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*Northern Plains Ethics Journal*  
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Fall 2017

Scholar Section



## *Host Communities' Perceptions of Refugees in North Dakota and Perceived Impacts of Refugees on North Dakota Communities*

**Tania Arseculeratne, M.S.**

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### **Abstract**

This study identifies host communities' perceptions of refugees and perceived impacts of refugees on North Dakota communities by analyzing a 2015 petition against future refugee resettlement using Braun and Clarke's guide to thematic analysis. I identify two host community perceptions of refugees: refugees as "other," and refugees as a potential threat to the security of individuals, the community, and the nation. I also identify three perceived impacts of refugees: privation of American citizens, and the beliefs that refugees exert pressure on public services, and refugees are ruining the American way of life.

**Keywords:** *Refugees, Perceptions, North Dakota, Perceived Impacts*

### **Introduction**

Although North Dakota has been resettling refugees since 1997, evidence suggests that North Dakota residents' concerns on resettlement are recent. On August 6<sup>th</sup> 2015, WDAY Valley News Live aired "Fargo and West Fargo could see 350 refugees move to cities by the end of September" (Burner 2015), and shortly thereafter North Dakota residents began an on-line petition against future resettlement of refugees (WDAY Valley News Live 2015). The petition was two-fold: petitioners demanded that the state legislature grant North Dakota residents the right to vote on further refugee resettlement and that Lutheran Social Services (LSS), the non-profit agency that resettles refugees in North Dakota, release all data on funding for refugee programs (Change.Org 2015). As of November 27<sup>th</sup> 2015, 3,257 residents of North Dakota and residents of other states such as Minnesota, Nebraska, Ohio, Florida, Texas, Utah, Kentucky, Washington, Indiana, and Idaho had signed the petition (Change.Org 2015).

The petition gave signees the opportunity to provide an explanation for supporting the petition. By critically examining petitioners' comments, this research identifies North Dakota residents' perceptions of refugees and the perceived consequences of refugee resettlement. The residents' perceptions are identified using thematic analysis.

Despite evidence from studies conducted in Europe, Africa, and Australia showing that immigrants' method of entry, refugee or asylum status, and demographic factors influence community attitudes toward immigrants (Codjoe, Quartey, Tago, and Reed 2013; Croucher 2013; Banks 2012; McKay, Thomas, and Kneebone 2012; Alix-Garcia and Saah 2009; Naidoo 2009; Phillimore and Goodson 2006; Verkuyten 2004; Hernes and Knudsen 1992), most studies conducted in the United States make no distinctions between immigrant sub-groups (Turper, Iyengar, Aarts, and van Gervan 2015; Garcia and Davidson 2013; Woods 2011; Fennelly 2008; Raiya, Pargament, Mahoney, and Trevino 2008; Fennelly and Federico 2007; Rohmann, Florack, Piontkowski 2006; Mayda 2004). Attitudes toward refugees, in particular, are insufficiently studied in the United

States (Bullard 2015, Murray and Marx 2013). In addition, there is a lack of qualitative studies on attitudes toward refugees in the United States (Bullard 2015, Murray and Marx 2013). Although findings of quantitative studies contribute to the literature, they are not ideal for capturing elements of behavior and attitudes that are not quantifiable. Instead of attempting to quantify participants' perceptions, this study draws on participants own words and social experiences to identify their beliefs of refugees and justifications for opposing refugee resettlement.

## **Who is a Refugee?**

Refugees enter the United States through authorized methods as non-permanent residents for humanitarian emergency reasons. Refugees are defined as people who are “unable or unwilling to return to their country of nationality because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion” (Martin and Yankay 2014:1). Refugee status is granted to people who apply for admission while outside of the United States (Martin and Yankay 2014). Although upon arrival refugees are not classified as lawful permanent residents, refugees become “eligible to adjust to lawful permanent resident status” one year after their continuous presence in the United States (U. S. Dept. of Homeland Security 2016: no pagination).

Refugees who enter the United States without permanent residency status are not considered unauthorized immigrants because they are subjected to intensive biographic and biometric security checks prior to entering the country. The United States Refugee Admissions Program (USRAP) has a priority process in place to identify the eligible refugee individuals and groups for resettlement in the US. Priority is given to 1) “individuals referred by the United National High Commissioner for Refugees (UNHCR), a US Embassy, or a non-government organization”; 2) “groups of special humanitarian concern”, and 3) “family reunification cases” (Mossaad 2016: 2). After a referral is provided, a resettlement support center working under cooperative agreement with the U. S. Department of State (DOS) conducts a pre-screening interview with the applicant and submits the completed application to the United States Citizenship and Immigration Services (USCIS). Then, a USCIS officer interviews the applicant to determine if he or she is credible, meets the definition of refugee, and is eligible for resettlement in the United States (Mossaad 2016). In this stage, applicants are required to complete the necessary biometric checks, additional biographic tests, and medical exams prior to obtaining approval (Mossaad 2016). The applicants who obtain approval for travel are screened prior to boarding based on travel information collected by Customs and Border Protection (CBP) (USCIS 2015). Based on the screen results, CBP determines if the applicant should be admitted to the United States (USCIS 2015).

# Statistics on Refugees at National and Regional Level

## National Level

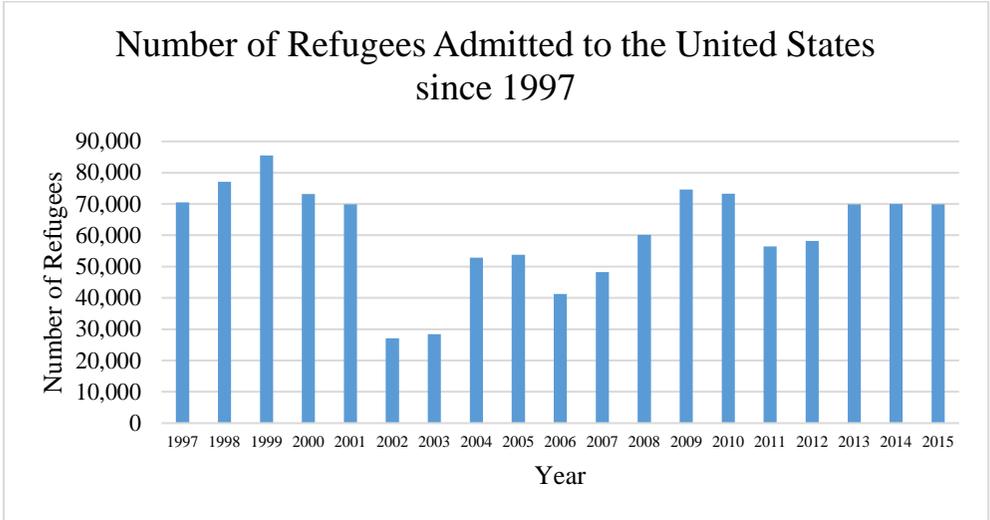


Figure 1. Number of Refugees Admitted to the United States from 1997 to 2015 (U. S. Department of State Bureau of Population 2016)

From 1997 to 2015, the United States resettled an average of 61,000 refugees each year (U. S. Department of State Bureau of Population 2016). From 2013 to 2015, an average of 70,000 refugees were resettled (Mossaad 2016). The refugees in the United States come from Burma, Bhutan, Iraq, Ukraine, Vietnam, Russia, Liberia, Iran, Somalia, Laos, and Cuba. Since 2008, the majority of refugees have come from Burma, Bhutan, Iraq, and Somalia (U. S. Department of State Bureau of Population 2016).

## Regional Level

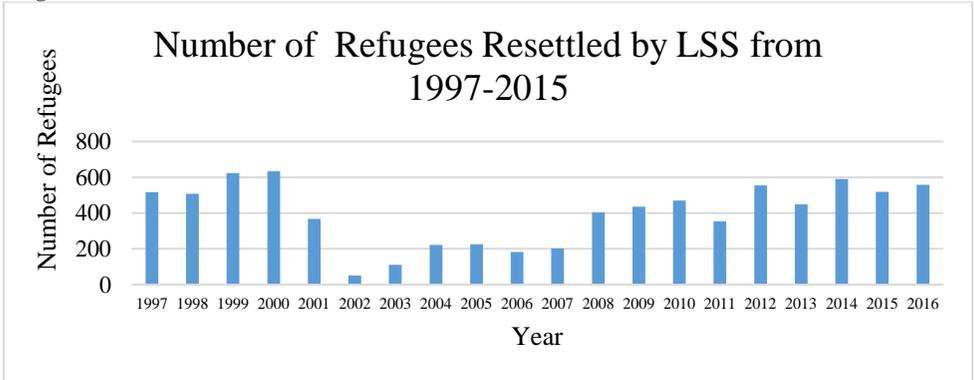


Figure 2. Number of Refugees Resettled by LSS from 1997 to 2015 (Lutheran Social Services 2017)

Since 1997, Lutheran Social Services (LSS) has resettled an average of 400 refugees in North Dakota each year. By fiscal year 2016, nearly 7,780 refugees have emigrated to Fargo, West Fargo, Grand Forks, and Bismarck (Lutheran Social Services 2017). It is projected that LSS will resettle 475 refugees in Fargo, Grand Forks, and Bismarck in fiscal year 2017 (Arick 2015). The refugees in North Dakota come from 35 different countries (Ross 2014) including Bhutan, Iraq, Somalia, Democratic Republic of Congo, Cambodia, Sudan, Eritrea, Afghanistan, Nepal, Burma, Iran, Ethiopia, India, Jordan, Pakistan, and Vietnam (Lutheran Social Services 2017). The majority of refugees resettled in North Dakota since 2001 arrived from Bhutan (39 percent), Iraq (26 percent), and Somalia (24 percent) (Arick 2015).

## **Literature Review**

There is a lack of empirical research on attitudes toward refugees and impacts of refugees in the United States. Thus, the review draws on a range of qualitative and quantitative studies conducted in Australia, Europe, Africa, and the Middle East on authorized and unauthorized immigrants, refugees, and asylum seekers outside of the United States. There is a general movement within studied host communities to restrict the flow of unauthorized immigrants, refugees and asylum seekers (Ceobanu and Escandell 2010; Richmond 2002; Hovey et al. 2000), however that restriction is more severe when communities perceive that immigrants, refugees, and asylum seekers are entering through unauthorized methods. For example, host communities along the Mexican border express more prejudice and anxiety toward unauthorized immigrants, and perceive unauthorized immigrants as a greater threat to their cultural and moral values, and overall welfare compared to authorized immigrants (Murray and Marx 2013). In Australia, hostility toward asylum seekers arriving by boat without valid visas has increased over time compared to other immigrants arriving with visas. Between 1999 and 2001, and between 2008 and 2010, Australia received about 12,000 and 9,000 asylum seekers by boat respectively (McKay et al. 2012). Two opinion polls conducted during these periods show that negative public reaction toward asylum seekers arriving by boat had increased from 50 percent in 2001 to 75 percent in 2010 (McKay et al. 2012).

Holding such negative attitudes toward immigrants can influence important behaviors within host communities, including voting decisions on immigrant related policies (Verkuyten 2004) and active opposition to increasing immigration (Mayda 2004). Past attempts by American voters attest to efforts on supporting policies that impact immigrants. In 1994, California voters passed proposition 187<sup>1</sup> to deny unauthorized immigrants from receiving public social services such as welfare benefits, public education, and health care (Cox 2013; Schuck 1995). In 2011, South Carolina passed Bill 20 to authorize law enforcement officers to determine the immigration status of immigrants during any lawful stop and convict immigrants who fail to carry official legal status verification documents (Fandl 2015).<sup>2</sup> In addition, in 2011, Alabama enacted the Beason-Hammon Alabama Taxpayer and Citizen Protection Act (HB 56) to “make it unlawful for unlawful aliens to apply for work in the state, prohibit tax deductions for service payments

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<sup>1</sup> Although the proposed law was passed by the voters, it was not enforced (Cox 2013).

<sup>2</sup> Legal status verification documents include, but are not limited to, U. S. passport, certificate of naturalization, certificate of U. S. citizenship, valid state issued driver’s license.

to unlawful aliens, and make it a civil offense for an employer to dismiss a lawful worker while retaining an unlawful alien worker” (Fandl 2015:539).

Besides method of entry, and refugee and asylee statuses, immigrants’ demographic factors also influence community attitudes. Demographic factors such as race, ethnicity, religion, country/region of origin, gender, education level, skill level, occupation, skin complexion, and economic status affect host community attitudes toward immigrants (Bullard 2015; Turper et al. 2015; Garcia and Davidson 2013; Marx, Ko, and Murray 2012; Woods 2011; Raiya et al. 2008). These demographic factors not only affect attitudes toward immigrants (Murray and Marx 2013; Raiya et al. 2008; Hernes and Knudsen 1992) but also the level of acceptance rates for potential immigrants (Turper et al. 2015).

In rural and urban areas of the United States, residents’ lower acceptance of immigrants is largely influenced by a few social and economic concerns. The opposition to immigration in rural areas is influenced by immigrants’ perceived impacts on the crime rates and competition for jobs (Garcia and Davidson 2013). The opposition to immigration in urban areas is similarly influenced by perceived impacts on the local economy, crime rates, and competition for jobs (Garcia and Davidson 2013).

In addition, urban and rural American residents feel threatened when immigrants do not conform to the values embodied in presumed American identities. Both urban and rural American residents equally value a set of core virtues embodied in the American identity (Fennelly 2008; Sears and Henry 2003). Thus, Americans would expect immigrants to conform to American virtues such as hard work, obedience, self-sufficiency, punctuality, sexual oppression, thrift (Sears and Henry 2003), English language proficiency, honesty, familial connections (Garcia and Davidson 2013), patriotism, and loyalty (Benjamin 2009). When immigrants’ virtues are perceived to be in conflict with said virtues, Americans tend to perceive immigrants as a threat to their traditional values. Non-conformists of American traditional values of importance were considered violators in the past (Sears and Henry 2003). In addition, although rural residents are highly invested in the notion of American identity, it is not seen as an attitude determinant for rural residents in predicting opposition to immigration (Garcia and Davidson 2013). On the contrary, American identity is seen as an important attitude determinant for urban residents in predicting opposition to immigration (Garcia and Davidson 2013).

Rural residents feel threatened and act less receptive when immigrants are from a lesser known and more visibly distinct culture. In the past, immigrants predominantly resettled in the metropolitan areas. However, over the past two decades, resettlement has been shifting away from urban areas to rural areas where cost of living is comparatively low (Garcia and Davidson 2013; Nezer, 2013; Fennelly 2008). Since most of the rural areas are homogenous communities, immigrants can be easily identified as a new population (Nezer, 2013; Rubin 1994). Sudden influx of a diverse population who are culturally, racially, and religiously different can unsettle the localities’ historically stable notions of belonging (Nezer 2013; Collins, 2013; Rubin 1994). Since rural residents are not accustomed to the presence of immigrants from diverse cultures, and are uncertain about problems that may arise with immigration (Garcia and Davidson 2013), immigrants presence may seemingly threaten the localities distinct traditional world-view and way of life (Fennelly 2008; Zárate et al. 2004). As a result, immigrants can be viewed as a threat

to local values consequently generating negative attitudes toward immigrants (Zárate et al. 2004).

Urban and less educated residents are more likely to perceive that immigrants lead to crime and other social ills, and express negative attitudes toward immigrants (Hainmueller and Hiscox 2007; Palmer 1996). Urban residents in the United States are more concerned about immigrants worsening crime problems than their rural counterparts (Garcia and Davidson 2013). Residents who perceive immigrants worsen crime problems are more likely to prefer decreased immigration (Garcia and Davidson 2013) or oppose immigration (Hainmueller and Hiscox 2007). However, this perception is most prevalent among the less educated residents, with more educated residents less likely to perceive that immigrants lead to increased crime rates and social ills (Hainmueller and Hiscox 2007).

Few prior studies have focused on presenting positive impacts of refugees on host communities (Grindheim 2013; Codjoe et al. 2013; Zetter 2010). According to these studies, refugees bring economic benefits and infrastructural developmental potential to their host communities. For example, refugees in Franklin, Ohio contribute to the local economy as consumers and small-business owners. Ohio refugees' household spending in 2015 is \$ 36.9 million and their total contribution to the local economy is \$ 1.6 billion (CRP Partner Organizations 2015). Furthermore, about 873 refugee-owned businesses in Columbus Ohio employ over 3,900 workers. In Franklin, the rate of refugee entrepreneurship (13.6 percent) is twice the general Franklin County rate of entrepreneurship (6.5 percent) (CRP Partner Organizations 2015). Similarly, refugees in North Dakota also contribute to the local economy as homeowners and taxpayers. According to Valley News Live, a report indicates that at least 100 refugee families in North Dakota own houses and pay about \$200,000 in taxes (Stanwood 2015).

Refugees also stimulate the growth of the host economy through other direct and indirect means. Refugees directly influence the expansion of the local market by increasing the demand for local food produce and commodities such as building materials (Grindheim 2013; Codjoe et al. 2013; Zetter 2010). Increased food, housing, and land prices bring more income to local farmers, and landowners (Mercy Corps 2012; Alix-Garcia and Saah 2009). At the same time, the presence of refugees indirectly contributes to the built and social capitals of the host communities. The host communities could seemingly benefit from assistance programs that provide infrastructure and welfare services to refugees in need (Zetter 2010).

Between 2011 and 2012 alone, 14,000 Syrian refugees arrived in Jordan (Mercy Corps 2012). An assessment performed by Mercy Corps humanitarian agency identifies that the increasing tension between Jordanian host community members and refugees is a result of pressure placed on local resources by the rapid influx of refugees.<sup>3</sup> Jordanian host communities are frustrated due to elevated rents and the plummeted availability of housing caused by the refugee influx (Mercy Corps 2012). The study noted that many residents complain that they have been priced out of their own housing market, and that skyrocketing rental prices force residents to pay a significant amount of their monthly income toward rent (Mercy Corps 2012). Although host community residents are aware that refugees are also adversely affected by exorbitant prices charged by opportunistic property owners, residents insist on a solution that favors them over refugees (Mercy Corps 2012). Host

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<sup>3</sup> Based on data gathered through focus groups and key informant interviews.

community residents also demand to charge a fair rent and protect them from excessive prices that result from high demand for housing (Mercy Corps 2012).

Studies also indicate that competition over resources can have both positive and negative economic impacts on communities (Mercy Corps 2012; Alix-Garcia and Saah 2009; Chambers 1986). Between 1993 and 1998 because of refugee influx, residents of Western Tanzania experienced increases in the prices of locally produced and consumed agricultural goods. Increases in prices due to refugee demand for food positively affected the local producers and negatively affected the consumers (Alix-Garcia and Saah 2009). Thus, the study suggests that policymakers should be concerned about price increases resulting from refugee demand when developing policies in order to avoid any adverse impacts on local consumers (Alix-Garcia and Saah 2009).

Host community residents perceive immigrants as a burden on the economy, public services such as education, and housing (Codjoe et al. 2013; Cox 2013; Nezer 2013; Mercy Corps 2012; Naidoo 2005; Burns and Gimpel 2000; Hovey et al. 2000; Zetter 2010), and also as a competition for jobs (Cox 2013; Mercy Corps 2012; Hovey et al. 2000; Richmond 2002; Rubin 1994). In recent years, these concerns have influenced several countries to implement tighter immigration control policies (Hainmueller and Hiscox 2007). The following section discusses the negative socio-economic impacts of immigrants in detail.

Refugees are considered an economic burden by countries and states facing economic difficulties. African host communities claim that refugees residing in Africa are “imposing additional costs on already economically hard-pressed public and social welfare budgets, arresting economic growth,” and “distorting markets” (Zetter 2010: 50). In the United States, states experiencing financial difficulties and members living in those communities have become resentful toward refugees in regards to the actual use of federal funds to supplement medical, education, housing, and transportation needs of refugees (Nezer 2013).

Residents view immigrants as a burden on social services assuming that immigrants subtract more from the government and taxpayers than they contribute to the local economy as taxpayers and employees. Many Americans perceive unauthorized immigrants as a burden on social services on the basis that social benefits unauthorized immigrants receive are provided at the expense of tax paying Americans (Cox 2013), and immigrants’ tax contributions may be minimal (Burns and Gimpel 2000). Many Europeans perceive immigrants as a burden on social services on the basis that they subtract more from the government than they pay back in taxes (Hainmueller and Hiscox. 2007). A survey conducted in 24 different countries, including United States finds that many residents perceive asylees as a drain on welfare system assuming that asylees are prohibited to work (O’Rourke and Sinnott 2006). Moreover, residents who perceive immigrants as a burden on social services are more likely to express negative attitudes toward immigration (Cox 2013).

Some host community residents of California view unauthorized immigrants as a burden on school services. These residents are more in favor of providing healthcare services for unauthorized immigrants than providing school services. The host community residents perceive children of unauthorized immigrants as contributing to overcrowded classrooms, which lowers the quality of public education (Hovey et al. 2000).

Apart from unauthorized immigrants' children, refugee children are also seen as a burden on school services. Different learning techniques and language abilities of refugee students<sup>4</sup> exert pressure on teachers who have to equip refugee students with necessary academic, social, and linguistic skills while attempting to create conditions for them to participate in the ongoing school curriculum demands (Naidoo 2005). The task becomes more challenging when teachers lack experience in teaching students whose first language is not English. In most instances, the schools, and staff are ill equipped and under-resourced to cater to the needs of the increasing number of refugee students (Naidoo 2005).

