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A WORD FROM THE DIRECTOR

As director of the Hinckley Institute of Politics, I am pleased to introduce the 2019 Hinckley Journal of Politics.

This edition marks the 20th year the Hinckley Institute has published this student-led journal, a truly noteworthy endeavor. For the past two decades, the Hinckley Institute has worked with students and professors to feature the top research papers written by undergraduate students at the University of Utah. We are proud to sponsor this journal in partnership with the Political Science Department as a place where our students can publish important research and elected officials can share their views on current issues.

This compilation could not have been produced without the diligence of its 2019 co-editors Hans Liu and Anna Paseman as well as the technical editor Nicholas Coleman. Additionally, I would like to recognize the important contributions of our faculty editors and advisors Professor John Francis and Professor Tobias Hoffman, designer and producer, Brooke Doner, student editorial board members, and Hinckley Institute staff.

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

We hope you enjoy reading the 2019 Hinckley Journal of Politics and appreciate your continued support of the Hinckley Institute of Politics.

Sincerely,



Jason P. Perry
Hinckley Institute of Politics

A LETTER FROM THE EDITORS

Dear Reader,

This year marks a momentous occasion for the Hinckley Journal of Politics: the publication of its 20th edition. As editors of this anniversary edition, we spent a great deal of time reflecting on the contents of previous volumes. In doing so, we remarked on the tremendous political changes that have occurred since the publication of the first edition in 1999—including the large-scale expansion of social media as a tool for political activism, the increased acknowledgement of social justice as a political concern, and the identification of climate change as an issue of international security. Despite these changes, we observe that many issues at the core of our political landscape remain the same. For example, in *Standing at the Crossroads: NATO in the Twenty First Century* (Vol. 3), the author made a case for the inclusion of Russia in NATO. While present political conditions deny the likelihood of Russian membership, the issue of maintaining diplomatic relationships between the United States, Russia, and European countries is highly topical. Similarly, in *Pushing the Envelope: Executive Power & President George W. Bush* (Vol. 9), the author addressed the expansion of executive national security powers. Although the President in question has changed twice since President Bush's tenure, the author's central question regarding the scope of executive power is as pertinent as ever.

In the following pages, you will find essays written by University of Utah students and esteemed public officials that address an array of topics concerning social inequality, public lands management, economic opportunity, and leadership in public service. As editors, we have sought to commemorate the journal's past by assembling an anniversary edition that mirrors the diversity of topics and viewpoints reflected in prior volumes.

We are honored to serve as the editors of this journal and to have overseen the publication of these thoughtful and relevant pieces. However, the publication of this journal required the talents and efforts of many others who deserve recognition. First, we would like to thank all of the talented students who submitted their work to be evaluated by the journal's editorial board, a diverse group of university students who solicited, debated, and selected each of the following papers. Next, we would like to thank our technical editor, Nicholas Coleman, who worked in conjunction with our accomplished faculty advisors, Dr. Tobias Hofmann and Dr. John Francis, to meticulously edit and revise each paper. Finally, we would like to thank the dedicated staff of the Hinckley Institute of Politics—particularly our Communications Director, Brooke Doner—who worked tirelessly to print, distribute, and publish the completed work that you now hold in your hands. We are sincerely grateful to all of the individuals who have participated in this formative journey.

We hope that you enjoy reading the 20th edition of the Hinckley Journal of Politics as much as we enjoyed crafting it, and we ultimately desire that the powerful ideas and arguments discussed within will help to judiciously shape and inform the political discourse and policy decisions of the future.

Sincerely,



Hans Liu
Co-Editor



Anna Paseman
Co-Editor

EDITORS' NOTES

HINCKLEY JOURNAL OF POLITICS' MISSION STATEMENT

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

STUDENT RESEARCH PAPER SUBMISSION GUIDELINES

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

STUDENT RESEARCH PAPER REVIEW AND NOTIFICATION PROCEDURES

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

SUBMISSION GUIDELINES FOR PUBLIC OFFICIAL OPINION ESSAYS

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

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ABOUT THE HINCKLEY INSTITUTE OF POLITICS

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

INTERNSHIP PROGRAM

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

CAMPAIGN MANAGEMENT MINOR

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

PUBLIC FORUMS AND EVENTS

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

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

SCHOLARSHIPS AND LOANS

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

HUNTSMAN SEMINAR FOR TEACHERS

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

DEPARTMENT OF POLITICAL SCIENCE

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

ROBERT H. HINCKLEY



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

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

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

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

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

STUDENT RESEARCH PAPERS

Bartering the Public Trust: Assessing the Constitutionality of the Utah Lake Restoration Act

By Andrew Follett

University of Utah

This research explores the legal and historical relationships between the federal public trust doctrine, Utah Constitution Article XX, and H.B. 272 (2018) “Utah Lake Restoration Act.” By analyzing court opinions from various jurisdictions concerning the rights and responsibilities of the states as trustees of sovereign lands, and by comparing the present case of Utah Lake to relevant precedent, this research concludes that the privatization of public trust resources on the scale pondered by H.B. 272 may represent dereliction of the state’s constitutional duties. Although the public trust doctrine and Article XX endow the state with broad discretion in the management of sovereign lands such as Utah Lake, the courts may be unlikely to grant the legislature deference in any case which results in the public losing permanent control over its trust assets. Considering Utah’s “expanded” public trust tradition, general recommendations for management of the lake are briefly outlined in conclusion.

Keywords: Public trust doctrine; Utah Lake; common law; Utah Constitution; public lands management; sovereign lands

Introduction

Urbanization, increasing agricultural intensity, and a rapidly growing population in Utah Valley over the past century and a half have resulted in significant deterioration of Utah Lake’s ecology and economic potential. In order to promote improvements to the public interest in the lake without raising state spending, the Utah legislature passed H.B. 272 “Utah Lake Restoration Act” in the 2018 General Session, aiming to empower the Division of Forestry, Fire, and State Lands to transfer an undefined portion of the lakebed, possibly its full extent, to private parties “as compensation” for environmental restoration efforts (H.B. 272, 2018). The potential scale of the act’s impact is demonstrated both by the language of the bill and the most prominent land transfer proposal theoretically authorized by the act, which consists of extensive dredging, ecosystem engineering, and real estate development on artificial islands on the lake. Beyond individual development proposals, this research primarily analyzes the basis of H.B. 272 and its aims to transfer lakebed title by exploring legal precedent, both binding and persuasive, from varying jurisdictions concerning the rights, obligations, and constraints on the state in regard to such lands.

Investigation of previous cases shows a pattern of judicial decisions which lends itself to a conclusion that Utah’s courts, much like those of many jurisdictions, may likely affirm that the public interest cannot be benefitted by

the permanent liquidation of sovereign lands at the undefined and potentially unprecedented scale permitted by the act. Although the state retains broad discretion in balancing competing land uses, including permitting some limited and temporary easements, any benefits offered by the sovereign lands to the public are contingent on unqualified public access and perpetual control of the lands by public bodies. Because it would permit the abdication of public control over sovereign lands at a significant and undefined scale, H.B. 272 threatens the public trust in which title to Utah Lake’s bed is held and seems to violate the trustee-trustor relationship outlined in Article XX, Section 1 of the Utah Constitution and the federal public trust doctrine. Thus, H.B. 272 supposes to exercise powers that the legislature may not hold to leverage sovereign lands as currency and to abdicate duties to which it is constitutionally bound.

Background to sovereign lands and the current conditions of Utah Lake

Inhabitants of Utah Valley and the Wasatch Front have long relied on Utah Lake to moderate local climate, assimilate waste, and provide food as a fishery (Farmer, 2009). As one of the largest freshwater lakes in the West, Utah Lake stands out from its generally arid Great Basin context as a particularly fecund and habitable oasis, representing a significant portion of arid Utah’s water assets. Utah Lake is

also unique in the legal landscape, being a massive body of sovereign lands. Sovereign lands consist of the submerged beds of water bodies which are considered navigable, or which can be used for commerce, trade, or navigation, and are held by the sovereign government for the benefit of the citizenry. In the United States, only the lands submerged under bodies of water which are considered navigable or usable for trade and navigation at the time of a state's admittance into the Union are considered sovereign lands and belong to the several states.

Although there is a logical nexus between the management of the bed of water bodies and the quality or quantity of overlying waters, the issue of sovereign lands is ultimately one of land use and title, not necessarily water law, rights, or policy. Unlike other categories of state lands, such as education trust lands or state parks, sovereign lands are uniquely bound by an extensive heritage of common law stretching back into the "ancient" origins of our Western legal tradition (*PPL Montana, LLC v. Montana, 2012*). This long history of precedent, called the public trust doctrine, establishes limits to the acceptable uses of the land and who may hold title to it.

As Justice Sandra Day O'Connor wrote in the case *Utah Div. of State Lands*, possession of sovereign lands is "an essential attribute of sovereignty" and acts as a receipt which demonstrates that the states are legitimate successors to the English Crown, which held the lands "for the benefit of the whole people." The Crown, in turn, is supposed to have assumed this responsibility and tradition from Roman law, drawing an unbroken tradition of sovereign lands custody tracing to the origins of modern government (Sax, 1970). Thus, when the colonies asserted independence and asserted their sovereignty, they claimed title to these lands, becoming heirs of the ancient land management tradition. As new states were subsequently admitted and crafted their own constitutions, they assumed submerged lands within their own boundaries in order to gain "equal footing" with the original 13 sovereign states. Although the equal footing doctrine is universally accepted federal tradition, the scope of each state's public trust and the ways in which they manage their sovereign lands as assets in the public trust is variable and subject to determination by the state itself (*PPL Montana, LLC v. Montana, 2012*).

Sovereign lands in the Utah Territory, and thereby the public trust doctrine itself, were formally claimed by the state at the ratification of Utah's constitution in Article XX, Section 1, which states that such acquired public lands are "to be held in trust for the people" (Utah Const., Art. XX). This Constitutional mandate, although working in conjunction with the federal public trust tradition, operates somewhat independently and is subject to interpretation and application only by Utah's judiciary. Thus, sovereign lands in the state are policed by two related legal forces, the federal

common law, and the state Constitution, both of which constrain alienation of title by the legislature. Any inappropriate abdication of authority over sovereign lands may be subject to litigation and challenges on multiple jurisdictional scales.

Since the ratification of the Constitution, the state has again asserted its ownership of Utah Lake title before the Supreme Court when it litigated to quiet title, lest there be any questions of its ownership. In the 1987 case just mentioned, *Utah Div. of State Lands v. United States*, the high court clearly affirmed that Utah does indeed hold title to the lake, superseding any Federal reservations to the lakebed claimed by Congress before Utah's statehood was granted, reaffirming Utah's own assumed role as custodian of the trust.

Such a constitutional charge to hold the lands carries with it reasonable expectations of management and upkeep so that the lake can continue to benefit the public as a productive fishery, a source of commerce and recreation, and by meeting other future public interests. Unfortunately, deteriorating ecological conditions in the lake, including intentional and unintentional introduction of invasive plant and fish species, intensive nutrient and chemical pollution, all driven primarily by population growth and urbanization and industrialization among other factors, have caused unprecedented stress on the lake's hydrology and ecological functions (Boyd and Cassel, 2007).

As a result, algal blooms and other signs of degradation to the lake's fisheries and water quality are increasingly apparent, in turn corroding public perception of the lake and establishing a need for the state to fulfill its fiduciary duties to the public to maintain and improve the quality and utility of the lake. In the 2017 General Legislative Session, Utah lawmakers responded to this demand and passed H.C.R. 26, a resolution which "urges an acceleration of comprehensive solutions to restore Utah Lake and improve its water quality" (Utah House of Representatives, 2017), followed in 2018 by H.B. 272, the "Utah Lake Restoration Act." The sense of urgency written into the resolution's language, canonized by H.B. 272's permission of transfer of lakebed "as compensation," seems to lack any sidebars or upper limits to lakebed privatization.

The erection of private wharves, piers, and other minor infrastructure considered conditionally acceptable under the public trust doctrine and currently permitted in Utah Administrative Code is unlikely the sort of compensation considered by H.B. 272. Instead, the scale of proposed transfer is strongly suggested to entail portions of land significant enough to be privately developed, since H.B. 272 states that such lands would be subject to municipal land use and development code (H.B. 272, 2018). A privatization of this magnitude reasonably indicates the abdication of general state control over lands in question by explicitly providing for the delegation of management authority.

This possibility of private acquisition of considerable

portions of the lakebed has arguably led to an increased range of proposals which may have been previously disregarded, and which threaten to push current efforts to the margins. Such unprecedented proposals, such as the island development proposal mentioned above, are not only thus permitted into the discourse of potential avenues for policy by these developments, but may have effectively taken center stage. In fact, a land transfer proposal filed last year by Lake Restoration Solutions, Inc. was the only such land transfer proposal submitted by the state's deadline last year, and it may be on track to becoming the effective outcome of H.B. 272, pending review by various state and Federal agencies. Sterilization of fish and vegetation, several feet of dredging, complete renovation of the lake and its bathymetry, rapid expansion of the urban-lake interface, and population increases of hundreds of thousands of people directly on the lake are all actionable by the mechanisms put forward in H.B. 272.

How such radical changes might affect chemical or physical processes of the lake in the long term, including algal blooms themselves, seem to remain under-explored by impartial specialists in primary peer-reviewed literature. These issues beg rigorous debate and critique in more suitable venues—a project of this sort and scale in freshwater bodies, including such intricate ecological re-engineering, is unprecedented. Although this project is not the primary focus of this research in particular, its prominence and comprehensive scale justify its comparison to previous cases and use as a model outcome to show the effective scale and dimensions of what H.B. 272 potentially stands to enact, thereby standing as an outer limit which courts are likely to consider when analyzing H.B. 272 itself. Even in the case that the islands project be replaced with a more mainstream land transfer proposal, or that the islands development successfully meets its argued ends, the legal implications of such a transfer are largely the same, however.

In order to explore the application of the federal public trust doctrine and Article XX in an analysis of H.B. 272, I will first outline the primary principles of the foundational Supreme Court opinion, *Illinois Central*, which has previously been cited also by Utah's own judiciary. Next, the broad deference granted to the legislature by the judiciary in questions of public management will be qualified by near-absolute constraints on a state's ability to surrender public lands established by *Illinois Central* and other cases. In addition to a brief survey of other jurisdictions' mandates against defeasance of public title, a tradition of a strong public trust in Utah itself in the form of *Colman* and its citation by the district court in *Utah Stream Access Coalition* will be outlined to show that Utah's Article XX may set forth an

even stricter level of judicial scrutiny than the federal tradition alone, as by it even those rights created by temporary leased easements have been limited. The state's previous invalidation of even temporary use easements and successive interpretations of the Constitution's public trust clause all but certainly preclude sweeping, permanent transfer actions such as those potentially authorized in H.B. 272. Finally, the case of a Utah Lake land transfer will be compared to the most analogous available case, Illinois' *Lake Mich. Fed'n*, to play out a feasible reaction by the courts to the present case. This case also exemplifies the skepticism demonstrated by the courts when considering proposed compensatory benefits to the public trust offered by a private party attempting to justify the permanent surrender of public control over sovereign lands, even when occurring on less than 1/1,000th scale of current Utah Lake transfer proposals.

Federal foundations of the public trust— Illinois Central

The hallmark case underpinning the federal sovereign lands trust relationship in the United States is undoubtedly *Illinois Central Railroad Company v. Illinois*. Although not the first Supreme Court case to ratify the public trust tradition assumed from English courts, as of 2010, the courts of 35 states, including Utah, have cited *Illinois Central* and thus accepted (as is their prerogative to do, per *PPL Montana, 2012*) a strong public trust tradition, solidifying its role as the load-bearing decision delineating the public trust doctrine and sovereign lands (Chase, 2010). Additionally, *Illinois Central* may be particularly relevant in Utah as it not only provides a basis for the federal public trust tradition, but is crucial to understanding the original intentions of the framers of the state's Constitution. As the Utah Supreme Court stated this year, because it was handed down just three years before the ratification of the Utah Constitution, "*Illinois Central* may help inform the search for the historical understanding of the public trust principles embedded in the Utah Constitution" (*USAC v. VRA, 2019*)¹.

Much like H.B. 272, sovereign lands in the case of *Illinois Central* were leveraged by the state as compensation for private efforts to restore and protect public lands, promote recreation and commerce, and develop transportation connectivity. In it, the United States Supreme Court considered the transfer of submerged lands to Illinois Central Railroad Company for its construction of a new rail line. The construction was sought in order to improve regional transportation and stimulate profitability in the area. In exchange for the lands, the company would additionally construct and maintain breakwaters to protect the harbor and publically

¹ In order to differentiate between the two opinions, the district court opinion will be cited as *Utah Stream Access Coalition v. VR Acquisitions, 2018* and the Supreme Court opinion as *USAC v. VRA, 2019*.

accessible parks. The legislature, therefore, justified its 1869 “Lake Front (*sic*) Act” as a means of promoting the public’s interest in the lands. Although the act was later repealed, the question of who held title to the lakebed was eventually brought before the courts.

Ultimately, the United States Supreme Court affirmed the lower courts’ rulings that the state held and must retain sole title to the lakebed and invalidated the transfer. The Court held that promised compensatory offers promised by Illinois Central Railroad did not pose any considerable benefit to the public interest. Although the state may have granted limited rights to lay track on trust land in the form of a permitted lease, for example, the attempt by the legislature to grant fee simple title was illegitimate and that such a contract would be made in “in disregard” of the public trust (*Illinois Central Railroad Company v. Illinois*, 1892). The trust in which the state is to hold sovereign lands is different from lands intended for or subject to sale because the title to sovereign lands is “to be held” for the people free from “interference of private parties.” As quoted above, *Illinois Central* binds states to their public trust obligations just as it is bound to its police powers (*Illinois Central Railroad Company v. Illinois*, 1892). As would be the case in the surrendering of police power, attempts to outsource authority over the public trust should be met with uncompromising scrutiny.

