

Fall 2021

# BERKELEY PUBLIC POLICY JOURNAL

## RECOVERY & RESILIENCE

*Alternative to Exclusionary and Racialized Discipline in K-12 Public Schools*

*Hidden Inputs and Racist Outputs: How We Can Truly Start to Address Systemic Racism in Policing*

*Data Privacy Regulation: A Promising Approach to Reduce the Spread of False Information Online*

*The Texas Legislature Should Increase Bilingual Funding Weight to Decrease Educational Disparities among English Language Learners*

*Holding Philanthropy Accountable: Increasing the Minimum Payout Rate for Foundations and Donor-Advised Funds*

**...AND AN INTERVIEW WITH DR. HENRY BRADY**



# EDITORS' NOTE

The close of 2021 is marked not by a period, but by an ellipsis . . .

Though many had hoped 2021 would bring a brand new chapter, its opening lines were stained with ink bleeding through from the final pages of 2020. And in that way, the January 6th attack on the U.S. Capitol may have been a harbinger for the year ahead: as a transition, not an arrival. The year 2021 is perhaps the poster year of liminality—an “in-betweenness” often marked with mess and pain. But thresholds of change are important in and of themselves. They offer a moment to take stock of what came before and to look out at what is still to come.

Perhaps this state of transition is most clearly on display when evaluating the ongoing COVID-19 pandemic. It's better, but not over. It's a metaphor for the often hybrid nature of progress. Here, at the Berkeley Public Policy Journal (BPPJ), we too have embraced our own hybrid model with some of us meeting remotely and others meeting in person. This is only possible because of the global vaccination effort, which has inoculated over 7 billion people in roughly a year.<sup>1</sup> While we applaud this scientific and administrative feat, we remain disappointed that just 67 percent of the U.S. population has received at least one shot.<sup>2</sup> Herd immunity remains elusive and, with it, a sense of normalcy. We continue to diligently wear our masks, ever present identifiers of a continued uncertainty.

At the same time, the transition has allowed us to take stock of what we need and what we want next. Economically, workers swing in abeyance. The “Great Resignation”<sup>3</sup> achieved a new American record of 4.4 million resignations in September, and despite new job openings, many Americans have not rushed back to work, accelerating a revolution in worker expectations.<sup>4</sup> In other arenas, expectations may not be evolving quickly enough. Since the start of last year, the U.S. has experienced 18 climate disasters.<sup>5</sup> Although the Biden administration rejoined the Paris Agreement, the world is still anxious that the upcoming U.N. Climate Summit will not herald enough change to make a dent in the climate crisis.

Unexpected transitions have also unleashed a chain reaction of human devastation abroad. In Kabul, that threshold state of liminal change, onset by the rapid U.S. withdrawal, has been bloody and fraught as digital editor-in-chief, Ethan Azad poignantly expressed in a recent BPPJ blog article: “The U.S.

bears significant responsibility for the current state of affairs in Afghanistan after a 20-year-long military campaign. We owe the Afghans who worked to protect our people. Instead of intervening militarily, the U.S. should focus on helping Afghans by giving them a chance at a better life here.”<sup>6</sup> Along with Ethan, the other editors-in-chief agree that the U.S. must raise the refugee cap.

Finally, we condemn the perpetuation of racism, especially the rabid outcry over critical race theory courses.<sup>7</sup> As a policy journal, publishing out of a public university, it is important that we clarify any confusion. Critical race theory is the philosophy that when we analyze any part of society, we must acknowledge that racism and other oppressive systems are embedded in the way our society works.<sup>8</sup> If there is any doubt, let us be clear: American racism and public policy are inseparable; only with an education that integrates critical race theory can we be equipped to apply antiracist principles as the next generation of policy practitioners.

With this context in mind, we are excited to introduce the Fall 2021 edition of the Berkeley Public Policy Journal. Charlotte Aaron starts us off with a proposal for combating racialized discipline in K-12 public schools in the U.S. Tedros Hadid follows with an analysis of racism in the American policing and criminal justice system with a push for ways to confront the roots of systemic racism. Heidi Wallace next breaks down the key factors enabling the proliferation of false information, concluding that a federal data privacy law is a critical first step in halting the spread. Lola Solis exposes the stark failure of the Texas education policy for English language learners and lays bare the importance of funding bilingual education in the state. Laila Heid reminds us of philanthropy's role in wealth redistribution and argues that we must increase the minimum payout rates for private foundations and donor-advised funds. Ella Geismar and Charlotte Aaron close out the issue by interviewing Dean Henry Brady, looking back on his time as Dean as he passed the baton to Dean David Wilson.

We thank our authors and editors for their invaluable contributions to the journal, and we thank Dean Brady for sharing his reflections on his tenure. In this time of transition, we hope this issue will inspire policy practitioners with the necessary resilience, knowledge, and empathy required to enter into a brighter chapter.

—Katherine Cohn and Laila Heid

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# BERKELEY PUBLIC POLICY JOURNAL

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**ALTERNATIVE TO  
EXCLUSIONARY  
AND RACIALIZED  
DISCIPLINE IN K-12  
PUBLIC SCHOOLS**

by Charlotte Aaron

Photo by Brianna N Lee



# ALTERNATIVE TO EXCLUSIONARY AND RACIALIZED DISCIPLINE IN K-12 PUBLIC SCHOOLS

CHARLOTTE AARON

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Edited by: Aaron Tiedemann and Ella Geismar

*In 2014, under the guidance of President Obama, the United States Departments of Education and Justice jointly published a letter to school administrators across the country reminding them of their federal obligation to administer discipline in a nondiscriminatory fashion. The letter's language demonstrated the reality of racialized discipline in schools. It also made clear that if the administration of discipline resulted in a "disparate impact," regardless of the "evenhanded manner" with which it was administered, it could result in unlawful discrimination under federal law. The publication of this letter instigated a shift in exclusionary discipline across the country. Many districts increased data collection of disciplinary incidences, and most importantly, the letter shined a necessary light on the administration of discipline across the country.*

*However, four years later, Secretary Betsy DeVos rescinded the letter under the Trump administration in response to recommendations made in the Final Report of the Federal Commission on School Safety, a commission convened following the 2018 shooting at Marjory Stoneman Douglas High School. DeVos specifically took issue with "school environments where discipline decisions were based on a student's race and where statistics became more important than the safety of students and teachers".<sup>1</sup> In part, she took issue with schools weakening discipline as a behavioral management tool without actually addressing student behavior. While the issues addressed are of concern, DeVos missed an opportunity to provide schools with much needed resources in order to begin improving student behavior and, in turn, decreasing the use of discipline. Instead, she undid important steps that had been made to combat a racialized and costly discipline system in response to an unsupported link between school discipline and school shootings.*

*As Biden's Secretary of Education, Miguel Cardona, settles into his first year, he has the opportunity to address disparities in school discipline. While research on Restorative Justice (RJ) is nascent, it is becoming clear that, when implemented fully and over the course of several years, RJ decreases rates of exclusionary discipline, reduces racialized discipline, and improves school environments for students and teachers alike.<sup>2</sup> This paper analyzes the economic and human loss due to excessive exclusionary and racialized discipline in the American public school system and proposes a concrete policy solution to address these issues over the next decade.*

## THE PROBLEM

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Each year, millions of K-12 students are suspended and expelled from American public schools.<sup>3</sup> This has created a school-to-prison pipeline in the United States: students who drop out of high school are eight times more likely to be incarcerated than students who graduate, and the risk of a student dropping out of school increases substantially each

time that student is suspended.<sup>4</sup> In fact, a single suspension in ninth grade increases the risk of a student dropping out from 16 to 32 percent.<sup>5</sup> Not only does exclusionary discipline increase the likelihood that a student drops out of school, but in the time a student is suspended or expelled that student is 2.1 times more likely to be arrested.<sup>6</sup> Research conducted on youth in juvenile justice detention facilities further confirms this linkage, indicating that four in five had been suspended from school and one in two had been expelled.<sup>7</sup>

Black and Hispanic children bear the brunt of this exclusionary discipline. While Black students make up 15.5 percent of public school students in the United States, they represent 39 percent of students suspended from school, and over 50 percent of students who are referred to law enforcement or involved with in school arrests are Black or Hispanic.<sup>8</sup> This disparity in discipline begins as early as preschool, where Black students are 3.6 times more likely to receive suspensions.<sup>9</sup> Studies suggest that implicit bias plays a large role in the ways teachers and staff judge student behaviors, resulting in unequal uses of discipline.<sup>10</sup> In one example from research published jointly by the U.S. Department of Education and U.S. Department of Justice, a Hispanic student with a similar academic and disciplinary record to a non-Hispanic student will face a more severe punishment for the same infraction.<sup>11</sup> Regardless of intent, the administration of discipline in schools has a disparate impact on Black and Hispanic students.

As established, excessive discipline leads to an increase in student dropouts. In addition to the proven effects this has on student outcomes, student dropouts have

long-lasting costs and consequences for society at large. It is estimated that a high school dropout generates about \$209,210 in economic losses to taxpayers over his or her lifetime, a number that jumps to \$391,110 per student when larger economic factors are included.<sup>12</sup> Given the predictive nature of suspensions on dropout rates and the projected economic cost per dropout, it is estimated that each year the United States loses 11 billion in fiscal impact, such as lost wages, and 35.7 billion from the social impact dropouts have on taxes, health, crime, and public assistance.<sup>13</sup> These numbers only reflect costs resulting from dropouts who had previously been suspended from school, suggesting that overall costs could be even higher.

Despite its substantial consequences, common practice and written state laws impose few restraints on the use of exclusionary discipline, giving teachers broad authority to “take disciplinary action to correct a student.”<sup>14</sup> For example, teachers in Alabama are “expected to maintain order and discipline” and are “hereby given the authority and responsibility to use appropriate means of discipline up to and including corporal punishment.”<sup>15</sup> Furthermore, the only job training required for behavior management in the state concerns tactics for physically restraining students who misbehave.<sup>16</sup> In contrast, some states, such as Delaware, require schools to submit “school discipline improvement plans,” which include professional development training in implicit bias awareness, restorative practices, and classroom management.<sup>17</sup> Unfortunately, this is not the norm.

In 2014, the Obama administration tried to address this issue by publishing a “Dear Colleague Letter,” which indicated dis-

tricts could be put on notice if they were found to disproportionately suspend and expel certain groups of students. The main consequence of this effort was a civil rights investigation of schools across the country; however, this effort failed to make schools internalize social costs of discipline or decrease suspensions.

Despite the failure to address exclusionary discipline policies at the federal level, individual schools and school districts do have the power to enact rules and policies that address these inequities. As recently as 2019, 16 states and the District of Columbia had passed laws limiting the use of exclusionary discipline, primarily in the elementary grades.<sup>18</sup> In many states, schools and school districts have taken the initiative to implement RJ programs, despite underfunding and budget cuts.<sup>19</sup> Nonetheless, at least 40 states still allow students to be suspended for defiant and disruptive behavior, and all 50 states require students to be expelled for possession of a firearm on campus.<sup>20</sup> Furthermore, Betsy DeVos rescinded the Obama administration's guidelines and abdicated federal responsibility by defining school discipline as inherently a state issue.<sup>21</sup>

While research on the subject is still new and without serious randomized controlled trials, there is a growing body of evidence that RJ programming in schools can improve student-teacher relationships and school culture, providing a viable alternative to exclusionary discipline. RJ programming can take many forms; however,

in the context of this discussion, the definition set forth by the National Center for Restorative Approaches in Youth Settings is most accurate:

*[RJ is] an innovative approach to offending and inappropriate behavior which puts repairing harm done to relationships and people over and above the need for assigning blame and dispensing punishment. A restorative approach in a school shifts the emphasis from managing behavior to focusing on the building, nurturing and repairing of relationships.<sup>22</sup>*

In practice, this approach can include an emphasis on social-emotional learning, preventive, and post-conflict resolution programs, peer mediation, restorative circles, and community conferencing with students and educators.<sup>23</sup> These practices require training for teachers, as well as sustained financial support and administrative persistence: Schools that implement these programs do not see true cultural and behavioral shifts until at least two to three years, or even three to five years, after implementation begins.<sup>24</sup> However, once fully implemented, evidence indicates that RJ does lead to improved school communities and fewer behavioral issues.<sup>25</sup>

"Betsy DeVos rescinded the Obama administration's guidelines and abdicated federal responsibility by defining school discipline as inherently a state issue."

## POLICY RECOMMENDATION

It cannot be left up to the states to initiate the legal and policy changes necessary to decrease exclusionary and racialized discipline. Even if states do make these changes, schools and districts are not equipped with



the financial resources to replace exclusionary discipline with the RJ programming necessary to make long-term cultural changes within schools. The federal government must jump-start this process with financial incentives for districts to limit exclusionary discipline and replace it with RJ programming.

Specifically, the government should establish a grant program for districts that commit to the following three requirements: (1) implement policy that limits exclusionary discipline, (2) submit disciplinary records to the Department of Education Office of Civil Rights, and (3) be designated a Title I public school. This grant would offer financing sufficient to fully fund an RJ program for each district receiving the grant. At a typical school, the grant would cover paid salaries for trained RJ staff and counselors, continuing professional development for teachers, and trained consultants to help administrators develop an academic schedule that allows for student social-emotional learning, as well as teacher-student participation in RJ practices.

Funding could be allocated based on a number of factors, such as the number of schools and students in a district, as well as the suspension rates. For example, in a school district with 36 schools implementing RJ practices, the cost

is about 3.2 million annually.<sup>26</sup> The first five years of the program would likely be the most costly, as it takes at least three to five years for schools to realize cultural

and behavioral shifts.<sup>27</sup> After five years, the federal government could begin to phase out its funding while providing consultation services to assist states in reallocating savings from corrections to RJ programs in schools. Ideally, after 10 years, states will see savings, as the economic costs of dropouts greatly outweigh the cost of running RJ programming.

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## POLICY EFFECTS & EVIDENCE

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This policy recommendation would achieve two key goals: (1) decrease the number of suspensions and expulsions and (2) decrease racialized discipline.

To address the lack of RJ policies, the proposed grant ties federal funding to rules limiting exclusionary discipline; districts would need to commit to establishing policies that cap exclusionary discipline — in the form of district limits on expulsions and suspensions — prior to obtaining the grant dollars.

These limits on exclusionary discipline will lead to immediate improvements in the number of students suspended and expelled; however, such limits will not intrinsically change student behavior within schools, nor will they ensure Black and Hispanic students will be treated more equitably by their teachers within classrooms. This is due to the fact that these policies offer no staff training or school programming following the policy shift, a necessary element of sustained

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"Well-behaved minority students will likely bear the brunt of the consequences, as their classrooms will become increasingly disrupted because teachers are unequipped to manage their classrooms without the use of exclusionary discipline."

