

The Woman Who Fell in Love with the Man Who Thought the World Was Flat

Public policy, identity, and the challenge of reconceptualizing domestic violence in the Latino community

Domestic violence is often wrongly characterized as a problem affecting women rather than a community. And in the United States, a well intentioned yet monolithic and culturally insensitive approach to public policy concerning domestic violence often causes more harm than it eradicates, especially in the Latino community. This article examines the ways in which immigration policy and cultural/economic forces play a role in increasing domestic violence in Latino communities and ultimately suggests the need to reconceptualize fundamentally that violence itself, looking to “abusers” as partners with a stake in achieving a lasting solution based on identifying the *strengths* of Latino culture.

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Are Negatives Positive?

While the public detests political attack ads, political consultants frequently defend them as valuable to the electoral process. So does one academic, John Geer, whose book, *In Defense of Negativity: Attack Ads in Presidential Campaigns*, undertakes a thorough and scholarly assessment of negative ads. He concludes they are indeed an asset to democracy, and that electioneering without them would impoverish the “information environment” of voters. To put Geer’s analysis to the test, several typical attack ads are put under the microscope.

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Religion and the Public University

This article is about religious life and its relationship to public higher education in America. As a way of addressing the fraught relations among religion, the state, moral values, and the university, the article takes a reading of Immanuel Kant’s *The Conflict of the Faculties* and the writings of contemporary social psychologist Jonathan Haidt. It uses the synthesis of Kant’s and Haidt’s ideas as the foundation for a partial historical reassessment, the ultimate goal of which is the re-enfranchisement of religious Americans into the nation’s public higher education system.

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An Equity Hurdle in International Climate Negotiations

Parties to the U.N. climate negotiations are now engaged in a three-year process to produce a new comprehensive global climate agreement. This agreement should attempt to satisfy competing demands from developed and developing countries for an equitable assignment of responsibilities for mitigating greenhouse gases. It should also be sensitive to national regulatory and legal circumstances. Unfortunately, the current basis for U.S. regulation of greenhouse gases is at odds with some approaches other nations take to the equitable reduction of emissions. This difference may make it difficult for the U.S. both to embrace a global treaty and to preserve its ability to cut its own emissions.

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The Woman Who Fell in Love with the Man Who Thought the World Was Flat

Public Policy, Identity, and the Challenge of Reconceptualizing Domestic Violence in the Latino Community

Marinés Fornerino

Almost as Often as the Earth Turns

The story I am about to tell should have taken place during medieval times, but instead, it takes place in the twenty-first century. Perhaps it could best be described as a Latino version of a tale about a knight-errant and his damsel, a tragic fairy-tale-in-the-making that has as its protagonists an undocumented Mexican couple – a man and a woman who ventured to an unknown land, like so many others, looking for work and the promise of a better future. I was a witness to this story before I became its narrator, and as such, I was struck by the ties that reach out across history, repeating the same tales again and again. The lovers and travelers, then and now, searching for hope and facing great obstacles, and even violence, along the way. This much is enough to tie us to the past, to tie fiction to reality. But there is more. For one of the most remarkable and surprising things that I discovered was that the modern caballero I knew, like the medieval cavalier I could only imagine, was utterly sure that the world is flat.

I discovered this fact while walking along Main Street in a small town somewhere in the American Midwest. I was making my way back to my office with our “hero” and his *doncella* (from now on, “Pedro” and “Isabel”), talking to them about their hometown.¹ It was a time during which that city found itself at the center of international news due to a high intensity earthquake that had just hit, causing major damage and loss of life. “It’s amazing how quickly we learn of events happening in places so far away these days,” I commented, “but I suppose that’s

the nature of technology: news travels around the globe in no time.”

To my surprise, Pedro reacted with confusion and disbelief – not to the claim that news travels quickly, but to the claim that it travels “around a globe.” Isabel proceeded to explain to an incredulous Pedro that the world was, indeed, round. She enunciated the word “round,” or *redondo* in Spanish, in such a beautiful and musical way that there was no doubt what she meant to convey, how she meant to insist on the idea of the roundness of the world. I also felt compelled to add that the Earth turned on its axis and, further, revolved around the sun. The cosmos is about curves and ellipses, never about flat surfaces and straight lines. Pedro listened for a while, looking at us condescendingly, apparently feeling sorry for us. After all, we were women, and by definition we were not capable of knowing more than he did. The conversation continued for a while, with stories of Columbus and Copernicus, explorers and scientists, discoveries and celebrations; but Pedro remained silent, unconvinced, and always smiling as if to indicate his disdain. I changed the topic and kept walking, sensing that we were not going to change Pedro’s mind in the first round.

We made our way through the summer air, and I thought of the seasons. I thought of the beauty of the way it all unfolds, spinning and turning. And I thought of Isabel and myself trying to argue for what we knew was right in the face of overwhelming and powerful disbelief, the two of us like modern female Latin American versions of Galileo. When Pedro looked away I whispered in Isabel’s ear “*E pure torna.*”

She turned to me and smiled. I doubt now that Isabel understood the presumptuous reference to Galileo's final rebuttal, as I later found out that although she is quite intelligent, Isabel never had the opportunity to finish elementary school while in Mexico. Despite her lack of formal training, though, there were many things that Isabel knew with complete certainty that happened to be true. She knew, for instance, that the world was round, that Pedro was wrong, and that he was no Prince Charming. As it turned out, Pedro beat Isabel on a regular basis – almost as often as the Earth turns. And in spite of all of this, she walked along through the trees and the flowers of a foreign land, her eyes full of care and compassion, deeply and completely in love with her unmoved abuser.

Over several months, I came to know Pedro and Isabel, and in the process I gained a far deeper understanding of their relationship and their story. My preconceived, simplistic notions that a person who experiences domestic violence should immediately leave the abusive relationship – and that self-respect should take precedence over any other apparent emotions – were put into context and put to the test. Although these are surely good guidelines and firm truths in some situations given particular cultural and social backgrounds, I now know that they can be difficult to enforce universally, for even the very conceptualization of “domestic violence” is part of a larger worldview that changes with time and circumstances.

Understanding Domestic Violence from the Abuser's Perspective

By accepting repeated emotional and physical abuse from her partner, Isabel was doing something irrational and difficult for many of us who are outside of such a situation to understand. It therefore seems as easy to judge her behavior as it is to judge that of her abuser. Through faulty and simplistic reasoning, conclusions such as, “She must like it,” “They are poor and uneducated; those people behave like that,” or “Latin American culture accepts domestic violence” are widely maintained. In fact, once Pedro's actions were brought to light, I overheard a social worker and a policeman saying that Pedro had to remember that he was not in Mexico any longer and thus couldn't act that way. Ironically, that was all he already thought about: this place was not his place.

Pedro had a strong and well-defined sense of identity. He knew exactly who he was. He was Mexican and was proud of his origins; he was Catholic and venerated the Virgin of Guadalupe; he had a clear vision of the role that he was supposed to play in society as a male; and he desperately wanted to go back home. Pedro, in fact, repeatedly claimed that it had been a big mistake to come to the United States. He reported that he had the persistent feeling that most Americans looked down on him due to his ethnicity. But perhaps the most interesting critique was Pedro's observation that the United States was a backward society because women had more power than men. He reached such a conclusion the same way that he determined that the world was flat: through observation, experience, and selective confirmation of his beliefs.

Even the very conceptualization of “domestic violence” is part of a larger worldview that changes with time and circumstances.

Sadly, I could not offer a rebuttal to the claim that there is persistent discrimination and racism in this society. Both my own personal experience and my years of more abstract academic training and reading only confirmed the conclusion. But when I asked Pedro why he thought that the U.S. was based on a matriarchal society, he told me that it was clear in the way that the law enforcement and judicial systems were organized here. When they arrested him, booked him, and took him to jail, everyone consistently used Pedro's mother's maiden name to identify him instead of his father's last name – which meant, to Pedro, that American society obviously adhered to a matriarchal system. His experience in court, coupled with his comparing notes with fellow countrymen, led him to think (through a seemingly impeccable logic) that using one's mother's last name was the way Americans have chosen to name themselves because women were more important than men in America. I tried to explain to him where his reasoning had gone wrong. I described the sense in which it was all a mistake. The “officials” in America were using Pedro's mother's last name to identify him out of a basic misunderstanding due to their own lack of knowledge concerning Latino culture. They, to be

sure, were as confused as he was. For Mexicans, as for most Latin Americans, an identification document includes the person's given names (*nombres*) and last names (*apellidos*). The given names are what non-Spanish speakers typically easily recognize as a first name, middle name, and sometimes a second middle name. But the last name for a Latin American includes both the father's last name *and* the mother's last name, without hyphenation, in that order. Though one is referred to everyday by only the father's last name, the mother's last name is still listed in the full name – and it is listed last.² When a non-Spanish speaking police officer looks at a Mexican I.D. in an effort to try to make sense of this “foreign language document,” he or she looks for the last word in the sequence of names, assumes it is *the* last name of the person, and mistakenly records the mother's last name of the suspect as the only last name. I explained to Pedro that in the United States a woman traditionally loses her last name completely when she gets married, adopting her husband's last name as her only last name and thus ensuring that her children will have no trace of her family name in their names. I thought that this might make it clear just how deeply patriarchal the American system actually is. But Pedro's expression was once again a familiar look of disbelief. I gave more examples, explained the history of it all, and suggested why the American officials were confused because they didn't even imagine that a woman's last name could be a part of his name. But Pedro was still Pedro, I was still a mere woman, and truth was elusive.

During those same days, I happened to be reading a scholarly paper on feminist epistemology as well as an essay on critical thinking and the problem of circular reasoning. The nature of rationality, complete with its many critiques, was on my mind. And for all of this academic insight, I was utterly surprised that I was fascinated by this man and was even, on some level, starting to admire him – and Isabel. True, Pedro seemed the incarnation of “machismo,” but in spite of that, or perhaps even because of it, throughout all of our exchanges he was charming and funny. He was proud of his ethnicity. He contested everything that did not make sense to him just as critical thinkers are supposed to do, refusing to take an appeal to authority or hearsay as legitimate evidence. He recognized his own mistake in coming to the United States and having fallen prey to the illusion of “the immigrant's American dream.” He had a sense of self

that resisted the forces of American hegemony and the oppressive potential of his poverty. He had the love of a good and thoughtful woman. A compassionate and intelligent woman. Whom he beat.

At times, for better or worse, throughout my interactions with Pedro I was able to put aside the fact that he abused his partner. But the abuse was real and demanded attention. I knew it to be real not only because Isabel had told me her terrible stories and because I had seen the wounds to her body and her soul, but also because Pedro himself had admitted to me that he had been abusive toward the woman he loved. He had said this to me one day in the same breath that he stated that he missed his daughters back in Mexico and would never allow a man to abuse either of them because it was clearly wrong.

Somehow I was able to see Pedro as a troubled human being and not simply a “monster” (as a well-meaning social worker from the local shelter had recently bluntly characterized him). Although I understood the sentiment of hatred toward Pedro from the people who provided assistance and shelter to Isabel during those times when things became unbearable and too dangerous for her at home, I also understood why the help such well-meaning people were offering was not as effective as they hoped it might be. By only validating Isabel's legitimate feelings of deep disapproval concerning Pedro's abusive behavior and not addressing the fact that for her there were also apparently legitimate reasons to love him, they were not allowing her to express and deal with the contradiction, confusion, insecurity, and guilt in her life. Perhaps it was the language and cultural barrier that made it difficult for the duality to be reconciled with their help, but to the credit of the social workers, their physical manifestations of empathy and constant and complete availability were an attempt to balance everything out.

From my own interaction with Pedro and Isabel, I slowly came to understand one of the reasons why an intelligent woman would continue to share her life with a man who threatened her very existence. Not unlike the rest of us – when dealing with people and institutions in our society that disconcert and disappoint us (the State and the Church among them) – Isabel was able to deal with the violent side of Pedro by dividing him into two different people: the “real” Pedro, who provided company and security against the unknown world, who was funny,

charming, self-confident, and loving; and the other “less real” Pedro, who appeared from time-to-time, terrifying her, destroying her confidence, and causing her incredible amounts of pain.

According to the script of “machismo,” men are supposed to be heroes and villains at the same time.

Pedro fit the clichéd definition of “machismo” almost perfectly, and one got the sense that he knew this, knew the role he was “supposed” to play, and knew what he thought someone cast in such a difficult part was supposed to be. According to the script of “machismo,” men are supposed to be heroes and villains at the same time. As heroes, men are expected to conduct themselves following a code of honor that includes responsibility toward their families, with constant displays of pride and courage and loyalty. And as villains, men are expected to celebrate their sexual prowess, to be tough and aggressive, to consume alcohol excessively, and to believe and act as if they are intellectually and physically superior to women. Isabel’s strategy to love the hero in Pedro and simultaneously to reject and block from her mind the villainous aspects of his “machismo” thus made sense. What the American system of providing assistance to abuse victims seemed to be missing was, in part, an understanding of this dualism seen in the context of a woman’s potential desire to save her relationship with the man who was abusing her. Isabel saw the qualities in Pedro that caused her to fall in love with him. And she saw the villain as well. How could she not be confused as well as frightened?

Another factor that made Pedro less of a monster and more of a deeply troubled human being was the fact that as a youngster he was himself a victim of domestic violence. As research on the topic has established, most abusers have also been subjects of abuse, and as a result they “see violence as an acceptable and useful means of resolving conflict” (Valle 2005, 120). Pedro was no exception. Isabel confided in me that Pedro’s father was “a drunk who regularly beat his wife and children,” and Pedro believed that he owed his life to the Virgin Guadalupe who had protected him throughout his childhood.