In *Lake Mich. Fed’n*, which will be explored at greater depth later, Judge Aspen of the U.S. District Court of the Northern Illinois District laid out a critical framework that can be taken from *Illinois Central* concerning scrutiny applicable to sovereign lands transfer proposals, distilling the essence of the opinion into three basic principles. First, courts should “be critical” of any state’s attempt to surrender valuable public resources to any private party in the first place. Such criticism may imply that a court’s null hypothesis or default is to uphold the state’s title to submerged lands, and that proposed recipients bear the heavy burden of evidence, which grows proportionally to the scale of a potential land exchange. Although the erection of wharves, docks, and piers by private parties are cited in *Illinois Central* as legitimate, these small and confined transfers are contrasted against the “abdication of the general control of the state over [sovereign] lands” (*Illinois Central Railroad Company v. Illinois*, 1892).

Second, “the public trust is violated when the primary purpose of a legislative grant is to benefit a private interest.” Although states in their legislation often frame transfers as being pursuant to the interests of the public at large by creating infrastructure, promoting growth, facilitating the construction of new parks and recreation opportunities, or protecting the trust resources or its environment, courts must approach these cases with the fact in mind that the state is bound to these lands by permanent obligations to the public. Just like the mother of a child claiming to be too sick to go to

school, courts need to exercise caution and scrutiny, realizing that first and foremost what is being risked is the abandonment of responsibility.

Finally, phrased concisely and definitively, “any attempt by the state to relinquish its power over a public resource should be invalidated under the doctrine” (*Lake Mich. Fed’n v. U.S. Army Corps of Engineers*, 1990). Again, although temporary easements and the granting of limited rights to private institutions may be permitted under strict scrutiny, the total surrendering of the public’s voice in the use or management of sovereign lands is impermissible. The state, as the agent of the people, must be able to dictate the use of the land in perpetuity.

The public interest and the state’s rights and obligations concerning sovereign lands

Moving one step beyond the principles of the public trust outlined in *Illinois Central*, since the most immediate obligation on states in regard to public trust is to benefit the public interest, precedent, and principles which delineate the boundaries and major features of the public’s interest in submerged lands is the next priority for discussion. Acting in response to the public interest grants the state both rights and obligations. In assessing a sovereign’s management of public trust resources such as sovereign lands, legal tradition allows courts to consider some number of benefits or interests of the public in those resources. The “traditional triad” of navigation, fishing, and commerce are considered to be cornerstones to the public trust predating even American courts, and are cited in *Illinois Central* itself (Sax, 1970).

Idaho’s *Kootenai Environmental Alliance v. Panhandle Yacht Club, Inc.*, however, makes the case for an ever-evolving public interest which allows consideration of shifting and novel uses not previously considered by courts, expanding the state’s range of management options. Public rights to hunt, swim, or boat, for example, might be considered elements of a “dynamic, rather than static” public interest (*Kootenai Environmental Alliance v. Panhandle Yacht Club, Inc.*, 1983). This is to say that states should consider contemporary public interests in addition to traditional uses. Despite increasing deference served by courts and allowing for a more flexible and responsive public interest, this approach may serve state legislatures with more questions than answers in land-use planning as the state is forced to weigh competing interests and benefits while still striving to represent complex and evolving public interests.

To answer these questions, ultimately, states retain broad discretion when it comes to balancing some land uses over others. Courts generally grant deference to legislatures in crafting rules to determine the public interest and manage appropriately. Ultimately, these land-use decisions are

inherently subjective and are doomed to leave at least some fraction of the public dissatisfied: environmentalists may be upset about the state’s efforts to expand public docks and marinas, just as recreationists may feel left out as this boating infrastructure is removed to mitigate harm to sensitive plant or animal populations.

A similar “expansive” public trust has also been adopted by Utah’s courts. *The Utah Supreme Court in 1993’s Nat. Parks & Consv. Assoc. v. Bd Of State Lands* and Utah’s fourth judicial district court last year in *Utah Stream Access Coalition v. VR Acquisitions* serve to clarify that Utah’s public trust also expands beyond the “traditional triad” to include the “ecological integrity of public lands and their public recreational uses” (*Nat. Parks & Consv. Assoc. v. Bd Of State Lands, 1993 and Utah Stream Access Coalition v. VR Acquisitions*, 2018). Thus, the state may consider more than just Utah’s Lake use as a recreational hub or fishing spot— its ecological health and ecosystem processes are legitimate ends for state funds and activities. It is these aspects of the “expanded public trust,” including ecological integrity, that H.B. 272 also seems to point to as justifications for transferring title.

The state can prioritize these or other public interests as it exercises its right to manage the public trust resources. To manage, however, is more than a right— it is the state’s obligation. Thus, one right the state does not hold is the right to expand these considerations and its plenary authority over sovereign land parcels to third parties. Merciful deference paid to the legislature is traded out for the strict scrutiny demanded by *Illinois Central* once private parties enter the arena, as highlighted in the second and third principles of the case delineated in *Lake Mich. Fed’n*. Although the state may shuffle competing land uses against one another, it may not wholly surrender control over sovereign lands to private individuals or parties. Considering the imagery of a weigh beam scale, the state is allowed to define, line up, shift, emphasize, or mute elements of the public interest as it attempts to come to balanced and actionable land management solutions for the benefit of the public, but it alone must do the weighing.

Put most succinctly by Justice Durham in a recent filing concurring in part and dissenting in part from the majority in *Utah Stream Access Coalition v. Orange Street Development*,² “the state cannot have its cake and eat it too.” More than 120 after it acquired the sole title to sovereign lands under the United States Constitution, the state cannot now change its mind and decide it no longer wants or has use of the title to sovereign lands. Citing Oregon’s *State Land Board v. Corvallis Sand & Gravel Co.*, Justice Durham repeats that “the state’s title to the riverbed vests absolutely

as of the time of its admission and is not subject to later defeasance.” As noted before, the state explicitly accepted title to the lands “when it adopted the Utah Constitution—” it’s too late for second thoughts or cold feet (*Utah Stream Access Coalition v. Orange Street Development*, 2017).

Borrowing from the opinion of the Supreme Court of Ohio offered in the case of *State v. Cleveland & Pittsburgh*, the state “cannot by acquiescence abandon the trust property or enable a diversion of it to private ends... If it is once fully realized that the state is merely the custodian of the legal title, charged with the specific duty of protecting the trust estate... a clearer view can be had.” Although an individual can abandon private property, the court writes, a “public trustee cannot abandon public property” (*State v. Cleveland & Pittsburgh R.R.*, cited in Sax, 1970). Similarly, the Florida Supreme Court wrote a few years following *Cleveland & Pittsburgh* that the trust in which title to sovereign lands is held “is governmental in nature and cannot be wholly alienated by the states.” Although the states “may by appropriate means grant to individuals limited privileges in the lands under navigable waters,” neither the waters nor the underlying lands may be diverted from their “proper uses for the public welfare” (*Brickell v. Trammel*, 1919 and Sax, 1970). Considering the broad rights of states to manage sovereign lands, their most principal obligation is to retain them.

Should the state attempt to “have its cake and eat it too” by defeasance of sovereign lands title, allowing developers or others to craft arguments concerning the public trust and play with the public interest scale weights, private interests are unconstitutionally prioritized over the will of the public. Questions of how interests and management plans compare become exponentially more complicated now that the state’s title, and the public’s sustained voice in the matter, is at risk. After all, private users are not bound to any public trust obligations. What is today a private park might tomorrow be a private home, and later a shopping mall, and the public has nobody to complain to.

Since the public now stands to permanently lose something that it already owns, the simple shuffling and measuring transforms into a shell game, in which the public risks losing assets which it already owns to unelected groups with which it has no contract and from which it can claim no reciprocal obligations. It goes without saying that private parties are not inherently malicious or unscrupulous. But they are also not responsive to or representative of the public, nor are they intended to be. Private companies are, by no fault of their own, beholden to the interests and ends of shareholders, not the public. Their interests might only overlap with the public interest coincidentally, partially, and temporarily. The

² Not to be confused with *Utah Stream Access Coalition v. VR Acquisitions*, decided by the Utah fourth district.

³ “...may by appropriate means grant to individuals limited privileges in the lands under navigable waters...”

life of private firms is, after all, short-lived in comparison to the longevity of a constitutional sovereign (Illinois Central Railroad Company, for example, no longer exists). The public trust, on the other hand, is at its very core designed to perpetually benefit all citizens.

By allowing private parties to make arguments to enter the game and assume sovereign lands in return for some “benefit to the public trust,” contemporary legislators and decision-makers may be illegitimately empowered to make decisions that eliminate future citizens’ ability to gain benefit from or dictate the use of sovereign lands. Public trust assets under this scenario of private interference face the risk of being transferred bit by bit, parcel by parcel, to private bodies who articulate some abstract benefit to the public, thereby contradicting the state’s obligation to hold such lands “in perpetuity” (*People ex rel. Scott v. Chicago Park Dist.*, 1976).

Colman, Utah Stream Access Coalition, and Utah’s magnified public trust scrutiny under Article XX

Returning for a moment to the language employed above in *Brickell*,³ it is worth mentioning that although the state legally and legitimately leases sovereign lands to private interests frequently (and although these leases do not represent any violation of the trust per se) Utah precedent indicates that even temporarily leased uses of sovereign lands by private parties are subject to potential scrutiny under some circumstances and may go too far by the standards of Utah’s Constitution, which seems to be considerably stricter than the federal tradition alone. The Supreme Court of Utah’s ruling in *Colman v. Utah State Land Bd.* also serves to introduce Utah’s own tradition of rigid adherence to the public trust doctrine. Unlike other cases regarding the federal public trust doctrine alone, *Colman* is binding precedent which will affect the interpretation of Article XX itself, whether or not Article XX is interpreted as a codification of *Illinois Central*.

The argument in *Colman* centered on whether or not Mr. Colman, a private user of Great Salt Lake lands (under a grant to extract minerals from deep brine canals) ought to be entitled to compensation when, by the state’s decision to breach the Salt Lake causeway in response to rising lake water levels, suffered injury in so far that his brine canal and ability to profit therefrom was demonstrably harmed. If his

property interests in the land were in fact real, such an action by the state would almost certainly have resulted in a taking by wiping out the economic value of the land (*Lucas v. South Carolina Coastal Council*, 1992). In response, however, the state itself argued in essence that it had no authority to grant Colman extraction easements in the first place and that its decision to do so in the first place was invalid and in violation of in the public trust doctrine. By making such an argument, the state articulated a very rigid public trust standard, strong enough even to preclude some temporary easements of sovereign lands to private parties.

Without such a strong public trust tradition, the court could have easily ruled that since there was no transfer of title, Colman’s temporary lease and use of the Great Salt Lake lands wasn’t substantial enough to trigger the public trust, since the state retained long-term control and ownership. Instead, citing *Illinois Central*, the court accepted a strict take on the public trust doctrine and remanded the case to trial court for further discovery in order to decide whether or not Colman’s lease alone violated the public’s interest in any way, expressing that the state may only grant “certain rights” insofar as the public interest in remaining lands is not affected (*Colman v. Utah State Land Bd.*, 1990). In other words, writes Utah fourth district Judge D. Pullan, “Colman demonstrates that the public trust may be violated by a mere lease of public land to a private party. A transfer of title or permanent loss of control was not required” (*Utah Stream Access Coalition v. VR Acquisitions*, 2018).

Not only does the state lack absolute power to surrender the title, its power even to grant easements or other rights to use sovereign lands are constrained or limited by the judiciary. Thus, the case against H.B. 272 is magnified as a result of its geography— Utah’s historical jurisprudence makes for a difficult venue in which to fight for the privatization of sovereign lands, as Utah’s judiciary has grounds to void any actions determined to be contrary to the public interests, regardless of temporality, in public trust management decisions. Given latitude to determine the scope of its public trust by principles outlined in *PPL Montana*, Utah has chosen to affirm an exceptionally strong trust doctrine.

Colman and the district court’s opinion in *Utah Stream Access Coalition v. VR Acquisitions* also serve to further clarify the language of Article XX of Utah’s Constitution in such a way that seems to further problematize H.B. 272.⁴ The act refers to “disposal” of the lakebed in exchange for restorative work (line 69) synonymously with terminology

such as giving the land (line 91) and, even more conclusively, “transfer[ring] ownership” (line 100). This seems to suggest an interpretation of “disposal” which is analogous or equivalent to transfer or “a getting rid of.” These cases, *Colman* and the district court’s *USAC* opinion, however, lend themselves to an alternative interpretation of the language of Article XX. As they emphasize, the use of the term ‘dispose’ by no means necessarily refers to the transfer or granting of title to a private party. Instead, Article XX, Section 1 may be implicated whenever “the state authorizes use of, regulates, controls, or manages the lands held in trust” (*Utah Stream Access Coalition v. VR Acquisitions*, 2018).

The Utah Supreme Court declined to definitively resolve the meaning of “disposal,” instead commenting in *dicta* that other definitions, such as straightforward granting or transferral, should also be considered. However, it notes that “even if ‘disposed of’ just means to sell or devise,” Article XX “also states that such lands ‘shall be held in trust for the people.’ This is at least arguably an independent duty attaching to public lands—a requirement that the State hold such lands ‘in trust for the people.’” (*USAC v. VRA*, 2019). If Article XX were interpreted as being written only to ‘get rid of’ public lands, the Constitution’s charge that the lands be “held in trust for the people of the state of Utah” may be contradicted and rendered meaningless.

At the very least, the Supreme Court of Utah has acknowledged that the definition of “disposal” leveraged in H.B. 272 is worthy of litigation. Thus, it is possible that H.B. 272 may misapprehend the proper meaning of Article XX, and may effectually ignore the state’s obligation “to hold.” Guiding from a reasonable analysis of precedent, a transfer on the scale of Utah Lake by H.B. 272 would likely require a constitutional amendment to be actionable.

Lake Mich. Fed’n as a microcosm of the case of Utah Lake

As a final exercise, comparing H.B. 272, using the islands proposal as a signifier of potential outcomes of the act, to persuasive federal precedent may give insight into the judgment that would likely be rendered by the judiciary and act as a review of many elements of public trust deliberations previously discussed. Again, it may be worth mentioning that as it has been interpreted, Article XX may be even more restrictive than the federal public trust. Alternatively, Article XX may simply be a codification of the federal public trust doctrine set forth in *Illinois Central*. In either case, considering factual similarities, the case most ripe for application (though very scaled-down) stands out in the 1990 case previously mentioned, U.S. District Court for the Northern District of Illinois’ *Lake Mich. Fed’n v. United States Army Corps of Eng’rs*. In this case, the private Loyola Univer-

sity Chicago proposed to fill 18.5 acres of Lake Michigan (a vanishingly small fraction of the 143-million-acre Lake Michigan) in order to expand its campus and to protect existing buildings from the eroding shoreline. The fill area was proposed to be used for parks, walking paths, and University athletic buildings, all of which was promised to remain accessible to the public.

As the Illinois legislature conceded and conveyed 18.5 acres of sovereign lands to Loyola, it reasoned that the transfer was permissible given the proposed benefits to the public, such as parks and increased recreation opportunities on increased shoreline area. Despite occurring on an impressively smaller scale (roughly 1/1,000th the size of transferred lands on a lake 150 times larger than Utah Lake), the basic reasoning of the Illinois legislature is the same as that of Utah’s in 2018. In fact, Loyola arguably had a more reasonable claim to benefit the public interest— in addition to the almost negligible scale of its proposed fill operation, Loyola argued that *Illinois Central*-informed scrutiny should not be applied in their case since public access and recreation opportunities would be increased rather than sacrificed. Since the lake-shore already occupied by the university was private with no right of public access, such a fill operation would allow greater access and enjoyment opportunities on an expanded public shoreline without affecting lake biota or navigability in any measurable way, while also protecting the land from erosive degradation resultant of delayed action.

Much like Illinois Central Railroad Company, and reflected by Lake Restoration Solution, Inc., Loyola also argued that the prevention of erosion would benefit the long-term use of the remaining public trust, protect its integrity, and act as an aesthetic improvement to the whole coastline. Although it can by no means promise no effects to plant and animal life or impacts to navigability, Lake Restoration, Inc.’s proposal reflects H.B. 272’s mandate, in the spirit of Illinois’ own justification, to “maximize, enhance, and ensure recreational access and opportunities” (H.B. 272, 2018). Also, Lake Restoration Solutions, Inc., like Loyola, argues that adding “a spatial dimension of lakefront living and abundant water recreation opportunity” benefits the public’s interest since Utah Lake is currently “underutilized;” “prime recreational opportunities” will boost lake visitorship and stimulate the public interest, they argue (Lake Restoration Solutions, Inc., 2018).

Judge Aspen writes in the majority opinion of *Lake Mich. Fed’n* that Loyola’s “argument is seriously flawed.” In arguing that the public would have increased access and greater opportunity to use their trust lands, “Loyola ignores the fact that the public will have to sacrifice 18.5 acres of publicly held land in order to obtain a coastline to which it has unlimited access. Moreover, it glosses over the fact that the public is actually gaining nothing.” Judge Aspen elaborates on the public’s loss of land and access by highlighting

⁴ The Supreme Court of Utah has identified a threshold error in the district court’s assumption that certain public easements regarding the use of streambeds were codified at the ratification of the Utah Constitution, and for this reason remanded the case for further discovery. Although the high court provided some commentary on Judge Pullan’s broader interpretation of Article XX, no definitive holdings concerning the meaning of the Constitution as applicable here were rendered. For this reason, the district court opinion, although not the final say in the matter, is leveraged in this research as a viable and reasonable perspective handed down by the bench.

the lost access to that land area which would become the interior portion of the lakefill. That is to say that although the “spatial dimension” or stretch of shoreline is longer, the total surface area of public-held lands is lost as some become the buried center or base of new fill. Public loss of even that small fraction of the lands was considered untenable. Furthermore, the court ruled that Loyola’s assessment of the public interest would be benefited from the project “is merely a value dependent assessment of the best use of the property. This judgment is not only highly subjective but also irrelevant to an analysis of the propriety of a grant of public land” (*Lake Mich. Fed’n v. United States Army Corps of Eng’rs*, N.D. Ill. 1990).