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success.<sup>28</sup> For example, after limiting exclusionary discipline in their district, the Los Angeles school superintendent noted that the district failed to provide staff with training needed to adequately implement the new discipline policies.<sup>29</sup> This is reflective of broader implementation flaws that fail to ensure culturally responsive practices necessary to change teacher-student interactions and decrease racialized discipline.<sup>30</sup> Well-behaved minority students will likely bear the brunt of the consequences, as their classrooms will become increasingly disrupted because teachers are unequipped to manage their classrooms without the use of exclusionary discipline.

"...across the United States — within five years of the program, the country will be saving billions of dollars currently lost due to high school dropouts."

Currently, the United States loses between 7.5 and 13.5 billion annually due to the societal impact of suspensions and expulsions noted earlier.<sup>33</sup> The proposed grant program's limits on exclusionary discipline would lead to immediate economic savings from the decrease in student dropouts. Further, while RJ is expensive to implement — approximately 5 billion per year across the United States<sup>34</sup> — within five years of the program, the country will be saving billions of dollars currently lost due to high school dropouts. Further, the number of students involved in the criminal justice system will decrease, and funding for those programs can be reallocated to cover the costs of RJ.<sup>35</sup>

In response to this gap in training and support, the proposed federal grant would fully fund RJ practices for at least 10 years following rule changes. Studies on RJ programs have revealed that teachers who implement RJ practices with their students see a significant decrease in the racial discipline gap in their classrooms.<sup>31</sup> Though RJ alone cannot eradicate racialized discipline entirely, studies indicate that, when implemented correctly, relationships improve between students and teachers regardless of race and ultimately close the racial discipline gap.<sup>32</sup>

To understand the economic impacts of the grant, two long-term costs must be examined. The first is the societal cost of students who have faced exclusionary discipline and enter the criminal justice system. The second is the cost of in school RJ programs.

## CONCLUSION

Presently, a small fraction of students in public schools benefit from policies limiting exclusionary discipline, and there is no national impetus for states to pass legislation broadening these practices. While several state legislatures enacted bills limiting suspensions or expulsions from 2000 to 2018, these policies vary wildly and are still few and far between.<sup>36</sup> Despite the fact that districts that enacted disciplinary reforms saw positive results — such as a staggering drop in average suspensions from 8 percent to 0.55 percent in one year — as of 2017, only 50 school districts across the country had implemented such policies.<sup>37</sup>

There exists a compelling, long-term economic and social argument to provide administrators and teachers with

the RJ funding necessary to improve student-teacher relationships — the key to decreasing excessive and racialized discipline in schools. The current administration seeks “not to divide, but to unify,” and this grant provides a unique opportunity

to do just that by incentivizing the change in discipline policies necessary to keep students in school, improve school culture, and change the trajectory of millions of students' lives.

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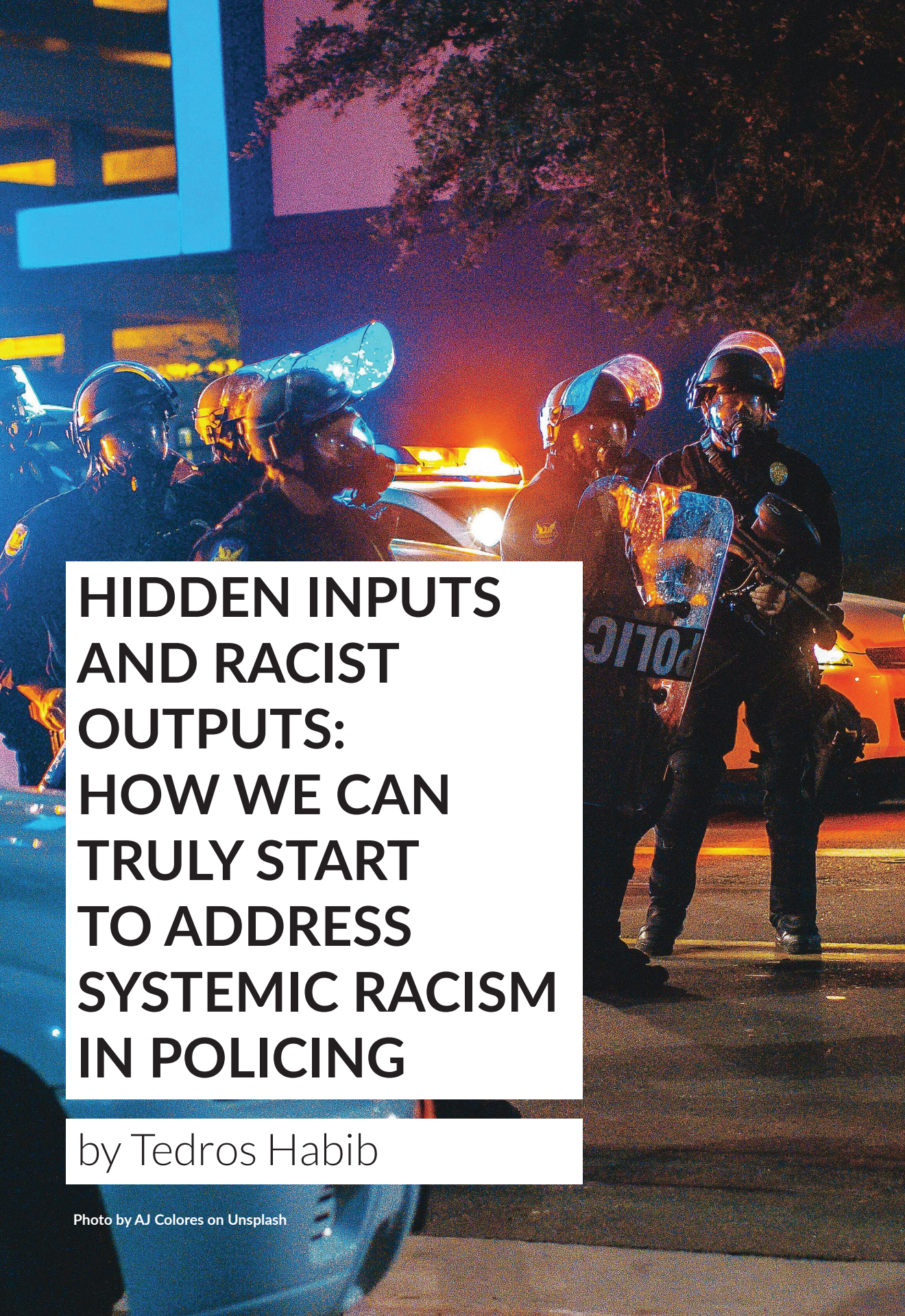
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32. Gregory, Clawson, Davis, and Gerewitz, "The Promise of Restorative Practices to Transform Teacher-Student Relationships and Achieve Equity in School Discipline."
33. Rumberger and Losen, "The High Cost of Harsh Discipline and Its Disparate Impact"; Henry M. Levin, "The Economic Payoff to Investing in Educational Justice." in *Schools in Transition*, Leiden: Brill Sense, 2017: 161-188. In a study of just Texas students, total lifetime savings for a single cohort of students who dropped out of school due to discipline would range from 750 million to 1.35 billion. Texas public school students account for approximately 10 percent of all public school students in America. When applied across the country, the range would be from 7.5 to 13.5 billion. It is worth noting that the factors playing into this number vary by state, so there is room for error. This estimation comes from economic models that compare earnings, crime, health, and welfare of high school dropouts and high school graduates over their working adult lifetimes and takes into consideration lost tax revenue. However, this estimation does not factor in cost of involvement in the juvenile justice system, which is significantly higher for high school dropout than for students who graduate from high school. Researchers examining data from California estimate that 1.1 billion is lost each year due to high school dropouts involved in juvenile crime (Belfeld, C. R., & Levin, H. M. (2009)).
34. As noted earlier in the paper, a school district of 36 schools that fully funded RJ programming spends about 3.2 million per year. There are approximately 56,000 public schools designated as Title I that would qualify for RJ funding. The following calculation was done to roughly estimate the cost of RJ funding for one year in America.  $56,000 \cdot (3,200,000/36) = 5$  billion. This could be a wild over- or under-estimate, as this did not take into account the size of the schools and the resources needed at each school.
35. --. *Saving Futures, Saving Dollars: The Impact of Education on Crime Reduction and Earnings*. Alliance for Excellent Education, September 2013. <https://mkoall4edorgjixiy8xf9.kinstacdn.com/wp-content/uploads/2013/09/SavingFutures.pdf> includes the following statistic: "The Alliance for Excellent Education (the Alliance) estimates that a 5 percentage point increase in the national high school graduation rate for male students alone would save the nation an overwhelming 19.7 billion annually."
36. Rafa, "The Status of School Discipline in State Policy." As of 2018, while 30 states and DC encourage districts and schools to use alternative school discipline strategies, 40 states still allow students to be suspended for defiant or disruptive behavior.
37. Watanabe and Blume, "Why Some LAUSD Teachers Are Balking at a New Approach to Discipline Problems."





# HIDDEN INPUTS AND RACIST OUTPUTS: HOW WE CAN TRULY START TO ADDRESS SYSTEMIC RACISM IN POLICING

by Tedros Habib

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# HIDDEN INPUTS AND RACIST OUTPUTS: HOW WE CAN TRULY START TO ADDRESS SYSTEMIC RACISM IN POLICING

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Edited by: Larry Cai and Katherine Cohn

*Police in America can easily be viewed as an independent arm of government within which systemic racism is a problem. This, however, furthers a belief that the problem lies mainly in policing itself. Police are, in reality, the functioning arm of a larger government that has defined the rules and boundaries within which police have been able to function for centuries. America has finally come to a point in time where there is bipartisan agreement in the necessity to examine the role of police in perpetuating systemic racism in the country. Doing so will require a systematic approach. This means we will have to look at the different components of the criminal justice system and how they each contribute to racist outcomes in policing. Looking at these outcomes along with the government's response to the harms they cause can shape a perspective of an interdependent existence between the different branches of the criminal justice system in contributing to racist outcomes in society. It is important to look at the problems that have arisen in the past with policing, and the aforementioned factors which enable them to truly address the problem.*

## INTRODUCTION

Looking at racism in a systemic way requires the ability to discern the difference between *individuals committing overt acts of racism and a system that perpetuates racist outcomes.*<sup>1</sup> Both can exist independently of one another as easily as they can exist together. Policing in America has been a direct function of racism interwoven into the fabric of what America is today. And yet, systemic racism is difficult to highlight due to the inability to link unique individual events across a nation to one enabling source.

This paper examines the cause of systemic racism in policing by examining different statistical outcomes of policing. As a system,

policing is a function of its parts. The parts, or “inputs,” of this system are people. Statistical data that would or could skew the actual percentage of the racial makeup of a group of people within the scope of one’s research should be viewed as a racist outcome of that system until there is evidence to show it is not. For example, Black and Brown residents of a town who have been stopped, arrested, or have had force used on them at higher rates than White residents of the same town, are likely victims of systemic racism in policing.

This paper also examines how individual parts of the criminal justice system perpetuate the existence of systemic racism and im-



pact the failures of law enforcement. Where police have been the main actors and contributors of racist outcomes in policing, other systems, such as legislatures, courts, and corrections, have been culpable as well. Unchecked, this leads to years of harm being imposed upon people of color in communities across the nation.

One solution discussed later is the creation of a national oversight body with the authority to proactively audit policing practices in any law enforcement jurisdiction. Another would be the mandate that major officer-involved incidents be investigated by both police agencies and district attorney offices outside of the jurisdiction of the involved agencies. While these governmental solutions are possible to accomplish, one major hurdle in doing so is the support of their implementation. There are people who would prefer the continuation of the status quo for reasons I will describe below.

## SYSTEMIC RACISM VERSUS ACTS OF RACISM

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In 1955, the accusations of Emmett Till offending a White woman and his subsequent murder were overt acts of racism. The acquittal, by an all White and all male jury of the men who murdered Till, was a

direct result of systemic racism. In 2012, the stalking and killing of Trayvon Martin by a person in Florida was an act of racism. His perpetrator's acquittal was based on a controversial law called Stand Your Ground and was a result of systemic racism.<sup>2</sup> The hunting down and murder of Ahmaud Arbery by a retired police officer and his son while a neighbor followed and recorded the incident would have slipped through

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"Policing in America has been a direct function of racism interwoven into the very fabric of what America is today."

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the cracks had the people involved not been so emboldened by systemic racism that they did not see enough fault in their actions to cover them up.<sup>3</sup> What these cases have in common is the fact that none of the killings were committed by active law enforcement but still had protection by the criminal justice system.

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"...there is a layer of protection that society has granted to police which was inexplicably extended to the civilian perpetrators above, and that hurts our ability to properly engage with the issue at hand."

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While it is true that the institution of policing has its history of racist actions and racist outcomes, there is a layer of protection that society has granted to police which was inexplicably extended to the civilian perpetrators above, and that hurts our ability to properly engage with the issue at hand. Recently, policing in the U.S. has been at the center stage of the nation's self-reckoning with race relations and the purpose of police altogether. The system within which policing functions and is provided protection, however, has been largely ignored.

A “system” can be seen as a set of parts that work together to produce an output. The output itself does not necessarily have to be intended to benefit all involved, but it is an output, nonetheless. When looking at policing as an insular system, it is important to note that it is also a part of the criminal justice system as a whole. The criminal justice system itself consists of three *independent* systems that work together. The word *system* is something we can mostly define in the context within which it is discussed. It is the second word of *systemic racism*, which tends to lose many who do not already understand it, through no fault of their own.

Oxford Dictionary defines the word “racism” as “prejudice, discrimination, or antagonism directed against a person or people on the basis of their membership in a particular racial or ethnic group, typically one that is a minority or marginalized.”<sup>4</sup> That very definition of racism, in essence, invalidates the question of systemic racism because it is assumed to be something *directed* by a sentient being. Since systems and structures do not have feelings, nonbelievers in the existence of systemic racism might find difficulty accepting the phrase itself as something easy to dissect.

Racist outcomes do not necessarily have to have racist intent by the actors (police) within a system. The racial disparities in policing that exist around the country show a fault not in any one person but through generations of enforcing laws meant to protect a system that was built around

White supremacy. To examine the cause of systemic racism in policing, it helps first to break down the larger criminal justice system and position policing within that larger system.

"Racist outcomes do not necessarily have to have racist intent by the actors (police) within a system."

## EVOLVING ROLE OF POLICE

President Lyndon Johnson’s Crime Commission’s report *The Challenge of Crime in a Free Society* in 1967 states “the criminal justice system has three separately organized parts — the police, the courts, and corrections — and each has separate tasks. However, these parts are by no means independent of each other”<sup>5</sup> The ethics of this criminal justice system, however, are subject to the laws it is sworn to uphold. As the United States’ history has unfolded, legal and ethical codes born from racism have been absorbed into the criminal justice system’s processes.

