing problems to incorporating values, deliberation, and purpose into news coverage. The values of journalists should center around reporting in “ways that can help public life get better” (1998, p. 96). In order to do this, new reporting skills need to be created that emphasize how values drive society. When discussing deliberation, public journalism once again establishes the importance that journalism has on society. Therefore, weighing the potential consequences of publishing a story is crucial in good journalism. Merritt also emphasizes the original purpose of journalism, which “is not to make news, or reputations, or headlines, but simply to make democracy work” (1998, p.36). Journalists should desire to assist the public in forming their opinions and do so in a productive, empathetic, and grounded way.

Jay Rosen, the author of *Public journalism: Theory and Practice: Lessons from Experience* (1997), agrees that journalists could contribute more to a positive society by rethinking their purpose and their practice. He notes that journalists need to master the art of avoiding a dichotomy of opinion and taking multiple views into account. There is also a need for public inclusion, in which journalists attempt to make

citizens a larger part of democracy and influencing it. Rosen also argues for reshaping a “master narrative” for citizens, which could “allow citizens to define an agenda of concerns, and journalists in turn respond” (1997, p.23). Through the practice and implementation of public journalism, the people and the press could build relationships that would eventually lead to a shift in the type of news that is disseminated to the public.

### Reflections on Utah Journalist Interviews

To explore these values and concepts of public journalism in the current news media setting, I contacted nearly a dozen Utah journalists from eight different media organizations between May and October 2019. These journalists each came from different news entities and media, such as radio, newspaper, and television. The different journalists also ranged widely in age and career status, ranging from their mid-twenties to mid-seventies and beginning journalists to senior editors. This wide variance in interviewees was intentional in order to provide a wide range of opinions and experiences.

The majority of questions centered around the ethical perspectives journalists had on their practice, as well as how journalists perceive their relationship with the public (see Appendix B for the full list of questions). Here are the three main questions that were covered:

1. How do journalists personally contribute to making the news more positive, inclusive, and progressive?
2. How do journalists describe their relationship between themselves and the audiences they serve?
3. What is the purpose of journalism?

These broad questions are reflected in the specific questions I covered during interviews with different journalists. They seek to discover ways in which journalists are trying to do better work within sharing the news.

From these in-depth and insightful interviews with eight Utah journalists and media writers, it was determined that Utah journalists have similar viewpoints on what journalism is, what its duty is in society, and how the general public views the practice today.

Specifically, almost all journalists were in agreement that negative news is necessary for the media, that there is a disconnect between citizens and journalists that can be improved upon, and most importantly, that the overall purpose of journalism is to inform. Although there were individual perceptions of these central themes and how they play a role in their practices, the results from all interviews were



unexpectedly congruent. In addition to their homogeneity, the responses further developed a multitude of themes from the ethical, hegemonic, and functional values that were analyzed, which therefore strengthens previous research on journalism. With references to journalism's interdependency with politics, the need to emphasize journalism's inclusion in public life, and the overall goal of informing the public in order for them to form opinions, these journalists supported the concepts added in the texts analyzed. The following paragraphs will analytically review the reflections and opinions from the eight Utah journalists interviewed.

### Negative News is Necessary

When specifically discussing the topic of negative news coverage versus positive news coverage, all eight journalists came to the conclusion that negative news is saturated more heavily in the type of coverage today, but that it is overall necessary in order for journalism to serve its purpose of informing the public on what is happening. Negativity, which is perceived by the public as stories that are saddening to read or reporting on events that impact society in a hurtful way, is ever-present in the news. Whether it comes from a national, state-wide, or local outlet, negative coverage fills publications more frequently than what is deemed positive news.

According to the majority of the journalists interviewed, negative news is intertwined into the very fabric of what journalism is. David Scheinder, a copy editor for *Deseret News*, took a more radical approach to describe negative news and its role in journalism, claiming that what the public deems as negative news is actually regular news, and it wouldn't be news without that sense of negativity. "Banks not getting robbed is not news. Banks getting robbed is news and once that isn't news anymore, I think we have a problem," Schiender said. "If it's more positive than negative then it's not news, and that's, unfortunately, the way it is. A newspaper that is full of only positive stories would not be a newspaper." When asked to elaborate on the actual definition of news, Schiender explained that "news is something happening that is important, probably not expected, and is worthy to be known by a wide range of people." When invited to consider if that definition of news applies to both positive and negative coverage, he made no comment. His overall opinion was that if news is all one and not the other, it is not journalism. "If it's all negative, you aren't providing anything beneficial. But negative news is necessary," Schiender said. Patrick Cone, the current editor of *Milepost*, a magazine for *The Park Record*, had similar viewpoints on negativity in the news. "It's news because there's something wrong and something out of the ordinary happening. Very rarely do you pick up a newspaper that says everything is fine, go back to bed," he said. Emily Means, the radio journalist for KPCW, also agreed with the idea that informing the public on "the bad" is necessary for

journalism. She admitted that it can be "really exhausting to digest all of this and see bad thing after bad thing," but also explained that the resulting exhaustion "doesn't mean we shouldn't talk about things that are bad because they are important to know about."

But are these stories really "negative," or are they perceived that way by the public? Kelsie Foreman, a journalist for *Utah Business*, claimed that all news can be negative or positive depending on your individual perception of what those words specifically mean. According to Foreman, *Utah Business* touches on hard topics often: "We wrote a feature piece on mental health in the workplace and we are going to run one on companies and programs in Utah that help people plan "end of life" care. Yes, they aren't 'positive,' but they aren't negative either, they are just heavier topics for people to consume." Foreman also made a point of saying that stories often associated with being "negative" are not seen in the way they should be. "It might be uncomfortable to say certain statistics in an article or have these certain confessions with business leaders, but just because it's uncomfortable doesn't mean it is not important." Kristen Case, a former writer and editor for *Park City Magazine*, claimed that good, positive stories have negativity intertwined into them, and oftentimes the public misinterprets the overall message of those stories. "Sometimes, a negative story should be deemed positive because it educates people on what is happening in the world," she said, "I think I wouldn't want what's really happening to be covered up. I want to know what they are doing at the border and that's important. The facts have to be out there, and people have to know what is going on so I'm not saying that newscasters should make everything fluffy. The reality is, it just isn't and I respect journalists for that."

Not only can there be a misinterpretation with what constitutes a story as "negative," but there can also be issues with a lack of understanding of why journalists decide to cover what they cover. *The Salt Lake Tribune's* Matt Canham argued that what is labeled as "negative" news is often found in publications because "when you define what is news, it is what is changing or what could change, and while that could easily be positive things, sometimes it is about disagreements had, oftentimes actually. And if you were going to label things, disagreeing would probably be negative." These stories about disagreements, and other stories labeled as negative, oftentimes do very well. According to Canham, they do well because they allow people to tell others about it and converse with friends, family, colleagues, and acquaintances. This response supports Herbert Gans in *Deciding What's News*, who claimed that "much news is about the violation of values. Crime and disasters are reported because these phenomena are desirable, which is why journalists and audiences speak of bad news" (1979, p. 50). When Canham was asked how society can get to a point in which the public can understand

how unbeneficial it is to label stories as negative and positive in the first place, Canham said: “I think the underlying point of your question is do I think people can get to the point where they have a better understanding on how journalism works, why we make the decisions we make, and how we hope they judge that work. I think that can get better, and I do think *The Tribune* has not done a great job of that in the past.”

Another common and possibly most important theme mentioned in the majority of interviews was the idea that the news often serves as a mirror to the people of society. As David Schneider claimed, journalists “we [journalists] are a reflection of society.” Therefore, if the news is often considered negative, the public could take that as an opportunity to reflect on how they as a community and society are interacting and behaving today. According to these journalists, it cannot and should not be at the fault of the journalists for reporting negativity, for that is what society has deemed relevant. John Hollenhorst, a senior correspondent for KSL-TV News, argued that journalism is intended to show the public what their society is like and give them insight into themselves. “My hope is that [journalism] will give a broad picture of what the world is like today, and that includes crime and political issues, as well as the wacko down the street that just wrote something on a billboard or whatever it is,” he said, “I have always leaned toward feature stories and those stories that are about us but not us at each other's throats, but us being us.” Sena Hauer, the editor of *The Times-Independent* in Moab, Utah, took a unique perspective on this idea by instead claiming that *The Times-Independent* oftentimes focuses more on the neutral, or so-to-speak, “positive” news about sports and local pieces, because it is necessary to do so in order to keep the paper in business. “You want people to continue to buy the newspaper, so you need to oftentimes appeal to your audience,” Hauer explained. Keeping her family-run newspaper afloat means that Hauer and her staff often need to appeal to what their audience wants in order to keep subscribers; she says they often want sports stories. “It's interesting how when we have terribly serious issues affecting our very existence on this planet, we're still just looking to see who won the latest football game.” The reflection of society in her hometown of Moab shows that the public craves to consume the more positive coverage, and the newspaper, in turn, supplies it.

Overall, journalists concurred that what is often deemed “negative” by the public is necessary news that needs to be shared, is often misinterpreted to be negative when it can actually promote a positive change, and is a reflection of both what the public is and what the public wants.

### **The Disconnect between Citizens and Journalists**

Another common trend among all interviewed journalists was the acknowledgment of a disconnect between themselves and the public. As noted, this disconnect is one of the largest

shortcomings of journalism today. Ethical journalism has been prioritized in journalism with good intentions, but has resulted in a growing disconnect between the readers of news and the writers of news. This isolation of the two groups is arguably one of the main factors that led the public to perceive the majority of the news as negative; there is a lack of empathy, of communication, and most importantly, of understanding. The following paragraphs will analyze journalist's opinions on connections, as well as potential suggestions made for improving their relationship to people.

Emily Means reported that connecting with the people she is writing about is paramount for her stories to be a success. In her explanation of a piece with the Park City Senior Center, she noted that “it was really good to sit down and actually talk to the people that were being affected.” In addition to incorporating public opinion into their coverage, Means and the KPCW team are also adamant about being responsive to emails from residents with suggestions on what to cover in the community. “It's really valuable to hear from the public about what is important to them. We might not be able to cover every single issue or every single story that they bring to us, but at least we are aware of it and they can inform our reporting about these issues.” Likewise, Kristen Case noted that her writing would not be successful without connecting to the people she is writing about. A project that she was in charge of for years, called “Local Color,” was centered around writing profiles for people making an impact in the community. Case would personally interview her subjects in their homes and have an extensive, deep, and raw conversation with them about their lives. “It was always a pain getting started on it, but after I interview these people, I am reminded of why I love my job. And I would always be inspired by them.” Not only does Case do this herself, but she respects the entities that do as well. When referring to *CBS Sunday Morning's* weekly vignettes about people and places, Case said, “I love those because they aren't aggrandizing or spitting out information. They are going a little deeper, looking at more than one side, and taking time to get a lot of information. So I prefer that format and I think that I feel more connected as a consumer when it's that format.”

From several decades of perspective, John Hollenhorst claimed that connections with news consumers can be improved upon by more verbal communication. “The more people you talk to, the better journalist you are going to be,” he said. “The demand for reporters is to seek out voices and the better we do that, the better our journalism is going to be.” Sena Hauer agreed with Hollenhorst's logic, but she emphasized how difficult finding voices can often be. “I think I'd have a harder time finding people if they weren't somehow associated with an organization, or made an effort to come talk to us, or were passionate about a public issue that's happening,” she said. There's not a lot of time for that and

there's not as many resources needed for that." Hauer noted that due to this time restraint, the same voices who write letters and volunteer are the voices that are heard, which inherently causes a disconnect with the voices that aren't heard. Since both Case and Means are journalists that often do not have a time restraint on when to get their pieces out, they are allotted the time and ability to connect with their subjects on a deeper level. Whatever the situation, all journalists explain how beneficial it can be when real connections are made in reporting stories, specifically through personal, face-to-face communication.

In today's media environment, it is increasingly rare to connect with the public in person. The way in which social media have evolved into being an integral part of everyday communication has allowed news organizations to interact with viewers on a more regular basis. Not only have news organizations transitioned into putting the majority of their print stories online, but they also have created multiple social media accounts for promotion, marketing, and connecting to readers. As Matt Canham noted, "So many people get their news through their smartphones today. They are on Facebook or other social media and their eye gets attracted to a headline and they click on it." Canham also claimed that this growing prevalence of social media in journalism communication has opened up the ways in which people can get back to *The Salt Lake Tribune*, saying, "The avenues in which people respond to us is through our emails, commenting on a story, Facebook messages, letters to the editor, and general social media posts." Kelsie Forman has similar viewpoints on how her publication is using social media. She claimed that social media is improving the way the public can access journalists. "We do have people talk to us a lot on social media and it's really cool because sometimes the public will reach out and give us story ideas," she said.

*Utah Business* uses social media to connect with people who have story ideas, which illustrates the idea of civic journalism in and of itself. Readers can actually have an influence on what is and isn't covered. David Schneider has an unpopular opinion on how social media is currently and will continue to allow connection to the public. He believes the *Deseret News* has a decent relationship with its audience and credits that to the use of social media. He also believes that reporters will not survive in their job without responding and connecting to their audience on social media. "They have to be connected. There will have to be some recognition that you are dealing with the public and are communicating with them," he said. Without a social media connection, journalists cannot gain credibility with their audience and, in turn, be successful in their field.

Journalists also reported that they are trying to improve upon their connection with the public through the act of diversifying. As Bivins described in *Mixed Media: Moral*

*Distinctions in Advertising, Public Relations, and Journalism*, "The complexities of society and culture can be fully accounted for only through the involvement of community and its varied voices" (2003, p. 275). If news entities have a diverse staff, they will in turn be able to relate to a wider audience and gain the trust of more news consumers. From their perspectives, diversifying will result in a more inclusive news environment. John Hollenhorst said, "Diversity is one of the most important aspects the media needs to focus on so that we get every possible point of view weighing in as we make decisions. It's not always the middle-class white guy that should be the reporter, so I think that's probably number one, encouraging people from everywhere to join the journalism effort." Matt Canham concurred with this idea, claiming that *The Salt Lake Tribune* makes the news more inclusive by hiring a wide array of journalists. "When we think of diversity in our newsroom, we think of age, gender, and of socio-economic background. If we only hired people who came from Harvard or Yale or live in Park City, they're going to see the world through that lens alone and it's valuable to have people that come from different backgrounds, we think of lots of different things," he said. "It's not always easy to hire people from different backgrounds, so you have to make a conscious effort." Diversity can and also should be found in actual coverage itself. Kelsie Foreman, who claimed that *Utah Business* as a whole has been making efforts to include people of various backgrounds in their publications, shared a story about the current issue. According to Foreman, an issue of the magazine was printed back in February that had a group of black men and women on the cover. "We got so much positive feedback on it with people saying thank you and for us highlighting other diverse communities that are underrepresented," she said. "But at the same time, we also had five or six people call us that day asking to be removed from the publication because they didn't want to be associated with us and it was because we put black people on the cover." Foreman then explains how appalled she was by this and continued to express her passionate desire for more diverse publications. "If people are upset with it, that means more and more people from the industry as a whole need to be putting this demographic in the spotlight," Foreman said. Through the diversifying of both staff and news content, the connection with consumers will likely improve.

