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Mission Statement

The mission of the *Journal of Multidisciplinary Research* is to promote excellence in leadership practice by providing a venue for academics, students, and practitioners to publish current and significant empirical and conceptual research in the arts; humanities; applied, natural, and social sciences; and other areas that tests, extends, or builds leadership theory.

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Editorial

A warm welcome to the summer edition of the *Journal of Multidisciplinary Research* (JMR). As Bill Gates once said, “life is not divided into semesters. You don’t get summers off,” and the same goes for us here at the journal. We took some time off to refresh and renew, but at the same time, we still set aside time to publish our summer edition.

In our continuous effort to deliver thought-provoking research from around the world, our current edition features interesting articles from the Wingate Institute, Lincoln Memorial University, Florida Gulf Coast University, and Montclair State University. This issue of the *Journal of Multidisciplinary Research* (Volume 4, Number 2) also contains a student article in the “Student Corner,” three book reviews, and a “Life Forward” section featuring an interesting interview with Daniel D. Dolan, a prominent national lawyer. In this issue, we also are introducing “Spotlight Artist” with photographs by Kim Cardwell.

As summer comes to a close, we are ready to start the new academic year with much vigor and great plans ahead, as well as continue to innovate and evolve as a research journal.

Onward,

Hagai Gringarten

Editor-in-Chief

The Transition of Retired Military Officers to a Second Career in Sport Management: The Israeli Case

Yair Galily and Pini Shimon

Abstract

Since Israel became an independent state in 1948, there has been a steady stream of Israel Defense Forces (IDF) military officers retiring from active service. Lately, as a result of drastic cuts in the military budget and the opportunity for early retirement at age 40-43, a growing number of officers are in transition from active military service to a second career in the civilian sector, including the field of Sport Management. Little or no research exists on the transition of retired military officers to a second career in Sport Management. Research findings will be in higher demand due to the intensification of global economic trends wherein monetary struggles replace struggles on the battlefield. In this future scenario, increasing numbers of military personnel will be forced to seek a second career in the civilian sector. The purpose of this study is to examine the trend among retired senior military officers' transitioning to a second career in Sport Management in Israel.

Keywords

second career, sport management, Israel, IDF, transition, officers

Introduction

Although primarily considered the implementer of policy, the Israel Defense Forces (IDF) influences many sectors of Israel's society. It has had a major voice in strategic planning in social matters such as education and the integration of immigrants, as well as in the government's role in occupied territories. Moreover, the enormous impact of the defense establishment on the economy has made its claim on the nation's resources and has been of major political significance (Metz, 2008). Since Israel became an independent state in 1948, there has been a steady stream of IDF military officers retiring from active service. Lately, as a result of drastic cuts in the

military budget and the opportunity for early retirement at age 40-43, a growing number¹ of officers are transitioning from active military service to a second career in the civilian sector, including the field of Sport Management.

Retired military officers face different social and organizational problems than other people at the retirement stage. They are a relatively young population (in their early 40s) and are choosing to retire, or are being made to retire, after 15 to 20 years of active service as career military officers. Although most of them are in the prime of their professional capabilities, and have the potential for 15 to 30 more years of creative activity, social-organizational adjustments in searching for a second career can be especially challenging (Vigoda-Gadot, Baruch, & Grimland, 2010; Cauly, 1987). The military in Israel has transformed from a unique and exclusive range of professions to a large organization with strong connections to civilian society. The military system has also become an increasingly bureaucratic organization, similar to any civilian system. Therefore, the transition from the military to civilian work life might seem to be seamless (Lang, 1972). However, Little (1969) points out that the two systems are distinct in their operational modes and in their adoption of new normative principles. Hence, in countries such as Israel, where the service period is relatively long, the adaptation process from military to civilian culture may be lengthy and difficult (Vigoda-Gadot, Baruch, & Grimland, 2010; Cauly, 1987).

As of now, no research can be found regarding the transition of retired military officers to a second career in Sport Management. Research findings will be in greater demand with the intensification of the global economic trend, wherein monetary struggles will replace struggles on the battlefield. In this future scenario, increasing numbers of military personnel will be forced to seek a second career in the civilian sector. Notwithstanding, in order to have a better perception of the importance of this study in the field of Sport Management in Israel, one must have a basic understanding of the organizational structure of sport in Israel and the developments in the field of Sport Management in the country.

The first important element that needs to be emphasized is the fact that Israel is a young developing country, just 64 years old, busy with defense issues and yet to institute sport traditions. Sport in Israel was established by the government and is still being funded by the government at the present time. In recent years, there have been encouraging adjustments, such as private entrepreneurs and corporations entering the field of sport in Israel (Ben-Porat, 2002; 1998). The new trend is to take over the management and ownership of football and basketball clubs from local authorities. As a result of this trend, we can observe signs of sport becoming a business. Another major significant milestone is the fact that Israel joined the "Olympic Medal Family" in 1992 and, until the 2008 Games in Beijing, Israel has won a total of seven medals in Olympic competitions (1 gold, 1 silver, 5 bronze). The tremendous recognition and appreciation these athletes received from the public and the media has stimulated corporations to show interest and involvement in the sport industry, and to invest money or supply value in kind products through sponsorships or partnerships.

¹ Retiring officers usually sought a second career; the IDF helped the transition into civilian life by offering occupational training (a course in business management, for example) and by paying the retired officer's full salary for up to one year depending on rank and seniority, while the officer searched for satisfactory civilian employment (Metz, 2008).

Since for many years governmental bodies have supervised sport, no business concerns were taken into consideration; along with the rest of the Israeli sport industry, there was no constructive development in the field of Sport Management in Israel. Despite other developments in the field of sport in Israel in recent years, there is not a single academic program in the field of Sport Management in the country. This daunting fact influences the level of management in many sport federations, clubs, and professional teams. For many years, this issue had a great impact on sport in Israel; however, due to the political structure of sport (for example, see Simri, Tenenbaum, & Bar-Eli, 1996), change was almost impossible. As corporations and private businesses entered the sport industry, there has been a great demand for professional and experienced managers in the field of sport. In January 2001, the Israeli Minister of Sport, Culture and Science (a new office, headed by Matan Vilnai, a retired IDF General himself) presented his new plans for the sport industry in Israel. The main assumption of the report confirms that one of the major deficiencies in the sport industry is managerial structure. The Minister claims that the main problem in the sport industry is not a shortage of funds, but the lack of qualified and professional sport managers. As a result, he held back governmental budgets for the sport organizations unless a qualified person with a Bachelor's degree manages the organizations.

As a result, experienced directors from various fields have made the transition into managerial positions in the sport industry. This study will present the phenomena of the transition of high-ranking military officers into second careers in the field of Sport Management. As previously mentioned, this change has occurred only recently, and will undoubtedly impact the future of the field of Sport Management in Israel.

The Transition of Military Personnel: Early Research in the United States

Baruch and Quick (2007) examined the career transition of senior executives from a strong bureaucratic organization into a dynamic business environment. In surveying retired, flag-rank admirals characterized by the need to start a second career, they found significant support for a career transition model. The retired admirals in the study largely enjoyed a smooth transition into civilian careers. However, in order to better understand this relatively recent success, one should go back to the earlier American experience of officers transferring from Army service to the civilian sector as early as the 1960s.

This research in the United States is based primarily on data gathered during the 1960s. This data focuses on American military retirees after World War II. The findings indicate that one of the major influences on military retirees when choosing a second career is the socialization process that they experienced during their extended military service. Sharp and Biderman (1967) assert that socialization in the military profession develops unique ways of thinking and a different set of values, ones that facilitate the search for a second career profession. According to Biderman (1969) and Little (1971), there is a preference among military retirees to be employed in large bureaucratic organizations that resemble the military system. Thus, the military population is inclined to find second career occupations related to their former military functions. Janovitz (1971) notes that most retired officers are employed in industry and government agencies, while others turn to the field of education or pseudo-military occupations, such as security officer.

Among enlisted men and officers, the Federal Government was the institution most frequently checked as preferred.... These preferences for affiliation with large bureaucratic organizations are clearly related to the civilian job roles for which most of these men see themselves qualified. The great majority of men apparently do not visualize a second career that would involve a radical departure from their military work pattern. Most of them rather plan to replicate their service working life in a civilian setting.... [We can conclude that for most of the officers and enlisted men, [their] aspirations [are] for orderly careers within a large organization. (Biderman, 1969, p. 430)

In light of the skills needed in the civilian job market, retired military personnel consider themselves to be best qualified for managerial positions; "Among both officers and enlisted personnel, men with administrative and quasi-administrative experience[s] and aspirations dominate" (Biderman, 1969, p. 430). Another aspect of this is revealed in the research that explores civilians' preference in recruiting military retirees. This preference suggests that administrative skills and discipline are the traits most valued by civilian employers (Reisman, 1956).

One of the major findings concerning retired officers is their attraction to autonomy, self-fulfillment, and social contribution, instead of extrinsic (monetary) benefits when searching for a second career option. Reisman (1956) argues that the pension provided to high-ranking military retirees allows them the freedom to choose a second career for self-satisfaction rather than monetary benefits. This corresponds to Porter's (1963) theory in which high-level executives are driven by self-fulfillment and autonomy, while lower level executives stress the importance of economic security as their dominant driving force.

One of the pioneers in researching the transition from the military as a first career to a civilian profession as a second career is Amitai Etzioni (1961). He perceives the degree of congruency among organizational power structures as an important influence on the adaptability process when shifting from one organizational structure to another. Etzioni describes three types of power.

- Coercive Power - Compulsion, based on physical sanctions (prison, concentration camp).
- Remunerative Power - Profitable, beneficial (industry).
- Normative Power - Symbolic benefits and prestige (religious and political organizations, universities).

Etzioni hypothesizes that mobility among various organizations with similar power structures does not create a considerable loss of efficiency, nor does it create adaptability problems. In contrast, mobility among organizations with different power structures creates difficulties in adaptation. Geller (1971) supports Etzioni's hypothesis and notes that retired officers who report minor changes in the workplace have higher satisfaction than officers who report drastic changes between military service and civilian occupations.

Based on the three types of power described above, Etzioni (1961) conducted a study of 32 retired officers and classified their military positions into two main categories: combat positions and special expertise positions (e.g., computer analyst, military psychologist). He also

classified their civilian positions into two main categories: external positions that focus on general administration positions, and instrumental positions that focus on specific expertise positions.

Etzioni hypothesizes that officers with a combat background in the military tend to be external leaders, while officers with a special expertise background in the military tend to serve as instrumental leaders in their second career. The results of Etzioni's study (1961) verify his hypothesis. Furthermore, his research leads to the conclusion that the ability to move efficiently from one organization to another depends on the type of power structure experienced in each. Put differently, it depends on the power structure to which a given officer has become accustomed.

Research in Israel

Similar to the American example, recent research by Vigoda-Gadot, Baruch, and Grimland (2010) examines the prospects of successful career transition from the IDF into a dynamic and turbulent civilian career, focusing on possible antecedents for success in the second career. Based on a sample of 202 high-level retirees from military and civilian defense organizations in Israel, their results indicate that preparations for retirement, social capital, perception of organizational politics in the new working place, and work-family conflict are related to the dependent variables and affect the retirees' success in their second career. However, similar to the States, since only a limited amount of research is available on the subject, it might be useful to go back early at the 1980s to gain a better understating of the issue.

Yariv (1980), one of the early researchers in this area, compared the military careers of ZAHAL (Hebrew acronym for the IDF) pensioners with their civilian careers. His interest was in exploring the continuity of the two careers from an organizational-institutional perspective; thus, he examined similarities in the two positions. One hundred and forty- six ex-officers who held the rank of Lieutenant Colonel and Colonel provided data through a questionnaire. Yariv highlights two major findings. First, there is an organizational continuity from military career to civilian career. Public sector organizations are chosen primarily by military pensioners at the beginning of their civilian careers (mainly the governmental sector). Second, there is continuity in the type of positions held in both careers. In relation to Etzioni's (1961) theory, this research found that retired officers who served mostly in combat positions turn to external jobs (general administrative positions) in their civilian careers. In contrast, those who held special expertise positions through most of their military service turn to instrumental jobs (specific expertise positions) in their civilian careers.

Two later studies (Cauly, 1987; Dror, 1990) rely on Nicholson's (1984) theory, which posits that four distinct adjustment strategies occur during changes in jobs or careers:

Replication – represents transitions that generate minimal adjustment to personal or role systems. The new employee makes few adjustments in his or her behavior to fit into the new role, and does not make changes in role requirements. Generally, a Replication strategy takes place when only small personal changes are needed and the role's requirements are not high.

Absorption – represents transitions in which the burden of adjustment relies almost exclusively on the individual personality, without significant modification in the parameters of the new role. The Absorption strategy takes place when the new role requires personal adaptation, though the role itself does not have high demands.

Determination – represents cases in which the employee's personal adjustment to the demands of the new role leaves him or her relatively unaffected. Instead, the employee alters the new role considerably and actively determines elements in the content or structure of the role. The Determination strategy takes place when minimal personal adaptation is needed, while role demands are high.

Exploration – represents cases in which there are simultaneous changes in both personal qualities and role parameters. The person actively shapes elements in the content or structure of his or her role, while personal adaptation is required by learning new skills. The Exploration strategy takes place when there are high requirements in both personal adaptation and role demands.

The four adjustment strategies described above can be placed on a continuum between personal development and role development. On the one hand, adaptation to a new role can be defined through a personal development process (changing personal characteristics, value system) in response to the new role's natural demands. On the other hand, adaptation can be expressed in continuous attempts to alter the structure and the natural demands of the role. This role development process emphasizes the employee's attempts to accommodate the nature of the role to his or her personal characteristics and needs.

Cauly (1987) uses the general frame of Nicholson's theory to examine how officers adjust to transitions in civilian work roles. A questionnaire was sent to 225 retired officers who made the transition to civilian careers during the years 1980-1986. The research findings point out the following:

Retired officers who adjust to a civilian career role by attempting to change the nature of the new role will better fit into civilian jobs where extensive discretion is required. In contrast, retired officers who make no effort to introduce changes or innovations in the condition of the new role as their mode of adjustment will better fit in civilian jobs where less discretion is required.

Retired officers with a significant desire for control and dominance will adjust better to civilian jobs where extensive discretion is required, while retired officers with little desire for control and dominance will find a better fit in civilian jobs where the discretion required is more limited.

Around 50 percent of retired officers are the initial creators of their new civilian jobs. Among those who enter an existing job, about half introduce significant changes in the nature of these jobs as they determine the job's objectives, priorities, and work procedures. This can indicate a tendency for domination among retired military personnel as they explore a second career in the civilian sector.

The opportunities for personal satisfaction are a dominant factor in choosing a second, civilian career. In this regard, among retired officers who change their civilian jobs, the main cause is lack of opportunity for self-expression in their previous job.

The second study relying on Nicholson's adjustment strategies model indicates that there is a relationship between the attributes of the civilian job and the choice of adjustment strategy (Dror, 1990). Independence and initiation characterize the civilian roles of those who have chosen the Determination or the Exploration strategy. A significant finding indicates that more military retirees (61.5%) chose either the Determination or Exploration strategies in coping and

adapting to a second career, while the rest of the retirees (38.5%) chose either the Replication or Absorption strategies.

Two important studies focus on the inter-sectorial transference of administrative skills. Geller (1971) explores how well various military factors explain variation in the adjustment of retired military officers to administrative positions in the Israeli civilian sector. Only four factors were found to be important to the administrative adjustment process. These factors and their correlational percentages are: (1) length of military service (-0.41), (2) independence at work (0.40), (3) correspondence between present position and positions of military command (0.39), and (4) present status as compared with status enjoyed during military service (0.35). Although the statistical significances of the four are not very strong, the negative influence of prolonged military service on the adjustment process, and the positive influence of independence, correspondence of positions, and compared statuses to the adjustment process suggest consideration by policy makers.

In a later study, Mushkat (1985) investigated retired Israeli military officers who turned to civilian administrative positions as their second careers. The retired officers responded to three main skill categories: administrative, human relations, and technical. They were asked to choose the category that is the most transferable to the Israeli civilian sector. Almost without exception, the retired military officers perceived administrative skills as the most transferable, while technical skills were perceived as the least transferable. Mushkat (1985) argues that these findings do not imply that retired officers do not possess either technical or human-relations skills, but that these skills cannot be easily transferred to the administrative civilian sector. This study suggests, with considerable confidence, that "the more salient the administrative component of the present position, the lesser the misemployment of skills...[is] experienced" (p. 225). Mushkat's argument corresponds to the earlier study on U.S. military retirees, who perceived their managerial capabilities as their greatest asset when entering the civilian job market (Biderman, 1969). In order to have a better understanding of the transition process, we should first look at two models: transition of military personal to the political realm and to the educational system.

Transition to Political Life

The supremacy of civilian authorities over the military has rarely been challenged in Israel's history. Factors weighing against military interference have included the prohibition on active officers to engage in politics and the population's broad support for the nonpartisan behavior of the armed forces. Given the ever-present external threat to Israeli security, however, the military looms large in everyday life. This has led some foreign observers to call Israel a "garrison democracy." The military has also served as a channel into politics, with political activity providing a second career for retired or reservist officers after they complete their military careers, usually between the ages of 40 and 50. This phenomenon has left its mark on Israeli politics, as high-ranking, retired or reservist IDF figures have often "parachuted" into the leadership ranks of political parties and public institutions.

According to Metz (2008), the vast majority of the citizenry does not regard the practice of retired officers "parachuting into politics" as threatening to civilian control of the military. No ex-IDF officer had assumed a cabinet position until 1955, and not until after the war in June

1967 did it become a common practice. Israeli law prohibits retired officers from running for the Knesset until 100 days after their retirement, but no such law exists regarding cabinet positions.

Despite the prominence and visibility of former military officers at the highest level of government, former officers have not formed a cohesive and ideologically united group. Although two of the most prominent military figures, Ariel Sharon and Refael Eitan (Chief of Staff from 1978 to 1983) were regarded as right-wing on Arab-Israeli issues, many more senior officers were moderates, less persuaded than the Likud government or the public that military force was the answer (Metz, 2008).

Recruiting Military Officers into the Educational System

Only limited sources of data exist in the Israeli literature on the transition of retired military officers to the educational realm. These sources of data are based on information from retired officers who went through the academic preparatory program that retrain retired officers for educational positions. Recently, Vigoda-Gadot, Baruch, and Grimland (2010) examined the prospects of successful career transitions from defense forces into the dynamic, and sometimes turbulent, civilian career of education, focusing on possible antecedents for success in the second career. However, many retired officers take educational positions, including principals' roles, without any prior preparatory program. So far, research has not been conducted on the stream of retired officers who enter the educational realm. Barkol (1996), who coordinated the preparatory program for retired military officers, presents the following theoretical perspectives for recruiting and retraining retired military officers for principals' positions.

Educational career as a national mission: There is a similarity between the military and educational sectors, as both of them can be regarded as public ones. Military officers are accustomed to working for the sake of the national mission of peace and security. Similarly, educators are expected to view their work more as a national endeavor, rather than merely an occupation. Barkol (1996) characterizes the idealistic view of education taken by retired military recruits, saying "they often grieve that the high school is just a factory for achieving grades. They tend to express their will to turn schools into places where youth can be developed culturally and morally" (p. 306).

The not so strict hierarchy of the military: The perceived strict hierarchy of the military has evoked considerable doubts among educators concerning the retraining of retired military officers as school principals. Many officers reject the criticism that the military sector contradicts the loose nature of the school system. They claim that the military is not only far from operating through a strict hierarchy, but it also enables freedom and encourages cooperation and collaboration. Poper (1993) strengthens this idea, as he rejects the strict hierarchy and coercive stereotypes of the Israeli combat units, and classifies them under the normative type of organizations. Interestingly, the retired military officers "find school bureaucracy to be, sometimes, much more strict than many military settings" (Barkol, 1996, p. 307).

Retired military officers as management experts: As opposed to most teachers, who lack managerial experience when becoming candidates for the principals' positions, the retired military officers not only possess managerial skills through extensive practical experiences, but they have also been exposed to theoretical knowledge in this discipline. This relates to Mushkat's (1985) study, which found that retired Israeli military officers perceive their administrative skills as the most transferable to positions in the civilian sector. Consequently, the more salient the

administrative skills needed in a particular position, the less likely that misemployment will occur. Barkol (1996) concludes by stressing the need of the Israeli educational system for people with extensive managerial backgrounds, which "is one of the officer's most outstanding advantages as newcomers to this field" (p. 307).

Status and prestige of those in education: Although the military in Israel does not have the same glamour as it had in the past, it is still highly appreciated. Hence, the transition of retired military officers to educational positions in general, and principals' roles in particular, can improve the status and prestige of the education profession. As the education profession gradually loses its status in the public eye, this transition can have a promising impact on the status of the profession in Israeli society (Barkol, 1996).

Bar-Zohar (1997) conducted the second, and most recent, study concerned with the transition of retired military officers to second careers in the education system. He surveyed 110 retired officers in the transition process. These retired officers went through the one preparatory program that exists in Israel. The data gathered indicate five leading reasons for their transition to the education field. In order of importance, these are the following.

1. The desire to contribute to societal welfare.
2. The belief that a good commander is also a good educator.
3. Seeking a second profession that is intellectually challenging.
4. The belief that success in the military will lead to success in the educational profession.
5. Attraction to instructing in educational settings.

Bar-Zohar argues that the same tendency of young people to serve the nation through military service facilitates their desire to continue to contribute to society by pursuing a second career in the educational realm. Furthermore, instructional and administrative positions in the education field are constructive channels for retired officers (who are in their 40s and early 50s) to fulfill their potential in the second phase of their professional careers.

On the other hand, Bar-Zohar found that the main reason among retired military personnel for leaving a second career in education is their disappointment in the educational system. "The aspect in which my personal status was tremendously curbed was the absolute inability to influence the system" (1997, p. 33). It may be that this idealistic and enthusiastic group of people, who aspire to contribute to the education field, faces a system that is not open to innovative transformations.

Methods

This study attempts to present a picture of one small social group in Israel. More specifically, an attempt is made to provide an objective adequate account of the transition of retired military officers to a second career in Sport Management.

The subjects of the present study are eight high-ranking male officers in the IDF. The ranks range from Lieutenant Colonel to General. The group is assumed to have a common background, as they all retired after a long-term career in the IDF. Some of the subjects served as commanders in combat units, while others were posted in administrative and sport-related positions.

The procedure of the study includes personal interviews with all subjects. During the first part of the interview, data was collected regarding interviewees activities in the different positions in which they served during their military service: rank, position, number of soldiers under their command, budget, organizational structure and procedures, committees to which they belonged, areas of responsibilities, and leadership skills. The second part of the interview dealt with issues regarding their new position in the field of Sport Management: position and title, number of employees, budget, organizational structure and procedures, areas of responsibility, and leadership skills. During the process, we were in agreement with Lincoln and Guba (1985) that a major advantage of interviewing is that “it allows the respondent to move back and forth in time – to reconstruct the past, interpret the present, and predict the future, all without leaving [the] comfortable armchair” (Lincoln & Guba, 1985, p. 272).

Most of the interviews were characterized by minimum control over the interviewees' responses. The idea was to encourage people to “open up” and express themselves in their own way and at their own pace. Since most, if not all, of the interviewees came from different backgrounds (yet all were connected to sport, or the army, or both), it made no sense to utilize highly structured interviews that would fit all the interviewees. Therefore, a semi-structured interview system was used. The subjects were divided into two groups: those with a military background having a correlation with military fitness and sport activities, and those with no connection to sport during their military service.

Results

The results of this study indicate strong links between success in military positions and a successful career in the field of Sport Management. The first major finding is the consensus regarding the present situation in the sport system in Israel: We are lacking managers with a formal education in Sport Management. Most managers in the sport industry gained their knowledge through experience and lack academic knowledge. In the last 10 years, we have seen a slight improvement in the involvement of businessmen with academic business degrees. In the Israeli sport industry, the directors receive political appointments and stay in that position for many years, while in the army there are new appointments every few years (2 to 5 years). In general, things are looking better today, and there have been some improvements in the Israeli sport industry and in the field of Sport Management.

Similarly, there are no national programs for elite sport, no clear goals or objectives. The status of the coach in Israel is very low, there is no hierarchy in professional and elite sport, and no criticism; every sport federation is working on its own objectives. There is a need for a national plan that is to be derived by each sport federation. There are many economic resources that are spread over too many systems, and the money that should support and subsidize athletes and coaches does not always reach its final destination. There are a few sports departments whose goals and objectives are unclear; there is a need to question their existence. There is no formal structure on how to develop a sport manager in Israel. In addition, the country places sport as one of its last priorities.

Furthermore, the results show that subjects who had some background in sport and fitness during their military positions tend to attain a better position in the field of Sport Management during the course of their second career. In many respects, the tasks are similar: they are managing human resources, selecting employees, working according to budgets,

qualifying manpower, managing an office, managing extensive systems, supervising feedback and promotion of employees and doing short-term and long-term planning for various programs.

Another finding indicates that a higher military rank in the IDF influences the level of the position in the second career in the field of Sport Management. All eight subjects were considered highly successful in their transition to a second career in the field of Sport Management. In addition, results indicate that those subjects with a military background that included sport and fitness tend to have a shorter and easier transition into a second career in Sport Management.

Discussion and Conclusions

Despite the recent trend in Israel regarding the topic under discussion, only limited references and research are available. Nevertheless, the limited research on transition from the military to the civilian sector in management positions indicates that the main motivation for former officers is the opportunity to apply their unique managerial experience and abilities in managing and organizing large projects. Apparently, the main problem that retired military officers face are the different management styles. While in the military, they were accustomed to issuing commands and orders to their soldiers, now they need to adjust to a management system in which they have to justify their motives and reasons with their employees.

The officers indicate that an academic project that prepares retired military officers for a second career in civilian life needs to put greater emphasis on the issue of management styles. Despite the apparent differences in the essence of the military and sport “businesses,” we could actually identify a common pattern between the two professions in the study. The officers use the basic skills of management and leadership that they acquired during their extensive military careers in order to advance in their second careers in Sport Management. Chen and Goldring (1989), as well as Vigoda-Gadot, Baruch, and Grimland (2010), note that common principles apply to management in any administrative structure. This is the main support for the findings in our study, which show participants relatively easy transition between two different organizational structures.

It seems that military personnel are accustomed to rapid changes in their environment, and are, therefore, much more adaptive when it comes to donning different mental hats. Therefore, they can serve as facilitators and role models in the tedious process of accommodating new and diverse active mental models necessary for tackling future managerial problems.

There is a similarity between the military system and most Sport Management systems in Israel, in that both are supported by governmental funding. Furthermore, military officers are used to operating in the best interest of the public and the government. It is valuable to further explore how the trend in retired military officers working in a second career will influence and shape the field of Sport Management in Israel.

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Discussion Questions

1. What are the advantages and disadvantages in hiring a retired military officer for a management position in the field of sport management?
2. What are the key factors that enable a retired military officer to be successful as a director in a sport organization or in any other organization?
3. Identify three examples of high ranked military officers (in your country) who retired from military service and made a transition to a second career in management position. Describe and evaluate their success.

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“Giraffes”

Photo by Kim Cardwell.

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The Benefits of Forcing Offensive Basketball Players to their Weak Side

James T. Bartholomew and David. A. Collier

Abstract

The recent movie *Moneyball* starring Brad Pitt highlighted the importance of sports analytics in recruiting, evaluating, and retaining players based on their performance and price. Digital video capabilities have evolved to the point they can collect terabytes of data on player, team, coach, and owner performance. This research defines new defensive basketball criteria to supplement the century old box score performance data. The two new defensive metrics are the number of times an offensive player goes to his or her right or left given his or her dominate hand (i.e., weak versus strong side). The basic research question is “What benefits, if any, do defensive basketball players and coaches derive from forcing their opponent (offensive) players to their weak side?” Future research will develop more comprehensive multiple criteria models of basketball team defensive efficiency.

Keywords

sports analytics, statistics, new basketball defensive performance metrics, benchmarking, decision support systems

Introduction

The book by Michael Lewis (2003) and the subsequent movie *Moneyball* helped the public recognize the value of advanced mathematical models of performance for sports players, teams, and owners. On-base percentage in baseball, for example, is a better measure of a hitter’s performance than the old metric of batting average. Performance metrics like this can lead to better player selection, evaluation, and retention decisions by coaches and team owners. Such insights provide a short-term competitive advantage since competitors can quickly copy successful strategies. The main story line of *Moneyball* is that through mathematical analyses, general managers and coaches could find high performance professional players at low prices (i.e., the undervalued asset) before competitors could identify and sign them. The long-term benefits of such *Moneyball* decision-making and strategy are questioned based on an analysis of the

Oakland Athletics by J. Fox (2011) in *Bloomberg Businessweek*.

Coaches and players have the ability to influence the “processes” inherent in a basketball game. Basketball processes are the controllable behaviors that players and teams practice and choose to execute in a game. They form the identity of a team through offensive plays, defensive schemes, player-to-player matchups, and individual skills that result in winning or losing a game. Business organizations have similar motivations and design controllable goods-producing or service-providing processes to maximize revenue and customer service while minimizing costs (Collier & Evans, 2011). If the processes are inefficient, assets are wasted, decisions are poor, and internal and external improvement opportunities are missed. A basketball game is similar to a business process in terms of allocating resources effectively and achieving desired outcomes.

Literature Review

The USA is a “sports nation,” and many global events like the Olympics and the World Cup Soccer league demand that we analyze the performance of these sports organizations as rigorously as world-class corporations analyze their goods, services, processes, people, and supply chains. Methods to price and manage assets are well known in corporations such as revenue management algorithms (Baker & Collier, 2003, 2005), stock pricing and company valuation models (Treynor, 1965; Treynor & Mazuy, 1966), and enterprise resource planning (Shin, Collier, & Wilson, 2000; Wilson & Collier, 2000) systems.

