

# EXPERIMENTS IN *Democracy*



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Darrah Short & Margaret M. Holland ✦ Emma Jones

## *Experiments in Democracy*

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Cover image: *Migración Betabeleros*, an installation by Ismael S Dominguez. The installation is part of a project chronicling the history of migrant beet field workers in Northern Wyoming through textile sculptures, historic photographs, and first account auditory stories. For an introduction to the history, see the essay by Chelsea Escalante & Conxita Domènech in this issue. Learn more about the project at [IsmaelSDominguez.com/betabeleros](http://IsmaelSDominguez.com/betabeleros).

# Introduction

Scott Henkel

It is a good time to study democracy in America. This is so, not because these times are easy, but because they are hard. As I write, cities in the United States are under military occupation by our own government. Masked federal agents abduct people, ignoring the law and the decent opinion of majorities of Americans. Closer to home, Wyoming's state officials continue to pass ever-stricter regulations for voting and intensify their efforts to ban books from public libraries and schools. None of these actions reflect the will of majorities of people in America or Wyoming, but while we did not choose those acts, we can choose to raise our voices.

So I am proud to present the second issue of the Democracy Lab's journal, *Experiments in Democracy*. However the current political situation continues—and it is too early for either predictions of success or doom—people who read this journal will know that even in difficult times, we choose to believe in what democracy could be, and to think critically about the world in which we live.

This second issue of *Experiments in Democracy* features the work of the Democracy Lab's 2023-2024 cohort of participants. The second cohort of participants was larger than the first, and it reflected the hopes of those of us who designed the program—the cohort was an interdisciplinary and intergenerational mix of people who worked together, challenged one another, and grew intellectually and civically because of that mix. This cohort's student participation was significant, bringing undergraduate and graduate students together with faculty and members of the public, beyond the university.

I am grateful to the Democracy Lab's facilitators: Amy Albrecht, Robby Bishop, Janel Seeley, and Tennessee Watson. Robby Bishop also continued excellent work as this journal's managing editor, making the publication a model of high-quality work, meeting the best standards of open-access scholarly publishing.

There are six essays in this issue, three of which are collaborative efforts and three of which are individual pieces. I am happy that they reflect a diversity of engagements with ideas about democracy. The Democracy Lab welcomes a broad approach to studying the quality of democracy, including the problems of electoral and representative democracy and questions of everyday democracy, the issues that impact the histories and daily lives of people in Wyoming, the nation, and the world.

Lucas Fralick's essay, the "Wyoming Elections Project," describes one part of a broader project about the perceptions that Wyomingites have about the state's contests for public office. Fralick challenges the persistent myth that elections in Wyoming are predetermined. By looking through historical data about gubernatorial races, Fralick shows that the stories people tell about the state's political history should be more complicated.

Chelsea Escalante and Conxita Domènech's essay, "Wyoming's First Spanish-language Newspaper: *La Página en Español* (1927) of the *Powell Tribune*," tells the story of the *Be-tabeleros*, Spanish-speaking sugar beet workers, many of whom settled in Wyoming's Big Horn Basin and North Platte Valley in the 1920s and 1930s. The *Powell Tribune* published *La Página en Español*, a Spanish-language page that ran from May 26 through October 27, 1927. It is one of the only Spanish-language newspapers of the region of that period; therefore, it shows readers a glimpse into the lives of Mexicans and Mexican Americans living in Wyoming nearly a century ago.

Hanisah Hassim and Ryan J. Tucker's essay "Difficult Doesn't Mean Impossible: Using Film as a Vehicle for Engaging in Critical Discussion" engages a fundamental aspect of "small-d" democracy, namely having difficult conversations with people who may disagree about important, and often polarizing issues. As they write, the idea of a conversation may seem simple, but the implications of conversations and their resolutions matter a great deal to the quality of democracy. Issues that are deep-rooted and close to the heart benefit from building good conversations about them.

Danielle Cover's "Reflection" is a meditation on the understanding and use of empathy in the legal classroom and in a democratic society. As she writes, empathy acknowledges the complex relationship between the existence of self and the existence of other people. Following that empathetic path in a classroom asks students to recognize experiences or contexts different from their own, in an effort to make meaning of the world around them. Such efforts become complicated when we recognize that people have many connecting identities and can be simultaneously part of in-groups and out-groups. 'Othering' becomes problematic when it is used to denigrate and/or dehumanize people from perceived out groups. Using empathy as a learning tool means connecting what happens in the classroom

with what happens in the outside world, a vital exercise both in legal education and in diverse communities.

Darrah Short and Margaret M. Holland's essay, "Guardianship in Wyoming: The State's Most Pressing Human Rights Concern" shows that while all people have certain rights, those rights are often denied when a person lives under plenary guardianship, a situation when a court gives authority to a person to make decisions for someone else. Their essay examines the implications of guardianship for Wyoming citizens, identifies key issues with the current system, and explores alternatives that offer protection while protecting individual rights, proposing a more dignified and inclusive approach to decision making and exploring less restrictive legal alternatives to guardianship.

Emma Jones's essay, "Restorative Justice and the Way Forward for Natural Resource Communication," shows that equitable decision-making practices are growing more important as communities recognize the full extent of the impacts on long term ecosystem health. Because equitable solutions are vital to pressing environmental problems, it is essential to consider the processes of communication and public participation to achieve those solutions. Restorative justice finds its greatest potential in incorporation into collaborative governance practices, she argues, and therefore it ought to have greater consideration by the agencies and other entities attempting to navigate complex issues in environmental justice and natural resource management.

Many thanks to these authors—in their brilliant and brave essays, there is material for all of us to reflect upon, during these times when democratic communities need thoughtful engagement.

# Wyoming Elections Project

Lucas Fralick

There is a persistent myth in the modern voter, especially in deep red or blue states that the electoral outcome is predetermined. The myth persists partly from habit, in deep Republican Wyoming, that has the effect of making every election hinder on a heavy Republican ballot. This myth does a disservice to both Republicans and Democrats during an election. For example, the idea that, “it doesn’t matter,” keeps voter turnout low. The best solution to this problem is to provide easily accessible civic election information. By “civic election” information we mean electoral results dating back several cycles, this will show us how politics was always divisive but was also more persuasive; and gives us hope that we can get there again. Wyoming, for now, is one of the easiest places to get detailed electoral information. The challenge is where and how to obtain the information; data that is most often spread out and often difficult to narrow down. The Wyoming Elections Project is that solution, where visitors will be able to access electoral results in one place.

From data collected so far, the Project is only looking at Wyoming Gubernatorial elections, this makes sense on a few levels. First, the gubernatorial races are statewide, so we have a chance to look at how results play out in all 23 counties per election. Second, statewide concerns are often more prominent in Wyoming Gubernatorial races. This is due to many reasons, but the biggest one is that Wyoming holds their Gubernatorial contests outside of Presidential election cycles by two years. That means influence from the top of the ticket, though present, is not as profound as the top of the ticket is the Gubernatorial race, not the Presidential. Therefore, the data from these races is much more easily condensed and analyzed. That is, data collected from these contests are much more useful for the earliest stages of the Project.

By looking at each election in one place, we see twists and turns of each electoral outcome, sometimes with a matter of a single cycle, we can see the vote swing wildly in one direction or another. Take for example, the 1978 and 1982 gubernatorial elections. In these elections incumbent Governor Herschler won both; however, the share of Democratic votes in Fremont County was an increase of about 4,000 votes between the two elections.<sup>1</sup> By itself that is impressive, but looking further, the data shows us that voters in Fremont County increased their support for Herschler significantly more than in 1978, where Herschler won the county by only a few hundred votes. What does this tell us about elections? Many things, but the take away here, is how the voters can once again be persuaded in a divisive time, or rather, that it is possible.

The future website will feature an easily accessible map of Wyoming counties, each with corresponding election dates, reaching back to 1978 as the start. The current project only features gubernatorial races at the county and state results level, deeper dives into precincts are also possible. Further, other statewide races will be added to include even more ways to analyze and see how electorates have evolved over the last several cycles. For now, the Wyoming Elections. The immense amount of data collecting is a taxing process for an individual or organization to undertake on their own. Currently, the Project only exists as a concept and handful of well-placed graphs. Nevertheless, the Wyoming Elections Project will show us how politics is not a set order of outcomes and could serve as a reminder that politics can sometimes be very surprising.

<sup>1</sup> *Wyoming Blue Book*, Vol. IV, 26-27.

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[https://wyoarchives.wyo.gov/pdf/WyomingBlueBookFour.pdf?TSPD\\_101\\_R0=08c21012b1ab2000586c39040bf7d05485383722079b9811c9b9a2ebd7a5a3ce8b327a8c496eee09088db2e33b14300048593d2abe6459559688fb4de30f9ee59fe5a3045483665d65d2d7f23c69460963ebd78e155ca552a936671855efc311](https://wyoarchives.wyo.gov/pdf/WyomingBlueBookFour.pdf?TSPD_101_R0=08c21012b1ab2000586c39040bf7d05485383722079b9811c9b9a2ebd7a5a3ce8b327a8c496eee09088db2e33b14300048593d2abe6459559688fb4de30f9ee59fe5a3045483665d65d2d7f23c69460963ebd78e155ca552a936671855efc311).

## Wyoming's First Spanish-Language Newspaper: *La Página en Español* (1927) of the *Powell Tribune*

Chelsea Escalante & Conxita Domènech

At the turn of the 20<sup>th</sup> century, the Great Plains region found itself the hub of a new booming industry: sugar beet production. Responding to the availability of massive plots of cheap land with ideal climatic and soil conditions, improvements in irrigation systems, and an increased demand for sugar in the American diet, investors built more than one hundred sugar beet factories in the United States by the mid-1920s. The Great Plains states quickly led the nation in sugar beet production, with fields and processing plants scattered throughout Colorado, Kansas, Montana, Nebraska, and Wyoming. However, at that time, this region was very sparsely populated and there were not enough workers to complete the arduous labor required of blocking, thinning, hoeing, and topping the sugar beets. As a result, sugar beet corporations devised labor recruitment strategies to entice more workers to the region. German Russians, Mexicans, and Mexican Americans from California, Texas, and New Mexico responded to this call, arriving to the Great Plains by the thousands.<sup>1</sup> Spanish-speaking sugar beet workers were referred to as *Betabeleros*, from the Mexican Spanish word for *beet*, *betabel*, and the suffix *-ero*, meaning *worker of*. In Wyoming, the *Betabeleros* mainly settled in the Big Horn Basin (Powell, Lovell, Worland) and the North Platte Valley (Wheatland, Torrington). The number of Mexicans in Wyoming grew from 2,051 in 1920 to 7,174 in 1930, making Wyoming the state with the seventh highest percentage of Mexicans in the

<sup>1</sup> Valdés, “Settlers, Sojourners, and Proletarians,” 110–23; Arrington, “Science, Government and Enterprise in Economic Development,” 4–8; California Bureau of Labor Statistics, 48–51; “The Story of Beet Sugar and the American Crystal Sugar Company”; U.S. Beet Sugar Association (USBSA), “Data Relating to Mexican Immigration, 1927.”

United States at that time.<sup>2</sup>

In their communities, the Betabeleros were met with both support and opposition. As part of the recruitment strategy, sugar beet corporations offered housing incentives, whereby workers could pay rent through lower wages in exchange for company-owned housing, or purchase construction supplies on credit through the company to build modest homes. However, this housing was located in a neighborhood, or *colonia*, outside of town, segregated from other residents, and without typical amenities. The sugar beet corporations sponsored community events such as baseball games, dances, and picnics for their workers, but the Betabeleros were often banned from public swimming pools, segregated in theaters, and not allowed in certain stores and restaurants.<sup>3</sup> Throughout the 1920s, the children of Mexican beet workers generally attended Wyoming's public schools alongside White and German Russian classmates. Company and community leaders encouraged this integration as part of broader efforts to settle Mexican families permanently and maintain a stable labor force. By the early 1930s, however—amid the economic turmoil of the Great Depression, the racialization of Mexican labor, and the implementation of New Deal agricultural programs—some towns established separate classrooms or entire schools for Mexican children. These “Mexican” or “Spanish” schools marked the institutionalization of segregation that had not existed a decade earlier.<sup>4</sup>

Although our knowledge of the Wyoming Betabeleros of the 1920s and 1930s is limited, one artifact that remains is a powerful resource that allows a glimpse into the lives of Mexican and Mexican American communities in the state's early history. In 1927, the *Powell Tribune* published *La Página en Español*, a Spanish-language page that ran from May 26

<sup>2</sup> Broadbent, “The Distribution of Mexican Populations in the U.S.” In its count of the number of Mexicans that migrated to Wyoming, it is unclear if this source refers to only Mexican nationals or also to Mexican Americans that were already living in the United States. At that time, these groups were often conflated into the same category.