Another step towards improving the connection between journalists and the public is to explain why journalists choose to write about certain topics, as well as to educate people how journalism works for the public. John Hollenhorst claimed that explaining news-gathering processes will be the main way to improve upon the relationship and connection to readers and viewers. "I think there is a trend over the years to be more open about the reporting process and do stories about the way we cover stories. I have done a few of those over the years

and I think that the story behind the story is really helpful so people get a better grasp of how we do our jobs,” he said. “The more reporters can talk to people in those realms that we cover and get a feel for how they look at things, the better.”

A final suggestion made for how to better connect with the public is by better appealing to how they communicate, think, and desire their stories. Pat Cone supports the idea of appealing to a target audience in order for them to feel more connected and personally contributing. “It’s about getting closer, knowing how to use words and terms of phrases, writing things that will trigger things in people’s memories, that’s important.” With an aging readership, Cone noted how important it is to modify the lingo used to better satisfy younger readers.

It became apparent through these interviews that despite the watchdog role, the accusations of bias, the perception of failures within journalism, and the overall feeling of negativity, there is a strong desire for connection in every single journalist interviewed. With the desire of connecting with the people they are writing about, connecting with the audience they are projecting to, connecting with themselves as they navigate how to interact and operate in their practice, there is an ever-present urge for connection. If both journalists and audiences are conscious of that, and a little more empathetic and aware on both ends of the story, they will be able to make the relationship stronger and, in turn, create positive change within the ways news is curated, shared, portrayed, and respected.

### **The Overall Purpose of Journalism: To Inform**

The most significant takeaway from interviewing journalists of different news and media entities throughout Utah was the overall unified belief that journalism’s core purpose is to inform the public. This reflects the Hutchins Commission on Freedom of the Press’ conclusion that journalists have several ethical obligations: to provide a truthful, comprehensive, and intelligent account of the days events; to serve as a forum for comment and criticism; to cultivate a representative image of different groups within society; to be accountable for the clarification and understanding of society’s goals; and to provide full access of the day’s intelligence (2004, p. 268). All eight interviewees answered the question of journalism’s purpose with the word “inform” in their answer. This consolidated and consistent answer among journalists presents two main inferences about journalism: One, there is still a strong and ever-present understanding on why journalism exists and what its purpose is in society. Two, despite this cohesive understanding of journalism’s purpose, there are varying ways of how to interpret that purpose, which ultimately leads to discrepancies among news operations.

Before analyzing each journalist’s opinions on informing the public, it is important to note that the majority of journalists also found it necessary to comment on journalism’s status in society. Multiple journalists made an emphasis about how their work should not be viewed as something special or more important than other jobs. “I don’t think my calling as a journalist is very sacred,” said Emily Means. “It’s something that I feel really grateful to be able to do and that I’m grateful other people do too, but I don’t think it’s more honorable or admirable than any other profession.” David Schneider has similar viewpoints, and said, “I don’t know if I am tougher than the one-man business contractor who is trying to feed his family by making sure he installs pipes and electrical wires correctly, and if someone is not happy with his work he has to go deal with it. I don’t want to put journalists on a pedestal.”

Not only did these journalists make note that their profession needed humbling, but they also all held themselves accountable for having subconscious, unintentional, or inherent bias when sharing information. Pat Cone remarked, “It’s really challenging to write and not be bias in some way or another just because you and your world comes into play with every single thing that you do.” Once again, Schneider put journalistic work into more humble and realistic terms by saying, “I believe that most journalists are not as unbiased as they think they are, but even more strongly I’m sure that journalists are not as biased as a public thinks they are.” These journalists acknowledged that their humanity being an influence in their work, and they said they keep themselves accountable for that. As John Hollenhorst put it, being aware of bias is woven into the very meaning of being a journalist: “It’s a matter of recognizing that you do have biases and beliefs and opinions, but that you set them aside as your professional commitment.”

In order to best analyze the perspectives these eight journalists have on the purpose of journalism, their responses are presented separately, while also systematically sorting responses that share similar viewpoints:

Sena Hauer claimed that without the ability to inform in journalism, the practice would overall be flawed: “The purpose of journalism is to inform people about the world around them. Without that, it would be complete corruption and chaos, I’m convinced.” Hauer terms journalists as being “the peacemakers somewhere in the middle” of political debates, and strongly believes in the idea of remaining neutral when reporting. She is unique from other journalists in her belief that keeping this neutrality/peacemaker role is actually convenient in society: “I personally find being a journalist really convenient because our job is to write the middle ground; we don’t have to take a stance and we aren’t supposed to.”

Emily Means disagreed with Hauer’s perspective, saying,



“I think there is this really antiquated idea of what journalism is, and maybe it’s because I’m just a young person in the field, but journalism has changed and it shouldn’t just be ‘Here’s one side, here’s the other side, and now you decide’ kind of thing. Not all issues are one side versus the other and there’s a lot of middle ground and there’s a lot of ways to interpret issues.” Means also took a less passionate explanation in her reasoning for believing informing is the overall purpose of journalism. She claimed, “Well, I think its most basic purpose is to inform. And that’s why even though this daily turn of stories isn’t my most favorite thing, I realize that it needs to get done because people need to know what’s going on.” However, she noted that despite this duty to inform, she personally loves to “put a face on an issue” in order to best understand the story and connect with what is happening more effectively, which is an entirely different aspect of what journalism can do. Means’ response resonates closely with Davis Merritt in *Public Journalism and Public Life*, in which he expresses that journalists need to shift from merely describing problems to incorporate value, deliberation, and purpose.

John Hollenhorst took a different approach to his explanation by claiming that despite journalism’s purpose of informing, one must still be conscious of the idea that it is still a business. “You can’t just give people medicine without some sugar, and you can’t make it all one thing or all upsetting and you need to try to balance all kinds of things when you think of information,” he said. Informing means giving the public, as he puts it, “a broad picture of what the world is like today, and that includes crime and political issues, but also includes the wacko down the street that just wrote something on a billboard of whatever it is.” His perspective differs from others in the sense that his version of informing incorporates a healthy “news diet,” that both includes feature/entertaining stories, as well as necessary news stories. Hollenhorst also emphasized the power that lies within journalism. “Journalists have the ability to throw light in a corner where somebody with power might do something that the public should know about,” he said.

Matt Canham’s perception of informing also incorporates the idea of shedding light in dark corners. Referring to his time as a political writer, he claimed, “I believed it is my job to tell voters who their politicians were, what these politicians believe in, and how they act. What they did not want you to know about what also what I was trying to find and that is investigative and watchdog journalism. And there is a role there in our society that’s very important.” Canham comes from a more literal, political perspective. He claimed that the purpose of journalism is “to inform the public about your community so that the public can make the right decisions when asked.” He believes that the core reason for journalism’s existence is to inform voters in the country on what is happening in society in order for them to make an educated

choice on whom to elect into varying government positions. “This is a country in which we are self-governed, and you as a voting citizen of our country need to be informed to self-govern correctly,” he said. “Our job is to help in that area.” Canham’s comments illustrate points made by Barbie Zelizer, who explained that journalism has diminished in value due to a lack of understanding about the interdependency between politics and journalism.

Pat Cone has a similar viewpoint as Canham: journalism is necessary in order for the people to have true information in a democracy and, in turn, make their own decisions based upon unbiased facts. “We are the proxy storytellers. We inform people about what is going on in the world about subjects that will affect their lives.” He believes that the public is not and will not be able to make proper decisions in society without being informed, therefore making the role of journalism vital. “It’s essential for people to have good, true information in a democracy, so they can make their own decisions based upon unbiased facts.” Merritt’s notions are again reflected in these responses; he claimed that the purpose of journalism “is not to make news, or reputations, or headlines, but simply to make democracy work” (1998, p. 136).

Keslie Foreman took her answer in a more political direction as well, claiming that the purpose of journalism is to inform and provide checks and balances in society. “I just think of what the political world would look like if all of these journalists weren’t bringing the corruption into light and it makes me think that no change would actually be driven,” she said. Her reasoning lies within the frames of informing to produce change amongst a population and its people.

Kristen Case’s response to this question was perhaps the most philosophical of all responses. She said, “It’s about communicating in a country and informing people of what is going on. It’s communicating what is happening in this world. We don’t send smoke signals anymore, right? And now, especially with the technology these days, you can know everything and anything instantly which, again, is good! If someone has their cell phone and films a riot in China, it’s amazing to be able to see that.” Her mentality on journalism centers around the practice of communication: “Communicating everything, what is happening in politics, in science, and the good and the bad. People used to be in tribes and have to walk a long distance to another tribe to give them an update and say our tribe has a sickness, what is happening with you? It’s sharing information.” Her approach to the act of informing embodies the irreplaceable need to share information and communicate with one another, which ultimately incorporates a more human-based perspective into journalism as a whole.

David Schneider provided a distinctly different answer to the question of what the purpose of journalism is. Rather

than directly answering, he countered, “what it is or what it should be?” He insinuated that there is a difference between journalism’s duty and journalism’s current state. When asked for both, Schneider said, “What it should be is an avenue for providing the public the information that allows them to make informed decisions about things that are important to them. That’s what it should be.” He claimed that what journalism really is today is “a combination of news media trying to do that and some that are more interested in something else.” His answer alluded to his belief that journalism today is flawed because it deters from its main purpose of informing, which is an important insight into why there are flaws in the practice today and how traditional “watchdog” journalism is often confused as negative news.

All responses, though varying in explanation and incorporating different aspects of journalism’s role, correlate to the idea that informing the public is necessary in order for journalism to uphold its fundamental responsibility. The realization that journalism is meant to inform can potentially educate readers and news consumers on why certain topics are covered and assist them in understanding that news is not for entertainment, but for the overall awareness of society. This means that journalists, however, should view informing from a more wholesome perspective and come to terms with the idea that informing includes all the bad and all the good parts of society.

## Conclusion

This research article addresses the perception of what is deemed “negative news” in the media through the analysis of journalism, its current state, and its prevalence for the public, ultimately concluding that both the public and journalists are at fault for the current perception of the news as “too negative.” This perception that the news is overly saturated with negativity is not only caused by the current news climate and the factors that are now be incorporated into news production, but it is also caused by the public misunderstanding journalism’s roles, intentions, and relationship to them. As expressed from established authors and journalists interviewed from various parts of Utah, improvements in journalism need to be made in order to make the news more inclusive and progressive, which in turn would be perceived as more “positive.” Although journalists had a variety of ideas, they expressed similar notions and reinforced multiple ideas mentioned from other scholars.

First, it was demonstrated that there is an explanation for the sense of negativity in the news.

People enjoy learning about the violations and irregularities of society; since most news media are driven by

profit, this often-subconscious enjoyment of more “negative” stories causes news entities to focus on them. Not only is the news influenced by what the public desires to read or view, but news media also report the irregular happenings of society because that is viewed as necessary. As Hollenhorst, Schneider, Means, and Canham noted, news that is considered negative is often necessary, for it assists in telling the public what is happening and allows them to be further informed. The act of informing, which was expressed in all interviews, as well as reiterated multiple times in texts, is argued as a main purpose of journalism. Informing shouldn’t, however, automatically correlate with negativity. Even the more intense or tragic news stories do not have to be labeled as negative, so long as the public reacts with the desire to improve themselves and their community.

Second, and more importantly, both researchers and journalists are aware that more can be done to improve upon news coverage and the way the public views it. Due to the increase in technology use, the priority of speed and, once again, the need to make a profit, news media are good at informing, but they are not necessarily taking news a step further to share, collaborate, and reflect. Their priorities and underlying processes are contributing to this negative perception the public holds. All interviewed journalists realize these issues and commented on how they can improve their practices, be it through diversifying their staff, hearing from more diverse demographics, taking more suggestions into consideration, or providing solutions to issues presented. Most notably, journalists desire to improve upon their relationship with the public so that they are able to better cover society, and the public is able to shift mindsets on news coverage. These responses alluded to the underlying desire of operating in accordance with civic-based journalism.

There are multiple ways in which journalism can improve upon the way it operates. In addition to civic journalism, David Schneider, Emily Means, and John Hollenhorst mentioned the idea and facets of solutions-based journalism, which was described as journalism that provides potential solutions or ways of improvement at the end of each story. Not only would more solutions-based journalism change the perception of negative coverage in the media, but it would fulfill journalists’ ultimate goal to report in “ways that can help public life get better” (Merritt, 1998, p. 96). Additionally, both the Utah journalists interviewed and the texts analyzed encourage more dialogue among the public and the journalists, more diversity of opinions and people, and more empathy from both journalists and the public.

Overall, journalism needs to be better understood by the public for the purposes of realizing that negative news is oftentimes necessary news; that journalism’s intent is to inform, not to ridicule; and that the public could improve their relationships with journalists. Simultaneously, journalists

must consciously incorporate the public into their reporting and writing processes; understand how their audience reacts, feels, and thinks; and continue to fulfill the purpose of informing by incorporating all types of stories in the news media. If someone has an issue with a news entity and its coverage, they should communicate their concerns in a productive, empathetic way. If a news entity is confronted by the public with concerns, they should be advised to take the concerns into account as much as possible, for the purpose of writing is to benefit them in the first place. If these changes are worked on in journalism, it will likely shift overall negative to positive views of the news.