According to Pedro, it was the Virgin’s image and her presence in his parents’ home that made survival possible. The image was so powerful in Pedro’s life, in fact, that once it almost made him stop abusing Isabel.

Walking toward the mall on a fall morning nearly a year ago, Pedro saw a sign from heaven on the sidewalk. It was a card bearing an image of the Virgin, a card that someone, no doubt, had dropped after receiving it as a memento of a funeral. As Pedro tells it, later that day he informed Isabel that he was going to change and he was going to stop abusing her. The image that had protected him from dying from abuse during his childhood had appeared once again in his life, now demanding that he change his ways and honor that past gift. For two full weeks, Isabel was not beaten, and for that she, too, was grateful to the Virgin. But such breaks from violence – which are typically preceded by promises and apparently sincere remorse – only make things worse for the victim. And for Isabel, this was surely the case, as Pedro’s heartfelt story and seeming desire to do good merely added to the confusing dichotomy surrounding Pedro’s personality in Isabel’s eyes. When Pedro eventually broke his promise, Isabel felt so ashamed that she tried to hide her wounds and the truth. It was a shame that cannot be easily understood by someone who does not know the whole story, who does not share the cultural Catholicism of those in the story, and who does not want this man to be a good man for his own sake as well as for his victim’s. The fact that he actually did not beat her for nearly two weeks made Isabel think that miracles can happen and that Pedro could change. The change, she now thought, could come from a love for two women: the Virgin and herself.

As tragic and as frustrating as this all was, the story also gave me hope for finding help for Pedro. He was not a happy man, and he wanted change in his life. Apart from merely trying to find help for Isabel, I did research on resources available for batterers; and in the small town where we live, the support in such cases often turned out to be of a psychological or a religious nature. But Pedro would not contemplate the idea of going to see a therapist because, as he said it, he was not crazy; and going to church did not sound very exciting or hopeful to him either. He told me that he was sure that they could not even begin to understand him, both because of the language and cultural barriers and also because

the power that the image of the Virgin held for him was not one that was available in the institutionalized Church – especially one that spoke English.

Violence as a Problem within the Community

Apart from the Church and the therapist, in the United States there seems only to be the possibility of punishment for the abuser and shelter for the abused. But there are alternatives, though the programs and theories behind them are not well known, nor are they in widespread use in the U.S.

Julia Perilla is among those who have pioneered a new approach to solving the problems surrounding domestic violence by means of involving the abusers themselves in combating and dealing with those problems. Contrary to the usual procedure recommended to female victims of domestic violence – which is to leave the abusive relationship (thus breaking up the family and breaking all ties with the abuser) as soon as it is possible and safe to do so – Perilla argues for expanding efforts to assist the batterers in order to confront, take responsibility, and deal with their own abusive behavior. Inviting the batterer into the conversation, argues Perilla, involves seeing the batterer as a human being and not a monster. And it furthermore leads to the possibility of recognizing that there might be an answer to the set of problems surrounding this issue that could be internally generated rather than externally imposed.

Perilla explains:

[I]t is essential that we do not stop at our study of women. In cultures in which the family plays such a central role, the men involved in abusive relationships – and their own environment – must be studied as well.... As we begin to listen more closely to the soft voices of abused Latinas, we must invite Latino men to speak to us as well. Furthermore, to understand the full texture of Latino families, we must study the interactions of Latino couples in which domestic violence is present, as well as those in which it is not, so as to learn not only their weaknesses and problems but their gifts and strengths as well (Perilla 1994, 337-8).

Looking to the gifts and strengths of the Latino culture in an attempt to solve the problem of domestic violence is a novel approach. But such practices are encouraging. Currently, in Atlanta, Georgia, Perilla runs a program that helps men stop being abusers. Based on *The Noble Man* (a program in use in some places in Mexico), Perilla's approach tries to analyze *machismo* and find the positive things in it (e.g., loyalty, respectfulness, honor, etc.), asking the abuser to take part in the process of analyzing how best to bring the cycle of abuse to an end by means of thinking about how best to be a man, a partner, a husband, and a member of a community. The program uses, for instance, indigenous Mexican stories that discuss what it is to be a man, mining such narratives for ways to get men thinking about how to become better men. Rather than assuming *machismo* to be a monolithic ideology that requires men to be abusive, *The Noble Man* program attempts to force men to confront the ways in which their abuse is a failure of that very ideology.

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committed against another in private.*

Furthermore, it is key to *The Noble Man* program's success that this endeavor is not one taken up by individuals but by a community. This requires a major shift in our way of thinking in the United States. Social workers will still be key, but they will not be seen as there to solve the problems but rather to work with the community to help solve the problems not by telling people what to do but by "walking along with them." Even the therapy sessions are always group sessions. Such an approach consequently has the additional benefit of empowering women rather than putting them in yet another relationship where they are subservient and dependent on others for protection, well-being, safety, and knowledge. Asking women what to do rather than telling them what to do is a first step. But asking men what to do – and family members and community members at large (including men who are not abusing their partners) – is also key. This approach is communal, and as such it requires a

major reconceptualization of the very nature of domestic violence.

The crime of domestic violence, under this model, is not seen as merely a crime one individual has committed against another in private. Indeed, the label of “crime” must itself come under scrutiny. As Natalie J. Sokoloff and Ida Dupont argue:

[T]here has been an overreliance on law enforcement to deal with social problems in poor communities of color and this overreliance has had several unintended negative consequences.... [They] create tensions for poor women of color between the need for some kind of state intervention to protect them from abuse in their homes and the recognition that many of the women most in need of such protection are made more vulnerable by these very interventions (Sokoloff and Dupont 2005, 55).

Moreover, calling something a crime rather than a social problem doesn’t solve it; it merely points us toward a different set of actors to try to solve that problem. The very term “domestic” violence further turns abuse into a private matter and sees things in an individualistic way. By singling out this sort of violence and giving it a “privatizing” label, the problem of such abuse is instantly seen as somehow separate from all of the overarching institutions and ideologies in place in society at large that may be playing a role in creating, or at the very least condoning, such violence. This move to relegate “domestic violence” to the home where one individual is acting inappropriately toward another in a private setting is thus also a move that ignores the possibility that (1) our homes are public and are parts of communities, and (2) there are larger structures of racism, sexism, colonialism, and economic oppression at work in creating the so-called domestic violence.

Perilla is right to point out that

as immigrant families face severe financial difficulties, Latinas who might have stayed at home to raise their families are increasingly joining the labor force, forcing Latino men out of their roles as sole financial providers for their families. Traditional roles are becoming less distinct and clear, thus creating new family dynamics that must be negotiated by people already confronted by majority culture values

and expectations different from their own....

On the average, the more a woman contributed to her family’s income, the more abuse she experienced.... Factors leading to gender equality in a relationship in the long run may decrease wife abuse. In the short run, however, these same factors may increase abuse due to the man’s perceived loss of power relative to his perception of competency (Perilla 1994, 326, 336).

It is true that economic and cultural forces put pressure on the relationship between a Latino man and woman, thus increasing the chances of a loss of identity and the possibility of violence. But while this is undeniable, it must not be overlooked that the question of what it is to be a man and what it is to be a woman is not a question that can be separated from these larger social and economic structures. Thus, as Sokoloff and Dupont have argued:

We exist in social contexts created by the intersections of systems of power (e.g., race, class, gender, and sexual orientation) and oppression (e.g., prejudice, class stratification, gender inequality, and heterosexist bias). No dimension, such as gender inequality, is privileged in explaining domestic violence. Most important, gender inequality itself is modified by its intersection with other systems of power and oppression.... [A]lthough culture is crucial to understanding and combating domestic violence, we cannot rest on simplistic notions of culture. Rather, we must address how different communities’ cultural experiences of violence are mediated through structural forms of oppression, such as racism, colonialism, economic exploitation, heterosexism, and the like. (Sokoloff and Dupont 2005, 43, 45).

When Latinos come to this country with their families and reside in it illegally, their status in society and their role in the family changes dramatically. Latino males often suffer prejudice, racism, and abuse in their workplace and in the community where they live. Men who usually were respected, were confident, and had a defined place in their communities of origin suddenly find themselves powerless and oppressed in a new and different way. The manner in which they often deal with this situation is by

reaching for alcohol or drugs, and by trying to control the members of their families.

The male and female roles within the family life thus also change. The men are no longer the sole providers, and the women who exclusively played the role of the housewives and caregivers back home now must start working to make ends meet. Frustration and the loss of control generated from the structural changes within the family – in addition to the reality of oppression, discrimination, and unfair treatment in the workplace – triggers a behavior described by Paulo Freire. According to Freire, when an individual is the victim of oppression, his or her reaction will be to seize any opportunity to become an oppressor himself/herself. In Freire's words,

the oppressed, instead of striving for liberation, tend themselves to become oppressors, or "sub-oppressors." The very structure of their thought has been conditioned by the contradictions of the concrete, existential situation by which they were shaped. Their ideal is to be men; but for them, to be men is to be oppressors. This is their model of humanity (Freire 1999, 45).

In general, the new victims of the oppression (the victims, that is, of the originally oppressed individuals) are going to be the most vulnerable members of the community. In the case of the Latino undocumented immigrant population, the most vulnerable individuals are women and children.

Some of the causal factors in such violence are larger cultural structures that carry the values of racism, sexism, colonialism, and economic injustice with them.

What is most important about this analysis is that we must not think of domestic violence as *merely* a problem of gender or a problem that is essentially private. Instead, we must begin by remembering that some of the causal factors in such violence are larger cultural structures that carry the values of racism, sexism, colonialism, and economic injustice with them.

This is not meant to offer an excuse for Pedro and other abusers of women. We cannot simply say, "Well, Pedro is confused about being a man; he is confronted with racism everyday; and he cannot break free from the bonds of his poverty; thus he is to be excused." Rather it is to move toward an explanation, and, with any luck, a possible solution that takes into account the ways in which all of these issues are always already interlaced. It is true that Pedro must take responsibility for his actions, but that does not mean that larger structures of injustice are not also at work and that they do not bear some responsibility for having created the possibility of violence. Consequently, if we are to have any hope of helping Isabel (and her sisters), we must not merely spirit them away from their abusers and lock up those abusers as punishment for their immorality, but we must, as well, confront anew the question of what constitutes and what causes "domestic" violence.

Latinas in the Absence of a Social Network and the Problem of Immigration

Violence against women is not accepted or tolerated in Latin American culture. It is necessary to establish this as a fact in order to counteract the negative effect that the opposite stereotype causes in the perception and attitudes toward Latinos in the U.S., and more specifically in the judicial system, social services agencies, and within the Latino community residing in this country. If we begin with a racist notion that somehow violence against women is part of Latino culture, then we will have little hope of solving this problem. It is true that, on average, there is a greater level of (reported) domestic violence in the Latino community in the U.S. than in the majority white community. But it does not follow that Latino culture naturally includes such violence any more than it follows that such violence is being committed more often in the Latino community because the group members are Latinos. Such thinking is not only indicative of racism, but is, at heart, not a good argument logically. Social scientists call this fallacy "correlation does not imply causation." For example, in the 1970s in New York City a study was conducted that measured the murder rate and compared it to the rate of sales of ice cream in the city. With complete correlation and predictability, it was found that whenever ice cream sales went up, so did the murder rate. So, was ice cream consumption turning people

into murderers? Though the data matched perfectly, of course the more obvious explanation is that as the weather heats up and more people are out and interacting with each other, the chances of (deadly) confrontations rise – as does the amount of ice cream sold. The correlation between the sets of data does not imply that a causal link exists. Similarly, just because a Latino family is more likely to experience domestic abuse than a white family, there is nothing in such a claim that indicates that being Latino is why one is more likely to commit an act of violence.

There are various factors that may account for the higher incidence of domestic violence in the Latino community in the U.S. when compared to the white population.³ Most of these factors are the same ones invoked as the explanation for a higher incidence of domestic violence in other minority groups as well: lower levels of education, limited access to housing, the effects of perpetual racism, and – perhaps most importantly – poverty. This is undoubtedly true, but one distinguishing factor that could shed light on the specific problem of violence against women among U.S. Latinos is the absence of a strong social and familial network characteristic of Latin American social systems.

Families, neighbors and friends – all of which combine to form a basic social network – are vital when it comes to dealing with violence against women and children in Latin America. In Latin America, individuals are defined and conceived in a manner that stresses the need for families and groups as the providers of the environment and resources – material, emotional, and spiritual – that make possible the full development of an individual. In other words, individual determination and excellence (which are widely celebrated) can be achieved only through common action. It is thus that such authors as Martín-Baró argue that issues that are usually understood as being individual in nature in the U.S. should be contextualized and elevated to the collective level when considered in terms of Latino communities. The definition of the individual and his or her reality should thus take into consideration the fact that

there is no person without family, no learning without culture, no madness without social order; and therefore neither can there be an I without a We, a knowing without a symbolic system, a disorder that does not have reference

to moral and social norms (Martín-Baró 1994, 41).

When Latinas come to the United States they leave many things behind. One of the factors that makes them most vulnerable and prone to violence in the home is the absence of their extended family and their social network. Latinas are completely dependent on their partners economically, emotionally, and even in matters of immigration. Without their families and social network, Latinas are isolated, lacking the means to solve conflict and avoid threatening situations (Valle 2002, 115).

One distinguishing factor that could shed light on the specific problem of violence against women among U.S. Latinos is the absence of a strong social and familial network characteristic of Latin American social systems.