In the years after the Civil War, the “Black Codes” were laws created to keep control over freed slaves.<sup>6</sup> While many policies created during the Reconstruction period granted Black people rights, they also created obstacles to ensure the playing field was uneven. Vagrancy laws in the South gave police the power to arrest Black people for minor violations, committing them to involuntary labor. This created a de facto slave labor force to replace the one that was lost after the Civil War. Other laws in Southern states prohibited Black people from obtaining jobs without written approval.<sup>7</sup> Based on these laws, police made arrests, Black people were convicted by courts more frequently, and harsher

sentences were handed out to be served in correctional institutions. As the post–Civil War Era moved on, “Black Codes” evolved into Jim Crow laws to explicitly maintain the inequality that was desired by those who created them.

Segregation in America was recent enough that there are Black people still alive who were forced to drink from colored only water fountains and who were threatened with violence as children when attending schools that became integrated. Jim Crow laws were a way of life that defined segregation, but they faced opposition from those who were harmed by it. As the movement for equality in America grew during the twentieth century, there were great leaders who stood up for injustice. However, those who opposed equality and who had created the laws to ensure the futility of such a movement, had a tool — or rather a system of tools — at their disposal that are still used to this day. When people would stand up to the powers that be, the powers that be would call the police to help them.

Throughout America’s racially volatile history, police have maintained law and order through either actual violence or fear of violence upon the oppressed class. It is this general practice of violence by the police (or fear of) that has quelled anti-racist movements. Ultimately, this practice of violence results in individual tragedies. When one of these tragedies is shocking enough to be catapulted to the nation’s attention, then and only then is action forced.

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“When people would stand up to the powers that be, the powers that be would call the police to help them.”

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The civil rights movement in the United States did not begin with John Lewis, Rosa Parks, or Dr. Martin Luther King Jr., but they are the most famous examples of the government’s use of police violence against its own people, consequently furthering the cause for justice and equality. The imagery of police clashes with citizens during major movements in recent American history portrays police violence as upholding law and order. The Black people in the infamous videos during the civil rights era were being attacked by police dogs and sprayed by fire hoses.

Their fight for equality was met with the criminal justice system’s toolbox built on post–Civil War era racism. Slowly but surely, however, public opinion roused by tragedy helped push the movement forward.

## **SYSTEMIC RACISM IN MODERN POLICING**

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Sadly, despite the efforts of the Civil Rights Movement, the evolution of systemic racism has brought us to today where even a murder by a police officer occurring in broad daylight, witnessed by multiple bystanders and other officers, and captured on camera, can go days without an arrest. When George Floyd was murdered by a Minneapolis police officer on May 25, 2020, there was a broad consensus that the actions taken by the officer who killed him were callous and inhumane, but that was not the only problem with that scenario. There was a group of officers standing around that did nothing to stop the officer with his

knee on the neck of Floyd while he pleaded for his life. There was an initial statement issued by the Minneapolis police department informing the public that Floyd was a suspect who “physically resisted officers” and appeared to be “suffering medical distress.”<sup>8</sup> It was not until four days after the murder that the Minneapolis police officer, primarily responsible for Floyd’s death, was arrested and charged.

A few years before, in 2014, 12-year-old Tamir Rice, who was playing with a toy pistol in a park, was killed by a then Cleveland police officer. Rather than being charged for the unnecessary taking of a child’s life, the police officer was fired for not being honest on his job application. No charges were ever brought against the officer, and he was even hired by another police agency a few years after he killed Rice.<sup>9</sup>

When it was announced that none of the officers involved in the death of Breonna Taylor were going to be charged with causing her death, even members of the grand jury who heard her case expressed disappointment. One of them was quoted as saying, “Was justice done? No, I feel that there’s quite a bit more that could have been done or should have been presented for us to deliberate on.”<sup>10</sup>

Even large cities like San Jose in the historically progressive state of California have shown racial disparities in its policing practices. The department enlisted the assistance of the University of Texas at El Paso to conduct a study on the detention data for a period between 2013 and 2016. The analysis showed Black people were approximately twice as likely to be detained on traffic stops compared to their estimated demographic representation in the city.

When large municipalities acknowledge racial disparities in stop data, the criminal justice system must be examined further to eradicate a system wide problem.<sup>11</sup>

Barbara Reskin, PhD, a sociology professor and renowned author, gives a reason why systems are resistant to change in her paper on race discrimination “The Race Discrimination System,” stating “Blacks suffer harsher penalties than Whites in social control systems.”<sup>12</sup> This is proven to be true as shown in a force analysis report created using data from San Jose Police Department’s Police Force Analysis System.<sup>13</sup> In this report, although Black people make up three point two percent of the city’s population, they account for 13.5 percent of the city’s arrests and 14 percent of San Jose Police Department’s uses of force. In the same report, although White people make up 23.6 percent of the city’s population, within the demographic, they account for a smaller percentage of the arrests at 20.8 percent and use of force at 21.4 percent. This shows proportionally that Black people are more likely to be arrested and have force used on them than White people.

Policing in America has racist origins and does the bidding of racist laws and lawmakers. However, it is not an explicitly racist institution. The main issue is that the laws created in this country, which police enforce and judicial bodies interpret, were not created with the best interests of every citizen in mind. This causes the government of a nation with unjust beginnings, which exists solely to serve its people, to be in a constant state of self-correction. Policing, which was created to enforce laws created by this government, is in a perpetual state of catch-up with this self-correction. While each case demonstrated above appears to be different,



together they form a narrative that shows evidence of one thing: A system resistant to change because it is designed to protect police. Reskin gives us a reason why systems are resistant to change: “[The] groups that contributed to the creation of a system and benefit from it have a stake in its survival.” Failures in policing systems reflect the failures of legislation and in the criminal justice system. As a result, the system of policing is protected by the system(s) for which it functions. The benefit of the doubt is given almost universally, even in the most egregious of circumstances and, regardless of facts, by courts and corrections alike.<sup>14</sup>

## RACIST OUTCOMES

In 2015, then President Barack Obama’s Justice Department initiated a civil rights investigation into the Ferguson Police Department after the fatal shooting of Michael Brown. The investigation found that the department “engaged in a pattern or practice of conduct that violates the First, Fourth, and Fourteenth Amendments of the Constitution.”<sup>15</sup> The Justice Department also found that Ferguson Municipal Court was guilty of “exacerbating the harm of Ferguson’s unconstitutional police practices and imposing particular hardship upon Ferguson’s most vulnerable residents.” Unfortunately, the victims of these civil rights violations were overwhelmingly Black. Even though Ferguson’s population was 67 percent Black, from 2012 to 2014, African Americans accounted for 85 percent of vehicle stops, 90 percent of citations, and

93 percent of arrests made by Ferguson police officers.<sup>16</sup> Ninety percent of documented uses of force by Ferguson police officers were against Black people.<sup>17</sup> This egregious example of systemic racism across both policing and the courts is not specific to one locality, region, or state. Municipalities around the nation have been shown to have similar tendencies.

The death of Freddie Gray at the hands of Baltimore police in 2015 caused an uproar which led to civil unrest across the nation. According to the charging documents in Freddie Gray’s arrest, police chased Gray on foot after he fled when he noticed their presence. They noticed he was in possession of a knife after they arrested him.<sup>18</sup> The reason for his stop — making eye contact with police who were in his neighborhood and then running — is not supposed to be considered a reason for detention in a free United States. The subsequent apprehension was made with no probable cause for any crime whatsoever. The illegal switchblade that the police discovered after he was unlawfully arrested was later deemed not a switchblade and was considered legal by the state’s attorney for Baltimore.<sup>19</sup>

“The main issue is that the laws created in this country, which police enforce and judicial bodies interpret, were not created with the best interests of every citizen in mind.”

The above circumstances led to the events that caused Freddie Gray’s death, but the state attorney ultimately decided not to bring charges against the officers involved; although, the city was quick to settle with the family of Gray.

The 6.4 million dollar settlement was arguably a hefty sum but called premature by others, for it was settled before the officers

even faced trial.<sup>20</sup> It is likely the timing of the settlement helped the city of Baltimore avoid additional costs it would have incurred if it had been discovered at trial that there was misconduct by the city, or worse, that the city knowingly swept the misconduct under the rug. The city of Baltimore protected itself by paying the settlement and not airing out its dirty laundry in a civil trial. This is a clear example that different systems have a stake in their own survival, and protecting police is a byproduct of that self-interest. The problems do not stop at the local level, however.

On August 10, 2016, the Justice Department released a report that found the Baltimore Police Department “engaged in a pattern or practice of conduct that violates the constitutional and federal statutory rights of city residents, and that the department lacks sufficient systems to minimize these violations.”<sup>21</sup> In this same report, Freddie Gray is mentioned several times. The report also revealed that thousands of people were arrested for crimes such as “hindering,” “interfering,” and being “rogue and vagabond.” People were also arrested for playing cards or dice. These nonviolent quality of life types of crimes bear a striking similarity to the “Black Codes” that were created after the Civil War, during reconstruction. The report also documented prosecutors declined to charge over 11,000 arrests by Baltimore Police Department between 2010 and 2015 because they “lacked probable cause or otherwise did not merit prosecution.” This means prosecutors had thousands of oppor-

"This egregious example of systemic racism across both policing and the courts is not specific to one locality, region, or state. Municipalities around the nation have been shown to have similar tendencies."

tunities to address the problematic arrests over those five years with the Baltimore Police Department and chose instead to simply not charge the cases.

When the Justice Department reviewed the Baltimore Police Department’s reports, it found that officers regularly made detentions that were con-

sidered unconstitutional arrests based on the lack of justification and amount of time the detentions would take. After the Justice Department’s scathing report of failures in every echelon of the department in protecting its mostly Black population from civil rights violations, just like the report on Ferguson, not one person was held to answer for the systemic racism of the police.

The federal government, which is completely independent of Baltimore, officially declined to bring federal charges in September 2017, stating that “evidence is insufficient” and that they were, “unable to prove the officers willfully violated Gray’s civil rights.”<sup>22</sup> When looking at how the system was able to protect those who protected it, the key term to focus on is “willfully.” The federal government determined the officers themselves did not purposefully violate the rights of a man who simply ran in his own neighborhood. This sends a clear message that the officers were functioning within a system that allowed for them to stop him without cause. While the Justice Department found no intentional wrongdoing for Gray’s death, they continued on with the consent decree, explicitly acknowledging a

large-scale problem with the Baltimore Police Department's practices.

While each case in each city is different, they all tend to show evidence of one thing: A criminal justice system inherently designed to protect individual police officers. We will see further proof of this in the next section when we explore the government's response to problematic policing practices around the nation.

### GOVERNMENT APPROACH

Instead of holding individuals accountable, the Justice Department responded to investigations into and findings of civil rights violations of their respective citizens in Ferguson and Baltimore, as well as many other agencies around the nation, with the consent decree.

In recent memory, consent decrees have become the catchall for the Justice Department in addressing issues with problem departments throughout the

nation. For the purposes of law enforcement, a consent decree is a written agreement between the Justice Department and a law enforcement entity that is overseen by a judge and requires an agency to meet a certain set of conditions before eliminating oversight. If a police department or other law enforcement agency displays a pattern of violating the rights of its citizens, the federal government can step in to take this type of corrective action. When the government found Ferguson was violating the rights of its citizens, the Justice Department stepped in and entered a consent decree with the city to ensure they would work to improve

the policies and practices of their police department.<sup>23</sup> Doing so appears to be a good faith effort to reform harmful practices by the city of Ferguson, but it was still not effective.

There was a strong effort made to reform problem police agencies during President Barack Obama's administration. The Department of Justice entered into 15 consent decrees with law enforcement agencies during President Obama's tenure.<sup>24</sup> That many different organizations of different sizes, spanning geographically across the nation (Los Angeles, New Orleans, Portland, Baltimore,) and having to be monitored by the federal government, cannot be reduced to a number of isolated organizational problems. Solving these issues must be looked upon with a larger systems lens.

"This sends a clear message that the officers were functioning within a system that allowed for them to stop him without cause."

The idea of entering a consent decree on a police agency may initially seem like an effective approach to a policing issue in a local government. The fact

is, however, the laws that exist to protect police at the local government level (the Constitution) are also the same laws upon which our nation's entire legal system was built. The actions of the police are protected by the Constitution and case law, which means that even if the problem of systemic racism in policing does not exist in every locality now, there is always the potential that it will in the future because of the legal framework currently in existence. It is because of this, as we will see, the current practice of utilizing consent decrees is an inefficient strategy to solve the problem of systemic racism in policing in the country.

## WHY CONSENT DECREES DON'T WORK

Consent decrees address problem departments but do not address problems system wide. Consider a large company that created baby cribs only to find a part of the cribs was discovered to be defective, causing injury or death to babies. The company would not address the issue by repairing the parts as defects and harms occur. That would be considered intentional negligence. A complete recall would be issued to repair the problem that might potentially occur in every single product. While the recall is happening, if there was a problem anywhere from the inputs to the final product, the company would ideally do the right thing and take a critical look at what went wrong in the entire process to ensure another defect does not occur.

If we translate the above scenario to systemic racism in policing, if there are a higher number of Black people stopped and arrested by police and force is used at a higher rate compared to the rest of the nation, then a recall (reevaluation) of the criminal justice system needs to occur. We, as a nation, have a responsibility to see where and why these actions are occurring and what must be changed in order to prevent them from happening again. Even though, the federal government's current practice of addressing defects as they occur by utilizing consent decrees is ineffective and not sustainable in fixing the larger problem, the system has still made further attempts to insulate police and itself.

On November 7, 2018, the Department of Justice's Attorney General Jeff Sessions issued a memo narrowly defining the scope

of consent decrees.<sup>25</sup> The memo's intent was to, "ensure that consent decrees with state and local governments are narrowly tailored to remedy the alleged violations."<sup>26</sup> This is a conscious directive to not engage a system and to make sure that only parts of problems are addressed and not viewed through a wider lens. The memo also made monitors who oversee consent decrees essentially ineffective by replacing them frequently and setting limits for the cost of the monitors in the consent decrees themselves. Directives like these are designed to take the teeth out of already dull consent decrees, and the institutions that are under them take notice.

The Chicago Police Department entered into a consent decree with the state of Illinois, effective in March 2019, with Margaret Hickey appointed as the Independent Monitor.<sup>27</sup> There were specific tasks for the department to complete before its first semiannual independent monitoring report. The department only completed 17 of those 50 tasks. The second semiannual monitoring report revealed the Chicago Police Department missed more than 70 percent of its deadlines.<sup>28</sup> The monitor's report expressed appreciation for the department's efforts, as ineffective as they were, but the Illinois attorney general's office was much more critical in its comments, stating that "the city [Chicago] and CPD have done little to reform the city's largely ineffective police accountability system" and that they were "concerned that the report obscures the extremely slow pace of the city and CPD's progress."<sup>29</sup> Although comments like these criticizing departments are valid, they are not made often enough and when they are, they are usually done so in the wake of a tragedy.