## References

- Bivins, T. H. (2003). Mixed media: Moral distinctions in advertising, public relations, and journalism. <https://doi.org/10.4324/9781410609045>
- Gans, H. (2004). Deciding what's news: A study of CBS Evening News, NBC Nightly News, Newsweek, and Time. <https://doi.org/10.1080/08821127.2005.10677988>
- Gardner, H. (2001). Good work: When ethics and excellence meet. *NY: Basic Books*.
- Merritt, D. (1998). Public journalism and public life: Why telling the news is not enough. *American Journalism*, 16(4).
- Overholser, G. (2017, July 10). How to best serve communities: Reflections on civic journalism. Retrieved from Democracy Fund: <https://www.democracyfund.org/publications/how-to-best-serve-communities-reflections-on-civic-journalism>
- Rodgers, R. R. (2019). Journalism and the concept of the constructive. Paper presented at the American Journalism Historians Association annual conference, Dallas, Texas.
- Rosen, J., Merritt, D., & Austin, L. (1997). Public Journalism: Theory and Practice: Lessons from Experience. *Kettering Foundation*.
- Shaw, D. L., Hamm, B. J., & Knott, D. L. (2000). Technological change, agenda challenge and social melding: Mass media studies and the four ages of place, class, mass and space. *Journalism Studies*, 1(1), 57-79.
- Suárez, E. (2018, June 27 ). Four news startups trying to improve civic discourse.
- Retrieved from Nieman Reports: <https://niemanreports.org/articles/four-news-startups-trying-to-improve-civic-discourse/>
- Wang, S. (2018, March 7). The Better India will show you all the positive news, on all the channels you might want it. Retrieved from Nieman Lab: <https://www.niemanlab.org/2018/03/the-better-india-will-show-you-all-the-positive-news-on-all-the-channels-you-might-want-it/>
- Zelizer, B. (2011, February 1). Journalism in the service of communication. *Journal of Communication*, 61(1), 1-2

## Appendices

### Appendix A: Interviews Conducted

Interviewee: Pat Cone, *The Park Record*

Interviewer: Elise Saarela Time: 51:26

Date: June 15, 2019 Interview Type: In Person

Interviewee: Emily Means, KPCW

Interviewer: Elise Saarela

Time: 27:39

Date: Jun 20, 2019 Interview Type: Phone Interview

Interviewee: Matt Canham, *The Salt Lake Tribune*

Interviewer: Elise Saarela Time: 40:47

Date: August 8, 2019 Interview Type: In Person

Interviewee: Kelsie Foreman, *Utah Business*

Interviewer: Elise Saarela Time: 22:02

Date: August 9, 2019 Interview Type: Over the Phone

Interviewee: Kristen Case, *Park City Magazine*

Interviewer: Elise Saarela Time: 40:57

Date: August 23, 2019 Interview Type: In Person

Interviewee: Sena Hauer, The Times-Independent

Interviewer: Elise Saarela Time: 35:05

Date: August 28, 2019 Interview Type: Phone

Interviewee: John Hollenhorst, KSL Television

Interviewer: Elise Saarela

Time: 1:05:11

Date: September 2, 2019 Interview Type: In Person

Interviewee: David Schneider, Deseret News

Interviewer: Elise Saarela Time: 46:27

Date: October 3, 2019 Interview Type: In person

### Appendix B: Questions Asked

#### Questions that were included in all interviews:

How long has this newspaper existed? How did you personally get into this?

How big is your audience?

What are the main types of stories you cover?

What is the favorite story you have ever covered?

How do you balance your reporting with your beliefs and opinions (about politics, religion, etc.)?

Do you think your paper covers more negative news than positive news?

Have you ever heard of civic or public journalism?

How do you think you personally contribute to making the news more positive, inclusive, or progressive?

Do you have certain ethical values as a journalist? Could you describe them?

Do you think journalists and the public could have a stronger relationship? How do we get to that point?

Do you see your work as public service? If so, why?

What is some of the feedback you get from your audience?

Do you get criticism from your audience/readers? What are some examples?

Do you people ever accuse you of being biased? Or sensationalistic?

What is the purpose of journalism?

#### Questions asked in specific interviews:

Patrick Cone:

Are you more involved in feature stories or photography?

What are your journalistic practices to make sure you are being totally unbiased with all of these things?

When you read the stories from publications like The Washington Post and The New Yorker, do you get frustrated like a lot of people do because it seems so negative or get mad that they are covering things in such a negative light? Or do you think there's even an issue in that regard?

Emily Means:

Do you personally think right now that the news covers more negative things than positive things?

Do you have any advice for me on what other questions to ask journalists and future interviews to get into the nitty-gritty of their practice and ask them how we can try to be more progressive on how they report?

Matt Canham:

For these enterprise types of stories, do your journalists have to come to you beforehand to get approval to start research?

Do you think we can ever get to the point where the public can understand that they shouldn't label these as negative or positive stories?

Do you think that journalism is kind of transitioning from prioritizing speed and getting the story out there to the quality? How do you fight that balance of quality versus getting the message out there as soon as you can?

Keslie Foreman:

How do you guys react to that [negative news]? Do you feel bad or do you take a step back and realize that sometimes the public just likes to complain?

Kristen Case:

How do you prioritize aspects of someone's life stories after interviewing them and how do you decide what to include in the story, because you obviously can't include all of it. So what is your process behind that?

Did you ever have people accuse you of being biased towards covering specific people and not others?

What do journalists need to do in order to make their news more chewable and digestible?

Do you prefer quality over speed?

John Hollenhorst:

What is your opinion on social media and its influence on the news?

What is your opinion on “Fake news”?

What has been your favorite part of being in this industry? David Schneider:

Were people scared when this power went off [referring to his favorite story he has covered] on a statewide level?

Can you think of an established or literal definition of what news is with that belief?

Do you consider yourself a civic or public journalist?

So what is your opinion on echo chambers and people being able to voluntarily pick and choose what they consume?

Do you believe in transparency? There were a lot of journalists that automatically went with transparency first as their ethical value, and what is your opinion on that?

Sena Hauer:

Do you have any siblings that are involved in this or have you kind of taken over for the family?

And so with Utah in general, do you think are news outlets are covering more negative news than positive news? And comparing it to your newspaper, what do you think?

Do you think the public wants more negative stories?

So do you think that if the public is mad or upset that their news is all negative or that journalists aren't covering the right types of stories, that responsibility is on them because they aren't voicing their opinions.





# Hate Speech in 21st Century Jurisprudence: An Analysis of the Current Interpretation of the First Amendment and the Compelling Need for Judicial Action

By Anthony Scoma

University of Utah

## Introduction

The treatment of speech by the courts of the United States charts the development of a robust system of protections and freedoms guided by a set of liberal principles. However, in the early years of the state, and often in times of real or imagined crisis, those principles have been abridged for the sake of a perceived common good—such as national security, maintaining societal order, and protecting the public. Indeed, the justices of the Supreme Court of the United States have voiced varied competing interests in the ongoing and dynamic debate on the exact limits of free speech (First Amendment, 2011). This debate, of course, interacts with other areas of the law and collides with other government interest, creating legal, ethical, and normative grey areas.

Hate speech, in all its varied and subjective interpretations, represents one of those unsettled areas of the law. The lapse in our judicial system's approach to such speech, the harm it entails, and the impact on the broader society represent a damning abstention by current First Amendment law. The United States finds itself in an increasingly precarious position by not incorporating some limitations on speech in pursuit of mitigating the harm that arises from hate speech.

This paper argues that the current interpretation of the

First Amendment in regards to hate speech fails to uphold other areas of compelling government interest—so called because they rise above the level of optional activity into the realm of essential government function. That claim is sustained by research into case law, First Amendment theory, and critical race theory. In providing a multi-pronged critique of speech laws in the U.S., I argue that the law must adapt to radical changes in our communication norms and socio-political landscape and move to a more holistic approach that balances the freedom of expression against the real dangers of hate speech.

The theories used in this paper—First Amendment theory (both case law and academic) and critical race theory—will be used to analyze and critique current speech law and explain why a restructure of this area of the law is not only important but imperative. Case law establishes the judicial precedent within the courts and academic reasoning creates a useful framework to understand its underlying principles, while critical race theory provides a necessary critique of where these systems have historically and contemporarily failed to achieve equity for all people, specifically in the context of race and racism. In addition to these theories, I will also use legal and philosophical reasoning to reinforce and connect these areas of scholarship.

To explicate and justify my proposition that the current interpretation of the First Amendment must change, my paper

will use a traditional legal adversarial documentary method. Gillmor and Dennis defined the method:

Legal research of the traditional, documentary mode is largely adversarial. The legal researcher sets down a provocative proposition and marshals evidence to support its plausibility, and that evidence may come from opinions of the court, dissenting opinions, legislative histories, constitutional interpretation, and legal commentaries. (Gillmor & Dennis, 1989, p. 335)

Using this method and evidence, in conjunction with First Amendment theory and critical race theory, I will support my claim that current jurisprudence is not adequate to address contemporary questions and crises of hate speech law in the United States. While my argument does not offer a single solution to this issue, it will demonstrate that it is an issue that deserves the attention and action of our judicial system.

In arguing for a reinterpretation of long-standing First Amendment's standards of free speech, I seek "to reform old laws and suggest changes in the law" (Gillmor & Dennis, 1989, p. 341). With such an "ultimate goal, the role of the legal scholar is different from that of a researcher who is satisfied... to observe, analyze, explain, and sometimes predict" (Gillmor & Dennis, 1989, p. 334). I thus advocate for a new legal approach that acknowledges the harm of hate speech and offer guiding principles in pursuing a nuanced application of the First Amendment. Indeed, the intent of this paper is not purely academic and should be understood as critique and refutation of current jurisprudence. Gillmor and Dennis also described the value of such an approach:

The goal of legal scholarship in mass communication is not always knowledge for the sake of knowledge; it is often an applied knowledge in keeping with the lawyer's adversarial purpose. (Gillmor & Dennis, 1989, p. 344)

Fundamental to my conclusion are the failures of current interpretations of the First Amendment. As First Amendment and critical race theorists have argued for decades, First Amendment law can and should adapt to our current context. As I will argue, the harm of hate speech has never been more visible, and the need for a new approach by the courts has never been more necessary.

### The Argument

This argument contains three premises—that hate speech regulations can be implemented into First Amendment jurisprudence with minimal impact on the freedom of expression; that international law and shared cultural values impel us to make such reforms; and that changing communication technology and norms threaten our outmoded

First Amendment jurisprudence and provide ample reason for the Supreme Court to alter established First Amendment law.

### Jurisprudence

To begin, it is necessary to establish current First Amendment legal precedence through Rodney Smolla's framework outlined in his seminal work *Free Speech in an Open Society* in conjunction with the Supreme Court's opinion in *R.A.V. v. St. Paul*, which referenced five of the six guiding legal principles (Smolla, 1992, pp. 43-68). Smolla, a preeminent First Amendment scholar, distills the questions and dynamics that have preoccupied First Amendment jurisprudence into six principles—the Neutrality, Emotion, Symbolism, Harms, Causation, and Precision Principles—which provides a useful foundation to engage with the established case law. In addition, it will be clarified how defending the rights of those harmed by hate speech can be incorporated within the existing jurisprudence with marginal impacts on the First Amendment's guarantee of free speech.

Smolla (1992) described the Neutrality Principle as "a cluster of precepts that form the core of modern First Amendment jurisprudence" (p. 46). Neutrality encapsulates the idea that it is not the government's role to choose what ideas in speech are protected and which are not. Undesirability or offensiveness cannot be the basis for the prescription of speech and laws that target the ideas or messages contained in speech have been repeatedly ruled unconstitutional. In *R.A.V.*, Justice Antonin Scalia used this reading of the First Amendment to strike down an ordinance meant to target unprotected "fighting words"—earlier defined in *Chaplinsky v. New Hampshire* as words which "by their very utterance, inflict injury or tend to incite an immediate breach of the peace" (1942). The ordinance was struck down partially on the basis that it contradicted a content-neutral position, claiming that "[t]he government may not regulate use based on hostility—or favoritism—towards the underlying message expressed" and emphasized that "the point of the First Amendment is that majority preferences must be expressed in some fashion other than silencing speech on the basis of its content" (*R. A. V. v. City of St. Paul*, 1992).

Scalia differentiated this unconstitutional content-based restriction with those on "the basis of a noncontent element," such as time, place, or manner restrictions or verbal "nonspeech" elements of communication like noisy speech or fighting words (*R. A. V. v. St. Paul*, 1992). Scalia also acknowledged the freedom of speech guaranteed through the First Amendment does not extend to those areas of speech "of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality" (*R. A. V. v. St. Paul*, 1992). Moreover, Scalia acknowledged that there is a



compelling state interest in securing “the basic human rights of members of groups that have historically been subjected to discrimination, including the right of such group members to live in peace where they wish” (*R. A. V. v. St. Paul*, 1992). Indeed, it seems that the crux of the issue in *R.A.V.* for Scalia was the imbalance of the protections “on the basis of race, color, creed, religion or gender,” as it left out other groups subject to similar outraging speech.

Speech that denigrates the basic humanity or “dignity” of an individual or group certainly falls within the speech “outweighed by the social interest in order and morality,” but it must be conceded that it is difficult for the government to clearly delineate who should be protected from said hate speech (*R. A. V. v. St. Paul*, 1992). To address this issue, the right of every individual to live with dignity within society must be applied without exception and “not limited to [...] favored topics” (*R. A. V. v. St. Paul*, 1992).

However, Scalia’s position that the First Amendment right to free speech always supersedes other considerations fails to consider the fundamental rights of groups and individuals to live with the assurance that their basic standing within society is non-negotiable. The “danger of censorship” is a legitimate concern, but one that must be balanced against other interests, as it is in other areas of the law (*R. A. V. v. St. Paul*, 1992; *Dun v. Greenmoss*, 1985). Within narrowly tailored limits, there is no reason why the government should not be able to upbraid hate speech that calls into question the humanity and value of another human life. There is no truth or legitimate argument to be found in the rhetoric of hate speech—only grievous harm—and public discourse is best served by separating it from other forms of controversial speech such as fighting words (Tsesis, 2002, p. 117). More succinctly, the most caustic forms of hate speech—those that target the fundamental standing and dignity of individuals and groups—must be added to the list of categories that may be regulated because of their constitutionally proscribable content.

While not all hate speech will fall into this category, it is necessary to establish a demarcation so that our jurisprudence can more accurately reflect historically observed dangers that unchecked hate speech can cause to a society that places the rights of the individual at its center. To object that censoring such speech will only drive it underground and out of the lauded marketplace of ideas is exactly the point—to establish in law and not just in the popular culture that the principle of equality that has been continuously fought for in the United States will not be allowed to pass away (Tsesis, 2002, pp. 196-197). As renowned legal scholar Jeremy Waldron (2012) phrased it, “[W]e want to convey the sense that the bigots are isolated, embittered individuals, rather than permit them to contact and coordinate with one another in the enterprise of undermining the assurance that is provided in the name of society’s most fundamental principles” (p. 95). A court

interest in preventing hate speech’s harms must involve a ban on the content of speech, as it is in the content where the harm originates. The medium—a narrowly tailored ban on the most caustic forms of hate speech—embeds the message that the fundamental dignity and value of human life is not an open discussion, but a settled consensus upon which all people can rely.