The injunction provided against Loyola’s proposed filling, coupled with a stunning rebuke of both the developer and complicit legislature, effectively nips the “public trust shell game” reasoning in the bud by thus asserting that the public already has access to submerged lands, even if they are harder to get to or if there is less to do on them. By permitting private parties to play the public trust shell game, subjective and irrelevant arguments may masquerade as real elements of the public interest. The public’s ability to benefit from trust lands is contingent on perpetual control. Such control is the concern of the courts, not subjective reasoning or interpretations of the public’s interest, which is not under the judiciary’s purview. As far as the courts are concerned, all other interests, such as recreation, economic output, and “ecological integrity” can’t compensate for any permanent transfer. The legislature weighs in on competing uses and the public interest, and the court ensures that the legislature retains lands.

If that were not the case, and should private parties be allowed to simulate public interest determinations, Judge Aspen writes, the public trust doctrine in the first place would be powerless. More potently, Judge Aspen rebukes the legislature’s attempts to free themselves of their obligations to the public with overly flexible shell game reasoning in the first place— despite proposing “the project’s numerous public benefits,” Loyola’s claims were found to be incorrect “both as a matter of logic and precedent. The very purpose of the public trust doctrine is to police the legislature’s disposition of public lands. If courts were to rubber stamp legislative decisions, as Loyola advocates, the doctrine would have no teeth. The legislature would have unfettered discretion to breach the public trust as long as it was able to articulate some gain to the public” (*Lake Mich. Fed’n v. United States Army Corps of Eng’rs*, 1990).

If an 18.5-acre conveyance in the case of *Lake Mich. Fed’n* and 194.6 acres in *People ex rel.* (all incalculably small fractions of the Great Lakes) were considered improper dispositions of sovereign lands in just those few cases considered, the case of justifying the 20,000 acres or more requested by the islands development proposal (roughly 20%

of Utah Lake’s bed) becomes very difficult, especially when the justifying logic put forward so closely resembles those arguments already called “flawed” by the courts. Due to the fact that H.B. 272 does not limit transfers even to 20,000 acres, and may be used as grounds for a transfer of the entire lakebed, it would be subject to even greater scrutiny, which may lack sufficient parallel altogether.

Conclusion

There is little question that deteriorating conditions of Utah Lake have triggered the state’s obligations to preserve the lake as a usable and sustainable resource for Utahns. The state needs to continue its efforts to make Utah Lake usable and ecologically healthy and self-sufficient. It would be foolish and overly polemic to claim that the state is making no such efforts. Many programs headed by the Utah Lake Commission and the Utah Division of Water Quality, including carp removal, phragmites control, continued general research, and participatory planning to set new nutrient pollution thresholds (guided by the joint ULC-UDWQ Steering Committee) all stand out as exemplary efforts to benefit the public interest and health of the lake ecosystem.

On principle, there is no fault in engaging with private entities to aid in upkeep or restoration efforts; in fact, third-party investments in Utah Lake may be encouraged and welcomed by the state and public alike. Private innovation and efficiency may stand to remedy ailments faced by the lake in ways that the state may be capable of only over much longer time periods, especially considering the high costs and labor-intensive needs. Restoring Utah Lake to a more central role in the social and cultural landscape would also undoubtedly result in greater willingness by the citizenry to allocate public funds and make long-term investments (Farmer, 2009). After all, restoring ecological integrity and fishery productivity would almost certainly be coupled with economic growth and development in the region.

However, sovereign lands themselves may not be leveraged as the form of payment for such efforts, as has been demonstrated through a survey of precedent concerning the public trust doctrine. If H.B. 272 did not include the transfer of sovereign lands and were to offer other forms of remuneration for the environmental restoration work, it might be a welcome part of the state’s efforts to preserve and restore the lake. Unfortunately, that is not the case, as H.B. 272 threatens to privatize the lake and surrender control to efforts which might permanently impair the lake (such as through intensive dredging) without any guaranteed returns.

In the future, nutrient pollution reduction, possibly through modified wastewater treatment systems or water purification, must be coupled with further studies into the effects and relationships between invasive species, lakebed

sediment, and current lake characteristics in either promoting or dampening algal blooms. It is worth consideration that the paradigm underpinning H.B. 272 is flawed at its core— long-term water quality improvements in Utah Lake likely require stakeholder coordination and the regulation of influent waters beginning at their respective sources, not simply treatment of the lake itself. Coordination and regulation at this scale almost invariably require public resources and the state’s police power.

Exactly what the public interest or expectations of the lake are may be under-investigated, as well. Similarly, it is likely that key knowledge concerning the lake and its natural history is lacking and thus precludes both the modeling of pre-settlement conditions to which the lake might be “restored” and the mechanisms by which such restoration could take place. In any case, restoration should not necessarily be taken for granted as the obvious goal of future management. Utah Lake, like all ecosystems, is dynamic, responsive, and complex. It has multiple regimes or stable states, and movement between states may not be possible once critical thresholds are exceeded, and change among multiple aspects or parts of the system occurs almost invariably in a nonlinear and unpredictable fashion.

H.B. 272 seems to be an erratic outlier in Utah’s otherwise dedicated and reasoned attempts to manage and restore Utah Lake after years of stress, as it does not appeal to the same rules as previous efforts and seems to be uninformed by Utah’s legal precedent and public trust tradition. As an outlier, it ought to be removed from Utah Code so that the limited time and taxpayer-provided resources of executive agencies might be better spent committed to research and review of management plans which are actionable and consistent with Utah’s Constitution and the federal public trust doctrine. Should lawmakers fail to prune this potentially unconstitutional statute from the state’s law books, the judiciary may be obliged to intervene following litigation by concerned parties, acting on strong precedent or the mandate outlined in Article XX, Section 1.

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Getting It: A Study on University of Utah Sexual Health Care Accessibility

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The majority of college students are sexually active and the University of Utah is no different. In this paper we describe issues of access to sexuality education and the related lifelong contraceptive use implications. We assess trends in college students' access to sexual and reproductive health (SRH) across the nation and turn in to focus on Utah specific barriers and facilitators to care. Focusing on the University of Utah we analyze survey data to describe students' knowledge about and current use of contraception as well as perceived need to expand access to contraception specifically and SRH more broadly. Our results find that students are in need of expanded contraceptive accessibility. We identified the University of Utah Student Health Center as a potential access point of care for SRH expansion with significant student interest in a free contraceptive clinic.

Introduction

The 2017 National College Health Assessment finds that 65% of University of Utah students have been sexually active in the past 12 months. While modern methods of contraception are highly effective, only 50% of sexually active students utilize methods of contraception (*National College Health Assessment*, 2018). Modern methods of contraception are highly effective. With the characteristics of birth control ranging across price spectrums, hormone levels, perfect- and typical-use efficacy, and with almost 20 contraceptive method options (Bedsider, 2019), why are only half of college students utilizing this highly effective health care option?

To begin to answer this question, we must dive into the realm of public health accessibility. Health accessibility, broadly defined, involves a fluid combination of non-modifiable and modifiable determinants of health fostered by individual and structural frameworks (Babitsch, Gohl, & von Lengerke, 2012). The Health Care Access Barriers Model targets three modifiable barriers (cognitive, financial, and structural) for community health interventions to identify root-causes of health disparities (Carrillo et al., 2011). The literature surrounding sexual and reproductive health (SRH) finds that there are similar barriers to the HCAB triad for transitional youth accessing contraception including knowledge, finances, and proximity to care (Winner et al., 2012).

Knowledge of care includes both client and provider

in a collective process; the client's literacy in sexual and reproductive health, awareness of available methods, pregnancy intentions, and informed decision making are coupled by a provider's knowledge of methods, their functionality, how to insert or remove certain methods, and integration of comprehensive contraceptive counseling into their practice (C. Lindberg, Lewis-Spruill, & Crownover, 2006). Financial barriers are exemplified in the price of one's ideal method, insurance status, and the cost of transportation to access these methods (Dennis et al., 2012). Finally, proximity to care describes the physical closeness of clinic locations where providers are trained in the desired methods, clinic hours, and time between scheduling an appointment and receiving a contraceptive method. These barriers compound on each other and are not isolated in their presentation, complicating the foundational question of "why aren't college students using contraception" (Carrillo et al., 2011)? In our paper, we explore University of Utah student attitudes and knowledge about sexual and reproductive health (SRH) care and interest in expansion of SRH service accessibility at the Student Health Center.

The remainder of the article is structured in the following way, we first discuss the variation in sexuality education programs and their impact on contraceptive use. We then turn to accessibility of sexual and reproductive health care for college students, followed by a review of localized access to SRH at the University of Utah Student Health Center. Following a summary of the contribution of our paper, we

describe our data and methods. In the final sections of the paper we outline our results and conclude with a discussion and conclusion with a call for future research and policy recommendations.

Education about Sex, Sexuality, and Contraception

In order to make an informed decision about one's health, the first step is knowing about available options and pathways of care. Sexual health education programs vary widely across the country, with the needs of youth being ignored as less than 50% of states mandate sexual education. Notably, a mere 13 states require instruction to be medically accurate. Only 18 states require instruction on contraception in contrast with 27 states that require instruction to stress abstinence (*Sex and HIV Education, 2018*). Abstinence-based programs are ineffective in delaying initiation of sexual intercourse or changing sexual risk behaviors (Guttmacher Institute, 2017; Santelli et al., 2017). According to Guttmacher, abstinence-based programs withhold comprehensive information on effective ways to reduce sexual risk behavior and "disregard basic ethical standards by providing incomplete and potentially harmful information to students" (Donovan, 2017).

In contrast, comprehensive programs effectively delay sexual debuts and reduce the risk of pregnancy and STI transmission. Comprehensive sexual education programs (CSE) are associated with improved reproductive health outcomes when youth are informed with age-appropriate information about contraception, sexuality, and abstinence amongst an array of SRH topics (UNFPA, 2015). Medical professionals have found that attitudes surrounding sexual and reproductive health acquired during adolescence are predictive of adult contraceptive behavior and CSE during adolescence could improve effective contraceptive behavior during the life course (L. D. Lindberg & Maddow-Zimet, 2012; Pazol et al., 2018).

While the State of Utah does not mandate an "abstinence-only" policy towards sexual health, Utah students are negatively impacted by abstinence-based policies that withhold medically accurate sexual and reproductive health information (Brown, 2019). Utah is one of three programs in the nation that is opt-in by parent permission rather than opt-out which removes autonomy from students who intend to learn pivotal health information (*Sex and HIV Education, 2018*). Once students obtain parental permission, their instruction does not cover contraception and condoms; rather their instruction stresses abstinence and heteronormative standards of sex-only-within-marriage (Utah State Board of Education, 2018). Recent findings from the Campus Contraceptive Initiative finds that Utah students are significantly more likely to report abstinence only education than their peers with 80% of students who attended high school in

Utah reporting that they received none or abstinence only sexual education (Brown, 2019). Perhaps most striking is the fact that Utah teachers are prohibited from responding to spontaneous student questions about content outside of what is mandated by law (*Sex and HIV Education, 2018*). Overall, Utah sexual education policies violate student autonomy and their capacity to make informed decisions about health care options and consequently predict adverse reproductive health outcomes throughout their life course (Guttmacher Institute, 2007, 2017). Many Utah high school graduates, who transition to college, may not be using contraception due in part to sexual health programs they are exposed to. In the state of Utah, most sexual health programs are focused on shame and stigma, rather than on encouraging healthy sexual behavior by providing comprehensive information on health care pathways and options.

Access to Health Care

Another key factor in the Health Care Access Barriers Model is the financial cost of accessing care. The 2012 Affordable Care Act (ACA) contraceptive coverage mandate was associated with a decrease in out-of-pocket contraceptive costs that significantly increased uptake in more effective methods such as long-acting reversible contraceptives (LARC) (Snyder, Weisman, Liu, Leslie, & Chuang, 2018). LARC methods, which include intrauterine devices and implants, tend to be the most expensive and therefore the most cost-prohibitive for individuals seeking to control their fertility. A local study conducted by the HER Salt Lake Contraceptive Initiative found that by removing cost barriers, women are 1.6 times more likely to access a LARC method as their ideal method of contraception (Sanders, Myers, Gawron, Simmons, & Turok, 2018).

The majority of college students are between the ages 18-24 which is the age group that is most likely to be uninsured in Utah. College students therefore are likely unable to benefit from the ACA contraceptive access expansion and unable to afford out of pocket costs for the most effective methods, which vary from \$500 to \$1000 upfront (Bedsider, 2019; "Complete Health Indicator Report of Health Insurance Coverage," 2018) (University of Utah Student Health Center, 2019). College students also find themselves in a bind as they attempt to access care while using their parent's insurance since billing information can breach confidentiality and reveal obtained services to their parents (Schapiro, 2010).

Efforts to "repeal and replace" the ACA as well as programs that limit Title X funding jeopardize sexual and reproductive health accessibility. If the ACA were to be repealed by the current federal administration, it is projected that Utah's uninsured population would rise by 83% and almost 30 million people across the nation would lose their health

insurance (Blumberg, 2017). Title X, a federal program that helps reduce the cost of SRH services for individuals of lower-income, is currently in jeopardy as the administration's proposed new regulations to limit funding for contraception, sexual education programs, and STI and cancer screenings if clinics refer to abortion services are currently being reviewed by the courts (Hasstedt, 2019; Stevenson, Flores-Vazquez, Allgeyer, Schenkkan, & Potter, 2016). The ever-fluctuating state of health insurance coverage places Americans at risk of losing access to vital health services. For college students, the fluctuation in financial accessibility of care limits their ability to obtain their ideal method, retain confidentiality, and qualify for assistive programs.

Access to SRH care at the University of Utah

University of Utah students may face a combination of these mutually reinforcing factors as they attempt to access sexual and reproductive health during their college career. Many universities have made strides to make student health plans more accessible knowing that college students are the most likely to be uninsured and unable to access care on their parent's plans confidentially. Affiliated institutions in the Pac-12 at the University of California Berkeley, University of California Los Angeles, and University of Colorado Boulder mandate students to enroll in a student health insurance plan or alternative plan during their time in college (UC Berkeley, 2019a; UCLA, 2019; University of Colorado (Boulder), 2019a). These plans cover 100% of birth control costs as they are seen as "preventative care management" (UC Berkeley, 2019b; UCLA, 2015; University of Colorado (Boulder), 2019b).

In contrast, the University of Utah does not have a mandated student insurance plan and does not require incoming students to have health insurance. The University of Utah Student Health Insurance Plan (SHIP) is mandated for international students and merely encouraged for graduate students. Since SHIP is not mandated for undergraduates, they tend to fall in an insurance gap where they may miss the benefit of contraception being covered by SHIP at 100% at the Student Health Center (University of Utah, 2019a, 2019b). Broader health insurance plans are also not accepted at the Student Health Center, leaving students without SHIP to face exorbitant prices for contraceptive care ranging from \$30/month for birth control pills, \$90 every three months for a birth control shot (i.e., "Depo shot"), and approximately \$1,000 for IUD and contraceptive implants with an additional \$35 office visit fee (University of Utah Student Health Center, 2019).

The Health Care Access Barriers Model describes structural barriers from accessibility which include the physical accessibility of the clinic itself. The Student Health Center is physically far from centers of campus life. SHC averages

approximately one mile from areas of high foot traffic and accessibility such as the dormitories, the Student Union, and the Marriott Library. Only two campus bus shuttles (the Green and Purple routes) have stops near the Student Health Center, yet neither of these routes approach dormitories or the Student Union, making transportation to the clinic difficult for busy students. Perhaps compounded by lack of comprehensive coverage at the Student Health Center and knowledge barriers, students may not be accessing contraception at SHC due to the physical distance to care. Disparities in provider training on a diverse array of methods leaves the Student Health Center, like many clinics in Utah, pressed to provide the desired methods of their clients. Recent efforts by groups like Family Planning Elevated have begun to expand statewide access to comprehensive contraceptive counseling and provision training to ensure that Utah providers are able to effectively meet their clients' contraceptive needs (Family Planning Elevated, 2019). Until all providers are trained on the diverse array of methods, non-coercive contraceptive counseling practices, and have an ample stock of methods, structural barriers will remain in place for students attempting to access care (Zapata et al., 2018). As a premier institution focused on becoming the University for Utah, we must direct our attention to student care that is presently falling through the cracks.

Our Contribution

In this article we present original research on University of Utah student perceptions, knowledge, current care, and interest in the expansion of sexual and reproductive health service accessibility at the Student Health Center. Based on our survey data we explore the following questions surrounding the current accessibility of care at the University of Utah's Student Health Center:

RQ1: Where are University of Utah students currently accessing contraceptive care? Are students utilizing the Student Health Center amidst established barriers?

RQ2: Are students interested in expanding sexual and reproductive health accessibility at the Student Health Center by piloting a Contraceptive Free Clinic?

RQ3: Do students want to know more about sexual and reproductive health, including more information about contraception?

Data and Method

Data for this study come from the Campus Contraceptive Initiative pilot survey. Data collection took place over two weeks in February 2018 where participants were recruited by word-of-mouth and social media. Our recruitment efforts were supported by the Women's Enrollment Initiative, the Associated Students of the University of Utah, the LGBT Resource Center, Students United for Reproductive Freedom, and other student health organizations, respectively. Eligibility for the assessment only required participants to be currently enrolled at the University of Utah. Students who chose to participate did not receive any benefit or compensation from the completion of the survey. Surveys were administered through a secure web-based data capture system over the course of two weeks where participants completed the survey via mobile link. Participants included 327 current University of Utah students aged 17 to 27 (SurveyGizmo, Boulder, CO). Participants were asked 15 questions assessing their risk of pregnancy, current method use, desired method use, SRH knowledge, and interest of SRH expansion at the University Student Health Center (see Table 1 for sample characteristics).

Our analyses proceed in three steps. First, we describe whether participants are sexually active and the type of contraceptive methods they use. In a second step, we examine attitudes towards receiving contraceptive methods at the Student Health Center. We do so both descriptively and in multivariate models. For the latter we estimated multivariate binary logistic models to understand the extent to which both individual characteristics and current contraceptive use patterns are associated with desiring contraceptive care at the Student Health Center. In a third step, we describe where current contraceptive users receive their method(s) and their level of interest in learning more about sexual and reproductive health, including more information about contraception.