In addition to the absence of a social network, the payment to a *coyote* to bring women (girlfriends, partners, and wives) into the U.S. illegally transforms women into “property.” The men who paid several thousand dollars to have their significant others “delivered” to them (men usually come to the U.S. in advance), expect their women to be forever in debt to them and therefore only “exist” in this country in order to fulfill their every need. This is a direct result of the current United States’ immigration system and foreign policy.⁴ Structures are put in place that thus force women into a category that removes their very subjectivity. How could we expect these women to be treated as full people once they finally arrive? How could we not imagine that domestic violence would be on the rise in such homes?

In the specific case of Isabel, for instance, each time she gathered the courage to consider the possibility that she might leave her abusive relationship with Pedro or even confront him about his behavior, she made reference to the need for her to finish paying Pedro the \$3,000 that he paid the *coyote* to smuggle her into the U.S. According to Isabel, this “indentured” status was something that Pedro often made reference to, both explicitly and implicitly. Without excusing Pedro, we can see how easy it might be to slip into a kind of thinking such

that Isabel would be seen to be less than a person given this particular situation and history. After all, Isabel had literally been treated as a thing when she was brought to this country. She was put in a trunk like luggage to cross the border. And when she walked through the desert, she had to drink water meant for horses and hide in the brush with the snakes. In Pedro's eyes, and in her own eyes, Isabel had become a thing and an animal. Although men often go through the same struggles and indignities with the help of a *coyote*, it is different when the man is paying for all of this – indeed, with Freire in mind, it might be argued that the man is regaining his own humanity by stealing it from someone else (the woman). To have suffered the degradation of being treated like a thing, the man – without even necessarily meaning to do so – struggles to regain his own humanity by the only means allowed him: by taking it from another. Thus, he pays for the delivery of “his woman” and turns her into a thing that is indebted to him. If we compare this to a white couple emigrating from, say, England to the United States, in this instance the man's wife perhaps arrives safely and welcomed into the comfort of JFK airport, having sat on the plane beside her husband for the whole trip. Though there are social and political structures that this white couple will face as well that might lead to the possibility of domestic abuse, the very circumstances of Isabel's arrival into the U.S. sets her apart. She arrives as a thing. To continue to treat her as a thing is thus more understandable.⁵

The reification, degradation, and lowering in the hierarchy of beings of Latinas – and the impact that all of this has had on their intimate relationships with partners – is a direct consequence of the current immigration system in the U.S. The process of transporting undocumented women into America conjures up echoes of colonial America, where human trafficking and the public sale of women were lawful and common practices:

The conditions under which white settlers came to America created various situations for women. Where the first settlements consisted almost entirely of men, women were imported as sex slaves, childbearers, and companions: ... agreeable persons, young and incorrupt, ... sold with their own consent to settlers as wives, the price to be the cost of their own transportation (Zinn 1999, 104).

It is easy to substitute “undocumented Latino immigrants” for “white settlers” and “Latinas” for the generic “women” in such a historical account, thus being reminded how history repeats itself. But it must be remembered as well that thoughtful policy and appropriate initiative can break the cycle. On the national level, we must push to have a more meaningful debate on foreign policy and immigration. And on the local level, we must remember that these large, overarching structures are having a direct influence on the men and women caught up in cases of domestic violence. Until we confront these problems on every level, we are condemning our neighbors, our communities, and ourselves to Freire's nightmare.

Indeed, even well-intentioned public policy can help perpetuate the problem rather than solve it. Months after going through the same legal and social procedures and institutions, the final hope that Isabel was given was that if she finally agreed to bring Pedro up on official charges, she could file for immigration papers that would make her legal once and for all, and Pedro would be rounded up, tried, and deported. To Isabel's ears, all that she heard was that she could be legal: legal under the status of a *victim of abuse*, a victim without a safe home to which to return. And with the promise of a green card waved before her, Isabel soon went to the police station and filed every charge she could against Pedro with enthusiasm. If all goes well, she will now get her citizenship by bringing her man up on charges; she will get her papers by stripping him of his “humanity.” The cycle repeats, there are no real winners, and the real problems of domestic violence are ignored.

Conclusion: The Loss of Hope at the End of the World

After accompanying Isabel for nearly a year through the abuse, sadness, and hope – through Pedro's several arrests, his sentencing, and finally his imminent deportation – the question of public policy has, I admit, become not merely one of theory for me but one of pragmatism and application. I have come to ask myself not only what policy seems most efficacious and most appropriate for our society, but I often find myself reflecting on Isabel and Pedro's story, asking how and why their needs were failed to be addressed by the institutions involved in

preventing and dealing with domestic violence in the community where we reside.

Pedro never received any kind of effective help and he never understood completely that what he was doing was unacceptable. Or to be more precise, if he did understand on some level that his actions were unacceptable, he did not have the slightest idea how to go about changing them, how to see them in relation to his larger worldview, or how to think of his own actions as inappropriate within the context of his own desire to be a good person. When he asked for help in all of this, the two options – apart from jail – that were made available to him were to see a psychologist or to seek help through the local Catholic Church. Neither institution offered specialized and culturally appropriate help, and Pedro declined to use them. Successful programs in the U.S. directed at helping Latinos are generally based on group therapy that takes into consideration Latino traditions, social expectations, effects of immigration on families, and other culturally specific issues. Such groups are not available in our community.

The deterrence effect intended by law enforcement and the judicial system did not work in Pedro's case. He could not understand a system that would sometimes deprive him of his freedom, and then inexplicably release him into Isabel's arms when a bond was posted. Week after week, he kept doing the same thing. In his mind, his passage through the court and detention system was confusing and illogical. "How is it possible that by paying money I could be freed?" he once asked me. "Is 'bond' like the 'mordidas' [bribes] that we pay in Mexico, only they are done out in the open?" The task of explaining and establishing the differences between the legal notion of bail compared to the bribes of corruption was a challenging one. In Pedro's mind, his freedom was determined by how much money he had and whom he paid it to, not by how he was treating Isabel. In Pedro's mind, no actions were really *bad* because everything could be translated into a dollar (or a peso) amount and be erased. I found it hard to argue against this. I tried. But I could not find the words. Just as I was similarly made silent when Pedro finally managed to ask in a straightforward manner, "So rich people get easier and faster out of jail? How is that 'justice'?" To compound the complexity of the situation, making bond meant to Pedro that he was receiving support and approval from his family, friends, and even Isabel – the tiny support network

that ultimately collected the money and made Pedro's freedom possible again. In Isabel's visit to the bondsman, was there not an implicit forgiveness? Forgiveness for a crime none of them fully understood?

As for Isabel, throughout the process she never learned how to avoid and deal with domestic violence. She knew that she could go to the local shelter in order to get help and protection; and every time she was admitted, she received a copy of the "Battered Woman Syndrome Cycle of Violence" pamphlet, she got a cell phone which she could use to dial 911 in case Pedro would threaten her, and she tried to figure out how to be safe when outside the shelter. But she never understood why she was a victim of domestic violence, or how she could avoid it in the future, or what it meant for her still to love the man she feared. For all of the well-intentioned help that she received, she was alone. She did not have the support of her family and the social network that she would have had back home. She did not have a sense of what she did right to survive domestic violence as long as she did, and she thought that perhaps there was something wrong with her for loving Pedro.

Successful programs in the U.S. directed at helping Latinos are generally based on group therapy that takes into consideration Latino traditions, social expectations, effects of immigration on families, and other culturally specific issues.

All along, Isabel had hoped for Pedro to change. Time after time, she told me how deeply she loved him and how she longed to find something magical that would make his bad side go away for good and they could live happily ever after. She gave up on that dream when she was offered the possibility of obtaining a U-Visa if she agreed to collaborate with law enforcement and the prosecutor's office in order to convict Pedro. I remember that on the day she turned Pedro in, she cried for so long I wondered if she would ever stop. And then she did; and she moved on. I can only hope that her next partner will not be abusive, and that Pedro will not find her when he comes back to the U.S. after being deported as

everyone feels he will surely do. I can hope, and I can try to change the way we deal with domestic violence in our community. But it seems increasingly a task better suited for a community rather than an individual.

I do not see Isabel very often anymore. When I last ran into her, she told me that she was still frightened every day. Little, it appeared, had really changed. She knew that Pedro would find a way to come back. The same economic and social forces that had driven him to the United States would still be there when he was deposited once again in Mexico, and he would surely follow his old path and make his way back to the U.S. What real choice was there for him? Or for her? Through new tears, she told me how much she still loved him, and how everyone knows – herself included – that she betrayed him. She told me that she wasn't sure what to do with her life. She told me that the only thing that could keep her safe now would be if Pedro were to fall from the edge of the earth.

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Notes:

¹The place in which all of this unfolds, and the names of those involved, have been obscured or altered in order to maintain the confidentiality of those concerned. The story, however, is true.

²For example, the late president of Venezuela was Hugo Chávez. But his full name was actually Hugo Rafael Chávez Frías. Hugo was his first name. Rafael was his middle name. Chávez was his father's last name. And Frías was his mother's last name. A confused U.S. police officer might look at President Chávez's I.D. card and think his name was Hugo Frías.

³The available data about the difference between domestic violence in the white population and Latino population is inconclusive and conflicting. Some surveys have concluded that the incidence of domestic violence seems to be consistent across racial and ethnic groups. But other studies have produced data establishing higher levels of partner abuse in Latinos (and African-American communities) than in white populations.

⁴A meaningful reform of the H-2A Agricultural Seasonal Worker Program could potentially reduce the cases of illegal transportation of women through the U.S.-Mexican border, but a comprehensive reform of the immigration system is necessary in order to start making a difference in

this area. However, reforming the U.S. immigration system and even overhauling the current U.S. foreign policy will not eliminate the problem since the present situation is rather the result of systemic, institutional, structural, and historical forces at work in our society.

⁵All of this is not to say that the only solution to the problem of domestic abuse in the U.S. Latino community is to end all immigration laws and have a completely open and porous border. Rather, it is to suggest that current immigration laws do, indeed, discriminate against certain groups of people, thus leading to the problems we have been investigating. More than this, though, there is a deep misunderstanding in current U.S. immigration policy that begins with the assumption, "Everyone wants to come to the United States." As is clear for Pedro, and literally hundreds of thousands of others, most undocumented workers absolutely do *not* want to come to the United States. They dream of going back *home*. But the economic situation at home – driven in part by U.S. foreign policy, colonialism, and imperialism – creates the need to cross the border and "come to the United States" in order to work. Until policy-makers understand the relationships among foreign policy, economics, history, and culture, one fears that there will never be worthwhile immigration reform.

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Are Negatives Positive?

Robert Fullinwider

“Does the Election Make You Want to Be Sedated?” So read a late October headline. What was the irritant calling for sedation? The “caustic” attack ads the 2012 political season delivered in spades. With the presidential election still four weeks away, Las Vegas television stations were featuring 10,000 political commercials a week. And Las Vegas ranked only tenth on the list of ad-saturated markets. None of these political ads limned detailed plans for our country’s future. Apart from the few that presented a candidate’s fuzzy “vision” for future prosperity and freedom, the rest sliced and diced opponents, leaving an observant visitor from Mars to conclude that the only people who run for office in the United States are mountebanks, schemers, time-servers, liars, fakers, traitors, quacks, and crooks.

Every opinion poll shows that the public heartily dislikes political attack ads; and baleful commentators ceaselessly lament the damage to democracy done by the steady diet of bile that campaigns feed the electorate. Yet many of those who create the ads take a different view. “Negative ads not only work, they give voters better information than positive ads,” declared one political consultant a few years back. Affirmed another: “competitive, comparative, compelling ads . . . provide voters with the mothers’ milk of political decision-making: information.” This sentiment is widely shared in the consulting profession. Are voters perhaps disgruntled with what in fact is good for them?

That’s what one political scientist believes. John Geer, in his 2006 book, *In Defense of Negativity: Attack Ads in Presidential Campaigns*, set out to establish empirically whether negative ads hurt or helped the electoral process.

He restricted his investigation to 795 television ads run in presidential races from 1960 to 2000, copies of which are readily accessible in a couple of

repositories. After coding these ads for content and type, Geer concluded that

- Negative ads have always outpaced positive ads by ratios ranging from 3 to 1 in 1984 to 20 to 1 in 2000. The average is about 8 to 1.
- There is a clear upward trend in negativity since 1960.
- Negative ads, contrary to received wisdom, enhance the democratic process by creating a more information-rich environment.

The last of these conclusions is the most interesting and provocative. How did Geer arrive at it? His argument involved several stages.

First, Geer postulated an “asymmetry” between positive and negative ads. “[F]or the negative ad to be effective, the sponsor . . . must marshal more evidence” [than the sponsor of a positive ad]. “[W]hen politicians present negative messages, they need to provide evidence to make them credible.” Geer then tested this postulate against the data. He examined the 795 ads to see if they included *evidence*. Geer’s findings supported his postulate: “In every year under study, negative ads were much more likely to provide clear evidence to support their point than positive ads.”

Second, Geer showed that attack ads are more likely to be about issues than about personality. The negative ads he studied were directed against the character of opposition candidates a third of the time and against their policy positions two-thirds of the time. “[N]egative appeals tend to be more positional in nature . . . [N]egative ads are almost twice as likely [as positive ads] to provide voters with a choice of governmental action.”

Finally, Geer presented some scaffolding. He endorsed a standard theme in Western political

theory, asserting that “progress [in ideas] is the offspring of criticism.”

Over 350 years ago, John Milton . . . in *Aereopagitica* argued that it was best to ‘let truth and falsehood grapple . . . in a free and open exchange.’ [. . .] John Stuart Mill . . . some 200 years later went even further, contending that an opinion gains legitimacy and credibility if it faces criticism . . .