The Emotion Principle represents the protections of the emotional and emotive areas of speech. Smolla (1992) summarized that under the First Amendment, “[s]peech does not forfeit the protection that it would otherwise enjoy merely because it is laced with passion or vulgarity” (p. 46). In *R.A.V.* (1992), Scalia referenced *Renton v. Playtime Theatres, Inc.* to differentiate the “[l]isteners’ reactions to speech” to the “secondary effects,” that were proscribable based on the compelling interest and content-neutral implementation. In *Cohen v. California* (1971), the Court “unequivocally rejected the notion that a state may seek to prevent the use of vulgarity merely for the purpose of cleansing public discourse and sheltering citizens from offensive language.”

This paper’s approach is in line with the reasoning offered in these cases. Emotions are an internal experience and therefore difficult to quantify or use as the basis for legal tests. Instead of focusing on the emotional impact of hate speech on the observer, the conversation on hate speech should center on the overall effect, platform, permanency, community, and scope of hate speech, as these qualities are used regularly in other areas of the law such as defamation and privacy. For example, in the case of *Albert Snyder v. Fred W. Phelps, Sr., et al.* (2011), the protesting of a soldier’s funeral by the Westboro Baptist Church—a widely reviled religious hate group—clearly evokes strong emotional responses to those targeted by their harassment. However, due to the fringe-nature of the religion and the historic and current support of average Americans for the armed forces, there is little danger of this speech imputing the basic foundations of Marine Lance Corporal Matthew Snyder, his family, or the armed forces collective humanity. Indeed, this is an area of the law where current regulations of time, place, and manner of the speech succeed in balancing interests of individuals to speak and others do not have to be subjected to said speech (*Snyder v. Phelps*, 2011). Similarly, due to the Westboro Baptist Church’s lack of political or social clout in the broader American society, the capacity of their speech to endanger the basic humanity and value of LGBTQ+ lives—a frequent subject of their vitriol—is marginal. In cases of similar scope of controversial speech, the prescription to confront this kind of speech with more speech is a solution that fits the parameters of the situation. It is when speech is not only emotionally reactive but also rises to the level of a more substantive assault on vulnerable groups’ standing within society that the judicial system has a legitimate interest

in protecting said groups.

The Symbolism Principle asserts that First Amendment protections are “not limited to the use of language, but also includes expressive conduct, such as mass demonstrations or communication through the use of symbols” (Smolla, 1992, p. 48). In *R.A.V.* (1992), Justice Scalia stated that the symbols “which will arouse ‘anger, alarm or resentment in others on the basis of race, color, creed, religion or gender’ are those symbols that communicate a message of hostility based on one of these characteristics.”

Again, there is nothing here that cannot be mediated between the opinion given by the court and those advocated in this paper. However, Jeremy Waldron (2012) is correct in arguing that the permanency of speech—that is in contrast to the impermanence of verbal speech—should be a contributing factor in evaluating the severity of speech meant to attack vulnerable groups’ fundamental standing in society (p. 37). Indeed, it is in the shared spaces of the public that individuals must be most secure in their ability to move through society unmolested, with their dignity unchallenged. Whether it is a Nazi swastika, a burning cross, or written public poster, when speech is made into a fixture of the visual environment—whether digital or physical— “[it] can become a world-defining activity, and those who promulgate it know very well—this is part of their intention—that the visible world they create is a much harder world for the targets of their hatred to live in” (Waldron, 2012, p. 74). Again, this is just one factor in the balancing evaluation between the need to protect speech and the need to protect groups from losing their ability to move through their environment safely and securely.

The Harms Principle is broken down into three component parts under Smolla’s framework. Physical harms, relational harms, and reactive harms comprise the broad categories of harm and it is the separation of these harm categories that is important. In brief, physical harms involve “Injuries to Persons” and “Injuries to Property;” relational harms involve “Injuries to Social Relationships,” “Injuries to Transactions or Business Relationships,” “Injuries to Information Ownership Interests,” and “Injuries to Interests in Confidentiality;” and reactive harms involve “Injuries to Individual Emotional Tranquility” and “Injuries to Communal Sensibilities” (Smolla, 1992, p. 49). According to Smolla (1992), the government “has the strongest case” under physical harms with relational harms earning a similarly strong case “though not as forceful as for physical harms” (p. 50). Reactive harms, which hate speech has typically been regulated to under current jurisprudence, “may not be used as justifications for regulations of speech. This rule reinforces the ‘neutrality’ and ‘emotion’ principles” (Smolla, 1992, p. 50). Indeed, these principles are essential elements of the law. Unchecked hate speech does have impactful relational harms, related and in addition to its reactive harms, which can adversely affect

social and business relationships.

In *R.A.V.* (1992), Scalia wrote that “emotive impact of speech” was not sufficient to qualify as a legitimate “secondary effect” worth prescribing, even while the aims of the dispute city ordinance might be worthwhile and legitimate in attempting to ensure “the basic human rights of groups historically discriminated against.” The secondary effects referenced in *City of Renton v. Playtime Theatres, Inc.* (1986) were focused on the effects of having an adult movie theater in the community. Here the logic of the Court seems contradictory. Certainly, it requires little imagination or empathy to recognize those targeted by hate speech are more affected beyond a purely emotional level by speech that is intended to remind a group of their unwelcomeness and subordinate standing in society. The intention of this speech is to isolate and frighten the targeted group and appeal to those who might share the speakers’ prejudices, assuring and emboldening them that they are not alone in their hateful preconceptions—a “rival public good” (Waldron, 2012, pp. 94-95). The relational harms this poses to cultivating free, open, and unguarded social and business relationships is clear, setting aside such speech’s correlation with more material harms in fighting words and extremist terrorism, which will be discussed below.

The relational harms and the negative impact on the social and business relationships of targeted groups are directly and inextricably tied to the speech itself. Indeed, the effect of hate speech is well-documented in critical race literature. Critical race theorist Mari Matsuda’s investigation into the experience of victims of hate speech concluded that it “reminds us that the harm of racist hate messages is a real harm to real people. When the legal system offers no redress for that real harm, it perpetuates racism” (Matsuda, Lawrence, Delgado, & Crenshaw, 1993, p. 50). Richard Delgado (1993), a prominent critical race theorist, in crafting a tort for racial insults—i.e. defining a civil wrong liable to prosecution—wrote about the “direct violation of the victim’s right to be treated respectfully,” as well as the intergenerational “long-term emotional pain,” reflecting the reality of the cumulative effect of reactive harms (pp. 94-95). But, as Delgado explains, it is this pervasive aspect of the reactive harms that we find directly responsible for the relative harms we must also consider:

The psychological injuries severely handicap the victim's pursuit of a career. The person who is timid, withdrawn, bitter, hypertense, or psychotic will almost certainly fare poorly in employment settings. An experiment in which Blacks and whites of similar aptitudes and capacities were put into a competitive situation found that the Blacks exhibited defeatism, halfhearted competitiveness, and “high expectancies of failure.” For many minority group members, the equalization of such quantifiable variables as salary and

entry level would be an insufficient antidote to defeatist attitudes because the psychological price of attempting to compete is unaffordable; they are “programmed for failure.” Additionally, career options are closed off by institutional racism—the subtle and unconscious racism in schools, hiring decisions, and the other practices that determine the distribution of social benefits and responsibilities. (Matsuda et al., 1993, p. 92)

In perpetuating these self-fulfilling stereotypes, hate speech affects more than just social and business relationships, it affects the basics of how you move through society. Hate speech itself—even separated from the violent tendency that it may provoke—has a very tangible negative effect on the economic, social, and political experiences of huge segments of the population, a cluster of harm to which the current laws have intentionally or unintentionally turned a blind eye. We also find in Delgado’s work why these reactive and relational harms cannot be effectively addressed through counterspeech due to failures in institutional response:

Physical attacks are of course forbidden. ‘More speech’ frequently is useless because it may provoke only further abuse or because the insulter is in a position of authority over the victim. Complaints to civil rights organizations also are meaningless unless they are followed by action to punish the offender. (Matsuda et al., p. 95)

Minors are in an especially precarious position. Lacking the greater autonomy and mental and emotional facilities of an adult, they have two precarious options—“hostility or passivity” (Matsuda et al., 1993, p. 95). Either option assaults the dignity of the individual through institutional and interpersonal alienation and scrutiny (Matsuda et al., 1993, p. 95). One would be hard pressed to find relational harms greater in terms of scope and severity and, as such, deserve to be recognized as the pressing issues they are. Indeed, as both Matsuda and Delgado assessed, in the face of all that hate speech endangers, the government’s silence on this topic is deeply troubling—endangering any claims to the ideals of egalitarianism and equal protection that our law professes (pp. 47-50, 90-93).

The Causation Principle pertains to the requirement of a “close causal nexus between speech and harm before speech may be penalized” and is best understood through the “clear and present danger” test (Smolla, 1992, p. 50). Smolla wrote that this principle is meant to uphold the Neutrality, Emotion, and Harms Principles and resist the tendency “to slip surreptitiously into penalizing opinions and into permitting regulation of speech purely because of the reactive disturbances it cause, for virtually any opinion might, at some indeterminate future time, ‘cause’ physical harms” (p. 51). Scalia wrote little about causation as it applied to *R.A.V.* (1992), focusing as it did on “fighting words” and its direct

“chain of causation” and the ordinance regulation being based on the “‘primary’ effect of the speech.” *Clarence Brandenburg v. State of Ohio* (1969) originated the incitement standard—i.e. the Causation Principle—when the opinion of the court asserted that the “constitutional guarantees of free speech and free press do not permit a State to forbid advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” While a close causal nexus cannot be disputed to charge someone responsible for hate speech with involvement in physical or relational harm, the current approach fails to capture the nuance of speech and how it can and does facilitate violent action.

In discussing the Harms Principle, the relational harms of hate speech were differentiated from the physical harm it engenders. This should not be understood as a legalist sidestep of the causation argument or a refutation of the physical harm associated with white supremacy and similar subordinating ideologies. In *Destructive Messages: How Hate Speech Paves the Way for Harmful Social Movements*, Alexander Tsesis—a constitutional law scholar—elaborated on exactly how and why hate speech plays into the violence of organized hate groups. Similar to Delgado’s findings, Tsesis concluded that hate speech “had long-term psychological ramifications. It establishes the definitional parameters within which minorities are dehumanized into throwaway objects, unworthy of respect and compassion” (Tsesis, 2002, p. 98). But the cumulative relational harms that we have discussed are inextricably tied to physical harm. Indeed, it is the dehumanizing speech that I am specifically targeting that leads to widespread and systematic physical harm:

Dehumanizing the targeted outgroup legitimizes efforts to harm them. On the conceptual level, effective stereotypes strip minority groups of their individuality and of their personal worth. They subject minorities to the will of the dominant group and expect outgroups to participate in their own demise: Nazis expected Jews to help round up their brethren for deportation to concentration camps; American slaves were told by owners and preachers that God decreed that they be obedient to white masters; Americans demanded that Native American tribes sell their lands for a pittance and vacate themselves to a place most of them had never seen; and today, in Mauritania, Arab/Berbers demand unquestioned dedication and loyalty from their black slaves. (Tsesis, 2002, p. 105)

To further articulate how relational harms of speech denigrate the basic value of vulnerable groups and lead to and reinforce violence, we must review the historical and current movements of white supremacists, Nazis, jingoists, and chauvinists in the United States. In the 1952 *Joseph Beauharnais v. Illinois* Supreme Court case, Justice Frankfurter



referenced the past three decades of conflict driven by hateful racial and religious ideology to justify the Court's mandate to halt the speech that proliferated such doctrine claiming

we would deny experience to say that the Illinois Legislature was without reason in seeking ways to curb false or malicious defamation of racial and religious groups, made in public places and by means of calculated to have a powerful emotional impact on those to whom it was presented. (*Beauharnais v. Illinois*, 1952)

Frankfurter also acknowledged the speech endangered “free, ordered life in a metropolitan, polyglot community” (*Beauharnais v. Illinois*, 1952). Joseph Beauharnais, the president of the white supremacist organization—the White Circle League of America, who attempted to march through Skokie admitted, “[w]e want to reach the good people—get the fierce anti-Semites who have to live among the Jews to come out of the woodwork and stand up for themselves” (Strum, 1999, p. 15). During the “Unite the Right” rally in Charlottesville in 2017, Nathan Damigo, founder of the white supremacist group Identity Evropa and one of the organizers of the event, tweeted: “This is a huge victory for us. We are going to get national attention” (Stapley, 2017). He was also a central figure at the “Battle of Berkeley”—monthslong clashes between various alt-right and antifascist groups on University of California campus—and claimed that Identity Evropa experienced “a surge in applications” afterward and was pleased, overall, with the often violent demonstrations and welcomed of the greater media presence they had brought (Southern Poverty Law Center, n.d.).

Within these examples, we find a confirmation of Tsesis’ argument. Rather than being a safety valve for controversial speech that can “mitigate threats to minorities,” hate speech reinforces and cultivates the separation of the perceived “ingroup” and “outgroup,” recruits those most receptive to its message, and perpetuates values of this subordinating ideology, thus, laying the foundations for organized violence and discrimination (Tsesis, 2002, p. 117). Merely because this is not a one-to-one causal relationship between speech and violence does not mean that the law should be blind to such long-term dangers to the foundations of a liberal democratic state, for it is the basic shared culture that hateful, supremacist ideology aims:

Cultural preparation for perpetrating crimes against humanity takes time and is vastly more dangerous than fighting words that lead to fisticuffs. With the aid of charismatic orators, bigots exploit social unrest to consolidate power by blaming outgroups for social ills. Misethnists then go beyond talk and back up their self-perceived superiority by brute force. (Tsesis, 2002, p. 117)

To maintain that the only harm from such ideology is purely

emotional or reactive, or even merely relational, is ahistorical and ignores the explicitly stated goals of hate groups. It is further clear that from the highly sophisticated communication networks that has developed since the eras of *Beauharnais v. Illinois* and *National Socialist Party of America v. Village of Skokie* (1977) hate speech is no longer a specific, localized community or even state issue, but, considering the internet, one of national and even global scale and is thereby harder to address through the mechanism of counter-speech, which were present and highly visible in both Charlottesville and Berkeley. The scope of the problem requires a reframing of the law to address it effectively and the longer the courts turn a blind eye to this pressing issue the weaker their legitimacy will be in asserting they uphold the constitutional rights of the vulnerable and marginalized in society. This is by no means a new assessment, as critical race theorists have pointed out this crisis of legitimacy since the end of the Civil Rights Era, yet its continued relevance speaks to the ever more visible failures of current speech jurisprudence and its need for a new approach in the 21st Century.