Immigrants are also perceived as competition for jobs. There are concerns that immigrants may take jobs away from local residents (Hainmueller and Hiscox 2007; Palmer 1996). When immigrants are perceived as a competition for jobs and willing to work for low wages (Cox 2013; Mercy Corps 2012), they are seen as a threat because they are hired for jobs that would supposedly have gone to local residents (Zárate et al. 2004). Furthermore, opposition to immigration increases during periods of recession or high unemployment (Mercy Corps 2012; Hovey et al. 2000; Palmer 1996; Rubin 1994). When residents become unemployed, they are more likely to believe that immigrants take jobs away from the native-born (Palmer 1996). In such instances, residents become anti-immigrant but not anti-refugee, on the belief that refugees are not authorized to work, therefore not a competition for jobs (O'Rourke and Sinnott 2006). In addition, competition for employment opportunities between immigrants and residents can also increase the existing ethnic and political tensions among diverse groups (Richmond 2002).

## **Methodology**

The study analyzes responses to a publicly available online petition<sup>5</sup> opposing future refugee resettlement in North Dakota that was started in August 2015.<sup>6</sup> As of November 27<sup>th</sup> 2015, 3,257 petitioners had signed the petition. The petitioners included residents from North Dakota as well as residents from other U. S. states including Minnesota, Nebraska, Ohio, Florida, Texas, Utah, Kentucky, Washington, Indiana, and Idaho. Out of the 3,257 petitioners, 1,044 petitioners stated their reasons for opposing refugee resettlement. Among those 1,044 comments, 730 comments were made by North Dakota residents. Since this study focuses on North Dakota residents' attitudes toward refugees, the data set was limited to the 730 comments from North Dakota residents. The analysis followed Braun and Clarke's (2006) six-phase guide to thematic analysis. To increase reliability and accuracy of coding, the data were analyzed using the qualitative analysis software ATLAS.ti.

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<sup>4</sup> Some African refugee students come from agricultural backgrounds that use oral tradition for learning and do not include any form of writing.

<sup>5</sup> Publicly available data does not require Institutional Review Board (IRB) approval.

<sup>6</sup> The petition is available online at <https://www.change.org/p/cass-county-legislature-stop-lutheran-social-services-in-fargo> under "Stop Refugee Resettlement and Lutheran Social Services in North Dakota" (Change. Org. 2015).

## Analysis and Findings

Table 1. Main Themes: Perceptions and Perceived Consequences

	<b>Themes</b>	<b>Frequency</b>
<b>Petitioners' perceptions of refugees</b>	Refugees as "other"	227
	Refugees as a potential threat to the security of individuals, the community, and the nation	137
<b>Perceptions of impacts on communities</b>	Privation of American citizens	222
	Refugees exert pressure on public services and taxpayers	212
	Refugees are ruining the American way of life	187

Table 2 displays themes developed during coding. The themes are separated into two categories: petitioners' perceptions of refugees or petitioners' perceptions regarding the impacts of refugees on communities. Frequency counts for each theme are provided. Themes on host community perceptions include seeing refugees as "other" and seeing them as a potential threat to the security of individuals, the community, and the nation. The perceived impacts of refugee resettlement include privation of American citizens, belief that refugees exert pressure on public services and American taxpayers, and the belief that refugees are ruining the American way of life. The next section discusses each theme in detail.

### *Petitioners' perceptions of refugees*

#### *Perception 1: Refugees as "other"*

Many petitioners viewed refugees as "other" where other refers to non-conformists (n=111), outsiders (n=97), and inferiors (n=19). Petitioners' perceptions of refugees were frequently explicitly or implicitly held in contrast to values embodied in the native-born American identity. For example, petitioners described themselves as "hardworking," "honest," "respectful," "loyal," and "patriotic," while describing refugees as "lazy," "don't work," "disrespectful," "not loyal," and "unpatriotic."

A few petitioners compared refugees with American immigrants who arrived after World War II. In particular, they argued that early immigrants learned English, found jobs, and worked hard to provide for their families. As one resident explained, "[early immigrants] didn't expect any handouts but helped others when in need." The petitioner

perceived that “this should be the same standard today rather than giving handouts” to refugees (Fargo resident). According to a few petitioners, the current “standards” are different from what petitioners desire.

About half of the petitioners who perceived refugees as non-conformists expressed a belief that unlike native-born Americans, refugees are unwilling to work hard and do not seek to be self-supporting. For example, many petitioners perceived refugees as “freeloaders” who are “free riding” in the United States without contributing to the economy. Petitioners claimed that refugees “live off” of “handouts,” “free stuff,” “free programs,” and “free services,” without finding jobs, working hard, and paying taxes. As stated by one Fargo resident, “we can’t keep bringing in more freeloaders. These people who come here live off the system. They refuse to work and are far from productive.”

Beyond the perception that refugees are unwilling to work, one other perception among some petitioners is that refugees in the United States expect to receive handouts and think they are entitled to receive benefits. As a Fargo resident stated, “[refugees] come here getting free handouts and expect everything for free.” One Fargo resident succinctly captured the reoccurring idea that refugees think they are entitled to receive benefits, and that the attitude of modern refugees is seen as distinct from past immigrants.

I feel we are creating a nation of helpless victims that feel they are entitled to benefits that we the people work for. Don't get me wrong, I wouldn't be here if it weren't for our great country allowing immigrants on to our land. But, our immigrant ancestors work[ed] hard and help[ed] build our nation. Now, they [refugees] sit in [on] their asses reaping the benefits from our hard work.

Using the words of a McCanna petitioner, “the majority of these immigrants want [the] generosity [of the American residents] and [expect] free programs without paying in return.” In addition to highlighting the perception of refugees as free loaders, it reflects an understanding of refugees as non-conformists who are “abusing resources,” and “taking advantage of the system.”

Another perceived aspect of refugee non-conformity mentioned lack of social skills appropriate to the United States. Some examples of inappropriate social etiquettes and social graces include shouting, screaming, littering, refusal to greet back, and staring at native-born residents. A Fargo resident stated, refugees “lack severely the daily skills, social and proper public etiquette, no common sense, dang near when they drive or even get outta [out of] the cars.” Examples of language used by petitioners to describe the perceived lack of U. S. social etiquette include “disrespectful,” “ungrateful,” “rude,” and “horrible drivers.”

Refugees were also seen as being outsiders. This conception is represented both by the labels applied to refugees, and the explicit mention of traits that supposedly make refugees culturally distinct from native-born Americans. For example, some petitioners described refugees as a group separate from the local community using terms such as “foreigners,” “unknowns,” and “outsiders” to express their attitude. That refugees were culturally distinct was highlighted through references to language, dress, religion, and eating rituals. For example, some petitioners mentioned that refugees were “clad with rags from head to toe,” that “the majority of these folks [refugees] are Muslim,” “can’t speak

English,” or had “very bad English,” and that there were differences in cooking and eating habits. A Fargo petitioner shared a related negative experience, “I can’t shop and talk to someone in English anymore while they are a US Citizen. Won’t handle my pork and causes delays in everyone’s shopping experience.”

Lastly, about 17 percent of petitioners who viewed refugees as “other” held a belief that refugees were inferior to native-born Americans. Dimensions along which refugees were seen as lesser include education, skill, social status, and worthiness. Language used by petitioners to describe refugees as inferior include “substandard,” “uneducated,” “unskilled,” “losers,” “trash,” “stupid,” and “garbage.” The following quotations exemplify the view that refugees are inferior:

“These guys are pigs, garbage and filth where they live”  
(Fargo resident).

“Take the trash out somewhere else. Enough!” (Minot resident).

### ***Perception 2: Refugees as a potential threat to the security of individuals, the community, and the nation***

The belief that refugees pose a threat to individuals, the community, and national security is grounded in the assumptions that refugees are either criminals or increase crime rates, and are either terrorists or potential terrorists. Petitioners viewed refugees as “unlawful” “criminals,” “illegals,” “lawless,” “thieves,” and “troublemakers” who “cause trouble” in the belief that refugees are disproportionately involved in criminal and illegal activities. These activities included “theft,” “robbery,” “vandalism,” involvement in “fights,” “shootings,” terrorist activities, and drug use or distribution. A Park River resident described some of the criminal and illegal activities he/she believes are carried out by refugees:

Too many problems with the people that are in the valley already! Shootings, fighting ect [etc.]. Peoples [People] at a business in Grand Forks openly trying to get others to join Isis! Some have only been in GF [Grand Forks] only a couple days! Lots of trouble with them, a few weeks ago two girls hit a pole in Fargo one girl was trying to teach the other to drive! Neither one had a license neither one knew how to drive! You can go on all day long [...]

Over 50 percent of petitioners (who viewed refugees as a potential threat to the safety of the individual and community) claimed that not only have crime rates in North Dakota increased with the arrival of refugees, but that the increase is caused by refugees. One Fargo resident states that the, “dramatic increase in violent crime in FM area timeline coincides with concerted effort to settle refugees [refugees] in Fargo.” Certain petitioners saw crime as being “significant,” having “sky rocketed,” “soared,” “doubled,” and “tripled” in response to refugee resettlement.

Not only do many petitioners’ viewed crime rates and criminal activities such as “theft,” “robbery,” “vandalism,” and “involvement in fights” as occurring more frequently,

but they view Fargo and Grand Forks as areas that are increasingly unsafe. A Fargo resident shared an observation about how neighborhoods have changed over time because of refugee arrival: “Over the past 10 years, I have watched as Fargo goes from being a great safe place to live, to a city just like every other with crime that just keeps rising.” Some petitioners expressed a fear of walking at night in their neighborhoods, going to gas stations at night, leaving their possessions unattended, and that they might be subjected to physical violence.

Increasing levels of fear among residents produced a number of expressed behavioral intents. For example, few petitioners mentioned that they had started to lock their vehicles and houses, had purchased guns for protection, or intended to move out of their community to safer areas such as “Horace, Harwood, and Mapletown.” In the words of an Arvilla resident:

I lived in a neighborhood that was overrun by Somalian[s] and we had to move [because] the crime rate was crazy. The police where [sic] always there. We found and saw these people throwing drug paraphernalia in our yard. I have a teenage son and couldn't live this way or expose him to this. We where [sic] scared to walk in or out at night. We had to move because of these people.

Though some petitioners claimed personal experiences as a justification for their feelings of insecurity or being at risk, others developed beliefs based on information provided by friends and relatives, and reports on mass media. As a Fargo resident mentioned, “The crime rate has also increased, as yet I have not been affected by this but I watch the news.” Few petitioners proposed that the means to “decrease crime” and “improve safety” is to stop bringing refugees into North Dakota.

Fears concerning safety and security seemed rooted in a fundamental distrust of refugees paired with a lack of knowledge regarding refugees’ backgrounds. Certain petitioners expressed a belief that most refugees come from countries with a “history of producing terrorists,” and by extension assumed that most refugees have connections to terrorists or terrorist groups. Though some petitioners revealed a general feeling of fear and distrust oriented toward all refugees, a few select participants expressed fear of Muslims in particular. For example, one Grand Forks resident expressed the following: “We shouldn't be bringing Muslims to our country! Ever [every] single one of them is or, will be a terrorist. They are either on jihad or support those who are! It's part of their religion.” Likewise, a Mapleton resident expressed a concern about potential terrorist attacks: “I feel as if we should stop refugees from coming into the United States at all, they have their own country they don't need to barge into ours and ruin our lives from possible terrorist attacks.” A West Fargo resident expressed concerns about the safety of the future generations of America. “These people [refugees] could be terrorists living next door to you, are [our] kids won't be safe.”

Although the USRAP has a process to identify refugees’ eligibility for resettlement in the United States, nearly half of the petitioners who viewed refugees as a threat to the nation raised questions about the reliability of the current security screening process. According to a Fargo resident, “These people are not screened by OUR standards

but by the standards of the country they are trying to leave – by their own chaotic governments that don't want them –and we take their word for it that these are “good” people.” Such comments reflect feelings of dissatisfaction or distrust with standing procedures. Some petitioners requested more information about the security screening process. Certain petitioners also raised concerns about refugees’ potential links to terrorists and terrorist groups. Some petitioners suggested to stop bringing refugees to the United States and a few suggested to act “with caution” instead “with heart” in order to protect the country and its citizens, and prevent placing the latter at “high risks of terrorism.”

### ***Perceived impacts of refugees on North Dakota communities***

#### ***Impact 1: Privation of American citizens***

Petitioners saw refugees as depriving American residents of goods and services that they believe to be justly theirs. A significant amount of petitioners expressed feelings of exclusion, deprivation, and loss of priority and entitlement. Their claim is that it is right and just to prioritize the needs of American citizens as long as such need exists, and that assistance rendered to refugees by the government and social service agencies such as LSS should only be allowed in circumstances when need of native-born citizens have already been met.

A large number of petitioners mentioned a number of social groups within the United States that they saw as deserving but lacking assistance due to what they see as the prioritizing of refugees by governmental agencies and non-profit groups. Social groups mentioned include veterans, homeless, senior citizens, underprivileged (low-income) families, single parents, disabled, sick, pregnant women, and the unemployed. A considerable amount of petitioners argued that, though these groups’ needs include financial assistance, housing assistance, medical assistance, food, operable vehicles, and jobs, American citizens do not qualify to receive assistance. In their own words, Americans “can’t get help” “don’t get help/assistance,” are “denied help,” or do not “get enough help” when they need assistance. A Grand Forks resident expressed feelings of disappointment about the situation:

I’m irritated with the fact that they can receive help with housing in an instant... I am an American who is a month away from having a baby and have to jump through hoops and has [sic] ultimately been denied...

Many petitioners perceived that “exclusion” of “native-born,” “hardworking,” “tax paying,” “needy” Americans was “not fair: As a West Fargo resident explained, “this has nothing to do with race or color, it has to do with fairness and...that rules aren't the same for everyone.” An Embden resident reasoned why exclusion of native-born was not fair: “We as citizens of this country should be able to get help when needed since we were born here and have worked here as well.”

The belief that refugees are favored over financially struggling native-born Americans is reflected in a number of comments. Statements include, American citizens “are at the bottom of the lists for assistance” or are put on waiting lists in order to help refugees. Additionally, some claim that when Americans are unable to get assistance, or

denied assistance, it is because refugees receive the “best of everything” and that the refugees’ experience in receiving assistance is easy and quick even “being from a different country.” As a Leonard resident stated:

I know several of my family members have tried to get help when they have ended up homeless with children and they have been told that they can't help them right now. Oh yet, an immigrant from another country comes over here and they don't tell them that they get everything handed to them!!!! What in the world that is ridiculous.

Whereas in this context social groups such as veterans and native-born homeless are seen as deserving, refugees are seen as underserving. Moreover, many petitioners viewed the provision of public services to refugees as favoring the undeserving at the expense of deserving American citizens. These perceptions seemed to be rooted in the belief that American citizens had to work and pay taxes to create social services, but they do not receive the benefit, and refugees (implicitly) do not work and pay taxes, but do receive benefit. A large number of petitioners expressed resentment over such treatment. Some petitioners desired that they had the same privileges the refugees enjoy.

Some petitioners also expressed feelings of relative deprivation. These petitioners assessed their positions in life and standards of living by comparing themselves with refugees. Some petitioners perceived that refugees “live better” or “are better off” compared to the “hardworking U. S. born citizens.” Several petitioners said that they have not witnessed any refugee who is “homeless, hungry, or without a vehicle to drive?” Some petitioners also made interpersonal comparisons between their own property and the property owned by refugees. According to many petitioners, although refugees depended on social services and other support systems, they owned brand-new expensive vehicles such as BMW, Lexus, and Mercedes, the latest cellular phones, “better furniture,” and “nicer clothes” when compared to the hard working, taxpaying American citizens. Some petitioners expressed feelings of anger, frustration, and social injustice in response to this perceived difference. “I’m sick of seeing Somalians and other such groups of people with cars nicer than I and my family have ever had” (Fargo resident). For some petitioners, the perceived inequity was coached in terms of their ideological aspirations, and a perceived unfair advantage held by refugees. For example, certain petitioners felt deprived because “refugees get the American dream,” and “everything they want within months of being” in the United States as a consequence of the support given by the government and agencies such as LSS (Fargo resident).

The perception that American citizens should be prioritized over refugees did not only stem from personal experience with refugees, but rather was an attitude expressed more generally by third-party perceivers.<sup>7</sup> Perceivers, in this case host community

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<sup>7</sup> A perceiver is a person who “assesses a given outcome distribution, a procedure, or means to treat individuals” (Hegtvedt 2006:47). However, all perceivers are not recipients of “outcomes, or targets of the procedure or treatment” (Hegtvedt 2006:47). Perceivers who are recipients of outcomes or targets are first-party perceivers and they make assessments that are greatly influenced by self-

respondents, favor the in-group. A large number of petitioners used phrases such as “take care of our own people,” “take care of our people here,” and “take care of the people born in this country” repeatedly to emphasize the importance of catering to the needs of native-born Americans prior to helping refugees.

### ***Impact 2: Refugees exert pressure on public services and American taxpayers***

A significant number of petitioners saw refugees as exerting pressure on public services such as “welfare,” “social security,” “health care/ medical,” the “education system,” “public housing,” and “infrastructure.” They claimed that at present, the United States is “broke,” and is “over 18 trillion in debt,” and that it has “enough problems with poverty.” According to many petitioners, the country has a “hard enough time funding [its] own citizens/programs/schools” and “doesn’t have enough resources” such as “housing,” “space in schools,” and general infrastructure such as roads, law enforcement “to help those who are already here”<sup>8</sup> Further, they see it as impossible to “assimilate this huge influx of refugees without significantly affecting [the] community”<sup>9</sup>. In the view of petitioners, there are not enough resources to provide for the needs of the native-born citizens, and bringing in “way too many refugees” is “taxing the resources of [the] communities.” Some petitioners questioned the sensibility of bringing refugees to the United States before “fixing” the existing economic problems and strengthening local economies. As a Fargo resident stated:

I started this petition because I have VOLUNTEERED my time at the Food Bank and have packed thousands of lunches for the weekend when low-income children don't have school lunch. If our county and state isn't [sic] taking care of these children and families and are relying on DONATIONS AND VOLUNTEERS to feed them then WHY are we allowing LSS to ship an additional burden on [to] me and my family?

A considerable number of petitioners assumed that refugees live at the expense of taxpayers, and are thereby exerting pressure on native-born, taxpaying citizens. Many petitioners saw refugees as a burden in that they “lived off” of public services paid for by hard working American taxpayer. They thought that citizens have to “support” refugees like “children” because “most of [the refugees] do not want to work to support themselves” but “want to be taken care of.” According to many petitioners, since “a lot of [refugees] don’t work” they “live on [American taxpayers’] money.” Some petitioners claimed that refugees never pay “property and school taxes,” and “any [other] taxes,” but refugees qualify to receive “SSI from Social Security” and other “free stuff” such as “free money,” “free education,” and “free medical.” As one Fargo resident shared, “I’m tired of my taxes paying for refugees’ free healthcare, housing, and food.” Another Fargo resident expressed

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interested concerns (Hegtvedt 2006). Perceivers who are not recipients of outcomes or targets are third-party perceivers and they make impartial assessments (Hegtvedt 2006).

<sup>8</sup> Fargo resident

<sup>9</sup> West Fargo resident

similar thoughts: “Our tax money is taken and given to those who contribute nothing.” Few petitioners feared that they will have to pay more taxes in order to support refugees.

Though perceived impacts of refugee resettlement on public services included a range of factors such as longer waiting times or waiting lists for public housing, increased housing costs, overloaded welfare systems, and overcrowded schools. Some petitioners seemed disproportionately concerned with the negative impacts on schools. Such impacts include overcrowding, lack of teachers, and a reduction of attention paid to American children as refugee children monopolize the teacher. As a Fargo resident explained:

[T]he [incoming refugee] rate is unsustainable and taxing the schools and services of the community...In some schools there is a 20% and growing population of early English learners, and when the schools have to dedicate 30-35% of the teacher resources because of English proficiency standards it leaves the other students at a disadvantage.

Even in the absence of concerns regarding the current deprivation of American citizens, there is a fear of over burdening the system so that future deprivation might occur. According to some petitioners, “too many Americans are already on some form of assistance.” Petitioners claimed that social services and welfare programs are unable to bear the burden of Americans who are already depending on them. Some petitioners feared that “dumping” refugees on “already overloaded systems” and “already overstressed social support systems” will put “more strain,” subsequently “drain[ing] welfare systems.”

Some petitioners blamed the government and LSS for encouraging refugees to depend on public services, and taxpayers. According to several petitioners, the “[government] takes [American citizens’] taxes and supports [refugees] for nothing” as a result “[refugees] refuse to work.” Some petitioners are also “tired of seeing LSS only teaching the immigrants they bring to Fargo how to fill out welfare forms and leave the taxpayers to support their clients for decades.” In petitioners’ view, providing free goods and services discourage refugees from becoming productive economic assets for the community. Certain petitioners further blamed LSS for not taking the responsibility to help refugees be self-sufficient, claiming that this responsibility is transferred to American taxpayers after a few month of refugees’ arrival. As one Fargo resident explained:

LSS brings these people here and then dumps them on society expecting us to pick up the pieces. They, LSS, gives them little to no assistance or training on how to integrate into the populace properly. LSS relies on the communities programs paid for by taxpayers to do the job for them.

### ***Impact 3: Refugees are ruining the American way of life***

Many petitioners reported that the arrival of refugees resulted in negative changes within their neighborhoods. According to some petitioners, North Dakota communities, prior to the arrival of refugees were “peaceful,” “quiet,” “secure,” and “good,” but refugee resettlement has negatively impacted those community traits. A

Horace resident explained, “I am sick of the influx of refugees in the FM area because the FM area used to be peaceful and not a bad neighborhood in town.” Another Fargo resident expressed similar notions: “The Face of Fargo has changed in the last 8 1/2 years since my family moved here, and all I see is more violence.” Perceptions of the decreasing quality of place led to some petitioners expressing a desire to “move out of” their current locations.

Some petitioners also experienced an undesired change in the national composition of the population, because of the perceived “influx of refugees.” Petitioners used phrases such as “too many new Americans in too short of time,” “our town being swarmed with foreigners,” and “neighborhood have been flooded by immigrants over the last couple of years” to express the belief that the national composition of the population has changed rapidly and to the detriment of current residents. Few petitioners expressed that they now felt like “the minority” in their neighborhoods.