<sup>3</sup> Davis, “Betabeleros.”

<sup>4</sup> Guzmán, “Things Change You Know,” 392–422.

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through October 27, 1927, for a total of 23 editions.<sup>5</sup> It is one of the only Spanish-language newspapers of the region of that period and the only one that we know about in Wyoming.<sup>6</sup> *La Página en Español* includes stories of the Betabeleros—the main consumers of the newspaper—, local, national, and international news stories, birth, marriage, and death announcements, sports news, announcements of community events, recipes, and advertisements for local businesses. As one of the only literary and/or journalistic primary resources we have of the Wyoming Betabeleros, this newspaper serves a unique purpose in allowing readers a glimpse into the lives of Mexicans and Mexican Americans living in Wyoming nearly a century ago.

The goal of this article is multifaceted. First and foremost, we hope to draw attention to this unique, primary, and publicly available resource in an effort to raise awareness of the impact the Betabeleros had in shaping the linguistic, cultural, and economic history of Wyoming. While the Betabeleros undoubtedly contributed to the prosperity enjoyed by small towns such as Powell, Lovell, and Torrington in the 1920s, their presence and impact in Wyoming is often overlooked and undervalued. By sharing *La Página en Español* with readers, we hope to increase the visibility of the history of the Betabeleros and encourage increased scholarship and community engagement programming centered around them. In addition to sharing the newspaper with readers, in this article, we critically engage with the publication, exploring two themes within it. First, we discuss the complexities around how to accurately label this newspaper—as an immigrant or ethnic newspaper. Labeling the newspaper as “immigrant” positions it within a framework of transition and assimilation, often focusing on its role in helping newcomers navigate life in a new country. This label, however, risks erasing the experiences of readers—particularly Mexican Americans—who were not immigrants but were incorporated into the United States through territorial annexation. On the other hand, identifying the publication as an “ethnic newspaper” emphasizes the persistence of cultural identity and collective memory within a marginalized group, highlighting the negotiation of belonging and exclusion within the socio-political landscape of the United States. Secondly, we discuss how the stylistic and typesetting choices apparent

<sup>5</sup> All twenty-three issues of *La Página en Español* are digitized in the Gonzalo Guzmán Collection, American Heritage Center, University of Wyoming, ah12782\_0001. *La Página en Español* was first studied by Gonzalo Guzmán, who, at the time, was gathering information for his doctoral dissertation on schools for the sons and daughters of Mexican and Mexican American beet workers. Guzmán reported the page to the American Heritage Center in December 2020, was processed in 2021, and named the Gonzalo Guzmán Collection in appreciation of his findings.

<sup>6</sup> The only other Spanish-language newspaper of the Great Plains region that we know of was *El Cosmopolita* of Kansas City, which ran for five years, from 1914-1919. Nearly all other Spanish-language newspapers printed in the U.S. during that time period were concentrated in the southwest region of the country (Texas, New Mexico, Arizona, and California). For additional information, please see Kent and Huntz, “Spanish-Language Newspapers in the United States.”

in *La Página en Español* mirror the power dynamics of the community; just as Spanish remains subordinate to English in the stylistic choices of the publication, the content of the paper also reveals the subordinate nature of the Betabeleros as compared to other residents of Powell.

### **A Newspaper of Hispanic Migrant Workers: Wyoming *en Español***

It is common to classify American newspapers in languages other than English into two categories: immigrant newspapers and ethnic newspapers.<sup>7</sup> To define immigrant newspapers, we use Park's explanation, "[it] is not merely a medium for the communication of news thus initiating the immigrant into the American environment, but is likewise a means of translating and transmitting to him American ways and American ideals."<sup>8</sup> In contrast, ethnic newspapers were "published for and about an audience identified as interested in the social, cultural, religious, economic, education, geographic and political information associated with people who align themselves with a specific ethnic group."<sup>9</sup> Nicolás Kanellos maintains the same classification—immigrant newspapers and ethnic newspapers—for these publications written in Spanish in the United States, and adds that the two types of newspapers should not be confused since ethnic newspapers "may include immigrants in its readership and among its interest; it may cover news and commentary of various 'homelands' . . . but its fundamental reason for existence and its point of reference is its audience's life and conditions in the United States."<sup>10</sup> However, the history of the Spanish-language press in the United States differs from the history of the press written in other languages, such as German, French, or Japanese, among others, because many of the readers of these newspapers from the states of Arizona, California, Colorado, Kansas, Nevada, New Mexico, Texas, and Utah should not be considered immigrants; rather, they were annexed or incorporated—along with the territory in which they lived—to the United States after the signing of the Treaty of Guadalupe Hidalgo (1848). Consequently, America Rodriguez describes early Latino media as "somewhat anomalous" within the framework of what is often referred to as the "immigrant press."<sup>11</sup> People living in these annexed territories became United States citizens; however, they were often considered socially, culturally, and politically foreign citizens and, above all, second-class citizens because they spoke a language that no longer

<sup>7</sup> For more information on immigrant newspapers and ethnic newspapers, see Park, *The Immigrant Press and Its Control* and Rhoades, *The Ethnic Press: Shaping the American Dream*.

<sup>8</sup> Park, *The Ethnic Press*, 87.

On immigrant newspapers and Park's definition of these publications, see Hickerson and Gustafson, "Revisiting the Immigrant Press."

<sup>9</sup> Jones Ireland, *Ethnic Periodicals in Contemporary America*.

<sup>10</sup> Kanellos, *Hispanic Periodicals in the United States*, 32.

<sup>11</sup> Rodriguez, *Making Latino News: Race, Language, Class*, 13.

belonged to the territory in which they now found themselves. This second-class citizenship is evident in the words of Filigonio Arellano, who does not describe his own identity but rather how he is identified according to the situation in which he found himself: “During wartime and when they need votes, white people call me an American; if I need a loan, I am Spanish; and if I am applying for a job, they call me Mexican.’ Arellano’s ancestors, of course, became citizens at the end of the Mexican War in 1848.”<sup>12</sup>

Although *La Página en Español* (1927) of the *Powell Tribune* exhibits some characteristics of immigrant newspapers—given its readership included Mexicans as well as United States citizens, specifically Mexican Americans—it is better understood as an ethnic publication. This distinction is significant because, while immigrant newspapers typically serve newly arrived communities seeking to navigate life in a new country, *La Página en Español* reflects a readership that included Mexican Americans who, despite being U.S. citizens, were often conceptualized by the public as immigrants due to their ethnicity, language, and status as migrant laborers. By labeling it an ethnic publication, we acknowledge its role in providing a space where Mexicans and Mexican Americans negotiated their identities and sought integration into a new socio-political and geographic context, such as Wyoming. This classification underscores the complex dual identity of its audience and the paper’s function in fostering a sense of belonging while navigating exclusionary societal perceptions.

### **Parallel Segregation and Subordination: A Spanish-Language Newspaper Without *Eñes* and Accent Marks**

In examining the different editions of *La Página en Español*, the typesetting practices used in its printing, and the content that was published, we observe an interconnected power dynamic. First, we notice that although the newspaper is printed in Spanish, English mechanics and the overall journalistic style of English still dominate the publication. We argue that the dominant nature of English and subordinate status of Spanish in determining the stylistic outcomes of the Spanish newspaper is symbolic of and parallel to the same power dynamics alive in the Powell community between Anglos and Mexican and Mexican Americans.

A quick glance at the newspaper and readers will notice the complete absence of Spanish-specific symbols such as the letter ñ (written and pronounced *eñe* in Spanish) and Spanish diacritics used to denote marked intonational patterns. This Spanish-language paper was created using an English typewriter and printing press, so characters specific to Spanish were likely unavailable. However, in Spanish, it is often the case that a word completely changes meaning if it is written with or without an accent mark (for example, *compro* means *I buy* but *compró* means *he bought*) or with or without the diacritic over the letter *n* (for example,

<sup>12</sup> Aguayo, “Los Betabeleros,” 287.

*sonar* means *to sound* but *soñar* means *to dream*). Due to the absence of these characters and the fact that Spanish pronunciation is very faithful to its spelling, when diacritics and special characters are excluded, ambiguity can arise. In such cases, readers were left to decipher the meaning of the ambiguous forms on their own. The complete absence of Spanish-specific characters was probably unavoidable—as the *Powell Tribune* office likely did not have access to a completely new printing system—but it does still symbolize the dominant position that English maintained, even in a Spanish-language newspaper.

Similarly, the newspaper follows the journalistic style present in English language press—capitalizing all of the words of a title with the exception of short connector words such as *a*, *and*, *but*, *the*, *of*, etc. This style contrasts with the typical journalistic style of Spanish, which capitalizes only the first word of a title and proper nouns within it. Additionally, nationalities and languages are not capitalized in Spanish. Thus, in a typical Spanish-language setting, it would be much more common for the title to be published as *La página en español* (all lowercase after the first word and “Spanish” not capitalized) rather than how it was published: *La Página en Español*.<sup>13</sup> The original publication’s title, again, exhibits the domination of English stylistic choices even though it was printed for a Spanish-speaking audience.

We also notice that the editors seemed to test different versions of the title over the course of the publication season, tenuous about which journalistic rules they should follow. The title of the newspaper was changed three times in just one sugar beet season. In the first issue, we find the English title at the top and, just below it, the Spanish title in square brackets. The English title, in a larger font than the Spanish title, reads “Tribune’s Page in Spanish.” It is followed by the Spanish title “[La Pagina Espanol De La TRIBUNE].” We suggest that this choice to include the English title first and in a larger font than the Spanish title, even on the Spanish page, may have been motivated by the editors’ desire to emphasize that English was the dominant language of the *Powell Tribune*, or alternatively, their desire to have the English-speaking readers understand what they were looking at when they encountered the Spanish page. After four issues, the editors eliminate the English title and only include the Spanish title, “La Pagina Espanol de La TRIBUNE.” However, this title still does not follow the grammatical patterns of Spanish, because in Spanish, the word *español* in the phrase “La Pagina Espanol” would be understood to play the role of an adjective. In this case, *español* is a masculine adjective describing *La Página*, in reference to either the Spanish language or the nationality. In either case, *La Página* is a feminine noun, so using the masculine adjective *español* with a feminine noun creates a situation of grammatical disagreement that is typically not permitted in Spanish. We assume that the editors wanted to emphasize that they were talking about the language of publication and not emphasizing a connection to the

<sup>13</sup> Throughout this essay, when we refer to the publication, we add in the *ñ* and the accent marks to avoid confusion in pronunciation.

country of Spain, but in doing so they ignored the tendency of Spanish to maintain gender and number agreement. In the fifteenth and sixteenth issue, the editors decide to return to including the English title first, with the Spanish title in a smaller font and placed underneath. Then, in the last and penultimate issues, the English title disappears once again, and in Spanish, the adjective *Espanol* changes to *Espanola*. Although now we do witness gender and number agreement in the title, we still face the lack of the *eñe*, which, due to the phonemic and graphemic distinction of *n* and *ñ* in Spanish, does not align with typical Spanish writing conventions.

Similar to the dominant position of English and subordinate status of Spanish in determining the stylistic outcomes of the Spanish newspaper, we also see similar power differences alive in the Powell community in the content of the articles printed in *La Página en Español*. This dynamic can be seen as early as the first issue of the newspaper, when the editors, in their description of the purpose of the newspaper, state, “we bring these beet workers into closer contact with our way of life,”<sup>14</sup> distinguishing between “beet workers” and “our way of life,” or between *we* and *you*, “*we* know of no better way than to bring out a page of the *Tribune* in *your* own language” (emphasis added), or between you and our community, “*We* want *you* to take an interest in this community, in *our* beautiful valley, in *our* schools and churches” (emphasis added). The message is clear: Powell belongs to us, not you. Previous research about Wyoming’s sugar beet industry has suggested that “Migrant laborers were almost exclusively perceived as ‘outsiders,’ people different from the typical hired hands in the family farm system due to the work they performed and ethnic or cultural differences”.<sup>15</sup> Thus, the permanent English-speaking inhabitants provide Mexicans and American citizens with a page in their language, in Spanish, so that they understand well how they should live and behave in the Powell Valley.