The final principle Smolla identified is the Precision Principle. When there is a sufficiently compelling government interest, this principle provides guidance in how speech may be regulated and in what way. Regulations will be overruled if they fail to be both “substantive” and “definitional” and must employ the “least restrictive means” in addressing the government’s interest (Smolla, 1992, p. 51). This principle focuses on preventing unnecessary censorship or even self-censorship caused by uncertainty around the exact specifications of the speech prohibitions (Smolla, 1992). In *R.A.V.* (1992), Scalia rejected the assertion that the ordinance was narrowly tailored to serve the compelling government interest, as the imposed “special prohibitions on those speakers who express views on the disfavored subjects of ‘race, color, creed, religion or gender,’” while permitting other “displays containing abusive invective.” The Court concluded that an ordinance not limited to specific topics would accomplish the same goals.

As previously argued, there is a compelling state interest in proscribing hate speech that targets groups’ basic human value and dignity in society. Furthermore, it is only through the censorship of the worst, most visible, and most offensive forms of this hate speech that the government can assert any justifiable claim in addressing the harms that make it a compelling government interest. While this plainly contradicts the current jurisprudence of speech as well as the established role of the courts in abstention from content-based provisions, it is a solution that has been championed by critical race theorists and one that can be instituted using standards and definitions found in other areas of the law, such as libel law.

Two definitional approaches are offered by Matsuda (1993) in *Words that Wound*—her treatise on “Critical Race

Theory, Assaultive Speech, And The First Amendment.” Matsuda attempted to craft an approach that “acknowledges both the civil libertarian’s fear of tyranny and the victims’ experience of loss of liberty in a society that tolerates racist speech” (p. 50). Her three-part definition of hate speech included that the speech contains a message of racial inferiority, it is directed against a historically oppressed group, and is persecutory, hateful, and degrading (Matsuda et al., 1993, p. 36). While her approach is not the only one capable of addressing the worst and most harmful hate speech, it can be argued that her focus on historically oppressed people is an essential component of any regulation of hate speech, as it is fundamental to the institutional and societal relational harms previously referenced. Delgado further articulated why it must be the law and not individual resistance and counterspeech to address these harms.

When victimized by racist language, victims must be able to threaten and institute legal action, thereby relieving the sense of helplessness that leads to psychological harms and communicating to the perpetrator and to society that such abuse will not be tolerated either by its victims or by the courts.... Because most citizens comply with legal rules, and this compliance in turn “reinforce[s] their own sentiments toward conformity,” a tort action for racial insults would discourage such harmful activity through the teaching function of the law. (Matsuda et al., 1993, p. 95)

This argument, too, is not necessarily the only means to address the harms that have been articulated. However, it must be the law that must address this hate speech, responsible as it is to address serious grievances and uphold the rights and principles that are requisite in a functional liberal democracy.

Other areas of the law, like privacy and libel, can offer guidance and torts in the area of hate speech regulation by providing legal precedence that shows how reactive harms can indeed rise to relational harm levels. In addressing the most dangerous hate speech, an important area to consider when balancing the harm of hate speech against the importance of free speech would be in terms of the victim’s community, the platform and permanence of the speech, and the public status of the speaker.

Privacy law, for example, offers case precedence that shows how and why reactive harms can rise to relational harm levels. The tort of public disclosure of private facts protects an individual from suffering the reactive harms of embarrassment, humiliation or general bother. But for plaintiffs to recover via this privacy tort, they must show these emotional reactions to the published speech that disrupted their lives on a relational basis (Calvert, Kozlowski, & Silver, 2018, pp. 296-313). This is done by meeting the necessary legal test, as shown in *Barber v. Time* (1942), for instance.

Dorothy Barber suffered a rare medical disorder in which she lost weight no matter how much she ate. While she was in hospital for treatment, Time magazine journalists intruded into Barber’s room, took pictures and ran a story terming Barber “the starving glutton.” Barber won her privacy intrusion tort, as the court ruled she certainly did have a reasonable expectation of privacy while in a hospital room. But the case also included a public disclosure of private facts tort that Barber also won. The court ruled the story was offensive, almost mocking, and treated Barber as a freak. The disorder was rare, but not contagious and did not endanger the community. For these reasons the court decided the humiliation and embarrassment Barber suffered—reactive harms—in fact endangered her interpersonal, social and economic relationships. In other words, these reactive harms raised to the level of relational harms and the Time story was thus not protected by the First Amendment. Such legal reasoning can be directly applied to hate speech cases.

Libel law presents similarly applicable case law. Libel law protects an individual against published lies that harm his or her reputation—how others in the community perceive that individual. Defamatory words are defined as those that hold a person in contempt, hatred, ridicule or scorn. Yet, libel law has never considered such words as reactive harms. The courts have always considered published lies as relational harms because they can destroy an individual’s ability to develop and maintain personal, social and economic relationships in their communities (Calvert et al., 2018, pp. 152-175). Such legal reasoning again directly translates to the similar effect hate speech can have on a targeted individual’s community relationships.

Another application of libel law to hate speech regulation is the legal status of a public official in *New York Times Co. v. Sullivan* (1964), which can help determine those who should be held to a higher standard in regards to hate speech. Just as Justice Brennan asserted in *Sullivan* that a public official is held to a higher standard of “actual malice” when proving libel—ensuring the rights of speech and press are protected—it should be equally true that they are held to a higher standard of how their perpetuation of hate speech affects vulnerable groups right to live in a society with dignity and security. It seems only fair that public officials and figures should be expected not to actively harm marginalized groups using their public status. This is just one example of legal reasoning that can help to inform the balancing between speech rights and the right to live without hate speech and craft a sufficiently narrowly tailored approach. There is a litany of other areas of the law that must be considered in crafting such an expansive reconsideration of current jurisprudence, but the scope of the issue requires such an effort.

But, of course, the foundation of how speech concerns can be effectively balanced is not a new conversation. Critiques

and reformations of the status quo of hate speech are not new and have been repeatedly offered since the civil rights era by Critical Race and First Amendment theorists. With no shortage of potential alternatives, what has been lacking in the Supreme Court in addressing these failures of current law is the political will to institute such radical changes. However, just as the law changed in the 20th century to be more robust and open to accommodate the changing norms and realities of society, so too must we accept the need for a 21st-century revision (Sunstein, 1993, pp. 17-52). Comparisons and analysis of other liberal democracies, international law, global sociological and political trends, and the emergence of a radically different communication apparatus provide solid reasoning for a renewed investigation into speech jurisprudence in the 21st century.

### International Law

It is not just within our own context that we see deficiencies in the law. In most nations comparable to the United States—Western, liberal democracies with a colonial history and multicultural, polyglot society—we find some form of free speech restriction in the name of equality and a well-ordered society. In *R. v. Keegstra* (1990), Canada’s seminal hate speech case, Justice Dickson placed a “reasonable limit” on the freedom of expression, the prevention of hate propaganda being of “sufficient importance to warrant overriding a constitutional freedom.” Australia’s Racial Discrimination Act of 1975, later upheld in *Jones v. Toben*, restricted speech meant

to offend, insult, humiliate or intimidate another person or a group of people; and the act is done because of the race, colour or national or ethnic origin of the other person, or of some or all of the people in the group. (Racial Discrimination Act 1975 pt 11A div 18C)

In England, which shares our jurisprudential origins, the breadth of proscribable hate speech is quite expansive, including expressions of hatred based on someone’s color, race, disability, ethnic or national origin, religion, gender identity, or sexual orientation (Public Order Act, 1986; Racial and Religious Hatred Act, 2006; Criminal Justice and Immigration Act, 2008). This is also an issue of international law and our commitment to the ideals.

In comparing the U.S. jurisprudence to other liberal democracies, it is important to understand that the adoption of legal checks on hate speech reflects global norms, as reflected in established international law. Article 20(2) of the International Covenant on Civil and Political Rights, a treaty ratified by the United States in 1992, stated the commitment that: “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law” (International Covenant, 1966). In

light of this shared commitment to institute some reasonable restrictions on hate speech, the United States stands apart from many of its peers in failing to establish any meaningful reforms. Indeed, in asserting that the provisions of the covenant were not “self-executing,” meaning effectively that they would never be executed, as the ratification did “not create a private cause of action in U.S. Courts.” (U.S. Reservations, 1992; US Senate, 1992). I argue that this unfortunate example of American exceptionalism must be remedied by our judicial system upholding international law and reinforcing our commitment to the shared ideals of liberal democracies. The assertion of the right of marginalized groups to be free of the harm brought about by hate speech is one recognized by countries with similar histories and governments as the U.S., each finding their own way to balance the interests of free speech with the principles of equality and egalitarianism. It is time for the U.S. to do the same, the crafting of a balancing test between free speech and the rights of marginalized groups to dignity and value in society is one way of accomplishing this imperative.

### Communication Technology

It is not only the precedent but the reality of the present that begs a revisitation of hate speech jurisprudence. The world and its peoples are fully interconnected across space and time through instantaneous communication, a vast and diverse media landscape, and user-oriented social media platforms (Guiora & Park, 2017). It is worth the time to ascertain how these developments challenge our assumptions of communication and speech norms and, more directly, how they facilitate the dissemination of hate speech across borders (Cohen-Almagor, 2015).

In *Defining Defamation: Community in the Age of the Internet*, Amy Kristine Sanders (2010) discussed how the Internet problematizes our concept of the community, which is an area that is key in determining the success of a defamation lawsuit, especially when establishing a public figure status. The status of a public figure is an area of the law that could be useful as a means of quantifying a speaker’s responsibility to not perpetuate denigrating hate speech. Moreover, social media platforms can act as a means of recruitment and propagandizing by radical ideologues, who are more easily able to reach a widespread and receptive audience (Tsesis, 2017). The Supreme Court’s inaction on the topic of hate speech online has raised questions of responsibility and blame for hate speech found on social media platforms and public forums. There is agreement with the findings in *Hate Speech on Social Media* that:

[g]iven the demonstrated impact of social media on our daily lives, a values-based approach must be buttressed by legal standards and limits...as demonstrated in a

number of cases, relying on a value system seems to limit the ability of the target to enjoy the protections society must offer in the face of hate speech and its intended consequences...In narrow circumstances, the duty to legally protect victims of hate speech outweighs the privilege of freedom of speech otherwise granted to those who engage in social media. (Guiora & Park, 2017)

While the Supreme Court continues to be silent on this issue and leave it to the regulation of the platforms themselves, no judicial guidance is not a long-term or a sustainable solution to hate speech online. Hate speech online certainly contributed to the recruitment abilities of the white supremacist groups already discussed. As the Anti-Defamation League reported, under the scrutiny of the public, white supremacist groups have adopted new tactics, including “[i]ncreased propaganda efforts, which allow them to maximize media and online attention, while limiting the risk of individual exposure, negative media coverage, arrests and public backlash” (Anti-Defamation League, n.d.). This further evidences the need to update the incomplete solution of counter-speech and ideological confrontation. The changing realities of communication in our society require us to change our approaches and conceptions from the centralized platforms with easily accountable speakers of the 20th century to the internet’s anonymous and atomized speakers of the 21st.

## Conclusion

This argument involves the necessity of the judicial system’s action on behalf of the harm of hate speech. While the form that this action takes—whether a legal tort or a balancing test between compelling state interests—the role of the judiciary is to address controversies in the law, including those brought about by hate speech. Certainly, the issues raised by unchecked hate speech are extremely relevant to the 14th Amendment, which guarantees that no state will “deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws” (U.S. Const., n.d.). Hate speech and the harm that it creates threaten the basics of these protected principles and particularly when it comes to equal protection under the law. Indeed, the use of the 14th Amendment to address controversies concerning basic freedoms and rights that have been inconsistently enforced through the law is an established power of the judiciary (U.S. Const., n.d.). Furthermore, the issue and danger of hate speech are more apparent than they have been since WWII, requiring the judiciary to adapt the law to changing circumstances (Cohen-Almagor, 2015, p. 203).

In the past five years, the frequency of hate speech and the harm it engenders have become a mainstream issue, calling into question the comforting idea that “ideologies of racism and anti-Semitism are thoroughly discredited in most of the Western society” (Slagle, 2009, p. 249). White supremacy groups have already benefited in increased recruitment and attention due to increased visibility of their hate speech, facilitated as it is by online communities and propaganda campaigns. The Anti-Defamation League (n.d.) reported a 182 percent increase in “white supremacist propaganda efforts, including the distribution of racist, anti-Semitic and Islamophobic fliers, stickers, banners and posters” from 2017 to 2018, an increase from 421 to 1,187 cases. A study released by the FBI observed a 17 percent jump in hate crimes in 2017, with a 37 percent increase in crimes “targeting Jews and Jewish institutions” (Anti-Defamation League, 2018). Even this reporting fails to account for the harm experienced due to hate, with “at least 92 cities with populations exceeding 100,000 people” either not reporting any data or affirmed zero hate crimes (Anti-Defamation League, 2018). This mounting evidence leads to the conclusion that hate speech is an escalating issue and one that must be addressed. Indeed, recent events have proven that hate speech is not, in fact, a dying ideology but rather a dormant one, waiting for the circumstances to emerge that will give it renewed relevance. The longer the judiciary remains silent on this issue and maintains current restrictions of legislative regulation of hate speech, the greater the crisis will grow. This inaction, in turn, fuels a crisis of legitimacy, as the government shows that it is either unable or unwilling to protect the fundamental rights of the most vulnerable groups in society.

Fears of judicial overreach, the potential censure of humor and satire, and the preservation of key civil liberties are all legitimate and contending arguments against the push for judicial change. But to do nothing only serves to perpetuate a fallacy within our judicial tradition that there is nothing we can do to balance the need for a free and open society and the need for all members of that society to a life of security and dignity.

This paper has endeavored to establish through legal and academic sources that mitigating factors—such as content, speaker, medium, context, audience, and target—which are used in other areas of the law, could also allow us to differentiate cases of hate speech in terms of their severity and, consequently, the harm they pose. There is also the necessary reckoning with the history of racism in this country—as advocated by critical race theorists for decades—which should also inform how we approach hate speech and judge its relative danger. To substantiate the need for change we need only look to the successful examples outside the United States as well as our increasingly complex communication systems and troubling rise in hate group organization to see that the



need is pressing. Indeed, rather than speculate on the potential pitfalls of the implementation of limits on hate speech, we must ask ourselves what we get when we pretend the harm of hate speech is not real and having a profound influence on the present and future of our society.