The economic impact of Division I National Collegiate Athletic Association (NCAA, www.ncaa.org) basketball exceeds \$14 billion in the United States. During the 2009-2010 season, the NCAA signed a 14-year \$10.8 billion dollar contract with CBS television to cover the NCAA tournament through 2024. We focus on the performance of a U.S. Division I college basketball team where player salaries are forbidden. These amateur athletes are evaluated on traditional box score basketball metrics such as points, offensive and defensive rebounds, steals, minutes played, assists, field goal shooting percentage, and blocks, and two new defensive metrics of forcing offensive players to their weak versus strong sides. Other traditional ways to evaluate player and teams include shot and rebound charts, play-by-play time series data, and video analysis—used to summarize the game performance metrics.

Professional teams and associations have not only massive amounts of on-the-court performance data but also salary information. Therefore, they can evaluate the “value” of a player, coach, or team. Value can be defined using several functional forms such as performance benefits divided by asset price (cost). Professional U.S. leagues, for example, include the National Football League (NFL, www.nfl.com), the National Basketball Association (NBA, www.nba.com), Major League Baseball (MLB, www.mlb.com), the National Association for Stock Car Automobile Racing (www.nascar.com) (NASCAR), and the National Hockey League (NHL, www.nhl.com).

Defensive player prowess is an undervalued basketball capability that tends to be highlighted mainly during tournament play. The adage “defense wins championships” is cited often to highlight the importance of defense in any sport at any level. The basic research question examined here is “What benefits, if any, do defensive basketball players and coaches derive from forcing their opponent (offensive) players to their weak side?”

Statistical methods can be used to evaluate and predict performance levels, defensive and offensive schemes and plays, and the likelihood of certain outcomes if you pursue certain

strategies as a team and among key player matchups. Example sports analytic articles include Reich, Hodges, Carlin, and Reich (2006); Kvam and Socol (2006), Connolly and Rendleman (2008), and Bartholomew and Collier (2011). Popular statistical software programs include Minitab (2011) and LISREL (2011).

Defensive Basketball Criteria

The goal of defense in basketball is to frustrate and antagonize the offense in a way that encourages a change of possession and lowers field goal percentage and total points scored. In general, defensive efficiency equals one minus offensive efficiency; that is, they are complements of one another. Of course, this inverse performance relationship defines the premise that a great defense (offense) can overcome a good offense (defense). Traditional basketball box scores use a limited set of defensive measures like the number of defensive rebounds, steals, blocks, turnovers, and fouls.

The focus of this research is on the benefits, if any, of the defense forcing offensive players to their weak versus strong side. Two new defensive basketball performance criteria introduced here are the number of times the offensive player goes to his or her (i) weak side (WS) and (ii) strong side (SS). Our data set is based upon NCAA Division I and II college basketball games in which players rely more on their strong side (left or right handed) capabilities. The results here may not apply to NBA level players who have mastered using both hands equally (i.e., highly ambidextrous) to play the professional game of basketball.

Data Collection Methods and Software

The digital video recording software *Gamebreaker* (2011) is used to collect 2010-2011 performance data by player and team for 20 halves of college basketball. The software helps expert data recorder(s) to define each performance metric and create a button for each metric. The expert(s) watch the game in real time and can slow it down, study it frame by frame, and replay basketball game sequences as they press these buttons to record the performance details that happen during a game. The result is volumes of performance data by player by team.

Data Analysis Results

The correlation matrix for the data investigated in this article is shown in Table 1. The vast majority of the correlations are logical and explainable (i.e., correct + or - sign) while some indicate no correlation. A few of the more interesting correlations are explained as follows.

- The correlations between WS counts and total opponent points (TOP), field goal percentage (FG%), and 3 point field goal percentage (3FG%) are .168, .058, and .230, respectively. The correlations between SS counts and TOP, FG%, and 3FG% are .273, .098, and .328, respectively. Notice all SS correlations are higher than WS correlations, so one explanation (i.e., null hypothesis) is that when college basketball players go to their strong side, their total points and field goal percentages increase more than when they go to their weak side. Please remember that measures of association such as correlation do not necessarily mean causation, X causes Y.

Separate studies are required to test causally using methods such as LISREL (2011).

- The correlations between TOP, FG%, and 3FG% and defensive rebounds (DR) are negative and $-.313$, $-.539$, and $-.180$, respectively. That is, as the opponent's total points and field goal percentages increase, defensive rebounds decrease. Similar explanations for defensive rebounds apply to forced turnovers, defensive steals, and offensive assists; that is, the correlations are logically of the correct sign (+ or -).
- The correlations between WS counts and defensive steals (DS), offensive assists (OA), and defensive rebounds (DR) are $.397$, $.008$, and $.139$, respectively. Traditional basketball metrics such as defensive steals and offensive assists are defined on the NCAA's website by downloading the 2010 & 2011 NCAA Men's and Women's Basketball Rules. (<http://www.ncaapublications.com/p-3941-2009-2011-mens-womens-basketball-rules-2-year-publicaton.aspx>). The correlations between SS counts and DS, OA, and DR are $.511$, $.247$, and $.163$, respectively. Notice all SS correlations are higher than WS correlations, so one possible explanation (i.e., null hypothesis) is when college basketball players go to their strong side—DSs, OAs, and DRs increase more than when they go to their weak side. This could be due to college players being more skilled when they go to their strong side, or simply a function of increased frequency of going to their strong side, or both. For our data set, the average number of times offensive players went to their weak versus strong sides per half was 61.6 and 86.8, respectively. That is, offensive players went to their strong side 58.5% ($86.8/148.4$) of the time.
- The correlation of forced turnovers (FTO) with WS is $.179$ and with SS is $.141$. These data support the premise that more turnovers happen when college players go to their weak side. The average number of FTO was 4.8 per half in our data set.

Table 1
Correlations of Basketball Variables for One University Team

N = 20	TOP	FG%	3FG %	TF	WS	SS	CP	FTO	DS	OA	DR
Total Opponent Points(TOP)	X										
Field Goal Percentage (FG%)	.719	X									
3 Point F. G. Percentage (3FG%)	.615	.386	X								
Total Fouls (TF)	.019	.150	-.141	X							
Weak Side Counts (WS)	.168	.058	.230	-.151	X						
Strong Side Counts (SS)	.273	.098	.328	-.239	.910	X					
Contested Passes (CP)	.214	.132	.119	-.325	.234	.263	X				
Forced Turnovers (FTO)	-.212	.051	-.203	.074	.179	.141	.077	X			
Defensive Steals (DS)	-.014	.187	-.001	.063	.397	.511	.255	.582	X		
Offensive Assists (OA)	.645	.522	.788	-.077	.008	.247	.235	-.108	.100	X	
Defensive Rebounds (DR)	-.313	-.539	-.180	-.377	.139	.163	.033	-.327	-.288	-.177	X

In general, the correlations in Table 1 are logical and of the correct sign which supports the validity of the data set for further analysis. Of course, many correlations are not as high as we would like but this is a function of the sample size, coding judgments, and complex real world performance relationships inherent in the game of basketball.

The performance relationship between FG% and the number of WS counts is shown graphically in Figure 1. Figure 1 is created based on Equation [1]. Over the relevant range of 30 to 120 counts, the relationship shown in Figure 1 is a convex decreasing non-linear curve. That is, as weak side counts increase field goal percentage decreases in a non-linear way. The functional form used to describe this curve is available in Minitab 16 (called Convex 1). This model is as good as other nonlinear (competing) models tested. Minitab's Gauss-Newton algorithm quickly converged to compute a Theta value = 0.00160454 where X equals the number of WS counts.

$$FG\% = 1/[1 + \text{Theta} * WS] \quad [1]$$

Nonlinear model convergence does not guarantee the sum of squared errors is minimized, so traditional regression summary statistics such as R-squares and p-value cannot be computed. However, all 20 data points fall within a 95% confidence interval as Figure 1 documents. Minitab computes an "S" value for nonlinear models that are measured in the same units of measure as the dependent variable (i.e., FG%) and represents the standard distance actual data points are from the nonlinear prediction curve (i.e., technically not a regression line). For the model shown in Figure 1, $S = 0.13$, so on average, the actual FG percent data points are a standard distance of 13 field goal percent from the prediction curve line. The lower the S value the better the nonlinear model is at predicting the dependent variable. For this data set, this nonlinear model is about as good as we can derive. In general, this model does establish the fact that forcing opponent offensive college basketball players to their weak side reduces field goal percentage.

The prediction of field goal percentage using this model, for example, might include a coaches "what if" question like "If we force the opponents offensive players to their weak side 80 times during one half of basketball versus only 60 weak side counts, what is the change in field goal percentage?"

$$FG\% = 1/(1 + .0160454 * 60) = 1/(1 + .987) = 1/1.987 = 50.3\% \text{ for 60 weak side counts}$$

$$FG\% = 1/(1 + .0160454 * 80) = 1/(1 + 1.284) = 1/2.284 = 43.8\% \text{ for 80 weak side counts}$$

Therefore, by forcing the offense from 60 to 80 WS counts during one-half of a basketball game, this model predicts a decrease in field goal percentage of 6.5% or a 0.325% reduction in field goal percentage per extra time a player goes to his or her weak side. Therefore, coaches need to evaluate opponent players in terms of their dominant hand prior to the game and any weak versus strong side tendencies, and consistently force certain players to their weak side. Based on this data set for this (one) team and its opponents, the benefits in terms of reduced field goal percentage are substantial. This conclusion is based on analytical methods, not opinion. Such data mining often reveals conclusions that support the coach's expert judgment, but sometimes new insights are gained. Coaches can use such statistics to motivate their defensive players to execute the game plan. Moreover, human judgment is limited as the number of performance

metrics increase (i.e., the multiple criteria solution space) whereas analytical methods are most beneficial in these multiple criteria decision-making situations.

Many of the regression models we studied were not statistically valid, but several provided interesting insights into the game of college basketball. We provide a few example regressions focused on WS and SS. Using the opponent's (or offensive) assists as the dependent variable and WS and SS as the two independent (predictive) variables, Equation 2 summarizes the following statistically valid regression model.

$$OA = 1.00501 - 0.181882*WS + 0.236275*SS \quad [2]$$

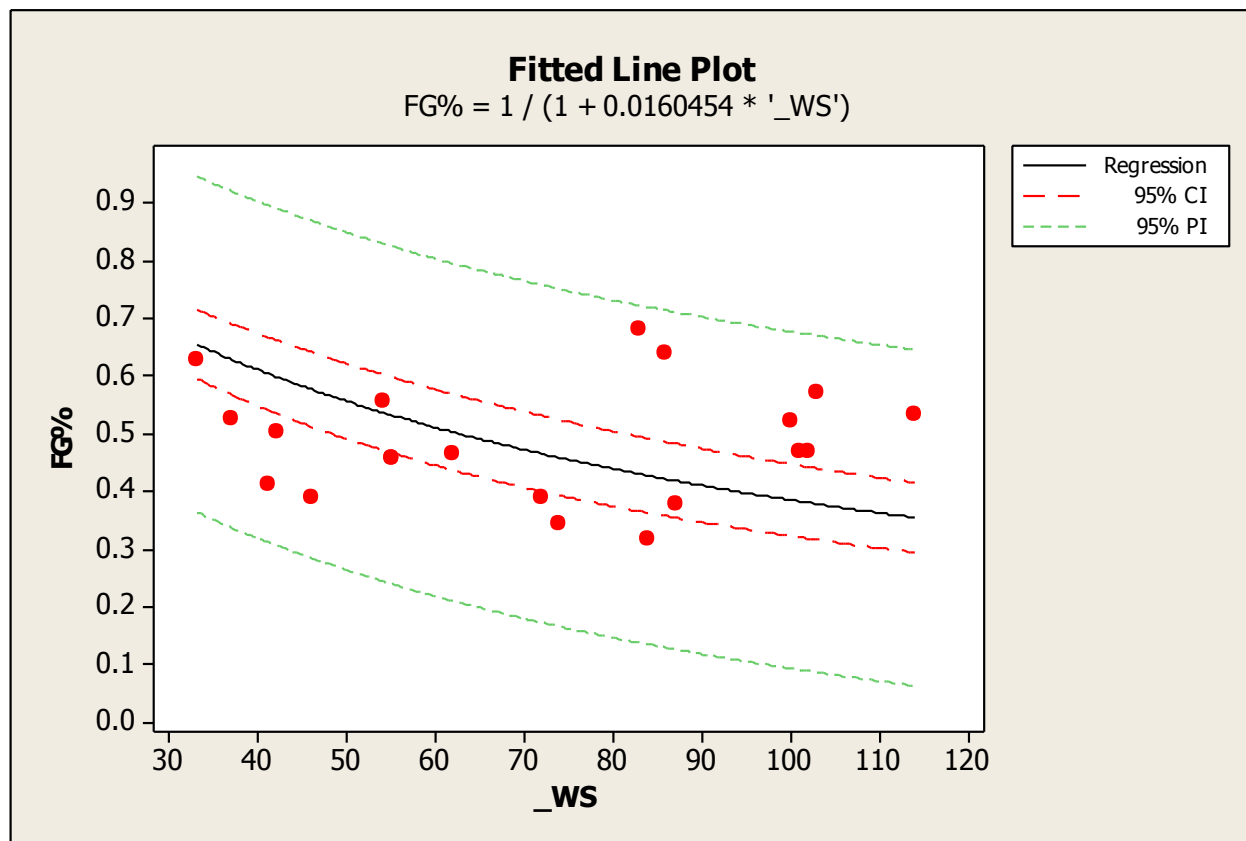
The coefficient t- (and p-values), respectively, for WS is -2.55 (p = .021) and for SS is 2.85 (p = .011). The models adjusted R-square and (adjusted R- square) are 32.3% and 24.4%, respectively. That is, as the defensive players force the offensive players to their weak side, the offensive players assists decrease.

A second multiple regression equation uses four independent variables including WS and SS counts to predict TOP shown in Equation 3. The independent variables are WS, SS, DR, and DS.

$$TOP = 41.1541 - 0.229118*WS + 0.468505*SS - 1.74644*DR - 2.03136*DS \quad [3]$$

The coefficient t- (and p-values), respectively, for WS is -2.60 (p = .030), SS is 2.66 (p = .018), DR is - 2.92 (p = .011), and DS is -2.25 (p = 0.04). The models adjusted R-square and (adjusted R- square) are 49.4% and 35.9%, respectively. Technically, Equation 3 suggests that DSs are most valuable in reducing the opponent's FG% with DRs the second most important. Forcing an opponent's players to their weak side is worth much less than the former two defensive metrics but still chips away at reducing the opponent's field goal percentage.

Figure 1. Predicting field goal percentage based on the number of times opponent players go to their weak side.



Conclusion

We introduced two new defensive metrics for the game of basketball, collected a small but unique data set based on one team's defensive performance against its opponents, and found some interesting performance relationships. We view the data analysis results as preliminary since larger sample sizes per team or league would enhance statistical significance, and such statistical analyses are always subject to various technical assumptions that may or may not fit each application.

In general, if your defense can force your offensive opponent to his or her weak side more, field goal percentage decreases in a non-linear way. Offensive assists and total points scored also decrease as the defense forces offensive players to their weak side. Yet, defensive steals and rebounds are much more important to a defensive game plan than the number of times defensive players force offensive players to their weak side. Such insights provide preliminary analytical evidence of one way to weight various defensive basketball performance metrics to obtain a total defensive efficiency score. On-going research will develop more comprehensive multiple criteria models of basketball team offensive and defensive efficiency.

Current video and business analytic methods can provide a decision support system for all stakeholders involved in the game of basketball. Analytical methods that provide such a decision support system in businesses are now being applied to sports. It is an exciting time for sports analytics.

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Discussion Questions

1. Do you agree that business analytics can be used to evaluate sports players and teams (i.e., assets) much like organizations evaluate products, jobs, processes, supply chains, vendors, and their other systems and assets? How are the assets alike and different?
2. Select a sport of interest to you, and define new performance metrics (beyond the traditional metrics) for coaches, teams, and players.
3. What criteria would you propose to evaluate owners of professional sports teams? Who are the best (worst) owners? Justify with quantitative data analysis.

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The Adult Student Priorities Survey™: An Analysis at a Private Central Appalachian University

**Jack T. McCann, Daniel B. Graves,
and Michael E. Dillon**

Abstract

The purpose of this research was to assess the adult student priorities at a private university school of business in central Appalachia. This study included a total of 305 School of Business students from an MBA program and adult degree completion program. A total of 170 surveys were used to calculate data for this study. The Adult Student Priorities Survey™ (ASPS) and demographic questions were used to collect data from participants. The research addressed the following questions: What are the strengths and opportunities for improvements as determined by the Adult Students Priorities Survey for the institution and then by program? What is the demographic makeup of the participants at the institution and by program? What are the results of the 8 Scales of ASPS at the institutional level and by program?

Keywords

andragogy, adult learners, adult student priorities, university graduation rates, student retention, student satisfaction, schools of business, MBA program, adult degree completion program

Introduction

Adult learning grows in importance in the United States because of the emerging issues of global competitiveness that require a different set of skills to compete in a world economy and an inadequacy of the traditional educational pipeline to fulfill the demand for a skilled workforce and must consider the changing U.S. workforce demographic makeup. Jobs that will support the economy in the coming years will depend on a skilled workforce that is able to learn and adapt quickly to new challenges. Therefore, adult student priorities and satisfaction is of critical interest to colleges and universities as they seek to improve the learning environment of students, satisfy the requirements of stakeholders, and seek to increase retention and graduation rates. According to Schreiner (2009), colleges and universities are concerned about student satisfaction because it can positively impact institutional effectiveness as measured by retention rates, graduation rates, student satisfaction, learning outcomes, and value-added education.

However, little empirical research exist that links student satisfaction to retention and graduation rates at colleges and universities (Schreiner, 2009). However, many believe there is a positive relationship between these variables. Schreiner (2009) conducted a study of 27,816 students at 65 four-year institutions to determine whether satisfaction is predictive of retention. The results indicated that student satisfaction is related to student persistence, along with word-of-mouth reputation of an institution. In addition, increasing student satisfaction with campus climate in particular can increase the odds of persisting, and influence positive student opinions about the institution. Further results indicate that satisfaction levels differ across class level and contribute differently to student persistence at each level. At the sophomore level, the more specific the indicators of satisfaction, the better. The importance of disaggregating Student Satisfaction Inventory™ (SSI) data by class the better the detail can be for a strategic plan for addressing retention challenges at an institution.

The following is a description of our study that evaluates what is important to the adult students and how satisfied they are with a full range of adult student experiences at a central Appalachian university using the Adult Student Priorities Survey™ (ASPS). It presents a description of the study, its major findings, and the implications for colleges and universities along with their schools of business. In addition, recommendations are included for future research, so that these results may be used by schools to help improve their policies and procedures.

Literature Review

According to Hiemstra and Sisco (1990), the most dominant form of instruction in Europe and the United States of America is pedagogy, or what is also known as didactic, traditional, or the teacher-directed approach to teaching. An evolving and competing idea in terms of teaching adult learners is what is known as *andragogy*. The following literature review provides a definition of the topic along with assumptions, and origins of the concept, and the adult learner.

Defining Andragogy, Assumptions, and its Origins

Kapp (1833) first introduced the term andragogy, and Lindeman (1926) first brought it to the USA, and it then gained common use internationally through the work of Malcolm Knowles (1970). When adult education began to emerge as a social practice over a century ago, it borrowed from the strategies and assumptions of pedagogy, which is the arts and sciences of teaching children as empty vessels. The term andragogy stems from the Greek word *aner*, meaning man versus boy and is the art and science of helping adults learning. It is based on the organismic model of man that comes from developmental psychology. The purpose of man in the organismic model is the continuous development of individuals toward their full and unique potential through their span (Knowles, 1974). Reischmann (2005) defined andragogy as the science of the lifelong and life wide education/learning of adults and distinguished adult education from it as being focused on the practice of the education/learning of adults.

According to Knowles (1974), most adult learning theory comes from the field of organizational development (OD) in the 1950s and 1960s. This focus on learning theory was a way to provide employees the tools that needed to perform better in the workplace. In addition,

OD practitioners needed new learning models because the traditional pedagogical models were not easily translated into the workplace. These OD practitioners coined the phrase andragogy to reflect the unique needs of this population and to separate adult learning from pedagogy.

According to Knowles, and building upon theory from OD, the andragogical model is characterized by four principles or assumptions about adult learners that help identify the learner's ability, need, and desire to take on the responsibility for learning:

1. Adult learners tend to be self-directed and take responsibility for their actions and their self-concept moves from dependency to independence or self-directedness.
2. Adult learners have extensive depth of experience that serves as a basis on which to build learning and are a rich source for learning.
3. Adult learners tend to be ready to learn and typically voluntarily return to college and actively engage in the learning process.
4. Adult learners are task motivated, and their time and curricular perspectives change from postponed to immediacy of application and subject-centeredness to performance-centeredness. They also attend college for a specific goal and primary motivation appears to be internal (Knowles, 1980; Knowles, 1984).

According to Miriam (2001), andragogy is one of two "pillars" of adult learning theory, while self-directed learning is the other pillar. She further posits that scholarship on andragogy has taken two directions since 1990. One direction questions the establishment of andragogy as a scientific discipline, while the other questions andragogy because it does not give attention to the learning context. Henschke and Cooper (2006) discovered that some adult educators tended to strongly favor Knowles' version of andragogy, by using a practical approach when teaching or facilitating adults learning within their own setting and context, while other adult educators dismissed Knowles' version of andragogy and charge it is inadequate and unscientific.

The Adult Learner

Kenner and Weinerman (2008) found three main groups of adult students are entering college because of the 2008 recession and the continuing economic downturn. One group is those workers who have lost their jobs because of the recession and need developmental courses to refresh their entry level skills. The second group is those returning veterans from Afghanistan and Iraq who delayed their education to serve their country. The third group is those adults who have completed their General Education Diploma (GED) and are advancing to higher education classes. It is critical to understand what differentiates traditional students, so educators can help adult learners with specific tools to allow them to integrate into college courses or a university environment in order to raise their chances of success. The challenges that adult students face (those with more than 25 years) are non-traditional factors, such as financial independence, full-time employment, dependents, and part-time employment (Horn, 1996).

According to Knowles (1984), the adult learner is more self-directed and task- or goal-oriented than traditional students; therefore, it is best educators frame learning strategies so adult learners understand the purpose of exercise because, if not, they may resist new strategies. Educators may use the competition approach and repetition, with variety, so adult learners can test new strategies to test their usefulness. Knowing many adult learners have achieved a certain

level of success in their non-academic careers and can understand the benefits of new learning strategies, they may see the benefits and replicate success in their academic endeavors. Employers now are seeking a more educated workforce, and the adult learner wants to be in the classroom. He or she typically will embrace the concepts of higher education, and if educators can work in partnership with their learners, they can help achieve the goals of both educator and adult learner (Kenner & Weinerman, 2008).

CAEL

CAEL is the Council for Adult and Experiential Learning and the author of *Nine Essential Principles of Serving Adult Learners*. CAEL is a 501(c)3 non-profit, international organization with 34 years of experience, approximately 600 members, and headquarters in Chicago, IL, with offices in Philadelphia, PA; Denver, CO; New York, NY; and Toronto, Canada. CAEL works to expand lifelong learning opportunities for adults and pioneers learning strategies for adult learners in partnership with community colleges and universities, employers, labor organizations and government (Wertheim, 2009).

According to Bryant and Wertheim (2009), CAEL's work has been on the behalf of adults and has provided assistance as educational institutions during the 1970s and throughout the 1980s by providing them with meaningful, relevant, and quality learning experiences focused on prior learning assessment. In the 1980s and through the 1990s, CAEL added outreach and services to employers to expand access to postsecondary education for both the active and downsized workforce. Then, from the 1990s to the present, it included public policy efforts to remove systemic barriers to lifelong learning and to link adult learning with workforce and economic development.

Bryant and Wertheim (2009) describe CAEL's mission as making lifelong learning within reach for every adult. CAEL removes barriers to lifelong learning for adults, identifies and disseminates innovative and effective practices, and delivers services that touch the lives of adults. Bryant and Wertheim (2009) present CAEL's *Principles of Effectiveness for Serving Adult Learners*, as follows:

1. Outreach
2. Life & Career Planning
3. Financing
4. Assessment of Learning Outcomes
5. Teaching-Learning Process
6. Student Support Systems
7. Technology
8. Strategic Partnerships
9. Transitions (slides 14-23)

These principles are effective if they are integrated, meaning they work together; indivisible, meaning they form a whole idea; and finally, imperative, which implies they are more than a good fit. CAEL's *Nine Essential Principles of Serving Adult Learner* are defined below.

Outreach. Conducts its outreach to adult learners by overcoming barriers in time, place, and tradition in order to create lifelong access to educational opportunities.

Life & Career Planning. Addresses adult learners' life and career goals before or at the onset of enrollment in order to assess and align its capacities to help learners reach their goals.

Financing. Promotes choice using an array of payment options for adult learners in order to expand equity and financial flexibility.

Assessment of Learning Outcomes. Defines and assesses the knowledge, skills, and competencies acquired by adult learners—both from the curriculum and from life and work experience—in order to assign credit and confer degrees with rigor.

Teaching-Learning Process. Faculty uses multiple methods of instruction (including experiential and problem-based methods) for adult learners in order to connect curricular concepts to useful knowledge and skills.

Student Support Systems. Assists adult learners using comprehensive academic and student support systems in order to enhance students' capacities to become self-directed, lifelong learners.

Technology. Uses technology to provide relevant and timely information and to enhance the learning experience.

Strategic Partnerships. Engages in strategic relationships, partnerships, and collaborations with employers and other organizations in order to develop and improve educational opportunities for adult learners.

Transitions. Supports guided pathways that lead into and from the institution's programs and services in order to ensure that students' learning will apply usefully to achieving their educational and career goals. (slides 14-23).

CAEL intends to serve as a guiding light to assist adult students, educators, and institutions bridge the educational gap for adult learners and skills needed for today and the future (Bryant & Wertheim, 2009).

Methodology

Measures

The Adult Student Priorities Survey (ASPS) was used as the survey instrument for this study. According to Noel-Levitz (2011b), the ASPS is appropriate for students 25 years of age and older, and adult students are typically completing undergraduate degrees at four-year institutions or enrolled in graduate-level programs. The ASPS is similar in structure and design to

the Noel-Levitz Student Satisfaction Inventory (SSI), but the items were modified to be appropriate for adult students. There is only one version of the Adult Student Priorities Survey.

The ASPS allowed the university an opportunity to examine the priorities of its adult undergraduate or graduate students as a unique group. The data helped the researchers identify what matters to our adult students and how satisfied these students are. With this information, the university can target areas most in need of improvement in order to retain adult students.

The Adult Student Priorities Survey asks students to respond with a level of importance and a level of satisfaction. A performance gap is calculated by subtracting the satisfaction score from the importance score (Noel-Levitz, 2011a).

According to Noel-Levitz (2011b), there are 50 standard items rated for importance and satisfaction on the ASPS. The ASPS includes 20 items that may be defined by the institution, and rated for importance and satisfaction. The survey includes nine items that assess pre-enrollment factors. These items ask only for an importance rating, and do not include satisfaction or performance gap scores. Three summary items are included the survey. There are 13 standard demographic items on the ASPS. The ASPS also includes two optional demographic items with up to six responses (students may select only one response). The survey also includes an optional demographic item to capture the students' major or program with a four-digit numeric code.

The Reliability and Validity of the ASPS

The Adult Student Priorities Survey (ASPS) has demonstrated its reliability is high. Cronbach's coefficient alpha for the importance scores was .93 and .90 for the satisfaction items. Furthermore, the test-retest reliability estimate of mean importance scores was .82 and .81 for the mean satisfaction scores (Noel-Levitz, 2011a).

In addition, the validity of the ASPS was assessed both quantitatively and qualitatively. First, the quantitative assessment was conducted by correlating mean importance and satisfaction scores on the instrument with mean importance and satisfaction scores on the Student Satisfaction Inventory, a Noel-Levitz satisfaction instrument with exceptionally high reliability and validity. The Pearson correlation between the SSI and ASPS was .74 for importance and .67 for satisfaction ($p < .0001$), suggesting the two instruments have commonalities as well as their own distinctive features (Noel-Levitz, 2011a).

According to Noel-Levitz (2011a), qualitative validity assessment was conducted by correlating respondents' scores on the ASPS with their interview responses on a qualitative protocol reflecting the content of the instrument. The interviews with adult students were conducted six weeks in advance of the written survey. The mean cross-method validity coefficients were .66 for importance scores and .62 for satisfaction scores; the individual scale correlations between the interview responses and the survey responses ranged from .91 to .53 for the importance scales and from .82 to .47 for the satisfaction scales. All scale correlations were significant at the .05 level, thus indicating the instrument adequately reflects the construct it was designed to measure.

Population

The survey population included all students of the Master of Business Administration (MBA) and Management Leadership Program (MLP) at a small private central Appalachian

university located in northeastern Tennessee enrolled during the fall 2011 semester. A total of 305 students were surveyed. Two hundred-twenty three MBAs and eighty-two MLPs made up this population.

Procedure

All students were sent a first e-mail invitation on November 15, 2011, from the host of the survey Noel-Levitz. Students were asked to participate and were provided an e-mail link to the survey Website. Students also were given the option to “opt out” of the study, which means they could simply choose not to participate or receive reminder notices. A first reminder, “Reminder 1” was sent on November 22, 2011, and followed up with “Reminder 2” on November 29, 2011. The survey was closed on December 10, 2011.