The power dynamics present between Spanish and English in the newspaper itself is also presented in the activities announced in the news. For example, there were two 4<sup>th</sup> of July celebrations, one for the English-speaking people and another for the Spanish-speaking: “at 1:30, when the program in the Spanish language will take place. Next Monday will be the 151st anniversary of the signing of the Declaration of Independence. English-speaking people will have their program before noon.” This segregation is also seen in the several lists found in the paper. Of particular note is the list of the “Sixty Betabelero Families Who Have Paid for Their *Tribune*.” The names of the Betabeleros who have paid the dollar—the price of *La Página en Español*—are written next to the rancher to whom they appear to “belong”:

<sup>14</sup> Unless otherwise noted, all translations and transcriptions in *La Página en Español* are our own. You can find the original in Spanish at <https://digitalcollections.uwyo.edu/luna/servlet/uwydbuwy~187~187>.

<sup>15</sup> Waggener, “Dirty and Difficult.”

<u>Worker</u>	<u>Rancher</u>
Abadón Maestas	K. Kawano
Tony Perea	J. H. Higgins
José Lara	
Anastasio Olivas	
M. M. Guardado	O. E. Good
F. Rodríguez	R. G. Gillison
Santiago Díaz	Lucy Wallace
C. Vega	Biesemeier rancho... <sup>16</sup>

The fact that the Betabeleros are listed next to the rancher for whom they work suggests that they were not considered fully autonomous individuals, but rather as a person dependent upon or belonging to another.

While the use of the word *mexicano*—or rather, *mejicano*, as it is written in *La Página en Español*—is consistent, the term or terms used for Mexican Americans in the periodical vary, and the most repeated ones are *ciudadanos americanos* or *hispanos americanos*. Although Mexicans and Mexican Americans are mentioned very frequently, no clear distinction is made between them. Moreover, it seems that the terms Mexican and Hispanic American are used interchangeably. Let's take, for example, the June 9 column titled "North Side of Lyric Theater Reserved for Hispanic Americans." While in the headline it appears that the theater is reserved for Mexican Americans, in the article it changes to all "Spanish-speaking people," that is, it is reserved for both Mexicans and Mexican Americans, "Mr. Fuikerson, manager of the Lyric Theater, has prepared a place in his theater for Spanish-speaking people." It should be noted that in this news article, segregation is clearly observed with the use of the north side: the north side is where "Hispanic Americans" must sit. In addition to "Hispanic Americans," Mexican Americans and Mexicans are often called "Spanish-speaking workers" or "Spanish-speaking people." These Spanish-speaking people, Mexicans and Mexican Americans who settled—often temporarily—in Wyoming are the readers of *La*

<sup>16</sup> The list appears in the July 21 issue, and on July 27 under the heading "His Name Did Not Appear on the List, However, He Already Paid" rectifies an error that a person has paid for *La Página en Español*, but his name is not on the list: "Mr. A. J. Álvarez showed up one of these days at the *Tribune* and asked why his name had not appeared on the list of those who had already paid his subscription when he had already paid it as well. To which we replied that perhaps we had missed his name. He has his receipt, and there is no question beyond that. If any name is overlooked and they have a receipt for their subscription, this is enough . . . will not be charged a penny more."

*Página en Español* and the protagonists of this newspaper. Some of these people are named in a list of honor, “people who have been doing a painstaking and excellent job as well,” which appears in two issues of the page, in the June 16 and 23 issues: Emilio Abeyta, Benito Chávez, Pedro Chávez, José de la Cruz, Cruz Jaramillo, José Lara, Pablo Lechuga, Ernesto Leyva, J. J. Lucero, Concepción Martínez, Andrés Ojeda, A. Palomar, Tony Perea, Francisco Rodríguez, and C. Vega, among others. Along with the names of the Betabeleros are the names of the ranchers for whom they work: Friedlan, Gillison, Heltland, Higgins, K. Kagi, K. Kawano, Kimmett, Kreps, F. Martin, Nielson, Shaulls, M. J. Smith, Bert Steck, Stutzman, and Townsley, among others. Once again, writing the name of the rancher to whom they “belong” suggests that the Betabeleros were seen to as property of, or at least dependent upon, their rancher.

### **Honoring the Voices of the Past: Lessons from *La Página en Español***

In revisiting the history of the Betabeleros and their unique contributions to Wyoming’s cultural and economic landscape, *La Página en Español* emerges as more than a newspaper—it is a testament to resilience, identity, and community. The pages of this publication bridge the gap between marginalized voices and a society that often rendered them invisible, highlighting the complexities of belonging and exclusion in 1920s Wyoming. By exploring the linguistic struggles, power dynamics, and dual identities that shaped both the newspaper and its readers, we gain invaluable insight into the experiences of the Betabeleros.

The historical relevance of *La Página en Español* extends beyond its archival value; it challenges us to reflect on the narratives often omitted from mainstream histories. In sharing this story, we honor the perseverance of Wyoming’s early Mexican and Mexican American communities, whose cultural imprints continue to influence the state today. This article calls for a broader acknowledgment and preservation of such narratives to ensure that the voices of the past inform a more inclusive understanding of our shared history.

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# Difficult Doesn't Mean Impossible: Using Film as a Vehicle for Engaging in Critical Discussion

Hanisah Hassim & Ryan J. Tucker

## Introduction

The idea of a conversation seems simple but has a lot of implications. Conversations between citizens form a part of social engagement, which can contribute to political activism.<sup>1</sup> Others have argued that some conversations could lead to the opposite. However, for a democracy to work the best that it can, it relies on a diversity of opinions which first needs to be expressed and then discussed to find resolution—and this starts with a conversation.

The U.S. is no stranger to polarizing issues. Conflicts exist on smaller scales and escalate to bigger ones depending on the matter at hand. These larger conflicts are more difficult as they deal with topics like identity, morality, and matters that are deep-rooted and closer to the heart. A study has shown how having discussions about these complex topics results in more understanding when approached in the right manner.<sup>2</sup>

Understandably, having conversations about the state of the country, world, or life can be daunting and feel out of place which is why this paper tries to offer a solution by using film as an anchor of the conversation. With movies occupying a notable portion of the media that people consume and the effect they can have on changing perceptions of people, movies become a valuable item to pursue.<sup>3</sup>

<sup>1</sup> Pattie and Johnston, “Conversation, Disagreement and Political Participation.”

<sup>2</sup> Kugler and Coleman, “Get Complicated: The Effects of Complexity.”

<sup>3</sup> Kubrak, “Impact of Films: Changes in Young People’s Attitudes.”

Films are a powerful tool that inspires a visceral response from viewers, evoking emotions as an art form and lucrative endeavor.<sup>4</sup> Films have been a conduit for social change, dealing with issues like gender, politics, identity, social inequality, and many other important discussions.<sup>5</sup> A study found that movies have positive effects on happiness as a leisure activity, invoking emotional responses for therapeutic processes.<sup>6</sup> Films have also been a vehicle for education, whether intentionally or not, as seen through a study that recognized film helped to raise awareness for rare diseases.<sup>7</sup> Media has been utilized as a site for presenting and debating feminist and other discourses in hypothesizing the possibilities of how scenarios will play out.<sup>8</sup> A study also asserts the importance of media literacy for citizens of a democracy in attempting to understand the roles of media as a self-expression tool where people are trying to communicate, which can help with civic engagement.<sup>9</sup> Research has also shown if viewers are prompted to search for and recognize social justice issues presented in a film, those viewers will report more positive attitudes toward social justice.<sup>10</sup> Considering that film can unintentionally change viewers' attitudes and behaviors, the hope is that with difficult discussions through the lens of a film, viewers would not only be more exposed to diverse opinions but also be emboldened into activism and action for change.<sup>11</sup>

We chose film as an anchor for discussing difficult topics because it tends to foster more productive conversations. Films serve as a springboard for deeper discussions that extend beyond their narratives. As mixed-race but brown individuals, we find it intriguing that, irrespective of a viewer's racial background, both the viewing experience and the key takeaways can often be similar. This shared interpretive space is what led us to write this paper, using film as a lens to examine these complexities.

<sup>4</sup> Butler and Kaufman, "Social Science of the Cinema: Fade Out."

<sup>5</sup> Dowd et al., "Movies, Gender, and Social Change"

<sup>6</sup> Uhrig, "Cinema is Good for You."

<sup>7</sup> Domaradzki, "Treating Rare Diseases with the Cinema."

<sup>8</sup> Lotz, *Redesigning Women: Television after the Network Era*.

<sup>9</sup> Hobbs et al., "Learning to Engage."

<sup>10</sup> Khoo and Ash, "Moved to Justice: The Effects of Socially Conscious Films."

<sup>11</sup> Das et al., "Moved to Act."

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Structurally, this paper begins by providing a brief background on the film of choice for this project, *Get Out*. Then, it segues into a discussion of the conversation we had with a group of friends after watching the film along with the primary themes that emerged from that conversation. What follows is a section delving into our personal reflections, which then concludes by urging others to engage in the conversations we have long held impossible.

## **Background**

### *A Synopsis of Get Out*

The film we chose to frame this project was the 2017 psychological horror film *Get Out*.<sup>12</sup> Serving as Jordan Peele's directorial debut, *Get Out* received acclaim from both critics and lay-audience members alike, eventually going on to win Best Original Screenplay at the 90<sup>th</sup> Academy Awards.<sup>13</sup> The film follows Chris (Daniel Kaluuya) and his girlfriend, Rose (Allison Williams), who, after five months of dating, have decided to take the next step in their relationship: a weekend getaway upstate with Rose's parents, Missy (Catherine Keener) and Dean Armitage (Bradley Whitford). Chris expresses his uncertainty in doing so, as Rose has yet to disclose to her parents that Chris is Black. Rose assures Chris he has nothing to worry about, and the pair head to Rose's childhood home. Upon their arrival, Chris initially reads the Armitage's over-accommodative behavior as nervous, albeit seemingly well-intentioned, attempts to grapple with Rose's interracial relationship. However, as the weekend progresses, a series of ever-evolving, disturbing discoveries leads Chris to a truth far more sinister than he could have ever imagined. The Armitage family has been abducting Black people and, through a medical procedure known as the "Coagula effect," transferring the consciousness of both their family and other wealthy white people (who bid on the abductees) into younger Black bodies.

### *A Justification for Choosing this Film*

As Lilek states, "The foundation of the Hollywood horror film industry has always included metaphors of what haunts American society."<sup>14</sup> In effect, at the core of the horror film is an attempt at reconciliation, one that sees the myriad of fears that plague the larger American populace manifested as monsters, ghosts, and all manner of things that "go bump in the night." This reconciliatory effort occurs, according to Winter, through the horror film's

<sup>12</sup> Peele, *Get Out*.

<sup>13</sup> Oscars, "The 90<sup>th</sup> Academy Awards."

<sup>14</sup> Lilek, "Horrors of Society," 125.

utilization of and reliance on metaphor.<sup>15</sup> To that end, Winter asserts that the cultural manifestations of metaphor present in horror films have at least three distinct but related effects:

1. **Elaborating:** Cultural representations may elaborate on existing metaphors, enriching them with specific examples.
2. **Reinforcing and Maintaining:** Cultural representations may strengthen metaphors in the minds of the people who witness these representations, which helps to keep metaphors alive.
3. **Creating and Recreating:** Cultural representations may create new metaphors or recreate old metaphors in the minds of new generations.<sup>16</sup>

These three effects, either on their own or in tandem with one another, aid in creating fear. When afraid, some people opt to investigate why the film made them uncomfortable. Irrespective of the reason for that discomfort, however, such an inquiry necessitates an engagement with the text that is of a more critical caliber (i.e., it requires critical thought).

The ability of horror films to elicit a sense of critical thinking within a viewer is why we opted for the genre, and the commentary-rich nature of *Get Out* made the film a prime candidate for this project. For clarity, our use of the term “critical thinking” is an amalgamation of several definitions<sup>17</sup> and refers to the following: careful thinking (often directed toward a goal) that acknowledges and tests previously held assumptions, allowing one to make more informed judgments and decisions.