## References

- Albert Snyder v. Fred W. Phelps, Sr., et al., 562 U.S. 443 (Mar. 2, 2011). Retrieved from <https://www.oyez.org/cases/2010/09-751>
- Anti-Defamation League. (n.d.). White supremacists step up off-campus propaganda efforts in 2018 [Press release]. Retrieved from <https://www.adl.org/resources/reports/white-supremacists-step-up-off-campus-propaganda-efforts-in-2018>
- Anti-Defamation League. (2018, November 14). ADL calls on leaders to redouble efforts to counter hate after FBI reports hate crimes jumped 17 percent [Press release]. Retrieved from <https://dc.adl.org/news/adl-calls-on-leaders-to-redouble-efforts-to-counter-hate-after-fbi-reports-hate-crimes-jumped-17-percent/>
- Arneson, P. (2011). Altering (Dynamic) social ideologies through the exercise of free speech. *Communication Law Review*, 11(1).
- Australia: Act No. 52 of 1975, Racial Discrimination Act 1975 [Australia], 11 June 1975, available at: <https://www.refworld.org/docid/4a7aa31d2.html> [accessed 8 May 2020]
- Calvert, C., Kozlowski, D. V., & Silver, D. (2018). *Mass media law* (20th ed.). New York: McGraw-Hill.
- Carlson, C. (2017). Censoring hate speech in U.S. social media content: Understanding the user's perspective. *Communication Law Review*, 17(1).
- Chaplinsky v. New Hampshire, 315 U.S. 568 (Mar. 9, 1942). Retrieved from <https://www.oyez.org/cases/1940-1955/315us568>
- City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (Feb. 25, 1986). Retrieved from <https://www.oyez.org/cases/1985/84-1360>
- Clarence Brandenburg v. State of Ohio, 395 U.S. 444 (June 9, 1969). Retrieved from <https://www.oyez.org/cases/1968/492>
- Cohen-Almagor, R. (2015). Confronting the internet's dark side: Moral and social responsibility on the free highway. <https://doi.org/10.1017/CBO9781316226391>
- Cohen v. California, 403 U.S. 15 (June 7, 1971). Retrieved from <https://www.oyez.org/cases/1970/299>
- Crenshaw, K. W. (1996). Race, reform, and retrenchment: Transformation and legitimation in antidiscrimination law. In K. W. Crenshaw, N. Gotanda, G. Peller, & K. Thomas (Eds.), *Critical race theory: The key writings that formed the movement* (pp. 103-126). New York: The New Press.
- Demaske, C. (2004). Modern power and the first amendment: Reassessing hate speech. *Communication Law and Policy*, 9(3), 273-316. [https://doi.org/10.1207/s15326926clp0903\\_1](https://doi.org/10.1207/s15326926clp0903_1)
- First amendment: Historic supreme court decisions. (2011). LandMark Publications.
- Fisher, A. (1988). *The logic of real arguments*. New York: Cambridge University Press.
- Giardinelli, C. (2019, January 27). White supremacist banner and stickers posted on campus. Retrieved from <http://dailyutahchronicle.com/2019/01/27/inside-sources-reveal-content-of-white-supremacist-poster-and-stickers-discovered-on-the-u-campus/>
- Giardinelli, C. (2019, January 27). White supremacist banner and stickers posted on campus. The Daily Utah Chronicle. Retrieved from <http://dailyutahchronicle.com/2019/01/27/inside-sources-reveal-content-of-white-supremacist-poster-and-stickers-discovered-on-the-u-campus/>
- Gillmor, D., & Dennis, E. (1989). *Legal research in mass communication*. In G. H. Stempel & B. H. Westley (Eds.), *Research methods in mass communication* (2nd ed.). Englewood Cliffs, NJ: Prentice Hall.
- Goodman, M. (2015). First amendment tension: Advocacy and clear and present danger. *Communication Law Review*, 15(1).
- Gotanda, N. (1996). A critique of "our constitution is color-blind". In K. W. Crenshaw, N. Gotanda, G. Peller, & K. Thomas (Eds.), *Critical race theory: The key writings that formed the movement* (pp. 257-275). New York: The New Press.
- Green, L. (1996). Race in the twenty-first century: Equality through law? In K. W. Crenshaw, N. Gotanda, G. Peller, & K. Thomas (Eds.), *Critical race theory: The key writings that formed the movement* (pp. 292-301). New York: The New Press.
- Griffin, R. A. (2010). Critical race theory as a means to deconstruct, recover and evolve in communication studies. *Communication Law Review*, 10(1).
- Guiora, A., & Park, E. A. (2017). Hate speech on social media. *Springer Science+Business Media*, 45(3), 957-971. <https://doi.org/10.1007/s11406-017-9858-4>
- Hare, I., & James Weinstein. (2009). *Extreme speech and democracy*. Oxford Scholarship Online.
- Hendry, J. P., Toulou, C. M., & Lisby, G. (2018). Our future democracy: Reconsidering regulation of social media in the era of trumpian politics. *Communication Law Review*, 18(1).
- International Covenant on Civil and Political Rights. (1966, December). Retrieved from United Nations website: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
- Joseph Beauharnais v. Illinois, 343 U.S. 250 (Apr. 28, 1952). Retrieved from <https://www.oyez.org/cases/1940-1955/343us250>
- Langford, C. L. (2011). Race and racism in the collective memory of the law: The case of roger B. taney and dred scott v. sandford. *Communication Law Review*, 11(2).
- Matsuda, M. J., Lawrence, C. R., Delgado, R., & Crenshaw, K. W. (1993). *Words that wound: Critical race theory, assaultive speech, and the first amendment*. Boulder, CO: Westview Press.
- Napoli, P. M. (2018). What if more speech is no longer the solution? First amendment theory meets fake news and the filter bubble. *Federal Communication Law Journal*, 70(1).
- New York Times Company v. Sullivan, 376 U.S. 254 (Mar. 9, 1964). Retrieved from <https://www.oyez.org/cases/1963/39>

- R.A.V. v. City of St. Paul, 505 U.S. 377 (June 22, 1992). Retrieved from <https://www.oyez.org/cases/1991/90-7675>
- Sanders, A. K. (2010). Defining defamation: Community in the age of the internet. *Communication Law and Policy*, 15(3), 231-264. <https://doi.org/10.1080/10811680.2010.489845>
- Shand, J. (2000). *Arguing well*. New York: Routledge.
- Slagle, M. (2009). An ethical exploration of free expression and the problem of hate speech. *Journal of Mass Media Ethics*, 238-250. <https://doi.org/10.1080/08900520903320894>
- Smith, S. A. (2011). The insight, influence, and inspiration of franklyn S. haiman. *Communication Law Review*, 11(2).
- Smolla, R. A. (1992). *Free speech in an open society*. New York: Harvard University Press.
- Southern Poverty Law Center. (n.d.). NATHAN BENJAMIN DAMIGO [Fact sheet]. Retrieved May 10, 2020, from <https://www.splcenter.org/fighting-hate/extremist-files/individual/nathan-benjamin-damigo>
- Stapley, G. (2017, August 14). 'This is a huge victory.' Oakdale white supremacist revels after deadly Virginia clash. *The Modesto Bee*. Retrieved from <https://www.modbee.com/news/article167213427.html>
- Strum, P. (1999). *When the nazis came to skokie: Freedom for speech we hate*. University Press of Kansas.
- Sunstein, C. R. (1993). *Democracy and the problem of free speech*. New York: The Free Press.
- Tsesis, A. (2002). *Destructive messages: How hate speech paves the way for harmful social movements*. New York: New York University Press.
- Tsesis, A. (2017). Terrorist speech on social media. *Vanderbilt Law Review*, 70(2), 651-708.
- U.S. Const. amend. XIV § 1 (amended 1868). Retrieved from <https://www.archives.gov/founding-docs/constitution>
- U.S. Const. art. III § 2, cl. 1.
- U.S. reservations, declarations, and understandings, International Covenant on Civil and Political Rights, S. Rep. No. 102-S4781-01, 2d Sess. (Apr. 2, 1992). Retrieved from <http://hrlibrary.umn.edu/usdocs/civilres.html>
- US Senate Report on Ratification of The International Covenant on Civil and Political Rights, S. Rep. No. 102-102-23, 2d Sess. (Mar. 24, 1992). Retrieved from <https://www.law.umich.edu/facultyhome/drwcsebook/Documents/Documents/Senate%20Committee%20on%20Foreign%20Relations%20Report%20on%20the%20ICCPR.pdf>
- Waldron, J. (2012). *The harm in hate speech*. Cambridge: Harvard University Press.





# Subsidized Child Care Policy and Its Implications for Low-Income Families

By Maia L. Southwick

University of Utah

*Recent federal regulations sought to increase funding for subsidizing qualified child care arrangements in order to promote access to affordable child care among low-income families. Access to child care is associated with promoting economic mobility and positive development among children. However, only a quarter of all eligible children in the United States received subsidized child care in 2016. This paper seeks to provide an overview of current child care policy and to explore the factors that may contribute to the deficit in participation in subsidy use among eligible low-income families. Understanding these factors can inform community outreach, application processes, and overall increasing access to social welfare resources. Factors include nontraditional work schedules, full time work, relying on relatives for child care, state funding priorities, and general lack of knowledge or discouragement of the application process. An important question for lawmakers to consider upon this analysis is whether focus should be given to either more comprehensive, inclusive child care policy or more sustainable, targeted policy.*

## The Current National State of Subsidized Child Care

Through adjustments in regulation for states and child care providers in the Child Care and Development Block Grant Act of 2014 (CCDBG), a final rule from the Administration for Children and Families (ACF) streamlined federal requirements aimed at producing affordable and higher quality child care for low-income families (ACF, 2016). One of these measures included establishing a 12-month minimum eligibility period for families. Extending eligibility periods was expected to allow families to continue utilizing a subsidized child care provider to establish a consistent child care arrangement for their children, even if a parent temporarily loses their job or has a change in income, and to promote economic stability for families, according to a report from the Department of Health and Human Services (Burgess et al., 2017). The Child Care and Development Fund (CCDF) is a major component of the CCDBG, and extension of eligibility periods will lead to an increase in CCDF expenditures per family, due to recipients being granted subsidized care for a longer amount of time.

While increased CCDF expenditures have been shown to jointly increase the employment rates of eligible mothers, this benefit is lost among low-income families who are eligible for the subsidized care but are not currently participating in the program (Enchautegui et al., 2016). The 2016 Final Rule

also emphasized the importance of access to child care not only for the economic development of families, but for the healthy development of children themselves. For example, children's language development and school readiness benefit from financially stable families who have stable child care environments (Brilli et al., 2016; Caronongan, 2009).

Despite these well-researched benefits of stability in care, there is a deficit of full participation in subsidized care among eligible, low-income families. Of the 8.5 million eligible children, in the United States (Chien, 2019) just 2 million children (24%) received subsidized care in 2016. This paper explores the possible barriers in the receipt of child care subsidies among low-income families. Typical nonrecipient families involve parents who work nonday shifts and engage in full time work, who also tend to rely on family and in-home care over center-based child care, and those who are not prioritized for funding by their state of residence. Additionally, the perceived costs of utilizing subsidized child care along with general lack of knowledge of social service resources among eligible families contribute to discouragement in applying for subsidized child care, or families seeking to apply in the first place.

## Understanding Child Care Policy: An Overview

To fully outline the barriers to access of child care subsidies by low-income families, key definitions must be provided in order to set the parameters of the issue. With the main source of funding for subsidized child care being the CCDF (ACF, 2016), an understanding of the terms and requirements made out in the most recent developments of the CCDF and CCDBG is critical to analyzing the implications and limitations of current policies on the low-income families in need of affordable child care. Commonly used terms in child care policy are outlined below (refer to Appendix for direct quotations from the ACF):

*Eligible Child Care Provider:* a provider of child care services who is licensed under state law and meets local requirements, or an adult relative (by marriage, blood relationship, or court decree) who provides child care to eligible children.

*Center-Based Care:* an organization at a single location which provides early care and education services to children aged five and under.

*Family Child Care:* an individual who provides child care for eligible children in a private residence other than the child's place of residence.

*In-Home Care:* an individual caring for an eligible child in the child's place of residence.

Families may resort to using different types of care providers based on their available resources, economic circumstances, and preferences, so these differences in providers are outlined here to guide further discussion.

### Determining the Cost of Child Care

The mechanisms for providing subsidies to families and eligible care providers aim to facilitate low-income families' ability to pay for affordable, quality child care. Families may receive discounted child care through a verified provider in the form of smaller copayments or vouchers, the amount subsidized being determined by the family's income and size. Funding from the CCDF allocated to each state is used to cover the differential between a family's copay and the actual cost of care (i.e. child care providers are reimbursed) (CCDBG Act of 2014). The maximum amount child care providers are reimbursed for the cost of child care is known as the maximum reimbursement rate. This rate is determined by the current market costs for child care (Stevens et al., 2017). The objective of a market-determined rate for child care providers is to ensure subsidized providers can operate at the same costs and, ideally, with the same quality as child care providers which are more readily accessible to higher income

families.

### Eligibility Requirements for Low-Income Families

The CCDF Final Rule of 2016 defines eligible families who do not "exceed 85 percent of state median income (taking into account irregular fluctuations in income)" and the children are under the age of 13 (with exception given to children with special needs) (Chien, 2019). Utilizing a measure based on the respective state median income differs from most eligibility standards and income definitions typically based on the federal poverty line (FPL). Within these limits, families cannot experience a "non-temporary cessation in job, training, or education" or else they risk loss of eligibility. States may have their own eligibility requirements in conjunction with federal mandates, such as the age limits of participating children and the activities families must engage in to qualify for child care assistance (e.g. work, volunteering, education, training, etc.). For example, thirty-two states count English as a Second Language (ESL) activities as a qualified activity for subsidy eligibility and instead of a minimum work hour policy, and twenty-nine states have policies where the number of work hours affects the number of subsidized child care families can receive (Tran et al., 2018).

Under the eligibility requirements set by each state, 24% of eligible children out of 8.5 million had received child care subsidies in 2016 (Chien, 2019). However, upon expanding to federal requirements, the percentage of subsidy receipt dropped down to 15% of 13.3 million children. In the face of limited funding and differences in eligibility across states, nearly 5 million children in 2016 were determined ineligible based on state guidelines and only a quarter of those eligible received some sort of government funding for child care.