Many petitioners perceived that “refugees are ruining [their] way of life.” In particular, some petitioners claimed that refugees and refugee resettlement are “ruining” North Dakota, its communities and neighborhoods “little by little” by undermining the local culture and values, and lowering the “standard of living down to a third world country level.” Perceptions seem to be shaped by what were seen as differences in “daily skills, social and proper public etiquette,” and culture. Petitioners criticized refugees’ lack of knowledge about local rules and laws, involvement in fights, and unfriendly and unethical behavior in public places (loudness, littering, unattended children). A West Fargo resident shared perceived negative impacts of refugees in the neighborhood:

My family works hard and built a new bilevel in west Fargo to get out of the apartment we were in to get away from the riff raff and have a better life. These pieces of garbage are now moving into all of the houses around us because they move in either five generations of their family or more common [commonly] have three different families living in a three bedroom house with at least fourteen people in a house so that they only have to work on [one] day a week to pay for it. The problem I have with them is not only the ten cars parked all over the lawn and driveways, but these people are extremely rude and stand in groups of three or four in their yard when we are outside and just stare at us! We've tried to go over and say hi to them but they look at us and don't answer back. There's a lot of strange behavior out of them and we now hate our neighborhood and want to leave our home that was supposed to get us away from these trashy substandard people who love to throw their garbage all over their yard so it blows into ours along with all the cigarette butts they throw in our yard.

Many petitioners believed that refugees are unwilling to integrate into American culture and feared that this might lead to negative cultural changes in host communities. In

asserting this belief, petitioners used phrases such as “no interest in joining our society or culture,” “no intention of becoming a part,” “don't integrate into society,” “do not even try to assimilate,” “won't assimilate,” and “not assimilating.” They justify their assertions by referencing refugees’ apparent reluctance to change their traditional dress, eating habits, social conduct, work ethics, and English language skills. The seeming reluctance of refugees to adapt was seen as a threat to the local cultural values. Some petitioners expressed dissatisfaction over recent changes in traditions and practices in order to cater to the needs of the refugees. Examples included: not being able to “say the pledge” in schools, “not being able to bring a bible to school,” “providing school signs in Farsi,”<sup>10</sup> and giving driver’s license written test in a refugee’s first language. Others expressed a fear that with the increased number of refugees “holidays and traditions,” and cultural “heritage” will be lost.

According to Sears and Henry (2003), when in-group and out-group ethics are not consistent, dominant in-group expects out-group to conform to the dominant group’s traditional moral values. This trend was reflected in the data. Some petitioners demanded that since refugees are in the United States, they should “change” or “adapt” to the American way of life without expecting any adaptation on the part of the host community. As one Fargo petitioner claimed, “not only that they feel we should change our ways our beliefs and so on...NO they came here therefore they should change their ways and become custom [accustomed] to ours [our] ways.”

Few petitioners described a set of social and ethical standards, seen lacking in, but expected from refugees. These standards were couched in terms of the American identity. That is to say, these standards reflect petitioners’ conceptions of what it is to ‘truly’ be American. Standards included the following: conformity to rules and regulations, adopting American cultural values, working hard to provide for family, learning to speak English, cleanliness, and demonstrating a “rock solid” loyalty to the United States. In the words of one Grand Forks resident, “If they [refugees] drop food or anything in apartments pick it up. I see crackers n [and] meat they drop and they do nothing. Either learn to adapt and work your way up or leave is how I see it.” A Manvel resident shared similar ideas, “If they leave their society to come to the US they should leave all the foreign garb [clothing or garbage] in the foreign places and conform to the USA. Shower, eat American food, and ACT LIKE AN AMERICAN.”

Some petitioners expressed hostility toward refugees that they interpreted as being unwilling to integrate into the local culture. Petitioners suggested that if refugees are unwilling to integrate they should “go back” to their own countries. A Manvel resident stated: “YOU [refugees] WANT YOUR WAYS IMPLEMENTED GO BACK TO YOUR HOME THEN YOU CAN HAVE YOUR WAYS.” When some petitioners expressed hostility over refugees’ lack of integration, two petitioners identified the reason for lack thereof and proposed a solution. A West Fargo resident identified lack of “adequate support system in place to successfully assimilate refugees to the community” as an issue to low integration. A Fargo resident proposed that “there needs to be a clear system in place to help immigrants and refugees adjust to the societal/cultural differences.”

## **Conclusion**

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<sup>10</sup> Farsi is a language primarily spoken in Iran and Afghanistan.

Some of the perceived negative impacts identified in this study include 1) refugees exert pressure on public services and taxpayers without contributing to the local economy as employees or taxpayers, 2) refugees exert pressure on school services by overcrowding, placing pressure on teachers, and reducing attention paid to American children, and 3) refugees increase crime rates in North Dakota. These findings are consistent with prior research conducted on impacts of authorized and unauthorized immigrants, and asylum seekers in America and Europe (Cox 2013; Hainmueller and Hiscox 2007; O'Rourke and Sinnott 2006; Naidoo 2005 Burns and Gimpel 2000; Hovey et al. 2000). Consistencies in findings suggest that certain perceived negative impacts are common to multiple immigrant classifications, and local and global communities.

Given the scope and explorative nature of this study, the findings raised more questions that need answers. For example, this study identified that host communities believe that refugees increase crime rates, refugees exert pressure on public services and resources, and refugees subtract more from the government and taxpayers than they contribute to the local economy. However, the accuracy of these perceptions are not often widely known. Not knowing the real impacts of refugees on local communities is a hindrance for implementing the appropriate policies and strategies to address any existing issue. Poorly planned strategies and policies can have negative impacts on both refugees and local residents. Researchers, refugee resettlement agencies, and policymakers can use the findings of this study as a starting point to further investigate and gather evidence on presumed perceptions prior to developing plans and reviewing policies.

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**Tania Arseculeratne** is a recent Master of Science graduate in Sociology from North Dakota State University with an emphasis on community development. As a graduate student, Tania worked at Northern Plains Ethics Institute at NDSU as the administrative assistant and completed her internship at Cultural Diversity Resources at Fargo, ND. Arseculeratne is currently working at the Omega Community Development Corporation in Dayton, OH.





## *Testimony and Moral Understanding*

**Anthony T. Flood, Ph.D.**

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### **Abstract:**

In this paper, I address Linda Zagzebski's analysis of the relation between moral testimony and understanding arguing that Aquinas's eudaimonism provides a basis for a solution to how one may use moral testimony in her cultivation of moral understanding and related virtuous acting. I proceed by offering an overview of Zagzebski's account of epistemic universalism, which maintains that the fact that another person believes *p* is a *prima facie* reason to believe *p*. The second part addresses the problem of moral testimony insofar as testimony does not seem capable of producing moral understanding. The third section covers Aquinas's characterization of the eudaimonist framework, particularly in terms of his understanding of *prudentia* and *docilitas*. The final section adapts Aquinas's notions to provide a solution to the considered problem of moral testimony.

**Keywords:** *Happiness, Linda Zagzebski, morality, testimony*

### **Introduction**

Linda Zagzebski offers a compelling and fresh account of the nature of and justification for epistemic authority. She first introduced her key ideas in the article "Ethical and Epistemic Egoism and the Ideal of Autonomy"<sup>11</sup> and then provided a comprehensive account in her *Epistemic Authority: A Theory of Trust, Authority, and Autonomy of Belief*. In this paper, I address her notion of the relation between moral testimony and understanding and argue that Aquinas's eudaimonist ethical account provides a basis for a solution to how one may use moral testimony in her cultivation of moral understanding and related virtuous acting.

I proceed by offering an overview of the key aspects of Zagzebski's account relevant to my argument. The second part addresses the problem of moral testimony insofar as testimony does not seem capable of producing moral understanding. The third section covers Aquinas's characterization of the eudaimonist framework, particularly in terms of his understanding of *prudentia* and *docilitas*. The final section adapts Aquinas's notions to provide a solution to the considered problem of moral testimony.

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<sup>11</sup> "Zagzebski, Linda. "Ethical and Epistemic Egoism and the Ideal of Autonomy." *Episteme: A Journal of Social Epistemology* 4:3, 2007, 252-63, p. 252.

## Zagzebski's Basic Account

Zagzebski formulates two basic positions that relate to how the beliefs of others ought to impact an epistemic agent's own beliefs—that is, given that someone else believes  $p$ , what sort of evidence does that provide for her to believe  $p$ . Zagzebski refers to the positions as epistemic egoism and epistemic universalism. She begins with a comparison of ethical and epistemic egoism. She characterizes epistemic egoism or epistemic self-reliance in terms of a default distrust in the beliefs of another person as evidence for one's own beliefs. Epistemic egoism admits of two versions: extreme and standard. "According to the extreme egoist, I have reason to believe  $p$  only when the direct exercise of my faculties gives me reasons for  $p$ ."<sup>12</sup> The core idea is just as the ethical egoist does not place ethical value on the interests of another, such that she never acts for the sake of another person's interests unless those interests happen to overlap with her own, so the epistemic egoist places no epistemic value on the belief and associated testimony of another person.

Zagzebski cites Elizabeth Fricker's characterization of an ideal epistemic agent, who is superior to humans, capable of deriving all knowledge from her own powers and doing so; such an agent does not epistemically depend on anyone else and, thereby, embodies epistemic self-reliance.<sup>13</sup> Zagzebski notes that most egoists make accommodations for trusting others and, hence, are not this extreme. In its place, they endorse what she calls "standard epistemic egoism," of which she states:

The standard egoist agrees with the extreme egoist that no belief is justified unless it is ultimately based on reasons he has acquired by the direct use of his own faculties. The difference is that the standard egoist is willing to use his faculties to determine that he has reason to believe that another person is a reliable source of true beliefs. The reliability of the source must be justified by beliefs he has using his own perceptual faculties, memory, and reasoning.<sup>14</sup>

While standard egoism might be more palatable than the extreme form, Zagzebski contends that both are untenable, and we ought, instead, to endorse epistemic universalism, the view that maintains that "the fact that another person has a certain belief always gives me *prima facie* reason to believe it."<sup>15</sup> In other words, our default position should be to trust other persons' beliefs as evidence for our own to the same extent as we trust our own. However, as Zagzebski notes, this trust can quickly be defeated by various factors, including the

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<sup>12</sup> Zagzebski. *Epistemic Authority: A Theory of Trust, Authority, and Autonomy of Belief*. Oxford: Oxford University Press, 2012, p. 52.

<sup>13</sup> Elizabeth Fricker. "Testimony and Epistemic Autonomy." In Jennifer Lackey and Ernest Sosa (eds.), *The Epistemology of Testimony*, pp. 225-250. Oxford: Oxford University Press, 2006, p. 243. While this is an ideal, Fricker does not think it is realistic in actual life and endorses a view similar to what Zagzebski calls "standard epistemic egoism."

<sup>14</sup> Zagzebski, pp. 54-55.

<sup>15</sup> Zagzebski, p. 58.

perception of a lack, on their part, of epistemic conscientiousness—the disposition to form beliefs out of a concern for the truth.

Zagzebski's argument concerning the incoherence and untenable nature of epistemic egoism centers on an analysis of the nature and role of self-trust in the epistemic life. The argument runs as follows: Self-trust—the trust that one's cognitive faculties are reliable—cannot be established by reasoning; any such attempt would inevitably be circular. Furthermore, there is no relevant difference between one's own cognitive equipment and the equipment of other epistemic agents, particularly if the other agents exhibit conscientiousness; that is, the other agents use their cognitive equipment in a truth-seeking manner. Consequently, there is no *prima facie* rational reason to trust my own faculties but distrust others.

In short, self-trust is pre-rational and trusting oneself commits one to trusting the operation of *any* relevantly similar cognitive equipment as such and not simply one's own; therefore, self-trust commits the agent to a default trust in the beliefs of other epistemic agents who are conscientious to the degree as oneself; a person need not use her own powers to ascertain the reliability of other agents. Zagzebski further contends that an agent who values her own cognitive faculties simply because they are hers values herself more than the truth, which would be an instance of extreme ethical egoism in the realm of the intellect, a position she contends no one would explicitly defend.

Zagzebski's analysis of the relation between self-trust and trust of others establishes that any characterization of epistemic egoism that values the use of one's own cognitive faculties more than those of others must be incoherent. The logic of self-trust commits one to a default trust of others who are as conscientious as oneself and, thus, a rejection of both forms of epistemic egoism. To reiterate a key point of universalism, the fact that another person assents to *p* is a *prima facie* reason to assent to *p*; or in terms of testimony, universalism maintains that one should consider the testimony of a conscientious believer as evidence in favor of *p*, even if one does not have evidence of the other's reliability.

## **Moral Testimony**

Zagzebski turns to an analysis of moral beliefs and how the above considerations affect how we should treat testimony about moral propositions and associated beliefs. She contends that the moral domain involves complexity not found in garden variety beliefs, and, therefore, the fact that another person has moral belief *p* does not necessarily mean that I should accept *p*, even if the other person is conscientious and other defeaters are absent. She focuses upon two problems: first, beliefs based on testimony lack motivational force, and second, they do not yield understanding. She argues that the nature of a community allows for the transmission of both motivation and understanding, though the process is complex. I wish to focus only on the second issue of moral understanding. Nothing I say undermines her case for the role that a community, either religious or other, may play in the communication of moral beliefs. Rather, I think there is a simpler way, which is compatible with her epistemic universalism, that moral understanding can be transmitted.

Zagzebski characterizes moral understanding as follows:

Moral understanding includes seeing the connection between moral reasons and moral judgments, and perhaps also the connection between certain emotional and moral judgments. Understanding permits us to see how to extend a moral judgment to different situations, and to see how distinct moral judgments relate to each other, perhaps because they are grounded in the same general value or principle.<sup>16</sup>

The problem facing moral testimony is that even if it can provide epistemic justification, it does not seem capable of producing this sort of understanding. Understanding requires not just true moral beliefs but also the grasp of the connections and relations between the beliefs and the reasons why they are true. For good, virtuous actions, knowing that a moral proposition is true is insufficient; one must also know why it is true. The “why” cannot be transmitted via testimony, only the “that.”

In short, even if we accept epistemic universalism, moral testimony alone, since it does not transmit understanding, fails to produce what is necessary for conscientious moral acting. Again, Zagzebski contends that communities provide the resources to overcome this limitation. Nonetheless, I think classical eudaimonism provides a much simpler link between testimony and moral understanding compatible with epistemic universalism.

### **Aquinas on *Prudentia* and *Docilitas***

My basic contention is this: a person’s apprehension that a testifier possesses a share of eudaimonia or happiness bridges the gap between moral testimony and moral understanding. In other words, perceiving that the testifier exhibits happiness gives a person a sense of why she should act on the basis of the testimony. The moral testimony creates the conditions by which she does not merely know that she should do such and such but also why, at least in a preliminary sort of way. She understands the precept’s connection to the attainment of happiness. I think any eudaimonist account could accommodate this point, though for the sake of this paper, I will focus on Aquinas’s version. His thoughts of the nature and place of docility in the context of self-direction provide an attractive framework to develop my thesis.

According to Aquinas, each person has the responsibility of leading and directing oneself to *beatitudo* or happiness and *prudentia* constitutes the key virtue pertaining to this activity, as it is the virtue that perfects practical reason. He notes that prudence involves three acts: counsel, judgment, and command:

Prudence is *right reason applied to action*...Hence that which is the chief act of reason in regard to action must needs be the chief act of prudence. Now there are three such acts. The first is *to take counsel*, which belongs to discovery, for counsel is an act of inquiry...The second act is *to judge of what one has discovered*, and this is an act of the speculative reason. But

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<sup>16</sup> Zagzebski, p. 175.

the practical reason, which is directed to action, goes further, and its third act is *to command*, which act consists in applying to action the things counseled and judged.<sup>17</sup>

The activity of prudence, then, includes taking stock of one's own moral knowledge and applying it to a given situation. Aquinas notes that this process also includes seeking the counsel of others, discussing this aspect when he considers prudence's eight integral parts, of which *docilitas* or docility is one.

Docility is the readiness to be receptive to and learn from the counsel of others, particularly the wise. A person makes the counsel of another her own in virtue of a placement of trust in that person. This act of trust occurs within, and not external to, the context of prudence. A person judges that she does not possess adequate knowledge and then judges that another person could provide the necessary guidance. The main reason why Aquinas values docility is that some moral knowledge can be difficult to obtain, especially for those who lack relevant experience or find themselves in an unfamiliar moral situation. He states:

Prudence is concerned with particular matters of action, and since such matters are of infinite variety, no one man can consider them all sufficiently; nor can this be done quickly, for it requires length of time. Hence in matters of prudence man stands in very great need of being taught by others, especially by old folk who have acquired a sane understanding of the ends in practical matters...Now it is a mark of docility to be ready to be taught: and consequently docility is fittingly reckoned a part of prudence.<sup>18</sup>

Docility frees a person from the confines of her own ignorance and allows the knowledge of others to aid in her pursuit of happiness. Moreover, docility constitutes an essential or integral part of the activity of directing and leading oneself to happiness. Through it, a person apprehends that others possess a share of happiness and thereby she is right to trust in their counsel.

### **Aquinas and Zagzebski**

According to Zagzebski, in many cases, the fact that another person believes *p* is a reason for the truth-seeking epistemic agent to believe *p*, provided that the other person is conscientious. However, if *p* is a moral proposition, then this simple relation may not hold, since adequate moral actions require the agent to not only know that *p* is true but also why it is true—to have moral understanding. I claim that a person can acquire the “why” or achieve minimally sufficient moral understanding provided that the person perceives the testifier possesses a genuine share of eudaimonia. For example, if Bob, who does not know

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<sup>17</sup> Thomas Aquinas, *Summa Theologiae*, translated by the Fathers of the English Dominican Province (Allen, Texas: Christian Classics, 1948), II-II, 47, 8.

<sup>18</sup> Aquinas, *ST*, II-II, 49, 3.

whether he should give 10% of his income to charity, sees that Mary possesses objective well-being and she believes one ought to give 10% regardless of any other consideration, then Bob can understand why he should follow Mary's lead. He is in a position to see not merely that he should give 10% but also why—to do so connects to happiness. By way of clarification, it should be clear that the moral testimony alone does not produce understanding. In order to grasp the connection between precept and happiness, each person needs to see for herself that the testifier possesses happiness. Understanding remains a first-person perspective sort of thing, but testimony can provide the content of the precept in question.

Aquinas's account of docility provides a framework that can be adapted to account for the production of moral understanding from testimony within the universalist structure Zagzebski endorses. If nothing else, even if testimony conjoined with the recipient's grasp of the testifier's happiness does not result in understanding, we could say that Aquinas provides a good reason for the standard egoist to accept moral testimony. Again, the standard egoist is one who contends no belief is justified unless it is ultimately based on reasons she has acquired by the direct use of her own faculties, though she is willing to use her faculties to determine that she has reason to believe that another person is a reliable source of true beliefs. In effect, the testifier's happiness would be proof of reliability. Nonetheless, my goal is to show the dynamism between testifier and happiness fits with universalism.

The way to do this involves a closer look at conscientiousness. The conscientious person uses her cognitive equipment in a manner governed by the desire to get truth. For Aquinas, truth and goodness are convertible. Truth is being in relation to the mind, while goodness is being in relation to the will. In this case, true beliefs are good for the intellect. Anything good for a part of a person is constitutive of her good as such; it is something that is constitutive of happiness. Therefore, when self-trust entails that I should trust another person's beliefs, provided that she is conscientious, I am simultaneously in a position to acquire moral understanding from her moral beliefs, as her conscientiousness is also indicative of her goodness or happiness.

We might question whether conscientiousness, even as indicative of a person's goodness, suffices as an appropriate threshold for happiness. In other words, since moral understanding requires the grasp of the connection between counsel and that person's happiness, we might suppose that the person has to be, at a minimum, happier than us. We, by way of supposition, are conscientious, so this would not necessarily be the case. I contend that it does suffice and the evidence for this is the reciprocity of moral counsel in actual life. Two equally conscientious people need not have identical moral knowledge. Mary knows more about charitable giving than Bob, but Bob knows more about self-control than Mary. In different circumstances, both can meaningfully acquire moral understanding from respective testimonies.

That being said, this view also allows for the possibility that if someone possesses a substantially greater share of happiness than oneself, her testimony would generate greater initial moral understanding relative to the case above. I think Aquinas has this latter circumstance in mind by specifying the wise, older moral agents as appropriate sources of counsel. He also specifies that perfect moral acting requires acting on one's own counsel.<sup>19</sup>

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<sup>19</sup> Aquinas, *ST*, I-II, 57, 5, objection and reply 2.

In terms of a complete account, then, I contend moral testimony can provide sufficient moral understanding to ground virtuously-directed action, but that the understanding preliminary and incomplete. Full moral understanding requires further inquiry and discovery beyond testimony.

In conclusion, we can employ and adapt Aquinas's notions of *prudentia* and *docilitas* to explain how basic moral understanding may be acquired through moral testimony in a concrete and practical manner. Moreover, since conscientiousness satisfies the condition for epistemic universalism, the fact that we can derive moral understanding from testimony adds to Zagzebski's case that epistemic reliance on others is both necessary for and beneficial to moral and epistemic agents.

**Anthony T. Flood** is an associate professor of philosophy at North Dakota State University. He teaches a wide-range of courses, including Ancient Philosophy, Epistemology, and Social and Political Philosophy. His research covers virtue epistemology and various themes from the philosophy of Thomas Aquinas. He focuses on the areas and notions in Aquinas, which he believes can constructively add to contemporary philosophical discourse. His first book *The Root of Friendship*, (2014), is available through The Catholic University of America Press. His second book, *The Metaphysical Foundations of Love* is forthcoming through the same press.





## *An Argument for Using Affirmative Action for Men in Female-Dominated Professions*

Dennis R. Cooley, Ph.D.