Descriptive Analysis

The data in this study were organized into strengths and challenges for the institution and then by program. The following demographics were summarized and presented by institution and program: gender, age, ethnicity/race, extended learning site location; MBA and MLP educational goals, employment, current residence, marital status, and institutional choice. Finally, the items on the ASPS were analyzed statistically and conceptually to form comprehensive scales for the institution and by program. Noel-Levitz (2011b) presents these scales, and a description of each follows.

The Scales of ASPS: 8 Scales

1. Academic Advising Effectiveness
2. Academic Services
3. Admissions and Financial Aid
4. Campus Climate
5. Instructional Effectiveness
6. Registration Effectiveness
7. Safety and Security
8. Service Excellence

Description of Scales

1. *Academic Advising Effectiveness*: assesses the comprehensiveness of your academic advising program. Academic advisors and counselors are evaluated on the basis of their knowledge, competence, and personal concern for student success, as well as on their approachability.
2. *Academic Services*: assesses services students utilize to achieve their academic goals. These services include the library, computer labs, tutoring, and study areas.
3. *Admissions and Financial Aid Effectiveness*: assesses your institution’s ability to enroll students in an effective manner. This scale covers issues such as competence and

knowledge of admissions counselors, as well as the effectiveness and availability of financial aid programs.

4. *Campus Climate*: assesses the extent to which your institution provides experiences that promote a sense of campus pride and feelings of belonging. These scales also assess the effectiveness of your institution's channels of communication for students.
5. *Instructional Effectiveness*: assesses your students' academic experience, the curriculum, and the campus's overriding commitment to academic excellence. This comprehensive scale covers areas such as the effectiveness of your faculty in and out of the classroom, and the effectiveness of your part-time faculty.
6. *Registration Effectiveness*: assesses issues associated with registration and billing. This scale also measures your institution's commitment to making this process as smooth and effective as possible.
7. *Safety and Security*: assesses your institution's responsiveness to students' personal safety and security on your campus. This scale measures the effectiveness of both security personnel and campus facilities.
8. *Service Excellence*: assesses the perceived attitude of your staff, especially front-line staff, toward students. This scale pinpoints the areas of your campus where quality service and personal concern for students are rated most and least favorably. (p. 2)

Results and Discussion

Strengths and Challenges

The data presenting the strengths and challenges of the overall survey population are presented in Table 1, and then the disaggregated data is presented by program in Table 2 and Table 3. The results are self-explanatory and, when separated by program, present many similarities in terms of strengths and challenges.

Table 1
Overall Survey Population Strengths and Challenges

Strengths

Classes are scheduled at times that are convenient for me.
There is a commitment to academic excellence at this institution.
My academic advisor is knowledgeable about requirements in my major.
I am able to register for classes by personal computer, fax, or telephone.
I am able to complete most of my enrollment tasks in one location.
Classroom locations are safe and secure for all students.
My academic advisor is accessible by telephone and e-mail.
Faculty are usually available for adult students outside the classroom by phone, by e-mail or in-person.
Registration processes are reasonable and convenient for adults.

Challenges

Nearly all faculty are knowledgeable in their field.
Tuition paid is a worthwhile investment.
The quality of instruction I receive in my program is excellent.
The content of the courses within my major is valuable.
There are sufficient options within my program of study.
I seldom get the "run-around" when seeking information at this institution.
Faculty provide timely feedback about my progress.
This institution responds quickly to my requests for information.
My advisor helps me apply my academic major to specific career goals.

Table 2
MBA Strengths and Challenges

Strengths

Classes are scheduled at times that are convenient for me.
There is a commitment to academic excellence at this institution.
My academic advisor is knowledgeable about requirements in my major.
I am able to register for classes by personal computer, fax, or telephone.
I am able to complete most of my enrollment tasks in one location.
Classroom locations are safe and secure for all students.
My academic advisor is accessible by telephone and e-mail.
Faculty are usually available for adult students outside the classroom by phone, by e-mail or in-person.
Registration processes are reasonable and convenient for adults.

Challenges

Nearly all faculty are knowledgeable in their field.
Tuition paid is a worthwhile investment.
The quality of instruction I receive in my program is excellent.
The content of the courses within my major is valuable.
There are sufficient options within my program of study.
I seldom get the "run-around" when seeking information at this institution.
Faculty provide timely feedback about my progress.
This institution responds quickly to my requests for information.
My advisor helps me apply my academic major to specific career goal.

Table 3
MLP Strengths and Challenges

Strengths

My academic advisor is knowledgeable about requirements in my major.
Classes are scheduled at times that are convenient for me.
There is a commitment to academic excellence at this institution.
Classroom locations are safe and secure for all students.
My academic advisor is concerned about my success as an individual.
Faculty are fair and unbiased in their treatment of individual students.
Parking lots are well-lighted and secure.
Faculty care about me as an individual.
The staff at this institution are caring and helpful.

Challenges

Nearly all faculty are knowledgeable in their field.
Adequate financial aid is available for most adult students.
The quality of instruction I receive in my program is excellent.
The content of the courses within my major is valuable.
Tuition paid is a worthwhile investment.
I seldom get the "run-around" when seeking information at this institution.
This institution responds quickly to my requests for information.

Program Demographics

The demographics of the institution and each program are tabulated by program respondents, gender, age, ethnicity/race, extended learning site location, MBA and MLP educational goals, employment, current residence, marital status, and institutional choice presented in following tables.

Responses by Program

Table 4
Institutional Responses by Program

	N	%
MBA	117	71.78%
MLP	46	28.22%
Total	163	100.00%
No Answer	5	

Gender Demographics

Table 5
Institutional Respondents by Gender

	N	%
Female	92	55.76%
Male	73	44.24%
Total	165	100.00%
No Answer	5	

Table 6
MBA Respondents by Gender

	N	%
Female	92	55.76%
Male	73	44.24%
Total	165	100.00%
No Answer	5	

Table 7
MLP Respondents by Gender

	N	%
Female	32	69.57%
Male	14	30.43%
Total	46	100.00%
No Answer	0	

Age Demographics

Table 8
Respondents by Age

	N	%
24 and under	27	16.36%
25 to 34	71	43.03%
35 to 44	42	25.45%
45 and over	25	15.15%
Total	165	100.00%
No Answer	5	

Table 9

MBA Respondents by Age

	N	%
24 and under	27	16.36%
25 to 34	71	43.03%
35 to 44	42	25.45%
45 and over	25	15.15%
Total	165	100.00%
No Answer	5	

Table 10

MLP Respondents by Age

	N	%
24 and under	11	23.91%
25 to 34	13	28.26%
35 to 44	15	32.61%
45 and over	7	15.22%
Total	46	100.00%
No Answer	0	

Ethnicity/Race Demographics

Table 11

Institutional Respondents by Ethnicity

LMU ASPS by Ethnicity	N	%
African-American	8	4.88%
American Indian or Alaskan Native	0	0.00%
Asian or Pacific Islander	5	3.05%
Caucasian/White	139	84.76%
Hispanic	2	1.22%
Other race	7	4.27%
Race - Prefer not to respond	3	1.83%
Total	164	100.00%
No Answer	6	

Table 12
MBA Respondents by Ethnicity/Race

	N	%
African-American	8	4.88%
American Indian or Alaskan Native	0	0.00%
Asian or Pacific Islander	5	3.05%
Caucasian/White	139	84.76%
Hispanic	2	1.22%
Other race	7	4.27%
Race - Prefer not to respond	3	1.83%
Total	164	100.00%
No Answer	6	

Table 13
MLP Respondents by Ethnicity/Race

	N	%
African-American	3	6.52%
American Indian or Alaskan Native	0	0.00%
Asian or Pacific Islander	0	0.00%
Caucasian/White	41	89.13%
Hispanic	1	2.17%
Other race	1	2.17%
Race - Prefer not to respond	0	0.00%
Total	46	100.00%
No Answer	0	

Table 14
Extended Learning Site Demographics

	N	%
Cedar Bluff	99	60.37%
Harrogate	33	20.12%
Middlesboro	10	6.10%
Morristown	9	5.49%
Sevierville	13	7.93%
Total	164	100.00%
No Answer	6	

Table 15
MBA Respondents: "What location do you take courses in?"

	N	%
Cedar Bluff	79	67.52%
Harrogate	33	28.21%
Middlesboro	0	0.00%
Morristown	0	0.00%
Sevierville	5	4.27%
Campus item 2 - Answer 6	0	0.00%
Total	117	100.00%
No Answer	0	

Table 16
MLP Responses by: "What location do you take courses in?"

	N	%
Cedar Bluff	19	41.30%
Harrogate	0	0.00%
Middlesboro	10	21.74%
Morristown	9	19.57%
Sevierville	8	17.39%
Campus item 2 - Answer 6	0	0.00%
Total	46	100.00%
No Answer	0	

MBA and MLP Educational Goal Demographics

Table 17
MBA Respondents Education Goal

	N	%
Associate degree	0	0.00%
Vocational/technical program	0	0.00%
Transfer to another institution	1	0.61%
Bachelor's degree	35	21.21%
Master's degree	113	68.48%
Doctorate or professional degree	14	8.48%
Certification (initial/renewal)	0	0.00%
Self-improvement/pleasure	2	1.21%
Job-related training	0	0.00%
Other educational goal	0	0.00%
Total	165	100.00%
No Answer	5	

Table 18
MLP Respondents by Education Goal

	N	%
Associate degree	0	0.00%
Vocational/technical program	0	0.00%
Transfer to another institution	1	2.17%
Bachelor's degree	34	73.91%
Master's degree	9	19.57%
Doctorate or professional degree	2	4.35%
Certification (initial/renewal)	0	0.00%
Self-improvement/pleasure	0	0.00%
Job-related training	0	0.00%
Other educational goal	0	0.00%
Total	46	100.00%
No Answer	0	

MBA/MLP Employment Demographics

Table 19
MBA Respondents by Employment

	N	%
Full-time off campus	109	67.28%
Part-time off campus	11	6.79%
Full-time on campus	18	11.11%
Part-time on campus	2	1.23%
Not employed	22	13.58%
Total	162	100.00%
No Answer	8	

Table 20
MLP Respondents by Employment

	N	%
Full-time off campus	33	71.74%
Part-time off campus	5	10.87%
Full-time on campus	4	8.70%
Part-time on campus	0	0.00%
Not employed	4	8.70%
Total	46	100.00%
No Answer	0	

Table 21
Respondents by Home Ownership

	N	%
Own house	103	63.98%
Rent room / apartment / house	30	18.63%
Relative's home	21	13.04%
Other residence	7	4.35%
Total	161	100.00%
No Answer	9	

Table 22
MLP Respondents by Current Residence

	N	%
Own house	30	66.67%
Rent room / apartment / house	4	8.89%
Relative's home	11	24.44%
Other residence	0	0.00%
Total	45	100.00%
No Answer	1	

MBA and MLP Martial Status Demographics

Table 23
MBA Respondents by Marital Status

	N	%
Single	53	32.72%
Single with children	19	11.73%
Married	25	15.43%
Married with children	58	35.80%
Marital - Prefer not to respond	7	4.32%
Total	162	100.00%
No Answer	8	

Table 24
MLP Respondents by Marital Status

	N	%
Single	12	26.09%
Single with children	9	19.57%
Married	6	13.04%
Married with children	16	34.78%
Marital - Prefer not to respond	3	6.52%
Total	46	100.00%
No Answer	0	

MBA and MLP Institutional Choice Demographics

Table 25
MBA Respondents by "Institution Was My"

	N	%
1st choice	125	77.64%
2nd choice	31	19.25%
3rd choice or lower	5	3.11%
Total	161	100.00%
No Answer	9	

Table 26
MLP Respondents by "Institution Was My"

	N	%
1st choice	35	77.78%
2nd choice	7	15.56%
3rd choice or lower	3	6.67%
Total	45	100.00%
No Answer	1	

ASPS Scales

The items on the ASPS have been analyzed statistically using the data from this study into the scales, and this data follows in Table 27 for the institutional summary, and Table 28 presents the MBA summary of the 8 scales. Table 29 presents the 8 scales for the respondents of the MLP.

Table 27
Institutional Summary

	Lincoln Memorial Students Import	Satis/SD	Gap	National Adult Students Import	Satis/SD	Gap	Mean Diff
Instructional Effectiveness	6.53	6.1/0.87	0.43	6.5	5.74/1.00	0.76	0.36***
Safety and Security	6.25	6.31/0.84	- 0.06	6.2	5.53/1.14	0.67	0.78***
Academic Advising	6.48	6.18/1.02	0.3	6.44	5.61/1.23	0.83	0.57***
Admissions and Financial Aid	6.27	5.96/1.07	0.31	6.33	5.41/1.24	0.92	0.55***
Academic Services	6.15	5.85/1.01	0.3	6.17	5.35/1.20	0.82	0.50***
Registration Effectiveness	6.45	6.26/0.76	0.19	6.4	5.66/1.03	0.74	0.60***
Service Excellence	6.39	5.99/1.06	0.4	6.34	5.36/1.30	0.98	0.63***
Campus Climate	6.44	6.16/.82	0.28	6.4	5.61/1.07	0.79	0.55***

Note. (* diff sig at the .05 level) (** diff sign at .05 level) (***)diff sig at the .001 level).

Table 28
MBA Institutional Summary

	Lincoln Memorial Students			National Adult Students			Mean Diff
	Import	Satis/SD	Gap	Import	Satis/SD	Gap	
Instructional Effectiveness	6.48	6.11/0.81	0.37	6.5	5.74/1.00	0.76	0.37***
Safety and Security	6.13	6.32/0.88	-0.19	6.2	5.53/1.14	0.67	0.79***
Academic Advising	6.39	6.19/1.01	0.2	6.44	5.61/1.23	0.83	0.58***
Admissions and Financial Aid	6.13	5.96/1.07	0.17	6.33	5.41/1.24	0.92	0.55***
Academic Services	6.01	5.86/1.02	0.15	6.17	5.35/1.20	0.82	0.51***
Registration Effectiveness	6.41	6.27/0.73	0.14	6.4	5.66/1.03	0.74	0.61***
Service Excellence	6.3	6.03/1.00	0.27	6.34	5.36/1.30	0.98	0.67***
Campus Climate	6.37	6.18/0.80	0.19	6.4	5.61/1.07	0.79	0.57***

Note. (* diff sig at the .05 level) (** diff sign at .05 level) (***)diff sig at the .001 level).

Table 29
MLP Institutional Summary

	Lincoln Memorial Students			National Adult Students			Mean Diff
	Import	Satis/SD	Gap	Import	Satis/SD	Gap	
Instructional Effectiveness	6.68	6.07/0.98	0.61	6.5	5.74/1.00	0.76	0.33*
Safety and Security	6.58	6.37/0.71	0.21	6.2	5.53/1.14	0.67	0.84***
Academic Advising	6.68	6.20/1.06	0.48	6.44	5.61/1.23	0.83	0.59**
Admissions and Financial Aid	6.62	6.03/1.04	0.59	6.33	5.41/1.24	0.92	0.62***
Academic Services	6.5	5.96/0.96	0.54	6.17	5.35/1.20	0.82	0.61***
Registration Effectiveness	6.57	6.31/0.79	0.26	6.4	5.66/1.03	0.74	0.65***
Service Excellence	6.63	5.96/1.20	0.67	6.34	5.36/1.30	0.98	0.60**
Campus Climate	6.63	6.17/0.84	0.46	6.4	5.61/1.07	0.79	0.56***

Note. (* diff sig at the .05 level) (** diff sign at .05 level) (***)diff sig at the .001 level).

Summary: Recommendations for Further Research

Several recommendations for further research emerge from the findings of the study. While many quantitative studies have been conducted on adult education, far fewer qualitative studies have been conducted among this population. Qualitative research can bring a deeper understanding of older adult participation in education and enable future inquiries into the underlying motives of adult learners. Continued longitudinal studies regarding adult student priorities are recommended to gain more insight into the changes of patterns and motivations of adults in education in order to identify predictors of persistence in education. In addition, comparative studies to find differences between young adults and older learners can contribute to expanding our understanding of adult education in general.

An additional finding from this research is that much of the research on andragogy emerged out of practice in human resources development/OD, and that applying these findings to improve practice and theory is critical. It is also critical to note that andragogy remains one of the preeminent models of adult learning. It has many limitations as a model, but there are

opportunities for andragogy in research and practice. These advances gained through research and practice will shape the art and science of andragogy (Knowles, 2005).

Closing: Applying the Findings to Practice, Theory, or Research

The findings of the research reported in this article are consistent with the findings of previous research on the adult student priorities who participate in formal learning activities. Much of the research on adult learning, including this study, has focused on White, well-educated, and middle class older adults and those primarily who can afford continuing education. More studies are needed regarding historically underrepresented older populations such as the poor, minorities, and immigrants to identify deterrents to their participation in educational activities.

The university must share the research data uncovered by the ASPS with its stakeholders and form a committee to further respond to the data and reinforce its strengths and consider the challenges presented from this research. Furthermore, conducting focus groups to gather more information, establishing timelines for responding to top issues, and planning for future survey administrations are necessary next steps.

The strength of the andragogical theory, research, and definition foundation can advance the practice of helping adults learn in adult, continuing, community, extension, and OD/human resource development education. A third significant finding includes the benefits gained by those adult educators who teach in environments such as colleges, universities, adult and continuing education programs, community and extension programs, and corporate training in human resource development. Educators willing to use andragogy as a technique for teaching their students may find new ways to learn, and grow themselves and their students. In addition, these educators will provide fresh and enlightening their adult students who seek self-actualization.

In summary, the current research supports the previous motivation studies on adult learning. Cognitive stimulation and interest appear to be the most influential predictor of adult participation in formal education. In addition, educational attainment, marital status, and length of residence are importantly associated with the motivations of adult students. Assessing motivation is an important area of practice as well as research. By recognizing motivations of adult learners, educators and administrators can attract more adult students to lifelong learning activities.

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Discussion Questions

1. Why is learning about adult student priorities important to a business school and its administration?
2. How should a university adapt its traditional student programs to target the adult student?
3. Why is important to understand the expectations of an adult student?

4. Can instructors use the same classroom approach for adult students that are used for traditional students? Why or why not?

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Is Utilization a Public Purpose Pretext?

Jeffrey Kleeger

Abstract

Contingency theory indicates there is no one best way to lead, organize, perform or structure an act, entity or task. This aligns well with Niklas Luhmann's (2004) description of autopoietic transformation of law connecting land use with commercial development. Contingency theory helps planners confront problems with an open mind, appreciating the fluidity of conditions and helping them to better tailor response to crisis. This is necessary for adaptation to variation in conditions. The problem of underperformance of economic resources is when disutility poses an obstacle to development (slowing productivity). Condemnation expropriation offers a solution of primitive accumulation stimulation. This article examines public use in the context of social need and incompatible priorities competing for limited resources. Eminent Domain law is recently being transformed in radical ways. While it has always been about state-sponsored and legally sanctioned expropriation, private purpose is ascending in dominance. Constructing bridges, canals, highways, ports, railways and other infrastructure sometimes requires forced dispossession. The unintended consequence of this is damage to personal autonomy. Since the 1980s corporate and private interests have increasingly asserted themselves in a privatized interpretation of Eminent Domain. This produces significant harm. This article examines the proposed Keystone Pipeline Expansion Project in the context of privatization and increasingly broad applications of Eminent Domain as an aspect of "dispossession by expropriation" (Araghi, 2000). The negative experience of expropriation threatens the viability of Keystone since the analysis turns on "public use" and reveals that hiding at the core of proposed energy independence and consumer gain is a "public purpose pretext" of profit-seeking cloaked in the language of "public use." The solution to this problematic is to admit "pretext" is poised against social welfare. This understanding frees decision makers to focus on the practical aspect of projects and to genuinely determine whether the community will benefit. Careful analysis of economic development takings cases – Berman (1954), Midkiff (1984) and Kelo (2005), (FN1) reveals Keystone's "public purpose" is arguably a disqualifying "pretext."

Keywords

condemnation, dispossession, eminent domain, expropriation, neoliberalism, privatization, public use

Introduction

This article examines how limited economic resources and incompatible social priorities can cause conflict in the law. This conflict can lead to transformation in legal understandings. Keystone is an existing pipeline whose owners propose to extend it. The extension plan is analyzed as a redevelopment project. The central question is whether the expansion justifies the use of eminent domain expropriation. Keystone reveals how difficult it is to resolve conflict between personal autonomy and commercial redevelopment as individuals resist plans to lay a pipeline on privately owned land while social forces seem to call for its construction. The Kelo (2005) Supreme Court decision authorizes takings for economic development but also points out that “pretext” invalidates the legitimacy of acts furthering a “public use.”¹ Moreover, it was a failure in terms of producing results (achieving a public good). What does this tell us about the viability of state-authorized expropriations for a public purpose?

Contingency theory is an important part of this analysis. It is frequently observed in the literature that there is no “one best way” to lead, organize, perform, or structure an act, entity, or task. Planners frequently are called upon to confront problems with an open mind and tailor response to crisis with a measure of flexibility. The problem of underperformance of economic resources can lead to a net social loss as productivity decreases. Condemnation expropriation potentially stimulates development to resolve this dilemma. Economics, law, and society intermingle in a mutually reciprocal correspondence (Luhmann, 2004). The taking of land to convert uses to stimulate development is but one expression of such structural coupling connections.

Economic under-utilization is incorporated into eminent domain law to justify takings. The claim is such takings facilitate the public good although rent-seeking is frequently an ulterior objective. Alexander (2005) explains this is what “pretext” is. The utilization concept is a way of expanding takings authority. It is borrowed from economics and philosophy, and merges “public use” with private gain to provide legitimacy for expropriation. TransCanada, the corporate entity behind the Keystone Pipeline Project, is anxious to complete its planned southern extension of pipeline, despite delays over plans to expand its northern stretch of exposure presently mired in environmental impact controversy. The global economic recession, along with increases in oil and gas prices, weigh heavily on economic development. Politicians call for radical solutions to resolve economic crisis. In a Presidential election year, especially, demand for economic stimulation is enhanced.

Araghi (2009a) discusses the present economic downturn as a possible contemporary “crisis of capitalism” requiring immediate resolution. Will increasing domestic oil production diffuse economic pressure? Advocates claim increasing production will lower costs. Others disagree arguing interference with personal autonomy is hardly worth the speculative gains promised. Julia Trigg Crawford, a Texan landowner seeking to preserve a measure of her own personal autonomy, owns land she wants to keep that TransCanada says it needs. The Keystone Project needs Crawford’s land (at least access to it) since the pipeline is now planned to cross its path. But plans can change based on costs. David Schultz (2011) explains that plans to convert private to public land require citizens to yield their rights to the collectivity. Kelo (2005) has expanded the definition of “public use.” It allows the state to delegate authority to private

¹ The Kelo line of cases are Kelo (2005), Midkiff (1984), and Berman (1954).

interests so private land can be lawfully transferred to a preferred entity. Why? The new owner supposedly will make “better” use of it. This is what privatizing eminent domain entails.

Kelo (2005) represented a lawful expropriation of a residential property for the purpose of promoting commercial gain. Schultz (2011) explains how law used in this way is a tool to achieve legitimacy for a policy of expropriation. The literature on development and its relationship to social progress identifies the importance of freedom and the need for individuals to fully participate in economic activity if social life is to be meaningful and productive (Sen, 1999). The argument is offered that freedom to participate politically is the equivalent of individual and social welfare (Sen, 1999) although theorists typically recognize there are legitimate circumstances to require individuals to yield to communal interests. Advocates for Keystone characterize its expansion as a social necessity.

This public interest critique is frequently rejected. Critics contend the development is a mere “pretext” camouflaging private gain. Historically, the language of “public use” faced serious analytic challenge since displacement negatively impacts large numbers of vulnerable workers each struggling to survive. Eminent domain gives license to acts promoting development using involuntary acquisition to secure a “public interest.” This system of state-authorized expropriation is an alignment of state and corporate interests (public-private partnership) in which the state authorizes land acquisitions that favor corporate interests. Law as an institutional form can retain legitimacy only if its dictates are respected. Alexander’s (2006) “reciprocity” concept provides moral right (legitimacy) by requiring proposed acquisitions set forth a rational “public purpose” objective coupled with methods that minimally offend personal autonomy. By this measure, only the minimum amount of land necessary can be taken to ensure minimum displacement and disturbance. The objective is to resolve conflicting claims on land use harmoniously. To achieve that, the coercive power of the state must be curtailed.

The Keystone expansion is different from intrusive takings, claim its proponents. Its intent is to provide energy security (a public good) by establishing a stable source of supply. Benefits include that tax revenues are enhanced, and manufacturing and construction jobs are created (Transcanada, 2012). The Perryman Group’s (2010) “independent study” concludes the pipeline expansion will significantly contribute benefit to the economy. This is its “public use.” Despite these claims, critics insist there ought to be guarantees built into any approval that ensures Americans will benefit directly from increases in oil produced (meaning consumers will see gain by enjoying reduced oil costs). It is not likely, however, that this will happen. Producers must retain Lochnerian “economic liberty” to flexibly sell their product to buyers of their choice (who will pay the highest price). Thus, deciding whether a proposed infrastructure development is truly in the public interest is complex. Factors such as health, safety, security, and environmental welfare weigh heavily in the calculus.

Zeller (2011a) observes the law holds it is within the national interest to promote efficient movement of goods and services. Does Keystone satisfy minimally necessary requisites for the public interest? Critics argue the state is biased and favors oil interests. Zeller (2011a), for example, suggests the negative costs are overwhelming while the promised gains are merely speculative. He adds that claims the project will eliminate oil imports from the Middle East, create 100,000 jobs, and minimally impact the environment are highly exaggerated (Zeller, 2011b). The argument it is wise to reverse U.S. dependence on Middle East oil is unassailable. It is a leap of faith to assume a Keystone expansion will accomplish that objective. Zeller (2011b) suggests it will not since the economy is built on free trade, and oil is distributed according to

free-market forces that respond to demand. He further contends the “price of oil study” commissioned by TransCanada demonstrates Keystone is more likely to export oil out of the U.S. doing nothing to stabilize prices to benefit consumers. Elizabeth Bast (2010) reinforces the contention law accommodates to the private needs of oil and desire for profit. She argues, following Robert Engler’s (1961) contribution on how *oil controls law and politics that the pipeline is a capital accumulation project promoting rent-seeking by capturing and controlling law, government, and public opinion. She adds that oil challenges public rule in favor of private interests. This means oil, in the name of social welfare, privatizes by destroying competition. It does this to privilege private interests.*

The study of “underutilization” in the context of eminent domain law refers to improving the efficiency of resource utility. Keystone is a possible solution to “underutilization” by forcefully enabling use of previously untapped resources. This is accomplished, it is said, by redistributing assets to more efficient users through state intervention. The concept of legal protection for private property is challenged by lawful termination of use-rights. Expropriation is state-authorized conversion or “legal larceny” in Proudhon’s (1995) sense of the term. It is a form of primitive accumulation. Once this is acknowledged, what remains is deciding how and when expropriations are legitimate. Questions to ask include when does state intervention serve a “public use”? When does intervention impermissibly deprive individuals of their lawful autonomy? Kelo (2005), which authorizes the state to expropriate, helps in efforts to understand how to answer these questions, which ultimately turn on distinguishing between illegitimate “pretext” and genuine “public purpose.”

The New London project in Kelo (2005) authorized the state to expropriate to build condominiums, a marina, and shopping and parking amenities. The idea was to stimulate economic activity to revitalize a community. Keystone follows the Kelo (2005) guidebook. It seeks to legitimize land reallocation to improve use-efficiency. David Schultz (2011) explains the law does not preclude “takings-to-transfer” for economic development purposes. Presently, a state’s remedial response of stimulating economic development to reverse economic decline is a legitimate “public use.” The only requirement is that there be no overwhelmingly “private purpose pretext.” This means a taking is OK if it is a sheep in wolves’ clothing, but it is not OK if it is a wolf in sheep’s clothing. The problem is the two are frequently difficult to tell apart.

Julia Crawford, meanwhile, plans to resist her own dispossession. She claims the taking of her land is a “pretext” for private gain. She contends she is a victim of state authority and private corporate greed who merely hopes to defend her dignity, liberty, and personal autonomy (Petition Letter, 2012). Economics is a driving force in cases such as Crawford’s. Market capacity to successfully regulate economic development is tested. Does the system of market regulation produce good or evil? Sen (1999) argues the market usually provides correct choices for productive development. To what extent, though, should the state intervene with a free-functioning, beneficially-functioning market? The experience of Columbia University’s campus expansion in Kaur (2010) is helpful for analyzing Keystone’s proposed pipeline expansion. There, the university intended an economic redevelopment to enhance its capacity to serve in the education business. This was asserted as being a “public good,” although in the process, commercial users of land would be displaced and dispossessed. The key question in both of these cases, Kaur (2010) and presently Keystone, is whether utility is a sufficient justification to dispossess.

Can developers lawfully expropriate to enhance utilization? Is utilization a public use? Is larceny lawful? Kelo (2005) suggests they can, and it is. Courts interpret law to promote the

“public good.” The “public use” dynamic justifies deference through a limited scope of judicial review. Courts typically defer to legislative decision-making and naïvely trust the paternalistic state. Is this appropriate? Keystone emerges in a climate of skepticism over the intent of the paternalistic state and reliance on its judgment. Critics assert its focus is profit for private companies and by extension for its own revenue capacity. They say any “public good” claims of energy security, jobs, and enhanced tax revenue made by TransCanada are merely a “pretext” to excuse a taking. Proponents insist, though, that the pipeline will provide energy security, create jobs, and contribute benefit to the “public good” (Perryman Group, 2010). Is this claim of a “public purpose” merely a smokescreen to justify state-authorized redistribution? Gregory Alexander (2006) argues autonomy and social welfare are both improved when a sense of social obligation in the ownership right is constitutionalized. Public and private gain can coexist, he claims. Following Alexander (2006), owners will find little support from courts if their challenge to expropriation is based on the legitimacy of expropriation for a public purpose. The legal theory of social obligation holds ownership admits of a duty to community. However, if a private purpose is the primary objective of a redevelopment plan and “public purpose” is a mere afterthought that is inserted into planning documents then clearly illegitimate “pretext” controls. In such a case, the expropriation will be disposed of by favoring the dispossessed owners (Somin, 2011).