## Discussion Themes

This section unpacks the three primary themes that emerged throughout the discussions we had with friends and each other: (1) privilege, (2) activism, and (3) approaching tough conversations. We have made slight edits to all quotes to enhance their readability.

### *Theme #1: Privilege*

One of the core themes evident in the film was privilege. Discussions with our friends about privilege were brought forth in four different forms: (1) racial, (2) financial, (3) familial, and (4) educational.

<sup>15</sup> Winter, “Horror Movies and the Cognitive Ecology of Primary Metaphors.”

<sup>16</sup> Winter, “Horror Movies and the Cognitive Ecology of Primary Metaphors.”

<sup>17</sup> Hitchcock, “Critical Thinking.”

“I’m from California, which is a very well-integrated place,” one of our friends said, recounting an experience from their youth:

There was a corner store by my high school, but whenever I’d go in there with some of my friends of color, there would always be this policy where we had to take off our backpacks. I don’t really know why. Maybe the [shopkeepers] were afraid of stealing? [Either way], when I would go in there by myself, I wouldn’t have to take [my backpack] off. [When I did so for the first time], I think it was sort of a realization for both sides. [I’d gone in there] with one of my friends, and we both had to take off our backpacks. I told him that I’d never had to do that before, and he was like, ‘Oh, well, I have to do that every time I come in here.’

Our experience informs us that most people only come to fully recognize their racial privilege after they experience and/or witness differential treatment compared to people of color, as the above anecdote demonstrates. Often, this recognition allows for their scope of thinking to widen, and they grow more cognizant of how society treats them versus people of color. It also likely makes a difference in reading it and experiencing it, as it not only forces them to absorb that such privilege exists but also how it affects the other person. Our peer who told us of the backpack incident admitted that the experience did not feel great, and the race-fueled conversation that followed felt even less so.

Another peer brought up financial privilege as a privilege unique to him and a few others. He explained how he is aware of friends who needed jobs to get by in high school and how even though he has a job now in college, his parents would be more than willing to foot the bill. Other friends too have spoken to us about how financial privilege is very powerful, as it gives you access to not only more things or high-quality products/services but it also allows you to be part of an exclusive group. The Armitage family and the guests attending their event are prototypical examples of those whose lives are rife with privilege, both racial and financial.

The conversations we had also brought attention to educational privilege, with one person noting, “I am very privileged to be going to college in general.” As most of our friends were pursuing or had already obtained a college degree, this was felt deeply among us. Access to higher education often serves as a gateway to economic mobility and social capital, yet it remains out of reach for many due to systemic barriers like rising tuition costs, especially in the U.S. College isn’t just about learning; it’s about entering spaces of opportunity that others may never access. In *Get Out*, the Armitages’ advanced education—Dean as a neurosurgeon and Missy as a hypnotherapist—symbolizes how higher learning can grant not only status but also power, which, in their case, becomes a tool for control.

There was some discussion about familial privilege as well, as someone shared, “My parents are divorced, and I feel like I did kind of miss out on something.” This comment underscores how societal norms often position the nuclear family as the ideal, leading those

from non-traditional family structures to feel a sense of lack, even if their upbringing was supportive. Familial privilege manifests in ways like having two parents who can pool resources for education or emotional stability. In *Get Out*, the Armitages' tight-knit family unit exemplifies familial privilege—they work together seamlessly to uphold their twisted tradition, using their unity as a source of power, while Chris' family is fragmented and, in some ways, haunted.

A broader reflection on privilege highlighted how it often goes unnoticed until confronted with contrasting experiences. As one person put it, "I think you kind of have to have that 'outside look' or else you're never going to know that you have any privilege. I think that's why a lot of people start to notice that privilege when they go to college. I really don't think that you can come to that realization [without exposure to different people and places]." This speaks to the echo chambers many in the U.S. grow up in—schools, neighborhoods, and social circles that lack diversity—making it hard to recognize one's own advantages. Considering the vastness of the U.S., people tend to have their own enclaves and rarely go out of their own bubble to experience lives led by other people. For many, college had been a place where they found and experienced the most diversity in their lives. By making personal connections with people who were different than them, they began to recognize and appreciate the value inherent in other life experiences but as mentioned above, going to college in itself is already a privilege. In *Get Out*, Chris initially downplays subtle racial microaggressions but, through unsettling experiences, comes to fully recognize the depth of the systemic oppression around him. Similarly, real-life exposure to new environments can act as a catalyst for recognizing the privileges previously taken for granted.

In *Get Out*, privilege operates on multiple levels, reinforcing systemic oppression. Racial privilege is central, as white characters, particularly the Armitages, exploit Black bodies while masking their racism with performative allyship. This privilege allows them to dehumanize Chris without facing societal consequences. Financial privilege is evident in the Armitages' wealth, enabling them to host elite gatherings and fund the Coagula procedure, commodifying Black bodies for their gain. Familial privilege plays a role as the Armitages operate as a cohesive unit, bound by loyalty and tradition, using their close-knit dynamic to entrap victims. Lastly, educational privilege empowers Missy and Dean, whose advanced knowledge in hypnotherapy and neurosurgery grants them control over others, turning intellectual authority into a tool of domination. Together, these layers of privilege highlight how systemic power operates across racial, economic, familial, and academic lines as we had discussed with our peers.

These discussions on the different branches of privilege are very interesting because one is only likely able to recognize privilege when they do not have them. When watching a film like *Get Out*, racial and financial privilege are not the only forms of privilege on display. However, conversations about privilege tend to be informed by our own experiences, and the two aforementioned forms appeared to be the most palpable for both us and our friends.

### *Theme #2: Activism*

Although activism is not explicitly dealt with in the movie, in our conversations with peers, we have found that this was the next step of where our conversations organically led to. One of our peers used the race-heavy commentary of the film as a catalyst to share his thoughts about why people (especially those in positions of authority) should advocate for marginalized communities, “The characteristics that differentiate us on a bigger level don’t really matter in the long run. [We’re] all humans. [We] have an obligation to fight for and help [one another].” This comment illustrates a significant point: that our fixation on difference tends to eclipse the human drive to support. To him, activism and its ensuing principles are not questions of if; they are questions of when and how. This sentiment is not shared with everyone as there have been other comments on how the people we help should try to help themselves first. For the U.S. context, there is still some emphasis on “pulling yourself up by your bootstraps” which is not always the most helpful angle. One of our friends who is active in coordinating mutual aid opportunities also expressed the importance of mutual aid as an important starting act of activism to meet immediate basic needs of people rather than letting them go through the very consuming process of applying for financial aid that can feel dehumanizing.

A distinction was also made between activism versus *performative activism* (i.e., shallow and self-serving support for social justice causes).<sup>18</sup> Our peer continued to explain, “There are a couple of people I went to high school with who were [performative]. They would talk about how they were super supportive of [social issues], but when it came down to it, they wouldn’t really stick their neck out for anyone.” While some may view activism as a responsibility, other individuals can warp its positive intent to fit their own solipsistic needs. If things grow knotty, those on the performative end of the activist spectrum will likely capitulate in favor of self-preservation. Their activism struggles to see beyond the scope of the self, and it hinders their ability to wholly advocate for others.

Building on the performative activism position, a few peers have expressed a similar disdain toward those who refuse to advocate for a cause on the grounds of being neutral and/or impartial. According to our peer, “One, [neutrality] saves people time, and two, it keeps them from being [labeled] controversial, which a lot of people avoid now. It’s just like being moderate. You don’t have an opinion, so no one can get mad at you.” Another peer reflected on how refusing neutrality is to, in effect, align oneself with those in positions of power. In other words, there is no true neutral. At the heart of their argument appears to lie a frustration with neutrality’s use as a tool to circumvent the complexity and difficulty that accompany activism. If one is neutral, they do not have to investigate why a cause is worth supporting (i.e., they save time), nor do they run the risk of adopting a stance that might

<sup>18</sup> Thimsen, “What is Performative Activism?”

upset others (i.e., they save face). Neutrality, to a lesser extent than that of performative activism, exhibits traces of solipsism and promotes idleness. In other words, impartiality breeds inaction.

In *Get Out*, activism, performative activism, and the role of passive bystanders are explored through the film's critique of race relations and superficial allyship. The Armitages and their social circle embody performative activism, masking their exploitation of Black bodies with shallow, self-congratulatory gestures. Dean's comment, "I would have voted for Obama for a third term," and the guests' fetishizing remarks, "Black is in fashion" highlight how some white liberals perform wokeness to virtue signal while remaining complicit in systemic racism. Passive bystanders or people who are neutral are also critiqued, particularly through characters like Jim Hudson, the blind art dealer, who claims he only wants Chris's eyesight, not his race, yet still participates in the violent commodification of Black bodies. His "neutral" stance exposes how inaction or selective morality perpetuates harm. In contrast, genuine activism is portrayed through Chris's survival, which becomes an act of resistance against a system designed to dehumanize him, and Rod's relentless efforts to save Chris, representing grassroots activism driven by loyalty and community care. The film ultimately critiques not only overt racism but also the dangers of shallow allyship and passive complicity, revealing how systemic oppression persists through both action and inaction.

### *Theme #3: Approaching Tough Conversations*

As we spoke to our respective peers, they revealed how films could act as a starting point for having conversations that are difficult but necessary. Moreover, they addressed the importance of one's attitude when entering such conversations.

**Via Channel of Film.** While the film was not always the center of focus throughout our conversation, its existence became an anchor for common ground (i.e., the point of similarity to which the conversation would have returned if things grew intense). One of our peers, R, broached this notion and discussed how movies can act as a gateway to more critical discourse. He stated, "I think that film is a great way to challenge preconceived notions. It talks about these tough issues in a way that many (but not all) people can look at as pure entertainment. You don't have to think critically about this movie, but you should." R's comment alludes to some of the larger objectives of this project, as part of our aim is to encourage individuals to think about and engage with their media (film, television, etc.) through a more critical lens. Indeed, one can be a passive viewer and take a piece of media like *Get Out* at face value; however, it is through a deeper examination of that media that growth occurs.

Our film-focused conversation continued, and we asked our peers if they had any criticism for the film shown. E remarked, "I feel like, especially for me, sometimes you just need to tell me straight to my face what something is. Otherwise, I won't get it. Like with Rose's

character being a villain.” This comment demonstrates how, despite the beauty of subtlety, there is still a need for movies to be blunt when tackling and attempting to comment on certain issues. For the filmmaker, it becomes a game of balancing the need to entertain with the need to inform and criticize in a way that is perceptible to the viewer.

**Inclusion.** One critique that our peers voiced about the tough conversations we attempt to engage in today is that we tend to exclude the people with whom the issue most affects. J commented on this problem: “I feel like, in that sense, you should include [marginalized people] into those conversations because it's about them.” He expanded on this argument, noting that a lack of representation for those who an issue directly impacts silences their voices, downplays their plight, and showcases a general lack of care on the part of the purported activists. J averred that there is little hope in finding a solution when the voices of the affected find little to no airtime to speak.

**Open-Mindedness.** Another approach our peers mentioned dealt with being open-minded. They all conveyed a similar belief that to carry out these difficult conversations civilly and productively, we must approach them from an angle of humility, reciprocity, and consideration. M shared their thoughts on this notion: “Just putting yourself in someone else's mindset—I think that's very valuable. I think humans [tend] to be loud, and the loudest one wins. But I think you just gotta take a step back and relax. Put yourself in someone else's shoes, and just imagine if that was you.” As M illustrates, the monopolization of a conversation does not assure or indicate overt correctness; it simply means that someone has a lot to say. Moreover, M's comment suggests that we need to (a) be more cognizant of what people are actually saying and (b) be willing to look at issues from a perspective that differs or conflicts with our own.

**Common Ground.** Our peers also raised the importance of finding common ground during these difficult conversations. J explained, “As the conversation progresses, we're going to find some common ground. Instead of going into [the conversation] antagonistically, [we should realize] that we'll find something to agree on at some point.” Before a conversation can reach a state of commonality, those involved must be willing to actively listen to one another. When they have established that sense of reciprocity, feelings of antagonism and combativeness should subside—albeit slowly. By adopting this mindset, our peers argued that people would come to realize that, upon entering a communicative encounter, most people harbor good intentions. It is only with this recognition that individuals can attempt to find solutions to any number of social issues.