## THE “DEFUND” PUSH

After the murder of George Floyd and the nationwide protests in mid-2020, one proposed solution for police violence had grassroots origins and has gained some traction since its inception: Defund the police has gained momentum as an idea that “‘public safety’ spending should prioritize housing, employment, community health, education and other vital programs, instead of police officers.”<sup>30</sup> This approach sounds simple enough, but a closer examination of the slogan and its intent also reveals its failure to properly engage the system based on some of the underlying issues it creates.

First, a *robbing Peter to pay Paul* scenario arises when reallocating funds from one department to another. If the issue was attributed to deficiencies in policing, then resources would need to be allocated to training the current police force that is in place. While there are certainly deficiencies in resources for the unhoused, those with mental illnesses, and other social programs, the money and staffing to address those issues do not necessarily have to come from police budgets. They can be found from other nonpublic safety departments or created from a small tax.

Cutting budgets of police departments may force them to become more efficient in the short term with services provided to the public, but systems adapt to change. The inherent race disparities in policing, as well as the rest of the criminal justice system in the United States, would not be addressed by simply defunding police departments. In “Making Policing More Affordable,” published by Harvard’s National Institute of Justice, stated that in regard to performance measurement systems, “the most

important benefits of good policing such as diffusing social tension and preventing the escalation of interracial conflicts are never measured.”<sup>31</sup> Racial justice is not factored into the equation of defunding police, and even if it were, there is no guarantee this would translate to the rest of the criminal justice system. A criminal justice system that changes the practices of the officers who enforce laws will adapt to its conditions to maintain the status quo. To properly engage a system in need of change, we must work to understand how it got to where it was.

While we have already acknowledged the roles of lawmakers in the criminal justice system, we must also acknowledge the lack of accountability in law enforcement when egregious violations of the rights of citizens occur. Taking a critical look at the systems in place to legally protect police could help us start to truly engage systemic racism in policing. These systems range from Internal Affairs to district and state attorneys’ offices to police unions.

## ACCOUNTABILITY IS KEY

The practice of police departments investigating their own misconduct complaints is commonplace, but an independent auditor system would provide a set of checks and balances to ensure proper and transparent investigations are being completed. Citizen complaints, as they are conducted in cities without independent auditors, are only seen through the eyes of law enforcement officers and the perception of the investigators looking into the complaint could be seen as one-sided. There is also an extra layer of accountability involved when a third party oversees complaints being investigated by city police departments. The

Chicago Police Department, for example, only investigates complaints against officers if they meet a specific set of criteria — the complaint meets the burden of proof and officers were acting improperly. This means if an officer commits an act that is considered wrong, but the act was within the department’s policy, the officer is not disciplined. This type of approach is similar to the consent decree approach by the federal government in that it does not properly address a larger systemic issue. It addresses harm but does nothing to trace back to the source of it.

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"To properly engage a system in need of change, we must work to understand how it got to where it was."

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comes to bail setting, legal representation concerns, and sentencing for nonviolent crimes. Reskin tells us racial disparities are larger when arrests are discretionary<sup>32</sup> and addressing these disparities with honesty requires acknowledging implicit biases exist in not only policing but the nation as a whole.

Following the events in Ferguson, Missouri, Dr. Nazgol Ghandnoosh PhD, a criminal justice researcher, wrote “Race and Punishment: Racial Perceptions of Crime and Support for Punitive Policies”

## POSSIBLE SOLUTIONS

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While the problem itself spans across multiple systems, there are actions that can be taken on a national scale to address police assaults and begin to rebuild public trust. There is currently no national oversight body with the authority to conduct audits on police agencies or enforce equitable policing practices. If self-initiated arrest statistics of individual agencies are heavily skewed toward a demographic that is not proportional to the general makeup of that jurisdiction, an analysis should be conducted into why it is happening and what corrective actions should be taken, if any. The analysis should account for socioeconomic conditions in a city as well as historic residential segregation practices that might have led to a person of color to be more likely to engage with police than a nonperson of color. This could provide valuable information to police on equitable policing strategies. It also might better inform the criminal justice system when it

and noted that in a survey, White respondents overestimated the crimes committed by Black people by 20–30 percent.<sup>33</sup> This means that the average White respondent in that survey could have looked at the fact that citations and arrests of Black people in Ferguson were 90 percent and 93 percent respectively, even though the city’s makeup was 67 percent Black, and found nothing was amiss. When people do not identify problems due to the implicit biases they hold, and no corrective action is taken, it propagates the continuation of those biases. This continuation leads to multigenerational racist police outcomes and mistrust of the police.

Mandating officer-involved incidents be investigated by both police agencies and district attorney offices that are outside of the jurisdiction of the involved agencies can also help rebuild some of that trust. District attorney offices work very closely with the law enforcement agencies within their jurisdiction. This creates an often

ignored conflict of interest when deciding on whether criminal charges should be brought against officers. As law enforcement agencies themselves should not oversee investigating their own officer-involved incidents, district and state attorneys should not be responsible for prosecuting officer-involved incidents that occur in their jurisdictions.

The above are ways that have been successful in reducing harm in the past with other police departments, but the changes only happened after years of poor practices that led to racist outcomes. That resistance to change led to tension and mistrust between people of color and the criminal justice system. When police do wrongly kill a person of color, it is almost an expected effect of a system of policing with racist outcomes.

This, however, can easily be interpreted as an individual officer committing a racist act with no basis in fact. The truth is police do not have to be racist for policing to be racist. It can be difficult, if not impossible, to expect a community to give the benefit of the doubt to any individual officer, as they are seen as the cog in that system that has produced racist outcomes for years.

Other effective solutions to replacing a system of racism in policing with an equitable one already existed at local levels, but we have failed to create national standards for policing. President Barack Obama's task force on 21st century policing lists six pillars as a framework for increasing public

trust in policing. Some departments and communities are already actively working to implement these effective solutions. Properly approaching and addressing systemic racism in policing and the criminal justice system, however, ultimately, means acknowledging systemic racism exists and/or has the potential to exist everywhere because of the very nature of the laws that were created and are being enforced.

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## CONCLUSION

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To treat systemic racism in policing, it is mandatory that a systematic approach is taken to treat all aspects of the criminal justice system that institutes and reinforces systemic racism. A systematic approach is not reactive in solely solving issues of policing from department to department after relations between police and the communities they serve have already reached a tipping point. A systematic approach is proactive and creates guidelines for every law enforcement agency to follow in terms of paying attention to racist outcomes and holds not just faceless agencies accountable but also individual officers for actions that are found to be wrong. A systematic approach means police, district attorney's offices, courts, and scholars working together and critically examining other portions of the justice system which enable racist outcomes to exist. Only with a systematic approach can we say we are treating systemic racism in policing with the seriousness it deserves.

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"It addresses harm but does nothing to trace back to the source of it."

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## AFTERWORD

On April 20, 2021, former Minneapolis police officer Derek Chauvin was convicted, by a jury, on all three charges related to George Floyd's murder. On April 21, the day after the verdict, the Justice Department announced it opened a "pattern or practice" investigation into the city of Minneapolis and the Minneapolis Police Department. According to the Department of Justice, "pattern-or-practice cases begin with inves-

"When people do not identify problems due to the implicit biases they hold, and no corrective action is taken, it propagates the continuation of those biases."

tigations of allegations of systemic police misconduct and, when the allegations are substantiated, end with comprehensive agreements designed to support constitutional and effective policing and restore trust between police and communities."<sup>34</sup> What will likely follow if the allegation is sustained is another consent decree. This sequence of events further highlights the importance of aggressively and proactively pursuing a more equitable system of criminal justice before more lives are unnecessarily taken.

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# **DATA PRIVACY REGULATION: A PROMISING APPROACH TO REDUCE THE SPREAD OF FALSE INFORMATION ONLINE**

by Heidi Wallace

# DATA PRIVACY REGULATION: A PROMISING APPROACH TO REDUCE THE SPREAD OF FALSE INFORMATION ONLINE

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*Social networking companies are spreading too much false, harmful content online. The rapid adoption of social networking technology has changed the way people receive their information, offering new, effective methods to rapidly spread false content. The scale of disinformation has been growing, adversely impacting democratic institutions and public health and heavily targeting marginalized communities. Lax regulations have allowed social networking platforms to enjoy robust legal immunity, and their business models have helped to create an ecosystem that fuels widespread disinformation. Government must intervene in order to correct for the negative externalities produced by this market, as well as to protect democratic institutions and minorities from adverse consequences. This memo evaluates two policy alternatives to address false information's spread: (1) enacting a federal data privacy law to regulate data use and sharing, and (2) repealing Section 230 of the Communications Decency Act (CDA) to remove liability protections for content posted on websites by users. These options are assessed on the basis of effectiveness, equity, and political feasibility. Enacting a federal data privacy law, though it may encounter formidable political opposition, would provide the highest level of effectiveness and equity and offers the best solution for tackling disinformation.*

## INTRODUCTION

In the past 15 years, the social networking landscape has exploded, offering the world extraordinary interconnectedness. Facebook currently boasts 2.7 billion active users posting 300 million photos daily, and Twitter hosts another 330 million users who send six thousand tweets every second.<sup>1</sup> On YouTube, 2 billion users upload 500 hours of new video content every minute.<sup>2</sup> As a result, the way people

access information has changed dramatically. One in five U.S. adults now prefer to get their news from social media, and 43 percent agree they get at least some of their news on Facebook.<sup>3</sup>

This unprecedented change in information exchange has created a breeding ground for false and harmful information to spread rapidly across far-reaching, virtual networks, leading to real-world harms. The phenomenon of

false information begins at the user level, with malicious actors intentionally planting it to sow harm (known as disinformation) or uninformed individuals unknowingly spreading it without malintent (known as misinformation). However it begins, social networking sites accelerate and incentivize its spread by profiting from micro-targeted behavioral advertising and by using algorithms optimized for engagement. These tools are made possible by the companies' ability to amass vast stores of behavioral data on their users. This analysis compares two potential solutions to addressing the spread of false information online: (1) enacting a strong federal data privacy law and (2) repealing the liability protections provided in Section 230 of the Communications Decency Act (CDA). Researchers and think tanks have called for strong federal data privacy protections to target the structures that underlie false information's spread.<sup>4</sup> Meanwhile, politicians across the political spectrum have criticized the liability protections afforded to internet companies by Section 230 in recent years, in part because companies cannot be held liable for their platforms' roles in spreading false information.<sup>5</sup> These two policies are analyzed for their effectiveness in addressing the problem, their implications for equity, and their political feasibility. Enacting a strong data privacy law emerges as the most promising option for staunching the flow of false information.

"False content appears to have impacted general public trust in elections, as local officials across the country found themselves inundated with calls from voters concerned after reading false information online."

## THE SCALE OF FALSE INFORMATION AND ITS CONSEQUENCES

Across social networks, false content has become increasingly pervasive, with deleterious effects for democracy and underrepresented groups. A 2018 report found evidence of disinformation campaigns in 48 countries, up from 28 countries the prior year, and federal investigations revealed that Russian state actors engaged in a massive disinformation campaign during the 2016 U.S. election to sow dissension and influence the democratic process.<sup>6</sup> In addition to denigrating candidates considered hostile to the Kremlin, the Russian campaign directly targeted people of color, focusing

heavily on seeding racial tensions and singling out African Americans in particular.<sup>7</sup> Disinformation proliferated again during the recent 2020 U.S. presidential election, originating from both foreign and domestic actors, and once again targeting people of color in an effort to suppress voter turnout.<sup>8</sup> False content appears to have impacted general public trust in elections, as local officials across the country found themselves inundated with calls from voters concerned after reading false information online.<sup>9</sup>

False content has also led to concerning regressive trends in public health worldwide. The rise of the anti-vaccination movement, which inaccurately touts the dangers of vaccines, has operated largely through popular social networks and has caused multiple measles outbreaks in



Western countries where the disease was previously extinguished.<sup>10</sup> During the COVID-19 pandemic, a joint coalition including the World Health Organization and the United Nations dubbed the widespread virus misinformation online an “infodemic.”<sup>11</sup> Despite social network companies’ strengthened community standards regarding COVID-19 misinformation, research shows that sources of inaccurate information about the coronavirus were more likely to be shared than accurate ones, leading to politicization and confusion around basic public health measures and treatments.<sup>12</sup>

In developing countries that may lack civil rights protections and where many residents’ low digital literacy leaves them particularly vulnerable to manipulation through digital mediums, virtual disinformation has had more dire consequences. For instance, government officials and other prominent individuals in Myanmar regularly posted disparaging content about the country’s Rohingya ethnic group, helping to incite widespread violence and genocide against them.<sup>13</sup> Given social media’s potential to act as a megaphone for propaganda and contribute to other atrocities in the future, U.S. regulators bear a special burden to enact regulations at home that can produce cascading effects for limiting false information globally.

## STRUCTURES UNDERLYING THE SPREAD OF FALSE INFORMATION

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While false information is not a new phenomenon, social networking platforms’ business models have cultivated technology that acts as a breeding ground for this type of content. The vast majority of their revenue comes from advertising space they sell on their platforms. This revenue, and the company’s value, is directly tied to the platform’s number of users and the length of time users spend on the site.<sup>14</sup> Thus, their technology has two primary aims: (1) to construct user profiles that can be sold to advertisers, and (2) to drive engagement by algorithmically promoting the content that

is most likely to capture attention. These companies build finely detailed behavioral profiles by harvesting data generated by users’ behavior on their own platforms, as well as amassing data from users’ smartphones and deploying web tracking devices that collect information about users’ actions across the internet.<sup>15</sup> Internet advertising’s profitability has exploded because the

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extraordinarily detailed information about users allows advertisers to operate with a previously unimaginable degree of audience segmentation, a process called microtargeting. Advertisers can refine their messaging by choosing specific categories of users, testing different messages, and receiving real-time data about their effectiveness. Disinformation actors exploit

these tools to test and develop precision messaging and new strategies, as well as to build groups of receptive audiences to disseminate future unpaid content.<sup>16</sup> A former Facebook security executive described micro-targeted advertising as “the tip of the spear” in disinformation campaigns, which use paid advertising to accumulate an audience to whom unpaid or organic content can eventually be delivered. While the 2016 Russian disinformation campaign placed just 3,000 paid ads on Facebook, the company later identified more than 80,000 pieces of unpaid, organic content promoted to groups of people who were recruited via behavioral advertising tools.<sup>17</sup>

The absence of technology regulation in the United States, along with liability protections for internet companies, have allowed false information to flourish. Digital advertising, data collection, and data sharing, key aspects of the technology that provide the infrastructure for its spread, are unregulated. Unlike traditional media publishers, technology platforms are shielded from liability for third-party content on their services by Section 230 of the CDA, which permits internet companies to moderate and curate content like publishers without assuming responsibility for all user-generated content that appears on their platforms.<sup>18</sup>

Companies’ algorithms maximize revenues by harnessing powerful psychological mechanisms to capitalize on user attention.