Expropriation

Scholars recognize law excuses, even promotes expropriation enclosures or takings-to-transfer that are euphemized as land use improvements. This is because private property plays an important role in economic development, and the promise of increasing prosperity justifies redistribution. Property is defined as a right to be selfish (Machan, 2002) as good flows out of it. Ownership that allows the “invisible hand” to work its magic provides a public good. Those who “have” are authorized to use what they “have” to create more. The reward is capital accumulation. The only legal constraint on this is the use made must not invade the rights of others (Machan, 2002). Put another way, the ownership right is said to include an obligation to favor forced dispossession if such would put land to “higher” and “better” uses. Better means more productive. This is the meaning of utilization as public use. It promotes efficiency in the context of eminent domain law.

Understanding that the cost to achieve speculative gains is burdensome, some theorists reject that taking for the purpose or effect of possibly improving efficiency is sufficient. There is a difference of opinion on this, but on deeper probing, it is generally accepted that state-authorized takings of property should be used to serve collective, not private, interests. Improving efficiency promotes the public good. Subordinating individual rights promotes the common good. This is proved historically and is presently acceptable to politicians. Alexander (2005) argues in support of this that the individual right of ownership is more than a mere economic right. Social wealth is but one purpose. Other objectives include enhancing self-development, belonging, and civic participation and self-actualization. These all enhance material and social life.

Theorists admit that eminent domain can potentially resolve economic and social problems, but they also observe that interference with personal autonomy causes harm to society. Some take a broader view contending “public good” ends justify almost any means possible. In a self-declared “thought experiment” to demonstrate a better way to resolve economic development takings, Alexander (2005) suggests evidence of rent-seeking is a violation of “public

use.” He argues that when recapture costs post-taking are too high, it is evidence of “pretext.” In such cases, rent-seeking undermines the economic rationale of takings (Alexander, 2005). Efficiency is nevertheless critical for justifying interference with ownership. The argument goes something like this: Efficiency is valuable and justifies state intervention since it helps diffuse political tension when the state intervenes with autonomy and cuts short property rights. The public accepts, complies, and even respects legal rules when the public perceives they are intended to inform and improve liberty or promote the public good.

It is considered “good” public policy to reverse economic stagnation. Stimulating development does this. Expropriations of all sorts are included in such a strategy, and they range from restoring run-down communities to building sports stadiums, to promoting the use of technology such as genetically modified alfalfa seeds, which all serve to make particular land uses more efficient (Berman, 1954; Goldstein, 2009; Monsanto, 2010; Tuck-It-Away, 2010). Historical “enclosure of the commons” is no different from modern dispossessions, which follow the same formula. Both are state-authorized efforts to make more economically productive uses of land. Restoring unused land (brownfields) or converting uses from sub-optimal to “better” (making Crawford’s “meadow” productive for society) is really more a matter of perception and priorities than actual values. Consider what the meaning of “utility” is. For Crawford, having a meadow is very important to her. She is willing to fight to retain it. Turning less “productive” uses of land into more productive uses by calling them “better” does not really define what makes one use better than another. Wealthy people can retain ownership of land that is vacant while homeless people surely could put that land to a “better” use by residing on it. But what is social benefit? If the wealthy individual holds the land vacant and it increases in value then is that a “better” use than permitting the homeless to live upon it?

In a competitive, democratic, and free society, uses should be the result of free-choice. If productivity is to be the calculus, members of society must agree to make it so. Some argue the market should set the parameters for this, others assert the state can appropriately intervene if the market “fails” to achieve more efficient uses. Modern takings-to-transfer are for the “public purpose” of enhancing utilization and instantiating utility as a “public use.” The only problem with this is that not everyone gains or has the opportunity for self-actualization. Land is finite, and expropriations favor the privileged and the wealthy. Approximating efficiency of welfare provision, resource distribution, and use is what underlies the notion of “public use.” Proudhon (1995) explains how Church lands were taken when the Church did nothing but hold them. The state made better use of the land by selling it for a profit. Is it acceptable to take to make a better use?

Privatization demands freedom of ownership and use of assets, which works against the idea of social welfare provision. Expropriation for redistribution purposes negatively impacts productivity if efficiency is lost. It can provide enhancement with gains in efficiency. Expropriations and dispossessions are legally justified when market failure produces social inequity and takings to right certain wrongs are appropriate (Midkiff, 1984). Is condoning inefficiency wrong? The thinking on this is ineffective utility is inefficiency. It is underutilization, which cries out for correction. Justice Sandra Day O’Connor opined in *Kelo* (2005) that a Motel 6 and a Ritz-Carlton are not equivalents. She said, however, that it is not the province of the state to favor one business model over the other. She defended ownership rights at the expense of economic efficiency arguing Motel 6 has legitimate legal right to use its property in any lawful manner it sees fit. Thus for her, improving resource utility is insufficient justification for taking.

O'Connor admits eminent domain is a legitimate use of state police power but rejects dispossession can be used for the purpose of improving utilization. She concludes ownership must be protected from expropriation.

Some theorists contend neglected resources can be made more productive by state intervention. They argue development takings can produce social benefits well worth related costs. They also insist progress comes from redevelopment, which increases the socio-economic pie for all. The purpose of economic development takings, therefore, is to remedy social ills caused by disutility. Ilya Somin (2011) argues the rule announced in *Texas Rice Land Partners* (2011) is correct. The key to any challenger's claim that an expropriation is illegitimate is to prove the public purpose claim is deficient. We can derive from this that a private company cannot on its own legitimately expropriate to build a pipeline. It needs the state. *Texas Rice Land Partners* (2011) held assertions of public use are insufficient, and there must be more than bald statements since the "extraordinary power" of eminent domain is an awesome power that must actually serve the public good (Kanner, 2011b).

Is redevelopment in the public interest? Is the objective of resolving disutility a sufficient justification to expropriate? Understanding the basis of Columbia University's expansion plan helps in deciding whether Keystone's proposal is legally viable. A taking-to-transfer is directed toward improving efficiency and encouraging accumulation. This demonstrates how the privatization of law is linked to the crisis of capitalism, which is defined here as the crisis of "global value relations" (Araghi, 2009b). Modern expressions of enclosure (takings) are an effort to stimulate development. The political response of stimulating economy is expressed as neoliberal austerity, which has come to mean the degradation of autonomy. It is possible to reassert personal autonomy and still promote the public good. Doing so requires linking ownership to social welfare by way of Alexander's (2006) social welfare obligation norm. This will restore vitality to the social contract. Reciprocity resolves the twin crises of profit decline and community dissolution engaging autonomy with social welfare to resolve the conflicts between them.

What ultimately distinguishes "public good" and "pretext"? "Dispossession by expropriation" or "displacement by expropriation" is at first glance offensive. It is made to seem legitimate when it is packaged as favorable to the public good. Araghi (2000) and Harvey (2005) discuss "displacement by expropriation" contending state-authorized takings achieve a privatization and primitive capital accumulation objective. They expose "pretext" for what it truly is and accept it as a means to an end. Since the state uses law to make its expropriation policy legitimate, it must transform law by reforming interpretation of legal principles. In this way, expropriation is a "first world expression" of rural peasant countryside dispossession now expressed in the urban built environment (Araghi, 2009a). This makes its global breadth and depth all the more relevant. A compelling response to this analysis is to ask whether state-authorized conversion of ownership is in fact a legitimate public purpose. This issue arises in the context of deprived autonomy, which has been caused by dispossession.

Some argue expropriation is an intolerable infringement on ownership. Others insist the state is authorized to safeguard ownership but can infringe on such rights with just cause. Infringement is constrained, they add, by limiting the state and holding it to its duty to protect its citizens. A socially necessary justification in the public interest, however, is legitimate grounds to justify interference with personal autonomy. The legitimacy of state action depends on whether the act serves a socially necessary public good. Araghi (2009a) describes this dilemma in terms of

the “peasant question.” His analysis is extended here by the suggestion that modern “peasants” are the residential and commercial owners faced with the threat of dispossession by state-authorized condemnation. Corporations have taken the form of the state. They have privatized the state through law. They have done this by controlling law. The conflict between autonomy and social welfare plays out in this analysis considering the appropriateness of state-authorized expropriation. The state police power is broadly defined engaging authority to prohibit things detrimental to public health, safety, welfare, and morals. The objective is to proactively achieve benefit for the community. The state possesses inherent power to do all things “necessary and proper” to preserve and protect the “public good,” but its authority is limited. The constraint of necessity requires use of the “least drastic but necessary means” to achieve sought-after ends. The connection between “accumulation by dispossession” and the extended construct of “dispossession by expropriation” is the restructuring of “global value relations” suggested by Araghi (2009b), whereby “takings” are the modern form of historical enclosures applied to remedy the present crisis of capitalism. Expropriation is, therefore, a political remedy to resolve market failure.

Araghi (2000) explains the historical solution was creating family-sized farms to vest interests connecting individuals to particular locations to “preserve the dignity of the individual” and ensure “the future of democracy in the world” (2000, p.148). Today, development brings discomfort. Critics of dispossession claim it threatens autonomy negatively impacting quality of life and dismantling social welfare networks in the name of eliminating inefficient producers. Negative results include the dissolution of community bonds. In some instances, negative social consequences are beyond a community’s capacity to repair. The remedy for the “problem” of disutility and underdevelopment, assuming *arguendo* it is in fact a problem, is to force more efficient land uses, which requires the state to disturb ownership rights and convert uses. This is about selecting preferential social values in response to contingency. The legal system, which derives its legitimacy from the general public’s willingness to comply with its directives, requires policy decisions be socially acceptable. Alexander (2005) argues rent-seeking (“pretext”) determines when a particular exercise of eminent domain is lawful or not. If profit is overwhelmingly the dominant factor then it is not. When eminent domain is applied to force sales of land, courts must inquire into the degree of private influence on the project to determine whether the “choice-of-means” is legitimate (Alexander, 2005, p. 961).

Alexander (2005) points out transfers of ownership demonstrate rent-seeking. This triggers a rebuttable presumption against there being a valid “public use” and is precisely what critics of Columbia’s expansion argue took place with respect to resolving the blight determination inquiry in *Tuck-It-Away, Inc., v. NYS Urban Development Corporation* (2010). There, the New York State Court of Appeals held it was proper to defer to an agency blight determination to justify an expropriation. It permitted the university to expand its physical space (*Tuck-It-Away, Inc., v. NYS Urban Development Corporation*, 2010). This decision is consistent with established custom, tradition, and administrative law. Courts commonly defer to agency discretion. The important take-away from this is the court reversed a ruling prohibiting Columbia from expanding since it agreed with Columbia’s contention that a taking targeting commercial properties is a genuine “public purpose” social welfare benefit and not an illegitimate “pretext” (*Tuck-It-Away Inc., et al., v. NYS Urban Development Corporation*, 2010).

The Supreme Court declined to review, let alone overturn, the Columbia expansion case (*Petition for Writ of Certiorari in the matter of Tuck-It-Away Inc., et al., v. NYS Urban*

Development Corporation, 2010). As a result, expropriation for the purpose of economic development is lawful in New York. Columbia's expansion was held by the Court of Appeals to be a more useful land use than a gas station and a public storage facility. Those businesses were displaced. This is an example of how agencies of the legislature make public policy choices and courts allow them. Tuck-It-Away (2010) reveals the state can seize private property for the "public good" mystifying (cloaking) development's "dark side" and converting uses to more efficient ones in which the drive for profit motivates the taking. David Harvey (2005) adds that expropriation is a continuous process of primitive accumulation that reasserts itself periodically and forces labor costs down to enhance capital accumulation. One of the more interesting aspects of the evolution of development takings law (FN1) is how it impacts voluntary exchange.

Contract law governs commercial activity. An underlying objective in enforcing the expectations of contracts is to facilitate economically efficient decisions. Breaches of contracts that are inefficient lead to alternative remedies. Friedrich Hayek's "spontaneous order" concept is described by Peters (2001) to outline the relationship between free-market voluntary exchange and order. Peters (2001) explains that free market exchanges produce more efficient results through utilitarianism, which describes the preference for market-like exchanges since voluntary exchange is valued positively and oppositional social coercion is valued negatively. Connecting utilitarianism to condemnation expropriation through economic development makes utilization a "public use." The important question arising from this analysis is whether utilitarianism is in fact a "public purpose pretext." For purposes of this analysis, it is useful to consider Columbia's expansion as an example of "rational utility maximization." Thus, development is thought of as a socio-economic problem and simultaneously its solution. To simplify, let us assume profit potential is the primary motivation of a particular taking. From there, it is easy to see how illegitimate "pretext" co-opts the economic development process making any asserted "public purpose" questionable.

Historically, development takings began as an exercise of police power to promote public welfare. In due course, takings authority was expanded incorporating slum clearance (blight remediation). Historical enclosures and their modern expression are about achieving an effective balance between autonomy and welfare. The history of enclosure begins, some argue, with the "long colonial period" of Western society stretching from 1492 to 1917, includes global colonial enclosures and the important year 1834, which saw to the start of the dismantling of the ancient welfare system in favor laissez faire liberalism (Araghi, 2009a). It is argued here that this process is now repeating itself in the present neoliberal expression of dismantling Keynesianism. Social welfare reform now coincides with a multiplicity of historical redevelopment projects of the 1950s and 1960s better known as "urban renewal" (Lefcoe, 2008), and extends the "peasant question" to modern applications in which the objectives of capital-accumulating businesses are counterpoised against small-scale ownership holdings as Araghi (2009b) argues.

The modern political solution to the "peasant question" is described in Kelo (2005). There, the Court explained how the state can legitimately expropriate to stimulate economic development. The Court observed the state also can move in the opposite direction by enacting greater protection for property rights should it choose to do so. The Court, however, declared that it would not substitute its judgment with respect to what is best for the public. Such decision-making is the duty of the legislature, it announced. Some say this is appropriate. Others disagree. *What does all this tell us with respect to Keystone's proposed expansion?* Araghi (2009a) argues "postcolonial neoliberal globalism" is a counteroffensive that acts to reverse social welfare

protections, free the market, dismantle the welfare state, and privatize its functions. He contends privatization (2009b) is all-encompassing. It uses the legal and property rights system as a tool to deregulate labor and trade. *This tells us Keystone will be permitted to expand.*

For Araghi (2009b), privatization is an increasingly significant aspect of modern political economy. Now more than ever, law is directed toward promoting more efficient allocations of resources. The consequence is increased instances of “dispossession through coerced market competition among unequals” (2009b, p. 134, citing John Block). This modern expression of political economy has significant implications for the use of eminent domain. As the political economy of the 1970s dismantled Keynesian social welfare through the introduction of neoliberal privatization, the enclosure regime correspondingly expanded. Competitive privatization is now the buzzword directing the global political economy to reverse the crisis of capitalism caused by welfare reform *by reforming welfare reform*. Neoliberal privatization is engaged to reverse economic stagnation. In the process, it does damage to personal autonomy. This article develops the argument that condemnation is operationalized to promote the public good, even as it operates to further private gain as the two are coincident.

Some theorists argue private and public need is inadequately distinguished. They claim the influence of private benefit can be overwhelmingly dominant, which ought to mean the public use justification is a sham (Alexander, 2005). But the justification continues to hold currency. Kelo (2005) is a majority “liberal” decision, but interestingly enough, it is consistent with neoliberal ideology. As Peters (2001) contends, privatization is an effort to engineer an extreme form of economic rationalism, which is as inconsistent with the ideology of the “New Right” as it is critical of the state as a form of individualism.

Peters (2001) suggests individuals should be able to direct their lives to a far greater extent than is presently possible. He describes the all-powerful state as the greatest obstacle to this. It is often said that libertarian property rights advocates suffered a setback in Kelo (2005). The Court did, after-all, hold that economic development is a legitimate “public use” justifying deprivation of private property rights. Justice Stevens observed each legislature is free to enhance property protections should it choose to do so. New York has not. Its state agency for redevelopment supported Columbia’s bid to expropriate. But was the land blighted? Responding to that question requires understanding what being blighted actually means. On this, there is no clear consensus. Some contend one knows blight when one sees it following Justice Potter Stewart’s observation in *Jacobellis v. Ohio* (1964). But that is not a satisfactory resolution. Kaitlyn Piper (2010) correspondingly suggests the answer may lie in how blight relates to underutilization through pretext. She questions if it makes sense to use economic underutilization to define a blight-qualifying status. She contends resolution of the underutilization as blight equivalent question remains unresolved.

Public Use

The previous section describes a world historical system mediated by law in the context of enclosure. This section focuses on “public use” and its transformation. The expansion of the definition of “public use” permits transferees significant latitude with respect to their use of expropriated land. This analysis has important implications for TransCanada’s Keystone plans. Cristin Kent (2007) describes the inequity of dispossession by expropriation when the original articulated “public purpose” is later abandoned. Subsequent abandonment leads to the question

whether the original justification was genuine or a mere pretext. Kent (2007) explains how an original owner's assertion of a right of redemption often is rejected by courts. The legal reasoning for rejecting the claim is that once a taking is approved there is not any obligation to put the land to a particular post-condemnation use. This means courts limit the rights of original owners to protect themselves from fraudulent takings since the condemnee cannot call for an "untaking" of land that has been taken (Kent, 2007).

What is the outer limit of expanding expropriations? The historical "colonial" liberal era known for economic development in the form of infrastructure creation (bridges, canals, ports, railways, roads, and other public utilities) is compared with the "social welfare Keynesian era" known for remedial redevelopment and social welfare provision. What changed between the two periods was legal interpretation. Modern analysis incorporates the idea that all members of society are bound by and entitled to the benefit of law. Keynesianism contends public welfare provision is socially necessary. Neoliberalism builds upon that legacy. It holds that privatizing austerity is a necessary response to the crisis of capitalism (Araghi, 2009b) caused by Keynesian policies. To resolve the crisis, law is transformed to accommodate to changed circumstances (Luhmann, 2004). The neoliberal policy is to roll back social welfare provision. Public funding is replaced by private investment. Private investors require a solid opportunity for profit, however, and that some specific amenities are included. The point of departure for this analysis thus begins with recognizing development takings as a form of public-private partnership.

The analysis connects economic means (utility) with social welfare ends (productivity). There is dialectic between private focus on profit and public focus on common good. Alexander (2006) observes it is necessary to restore reciprocity between autonomy and social welfare. He suggests the social welfare obligation norm can free the expropriating authority from the constraint of having to stretch to articulate a contrived "public purpose." George Lefcoe (2008) explains the difficulty in distinguishing "private good" from "public good" lies in the public-private mixing of uses. When underutilized areas are improved, both private and public welfares gain. Kent (2007) elaborates on this point. She argues redevelopment is the ultimate expression of law's privatization. For her, the articulated justification for taking (furthering public good) is an excuse to satisfy legal requisites. Theorists who condemn development takings as a public "bad" point to cases such as Poletown (1981) where the City of Detroit condemned the homes of thousands and many small businesses to construct a facility to secure a company's commitment to remain in the community. The goal was to save jobs and tax revenues. However, those public goods never materialized. The Michigan Supreme Court later overruled Poletown (1981) in County of Wayne (2004) when it had become apparent that the previous policy was a failure. County of Wayne (2004) prohibited economic development takings under the "public use" clause of the Michigan Constitution declaring such takings do not, in fact, satisfy a "public purpose."

One argument offered in opposition to development takings is the representative-democratic political process allows interest groups too much power. According to Somin (2005), it permits them to usurp state authority and manipulate condemnation for private gain. Somin (2005) offers comparisons between "relatively poor and working class" owner-victims and the more politically astute capitalist corporations. He contends there is a significant differential in power relations at play. Moreover, he suggests that, even as the state transfers property from less effective users to more effective users to benefit the public, powerful social elites profit and gain at the expense of vulnerable and unprotected individuals who are typically powerless to resist

dispossession. Owner-victim-challengers contend redevelopments fail to satisfy minimum “public use” requisites but still are approved as long as they remotely appear to promote a legitimate “public purpose.” They claim this proves illegitimate “pretext.” Lefcoe (2008) describes this situation as a mystification or “naked pretext for wresting land from one private owner for the exclusive benefit of another” (2008, p. 803).

The 1930s and 1940s saw a multiplicity of remedial restorations. By the end of the 1970s, federal financial support for such programs diminished although they were still socially necessary. It is an interesting historical footnote that the expansion of state authority to take corresponds with increased private involvement in the process. Lefcoe (2008) draws no conclusions from this but adds that expanding state takings authority means there is less of a need to justify takings. Restoration projects now derive legitimacy from their promotion of efficiency, which aligns well with the predominance of neoliberal austerity. While some objectionable forms of redevelopment persist such as “spot” takings that encourage a favored private firm to expand “by acquiring land from unwilling neighboring owners” (Lefcoe, 2008, p. 804), more often than not, redevelopments truly embody a public purpose objective. Kent (2007) argues the only way to reverse a privatization trend of favoring wealthy private developers at the expense of the public good is to encourage courts to stop presuming the state acts in good faith when transferring ownership.

To correct imbalances, courts need to make a more rigorous inquiry into whether an expropriation is, in fact, necessary. Kent (2007) argues courts should defer less often and less willingly to political policy choices of legislatures or delegated proxies. One way to accomplish that is to require the state to put taken land to its originally articulated “public use” within a reasonable time and for a reasonably minimum time. The remedy for failing to do so could be creation of a right of redemption that could issue to the original owner at the original condemnation price (Kent, 2007). Somin (2005) argues authorizing an expropriation without a corresponding obligation to use the land for the originally articulated public purpose is a public “bad.” If the taking is not coupled with a binding obligation to produce a beneficial result, there will likely be no public gain since there is no accountability. This means voters cannot punish those who make poor policy choices.

Somin (2005) adds that blight is an important part of the analysis. He explains that since expansive definitions of legitimate expropriation circumvent due process restrictions, no amount of prosperity can ever adequately protect owners against potential blight determinations. If blight factors are expanded to include downward trends in business, relocations, financial failures, and loss of sales, all of which commonly occur, then there may be no end to what circumstances tolerate expropriation. Blight and underutilization blend into one and the same thing meaning the expansion of the authority to dispossess is unlimited. Kent (2007) says we cannot have that. She argues for introducing more equity into takings law analysis. But equity and efficiency do not always correspond. Is state involvement in redistribution of ownership rights truly in the public interest? The argument developed here is it is possible to streamline land assembly and resolve market failure simultaneously. How can this be done?

The fact is the market does not always offer the “best choices or the most coherent, benign development patterns” (Lefcoe, 2008, p. 805). Therefore, private-public partnerships serve a necessary and sufficient purpose of correcting imbalances. Still, critics contend the private sector functions just fine without state interference. They argue the role of the state in land use is historically complex, and courts are ill-equipped to resolve condemnation challenges since their

direction is frequently limited to law's specification whether the legislative assertion furthers a public use in the first place. An example would be to abate a nuisance (Lefcoe, 2008).

Gold and Sagalyn (2011) explain why restoration is a frequently used justification for expropriation. They argue "blight" is historically defined as the negative conditions necessitating remedial police power intervention to remedy safety risks (Gold & Sagalyn, 2011). As burdens on social welfare impose costs on the public, the state typically seeks to shift such costs to the private sector. The private sector willingly assumes such costs if there is a profit to be made. Public-private partnerships are a logical response to the loss of federal funding. They respond to economic crisis by maximizing efficiency of resource use and remedying hazards in the interest of public safety by combining private and public objectives. Gold and Sagalyn (2011) label this "Economic Development Use." They argue the potential for abuse of process ("pretext") increases when the blight designation is used because it is vulnerable to subjective interpretation. They explain redevelopments that produce less of a public benefit and more of a private benefit signal there is an increase in potential for abuse.

Gideon Bell and Abraham Parchomovsky (2006) argue that granting the state broad deference to expropriate can result in actually protecting property owners, rather than harming them. They admit Kelo (2005) is unpopular because it grants excessive deference to state authority and tolerates impairment of ownership. However, they also accept that the decision favors large corporations' efforts to accumulate capital at the expense of small property owners without their consent, which disproportionately harms the poor. Bell and Parchomovsky (2006) argue efforts to more narrowly construe "public use" erode property rights by increasing the potential for abuse of state authority. The problem is that having compensated takings enhances the attractiveness of using uncompensated seizures. This has the effect of leaving property owners more vulnerable to damaging-because-uncompensated, indirect takings. Bell and Parchomovsky (2006) argue "takings" to enable "givings" (takings-to-transfer) lack a "public use" but still fall within the zone of legitimate condemnation if the pre-taking property is blighted. A prospective condemnor seeking state assistance to condemn can accomplish his objectives by finding himself blighted property then allowing it to deteriorate further so a blight expropriation can more easily be asserted. This is precisely what some claim that Columbia University did (Kaur, 2010).

A narrow definition of "public use" forbids post-taking private ownership. An exception arises in cases of expropriation for the purpose of remediating blight (Bell & Parchomovsky, 2006). Society defines how it wishes the power of condemnation expropriation to be implemented. A narrow implementation forbids taking non-blighted property to encourage growth. Must the exercise of eminent domain be limited to only acts producing "public property" or may its exercise be for purposes of containing poverty, or remedying social inequity, or enhancing social welfare provision? Can private and public objectives be satisfied simultaneously? The difficulty with this analysis is identifying where to draw the constantly shifting gray boundary lines between legitimate state action to facilitate the public good of remedying blight and illegitimate state action to foster economic redevelopment for private gain (Bell & Parchomovsky, 2006). It is also difficult to distinguish legitimate seizure of underutilized properties when asset values are depressed due to disrepair from illegitimate seizure of underutilized properties reduced in value due to intentional underutilization by an owner seeking a blight designation to justify expropriation.

Bell and Parchomovsky (2006) conclude politics (not law) blocks *and* encourages takings. Takings are a matter of economic, political, and social compromise. They explain law transforms

in response to social needs. They accommodate to economic, political, and social influences. One factor to consider in deciding if the articulated public purpose is legitimate is if the state has developed a comprehensive plan internally from its own staff and resources, or relies on a private entity (Gold & Sagalyn, 2011). An internally directed comprehensive plan demonstrates a measure of independence between public and private interests. For Gold and Sagalyn (2011), private sector involvement in planning can influence the plan itself, which in turn creates a risk of impropriety by conflict of interest. They argue the “public purpose” aspect of a redevelopment is compromised when developers “capture” the influence of public officials to secure profit. An alternative way of analyzing this problem, they suggest, is to consider why private interests may be drawn to a particular redevelopment. They conclude developers select projects that fit with their business model, their capacity, and their experience, but perhaps most importantly, they require a significant potential for return on investment. The Atlantic Yards case is one where these factors all came together. Challengers claimed the project was driven by “pretext” since the developer was motivated by profit, and private benefits were clearly in excess of what is permissible since the public good “gains” were speculative and unquantifiable promises (Goldstein v. NYS Urban Development Corporation, 2009).

This article does not presume “pretext” is the equivalent of profit although the terms are related and perhaps intermixed in this analysis. The terms may even sometimes be interchangeable. Kelo (2005) held expropriation is a necessary and sufficient “public purpose” that permits condemnation for redevelopment to put land to higher and better uses. This equates accumulation with “public good.” Lefcoe (2008) contends efficiency-enhancing activities are a “private purpose.” Others argue they benefit the public too while there are those who contend non-blighted residential properties can never be legitimately expropriated since that would amount to unlawful “public use” from the inception (Berman, 1954; Kelo, 2005, dissenting opinion).

Kent (2007) argues autonomy and ownership are interconnected meaning land is a linchpin that is indistinguishable from liberty since displacement from one’s home defeats one’s autonomy. This argument can be turned on its head implying the expansion of state authority to take resolves economic crisis by promoting individual capacity to create by innovation. Lefcoe (2008) points out the dilemma for the City of New London in Kelo (2005) arose out of fiscal distress. The cause was the shutting down of federal military bases (New London was directly impacted by the closure of a military research facility), loss of related federal public spending as well as the expectation of a costly remediation for an environmentally polluted site. The solution to the crisis was to attract private investment to replace lost public funding. The economic stimulus package of privately-funded redevelopment promised the city a functional marina, a state park, new streets, sidewalks, curbs and utilities, a new Coast Guard museum, a hotel, plenty of commercial office and retail space, an extension of river-walk and high-end residential units, and the long-term presence of Pfizer Corporation, which would enhance tax receipts.

Critics of Kelo (2005) contend the “public goods” described above are window dressing. They are a public purpose disguise for a private purpose capital accumulation development plan. Lefcoe (2008) contends developers manipulate the political process. He is critical of judicial review that does not go quite far enough to ensure projects satisfy constitutional requisites for “public use.” This is especially true, he complains with respect to requiring accountability from the private beneficiaries of eminent domain acts to keep the promises made at the time the request to condemn was originally made. He explains that when a condemnor promises economic

development and employment in exchange for dispossession and expropriation, he should be made to keep his end of the bargain. If a condemnor is not required to provide any of the benefits he claims he will provide when he first asserts the need for state-authorized condemnation then the logic of expanding expropriation authority collapses. Sadly, observes Kanner (2011a), no public benefits ever materialized as a consequence of the displacement and dispossession authorized by Kelo (2005). Presently, the 91 acres of waterfront property that were condemned are designated as a place to dump vegetation debris (Kanner, 2011a).