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### **Abstract**

Affirmative action's focus is to introduce people into professions and other areas in which, as a group, they are under-represented. Generally, in the United States of America, affirmative action is used to integrate women into male dominated and minority races into white dominated professions, respectively. There are a number of arguments used to justify such action, including equality, justice, the need for role models and the pursuit of social goals or goods.

What receives far less attention in the literature is affirmative action for men in female-dominated fields, especially those that require the employee to be subordinate to another employee. I contend that ignoring this side of affirmative action makes it far more difficult for women to succeed in integrating male-dominated fields and the arguments for affirmative action for women work equally well for men. A pragmatic argument will be made for why it is necessary to integrate men into female-dominated fields to help eliminate unconscious sexism in all fields of endeavor. Moreover, what is said here applies to other areas in which affirmative action is employed.

**Keywords:** *Affirmative action, sex discrimination, pragmatic ethics, psychology.*

### **Introduction**

Discussions of affirmative action, sometimes called reverse discrimination, are overwhelmingly focused upon women and improving their presence and competitiveness in male-dominated fields.<sup>20</sup> If we look at the number of women in certain professions, such as science, technology, engineering, and math (STEM),<sup>21</sup> or in upper management in business, we find them underrepresented in comparison to their availability in the relevant population pools. For example, women hold only 5% and 21% of full engineering and science U.S. professorships, respectively, whilst receiving approximately 50% of science and engineering doctorates. (National Science Foundation 2012) According to the US Bureau of Labor Statistics, women make up 27.9% of chief executives and 72.2% of office and administrative support occupations, with 94.5% being secretaries and administrative assistants; 34.5% lawyers and 85.4% of paralegals and legal assistants; 37.9% of

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<sup>20</sup> The argument focusses on the United States, but issues raised here will have relevance for those want to do business in the USA or who have similar circumstances confronting them. In addition, affirmative action refers to the practice, and not necessarily what is legally required, especially since the legal focus is on women and minorities.

<sup>21</sup> I focus on STEM for several reasons: higher education is a business, and based on their reasoning processes, those involved in STEM should be ideal candidates for integrating their disciplines, yet they still seem to struggle to do so after years of affirmative action. If a plausible hypothesis can be found for this lack of adequate progress, then it can be applied to all businesses.

physicians and surgeons and 72.6% physician assistants, 90.8 percent nurse practitioners, and 89.4% registered nurses; and 9.4% pilots and flight engineers and 74.9% flight attendants (United States Bureau of Labor Statistics 2016). So there is, at the very least, a *prima facie* problem to be solved, in part, through applying the proper attention and resources in recruitment, hiring, and retention of women in male-dominated fields, as well as integrating those fields predominately occupied by women.

Rarely, if ever, is affirmative action mentioned when it comes to non-minority males because a general assumption appears to be that they do not need such assistance when pursuing career goals. Over a considerable number of years, this has been correct in many cases, but the view is rather myopic. In female-dominated positions, as will be shown below, men have a very difficult time finding a job even when their credentials merit serious consideration and employment.

After arguing for consistency in the standard reasoning for affirmative action, which expands its scope, I will develop my pragmatic justification for using affirmative action for men and women. The idea is that if women continue to dominate professions that are thought of as being subordinate and substandard to those in male-dominated professions, such as STEM, then women will continue to have difficulty achieving adequate representation in those areas in which they desire to increase their numbers.<sup>22,23</sup> Having too many women in positions thought inferior reinforces unconscious sexist stereotypes about power, which in turn affects how women are thought about in male-dominated fields. If we want women to be accepted in STEM and the business world's upper echelons, as well as treating men as we ought, we need to stop providing subtle evidence that women's "proper place" is serving others, especially males in charge.

## Stipulations

Before arguing that affirmative action should be used for males in female-dominated fields to the very same degree it is employed for women in male-dominated professions, three stipulations need to be made.<sup>24</sup> First, generally, no person should be discriminated against merely because of a morally irrelevant feature nor should that characteristic figure into decisions about employment in any of its aspects (Cohen and Sterba 2003, p. 23).<sup>25</sup> Justice:

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<sup>22</sup> This view is shared by Dominique Gomez.

<sup>23</sup> Madeline Heilman argues that affirmative action programs and practices might actually be harming women by contributing to stereotyping. (Heilman 1997, p. 877).

<sup>24</sup> I use "sex" and "gender" interchangeably, although there are essential differences between the two. "Sex" more closely captures the difference between groups I want to address, but the literature generally uses "gender" when referring to men and women.

<sup>25</sup> Although gender is extraneous to most legitimate work requirements, sometimes it is relevant to the job. For example, if we want someone to portray Marie Curie in a film, then we would hire a female actor for the part rather than a male. I am assuming that there could be a legitimate reason to use sex as a criterion for employment, etc., although it is not clear when that reason would obtain in the STEM and business management professions. However, if the position is not gender specific, then anyone who is able to do the job should be considered fairly. For competitiveness' sake and the importance of the job, such as surgeon and business executive, those who fall into the group of best fit to perform the job should be hired.

certainly entails at least this: It is wrong, always and everywhere, to give special advantage to any group simply on the basis of physical characteristics that have no relevance to the award given or the burden imposed (Ibid., p. 25).<sup>26, 27</sup>

After all, no one gets to select his or her gender, and gender is morally irrelevant to doing a job in the vast majority of cases, therefore normally, it cannot be used as a merit criterion when it comes to hiring, promotions, and job related rewards.

Second, although justice is important, at times, special permission for affirmative action's discrimination can be morally justified using plausible reasoning.<sup>28</sup> Based on the standard role models and achieving social goals arguments,<sup>29</sup> I will stipulate - non-controversially, I hope - that affirmative action is a morally legitimate method to achieve desired outcomes.

Third, I will also assume that women want to enter male-dominated fields and that men want to enter female-dominated fields in sufficient numbers to justify affirmative action programs of some type. The reason I make this an assumption rather than taking it as an accepted fact is recent research showing that women have greater choice in careers, which might better explain why there are fewer women in STEM professions than discrimination does (Wang, et. Al. 2013, pp. 1 and 5). Those women who score high in both math and verbal abilities possess more career opportunities than men who tend to score lower in verbal ability but higher in mathematical ability. The former have opportunities in both non-STEM and STEM careers, whereas the latter, based in part on gender stereotyping, generally must seek STEM professions. Making the case for gender-based affirmative action more difficult is the finding that the pursuit of math-science careers is more heavily influenced by individual differences than group membership, *viz.* gender. (Lubinski and Benbow 2006) If real, then this fact would make solutions concerning affirmative action based on gender much more difficult to achieve because one's gender will no longer provide an easy marker as to who should receive affirmative action benefits.

## **The role model argument**

The role model argument incorporates the need for exemplars to combat unconscious sexism as its central premise. Women in power as role models are required so that other females can identify with them. With a sufficient number of role models, it becomes reasonable to aspire to and try for managerial, executive, STEM and other

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<sup>26</sup> Lisa Newton's argument against reverse discrimination is based on Aristotle's conception of justice is convincing: One cannot violate justice in order to uphold justice.

<sup>27</sup>Some claim that equality is so important: "Quotas, as contested as they are, are another way to counter the under-representation of women scientists in decision-making positions in research organizations." (Muhlenbruch and Jochimsen 2013, p. 42)

<sup>28</sup>Sissela Bok (1999) argues that lying or deception requires special permission when telling the truth does not. I am modifying her argument to fit my argument.

<sup>29</sup> Compensation arguments seem the weakest support for affirmative action, and will prove even more so when it comes to males seeking positions in female-dominated professions.

influential positions, since becoming one of these is a practical possibility.<sup>30</sup> Without affirmative action, there will be too few women in the desirable professions to create the normalization effect of women and girls seeing women in those areas as part of the given.<sup>31</sup> That is, familiarity does not breed contempt in these circumstances, but it does show women that it is a natural thing, defined as being common and accepted, for them to be in powerful positions in male-dominated professions. It can be who they are.

The idea here is to alter personal identity in a positive way so that men and women have equal motivation to pursue more powerful careers. Eccles argues that motivation is tied to identities, which are comprised by at least three components:

1. A value component that captures the salience, centrality, and valence a person attaches to specific individual characteristics and collective groups of which one is a member;
2. A content component that includes all of the beliefs the person has about which tasks, behaviors, mannerism, activities and so on, are associated with the successful enactment of various personal and collective identities; and
3. An efficacy or expectancy component that includes the individual's beliefs about his or her ability to enact these various behaviors. (Eccles 2009, p. 88)

Making the value, content, and efficacy components similar enough between men and women in practice allows us to increase career choices for both, as well as to avoid wasting resources. (Hill, et al. 2010, chapter 10) More specifically, men already have the support network in place to realize their ends, and automatically believe that they have opportunities in those powerful professions. We want to have the same sort of belief, decisions procedures, and beneficial structures existing for women so that we do not have to make a special effort to accomplish what is already successfully being done with the male's fully developed and implemented process. After all, once it becomes commonly accepted for women to be in currently male-dominated fields, affirmative action will no longer be needed.<sup>32</sup>

Men seeking jobs in female-dominated professions need the same efforts applied as well, and for the same reasons. Although these less independent and less powerful jobs have no inherent degradation to them, many men taking "female" jobs hurt their social and self-image. Too often people feel that such men cannot be *real* men because they cannot compete in masculine dominated fields or they have too many traits associated with being female, which makes them too feminine. The American Assembly for Men in Nursing, for

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<sup>30</sup> Jennifer Raymond argues that it is not enough to have role models. Unconscious gender bias is also transmitted through the overall culture. However, "[b]y enabling more women to succeed, despite the existence of unconscious bias, this will gradually eliminate the stereotype of the successful scientist as male, which is the root of gender bias." (Raymond 2013, p. 34)

<sup>31</sup> When thinking about jobs in certain professions, such as secondary teacher and engineers, White and White found that there was bias in regard to which gender filled those positions. (White and White 2006, p. 259).

<sup>32</sup> This task will be made harder based on cultural biases. Pamela Frome, et al. have found that "concerns for balancing career and family, together with lower value for science-related domains, continue to steer young women away from occupations in traditionally male-dominated fields, where their abilities and ambitions may lie." (Frome, et al. 2006, p. 359)

example, reported that the top three obstacles for recruiting men into nursing are gender/gender stereotypes, the field being traditionally female, and other professions being seen as more male appropriate: 73%, 59%, and 53%, respectively. (AAMN 2005, p. 18)<sup>33</sup>

We could plausibly extend these results to males in other female-dominated professions. Levinson argues that the very action of men seeking positions in female-dominated professions makes them more undesirable as potential employees than women trying to enter a male-dominated field because the former is thought to be settling for “women’s work” rather than living up to his masculine potential. Women in similar circumstances, on the other hand, are credited with more courage. (Levinson 1975, p. 540) In fact, men in female-dominated professions are too often ridiculed or ostracized in public, and they frequently have to justify the decision they made, whilst few would question a woman working in a female-dominated field.

Making matters more difficult is how a number of men in the female-dominated jobs view themselves. They try to change their professional labels in order to make their positions more masculine and to improve how those jobs are perceived by themselves and society. (Simpson 2004) For example, male secretaries often want to be called “administrative assistant” rather than “secretary.” Male nurses are sometimes termed “nurses” instead of merely being labeled as nurses. Other female-dominated professions encounter the same rebranding attempts.

It should be obvious, however, that masculinizing the terminology is as irrational as women being called “female managers” or “female scientists.” If one has a profession, in general, then one’s gender is irrelevant to profession’s identification. It adds nothing to the story about a groups’ competence to have their gender added to their job titles, just as it contributes nothing to the job's description. Except as a way to distance men from being thought of as more feminine merely because they are working in a female-dominated field. To draw attention to the individual's gender entails that the person doing the verbal alteration thinks that the true label is degrading or illegitimate in some way. But a job position is a job position. Therefore, rationally, if a woman is a nanny, then a man is a nanny because they do the same job.

Given the social stigma that certain female dominated jobs possess for males, it would be important to increase the number of men working in those fields so that other men and boys will grow up thinking that these jobs are legitimate options for them and their gender identity. Both males and females should believe that a job well done is not something that relies upon one's gender, but rather on how skillfully the person performing the job's features fulfills the role, and that there is nothing wrong or shameful in a man being in a female-dominated profession. With a sufficient number of role models, men in currently female-dominated jobs would alter some cultural beliefs both so that women and men have greater opportunity and unethical stereotypes are eliminated.

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<sup>33</sup> This perception might help explain the small number of men pursuing nursing careers. Men have increased their numbers as RNs from 7.7% in 2000 to 9.1% in 2010, but still remain a small minority in the field. (NRSA 2013, p. 24). The trend is almost the same for LPNs. (Ibid., p. 25) Moreover, in American nursing schools, men in practice-focused, baccalaureate, master’s nursing programs are 9.4%, 11.4% ,and 9.9%, respectively. (AACN 2012, p.3)

## The social goal or goods argument

The social goal for moving women into positions of power is to enable the group to improve its lot in life, unleash more competition and innovation in a dynamic marketplace, and to make a better society. (Shen 2013, p. 2)<sup>34</sup> There are those who argue that women have unique insights into issues which are lost if they are blocked from certain professions. Blockage skews how the profession functions by having only men define it rather than creating a more inclusive meaning that would be more useful in maneuvering in the real world. A diverse workforce would start a far more competitive marketplace of ideas as each person brings both her unique and general experiences to the table. An integrated, more dynamic marketplace will make society and its constituent groups far better off than those hampered by sexism and inefficiency.

There is also a positive dynamism created by having more people compete for positions. If women's commitment to the labor force increased – that is they adopted the same value, content, and efficacy components men have - then the number of women professionals would rise and women in menial occupations would decrease. (Polachek 1981, p. 68). Instead of choosing from an unnecessarily limited candidate pool, employers can select from a larger one, which should have more competition to improve merit. Given that each person wants the job in which she is interested, then there will be additional incentive to improve her skills so that she can be successful. As a result, greater competition leads to better work and innovation, which in turn raises the requirements for future individuals to be successful. If the acceptable standard is set high for this generation, then the next must build upon it to progress even further. Hence, there will be a constant cycle of innovation and improvement with diversity.

There are other goods identified in the social goal argument. It is clear that not only should competition be increased in the fields to benefit markets, there is also a gap in many female-dominated professions that does not appear capable of being filled by the way things work now. For example, there is a pressing need for more nurses that cannot be met by women alone. Instead of trying to fix the problem by recruiting additional women - especially since they now have greater choices available to them to go elsewhere - then why not double the number of available candidates by making nursing in its various forms a viable career choice for men? Other female-dominated professions might not be in such difficulty, but they could benefit from having a more diverse, larger, qualified work force.

In fact, there is another social goal argument that can weakly support affirmative action for men. In the United States, in many professional fields, women are paid considerably less on average than their male counterparts, even though both genders are performing the same tasks. (United States Bureau of Labor Statistics 2016) Introducing more men into the field might help women achieve greater power to remove part of this gender gap. For example, women comprise 90.3% of registered nurses (WeNews 2011, p.1) yet salaries for male registered nurses unfairly average more salary than female registered nurses. (United States Bureau for Labor Statistics 2016)<sup>35</sup>

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<sup>34</sup> Thomas Nagel (1973) has one of the most forceful arguments on affirmative action as a social good.

<sup>35</sup> A nursing trainer and consultant informed me that most male nurses move to management as soon as they are able, or are in emergency rooms, operating rooms, and intensive care units in

Although rather cynical, having more men in a field might lead to greater prestige and reward than it does with women predominately. That is, it might be a good idea to use unconscious sexism to pursue equality for all. Men in female-dominated fields often tend to make more money on average than the women in that field. Whatever is causing the income discrepancy, if women used it to argue for justice in compensation packages based on precedence, then they might be able to receive equal remuneration. Aristotle's justice principle states that likes should be treated alike; therefore, nurses in the same field, such as the operating room, should receive the same wages for the same activities. Other specializations and professions could use the argument in the same way.

It is obvious that there is some overlap between the social goals and the role model arguments because both claim to lead to better social conditions. The more role models we have, the more likely it becomes that many more females will grow up with the view that being professionals in this area is something they can readily do. With too few paradigms, others will find careers in these fields something abnormal, which in turn, makes it less likely that they will pursue those career avenues. Most people do not want to be trailblazers for others because there is unreasonable risk to them associated with the career move, especially if being an innovator requires fighting cultural norms and questioning one's gender identity. Instead, as a result of herd mentality and self-esteem, as discussed below, they will go for the safer, more comfortable standard which they know will work for them and will not place them into the unenviable position of being different. Hence, affirmative action will help society by making currently unattractive professions to women into real contenders for their future education and career paths.

The social goal thinking can also apply to men in female-dominated professions, such as nursing. The same sorts of overall benefits accrue from identical sources. These have already been sketched out above, so I will not reiterate that argument here.

There is an even more interesting practical argument, however, behind the social goal position which receives considerably less attention than it deserves. By integrating men into professions heavily dominated by women, women will have to compete more for the available jobs. Given that men will be taking a significant number of these positions as a result of affirmative action, then other career paths would become more attractive to women from sheer necessity. The "safe"<sup>36</sup> jobs that women can get will become scarcer for them, which entails that as reasonable agents, women will have to begin considering competing in other areas that might be better suited to their interests and abilities. Women who would have been in a less powerful position, for example, might begin considering becoming STEM or business professionals because they know that there is no guaranteed place for them in the formerly female-dominated fields. Hence, the beneficial effects desired for affirmative action programs for women would get a much needed boost to achieve equality's final end by making it less likely for women to be able to dominate certain fields, just as affirmative action tries to eliminate men dominating other career areas.

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which there is less care nursing that requires multi-tasking. This is not surprising. Women in general are better at multi-tasking than men. Men may be better able to "exhibit a single-minded devotion to one particular goal, especially their occupational goal." (Eccles 2009, p. 86)

<sup>36</sup> Not safe in the sense that these jobs pose no risks, but safe on the grounds that they do not challenge social stereotypes and favor hiring women over men.

In addition, building on Wang, et al.'s findings, opportunities for men would increase with this type of affirmative action. Not only would more jobs become viable for them, in order to be able to function well in these positions, men could acquire more of the characteristics associated with caring or subordinate professions, such as nursing. The result is not emasculating, but liberating as the traditional male-female stereotype roles are broken down in pursuit of useful equality and justice for society.

### **A pragmatic argument**

Each affirmative action program's effectiveness is reduced by not integrating women dominated professions with males to the degree that affirmative action works to integrate women into male-dominated areas. It leaves in place a source for the subtle reinforcement of unconscious sexism. At the moment, women in certain professions receive far greater attention than men do in order to recruit, train, and keep the former in those professions. This is a good thing, but it often causes us to become blind to other illicit discrimination and its results, and how to alleviate both. The result is that the value, content, and efficacy components needing change remain in place rather than being altered in a way that is conducive to individual and social flourishing.

First is the problem of social resentment built by assumed injustice. We are still part of a culture that falsely believes that women with power lack merit because they did not compete fairly for what they have. For example, even though affirmative action requires women to be qualified for a job and have the ability to perform the position's tasks well, especially if the position can endanger others if not performed by a highly competent individual, it is wrongly assumed that female professionals are incompetents appointed to meet some arbitrary quota.

In addition, too many incorrectly think that whilst women are entering professions dominated by men, there is nothing being done in order to open avenues for men to move into fields dominated by women. This false belief is supported in part by the lack of publicity showing the use of affirmative action to benefit men in female dominated positions, if common place experience is any indication. Therefore, it is believed that there are fewer jobs available to men and no committed affirmative action program to help them, even though they may be struggling with the same sexist stereotypes women face in entering STEM and the upper levels of business. At the very least, because of affirmative action for women, there are fewer jobs and more competition in areas that men dominate or used to dominate. The market tightness places greater stress on men competing for the positions when, during a previous time, they had far greater opportunity of being successful. So we are changing the employment market whilst not ensuring equal chance for success.

The misperceptions and realities of markets introduce an apparent inherent unfairness to the system, which in turn, causes a great deal of resentment by a significant number of men who assume that their lack of a job or success in their field is the result of affirmative action's side-effects. There are even women who feel the same way about the system.

Affirmative action, hence, becomes a convenient way to explain away a failure to procure a job because it is easier to blame a system one thinks is unfair rather than accept a defect on one's part as the true cause. As a result, there is a psychologically appealing

incentive for many men and women to be against affirmative action. At the same time, there is little psychological incentive for these same individuals to think that affirmative action is good because they appear to be the agents bearing the burdens of it, whilst women get all the fruits of its labors.

However, if both sexes had equal affirmative action to help them, then there would be no division between men and women in regards to who is benefitted or harmed. Men would see that the process works equally well for them, therefore they are not the only ones paying affirmative action's costs. Hence, there will be less reason for resenting affirmative action, and a motivation for thinking that women are somehow defective in those professions currently dominated by men will be eliminated.

### **Psychological causes for stereotypes inhibiting free flow of human capital**

Not integrating men into professions dominated by women helps keep conscious and unconscious sexism strong through the subconscious messages being sent. (Berkelaar, et al. 2008, p.106)<sup>37</sup> We already know that unconscious sexism is alive and well when it comes to science faculty members' perceptions of male and female graduate students. For example, one study found that two fictional students with identical resumes applying for a job as a laboratory manager would be treated differently even though there was no morally relevant merit distinction between them. In addition to the female student receiving \$3,730 less a year than the male student, faculty members, including women, indicated more willingness to mentor the male than they did for the female. (Moss-Racusin, et al., 2012)

The above results are not outliers. Constantly perceiving women in subordinate professions might foster the belief that women are naturally inferior to men in positions of power in business and STEM, as well as in life in general. Powerful positive words such as "bold," "mighty," and "power" are associated by both men and women with men, whereas weak positive words are associated with women by both groups. (Rudman, et al. 2001, p. 1164) Moreover, negative identifiers are often linked to women by men, although women tended not to make that connection. (Ibid.) Other gender stereotypes favor men, as well. For example, fictional male names are more readily associated with achievement than fictional female names by male and female study participants, even though there was no rational justification for them to do so. (Banaji and Greenwald 1995, p. 197). As a result of these and other individual and cultural stereotypes, men have an advantage over women when it comes to being hired for positions with power because there is already an unconscious bias in place that men by being men have the abilities to succeed in those positions, whereas women do not.<sup>38</sup>

But we need to be careful here. Unconscious sexism can benefit men, but it can also harm them. In a study showing sexism against men, two fake applications – different genders with the same qualifications - were submitted for 400 job postings in four different

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<sup>37</sup> Cynthia Lloyd's *Gender, Discrimination, and the Division of Labor* remains an excellent resource on male chauvinism in the workplace.