In a healthy democracy, “[we] need the criticisms from competing candidates to ensure that we more fully vet [their] respective plans and qualifications.” In short, in campaigns “the more evidence, the better.”

Geer’s argument can be summed up thus:

Negative more than positive ads address issues and appeal to evidence. Thus, negative ads enrich the information environment of voters. Such enrichment strengthens democracy.

Geer presented his thesis about the virtues of negativity as a bold strike against conventional wisdom. He displayed little sympathy for the public disgust at negative advertising. “[J]ust because people do not like the messiness of politics does not mean we should devise a system that is consistent with these preferences . . . [A]ny effort to lessen negative advertising will lessen the quality of information available to the public.” Evidently we must hold the people’s collective nose and make them take their political castor oil.

II

Geer commends ads that supply information. Of course, he allows, it would also be desirable if the information is accurate. “Obviously, [ads] that convey accurate information are superior to those that lie and mislead.”

Yes, indeed, the *accuracy* of the “information” in an ad would seem to be relevant to judging how well it “enriches the information environment.”

But Geer’s elaborate analysis of ads forgoes this crucial inquiry. “I will not,” he writes, “assess explicitly whether information from an ad is accurate or not.” Why not? Geer explains:

The problem is that it is very hard to establish the truth. Moreover, ads, like all propaganda,

stretch the truth. Campaigns put forth the most positive account possible of their candidate and paint the least flattering picture of the opposition. However, exaggeration is not the same thing as lying and/or being dishonest. Reasonable people can disagree about how best to present the ‘facts’. Republicans . . . will offer different interpretations of the facts than Democrats. Where one falls politically will almost inevitably influence whether particular information is judged to be ‘accurate’ or ‘inaccurate’. As a result, there is no clear set of guidelines that can clearly establish what is true or false. Efforts to establish whether information in campaigns is misleading strike me as a very slippery slope. It is for these reasons that I chose to establish the standard of evidence . . . [I]t is possible to determine whether evidence exists or not in a reasonably objective fashion.

In fact, however, Geer never even determines the existence of *evidence* in ads. He stipulates a peculiar definition: an ad supplies evidence if it incorporates “specific statistics” or makes “specific references” or uses “direct quotes.” Thus, in analyzing his sample ads, Geer simply tabulated the *appearance* of various *marks* or *signs* of evidence. That’s what can be done in a “reasonably objective fashion” – count the quotes, citations, references, and the like. Do these counted marks or signs underwrite a claim that an ad is full of *evidence*? Not if they are bogus or fabricated. Yet here is Geer: “I did not undertake any formal verification of the evidence.”

Isn’t this non-undertaking an extraordinary omission in a treatise trying to prove that negative ads supply an “enriched information environment” to the voter? Geer isn’t troubled. Judgments of “truth,” “lies,” “misleading,” “distortion,” and the like, he writes, are inherently normative and “not something that readily applies itself to normal social science standards.”

On Geer’s crudely positivistic conception of social science, he is limited to counting, not judging. By counting the number of quotes in an ad or the number of references it makes to external sources, he can stay away from messy normativity.

The problem with Geer’s methodology should be readily apparent by now. It is this: “Quality of information” is itself a *normative* notion. “Enriched

information environment” is a *normative* notion. Indeed, “information” is a *normative* notion, just like “truth,” “distortion,” “lies,” and all the rest.

Thus, Geer’s finding that the negative ads he studied were more likely than positive ads to supply evidence for their claims has to be taken with a grain of salt. Or better, a whole box.

In defense of his asymmetry thesis, Geer repeatedly protests that candidates can’t just make up stuff. Of course they can. And they do. Fake newspaper headlines, sham quotes, and phony documentation are delivered up more often than you might imagine. Such cheeky counterfeiting is less likely in ads produced in presidential campaigns, but as you travel down the political food chain, you should adopt President Ronald Reagan’s famous slogan (made about relations with the Soviet Union), “trust, but verify” – which means, in effect, “don’t trust, verify.” Geer omits any verifying. Yet he has no hesitation in concluding that negative ads are evidence-driven, and no hesitation in generalizing his “findings” about presidential campaign ads to negative ads in general.

III

If ads “enrich the information environment” of voters, how do they do so and how do they fail? Geer assumes that *adding* to the “information environment” is the same thing as *enriching* it. This is clearly not so. Indeed, adding information might *degrade* a voter’s information environment. We can see this by looking at some ads.

The first we’ll look at is from Guy Millner’s 1994 campaign against incumbent Georgia governor Zell Miller. Millner’s campaign ran this ad:

Guy Millner (into the camera): “My daughter Tricia awoke to a man standing over her bed with a knife in his hand and a ski mask over his face.”

Tricia (into the camera): “I thought he was going to kill me.”

Guy Millner (into the camera): “My daughter I almost lost, but by the grace of God she is with me here today.”

Text and Voice-over: “Keeping violent criminals in jail hasn’t been a priority in

Georgia. If Guy Millner were governor, it would be.”

Miller’s campaign cried foul. It claimed the ad was misleading, implying that the attack on Tricia occurred in Georgia when in fact it occurred ten years earlier in Tennessee. The Miller campaign retorted that the ad was not “false” because it never *said* the attack occurred in Georgia. It was an honest effort at showing Millner’s *personal commitment* to keeping criminals in jail.

Adding information might degrade a voter’s information environment.

Misleading? Not misleading? Is this an ad where, like John Geer, we must throw up our hands and simply confess that partisans of the different candidates will come to different conclusions? We can do better than that. Let’s credit Millner’s declared motive for making the ad, and rewrite it so that it honestly displays Millner’s personal urgency:

Guy Millner (into camera): “*Some years ago, in another state*, my daughter Tricia awoke to a man standing over her bed with a knife in his hand and a ski mask over his face.”

Tricia (into camera): “And I thought he was gonna kill me.”

Guy Millner (into camera): “My daughter I almost lost, but by the grace of God she is with me here today.”

Voice Over: That experience made Guy Millner a firm believer in keeping violent criminals in jail.

Guy Millner (into camera): “I don’t believe that’s been a priority in Georgia. Under my administration, it will be.”

If the point of the ad is to express Millner’s personal commitment to keeping criminals in jail and to give voice to his opinion that keeping criminals in jail hasn’t been a priority in Georgia, then the rewritten ad does the job as well as or better than the original. It follows the original’s format and language, making only minor and inconsequential changes. I say

the changes are inconsequential if the point of the ad is to capture Millner's personal experience and express his opinion that keeping criminals in jail hasn't been a priority in Georgia. On the other hand, the changes are quite consequential if the aim of the ad was actually to lead viewers to a false supposition. Seeing the original ad, a Georgia viewer might have had the following thoughts: "A violent criminal, given early release in Georgia under Zell Miller's administration, nearly killed Guy Millner's daughter; to my way of thinking, that sure lends some credence to Millner's claim that keeping violent criminals in jail hasn't been a priority in Georgia." The revised ad blocks this inference. The original encourages it.

The ad-makers were counting on most viewers to react immediately to the ad, not to investigate it.

Was the original ad simply a clumsy effort, an inept try at saying what the revised version says? The ad-maker was young Alex Castellanos, who has gone on to great success in Republican circles and now has the status of wise TV commentator during election season. Look at two more of his ads the same year. One was another Millner campaign ad against Zell Miller. The ad displayed a newspaper headline: "Paroled Murderer Charged in Death of Medicaid Staffer." A voice declared: "Zell Miller is releasing through his Pardon and Parole Board violent criminals only serving one-third their time." As it happens, the accused individual described in the headline was paroled during a previous governor's administration. The ad doesn't report this fact, however, because doing so would get in the way of viewers assuming a connection between the parole and Zell Miller's administration. A second ad was one Castellanos produced for Jeb Bush's run against Florida governor Lawton Chiles. This ad showed the mother of 10-year-old murder victim saying to the camera: "The murderer of my daughter is still in prison and Governor Chiles won't sign his death warrant. He's too liberal on crime. I know Jeb Bush. I know he'll make criminals pay." Of course, his liberal softness aside, it would have been difficult for Governor Childs to sign a death warrant in a case still before the appeals courts. See a pattern? The ads all invite the viewer to make a connection not actually

supported by the content. This invitation is deliberate. Even in his early career, no one would ever have put the words "Alex Castellanos" and "inept" together in the same sentence.

IV

Let's look at a more recent ad. Made by a group called VoteVets, it was deployed against Virginia Senator George Allen in his 2006 run for re-election. Look at the ad for yourself. It is a masterpiece of visual effectiveness.

<http://www.youtube.com/watch?v=mUMECgG4NEY>

The narrator fires an AK-47 into two dummies, one protected by a modern body armor vest and another protected by an older body armor vest. He then tears open the vests; the first dummy is unscathed, the second pocked with bullet holes. The difference between the two vests is a difference of "life or death," intones the narrator. Then he tells us that George Allen "voted against giving our troops this," indicating the modern body armor vest. While he is saying these words, a small script appears for two seconds at the bottom of the picture. It says "vote 116, 108th Congress, 1st Session."

Only if a viewer recorded this ad and then replayed it back several times could she actually make out what the words say. If such an intrepid viewer went on to search out the Congressional Record for the referred-to vote, what would she find? She would find that vote 116 was on a motion to table an amendment offered by Senator Mary Landrieu to the April, 2003 Supplemental Defense Appropriations Act being considered by the Senate. The Landrieu Amendment in its entirety read, "In chapter 3 of title I . . . insert . . . the following: For an additional amount for National Guard and Reserve Equipment, \$1,047,000,000."

The intrepid researcher could learn more, too, but the ad-makers were counting on most viewers to react immediately to the ad, not to investigate it. More typical was the response by this viewer when she saw the ad (I paraphrase): "As a parent of a combat veteran, I was angered and disgusted at a Senator who didn't give a damn about our troops." Do you think the ad-maker, witnessing this reaction, would have exclaimed, "Oops, I didn't mean for her to draw *that* conclusion!" – or do you think he would have said, "Bingo!"?

The Supplemental Appropriations bill itself provided more than \$50 billion to the military services – including to National Guard and Reserve components – to prosecute the wars in Afghanistan and Iraq. The Landrieu amendment was one of many offered by Democrats; all were turned aside. The amendment was non-specific; its funding could have been spent on tents, rifles, field radios, power generators, helicopters, and any other National Guard and Reserve requirements, including personal protection devices. The vote to table it was 52-47. Every Republican voted yea; every Democrat nay. To conclude from George Allen's vote to table that he didn't give a damn about the troops, you'd also have to conclude that John McCain, former prisoner of war, didn't care about the troops, that Chuck Hagel, who served in Vietnam, didn't care about the troops, that John Warner, stalwart long-time member of the Senate Armed Services Committee, didn't care about the troops, and that Bob Dole, injured WWII veteran, didn't care about the troops.

The ad-makers sought a reaction like the one exhibited by the mother, a reaction not earned honestly.

V

Look at another ad from the 2006 campaign season.

<http://www.youtube.com/watch?v=EBobHMq-ixI>

If there were an Academy Award for political ads, this one would qualify, it is that good. Three figures address the camera one after the other. A teenage boy: "Returning from a camping trip next week I'll be in a car accident and paralyzed for life." A forty-something woman: "In twenty years I'll have Alzheimer's. I won't recognize my husband or my kids." Little girl: "This week my mommy and daddy are going to find out that I have diabetes." The gist of the ad: each of the individuals speaking could be your child, your spouse, or you. And each might have his or her prospects improved by the fruits of stem cell research. But their Congressman, James Walsh, "voted against federal funding for stem cell research."

Unlike the VoteVets ad, this one contains no brief reference to the specific vote, so an intrepid viewer would have to do even more sleuthing to dig out the underlying facts. However, with enough patience and digging she would come across two votes recorded in the Congressional Record for May 24, 2005. One

vote was for H. R. 810, the "Stem Cell Research Enhancement Act of 2005." It directed the Secretary of Health and Human Services to support "human embryonic stem cell research." Congressman Walsh voted *against* H. R. 810. A second vote was for H. R. 2520, the "Stem Cell Therapeutic and Research Act of 2005." It directed the Secretary of Health and Human Services to support research using stem cells collected from "cord blood," blood from the umbilical cords of newborn babies. Congressman Walsh voted *for* H. R. 2520.

So it's not quite true to say *without qualification* that Walsh voted "against stem cell research." The ad could easily have offered the appropriate qualification and squeezed the word "embryonic" in between "federal funds for" and "stem cell research." Why didn't it? Was the omission inadvertent? Don't believe it. The ad-makers knew what they were doing. They wanted an audience reaction unclouded by a potential turn-off for some viewers – namely, that the research on embryonic stem cells involves destroying the human embryos from which the cells are taken.

VI

Finally, here is an ad by one of the consultants who touted the informational value of attack ads. His candidate was running for the Senate against an attorney who had established a multi-office law firm across the Midwest. The ad informed viewers that the attorney's firm had been sued for malpractice "hundreds of times." The ad-maker clearly intended for viewers to conclude that the attorney was an untrustworthy sleaze-ball. The average viewer hears "sued hundreds of times" and reactively concludes "bad man." What could be more natural? But did the ad provide any basis for this natural slide? Does the fact that the attorney's firm was sued "hundreds of times" speak for itself? No.