## Our Personal Reflections

Engaging in discussions about race, privilege, and activism through the lens of *Get Out* prompted us to reflect on our own experiences and positionality. As mixed-race but brown individuals (with one of us being half Black), our engagement with the film was shaped by a unique duality: We are not white, yet we exist in a racialized hierarchy where one of our experiences differs from those of Black individuals and the other readily aligns with those experiences. This positionality allowed us to observe both the subtle and overt ways privilege operates, while also recognizing the limitations of our own perspectives. The process of analyzing *Get Out* and discussing it with our peers reinforced the importance of dialogue as a tool for self-awareness and collective understanding.

One of the most striking aspects of our discussions was the realization that many of our friends had never deeply interrogated their privileges before. The film served as a catalyst for these reflections, highlighting how racial, financial, and educational privileges manifest in everyday life. While we, too, have encountered our fair share of racial microaggressions, our discussions led us to reflect on how our own privileges—educational access, financial stability, and familial support—have influenced our experiences and perspectives. Recognizing these privileges is not about guilt but about understanding the systems that shape our lives and the lives of others.

We found the conversations surrounding activism and performative allyship to be particularly compelling. The critique of those who remain neutral resonated deeply, as we have encountered individuals who espouse progressive values in rhetoric but fail to act on those very values. This reflection led us to examine our own engagement with activism. Are we doing enough? Are our conversations translating into action? The discussions reinforced that activism is not just about public advocacy but also about everyday choices—challenging biases, supporting marginalized voices, and refusing to be complicit in injustice.

Additionally, we reflected on the emotional labor involved in having these conversations. Discussing race and privilege, especially with those who have not previously engaged with these topics, can be exhausting. The tension between wanting to educate and the frustration of encountering resistance is a challenge we both have faced. The conversations *Get Out* prompted were, at times, uncomfortable, but they also underscored why these dialogues are necessary. Silence only perpetuates the status quo.

Ultimately, this project reaffirmed our belief in the power of media (film, in particular) as a site of discourse and transformation. *Get Out* did not just entertain; it provoked, unsettled, and demanded critical engagement. As we move forward, we hope to continue using film and other cultural texts as entry points for difficult conversations, recognizing that these discussions, however challenging, are integral to fostering awareness and inspiring change.

## **Conclusion**

We cannot expect to engage in or fully actualize a democratic society when we view the conversations needed for its flourishing as synonymous with the impossible. It would be remiss of us to contend that such conversations are not difficult; however, the tendency to conflate “difficult” with “impossible” need no longer occur. This conflation makes many people reluctant to even attempt to converse with one another, let alone come together to engender change on a large scale. While this project is in no way perfect, it still demonstrates that, at least at a micro level, these conversations are possible. To transpire, they take time, effort, and a genuine sense of willingness and reciprocity from all involved. We recognize that these elements are difficult to fulfill on their own, and they grow increasingly so when one combines them. Where, then, does an effective starting point for these conversations lie? It could, as this project reveals, lie with film.

When entering these film-prompted conversations, we recommend that the parties position the film as an anchor for common ground (i.e., the point of similarity to which the conversation returns if things grow intense). From there, the parties should do the following: (1) approach the conversation from an angle of open-mindedness; (2) listen to understand, not to refute or attack; and (3) take time to reflect on not only their own positions but also the positions of the other party once the conversation concludes. We hope that readers adopt this three-part approach (or one similar in tone) when they inevitably find themselves amid a difficult conversation. Adoption of this approach could materialize into action, which might then improve and reshape how we approach democracy and its attendant discourse. Perhaps the conversations we long held impossible could take on an air of possibility and result in proper, profound, and widespread change.

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# Reflection, May 2024

Danielle Cover

## Introduction

I began my Democracy Lab journey looking to explore how legal writing could, in the unidirectional conversation it represents, be a force in breaking down divisive political speech and extremism. I understood that it was a rare occasion that the truisms expressed in the U.S. Constitution had ever been achieved. At the same time, I thought that if people who saw themselves as guardians of those fundamental principles could just *explain why* racism, misogyny, homophobia, climate science denial, or any of a number of social justice concerns failed to meet the obligations of this country's founding documents we could change the world for the better. As a law professor, I firmly believed that there must be a pathway, or many, to healing the deep rift between the constitutional mandates on which our democracy is based and the everyday experiences of people living in America.

Early in the process of researching American democratic systems and rhetoric, I found myself directed time and again to the idea that the roots of political and social change were steadfastly located in empathy, specifically a version of empathy that allowed room for all perspectives to be seen and heard – acknowledged if not agreed upon. When I realized that my original project idea was too large to adequately explore in this venue, I focused my attention more narrowly to legal education. Having run a law school legal clinic for a decade, teaching empathy was a corner stone of my pedagogy. Could we not use empathy to subvert the traditional pedagogies of the legal academy and to make the law classroom a locus of justice-based societal change? Empathy could be the answer for doctrinal legal education just like in clinical education! As an early step in their professional socialization, law stud-

ents could explore within the protective bubble of the classroom how legal principles manifest in lived experiences. Legal education could become transformative, a force for breaking down political extremism with dialogue, compassion, and understanding. And, inspired by Myles Horton's description of the power of democratic learning spaces,<sup>1</sup> I considered that there might be a pathway to dismantling systemic and institutionalized bigotry: empathy practiced and exercised in a democratic classroom could create the space needed for dialogue and understanding while also disrupting legal education's complicated and problematic legacy.

It did not take me long to realize that my optimism might be misplaced. What began as a meditation on and experiments in using empathy as a pedagogical tool quickly exposed themselves as an exploration of my own values. That exploration, in turn, gave rise to the central question of this reflection: How can we ask institutionally minoritized and marginalized students to continue to do the emotional labor of making space for understanding or perspective taking when they have been asked time and again to carry the weight of educating those around them?

## I.

There is a perception of law school that reflects the rigorous neutrality of John Housman's fictional contracts class in the 1973 film *The Paper Chase*.<sup>2</sup> First year Harvard law students shuffle into each class with Professor Kingsfield ready to be humiliated in the face of his great intellect. Twenty-eight years later, *Legally Blonde*<sup>3</sup> offered the world a somewhat different, perhaps kinder and gentler, Harvard, still elitist but not quite as fearsome as it was in 1973. And, of course, many of us have our own personal and individual experiences that inform the way we think about legal education. Whatever your understanding, in its most didactic and historical form, the American law school arose from a need to accomplish two things: to give the profession legitimacy as an intellectual endeavor and to gatekeep who was allowed to enter into that profession.<sup>4</sup>

<sup>1</sup> Horton, *The Long Haul: An Autobiography*.

<sup>2</sup> *The Paper Chase*, directed by James Bridges.

<sup>3</sup> *Legally Blonde*, directed by Robert Luketic.

<sup>4</sup> See Coronado, "Envisioning Reparative Legal Pedagogies," 76; Williams, "Gatekeeping the Profession."

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I want to draw a distinction between the legal profession, the legal system, and legal education. The institution of the legal system, by which I mean the courts, trials, etc., and the institution of the law school are independent parts of a larger whole, the profession. All three are both dependent on and informed by the others, inextricably woven together, iterative and dynamic. Members of the profession come predominantly out of law schools, an environment rife with institutionalized exclusion, bigotry, and elitism.<sup>5</sup> Law students become lawyers some of whom, in turn, become judges, policy makers, and law professors. As we act as members of the profession, the biases inherent in the way we were educated along with our own biases, judgments, and assumptions can travel with us shaping how we practice law, how decisions are made, and how laws are written and enforced.<sup>6</sup> Eventually, all that day-to-day movement finds its way back into the law classroom.<sup>7</sup>

Legal education has traditionally had its own pedagogy, the dreaded Socratic method paired with casebook analysis.<sup>8</sup> Michael Hunter Schwartz and Paula Manning describe Socratic methodology as

Law professors who use this method ask their students many, many questions. Professors select one student... and typically engage in a one-on-one dialogue... asking the student to explain an assigned statute or court opinion, to dissect the court's reasoning, the public policy underlying the statute or the holding, and to identify and analyze the issues in a hypothetical.<sup>9</sup>

From this simple description it is easy to see that a Socratic style is focused on moving students toward a "right" answer or explanation. The description also suggests that the professor has determined what that answer is and what questions need to be asked to get the class to it.

Popular culture is not known for downplaying the trauma associated with Socratic methodology, as Professor Kingsfield aptly demonstrated. And, while Socratic method ostensibly teaches critical thinking skills, rigorous Socratic lessons serve several additional lofty

<sup>5</sup> See generally Coronado, "Envisioning Reparative Legal Pedagogies"; Kanu, Exclusionary and Classist."

<sup>6</sup> Social Distortion, "Ball and Chain," ("But wherever I have gone/I was sure to find myself there...").

<sup>7</sup> Morrison, "Democratic Classrooms: Promises and Challenges." On a societal scale, American culture and the curricular evolution of public schools have long reflected and informed each other.

<sup>8</sup> *Merriam-Webster Dictionary*, "Socratic method." The entry defines the term as an argumentative form of dialogue between individuals driven by questions and answers. Many law professors are finding ways to adapt their doctrinal courses to non-Socratic methodology. The American Bar Association's accreditation standards also recognize that a well-rounded legal education reflects a multitude of active learning pedagogies. See generally American Bar Association, *Standards and Rules of Procedure for Approval of Law Schools 2023-24*. John Houseman's character in *The Paper Chase* provides the quintessential example of how terrifying Socratic methodology can be.

<sup>9</sup> Schwartz and Manning, *Expert Learning for Law Students*, 104.

purposes like teaching how to read case law, providing a foundation for topics tested on the licensing exam, and fostering persuasive argumentation skills.

What many legal educators and scholars have often ignored are the ways in which Socratic method has perpetuated violence and reinforced harms against minoritized people, both inside and outside the classroom.<sup>10</sup> Some law professors teach their courses as though the historical, societal, and economic contexts in which legal decisions are made (or even how legal education developed as a gatekeeping tool)<sup>11</sup> are irrelevant. A Socratic exploration of ‘law’ can foster the misleading impression that both law and the legal system are neutral and rational – legal doctrine, professional ethics, and lawyering practice represent a reasoned and reasonable evolution of a system free from the influence of human emotion. Such a pedagogy can employ a complicated system of ‘impartial’ smoke and mirrors to hide the brutal social history of legal education.<sup>12</sup> For example, first-year law students are introduced to the “reasonable man standard,” a hypothetical human who responds to a legal injury in a way that is reasonable under the circumstances; he represents, the student is told, an objective measure against which we can neutrally apply the law. Aside from the obvious gender-based reference point, the reasonable man, in legal imagination, looks a whole lot like the people who designed and built the legal system – white, male, land-owning, and probably married to a woman. While the “reasonable man” eventually became the “reasonable person”, a standard described as how a reasonable person bearing the characteristics of that plaintiff would respond to the legal harm, it neither solves the problem of lack of neutrality nor addresses the influence of biases on decision-making.

Like any normative system the lived experiences of everyone involved in its creation – legislators, litigants, lawyers, judges, juries, and, of course, students and professors – shape each facet of law and the profession, and like any normative system, contrary to the illusion of impartiality. Every participant is human and therefore bound by human flaws and foibles, biases and assumptions. While purportedly objective and value-free, legal education and its pedagogies have played a primary role in a socialization process that erases many lived experiences and realities while supporting unacknowledged white, male, heteronormative, and class-based perspectives.<sup>13</sup> “Law” as it stands reflects the dominant or critical values of that moment.

<sup>10</sup> There are law professors and law school administrators tackling institutionalized and systemic problems within their institutions. There is a growing body of scholarship on the issues as well as concrete efforts to make progressive change within the academy. However, as Antonio Coronado points out in “Envisioning Reparative Legal Pedagogies,” many of the revolutionary re-imaginings of legal education are just that: imaginary.

<sup>11</sup> See generally Crenshaw, “Toward a Race Conscious Pedagogy in Legal Education.”

<sup>12</sup> Gerdy, “Clients, Empathy, and Compassion,” 25.

<sup>13</sup> Coronado, “Envisioning Reparative Legal Pedagogies,” 68. Coronado argues that the current wave of “book-banning, historical revisionism, and identity subjugation” are reflected in long-held traditions in legal education that defend institutionalized white power. See also Williams, “Gatekeeping.”