One such mechanism is the tendency for negative information to capture attention more effectively and to be more contagious than positive information.<sup>19</sup> Anger in particular appears to be more influential than other emotions and causes content to spread more widely.

<sup>20</sup>Knowing that the algorithms are optimized to promote negative, anger-inducing material, disinformation developers deliberately create emotionally provoking content, which they target to susceptible users or propagate to specific groups through automated programs (i.e., “bots”).<sup>21</sup>

The platform’s own algorithms eventually pick up and promote the content the more it is shared or liked, further amplifying its reach and pushing it to receptive audiences. These strategies appear effective at spreading false content and affecting users. A large Twitter study discovered that false news was 70 percent more likely to be shared and reached users six times faster than accurate news, and a large meta-analysis found that 99 percent of disinformation attempts are successful when people are unfamiliar with the issue at hand.<sup>22</sup>

## CURRENT STRATEGIES TO COMBAT FALSE INFORMATION

In this context of lax regulation, social networking sites have each developed content standards and enforcement strategies to tackle some types of false information on their networks, but these efforts are inconsistent across firms and have proven

"A former Facebook security executive described micro-targeted advertising as “the tip of the spear” in disinformation campaigns, which use paid advertising to accumulate an audience to whom unpaid or organic content can eventually be delivered."

sorely inadequate at quelling false information's spread. Content moderation strategies largely fall into two main categories: *content control* and *transparency*.<sup>23</sup> Content control involves manually removing content that explicitly violates community standards and algorithmically de-prioritizing other types of content.<sup>24</sup> While no social networking company prohibits false information, it can be removed when it constitutes spam or is propagated by fake accounts.<sup>25</sup> Unfortunately, manual content enforcement efforts are often vastly under-resourced, and even when false content meets the criteria for removal, it may have already inflicted harm by reaching thousands of users before its identification. Automated methods of detecting and de-prioritizing content are still relatively easy to circumvent, but they can be marginally effective. For example, Twitter saw a 4-to-8 percent decrease in targeted content when testing machine learning methods to de-prioritize suspicious content. However, experts predict that emerging artificial intelligence (AI) technologies, such as those that create convincingly realistic synthetic videos and images (e.g., "deep fakes"), will soon outpace the ability of algorithms to detect false content.<sup>26</sup> Transparency efforts, which involve fact-checking and labeling false content, appear to be ineffective in fighting disinformation. Research shows that exposure to false content, regardless of accompanying information about its inaccuracy, increases the likelihood that users will believe it.<sup>27</sup> Moreover, labeling false content has produced paradoxical results. In one ex-

"The absence of technology regulation in the United States, along with liability protections for internet companies, have allowed false information to flourish."

periment, Facebook found that users were more inclined to share false content when it was labeled "disputed."<sup>28</sup>

Self-regulation efforts do little to address the alignment of incentives between social networking platforms and disinformation developers. Since their worth is directly tied to their number of users

and their ability to engage them, platforms derive short-term benefits from the sensational, attention-grabbing content spread by malicious users and fake accounts. For example, when Twitter removed a large volume of suspected bot accounts in response to public scrutiny about disinformation, its stock immediately plunged 21 percent. As a result, Twitter has yet to remove many of the bot accounts directly implicated in the 2016 Russian disinformation campaign.<sup>29</sup>

## **THE GOVERNMENT MUST INTERVENE**

The government must force the market to internalize the negative externalities produced by false content on social networking platforms. Users incur its costs in the form of negative health effects, negative emotions, lowered trust in their democratic institutions, and even real-world violence. Their interests, however, are not represented in the market, because they neither pay for the service nor have the ability to hold firms accountable for these negative impacts. In this digital economy, technology companies represent the suppliers and advertisers are the consumers. Users are simply the product.

Likewise, government intervention must correct the unacceptable distributional and institutional outcomes that result from false information. While everyone is susceptible to its ill effects, disinformation has been disproportionately targeted at marginalized groups. These injustices have played out with disastrous and discriminatory consequences in Myanmar and risk suppressing voter turnout among Black and Latino voters in the U.S. More broadly, disinformation has undermined the general public's confidence in their public health and democratic institutions.

Congress has the power to deliver the freedom from discriminatory targeting and manipulative information that Americans deserve in their online spaces, and regulations in the U.S. could reduce suffering abroad. In the past, regulatory structures implemented in regions that comprise large segments of social networking sites' user bases produced positive changes in the technology globally, suggesting that regulatory changes in the United States could have beneficial impacts for marginalized people in other countries. For example, when the European Union rolled out their landmark digital privacy law, the General Data Protection Regulation (GDPR), Americans benefited from several enhanced privacy controls that Facebook implemented as part of its response to the regulations overseas.<sup>30</sup> *Given the extent of false content and the severity of its consequences, Congress must act to reduce the spread of false content online.*

"...manual content enforcement efforts are often vastly under-resourced, and even when false content meets the criteria for removal, it may have already inflicted harm by reaching thousands of users before its identification."

## POLICY OPTIONS TO LIMIT FALSE INFORMATION ONLINE

**Enact a federal data privacy law.** Congress could pass a strong data privacy law to prevent the detailed data collection and sale that enables the micro-targeted promotion of false information. This law would restrict businesses' data collection on users to the minimum required to perform the core functions of their service, where the core functions are defined from the end user's perspective, regardless of the business's financing structure. The law would restrict the purchase and sale of user data between companies to only those companies that have an explicit vendor-contractor relationship and to only the data upon which the core service depends. Users must give informed consent to the company before their data is used in

behavioral research and users must be opted-out of targeted promotion and research by default. Discriminatory practices in content optimization, such as targeting on the basis of race, age, and other protected classes, would be banned.<sup>31</sup>

**Repeal Section 230.** Alternatively, the federal government could pass legislation that repeals Section 230, allowing technology platforms who engage in content moderation to be held accountable for false information and other content appearing on their services that causes harm. In the 116th Congress, three such bills were introduced.<sup>32</sup> Repealing Section 230 would re-



turn the internet industry to the pre-1996 status quo, in which websites were treated as publishers who could be held liable for any information appearing on their services, if they engaged in content moderation or censure that went beyond addressing illegal activity.

## CRITERIA FOR AN EFFECTIVE POLICY SOLUTION

Tackling false information online requires a solution that is effective, equitable, and politically feasible. Given the immense scale of the problem, Congress must pursue an approach that offers a high degree of efficacy for limiting its spread. The disproportionate impact of false information on marginalized communities warrants careful consideration of the equity implications of proposed solutions, as the chosen approach should actively protect against discrimination. Further, because technology companies constitute a powerful political lobby and the existing regulatory environment has enabled the evolution of this problem, any solution must provide a reasonable likelihood of enactment. The following section evaluates the proposed solutions on these dimensions.

"Congress has the power to deliver the freedom from discriminatory targeting and manipulative information that Americans deserve in their online spaces, and regulations in the U.S. could reduce suffering abroad."

Enacting a federal data privacy law would provide the most effective means of limiting the spread of disinformation online by directly addressing the underlying structures that fuel it. Restricting the collection and sharing of behavioral data would eliminate the infrastructure that enables bad actors to exploit users' vulnerabilities through micro-targeted behavioral marketing and unpaid content optimization. Evidence suggests that impairing micro-targeted advertising would curb the spread of disinformation via paid and unpaid avenues. In one study, after Facebook banned paid advertising by known anti-vaccination websites, the organic sharing of false anti-vaccination news articles by users fell 75 percent in comparison to Twitter which had no such regulation change.<sup>33</sup> Under such a law, advertisers could buy space on a particular platform or website, but they would be unable to engage in micro-targeted messaging using a detailed psycho-

logical profile or purchase data that allows them to segment audiences and exploit their information. In addition, this policy proposal will directly address unpaid algorithmic content promotion, which acts as marketing for the small number of influencers who origi-

nate the vast majority of false content, by reducing the amount of behavioral data any single company has access to.<sup>34</sup> Social networking sites could continue to algorithmically optimize content based upon user behavioral data collected on their site, but they may no longer sell this information to third parties or collect data by

## ANALYSIS

### Enact a federal data privacy law.

#### Effectiveness

tracking their users around the web. Data privacy regulations elsewhere in the world may have helped reduce disinformation's spread. The Europe Union's digital privacy law, the GDPR, went into effect in 2018, and the EU reported comparatively low levels of disinformation during elections the following year, though the EU's generally more aggressive stance on tackling disinformation complicates direct comparisons with the U.S.<sup>35</sup>

### Equity

This policy alternative would directly affect the unjust distributional outcomes resulting from false information, both by removing the structure that allows discriminatory microtargeting to occur and explicitly prohibiting content promotion based on protected characteristics. Restricting the collection and sale of behavioral data would reduce the amount of information that disinformation developers have at their disposal, limiting their ability to segment audiences by characteristics associated with protected classes. Expressly prohibiting targeted content promotion on the basis of protected classes would reduce exploitation, and the legislation should leave little room for loopholes. For example, the law should explicitly prohibit algorithmic content promotion that disproportionately targets racial/ethnic groups by inferring their characteristics from other information, such as membership in online groups based on race or ethnicity. This approach to minimizing false information's

spread also provides the advantage of sidestepping freedom of speech issues and equity issues that plague enhanced content moderation tactics and the debate over amending Section 230, discussed in more detail below.

### Political feasibility

Because strong data privacy regulations would target social networking companies' business models, as well as that of countless other businesses, this alternative would inspire strong political opposition from the technology industry. The law would impair behavioral advertising, an increasingly important component of the advertising-funding model. Platforms derive nearly all their revenue from advertising, with Facebook reporting more than 98 percent of its revenue from advertising, Twitter at 86 percent, and YouTube's owner Google at 83 percent,

"...after Facebook banned paid advertising by known anti-vaccination websites, the organic sharing of false anti-vaccination news articles by users fell 75 percent in comparison to Twitter which had no such regulation change."

and while they do not report revenue from behavioral advertising separately, the ability to finely segment audiences is a key selling point to their advertisers.<sup>36</sup> Congress's pro-business mentality has historically led to a reluctance to regulate most aspects of the technology industry, and technology companies further ward off regulation by cultivating close relationships with politicians and pouring their vast resources into congressional lobbying, particularly in the face of the heightened scrutiny that has followed the 2016 election.<sup>37</sup> The Obama administration attempted to pass a Consumer Privacy Bill of Rights twice and failed.<sup>38</sup>

Amid heightened public concern about false information online following the 2016 presidential election, several proposed bills addressing data privacy protections gained bipartisan support, most of which represented widespread agreement on several key consumer data protections, including data minimization and the right of deletion.<sup>39</sup> However, the proposals all ultimately stalled, usually due to disagreements over state law preemption and the right to private action. While these disagreements

may prove difficult to overcome, the Biden administration appears poised to strike a tougher stance on consumer data privacy protections, making privacy legislation a feasible option. Vice President Harris is expected to emerge as a strong advocate for data privacy protections, given her history of data privacy enforcement during her tenure as California's Attorney General. The administration has also welcomed several returning staffers who contributed to President Obama's data privacy proposals, signaling a significant reversal from the Trump administration's repeal of Obama-era privacy protections early in his presidency and his lack of action on consumer data privacy since then.<sup>40</sup>

## Repeal Section 230.

### Effectiveness

Repealing Section 230 is likely to be highly effective for addressing disinformation's spread on well-resourced platforms, but the unintended consequences could spur the spread of false information across the rest of the internet. Prior to Section 230's creation, websites were in a better legal position if they avoided third-party content moderation, so they could not be interpreted as publishers and held liable for content on their website.<sup>41</sup> Section 230 has allowed companies to moderate content

"Congress's pro-business mentality has historically led to a reluctance to regulate most aspects of the technology industry, and technology companies further ward off regulation by cultivating close relationships with politicians and pouring their vast resources into congressional lobbying, particularly in the face of the heightened scrutiny that has followed the 2016 election."

according to their own content standards and user preferences without fear of liability for their decisions. Repealing this law would affect companies far beyond social media, including businesses such as Amazon, Yelp, and TripAdvisor, which moderate customer reviews, and websites with crowdsourced informational content, such as Wikipedia.<sup>42</sup> Experts agree that lawsuits would proliferate after changes to Section 230, and some well-resourced companies are likely to respond by significantly increasing investment in their current content moderation strategies, prescreening and censoring nearly every user post to assess its potential liability for companies.<sup>43</sup> However, content moderation at this level would prove extremely costly, and as a result, companies without the resources or will to moderate all content may choose to act as distributors rather than publishers by only removing content that violates serious federal laws. The prospect of lia-

bility could deter even the most prosperous companies from moderating content, leading the user experience to deteriorate accordingly. Ironically, disinformation and other harmful behavior would find a comfortable home in these newly unmoderated spaces.

### Equity

Repealing Section 230 could have harmful effects for individuals with less political power. Human rights watch groups have raised concerns about laws that increase the censorship of online speech, particularly when the enforcement falls onto private companies that operate without transparency. Authoritarian leaders have often misapplied the term “fake news” to encompass all content from their political opposition and passed laws to force platforms to become their censors, while citing Germany’s censorship of hate speech as support for their positions.<sup>44</sup> Human rights groups fear that a US law resulting in greater censorship of online speech could be used to silence minority voices at home and abroad, interfering with democratic freedoms and spurring oppression.