Do you know how often lawyers get sued for malpractice? I don't. I bet none of the ad's viewers knew. I'm certain the ad-maker had no idea. But without a baseline, the information in the ad supplies no warrant for any kind of judgment about the attorney and his firm. To see, let's just make up some numbers. Suppose the national average is 0.4 malpractice lawsuits per lawyer per decade. On average then, a 100-member law firm will incur 40 malpractice lawsuits in a decade, a 1000-member firm 400 lawsuits. The attorney's firm was very large. Let's

assume that it was in the 1000-member range. The ad alleges (“informs us”) that the firm was sued “hundreds of times.” How many hundreds? If it were *three* hundred in ten years, we would have a reason to think the attorney actually ran a better-than average firm, one more honest and competent than most. If it were *seven* hundred over ten years, then we could suspect the attorney ran a shoddy operation. Without a baseline and some specific numbers, the ad’s “hundreds of times” tells the viewer absolutely nothing. Yet the ad-maker didn’t run this ad on the expectation that viewers would draw no conclusion from it.

VII

The ads we’ve looked at are dishonest. They deliberately omit facts that would prevent viewers from jumping to conclusions. By Geer’s mechanical counting method, only the ad against George Allen counts as evidence-based, but all them inform. They *add* information to the voter’s stockpile (although some of the information is tendentiously characterized). Tricia *was* attacked. George Allen *did* vote against something having to do with body armor. James Walsh *did* vote against federal funding of one kind of stem cell research. The attorney’s firm *was* sued hundreds of times.

Addition without context, or addition yoked to clever omissions, can lead the voter to jump to false conclusions and make unfounded inferences.

Mere addition, however, doesn’t put the voter in a better position to make a fact-based and warranted

decision about candidates. Indeed, addition without context, or addition yoked to clever omissions, can lead the voter to jump to false conclusions and make unfounded inferences. It can *degrade* voters’ “information environment” by making it more rather than less likely that they will draw an unsupported conclusion.

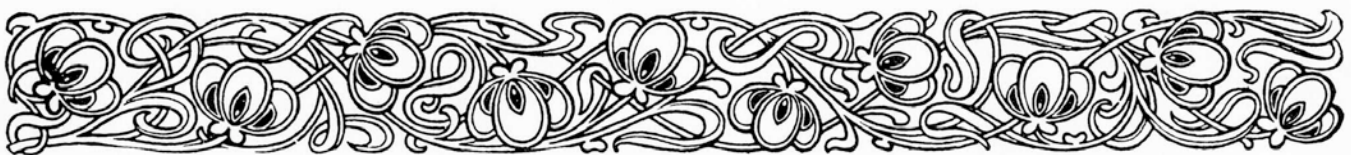
The ads we’ve looked at *manipulate* viewer response. They play upon associations that viewers would naturally make, elicit responses further information would forestall, and the like. If we are concerned about the *quality* of information that voters receive, then the relevant empirical query is this: How many attack ads are like the ones we’ve looked at? If most are, then the public revulsion is well justified. Geer thinks the public is turned off by the harsh tone of negative ads. More likely they are revolted at the transparent mendacity that fills the airwaves. But, of course, mendacity is a normative notion that lies outside of Geer’s purview.

Why the upward trend in attack ads since the 1950s? One reason is this. Elections are not occasions to teach and inform voters, they are occasions to *mobilize* them. As parties have become more polarized over the decades, successful mobilizing increasingly provides the key to electoral victory. Information? All you need to know is that the country will go to hell if the other guy wins. That’s what will drive you to the polls.

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Source:

Geer, John. *In Defense of Negativity: Attack Ads in Presidential Campaigns*. Chicago: University of Chicago Press, 2006.



Religion and the Public University

Samuel Joseph Kessler

It seems almost commonplace now, in the second decade of the twenty-first century, to bemoan the crisis facing public higher education in America.¹ Funding at the federal and state levels – sometimes in decline, sometimes on the rise – feels more tenuous than ever.² To entice new students, colleges and universities have been creating and revamping majors, expanding study-abroad programs and internship options, and opening new recreational and research facilities, all while increasing tuition at rates well above inflation.³ And we have recently been witness to a disturbing set of public shamings as schools disclose a culture of statistical inflation in pursuit of higher rankings in *U.S. News and World Report* (Pérez-Peña and Slotnik 2012). The 2008 fiscal crisis and the fraught relationship between Congress and the White House have only added urgency to this already agitated discussion.

Many reasons can explain the anxiety about the future of public higher education. This paper addresses one cause that is often unmentioned. It is my worry that millions of Americans who regard religion as central to their lives may have become disenchanted with and disenfranchised by public higher education. For one example among many, Liberty University in Virginia, founded by the Baptist preacher Jerry Falwell in 1971, has doubled its student body twice since 2007 alone. It now educates more than 60,000 students each semester – far more than even some of the largest public universities (Anderson 2013). Religious Americans who attend or send their children to parochial schools of higher education do not see their moral or political views reflected in or valued by public academia, which is often seen as dominated by left-of-center voices.⁴ I believe that this sense of disenfranchisement leads religious Americans to send more and more of their children to private denominationally-affiliated colleges and seminaries instead of public universities.⁵

This essay is organized into two major parts. To provide an overview of the crisis facing American higher education, I begin by discussing two representative texts, *The University in Ruins* by Bill Readings and *The Marketplace of Ideas* by Louis Menand. These books describe different sets of problems and propose divergent (though complementary) kinds of solutions. The essay then takes up a vision of the university presented in the 1790s by the German philosopher Immanuel Kant and compares his view with recent writings by the contemporary social psychologist Jonathan Haidt. I conclude by using these texts to suggest how public higher education could better accommodate religious Americans.

Bill Readings and the University of Economics

Two books on public education, one by the late literary scholar Bill Readings and the other by the cultural historian Louis Menand, present broad critiques of the contemporary public university. In a way, these two authors create a tension with each other. For Readings, the university functions primarily as a filter for creating and credentialing capitalist workers; for Menand, the university is structurally anachronistic and detached from the demands of contemporary life. A look at these two books provides an outline of the dominant discourses of alarm. It also suggests the reasons that words like “morality,” “God,” “nation,” and “truth” (common tropes for religious Americans) tend to be excluded from the debate about the condition and future of public higher education.

Readings’ primary contention is that, by the final decade of the twentieth century, the university had been transformed from an institution conveying what he calls “culture” to an institution promoting



Figure 1: Liberty University in Virginia
(Source: EOverbey, Creative Commons license BY-SA 3.0)

something he calls “excellence.” By “culture,” Readings means a sort of nation-state ethos, a narrative played on the accomplishments – including the history and the literature and art – of the political and geographical entity in which a university was founded and had matured. The idea of culture as the object of higher education, in Readings’ view, is an inheritance of largely German origin. Readings lays particular emphasis on Alexander Humboldt’s nineteenth century reorganization of the University of Berlin, a model that Readings contends was exported to America.

According to Readings, the university as conveyor and protector of culture reached its high-water mark during the Cold War, when America countered Soviet propaganda through a triumphal retelling of the Western liberal narrative. Readings is no wide-eyed supporter of that narrative, but he does see within it a promising view in which higher education is attuned to the need of students to identify with a common social mission – a view in which the university is dedicated to playing a role in history and not simply in the economy.

The conversion of the university of culture into a university of excellence is Readings’ overwhelming concern. “Excellence” represents many things for Readings, one of them being a metaphor for how vapid contemporary education has proven itself to be. Because “excellence” can be and often is applied

without discernment, it follows happily along with the market takeover of higher education. Even the venerable and ancient Oxford, Readings laments, has begun to call itself “excellent,” perhaps because its own specific cultural inheritances (England, monarchy, empire, male dons, etc.) have been discredited. Oxford no longer seems to have anything to offer but its ability to train workers for service in multinational corporations or public bureaucracies. According to Readings, “The social responsibility of the University, its accountability to society, is solely a matter of services rendered for a fee.”

Readings’ alternative to the university of excellence is not a return to the university of culture. The forces of globalization and trans-nationalism, he believes, are too strong for any appeal to the notions of a geographically bounded culture. He is also wary of giving the “ruined” university over to the aesthetes and the romantics – the descendants of those who idealized and codified Humboldt’s vision of the nineteenth century university. In these avoidances Readings’ book is post-modern in the deepest sense, comprehending the extraordinary lengths we have come from the beginning to the end of the twentieth century and positing as the future of higher education a series of fragmented if overlapping places of learning not linked by a hierarchical appeal to a cultural community or by a quest for an enduring truth. His proposals would allow the public university

to continue as a semi-autonomous institution within the borders of (in his view) an increasingly meaningless nation-state politics, but seizing the opportunity that fragmentation presents to diversify and broaden thought.

To those on the political left, Readings view of public higher education as a fragmented but somehow interacting patchwork of discourse communities may seem like the logical response to the devastations of the twentieth century. To the religious right, however, his view represents a capitulation to an idea of intrinsic human limitation (and a recognition of our failure at civilization itself) that is not reflected in their theology or in their reading of history. By dismissing the idea of the university as a place where a set of truths can be discovered and human society perfected, Readings is excluding the university from participating in the social renewal and redemption envisioned by the religious right. His analysis allows the religious right not only to dismiss the university as flawed but to refuse to use its ruins for another project, such as the one Readings advocates. Instead the religious right treks through the ruins (or around them) in search of new ground on which to build its own future for higher education.⁶

Louis Menand and the University of Anachronism

In his short volume *The Marketplace of Ideas*, Louis Menand focuses on a different (though adjoining) set of problems afflicting the contemporary university – and offers a much more encouraging analysis of their origins and potential solutions. *Marketplace* is divided into four chapters, each depicting a particular aspect of the crisis whose resolution Menand predicts could at least mitigate a more general disaster. Menand asks: (1) What are the virtues and deceptions of a general education curriculum? (2) How and why did the humanities find itself in the position of questioning its own relevance? (3) What does the zeal for “interdisciplinarity” tell us about the professoriate? (4) Why do the great majority of professors and graduate students have similar left-leaning politics? While each chapter is worthy of its own explication, what is most relevant here is the intellectual framework Menand brings to his analysis and conclusions. Menand appeals – as does Readings – primarily to those already inclined to accept a basic assumption: that the

university is a Balkanized assortment of departments unmoored from the promotion of morals and indifferent to the advancement of any cultural tradition, persuasion, or social or historical mission.

Menand's book exemplifies a common theory about the crisis of the university: that there is more or less complete similarity between the role of Harvard in American society and that of public universities.

Throughout the book it is Menand's contention that, although universities rapidly expanded and diversified after World War II, they retained the same patterns and structures as prewar universities – the schools founded during the decades on either side of the turn of the twentieth century. He argues that this method of expansion on an inherited pattern was not problematic for the postwar university; what society needed from its schools of higher education was simply massive growth – first for the returning GIs, then for the baby boomers – and not radical transformation. Universities expanded because of a new combination of federal grant money (for both education and research) and a broad network of cultural support. Indeed, in the postwar years, the university became one of the primary modes for middle class advancement, not by transforming the cultural capital historically preserved for the elites but instead by distributing it more widely than ever in history.

Menand calls 1970 a tipping point, when the student population ceased to expand and support for the liberal arts began to disappear. Instead of beginning to adjust to what would prove a long-term trend toward fewer students, fewer academic jobs, less government money, and less social prestige, universities persisted in their now bloated and maladjusted postwar configurations. Despite the intellectual and social revolutions of the 1960s and 1970s, the professoriate – comfortable with the model inherited from its all-male, all-white intellectual forbearers – proved satisfied with the status quo and persisted to reproduce what they had inherited, making marginal adjustments only when forced to do so in the cultural and technological context of a vastly different world.

Menand's *Marketplace* is a response to this complacency. He sees the reforms of the earlier twentieth century as answering the right questions for their time. The changes made to expand research and education were bold and brave, he says, and no one questions that what they created is a recognizable university, honoring the past while embracing the present. He wants our generation to take the same courageous steps, to do what those early reformers did but in the context of a globalized information age.

Menand's book, which is concerned wholly with elite universities, exemplifies a common theory about the crisis of the university: that there is more or less complete similarity between the role or mission of Harvard in American society and that of public universities, such as the University of California or the University of North Carolina. And, thus far, history has mostly followed along: the movement of faculty between the elite privates and publics assumes no separation. Menand's is an excellent book about reforming Harvard and Yale; it is an unsuitable book, however, for thinking about the future of public higher education in a fractured and religious democracy.

Kant on the Conflict of the Faculties

Immanuel Kant's *The Conflict of the Faculties* (1798), written as three essays over the course of half a decade, provides an intimate psychological portrait of academic life at the end of the eighteenth century. *Conflict* is in many ways an early anthropological study of the associations among professors at Kant's own University of Königsberg, but it is likewise a broader theoretical critique of the relationship between scholars, scholarship, public intellectual responsibility, and the governing State. No matter the numerous intellectual arguments concerning the validity of Kant's philosophical theories or the attempts to position him within a certain (to some) now-troublesome branch of Western metaphysics, Kant's writings continue to exert an extraordinary authority in Western academic discourse. In that sense, *Conflict* presents a serious and still-relevant treatise on the organization and place of the university within a broader national society.

The overriding schema of Kant's *The Conflict of the Faculties* is the (then-extant) division of university faculties (what we now call colleges or schools) into "higher" and "lower." Theology, law, and medicine

constituted the higher faculties at Kant's university; philosophy (including all of what are now the humanities and the social and natural sciences) filled out the lower faculties. In each essay, Kant positions the "philosophy faculty" in conflict with one of the three higher faculties, separating the intellectual contributions of the two sets of faculties through their nearness to what he calls "reason alone."

In no way is Kant a passive observer in these texts – he is an active partisan for the philosophy faculty, strongly anti-theology and overwhelmingly dismissive of law and medicine as capable of producing true knowledge. Yet despite his biases, Kant's argument is not intended to upend the structure of the university; it seeks to promote philosophy as the ultimate source of rational knowledge for national success: "For without a [philosophy] faculty of this kind, the truth would not come to light (and this would be to the government's own detriment)."