I am not the first to ask whether empathy can be an effective pedagogical tool in a law school classroom. The pedagogical model of clinical legal education, originating in the 1960s, often endeavors to teach empathy for marginalized peoples and communities. ‘Client-centered representation’ is the buzz phrase for describing legal representation free from moralizing judgments by the student attorney. In the 1980s and ‘90s, various movements in legal scholarship examined how client narratives and counter-narratives (and consequently, how lawyers present those narratives) influence legal fact-finding and decision-making.<sup>14</sup> In turn, those conversations expanded to include critical legal theory on race, class, gender, religion, and sexual orientation. Each developmental step toward critical deconstruction of the law, legal processes, and lived experiences acted as catalysts for serious academic study.<sup>15</sup> Whether or not the academy used the word “empathy” to describe the evolution of critical theory, each step moved students closer to examining flaws in the legal system.

Many of these early efforts to influence how future clients experienced the legal system did not address harms perpetuated against students in the law school itself. It is interesting to consider that the institution responsible for fostering successive generations of attorneys was willing to address disparities in the legal system but was (and arguably remains) unwilling to address the fundamental principles around which law schools were formed.<sup>16</sup> While exposing students to a version of the legal system that was repressive, oppressive, and in need of correction, quiet patterns of institutionalized violence perpetuated against minoritized students remain. Many students continue to find themselves in classrooms where they are forced to discuss systems of power in neutral terms while simultaneously experiencing those classrooms and systems as decidedly not neutral.<sup>17</sup>

## II.

As a student of what he calls “moral psychology,” Paul Bloom juxtaposes emotional empathy with cognitive empathy, drawing the distinction between *knowing* that someone has had different experiences from you (cognitive) and feeling those experiences together with or on behalf of another (emotional).<sup>18</sup> The emotional experience of standing in another’s shoes is beautifully described in the final pages of *To Kill A Mockingbird*<sup>19</sup> as Scout recognizes how Boo Radley saw their street and neighborhood:

<sup>14</sup> Cover, “Nomos & Narrative.” Robert Cover (no relation) may have jump-started the trend of scholarly interest in narrative with this 1982 essay. In 2018, Cambridge University Press published a compilation of essays on the topic: Hanne and Weisberg (eds.), *Narrative and Metaphor in the Law*.

<sup>15</sup> hooks, *Teaching Community: A Pedagogy of Hope*, 46.

<sup>16</sup> See generally Coronado, “Envisioning Reparative Legal Pedagogies.”

<sup>17</sup> Coronado, “Envisioning Reparative Legal Pedagogies.”

<sup>18</sup> Bloom, *Against Empathy*, 16-17.

<sup>19</sup> Lee, *To Kill a Mockingbird*

A boy trudged down the sidewalk dragging a fishing pole behind him. A man stood waiting with his hands on his hips. Summertime, and his children played in the front yard with their friend, enacting a strange little drama of their own invention. It was fall, and his children fought on the sidewalk in front of Mrs. Dubose's.... Fall, and his children trotted to and fro around the corner, the day's woes and triumphs on their faces. They stopped at an oak tree, delighted, puzzled, apprehensive. Winter, and his children shivered at the front gate, silhouetted against a blazing house. Winter, and a man walked into the street, dropped his glasses, and shot a dog. Summer, and he watched his children's heart break. Autumn again, and Boo's children needed him.

Atticus was right. One time he said you never really know a man until you stand in his shoes and walk around in them. Just standing on the Radley porch was enough.<sup>20</sup>

For the purposes of this reflection, I adopt Bloom's description of emotional empathy, that is, having an emotional experience of the world as you think someone else might just as Scout was able to experience Boo's love for his children.

Empathy tacitly acknowledges the complex relationship between the existence of self and the existence of 'other.' If, as the definition of empathy suggests, we ask students to recognize experiences or context different from their own, then we accept that othering can be a natural consequence of making meaning of the world around us. There are members of an identified racial, class, sexuality, or gender group and those who do not fit those characteristics – in-group and out-group.<sup>21</sup> And, as humans with many connecting identities we can be simultaneously in-group and out-group. However, 'othering' becomes problematic when it is used to denigrate and/or dehumanize people from perceived out groups.<sup>22</sup> To say, "I don't see an 'other,' I just see a human," while perhaps well-intentioned,<sup>23</sup> is to deny the many identities of that person and to suggest that one is not ready or willing to believe someone's lived experience.

Chimamanda Ngozi Adichie's 2009 TED Talk *The Danger of the Single Story*<sup>24</sup> explores the impact of stories on human understanding. Adichie discusses how, when we repeatedly and consistently tell one story of a group, we erase the messy complexity of the human experience. Any single person's humanity is effectively reduced to one dimension; this is

<sup>20</sup> Lee, *To Kill a Mockingbird*, 321-322.

<sup>21</sup> Brome et al., "Saying 'I Don't See Color.'"

<sup>22</sup> Toni Morrison provides a comprehensive analysis of the action of 'othering' in all its contradictions in *The Origins of Other*, a published compendium of lectures given at Harvard University.

<sup>23</sup> There is a significant body of work that explores the nature of microaggressions like claiming to be 'colorblind.' A 2012 article summarizes much of that research: Apfelbaun et al., "Racial Color Blindness: Emergence, Practice, and Implications."

<sup>24</sup> Adichie, "The Danger of a Single Story."

equally accurate for large groups of people with similar characteristics or cultures.<sup>25</sup> On the other hand, multiple stories of the positive and negative, personal and political, accomplishment and failure, and the broad spectrum of human experience have the opposite effect: rather than a flattening, multiple stories demonstrate the full humanity of a life lived.

Adichie explains the Igbo word *nkali* as roughly translated to mean “to be greater than another.”<sup>26</sup> She uses *nkali* to describe not just the power to tell the story but also the power to make that story definitive.<sup>27</sup> *Nkali* has wide spread implications. For example, James Coleman’s 1966 study on the impact of inequities in American education concluded that cultural and home life factors contributed more to disparities in educational achievement than did unequal resources.<sup>28</sup> The cascading impact of Coleman’s conclusions? Decades of studies that shifted the blame for racial inequality in education and achievement onto Black people.<sup>29</sup> *Nkali*. We can see the power of *nkali* in the current political environment. So far, Donald Trump’s 2024 election rhetoric mirrors that in his first term from 2016-2020 and during his second run for president in 2020. Trump and his surrogates tell a single story of immigration: immigrants, particularly those with brown skin or Arab-sounding names, are criminals, insane, rapists, terrorists, murderers, pet-eaters. Nuanced stories have no place in Trump’s depiction of the “other” who must be eradicated to protect the nation.

Adichie’s talk raised for me the question of how to combat the danger of a single story in doctrinal legal education. The myth of neutrality, of one universally applicable definition of rationality or logic, is a dangerous single story. If the law reflects neutral principles and is administered in an unbiased manner, there is no need to listen to individual stories; the flaws are with the storyteller, not the institution. Empathy directly challenges law’s single story by providing a counter-balance to *nkali*. We can create empathy by engaging in dialogue designed to inspire not only perspective-taking but also an emotional experience of understanding. We can join in this potentially transformative dialogue with the goal of reducing *nkali* or eliminating it altogether.

### III.

If you conduct an internet search of the phrase “democratic classroom” you will be rewarded with a myriad of pedagogical tips, thought pieces, and critiques of the theory. As with

<sup>25</sup> Adiche, “The Danger of a Single Story,” 12:57-13:07, 9:28-9:35. “[Y]ou show a people as one thing, and only one thing, over and over and that is what they become.” Adichie tells the story of how she bought into a single story about Mexican immigrants and the shame she felt when she realized what she had done (8:25-9:25).

<sup>26</sup> Adiche, “The Danger of a Single Story,” 9:53.

<sup>27</sup> Adiche, “The Danger of a Single Story,” 10:12-10:15; Barnum, “The Racist Idea that Changed American Education.”

<sup>28</sup> Coleman et al., “Equality of Educational Opportunity (Summary Report).”

<sup>29</sup> See, e.g., Jensen, “How Much Can We Boost IQ and Scholastic Achievement?”

democracy generally, it can be hard to pinpoint exactly what a democratic classroom represents. I envision that a democratic learning environment engages students by promoting inclusion, voice, representation and participation. A professor may facilitate the conversation but the topics discussed or direction taken is driven by the needs and interests of participants.<sup>30</sup> While democratic classrooms come in a variety of shapes and sizes, all seek to deepen meaningful learning. For me, one of the most powerful goals of a democratic pedagogy is to share information through dialogue; dialogue supports critical thinking and shared responsibilities.<sup>31</sup> And, ideally, dialogue between and among majoritized and minoritized students would foster empathetic perspective-taking through greater understanding one of the other. As a theoretical matter, that puts a lot of pressure on the democratic classroom to solve society's ills.

To whom and about what one feels empathy are, as Paul Bloom suggests, directed by bias:<sup>32</sup> humans tend afford empathy to the people and things they value. Proving Bloom's point anecdotally, my biases certainly influence how much empathy I feel in any given circumstance. I have no desire to empathize when someone explains how inclusion is discriminatory on its face. My empathy lies with the lived experiences of minoritized people and those are the voices I want to amplify. As a result, a serious conflict exists between where my empathetic feelings lie and how I envision democratic learning environments. Specifically, I have no empathy for what I have heard called worldview discrimination, what students describe as not being allowed to express their conservative-leaning perspectives for fear of backlash. Students claiming worldview discrimination seem afraid that they themselves may or already have become the Other – powerless, excluded, holders of beliefs that have become irrelevant.<sup>33</sup> I have had students tell me directly that they are not interested in

<sup>30</sup> Marshall, "The Power of the Democratic Classroom, ("The democratic classroom fosters critical thinking, authentic participation, and social and emotional learning. It's a humanizing space...Part of creating a democratic classroom is being aware of how to set up our classrooms, establish community, and make space for students' diverse voices, opinions, and perspectives."); Learning for Justice, "Democratic Classrooms." Since I accessed the video on YouTube in March 2024 it has been removed from public viewing. The democratic classroom model fits nicely with graduate level education as it supports many of the principles of andragogy, theories of adult learning. Andragogy focuses on engaging adult learners in directing what they learn and making that learning relevant to everyday life: Knowles, *The Modern Practice of Adult Education: From Pedagogy to Andragogy*.

<sup>31</sup> hooks, *Teaching Community*, 44.

<sup>32</sup> Bloom, *Against Empathy*, 34. Bloom argues that we can value the lives of others and give others weight in our decision-making but the strength of our empathy tends to lessen as we move beyond those people and things we love most.

<sup>33</sup> Toni Morrison, "Being or Becoming the Stranger," in *The Origins*, 30. Drawing on Camara Laye's *The Radiance of the King*, Morrison discusses fear of otherness. She writes, "It allows us to... imagine anew what it feels like to be marginal, ignored... to be stripped of history or representation... In other words, to become a black slave." Morrison, "The Foreigner's Home," in *The Origins*, 109. See also hooks, *Teaching Community*, 27.

listening to the voices of minoritized and under-represented students, echoing broader politicized claims that white students are shamed and discriminated against when forced to listen to those voices.<sup>34</sup> As bell hooks so eloquently puts it, “The danger of sympathizing with the stranger is the possibility of becoming a stranger.”<sup>35</sup>

Even as critical legal theories can foster empathy by explicitly naming imperialism, white supremacy, and capitalist patriarchy have undeniably shaped the American legal landscape, there are those who seek to continue centering the myth of neutrality. As I discuss above, Socratic dialogue centers the educator’s choices, that is, the educator decides what is important in any particular lesson and, with guided questions, directs the students toward those conclusions, conclusions that carry an air of universality and rationalism. This is not to suggest that even a law professor using traditional Socratic method cannot choose to focus on the cultural, historical, and economic backgrounds of the legal lessons and, in fact, many do; the point being, of course, that the professor has made the choice to direct the conversation toward specific topics. Because a democratic dialogue would move between students, with the educator acting primarily as a facilitator to the student-led conversation, the elephant in the law classroom is whether an empathy-focused discussion can be successful.