This fact sheds light on the “pretext” complained of in Justice Kennedy’s Kelo (2005) concurrence. Kennedy argued “pretext” seemed to be absent according to the facts, but if it were present, that would make the taking illegitimate. Pretext, therefore, cancels the legitimacy of takings that reallocate ownership to ensure more productive land uses. The development of the law in this area reveals a trend of expanding state authority. Berman (1954) condoned a legislative remediation scheme to eliminate blight. Midkiff (1984) authorized reallocations of land to resolve a crisis of equity in ownership. Kelo (2005) approved the substitution of more efficient land uses in place of less efficient uses. In each case, the law permitted dispossession for substitution of uses. Berman’s (1954) plaintiff argued his parcel was not blighted, and its inclusion could not possibly achieve remedial effect. His claim was rejected. Midkiff (1984) argued forcing transfers to redesign a long-established social ownership system is a violation of private property rights, but the claim was similarly rejected. The legislature spoke, and the Court affirmed its public policy choices. Kelo’s (2005) plaintiff argued her parcel was not blighted, and a plan to convert ownership in order to promote economic development is a violation of private property rights. The Court rejected that argument too holding a plan to promote the public good is adequate justification to exercise the expropriation authority. Kent (2007) explains the present interpretation of the law of “public use” is now so broad it brushes against the perimeter of elasticity identifying ever more remote boundaries. Today, almost any act is necessary, proper, and sufficient to serve a “public use.”

Kent’s (2007) description suggests takings are lawful as long as they benefit the public in “some” way. This means a “public use” is anything that serves a “public purpose.” Obviously, the preceding definition lacks clarity. Having so low a threshold means “anything goes.” Put another way, the drying up of federal financial support for redevelopment programs forced states to form partnerships with private entities to fund programs to stimulate economic activity. But because corporations are typically driven by profit, the capital accumulation motive subordinates the public welfare objective. As a result, critics contend, state-authorized takings benefiting corporations are a “pretext.” They are an improper use of state power since legitimacy is derived from satisfying a “public use,” but the “private purpose” underlying the project is, in fact, the primary driver of the redevelopment objective. Lefcoe (2008) argues that restoring equity can resolve this dilemma. Kanner (2007) adds equity is restored by ensuring the articulated public purpose use is actualized. He observes redevelopment agencies can and ought to be required to honor their original plans.

It seems unfair to allow an agency to disregard its plan of redevelopment when the plan was the justification for the expropriation in the first place. Lefcoe (2008) also argues it is unfair to permit a property to be taken for one purpose and then be conveyed to another for an entirely different use. “Takings-to-Transfer” are facially inequitable but legitimized by the underlying public purpose they serve. This issue is complex because the legal premise for such a result is not contestable. A fee simple transfer typically conveys all right title and interest to the property. A

condemning authority is, therefore, free to do as he or she pleases with the taken land (Lefcoe, 2008). But takings are not the normal situation. If a justification to take is the basis for the taking then the justification ought to be a requisite for continuing such ownership.

Blight determinations are also relevant in this analysis. The term “blight” often is inserted cryptically into enabling statutes to lend legitimacy to redevelopment projects (Lefcoe, 2008). This explains why the tradition of using “blight” to justify expropriations is maintained in modern takings. The blight designation only superficially excuses expropriation. This is in terms of nuisance-abatement. Advocates for autonomy argue “blight” is a tool subject to manipulation. It is abused when the “blight game” is played to expand the reach of a redevelopment. This happens when an agency declares a targeted area “blighted.” It is a commonplace that agencies typically choose consultants not to determine if there is blight but to find blight where they want it to be (Lefcoe, 2008). Typically, a party seeking approval for an expropriation commissions an “unbiased external report” that attests to the “public utility” of a proposed project. Such reports typically support the conclusion the proposed project satisfies all “public use” requisites. Lefcoe (2008) explains how the state can exercise extremely broad authority in this regard. For example, the state can declare a particular parcel that is “bad enough” to be deemed “blighted” somewhat bad meaning “deteriorating,” which would qualify it for remediation (Lefcoe, 2008).

Theorists of the Chicago School of Sociology argue the crisis of urban decline calls for public intervention. They claim that blight threatens social welfare and public intervention such as by nuisance abatement can resolve the threat. Alternatively, some suggest takings-to-transfer can resolve the crisis. They argue those better equipped to use the land should be given the ability to do so. This is done by authorizing takings for development including takings for re-sale to private developers (Lefcoe, 2008). The “public purpose” requisite is satisfied by the promise of future improvements due to enhanced efficiency. This is utilization as a public use. Critics contend “value” is a relative term, however, and its meaning is inherent, intrinsic, and subject to interpretation. Thus, it is a problem to decide whose use is the more valuable. The answer to that criticism is to let society make those choices. Courts defer to public policy choices of legislatures representing the public will all the time. Some hold if a private purpose is central to a project, it cannot serve a “public use,” while others conclude that if a private use is merely incidental then “public use” requisites are adequately satisfied (Kent, 2007).

Blight and Abandoning the Articulated Public Use

The concept of “blight” is related to the thesis of “utilization as public use” since both blight remediation and utility are justifications for dispossession and expropriation. Both are intended to improve the utility and value of the subject asset. Law is used as a tool to convert ownership and transform uses to improve productivity. Lefcoe (2008) comments that statutes extend taking authority by expanding what can appropriately be taken. Strict interpretation of rules limit state authority and flexible approaches expand the scope of authorization such as permitting the taking of non-blighted land to support the redevelopment of a larger blighted area.

The issue of a condemnor abandoning its originally declared “public purpose” in favor of an alternative (private) use (discussed in the previous section of this article) is a particularly troubling aspect of this analysis. Critics argue it is unfair to take for one “public” purpose and later switch applications to alternative “private” objectives. They say this is a “bait and switch” tactic and a “pretext” disguising an underlying “private purpose” to make it appear more

appealing. Kanner (2007) suggests broadening state authority to facilitate expropriation permits the collective interest to trump individual rights, but the reverse could just as easily be argued. The state is able to capture surplus produced by economic development stimulus (enhanced tax revenues) or delay realization by reinvesting the surplus by transfer to a preferred private entity in the form of abatements for improvement grants.

Should the state's hands be tied and should it be forced to proceed with a plan that turns out not to be a good approach simply because it originally appeared a good choice? What if additional information leads planners to conclude it makes sense to alter the original plan? Lefcoe (2008) addresses this dilemma in the context of how surplus value is extracted by dumping or transferring costs onto neighboring owners. The historical example of this is the Mill-dam Cases. He explains "blighted" land is an expression of a monopoly problem. A use that inflicts costs on neighbors is a nuisance, but it is a nuisance that may, in fact, make sense to permit. *A nuisance is tolerated when it is economically efficient, and this is perhaps why expropriations are lawful.* In cases in which benefits exceed costs, the injured can be compensated, and surplus remains. If it is more efficient to tolerate the nuisance and compensate victims than to eliminate the nuisance then the nuisance will be maintained. The Mill-dam cases demonstrate this.

Lefcoe (2008) explains it may be inappropriate to allow an owner to demand compensation to discontinue an offending use, however. He explains that an owner has no legal right to gain from a subnormal use of his or her land. Kanner (2007) labels expropriation from unoffending parties and conversion to favored entities for profit a "reverse Robin Hoodery." He argues if private gain lies at the core of a redevelopment the fact that it does so demonstrates a lack of a genuine "public purpose." The only logical conclusion then is the taking is a "pretext." Lefcoe (2008) suggests contemporary takings are better understood as expansions of historical takings, which involved correcting deteriorating conditions. Society is always interested in self-correction. Modern urban restorations are an alliance of activists, realtors, and reformers each seeking to improve their particular agendas. The common denominator of interests is to revive declining urban centers, improve living conditions for the common folk, make land available for "higher and better" uses, and create employment opportunities that stimulate economic growth. Each of these objectives furthers a "public purpose." All are expressed in the incipient restoration case Muller (1936), in which the court accepted slum clearance as a "public use" (Lefcoe, 2008).

Lefcoe (2008) observes state officials increasingly reach out to private developers for assistance with restoration planning. They do so to gain access to the expertise private companies have developed and out of financial necessity. He explains "public-private partnerships" are designed to make a city appear more attractive to encourage businesses to locate there. Planners add recreational and leisure amenities as added incentives. The "throw-ins" of infrastructure improvement, modern urban design, and jobs-creation get them the bid since they demonstrate the necessary "public purpose." No one suffers from restorations, argue proponents, because they improve the public good, except perhaps those who are displaced, but even they benefit from their displacement when provided with "just compensation" for the individual sacrifice of dispossession for the public good.

Mixing private and public benefits makes it easier to legitimize questionable expropriations. Private gain is acceptable when coupled with a "public purpose." Thus, agencies seeking to avoid a "public use" challenge stretch the imagination to demonstrate their project contains sufficient elements of a "public use." This deflates criticism. Legitimate "comprehensive plans" are distinguished from illegitimate "spot takings," the latter containing a questionable

public interest justification. Lefcoe (2008) recommends that agencies seeking to avoid a claim of “pretext” should include more than one redeveloper in its plan, schedule more than one site visit and adorn their project with as many “public goods” as possible. Public goods include quality design, dedicated open spaces and preserves, transit stops, recreational and other such amenities.

Is this a masquerade disguising private acts as public goods? Perhaps it is. Kanner (2007) argues courts defer too readily to the presumed integrity of comprehensive plans. He criticizes such heavy reliance since the plans are not binding, officials are not land use experts, they frequently lack business sense and the private sector is often called in to resolve deficiencies and end up changing the plan anyway. Kanner (2007) argues that deference is problematic since the expropriation plans don’t even have to be followed. If the agency can ultimately use the land for any purpose it sees fit then why are courts focusing on a plan that may never actually be implemented? Agencies can rightfully transfer the land they take to any entity for any purpose thought to be “useful” or “public.” Kanner (2007) observes that one important lesson to be taken from Midkiff (1984) is that the unintended consequences of social engineering can be harmful. In Midkiff (1984), effort was made to remediate social inequity by undoing what was thought to be a discriminatory land use system. The idea was to correct a “malfunctioning” real estate market by forcing fee simple transfers. The result was not what was expected. The housing supply was reduced, land prices rose and the plan to redistribute by taking was ultimately counterproductive (Kanner, 2007).

Kanner (2007) uses the example of Los Angeles’ expropriation of Chavez Ravine to illustrate his point. There, the taking was for the stated purpose of constructing low-cost public housing which was never built. This demonstrates how unreliable expropriation plans can be. In that case the city ultimately transferred the land to the Brooklyn Dodgers to encourage the team to relocate, which of course it did. Was this a pretext orchestrated through “bait and switch” tactics or was it merely a genuine change in plans? Kanner (2007) observes that law supports economic development by legitimizing dispossession. When the former owners sued for redemption arguing the land was not being used for the originally articulated “public purpose” that justified the taking in the first place the courts denied them any relief. Is it that public officials don’t know what they are doing or is that that they are wise enough to alter plans as current circumstances dictate? Surely the latter explanation must be correct.

Kanner (2007) argues land targeted for redevelopment must meet certain criteria. It must be sufficiently “downscale” to permit the claim it is blighted but sufficiently upscale that improving it will attract investors. This is the same analysis taken with respect to choosing to develop brownfields over greenfields. The land ultimately taken is selected only if it can *both* be used to remedy social ills and also is capable of providing a lucrative return on investment. Land that is not commercially desirable but can remedy social ills is avoided. This proves it’s about profit not equity. Kanner (2007) suggests too much judicial deference to legislative decision making is a mistake since it permits the “for-profit” motive to dominate the analysis. Since deference allows disregard for the language of “public use” it undermines constitutional protections of individual rights legitimizing dispossessions for profit. Kelo (2005) is criticized by some for encouraging even more deference. It arguably adopts a neoliberal privatization perspective on takings that tolerates privatization of the legal process by letting the market decide how redevelopments should proceed and permitting the political process to interfere too robustly to facilitate market activity. In this way passive judicial review is a reflection of subordinating society to the market which has the effect of rendering “public use” meaningless

since it condones expanding interpretations of state authority to expropriate. These justifications go beyond customary and traditional constitutional definitions. Kanner (2007) argues this can be resolved. He suggests courts must reinterpret “public use” to impose clear limits on state expropriation authority. Courts need to demonstrate he claims, that they will no longer tolerate an infinite broadening of expropriation-acquisition power, nor rubber-stamp claims of facilitating a “public purpose.”

Kanner’s (2007) point is well taken. He argues that it is one thing for courts to support expropriations to resolve a discrete problem that may not lead to the “best” resolution, but it is quite another to accept as OK the authority to expropriate, even if it is clear from the start that the remedial approach selected is a pretext. There is pretext in which the condemnor is inherently incapable of achieving its stated purpose or in which the post-condemnation successor-in-interest can disregard the originally articulated legislative purpose that was “sold” to the courts, and the public and then insouciantly apply the taken property to uses entirely different from what was originally contemplated (Kanner, 2007). Daniel Kelly (2009) adds that takings are legitimate if they appear appropriate and no conflict of interest seems to arise. He proves the legitimacy of takings by means of an analysis that uses “comparative competencies” and a burden-shifting approach.

Kelly (2009) claims that takings are legitimate if they promote a significant “public good.” They also must be executed pursuant to a carefully considered development plan with the identity of private parties not known in order to avoid any conflict of interest. He admits that unlimited private involvement can lead to a number of problems including corruption, which can increase the likelihood of undesirable transfers. Still, he suggests, these problems can be satisfactorily resolved if decision makers study “comparative competencies” with a focus on ensuring benefits of private involvement outweigh related costs and victims are adequately compensated. Kelly (2009) explains legislatures can implement his “comparative competency” framework by adopting a burden-shifting test, which is similar to the one popularly used to discover “pretext” in federal employment law cases.

Kelly (2009) claims it is important to strike a balance between excessive judicial deference and discretion. He argues balancing minimizes the risk of approving corruption-producing expropriations that offend autonomy. He explains that incentivizing the use of condemnation expropriation for projects that purportedly produce a public benefit can be a good thing. But if the sole purpose is to create a surplus to benefit a private party, this private gain purpose will have negative effects and trigger increases in private efforts to manipulate the eminent domain power by interest groups whose action causes waste of social resources. He argues the trick is to find a way to synergize gain. He analyzes the risk of relying upon private investment is the possibility that the market can manipulate the law such as when private parties threaten to relocate unless a government authority condemns land on its behalf.

The use of cost-benefit analysis in these types of cases is helpful. Companies whose activities provide tax revenue for local government influence public officials to support their activities, even if there is only a remote connection between private acts and public interest. Kelly (2009) admits it is extremely difficult to determine whether a taking is genuinely for a “public purpose.” This is due to various factors including that a condemnor’s motivation is not immediately evident and that the state may frustrate effective judicial review by masking its motives and striking down a taking on the basis of a perception of impermissible motivation. Kelly (2009) argues this is often detrimental to social welfare since the effect can cause disutility.

Justice Anthony Kennedy underscored the significance of “pretext” (as discussed in an earlier section of this article) in his Kelo (2005) concurrence arguing “illegitimate pretext” is present when a taking is intended to favor a particular private party but provides only incidental public benefit. In such cases, there ought to be a more demanding level of judicial review beyond the “rational-basis” level, he argues, since public benefits seem “incidental” or “de minimis” to private ones (Kelly, 2009, p. 185, citing Justice Kennedy). Kelly (2009) argues that if public benefits are relatively insignificant, the justification for the taking is inadequate. He crafts a test for “pretext” that compares private and public goods. A problem with this approach is the analysis does not consider a sliding scale comparison of quality with quantity. It ignores the significance of the magnitude of private benefits, even as it identifies that projected public benefits are often speculative.

In Midkiff (1984), the Court declined to second-guess the “wisdom” of the legislature’s policy choice to alter the social property law system. Kelly (2009) explains that reliance on the political process for legitimacy is a deficient approach since public officials expropriate on behalf of developers, and modify their actions and procedural justifications to suit their purpose, and so one can never know for certain whether a “public purpose” is genuinely public or not. Put another way, he explains that if a court invalidates an expropriation on the basis of a lack of planning or some other deficiency of procedure then officials can remedy said deficiency by reauthorizing the condemnation within a more comprehensive development plan or accommodating the procedural requirements to obtain the necessary private benefits. Adjustments can be made to alter the perception, and so what is real is unclear.

Kelly (2009) contends the timing of when private parties are identified to a development is significant. He observes how in Kelo (2005) the Court was impressed that the identities of the private parties remained unknown until *after* the development plan was adopted. This meant less of a possibility for conflict of interest. Kelly (2009) admits, however, that the timing of the identification of the parties may not be decisive. He observes how courts may approve certain expropriations with post-condemnation private activity even though such involvement is unnecessary, and conversely, they may prohibit pre-condemnation private activity that is necessary (Kelly, 2009, referring to Goldstein). This is the classic problem overbreadth, which is when a law is so broad it has the effect of or actually regulates or prohibits conduct not intended to be proscribed.

Kelly (2009) rejects a test for “pretext” focused inordinately on a condemnor’s intent. He argues “mixed motives” cause and resolve conflicts. This means officials genuinely motivated by the public interest should not be condemned for conducting themselves inappropriately when a taking produces private gain. Private involvement is a “pretext” argues Kelly (2009), if the motive for the taking is impermissible favoritism, but private involvement may be necessary to ensure a project’s success. Reviewing courts need to be mindful there may be good reasons for including private entities in certain public works projects. Private involvement, for example, can be helpful for the information private parties contribute. The state may not have access to particular information and considerations of optimal location, parcel size and shape, proximity to infrastructure, or location relative to the labor force also may be unknowns. These factors can be critically important. Thus, as Kelly (2009) points out, private enterprise is typically involved in redevelopments since development often cannot proceed without such involvement.

Kelly (2009) suggests corruption is mitigated by competitive bidding and other mechanisms to reduce the likelihood of inappropriate private influence. He argues competition

avoids corruption, and there is a full spectrum of possibilities for private involvement. Private companies advise and consult, or they may be active investors. Kelly (2009) observes the state is obliged by law to further a “public purpose” while private investors are obliged by economic necessity and investor accountability to secure a return on investment. The key to resolving these conflicts is to satisfy both objectives. This is possible if developers build using private and public monies to provide public benefits but also to provide investor profits. Improving efficiency of uses can secure both objectives. As Kelly (2009) points out, private involvement means a private party can obtain a distinct benefit, has the power to abandon unproductive projects, and can lobby the state to delegate or at least to facilitate use of eminent domain authority to favor its purpose.

Kelly (2009) argues to reduce the risk of private encroachment, courts must apply a burden-shifting analysis. He suggests the legal analysis used in reviewing the legitimacy of employment discrimination claims is appropriate to apply to expropriation challenges. In a nutshell, he explains that a condemnee is required to provide direct evidence of favoritism to prove the real purpose of a taking is in fact private gain. If plaintiff proves this, the analysis ends. If direct evidence is not available, however, the complainant can still prove his case by demonstrating *prima facie* favoritism using indirect evidence. This would mean proving “pretext.” Kelly (2009) observes egregious pretext cases are those in which the state transfers land to a private developer who expects a distinct benefit for partnering with the state and provides little in return. For Kelly (2009), these types of cases justify shifting the burden of persuasion to the condemnor, who must articulate a legitimate justification for the private involvement.

Thus, a condemnor asserts a traditional “public purpose” to justify her taking. If the assertion is coupled with a preference for a particular developer, he or she must show a specific justification as to why a particular type of private involvement was necessary. If he or she can do this, he or she proves the project cannot proceed without that unique private party’s involvement, and this avoids a “pretext” disqualification (Kelly, 2009, 219). If a condemnor satisfies all burdens, the presumption of “pretext” disappears. This means the burden shifts back to the condemnee, who then must prove the condemnor’s justification for private involvement is a “pretext.” “Pretext” is demonstrated by the unnecessary involvement of a “preferred” party. For example, a competitive process to select a developer could have been, but was not used. The point is to show an inappropriate risk of impermissible preferences was not avoided.

Kelly’s (2009) cost-benefit and burden-shifting analysis provides a means to distinguish illegitimate pretext from genuine public purpose. Kelly (2009) argues the state can either rely on expanding definitions of blight to justify dispossession or it can eliminate takings that are justified only by economic development. He adds some courts already use a “least restrictive alternative” requirement to safeguard against “pretext” by examining “comparative competencies” of state and private actors. If a private party attempts to use condemnation to achieve a private objective, but the same objective is possible by alternative means, then proposed improvement is lawful only if there is a concrete economic benefit to be had from joining private with public effort. If the state, however, possesses all the information it needs to proceed then private party involvement *by a preferred developer* is presumed unnecessary, which presumption can be rebutted by a legitimate justification for the private involvement.

Conclusion

Keystone is an infrastructure development project promising to deliver certain “public goods.” When analyzed in terms of Kelo’s (2005) broad interpretation of the constitutional “public purpose” requirement, the challenge for proponents to overcome is the deal-killing disqualifier of “pretext.” If Keystone is primarily about the quest for oil and private profit and less about providing “public goods” such as high quality low-cost energy then Keystone is indeed a “pretext” for a “private purpose.” Texas courts need to apply a degree of scrutiny greater than “rational basis” to disrobe the articulated “public purpose” and reveal whether “pretext” controls the application. Already some courts have held “unadorned assertions of public use are constitutionally insufficient” (Texas Rice Land Partners, 2011). Thus, Keystone may ultimately be restricted from expropriating land to further private gain, but if it is so restricted, it will be because courts have made inquiry into the genuineness of the alleged “public use” and have found disqualifying “pretext” since private parties cannot take to build private goods (Texas Rice Land Partners, 2011).

Gold and Sagalyn (2011) suggest courts measure the ratio of public benefits to private sector benefits. Others suggest a comparative cost-benefit analysis is more appropriate (Kelly, 2009). Both approaches are worthy of further consideration since they retain a “public purpose” focus while recognizing practical needs and purposes of private investment. The Court’s decision to deny review in Columbia’s expansion case (Petition for Writ of Certiorari in Tuck-It-Away Inc., 2010) is consistent with privatization of law demonstrated by judicial expansion of expropriation authority. Kelo (2005) holds that individual states can restrict or expand their already broad authority to take. *The interesting question is whether the state can reallocate ownership for the express purpose of improving the efficiency of land uses justifying expropriation to remediate underutilization as a “public use.”* Following Kelo (2005), the promise of economic benefit satisfies the “public use” requirement. However, legal interpretations change over time. Law evolves in response to social influence. Lawyers reframe factual scenarios and compare them to established principles to test and challenge interpretations. Development as “public purpose” is an idea that can be applied to legitimate state action directed toward redistribution, but it also can be directed to prohibit state action. Political expediency, subject to contingent environmental factors, invariably influences the transformation of law. Utilization is used both as a public purpose justification and as a pretext.

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About the Author

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Discussion Questions

1. Displacement, dispossession and expropriation are typically characterized as socially negative state-authorized acts in the context of eminent domain law. Can you make the argument that displacement, dispossession and expropriation actually produce concrete benefits for society?
2. It is said that the “public use” doctrine has gradually been broadened to include almost any purpose that can arguably be described as having some type of “public” aspect to it. Should the state be authorized to take private property to serve any type of a “public purpose” imaginable or should the state’s power to take be strictly limited to the furthering of traditional “public” objectives which include the building of bridges, hospitals, roads, schools and the construction and regulation of utilities to ensure the public health, safety and welfare?
3. Is a state policy of encouraging redevelopment of decaying and less economically productive communities through the offering of financial assistance such as tax increment funding a sufficient way to serve the public good?
4. Alternatively, do you believe it is necessary and wise for the state to actively enter the field to forcefully revitalize neighborhoods through land condemnations that engage private companies in partnership with the state to remediate underutilized areas?

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“Andrew”

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An Analysis of Accountability on the Performance of the Florida Department of Children and Families, 2006-2010

Ariel Álvarez

Abstract

Using Romzek and Dubnick's 1987 model of accountability, this study evaluates the accountability of performance of Florida's Department of Children and Families, during 2006-2010. A case study method using quantitative and qualitative measures was employed to assess organizational structure and accountability of performance. While performance is not optimal, findings suggest that Florida's Department of Children and Families continues to make positive strides in the wake of shrinking funding.

Keywords

child welfare, accountability, child abuse, child neglect, organizational structure, performance measurement

Introduction

In 2010, the child population in the United States was 75,512,062; of these, 753,655 were identified as victims of abuse (Children's Bureau, 2011). The population of Florida in 2010 was 18,801,631. Based on calls to the Florida Department of Children and Families (DCF), the number of investigations related to possible child abuse and neglect increased 6.7%, from 176,581 to 188,528, between 2009 and 2011 (Florida Department of Children and Families, 2011). Among the 4,121,704 children living in Florida in 2011, 51,555 were victims of child abuse and neglect, 19,156 lived in foster care, 3,711 were adopted from foster care, and 150,391 were raised by their grandparents (Children's Defense Fund, 2011; Florida DCF, 2011). Between 2006 and 2010, the number of calls for suspected child abuse and neglect declined from 313,228 to 284,330; however, the number of calls increased between 2010 and 2011 to 313,307 (Florida DCF, 2011). In 2010, DCF responded to 193,339 referrals for suspected child abuse and neglect, and conducted 151,361 investigations that resulted in 33,162 substantiated cases (28.54%). This was the third highest number of investigations nationally, after California and New York

(Children's Bureau, 2011). The Florida DCF employed 192 intake and screening workers, and 1,748 investigative workers, for a total of 1940 workers. This was the fifth largest number of intake and screening and investigative workers among the 47 states that reported this information (Children's Bureau, 2011). The average response time between the referral and commencement of an investigation was nine hours, the best response time among the 36 states that reported this information in 2010 (Children's Bureau, 2011). The number of children victimized through abuse and neglect in Florida was above the national average in 2007, but remained below the national average between 2008 and 2010 (see Table 1). Florida was among the poorest performing states, in terms of maltreatment occurrence and absence of recurrence of maltreatment while in foster care. There was improvement between 2006 and 2007, but performance has dipped since, placing Florida among the bottom 20% in 2010.

Table 1

Incidence of Child Abuse and Neglect and Maltreatment Occurrence and Recurrence from 2006-2010 as Reported by Florida DCF

Year	Child population	Unique victims	Unique first-time victims	Rate per 1,000 children			Percent absence maltreat Occurrence	U.S. Rank	Percent absence maltreat Recurrence Foster Care	U.S. Rank
				FL	US	Rank				
2006	4,004,217	---	---	---	11.0		^a 89.1	45 th	^b 99.45	35 th
2007	4,081,907	50,451	33,870	8.3	7.2	29 th	^a 94.4	28 th	^b 98.85	41 st
2008	4,070,878	47,981	28,019	6.9	7.2	21 st	93.5	36 th	^c 98.66	45 th
2009	4,057,773	45,841	24,860	6.1	7.0	21 st	93.0	36 th	^a 99.67	23 rd
2010	4,004,679	50,239	26,994	6.7	6.9	22 nd	92.8	42 nd	^d 99.18	41 st

Note. ^a 49 states reporting, ^b 46 states reporting, ^c 48 states reporting, ^d 47 states reporting.

In 2010, there were 1,537 child abuse and neglect related fatalities in the U.S., representing a rate of 2.07 per 100,000 children; (11.71%) of those deaths occurred in Florida, at a rate of 4.44, the second highest rate behind 2.22 in Texas (Children's Bureau, 2011). In 2010, Florida reported 58 (32.2%) deaths among families that received preservation services, and two deaths among families that had received reunification services within the last 5 years (Children's Bureau, 2011). The number of child fatalities in Florida remained high between 2006 and 2010, ranking as the second or third highest, at times twice the national average (see Table 2). Between 2001 and 2010, there was a 32% decrease in the number of children entering foster care, but an increase in the number of foster home placements available, and an increase in the number of adoptions. However, over 106,000 child abuse or neglect victims have been identified with nearly, 35,000 children in foster care at a time. In addition, an increase from 163 reported instances of child deaths as a result of abuse or neglect in 2007 to 201 reported cases in 2008 (Children's Campaign, 2011, p. 12).

Table 2

Comparison of Child Abuse and Neglect Related Child Fatalities in Florida and the U.S. from 2006-2010

Year	Child population	# Child fatalities nationally	National rate per 100,000 children	Number of child fatalities in Florida			Florida rate per 100,000 children
				<i>f</i>	%	Rank	
2006	4,004,217	1382	2.00	140	10.13	2 nd	3.50
2007	4,081,907	1608	2.28	153	9.51	3 rd	3.75
2008	4,070,878	1670	2.28	185	11.78	2 nd	4.54
2009	4,057,773	1668	2.32	156	9.35	3 rd	3.84
2010	^a 4,004,679	1537	2.07	180	11.71	2 nd	4.49

Note. Information taken from Children's Bureau, 2011, Child Maltreatment; ^a U.S. Census Bureau, 2010.

Florida DCF Services Provided: Privatization of Child Protective Services

Major reforms within the Florida child welfare agency were implemented in 1996, and included the decentralization and privatization of services among child welfare institutions across the state through community-based services. The rationale was that the outsourcing of foster care and related services would result in greater responsibility, community involvement, and accountability (Florida Coalition for Children, 2007). Child welfare services in Florida are provided through community-based care authorized through the Florida DCF, which includes in-home services (family preservation services and post-placement supervision) and out-of-home care (relative/non-relative care and state custody). Overall, annual caseloads for community-based care decreased from 45,770 to 33,801 children and young adults served, while the number of services increased to 35,77 in 2011 (Florida DCF, 2011). With regards to in-home services, caseloads increased from 16,558 to 17,322 between 2003 and 2005. There was a substantial decrease in annual caseloads between 2007 and 2010 from 16,106 to 11,066; however, annual caseloads increased to 12,395 in 2011 (Florida DCF, 2011). Caseloads for out-of-home care decreased from 32,051 to 18,723 between 2003 and 2010; however between 2010 and 2011, annual caseloads increased to 19,297 (Florida DCF, 2011). Overall, lack of adequate services, timely initiation of services, and family participation still plagues the Florida DCF (Florida Senate, 2010).