Results

We find that among pilot study participants, about 52% self-identify as sexually active. A majority of the students that self-identified as sexually active report using contraception. However, there is also a number of students, who are currently using birth control even though they do not report sexual activity, potentially for other health reasons beyond contraceptive care. When asked about the current contraceptive method use, participants had the option to select a mixture of the following contraceptive options, including withdrawal or "pulling out," condoms, pills, patch, ring, shot, implant, and IUD. We find that "pulling out," condoms, the contraceptive pill and IUDs are the most frequently used methods. Among the 170 sexually active participants, about

59% use condoms, 44% reported "pulling out," 38% report using the pill, and 28% use IUDs, respectively (Table 2). T-Test and chi-square tests indicate no significant gender differences in reporting use or partner-use of contraceptive methods.

In our second analytic step, we examine where participants obtain their contraceptive methods and seek to understand how participant characteristics and current method use patterns predict support for contraceptive expansion at the Student Health Center (Table 3). Unlike contraceptive method use, there are clear gender differences in where participants obtain contraception. Cisgender women are more likely to obtain contraceptive methods from their personal medical provider, whereas cisgender men are more likely to obtain contraceptive methods at a store. Methods available at one's local store include barrier methods such as condoms, but available methods may increase based on recent legislation that expands contraceptive accessibility at pharmacies. When asked if participants were able to obtain no-cost contraceptive care from the Student Health Center a vast majority of 80% stated they would take advantage of stated services while 15% stated they were unsure but would potentially utilize services if available (Table 4). These results are reflective of sexually active individuals as well as those who are not currently sexually active, although the support is lower among participants who are not sexually active.

Our multivariate logistic regression (Table 5) finds when assessing sexual activity status and sexuality and age, cisgender women have significantly greater odds of supporting SRH expansion at the Student Health Center (Model 1). Model 2 further illustrates that IUD and condom users have significantly greater odds of supporting SRH expansion at the Student Health Center. In Model 3, we test whether the location of where individuals obtain contraceptive methods impact their support of SRH expansion. We find that individuals who receive their birth control through Planned Parenthood and through the store have significantly greater odds of desiring contraception through SHC compared to the reference group of individuals who do not use contraception.

In a final step, we assessed interest in learning more about sexual and reproductive health including information about contraception (Table 6). We found that 73% of students want more information about SRH and contraception with no statistical differences across sexual activity. Students would like to know more about their sexual health and respective options to care, and were most likely to select online resources rather than in-person interventions. Eighty percent of students reported interest in an online source to comprehensive contraceptive counseling as they approach their method selection and 66% of students are interested in having SRH education available through the University CIS database similar to the "SafeU" website. A smaller proportion of students are also interested in programming, such

as an SRH lecture series (38%), a panel on local reproductive health issues (36%), and peer contraceptive counseling (33%). This indicates variance across desired methods to learn more about sexual and reproductive health.

Discussion

Our sexual and reproductive health checkup found that University of Utah students are eager to take control of their sexual and reproductive health but currently face gaps in accessing SRH services and information. Compared to the results of the 2017 National College Health Assessment, our sample reported lower levels of sexual activity, 65% to 53%, respectively. Students at the University of Utah are currently using an array of contraceptive methods, although none of our participants reported currently using the patch or shot. The most popular methods amongst sexually active students tend to be less effective at preventing pregnancy. Behavioral and barrier methods such as withdrawal (44%) and condoms (59%) are the most popular amongst University students while use of medium-tier efficacy methods such as pills, patch, ring, and shot and most efficacious tier methods such as implants (6%) and IUDs (28%) is markedly less reported. From an STI prevention standpoint, a high condom utilization rate is a positive sign, but our results find that the most frequently used methods by students are also the least efficacious. This may be due to barriers in accessibility that students are not able to access more reliable methods or a lack of comprehensive contraceptive education about the wide variety of available methods. We hope to better understand method selection criteria in future studies.

Our results find that the Student Health Center is not a primary source of contraceptive care for students. Primary care providers and insurance coverage are the most frequently cited source of care followed by local stores, Planned Parenthood, and finally, the Student Health Center. Only 1.6% of students report accessing care at SHC in the past year for their contraception. As the SHC only accepts the SHIP, and SHIP is only mandated for international students, many students are turning to alternative sources of care. Recent policy changes in local pharmacy dispensing law and federal Title X regulations may impact student accessibility at these alternate points of care in the coming years. Utah pharmacists as of 2018 are able to prescribe self-administered birth control methods and clients can easily obtain the methods without prior physician prescription. More students may obtain their methods from local pharmacies as this law is implemented over the next few years. On the other hand, the Trump Administration's changes to federal regulations surrounding Title X that would prohibit providers from "promot[ing], encourag[ing], or advocat[ing]" for abortion at the risk of losing funding for their clinics. Most poignantly,

the regulations will impact Planned Parenthood who serve "41% of women obtaining contraceptive care from Title X sites". These restrictions emphasize the need for increased accessibility of services on campus as a location that many students go for care is currently in jeopardy. Public health researchers will need to assess the impact of fluctuating coverage of care on accessibility over the coming years and programs need to be implemented to fill gaps in coverage.

The Student Health Center in partnership with the Campus Contraceptive Initiative is actively planning to implement a contraceptive "free clinic" at the SHC for all University of Utah Students and their partners within the next few years. The program intends to remove financial barriers for students which may allow students to access their ideal method within their budget. Broadly, students have shown high interest in accessing services from a contraceptive free clinic at the Student Health Center. Cisgender women, sexually active individuals, and people currently using IUDs or condoms have greater odds of interest in the SHC free-clinic. Cisgender women often feel the burden of contraceptive decision-making and paying for methods on their own, and may feel more interest in a free program as it would make their ideal method more affordable. Individuals who are currently sexually active may support the clinic as they hope to continue their method, switch to another method, or assist in contraceptive care with their partner. People who are using IUDs may be towards the end of IUD's lifespan and hope to obtain a new device or method at a low cost while people using condoms may show interest as it will allow for greater affordable method selection. In contrast, individuals who currently obtain their method from a primary care provider were slightly less likely to show interest in the SHC free-clinic compared to the rest of the population.

Finally, our survey found that students want to know more about sexual health and contraceptive options. Ineffective and unethical abstinence-based education policies leave students in the dust as they attempt to develop sexual health decision-making skills in their transition into adulthood. The majority of our students reported a desire to know more about their options to care and were most interested in online resources. Students are increasingly digital, and medically-accurate information about sexual health needs to be available online in order to meet their preferences for information uptake. In-person programs are also desired by students and could also increase communal SRH knowledge.

Conclusion and Policy Recommendations

Our research suggests that there is a need to expand student access to contraceptive methods and additional work needs to be done to provide sexuality education programming to students. A contraceptive free clinic on its face only

removes financial barriers from the HCAB triad – in order to truly increase the accessibility of care, program developers will need to implement cognitive and structural innovations to reduce the reciprocal reinforcing effect. Student and provider programs that attempt to mitigate the effect of cognitive barriers should include student organization programming to increase awareness of method options, contraceptive journeys over the life course, and broader information about sexual and reproductive health. Provider programs focused on comprehensive contraceptive counseling, method insertion and removal, pregnancy intentions, and client-centered contraceptive decision-making will leverage collective cognitive knowledge alongside student programming. By assuring the operating hours of the clinic are convenient to students, establishing shuttle routes that provide direct transportation to the clinic from major centers of campus, and reducing wait times to receive methods by having an ample stock, clinics can also attempt to mitigate structural barriers as well. College students have the right to comprehensive information about their health and programs that make health more accessible. As sexual and reproductive health programs fluctuate across the country, the University of Utah has the opportunity to become an innovator in health care accessibility, moving the institution one step closer to becoming the University *for* Utah.

Table 1: Sample Demographics

| | VARIABLE | OBS | MEAN/ PERCENT | STANDARD DEVIATION | MINIMUM | MAXIMUM |
|--------------|---|-----|------------------|-----------------------|---------|---------|
| STUDENT TYPE | AGE | 327 | 19.92 | 1.79 | 17 | 27 |
| | RESIDENT UNDERGRADUATE | 322 | 0.75 | 0.44 | 0 | 1 |
| | NONRESIDENT UNDERGRAD. (INCL. INTERNATIONAL) | 322 | 0.21 | 0.41 | 0 | 1 |
| | GRADUATE STUDENT | 322 | 0.05 | 0.21 | 0 | 1 |
| | SEXUALLY ACTIVE (1 = YES) | 320 | 0.53 | 0.50 | 0 | 1 |

Table 2: Percent women/men using each contraceptive method. Multiple responses allowed.

| | CISGENDER WOMEN | CISGENDER MEN |
|--------------------|-----------------|---------------|
| CONDOMS | 55.94 | 76.00 |
| PULLING OUT | 42.66 | 52.00 |
| BIRTH CONTROL PILL | 35.66 | 48.00 |
| IUD | 29.37 | 16.00 |
| IMPLANT | 7.69 | 0.00 |
| RING | 3.50 | 0.00 |

Note: N=168, sexually active participants only. Two sexually active participants identified as nonbinary, they are not included here. Three participants who are not sexually active also report using contraceptive methods (pill, pulling out, and condoms), they are not included here.

Table 3: Where do participants obtain contraception (by gender)?

| WHERE IS CONTRACEPTION OBTAINED? | CISGENDER WOMEN | CISGENDER MEN | NONBINARY, TRANSGENDER, GENDER FLUID | TOTAL |
|-------------------------------------|-----------------|---------------|---|-------|
| NO BC/DOES NOT APPLY | 42.9 | 53.7 | 78.6 | 46.3 |
| DOCTOR/INSURANCE | 25.8 | 3.7 | 7.1 | 21.3 |
| PLANNED PARENTHOOD | 15.1 | 9.3 | 7.1 | 13.8 |
| STORE | 15.5 | 27.8 | 7.1 | 17.2 |
| STUDENT HEALTH CENTER | 0.8 | 5.6 | 0.0 | 1.6 |
| TOTAL | 100.0 | 100.0 | 100.0 | 100.0 |
| N | 252 | 54 | 14 | 320 |

Table 4: Do Participants desire Contraceptive Care through Student Health Centers (by Sexual Activity Status)?

| | NOT SEXUALLY ACTIVE | SEXUALLY ACTIVE | TOTAL |
|-------|---------------------|-----------------|-------|
| NO | 9.3 | 1.8 | 5.3 |
| MAYBE | 19.3 | 12.4 | 15.6 |
| YES | 71.3 | 85.9 | 79.1 |
| TOTAL | 100.0 | 100.0 | 100.0 |
| N | 150 | 170 | 320 |

Table 5: Desiring contraceptive care through student health center; Multivariate logistic regression, odds ratios shown.

| VARIABLES | (MODEL 1) | (MODEL 2) | (MODEL 3) |
|--|-----------------|----------------|-----------------|
| AGE | 0.974 (-0.325) | 0.946 (-0.669) | 0.949 (-0.630) |
| CISWOMAN | 1.974* (2.160) | 1.753 (1.785) | 2.020* (2.126) |
| SEXUALLY ACTIVE | 2.317** (2.853) | | |
| CONTRACEPTIVE USE | | | |
| IUD | | 3.935* (2.166) | |
| CONDOM | | 2.388* (2.227) | |
| IMPLANT | | 3.119 (1.053) | |
| BIRTH CONTROL PILL | | 0.576 (-1.401) | |
| "PULLING OUT" | | 1.217 (0.450) | |
| WHERE IS CONTRACEPTIVE METHOD OBTAINED? | | | |
| DOCTOR/INSURANCE | | | 1.068 (0.182) |
| PLANNED PARENTHOOD | | | 15.73** (2.665) |
| STORE | | | 2.703* (2.223) |
| CONSTANT | 2.595 (0.595) | 5.671 (1.063) | 4.554 (0.931) |
| OBSERVATIONS | 320 | 327 | 322 |

Table 6: Desire to learn more about sexual and reproductive health including contraception, by Sexual Activity Status

| | NOT SEXUALLY ACTIVE | SEXUALLY ACTIVE | TOTAL |
|-----|---------------------|-----------------|-------|
| NO | 28.0 | 25.6 | 26.7 |
| YES | 72.0 | 74.4 | 73.3 |
| | 100.0 | 100.0 | 100.0 |
| | 150 | 168 | 318 |

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The Dyadic Conversation of Racial Inequality in Employment, Criminal Justice, and Healthcare: Using the Color-Blind Fallacy to Understand Differing Perceptions

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This research summary compiles evidence for the racial inequality that continues to plague American society, specifically in regards to employment, criminal justice, and healthcare, in an attempt to deconstruct the complex nature of implicit racism and reconcile the differing perceptions that subsequently arise from such an analysis. When viewing racism as a dyadic conversation between those discriminating and those being discriminated against, a myriad of situations arise to emphasize a destructive difference in perception. A majority of the American population, white or other, would not consider themselves to be racist, creating a situation where society is inherently racist, but individuals, for the most part, consciously are not. This paper explains the phenomenon of mismatching perceptions by employing the color-blind fallacy to demonstrate how abstract liberalism, naturalization, cultural racism, and minimization of racism are common techniques used to cover up or explain away recurring instances of racism, halting any meaningful discussion aimed at improving race relations in the United States.

Keywords: racial inequality; employment; criminal justice; healthcare; differing perceptions; color-blind fallacy

Introduction

Racial inequality has been an issue prevalent in American society throughout the country's history. The effects of racial inequality can be clearly seen in many different sectors, specifically employment, criminal justice, and healthcare. The current literature cites multiple studies in each of these areas that detail the multitude of disadvantages faced by minority races, pointing to a problem of systemic racial inequality in American society. A majority of the American population, white or other, would not consider themselves to be racist, creating a situation where society is inherently racist, but individuals, for the most part, consciously are not. The fact that individuals do not regard their explicit attitudes or actions as racist despite the racist undertones of their implicit biases lends itself to the perception differences commonly identified between races. An interaction that appears friendly to white participants may contain several undertones of racial bias for black participants.

This phenomenon of perception can be explained through the color-blind fallacy in which the majority race uses the idea of a color-blind society to denounce programs that are necessary for aiding disadvantaged races. Applied

analysis of the color-blind fallacy to sectors of American society such as employment, the criminal justice system, and healthcare, can help elucidate the dyadic nature of racial interactions that ends up perpetuating systemic racism. The dyadic conversation of racism refers to the two parties involved in racial interactions, and understanding the differing perceptions in these interactions can point to the underlying miscommunication occurring in race relations. The key to resolving this disparity of perceptions is developing the ability to recognize the systemic racism prevalent in American society as well as defining racist actions to not only include those which actively harm minority races but also those which perpetuate systemic racism.

In theory, racial attitudes can be examined at three different levels: public, personal, and implicit. Dovidio et al. (1997) described public attitudes as the way "individuals may publicly express socially desirable (nonprejudiced) attitudes even though they are aware that they privately hold other, more negative attitudes" (p. 519). Public attitudes of racism are tailored to the way an individual wants to be perceived by society. The next level, personal racism, is different in that these attitudes are influenced by a person's private standards and ideals such that expression of attitudes

is consistent with an individual's nonprejudiced self-image but do not reflect unconscious negative feelings. The last level, implicit racism, refers to "unconscious feelings and belief which are often different from personal or public attitudes" (Dovidio et al., 1997, p. 519). Discrepancies among these levels of individual attitudes can lead to systemic racial problems that are difficult to either acknowledge or address.

The small-scale nature of implicit bias plays a role in its being overlooked as a major contributor to systemic racism. It is important to note that the large-scale effect of such subliminal racial undertones end up dictating the scene of racial interactions. Payne et al. (2017) demonstrated, "Implicit bias is much more strongly associated with disparate outcomes when examined at aggregate levels such as nations, states, or metropolitan areas" (p. 234). They went on to cite a study that found that metropolitan regions in the United States with higher levels of implicit race bias also showed greater racial disparities when it came to shootings of citizens by police (Hehman et al., in press). A similar study looked at the broader effects of implicit bias in healthcare and found that even when controlling for various demographic and geographical factors, counties with higher levels of implicit racial bias also had greater Black-White gaps in infant health outcomes (Orchard & Price, 2017). The broad implications of implicit racial bias that feed into the blatant disconnect between individual and societal racial prejudices are one that must be addressed in discussions of race relations.

I use the color-blind fallacy to explain the perception differences among races in regards to the prevalence of racism in modern American society. Viewing racism as a dyadic conversation between two races elucidates the underlying fallacies that lead to differing perceptions. After introducing the concept of the color-blind fallacy, I turn to analyzing the dyadic conversations between races in three important sectors of American society. First, I shed light on the most common erroneous assumptions employed in the conversation of race relations in the hopes of reconciling different perceptions that continue to breed mistrust and resentment between races in the area of employment before turning to the criminal justice system and healthcare. The article concludes with a brief summary and a discussion of how color-blind fallacies in these sectors can be addressed and overcome to prompt a better-informed and more effective national discourse on race relations in this country.

The Phenomenon of Color-Blindness

There lies a disparity in perceptions of racism between America's white population and its minority, specifically black, populations. Dovidio et al. (1997) determined that "while white participants reported that they acted in an

equally likable and sincere manner with black and white partners, their nonverbal behaviors were inconsistent with their perceptions" (p. 533). These results were supported by similar findings by Fazio et al. whose research shows that a black experimenter's perceptions of white participants' friendliness are better predicted by the implicit attitudes of the white participants than by their explicit attitudes (Fazio et al., 1995). What is perceived as racism and a disadvantage by a minority person is often not perceived the same way by a white person.

These differences in perceptions are the very basis of the color-blind fallacy. Bonilla-Silva (2003) described the four frames of color-blind racism as abstract liberalism, naturalization, cultural racism, and minimization of racism (p. 26). Bonilla-Silva went on to define abstract liberalism as "using ideas associated with political liberalism (e.g., "equal opportunity," the idea that force should not be used to achieve social policy) and economic liberalism (e.g., choice, individualism) in an abstract manner to explain racial matters" (p. 28).