## Barriers to Receiving of Subsidized Child Care

Up to this point, it has been established that there is a lack of full participation in subsidy usage among eligible families. A thorough analysis of potential barriers to subsidy receipt may prove useful in informing policy updates intent on assisting more in-need families and children.

### Selecting a Child Care Provider

Low-income families may be composed of parents (or a single parent) who are working jobs that either have irregular work hours or who are working multiple jobs with nonstandard or untraditional schedules (Hepburn, 2018). This can make finding affordable, high-quality child care hard to find (Hepburn, 2018). From a national Early Childhood Program



Participation survey conducted through the Department of Education, responses from 2011 showed 33% of children in families above the FPL with employed mothers were being taken care of in center-based care like day care centers (24%) and nurseries (9%), while families with employed mothers who were below the FPL, 19% of those children were being taken care of in a daycare (16%) or nursery (3%) (Yanez, Seldin, & Mann, 2019). Instead, families below the FPL were more likely to rely on family and in-home care, such as being watched by grandparents (30%) and fathers (29%).

These data coincide with work status shift data from the same survey, where in families who had mothers typically working non-day shifts were less than twice as likely to use center-based care (e.g. day care center [12%] and family day care providers [5%]) than families with employed mothers working more traditional day shift hours (27% and 9% respectively). Additionally, those families who have full-time workers are more likely to be nonrecipients than those who are part-time (Herbst, 2008). Families who tend to work more non-regular hours alongside families who were below the FPL were shown to utilize center-based care less regularly than those above the poverty line (Yanez et al., 2019). This indicates that there are select groups of families who have different needs and constraints for child care that may not be met by center-based care alone, which is where subsidized care typically takes place (72% of subsidized families in 2016 relied on a licensed center as their primary type of care) (Swenson, 2019).

The low usage among eligible non-recipients of center-based care means these families must find alternatives for child care if they are employed. Utilizing family and in-home care is a common strategy used by families in these situations (Yanez et al., 2019). However, the developmental benefits for the children in care vary depending on the quality and stability of the chosen child care provider(s), and low-income families who tend to use center-based care as opposed to other providers are predicted to have better academic achievement (Tang et al., 2012). This may be associated with a variety of factors such as “inconsistent and harsh parenting”, parental difficulties handling children with difficult temperaments and externalizing behavior, and additional stressors placed on these families (Tang et al., 2012). A stable center-based child care provider can be hard to come across for families facing irregular work hours, and stressors such as potential job loss, family relatives’ own scheduling needs, and unstable family environments can make child care arrangements largely unstable, adding extra burdens not only to families’ stress loads but to their child’s development too (Davis et al., 2014). Circumstances like these may make center-based care, which is the primary source for child care among subsidy recipients, less sensible and accessible to eligible, yet nonrecipient families.

## The Application Process and Perceived Costs

Establishing the context for the current state of child care arrangements among low-income families identifies areas of child care which could be targeted by child care subsidy policy in order to better accommodate low-income families’ situations. The lower participation rates in center-based care may be the result of eligible families not applying for child care subsidies because they are either utilizing alternative methods of care that they are not eligible for (or perceive that they are not) or the application and eligibility process for subsidy receipt is perceived by families to be too arduous or difficult to navigate to be worth the effort. For example, a small study found that 50% of eligible respondents had believed that they were not eligible for subsidy receipt, and so they did not apply for financial help through welfare programs (Shlay et al., 2004). This finding also indicates lack of knowledge and the limited availability of information to eligible families about their status may also be an underlying barrier to applying for receipt. Two of the other major reasons eligible respondents decided not to utilize a child care subsidy (for those who knew of their eligibility) were the extra time and resources it took to apply (e.g. taking time off work, collecting supporting documents, length of the application form, etc.) and the long waiting lists in place prior to receiving a subsidy (Shlay et al., 2004).

Additionally, eligible families may perceive the costs of going through the eligibility determination process outweigh the benefits of a small subsidized amount of child care. For example, if a family would typically pay \$10,000 annually for private, quality child care, receiving a reimbursement rate of \$5,000 per year doesn’t fully cover the costs of quality care and families are still left with a relatively large payment. Eligible families may not either accept the subsidy or simply won’t apply for subsidized care due to their understanding and perception of the costs and benefits of the subsidy system. In a descriptive analysis of eligible recipients and non-recipients, Johnson, Martin, and Brooks-Gunn (2011), found that the mothers who found the cost of child care to be an important factor in their child care decisions were more likely to be non-recipients and prioritized using free programs (e.g. Head Start and public pre-kindergarten) or relatives. Despite subsidized costs, there are still some eligible families who are deterred or may not be able to afford any sort of child care costs (Johnson et al., 2011). The application and re-determination process for child care subsidy receipt can be a trying process for families who may not have the understanding or time to go through the paperwork requirements (Forry et al., 2013). The type of application process (e.g. in person, online, etc.) and the prospect of being waitlisted or not receiving a subsidy around the period of application can be a deterrent for eligible families who are unsure about using subsidies, especially when the reimbursement rates for child care payments may be

too low to outweigh the costs of (re)applying.

**The Limitations of Federal & State Funding**

While there are a number of families who fall under the eligibility criteria outlined in the Child Care and Development Block Grant Act of 2014 and CCDF 2016 Final Rule, limited funds make it difficult to ensure every potentially eligible family who applies will be guaranteed subsidies. Select populations are guaranteed subsidies in certain states, such as children with special needs in Illinois or children under Child Protective Services in Tennessee, while other groups are only given priority, but not guaranteed receipt (Tran et al., 2018). States receive a limited amount of funding from the CCDF and, as a result, they have prioritized groups to focus their efforts for assistance as states may not have enough funds to cover all eligible families. Along with the need for prioritizing, discrepant policies across states may cause further confusion among families concerning their perceptions on eligibility. Many families are waitlisted for long periods of time (with some states not even keeping waitlists to avoid administration costs) and, as of 2016, only 15% of eligible families based on federal guidelines are receiving CCDF subsidies (Burgess et al., 2017; Burgess et al., 2016).

As mentioned earlier, the CCDF Final Rule of 2016 established a 12-month minimum for subsidy receipt of participating eligible families. This provides child care security for current subsidy recipients, however, the eligibility extension in combination with limited funds means there are more families who are either waitlisted or incapable of receiving subsidized child care due to the limited availability of resources. Limited funding is a major barrier preventing low-income families who are eligible for child care subsidies from receiving them.

This graph displays the past fifteen years of available data for the national average monthly adjusted number of children served each fiscal year since 2003 along with the total CCDF funding outlined in the Department of Health and Human Services budgets in that time frame (Office of Child Care, 2019). Since 2003, the caseload for CCDF programs has been declining while the real dollar amount of CCDF funding has declined for the majority of the 2003-2017 period (refer to Figure 1). The decline in caseload on a year-by-year basis has varied, ranging from a gain of 43,800 families and 59,300 children in 2010 and a loss of 69,800 families and 121,100 children in 2012 (refer to Appendix, Table A2). The limitations in funding on the federal and state level lead to different prioritizations of select groups and guarantees given to receive subsidized care upon application. For the case of eligible non-recipients, the resulting long waitlists partially due to prioritizations may be a deterrent for applying for subsidized child care, as mentioned earlier.

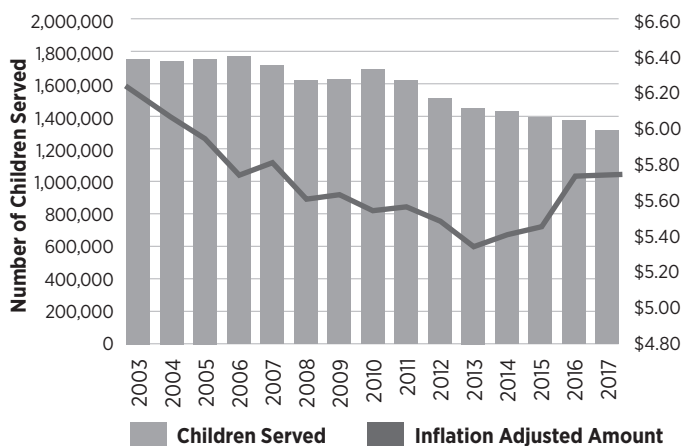
**Conclusion**

Every state has produced approved CCDF plans for the next three fiscal years, 2019-2021, outlining policy and administrative details that will affect the implementation and use of the CCDF for low-income families in each state (ACF, 2016). Subsidized child care efforts will be aided by the recent increase in mandatory spending for the CCDF, which is a part of the budget that has not changed for several years (K. Burgess, phone interview, July 2, 2019). However, the funding will still not be enough to allow states to meet all of the requirements set forth in the Child Care and Development Block Grant Reauthorization of 2014, or enough to serve more than 15% of eligible low-income families.

Eligible low-income families continue to not have access to subsidized child care while the families who are currently utilizing subsidized child care are able to have longer eligibility periods and potentially higher quality child care due to the change in regulations and guidance set forth by the CCDF Final Rule of 2016. This poses a critical question lawmakers must consider for subsidized child care policy: “Should increasing the number of eligible families and children receiving subsidized child care be prioritized by the CCDF and CCDF programs, or should focus be given to creating more sustainable eligibility requirements and better quality child care for current participating low-income families?”

If states were to extend coverage past the federal minimum requirements, maintaining high child care quality

FIGURE 1:



Average Monthly Adjusted Number of Child Served, from 2003-2017, shown with the Total Funding for CCDF and Inflation-Adjusted based on 2017.

standards for the increased number of caseloads may be hard to sustain, due to limited funding and resources (K. Burgess, phone interview, July 2, 2019). However, a significant number of children and low-income families are not able to take advantage of affordable child care. Different child care provider preferences, the nature of certain low-income families' work, arduous and unfulfilling application processes, and limited funding make for a difficult-to-reach child care subsidy program for those who need it. One thing is clear after reviewing the most common and well-known reasons behind the large proportion of eligible non-recipients: there is a complex system of preferences, needs, and circumstances which lend themselves to a family's ability to access welfare resources and their decision to apply for them.

## References

- Administration for Children and Families (2014). Characteristics of center-based early care and education programs [Fact Sheet]. Retrieved from [https://www.acf.hhs.gov/sites/default/files/opre/characteristics\\_of\\_cb\\_fact\\_sheet\\_final\\_111014.pdf](https://www.acf.hhs.gov/sites/default/files/opre/characteristics_of_cb_fact_sheet_final_111014.pdf)
- Administration for Children and Families (2016). Approved CCDF Plans (FY 2019-2021). Retrieved from <https://www.acf.hhs.gov/occ/resource/state-plans>
- Administration for Children and Families (2016). Child Care and Development Fund (CCDF) Program. Retrieved from <https://www.federalregister.gov/documents/2016/09/30/2016-22986/child-care-and-development-fund-ccdf-program>
- Brilli, Y., Del Boca, D., & Pronzato, C. D. (2016). Does child care availability play a role in maternal employment and children's development? Evidence from Italy. *Review of Economics of the Household*, 14(1), 27-51.
- Burgess, K., Campbell, C., Chien, N., Morrissey, T., & Wolf, S. (2017). Income and employment fluctuations among low-income working families and their implications for child care subsidy policy. Office of the Assistant Secretary for Planning and Evaluation. Retrieved from <https://aspe.hhs.gov/system/files/pdf/255481/incomefluct.pdf>
- Burgess, K., Chien, N., & Enchautegui, M. (2016). The effects of child care subsidies on maternal labor force participation in the United States. Office of the Assistant Secretary for Planning and Evaluation. Retrieved from <https://aspe.hhs.gov/system/files/pdf/253966/EffectsCCSubsidiesMaternalLFPBrief.pdf>.
- Burgess, K., Chien, N., Morrissey, T., & Swenson, K. (2014). Trends in the use of early care and education, 1995-2011: Descriptive analysis of child care arrangements from national survey data. Office of the Assistant Secretary for Planning and Evaluation. Retrieved from [https://aspe.hhs.gov/system/files/pdf/76831/rb\\_ece.pdf](https://aspe.hhs.gov/system/files/pdf/76831/rb_ece.pdf)
- Caronongan, P. (2009). Examining the effects of child care subsidy eligibility on children's child care experiences (Master's Thesis). Retrieved from <https://search.proquest.com/openview/aa999a794afdfa2a9997fc3f418b4890/1?pq-origsite=gscholar&cbl=18750&diss=y>
- Chien, N. (2019). Factsheet: Estimates of child care eligibility and receipt for fiscal year 2016. <https://aspe.hhs.gov/system/files/pdf/262926/CY2016-Child-Care-Subsidy-Eligibility.pdf>
- Chien, N., Minton, S., & Giannarelli, L. (2017). A policy to provide child care access for all working families: Effects on mothers' employment and caseload. Office of the Assistant Secretary for Planning and Evaluation. Retrieved from <https://aspe.hhs.gov/system/files/pdf/255471/ChildCareBrief.pdf>
- Child Care and Development Block Grant Act of 2014, Pub. L. No. 113-186128 Stat. 1971.
- Davis, E. E., Carlin, C. S., Krafft, C., & Tout, K. (2014). Time for a change? predictors of child care changes by low-income families. *Journal of Children & Poverty*, 20(1), 21-45. doi:<http://dx.doi.org/10.1080/10796126.2014.894003>
- Department of Health & Human Services (2019). FY 2020 Budget. Retrieved from <https://www.hhs.gov/about/budget/index.html>
- Enchautegui, M. E., Chien, N., Burgess, K., & Ghertner, R. (2016). Effects of the CCDF subsidy program on the employment outcomes of low income mothers. Office of the Assistant Secretary for Planning and Evaluation. Retrieved from <https://aspe.hhs.gov/system/files/pdf/253961/EffectsCCSubsidiesMaternalLFPTechnical.pdf>
- Family Child Care (2016). Retrieved from <https://www.acf.hhs.gov/occ/family-child-care>.
- Forry, N. D., Daneri, P., & Howarth, G. (2013). Child care subsidy literature review. OPRE Brief 213-60. Washington, DC: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services. Retrieved from [https://www.acf.hhs.gov/sites/default/files/opre/subsidy\\_literature\\_review.pdf](https://www.acf.hhs.gov/sites/default/files/opre/subsidy_literature_review.pdf)
- Hepburn, P. (2018). Parental work schedules and child-care arrangements in low-income families. *Journal of Marriage and Family*, 80(5), 1187-1209. doi:<http://dx.doi.org/10.1111/jomf.12505>
- Herbst, C. M. (2008). Who are the eligible non-recipients of child care subsidies? *Children and Youth Services Review*, 30(9), 1037-1054. Retrieved from <https://www.sciencedirect.com/science/article/pii/S0190740908000121>
- Johnson, A. D., Martin, A., & Brooks-Gunn, J. (2011). Who uses child care subsidies? Comparing recipients to eligible non-recipients family background characteristics and child care preferences. *Children and Youth Services Review*, 33, 1072-1083. doi:10.1016/j.childyouth.2011.01.014
- Office of Child Care (2019). Child care and development fund statistics. Retrieved from <https://www.acf.hhs.gov/occ/resource/ccdf-statistics>
- Shlay, A. B., Weinraub, M., Harmon, M., & Tran, H. (2004). Barriers to subsidies: why low-income families do not use child care subsidies. *Social Science Research*, 33(1), 134-157. [https://doi.org/10.1016/S0049-089X\(03\)00042-5](https://doi.org/10.1016/S0049-089X(03)00042-5)
- Stevens, K., Blatt, L., & Minton, S. (2017). Child care subsidies under the CCDF program: An overview of policy differences across states and territories as of October 1, 2015. Retrieved from [https://www.acf.hhs.gov/sites/default/files/opre/ccdfdatabase2015policysummary\\_b508.pdf](https://www.acf.hhs.gov/sites/default/files/opre/ccdfdatabase2015policysummary_b508.pdf)
- Swenson, K. (2019). The cost of subsidized child care: 2005 to 2016. <https://aspe.hhs.gov/pdf-report/cost-subsidized-child-care-2005-2016>
- Tang, S., Coley, R. L., & Votruba-Drzal, E. (2012). Low-income families' selection of child care for their young children. *Children and Youth Services Review*, 34, 2002-2011. doi:10.1016/j.childyouth.2012.06.012
- Tran, V., Minton, S., Haldar, S., & Giannarelli, L. (2018). Child care subsidies under the CCDF program: An overview of policy differences across states and territories as of October 1, 2016. Retrieved from [https://www.acf.hhs.gov/sites/default/files/opre/ccdfdatabase2016policysummary\\_b508.pdf](https://www.acf.hhs.gov/sites/default/files/opre/ccdfdatabase2016policysummary_b508.pdf)
- Yanez, C., Seldin, & Mann, R. (2019). The costs of child care: Results from the 2016 Early Childhood Program Participation Survey. R