<sup>38</sup> At one time, many of the now female-dominated professions were actually dominated by men. Flight stewards were male because it was thought that air travel in its first 18 years was too dangerous for women, as well as being based on maritime tradition. Men were also secretaries. They took these positions, often, as a training ground for advancing in business and politics.

fields. Although women were half as likely to get an interview for an engineering position, men were nearly four times less likely to receive an interview for secretarial or administrative assistant jobs. (Riach and Rich 2006, p. 7).<sup>39</sup> There was also significant bias against men in accountancy and computer analyst jobs that are already far more integrated. (Ibid., pp. 3 and 7)<sup>40</sup> The unconscious sexism against men seeking employment in female-dominated fields ultimately stems from false cultural beliefs about men's natural and social identities. A man cannot be an authentic man if he is performing women's work, which provides strong incentive for him not doing it. Thus, an unconscious prejudice advantages women at times.

I believe that an effective long-term policy to undermine unconscious sexism is to integrate all professions with all genders if one is going to do it for any one gender.<sup>41</sup> The arguments for affirmative action for women in male-dominated professions need no further explication; so, I will develop only my proposed solution's second part. It is necessary to integrate men into female-dominated professions because if we do not then women will continue to be seen as subordinate and men as degraded by taking female-dominated jobs. Without the fully integrated approach, we will continue to have the value, content, and efficacy components supporting unconscious sexism remaining in force.

There are at least four causes why people have unconscious sexist stereotypes in employment. Firstly, consider the subordinate professions that women currently dominate and the characteristics of these jobs. These positions are thought weaker because those holding them inherently have less power than their supervisors. They must obey the commands of others in order for the former to perform their jobs well. For instance, secretaries lack the power of supervisors. Anyone who has been in an office knows that the office could not function without the secretarial staff. But even though secretaries are necessary, they are often treated as lesser beings rather than as equals to those who can give them orders that must be obeyed.

Secondly, the power differentials and how subordinates and supervisors interact with the other reinforces the notion that one is more powerful than the other, which can lead to an illicit overvaluing of a superior's worth. If we see someone obeying us, then it is confirmed that we have power over them. Although this is not inherently a bad thing – in fact, it is necessary for businesses to function - it can lead to the impermissible. With the view that one has power, sometimes comes the idea of superiority in other areas - such as value as a person - because of that clout. In too many cases, those with power begin to believe that they are morally superior people to their subordinates because of the fact that the former have authority over the latter in their workplace roles. They might, for example,

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<sup>39</sup>In a 2010 study of gender bias, Booth and Leigh observed “substantial discrimination” against males trying to enter female-dominated jobs. “[A]n average male candidate would have had to submit 28 percent more applications in order to receive the same number of callbacks” as women applying for the same jobs (Booth and Leigh 2010, p. 5).

<sup>40</sup> These results support Richard Levinson's findings that men were discriminated against 44% of the time when applying for secretarial positions in Atlanta. (Levinson 1975, p. 533) Similar results were achieved when Richardson had mixed gender pair make job inquiries for male and female-dominated jobs. (Levinson 1976, p. 192)

<sup>41</sup> Becker and Swim contend that there is very little known “about how to reduce the endorsement of subtle sexist beliefs.” (2011, p. 239).

believe that they deserve such sway and those who are their subordinates deserve to be their subordinates.

Third, we should not underestimate the effectiveness of herd or bandwagon mentality. Herd mentality heavily influences how people behave: “the probability of any individual adopting it [increases] with the proportion who have already done so.” (Colman 2003, p. 77) Therefore, if enough people act in a certain manner, then those coming into the situation are far more likely to perform similarly in order to fit in with the social structure and mores. This phenomenon was identified as significant in a study of “negative duration dependence” on potential employer hiring behavior. (Kroft, et al. 2013, p. 1123)<sup>42</sup> Negative duration dependence states that the greater the length of time a person is unemployed, the less likely she will receive an employer callback in a tight labor market in comparison to someone with equivalent skills who has been unemployed for a shorter period of time. (Ibid.) The relevant part for herd mentality and sexism is that employers “jumped on the bandwagon” when they thought that others were not interested in the candidate, even though there was no rational evidence that supported the belief that a person unemployed for a greater length of time has less merit than one unemployed for a shorter duration. As a result, businesses on the bandwagon were acting irrationally by treating likes as significantly different based on nothing more than bias.

Fourth, having power offers enormous benefits to us. By seeing that we have supremacy over others, we build our self-esteem and positive self-concept or identity. Consistent with the three components of identity, self-esteem:

[I]s the attitude which we have toward ourselves to interact effectively with our social environment, to achieve the goals which we set for ourselves. Respectively, our self-esteem is positive or negative if we have a reasonably favorable or unfavorable attitude toward ourselves in this regard. (Thomas 1980, p. 246)

We desire to be powerful agents, and want not only to maintain that status, but to make sure that others recognize it as well because that recognition of our value feeds our self-esteem. The way to make others appreciate our power is to exercise it frequently enough<sup>43</sup> so that they identify it, and then reflect that recognition back to us by deferring, obeying, or exhibiting other behavior that signifies our dominance. In turn, the acknowledgments of our power build greater self-esteem based on now enhanced self-perceptions of our power and its effects. Unfortunately, for some people, the disparity in perceptions of worth based on influence make them begin to think they are so superior that subordinates can be treated permissibly as a servile worker rather than as subordinates deserving equal respect as people.<sup>44</sup>

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<sup>42</sup> “Although we emphasize that we do not rule out a role for human capital depreciation, our results are most consistent with employer screening playing an important role in generating duration dependence.” (Kroft, et al. 2013, pp. 39-40)

<sup>43</sup> But not so frequently that it makes people less likely to admire or be guided by it.

<sup>44</sup> For example, one secretary I work with has regularly been abused by his faculty members by being told to shut up, not to forget that he is merely a secretary and that the person telling him to act in a certain way is a faculty member, yelled at, ordered to violate policy and state law, and so on. He has been informed by a middle manager and the head of human resources that if he is being abused or told to act illegally by a faculty member, he is not allowed to object to it then and there.

Even if this extreme degradation is not reached, there is still a constant reinforcement of the idea that women are naturally less powerful than men because the former obey men in many work situations that those with power in STEM and business encounter. That is, a work environment in which women are almost always the subordinates makes people automatically think that women in general deserve to be subordinates, regardless of their actual role. Since they usually occupy subordinate rather than dominate roles, then it is conjectured that there has to be something about women that keeps causing them to merit less power than men.

Given the benefits of conforming with herd mentality and self-esteem building, the belief that women are suited to subordinate positions will have greater force on people's beliefs and behavior overall than the belief that women should have positions of power in business or STEM. As a result, the negative reinforcement of sexist and classist beliefs by common working conditions in which women continue to dominate certain subordinate professions will likely have greater power on cultural and social beliefs than any well-meaning desire to see women in male-dominated professions.

### **A practical solution to overcoming powerful stereotypes**

Overcoming self-esteem based on illicit stereotypes and herd thinking will be difficult because both their mentality and behaviors are natural tendencies.<sup>45</sup> First, in regard to herd mentality, our desire to imitate others, especially if they are successful is very strong. (Bikhchandani, et al. 1998, p. 152). Herd mentality can be so robust that individual rationality can be subverted by it. (Ibid., p. 168). That is, some people are willing to reject what their reason tells them (Asch 1956, p. 3) – e.g., sexism is wrong and should not be fostered - so that they can be or remain a herd member. If we add in the desire-for-power component of human interaction and personality – that is self-esteem built on dominance - as fellow employees see that the more powerful workers treat those in female-dominated professions as servile or lesser beings, the former become more likely to act similarly so that they also exhibit power behavior that the powerful have. In other words, the bandwagon effect is fed, in part, by the desire for enhancing self-esteem through acquiring power for oneself.

Herd behavior and its underlying psychological conditions can be unconscious, which makes it much harder for individuals under its sway to identify and correct it. For instance, a great deal of sexism is “unseen.” (Becker and Swim 2011, p. 227) Not only do men not realize they are being sexist, especially if they are involved in Benevolent Sexism: Sexism in which men protect and provide for women while assuming that women are too weak and powerless to take care of themselves. In addition some “women endorse sexist beliefs because they lack recognition of subtle forms of sexism, discount sexist incidents, and do not notice the aggregate amount of sexism in their daily lives.” (Ibid., p. 239) Since being sexist and acting accordingly is standard behavioral practice, then no one perceives what is happening as wrong and in need of being addressed. Moreover, this unconscious

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Instead he must smile, be polite, and then inform the abuser that the secretary must take the matter to his supervisor to be handled.

<sup>45</sup> See Asch 1951, 1955, 1956.

sexism is difficult to eliminate because it is part of many powerful people's, especially men's, self-esteem and self-concept.

[T]hose activities which we believe will enhance our self-esteem have a natural attraction for us. So we are disinclined to give up those activities the successful pursuit of which enhances our self-esteem unless we have reason to believe that we can maintain our self-esteem by engaging in other activities. (Thomas 1980, p. 246)

In other words, we cannot eliminate sexism merely by showing it is irrational to be sexist because sexism holds such a powerful appeal to the sexist's emotions and psychological core of being. In some cases, men think that they deserve their power status based on their merit, regardless of the fact that what they have is undeserved. (Jost and Kay 2005) There are also men who want to continue to hold their higher status instead of jeopardizing it through strenuous efforts to eliminate gender inequality. (Schmitt, et al. 2003) These and other motivations show that having power over female subordinates feeds the powerful person's ego. Hence, in the work world, it is difficult to break the cycle of sexism in which women are generally thought of as weaker because it plays a central role to the self-esteem in men's identity, and that of women if they also make being powerful in this manner part of their positive self-image.

An important point about affirmative action and why men should be integrated into female-dominated professions can now be made. Unconscious belief that women should automatically be in subordinate roles has far greater psychological power than does the conscious belief that women should be in positions of power. Hence, the former will defeat the latter when the two are in conflict. As a result, affirmative action's effectiveness against unconscious sexism is reduced if it is limited to making women successful in male-dominated fields.

When women are integrated into male-dominated professions with the motivation to share power, then there is limited psychological benefit to the self-esteem and identity of those who have power. They might feel as if they are doing a good thing by integrating, but their self-esteem is not necessarily enhanced by the process or result. In fact, their self-esteem and self-concept are actually endangered as they begin to compete and interact with women, and then find that their merit is not as high as they thought it was.

On the other hand, believing that women should be in subordinate positions of employment is much more psychologically appealing. If it is already dictated by herd behavior and cultural beliefs that women generally fill such positions, then those with power are already comfortable dominating women workers. Challenging this state of affairs is actually asking people to reject the herd and do something it would not do. This is a very difficult action to take because it poses the risk of being ostracized, which will cause failure in one's profession and loss of self-esteem. Conforming to the company and social herds is vastly more emotionally attractive.

In addition, individual self-esteem was built, in part, on how well those in power fit their actions to their values and abilities. The better the fit, the greater the person's self-esteem. Those in power have learned that dominating women in subordinate positions enhances the former's self-esteem. And the system as it is now allows the powerful - mostly men - to dominate women in the female-dominated professions.

Furthermore, males in subordinate jobs normally held by women pose a threat of sorts. If males were in the female-dominated positions, then they might not be thought to be so readily dominated based on male behavior stereotypes, and they might behave in a way consistent with those norms. That is, subordinate men would not be expected to be as subordinate as female workers. Therefore, it would strike at the heart of the self-esteem and identity of those in power if they had to challenge themselves by confronting the new workplace order in which they have to be concerned that a man would act more aggressively to a command than would a woman. In fact, there would always be a tension that one might not be obeyed in the same gratifying style merely because of the possible challenge-to-authority concern that would otherwise not exist.

Only by changing the value, content, and efficacy components of identity can we be sufficiently motivated to accept what reason dictates. By integrating female-dominated positions with men and male-dominated positions with females, the unconscious sexist cycle will be begin to be starved of one of its strongest supply chains.

Firstly, the currently female-dominated profession's prestige and power as jobs becomes greater as people recognize the jobs' actual worth instead of allowing sexism to degrade them and the people who work in them. By continuously challenging the unconscious bias that these subordinate jobs are suitable only for women, integrated subordinate jobs will break and then avoid the unconscious stigma attached to them - or at least reduce it to mere classism. If enough people desire something, then common thinking becomes that the objects desired are valuable because so many people desire them - everyone jumps on the diversity bandwagon although they might not consciously do so.<sup>46</sup>

Secondly, we can allow people to build their self-esteem by having power over subordinates, but delink self-esteem and having power over mostly female subordinates. Every time a person in power interacts with subordinates, he or she will have far more diverse exchanges than if subordinates are always women. Working with female and male subordinates then becomes the norm rather than the exception, and it is no longer a pattern of having power over women but having power over subordinates. Hence, the individual's self-esteem can be developed and nurtured because there is still the pleasing effect of being able to have one's commands obeyed and all the other benefits that come from being in power. In other words, we are replacing a working self-esteem model with one that can give us the same incentive whilst not drifting into reinforcing sexist stereotypes.

Finally, affirmative action for all helps eliminate the constant evidence that women in male-dominated professions are not the standard. Every time a person in power sees that all the subordinate secretarial staff or other workers are female, then his or her unconscious idea of the proper place for women in a less powerful position is reinforced, which helps lead to treating them as weaker in both the male and female-dominated professions. Moreover, we are uncomfortable with males doing jobs in female-dominated fields - because men are perceived as powerful, these jobs involve subordination, and men doing these jobs challenge stereotypes of male identity. However, if we regularly see both men and women in subordinate positions, and this is our standard way of interacting with them, then it becomes normal and comfortable to think of them in this way. As a result, by changing people's value, content, and efficacy components of identity, we help eliminate

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<sup>46</sup> Of course the desirable might not be the same thing as the worthy, but the psychological impetus to change is what is of importance here.

unconscious sexism that would make us think or act wrongly, which can only benefit everyone.

## Conclusion

If we want to be practical, then we need to address all causes of unconscious sexism with our affirmative action program so that we actually get the results we want. We cannot do half the job and expect the real integration we desire and need. We want everyone to be treated for the quality of their character and not a morally irrelevant property they instantiate. We want everyone to have an opportunity at any job for which they are qualified. We also want people to know that they are where they are because of their merit. However, changing the very reasons discrimination exists by integrating all work fields and breaking the constant reinforcement of women as weaker caused by standardly seeing and interacting with them in subordinate, female-dominated positions, then those who do make it in the male-dominated fields can never know if they are being treated as equals in reality, or merely being thought of unconsciously as weak. In addition, we rob men of greater choice and fulfillment. Neither is a good outcome for markets or our society.

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**Dennis R. Cooley** received his PhD in philosophy from the University of Rochester in 1995. His teaching and research interests include theoretical and applied ethics with a focus on pragmatism, bioethics, business ethics, personhood, and death and dying. He is the author of *Technology, Transgenics, and a Practical Moral Code* (Springer, 2009), *Death's Values and Obligations: A Pragmatic Framework* (Springer, 2015), and co-edited *Passing/Out: Identity Veiled and Revealed* (Ashgate, 2012). He is Secretary General of the International Academy of Medical Ethics and Public Health, co-editor of Springer's International Library of Ethics, Law and the New Medicine, and Director of the Northern Plains Ethics Institute.





Fall 2017

Community Section





From Theory to Practice: A collection of essays on morality  
and controversial practices involving women

**Skyler Johnston**

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**Abstract**

What follows are three essays I wrote showing the development of my thinking on a life well lived, and how that thought pattern applies itself to women and issues affecting them. There is a difficult balance between right and wrong in many scenarios life presents us. I understand there are those of you reading this who will fall on the other side of the fence than me, and that is okay. I only ask that you consider the information I present, and discern for yourself what your own conscience guides you to believe.

**Keywords:** female genital mutilation, purity, utilitarianism, women's religious head coverings.

**Essay 1: Hedonism**

Until recently, I had repeated a sort of personal mantra to myself for the last half of a decade. I'd say that life is simply a culmination of moments, thus if I am experiencing joy in the moment (and every moment) I will have a happy life. Thus, it shouldn't be a surprise that my favorite view of well-being is the Hedonists' view. The idea that one should enjoy more pleasure than misery in a lifetime is an especially attractive notion to me. Hedonists argue that happiness is the only thing that is intrinsically good. Thus, everything else only improves our wellbeing to the extent that it makes us happier. This basic condition of Hedonism brings with it many attractions.

Hedonism's theory of welfare allows for many different models of a good life. This is easily explained, because there are many paths to happiness. Different people with different aspirations can all have good lives according to Hedonism. I believe this is the single most important attribute of Hedonism. Because of this flexibility, Hedonism is one of few anti-elitist approaches to the good life. It grants to each individual their own agency – something I value highly. Because of this, Hedonism can explain why each person can follow a varied range of personal values and lead a good life; following those values leads them to a happier life. Truth is an important value to me because telling the truth and hearing the truth makes me happy. While at the same time, telling lies and hearing lies may make you happy. Thus, in place of truth, you might value deception. Both of us will lead a life of good wellbeing, doing and experiencing exactly opposite things, because we are brought happiness by these different, opposite things.

This next advantage goes hand in hand with Hedonism's flexibility: Its ability to explain objectively good things filling a life, but not bringing that person wellbeing. A wealthy, well-educated and well-liked man can be filled with constant sorrow while still never experiencing any compensating pleasures. Many people may say he has a good life, for he is wealthy, well-educated and well liked. These are all objectively good things.

However, it is difficult to accept that this man is leading a life of good wellbeing. Shafer-Landau puts forth a perfect scenario for thought on this in *The Fundamentals of Ethics*. He says to “imagine two people leading identical lives, with only one difference: the first person enjoys his life, and the second doesn’t.” Shafer-Landau assumes we all would pick the first life, and I agree with him. Picking the first life is also what hedonism would recommend, of course. This boils down to the well-known fact, that not everyone enjoys pleasure from the same sources.

The best argument I see against Hedonism is one that Shafer-Landau could have expanded on further than he did, though he did address it. The idea that there are things other than happiness that are intrinsically valuable. Happiness being the only thing that is intrinsically valuable is central and required by Hedonism, if we disprove this then the whole theory fails. Shafer-Landau tried to tackle this whole topic in two arguments.

His first attempt is a good one. In his “argument from autonomy” he claims that “Autonomy sometimes directly contributes to a good life, even when it fails to make us happy.” This easily can be seen as plausible. Especially when presented with paternalism, defined by Shafer-Landau as “someone’s limiting your liberty against your will, but for your own good.” Certain limits on a person’s liberty could lead to greater happiness, ultimately. However, it is easy to see how one would object to this. With this argument Shafer-Landau is trying to make it clear that autonomy might be intrinsically valuable, regardless of the extent it makes us happier.

In Shafer-Landau’s second pitch for something other than happiness being intrinsically valuable, he doesn’t name what it is. His “Argument from Multiple Harms” states that “If hedonism is true, then you can be harmed by something only because it saddens you.” It next states “You can be harmed in other ways.” This would imply that one’s unhappiness can be, and likely often is, a symptom of losing something other than happiness that is intrinsically valuable. Loss diminishes our happiness. But, misery in situations of loss is evidence that our happiness depended on appreciating what else had value, in its own right, in the first place. Shafer-Landau’s statement in *The Fundamentals of Ethics* makes this point evident. He uses the example of a loving relationship, though it could be numerous other things. He says:

If loving relationships didn’t by themselves make us better off, it wouldn’t be so clear that their loss is our loss. We mourn because we have been deprived of someone whose presence has directly made our lives richer.

Emily Esfahani Smith in her April 2017 TED talk entitled *There’s More to Life Than Being Happy* stated:

The suicide rate has been rising around the world, and it recently reached a 30-year high in America. Even though life is getting objectively better by nearly every conceivable standard, more people feel hopeless, depressed and alone.

What is especially startling about this is that she goes on to say – “according to the research, what predicts this despair is not a lack of happiness.” Armed with this simple knowledge,

if true, one might conclude that Hedonists best reconsider their ideals. If people are happy, yet still killing themselves there must be something else intrinsically valuable they are lacking. Unlike Shafer-Landau's argument, where he doesn't name the missing value, Smith does name it: "meaning in life." Smith claims that a life's purpose is deeper than gaining or maintaining happiness.

I agree with her on this point. Without a purpose, one will never feel fulfilled; and this sense of fulfillment is valuable. I recently came to a similar conclusion where I define the meaning in life as translating to a life that is worthwhile. If one aligns their aspirations and projects to correspond with a life that is worthwhile, as opposed to a life that is simply happy, I believe they will find a fulfilled contentment perhaps similar to, but distinctly different from pleasure. I believe it must be this fulfillment of a meaningful purpose that leads to a good life.

**Segue:** When reading the next essay, please keep in mind the sentiment of a worthwhile life. Many women view religious head coverings as a means to a fulfilled life. However, as you will see, I didn't come down on that side of the argument.