### Political feasibility

Lawmakers across the political spectrum have recently spoken out against the CDA’s liability immunity, albeit for different motives. Democrats have expressed concerns that social networking companies’ legal immunity has resulted in overly weak re-

sponses to false information and other harmful content.<sup>45</sup> Meanwhile, Republicans accuse platforms of censoring conservative content more than liberal content.<sup>46</sup> Despite a lack of bipartisan consensus on social media regulation generally, Democrats and Republicans agree that social networking companies have too much power, which they both attribute to liability protections, making the prospect of repealing Section 230 conceivable. Social networking companies, for their part, have stated they would vehemently fight changes to Section 230 protections, but this policy would not engender widespread opposition from businesses outside the internet industry.<sup>47</sup>

## CONCLUSION

The spread of false information on social networking sites has accelerated in recent years, leading to a host of negative consequences at home and abroad. Policymakers have most commonly discussed two policy options with implications for this problem: Removing technology companies’ liability protections for content on their platforms, and implementing a federal data privacy law. Enacting a strong federal data privacy law provides

"Despite a lack of bipartisan consensus on social media regulation generally, Democrats and Republicans agree that social networking companies have too much power, which they both attribute to liability protections, making the prospect of repealing Section 230 conceivable."

several advantages over repealing Section 230 in reducing the spread of false information on social networks. By targeting the structures that incentivize and sustain this type of content, a data privacy law proactively addresses a major systemic driver, rather than relying on inadequate reaction-



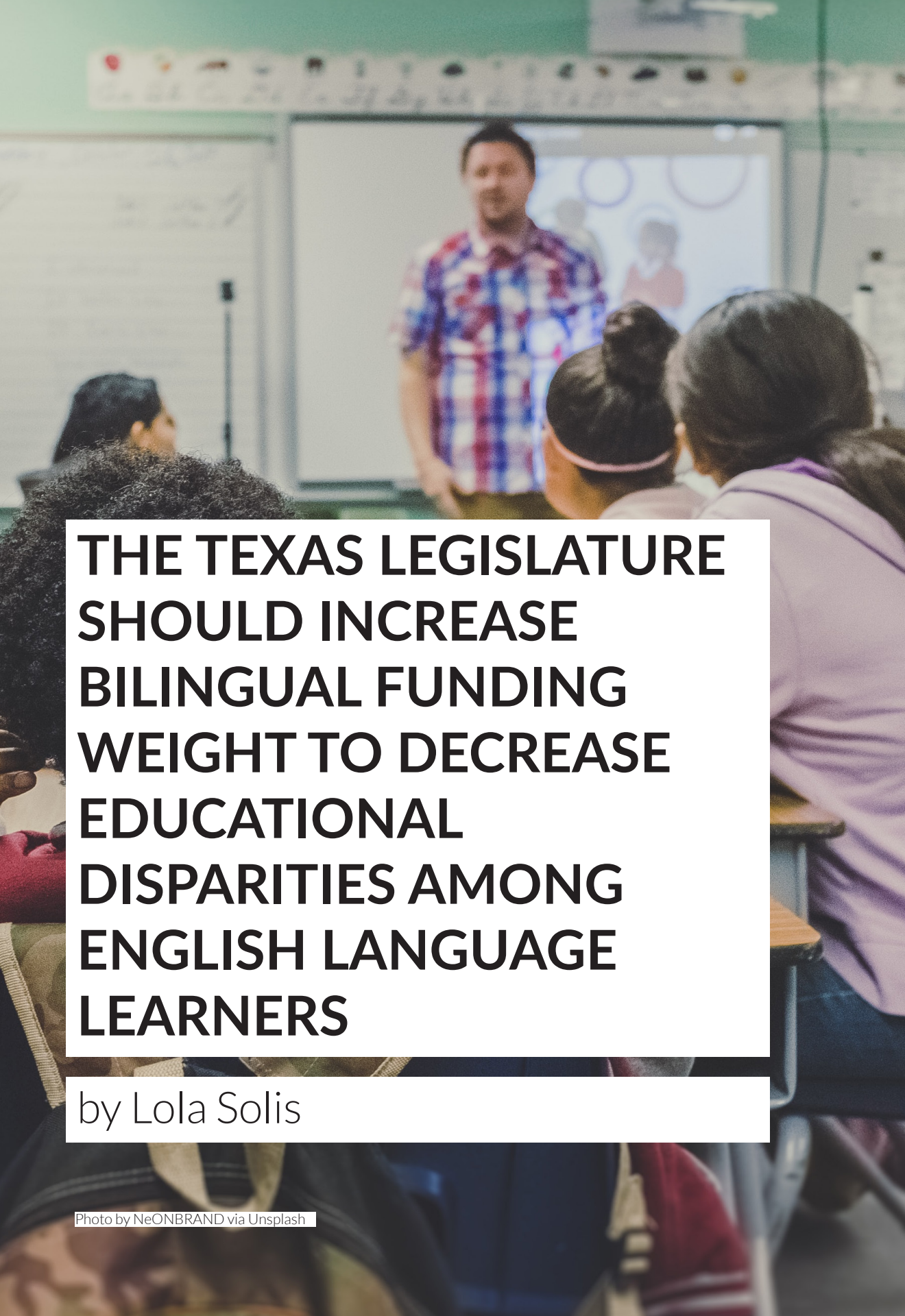
ary tactics such as content moderation. A federal data privacy law would also afford important protections that enhance equity, directly interfering with disinformation's pattern of discriminatory targeting of marginalized communities and undermining democratic institutions. Repealing Section 230, on the other hand, could weak-

en smaller websites and lead to censorship that disproportionately impacts minorities. While a data privacy law would face strong opposition from social networking platforms, as would any regulation of the technology industry, the scale of the harm stemming from false information demands the most effective, most equitable solution.

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A photograph of a classroom scene. A male teacher with a beard, wearing a red, white, and blue plaid shirt, stands in front of a whiteboard. The whiteboard displays a diagram with several circles and lines. In the foreground, the backs of several students' heads are visible as they sit at their desks, listening to the teacher. The classroom has a green wall and a whiteboard with some writing on it.

# **THE TEXAS LEGISLATURE SHOULD INCREASE BILINGUAL FUNDING WEIGHT TO DECREASE EDUCATIONAL DISPARITIES AMONG ENGLISH LANGUAGE LEARNERS**

by Lola Solis

# THE TEXAS LEGISLATURE SHOULD INCREASE BILINGUAL FUNDING WEIGHT TO DECREASE EDUCATIONAL DISPARITIES AMONG ENGLISH LANGUAGE LEARNERS

LOLA SOLIS

Edited by: Charlotte Aaron and Laila Heid

*Texas's method of allocating funds for bilingual education is failing English language learners (ELLs) across the state; ELLs experience lower graduation rates, lower than average test scores on the State of Texas Assessments of Academic Readiness (STAAR), and higher dropout rates. These differences in academic achievement between Texas's overall student population and ELLs illustrate a drastic disparity in educational outcomes and the need to increase funding for bilingual education. Additional funding is needed to ensure that ELLs have a chance of succeeding academically by being able to hire more bilingual teachers, create effective programs in schools that meet the needs of their ELLs, and provide any other additional resources that would support the students throughout their public education. The state should increase the funding weight for bilingual education from .10 to .40 because it could dramatically increase the funding that schools receive and allow them to employ more resources that would help ELLs succeed.*

## INTRODUCTION

Texas's method of allocating funds for bilingual education is failing English language learners (ELLs) across the state. ELLs experience lower graduation rates, lower than average test scores on the State of Texas Assessments of Academic Readiness (STAAR), and higher dropout rates. In the 2017–2018 school year, 43 percent of ELLs passed the math portion of the STAAR exam compared to 47 percent of all third graders, and 35 percent of ELLs passed the reading portion compared to 43 percent of all students.<sup>1</sup> Additionally, ELLs currently

have a graduation rate of only 72 percent compared to a statewide rate of 90 percent. ELLs are also more than twice as likely as their peers to drop out of school.<sup>2</sup> These differences in academic achievement between Texas's overall student population and ELLs illustrate a drastic disparity in educational outcomes and the need to increase funding for bilingual education.<sup>3</sup> Further, in the 2009–2010 school year, there were 779,771 bilingual students and in the 2020–2021 school year, there were 1,109,883 bilingual students — a 42 percent increase in just over 10 years.<sup>4</sup> As the number of ELLs continues to grow and the



achievement gap between ELLs and Texas's average student population remains discernible, the need for action from the state of Texas becomes abundantly clear.

Because the state of Texas is unwilling to provide an adequate education for its bilingual students, ELLs are unable to be on par with state and federal standards for academic readiness. Additional funding is needed to ensure that ELLs have a chance of succeeding academically. The funds can be used to hire more bilingual teachers, create effective programs in schools that meet the needs of their ELLs, and provide any other additional resources that would support the students throughout their public education.

"Because the state of Texas is unwilling to provide an adequate education for its bilingual students, ELLs are unable to be on par with state and federal standards for academic readiness."

Bilingual education, like other specialized education, requires additional funds to operate effectively. To teach a bilingual class in Texas, teachers must pass two additional exams on top of the two baselines required of all teachers in the state. Despite the fact that bilingual teachers get paid marginally more, in the form of stipends, than the average teacher, the additional expenses and time required to pass these exams are still too much of a disincentive for teachers to attain the certification needed to teach bilingual classrooms.<sup>5</sup> Further, certified bilingual educators are required to supplement the instruction provided in general education classes by creating and providing material to convey the same lesson in a different language, which can be time-consuming.<sup>6</sup>

Assistant Professor Arcelia Hernandez at St. Edward's calls attention to the "hidden labor of bilingual education" in an article in *The Texas Tribune*, where bilingual educators do more behind the scenes that are not reflected in their pay, such as translating exams, homework, and other assignments.<sup>7</sup> Bilingual teachers are also often in charge of conducting assessments of students in order to determine whether or not they are progressing through the program or need more assistance and support.<sup>8</sup> These assessments further add to the hidden labor of bilingual educators. Moreover, the workload of a bilingual educator is a major contributing factor to the ongoing bilingual teacher shortage.

Increasing the availability of funding to ELL programs can likely play a role in mitigating the bilingual teacher shortage by allowing for increased bilingual teacher pay. The Texas Education Agency indicated that in the 2015–2016 school year, there was only one bilingual teacher for every 46 students.<sup>9</sup> A 46:1 ratio of students to teachers will result in unsustainable and inadequate instruction as we can see with the evidence provided on the disparities of ELLs' academic achievement. The concern is that with bilingual teachers' overcrowded classrooms, students will not be able to receive the attention and support they need to achieve academically. The increase in ELLs and the decrease in bilingual teachers only exacerbate the need to increase targeted funding for ELLs.

## A SHORT HISTORY OF BILINGUAL EDUCATION FUNDING IN TEXAS

Before 1973, schools were not required to provide specialized instruction to meet the needs of their bilingual students. On June 3, 1973, the Bilingual Education and Training Act (S.B. 121) was signed into law, mandating that all Texas elementary public schools with 21 or more students of “limited English ability” receive bilingual instruction.<sup>10</sup> Two years later, the adoption of H.B. 1126 required the state to fund bilingual or English as a second language (ESL) programs in districts that chose to implement them.<sup>11</sup> Under the new law, the state provided a “per pupil” allocation of \$25 that was multiplied by the number of students who were participating in a bilingual or ESL program.<sup>12</sup> The 1973 mandate was found to be insufficient in the 1981 case, *United States v. Texas*, where the United States District Court of the Eastern District of Texas declared that the state was violating the Equal Educational Opportunities Act by failing to aid ELLs in overcoming language barriers.<sup>1</sup>

"The Texas state funding weight for ELLs is the main driver of the educational disparities between ELLs and the overall student population in Texas."

For this example, the school would receive an additional \$27.5 of funding for bilingual instruction for every \$100 from the state.

<sup>3</sup> The court then ordered that specialized instruction must be provided for all children with limited English proficiency.

As a result of *United States v. Texas*, Texas passed S.B. 477, which expanded bilingual education to grades K-6 and provided ESL programs to middle and high schools. After the passage of S.B. 477, the per pupil allocation increased from \$25 to \$50.<sup>14</sup> This mechanism of funding remained until 1984 when the Texas Education Agency instituted a weighted funding system to supplement bilingual or ESL programs. Texas now utilizes a weighted funding system, which will be described in more detail immediately below, and in the 1980s the

state arbitrarily set a .10 weight, despite research indicating that .10 would not be enough to provide an adequate education for ELLs.<sup>15</sup> At this time, education policy researchers recommended that the funding weight be 40 percent more than the average student, or .40.<sup>16</sup> More than 30 years have passed since the .10 weight was implemented and it has not changed since.

### WEIGHTED FUNDING FOR ELLS

The Texas state funding weight for ELLs is the main driver of the educational

**Table 1. Funding Weights for Specialized Education in Texas**<sup>21</sup>

Allotment	Funding
Compensatory Education Allotment (ADA)	.20
Bilingual Education (ADA)	.10
Gifted and Talented Program (FTE)	.12
Career and Technology (FTE)	1.2
Special Education (FTE)	1.1

disparities between ELLs and the overall student population in Texas. The state of Texas provides public schools with extra funding using a weighted system to supplement bilingual or ESL programs. The bilingual education funding weight is the lowest compared to the other funding weights used for specialized education in Texas, as can be seen in Table 1. For ELLs, the funding weight is .10 compared to the highest weight, 1.2, for special education.<sup>17</sup> Additionally, of the 20 U.S. states that utilize a weighted funding system for bilingual education, the average weight is .387, with the lowest weight at .10 (Texas) and the highest at .99 (Maryland).<sup>18</sup> It should be noted that school finance systems vary tremendously across the country, and weighted systems can also be calculated differently depending on the state. Nevertheless, Texas is clearly falling behind in terms of adequate funding for its bilingual students.

*Here is a simple example of how to calculate the additional weighted funding for bilingual education for a school in Texas that receives a basic allotment of \$100.*

ADA Student 1=.98  
 ADA Student 2=.86  
 ADA Student 3=.91  
 $100 \cdot ((.10 \cdot .98) + (.10 \cdot .86) + (.10 \cdot .91))$   
 = 27.5.

All schools receive a basic allotment, which is a “legislatively mandated apportionment of funds from the general revenue funds that goes to each school district to provide a basic level of education for the district’s residents.”<sup>19</sup> As mentioned above, there are also student groups that receive additional

funding for specialized education. There are two categories used in Texas that provide additional funding for certain students and programs: 1) Average Daily Attendance (ADA) student count, which provides weighted funding in addition to regular program allotment funding and 2) Full-time Equivalent (FTE), which provides weighted funding in lieu of any program funding allotment for the time that the student spends in that program.<sup>20</sup> Students receiving bilingual education, ELLs, fall under the ADA category. The bilingual funding weight is multiplied by the ADA for each student in the school, and this total is then multiplied by the basic allotment. The resulting number is the additional funding that all the students in a given school would

“...it is clear that the state has the capacity to increase the bilingual education weight.”

receive for bilingual instruction. It is also important to note that the Texas legislature passed a school finance bill in 2019, House Bill 3 (H.B. 3), but it did not change the weight for bilingual education. However, H.B. 3 did add an additional funding weight of .05 for students enrolled in dual language programs.<sup>22</sup> This additional weight will not benefit all bilingual students, as there are many different types of bilingual programs that schools implement, and, therefore, these funds will not actually benefit most ELL students.<sup>23</sup> In fact, research indicates that 80 percent of ELLs are not enrolled in a dual language program in Texas.<sup>24</sup> Because Texas was able to increase funding for bilingual education through creating an added weight for dual language programs, it is clear that the state has the capacity to increase the bilingual education weight. However, it is imperative that the funding goes to the right location in order for it to

have the largest impact on students across the state.