Bureaucratic accountability. Bureaucratic accountability systems have an internal source of agency control and a high degree of control over agency actions. In fact, bureaucratic systems of accountability are commonly used in public administration. For public administrators, the focus is on the priorities and expectations of those at the top of the agency hierarchy (e.g., in the case of the Florida DCF, the Secretary). Also, there is considerable control within the agency through the internal supervision of agency activities (Romzek & Dubnick, 1987). This is typically found in bureaucratic accountability systems. It is a policy structure of clearly defined rules, regulations, and operating procedures coupled with a supervisory-worker relationship. Under this approach, the worker follows the directives of the supervisor (Romzek & Dubnick, 1987). After highly

publicized cases resulting from the failure of the state's child protective services to ensure the safety of children under the agency's care, calls for reform abounded. The focus is placed on those who administer the large state-run systems, and the caseworkers in charge of interacting with and overseeing the day-to-day care of children and vulnerable adults under the agency's protection. Often, lack of leadership, poor training, and insufficient funding are identified as the underlying causes behind this failure. In addition, calls for reform from state and federal political and legislative authorities demanded improvements in how the state child welfare agency functions (Social Work Policy Institute, 2010).

With many levels of responsibility and accountability, Florida DCF'S organizational hierarchy includes the Secretary of Florida's DCF, who reports to the Governor and is supported by the Deputy Secretary, and oversees the functions of the Assistant Secretary for Administration, the Assistant Secretary for Operations, and the Assistant Secretary for Substance Abuse and Mental Health. The Assistant Secretary for Administration oversees administrative functions, such as financial, human resources, contract services, and general services. The Assistant Secretary for Operations oversees regional managing, functions, and programs, such as public benefits integrity, refugee services, program management, economic self-sufficiency, and family and community services. The Assistant Secretary for Substance Abuse and Mental Health oversees the functions of performance and support services, the Office of Suicide Prevention, the consumer and stakeholder office, mental health facilities used by Florida DCF, and substance abuse and mental health programs. Finally, in addition to the Chief of Staff and supporting departments, the Florida DCF also has an Inspector General, General Counsel, and a Director of Children's Legal Services (Florida DCF Organizational Chart, 2011). The Deputy Secretary, Assistant Secretary for Administration, Assistant Secretary for Operations, Chief of Staff, and General Counsel were appointed in 2011.

As the Florida DCF has grown, layers of processes have been added to case managers, child care workers, child protective investigators, and the community-based care providers contracted by the agency. The Florida Coalition for children (2007) reported that the average length of employment for Florida DCF caseworkers was less than 2 years. High caseworker turnover has been attributed to low pay, high caseloads, and increased paperwork requirements. A consequence of high turnover is the loss of rapport that is developed over time between caseworkers and the children and families they serve, which negatively affects permanency goals. Among child welfare agencies, a child with one case worker has a 74.5% chance of achieving a permanent placement within a year. The likelihood of obtaining a permanent placement within a year drops to 17.5% when a child has two caseworkers, and to 2.2% under four or more caseworkers (Bureau of Milwaukee Child Welfare, 2003, as cited in Florida Coalition for Children, 2007, p. 7).

The level of performance on the safety, permanence, and well-being outcomes for any state child welfare agency is largely influenced by the direct services provided to vulnerable children and adults. The investigation of abuse and neglect, as well as regular interaction with individuals under the care of the child welfare agency, is accomplished by case workers. Between 2007 and 2009, there were improvements in the percentage of children who received a monthly visit from a Florida DCF case worker. However, a 2009 report from the Gabriel Myers Work Group to the Florida Senate Committee on Children, Families, and Elder Affairs cites continuing problems with training and qualification of child protective personnel, and confusion about roles, responsibilities, and accountability within the workforce, both within the agency and among the

various community-based care providers. The group concludes that there is insufficient evidence-based practice. However, the lack of training is not just a professional, but also a bureaucratic issue. Policies and procedures within a bureaucratic structure must support an organizational culture of learning and on-going professional development, as well as the retention of skilled workers. Workers with high caseloads and increased responsibility have responded to bureaucratic policies and procedures by being selective in the information accessed and used when providing care for those under protective custody and during investigations of suspected abuse and neglect (Lawrence, Martinez, & Sewell, 2011). Worker documentation has also been problematic, with delayed, incomplete, or inadequate reporting reflecting poor quality assurance within the agency (Lawrence et al., 2011).

Lawrence et al. (2011) argues that by decentralizing services, the ability of workers to access the information necessary to provide quality care is hampered, limiting the ability of managers and caseworkers to develop well-informed evaluations and appropriate recommendations for legal actions, programs, and services for children and families. Because of high caseloads, workers are often not given sufficient time to adequately review critical information before having to develop a plan for care or make recommendations to the court (Lawrence et al., 2001). To deal with these bureaucratic problems, the model of Structured Decision Making (SDM) was implemented for use by case managers and child protective investigators. This has helped improve the evaluation process and recommendation for services, but work is still needed to bring systemic outcomes in compliance with state and federal mandates (Lawrence et al., 2011).

Bureaucratic Accountability: Florida DCF CFSR Rounds 1 and 2 Performance Outcomes

Child welfare agencies across the U.S. are evaluated in four broad areas: safety, permanency, well-being, and systemic factors. The Florida DCF round 1 CFSR was conducted from April 1, 2000 to August 5, 2001, and the final report was submitted in August 2001. The second CFSR was conducted from January 7-11, 2008, and the final report was submitted in January 2009.

National data indicators for Florida CFSR rounds 1 and 2. In addition to the three outcomes and systemic factors, each state must meet the requirements of national data indicators, which include the absence of maltreatment, re-entry into foster care, timeliness of reunification or adoption, and the stability of foster care placements (see Table 3). Overall, the Florida DCF's strongest area of performance was in the timeliness of adoptions, while finding stable foster care placements was the area with the lowest performance scores. Results of the first CFSR in 2001 indicated that the Florida DCF met two of the six national standards. Florida achieved a foster care re-entry rate of 5.37%, well below the national standard of 8.6%. Florida also achieved a timely adoption rate of 43.4%, which was higher than the national standard of 32%. While not achieving the national standards for the absence of maltreatment recurrence, or the absence of maltreatment in foster care, the Florida DCF achieved rates that were very close. However, the Florida DCF did very poorly in terms of achieving timely permanent placements and in the reunification of children in foster care, with a rate of 44.6%, which fell well below the national standard of 76.2%. Finally, Florida DCF's rate of 20.52% for the stability of foster care placements was significantly below the national standard of 86.7%. National standards for the second round of CFSRs included the absence of maltreatment, timeliness of reunification or

adoption, finding permanent placements for children who had been in foster care for an extended period of time, and the stability of foster care placements.

The Florida DCF failed to meet the national standards for four of the six items assessed during the second round of CFSRs. The Florida DCF exceeded the national standards for timeliness of adoptions (as it did in the first CFSR) and finding permanent placements for children who had been in foster care for an extended period of time. In terms of the absence of maltreatment recurrence and the absence of maltreatment in foster care, the Florida DCF failed to meet the national standards again, and performed worse than reported in the first CFSR, with the absence of maltreatment recurrence dropping from 94.6% to 89.7%. Finally, the Florida DCF failed to meet the national standards set for timeliness of permanency reunification and the stability of foster care placements. Again, the stability of foster care placements was the area of poorest performance.

Table 3
National Data Indicators from Florida CFSR Rounds 1 and 2

Indicator	National standard		State		Standard set	
	CFSR 1	CFSR 2	CFSR 1	CFSR 2	CFSR 1	CFSR 2
Absence of maltreatment recurrence	93.90%	94.60%	93.81%	89.70%	No	No
Absence of maltreatment in foster	99.43%	99.68%	99.13%	99.43%	No	No
Foster care re-entry	8.6%	NS	5.37%	NA	Yes	NA
Timeliness and permanency of reunification	76.2%	122.6	44.6%	111.70	No	No
Timeliness of adoption	32.0%	106.4	43.4%	124.20	Yes	Yes
Permanency for children and youth in foster care for long periods of time	NS	121.7	NA	125.7	NA	Yes
Stability of foster care placement	86.70%	101.5	20.52%	88.1	No	No

Note. NS = No standard for this item; NA = Not Applicable.

Florida Child Welfare Services and Systemic Functioning Outcomes

The effectiveness of state child welfare agencies in meeting the needs of vulnerable children and adults was measured during the two CFSRs based on safety, permanency, and well-being outcomes, and an assessment of the system as a whole based on seven systemic factors.

Safety Outcomes. The overall performance of the Florida DCF on safety outcomes from CFSR rounds 1 and 2 are presented in Table 4. The percentage of cases reviewed in CFSR1 and CFSR2 showed that the percent of cases that substantially achieved Safety Outcome 1: “Children are, first and foremost, protected from abuse and neglect,” decreased from 85.7% to 70.0%, with Florida DCF failing to be in substantial conformity for both reviews. While there was improvement in terms of the timeliness of initiating investigations based on the report of child maltreatment, from a rating of 85.7% to 90.0%, there was a significant decrease in the rating for

repeat maltreatment, which dropped from a rating of 91.8% during the first round CFSR to 64% during the second round CFSR. There was also a decrease in outcome performance for Safety Outcome 2: “Children are safely maintained in their homes whenever possible and appropriate,” from 78.0% to 61.5% in substantial agreement, failing to be in substantial conformity for CFSR round 1 and 2. Again, there was a decrease in outcome performance for providing services to families to protect children, falling from 90.3% to 74.0% and indicating a need for improvement. The performance outcome ratings for item 4, preventing risk of harm to the child, decreased from 78% to 65%, indicating a need for improvement during both CFSR rounds. Overall, Florida DCF failed designated safety outcome levels in all areas, with performance levels decreasing during the period between CFSR round 1 and 2.

Permanency outcomes. The overall performance of the Florida DCF on permanency outcomes from CFSR rounds 1 and 2 are presented in Table 5. In terms of the two permanency outcomes, Florida DCF failed to be in substantial conformity for outcome 1: “Children have permanency and stability in their living situation” during CFSR rounds 1 and 2, with the percent of cases substantially achieved during the review process falling from 75.9 to 34.1 in rounds 1 and 2, respectively. Among the five items covered under permanency outcome 1, Florida DCF achieved 96.4 and 100—there were no foster care re-entries among the cases reviewed during CFSR round 2. In terms of stability in foster care placements, permanency goals for children, providing independent living services, facilitating reunification, guardianship, and relative placements and adoption placements, Florida DCF performance either stayed the same or was poorer between CFSR rounds 1 and 2. Though still rated as needing improvement, there was improvement in providing other planned living arrangements for children living in foster care.

Between CFSR round 1 and 2, there was a significant drop in performance on permanency outcome 2: “The continuity of family relationship and connections is preserved for children,” with the percent of cases reviewed that substantially met this outcome decreasing from 90% to 47.5%; falling out of substantial conformity between CFSR rounds 1 and 2. There was a significant decrease in performance for all items related to permanency outcomes, with areas rated as “strength” in round 1 being rated as “needing improvement” after the round 2 reviews.

Well-being outcomes. The overall performance of the Florida DCF on permanency outcomes for CFSR rounds 1 and 2 are presented in Table 6. Florida DCF failed to be in substantial conformity with the three well-being outcomes for both CFSR rounds 1 and 2. With the exception of meeting the educational needs of the child, the percent of cases that substantially achieved the requirement for the outcome decreased between the reviews for rounds 1 and 2, most notably for Outcome 1: “Families have enhanced capacity to provide for their children’s needs,” which decreased from 62% to 24.6%. While there was a slight improvement for Item 19: “Worker visits with child,” there were substantial decreases in performance ratings, especially on Item 17: “Needs and services of child, parents, foster parents,” which fell from 72% to 29%, and Item 20: “Worker visits with parents,” which fell from 69% to 31%. Finally, while there was a decrease in performance and failure to meet substantial conformity between CFSR rounds 1 and 2 for Outcome 3: “Children receive adequate services to meet their physical and mental health needs,” the drop in performance was not as substantial as those found for outcomes 1 and 2. Overall, reviews for all areas related to Well-Being outcomes on both CFSR rounds 1 and 2 indicated a need for improvement.

Systemic factors. Seven factors are assessed with CFSRs. Florida DCF achieved high ratings and was in substantial conformity on four of the seven factors (See Table 7). Florida DCF

achieved ratings of 4, or improved from a rating of 3 to 4, between CFSR rounds 1 and 2 for operating a statewide information system (Factor 1), quality assurance system (Factor 3), agency responsiveness to the community (Factor 6), and foster/adoptive parents licensing, recruitment, and retention (Factor 7).

Table 4

Overall Performance of Florida Department of Children and Families on Safety Outcomes from CFSR Rounds 1 and 2

Safety Outcomes	Percent substantially achieved		In substantial conformity*		Rating and percent strength			
	CFSR 1	CFSR 2	CFSR 1	CFSR 2	CFSR 1		CFSR2	
Outcome 1: Children are, first and foremost, protected from abuse and neglect	85.7	70.0	No	No				
Item 1: Timeliness of initiating investigations of reports of child maltreatment					ANI	85.7	Strength	90.0
Item 2: Repeat maltreatment					ANI	91.8	ANI	64.0
Outcome 2: Children are safely maintained in their homes whenever possible and appropriate	78.0	61.5	No	No				
Item 3: Services to family to protect child(ren) in home and prevent removal					Strength	90.3	ANI	74.0
Item 4: Risk of harm to child					ANI	78.0	ANI	65.0

Note. ANI = Area needing improvement; *95% of the applicable cases reviewed must be rated as having substantially achieved the outcome for the State to be in substantial conformity with the outcome.

Table 5
Overall Performance of Florida Department of Children and Families on Permanency Outcomes
from CFSR Round 1 and 2

Permanency Outcomes	Percent Substantially Achieved		In Substantial Conformity*		Rating and Percent Strength			
	CFSR 1	CFSR 2	CFSR 1	CFSR 2	CFSR 1		CFSR 2	
Outcome 1: Children have permanency and stability in their living situations	75.9	34.1	No	No				
Item 5: Foster care re-entries					Strength	96.4	Strength	100.0
Item 6: Stability of foster care placement					ANI	89.7	ANI	59.0
Item 7: Permanency goal for child					ANI	58.6	ANI	59.0
Item 8: Independent living services (CFSR 1)								
Item 8: Reunification, guardianship, relative placements (CFSR 2)					ANI NA	50.0 NA	NA ANI	NA 70.0
Item 9: Adoption					Strength	70.0	ANI	44.0
Item 10: Other planned permanent living arrangement					ANI	33.3	ANI	64.0
Outcome 2: The continuity of family relationships and connections is preserved for children	90.0	47.5	Yes	No				
Item 11: Proximity of foster care placement					Strength	96.6	Strength	93.0
Item 12: Placement with siblings					Strength	95.5	ANI	87.0
Item 13: Visiting with parents and siblings in foster care					ANI	80.0	ANI	53.0
Item 14: Preserving connections					Strength	96.2	ANI	77.0
Item 15: Relative placement					Strength	96.6	ANI	61.0
Item 16: Relationship of child in care with parents					ANI	87.0	ANI	28.0

Note. ANI = Area needing improvement; NA = Not Applicable; *95 percent of the applicable cases reviewed must be rated as having substantially achieved the outcome for the State to be in substantial conformity with the outcome.

Table 6

Overall performance of Florida Department of Children and Families on Well-Being Outcomes from CFSR Rounds 1 and 2

Well-Being Outcomes	Percent Substantially Achieved		In Substantial Conformity*		Rating and Percent Strength	
	CFSR 1	CFSR 2	CFSR 1	CFSR 2	CFSR 1	CFSR 2
Outcome 1: Families have enhanced capacity to provide for their children's needs	62.0	24.6	No	No		
Item 17: Needs and services of child, parents, foster parents					ANI 72.0	ANI 29.0
Item 18: Child and family involvement in case planning					ANI 53.1	ANI 35.0
Item 19: Worker visits with child					ANI 75.5	ANI 80.0
Item 20: Worker visits with parents					ANI 69.0	ANI 31.0
Outcome 2: Children receive appropriate services to meet their educational needs	78.9	82.5	No	No		
Item 21: Educational needs of the child					ANI 78.9	ANI 83.0
Outcome 3: Children receive adequate services to meet their physical and mental health needs	74.0	61.4	No	No		
Item 22: Child physical health					ANI 85.1	ANI 79.0
Item 23: Child mental health					ANI 76.3	ANI 67.0

Note. ANI = Area needing improvement; NS = No standard for this item.

However, Florida DCF showed poor ratings and failed to be in substantial conformity with regards to their case review system (Factor 2), training (Factor 4), and the services array for resource development of the agency (Factor 5). These factors pertained to the provision of services provided to families and children in foster care, the training of the DCF workforce, and consistent review of cases, all areas that substantially affect safety, permanency, and well-being outcomes as reflected in the poor performance notes in these areas.

Among systemic factors, hiring, training, and retention of caseworkers and investigators are vital for a child welfare agency to meet its outcome goals. The skill level and ongoing training of caseworkers, investigators, and others involved in the direct care of children in the care of the child welfare agency directly affects overall performance of the agency. Staff hiring, retention, training, and competency have been consistent problems in Florida's DCF. High and unmanageable loads have been identified as an important factor contributing to the inability to meet safety, permanency, and well-being outcomes. Current levels of caseworkers and other staff is insufficient to meet the level of reported and substantiated cases of child abuse and neglect. Because of systemic problems and high caseloads, DCF often loses some of its best trained and most experienced workers due to low pay and burnout. This places an increased burden on the agency, which must fund the hiring and training of new workers, many of whom then go out into the field with little or no experience. High job turnover is expensive, costing between one-third to two-thirds of a worker's annual salary to replace a worker who leaves the agency. These costs include money paid to the worker who quits, as well as recruitment and training costs to hire a new worker (Social Work Policy Institute, 2010). The inability to retain workers for the long-term, contributes to reduced job performance and increased workloads and job stress because agency workers have to assume the workload created by the vacant position.

Table 7

Overall performance of Florida Department of Children and Families on Systemic Factors from CFSR Round 1 and 2

Systemic Factor	In Substantial Conformity		Rating*	
	CFSR 1	CFSR 2	CFSR 1	CFSR 2
1. Statewide Information System	Yes	Yes	3	4
Item 24: Operates statewide information system with data maintained on each child.			Strength	Strength
2. Case Review System	No	No	2	2
Item 25: Written case plan developed jointly with the child's parent(s) with required provisions.			ANI	ANI
Item 26: Periodic review of child status by court and administrative reviews.			Strength	Strength
Item 27: Child in foster care has permanency hearing in a qualified court/administrative with first year and then annually.			Strength	Strength
Item 28: Process for termination of parental rights.			Strength	ANI
Item 29: Notification process of reviews/hearings for foster parents, pre-adoptive parents, and relative caregivers of children in foster care.			ANI	ANI
3. Quality Assurance System	Yes	Yes	4	4
Item 30: Developed/implemented standards for quality services protecting child safety/health.			Strength	Strength
Item 31: Have in place quality assurance system.			Strength	Strength
4. Training	Yes	No	3	2
Item 32: Provide initial training to new staff.			Strength	ANI
Item 33: Provide ongoing staff training.			ANI	ANI
Item 34: Training for foster/adoptive parents, staff of State licensed/ approved foster care facilities with assistance under title IV-E.			Strength	ANI

Table continues

Table continued

Systemic Factor	In Substantial Conformity		Rating*	
	CFSR 1	CFSR 2	CFSR 1	CFSR 2
5. Service Array and Resource Development	No	No	1	2
Item 35: Array of services to achieve placement			ANI	ANI
Item 36: Assuring accessibility of services in item 35 to families/children served by agency.			ANI	ANI
Item 37: Individualizing services in item 35 to meet needs of children/families served by agency.			ANI	ANI
6. Agency Responsiveness to the Community	Yes	Yes	3	4
Item 38: State engagement in consultation with stakeholders.			Strength	Strength
Item 39: Creates, with stakeholder input, annual reports of progress/services delivered pursuant to CFSP.			Strength	Strength
Item 40: Services coordinated with other federal programs.			Strength	Strength
7. Foster/Adoptive Parent Licensing, Recruitment, Retention	Yes	Yes	3	4
Item 41: Standards for foster family homes/childcare institutions in accord with national standards.			Strength	Strength
Item 42: Standards applied to licensed/approved foster homes/institutions receiving title IV-E /IV-B funds.			Strength	Strength
Item 43: Federal criminal background checks for licensing/approving foster care/adoptive placements.			Strength	Strength
Item 44: Diligent recruitment of foster care and adoptive homes.			ANI	Strength
Item 45: Use of cross-jurisdictional resources to facilitate permanent placements for waiting children in foster care.			Strength	Strength

Note. ANI = Area needing improvement; * Scores range from 1 to 4; 1 or 2 = factor not in substantial conformity; 3 or 4 = factor is in substantial conformity. 1 = None of the CFSP or program requirements is in place; 2 = Some or all of the CFSP or program requirements are in place, but more than one of the requirements fail to function as described in each requirement; 3 = All of the CFSP or program requirements are in place, and no more than one of the requirements fails to function as described in each requirement; 4 = All of the CFSP or program requirements are in place and functioning as described in each requirement.

One approach used by the Florida DCF to deal with high turnover and fill vacant positions was to relax requirements for new caseworkers by no longer requiring a bachelor or master's degree in social work. In fact, some workers hired had no experience working in child welfare (Florida Senate, 2010). To accommodate an increasingly de-professionalized staff with less knowledge and skills related to child welfare, the Florida DCF responded by creating a less complex system to deal with how tasks are approached and accomplished (Jones & Okamura, 2000). The problem of lack of sufficient training and competence is consistent. During the CFSRs, some professional caseworkers and investigators lacked competence and failed to provide effective assessment and care for children and vulnerable individuals under the investigation or protection of the agency (Lawrence et al., 2011). Poor performance by professional caseworkers and investigators was compounded by other members of DCF who did not identify serious omissions or flaws in recommendations when cases came under their attention (Lawrence et al., 2011). A culture of complacency in the past, coupled with poor critical thinking skills, has led to lack of consideration on all relevant issues. Case managers consistently failed to make sure that relevant information gathered from different sources was made accessible to all individuals and agencies involved in the child or vulnerable adult's care. The responsibility for the quality of care provided does not rest solely on the caseworker or child protection investigator, but also with the agency and state legislature which makes critical decisions about caseloads, the level of training required, ongoing staff development, and technical support services to which workers have access (Florida Senate, 2010).

Prior to 2008, there were no state statutes or rules specifying minimum education requirements or training for child protective investigators. To improve the level of knowledge and skills of caseworkers and investigators, the Florida DCF now requires new child protective investigators to have at least a bachelor's degree and one year of child welfare related work experience, or a Master's degree, which can substitute for the year of child welfare work experience (Florida Senate, 2010). However, the professional preparation of CPI and caseworkers is not tracked. Only new hires are subject to the education requirements. Less than 25% of workers hold a bachelor's in social work, and less than 10% of supervisors hold a master's degree in social work (Florida Senate, 2010). The agency has attempted to compensate for lack of education and training of initial hires by requiring minimum training be met for certification as a Child Welfare Professional, certification necessary to serve as a child protective investigator (Florida Senate, 2010).

Legal Accountability: Overview of Major Child Welfare Legislation in the U.S.

The legal accountability relationship is based not on a hierarchical power structure, but on a formal agreement between the legal entity and the public agency (Romzek & Dubnick, 1987). Legal accountability systems have an external source of agency control and a high degree of control over agency actions. This accountability system is similar to the bureaucratic system because it involves "the frequent application of control to a wide range of public administration activities" (Romzek & Dubnick, 1987, p. 228). Legal accountability is different in that the controlling agent is outside of the organizational system. This controlling agent has considerable power to wield legal sanctions or impose contractual obligations. The outside agents are often legislative or governmental agencies which create laws and policies that the organizational system is required to implement or enforce (Romzek & Dubnick, 1987).

Legislation prior to the August 2001 Florida DCF CFSR. In addition to state laws governing the operation of its child welfare agency, each state must also comply with Federal requirements in order to receive federal funding. Often, changes in federal legislation lead to changes in state legislation related to the operation of its child welfare agency.

Child welfare legislation during the 1970s. The Child Abuse Prevention and Treatment Act (CAPTA) enacted by Congress in 1974 created the National Center on Child Abuse and Neglect (NCCAN), part of the U.S. Department of Health, Education, and Welfare, to administer grant programs and collect and disseminate information through the National Clearinghouse on Child Abuse and Neglect Information. Major provisions of the act were to provide funding for states to develop child abuse and neglect prevention programs and to establish Basic State Grants and Demonstration Grants to train personnel on identifying, preventing, and treating child abuse and neglect. The Child Abuse Prevention and Treatment Adoption Reform Act of 1978 was enacted to improve the provisions of CAPTA and to facilitate the adoption of children. The CAPTA Reform Act required NCCAN to facilitate agency activities and provide funding for the identification, treatment, and prevention of child sexual abuse, and an Adoption Opportunities Program to establish quality standards for adoption placements, childrens' rights, and create a national adoption information exchange.

Child welfare legislation during the 1980s. The Adoption Assistance and Child Welfare Act of 1980 amended titles IV-B and XX of the Social Security Act with the purpose of requiring states to make adoption assistance payments to adoptive parents, make reasonable efforts to return children to the home, or prevent removal, and to establish reunification and prevention programs for this purpose, place foster children in their communities, review the status of the child every six months, and have a permanency plan within 18 months from the time when the child entered foster care. The Child Abuse Amendments of 1984 required states to improve child abuse and neglect laws, established the federal adoption and foster-care data-gathering and analysis system, and directed Health and Human Services to establish regulations and provide training for child care providers.

Child welfare legislation during the 1990s. Several laws were enacted to amend the provisions and expand programs and requirements of CAPTA (e.g., Indian Child Welfare Act of 1978, Child Abuse Prevention, Adoption, and Family Services Act of 1988, Child Abuse, Domestic Violence, Adoption, and Family Services Act of 1992).

The Family Preservation and Support Services Program Act of 1993 defined preservation and support services provided by states, required states to develop more comprehensive support and preservation strategies, and court improvement grants to states to increase the effectiveness of the courts in handling child welfare cases.

The Child Abuse Prevention and Treatment Amendments of 1996 modified and reauthorized CAPTA, abolished NCCAN, created the Office of Child Abuse and Neglect, and required states to expedite the termination of parental rights in cases of abandoned children and children at risk of injury or death. The act provided federal grants to create three or more citizen review panels in each state to facilitate assessment of policies and procedures, ability to meet child welfare safety, permanency, and well-being outcomes, child deaths and near fatalities, and how well state child welfare protective services are coordinated with title IV-E established foster care and adoption programs.

The Adoption and Safe Families Act of 1997 amended title IV-E of the Social Security Act in order to facilitate the timely adoption of children in foster care. Major provisions of the

act included: (a) extending the categories of services to help facilitate adoptions, including providing incentive funds to states that increased adoption rates; (b) conducting criminal background checks on foster and adoptive parents; (c) requiring health needs of children in foster care be addressed; (d) requiring permanency hearings to be conducted within 12 months of a child entering foster care; and, (e) increasing accountability by requiring HHS to establish outcome performance measures to assess state performance. The Foster Care Independence Act of 1999: (a) provided increased funding and flexibility to help children transition out of the foster care system; (b) resulted in the development of state performance outcome measures related to independent living programs; and (c) increased funding for adoption incentive payments.

Legislation prior to the January 2009 Florida DCF second round CFSR. The Child Abuse Prevention and Enforcement Act of 2000 was created to: (a) increase state funding to implement the State Children's Justice Act reforms; (b) decrease incidences of child abuse and neglect by authorizing states' use of federal law enforcement funds to improve state criminal justice systems; and (c) increase the collection of and access to criminal history information related to protecting children in and out of foster care. The Adoption Promotion Act of 2003 provided authorization to impose penalties against states failing to provide required data to the Adoption and Foster Care Analysis and Reporting System (AFCARS). The Fair Access Foster Care Act of 2005 allowed for-profit and not-for-profit child care or child placement agencies to receive foster care maintenance payments on behalf of eligible children. The Deficit Reduction Act of 2005 contained provisions to ensure timely meeting of safety, permanence, and well-being needs of children in foster care, provided for attorneys, judges, and other legal personnel in handling child welfare cases, and specified criteria for states to receive matching funding for child welfare agency administrative expenses.

The Safe and Timely Interstate Placement of Foster Children Act of 2006 included: (a) provisions for and holds states accountable for the timely and safe placement of foster children across state lines; (b) provided pre-adoptive parents, foster parents, and relative caregivers notice of court proceedings pertaining to foster children in their care; and (c) required that states facilitate permanent placements and adoptions by eliminating, where possible, legal barriers.

The Child and Family Services Improvement Act of 2006 amended title IV-B of the Social Security Act to reauthorize the Promoting Safe and Stable Families Program (PSSFP). The PSSFP act included provisions that provided flexibility in using funds, and required state plans describing standards for child welfare services and monthly caseworker visits with a focus on service delivery to ensure meeting outcomes for safety, permanency, well-being, and accountability of expenditures.