The use of liberal language to frame debates of racial inequality allows the white population to oppose practical solutions to racial disparity while still sounding moral and just. In this way, liberal ideas like equal opportunity can be used to denounce social programs aiding black minority populations and therefore perpetuate racial disparities. Neville et al. (2013) referred to this frame as power-evasion, defined as "denial of racism by emphasizing equal opportunities" (p. 455). The problem with this liberal language lies in the fact that equal opportunities does not address the years of discrimination that minority races, especially African Americans, have faced that leave them, to this day, at a severe disadvantage when compared to white citizens.

The second frame of the color-blind fallacy, naturalization, "allows whites to explain away racial phenomena by suggesting they are natural occurrences" (Bonilla-Silva, 2003, p. 28). This is another form of complacency aimed at minimizing the responsibility of white people to address and reform racial disparities. The third frame, cultural racism, uses assumptions about specific races to create culturally based arguments that explain the standing of minorities on society. This is often seen when disadvantaged minorities, who have suffered generations of systemic deprivation, are blamed for their low place society as a result of lack of motivation or hard work.

The last frame, minimization of racism, "suggests discrimination is no longer a central factor affecting minorities' life chances" (Bonilla-Silva, 2003, p. 29). This frame leads to different perceptions of racial disparities in that white populations feel that minorities exaggerate racial discrimination while minorities feel that whites minimize its effects. Neville et al. (2013) refer to this frame as color-evasion, defined as "denial or racial differences by emphasizing same-

ness" (p. 455). Emphasizing sameness is synonymous with minimizing racial differences and racial inequality by using the justification that every race faces the same challenges. However, racial inequality poses a unique set of difficulties for minority populations, which the majority population can turn a blind eye towards using this frame of the color-blind fallacy.

All four frames lead to the color-blind fallacy where proponents for a color-blind society, in lieu of their lack of support for programs aimed at leveling the playing field for minorities, end up perpetuating racial inequality. The refusal to acknowledge the complacency inherent in all four frames of the colorblind fallacy condones the very institutions perpetuating racial disparities.

Color-Blindness in Sectors of American Society Employment

An important sector in American society where racial disparities are especially prevalent is employment. The current literature points toward the idea that black employees face significant racial disadvantages that white employees do not. Word et al. (1974) found that white interviewers behave less positively nonverbally with blacks than with whites. They went on to show that interviewers trained to exhibit these less positive nonverbal displays produced inferior applicant performance among white interviewees than interviewers trained with the more favorable displays generally afforded to white interviewees in the workplace environment. More recent employer interviews revealed persistent association of strong negative associations with minority workers, with particular negative characteristics attributed to African American men (Kirschenman & Neckerman 1991; Moss & Tilly 2001; Wilson 1996). Numerous hiring behavior studies have been conducted suggesting that employers strongly prefer white workers to otherwise similar African Americans. (Pager 2003; Pager et al. 2007; Bertrand & Mullainathan 2004; Bendick et al. 1999; Fix & Struyk 1993).

The concept of racial discrimination in the workplace can be described as a dyadic conversation between black employees being discriminated against at work and the white employers who are discriminating. Both the black employees and white employers have different perceptions toward what qualifies as racial discrimination and the degree of inequality that exists.

In order to understand the racial dynamics between employees and employers, the perceptions of both sides must be fully evaluated and understood. Black employees perceive significant racial discrimination in the workplace that cedes significant disadvantages. Hunter (2011) surveyed employees of color and identified eight main domains of racial microaggressions: ascription of intelligence, color blindness/

assimilation, criminality/assumption of criminal status, myth of meritocracy, pathologizing of cultural values/communication styles, traditional prejudicing/stereotyping, denial of racism, and environmental microaggressions (p. 33-48). The fact that these eight domains span a broad range of workplace considerations supports the probability that employers are perpetuating racial discrimination intentionally and/or unintentionally. Light, Roscigno, and Kalev (2011) also conducted a similar survey study and found, "Employees experiencing workplace racial discrimination most often claim differential treatment (56 percent) relative to white employees. Differential treatment claims range from not receiving a promotion to being discriminatorily fired for workplace rule infractions, to being asked to undertake job duties that other employees are not asked to do" (p. 48). These are all conscious actions taken on the part of employers that are seen as being racially motivated. Light et al. went on to explain that black employees feel as if they are evaluated by subjective judgment of qualification and oftentimes treated with isolation and hostility. These studies demonstrate the frustrations of minority employees due to perceptions of multiple forms of racial discrimination in the workplace.

Employers, on the other hand, perceive racial discriminations in the workplace much differently. Employer perceptions tend to minimize the existence and effects of racial discrimination; they also tend to shift blame to structural or individual shortcomings that make minority employees less desirable than white employees. Pager and Karafin (2009) found that when asked how they perceive young black men, over 40% of employers commented on structural issues (residential segregation, discrimination, incarceration, lack of education, etc.) as barriers to employment opportunities to black men (p. 76-77). More than 60% of employers emphasized individual factors (work ethic, self-presentation, attitude, etc.) as their primary explanation for black men's employment problems (IBID). Employers ascribe responsibility for the effects of racial discrimination onto societal racism or individual factors. The shifting of responsibility falls into the third frame of the color-blind fallacy, cultural racism, because societal assumptions of black people are being used as a basis to discriminate.

A similar study done by Light et al. (2011) surveyed employers as well and found, "The majority of employers (57 percent) claim that their organization is purely meritocratic in terms of workplace decisions, adheres to the equal opportunity employment laws, and respects the tone of such laws. Thus, employment decisions are arguably never made on the basis of race but, rather, are made through concrete and fair evaluations of worker performance" (p. 50). This argument of meritocracy is simply a substitute for the "equal opportunity" argument that falls under the first frame of the color-blind fallacy, abstract liberalism. Employers use meritocracy as a way to seem moral while still being able to

perpetuate the employment systems that keep black employees at a disadvantage and perpetuate racial disparity.

The discrepancy between employee and employer perceptions can be explained by the color-blind fallacy. Employers perceive no discrimination because abstract liberalism is used to convince themselves of the morality of their actions, but the underlying discrimination described by employees is still existent: “Whites often express support for meritocratic ideals, yet they remain reticent to acknowledge potential structural and historical impediments that minority groups face. Consequently, meritocracy remains a key cultural justification for inequality, while the effects of continued racial bias often go unacknowledged” (Light et al., 2011, p. 42-23). Elimination of the color-blind justification will increase awareness of inequality and recognition of the effects of racial disparities in the workplace, enabling the workplace to transform from an institution condoning and perpetuating these racial discriminations to an institution working to actively close the gap of racial disparities.

The Criminal Justice System

Another important sector in American society where racial disparities are prevalent is the criminal justice system. The most well-known example of racial disparity in the criminal justice system has to do with the war on drugs. Many studies show that all races use and sell drugs at remarkably equal rates, and wherever significant differences were found, it has been frequently suggested that whites are more likely to engage in drug crime than blacks (Mauer & King 2007, Snyder & Sickman 2006, Johnson et al. 2007, Johnson et al. 2003). However, in some states, the rates of black men being admitted to prison on drug charges is twenty to fifty times greater than those of white men (Human Rights Watch 2000), and in some major cities, up to 80% of young African American face legalized discrimination for the rest of their lives due to their criminal records (Street 2002). As stated by Mark Mauer, “To the extent that they exist, higher crime rates among black Americans are insufficient to explain the racial disparity in the criminal justice system” (2011).

Another study analyzed the decision-to-shoot response of white students and found, “The participants tended toward mistakenly shooting the unarmed Black male suspects more often than the unarmed Black female and the unarmed White male and White female suspects. For the Black male suspects, White participants responded with a liberal bias toward shooting” (Plant et al., 2011, p. 1279). These findings are consistent with previous work revealing a stereotypic association between black males and violence and a tendency toward self-protective responses toward black men by white participants (Maner et al., 2005; Navarrete et al., 2010; Quil-

lian & Pager, 2001; Sidanius & Veniegas, 2000). A large-scale discussion of how racism affects the criminal justice system can be seen in the study by Hehman et al. which found that metropolitan regions in the United States with higher levels of implicit race bias also showed greater racial disparities when it came to shootings of citizens by police (in press).

The concept of racial discrimination in the criminal justice system is more difficult to frame as a dyadic conversation. Instead, the difference in perception should contrast the way that black people view the criminal justice system to the way white people view it. Black people and white people have very different perceptions of the criminal justice system, especially in terms of crime and fairness.

White people and black people perceive crime very differently. Disagreements tend to arise mainly over the causes of crime. Bobo and Thompson (2011) showed that 51.4% of white people v. 37.0% of black people believe people turn to crime because they are lazy. They also found that 24.8% of white people v. 49.5% of black people agree people turn to crime because society does not guarantee regular employment for everyone (p. 12). Laziness is a rather individualist cause of crime while lack of regular employment is a rather structuralist cause of crime. This data showed that white people tend to believe crime has individualist causes and occurs because of individual deficiencies while black people tend to believe crime has structuralist causes and occurs because of societal deficiencies. Thompson and Bobo (2011) backed up these conclusions with more data: 51.7% of whites v. 28.8% of blacks believe crime has individualist causes and 15.2% of whites v. 32.6% of blacks believe crime has structuralist causes (p. 17). Therefore, while white people believe individuals should be held more responsible for crime, black people believe that society should be held more responsible for crime. This difference in perception, in addition to the fact that the black population has higher incarceration rates than the white population, causes black people to believe they are being punished unfairly and make them more suspicious of the criminal justice system.

Not only do perceptions differ about the cause of crime, but they also differ on perceptions of fairness of the judicial system and courts. Overby et al. (2004) studied these perceptions of fairness in the state of Mississippi and found that more than 40% of whites v. less than 30% of blacks believe the system is fair, more than 40% of whites v. 30% of blacks believe the sentences are the same regardless of race, more than 60% of whites v. 30% of blacks believe judges are fair, and more than 40% of whites v. less than 30% of blacks believe district attorneys are fair (p. 172). Once again, because incarceration rates are much higher for the black population than the white population, these differences in perception can lead to increased perceptions of racial inequality within the criminal justice system. Additionally, Hurwitz and Pef-

fley (2005) explained that different perceptions of fairness can affect the way a black person interprets a situation in comparison to how a white person would interpret the same situation:

While many whites adhere steadfastly to a “color-blind” perspective in their reactions to the scenarios, many blacks seem quick to assume the worst motives by the police. While whites may naively discount evidence of unfairness, many African Americans assume the system is biased against them—a belief confirmed when they see an example of potential racial bias. (p. 780)

Once again, as seen in employment, the color-blind fallacy is at play in white perceptions of fairness because a color-blind perspective is assumed. This abstract liberalism perpetuates the idea that racial inequalities do not exist in the system, therefore halting the discussion on policies that would work on decreasing incarceration rates of the black populations.

In a broader sense, because the goal of the criminal justice system is fairness and justice across all races, there is implied abstract liberalism of color-blindness. In this way, the criminal justice system, as a whole, is being used as a means to perpetuate racial disparities. However, interestingly enough, cultural racism, frame three of the color-blind fallacy, is being used by African Americans who assume the system is biased against them. This cultural racism escalates situations where black people might see exaggerated racist motives in their interactions with the criminal justice system. Once again, elimination of the color-blind fallacy from both populations will result in the accurate identification of racial disparities as well as facilitate discussion on how to level the playing fields among different races.

Healthcare

One more vital sector in American society where racial disparities are prevalent is healthcare. Several studies demonstrate that African Americans receive consistently worse care across many aspects of healthcare delivery. African Americans persistently receive less aggressive cardiac interventions (Bhandari et al. 2008, Stanley et al. 2007), less adequate pain management (Miner et al. 2006, Pletcher et al. 2008), reduced follow-up therapy for colorectal cancer (Morris et al., 2008), less focused diabetes management (Sequist et al., 2008), and increased lower-extremity amputation (Feinglass et al. 2005, Lefebvre & Metraux 2009). Additionally, black Americans are more likely to pick up on physician bias, lose trust in the healthcare system, and, therefore, have less satisfaction with the health care outcomes they receive (Armstrong et al. 2008, Banks & Malone 2005). All these factors, including the fact that African Americans are usually forced by social structures to the worth health services and

facilities, lead to them experiencing, as a race, the worst health statuses and medical outcomes (Byrd & Clayton 2003, Mayes et al. 2007). Another study took a large-scale look at the broader effects of implicit bias in healthcare and found that, even when controlling for various demographic and geographical factors, counties with higher levels of implicit racial bias also had greater Black-White gaps in infant health outcomes (Orchard & Price, 2017).

The concept of racial discrimination in healthcare can, like in employment, be described as a dyadic conversation between black patients being discriminated against and the white doctors or nurses who, consciously or subconsciously, are discriminating. Both the black patients and white medical providers have different perceptions toward the type of care that is being provided and the causes of racial disparities in healthcare.

Black patients and white health care practitioners perceive racial discrimination in the healthcare system very differently. Black patients tend to perceive discrimination in both the care they receive as well as in doctor-patient interactions. Black patients perceive this discrimination in multiple ways, one of which being comparative observations of differential treatment between black and white patients. Ross et al. (2012) examined specific perception differences in interactions between white healthcare practitioners and black patients: “Participants specifically identified differences in communication styles, nonverbal behaviors, and noticeable differences in level of attention to their care as sources of their perceptions of discrimination” (p. 526). These perceptions of discrimination by black patients illustrate the sense of racial disparity witnessed in the healthcare system. In addition, Ross et al. noted that participants believed that health care providers naturally assumed the worst about African Americans based on previous experiences with African Americans. This perception of cultural racism on the part of health care providers, a clear example of the third frame of the color-blind fallacy, illustrates the extent to which the health care system is buried in justification of racial disparities rather than acknowledgment and solution generation.

On the other hand, white health care providers have very different perceptions of racial inequality in the healthcare system. White health care providers tend to place the responsibility for racial disparities on their black patients: “Patient behaviours were by far the most often cited explanations for racial inequality in medical treatment” (Malat, Clark-Hitt, Burgess, Friedmann-Sanchez & Van, 2010, p. 1437). Common behaviors include the fact that black patients have less information than white patients, black patients are more hesitant to accept treatment or a referral to a specialist, and black patients are less compliant with recommendations. Doctors in this study acknowledged that larger systems were at play that caused black patients to have less information, to be more hesitant, and to be less compliant. For example,

lack of education could lead to less information. Lack of resources or lifestyle conducive to health habits could reduce compliance.

Cultural racism is seen in the way that doctors still placed responsibility for healthcare disparities on black patients. Malat et al. (2010) similarly concluded their study: "Recitations of ways that black patients could be to blame for racial inequality in medical treatment fit into the colour-blind ideology that blames behavioural and cultural traits ascribed to blacks rather than whites' behaviour or structural factors" (p. 1438). This cultural racism characterizes the healthcare system as an institution aimed, not at leveling the playing fields, but at perpetuating the racial disparities in healthcare. By losing the color-blind ideology, doctors can more effectively examine the disparities within patient-doctor interaction and other factors that potentially cause good health outcomes for black patients to be less attainable than for white patients.

Conclusion

In the current discussion on racism in America, there exists a largely unaddressed discrepancy between individual self-perceptions of racism and the societally-engrained institution of racism, whereby individuals mostly view themselves as non-racist while overwhelming research points to the fact that that American society largely is racist, specifically in regards to the following three sectors: employment, criminal justice, and healthcare. The color-blind fallacy needs to be prevalent in the discussion of racial inequality throughout American society as it offers a starting point for reconciliation of the blatant discrepancies of individual and societal perceptions by framing racist interactions as a dyadic conversation between two parties and highlights from where difference in perceptions stem.

The two most dangerous frames of this fallacy are abstract liberalism and cultural racism. Abstract liberalism allows rhetoric to disguise the perpetuation of racism as a means to ultimate equality. The problem with this is that racial equality cannot be achieved without first leveling the racial playing fields in American society that have become unbalanced by systemic oppression (Mauer & King, 2007). Cultural racism is another dangerous trap that allows society to rid itself of any responsibility of racial inequality by placing blame on races that have been marginalized for generations. The refusal to acknowledge the complacency inherent in the colorblind fallacy condones the very institutions perpetuating racial disparities.

Several studies demonstrate the way that black people are at a significant disadvantage to white people in the workplace. This disadvantage is pervasive and spans a range of issues such as interviewing practices, hiring practices, firing

practices, differential treatment, and disciplinary actions. When framed in context of the color-blind fallacy, this discrimination can be viewed as a dyadic conversation between white employers and black employees, both of which have differing perceptions regarding racial bias in the workplace. Black employees perceive racial discrimination according to any of Hunter's (2011) eight main domains of racial microaggressions while white employers tend to downplay evidence of racial inequality as a result of structural barriers or individual factors work ethic, self-presentation, attitude, etc.) Employers ascribe responsibility for the effects of racial discrimination onto societal racism or individual factors.

In this discrepancy of perception, the black perception points to problems of implicit bias while the white perception points to problems of structural racism and differences with individual factors among different races of employees. The shifting of responsibility of white employees falls into the third frame of the color-blind fallacy, cultural racism, because societal assumptions of black people are being used as a basis to discriminate. The first frame of the color-blind fallacy, abstract liberalism, can also be seen in this employment conversation as employers use the argument of meritocracy as a way to seem moral while still being able to perpetuate the employment systems that keep black employees at a disadvantage and perpetuate racial disparity. Elimination of the color-blind justification will increase awareness of inequality and recognition of the effects of racial disparities in the workplace, enabling the workplace to transform from an institution condoning and perpetuating these racial discriminations to an institution working to actively close the gap of racial disparities.