**POLICY RECOMMENDATION:  
INCREASE THE FUNDING WEIGHT  
FOR ELLS**

Texas should increase the funding weight for bilingual education from .10 to .40. Extensive research has indicated that more funding for public schools leads to better educational outcomes. One study from Brown University found evidence that increased funding in Texas led to an increase in reading and math scores, a decrease in dropout rates, and a marginal increase in graduation rates and college enrollment.<sup>25</sup> In fact, in 1984, the Governor's Office of Educational Research and Planning conducted an audit of a number of school districts and found that the bilingual education programs should have a weight of .40 to ensure that students meet state expectations and standards, which included passing state exams that are required to graduate.<sup>26</sup> Moreover, the state of Oregon provides a clear example of how increasing the funding weight could effectively increase graduation rates. Oregon utilizes a .50 funding weight for bilingual education and its statewide graduation rate in the 2017–2018 school year was 78.68 percent.<sup>27</sup> The graduation rate for former ELL students and students enrolled in high school ELL programs was 72.48 percent, only a 6.2 percentage-point difference. In Texas, the overall graduation rate is 89.9 percent, while for ELLs, the graduation rate is 71.5 percent, an 18.4 percentage-point difference. Although Oregon's weight is .10 more than .40, we can assume the additional funding will still increase graduation rates among ELLs.

Increasing the funding weight from .10 to .40 would dramatically increase the funding that schools receive and allow them to employ more resources that would help ELLs succeed. For example, Richardson Independent School District currently gets an additional 5,796,037 million with the .10 weight for ELLs. With a weight of .25, they would receive 82,176,375 million and with a weight of .50, they would receive 164,352,750 million for bilingual education.<sup>28</sup> The additional funding schools would receive with a .40 weight would be somewhere between 76,380,338 and 158,556,714 million. With such a substantial amount of additional funding, schools can effectively work toward improving instruction for bilingual students.

**CONCLUSION**

Increasing the funding weight for ELL students would be difficult to achieve politically, but not impossible. The conservative legislature has pushed back against increasing the funding weight to anything above .10. In the late 1980s through the early 2000s, researchers in Texas advocated for an increased funding weight. Advocates suggested several policy options: implementing a new weight between .25 to .40, changing the starting weight to .15 before increasing it to .40, and requesting an additional \$1,960 per pupil.<sup>29</sup> Additionally, cost studies conducted in the late 1970s indicated that funding weights for bilingual education should range between .25 and .42. All three times that researchers urged Texas to increase the funding weight, the legislature refused.<sup>30</sup> The passage of H.B. 3 is a favorable indicator that increasing the weight for bilingual education is feasible, but it may just not be in the near future. Contrastingly, Texas's refusal to increase the funding weight for bilingual education is in

line with the state's view of public education. Over the past two decades, Texas has slowly decreased the share of state funding to public education. In 2000, the state share of funding for public education was 46 percent and in 2018, the share was 36 percent.<sup>31</sup> Although the state legislature increased spending on public education in 2019 with the passage of H.B. 3, the bill fails to make up for the \$5.4 billion in cuts to public school that oc-

curred in 2011.<sup>32</sup> H.B. 3 may be a step in the right direction, but researchers in the field indicate that H.B. 3 provides nowhere near what public schools in Texas need to provide equitable funding for all, including ELLs. If Texas wants to improve academic outcomes for ELLs, the state must raise the funding weight from .10 to .40.

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# HOLDING PHILANTHROPY ACCOUNTABLE: INCREASING THE MINIMUM PAYOUT RATE FOR FOUNDATIONS AND DONOR-ADVISED FUNDS

by Laila Heid



# HOLDING PHILANTHROPY ACCOUNTABLE: INCREASING THE MINIMUM PAYOUT RATE FOR FOUNDATIONS AND DONOR-ADVISED FUNDS

LAILA HEID

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Edited by: Emily Clayton and Ashwin Mb

*This article will argue that the federal government should revise the tax laws to increase the minimum payout rates for private foundations and donor-advised funds (DAFs). It will explore how the modern philanthropic sector came to be and posit that current regulations prevent philanthropy from living up to its stated goal of redistributing wealth. The article will conclude by outlining the potential advantages and shortcomings of revising the minimum payout rate for foundations and DAFs.*

## INTRODUCTION

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The United States' wealthiest citizens have historically supported essential services through philanthropy and charity. For the last century, the federal government has subsidized the wealthy's charitable activity with the expectation that this private funding will support public goods that the government would otherwise provide at an implicit higher public cost.<sup>1</sup> Despite a recent uptick in charitable giving, research suggests that the use of modern philanthropic vehicles, such as philanthropic foundations and DAFs, has hampered the effective and efficient redistribution of wealth.

Meanwhile, over 34 million Americans experienced poverty in 2019, and the joint impact of the pandemic and recession were expected to have pushed five to 12 million more Americans into poverty

in 2020.<sup>2</sup> One-third of nonprofit organizations were not expected to survive this recession, threatening the delivery of essential human services.<sup>3</sup> As Americans face unemployment, hunger, and homelessness, and as nonprofits are increasingly asked to do more with less, the federal government should call philanthropic resources to action by increasing minimum payout rates for foundations and DAFs, requiring that those funds be allocated to grant making.

Revising the minimum payout rules for foundations and DAFs could inject more than \$200 billion into the economy over the next three years, at no cost to the federal government.<sup>4</sup> This could prevent millions of people from falling into poverty. The federal government must hold philanthropy accountable for its stated goal of serving the public and require this form of charitable stimulus.

## I. THE BIRTH OF THE PHILANTHROPIC SECTOR

### *The Birth of Modern Philanthropy*

Before exploring the relationship between philanthropy, tax law, and economic inequality, it is first important to understand the inextricable developments of the federal income tax and the philanthropic sector. Because both the income tax and the philanthropic sector evolved in response to wealth inequality, charting their interconnected history informs our understanding of how to disentangle the two.

In 1913, the same year that Congress initiated the first modern income tax, John D. Rockefeller succeeded in chartering the largest U.S. foundation of the time.<sup>5</sup> Both the income tax and the introduction of the modern foundation were responses to the intense wealth inequality of the era. The income tax was less of a “revenue-generating” innovation (throughout the Gilded Age, the U.S. generated most of its revenue from tariffs and excise taxes) as it was a response to the social and economic inequalities of the 1880s and 1890s.<sup>6</sup> The evolution of the Democratic Party, along with the monopolistic byproducts of the Industrial Revolution, fueled a social movement in favor of more economic justice.<sup>7</sup> The income tax was therefore primarily an opportunity to redistribute the tax burden to the wealthy.<sup>8</sup>

At the same time, Gilded Age tycoons, such as Rockefeller and Andrew Carnegie, made moves to establish new philanthropic entities, which would later become examples of the modern foundation. As leaders in the philanthropic sector, they posited they could lift up the poor by spending their money on public works and the public good.<sup>9</sup> This, they believed, would offset the negative externalities caused by their own companies.

Toward the tail end of World War I, Congress expanded the tax base for the income tax with the passage of the War Revenue Act of 1917. The same bill introduced the first tax incentive for charitable giving: an income tax exemption for charitable gifts up to 15 percent of the taxpayer’s taxable net income.<sup>10</sup> According to an analysis of primary documents of the time, Americans feared that charitable giving could not be sustained under the new pressures of an income tax and the war effort.<sup>11</sup> If charities

"If charities could not survive the war, proponents of the deduction posited, then a budget-strapped federal government would be burdened with funding the social safety net services otherwise provided by charity."

could not survive the war, proponents of the deduction posited, then a budget-strapped federal government would be burdened with funding the social safety net services otherwise provided by charity.<sup>12</sup> The loss of tax revenue from the charita-

ble deduction was seen as a minor expense in comparison, and thus, the charitable deduction became a key feature of both U.S. tax law and the U.S. social safety net.

Nevertheless, many in government feared the plutocratic possibilities of the charitable tax deduction. The authors of the Commission on Industrial Relations report wrote in 1916:

*The domination by the men in whose hands the final control of a large part of American industry rests is not limited to their employees, but is being rapidly extended to control the education and 'social service' of the Nation. This control is being extended largely through the creation of enormous privately managed funds for indefinite purposes, hereinafter designated "foundations" . . .<sup>13</sup>*

As the income tax and the top marginal tax rates increased, the wealthiest Americans were further incentivized to dodge taxation.<sup>14</sup> According to an article prepared by Gabrielle Fack and Camille Lamdais, charitable trusts and foundations became a "highly practical vehicle for tax sheltering."<sup>15</sup>

With few rules and regulations governing the sector, wealthy Americans found few disincentives to commit fraud and abuse the system.<sup>16</sup>

Finally, in 1969, Congress passed tax reforms to better regulate foundations and prevent "self-dealing" (e.g., using foundation funds to pay family members). The law also established a minimum payout rate of four percent, intended to ensure that philanthropic foundations were distributing

funds. In response, "charitable" giving by the wealthy dropped by 30 percent.<sup>17</sup>

However, the 1969 tax reforms also introduced new incentives for donors who

pooled resources into a "common fund."<sup>18</sup>

These common funds had a more favorable deduction rate (50 percent of gross annual income at the time) and did not have a minimum payout rate. Many would later

point to this provision as the initial incentive to establish the modern DAF.<sup>19</sup>

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## II. PHILANTHROPY TODAY

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Since 1969, the tax laws governing foundations and DAFs have remained largely unchanged.<sup>20</sup> The federal government continues to allow Americans to deduct donations to foundations and DAFs from their taxes on the assumption that charitable activity may create even greater social value than what

the state could provide.<sup>21</sup> However, in the same 40-year period, wealth inequality has expanded, and the philanthropic sector has boomed.<sup>22</sup> In order to hold philanthropy accountable for its intended goal of wealth redistribution, it is important to reexamine how tax laws could do more to encourage giving from DAFs and foundations.

Tax incentives have successfully stimulated and also institutionalized philanthropy, as evidenced by the enormity of the

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"With few rules and regulations governing the sector, wealthy Americans found few disincentives to commit fraud and abuse the system."

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"In 2019, the United States was home to over 80,000 foundations, with total capitalization reaching over \$1 trillion."

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philanthropic sector. Total charitable giving amounted to 449.64 billion in 2019, with an estimated 309.66 billion coming from individuals and roughly 75.69 billion from foundations.<sup>23</sup> The percent of charitable dollars going to foundations nearly tripled from 1978 to 2011.<sup>24</sup> In 2019, the United States was home to over 80,000 foundations, with total capitalization reaching over \$1 trillion.<sup>25</sup>

The financialization of the philanthropic sector has resulted in the explosion of foundations and DAFs, charitable investment accounts overseen by fund managers like Fidelity and Schwab Charitable. These financial intermediaries intercept donations that might have otherwise gone directly to charity, acting more or less as a philanthropic savings account. However, DAFs especially have been aggressively marketed by for-profit Wall Street firms (e.g., Goldman Sachs) as a tax avoidance tool.<sup>26</sup> In 2017, six of the top 10 recipients of charitable contributions were DAFs.<sup>27</sup> There is no legal incentive to move money from a DAF to charity; as a result, assets can remain in DAFs for perpetuity.<sup>28</sup>

Private family foundations and DAFs are heavily subsidized by the government. For example, those who contribute to “certain private foundations . . .” receive an income tax deduction of up to 30 percent of their adjusted gross income (AGI).<sup>29</sup> Individuals who contribute to DAFs can deduct up to 60 percent of their annual AGI (sometimes even 100 percent with qualified contributions).<sup>30</sup> In 2016, subsidies for charitable

contributions cost the government \$50 billion lost tax revenue.<sup>31</sup>

Current rules and regulations create a time asymmetry between when donors receive a tax break and when funds enter the market. Private foundations, for example, are required to pay out just 5 percent of their assets each year. This can include travel expenses, consulting fees, and professional fees, but does not necessarily need to include any charitable grants.<sup>32</sup> There is no annual distribution requirement for DAFs.<sup>33</sup> This time asymmetry may be especially advantageous for taxpayers who want to deduct large sums from their AGI, but who do not necessarily have philanthropic motivations or a charitable strategy. This prevents funds from entering the public domain, either through taxes or charity.

"Current rules and regulations create a time asymmetry between when donors receive a tax break and when funds enter the market."

Advocates for institutionalizing philanthropy via DAFs and private foundations argue that these giving vehicles allow donors to make long-term, strategic decisions about their giving.<sup>34</sup> Donors are incentivized to effectively create a charitable savings account that they can deploy when they believe the time is right. However, evidence suggests that giving recedes during times of crisis when Americans could arguably benefit the most from charitable services. For instance, during the 2008 recession, charitable giving dropped by seven percent.<sup>35</sup> This trend is especially relevant to foundations and DAFs, many of which hold investment assets. In 2009, at the peak of the Great Recession, 45.2 percent of foundations decreased their charitable giving.<sup>36</sup>



### III. REVISING MINIMUM PAYOUT RATES FOR PRIVATE FOUNDATIONS AND DAFs

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In order to inject additional philanthropic funds into society, Congress should revise the minimum payouts for private foundations and DAFs. Congress should require that foundations annually allocate at least 10 percent of their assets to grant making (compared to the current 5 percent minimum payout rate, which is not required to go to grant making and can include travel expenses, board meetings, and financial management fees).<sup>37</sup> By removing foundation overhead as an allowable payout expense, Congress would reduce incentives for excessive internal spending on travel, administrative costs, or board salaries.<sup>38</sup> Congress could also introduce a 10 percent annual payout for DAFs.

Revising the minimum payout rates for private foundations and DAFs would effectively increase funding to charity. A 2003 Harvard Business Review (HBR) study of the 200,000 largest nonprofits found that increasing foundation payout rates to seven percent could deliver an additional 30 billion in social service benefits.<sup>39</sup> More recently, a 2020 Institute for Policy Studies report found that a 10 percent minimum payout for foundations and DAFs

"...a 2020 Institute for Policy Studies report found that a 10 percent minimum payout for foundations and DAFs could inject 200 billion into the economy over the next three years."

could inject 200 billion into the economy over the next three years.<sup>40</sup>

Revising the minimum payouts for private foundations and DAFs would result in minimal costs to the federal government but could substantially increase societal benefits. First, this policy would reduce the existing time asymmetry between when donors receive a tax break and when nonprofits receive funds, thereby reducing societal costs. Additionally, the 2003 HBR study found that withholding expenditures diminishes the value of future payouts by as much as 50 percent.<sup>41</sup> This is because withholding funds requires additional administrative costs for philanthropies as well as additional societal costs from delaying the distribution of social benefits.<sup>42</sup> Requiring that higher minimum payouts go toward grant making would reduce this loss.

### IV. LIMITATIONS AND CONCLUSIONS

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It is worth acknowledging that revising minimum payout rates does not fully address many of the potential shortcomings of philanthropy itself. Foundations and DAFs, for example, inherently create a delay between when a donation is technically made and when grantees receive funding. Although revising the minimum payout rates might encourage

"Although revising the minimum payout rates might encourage more grant making activity, such a policy also serves to further legitimize the institution of modern philanthropy."

more grant making activity, such a policy also serves to further legitimize the institution of modern philanthropy.