## **Essay 2: Unveiling Women's Religious Head Coverings**

In this essay I will discuss the subject of religious head coverings worn by Christian and Muslim women. I will not only discuss the details of the practice, but also their purpose and reasons for wearing them. During the discussion, I will observe dissimilarities of the practice between the religious groups, and conclude with a major observed similarity. Throughout I will be interpreting the facts I put forth as others have, and as I see them. I decided to write on this topic out of genuine personal curiosity. Growing up as a practicing Catholic, I have gone to mass on a regular basis for my entire life. At times I have seen women wearing head coverings inside the worship space. I often wondered what the purpose of this was, and the reasons behind it. This essay gave me a motive to satisfy that curiosity. Furthermore, I often see Muslim women with their heads covered even outside of a worship space. To me, the fact that these two world religion behemoths both have similar yet different practices in regards to women's head covering seems significant enough to warrant investigation.

"Every woman who has her head uncovered while praying or prophesying disgraces her head" (1 Corinthians 11:5, New American Standard Bible). This single line, 1 Corinthians 11:5, is the basis for women's head covering in the Christian faith. The apostle Paul is giving commands in this letter to the Corinthians, commands one who is faithful should assume translates to all Christians. Jeremy Gardiner, founder of [Headcoveringmovement.com](http://Headcoveringmovement.com), states "the very first reason for head coverings is because of the created order." (Gardiner, 2013) Gardiner uses this verse, also from 1 Corinthians 11, to back that up: "For a man ought not to have his head covered, since he is the image and glory of God; but the woman is the glory of man. For man does not originate from woman, but woman from man; for indeed man was not created for the woman's sake, but woman for the man's sake. Therefore the woman ought to have a symbol of authority on her head" (1 Corinthians 11:7-10). This means, that women were created after men, and not in God's image as men were, and because of this she must wear a covering on her head to recognize God's (and men's) superiority above her. David Gill, while writing for the *Tyndale*

*Bulletin*, tries to produce a logical reasoning for this when he says “in the case of women Paul restates that they should continue to place a high value on marriage and should not flout social conventions in the church meeting purely for the sake of being contentious.” (Gill, 1990) In other words, by commanding women wear a head covering it should remind them of their place, and the reason(s) they go to worship.

And say to the believing women that they should lower their gaze and guard their modesty; that they should not display their beauty and ornaments ... that they should draw their veil over their heads and not display their beauty except to their husband (Quran 24:31)

Thus, “Muslim women cover much of their bodies, including their head and hair, and only display these parts of their bodies to their husbands and other males in their families.” (Why Do Women Wear Head Coverings in Different Religions & Cultures?, 2014) The head covering helps deter unnecessary attention such as flattery or sexual attraction in their extramarital relationships. This direct command of the Islamic faith has had implications in overall Arab society. For example, “women soldiers and police in Iran, Iraq, and the United Arab Emirates [wear head coverings].” (Shirazi, 2001) Although the requirement for head covering has breached explicitly religious context, it is still an inherently religious practice. “Their uniforms comply with Shari’ah requirements for women’s dress: loose fitting outfits and heads covered with scarves.” (Shirazi, 2001)

I have discovered the primary differences in the use of Head coverings between Christian and Muslim women to be few, yet significant. First, use of head coverings, primarily the Hijab, in Muslim countries has become prevalent in Arab society proper; this breach into culture versus religious containment has not occurred in Christian societies. Second, Christian women wear their head coverings in a holy worship space and during prayer only. Muslim women will wear a head covering always unless she is in a very private place, likely only in the presence of her husband.

The similarities on the other hand, revolve around a central topic. Though it pains me to detract from or degrade anyone’s religious beliefs, I must make a point here. In my research I have found no prudent, self-regarding, reason for women to wear head coverings. It seems to me, in both Christianity and Islam, the requirement of wearing a head covering is simply and palpably a means to subjugate women. Despite my best efforts, I was not able to find a truly convincing reason as to why Christian women should wear head coverings other than because Paul, not God, said so. Even if Paul had a good reason in mind, such as some people suggest he was urging the women of the Roman colony to wear a head covering in order to distinguish them from prostitutes who roamed the streets. (Gill, 1990) He did not give this as his reasoning, in fact his qualifying statement prior to his command says “But I want you to understand that Christ is the head of every man, and the man is the head of a woman” (1 Corinthians 11:3) This can be open to a bit of interpretation, but it is generally understood as meaning men have authority over women, and women must understand this authority comes from God. Head coverings were and still are worn by Christian women to show their devotion to their husbands and as a symbol of modesty. (Why Do Women Wear Head Coverings in Different Religions & Cultures?, 2014)

The purpose and reasoning behind Muslim women covering their heads, and sometimes whole bodies is again for men's sake, not hers. Jennifer Fredette poses this question and response in regard to covered Muslim women: "When you pass one of these fully veiled women... what do you feel? Naturally, every one among you gets the feeling one is passing an imprisoned person, who is inaccessible and even a victim... even if they say they consent to it." (Fredette, 2015) My opinion on this matter can be summed up best in the words of John Stuart Mill who said "subordination of one sex to the other – is wrong in itself... it ought to be replaced by a principle of perfect equality, admitting no power or privilege on the one side, nor disability on the other." (Mill, 1869)

**Segue:** Some grace was granted prior to the previous essay. My stance is sounder in regard to the next issue. I ask you to internalize the ramifications of the practice I will critically discuss. From here, I will let the essay speak for itself.

### **Essay 3: Female Genital Mutilation and Purity**

My heart was racing. My mouth was dry and not a word came out. I sat on the tub. My mother squatted behind me and held me tight. A hand shoved my skirt up. Suddenly I heard Aunt Asha's voice. She said that I should raise my legs and put my feet, left and right, on the tub's rim. Hands touched my body everywhere, a horde of hands, pressing, tearing, pulling. A voice said: "hold her tight!" A hand gagged my mouth. The first cut was ice cold. A deep blue pain. A lightning bolt to the head. The voice of my mother, calling: "Don't scream like that. Don't shame me. Be a big girl!" This *cold*. Blood on my backside, ice cold blood. I bucked under an all-consuming, devouring pain. A shriek to the ends of the world wanted to escape but stuck in my throat. It couldn't get out. The world stopped spinning. Everything went numb (Korn).

That was what Fadumo Korn experienced on the day of her mutilation. "Female Genital Mutilation is a harmful practice that involves the partial or total removal of the female genitalia (Female Genital Mutilation (FGM))." Millions of African women have undergone genital surgeries, often as young girls, without anesthesia, in unsanitary conditions, the surgical implement a knife, a razor blade, or a broken bottle wielded by a person with no medical training (Gaughen). Female Genital Mutilation is also referred to as Female Genital Cutting (FGC) or the misnomer female circumcision is used to label this act. Female circumcision is a misnomer, because it implies a similarity to male circumcision. "The male equivalent of the clitoridectomy would be the amputation of most of the penis. The male equivalent of the infibulation would be the removal of the entire penis, its roots of soft tissue, and part of the scrotal skin" (Nussbaum). As you can see, there is no similarity to the harmless removal of fatty skin on a male penis and the atrocity of female genital surgeries.

There are three variations of FGM, two of which were referenced in the previous male equivalence quote, and all of them are cruel and should not continue. The least severe

form of FGM is clitoridectomy; where “a part of [or the] whole of the clitoris is amputated and the bleeding is stopped by pressure or a stitch” (Nussbaum). A more radical form of FGM is excision, where “both the clitoris and the inner lips [labia minora] are amputated. Bleeding is usually stopped by stitching, but the vagina is not covered” (Nussbaum). The most drastic form of FGM, which accounts for 80% to 90% of all operations in The Sudan, Somalia, and Djibouti (Nussbaum), is infibulation. During the infibulation surgery “the clitoris is removed, some or all of the labia minora are cut off, and incisions are made in the labia majora to create raw surfaces. These surfaces are either stitched together or held in place until they heal as a hood of skin that covers the urethra and most of the vagina” (Nussbaum). Often times following infibulation operations the girls’ legs will be bound together for up to six weeks while eggs and sugar are applied to help scar tissue form (Untold Stories Female Genital Mutilation PT 1&2&3). Almost equally as horrible, as infibulation, is deinfibulation; the reopening of an infibulated vagina. Deinfibulation is done before marriage or childbirth. In accordance with tradition this process is enacted with a rhino’s horn as the tool.

Now that I have explained exactly what FGM is, I am going to tell you why it is a harmful practice that cannot continue. First, these women often feel little to no sexual responsiveness after undergoing FGM operations (Gaughen). This is not surprising as the clitoris is always at least partially removed (Gaughen). The clitoris is the female sex organ that heightens a woman’s sexual desire and allows her to experience an orgasm (Komisaruk, Whipple and Nasserzadeh). Secondly, FGM operations are performed when girls are young, usually ages 4-12 (Gaughen) but sometimes as early as weeks old or as late as upper teens, before marriage. Unable to fight back or to know what is about to be done to them. “The girls can’t wait for this day. But they don’t know what they are waiting for. Afterward, the girls know only that they have become women” (Korn). “There would be a girl in school that is gone for a week and then come back. We never really knew why, but we could guess” (Ludwig). Thirdly, FGM is forced and done for non-medical purposes (Untold Stories Female Genital Mutilation PT 1&2&3). I will extrapolate on the reasons for which FGM is performed later. Lastly, many girls die during or after their cuttings, and those who survive are always ailed by the lifelong debilitating effects of the surgery. I will extrapolate on these ailments later also.

You may ask why this horrendous operation is performed at all. The most relevant answer, FGM is simply a way to demean women. In Africa it is still a man’s world; women do, and have done to them, things that they shouldn’t, without any sort of recourse. The following two quotes sum these statements up well. “FGM is recognized internationally as a violation of the human rights of girls and women. It reflects deep-rooted inequality between the sexes, and constitutes an extreme form of discrimination against women. The practice violates a person’s rights to health, security, and physical integrity, the right to be free from torture and cruel, inhumane or degrading treatment, and the right to life when the procedure results in death” (Female Genital Mutilation (FGM)). “It remains particularly true that women have little legal recourse and may face threats to their freedom, threats or acts of physical violence, or social ostracization for refusing to undergo this harmful traditional practice, or attempting to protect their female children” (Nussbaum). The preceding quotation was the appellate ruling statement from Nussbaum’s appeals trial for naturalization in the United States. I find it interesting that it points out the lack of legal recourse, because in Benin, Burkina Faso, CAR, Chad, Cote d’Ivoire, Djibouti, Egypt,

Ghana, Guinea, Kenya, Niger, Nigeria, Senegal, Tanzania, and Togo, FGM is banned. There have been no prosecutions, and it is still highly practiced in all of these and 13 more African countries. The most notable countries are Somalia with 98%, Mali with 93%, The Sudan with 89%, and rural Kenya with 80% of the women living there undergoing FGM surgeries (Nussbaum) (Untold Stories Female Genital Mutilation PT 1&2&3). This is a massive problem; 100-140 million women living today have undergone genital surgery with 3 million more a year (Female Genital Cutting Fact Sheet). To reiterate, “these girls are usually 4-12 years old”(Gaughen). This means that, for the most part, they never experience intercourse with the fully functional capabilities of their bodies. Though some do, like Mariam Razak. Razak was fifteen when she was cut, with five adult women holding her down. She had had sex with the man who is now her husband, prior to that time, and found it satisfying. Now, she and her husband both say things are difficult. Mariam compares the loss to “having a terminal illness that lasts a lifetime.” “Something was lost in that place... I try to make her feel pleasure, but it doesn’t work very well”, her husband says (Nussbaum). For reasons such as this, and others, the rate of depression and other psychological problems are prominent in cut women.

Superstitions, cultural traditions, and marriage prospects are more reasons behind FGM. These fallacies include that the clitoris must be removed or it will continue to grow into a penis, or that the external genitalia are unclean and can actually cause the death of an infant during delivery, if not removed. These are not true beliefs, but an undereducated village would not realize this, as all of their women have undergone the operation. Sometimes there is no real explanation aside from “It’s tradition. That’s what our ancestors did. That’s what we do” (Kassindja and Bashir). “It’s an ancient tradition” (Korn). That being said, still sticking to the cultural tradition reasoning, there is some substance to the argument. It is very common to have statements like this; “FGC is often part of a community’s tradition. Most parents who support FGC believe they are protecting their daughter’s future marriage prospects, and not hurting her. It is seen by parents as part of a girl’s upbringing” (Female Genital Cutting Fact Sheet). It often comes back to men or marriage as shown in the previous quotation and in this one, “if women don’t have this done, they won’t be acceptable to men” (Nussbaum). Men want their wives to be faithful to them, but the men cheat on their wives all the time; they go to work in the big cities and commit unfaithful acts (Ludwig). This is confirmed in *Sex and Social Justice* “FGM keeps women from extramarital sex.” “It is a way for men to keep women in their place” (Ludwig). It is chillingly effective in this respect as “orgasms become practically impossible” (Gaughen).

We now know what FGM is, and why it happens. Can it be justified? No, it cannot be justified. I will now share the health problems related to FGM of which I alluded to earlier. These include infection, hemorrhage, and abscess at the time of the operation and later difficulties in urination and menstruation. Stones in the urethra and bladder due to repeated infections can occur, with excessive growth of scar tissue possible. Pain during intercourse is common. Obstructed labor often causes damaging rips and tears during childbirth. (Nussbaum) These awful consequences are, most definitely, reason to end this cruel practice. It is when these girls develop what is called a fistula that life really becomes torturous. A fistula is when a hole forms between the anus and vagina or urethra and vagina (Untold Stories Female Genital Mutilation PT 1&2&3). “Women who develop fistulas may suffer frequent miscarriages because of urine seeping into the uterus. In addition, they smell

of urine and often become outcasts” (Gaughen). Not surprisingly, whether spurred by health problems, fears of infertility, or the loss of a husband’s attention because of penetration difficulties; depression and anxiety are also frequent consequences of genital surgery, as I alluded to earlier.

There are claims that it is not my place, as a westerner, to judge the culture of other people; that the criticism of genital mutilation is inappropriate and demeaning of a culture in which I do not live. I condemn this practice because it puts lives in jeopardy, it debilitates millions of women and it is performed almost exclusively non-consensually. Someone in opposition to my stand might argue “the focus on this problem involves a western glamorization of sexual pleasure that is inappropriate” (Nussbaum). I do not mean to imply that these women should have their genitals remain intact so they can become sexually promiscuous. I protest this practice, because they have the right to maintain their physical capacities.

Female Genital Mutilation has been compared to dieting and body shaping in America and is said to be on par morally. I do not agree that this cultural comparison is accurate; FGM is something these women cannot refuse. Dieting is a choice, and the consciences of that choice are justified; whereas, the consequences are not justified in the case of FGM.

Racism and prejudice have been compared to FGM, especially in the case of anti-Semitic practices during the 30s and 40s. These anti-Semitic practices were more or less dismissed by the public. It would not be right for the world to turn a blind eye on FGM. A blind eye was turned on the Jews in the Holocaust, and it was certainly not the right thing to do.

Female Genital Mutilation, Female Genital Cutting, or Female Circumcision, is a blatantly cruel, even torturous, violation of human rights that exists solely on false beliefs or sexist sentiment.

The midwife was going to purify me... They held me tight...  
Cut my flesh without anesthetics. I screamed till I lost my  
voice... I could not eat, drink or even pass urine... shivering  
with pain... I suffered a lot (Gaughen).

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**Skyler Johnston** recently received his Associate of Arts degree in Liberal Arts and Sciences from Minnesota State Community and Technical College. He plans to continue his education in pursuit of a Bachelor's degree in philosophy. He has always been a deep thinker, and enjoys pondering difficult questions. He has a particular interest in ethics and how morality interacts with society.





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## *Objecting to the Reasonable Person as a Justified Person Standard*

**M. B. Mortimore**

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### **Abstract**

The standard of a reasonable person is somewhat vague in the legal literature, describing a threshold to sensible human action. In attempting to demystify this ambiguity, John Gardner has argued that what it means to be a reasonable person is simply to be a justified person. However, I reject this relationship and argue that the standards not so cleanly defined boundaries are ultimately to our benefit. First, I introduce the most salient features of a reasonable person, then secondly I mention some typical problems encountered with the legal fiction. Thirdly, I discuss Gardner's justified person standard and attempt to demonstrate why he is mistaken in his attribution of justification to reasonableness, and lastly I suggest that the legal fiction of a reasonable person in its current form is more appropriate and versatile than Gardner's relative to what we need it to do.

**Keywords:** *justified person standard; philosophy of law; reasonable person standard*

### **Introducing a reasonable person**

A reasonable person is a legal fiction, constructed as an aid for determining negligence in tort and criminal law. It is a standard that is intended to account for the wide variety of circumstances a person can find herself, and the myriad different ways in which the person can be said to have acted reasonably in those circumstances. Sometimes referred to as the 'reasonable man', or 'the man on the Clapham omnibus' in English law, a reasonable person is often described as a "person of ordinary prudence", or "a person of reasonable prudence" or some other variation of these terms.<sup>47</sup> Though defined fairly consistently throughout the legal literature, its actual interpretation and application are not as consistent. I will first outline the most common features of a reasonable person and show where there is disagreement amongst scholars. Secondly, general problems with the reasonable person standard will be discussed, and how John Gardner attempts to fix these issues by implementation of the justified person standard. Finally, I will demonstrate the pitfalls of Gardner's justified person standard, and show where criticisms of a reasonable person are generally mistaken, and why the standard ultimately works the way we need it too.

### **The common attributes of a reasonable person**

The reasonable person standard was born out of the need to criticise negligence when it was not clearly defined in the law. Because of the seemingly infinite variety of

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<sup>47</sup> William Lloyd L. Prosser et al., [William Lloyd] Prosser and (W. Page) Keeton *on the Law of Torts*, 5th ed. (United States: West Publishing Co, 1995), 174

circumstances a person can be found in to act, it is impossible to set definite rules beforehand for all possible human behaviour.<sup>48</sup> There was a distinct need to find a way around the legal system's rigidity whilst maintaining an acceptable amount of objective measure and pragmatism. A reasonable person allows us to do this, where her measure and pragmatism allows for sufficient plasticity in interpretation not to pigeon hole what is considered reasonable human conduct.

The reasonable person standard is most often developed as a community standard. This is done in light of a few considerations, first and foremost being that cultures have different rules on behaving and acting appropriately towards others. People also find varying degrees of value in objects, places, words, thoughts and actions. Some people tend to place more value in the sentimental and the metaphysical, whereas others may place it in the monetary and the material. Sometimes it is the thought that counts, and in other circumstances actions speak louder than words. Just another bench in the park to person A may be the place of her first kiss to person B. Some people want to maintain their view shed, but a neighbour may wish to erect a wind turbine. One values renewable energy whereas the other values aesthetic qualities.

To reiterate, people find varying degrees of value in objects, places, words, thoughts and actions. Hence a reasonable person is typically constructed around the values of the community, though as will be discussed later some values should not be considered culturally sensitive.<sup>49</sup>

Even though a reasonable person should be a reflection of the community, sometimes community norms fall below the objective person standard. Being based on the community, it is normally considered relevant and admissible that the evidence of the normal and customary behaviour under similar circumstances be used in determining reasonableness. If a person merely does what everyone else does, and conforms to the standards in place, then there is at least the inference that the person is doing what is considered reasonable by the community. This gets morally murky, however, as there seems to be a distinction between whether the community standard is ethical or unethical. In other words, whether the community standard has emerged out of a sincere state of necessity, practicality or custom to honestly pursue that society's morally permissible goal of flourishing, or whether the standard has been consciously implemented by the community for some unjust end. For instance, industries cannot set their own standards, and then use them as a defence against negligence. The temptation would be, by adopting careless practices they may seek to save time, effort, or money, to give themselves a standard far below that of minimal due care: "The fact that all other beverage bottlers use the same slipshod methods cannot serve as absolution for the bottler who is being sued."<sup>50</sup> A natural standard would be the custom of shaking hands to create contracts, which arose out of historical practicality (demonstrating neither party had a weapon in hand), or the fact that in some rural American communities children as young as 14 are allowed to drive as to help out the family farm. It is these latter sorts of standards that a reasonable person would reasonably incorporate into her conduct.

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<sup>48</sup> Prosser et al., *Prosser and Keeton on Torts*, 5<sup>th</sup> ed. 173

<sup>49</sup> Pg 13

<sup>50</sup> Prosser et al., *Prosser and Keeton on Torts*, 5<sup>th</sup> ed. 194-95

A reasonable person is also a standard to which common people are expected to meet in their conduct, but they can only be expected to meet it so far as they can:

Allowance is to be made for disability, and the impossible cannot be demanded of [the disabled] by conforming to physical standards which they cannot meet... The conduct of the handicapped individual must be reasonable in the light of his infirmity, which is treated merely as one of the circumstances under which the person acts.<sup>51</sup>

A blind man cannot be found negligent in failing to see, and nor can a deaf woman in failing to hear. One can only be expected to operate within her abilities, or in other words, “ought implies can.”

It, therefore, becomes clear why there is a need to be careful about which article we use when talking about reasonable person standards. A reasonable person does not presuppose any necessary physical ability or trait, but *the* reasonable person does. To talk about the reasonable person presupposes there is only one way of being reasonable. It is important that we remain nonpartisan in our terminology, otherwise, the standard will find it harder to do the work we want it to. Though ‘the’ reasonable person would certainly be less restrictive in cases of physical infirmity, its real damage would be to the mental life of a reasonable person. As noted by Kheel, “The reasonable man, for example, is often equivocated with the ‘hegemonic masculinist’s’ ideal of a white, heterosexual, Protestant, employed, urban man.”<sup>52</sup> There are many different ways that a person may legitimately be reasonable, and having a standard that requires at least and at most one ideal does not give due regard to all these other ways that one may legitimately be reasonable.

Allowance is made in degrees for physical disability, for instance, but it is much more difficult for the law to make the same allowances based on mental disability. An inability to determine a person’s mental capacity with sufficient accuracy leaves too much room for error and its dishonest use as a defence. There is some sentiment for those who suffer from sudden onset of delirium or the loss of one’s mental faculties to such a degree that they lose control of their conduct, thus being shielded from liability as long as the lapse was unforeseeable.