What is striking about *Conflict* to us in the academy now is the importance of the high-low structure in relating university scholarship to the State (which in eighteenth-century Prussia meant an absolute monarchy). The higher faculties, "both as to their content [i.e., scholarship] and the way they are expounded to the public," are observed by and interact with the ruling government. In other words, the higher faculties, while ostensibly remaining part of the university, are drafted into the service of the state for responsibilities beyond the pursuit of reason alone – such as educating ruling ministers, imparting theological or judicial judgment, or healing the sick. Kant recognizes the necessity of the higher faculties for the overall welfare of the State; indeed, they are the people who shield the philosophers from the oversight of government. For Kant, however, the higher faculties remain ever shallow and perfunctory distributors of second-hand, impure knowledge, interested somewhat in reason but also beholden to power, diplomacy, and a host of other responsibilities. If their knowledge is proven wrong they need appeal only to the phrase: my instructions came from the sovereign himself.

In juxtaposition Kant describes the activities and freedoms of the lower faculty. Philosophy is the primary teacher of the higher faculties, distributing knowledge upwards; but philosophy likewise looks to its own ends, following truth and reason wherever they may lead. "[T]he philosophy faculty, because it must answer for the truth of the teachings it is to

adopt or even allow, must be conceived as free and subject only to laws given by reason, not by the government.” In Kant’s conception, philosophy enjoys a freedom of thought and thus acts on an amorphous plane somewhere below the direct gaze of the government. It is a plane not isolated from society, only generally disregarded by it. Kant envisions the arguments and exchanges of philosophers as having a radiant effect, first by convincing the higher faculties of certain new truths (as they are discovered) and then indirectly when the higher faculty in turn influences the government and its activities.

The “conflicts” of Kant’s title are the discrepancies and subsequent arguments between the philosopher’s truths (which Kant assumes are always correct) and the higher faculties’ “truths” (which are likely tainted – as government’s ends are different than the ends of reason alone). It is the responsibility of philosophy to maintain these conflicts, thereby hoping to move the higher faculties and the government evermore toward the truths discovered through reason. Indeed, Kant’s ultimate goal is not the destruction of the hierarchical university system but a switching of the importance of the faculties, with philosophy (still oriented only toward pure reason) directly advising the government; and theology, law, and medicine (still perfunctory knowledges) merely seeing to the daily needs of the citizenry.

What becomes apparent as the essays proceed is how rapidly the juxtaposition initially posed fades into degrees of difference. In essence, the faculties are fundamentally the same species; the tensions between them prove not detrimental but essential to the balance of government and its relationship to (true) knowledge. Philosophy’s rational knowledge (because it remains within the jurisdiction of the monarch and even attempts to have influence on it) is only slightly less deferential to the State than that propounded by the higher faculties.

According to Kant, philosophy cannot challenge the authority of the State in any profound way. To see this, imagine that through reason philosophy discovered a radical new governing structure. The government would either need to transform itself completely or reject these findings outright. The latter is the likelier option, whereupon philosophy would lose even its minor influence and all the “conflicts” would have been for naught. But Kant’s philosophy

never discovers the radical option. His are not utopian dreams. Kant’s reason leads to a more perfect monarch and a more just monarchical state. And such being the case, the inversion of the faculties appears an achievable, even laudable, endeavor.

This conservatism provides one of the keys to apply Kant’s system to American public higher education. The university at its core (then or now) is not designed to revolutionize the governing apparatus of the state. It is instead more akin to an informational feedback loop, the one attempting to influence the other and in turn being itself influenced. Implicit in this balancing system is the unique situation of the university as partially self-governed. There is equilibrium in Kant’s system, a recognition that the primary elements that composed Prussian society are somehow represented by the various members of the semi-autonomous university community. “The people conceive of their welfare...as [the realization of] their natural ends and so as these three things: being happy after death [theology], having their possessions guaranteed by public laws during their life in society [law], and finally, looking forward to the physical enjoyment of life itself (that is, health and a long life) [medicine].”

For American public higher education this equilibrium between university and society has vanished. The theology faculty has been excised, and the humanities faculty has ceded much of itself to the sciences.

One can quibble with Kant’s condescending tone toward the general citizenry, but his underlying argument is strong: the needs of the society are likewise the address of the university. One is not divorced from the other. Kant is clearly an advocate for the society’s need to change (indeed, for it to become more like philosophy), yet Kant would never expect the university to divorce itself from society simply because its interests are not the same as those of the populace.

For American public higher education this equilibrium (between university and society) has vanished. The theology faculty has been excised, and the humanities faculty (titular heir to “philosophy”) has ceded much of itself to the hard and soft sciences

– especially those disciplines funded by federal agencies – and no longer regards itself as the path of pure reason. I am not interested here in debating the legitimacy of these decisions. Rather, I am interested only in their consequences for the public university as an institution in the United States.

Jonathan Haidt on Group Morality

In 2007, Jonathan Haidt and Jesse Graham published an article in which they identified “five psychological foundations of morality;” that is, five broad categories within which humans (as part of cultural groups) make fundamental decisions about their beliefs and actions. Haidt and Graham labeled these foundations “harm/care, fairness/reciprocity, ingroup/loyalty, authority/respect, and purity/sanctity,” where each grouping is designed to include a subset of cultural attitudes and practices. Harm/care and fairness/reciprocity are identified through terms like social justice, individual freedom, rights, and welfare; they are the buzzwords of political liberalism and social activism. Ingroup/loyalty, authority/respect, and purity/sanctity are manifest in calls to patriotism, respect for elders, expectations of chastity, and rules about women’s bodies; they are the recurring tropes of the religious right.

The insight here – or the principal hypothesis – is that liberals and religious conservatives stress different moral foundations when making political judgments and setting policy.

Haidt and Graham present data that convinced them of one way to explain why liberals (as Haidt labels himself) and conservatives in American politics always seem to be speaking past one another, and why Democrats do not more often win elections when – intrinsically and on the face of it – their policies are designed to help a larger and more needy percentage of the population. In their study, Haidt and Graham noticed that in America, people who self-identified as on the political left continually stressed two of the five moral categories: harm/care and fairness/reciprocity. They also noticed that the more religiously conservative a respondent self-identified, the more evenly spread was his or her

concern across the spectrum of all five moral foundations. The insight here – or the principal hypothesis – is that liberals and religious conservatives stress different moral foundations when making political judgments and setting policy.

In various places, most recently in a newly published book (2012), Haidt argues against interpreting these data as one of a secular/religious divide. Instead, he urges that the best analyses are those that label this left/right divide as between different (and competing) theological agendas, one focused almost entirely on harm/care and fairness/reciprocity, the other spread more evenly among all five (harm/care, fairness/reciprocity, ingroup/loyalty, authority/respect, and purity/sanctity). He and Graham write: “As a first approximation, political liberals value virtues based on the first two foundations (harm/care, fairness/reciprocity), while political conservatives value virtues based on all five.... Conservatives have many moral concerns that liberals simply do not recognize as moral concerns.”

These are striking statements, all the more so because they focus on conservative moral expansiveness rather than conservative parochialism. Haidt and Graham argue that conservatives *do* understand the left’s moral arguments, but when designing a moral imaginary (e.g. a political platform or an academic curriculum) they place far less value (two-fifths as opposed to one whole) on the first two moral foundations. This imbalance has major consequences for the left/right divide in American society.

Of fundamental importance is Haidt and Graham’s next insight: the moral values expressed by conservatives are not invisible to liberals – they are moral values liberals often rebrand as repulsive or frightening social flaws. The importance conservatives place on “the United States” as an entity and on “American culture” specifically makes sense within a discourse community that has become almost incomprehensible to liberals. Haidt and Graham write: “patriotic displays, respect for authority, or chastity...[these] topics might even make [liberals] feel uneasy, evoking associations with political...movements that limit the autonomy and free expression of the individual.” What the authors are arguing is that for moral conservatives, the State (i.e. country and flag) is a necessary and vibrant part of their social and ethical organization. With theology, moral conservatives unite the two main pieces of

their social unit: God and nation. Without theology, the moral center is lost into an undifferentiated world of half-truths and lurking falsehoods.

Words like “tradition,” “respect,” “nation,” “God,” “family,” “chastity” – these are conservative trail markers for historical connection and ontological foundation. The point in contention is not that traditions change over time and that signs and symbols and tribal loyalties get altered. What Haidt’s research suggests is that the three additional moral foundations are – in an authentically deep way – counteracting forces to cultural fluidity. They are stabilizing mechanisms in a chaotic world of shifting alliances.⁷

Toward a Public University for All

The relation – or conflict – between the faculties in Kant’s university smoothly maps onto the five moral foundations Haidt identifies. The theology faculty reflects the moral categories of authority/respect and purity/sanctity; it appeals to people’s sense of social correctness and to their ontological security. Kant ridicules theology for mattering only in people’s care for the afterlife. This is unfair but revealing. For anyone to be a candidate for the afterlife means that the powers and beliefs of the living world must be ordered (or ordered enough) not to hinder a person’s acceptable passing. This is a religious stability founded both on the authority of tradition and its presumed sanctity (through history, text, and miracle) in the eyes of God. Indeed, these are moral foundations almost impossible to fulfill in any other way.

The interaction of law and medicine with the government is a manifestation of ingroup/loyalty. In modern parlance, ingroup/loyalty is the most “tribal” of the moral foundations; it involves making decisions within and for a system primarily because one is born into that system. Law and medicine have public responsibilities because they possess skills necessary for the proper functioning of a complex society. There is a loyalty to fellow citizen manifest through the government. Today we call this civic duty. And these duties are complimented by the philosophy faculty’s subtle influence over their actions – and thereby over the government’s – in fulfillment of philosophy’s partial role in the maintenance of fairness/reciprocity. Kant is very clear that the more often philosophy’s rational truths

are conveyed to the government, the more enlightened and fair that governance will be. Kant draws a direct line between philosophy’s importance and the proper (i.e., equitable and charitable) running of government.

The public university has structurally excluded itself from acknowledging a divergent – or, in fact, a more comprehensive – set of moral foundations.

One can easily identify three main structural changes to the university since Kant’s day: the loss of a theology faculty; the absence of the influence of the academic humanities over the common culture; and the humanities’ lack of interest in the search for enduring truth. Today, to a great degree, the humanities faculty is united on the liberal side (harm/care and fairness/reciprocity) of Haidt’s outline. The removal of an overt theology curriculum at public universities, along with the suppression of purity and nation-oriented/group loyalty language among academics, has upset the relations mapped so carefully by Kant between university-based knowledge, public responsibility, and the State. The harm/care commitment remains fully a part of the entire contemporary university, epitomized by the myriad departments focused on human well-being, and the administrative offices devoted to student life, psychological and emotional health, community safety, and the like. The fairness/reciprocity axis remains strong as well, though now felt in the emphasis on civil rights and human equality and seen in the guise of multiculturalism, promotion of diversity within student populations, study-abroad programs, social activism, and charitable service, to name a few.

As Haidt’s research suggests, the neglect of three parts of the five-part moral value system results in the alienation of many members of society who might otherwise support public higher education. In essence, the American public university has placed itself in the position of appealing strongly to the core liberal moral foundations (harm/care and fairness/reciprocity) and not at all to the other three moral foundations (ingroup/loyalty, authority/respect, and purity/sanctity) conservatives also

embrace. To put this thought in terms of the discussion of Readings and Menand above, the public university has ceased to be concerned with the entire range of cultural processes and become now, on the one hand, a means for economic professionalization, and on the other, the bastion of a morally narrow professoriate. The public university has structurally excluded itself from acknowledging a divergent – or, in fact, a more comprehensive – set of moral foundations. Sadly, it could be said (almost polemically) that football and basketball teams represent all that is left of the possibility of cultural cohesion on college campuses.

The impact of this structural realignment of the public university is what I called at the beginning of this essay “disenfranchisement.” The expectation that religious conservatives will participate in a public university that is wholly dedicated to less than half of their moral universe appears unlikely and even patronizing. What Haidt’s research shows is that moral intuitions are discovered in groups and societies not just in individuals. Moral intuitions do not necessarily compel a search for ultimate truth, but they do call for the maintenance of a historical trajectory and a sense of legitimacy. If a conversation between the conflicting responsibilities of the public university is to begin, this may be the place to begin it.

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Notes:

¹For one example among many, see Capaldi 2011.

²From Sonnenberg 2004: “Among postsecondary institutions, the federal share [of educational expenditures] declined from 18 percent in FY 1980 to 14 percent in FY 1990 and then rose to 19 percent in FY 2003.” From National Conference of State Legislatures 2010: “According to research conducted by the State Higher Education Executive Officers (SHEEO), educational appropriations per full-time student reached a high of \$7,961 in FY 2001, followed by four years of decline from FY 2002 to FY 2005 (after the 2001 recession). Per student funding then increased in fiscal years 2006, 2007 and 2008, recovering to \$7,220. In FY 2009, appropriations per student fell by 4 percent due to the onset of the latest recession and declined to \$6,928 per student as states

struggled with massive revenue shortfalls. Appropriations per student remained lower in FY 2009 (in constant dollars) than in most years since FY 1980.”

³In 1980/1, average tuition at a two- or four-year undergraduate institution was (adjusted for inflation) \$7,759; in 2010/11, it was \$31,395. “Tuition costs of colleges and universities,” National Center for Educational Statistics, accessed April 25, 2013, <http://nces.ed.gov/fastfacts/display.asp?id=76>.

⁴Perhaps the most important book to describe this phenomenon is Riley 2005.