Current research also demonstrates the way that black people are at a significant disadvantage in the criminal justice system from the war on drugs to incarceration rates, criminal records, mistaken shooting of unarmed suspects, etc. Therefore, the key to resolving this disparity in perceptions of racial inequality is recognizing systemic racism and defining racism to include actions which perpetuate systemic racial disparities. When framed in context of the color-blind fallacy, this discrimination can be viewed as a dyadic conversation between the way white people perceive the criminal justice system and the way that black people do, both of which offer differing perceptions and insights regarding crime and fairness in the current system. In this conversation, white people tend to believe crime has individualist causes and occurs because of individual deficiencies, such as laziness, while black people tend to believe crime has structuralist causes, such lack of regular employment, and occurs because of societal deficiencies. It goes to follow that, while white people believe individuals should be held more responsible for crime, black people believe that society should be held more responsible for crime. This difference in perception, in addition to the fact that the black population has

higher incarceration rates than the white population, causes black people to believe they are being punished unfairly and makes them more suspicious of the criminal justice system.

Different perceptions of fairness can affect the way a black person interprets a situation in comparison to how a white person would interpret the same situation. As seen as in employment, the color-blind fallacy is at play. Because the goal of the criminal justice system is fairness and justice across all races, there is implied abstract liberalism of color-blindness that perpetuates the idea that racial inequalities do not exist in the system, therefore, halting the discussion on policies that would work on decreasing incarceration rates of the black population. Interestingly enough, cultural racism, frame three of the color-blind fallacy, is being used by African Americans who assume the system is biased against them. This cultural racism escalates situations where black people might see exaggerated racist motives in interactions with the criminal justice system. Elimination of the color-blind fallacy from both populations is essential to reconciling differing perceptions and facilitating the discussion on how to level the playing fields among different races.

The current literature also clearly demonstrates that black Americans are at a significant disadvantage when it comes to healthcare as compared to white Americans. Black Americans persistently receive less aggressive cardiac interventions, less adequate pain management, reduced follow-up therapy, less focused chronic disease management, and increased lower-extremity amputation. Black Americans are more likely to pick up on physician bias, lose trust in the healthcare system, and have less satisfaction with the health care outcomes they receive. Research has shown that the effect of persistent implicit bias in the healthcare field is reduced health outcomes for black patients (Orchard & Price, 2017). Therefore, it is important to use the color-blind fallacy to frame this conversation between black patients and white healthcare providers and shed light on the differing perceptions arising from healthcare interactions between races.

Black patients tend to perceive discrimination in both the care they receive as well as in doctor-patient interactions. These perceptions arise from comparative observations of differential treatment between black and white patients and the belief that health care providers naturally assumed the worst about African Americans. White health care providers tend to place the responsibility for racial disparities on the behavior of black patients: black patients have less information than white patients, black patients are more hesitant to accept treatment or a referral to a specialist, and black patients are less compliant with recommendations. The color-blind fallacy, specifically cultural racism, can be noted in the way that doctors place responsibility for healthcare disparities on black patients. Losing the color-blind ideology could be a first step as doctors move to more effectively examine the disparities within patient-doctor interaction and

other factors that potentially cause good health outcomes for black patients to be more unattainable than for white patients.

The biggest problem arising from the color-blind fallacy is the ease with which it can be brushed off, justified, or ignored. Without explicit signs of racism present, it is difficult for people on both sides of the dyadic conversations of racism to acknowledge the fallacy in thought processes that spur such drastic racial perceptions. The acknowledgment of a disconnect in racial perception and the comprehension of the color-blind fallacy is essential for well-rounded, progressive solutions to race relations in this country. Bonilla-Silva (2003) suggested an individual approach whereby people move past simply being tolerant and "transition from the liberal stand (i.e., being a good, tolerant person) to becoming an anti-racist. While the former stand cohabitates with racism – good people can harbor racialized views and emotions, the latter stand requires a permanent war against racism" (p. 243). He described the ideology of antiracism to be changing norms and practices that allow racism to exist.

With this goal applied to the discussed fields of employment, criminal justice, and healthcare, both sides of the conversation would be better able to understand the other's perceptions and actively work towards correction of fallacious assumptions and practices. Color-blind racism cannot be passively accepted by either party, and both must work to correct all four frames of the fallacy in order for progress to be lasting and substantial. White people cannot continue to believe the lie of equality fed to them by the rhetoric of abstract liberalism, and the black population cannot use cultural racism as means to exaggerate inequalities for the purpose of an excuse of increased aggression or decreased performance. Both sides of the dyadic conversation must work together to eliminate fallacious thinking and erroneous assumptions to substantially and systematically level the playing field and build an America in which race is no longer a determining factor for a promising future.

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Utah's Inland Port: Assessing the Economic and Political Impact of a Commercial Hub in the Epicenter of the Expanding Wasatch Front

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This article focuses on Utah's inland port and provides an assessment and analysis of the economic and political impact of the project. An understanding of the history of Salt Lake City's economic development leads into a discussion of the political process behind the creation of the port. The subsequent assessment of the inland port includes key areas of concern such as the environmental impact, the governing body of the port—the Inland Port Authority Board, and the potential success of the port. The purpose is to understand how the inland port fits into Utah's broader economic growth and how state and local governments have addressed, and will address, these areas of concern. The conclusion of this assessment is that changes to the project's implementation need to occur for its overall success. More attention needs to be given to the environmental impact, and the state must give equal consideration to other important areas such as education and transportation. Finally, the Port Authority Board must provide maximum transparency regarding the inland port so that proper action can be taken by government and industry experts.

Introduction

Due to Salt Lake City's unique geographic location and growing economy, the city has been considered for an inland port—a processing and shipping hub that helps alleviate pressure on coastal ports and acts as a major connecting point for goods that are being shipped into, out of, and throughout the U.S. Last year, the State of Utah took steps to officially create an inland port in the northwest portion of Salt Lake County, resulting in an ongoing political battle over one of the state's largest economic development projects. This article will assess several key aspects of Utah's current inland port project, the purpose being to explore important questions and offer critical perspectives regarding the project's creation and implementation.

First, the article will provide a brief history of Salt Lake City's economic development to provide context for the current project. Next, it will describe the inland port concept in Utah, how the current project came into being, and analyze the political impact of the process behind the port. The following section of the article will assess a central concern of an inland port, which is the potential effect on the environment. Next, there will be an analysis of the governing body of the inland port, known as the Inland Port Authority Board, highlighting key concerns of the port authority's actions and to show how the push for economic development has

become the driving force behind the project. Finally, there will be a discussion of the project's potential success and promised economic growth.¹ Underlying this article is the argument that key issues regarding the inland port need more attention and that there is a need for greater public transparency.

History of Salt Lake City Development

In 1847, the first Mormon pioneers moved into the Salt Lake Valley and quickly founded Salt Lake City as their home. Salt Lake City was situated as a center point between Midwestern states like Missouri and Iowa, and the Pacific Coast. Due to this central location, the area became a popular place for westward travelers to resupply in preparation for the final journey to the West Coast. As a result, Mormon leader Brigham Young sought to have the Transcontinental Railroad run directly through the city. His attempts did not prove successful and the railroad was finished north of Salt Lake near Promontory in 1869. Shortly thereafter in January of 1870 a connecting line from Ogden to Salt Lake City was completed (Strack, n.d.).

After the completion of the Transcontinental Railroad, Salt Lake City became a strategic connection for different rail lines across the western region. In 1883, a line connecting Denver and Salt Lake City was completed, and in 1903 a

¹ Note that at the time of this article's publication the Inland Port was still in its early stages of development. There may be updated legislation or plans regarding the project.

line connecting Los Angeles to Salt Lake City was finished (Strack, n.d.). Over the ensuing decades, the city would continue to grow. The railroad system supported Utah's growing mining industry and served as a key way to transport things such as coal and copper (Strack, n.d.). By the middle part of the 20th century, the Salt Lake region was experiencing a build-up of suburban areas surrounding Salt Lake City.

To accommodate the expanding Salt Lake City metro area, Utah made changes to a series of state highways to incorporate them into the interstate system. Interstate 15 ran north to south and connected the entire Wasatch Front from Brigham City to Nephi, alongside additional connections to the Canadian border and Los Angeles, CA. Interstate 80 ran east to west through the heart of Salt Lake County connecting San Francisco to New York passing through cities like Sacramento CA, Reno NV, Omaha, NE, Des Moines, IA, and Chicago, IL. Interstate 84 ran through northern Utah into Salt Lake City with a connection to Portland, OR. These interstates connected Salt Lake City to other major cities and provided key transportation points to coastal ports. The port of Long Beach is only 12 hours away via I-15. The Port of Oakland is only 12.5 hours way via I-80 (Utah Inland, 2017, p. 2-27).

Another way in which Salt Lake became a strategic connection point was the Salt Lake City International Airport, first founded in 1930 as the Salt Lake Municipal Airport. In 1968, after the construction of a new terminal, the airport was designated as the Salt Lake International Airport ("Airport History," n.d.). Throughout the next 40 years, the airport would undergo a series of expansions to include new terminals and new runways. Then in 2014, a major expansion project broke ground to accommodate the airport's 25 million annual travelers ("The New SLC," n.d.). The expansion includes a new terminal, two new concourses, and a new parking garage. These transportation connections made Salt Lake City the crossroads of the west. As a result, the idea of an inland port in the area surfaced.

Developing an Inland Port: From Local Initiative to State Project

In its simplest definition an inland port is a logistical hub where goods can be received, processed and shipped to both domestic and international destinations. The purpose of an inland port is to be an effective extension of seaports and relieve pressure by allowing goods to be removed from cargo ships and moved inland for further processing, including freight consolidation, temporary storage, customs clearance, transportation connections, assembly, and distribution (Utah Inland, 2018). As a result, freight can be inspected before being taken to a seaport to be put on a shipping vessel, or it can be removed from an incoming ship and moved inland for

further processing. Inland ports usually have connections to railway networks and highway systems and in some cases international airports. Other inland port examples include the Port of WalaWala in Washington and the Rickenbacker Inland Port in Rickenbaker, OH (Ritchey, 2018). Inland ports can be strategic connecting points for shipping goods around the country leading to investment and development in the surrounding region (Utah Inland, 2017).

The idea of an inland port in Utah first came about in the 1970s, but attempts to create one never fully materialized. In 1974, the Utah State Legislature passed legislation allowing for the creation of port authorities. In 1987, Salt Lake County created an Inland Port Task Force to study the feasibility of an inland port. They found that an inland port could bring hundreds of millions of dollars in economic activity to the region (A Brief, 2017). In 1990, the creation of an inland port began, but it lacked the funding to continue operation. Later that same year, the county requested \$150,000 from the state. The petition failed and the port was never finished (A Brief, 2017).

Fast forward to 2016 and hopes for an inland port had resurfaced. In August of 2016, the Kem C. Gardner Policy Institute at the University of Utah published a research brief with a market assessment of an inland port in Utah. Key findings in the report were that Salt Lake City is favorably located, has a strong labor market, and a competitive tax structure. (Gochnour, 2016). The northwest quadrant of Salt Lake City, a largely undeveloped area near the Great Salt Lake, was the targeted area for an inland port. Plans for developing this area started with local governments. In 2016, Salt Lake City published a master plan for the future development of the northwest quadrant, and in 2017, Salt Lake County published an economic development plan focusing on global trade and investment (Salt Lake, 2017). Then by early 2018, Salt Lake City had approved several development agreements that included \$123 million in tax revenue to be invested into the area (Dentzer, 2018).

The inland port idea began to receive increased traction due in part to other development projects, such as the relocation of the state penitentiary from Draper to the west side of the Salt Lake City International Airport and the airport's \$3 billion expansion (Salt Lake, 2018, p. 1). In the weeks leading up to the 2018 General Legislative Session state leaders confirmed plans to pursue inland port legislation. The bill S.B. 234 "Utah Inland Port Authority" was introduced on February 27, 2018, and began quickly advancing through the legislative process. The city and county governments of Salt Lake worked throughout the session to preserve the integrity of their plans and stake in the northwest quadrant and inland port development process. Their concerns centered on land use decisions, allocation of property tax revenues and the potential environmental impact. The governing body of the port was also a point of tension. The legislation would create

an 11 member-independent-unelected Inland Port Authority Board which would have power over land use decisions and all property tax revenues (Utah Inland, 2018). The inland port boundaries included more than 20,000 acres of undeveloped land in the northwest quadrant of Salt Lake City and included small portions of West Valley City and Magna (Utah Inland, 2018).

Along with the loss of land use decision and property tax revenues, local municipalities were not going to receive any help from the state to provide standard municipal services to the area, such as police and fire. As a result, Salt Lake City and County officials argued that the move was a takeover by the state that would strip them of valuable tax revenue and land control. State leaders argued that the project was too big for one municipality to take on alone (Dentzer, 2018). The bill ultimately passed on March 7, 2018, thanks to a last-minute push at the end of the general legislative session, promising to bring economic growth to the region. When Governor Herbert signed the bill, he promised to call a special legislative session to address local officials' concerns (Nixon, 2018).

Shortly after the legislative session ended in March, Governor Herbert and Salt Lake City Mayor Jackie Biskupski entered into negotiations over the inland port. In May, the negotiations broke down with no final agreement, and no call for a special session (Anderson, 2018). Without a compromise, Salt Lake City Council members accepted invitations to work with state legislators and the governor on continuing the negotiation process where they sought to include the mayor and her staff in the process. On July 10, 2018, council Chairwoman Erin Mendenhall sent a letter to the mayor requesting her involvement (Anderson, 2018), on July 11, 2018, Mayor Biskupski wrote to the city council informing them that she was withdrawing fully from the negotiations (Nixon, 2018). The withdrawal also extended to her staff and division directors, leaving the city council without the valuable input of various experts. Instead, the council worked closely with county officials throughout the negotiation process (Anderson, 2018).

Despite Mayor Biskupski's absence, local and state officials made progress and on July 18, 2018, the governor called a special legislative session to pass amendments to the original inland port legislation. The new bill shrunk the size of the port from more than 20,000 acres to 16,150 acres (figure 1 shows the finalized boundaries of the port) (Anderson, 2018) and made changes to the appeals process for land use decisions (Nixon, 2018). The new bill also provided 10 percent of property tax revenue for affordable housing "as provided in Section 17C-1-412" of the Utah state code (Utah Inland, 2018). It also required the Port Authority Board to negotiate agreements to assist local municipalities to "provide the same municipal services to the area of the municipality that is within the authority jurisdictional land as

the municipality provides to other areas of the municipality" (Utah Inland, 2018).

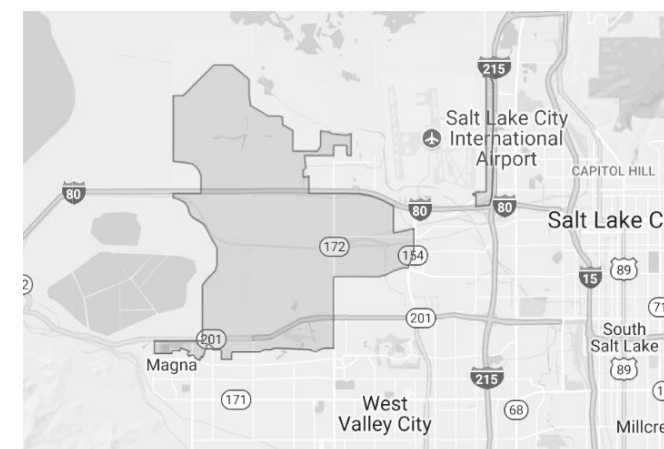


Figure 1: Utah Inland Port Boundaries. Retrieved from: <https://www.google.com/maps/d/u/0/viewer?mid=1iT1ZIVBeCABt6CtRxygAdOEsJCqvGGw&ll=40.76346010799609%2C-112.02969100000001&z=12>

Ultimately, Mayor Biskupski still did not support the approved changes stating: "Let's be clear, the bill passed during the special session today is still unacceptable" (McKellar, 2018). The Salt Lake City Council approved of the changes and promised to work for the future implementation of the port. Amendments to the inland port legislation passed in 2019 also allow the Port Authority Board to create project zones outside the inland port boundaries, which is meant to increase the efficiency of the port and extend its reach to rural portions of the state. This will be discussed in greater detail in the section concerning the Port Authority Board.

Throughout the process, it became clear that local development plans had become a state project. While city and county leaders worked with state leaders to make changes to the legislation, they had no other choice. If they wanted to be part of the ongoing process the option to protest was off the table. The inland port legislation had already passed and the Port Authority Board was set to begin meeting in July of 2018 (Utah Inland, 2018), which is why local officials accepted the opportunity to continue negotiations when Mayor Biskupski walked away. It is important to consider why this shift from local initiative to state project occurred. In order for the undeveloped areas of the northwest quadrant to be developed this shift was not necessary. There are other ways that this area could be developed. While an inland port was not the only way for the northwest quadrant to be developed, an inland port does require a separate governing body. Local municipalities are already dealing with a host of issues such as education, and homelessness. If the inland port is to be successful it needs the time and attention of a specific entity that can invest its resources into this one area. Port authorities are common throughout the U.S. and are tasked with overseeing the operations of a port. Therefore, the shift was

necessary for the success of an inland port. However, this does not mean that an inland port is necessary or that the area could not be developed in another way while remaining under the control of the local governments.

The development of the northwest quadrant turning into a state-run inland port caused two potentially dangerous precedents to arise. The discussion of these precedents will provide the framework for assessing the other key aspects of the port outlined at the beginning. The first is a disregard for local issues and authority in pursuit of economic development. Many of the concerns of the city have already been mentioned and some were addressed in the revised legislation. However, local governments have lost a considerable amount of power and control over the development of the port causing some important issues to be ignored as the area is developed. The second precedent is the lack of public transparency and accountability. The inland port legislation was passed quickly and actions of the Port Authority Board have fallen short of this important principle of accountability. The board will need to work with local jurisdictions to address key concerns of the community and provide the maximum level of public involvement.

The Environmental Impact of the Inland Port

The first pressing issue behind the inland port is how it will affect the environment.² Utah is known for its winter inversions which are the result of built-up particulate matter, especially PM2.5 which is “directly emitted into the atmosphere from combustion sources” (Utah Division, 2017, p. 17). The main source of this pollution is auto emissions which account for 57% of air pollutants. Homes and buildings account for 32% and industry accounts for 11% (“Pollution Sources,” 2014). The American Lung Association has ranked Salt Lake City the 8th worst city in the nation for short term particulate pollution (“Most Polluted,” n.d.).