Legislation after Florida DCF second round CFSR: 2008-2010. The Fostering Connections to Success and Increasing Adoptions Act of 2008 was created to improve the quality of services and provide adoption incentives for children in foster care. Major provision of the act: (a) provided grants to child welfare agencies and private not-for-profit organizations to help children in or at risk of being in foster care stay connected with family members; (b) allowed states to claim federal reimbursements for short-term training of relative guardians and private child welfare institutions providing service for children in foster care; (c) extended funding for the Adoption Incentive Program through Federal FY 2013 and doubled the incentive payments for families adopting special needs children (\$4,000) and older children (\$8,000); (d) required states to notify relatives of the option to serve as guardian for a related child placed in foster care; (e)

required states to make reasonable efforts to keep siblings together in foster care placements; and (f) required case plans that assessed and provided for the educational needs of children in foster care.

The CAPTA Reauthorization Act of 2010 reauthorized the 1978 CAPTA and (a) directed the Secretary of Health and Human Services to study the effectiveness of citizen review panels in assessing the effectiveness of child welfare agencies in fulfilling their responsibilities and duties; (b) promoted and enhanced communication and collaboration among different agencies providing services to children in foster care; (c) required each state to coordinate its CAPTA State Plan with its title IV-B State Plan; (d) required additional data provided in annual state data reports (e.g., qualification and training of caseworkers); (e) authorized grants to states to improve placement of foster care children; (f) required state plans for improving permanency rates for children in foster care and improving states' evaluations plan for assessing program effectiveness.

Political Accountability

Political accountability systems have an external source of agency control and a low degree of control over agency actions. Political accountability is based on the notion of responsiveness between the public administrator and individuals or agencies to which he or she is accountable. The public administrator must be responsive to the policies and program needs of the agent. According to Romzek and Dubnick (1987), the central question is "Whom does the public administrator represent?" (p. 229). The possible agents or agencies can include governmental and legislative officials, heads of agencies (e.g., the Secretary in Florida DCF), the population served by the agency (e.g., the adults, children, and families served by Florida DCF), and special interest groups (e.g., Children's Rights, CWSA).

The Florida legislature has implemented several pieces of legislation and policies geared toward improving the ability of Florida's DCF to serve children and vulnerable adults at risk of abuse and neglect. In an attempt to improve investigations of suspected child neglect and abuse, and improve the availability of services provided, the Florida DCF implemented the Family Services Response System (FSRS) created by the Florida legislature in 1993 (Florida Senate, 2010). The goal was to create a more effective and user-friendly system for those who needed to report suspected cases of neglect and abuse. The primary feature of the FSRS was to provide a systemic structure for assessing risk and then identifying and providing the services required to remove those risks (Florida Senate, 2010). In addition, a level of political and bureaucratic performance accountability was written into the law, requiring the Florida DCF to conduct outcome evaluations and provide three annual status reports to the state beginning in 1995 (Florida Senate, 2010). Following the implementation of the FSRS, district agencies reported improved criminal investigations by law enforcement and movement toward improvements in worker training and competency (Florida Senate, 2010). To improve work structure and compensation, some positions were consolidated, competency requirements for job positions were created, a training and mentoring program was implemented, and recruitment and hiring practices focused on hiring caseworkers with bachelor or master's degrees in social work (Florida Senate, 2010). Differing levels of success in reaching FSRS goals were reported in a 1996 evaluation of the system (Florida Senate, 2010). It was noted that there was a lack of consistency across the state in implementing the FSRS, caused, in part, by use of different sets of defined

objectives, underdeveloped decision-making processes and response systems resulting in lack of focus on child safety, insufficient services to meet client needs, insufficient training and technical support, and several high profile child fatalities associated with the FSRS during the implementation period (Florida Senate, 2010). Problems with implementing and using the system resulted in the system being discontinued by 1998 (Florida Senate, 2010).

Federal child welfare agency underfunding. Federal funding for state child welfare agencies from 2006 to 2012 are presented in Table 8. Overall, the level of funding appears to have remained fairly constant between 2006 and 2012, ranging from \$26,257 billion in 2006 to \$26,090 billion in 2012. However, when adjusted for inflation, the amount of funding decreased over \$3 billion between 2006 and 2012. As the cost of living, wages, and other services have risen, the level of funding has not kept pace, leaving many agencies underfunded. Funding of state child welfare agencies is a constant concern for agencies leaders. Leaders of child welfare agencies often argue that cuts in funding lead to insufficient budget allocations for the array of services provided to families, as well as funding to maintain information systems and provide adequate staffing with sufficient levels of training. On the federal level, attempts were made to eliminate Social Services Block Grants for the Federal FY 2012 budget. The Social Services Block Grant provide flexible funding for states that included child welfare prevention and intervention services. States are not required to match federal SSBG dollars that represent about 12% of federal funding used by state child welfare agencies for child abuse and neglect prevention, child protection and foster care services, facilitating adoptions, and to provide independent and transitional living assistance for children who age out of the foster care system. SSBG money also is used by child welfare agencies to provide care for children not eligible under Title IV-E foster care assistance (CWLA, 2011c).

Table 8

Federal Funding for State Child Welfare Agencies from 2006 to 2012 (Reported in Millions of Dollars)

	2006	2007	2008	2009	2010	2011	2012
Protective and Preventive Services							
Child Welfare Services Program (Title IV-B, Part 1)	286.8	286.7	281.7	281.7	282	281.0	281.0
Child Welfare Training (Title IV-B)	7.3	7.3	7.2	7.2	27.0	27.0	26.0
Promoting Safe and Stable Families Program (Title IV-B, Mandatory and Discretionary)	394.1	394.1	369.3	368.3	408.0	428.0	408.0
Court Improvement Program (Under PSSF)	20.0	20.0	20.0	20.0	20.0	32.0	---
CAPTA Child Protective Service State Grant Program	49.5	27.0	26.5	26.5	27.0	26.0	26.0

CAPTA Discretionary Grants Program	25.7	25.7	26.5	28.2	29.0	26.0	26.0
CAPTA Community-Based Grants for Prevention of Child Abuse & Neglect	42.3	42.4	41.6	41.6	42.0	42.0	42.0
Social Services Block Grant (Title XX)	2,250	1,700	1,700	1,700	1,700	1,700	1,700
Grants to Improve Monthly Caseworker Visits ^a	10.0	10.0	10.0	10.0	13.5	**** ---	**** ---
Grants to Improve Outcomes of Children Affect by Parent Substance Abuse	---	40.0	35.0	30.0	20.0	20.0	---
Out of Home Care Services							
Foster Care Program (Title IV-E)	4,685	4,475	4,581	4,660	4,603	3,967	4,288
Kinship Guardianship (Title IV-E)*	---	---	---	14.0	56.0	32.0	80.0
Family Connections Grants (CWS)**	---	---	---	---	15.0	15.0	15.0
Adoption Services							
Adoption Assistance Program (Title IV-E)	1,795	2,027	2,156	2,371	2,438	2,480	2,495
Adoption Awareness Training	12.6	12.6	12.4	12.9	*** ---	*** ---	*** ---
Adoption Opportunities Program	26.8	26.8	26.3	26.3	26.6	39.0	39.0
Adoption Incentive Payments	12.7	17.8	4.3	36.5	40.0	39.0	39.0
Basic TANF Block Grant	16,500	16,500	16,500	16,500	16,500	16,487	16,485
Independent Living Program (Title IV-E)	140.0	140.0	140.0	140.0	140.0	140	140
Total	26,257.8	25,752.4	25,937.8	26,274.2	26,387.1	25,781	26,090
Adjusted for inflation:	29,521.0	28,151.0	27,343.0	27,759.0	27,428.0	25,978	26,090

Note. Data derived from *Funding for Selected Children's Programs* (2001) available as cwla.org; ^a funded by Child and Family Services Improvement Act of 2008; *enacted 9/2008; ** enacted October 2008; *** Merged with Adoption Incentive Payments. **** May be included in CAPTA discretionary grants program.

Between 1996 and 2002, SSBG funding was cut from more than \$3 billion annually to \$2.38 billion. The 1996 Welfare Act resulted in SSBG funding being increased to \$2.8 billion and allowed states to move 10% for TANF grant funding into SSBG. In 1999, funding for SSBG was cut to \$1.9 billion; funding was further reduced between 1999-2004, reaching its current level of \$1.7 billion. States use SSBG funding for child abuse and neglect services in foster care adoptions, to fund the foster care program, provide for independent and transitional living services, residential treatment programs, Youth-At-Risk services, and prevention and intervention services. In addition, in 2011, \$679 million in funding for Community Services Block grants were targeted for budget cuts (CWLA, 2011b). As part of the Deficit Reduction Act of 2005, new mandates for TANF funding were enacted that included states lowering the number of families receiving TANF, and requiring families to meet higher work requirements in order to receive state aid. States that fail to meet the new requirements face the reduction or loss of TANF block grants. This puts increased pressure on states to fund support services for TANF families. The DRA of 2005 also limited the ability of states to use funding from Medicaid Targeted Case Management Services (TCM) for children in foster care (Laird & Michael, 2006). However, a \$40 million increase in funding was provided for the Promoting Safe and Stable Families programs, and two \$10 million grants were provided for the Court Improvement Program under PSSF. Finally, overall funding for the federal child care program was increased to \$200 million in the first year, with no additional increases for the following four years (Laird & Michael, 2006).

In 2005, the Federal government cut funding to foster care and adoption assistance programs by \$577 over five years, and 1.29 billion over ten years. Initially, Congress and President Bush wanted to convert programs under Title IV-E of the Social Security Act to a limited funding stream (Laird & Michael, 2006). During his administration, President Bush proposed converting all funding into state block grants. While allowing flexibility, the fixed funding of block grants would fail to provide for funding adjustments to account for inflation; thus, states were not able to meet demands (Laird & Michael, 2006).

Funding of the Florida DCF. In 2000, Florida Governor Jeb Bush pushed to privatize the services provided by Florida's Department of Children and Families (DCF). Florida legislators turned to the private sector to contract for services provided by Florida's DCF believing that private institutions could provide quality services at less cost to the state. However, according to Kestin (2011), this move increased rather than decreased costs to provide services. Expenditures for Florida's DCF increased from \$717 million in 2000, when it began privatizing services, to more than \$1 billion (Kestin, 2011). Even when adjusted for inflation, costs increased by \$105 million. Contributing factors in the rise in cost are the shift toward prevention, funding help for foster children (\$90 million more than in 2000), and the low funding DCF received before shifting to the use of private sector provided services (Kestin, 2011). However, overall assessment indicates that moving services to the private sector has resulted in increased adoption levels, higher rates of reunification, and decreased incidences of recurrent maltreatment. However, high administrative costs placed strains on the budget, with some private agency executives receiving salaries as high as \$200,000, as well as bonuses, while reducing payments for former foster children (Kestin, 2011).

The Florida DCF spent \$1,003,537,213 for child welfare services in 2006. Half of these services, or \$500,729,750, were funded with federal dollars, with 40% (\$200,291,900) of the money coming from Title IV-E Foster Care and Adoption Assistance, 6% (\$30,043,785) from

Title IV-B Child Welfare Services and Promoting Safe and Stable Families program funding, 19% (\$95,138,652.5) from Social Services Block Grants, 31% (\$155,226,222.5) from TANF, and 4% (\$20,029,190) from other federal funding sources. The other half of the funding came from state dollars, and 0.2% came from local funding (Children's Campaign, 2011, p. 12). Social Services Block Grants (SSBG) authorized under Title XX of the Social Security Act fund a wide range of services provided by child welfare agencies. Federal waivers allowed for the shifting of federal dollars for use in any child welfare program, other than out of home care, for which the funding is allocated. Budget cuts to Florida's DCF would result in the state child welfare agency failing to be in federal compliance to receive Title IV-E Waiver funding. These federal dollars have been used by the DCF to reduce the number of children in foster care and out of home placements by 25% since 2000.

Florida's 2011 legislative platform and recommendations related to Florida DCF include funding DCF services at a level that maintains eligibility for the Title IV-E Waiver and creating equity in the distribution of funds across the state for child welfare services, restoring cuts from the 2010 legislative session for the Healthy Families child abuse and neglect prevention program, ensuring all children in child protective services are assigned a *guardian ad litem*, and limiting social worker caseloads to no more than 12 to 15 foster children (Children's Campaign, 2011). The annual budget for the Florida DCF from FY 2010-2011 was \$17,426,920 (Florida DCF, 2011, p. 8) (see Table 9). Federal funding for Florida under the Title IV-E Waiver increased from a base of \$136.6 million in 2005 to \$165.1 million in 2011 (some funding for 2011 comes from a temporary Recovery Act increase). The ratio of out-of-home care costs to prevention and family preservation services/in-home-care has changed from \$8.54 in 2006 to \$3.14 in 2010 (Winstead, 2011).

Table 9

Florida Department of Children and Families Funding for FY 2010/2011

Amount of Funding	Source
\$10,176,573	Child Care Development Fund placed in the Federal Grants Trust Fund
\$4,350,309	Social Services Block Grants
\$1,424,600	General revenue
\$685,065	Operations and Maintenance Trust Fund
\$790,373	One-time American Recovery and Reimbursement Act Funds
\$17,426,920	Total Funding

Note. Source: Florida DCF, 2011, p. 8.

Underfunding of Florida DCF. Since 1996, per child funding requirements have increased for the Florida child welfare system, surpassing increases in state funding (Florida Coalition for Children, 2007). In 2004, the national mean for federal, state, and local per child welfare expenditures was \$318, while the Florida per child expenditure was \$224 (Florida Coalition for Children, 2007). To bring Florida in parity with the national average would require a 42% (\$300 million) increase in funding.

Florida contracts out the provision of child welfare services to more than a dozen private sector institutions that receive the bulk of DCF's budget. The funding structures from the 1996

state reform measures resulted in local provider agencies receiving fixed levels of funding, regardless of the number of children served by the agency during any given funding period. Savings obtained from contracting out to the private sector are to be used for prevention services and to keep families together. However, Florida has been slow in its accountability of how prevention money has been used and its effect (Kestin, 2011). The Florida DCF has had to deal with decreased funding. In a 2007 report by the Florida Coalition for Children, it was reported that Florida had child victimization rates that were above the national average, and that the Florida child welfare system was inadequately funded by funding levels that were below the national average. The fixed funding of contracted dollars has failed to provide for adjustments in response to growth in the number of children served over time, especially children with special needs, which have a higher per-child cost (Florida Coalition for Children, 2007). In addition, some practices by the Florida state legislature have failed to shift savings to private agencies providing services for DCF. When the Florida DCF retained funding for administrative expenditures, it left these private agencies to absorb these costs. When the “zone” concept was implemented, resulting in a \$20 million dollar reduction in administrative costs, funds were used by the state to decrease the state Medicaid deficit, rather than allocating the money to private agencies to cover service costs (Florida Coalition for Children, 2007).

In 2008, Florida led the nation in the number of adoptions (3,389), receiving a \$10 million bonus from the federal government. However provisions for independent living of children who age out of the foster care system have been inadequate, resulting in poor outcomes (Children’s Campaign, 2011). Other funding problems faced by the Florida DCF include the lack of funding (\$3.8 million reduction) for the *Guardian ad Litem* (GAL) Program, which provided legal representatives for 27,749 (82.5%) of the children in foster care in 2008. Current funding levels for the GAL program do not meet legislative funding mandates. Funding cuts of nearly \$10 million to the Healthy Families Child Abuse and Neglect Prevention program resulted in the program being shut down in 12 Florida counties, impacting 3,500 families and 5,800 children (Children’s Campaign, 2011).

Conclusion

Among the reporting states in 2010, Florida had the best response time for starting investigations to reports of suspected child abuse and neglect, in part attributed to the Florida DCF having the fifth largest workforce among child welfare agencies in the nation. However, these improvements are overshadowed by the lack of improvement in several key areas of agency assessment as identified in the federally mandated CFSRs. While Florida DCF had the lowest number of identified instances of child abuse and neglect, the state has not performed well in preventing a recurrence of victimization either while the child was in foster care or after having been returned to the home environment. In recent years the recurrence of maltreatment has been increasing. Even more troubling has been the high incidence of child fatalities attributed to abuse and neglect victims in Florida with over one-third of the victims receiving or had received services from DCF at the time of their deaths.

Several factors affect the ability of the Florida DCF to meet its goals and objectives that include working with law enforcement agencies, a differential response system, availability of resources and services for children and families, worker competency, training, and evaluation, state and federal funding of programs and services, and both external and internal leadership.

Following the first CFSR, the Florida DCF instituted several changes to improve safety, permanency, and well-being outcomes and systemic factors. However after the second CFSR more instances of poorer performance on outcome and systemic measures were reported than instance of improvement between the first and second rounds of CFSRs.

High caseworker turnover continues to be a significant problem for the DCF with the average length of employment less than two years. High caseloads and job stress is attributed to delayed, incomplete, and inadequate reporting contributing continued organizational functioning of the Florida DCF. The systemic factors associated with direct services such as worker training, case reviews, as accessibility to services have received poor ratings and with performance in these areas has worsened. The Florida DCF consistently has failed to meet national standards, performance outcomes, and measures of systemic functioning. The Florida DCF's greatest strength is the ability to get children adopted in a reasonable amount of time. However, in terms of overall functioning and ability to achieve acceptable levels of performance, the Florida DCF has failed to improve over time.

Community-Based Contracted Services

With the costs of doing business rising and funding decreasing, the Florida DCF is placed in a difficult position of how to use the funding it receives. Cuts in funding often necessitate cuts in personnel and services; actions that are reflected in decreasing ability to meet outcome measures. As an approach to improving services and reducing costs, the Florida legislature decentralized the provisions of services by contracting out Florida DCF functions to community-based service providers. There have been some improvements since this decentralization. Overall assessment has revealed that moving services to the private sector has resulted in more adoptions, more children be reunited with their families, and less instances of recurrent maltreatment. The reliance on community-based programs or privatized services, while intending to increase quality at reduced costs has in reality led to increased costs to the Florida DCF. Even when adjusting for inflation, the cost to Florida has increased over \$105 million. In recent years, the number of caseloads for in-home services and out of home care has increased and the Florida DCF has lacked adequate services or personnel to meet the demands placed on the agency.

Rising Costs and Decreased Funding

With costs to run child welfare programs increasing, the practice of providing high executive salaries for private agencies contract by the state have put strains on the Florida DCF budget. It is difficult to justify giving salaries as high as \$200,000 with bonuses to executives that result in the Florida DCF having to reduce payments for other child welfare services. Furthermore, budget cuts to the Florida DCF would jeopardize the agency's ability to stay in federal compliance and possible lose federal funding. In addition, fixed funding of contracted dollars has failed to keep pace with the costs to provide services. The Florida legislature has failed to shift savings in Florida DCF administrative costs to contracted service providers instead using \$20 million in administrative savings to decrease the state Medicaid deficit. This in effect punished the Florida DCF for trying to hold down costs decreasing any future incentive for managing costs.

Political Accountability

Accountability also rests with the political system. Political accountability involves the political system being responsive to internal and external stakeholders in meeting performance expectations and well as providing fiduciary support. The relationship is based on responsiveness of the public agency to its constituents (Romzek & Dubnick, 1987). Political accountability involves incorporating into legislation flexibility in how child welfare agencies allocate federal and state funding in the provision of services and placement of children in foster care. When the child welfare agency is able to provide an array of services to prevent abuse or neglect while enabling the child to stay in the home, the money saved can be directed at increasing the provision of prevention services. An indication of the effectiveness of current policies and procedures affecting agency operation is reflected in how well the agency meets safety, permanency, and well-being outcomes and in the amount of recurrent maltreatment.

Bureaucratic Accountability

However, more money is not the solution. Adequate funding must be supported by bureaucratic policies and procedures that support workers with the necessary skills and knowledge, funding for and accessibility of prevention and support services, and stability in leadership. Problems with reduced performance levels can be tied directly to Florida DFC agency policies and procedures governing worker responsibilities and accountability. Frequent changes in leadership, poor training of caseworkers and investigators, and funding cuts are reflected in poor performance on safety, well-being, and permanency outcomes as well as measures of systemic functioning. Even when workers possess the necessary knowledge and skill, the bureaucratic structure must maintain adequate support in terms of salary, worker caseloads, high job stress, and redundant paperwork that decreases time available for the direct provision of services.

The bureaucratic accountability system is based on the relationship between the organizational hierarchy and the supervisors who manage agency operations. It is difficult not to attribute some of the agency problems to the frequent changes in leadership which results in a loss of shared visions and continuity of agency mission, goals, and objectives.

There have been significant changes in the leadership of the Florida DCF with the Deputy Secretary, Assistant Secretary for Administration, Assistant Secretary for Operations, Chief of Staff, and General Counsel appointed in 2011.

Legal Accountability

The preponderance of child welfare legislation has been enacted at the federal level with states implementing legislation to facilitate being in compliance with federal mandates. The legal accountability system is based on the public administration accountability through legal contracted agreements. The basis of the relationship is oversight between the lawmaker and the public agent. However, there appears to be a lack of consensus among the federal legal making body, Congress, on how best to facilitate the ability of state child welfare agencies such as the Florida DCF to comply with federal mandates. While Congress enacts laws that address issues of child abuse and neglect in the U.S., Congress fails to address how to adequately fund these agencies.

As the highest legislative body, Congress has a responsibility both to enact effective child welfare legislation and to provide the necessary funding to meet mandated performance requirements. At this point, the level of funding has stayed constant, while the cost of programs and services continue to climb. The only response is to reduce worker training, programs, and services. This necessitates legislative, political, and bureaucratic leaders to come to a consensus in how to reduce costs, provide adequate funding, and create a system of programs and services that are sustainable over the long term. In an era of grandstanding and lack of cooperation, it will be an up-hill battle to improve the performance of state child welfare agencies such as the Florida DCF.

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About the Author

Ariel Alvarez, J.D., Ph.D., will begin his position of assistant professor at Montclair State University in Montclair, New Jersey, where he has a dual appointment in the Department of Political Science and Law as well as the Child Advocacy program. He just graduated from law school and is studying for the Bar Exam. His M.A. and Ph.D. degrees were awarded at Rutgers University. His J.D. was awarded by St. Thomas University School of Law in Miami, Florida. Ariel continues to research and write in the area of child welfare and advocacy.

Discussion Questions

1. Based on this article, do you believe this agency is making progress in providing better services for children under its care and protecting them from harm?
2. Do you feel that there are adequate measures of accountability? And if so, do you feel the agency is holding itself accountable for its shortcomings?

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Life Forward

Daniel D. Dolan, II, Esq. Dolan Law Firm



Interviewed by Raúl Fernández-Calienes, Deputy Editor

Dan Dolan draws on his past experience of representing doctors, hospitals, and corporations to advocate on behalf of the seriously injured and their families in catastrophic personal injury, wrongful death, and mass tort litigation. Since 2001, Mr. Dolan has recovered more than \$70 million on behalf of his clients across the United States. In 2008, he was elected the President of the Miami-Dade Justice Association, the largest county-based trial lawyer organization in Florida. An Eagle member of the Florida Justice Association, Mr. Dolan served as chairman of the Dade County Legislative Recruitment Task Force, and in 2004, he was awarded the Association's Bronze Eagle Award. Mr. Dolan is A/V Peer Review Rated by Martindale-Hubbell and has been recognized as one of the region's leading trial lawyers by *Florida Trend Magazine*, the *South Florida Legal Guide*, and *Florida Super Lawyers*. Mr. Dolan regularly lectures on trial practice within Florida and across the country.

Life is about stories. Do you have a favorite story that you use as an icebreaker?

It really depends on the audience, but professionally I am typically meeting people at one of the worst periods in their lives. In these circumstances, prospective clients understandably need to feel that by hiring counsel, they are taking a burden off of their backs and handing it to the lawyer for resolution. This allows the client to focus on healing his or her medical condition or grieving in a healthy way. It is challenging to understand a stranger's needs and get to know him or her if one is doing most of the talking. While story telling is an invaluable skill for a courtroom lawyer, during first meetings my focus is on listening.

What is your law firm's mission and focus?

We are a civil trial firm that represents the catastrophically injured and their families in the civil justice system with the goal of obtaining the resources necessary to provide for their future medical care and financial needs. The firm's clients usually have suffered their injuries due to bad drivers, poorly designed products, or unsafe premises, or at the hands of careless medical providers. The firm limits its involvement to fewer than a dozen matters per year, throughout Florida and the United States. We also have developed a division that exclusively represents consumers and business owners in disputes with their insurance companies over the value to repairing damaged or destroyed homes and buildings as a result of storm damage, fire, or other destructive events. In addition, I am a founding partner in a joint venture firm that represents victims from across the country of medical mass torts involving faulty medical products or dangerous drugs as well as whistleblowers who report efforts to defraud the federal government under the Federal False Claims Act.

What is your long-term vision for your firm?

The firm will remain true to its vision while continuing to expand our involvement in mass torts and class action litigation.

What are some of your greatest challenges?

The insurance and business lobbies have spent nearly a billion dollars over the past 20 years to enact laws to limit the financial responsibility of those who injure or kill others. The effect of these laws has shifted the responsibility for paying for these losses from those responsible, to the public at large through government assistance. These efforts also have politicized the use of the Judicial system, the third co-equal branch of government, to the point that in the minds of many, anyone involved with, or who is forced to avail themselves of, the court system must be up to no good. The legal system created by our founder's remains the envy of the world, but it is under a relentless attack by forces with nearly unlimited resources that fully intend to corrupt it for personal and corporate gain. Protecting this critical element of our democracy and keeping the courthouse doors open for all presents a real and present challenge for the future of our country as a whole.

What companies, organizations, or persons do you admire?

Rather than specific names, I admire those who embody the characteristics of fierce determination, innovation, empathy, and integrity.

What lessons have you learned from your career?

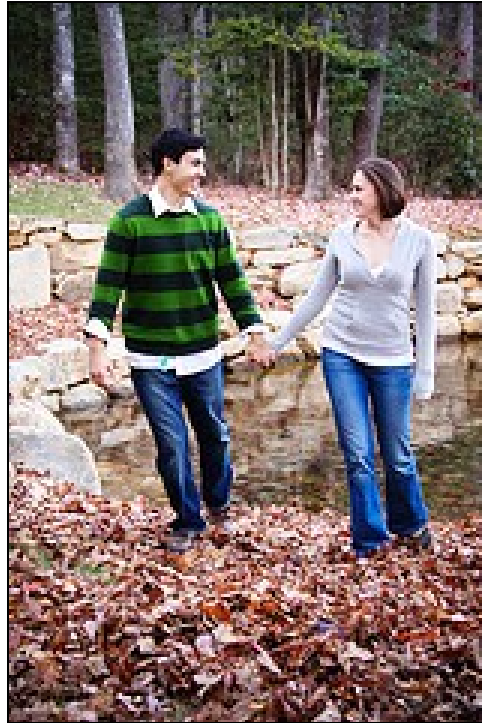
Always attempt a strategy for victory that involves the fewest number of moves. The execution might not always be possible, but it forces you to distill the case to its most basic elements and lessens the chances of getting distracted chasing every rabbit trail into the woods.

What elevator speech would you give your children about success in life?

You don't learn anything about yourself in the winner's locker room. All of my humble successes have been born through epic failures. Don't be afraid to fail as the fear is often many times more counter-productive than any possible failure.

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“Fall walk”

Photo by Kim Cardwell.

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Student Corner

How Personality and Physical Attraction Lead to Possible Dating: A Reflection

Veronica Hernández Menadier

Abstract

This study investigates if personality (social traits) is really favored more when looking for a dating partner than physical attraction. The investigation included fifteen males and fifteen females of White, Black, and Hispanic descents. Society stereotypically believes men care only about the looks of women and not their personality when dating. Previous research has both proven and disproven this belief. Supposedly, personality is seen as a second component after physical attraction in dating, but it is hypothesized that males would choose to date based on the personality traits of their dating partner, and contrary to social expectations, females would prefer looks to personality, as suggested by previous research. A questionnaire along with a selection of random images of men and women were used to determine the results of our experiment. The results showed that males and females, and PASA, PUSA, PUSU, PASU, are independent of each other. There was no relationship to gender in terms of the frequency of choosing to date a person who is PASU vs. PASA vs. PUSA vs. PUSU. Our hypothesis was disproven, although future studies should focus more on a specific location, area, and age group to better determine which of the two factors is most powerful with the gender groups.

Keywords

dating, evolutionary theory, personality, physical attraction

Introduction¹

The transition from adolescent friendships to romantic relationships is marked by variations in companionship and intimacy. Romantic relationships are an important aspect of adolescent development and the transition into adulthood. Girls tend to be more advanced on the timeline when establishing sexual romantic relationships with the opposite sex than boys. Also, girls tend to spend more time with boys, which results in the development of emotions through their interaction. This pattern leads to girls having more opposite-sex friendships during late adolescence. Throughout their adolescent years, girls and boys usually have formed romantic relationships by the age of 18 (Raley, Crissey, & Muller, 2007).

Over time, these romantic relationships evolve into various forms, ranging from committed to those that just last a few hours. Nonetheless, there is attraction and personality within either person that is involved in the relationship. According to society, it has always been said that females look at personality when looking for a relationship and that males simply care about looks rather than personality. These beliefs are homologous to scientific thought.

Since the development of evolutionary theory, it has conceptions from the start not only of biological but also of social and psychological evolution, including formulations of sexuality and mating strategies, most notably the work of Buss and Schmitt (1993). Their Sexual Strategies Theory (SST) continues to be the basis of sexual evolutionary psychology, despite criticisms from alternative theories such as social constructionism. Attempting to reformulate the psychology of human mate selection in light of competing theories has become important because of the sociopolitical implications of such work, especially when it comes to assumptions of gender difference. In this article, I provide a brief overview of the major theories concerning mate selection and then explain the present study.