More generally, however, the issue is more mundane, “As to all such mental deficiency, of a minor nature, no allowance is made... it is not enough that the defendant did the best he know how.”<sup>53</sup> Though it may seem at first that the standard is unfairly discriminatory against the mentally impaired, it is vital that merely doing the best that one knows how is not sufficient for being a reasonable person, and this is one of the glaring pitfalls of Gardner’s justified person, as will be discussed later on.<sup>54</sup> For instance, it is not an appropriate excuse for a qualified plumber who having been paid for his work, does such a poor job that a family is left with no hot water, and the pipes leak causing structural

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<sup>51</sup> Prosser et al., *Prosser and Keeton on Torts*, 5th ed. 176

<sup>52</sup> Dennis R Cooley, *Technology, Transgenics and a Practical Moral Code* (New York: Springer, 2010), 40

<sup>53</sup> Prosser et al., *Prosser and Keeton on Torts*, 5th ed. 177

<sup>54</sup> This is addressed in ‘Problems with a justified person. 9

damage to their property, to get off blame by saying, even truthfully, “It is the best that I knew how.” For one, it would be far too easy to fabricate this as an excuse, and secondly merely doing what you think is best is not what we mean by reasonable. If this were the case, a reasonable person would be one who *thinks* their actions were reasonable, not a person whose actions actually *were* reasonable. For example, some parents seek the aid of faith healers rather than modern medicine. They often want nothing but the very best for their children and believe with complete certainty that what they are doing is the most productive means of healing their sick child. It cannot be said that they are lacking in love or care, as they are literally doing what they think is best. Unfortunately, what they lack is reasonable care. It is not reasonable, on grounds of empirical evidence, to believe that faith healing is medicinally superior to modern medical treatment. Therefore, although they care in the appropriate amount for the wellbeing of their child, the direction of their care is misplaced in faith healing rather than professional medical help. To exaggerate the example, a parent (probably with impaired mental functioning) who believed with complete certainty that hitting their child on the patella with a hammer would fix their aching knee is not justified in their belief, and so acts unreasonably even with the best of intentions. This is why ‘doing the best that one knew how’ is an insufficient condition for being a reasonable person.

Though the reasonable person standard as applied is reluctant to lower the bar for those who lack in mental capacity, intelligence or understanding, it readily raises the bar for those who possess superior knowledge or skill. The standard for an electrical engineer in regard to electrical engineering is much higher than it would be for a layperson. For example, the former would be expected to distribute and tie electrical wiring more efficiently and understand how various components most optimally work together to achieve her goal. She has superior knowledge in her field and would be expected to act with a higher degree of skill, care, and understanding with which her superior knowledge demands of her.

Though a professional person’s standards of reasonableness may be higher in light of her knowledge and skill, ignorance is not a defence for the layperson. A person may know enough to be conscious of their own ignorance and of the possible dangers it may present to herself and others, and she can be found negligent in acting in the presence of known ignorance.<sup>55</sup> Interestingly, the UK-based website Lawteacher.net interprets the standard of specialised knowledge and skill differently. They say, “the standard of care to be expected from a learner-driver is the same as that required by a qualified driver. Likewise, a householder doing DIY work must not fall below the standard to be expected of a reasonably competent carpenter in doing the work.”

There are two standards implemented here, one of which raises the bar set by the more traditional interpretation of a reasonable person whilst the other lowers it. The first one pertains to the standard of care. They say that a learner-driver should exhibit the same standard of care as a qualified driver. All this means is that the level of skill should not change the amount of care given to any task. Though a learner driver’s skill is less in comparison to a qualified driver, the same level of care should be expected from both. It could even be said that the learner driver should exhibit more care in the face of her known ignorance/ inability.

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<sup>55</sup> Prosser et al., Prosser and Keeton on Torts, 5th ed. 184-185

The second standard pertains to the quality of work. It says that a homeowner doing DIY should demonstrate the same quality of work as a reasonable carpenter. This raises the bar to troubling new heights. It is not good enough that the householder demonstrate the same level of care, but she is now required to produce the same quality of work. For someone to be a legitimate carpenter, they need to possess a certain level of skill at woodwork. A reasonably competent carpenter's skill would far exceed that of the common home owner, and so Lawteacher.net and those of similar views are essentially requiring that the layperson demonstrates the same level of skill as could be reasonably expected from a professional in that area. Therefore, it follows that the learner driver is no longer required to demonstrate the same level of care, but also the same quality of work as the qualified driver, which would then defeat the purpose of being a learner-driver. Clearly, this second standard is not pragmatic in the way we require a reasonable person to be.

In addition, Lawteacher.net claims the opposite when assessing the work of a professional. The latter is to be judged on her skill by the standard of an "ordinary skilled man exercising and professing to have that special skill."<sup>56</sup> Rather than being assessed as a professional *with* that skill, they are to be assessed as though an ordinarily skilled person merely *professing* to have that skill. What this means is that the carpenter is to be evaluated the same as the ordinary person claiming to be able to do carpentry, where the ordinary person is to be assessed as the ordinary carpenter. This is circular, confusing, and not in the spirit of a reasonable person standard.

Though centred on a common theme, the varied use of language to articulate the reasonable person standard can have large theoretical and applicatory consequences. Lawteacher.net is a prime example of how care needs to be taken when articulating the standard as not to befuddle a reasonable person. That is a person whose actions are to be judged in cases not covered by the law.

It has also been noted that as scientific knowledge advances, what was possible to excuse justifiably as ignorance yesterday becomes negligent ignorance today.<sup>57</sup> Prosser and Keaton state that there is a minimum body of knowledge who every adult with minimum intelligence, barring an almost complete lack of mental capacity, must have necessarily learnt:

the law of gravity, the fact that fire burns and water will drown, that inflammable objects will catch fire, that a loose board will tip when it is trod on, the ordinary features of the weather to which he is accustomed, and similar phenomena of nature. A person must know in addition a few elementary facts about himself: the amount of space he occupies, the principles of balance and leverage as applied to his own body, the effects of his weight, and, to the extent that it is reasonable to demand it of him, the limits of his own strength, as well as some elementary rules of health.<sup>58</sup>

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<sup>56</sup> "Negligence Breach of Duty - Reasonable Man Test," LawTeacher, 2003, accessed November 16, 2016, <http://www.lawteacher.net/lecture-notes/tort-law/negligence-breach-lecture.php?cref=1>.

<sup>57</sup> Prosser et al., Prosser and Keeton on Torts, 5th ed. 185

<sup>58</sup> Prosser et al., Prosser and Keeton on Torts, 5th ed. 183

What is meant by “some elementary rules of health” is not entirely clear. It seems what they have in mind is something like humans need to eat, drink and sleep, and they cannot be without shelter for prolonged periods of time in the freezing cold or the searing heat etc. Facts about healthcare that even children are expected to know. However, which “some” these are there is no way to tell, and it would have been better to include *all* elementary rules of health, rather than just a few. It is straight forward and would prevent persons from juggling around which “some” they are required to know. It would have been clearer to say something like X needs to know Y about healthcare because Y is required to survive. This makes it reasonable to infer and expect that X knows Y for (1) the very fact that X is alive, and Y is required to survive, and (2) because knowledge of Y is so common that no person can be expected not to have learnt it.

### **Problems with a reasonable person standard**

What do we actually mean by “reasonable”? Even though we successfully communicate using it in everyday language, we have a difficult time defining exactly what we mean when we say such and such is reasonable. When we say something like “that was a reasonable price,” or “she was reasonably strong,” we mean to say that the object of our language was fair or moderately good. When we say something like “that is a reasonable theory”, or “he thinks very reasonably,” we mean to say that the object of our language is in accordance with reason.<sup>59</sup> Depending on which definition of reasonable we use, it drastically changes the characteristics of the reasonable person standard. If by reasonable we mean fair or moderately good, all we are saying is that the act or belief in question is ‘acceptable’ by conventional standards. To say something is moderately good or fair is to say that it is average or a bit above in its goodness or correctness. Goodness here stands in relation to ethics, and correctness stands in relation to facts about the world. It is possible for something to be both ethically good and factually correct at the same time, they are not mutually exclusive. For example, the belief that lowering income inequality in the U.S is more economically productive is both factually true and ethically good. It is factually true because the empirical and historical data strongly agree with the statement, and it is ethically good because it would improve the standard of living for millions of Americans. For one to be reasonable by these lights, they need only meet an average standard of goodness or correctness as set by the community. The behaviour found reasonable at time  $t^1$  may later fall under the standard set at time  $t^2$  within the same community and vice versa, so the standard of reasonableness can shift with the changing values and actions of the community.

The problem is that this relativism seems too capricious and arbitrary at face value for a legal standard, but is this what we mean by the ‘reasonable’ person? Note that two of the synonyms for the ‘reasonable person’ as discussed by Prosser and Keaton were the ‘person of ordinary prudence’ and the ‘person of reasonable prudence’. The only difference between the two phrases is the use of either the term ordinary or reasonable, and seeing as both phrases are synonyms of each other, by transitivity, ordinary and reasonable must both convey the same information. What is understood by ordinary prudence is something like normal, usual, or the mode average prudence. Therefore, seeing as both phrases carry the

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<sup>59</sup> Accessed November 16, 2016, <https://en.oxforddictionaries.com/definition/reasonable>.

same information, reasonable must also mean something like normal, usual, or the mode average.

At this point, it seems obvious that we could substitute reasonable for ordinary wherever we find it without any loss in meaning, including in the reasonable person. However, do the 'reasonable person' and the 'person of reasonable prudence' both use the word reasonable in the same way? When we subtract the same words from each phrase, we are left with prudence as the difference between the two phrases. What is prudence? Prudence is the ability to govern oneself through the use of reason. It is to act in a way that serves your best interests. So the 'person of reasonable prudence' is the 'person of ordinary ability at governing oneself through the use of reason.' This means that the reasonable in the reasonable person does not mean solely something like the ordinary or average person, but the person with ordinary or average reasoning abilities.

These are two very different standards. For one to be an ordinary person, all one needs to do is conform to the norms of the community, no matter how monstrous or idiotic the norms may be, and one can properly meet the reasonable person standard.

However, in order for a person to meet the standard set by the ordinary ability to reason, a person cannot simply conform to social norms, as they may well fall below what can be reasoned to be good or correct. It is possible that a person or a community holds beliefs or performs actions that they may well have the ability to reason are unjust or incorrect, and so merely doing as everyone else does is not a defence. Even considering this fact about doing as everyone else does, Prosser and Keaton state explicitly that "If the actor does only what everyone else has done, there is at least an inference that the actor is conforming to the community's idea of reasonable behaviour."<sup>60</sup>

The problem here is that conforming is not reasoning, and the community may not necessarily have reasoned its behaviour, so reasonable behaviour is apparently not the same as reasoned behaviour. An actor may be doing what is considered ordinary, but if the ordinary person took the time to reason the behaviour would discover its wrongness or falsity. Again, merely doing what everyone else does is not a defence in the face of reason. We do not intend to pardon behaviour as reasonable merely because of its status as a social norm or the common thing to do, that does not have the objectivity the reasonable person standard requires.

One way to relieve ourselves of the slippery slope now associated with reasonableness as it pertains to 'ordinary' behaviour is to forgo this interpretation. Instead, as mentioned earlier, should we take reasonable to mean 'in accordance with reason'?

Unfortunately, being in accordance with reason also misses the mark of what we intend for a reasonable person. For one to be in accordance with reason, despite the fact that being in accordance with reason means thinking in a certain way (something like thinking logically), all that needs to be said is that it requires thinking at all. Sometimes we act purely out of emotion, where our behaviour is reactionary and we do not stop to think it through and weigh up our options. This is an incredibly common and deeply human type of behaviour, and is not accounted for at all under this definition. Imagine all the different reactions that could be considered reasonable, not taken into account under this definition, that a person could give after being frightened, or being suddenly plunged into emotion. People are not emotionally stable at all times, and they cannot be expected to coldly reason

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<sup>60</sup> Prosser et al., Prosser and Keaton on Torts, 5th ed. 193-194

themselves through each situation presented to them. Even if this were the standard expected of a reasonable person, to always give reasoned thought to the matter, it would require that they give thought in a particular way. What this particular is does not actually matter, all that is important is that it locks people into thinking in a particular way, and again, this cannot be expected of people. What would happen to religious liberty if reasonable persons were all expected to think similarly?

### **Introducing a justified person**

Gardner suggests that a reasonable person is whoever is epistemically justified in their beliefs and actions. Being justified is open to less ambiguity and vagueness than being reasonable,<sup>61</sup> and attempts to bring into focus the numerous grey areas of the reasonable person standard. For Gardner, “[a] reasonable action is a justified action, a reasonable belief a justified belief, a reasonable fear is a justified fear, a reasonable measure of care is a justified measure of care, etc.”<sup>62</sup> To be more exact, he claims three conditions must be met for justification. (1) That there were reasons for one to do as one did, (2) that these reasons stood undefeated by conflicting reasons, and (3) that one did as one did for one of these undefeated reasons.<sup>63</sup> Gardner is attempting to produce what Prosser and Keaton referred to when they said, “[t]he utmost that can be done is to devise something in the nature of a formula.”<sup>64</sup> In doing so, a justified person gives less room for the law to err, and does away with such secondary legal fictions as the reasonable carpenter, doctor, soldier, mechanic etc. A justified person is justified *tout court*.<sup>65</sup>

The standard of a justified person does well in the criminal law of duress, where it helps to identify justified fear as a legitimate excuse of action. For example, a reasonable person can have their actions excused in the thrall of fear when in the presence of grave danger. “[t]he reasonable person is held by the law to be performing unjustified actions from a justified emotion. If his actions were justified, he would not need and could not intelligibly have an excuse for them.”<sup>66</sup>

### **Problems with a justified person standard**

It appears that what Gardner has in mind is more closely aligned with a rational person than a reasonable person. A rational person is an individual who works efficiently to achieve their goals, but there is no restriction on what their goals may be. Cooley uses the example of a hedonic egoist, who in pursuit of their narcissistic long-term interests severely harms others by his behaviour, and the egoist is fully aware that this will happen before he acts. The fact that he disregards what happens to those he affects allows him to better achieve his goals within his egoistic framework; it would not serve his interests to feel guilt and other negative emotions that would eat away from his agent-utility. But this

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<sup>61</sup> This is explained in the next section, ‘Problems with a justified person’. 9

<sup>62</sup> John Gardner and Arthur Ripstein, “The Mysterious Case of the Reasonable Person,” *The University of Toronto Law Journal* 51, no. 3 (2001), doi:10.2307/825941. 1

<sup>63</sup> Gardner and Ripstein, “The Mysterious Case of the Reasonable Person.” 5

<sup>64</sup> Prosser et al., *Prosser and Keeton on Torts*, 5th ed. 173

<sup>65</sup> John Gardner, “The Many Faces of the Reasonable Person.” 9

<sup>66</sup> John Gardner, “The Many Faces of the Reasonable Person.” 6

callousness disqualifies him from being reasonable.<sup>67</sup> A reasonable person must necessarily take into account what happens to others, who are also intrinsically valuable beings.

One of the other immediate problems with the justified person standard is the fact that it *is* narrower in its scope than the reasonable person standard. In trying to clarify the boundaries of the standard, Gardner has done away with one of the strengths of a reasonable person. It is precisely because a reasonable person can be debated and is not exact in its nature which makes it so useful. The reasonable person standard permits flexibility, it gives due regard for one's culture, goals, ways of thinking and the various ways of living. Having clear and narrow boundaries seems to have been mistaken for accuracy.

In fact, it is unlikely that there is an equation or formula that could be applied to all cases of human conduct with complete accuracy. To say someone was justified on undefeated grounds raises more questions than it answers. Justified under what standard? It is no good just to say justified *tout court*, as that means what exactly? Can one be justified on reasons to which they only believe to be true, or do they necessarily have to relate to reality in the appropriate way, i.e. that the belief is actually true. Is justification a social standard? What does it mean to be justified? The standard suffers the same problem it tries to address in the reasonable person. If one was reasonable if and only one was justified, and one was justified if and only if one was reasonable, then we have a tautology and nothing has been added to the standard.

Another problem encountered by Gardner's interpretation is whether a justified person is always reasonable. What happens to the standard of justification in the mentally impaired, as remember that the reasonable person standard does not allow merely 'doing the best that one knew how' as a defence. However, this could be used as a defence against negligence if all one needed to be was justified in their conduct. For example, it is possible that a paranoid schizophrenic who suffering from a distinct break in reality falsely believes that the public is out to kill them, and as a result, under the belief that they are fighting for their life, proceeds to gun down and murder innocent passers-by. If we make our way through Gardner's criteria for justification, we will see that the paranoid schizophrenic meets this standard. (1) That there were reasons for one to do as one did: The paranoid schizophrenic killed under the belief of kill or be killed, which is a reason to do as one did. (2) That these reasons stood undefeated by conflicting reasons: To the paranoid schizophrenic, their reasons to kill go undefeated. They are experiencing a severe form of psychosis, and all available evidence to them suggests that the public is out to kill them. Though their evidence may not be grounded in any common reality whatsoever, they still go undefeated in light of their paranoid schizophrenia. They are objectively experiencing the reality of their psychosis (3) That one did as one did for one of these undefeated reasons: Again, they acted on the belief of kill or be killed, which all prevailing evidence to them suggests is true. They justifiably believe their life is threatened, and so reasonable force is exhibited under the notion of kill or be killed. However, this is not reasonable behaviour, a reasonable person is not disconnected from reality nor do they kill innocence. In depositing the justified person, Gardner has just moved the goal post laterally rather than adding to the standard in any meaningful way.

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<sup>67</sup> Cooley, *Technology, Transgenics and a Practical Moral Code*. 43-45

Is a reasonable person always justified? We have seen that being justified does not necessarily entail being reasonable, but does being reasonable always require one to be justified? Tentatively, a reasonable person is always justified, though this comes with some interesting caveats. The conjunction between faith and reason poses an interesting conundrum, and would no doubt spark debate on the issue in relation to a reasonable person. Some people, as mentioned earlier, pray instead of seeking medical treatment for their loved ones, or take them to see a faith healer. Though they are overwhelmingly defeated in their justification for praying instead of seeking medical help, it presents itself as an interesting case to say they are not giving proper care to the party involved. It is precisely *because* they care that they pray, or see a faith healer. They honestly believe, though on unjustified grounds, that prayer is the best way to bring the concerned person back to health. This is a good example of when ‘doing the best that one knows how’ is not the best at all. The point is that some communities would be reluctant to say the individual was negligent in their care, and in many places around the world this is the social norm. However, we would respond differently to a rural Indian family who seeks treatment through prayer than an urban American family who does the same. This is because the culture, education, and importantly the social norms are different. Though being a social norm is not a sufficient condition for being found reasonable, it is an important consideration that needs to be entertained when asking the question, “is this a reasonable person?”

Religiosity and spiritualism are certainly areas where there would be a great deal of debate over whether a reasonable person need be justified. Can a reasonable person be justified in their belief of Yahweh, Allah, Vishnu or Hanuman? Many would be inclined to answer yes with little thought, but what about a belief of long dead gods such as Odin, Anubis or Zeus. If the former is acceptable but the latter is not, what makes these two beliefs so fundamentally different? Do contemporary like-minded thinkers help to justify one's beliefs, if they do, how far can they be used in this justification. Another example of an instance when a person could be reasonable and unjustified is the belief that organic food is better for you than genetically modified foods. There is a common way of reasoning (in part through pseudoscience and the spread of miss-information) that leads a person to believe that organic food is superior in nutritional quality to genetically modified foods. However, the science says overwhelmingly that there is no universal benefit from eating organic foods. Golden rice, for example, was genetically modified to biosynthesize beta-carotene, a precursor to vitamin A, which has helped prevent some of the hundreds of thousands of deaths in children under the age of five as a result of vitamin A deficiency.<sup>68</sup> It is far and away the majority view of the ordinary public that genetically modified foods are bad for you, even though that belief is in stark contradiction with modern science. Once again, do fellow like-minded thinkers help justify one's position, even if empirically it is unsupported? None of these examples seems to tip the scale in favour of a reasonable person standard which does not necessarily require justification, but it is interesting food for thought none the less.

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<sup>68</sup> Xudong Ye et al., “Engineering the Provitamin A ( $\beta$ -Carotene) Biosynthetic Pathway into (Carotenoid-Free) Rice Endosperm,” Report 287, no. 5451 (January 14, 2000), accessed November 16, 2016, doi:10.1126/science.287.5451.303, <http://science.sciencemag.org/content/287/5451/303>.

## Why a reasonable person ultimately works

There is a great deal of emphasis that goes into making a reasonable person an objective standard. For one, the law strives to be impartial in its practices, and an objective standard where everyone is judged against the same equal measure seems fair. However, the problem that has arisen from doing this is that the predominant culture sets the objective measure, which makes it easier for one social group to conform to the standard whilst simultaneously excluding the values of other social groups.<sup>69</sup> Not only does the objective measure exclude the values of minority groups, but it also systemically excludes the values of the individual too. As Maguigan noted, defendants in criminal law cases are denied the opportunity to explain their behaviour as being reasonable in relation to their cultural upbringing because it is at odds with the predominant culture.<sup>70</sup> Interestingly, Pérez-León Acevedo argues that the reasonable person standard “pays no attention to the fact that the average person might behave in undesirable ways. For example, the ordinary man could get so upset when facing non-violent homosexual advances that he may consider it reasonable to use lethal force to repel them.”<sup>71</sup> I argue that this point and example are not entirely accurate, and are hiding an important misrepresentation of the standard. It is not true that the standard “pays no attention” to the fact that the average person may behave undesirably. As discussed earlier, though a reasonable person is a community constructed standard, the common practices of the community may fall below the reasonable person standard.