⁵In Fall 1980, 9,457,394 students attended public institutions of higher education; 1,006,173 students attended religiously affiliated institutions. In Fall 2009, 14,810,642 students attended public institutions of higher education; 1,811,947 students attended religiously affiliated institutions. Between 1980 and 2010 the number of public institutions of higher education increased by 159; the number of religiously affiliated institutions increased by 117. “Fall enrollment and number of degree-granting institutions, by control and affiliation of institution: Selected years, 1980 through 2010,” National Center for Education Statistics, accessed April 25, 2013, http://nces.ed.gov/programs/digest/d11/tables/dt11_206.asp.

⁶Orol Roberts University (founded 1963) and Liberty University (founded 1971) are excellent examples of this phenomenon. “College should be a time of discovery, growth and fun. At ORU it’s all that and more. Through development of your mind, body and spirit, the ORU experience is designed to help you grow as a whole person, ignite your leadership skills and prepare you to impact the world for good. This is your time. ORU is your place.” From the Orol Roberts website, accessed April 25, 2013, http://www.oru.edu/oru_experience/.

⁷Haidt writes: “religion and political leadership are so intertwined across eras and cultures because they are about the same thing: performing the miracle of converting unrelated individuals into a group... The three Durkheimian foundations (ingroup, authority, and purity) play a crucial role in most religions. When they are banished entirely from political life, what remains is a nation of individuals striving to maximize utility while respecting the rules. What remains is a cold but fair social contract, which can easily degenerate into a nation of shoppers” (Haidt 2008).

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An Equity Hurdle in International Climate Negotiations

Andrew Light

After a lengthy stalemate in the United Nations climate negotiations over creation of a comprehensive global climate treaty, active discussion of how to equitably distribute greenhouse gas reductions is now squarely back on the table. While one cannot imagine a successful international treaty to limit dangerous levels of greenhouse gases that did not satisfy at least a general notion of fairness, much work will be needed to overcome the serious divisions that now exist among different parties on how to best allocate this critical global responsibility. This is particularly true in the current political climate in some countries, such as in the United States, where the political climate makes it difficult to discuss more ambitious goals for reducing greenhouse gas emissions.

This article will briefly summarize the history of the discussion of equity in the U.N. climate negotiations and will highlight a problem that many analysts working on this issue today may not recognize as a potential hurdle to the agreement of the United States to a new climate treaty. The issue I will highlight is especially a problem for any treaty that includes a notion of equity that conceives of the atmosphere as a global commons in which individuals, groups, or nations may claim shares. This approach does not mesh well with the legal and regulatory framework of the United States, which is more capable of controlling greenhouse gas pollution to ensure public safety and health but less capable of distributing shares in a putative commons.

Differentiating Responsibilities

The global community has been working for the past twenty years to develop a comprehensive treaty to

reduce greenhouse gas emissions to safe levels. The first climate treaty was proposed in 1992 at the Rio Earth Summit in Brazil. It led to the creation of the U.N. Framework Convention on Climate Change (UNFCCC), which was ratified by 194 parties, including the United States, and which took effect in 1994.

Two criteria have come to mark what differentiates the responsibilities of different countries: (1) their historical emissions and (2) their development needs.

Although it represented a landmark piece of diplomacy at the time, the framework convention itself called only for voluntary reductions in greenhouse gases. As a result, most parties to the convention considered it to be inadequate. Since that time, the UNFCCC has been struggling to create a treaty binding the largest greenhouse gas emitters in the developed and in the developing world. Altogether, 18 countries in the world are responsible for 80 percent of global emissions (E.U. Climate Expert Group 2008). Only a treaty that includes all or most of them has a chance of achieving the emissions reductions necessary to keep global warming within levels to which we could feasibly adapt. The chief sticking point is finding the right balance of responsibilities among developed and developing countries in this group. Who will reduce their emissions, how fast, and by what amount to achieve a predetermined level of climate stabilization?

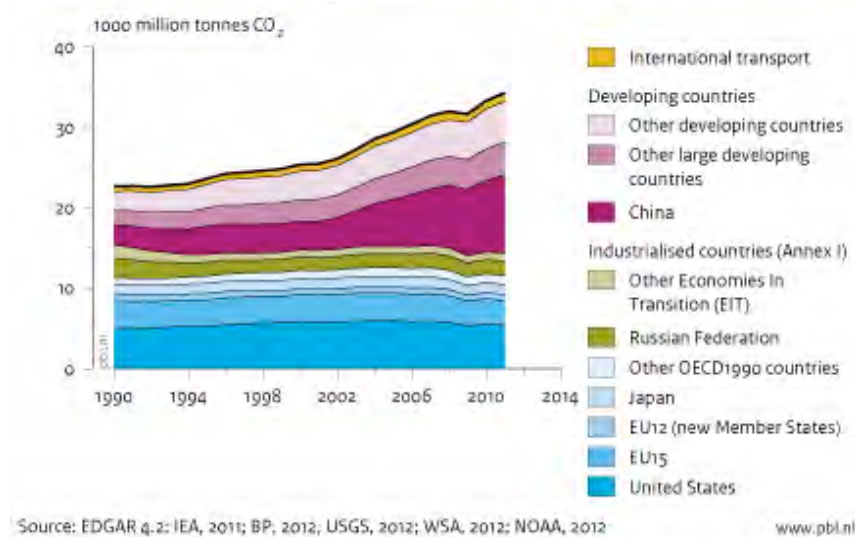


Figure 1: Global CO₂ emissions from fossil fuel use and cement production (PBL Netherlands Environmental Assessment Agency 2012)

The only guidance provided by the original treaty is that the assembled parties have “common but differentiated responsibilities and respective capabilities” to reduce their emissions, or, as it has come to be known, “CBDR.” In essence, two criteria have come to mark what differentiates the responsibilities of different countries: (1) their historical emissions and (2) their development needs. Historical emissions matter because the main anthropogenic greenhouse gas – CO₂ – continues to force increases in temperatures for hundreds and sometimes thousands of years, depending on the source. The almost one degree Celsius of global warming humans have caused so far is due largely to the emissions produced by today’s developed world. In addition, development needs matter when it comes to assigning mitigation targets. The crushing poverty still experienced in many parts of the developing world is a reason to accept a slower transition from dirtier carbon-intensive fuels, which still tend to be cheaper, to cleaner fuels. Combining the two ideas, the conclusion is that developed countries should make deeper cuts in their emissions first, followed by cuts from developing countries. This crude formulation has effectively served over the past twenty years as a functional definition of climate equity, or as an appropriate baseline to measure who should cut their emissions the most and to what level of stringency those parties making cuts should be

bound. Those who embrace CBDR in its most extreme form say it implies that only developed countries should cut their emissions, and those and only those cuts should be legally binding in an international regime. Developing countries, no matter what their emissions growth profile, should, at most, make voluntary cuts to their emissions, if supported by developed countries.

This formula, if developed into something like a global “polluter pays” principle that places all responsibility for emissions cuts on developed nations, confronts an insuperable physical hurdle. The largest growth occurs now in developing countries, both in terms of emissions and population (see figure 1). The development goals of China or India (the first and third largest emitters at this time) require a lot more production of reliable electricity, and the cheapest way to do that now is still by burning fossil fuels.

For this reason, even if developed countries lowered their greenhouse gas emissions to zero and developing countries proceeded on a “business as usual” (BAU) path, the world would exceed dangerous levels of emissions and dangerous levels of warming. Again though, this isn’t true of all developing countries, but only the major emerging emitter nations such as China, India, Indonesia, South Africa, Brazil, and Mexico. A treaty that could contribute to meaningful global mitigation of

greenhouse gases would have to encourage or mandate equally robust – though certainly not equal – participation in mitigation efforts by the major emitters in both the developed and the developing world. A cooperative effort by all major emitters makes all the difference between a decent chance of achieving some level of climate safety and very little chance at all.

Climate Safety

What counts as “climate safety”? Generally, it is a level of stabilization of human-caused temperature increase to which we could, still with significant effort, adapt. It does not mean absolute safety from the impacts of climate change, since at this point the atmosphere already holds too much CO₂, which will continue to force up the global temperature, even if all emissions were to miraculously stop today.

An approach that would put the entire burden for mitigation on developed countries, or one that never resolves the issues around CBDR, is simply not physically viable as a pathway toward achieving some modicum of climate safety.

Since 2009, when the majority of the parties to the UNFCCC endorsed it at the Copenhagen climate summit, the internationally accepted target has been to stabilize temperature increase caused by humans at 2 degrees Celsius over pre-industrial levels, or 3.6 degrees Fahrenheit. While there have been ample calls for stabilization at lower temperatures, it looks highly unlikely at this point that anything better than the 2°C target is possible, and indeed that target is beginning to look increasingly out of reach (World Bank and Potsdam Institute 2012).

At the G8 summit in July 2009 in L'Aquila, Italy, developed countries affirmed the 2°C target, the consensus view from the Intergovernmental Panel on Climate Change that achieving that target required a global cut in emissions of 50 percent by 2050, and, most importantly, that developed countries should make a cut of 80 percent by 2050 as their fair share of cumulative emission reductions (G8 2009, paragraph 65). This was a notable step forward by these parties, since it represented a bold, though not completely

uncontroversial embrace of CBDR, given that it articulated a higher cut in emissions for developed countries. But later that year at the UNFCCC summit in Copenhagen, developing countries, led by China, blocked these same parties from enshrining the 80 percent target in the outcome document that emerged from that meeting (the “Copenhagen Accord”). The most straightforward explanation is that allowing this language in the outcome document would have implied that developing countries would be responsible for whatever emission reductions remained beyond the 80 percent committed to by developed countries in order to achieve the 2°C target.

Since then, the question of how to differentiate the mitigation responsibilities of developed and developing countries under CBDR has remained at a deadlock. Before turning to the current effort to try to work out a new agreement that could overcome this impasse, it is important to see that the difference is vast between a world in which the major emerging economies get a jumpstart on reducing their emissions at a slower pace – but one nonetheless comparable to the pace of developed countries – and a future in which they wait longer to reduce their emissions. An approach that would put the entire burden for mitigation on developed countries, or one that never resolves the issues around CBDR, is simply not physically viable as a pathway toward achieving some modicum of climate safety.

In 2010, the U.S. Environmental Protection Agency (E.P.A.) looked at three possible scenarios for achieving the 2°C target: 1) a BAU scenario; 2) a scenario in which the G8 parties fulfill their pledge to reduce their emissions 80 percent by 2050 below a 2005 baseline and developing countries delay meaningful mitigation efforts until 2050; and 3) a scenario in which the G8 pledge is met and developing countries do more than nothing but less than the G8 parties, namely, they cap their emissions at 2025 levels and achieve 26 percent cuts below their 2005 levels by 2050 (the “full participation” scenario illustrated in Figure 2). If the G8 target is met and developing countries delay action (and maintain emissions in 2050 only at 2050 levels), we will have only an 11 percent chance of holding temperature increase at 2°C. If the G8 target is met and developing countries take on essentially a third of these cuts in twice the amount of time, we would

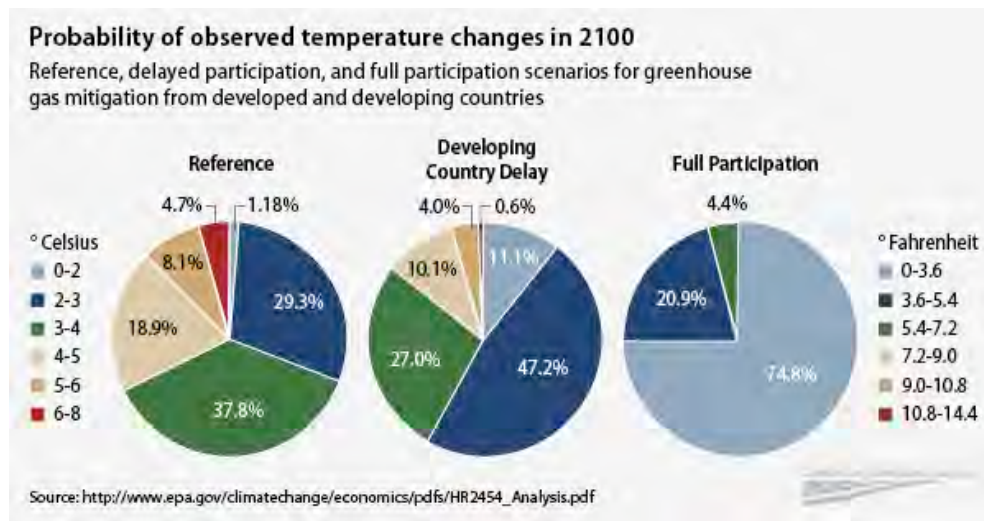


Figure 2: Probability of observed temperature changes in 2100 (Scenarios: EPA; Figure: Center for American Progress)

have a 75 percent chance of stabilizing temperature increase at 2°C.

Although this comparison is encouraging, the language of the framework convention and the dynamics of the climate negotiations to date have not encouraged the full participation scenario described by the E.P.A.

When the framework convention was able to create a binding treaty for emission reductions, the result was the Kyoto Protocol in 1998, which embraced a version of CBDR. Kyoto bound only developed countries (or “Annex 1” parties in the treaty) to reduce their emissions, while developing countries (“non-Annex 1” parties) were asked to enact only voluntary measures, at least through the first commitment period of the treaty out to 2012. For this reason, the United States never ratified Kyoto. In fact, the U.S. Senate never considered ratifying it; instead, it unanimously communicated to the Clinton Administration that it would never ratify a treaty shaped like Kyoto (U.S. Senate 1997). In large part, the objections arose because the treaty assigned different sets of rules to the U.S. and some of our largest economic competitors, in particular, China and India.