Other policy alternatives could disincentivize the use of philanthropic giving vehicles altogether. Lowering the cap of annual AGI deductions for gifts to foundations and DAFs, for example, would likely discourage giving through these popular philanthropic vehicles. A wealth tax could also deflate

billionaire philanthropy by targeting the United States' wealthiest citizens.

However, given the urgency of the concurrent economic and health crises, revising the minimum payout rate could quickly improve how philanthropy serves the public. Given the urgent need, revising minimum payout rates would be an easy first step in reforming philanthropy to be more accountable for the people.

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**INTERVIEW: DR. HENRY  
BRADY, FORMER DEAN  
OF GOLDMAN SCHOOL  
OF PUBLIC POLICY**



# INTERVIEW: DR. HENRY BRADY, FORMER DEAN OF GOLDMAN SCHOOL OF PUBLIC POLICY

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Edited by: Charlotte Aaron and Ella Geismar

*Dr. Henry Brady completed his twelve-year tenure as dean of the Goldman School of Public Policy (GSPP), July 2021. Students at the Berkeley Public Policy Journal had a chance to sit down with him in June to discuss and reflect upon his time at Goldman, the state of public policy education, and the future for both the school and his own work.*

*The contents of this interview have been edited for clarity and brevity.*

**BPPJ: Thanks so much for sitting down with us today. What were your goals for GSPP when you first became dean, and to what extent were you successful in meeting these goals?**

When I became dean of GSPP, I thought we were too small; I thought we were too old as a faculty, and I thought that we lacked diversity. We didn't have but one woman on the faculty, which was really an embarrassment of major proportions. We needed to become more diverse, and so I set goals to try to change that, and I think we did manage to do it. I also wanted to figure out a financial model for the school that would work. I literally worried when I first became dean that the school wouldn't survive.

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"When I became dean of GSPP, I thought we were too small; I thought we were too old as a faculty, and I thought that we lacked diversity."

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[We] had a situation where half the faculty [was] over age 60. It was clear that many of them would retire in the next 10 or 15 years, and when that happened, a lot of illustrious people would be gone. We had to figure out ways to rejuvenate ourselves. The truth is, the school had a long history of feeling pretty good about itself. Personally, I think maybe too good about itself — it still had a very high ranking and status, but we needed to really change in fundamental ways. It was thrilling to work with the faculty and to move a fairly secure and self-satisfied [faculty] to an understanding that we had to change, and we've done that.

We made sure that we continued to try to diversify the faculty. It was easier to do that with the lecturers and adjuncts. Part of the reason is the ladder-rank faculty turn over



really slowly, and we have only a few opportunities to make changes, but nevertheless, we have become more diverse, and I think now we have a faculty that is at least moving in the right direction.

The other thing is students. If you look at [our] diversity statistics, we're more diverse than the Ford School at Michigan, the Kennedy School at Harvard, the [School of International Public Affairs at Columbia], and the Harris School at Chicago. Those are our major competitors, and we are significantly more diverse than they are. My goal has been to make GSPP as diverse as the state of California. I think we can. It's not going to be on my watch. David, I'm sure, will move us in that direction, but I think we've gotten very close to it, and I'm really proud of that.

I wanted to make us a place that thought more about inequality, since that's been my lifetime work, writing on and thinking about inequality, especially in political participation and politics. So I was very heartened with the American Prospect article,<sup>1</sup> [which] said that the Goldman School, the Institute for Research on Labor and Employment, and the Economics Department were the center of a new movement to move economics toward studying inequality. To me, that was just utterly thrilling.

**BPPJ:** During orientation, in the fall of 2020, you said that, as policy students, we have to believe in meliorism. Can you elaborate on that in the context of policy as a field of study and practice?

Given climate change and everything else, it's hard to believe that we're going to get better, but I'm with Martin Luther King Jr. [in thinking] that the arc of change tends toward justice. There are so many horrific examples of backsliding in history, but if you're going to be a public policy student, you've got to have [the] goal to make the world a better place. That's what I love about the GSPP. I think it's about trying to do that.

You also have to believe in evidence. One of the things that worries me is [when] people who have ideological positions think they know the answer, and they haven't looked at the evidence. We have to be willing to entertain the possibility that we're wrong.

This came to me forcefully in the '90s, when I was studying welfare reform. I was doing data analysis, trying to figure out what was working and what wasn't. I started thinking to myself, "If I'm wrong, people might suffer because of my research. I better get it right." That's what I hope the Goldman School is about — to say it's inexcusable not to get it right.

"But if you're going to be a public policy student, you've got to have [the] goal to make the world a better place."

I've been lucky because I had a chance to end up leading a school that does make a difference in the world. Institutions allow you to do things you could never do alone. By being a part of GSPP, I am part of an enterprise that mobilizes faculty, staff, students, and alumni to really make differences in the world. That's a level of impact and influence that I certainly could not have [had] alone, and that means that

my efforts are multiplied in ways, they just simply couldn't be otherwise.

**BPPJ: What did you believe the purpose and value of the study of public policy were when you began your position as dean in 2009? To what extent has your conception of a public policy school changed since then, if at all? Why?**

To some extent, I've had a constant concern about public policy going back to 1978. [I thought] the school should deal more with class and with stratification systems. It worrie[d] me that we [were] so fixated on economics,

Pareto optimality, efficiency. A constant refrain from me has been that we need to think more about approaches that go beyond just economics and statistics, as much as I love those topics. I've been really happy that curriculum reform has led us in those directions. I wrote something two or three years ago where I said [I was] worried that schools of public policy [would] become schools of market failure and that our ideal will be the perfectly functioning capitalist system. That's about how to make the economy more efficient, but it's not a way to make it more just. To get questions of justice, you have to look at the question of who gets what in a society. We have to have a curriculum that teaches our students about those things.

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**BPPJ: Given that a lot of students feel that the curriculum still relies heavily on a very quantitative mode of policy analysis, can you elaborate on what those curricular changes were?**

I don't think it's quantitative versus qualitative. I've edited and contributed to the book *Rethinking Social Inquiry: Diverse Tools, Shared Standards*, where we've ar-

gued that, that's just a false distinction. Qualitative research can be good, and it can be bad. Quantitative research can be good, and it can be bad. The real issue is, what are you studying with those techniques, and are you doing it carefully and thoughtfully? It's not like qualitative research gives you insights that quantitative doesn't and vice versa. They both give you insights.

I personally believe that there should be a lot more sociology in the curriculum, and I don't know that we're quite there yet. We've hired Angela Glover Blackwell as an adjunct faculty member to teach a course on equity. I think there's more concern with those issues compared to [when I started]. A quarter of our courses now are on inequality. I don't think we can argue

that we want 100 percent of our courses on inequality. There [are] other issues like climate change, national security. [But] I do

think we want every course to be aware of how race and inequality affect [each] arena.

**BPPJ:** Over the last few decades, “policy” seems to have taken a more prominent role in the messaging and rhetoric of social and political movements, rather than a purely analytical undertaking. Do you agree with this observation? And to what extent has this shift affected the actual process of policymaking, politics, and coalition building?

Most of my career was as a political scientist, so I have a predilection to believe political science is really important, but now I think it's more important than I even imagined. We have to understand the politics of situations, but beyond that, we have to understand the nature of stratification systems, which is really more sociology than anything else. At the same time, I don't want [GSPP] to become a school that's taking an ideological perspective and just saying, “We know the answers because we're progressives, and progressives think XYZ.” Our job is to sometimes lean against the progressives and say, “Have you really thought that through? Are you sure that's a good idea?” That's why we put such an emphasis on quantitative methods, analytical methods, to actually try to analyze whether things will work or not.

**BPPJ:** How has this emphasis on politics changed the student body of policy schools like Goldman?

There's a need to tell students that we care about social justice and to attract students who care about that. We've got to think about how to make a society that's fair and just and caring, and I'd like to think the school has that ethos. I wish I'd done better with the students. I feel that there is a sense among students that we don't care enough. Yet, that's our goal. I mean, I increased student aid by 13 percent a year for five years. That was a real reach. That was real work. It means that we've got the diversity statistics we've got. In concrete ways, I think we've tried.

**BPPJ:** There was, and continues to be, a push to increase diversity and inclusion at GSPP among students, faculty, and administrators. Despite the measurable success of these efforts, such as those you've already cited, many within the community still feel that the administration has a long way to go in order to be a fully inclusive and equitable community for its marginalized students, staff, and faculty. What is your assessment of the current state of diversity and inclusion within GSPP, and what progress do you hope to see in the coming years?

I don't think most students have a clue about the statistics that I put forth. I'll be blunt about it. I wish they'd look at those statistics and understand what we've achieved because those were hard to achieve and hard won. I wish they would look at the comparisons with Ford, Kennedy, SIPA, and Harris. We are way ahead of them in

"I wish I'd done better with the students. I feel that there is a sense among students that we don't care enough."

terms of the diversity of our students and faculty.

I wish people would reflect a little bit about what we have accomplished and not just presume that because it's not perfect, there weren't good intentions. You don't get diversity statistics like we have by just sitting back and saying, "Let's let the good times roll." It's a lot of hard work. That's something I've been doing for a decade. That's the only way it happens, and I'm proud of those statistics. I think our students should be proud of what we've accomplished; [although] there's more to be done.

People come to a place; they don't know the history; they don't look at other places, and they have an absolute standard of what they think is correct. They use that absolute standard, and that may be right in terms of pushing for change, but it's not necessarily fair in terms of what's been accomplished. That's not to say we are where we want to be. I've said I'd like to see a student body as diverse as the state of California. I'd like to see a school in which everybody feels included.

I'm hoping that David, our new dean — who's a wonderful person and tremendous choice — will find an opportunity to really put things together, and pick up the pieces after COVID [and] Trump.

**BPPJ: What are the broader obstacles that a school like Goldman faces when trying to have a curriculum, faculty, and student body that is really reflective of not only policymakers but stakeholders and the people affected by these policies?**

When I became dean, I wanted to attract a lot more women to our faculty. I went, solicited, and asked for names. In the economics profession, only 0.6 percent of PhD students are African American women. That tells you that there might be one or two people in a given year who are available and on the job market who are African American women. Some of them aren't going to be interested in being at a public policy school. Then 50 schools are competing for those remaining people. It's really hard.

There's also the problem that we're a master's program, and we take teaching very seriously. Generally, faculty are judged mostly on their research. They've got an incentive to minimize their teaching and maximize their research because that's what they get tenure from. Master's students are demanding — they're hard to teach. Undergraduates idolize us. PhD students want to be like us. I'll let you come up with your own conclusion about what you want to be. So it's hard to

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"You don't get diversity statistics like we have by just sitting back and saying, "Let's let the good times roll."

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"Teaching is important. It's the way you multiply your impact on the world. We have faculty members who, by and large, think that teaching master's students is a worthwhile activity."

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get a group of really first-rate academics to be willing to be in a public policy school.

This faculty is the best faculty, pound for pound, of any faculty in the country by far. We have 10 members in the American Academy of Arts and Sciences, three Carnegie Award winners in the last five years... It just goes on and on. Yet, they really care about teaching. Teaching is important. It's the way you multiply your impact on the world. We have faculty members who, by and large, think that teaching master's students is a worthwhile activity.

**BPPJ: What have you gained from your time as dean at GSPP?**

What an honor. I mean, how lucky can you be? As a kid, I never imagined graduating from college. My mother went to one year of college, and my father didn't go to college, so I'm first-generation. It never occurred to me that I would end up as a dean at the greatest university on earth.

"A GSPP education isn't an inoculation against doing bad, but I'd like to think that it makes it more likely that you will do good."

I love the school; I love what we've accomplished, and I love what we do. I love the fact that the students are animated and motivated to think about social justice and are trying to change the world. I must admit, I'm especially happy when they also want to get the evidence to do it in a way that will really work and be successful. I get distressed when I see students who don't see the virtue in that. I worry that they're going to make mistakes, thinking they're doing the right thing, and end up doing not such good things.

A GSPP education isn't an inoculation against doing bad, but I'd like to think that it makes it more likely that you will do good. You've learned what works and what doesn't work, and you're more willing to ask questions and not just accept what seems to be popular or easy.

**BPPJ: And what's next for you?**

I've got a bunch of books that have been on the back burner. I'm trying to finish a book on the collapse of the Soviet Union. I've also got an article in *Daedalus*, the journal of the American Academy of Arts and Sciences, that's about the declining trust in institutions, something I'm really worried about these days. That partly comes from my role as a dean — I really think institutions can increase what you can do in the world, and I think the knee-jerk attitude of many on

the left and the right to reject institutions on the grounds that they're inherently bad is a mistake. Power can be misused, but it also can be used for good. Power isn't a dirty word. Power is something that allows

you to do good things — as long as you recognize the dangers of the misuse of that power. I want to make sure that we have proper understanding and respect for the institutions that can help change society and make it better.

I'm also working on a project called Cal 100<sup>2</sup>, which is about the future of California.

**BPPJ: As you prepare to pass on the baton of deanship, what words of advice**



would you give to Dr. Wilson as he prepares to take on his new role?

One thing I believe strongly is when you hire a leader, you hire the person based upon their character, not their vision. What you need is somebody with character who can work with others and make them the

best they can be. You want to have goals and ideas, but the most important thing is to have that wonderful character — and David has that in a tremendous abundance.

In terms of advice: please take this precious place, and make sure that you love and care for it, and make it even better. Recognize how important it is to the people who are part of it and how important it is that it be successful, especially in this era when democracy is dissolving, when lies trump the truth, and when evidence is ignored.

I think of us as an oasis, as a place that can help shape a future that's going to be based upon truth, evidence, and justice. So my advice is just to take it, nurture it, make it better. And he will.

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"Power isn't a dirty word.

Power is something that allows you to do good things — as long as you recognize the dangers of the misuse of that power."

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**BPPJ: Thank you.**

Thank you for giving me this chance to talk about some of these things because

they matter a lot to me. I hope people will understand that institutions are inherently imperfect, and that people are imperfect, for that matter. Have a little bit of faith and a little bit of willingness to let those institutions have space to do the things they need

to do. There [are] a lot of institutions people will encounter in life, and I really don't think they're going to find many institutions that are more caring and concerned about making the world a better place than this [one]. GSPP is not one of the bad guys. I

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"There [are] a lot of institutions people will encounter in life, and I really don't think they're going to find many institutions that are more caring and concerned about making the world a better place than this [one]."

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really think we're the good guys.

## ENDNOTES

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1. Harold Meyerson. "The Berkeley Scholar." *The American Prospect*, March 25, 2021. [www.prospect.org/economy/berkeley-school-economics](http://www.prospect.org/economy/berkeley-school-economics)

2. [www.california100.org](http://www.california100.org)



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