#### IV.

A student’s worldview is shaped by the many experiences they have over the course of their lifetime; in addition, each person lives within connected nests of cultural- and value-driven frameworks that they absorb over time.<sup>36</sup> I have worked with countless strong-willed students, many of whom share the personality trait of not wanting to have their minds changed for anything or anyone. This presents a challenge to implementing learner-focused democratic principles. If a democratic classroom rises from a presumption that there is room in every lesson for multiple voices with multiple perspectives, then inherently there is a danger of majority rule. In my ten years at the University of Wyoming my classrooms have tended to be dominated by white students with rural backgrounds; the population is also overwhelmingly politically and religiously conservative, straight- and cis-presenting. Dehumanizing othering sometimes hides in the voice of that majority; Ta-Nehisi Coates labels this behavior as an attempt to “confirm one’s own self as normal.”<sup>37</sup> In turn, minoritized students have not

<sup>34</sup> Maxine Greene explores the phenomenon of “negative freedom” in *The Dialectic of Freedom*. She describes negative freedom as the freedom from constraint, the freedom to do or say as one pleases in the face of feelings of powerlessness.

<sup>35</sup> Morrison, *The Origins*, 30.

<sup>36</sup> Hooyman and Kramer, *Living Through Loss*, 78. They define culture “broadly as a set of shared beliefs, values, behavioral norms and practices that characterize a particular group of people with a common identity.”

<sup>37</sup> Coates, “Foreword by Ta-Nehisi Coates,” in *The Origins of Other*, xii.

felt safe in pointing out the differences between their colleagues' worldviews and their own concealed or counter-narratives, exactly the impact I am trying to avoid.

Feminist journalist and writer Rose Hackman describes emotional labor as "identifying or anticipating other people's emotions, adapting yours in consequence, and then managing to positively affect other people's emotions."<sup>38</sup> Hackman explains that emotional labor "relies on the fundamental understanding that women should prioritize other people's experiences before their own."<sup>39</sup> While Hackman's writing primarily addresses the role of women in heteronormative relationships, the behaviors she describes are applicable whenever the minoritized player is required to put their own emotions to work for someone else.<sup>40</sup> Can there be any work more traumatic than arguing for one's own worth against someone who is not ready or willing to hear and believe your stories, especially in light of their emotions, beliefs, and values? There is a tremendous psychological toll to being the person responsible to carry the weight of emotion management.<sup>41</sup>

In many ways, the practice of empathy reflects not only the ability to take on the perspective of another<sup>42</sup> but also the principles of self-awareness and self-forgiveness. Empathy comes both from others recognizing and being willing to believe another's lived experience. It also requires awareness of and reflection on ways we have not acted empathetically. Broadly characterized, empathy can be both externally sourced and self-referential, i.e., one offers empathy to another and one forgives oneself for not having empathy for self or others.<sup>43</sup>

A democratic educator seeks to dismantle systemic and institutionalized hierarchies built around race, class, gender, sexuality, and religion.<sup>44</sup> As a pedagogy I aspire to, how can I make space for all voices to be heard in a majority rules scenario where the illusion of neutrality is the given? Should I make room for the voices of dehumanization? Should empathy flow from the minoritized to majoritized in the name of creating understanding? The choices I make as an educator communicate my beliefs and values, including choices about who has the power and privilege to speak and about what.

How can we reconcile the principles of democratic education with the burden of emotional labor in the law school setting? Antonio Coronado names the disparate burden

<sup>38</sup> Hackman, *Emotional Labor*, 19.

<sup>39</sup> Hackman, *Emotional Labor*, 9.

<sup>40</sup> Sandberg, "The Art of Showing Pure Incompetence." Emotional labor is tied to the idea of weaponized incompetence, a manipulative way of approaching the world by behaving such that others will not ask you to do something. The tie is evident when a majoritized group refuses to educate themselves about or believe the stories of the lived-experiences of others.

<sup>41</sup> "Emotional Labor: The Metafilter Thread Condensed."

<sup>42</sup> *Merriam-Webster Dictionary*, "empathy." The entry defines empathy as both the action of understanding of the experience of another and the ability to be empathetic.

<sup>43</sup> See generally Givens, *Radical Empathy*.

<sup>44</sup> hooks, *Teaching Community*, 45.

imposed on minoritized students, staff, and faculty as “the onus of changemaking in legal education’s white supremacist foundations and lasting curricula.”<sup>45</sup> If minoritized students find themselves explaining why or arguing whether they are fully human, educators looking to disrupt the foundations of traditional legal education have failed. If intellectual trauma and violence are, as we know to be true, pervasive and persistent in the law school environment, can a democratic classroom model coupled with empathy interrupt that harm? In the words of Coronado, “Trauma is not a teaching tool.”<sup>46</sup>

Intentionality in using empathy as a learning tool means connecting what happens in the classroom with what happens in the outside world. In contrast to the myth of legal education as untouched by emotion, history, geography, or economics, empathy suggests that we are bound to recognize how context influences the conduct of the profession; it invites us to explore how *nkali* manifests in the day-to-day interactions of the people around us. And it requires us to ask who holds power in the broad root structure of the American lawyer/legal system, who benefits from that power, and who is left out.<sup>47</sup>

It occurred to me as I worked through these questions for myself was that I was asking myself a moral question more than a pedagogical one – how much and to what extent is it okay for me to ask minoritized students to do the heavy lifting? Emotional empathy is, in many ways, reflective of morality. Most discussions of empathy center around how the more powerful can open themselves to hearing and believing the experiences of those less powerful. In this conception, empathetic concern explores how dominant cultures have failed not only to get the stories right but also then to work actively and intentionally toward correcting those failures. Empathy comes from learning. The morality of that learning is centered in who we expect to do the teaching and the reasons why we choose to teach empathy in the first place.

Asking for more work from minoritized students runs counter to the principles of the democratic classroom. In this context neutrality and morality are at odds. My morality will not allow me to be neutral in my teaching and learning spaces. I will pick and choose who is heard and when, and I will challenge people who behave in brutalizing ways – valuing equal air time makes sense only when paired with a failure to acknowledge how the law school environment supports and perpetuates violence against many of its students. It cannot follow that in democratic teaching and learning spaces that empathy is owed to the immoral and dehumanizing; oppression is not discourtesy.<sup>48</sup> And, as the person in the front of the room, I believe it is my moral responsibility to make sure that I am not giving a pass to oppression in the name of democracy. We do not and should not expect empathy to flow in the direction of minoritized to majoritized.

<sup>45</sup> Coronado, “Envisioning Reparative Legal Pedagogies,” 77.

<sup>46</sup> Coronado, “Envisioning Reparative Legal Pedagogies,” 71.

<sup>47</sup> See, e.g., Adichie, “The Danger of a Single Story.”

<sup>48</sup> Mayo, “The Tolerance That Dare Not Speak Its Name,” 38.

## Conclusion

The power an educator wields in the teaching and learning space is the ability to set up structures and scaffolding to dismantle from the inside the things that are too shameful to speak – systems that perpetuate danger, harm, and erasure. It is not a question of pedagogy, it is a question of morality. Who am I as both a moral actor and an educator? What are my responsibilities to the students in my teaching and learning spaces? Certainly, I am there to facilitate conversation and learning, but what does that look like in action, knowing what I know and believing what I believe about legal systems.

Law school is but one stone of many in a long road of educational spaces that justify existing institutionalized systems of oppression.<sup>49</sup> While I disagree with Paul Bloom that empathy has little use because of the influence of bias,<sup>50</sup> I agree whole-heartedly that to whom and when we show empathy reflects our own biases and judgments, our choices of when and with whom to engage. Empathy is a moral choice; if we choose not to exercise it, as educators we must attend to the consequences of those actions. What are the choices we are making and how do those choices reflect our values? Answering for ourselves these hard questions opens us up to transformation – the central goal of learning, and teaching.<sup>51</sup>

## Postscript: July 2025

I wrote this reflection at the end of a year spent in the 2023-2024 Democracy Lab program at the University of Wyoming. I was the only person in the cohort with a legal background; my colleagues were undergraduate students, graduate students, professors in other departments, and community members. And yet, I cannot explain adequately the impact of the perspectives of those colleagues had on my definition of “democracy.”

In the years since Trump’s 2020 election loss, he was found liable for sexually abusing E. Jean Carroll, an American journalist and author.<sup>52</sup> In a different case, a jury convicted Trump of 34 felonies related to improperly influencing the 2016 presidential election.<sup>53</sup> Through the spring and summer of 2024 I listened to the wild and often unhinged political rhetoric that defines Trump’s Make American Great Again movement. And, as the 2024 election drew closer I wanted to believe that the outcomes in Trump’s court cases, along with his attempt to disrupt the 2020 election on January 6, 2021 would be enough to keep him from winning.

<sup>49</sup> *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973). The arguments rely on social science research suggesting poor children of color may not be capable of learning even if schools in low-income, racially divided neighborhoods were funded at the same level as schools in predominantly white areas.

<sup>50</sup> See generally Bloom, *Against Empathy*.

<sup>51</sup> Tompkins, *A Life In School*, 213.

<sup>52</sup> Neumeister et al. “Jury Finds Trump Liable for Sexual Abuse.”

<sup>53</sup> Sisak et al., “Guilty: Trump Becomes First Former President Convicted of Felony Crimes.”

Then, on July 1, 2024, the United States Supreme Court, led by the 6 conservative-appointed justices, ruled that the United States Constitution conferred upon a sitting president nearly absolute criminal immunity for acts undertaken as part of executive branch duties.<sup>54</sup> It was a devastating blow for many in the legal profession who had committed themselves to upholding constitutional principles. Liberal pundits could not talk loudly enough about the existential threat the ruling posed to American democracy. These same pundits argued that the Supreme Court held off releasing its opinion to ensure that Trump would not be criminally tried on the 4 counts of insurrection related to January 6, 2021 before the November election. As a result, and despite his history, Trump rode the wave of exoneration to election victory.

In the 7 months since Trump took office on January 21, 2025, the world has watched his regime systematically erase constitutional principles that were once considered inviolate. Stories of corruption and revenge in the regime filter through the news cycle on a nearly daily basis. Along with attempting to eliminate or redefine entrenched rights such as birth-right citizenship and abortion access<sup>55</sup>, Trump and his surrogates are implementing a coordinated campaign to destroy the federal government. The goal: to consolidate absolutely government power and to create a unitary executive. In the months since his inauguration, Trump has bypassed Congress in every way possible, signing executive order after executive rather than going through the legislative process, declaring well-established processes unconstitutional, attacking funding and curricula at private and public universities, eliminating federal departments, challenging the legitimacy of Article III courts,<sup>56</sup> and creating what amounts to a private highly funded secret police force through ICE that which is free from any governmental oversight. orderAnd in what has now become an unsurprising, if not infuriating, trend, the Supreme Court continues to rule in ways that expand executive power, limit Article III court jurisdiction and power, ignore Article I authority, and erase long recognized individual protections. Even the nation's congressional leaders seem to be clearing the way for the elimination of this country's 250-year old system of checks and balances.

Notable in the post-inauguration world is an absolute no-tolerance policy regarding diversity, equity, and inclusion initiatives. Grant funding for the National Institutes of Health, the National Science Foundation, the National Endowment for the Humanities, and many

<sup>54</sup> *Trump v. United States*, 603 U.S. \_\_\_\_ (2024). The appointments are as follows: George H.W. Bush nominated Clarence Thomas in 1981; George W. Bush nominated John Roberts and Samuel Alito in 2005 and 2006 respectively; and Donald Trump nominated Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett in 2017, 2018, and 2020 respectively.

<sup>55</sup> The stories of people illegally arrested and deported, the inhumane conditions in holding facilities like "Alligator Alcatraz," specious accusations of criminality, and a refusal to back down even when American citizens have been arrested are legion and beyond the scope of this paper. Heather Cox Richardson, a Boston College professor of American history, writes a daily newsletter called "Letters from an American" in which she discusses the connections between current politics and policy and United States history.

<sup>56</sup> US Const. art. III.

more is currently paused while Trump's minions review projects and applications for alignment with the administration's priorities. Any program, project, or initiative that even hints at providing support for minoritized and underserved populations faces elimination, even if the project is funded entirely by private organizations. Public universities, including the University of Wyoming, feel the pinch as state legislatures outlaw DEI in state institutions. Undergirding anti-DEI policy is an absolute acceptance that worldview discrimination against conservative thinking can be redressed only by a return to white-washed history and a return to meritocracy.<sup>57</sup>

As I edited the original reflection in this political atmosphere, I and several of my colleagues around the country were talking about how to ensure we were creating learning environments that did not perpetuate trauma against minoritized students. Even as we have discussed changing our vocabulary and reworking teaching styles, we cannot ignore the fact that Trump's policies seek to eliminate any acknowledgment of minoritization in every sphere of American life. Many of us wonder if and when students unhappy with the content of our courses will report us as violating their "rights." At the same time, intrinsically motivated changes in the culture of the profession are not possible if legal educators and others in the profession abdicate responsibility for what occurs in their classrooms, bowing to threats of retaliation from governmental authority. I am reminded, as I often am, of Audre Lord's powerful observation that we cannot dismantle the master's house using the master's tools.<sup>58</sup> As such, the conundrum remains – how do we do the work of fostering empathetic, well-rounded learning grounded in history in this atmosphere of heightened fear and scrutiny?