This outcome essentially doomed the Kyoto process to never achieving a significant reduction in global emissions. Since the U.S. is the second largest emitter of greenhouse gases, and the largest historical emitter, it’s difficult to imagine a workable

international climate regime that does not include the U.S. as a full participant. And, to be sure, the failure of the U.S. to join Kyoto ensured that countries like China and India would refuse considering an evolution of the treaty to one in which they would eventually make binding emission cuts themselves, even at a lower level of ambition than developed countries. Without the inclusion of these parties as participants in the treaty, it simply did not cover a high enough percentage of the world’s emissions to make a dent in global emission levels even if ambition for signatory parties had been significantly increased. By the time the Kyoto Protocol came up for authorization of its second commitment period in 2012, the Annex 1 parties in the agreement comprised only some 15 percent of total global emissions. If those parties agreed to cut all of their greenhouse gas emissions completely, and the rest of the world continued on a BAU path, then achieving climate safety would be impossible.

This is not to say though that the framework convention has not achieved anything since creating the Kyoto Protocol. Staring with the 2009 Copenhagen Accord, a series of “bottom up” agreements emerged, culminating in the 2010 Cancun Agreements, which created the conditions whereby over a hundred countries, responsible for some 80 percent of global emissions, officially registered what they were willing to do unilaterally to reduce their emissions by 2020. Included among these parties are

all the major emitters in the developed and developing world, including the U.S. as well as all the major developing countries not bound to reduce their emissions under the Kyoto Protocol. Just as importantly, included in these agreements were provisions for measuring, reporting, and verifying these pledges. In addition, there were provisions for the exploration of new mechanisms to promote reducing emissions in the forestry sector, the promotion of new market mechanisms to reduce emissions, and the formation and support of national adaptation plans. Added to all of this was a commitment to raise \$30 billion in “fast start” finance for developing countries between 2009 and 2012 to foster a faster transition to low- or zero-carbon growth as well as the creation of a new global institution, the Green Climate Fund, with a mandate to raise the majority of \$100 billion annually for mitigation and adaptation in developing countries starting in 2020.

Unfortunately, all of this success does not yet add up to a pathway to climate safety. Unless these voluntary pledges to reduce emissions by 2020 increase by at least a third and perhaps by half, then it will be impossible to eventually stabilize global temperature increase at 2°C (see Light 2013). This will require a larger effort by all parties, which will in turn entail revisiting the meaning of CBDR and the overall question of an equitable distribution of mitigation efforts. If this effort cannot be resolved to the satisfaction of all parties, and in a way that ensures an adequate level of emission reductions by the largest greenhouse gas polluters, then this international process will not be able to meaningfully contribute to achieving climate safety.

Toward Equity in the Post-2015 Agreement

There are plenty of good attempts in the philosophical literature to try to estimate the best distribution of global reductions in greenhouse gases, including the work of Stephen Gardiner, Dale Jamieson, Henry Shue, and others (for a sample, see Gardiner et. al. 2010). I will not engage with that literature here. Instead, I want to first describe the context in which debates over equity will play out over the rest of this decade in the actual international climate negotiations and to second examine one overlooked hurdle to their reconciliation that remains

unacknowledged in the literature on climate ethics or by those actively engaged in these negotiations.

In 2011, at the UNFCCC’s annual summit, held this time in Durban, South Africa, an effective reset was called and the parties agreed to start a new three year process to create a comprehensive climate agreement by 2015, which would go into force by 2020 or later, to replace the Kyoto Protocol and the Cancun Agreements. While the details of how this agreement came about are both complicated and fascinating (see Light 2011), for the present purposes, one critical part of the negotiation was the language selected in describing this new agreement. Specifically, the aim is to create either a “protocol, another legal instrument or an agreed outcome with legal force under the Convention *applicable to all Parties*” (United Nations 2011a, paragraph 2, emphasis added).

This new treaty track, which is now called the “Ad Hoc Working Group on the Durban Platform for Enhanced Action” (or ADP), may or may not set a specific level of ambition for each party to hit either by 2050 or by some mid-term target. But in stipulating that the outcome should be “applicable to all Parties,” the agreement presupposes that, whatever cuts the parties agree to, the same legal requirements will be common for all. This one caveat offers a compelling opportunity to rethink both CBDR and equity under the framework convention. While it is still assumed that the level of ambition for the parties to reduce their emissions will be differentiated – consistent with a rudimentary interpretation of CBDR – the idea of creating something like the Kyoto Protocol that would bind only developed countries to reduce their emissions is effectively off the table. The U.S. celebrated the inclusion of this one phrase as a major achievement at Durban, and as a step toward creating a treaty with a better chance at Senate ratification (Light 2011).

Nonetheless, this outcome was certainly not uncontroversial. The Indian delegation pushed hard to get references to “equity” included in the final Durban agreement; this was blocked by the United States in fear that it would lock the new treaty into a structure that would duplicate the interpretation of CBDR used in the Kyoto Protocol to create the firewall between the obligations of developed and developing countries. But to resolve these differences, negotiators agreed that workshops on equity would begin alongside the new treaty process to try to bring

the parties closer together on how this notion could function in a treaty that would be applicable to all on the same terms. In this light we can see that in some respects the Kyoto Protocol took an easy way out of this problem by simply avoiding it altogether, at least for the first commitment period of the treaty, by not requiring developing countries to make mandatory emission cuts. But now that option is not available, so the parties have to dig deep and try to come up with an equitable distribution of their mitigation commitments.

This conversation started in May 2012 at an intercessional meeting of the UNFCCC in Bonn, Germany, where a two-day workshop was held on equity in sustainable development. Unfortunately, the old divisions that have haunted these talks quickly re-emerged. I will focus here on only one of the problems.

It was clear at the outset of this process that many parties are attracted to the simplest division of responsibilities, one based solely on historical per-capita equality. While there are many forms of the argument, they tend to look something like this:

1. Start with an assumption that the global commons can only absorb X tons of carbon before reaching unacceptable levels of global temperature increase.
2. Divide X by the global population and allocate an equal amount of emissions for all people on a country-by-country basis.
3. Subtract the amount of emissions that any country has historically contributed (back to an accepted baseline year) from its total allotment.
4. From 2 and 3 assess the amount of future emissions allowable for each country starting now, expressing this figure as positive allowable emissions (here, some forms of this argument would express this amount as an “emission right” or “development right”).
5. If a country has already emitted more than its fair share of CO₂ since the base line year (which is true of the United States in all of these treatments), then it has a “carbon debt” and must either radically reduce its emissions to zero or compensate those countries which have not emitted their fair share of historical greenhouse gases for holding back on the emissions they still have a right to emit.

We can see this reasoning at work in the discussions over equity even prior to the Durban meeting which were pressed again most strongly by India. In a submission to the convention on October 10, 2011, the Indian government put the point this way:

... India believes, [that the reference to “equitable access to sustainable development” in a previous agreement of the convention] takes within its fold an approach premised on an understanding of the atmosphere as a global common to which all nations must have equitable access. Equitable access, for its part, must derive from the notion that all human beings have an equal entitlement to the global atmospheric space, and that in determining just shares of the remaining atmospheric space, past usage (or over-usage) of the global atmospheric space must be taken into account. For developing countries like India with serious energy poverty and developmental challenges, a climate regime built on principles that do not ensure equity will impose severe limitations on its ability to lift its people out of poverty. It is imperative therefore that the equitable basis on which the climate regime is to be structured first be discussed and fleshed out, and next be used as the optic through which the regime is interpreted and developed (United Nations 2011b, 4).

There are a number of interesting and important ethical claims embedded in this statement, which I will not take up here (but see Broome 2012 for a more general discussion of such issues). However, as one might imagine, the United States, and some other developed countries, have categorically rejected anything like the idea of equal per capita distribution of rights to emit, or development rights described in this way, no matter what arguments could be mustered in their favor.

Concerns about development rights as described here include whether it is fair to penalize people for emissions produced by their ancestors; whether the terms of the distributions proposed in these schemes are defensible against competing accounts; and whether countries will ever agree to sign onto a treaty that effectively demands they cut their emissions to zero or begin paying a global tax to other countries. It is doubtful that signing such an agreement would garner much popular support (at least in the countries

that would have emissions deficits) or that leaders who embrace such an agreement would stay in office for very long.

These concerns raise the ever-present question of how the structure of any international agreement does or does not cohere with a given country's national circumstances. While I would not endorse a position that national priorities should never bend to collaborative international ambitions, I do think that international negotiations would be better served by a more informed understanding of the hurdles that a proposed agreement would face among the parties we would most want in a comprehensive global climate agreement. Because a global treaty that does not include the U.S. as an active participant is unlikely to be a successful treaty, domestic hurdles in the U.S. are worth noting, and perhaps considering, in the structure of an agreement.

In this context, one common refrain by U.S. participants in international climate talks is that the rule that the Senate must ratify a treaty by a vote of two-thirds of its members makes it incredibly difficult for the U.S. to sign onto any treaty. Given how difficult it is to get anything through the U.S. Senate because of the 60-vote threshold to get over the threat of a filibuster, the idea of getting six additional votes is daunting. More interesting than this problem are the problems that might prevent the executive branch from even trying to lobby the Senate to support a new climate treaty. It is here where we can see a unique hurdle to the sorts of per-capita emissions solutions to the distribution of global mitigation efforts described above.

If the U.S. were to sign onto an international treaty that accepted a notion of greenhouse gases such as that described in the Indian submission, it could potentially dismantle the current basis for regulating these substances at home. At issue is the description of greenhouse gases as the source of a positive right – a resource, if you will – rather than as a pollutant. In the Indian submission greenhouse gases are described in positive terms, such as representing “just shares of the remaining atmospheric space.” But at present, the only basis for regulation of CO₂, for example, is in negative terms as a form of pollution.

The origin of this designation goes back to the 2007 Massachusetts v. E.P.A. decision (549 U.S. 497). There, the Supreme Court ruled in favor of 12 states and several cities that had sued the George W. Bush

Administration over its refusal to determine whether CO₂ and other greenhouse gases constituted pollutants under the Clean Air Act. In the 5-4 decision, the court determined that global warming could present a potential threat to these states and cities for various reasons and so the E.P.A. was required to undertake an “endangerment finding” to determine if these substances needed to be regulated to protect the health and safety of Americans. While the Bush Administration never started the process of producing this finding, the new Obama Administration started the process a few months into its first year and announced in December 2009 that these gases did meet the standard of a dangerous pollutant under the Clean Air Act.

At issue is the description of greenhouse gases as the source of a positive right – a resource, if you will – rather than as a pollutant.

While the Obama Administration was making this executive determination, the U.S. Congress was trying to pass a comprehensive energy and climate bill. Unfortunately, while the House version of this legislation (the “Waxman-Markey” bill) passed, companion legislation in the Senate never even made it to a floor vote. As a result, the determination of greenhouse gases as a pollutant under the Clean Air Act became the basis for a “plan B” by the Obama Administration to join the rest of the world in reducing its emissions. The results have been impressive with E.P.A. regulations passed on the basis of this authority limiting emissions from mobile sources, the completion of a set of rules on regulating emissions from new stationary sources (which is likely to soon be approved and may make it prohibitively costly to ever build another coal-fired power plant in the U.S. again), soon to be followed by an attempt to create a rule to regulate emissions from existing stationary sources.

Now, many environmental critics of the administration find these regulations to be insufficient to meet the U.S.'s global responsibility to reduce our emissions given the amount we have historically emitted. And in general this process of emissions reduction by direct regulation is fraught with both legal challenges and regular attempts by Congress to either slow them down or undermine their authority

altogether. But no matter how much one may disagree with these efforts, it is undeniable that the authority to regulate greenhouse gases in the U.S. stems from a description of them as harmful pollution. If the Obama Administration were to embrace a global treaty that instead defined greenhouse gases as the source of a positive right, as suggested in the Indian version of a per-capita understanding of climate equity, then it would undermine its defense so far of its legal authority. The administration would otherwise have to defend a contradictory conception of the same set of substances in two different arenas. This would make it far more likely that an attempt to overturn the basis of these regulations would succeed. Since these regulations have so far helped to lower U.S. emissions to 6.9 percent below 2005 levels, which is getting us closer to our pledge in Copenhagen to lower emissions 17 percent below 2005 levels by 2020, it would not help global climate stabilization efforts to throw a wrench into them now (U.S. E.P.A. 2013).

While there may well be an optimal allocation of global reductions in emissions in the abstract, the reality is that a global treaty may not be the best vehicle for carrying that allocation forward.

Although this consideration is not absolutely defeating for embracing something like a development rights or emissions rights approach to equity in the international climate negotiations, it does at least demonstrate how a new treaty has to grapple with a delicate combination of philosophical and practical considerations that are made all the more difficult by national circumstances. While there may well be an optimal allocation of global reductions in emissions in the abstract, the reality is that a global environmental treaty may not be the best vehicle for carrying that allocation forward, in view of the rule of law in different countries.

Pointing out tensions like these though does not mean that a new equitable, workable, and effective climate treaty is beyond our reach. Over the next few years, as we approach the 2015 Durban deadline, we will see the emergence of several cooperative efforts among state actors and non-governmental organizations to try to produce a more flexible, less abstract notion of climate equity that rethinks CBDR

and could be represented in a new treaty (see for example the Climate Justice Dialogue, sponsored by the World Resources Institute and the Mary Robinson Foundation). This process will create ample opportunities for more publicly engaged philosophers and policy experts to have a role in shaping a new international climate regime.

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