There is also a growing level of carbon emissions in the Salt Lake region. A report published by Salt Lake City estimated that greenhouse emissions from road transportation sources would increase 1.4 percent each year between 2005 and 2030 (Salt Lake, 2010, p.15). Graphical data from the Utah Department of Health confirms a growing trend in carbon emissions especially among transportation sources (see figures 2&3) (“Complete Health,” 2018). The emission of greenhouse gas and the buildup of particulate matter is a major concern around the inland port. Utah’s inland port will create more roads which will, in turn, mean more trucks and cars on Utah roads, increasing the likelihood that this trend continues which could lead to adverse effects on Utah’s environmental areas, Utah citizens and the surrounding

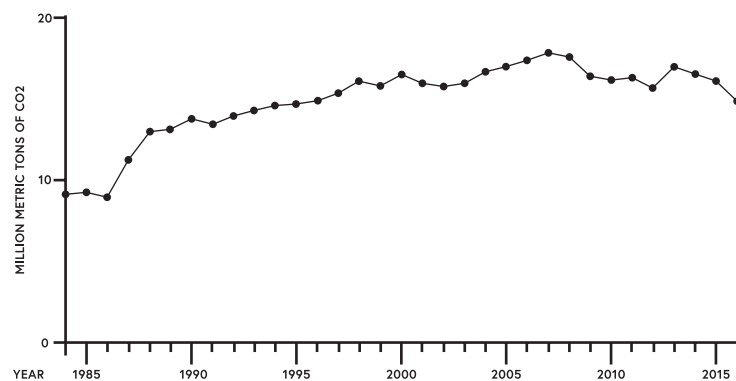


Figure 2: Total Carbon Dioxide Emissions from All Energy Sectors by Year, Utah, 1984-2016. Retrieved from https://ibis.health.utah.gov/indication/complete_profile/CliCharGreGas.html

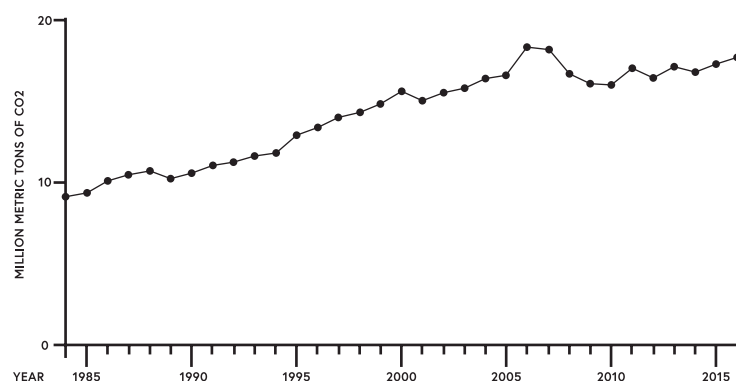


Figure 3: Carbon Dioxide Emissions due to Transportation by Year, Utah 1984-2016. Retrieved from https://ibis.health.utah.gov/indication/complete_profile/CliChaGreGas.html

community. A report from the Utah Division of Air Quality states: PM2.5 “can become embedded in human lung tissue, exacerbating respiratory disease and cardiovascular problems. Other negative effects are reduced visibility and accelerated deterioration of buildings” (Utah Division, 2017, p. 17).

Air quality is not the only environmental concern. Some of the areas near the inland port have been identified as environmentally sensitive which could be damaged by development. There are wetlands near the Great Salt Lake that are home to various wildlife, two of these areas are the Inland Sea Shorebird Reserve and the South Shore Preserve (Northwest Quadrant, 2016). While not inside the inland port boundaries large developments can have an impact on these wildlife areas such as water contamination. Parts of the northwest quadrant have also been identified to have high liquefaction levels posing challenges to soil structure and leading to increased construction costs. Some of the areas north of Interstate 80 are also susceptible to seasonal flooding (Northwest Quadrant, 2016). All of these factors will have to be taken into consideration when developing the port. The inland port legislation includes general provisions

for environmental protection but does not include specific measures. Utah Senator Luz Escamilla proposed legislation that would “establish and maintain monitoring facilities to measure environmental impacts from inland port development” (Utah Inland, 2018). Passing this legislation could be key to protecting the environment and Utah residents.

There are also concerns about the transportation of toxic chemicals and materials. The concerns include how the port authority will address safety regulations and what will happen if there is a contaminant spill. Due to the sensitive wetlands and flooding areas, a contaminant spill could contaminate water in the area and damage wildlife reserves. One of the top exports from Utah is chemicals—including basic chemicals, paints, pesticides, and cleaning agents (Wood, 2017). The concern over contaminants was heightened in light of legislation passed in 2019 that could allow for the importation of depleted uranium into Utah. H.B. 220 “Radioactive Waste Amendments” could potentially allow the energy company Energy Solutions to store depleted uranium at its disposal sites (O’Donoghue, 2019). Depleted Uranium is the byproduct of Uranium enrichment and is a class A waste (the lowest ranking) however, over time the Uranium becomes more radioactive (O’Donoghue, 2019). The inland port would provide an easy way to transport toxic chemicals and other hazardous materials into and out of the state. It is imperative that the Inland Port Authority Board place proper regulations on these materials to guard Utah’s environment.

We do not know to what extent environmental concerns will be addressed by the Inland Port Authority Board and the state legislature. To this point, it has taken a back seat to other aspects of the port’s development. The port authority could take several measures to ensure the protection of the environment. The proposed legislation for Senator Escamilla should receive the port authority’s full support and be used in implementing strict environmental protections. The purpose is to help them monitor environmental impact and make necessary adjustments as the port is developed. The port authority could also invest in green energy such as solar panels to help provide power to the area. It could also help invest in public transportation services for port employees and other Utah residents to reduce carbon emissions. Taking these measures will not inhibit the port’s success but will prevent it from becoming an environmental hazard.

The Inland Port Authority Board

Another area of key concern is the inland port’s governing body, the Inland Port Authority Board. The board has

already run into several controversies since it first met in the summer of 2018. The board is made up of 11 members which include: two appointments by the governor, and one by each of the president of the Senate, speaker of the House, and Salt Lake County Mayor and the West Valley City Manager (with city council consent). The other seats are filled by an appointed member from the Permanent Community Impact Fund Board, member of the Salt Lake City council whose district includes the Salt Lake City Airport, executive director of Department of Transportation, and the director of the Salt Lake County Office of Regional Economic Development (Utah Inland, 2018). The members that are appointed by the governor, House Speaker, and Senate President can be removed by their appointer without cause and at any time (Utah Inland, 2018). The power to appoint and remove board members gives the state officials considerable power over their local counterparts, who do not share this power.

The Salt Lake City School District has also contended that it should have a seat on the board due to the fact that it is the “largest taxing entity affected by the port” (Stevens, 2019). The district estimates that up to \$500 million of property tax revenue could be lost over the next 25 years. (Stevens, 2019). This is obviously due to the fact that Salt Lake City will not be the recipient of property tax revenues generated by the port. There are three public schools located within a mile of port boundaries: North Star Elementary, Meadowlark Elementary and Northwest Middle School (Stevens, 2019). The issue of education funding is particularly important due to Utah’s low levels of education spending and recent cuts to education funds (Bennett, 2019). The loss of property tax revenue to an economic development project may only further that problem.

The Port Authority Board convened for the first time in July of 2018 under the direction of board chairman Derek Miller, who also serves as the CEO of the Salt Lake Chamber of Commerce. In the early stages of its meetings, the board voted 9-2 to keep the meetings of its subcommittees closed from the public (the only dissenting votes were Miller and Salt Lake County economic development director Laura Fritts) (Stevens, 2018). The move was quickly criticized by a wide range of people including Governor Gary Herbert, Salt Lake City Mayor Jackie Biskupski, Salt Lake County Mayor Ben McAdams, the entirety of the Salt Lake City Council and over 160 different state-based organizations. The board argued that their subcommittee meetings are not required to be open to the public under the state’s Open and Public Meeting Act (Stevens, 2018).

A few weeks after voting to keep subcommittee meetings closed, the board again came under fire for the release of

² At the time of this article’s publication, there was no official report or analysis completed on the potential environmental impact of the project.

its \$2 million budget plan. The entire budget fit on to a half a page and was criticized for being vague and offered little detail regarding some of the larger line item expenditures. (Stevens, 2018). The expenditure that caught the most attention was the \$300,000 set aside for “Community Engagement” with an asterisk next to that line reading “Contracted support” (FY 2019, 2019), likely meaning that the board will hire a public relations firm to promote the inland port to the public. Many have said this expenditure would be completely unnecessary if the board simply allowed for more public involvement and engaged directly with community members (Stevens, 2018).

Other concerns have arisen with H.B. 433 “Inland Port Amendments” which was introduced during the 2019 General Legislative Session and expands the powers of the Port Authority Board. The original draft of the legislation would have prohibited a local government from legally challenging the decisions or operations of the board without the approval of that entity’s governing body, such as a city council. The bill was moving quickly towards being passed at the end of the 2019 General Legislative Session which led Salt Lake City Mayor Jackie Biskupski to file a lawsuit against the inland port before the legislation was passed. The mayor had threatened legal action early on, however, the Salt Lake City Council had taken steps to prohibit such action without their approval (McKellar, 2019). The lawsuit was filed in state district court on March 10, 2019, without the knowledge or approval of the city council. Amendments to the bill ultimately removed that language before being passed (McKellar, 2019).

The final version of the legislation allows the board to create project zones outside the specified inland port area. The idea is that Salt Lake City would be the central hub and that these project zones would be like spokes on a wheel. The hub and spoke concept is designed to help areas of rural Utah export goods more quickly and at a lower cost than shipping them to Salt Lake first. This “hub and spoke” model is meant to increase economic growth outside the Wasatch Front. Opponents of the bill argued that it was a way for the board to expand its powers beyond the northwest quadrant and would be a way for the increased used and exportation of fossil fuels (McKellar, 2019). It is also a political move that transitions the focus of the inland port away from Salt Lake City. Much of the criticism around the inland port has centered on the takeover of land in the northwest quadrant and how this would deprive the city of valuable tax revenue. By extending the port outside of Salt Lake state officials have a stronger argument for the project being statewide.

Interestingly the bill was sponsored by Representative Francis Gibson who also sponsored the original inland port

bill and serves on the Port Authority Board. Representative Gibson was appointed by former House Speaker Greg Hughes who had originally appointed himself to the board but resigned after it was reported that he owned property within the prohibited five-mile limit (Ritchey, 2018). Because the inland port is governed by state-level legislation, allowing sitting state legislators to serve on the board gives it even more power and influence. If the board feels there are needed changes to their governing legislation they will not have to resort to the normal advocacy strategies as other organizations.

The relationship between Salt Lake City Mayor Jackie Biskupski and the Port Authority Board have continued to be divisive. Further division arose when reports surfaced that board chairman Derek Miller was heard on an audio recording of a board meeting speaking to Salt Lake City Councilman James Rogers about the idea of reaching out to Democratic mayoral candidate Jim Dabakis, who is former state senator (McKellar, 2019). These events took place before Mayor Biskupski’s announcement that she would not be seeking reelection.

The new mayor of Salt Lake City will have to decide whether to take Mayor Biskupski’s approach or seek common ground with the Port Authority Board. The stance of mayoral candidates will be an important issue for voters in the 2019 municipal election. Candidate Jim Dabakis has stated that he supports the lawsuit against the inland port (Stevens, 2019). Stan Penfold, a former Salt Lake City councilman has been critical of Mayor Biskupski’s approach to the inland port and has said he would work with the state legislature regarding the inland port issue (Stevens, 2019). Candidates David Ibarra and David Garbett have also said they would work with the board, while and Christian Harrison has proposed passing an amendment to the state constitution that would “guarantee cities the right to govern themselves” (Stevens, 2019). Senator Luz Escamilla, whose senate district includes the inland port area, has announced her candidacy for mayor and has voted against inland port legislation in the past. City councilwoman Erin Mendenhall is also running; as council chairwomen in 2018, she played a major role in the negotiations around the amendments to the inland port bill during the 2018 special legislative session. With so many candidates the inland port will be a pivotal issue of the 2019 mayoral race and the outcome of that race could prove equally important to the future of the inland port.³

For now, the Inland Port Authority Board will need to evaluate its commitment to public transparency. All aspects of the development process need to be open to the state’s residents, as well as local and state officials. Transparency

is vital for local officials in order to remain informed and make the proper decisions concerning aspects of the inland port that directly affect their community. The board is an unelected board and therefore must take extra steps to ensure they are accountable to the community. Doing these things are vital to the project’s overall success.

Will the Inland Port be Successful?

Perhaps the most important question to answer when considering an economic development project is whether or not it will actually work. Do the positive outcomes outweigh any negative trade-offs? Several assessments and studies have shown that the Salt Lake region has many of the necessary characteristics for the inland port project.⁴ Some of these aspects include a competitive tax structure, transportation connectivity, and a skilled workforce (Utah Inland, 2017). Utah also has one of the most diverse economies in the nation with strong financial, technology and tourism industries (Utah Informed, 2019). Due to this, it is likely that an inland port will be successful in bringing increased economic activity. At this time there are no estimates as to how much additional economic activity the inland port will bring to Utah since the project itself will take years to implement. Analysis conducted by the World Trade Center Utah (WTCU) recommended a 20 to 25 year timeline for a 7,000-acre site; the current inland port is more than double that size (Utah Inland, 2017). While there is no complete timeline for the inland port, the first development project was approved on December 27, 2018, less than six months after the first board meetings. The Stadler Rail Company has been given a project site of 63 acres near I-80 and 5600 west for “advanced manufacturing” with estimated expenditures of \$50 million (Stadler Project, 2018).

Beyond this project the inland port will require infrastructure additional investment including roads, storage facilities, added rail networks and other buildings. According to the same WTCU report for a 7,000-acre site, new roads could cost \$93 million, and new water and sewage systems would cost an additional \$55 million (Utah Inland, 2017). Building cost estimates range from \$40-80 per sq. ft. That puts a 50,000 sq. ft. facility between \$2-4 million (Gochnour, 2018). These costs are important because the initial investment for infrastructure will have to come from somewhere. Once port facilities become operational they can begin to create revenue but they first have to be built. Initial investments will likely have to come from both state funds and private investment. How much money the state chooses to invest in the area could bring about new political

battles especially in light of recent battles over education and Medicaid funding (Bennett, 2019 & Roche, 2019). Due to the lack of an implementation timeline for the inland port, it is difficult to know the timeline for profitability and self-sustainability of the inland port.

Additionally, there are infrastructure needs outside the inland port area. The Wasatch Front Regional Council—an organization that recommends solutions to the problems facing Utah’s growth—predicts that by 2040 the state’s road infrastructure will require \$80.5 billion to maintain, update and construct new infrastructure with, \$67.5 billion required for “prioritized transportation needs (“Financial Assumptions,” n.d.). Under the state’s current Unified Transportation Plan revenue sources only reach to \$60.2 billion (“Financial Assumptions,” n.d.). These needs are important considering that 76 percent of Utah workers drive alone to work, whereas only 4.7 percent use public transportation (U.S. Department of Transportation, 2018 & Leonard, 2010). As Utah’s population grows there are more cars using the roads and with low numbers of public transportation users, this puts great strain on highway systems. There are currently no concrete plans to build additional public transit services to the inland port area which will translate into more traffic from port employees and trucks. Salt Lake City has identified potential areas of improvement for public transport, such as a “high capacity public transit along 5600 West” (Northwest Quadrant, 2016, p. 12). There is no estimate of when, or if, this project will be implemented or how much it would cost.

Several road infrastructure expansion projects are currently underway such as the expansion of I-15 in Utah County and the planned creation of a new freeway known as the West Davis Corridor. The I-15 expansion includes widening the freeway from four lanes to six lanes from Main Street in Lehi to Route 92, as well as thirteen new freeway overpasses. The project, which began in the summer of 2018, will cost \$430 million (Raymond, 2018). The West Davis Corridor will be a new freeway that runs northwest from Legacy Parkway through Davis and Weber Counties; it will be a two-lane highway with a 65-mph speed limit. The estimated cost of the project is \$610 million but could run as high as \$725 million (Davidson, 2017). In addition to this, the Legacy Parkway ban on semi-trucks is set to end, despite the opposition from local residents (Davidson, 2018). These projects are obviously necessary considering Utah’s growth but they are expensive. More trucks and cars also relate to environmental concerns addressed in the environmental section. How the state will continue to fund these needed changes while also keeping up with other needs, such as education and healthcare is an important question. These are the tradeoffs that have to be weighed when planning and

³ At the time of this article’s publication the Salt Lake City mayoral race was in the early stage of the primary election.

⁴ See (Gochnour, 2016) and (Northwest quadrant, 2016)

implementing economic development projects such as the inland port.

Along with infrastructure, part of any economic development project is the creation of jobs. It is estimated that a 7,000-acre site could create more than 12,000 jobs (Utah Inland, 2017, p. 7-72). Of course, there is the question of how well these jobs pay. According to estimates by the Kem C. Gardner Policy Institute, some of these jobs, such as mechanical engineers or distribution managers would pay more than 100 percent of the median per capita income in Utah which is currently \$39,045. Others such as shipping and receiving clerks, construction workers, and light truck drivers would make between \$24,000-29,000 annually (Gochour, 2016). Wages are a key factor due to the rising cost of housing in Utah. Since 1991 the rise in housing prices has ranked Utah fourth in the nation, with an annual growth rate of four percent compared to the national average of 1.5%. Meaning that a home with a valuation of \$125,000 in 1991 would be worth \$347,000 by 2017 (Wood, Eskic, & Benway, 2018, p. 3). The National Low Income Housing Coalition (NLIHC) reports that in the state of Utah the average wage of a renter is \$13.92 (nearly double the \$7.25 minimum). However, according to NLIHC, the average wage needed to afford a two bedroom apartment in Utah is \$17.77; in Salt Lake City it is \$19.90⁵ (Out of Reach, 2018). It is important that the jobs added by the inland port allow those employees to afford to live in the area. Economic development does not automatically translate to economic prosperity.