It appears as though Pérez-León Acevedo is writing under the impression that reasonable is rigidly taken to mean fair or average. If this were the case, his assessment would be accurate, however, as it is used in tort and criminal law reasonable is freely taken to mean anything from fair or average to being in accordance with reason. Whatever fits the requirements of the case better, the law has the liberty to choose, and it is a mistake to say that it “pays no attention” to these issues. The community could not fall below the standard if it were truly the case that it did not take such problems into consideration. When he says the ordinary man, he is clearly thinking of the ordinary heterosexual man, which is an important stipulation. In any case, the ordinary heterosexual man may resort to violence when being the subject of non-violent homosexual advances. However, this is not reasonable behaviour and would be an example of when the ordinary practices of the community fall below the reasonable person standard. The important thing is that it *is* debatable, courts *can* discuss the legitimacy of such issues because the reasonable person standard *is* flexible.

As for the problems mentioned earlier of predominant culture superiority and the lack of a cultural defence available to defendants, this is a failure of the courts, not of the

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<sup>69</sup> Juan Pablo Pérez-León Acevedo, “The Inconvenience of the Reasonable Person Standard in Criminal Law,” *Derecho PUCP*, no. 73 (2014).

<sup>70</sup> Holly Maguigan, “Cultural Evidence and Male Violence: Are Feminist and Multiculturalist Reformers on a Collision Course in Criminal Courts,” *New York University Law Review*, no. 70 (1995).

<sup>71</sup> Pérez-León Acevedo, “The Inconvenience of the Reasonable Person Standard in Criminal Law”.

standard itself. A reasonable person says nothing of the inability of defendants to use culture to explain their behaviour; that has been a systemic attitude of the courts not to allow such information as admissible. Nowhere in the legal literature on reasonable persons does it say that culture is not relevant, in fact, it is quite the opposite. Negligence is the failure to take proper care in doing something, and it is the courts who have been negligent in failing to take the proper care over the admissibility of cultural defences. This is a shortcoming of the courts. As for the reasonable person standard being informed by the predominant culture, this is an interesting issue for a number of reasons. There is certainly a lack of uniformity in the courts on how far to take culture into consideration, but are some cultures just inherently more or less reasonable than others?

Compare contemporary Canada and Yemen. In Yemen, married gay men can be executed by stoning, and unmarried gay men face a year in prison or flogging, and gay women can expect up to seven years in prison. Yemen is also consistently ranked as the worst country in the world for women to live, as “women in Yemen have minimal rights to education, marriage, healthcare, and they are denied many basic human rights.”<sup>72</sup> In Canada, none of these issues are present.

Courts tend to be ethnocentric in their rulings, but this is not a failure of the standard but rather a natural tendency to bias rulings in favour of one’s own cultural norms. If we take an extreme example, though not technically legal, honour killings have been a regular phenomenon in Pakistan. Only very recently has the country started to take minor steps in trying to prevent these crimes, but the majority of the time the perpetrators go free because it is considered reasonable to kill someone in the name of family honour. This type of behaviour would never be granted the cultural defence in the United States, and that is because on these grounds Western (U.S) culture is not just more reasonable, but morally preferable. There is an unspoken understanding that some acts and beliefs are unreasonable regardless of one’s culture. They can be immoral, and culture does not make up this difference. As we move away from clear-cut extremes like honour killing, we will eventually run into equally shallow waters. Along the continuum there will be ways of behaving which are more or less reasonable than others irrespective of culture, but which are still more in keeping with some cultures and their traditions over others. Did the west become more reasonable in its appetites as a result of the enlightenment, or did it just become reasonable in another way, i.e. the reasonable person standard is entirely a subjective culturally informed measure.

As discussed earlier, conforming to social norms does not necessarily protect an individual against negligence, which indicates there is some sort of objective measure to which individuals are being held accountable. When it comes to behaviours where there is no clear moral or reasonable superior, then it is justifiable that either emotion or rationality be the main driving force upon one’s beliefs and actions. As discussed earlier, people do not function in a vacuum, and cannot be expected to rationalise every action they take. Sometimes the evidence and considerations a person must weigh are so evenly balanced, rationality cannot choose between them, and so emotion can tip the scale. Even if there are more or better reasons for one belief or action over another, if they are similar enough in

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<sup>72</sup> “Women in Yemen: Worst Place to Live as a Woman - the Borgen Project,” The Borgen Project, November 2, 2013, accessed December 20, 2016, <http://borgenproject.org/yemen-worst-place-live-woman/>.

number or kind, then a rationally engaged person cannot accurately nor efficiently decide between them, and so emotion becomes a major and reasonable driving force in a person's behaviour. Cultures show and react in emotionally diverse ways, and both contrasting behaviours can still be reasonable given these considerations. To reiterate, the problem of predominant culture superiority does not have its roots in the standard, but rather in the ethnocentric bias of the courts.

Despite the fact there is no universally agreed upon formula for determining whether or not one was reasonable, or what it is exactly we are referring to when we say such and such is 'reasonable', they ultimately rest as the strengths of the standard. Because no one could conceivably think of all future human behaviour, in setting a formula we are in danger of excluding something that has not yet come to mind. The power that is given to the standard in there being no formula is flexibility. It allows us to evaluate case by case, where we are far less likely to be caught out by circumstances that have yet to be accounted for. Though something in the way of a formula would certainly speed up the legal process, accuracy takes precedence. The freedom to understand reasonable as something like a community set standard, or a way of information processing in the brain, allows the reasonable person standard to be more pragmatic in its application than if it were limited to any one definition. The legal fiction of a reasonable person is a flexible measuring stick that is not rooted in clear cut rules. The concept of a reasonable person is a legal tool, but the problems associated with it are in its application, not with the actual tool itself. You will not achieve the results you are looking for if you use a hammer to clean your dishes. There is not anything faulty with the standard *per se*, but it noticeably falls short of an idealistic application.

## Conclusion

I have elucidated a defence of the reasonable person standard and demonstrated why Gardner's justified person is not a satisfactory replacement for it. Though the reasonable person standard is not without its criticisms, Gardner's attempt to fix problems by defining what a reasonable person is more specifically only serves to include those who should not be included, or to exclude those who shouldn't be excluded. A reasonable person is a legal fiction which has survived a century going near enough unaltered. Not because legal philosophy has not made any advancements in the area of tort or criminal law, but because it is so difficult to improve upon a standard that must necessarily account for all human behaviour without accidentally shaving off too much, and thus, rendering it too narrow.

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**M. B. Mortimore** is a PhD graduate student in philosophy at Tulane University. His main areas of research include socio-political philosophy, law and economics, with a particular interest in the intersection of law, moral obligation, the free market, and social welfare. Mortimore aims to produce practical solutions to everyday philosophical and economic problems, and is very active in public education. A keen advocate of public dialectics, Mortimore wants to make education more accessible and provide a free public space for local dialectic discourse. A semi-professional track and field athlete and national champion, his spare time is spent training and competing in Europe during the competitive season.



## *The Catholic Church and Latin Immigration in the 21<sup>st</sup> Century*

**Kali L. Christianson**

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### **Abstract**

This article examines the history, teaching, and contextual dynamics that informed the Catholic Church's view of Latin immigration in the 21<sup>st</sup> century. Specifically, the article looks at how two elements of Catholic Social Teaching—solidarity and subsidiarity—informed the United States bishops' pastoral statement *Welcoming the Stranger Among Us: Unity in Diversity*, which outlined the Church's position and inspired policy advocacy. The article also reviews literature of inter-comparisons between the Catholic Church and other Christian denominations and intra-comparisons between the catholic hierarchy and laity. It argues that inter-denominational differences may be attributed to differences in theology, migrant religious affiliation, and organizational structure. Additionally, structural differences may be masking evidence that white Catholics hold views more similar to white Protestants and evangelicals than the official position of the bishops.

**Keywords:** *immigration, Catholic Church, Catholic Social Teaching, policy, religion*

### **Introduction**

During his first official visit to the United States, Pope Francis addressed a joint meeting of the United States Congress about the issue of immigration:

I say this to you as the son of immigrants, knowing that so many of you are also descended of immigrants... We must resolve now to live as nobly and as justly as possible, as we educate new generations not to turn their back on our 'neighbors' and everything around us. Building a nation calls us to recognize that we must constantly relate to others, rejecting a mind-set of hostility in order to adopt one of reciprocal subsidiarity, in a constant effort to do our best. (CLIN, 2015)

These statements demonstrate many of the Catholic Church's principles and practices regarding immigration. The Catholic Church has a history of supporting immigrants and liberal immigration policies since the 19<sup>th</sup> century. In the United States, those views were refined and applied throughout the 20<sup>th</sup> century. During the 21<sup>st</sup> century, Latin immigration has become an increasingly complex and controversial political issue. This essay will describe the policy views expressed by Church officials, explain the context and reasoning for the Church's positions, and provide examples of how the Church's ideas have translated into specific actions. The goal of this research is to demonstrate how the Catholic Church's

understanding of migration has influenced its policy views on Latin immigration in the 21<sup>st</sup> century.

## **Background**

During the 19<sup>th</sup> century, American bishops were primarily concerned with supporting immigrants by providing pastoral care and material aid (Scribner, 2015). Many European immigrants came to America seeking economic opportunities, and the Catholic Church adopted the role of helping poor immigrants and ensuring they had access to the sacraments. This ministry was mostly reserved for fellow Catholics (Scribner, 2015). Starting in the mid-20<sup>th</sup> century, Church officials began to express a greater role in the immigration debate. Rather than simply focusing on institutional needs and providing pastoral and material aid to Catholics, the Church engaged in a social mission to help all migrants (Scriber, 2015). Guided by the Church's social teaching, this mission was reflective of a wider change within the Catholic Church to be more politically active.

Millions of European Catholics migrated to the United States during the 19<sup>th</sup> century, and most received an unfavorable welcome (McEvoy, 2014). In response to anti-Catholicism, the United States implemented a national quota system from 1924 to 1965. During this time and the rest of the 20<sup>th</sup> century, Latin immigration increased. In the 1940s, the United States and Mexico instituted the Bracero Program, which “brought thousands of Mexican [and Puerto Rican] nationals to work in agriculture” (Aguilera-Titus & Deck, n.d., p. 1). The Cuban Revolution in the 1960s resulted in an influx of Cuban migrants. During the 1970s and 1980s, political unrest in Central American countries such as Guatemala and El Salvador further increased Latin immigration. Lastly, economic collapses led to a sizeable number of migrants from Columbia, Bolivia, Ecuador, and Peru in the 1990s (Aguilera-Titus & Deck, n.d.).

Today, there are 47 million people in the United States with Latin heritage, making them the largest and fastest growing minority group (Aguilera-Titus & Deck, n.d.). Some of these migrants have come to America legally, while others are undocumented immigrants. During 2000-2004, an estimated 485,000 undocumented immigrants entered the United States through Mexico each year (Melkonian-Hoover, 2010). In 2015, the Pew Hispanic Center lowered that estimate to 300,000 undocumented immigrants each year (Migration and Refugee Services Office, 2013). There are 11 million people currently residing in the United States without legal status (M.S.L.J., 2013). All policymakers agree that undocumented residents are a problem, but they differ in their proposed solutions. Immigration policies, legislation, and executive orders have focused on visas, legalization, border security, enforcement, and due process rights.

## **Catholic Social Teaching**

All Catholic social teaching is directed by two interdependent elements—solidarity and subsidiarity. Solidarity refers to the compassion and empathy humans have for their neighbors. According to Pope John Paul II, “Solidarity is... a firm and persevering determination to commit oneself to the common good; that is to say, to the good of all and of each individual, because we are all really responsible for all” (CLIN, 2015, p. 9). Subsidiarity refers to the Catholic Church's belief that problems are best solved at the most

local level. Together, solidarity and subsidiarity teach charitable decision-making and the empowerment of resident peoples and organizations to help their neighbors (Committee on Migration, 2003). Both principles have helped shape the Church's understanding of migration, as expressed through the papacy and church officials.

Catholic immigration views are derived from teaching and outlined in papal documents. While Catholics have taught the need to embrace the "stranger" and "alien" since ancient days, it was not until the 20<sup>th</sup> century that popes began to teach specifically about modern immigration policies (Committee on Migration, 2003). In *Exsul Familia Nazarethana* in 1952, Pope Pius XII wrote about the common good and an individual's right to migrate in order to meet life's basic conditions (Committee on Migration, 2003). In 1963, Pope John XXIII's encyclical, *Pacem in Terris*, also outlined the Church's understanding of migration (Committee on Migration, 2003). These documents—as well as *Rerum Novarum* (1891), *Octogesima Adveniens* (1971), *Laborem Exercens* (1981), and *Solicitudo Rei Socialis* (1987) (CLIN, 2015)—inspired the three basic immigration principles taught by the United States Conference of Catholic Bishops (Committee on Migration, 2003).

The Catholic Church's 21<sup>st</sup> century immigration teaching was outlined in the United States bishops' pastoral statement *Welcoming the Stranger Among Us: Unity in Diversity* (2000). This statement described and explained three basic principles of Catholic social teaching on immigration: 1) "People have the right to migrate to sustain their lives and the lives of their families;" 2) "A country has the right to regulate its borders and to control immigration;" and 3) "A country must regulate its borders with justice and mercy" (USCCB, 2000). According to the Catholic Church, each of these statements are inspired by biblical teaching and Church tradition (Betz, n.d.). They also reflect the values of solidarity and subsidiarity.

The first principle reflects the Catholic Church's belief in the "common good" (Betz, n.d.). The Church teaches that all people have a right to provide for their basic needs, and migration may be necessary to provide for the common good of all. The Church believes that God created the Earth and all of its resources, and His sovereignty provides innate human rights that prevail over national laws (Migration and Refugee Services Office, 2013). Based on the value of solidarity, prosperous nations should share their resources and accept migrants in need. On the other hand, the second principle is guided by the value of subsidiarity.

The second principle says that migrants also must consider the common good and not just the good of their families (Betz, n.d.). Nations have a right to preserve the social and economic life of their citizens (Migration and Refugee Services Office, 2013). According to the value of subsidiarity, people in need should first be helped by their family and friends, then local charities and organizations, then the municipal government, then the territorial government, then the federal government, and finally seek international help (Committee on Migration, 2003). However, the subsidiary duty also states that in extreme humanitarian crises, such as genocide, a higher body (e.g., the international community) should step in temporarily until the natural order can be restored (O'Neill, 2012).

The first two principles are often at odds with one another, and so the Church relies on the third principle to connect its teaching (Betz, n.d.). The third principle demonstrates the values of both solidarity and subsidiarity. It directs Catholics to show compassion to aliens according to biblical teaching (Lev. 19:33-34; Mt. 25:35; Gal. 3:28),

while also reminding both migrants and nations that they should consider the common good and not act in greed or self-interest (Betz, n.d.). The third principle also helps nations use solidarity to restore the order of the subsidiary duty. For example, by acting with mercy, a nation should not inflict long and burdensome family separations. This act of solidarity helps restore the subsidiary order because, according to the Church, the family is the first source of support.

## 21<sup>st</sup> Century Policies

Within the Catholic Church, the three principles of immigration teaching have been applied to help parishes welcome Latin immigrants in the United States. The Catholic Church provides pastoral, educational, medicinal, legal, and social services to migrants regardless of legal status (Betz, n.d.). Additionally, the Church encourages a culture-specific ministry that allows migrants to receive the sacraments in their native language and create social support within a local parish (Aguilera-Titus & Deck, n.d.; Rehwaldt, 2015). Since the 20<sup>th</sup> century, the Catholic Church has participated in the “Sanctuary Movement” by agreeing to shelter undocumented migrants and refusing to cooperate with immigration enforcement officers (McEvoy, 2014). Outside of the Church, the USCCB has lobbied the federal government for liberal immigration policies (McAndrews, 2015).

In 2003, the conferences of Catholic bishops in the United States and Mexico released a joint statement, *Strangers No Longer: Together on the Journey of Hope*, expressing their policy positions (Committee on Migration, 2003). According to the statement, the bishops advocate both nations working together to address the root causes of undocumented immigration. In Mexico, the bishops endorse economic equality, job creation, the humane treatment of migrants, and border safety (Committee on Migration, 2003). In the United States, the bishops advocate for visa reform, reduced wait times for family reconciliation, a broad path to legalized status, safer enforcement policies, more permanent and temporary work visas, care for unaccompanied minors, border safety, and the reinstatement of due process rights (Committee on Migration, 2003; Migration and Refugee Services, 2013).

During the 21<sup>st</sup> century, the Catholic Church has embraced an active role in immigration lobbying. In 2005, the USCCB initiated the “Justice for Immigrants” campaign, which opposed sanctions against sanctuary organizations and governments (M.S.L.J., 2013). In 2013, Catholic bishops spoke in favor of Senate legislation to provide a path to citizenship, and they opposed strict immigration enforcement laws proposed by the House of Representatives (M.S.L.J., 2013). One of the Church’s most visible lobbyist efforts was its opposition to the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which stripped undocumented immigrants of any due process rights (M.S.L.J., 2013). Today, the Church continues to fight for a restoration of these rights, including the right to a lawyer, a bail hearing, a trial by jury, and to have illegally obtained evidence excluded from court (Migration and Refugee Services, 2013). The Church also seeks to eliminate the IIRIRA’s three and ten-year bans on reentry (Migration and Refugee Services, 2013).

Recently, the Catholic Church has had little success in achieving its immigration policy objectives. Some researchers suggest this is the result of emphasizing moral principles over practical policies (McAndrews, 2015). In his book, *Refuge in the Lord*:

*Catholics, Presidents, & the Politics of Immigration, 1981-2013*, Lawrence McAndrews argues that the Catholic Church's unwillingness to compromise has made it an ineffective ally to migrants (2015). However, despite its limited political success, the Catholic Church continues to boast of the many services it provides for migrants in need (Betz, n.d.).

## Other Viewpoints

This essay has focused on the principles and policies of the Catholic Church, but there are many shared beliefs among other Christian denominations (Melkonian-Hoover, 2010). Protestant and evangelical traditions teach the importance of loving strangers and providing material aid to those in need. However, Protestants have had less success than Catholics in embracing migrants into their churches (Rehwaldt, 2015). According to a recent research analysis, this discrepancy can be explained by differences across three categories: 1) theology; 2) migrant religious affiliation; and 3) organizational structure (Rehwaldt, 2015).

First, protestant teaching focuses on "welcoming the stranger" or "loving the alien," which reinforces the idea that migrants are *different* or *outside of the norm*. In contrast, the Catholic Church has revised its teaching to be use more inclusive and uniting language (Rehwaldt, 2015). For example, a statement by the USCCB in 2000 was titled *Welcoming the Stranger Among Us: Unity in Diversity* (USCCB, 2000), but its 2003 statement was titled *Strangers No Longer: Together on the Journey of Hope* and emphasized that all Catholics are united in one faith (Committee on Migration, 2003).

Second, it may be easier for Catholics to embrace migrants because more migrants grew up affiliated with the Catholic Church (Rehwaldt, 2015). According to a study by the Pew Research Center, Catholics are more likely to be immigrants or the children of immigrants than other Christians, and 22 percent of all Catholics in the United States are Latin migrants (Lipka, 2015). The rich Catholic tradition in Mexico, Central America, and South America makes it easier for Catholic migrants to assimilate in their local parishes (Aguilera-Titus & Deck, n.d.).

Third, the Catholic Church has a top-down structure, while most Protestant and evangelical denominations rely on bottom-up organization (Rehwaldt, 2015). Protestant ministers are often hired by the congregation, and therefore they fear repercussions if they do not act in accordance with the people's views. In contrast, Catholic priests are accountable to the bishops and Church hierarchy (Rehwaldt, 2015). This means that Catholic pastors are more likely to preach and act in accordance with the Church's policies, while Protestant pastors are more likely to reflect the principles of their specific congregation. According to Rehwaldt's research, these differences help explain why Christian sects with similar beliefs show different levels of political activism.

In addition to the differences between various Christian sects, there are also differences among the laity. According to studies by the Pew Research Center, 45 percent of Catholics support a path to permanent citizenship, and 59 percent believe immigration reform is extremely important. Contrastingly, only 34 percent of Protestants support a path to permanent citizenship, and 46 percent believe immigration reform is extremely important (Lipka, 2014; Lipka & Martinez, 2015). However, researchers say ethnic background is more important than religious beliefs in determining immigration views. When researchers separate the data for white and Hispanic Catholics, they find no

difference between the beliefs of white Catholics and Protestants (Lipka & Martinez, 2015). This supports the conclusions of a previous study (2010) that found only seven percent of people rely on their religious beliefs to influence their immigration views (Lipka, 2014). This points to a potential disparity between the principles of Catholic Church teaching and the views adopted by the Catholic laity.

## Conclusion

This essay examined how the Catholic Church's understanding of migration influenced its policy views on Latin immigration in the 21<sup>st</sup> century. First, I outlined the history of Latin immigration in the United States. Second, I described the Catholic social teaching of solidarity and subsidiarity and the three basic principles of immigration. Third, I provided specific policy examples of how the Church has applied its teaching. Lastly, I analyzed differences between the Catholic Church, Protestant and evangelical churches, and the Catholic laity. This research provides an overview of the relationship between the Catholic Church and Latin immigration, and it can be used to inform readers about the Church's official positions and provide context for current and future actions by the USCCB.

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**Kali Christianson** is the public outreach specialist for the NDSU Center for the Study of Public Choice and Private Enterprise. She graduated from North Dakota State University in 2017 with a bachelor's degree in strategic communication and associate degrees in political science, psychology, and agricultural communication. She serves on the board of directors for Wish Fast, an annual fundraiser for the Make-A-Wish Foundation of North Dakota; is an avid supporter of the North Dakota Girls State program; and remains an active member of her local Catholic parish. A born-and-raised citizen of North Dakota, she previously served the state through her work for the federal government, state government, and local nonprofits.