## Appendices

**Table A1**

*Definitions of Commonly Used Terms in Child Care Policy*

| <b>Term</b>                               | <b>Definition</b>   |
|---|---|
| Eligible child care provider <sup>2</sup> | A center-based child care provider, a family child care provider, an in-home child care provider, or other provider of child care services for compensation that: <ol style="list-style-type: none"> <li>1. is licensed, regulated, or registered under applicable State or local law</li> <li>2. satisfies state and local requirements, or</li> </ol> A child care provider who is 18 years of age or older who provides child care services only to eligible children who are, by marriage, blood relationship, or court decree, the grandchild, great grandchild, siblings (if such provider lives in separate residence), niece, or nephew of such provider, and complies with any applicable requirements that govern child care provided by the relative involved. |
| Center based care <sup>3</sup>            | The set of all early care and education (ECE) services to children birth through five years, not yet in kindergarten, provided by an organization at a single location. Center-based programs include Head Start facilities and preschools and pre-kindergarten classrooms in public schools, as well as private nursery schools, day care centers, and many other types of ECE.  |
| Family child care <sup>4</sup>            | One or more individual(s) who provide child care services for fewer than 24 hours per day per child, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work. This is child care provided within a caregiver's home, which can include group homes.  |
| In-home care <sup>5</sup>                 | An individual caring for a child in the child's home.   |

**Table A2**

Monthly Adjusted Number of Families and Children Served over the Past 15 Fiscal Years (ACF, 2018).

*Total Spending and Population Served by CCDF (dollars in billions)*

| Year | Mandatory | Discretionary | Total CCDF Funding | Inflation Adjusted Amount | Children Served | Families Served |
|------|-----------|---------------|--------------------|---------------------------|-----------------|-----------------|
| 2003 | 2717      | 2090          | 4807               | 6.424                     | 1,751,300       | 1,023,500       |
| 2004 | 2717      | 2090          | 4807               | 6.303                     | 1,738,400       | 1,004,400       |
| 2005 | 2717      | 2090          | 4807               | 6.121                     | 1,746,100       | 1,007,000       |
| 2006 | 2717      | 2073          | 4790               | 5.866                     | 1,770,100       | 1,025,400       |
| 2007 | 2917      | 2062          | 4979               | 5.973                     | 1,706,600       | 991,500         |
| 2008 | 2917      | 2062          | 4979               | 5.728                     | 1,622,600       | 944,500         |
| 2009 | 2917      | 2062          | 4979               | 5.726                     | 1,638,000       | 957,300         |
| 2010 | 2917      | 2172          | 5044               | 5.652                     | 1,697,300       | 1,001,100       |
| 2011 | 2917      | 2223          | 5140               | 5.668                     | 1,623,700       | 970,900         |
| 2012 | 2917      | 2278          | 5195               | 5.566                     | 1,502,600       | 901,100         |
| 2013 | 2917      | 2206          | 5123               | 5.402                     | 1,449,800       | 870,800         |
| 2014 | 2917      | 2360          | 5277               | 5.478                     | 1,438,200       | 869,700         |
| 2015 | 2917      | 2417          | 5334               | 5.542                     | 1,393,900       | 844,400         |
| 2016 | 2917      | 2805          | 5722               | 5.865                     | 1,366,300       | 820,700         |
| 2017 | 2917      | 2962          | 5879               | 5.879                     | 1,316,900       | 796,000         |

*Note. Data was gathered from the Department of Health & Human Service's budget for fiscal years 2003-2017.*





# **PUBLIC OFFICIAL CONTRIBUTIONS**



# Census 2020: Counting the Population during a Pandemic

By Pamela S. Perlich and Mallory Bateman

Kem C. Gardner Policy Institute  
University of Utah

*Every ten years, the US Census Bureau conducts a nationwide enumeration of residents and housing units. The resulting counts directly affect the allocation of political power and government funding and create a statistical portrait of our nation. This massive undertaking is the largest peacetime mobilization of the federal government.*

*Even in the most ideal of circumstances, a successful enumeration is an enormous operational and logistical challenge. Conducting the 2020 count during a pandemic introduces the extraordinary complications of collecting responses while addressing public health concerns and irregular migration patterns, and will ultimately affect data interpretation*

## Representation and Community

This decennial count of people and households is the constitutionally-mandated tool to apportion representation to the United States House of Representatives. However, the census also provides the “gold standard” data that creates the demographic portrait of our nation and informs decisions throughout the public and private sectors. The data provide the most basic and essential demographic information about our changing people, households, and communities. This particular enumeration will provide us essential data to better understand how the pandemic shapes our communities and impacts our people.

Within the public sector, census data provide the basis for the allocation of billions of dollars of federal, state, and local funding each year, insights for communities to plan services like education and healthcare, and the ability to project what the Utah population could look like in the future. Within the private sector, census data provides opportunities to analyze market shares, evaluate locations for new branches or operations, and characteristics of clients.

However, if households do not participate, they cannot be represented in the data. To help address this, community leaders and trusted voices across the nation have organized and operationalized to focus efforts on counting every

resident. The emphasis of these initiatives, sometimes called Complete Count Committees, is to educate and motivate “hard to count” neighborhoods or populations to participate in the 2020 Census. These hard to count groups are disproportionately communities of color and immigrant enclaves, with higher rates of poverty, more insecure housing, less access to healthcare, and greater economic insecurity. During the planning phase for the 2020 Census in Utah, about 10% of households statewide were identified as potentially hard-to-count. The majority of these households fell in urban counties that had some or all of the attributes mentioned above. Communities in several rural counties were also identified as hard to count, primarily due to the Census Bureau outreach methods.

The political and financial stakes of being represented in the census data are always high, especially for the traditionally “hard to count” populations. With the additional significant impacts of COVID-19 on these communities, the urgency and importance of census participation is even more critical than in years past. The data are used as denominators to understand rates, incidences, and proportions of characteristics and events. These results impact funding and resource distribution. People and households missed in the 2020 Census lose the opportunity to represent themselves for the following decade.

Irrespective of the current situation, Utah is a state where growth and change have been our constant companions. An

accurate record of who Utahns of 2020 are is vital. Although the pandemic poses significant new challenges, we are hopeful that Utahns will recognize the importance and necessity of participating in this once-a-decade opportunity to inform everyone about who lives in their community.

## Framework for the 2020 Census

Before 2020, the Census Bureau was aware that the upcoming decennial count had opportunities through innovations in addition to some serious challenges. Challenges including an increasing distrust in government, a constrained fiscal environment, and an increasingly mobile population forming nontraditional households were all included in planning conversations in the middle of the decade. Additionally, increased anti-immigration policies by the Federal Government perceived as hostile by many traditionally hard to count populations exacerbated existing concerns about the participation of these populations.

These challenges existed counter to the introduction of new tools and capabilities, primarily through the use of new technologies. Online response is the preferred method of response for the first time, available in English and 12 additional languages. Online tools for planning for the census count, utilizing past Census data supplemented by the American Community Survey, are available to the public. Communities can monitor their response rate progress online with daily updates. These innovations from the Census Bureau are in response to an increasingly data-dependent and tech-savvy public audience. The introduction of online response provided hope of increased initial response rates and the ability to avoid costly face-to-face outreach.

Recognition of these strains and opportunities occurred early in Utah. The development of a Statewide Complete Count Committee began in 2017. This group met quarterly to create a grassroots outreach strategy for the 2020 Census with no anticipation of state fiscal support. However, after increasing public awareness of the challenges of the Census Bureau and internal championing within the Utah State Legislature, a one-time appropriation was allowed for Utah's 2020 Census efforts. This funding went to a statewide marketing strategy as well as grants to local community organizations, cities, counties, and associations of government focused on outreach to hard to count communities.

## COVID-19 and the 2020 Census

COVID-19 unleashed the dual public health and economic crises that escalated at the same time that 2020 Census activities were beginning. Intensive mitigation efforts and extensive risk management plans will hopefully put us on a path of reopening our communities, establishing practices and policies that allow us to move forward with our lives, and managing public health risks. At the same time, we coexist with the threat of this virus.

In Utah, the physical location many people call home changed during this time. College students left campus before spring break, potentially impacting total populations of college communities. Missionaries for the Church of Jesus Christ of Latter-day Saints returned home, probably responding to the census from their family homes rather than the communities in the United States where they had been serving. Those serving abroad would not have been counted in Utah during the 2020 Census at all, a situation considered in court after the enumeration in 2000 did not result in Utah gaining an additional congressional seat.<sup>1</sup>

In mid-March 2020, the Census Bureau implemented a two-week delay for in-person and community-based operations. By April 13, the Census Bureau suspended all field operations until June 1 and requested a 120-day delay in data releases. In the 220 years of the Census, this has never occurred.<sup>2</sup> National and local outreach and marketing campaigns were adjusted to deal with new social norms of distancing and staying home.

One field operation, "Update Leave," has had significant impacts on Utah's rural areas. Update Leave utilizes in-person outreach to invite participation in areas without traditional mailing addresses. Census response was effectively paused the 2020 Census in the Utah counties where Update Leave was slated for the majority of households (Beaver, Daggett, Duchesne, Emery, Garfield, Piute, Rich, San Juan, and Wayne). At the end of April, Utah had a 60% response rate statewide. Counties in northern Utah were faring best, with Morgan, Davis, and Cache having the highest response rates. The rest of the Wasatch Front counties, in addition to Tooele and Box Elder, all had response rates over 60%. In Utah's rural and tribal areas, which relied heavily on Update Leave outreach that only reached 5% of anticipated households before operations paused, the response rates ranged from 1.8% to 17.7%.<sup>3</sup>

In early May, the Census Bureau announced that Utah was included in the first phase of restarting operations. A contact-free Update Leave operation is part of this outreach, allowing rural Utah and tribal areas to finally get their invitation to respond.

The extension of data collection until the end of October 2020 also delays the release of summary statistics, including

data required for apportionment and redistricting. Subject to Congressional approval, these proposed delays result in the delivery of apportionment data to the president by April 30, 2021, rather than December 31, 2020. The redistricting data, previously scheduled to go to states at the end of March 2021, will be delivered on July 31, 2021. This delay should provide time for the Census Bureau to collect and process the data.

| <b>Operational Milestone</b>         | <b>Previous Deadline</b>       | <b>Revised Deadline</b>        |
|--------------------------------------|--------------------------------|--------------------------------|
| Field Operations and Data Collection | 07/31/2020                     | 10/31/2020                     |
| Group Quarters                       | 06/05/2020                     | 09/03/2020                     |
| Update Leave                         | 04/17/2020                     | 07/09/2020                     |
| <b>Data Releases</b>                 | <b>Previous Release Timing</b> | <b>Proposed Release Timing</b> |
| Apportionment Data                   | 12/31/2020                     | 04/30/2021                     |
| Redistricting Data                   | 03/30/2021                     | 07/31/2021                     |

Despite the daunting challenges created by COVID-19, the goal of the 2020 Census remains unchanged: count every resident, once, only once, and in the right location. Census counts have enormous political and financial impacts and provide critical data for research and planning. While the unfolding health and economic crises consume the energy and attention of most of us, responses continue to be submitted by people across the country. The stakes of an accurate count remain high, especially for the hard to count. Rectifying discrepancies in where people called home during this period and gaining insight on the impacts of COVID-19 on our population will result in further analysis throughout the decade. The history of the 2020 Census will be forever inextricably tied to that of this devastating pandemic.

---

<sup>1</sup> Utah v. Evans, 143 F. Supp. 2d 1290 (D. Utah 2001); No. 2:01CV0023B. (April 17, 2001). United States District Court, D. Utah, Central Division.

<sup>2</sup> Brockell, G. (2019, June 27). No, the census has never been delayed. Even when it was really hard to conduct. . The Washington Post.

<sup>3</sup> Center for Urban Research. (2020, April 11). Census 2020 Response Rate Analysis: Week 3. Retrieved from City University of New York: <https://www.gc.cuny.edu/Page-Elements/Academics-Research-Centers-Initiatives/Centers-and-Institutes/Center-for-Urban-Research/CUR-research-initiatives/Census-2020-Response-Rate-Analysis-Week-3>





*"We either advance or we decline. Power comes from looking forward with faith and courage – of expecting and demanding better things."*

- Robert H. Hinckley