The original question of this section was to consider the potential success of the inland port. In terms of adding jobs and bringing revenue the answer is likely yes. However, it is also likely that funding the project and other needed updates surrounding it could lead to cutting important needs elsewhere. In addition to the planned expansion of major highways, there is a need to implement more public transit to serve more of the Salt Lake metro area's population. The implementation timeline is also a vital component to the overall success of the inland port. Based on analysis from the World Trade Center Utah and the size of the current inland port, the project needs at least three to five decades of steady investment and implementation. Industry experts and government officials will need transparency to assess how the port's operation fits into the broader context of Utah's economic growth, as well as to ensure that wages keep up with the cost of living.

Finally, we must consider the possibility that the inland port never materializes. As previously stated the project will not be completed in just a few years or even a decade. A successful inland port will be a multigenerational project that will require a great deal of work to continue. What becomes

of the northwest quadrant if the project fails? As previously noted it is unlikely that the area will remain undeveloped. Salt Lake City had a published plan that outlined plans for development before the inland port project came into being (Northwest quadrant, 2016). Under current Salt Lake City zoning, 8,251 acres of the Northwest Quadrant is zoned for light manufacturing (Northwest Quadrant, 2016). It also has 5,098 acres of agricultural areas which are intended to be a placeholder for final zoning adjustments. The current agricultural zoning "allows for single-family development on 10,000 sq. ft. lots" (Northwest Quadrant, 2016, p. 11). The other zoning areas are open space and general commercial areas, meaning that the northwest quadrant could become a mix of commercial and manufacturing areas with the potential for residential units if the inland port falls through. It is clear that the inland port is not the only way to take advantage of this undeveloped land.

Conclusion

This article has sought to cover several key aspects of Utah's inland port. First, the historical narrative behind this project was provided to highlight the highly political nature of this project. It is extremely complex, and with a variety of people and organizations that have a stake in the port, there are bound to be points of conflict and tension. An inland port was not necessary for the development of the northwest quadrant however, in order for there to be an inland port, it needed a separate governing body. The process of creating a port authority has led to the loss of local control over how this area is developed and how negative impacts are addressed. The lack of public transparency also increases the likelihood that key concerns will not be addressed properly.

The Salt Lake region does have the right characteristics to see a successful inland port from an economic standpoint. In order for this to happen a proper timeline that allows for assessment of the port's impact is needed so that needed adjustments can be made. There also needs to be the right level of environmental monitoring to ensure that the port does not worsen air quality or pose a threat to sensitive environmental areas. The port authority should also work to invest in green energy, transportation, and technology. With all the money that is going to be needed to invest in the port's startup, it is imperative that outside concerns are given equal consideration such as the state's other transportation needs, education funding, and healthcare. Finally, the Port Authority Board must provide as much transparency as possible and should be given true independence from state-level lawmakers who currently give the board a political advantage over other

government bodies. Behind the inland port is one driving narrative: economic development. This essay is meant to be critical of a project that is so complex, yet seems on the surface to have only one thing driving its implementation. The inland port has the potential to do great things for the state of Utah, but as this article has shown it has equal potential to do harm. The inland port implementation process must address the consequences that the inland port project will have on the state, specifically the negative consequences. There should be more attention given to the impact on the state's environment, both in the short term and the long term. If the inland port is to be more than just economic success, then those overseeing its implementation must address the major concerns and critical perspectives around this project.

⁵These numbers are based on the general standard of spending not more than 30 percent of gross income on gross housing costs.

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PUBLIC OFFICIAL CONTRIBUTIONS

The 500-Day Plan: A Powerful Tool for Effective Public Leadership

By Rich McKeown and Natalie Gochnour

Introduction

Approximately 1,000 days before the 2002 Olympic Winter Games, Utah Gov. Mike Leavitt and his chief of staff, Rich McKeown, were on a flight home from Sydney, Australia. They had traveled to Sydney to learn from the leaders of their successful 2000 Olympic Summer Games. It was on this flight that 500-day planning was born.

Hosting an international event the size and complexity of the Olympics presented a significant challenge to Utah leaders. Doing it during a national recession (collapse of the dot.com bubble) added complexity. The 9-11's terrorist attacks made it even more difficult. Utah leaders knew they had one chance to get it right and capitalize on the opportunity of hosting the world. The Olympics precipitated the development of a 500-day plan, with a 5,000-day horizon.

We present in this essay the problem, principles and process we call 500-day planning. A 500-day plan consists of clearly articulated outcomes to be achieved in 500 days that will support a 5,000-day vision. In this way, leaders can "plan by the day" with their eyes on an aspirational future.

We developed and refined 500-day planning as we served in the Utah governor's office, the Environmental

Protection Agency, and the Dept. of Health and Human Services. Five-hundred-day planning provides an organizational platform that helps busy public decision-makers set direction, align resources, manage time, communicate internal and external messages, motivate people and measure results.

The Problem

The typical day for a chief of staff¹ to a public official requires managing various, often unpredictable, competing demands for attention and resources. The pace is fast and furious for 10-12 hours a day during the workweek and spills into the weekend. Nearly everyone wants to make their problem your problem. Issues come from all directions – cabinet members, press, legislators, staff, local government officials, constituents and others. It is demanding work with a high burnout rate.

As directed by the elected/appointed official or principal, a typical chief of staff acts in both an offensive and defensive role, addressing complicated, risky, visible, and often emotional issues. The chief of staff must balance urgent

¹ We focus on a chief of staff, but the same thinking applies to all public leadership roles.

concerns that descend seemingly out of nowhere and require an immediate response with less urgent, yet vital, issues that require collaborative responses.

Serving in such a position is an immense challenge, an overwhelming responsibility and an incredible opportunity. The 500-day plan helps address these challenges and opportunities.

Principles

Five-hundred-day planning adheres to principles that inform and complement one another.

Principle #1: Offense, not defense

Many view the chief of staff role as a tennis doubles partner. You play at the net and hit every ball that judgement and experience suggest you should. You let through to the principal anything he or she wants or anything that judgement and reason suggest he or she should see. Under this model, the chief of staff serves as a gatekeeper – controlling access and prioritizing issues so the principal can focus on the most important or desirable tasks.

This defensive and reactive management strategy, while not without its advantages, creates challenges. Positioned at the tennis net you can't possibly cover all the court from where you stand. Those who govern this way create a decision-making bottleneck and find the agenda becomes dominated by defensive decision-making that limits application of the guiding principles typically devoted to proactive policy issues.

A successful vision requires more than reaction. A leader must conceptualize, create and communicate a pathway to implementation. The 500-day plan provides this tool. Rather than a doubles tennis team, it creates a much larger team. Teammates carefully plan before taking the field, call plays required by the conditions and opponents, and leverage the strength of the team members to achieve common goals.

Principle #2: Control follows vision

Five-hundred-day planning provides direction, clarity and transparency, which leads to greater delegation and control. Though the leader's power becomes dispersed when delegated, it is increased when the entire team acts together, focusing on priorities to accomplish a commonly held vision. Team members innovate, take ownership and contribute valuable insights. Employees become more accepting of executive decisions because they understand the principle behind them. Greater delegation means more sharing of responsibility and workload, which reduces burn out.

Principle #3: Priorities matter

The 500-day plan requires more strategy and up-front work to identify priorities, but pays dividends later. Priorities become explicit, rather than hidden. Careful planning allows leaders to proactively anticipate future needs and demands rather than simply waiting to react when problems arise. Proactive decisions become outcome, rather than politically-motivated.

Principle #4: Nothing self-executes

Strategic planning requires a firm plan for implementation because nothing self-executes. Project leads and project plans serve as essential components in tying the day-to-day work to broader strategic objectives. Strategies from the 500-day plan can be translated into projects, each with a project lead who oversees a team of professionals.

Principle #5: Strategic Scheduling

Time is the chief of staff and principal's greatest asset; it must be used wisely. The 500-day plan provides a ready-made strategy for effective scheduling. Calendar invitations can be screened by importance based on their connection to the highest identified priorities. Events can be planned around 500-day milestones and fortify a public message.

Process: How it Works

Five-hundred day planning requires an aspirational vision, backed by a careful articulation of the mission, values, strategic objectives, strategies and measurement. It then requires a deliberative process to convene, collect, construct, review, revise and release. Figure 1 presents the plan and process components.

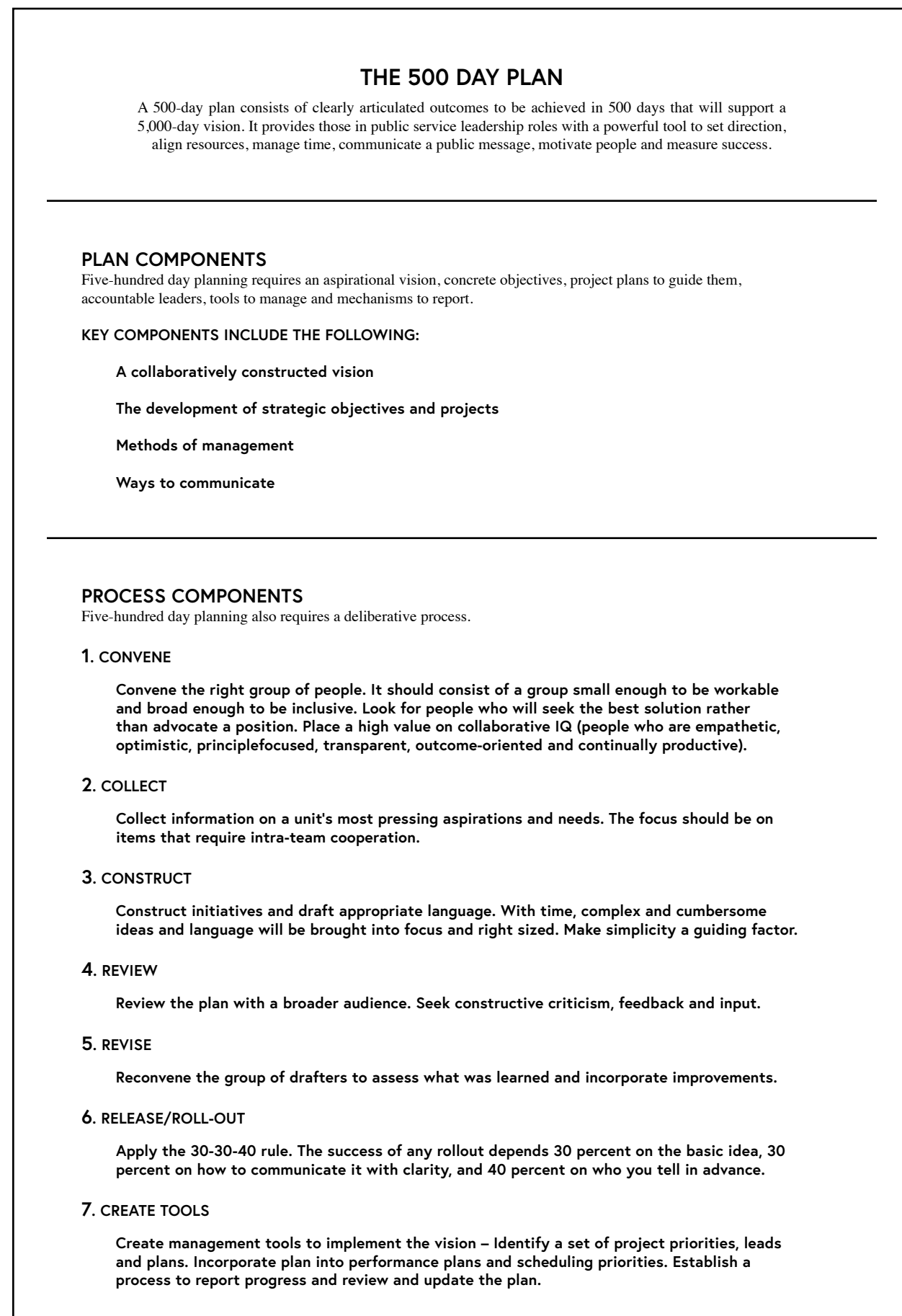
Conclusion

Our experience with 500-day planning taught us the power of collaborative strategic planning and management to drive forward major policy initiatives amid the chaos of daily governing. The 500-day plan provides an effective tool for public leadership that helps set direction, align resources, manage time, communicate public messages, motivate people and measure success.

Editor's Note:

Rich McKeown and Natalie Gochnour served in leadership roles with former Utah governor and presidential cabinet member Michael O. Leavitt. They recognize the distinct honor and privilege it was to serve under his inspired leadership and attribute many of the ideas described in this essay to his public leadership.

Figure 1



Increasing College Completion – ISAs as a Tool

By President Ruth V. Watkins, Ph.D. & Courtney H. McBeth, Ed.D.

University of Utah

Nationally, only about six of every 10 students who attend a four-year college ultimately earn a degree (NCES, 2018). Students who complete a bachelor's degree outperform their peers with less education on nearly every measure of economic well-being and career attainment (Taylor, 2014). College graduates have higher salaries and overall job satisfaction and a lower risk of poverty than their peers who do not complete. A significant percentage of students who start but do not finish college accumulate student loan debt, but do not benefit from increased earnings to pay off the debt. The economic disparity between those with and without a college degree has never been more pronounced than in the modern era. Nearly all new jobs created since the 2008 recession require a post-secondary education (Carnevale, et al, 2013). Considered together, these facts reveal the urgency of increasing college completion rates, both to enhance individual well-being and to advance the collective good.

At the University of Utah, increasing undergraduate student success – defined here as the completion of the bachelor's degree within 150% time (i.e., within six years) – is a top priority. As noted above, earning a college degree transforms students' lives, supporting entry to the workforce and providing a safeguard against poverty and unemployment. A ready supply of college-educated adults is also vital to sustain and advance Utah's vibrant economy, enabling industries to strengthen their presence in our state and new ventures to locate in Utah.

The University of Utah (the U) has achieved noteworthy progress in graduation rates over the past five years, with 70% of first-year students now continuing their studies at the U through completion of the degree. Focused, strategic efforts have increased our graduation rate from 60% to 70% over the past five years, and from 54% to 70% in the past nine years. Thoughtful deployment of data-informed strategies has produced this increase, such as completion scholarships, advising, online courses, internships, transformative experiences that connect students to campus and deepen learning, and predictive data analytics that identify students who can benefit from assistance offered at just the right moment.

We are proud of our noteworthy progress in student success at the University of Utah. Many talented people on the campus have actively contributed to achieving this increase in graduation rate, faculty, staff and our students themselves. As we survey the national landscape of large public research universities, only one or two other institutions in the U.S. have increased their graduation rates as swiftly as we have at the U. This truly matters.

At the same time, there is more we can – and must – do to increase student success. We readily acknowledge that our work is not done when three of every 10 entering undergraduates still do not complete their degree in a reasonable time frame. Our data show that financial barriers continue to strain our undergraduates' ability to persist through to degree completion.

It is time for new strategies to boost college completion rates, innovative financial strategies specifically tailored to the profile of Utah's college students. Accordingly, the University of Utah has created a new income share agreement initiative – Invest in U – as a pilot program to help more students cross the degree finish line in a reasonable time period. An income share agreement (ISA) is a financial obligation in which a student receives funding for education-related expenses in exchange for paying a percentage of their income over a certain period of time. An ISA is not a traditional grant or loan, and there is no principal balance or interest rate. ISAs can fund all educational expenses or be a gap funding strategy. The Invest in U pilot program will introduce an ISA as an additional financial aid tool designed to fill funding gaps and work alongside other scholarships and grants.

The basic elements of Invest in U include:

- A small group of investors and donors have joined the University of Utah to create a \$6 million fund to assist students near completion of their degree.
- A strategic, pilot program to assist up to 1,500 undergraduate students.
- Eligible students – those within one year of degree completion in one of 18 majors – can receive up to \$10,000 to support their full cost of attendance and allow them to enroll full-time and finish the degree.
- Graduates will replenish the fund by paying 2.85% of their salary back to the fund for three to 10.5 years, depending upon their major and ISA award amount.
- Payments go back into the Invest in U fund to fund the success of future students. The fund can then be extended to assist another wave of students.

ISAs are potentially cheaper than other traditional student loans and they provide students with flexibility as their interests, passions, and jobs change. ISA payments may be paused for graduates engaged in voluntary service, pursuing graduate degrees, and working full-time and making less than \$20,000 (see isa.utah.edu for additional information). For University of Utah students, three elements of Invest in U are particularly compelling: (a) the opportunity to gain support from their known and trusted institution; (b) financial assistance to finish the final 32 hours of their undergraduate degrees as full-time students for a single year, rather than as part-time students for two or three years; and (c) making payments into a fund that will support the suc-

cess of future University of Utah students, utilizing a “pay it forward” perpetual fund model.

The fundamental aim of Invest in U is to help University of Utah students earn their baccalaureate degrees, shortening the time to degree completion and reducing the number of students who leave the U without earning their degree. A secondary aim of this innovative pilot program is to thoughtfully evaluate the effectiveness of income share programs in increasing college completion rates. Invest in U has the potential to inform the national dialogue on college completion. In order to do so, we will implement a program evaluation to measure the influence of using support from Invest in U on completing the degree vs. matched controls who do not elect to use the Invest in U fund. Through this evaluation, Invest in U can help Utah students directly, and also contribute to the national knowledge base on effective practices in increasing college completion rates.

In summary, far too many U.S. students leave college without earning the degree they seek. At the University of Utah, we have significantly increased the college completion rate over the past five years. In order to continue this positive trajectory, we have designed a specific program, Invest in U, to provide needed financial support for the final stage of the degree process. As we implement and evaluate this innovative program, we hope to make the dream of a college degree achievable, for Utahns and for college students across our nation.

References

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“Unless we look seriously at the problem of new and greater respect for our government and realize how much it means to us, we cannot be prepared to make the sacrifices that will be necessary to keep it.”

-Robert H. Hinckley