Evolutionary Theory and SST

Charles Darwin (1859), the founder of evolutionary theory, recognized survival as an essential trait in the evolutionary process of “survival selection.” The two main components of survival selection are intrasexual competition and intrasexual selection. In intrasexual competition, the species of the same sex compete with each other for the attention of the female (Darwin, 1871). The winner of this competition then passes down these winning qualities to their offspring. Competition also includes dominance in hierarchy, access to territorial regions, and access to status (Buss, 2007). Intrasexual selection is the preference of one sex for a specific opposite sex member due to exclusive qualities he or she possesses.

According to the example stated by Buss (2007), if a group of females chose a mate with green eyes, this trait then becomes dominant and favorable by the females of that species. This preference causes evolutionary changes, which also correlate with intrasexual competition because it makes certain traits more dominant than others within that species (Buss, 2007). Buss (2007) refers to the “universal” clusters of sex differences, such as the desire for beauty and

¹ Acknowledgement: To Professor Celia L. Alvarez and Dr. Scott Gillig, thank you for all of your helpful suggestions and support during this amazing journey. Ruby Francois and Yvonne Ramirez, thank you for your help in the initial development of this study.

youth, which men value most, and the desire for good financial and social stability in the mate, which females value most, as part of this evolutionary process.

The Sexual Strategies Theory (SST) formulated by Buss and Schmitt (1993) applies basic evolutionary theory to specific mating contexts such as the long-term and short-term mating strategies of females and males. It is an attempt to provide empirical evidence for a comprehensive formulation of contemporary mating behaviors based on evolutionary theories, generating “more detailed, more precise, and more numerous predictions than any previous theory of human mating about the adaptive problems that men and women have confronted in different mating contexts” (Buss & Schmitt, 1993, p. 230).

Other Theories

Certain studies that have modified evolutionary theory frame an idea that both genders also focus on the social status of their mate. According to a study by Ha, Overbeek, and Engels (2010), boys consider social status to be important only when they find a partner to be attractive, which along with attraction was also important for females.

The search for more complex and egalitarian demands in a partner can be an explanation the average marriage age has increased over the past years for both men and women (Raley, Crissey, & Muller, 2007). This also means that serious relationships develop later throughout a lifetime. Couples in the 1990s used to get married around the age of 26 (men) and 24 (females); in 2003, the age increased to 27 (males) and 25 (females) (p. 1210). Measurements of the average marrying age provide a tool to understand the development and social influences that contribute to union formation.

Moreover, research by Macapagal, Rupp, and Heiman (2011) has been conducted on how both females and males perceive a male within the first few seconds of seeing his face. It can be considered to be a “masculine hypermasculine” face, which is perceived to be more dominant, less honest and cooperative, compared to a “masculine hyperfeminine face,” which is more friendly and trustworthy. These identifications are strong supporters of traditional ideas (attraction, aggression, masculinity, and trustworthiness) of each gender, which are a cause of gender role socialization and education. Females use this method in categorizing a male as hypermasculine or hyperfeminine in order to determine the male’s ability to reproduce “high genetic quality or traits” (Macapagal, Rupp, & Heiman, 2011, p. 93). These at-first-sight facial cue encounters help develop the potential of competition rapidly and accurately between the genders.

According to research done on specific films and nudity, men tend to get more sexually aroused by these sources than women do (Laan & Everaerd, 1995; Costa, Braun, & Birbaumer, 2003). In the study by Costa, Braun, and Birbaumer (2003), brain responses to nude pictures were the key of their experiment. Males find opposite-sex nude images to be pleasant and cause high arousal and same-sex nude images are neutral and slightly less arousing to them. Females, in contrast, view images of males and females to be neutral and both equally arousing. When it comes to viewing sexual films, however, most men like to spend time looking at the faces of women while women just like to look at genitals (Rupp & Wallen, 2007). But when it comes to relationships, women spend more time looking at men’s masculine faces (Macapangal, Rupp & Heiman, 2011).

Research done on sexual desires and sexual drives is connected with an increase in attraction in males and females (Lippa, 2007). In females (homosexual or heterosexual), “sex drive is associated with increased sexual attraction to both men and women” (Lippa, 2007, p. 209). Males, depending on their sexual orientation, “have an increased attraction to one sex but not to both sexes” (p. 209).

The Present Study

According to an experiment by Harris (2004), personality is defined as personal qualities and characteristics associated with interpersonal behaviors. Personality is seen as a second choice after physical attractiveness when it comes to being involved in relationships. Although many experiments (Schmitt, 2002; Harris, 2004; Tsujimura et al., 2010) have been conducted previously in areas of personality and physical attraction, all have various results but share just one in common. None have had an actual reliable and assessable quantitative method to evaluate the correlation between personality and physical attraction and how they lead to dating (Tsujimura et al., 2010). The above observations led my colleagues and I to wonder to what extent personality actually plays a role in the people we choose to date or not.

The key hypothesis of this study is the following: There will be a relationship in gender in terms of the frequency of choosing to date a person who is PASU (Physical Attraction/Social Unattraction) vs. PASA (Physical Attraction/Social Attraction) vs. PUSA (Physical Unattraction/Social Attraction) vs. PUSU (Physical Unattraction/Social Unattraction). This hypothesis will be tested against the alternative: There will be no relationship in gender in terms of the frequency of choosing to date a person who is PASU vs. PASA vs. PUSA vs. PUSU.

Materials

A group of 30 heterosexual participants were involved in this experiment; 15 were women and 15 men. Ranging from ages 17-26, various races were involved as well. A range of 24 pictures of males and females randomly selected from the Internet by a group of 3 undergraduate students at a local university to fit racial and age criteria were provided to the participants as a handout. This allowed controlling the possibility that a subject would not choose a potential date based on race, but instead on attraction or personality.

Also, a sum of seven personality traits (or social traits) was given verbally to each participant: seven positive (Confident, Ambitious, Friendly, Self-Assured, Has Good Opinion of Self, Self-sufficient and Understands Others) and seven negative (Cautious, Unsure of Self, Shy, Reserved, Self-doubting, Lacks Self Confidence, and Skeptical about Others) (Harris, 2004).

Methods

First, each participant was asked basic background questions (age, race, and gender), which helped to further understand the participant’s dating choices. Then, we showed the participants the pictures of physical traits. Next, the participants chose their favorite and least favorite pictures based solely on the represented physical traits. Then, the personality traits were revealed for the chosen pictures, matching the negative personality traits to the favorite picture and the positive personality traits for the least favorite picture. After, the participants’

personalities were revealed; then, the participants were asked if they still wanted to date the same person.

The SPSS 20 program was used to determine the results. If the participants changed their minds or still decided to date the favorite choice then the results were based on the information they provided. The participants' choice of changing either the physical appearance or the personality trait of their favorite choice to make it more favorable for themselves at the end to date allowed us to conclude what the participants really did first focus on when looking for a dating partner.

The independent Variable, which is being tested, is gender (1=males vs. 2=females) of the participant.

Content Analysis

After completing the experiment, a set of categories was formulated to refer to each of the gender-based findings:

1. PASA (Physically Attractive/Socially Attractive)
2. PASU (Physically Attractive/Socially Unattractive)
3. PUSA (Physically Unattractive/Socially Attractive)
4. PUSU (Physically Unattractive/Socially Unattractive)

The "S" was used to refer to socially since physically was given the letter "P." Using another "P" for personality would cause confusion. Therefore, "S" (socially) and personality mean the same thing.

Results

Males were more likely to vote yes for PASU and females were more likely to vote yes for PUSA as shown on the table. However, the relationship between gender and the categories (PASU, PASA, PUSA, PUSU) was not significant at the 0.05 level ($X^2=3.918$, $df=3$, $P=.270$). Thus, gender and the category are independent of each other. There was found to be no relationship in gender in terms of frequency to choosing to date a person who is PASU vs. PASA vs. PUSA vs. PUSU. The null hypothesis was retained because there was no relationship in gender (between males and female) in terms of frequency to choosing to date a person who is PASU vs. PASA vs. PUSA vs. PUSU.

Table 1
Case Processing Summary

	Cases					
	<u>Valid</u>		<u>Missing</u>		<u>Total</u>	
	N	Percent	N	Percent	N	Percent
Gender * Category	30	100.00%	30	0.00%	30	100.00%

Table 2
Gender * Category Crosstabulation

Count		Category				Total
		PASU	PASA	PUSA	PUSU	
Gender	Male	7	5	3	0	15
	Female	4	3	7	1	15
Total		11	8	10	1	30

Table 3
Chi-Square Tests

	Value	Df	Asymp. Sig. (2-sided)
Pearson Chi-Square	3.918 ^a	3	0.270
Likelihood Ratio	4.366	3	0.225
Linear-by-Linear Association	3.136	1	0.077
N of Valid Cases		30	

Note. ^a. 4 cells (50.0%) have expected count less than 5. The minimum expected count is .50.

Conclusion

Previous research has a concentration in the way relationships work and form, and how physical attractiveness plays an important role in mate selection (Sangrador & Yela, 2000). It has been said males tend to get more sexually aroused by sexual films and images than do females (Laan & Everaerd, 1995; Costa, Braun, & Birbaumer, 2003). This, however, does not mean it is what males ultimately focus on when choosing a dating partner. This study sought to identify the correlation between and the main reason why people chose who they chose to date. Such clarification would provide a better understanding of how relationships form and the possible reasons for choices when trying to find a dating partner.

This study differs from previous research by incorporating personality traits into the experiment. The study by Rupp and Wallen (2007), results of which indicated most males like to spend time looking at the faces of women while women just like to look at genitals, can be compared to our results, which indicated something similar: Both men and women did focus on physical attraction (PASU) the most, although males scored higher than females. There is, however, a great difference in the frequencies between men and women who focused on personality (PUSA): Women scored the highest. PUSU scored the least out of all the categories, which tells us males and females either focus on one or both: physical attraction and personality (social attraction).

Both variables, gender and the categories (PASA, PUSA, PASU, PUSU), showed closely related frequencies within our participants. Although the result showed dependency on the gender and the category the participant chose, they do not provide reasons or depth analysis of why our participants decided as they did. A possible explanation for these reasons can be seen in

Ha, Overbeek, and Engels (2010). Their study also denoted “that adolescents did not generally aim for the best partner possible, but that they choose a partner that fits their own mate value” (p. 1069). Our analysis also did not focus on the social or environmental reasons why these choices were made. These limitations might have been because our participants ranged in age from 17 to 26, lived in Miami, Florida, a multicultural urban area, and were Black American, White American, and Latino/Hispanic. Though we attempted to prevent participants from making choices based on race or ethnicity by providing at least two choices for each gender and racial/ethnic composition, we did not ask participants whether their choices were thus influenced regardless, making it very possible they might have been. A more comprehensive study could attempt to more adequately isolate the race/ethnicity variable and other significant variables (such as class, educational background, and religion) in order to measure better the influence of both physical attraction and personality independently. Another factor future studies can focus on is the extremes of the positive and negative personalities mentioned. According to a few of our participants, these personalities were neither clear nor extreme enough to actually cause them to make a change of choice. If this was to be done, maybe more variety within the results could have been seen, allowing better inferences to have been made.

Challenging social expectations of general behavior is an important step toward social justice and awareness. Stereotypes and prejudice are factors that accompany any decision and, therefore, should be proven scientifically true or false, which is the main purpose of this study. As dating and sexual practice evolve, so must the understanding of the motivations behind our personal choices. This current study proved the need for a more sophisticated knowledge of these processes.

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About the Author

Veronica Hernández Menadier was a student at St. Thomas University as a Pre-Nursing major at the time of her research. During the second year of her undergraduate study, she was taking a scientific writing course, which is where this experiment originally developed. After the class was over, she continued to develop the project and presented the results at the school's annual undergraduate research symposium. Her mentors and teachers, Professor Celia Alvarez and Dr. Scott Gillig, guided her throughout the development of her studies. Ms. Hernandez has been accepted in the Nursing Program at the University of Miami. She hopes to continue her education to become a registered nurse for the geriatric population, later developing into a Nurse Practitioner and finally completing her dream of becoming the director of nursing for a nursing home.

Discussion Questions

1. The article investigates reasons behind whom we choose to date. Do you believe these reasons that drive us to make these choices are social or biological? Why?
2. If larger populations were to be investigated, would these yield different results? Why?

3. As mentioned in the future studies, if factors other than physical attraction and personality were to be considered, do you believe a greater number of participants would focus on these factors than on what the experiment originally investigated? Why?
4. Given the research, what distinctions can be made between the mating behaviors of each gender?

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Book Review

Book Details

Rasley, J. (2010). *Bringing progress to paradise: What I got from giving to a mountain village in Nepal*. San Francisco: Red Wheel/Weiser, 238 pages, paperback, ISBN 978-1-57324-482-4.

Reviewer

Tina Marie Trunzo-Lute

Synopsis and Evaluation

In *Bringing Progress to Paradise*, Jeff Rasley takes his readers on a journey through the mountains of Nepal from his very first trek along the Everest Base Camp trail in Sagarmatha Park, inspired by his wife who told him to “go climb a mountain” to his most recent expedition to Basa. This middle-aged attorney from Indiana shares his transformation from an ordinary husband and father to a Himalayan mountaineer and philanthropist. The overall theme of Rasley’s book is his internal conflict with his decision to help bring tourism to an isolated community in Basa, in the Solu region of Nepal, comprised of only a few hundred people.

Rasley begins *Bringing Progress to Paradise* by recounting his interactions with the Sherpas, the indigenous people of Khumba, Nepal. The Sherpas were originally yak herders and potato growers known only as “the people of the east” to the rest of Nepal. Quality of life changed drastically for the Sherpas when Sir Edmond Hillary started his own expedition company in Nepal after becoming the first human being, along with Tenzing Norgay, to climb Mount Everest in 1953. Hillary conquered the Mountain that the Sherpas called “The Mother Goddess” and encouraged other Westerners to follow suit. Hillary successfully brought tourism to Khumba through his expedition company and the Sherpas embraced their new roles as lodge owners, guides, cooks, and porters. Hillary also established schools and medical clinics, and brought hydroelectric projects to the Sherpas. In just a short period of time, “the hillbillies of Nepal became the nouveau riche” (p. 19).

Inspired by Hillary and the people of Nepal, Rasley began organizing expeditions to be contracted directly with Nepalese companies so that the money went straight to the Nepalese people, instead of to U.S. companies that charge higher rates to cover costs of U.S. tour guides. Contracting with Nepalese companies means a Westerner will have a more authentic experience and will be engulfed in the Nepalese culture. Rasley went on four expeditions to Nepal in his first five years of trekking. However, tragedy struck in 1999 when an avalanche killed seven people,

and three of those were killed as Rasley watched helplessly. The calamity shook Rasley to his core, and he did not return to Nepal for four years.

Rasley finally returned to the Himalayan Mountains and was once again captivated by Nepal, specifically the people of Basa, known as the Rai. After one of his treks, he made a commitment that he would help the Rai people develop a school in Basa. Rasley's goal was to raise \$5,000 to provide a fourth grade teacher and a fifth grade teacher, make necessary repairs to the existing schoolhouse, create a playground for the schoolchildren, and provide benches for all students so no one would have to sit on the concrete floor.

In October of 2008, Rasley organized a trek to Basa so he could actually see the school and meet the Rai. Five people accompanied Rasley on this trek, all of them either friends or acquaintances. This remarkable journey of six Westerners to Basa is where the book becomes surreal. The six originally signed up for an introductory trek that turned into an "extreme trek" after a plane crash caused the airport to close, cancelling a crucial flight to an area where the group was to begin their trek. This change in plans forced them to take a bus as far as it would go, then trek six days, six to ten hours each day, with no rest days. Each member of the group was tested physically, mentally, and emotionally. Rasley creates a bond between the readers and the members of the group, and the reader feels the pain, struggles, and transformations that the trekkers go through as they are all radically and forever changed because of their journey.

Bringing Progress to Paradise is a heartwarming and stimulating book that will have you hooked from Rasley's very first adventure. Rasley shares personal stories about his many treks while managing to incorporate some of Nepal's history, religion, and culture. He also keeps his readers engaged by recounting some of his other voyages, such as his solo-kayak trip in the Rock Islands of Palau. Rasley's striking imagery will make you feel as though you are trekking in the Himalayan Mountains, sweating in the heat of the day, observing wild animals, and sensing an attraction to a country rarely thought of by Westerners. Rasley knows how to keep his readers on the edge of their seat wondering if he will once again conquer what seems like the impossible. Some parts of the book seem to be fiction, until you see the pictures that accompany the text. The reader will see firsthand the people of Basa, the crew that trekked there, and evidence of their remarkable expedition.

While the book does not provide a solution to Rasley's original dilemma of trying to determine whether bringing tourism to Basa will destroy its culture, it does address the concern throughout the book and allows the reader to ponder the consequences and come to her own conclusion. One Sherpa asks a question that will make any Westerner realize why the Nepalese would want to become more modern: "You wouldn't want to walk a mile to fetch water if running water can be piped into your house. Why should we?" (p. 233). Will tourism destroy Basa as Rasley fears? This book may be the encouragement adventurers need – to embark upon a trek to Nepal and take on The Mother Goddess to find out.

In the Author's Own Words

"When people in an indigenous culture embrace a tourist economy in the hope of obtaining greater material wealth, the danger is that they then become so like us, they lose their attraction and the tourists stop coming. The native people are then left with a damages and distorted culture, and they don't even have the tourist dollar as compensation" (p. 13).

Reviewer's Details

Tina Marie Trunzo-Lute is a J.D. Candidate and an LL.M. Candidate in Intercultural Human Rights at the St. Thomas University School of Law. She received her Bachelor of Arts in Sociology from the University of Central Florida. In law school, she has served as the Research Assistant for Professor Carol Zeiner, Esq. (2010-2012) and for Professor Raúl Fernández-Calienes, Ph.D. (since 2012), and as a Law Clerk with Blaxberg, Grayson, Kukoff & Twombly, P.A. (2010-2011). Since January of 2012, she has interned and worked with Children's Legal Services of the Florida Department of Children and Families. Her research interests include human trafficking, freedom of religion, and human rights.

To Cite this Review

Trunzo-Lute, T. M. (2012, Summer). [Review of the book *Bringing progress to paradise: What I got from giving to a mountain village in Nepal*]. *Journal of Multidisciplinary Research*, 4(2), 121-123.

Book Review

Book Details

Human Rights Watch. (2012). *World report 2012: Events of 2011*. New York: Seven Stories Press, 676 pages, paperback, ISBN 9781609803896.

Reviewer

Tomislava Savcheva, LL.M.

Synopsis and Evaluation

Human Rights Watch is one of the world's most well known and most active non-governmental organizations dedicated to the protection and promotion of human rights all over the globe. It monitors state compliance with international human rights standards, conducting extensive on site investigations and focusing the international attention on situations of severe human rights abuses and violations. With divisions in Europe, USA, Americas, Africa, and Asia, the organization has various programs with focus on different fields: arms; business and human rights; children's rights; health and human rights; international justice; lesbian, gay, bisexual, and transgender rights; refugees; women's rights; etc. Its main goals are to give voice to those who are oppressed, to the most marginalized and neglected, to bring justice and security, holding the oppressors accountable for their crimes, laying the legal and moral groundwork for deep-rooted changes.

The 22nd annual World Report summarizes human rights conditions and key issues in more than 90 countries and territories worldwide, being the outcome of extensive investigative work undertaken in 2011 by Human Rights Watch staff, usually with the collaboration and close partnership with the domestic human rights organizations and advocates (p. 20).

The book is divided into five essays, followed by country-specific chapters. In the first essay, named "Before the Arab Spring, the Unseen Thaw," Eric Goldstein assesses the signs of change which were largely overlooked in the Middle East and North Africa region. According to the author "we tended to see the mainly authoritarian governments, whose grip was never in doubt, even when they tolerated a controlled pluralism, cautiously independent print media, and a fragile civil society. What we undervalued were rising expectations on the demand side, which subsequently fired the 2011 upheavals, during which thousands of peaceful demonstrators gave their lives in Tunisia, Egypt, Libya, Syria, Yemen, and Bahrain" (p. 25).

In the next essay, "After the Fall," Rachel Denber looks retrospectively into the USSR's collapse 20 years ago in search of valuable lessons. Next, Benjamin Ward concludes in "Europe's

Own Human Rights Crisis” that while many European officials see the Arab Spring as “the most thrilling period since the fall of the Berlin Wall,” in Europe itself “human rights are in trouble” since the old continent continuously demonstrates intolerance and discriminatory practices towards migrants and “problematic” minorities (p. 42).

In her essay “From Paternalism to Dignity,” Shanta Rau Barriga calls for respect of the rights of persons with disabilities who are “often stripped of the most fundamental of all human rights – the right to make choices about their own lives – under the guise of “protecting” them from the challenges of decision-making and living independently” (p. 51).

Finally, Jo Becker and Nisha Varia appraise the revolutionary elaboration of a landmark instrument – the new International Labor Convention 189 establishing global labor standards for the 50 to 100 million domestic workers worldwide (“A Landmark victory for Domestic Workers”).

The book continues with individual country reports, identifying significant human rights issues, examining the freedom of local human rights defenders to conduct their work, their major achievements and obstacles, as well as the role and positive-negative interference of key international actors, such as the United Nations and various regional and international organizations and institutions.

Presenting a thorough, detailed examination of the human rights situation in more than 90 countries, this book is a great resource for human rights activists all over the world. The report is an extremely useful tool, providing information both about the progress and the various achievements accomplished in the human rights field by different individual states, as well as the challenges, needs and severe violations that must be urgently addressed. Furthermore, the monitoring and the conducted investigations whose results are described in the report, as well as the targeted advocacy build intense public pressure for action, raising and maximizing the cost of human rights abuses.

In the Author’s Own Words

“We stand with victims and activists to prevent discrimination, to uphold political freedom, to protect people from inhumane conduct in wartime, and to bring offenders to justice. We investigate and expose human rights violations and hold abusers accountable. We challenge governments and those who hold power to end abusive practices and respect international human rights law. We enlist the public and the international community to support the cause of human rights for all” (introduction).

Reviewer’s Details

Tomislava Savcheva, LL.M. in Intercultural Human Rights, is a J.S.D. Candidate in International Law at the St. Thomas University School of Law. Her doctoral research is in the field of international law and human rights. Her research interests include human trafficking, genocide and ethnic cleansing, cultural genocides in the modern world, and rights of indigenous peoples and minority groups.

To Cite this Review

Savcheva, T. (2012, Summer). [Review of the book *World report 2012: Events of 2011*]. *Journal of Multidisciplinary Research*, 4(2), 125-126.

Book Review

Book Details

Hoffman, R., & Casnocha, B. (2012). *The start-up of you*. New York: Crown Business, 260 pages, hardcover, ISBN 978-0-307-88890-7.

Reviewer

Hagai Gringarten, A.B.D.

Synopsis and Evaluation

Hoffman and Casnocha's *The Start-Up of You* (2012) seeks to provide a "start-up mind-sets and skills sets you need to adapt to the future" (p. 4). According to Reid Hoffman, co-founder and chairman of LinkedIn, the largest professional network in the world, and Ben Casnocha an author and entrepreneur, we live in a fast changing and uncertain global environment, and people need to invest in themselves and be able to "adapt to the future." In short, people can ensure better professional opportunities by behaving like entrepreneurs, gain competitive edge, expand their network, and achieve career goals.

The authors assert that in the past, the job market for the educated masses was like an escalator on which young graduates start at the bottom and move steadily up the escalator, while gaining professional experience, higher income, and job security until reaching a comfortable retirement. Now, the "escalator is jammed at every level" (p. 5), and guaranteed lifetime employment is replaced by short term contracts based on performance; thus, people should always generate opportunities. According to the authors, today's new and fast evolving challenges require people to "think and act like you're running a start-up: your career" (p. 8) and to be "forever a start-up."

Hoffman and Casnocha warn of complacency, and point to GM and Detroit as an example of "once a crown jewel of America," and now GM is struggling, and Detroit was named "the second most-dangerous city in the United States." The fast changing landscape of U.S. industry is also evident with firms on the S&P 500, with firms in the 1930s staying on it an average of 65 years while today, the average tenure is less than 10 years.

Hoffman and Casnocha point out that in order to succeed, individuals must emulate Silicon Valley's entrepreneurial mojo and take intelligent risks, build networks of strong, diverse alliances, and "pivot to breakout opportunity" (p. 19). They urge the reader to have a permanent "beta mind-set" and to always view themselves as "work in progress." The authors offer a road map for a "start-up of you" transformation. Among their suggestions are the following:

- Develop your competitive advantage by combining your assets, your aspirations, and market realities.
- Always remake yourself as the world changes. Learn new skills, improve your niche, and learn to adapt to new world realities.
- Develop an ABZ plan. Plan A is for what you are doing now; plan B suggests “pivoting” for a better plan when you need to change your goals or your route of getting there. Plan Z is your fallback plan if everything goes wrong so you can re-group and re-launch your career.
- Become an active networker, and expand the breadth of your network. Develop a social and professional network of friends, colleagues, and professionals because “relationships matter to your career no matter the organization or level of seniority” (p. 84).
- Establish an identity independent of your employer in order to maximize market opportunities.
- The fastest way to change yourself is to “hang out with people who are already the way you want to be” (p. 85).
- Develop and actively maintain relationships based on “What’s in it for us?” instead of “What’s in it for me?”
- Create an “interesting people fund” to pay for occasional coffee, lunches, or trips to meet new people or to strengthen existing relationships.
- Develop your online social network and become “LinkedIn” (obviously).

Accompanied by interesting success stories, Hoffman and Casnocha’s *The Start-Up of You* (2012) is a manifesto of how workers at all levels can combine assets, aspirations, and market realities to adapt and succeed in the new uncertain, transitory, and highly competitive global environment. Reid Hoffman’s background as co-founder and chairman of LinkedIn, and as an early investor in more than 100 companies including Facebook, brings credence to their assertion that in order to succeed, people need to constantly adapt to an evolving world, while developing and maintaining a strong professional and social network.

A clever but blunt promotion for LinkedIn, Hoffman and Casnocha’s *The Start-Up of You* (2012) is an authentic and inspiring read, guiding and empowering readers to rekindle their entrepreneurial spirit, adapt to the future, invest in themselves, and transform their career.

In the Author’s Own Words

“We believe implementing the strategies discussed in these pages will give you an edge. But think of them as guidelines, not rules of nature. Sometimes in order to make something work, you will drive over the guardrail of one of these rules. Sometimes you evolve new rules in order to stay ahead of the competition. One of the key messages we hope you’ve taken away from this book is that you are changing, the people around you are changing, and the broader world is changing – so it’s inevitable the playbook will evolve and adapt” (p. 224).

Reviewer's Details

Hagai Gringarten's doctoral research is in global leadership with a specialization in branding. His research interest includes branding, international business, and marketing. He has authored a non-fiction bestselling book *Over a Cup of Coffee* (Shiram Shachar, 2000). He also pursued postgraduate studies at Harvard Graduate School of Business and the Kellogg School of Management. He currently teaches branding, marketing, and other business courses at St. Thomas University, and serves as the Editor-in-Chief of the *Journal of Multidisciplinary Research*.

To Cite this Review

Gringarten, H. (2012, Summer). [Review of the book *The start-up of you*]. *Journal of Multidisciplinary Research*, 4(2), 127-129.

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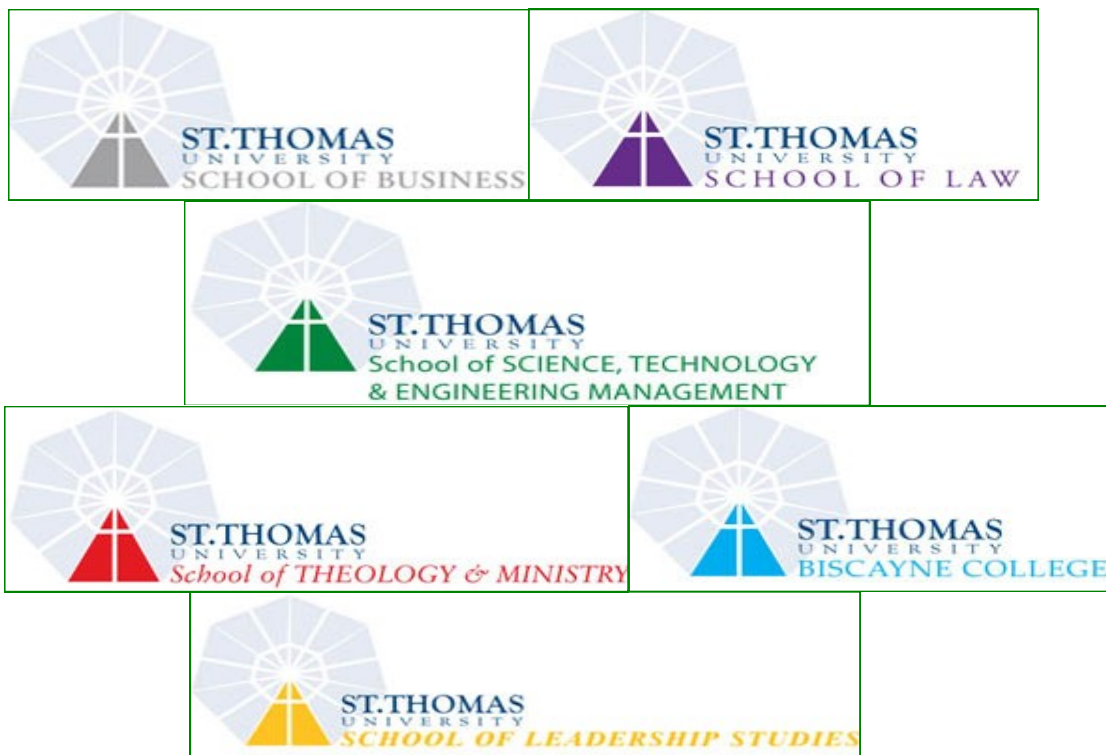
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