<sup>57</sup> See generally Litman, *Lawless: How the Supreme Court Runs on Conservative Grievance*.

<sup>58</sup> Lorde, "The Master's Tools Will Never Dismantle the Master's House."

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# Guardianship in Wyoming: The State's Most Pressing Human Rights Concern

Darrah Short & Margaret M. Holland

All people have rights to due process, privacy, marriage, property ownership, participation in elections, employment, education, and community life.<sup>1</sup> However, thousands of Wyomingites living under plenary guardianship may be systematically denied these rights under current guardianship law. In this paper, we first examine the implications of guardianship for Wyoming citizens. We identify seven key issues with the current system, including problematic legal terminology, unchecked judicial oversight, and contradictions with Wyoming's core values. We argue that restrictive guardianship measures are often unnecessary and explore alternatives that offer protection while protecting individuals' rights. We propose a more dignified and inclusive approach to decision-making and explore less restrictive legal alternatives to guardianship. Finally, we present six recommendations to steer Wyoming guardianship on a course to pursue freedom and self-determination in decision-making.

## Understanding Guardianship

Guardianship is when a court gives authority to a person to make decisions for someone else. Outside of incarceration or involuntary commitment, guardianship is the most restrictive of a person's rights<sup>2</sup> as it can take away their legal rights and restricts their independence and

<sup>1</sup> United Nations, "Decl. Of Human Rights."

<sup>2</sup> Johns, "Due Process and Guardianship."

self-determination. In Wyoming guardianship law, the person for whom rights are taken away is called a “ward” and “proposed ward.”<sup>3</sup> While language like “mental deficiency,” “incompetent,” and “ward” is used when citing the law specifically, out of a desire to empower and respect people living under guardianship, readers will see person-first language (ex. Person living under guardianship, people legally deemed “mentally incompetent”) throughout this paper. This is intended to linguistically emphasize the person's humanity first and legal status second as well as bring more humanity into this discussion of guardianship.

There are four types of guardianship arrangements in Wyoming: plenary, limited, emergency, and standby.<sup>4</sup> Guardianship can be limited in two ways: scope (decisions guardians can make) and/or time (how long someone is a guardian for). Plenary guardianship carries the full range of duties allowable by law and is not limited in scope or time. Limited guardianship may be limited in either scope or time and is typically only appointed to minors. Limited guardianship is also usually limited to no more than one year and only applies to educational, medical, and dental purposes. Emergency guardianship is limited in scope and time and only applies to educational, medical, and dental purposes and typically last no longer than 90 days.<sup>5</sup> Standby guardianship is limited to taking effect only in the event of some specified event or the existence of a mental or physical health condition.

This paper focuses on plenary guardianship, because it is the most restrictive option out of the four types. It is also the type of guardianship pursued most often in Wyoming. People with intellectual and developmental disabilities (IDD) experience higher rates of guardianships than people without IDD; however, guardianship also affects people with mental illness, people with substance use disorders, and people of advanced age.<sup>6</sup>

<sup>3</sup> Wyo. Stat. § 3-1-101, “Definitions.”

<sup>4</sup> Wyo. Stat. § 3-1-101, “Definitions.”

<sup>5</sup> Wyo. Stat. § 3-2-106, “Provisions.”

<sup>6</sup> Wyoming Statute § 3, “Guardian and Ward.”

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### *Guardianship Issue #1: Broad Definitions of “Incompetence”*

In Wyoming, for someone to be subject to guardianship, they must be deemed “incompetent” by a judge.<sup>7</sup> There are two types of incompetence under the law:

(ix) “Incompetent person” means an individual who, for reasons other than being a minor, is unable unassisted to properly manage and take care of himself or his property as a result of the medical conditions of advanced age, physical disability, disease, the use of alcohol or controlled substances, mental illness, mental deficiency or intellectual disability;

and

(xii) “Mentally incompetent person” means an individual who is unable unassisted to properly manage and take care of himself or his property as the result of mental illness, mental deficiency or intellectual disability.

Note the important distinction between “incompetence” and “mental incompetence” in this statute, which is that only people who have “mental illness,” “mental deficiency,” or “intellectual disability” can be subject to the “mental incompetence” definition and restrictions. This is important because being deemed “mentally incompetent,” more severely limits someone’s rights. For example, “mental incompetence” disenfranchises people from voting.<sup>8</sup>

Another distinction is that only “mentally incompetent” people are stripped of their legal power to “convey, encumber or dispose of property in any manner.”<sup>9</sup> When someone is deemed “mentally incompetent” all their property is “subject to the possession of the [guardian]”<sup>10</sup> meaning their property and assets are not their own. Ultimately, people living under guardianship, and especially people subject to the definition of “mentally incompetent,” have severe rights restrictions.

The implications of these broad legal definitions are striking. A study conducted by the Human Services Research Institute (HSRI) and National Association of State Directors of Developmental Disabilities Services (NASDDDS), found that in Wyoming:

- Only about half the rate of people with IDD live without a guardian compared to the national average (29% vs. 54%).<sup>11</sup>

<sup>7</sup> Wyo. Stat. § 3-1-101, “Definitions.”

<sup>8</sup> Wyo. Stat. § 22-1-102(a)(xxvi), “Elections Qualifications.”

<sup>9</sup> Wyo. Stat. § 3-1-202(a), “Powers of Ward.”

<sup>10</sup> Wyo. Stat. § 3-1-203, “Title to Ward’s Property.”

<sup>11</sup> HSRI & NADDDDS, “Guardianship,” 32.

- Only about half the rate of people with IDD live under limited guardianship (5% vs. 9%).<sup>12</sup>
- As mentioned above, more than twice the rate of people with IDD live under plenary guardianship (65% vs. 28%; HSRI & NADDDDS, 2023).<sup>13</sup>

Data indicates that Wyoming is not opting for the least restrictive option, despite the law stating that people living under guardianship have the right to the “least restrictive and most appropriate” guardianship.<sup>14</sup> These rates show that people with IDD are disproportionately denied autonomy and self-determination. Further, this may indicate that Wyomingites are not aware of and/or do not have access to these alternatives.

While guardianship in Wyoming is predominantly and severely affecting individuals with IDD,<sup>15</sup> it is important to understand that the broad scope can impact Wyomingites without IDD, too. These broad definitions of incompetence can apply to adults who courts deem unable to manage their property or lives because of common life conditions. Things like advanced age, physical disability, disease, the use of alcohol or drugs, mental illness, or intellectual disability.<sup>16</sup> The legal definition of “incompetence” explicitly ties requirements of guardianship to human conditions that affect many Wyomingites.

For example, 1 in 5 (103,877) Wyomingites are “of advanced age.”<sup>17</sup> Mental illness affects 1 in 5 people in Wyoming.<sup>18</sup> In any given month, 235,000 people used alcohol in Wyoming and 55,000 Wyomingites used controlled substances.<sup>19</sup> This establishes that Wyoming law could subject over half of all Wyomingites to guardianship.

### *Guardianship Issue #2: Human Rights Restrictions with Guardianship*

Appointment of a guardian involves removing the individual rights of the person living under guardianship. The only rights of people living under guardianship are as follows: 1) right to the least restrictive and most appropriate guardianship; 2) right to the least restrictive and most appropriate residence, education, and employment; 3) freedom from inappropriate

<sup>12</sup> HSRI & NADDDDS, “Guardianship”, 32.

<sup>13</sup> HSRI & NADDDDS, “Guardianship,” 33.

<sup>14</sup> Wyo. Stat. § 3-1-205(v), “Rights of Proposed Ward”; Wyo. Stat. §3-1-206(a)(i), “Rights of Ward Least Restrictive.”

<sup>15</sup> HSRI & NADDDDS, “Guardianship,” 32-33.

<sup>16</sup> Wyo. Stat. § 3-1-101, “Definitions.”

<sup>17</sup> Gordon et al., “Wy Aging Population,” 1-2.

<sup>18</sup> NAMI, “Mental Health in Wy,” 1-2.

<sup>19</sup> SAMHSA, “Wy Survey Drugs and Health,” 1-2.

physical or chemical restraints; and 4) all other rights available to residents of facilities or participants of programs that they participate in.<sup>20</sup>

Guardians authorize or withhold medical and professional care as well as manage the money and property of the person living under their guardianship.<sup>21</sup> In addition, guardians may, with court approval, commit the person living under their guardianship to a mental health hospital or facility, consent to electroshock therapy, psychosurgery, sterilization, and other long-term or permanent contraception, relinquish their minor child for adoption, and execute advance directives.<sup>22</sup>

Concerningly, this signifies that guardians are solely responsible for defining and facilitating the least restrictive and most appropriate guardianship, residence, and educational and social activities for the person living under their guardianship. This may put extreme and unnecessary pressure on the guardian as well as legally exclude someone living under guardianship from the decision-making process. The powers and duties outlined for guardians necessitate that the person living under guardianship loses their autonomy and ability to make the most important decisions in their lives.

For example, people living under guardianship cannot consent to medical procedures, marriage, financial agreements, or employment. Because guardians are tasked with the responsibility to choose the least restrictive and most appropriate residence, education, and social activities, people living under guardianship may not make these choices either. People living under guardianship who are deemed “mentally incompetent” are also not able to own property—meaning, all their property belongs to their guardians.

Other states have acknowledged the significant rights restrictions imposed on individuals under guardianship. In fact, every other state in the U.S. has implemented legal protections for guardianship,<sup>23</sup> with stronger evidentiary standards being one such measure. This leads to the next critical issue in guardianship; the alarmingly low evidentiary standard in guardianship proceedings.

### *Guardianship Issue #3: Preponderance of the Evidence & Judicial Discretion*

Outside of incarceration or involuntary commitment, guardianship is the most restrictive of a person’s rights,<sup>24</sup> as discussed in the section above. However, Wyoming’s evidentiary

<sup>20</sup> Wyo. Stat. § 3-1-206, “Rights of Ward.”

<sup>21</sup> Wyo. Stat § 3-2-203, “Title to ward’s property.”

<sup>22</sup> Wyo. Stat § 3-2-202, “Powers of the Guardian.”

<sup>23</sup> Benish, “WY Behind in Guardianship,” 392.

<sup>24</sup> Johns, “Due Process and Guardianship.”

standards do not reflect that fact. Wyoming's burden of proof is only "preponderance of the evidence,"<sup>25</sup> making it the only state with this low of an evidentiary standard.<sup>26</sup>

The burden of proof is the responsibility to prove, through evidence and argument, a claim in a legal case. These levels, ranked from least to most evidence required, are: reasonable suspicion, probable cause, preponderance of the evidence, clear and convincing evidence, and beyond a reasonable doubt.<sup>27</sup> Because criminal cases severely limit someone's human rights, for example, they require the strongest evidentiary standards (beyond a reasonable doubt) to protect those rights.

Except for Wyoming, all U.S. states require at least the "clear and convincing evidence" standard for plenary guardianship proceedings. The "clear and convincing evidence" standard in guardianship cases would require a judge to determine that it is "substantially more likely than not" or around 75% likely that a person is unable to care for themselves or their property.<sup>28</sup> In contrast, Wyoming's lower standard, "preponderance of the evidence," means it must be only 50% likely that the claim is true<sup>29</sup>—that a person is unable to care for themselves or their property without assistance. This sets an unacceptably low threshold for such a significant restriction of rights.

This standard enables judges—who are likely not experts in the ability of a person to care for themselves and property—to have complete discretion in whether a guardian should be appointed for a person. Evidentiary standards that fail to protect individual rights and give too much discretion to judges have certainly contributed to the disproportionate number of Wyomingites—especially those with IDD—living under plenary guardianship.

This low evidentiary standard is further complicated for people with disabilities because societal structures (i.e. laws) are influenced by societal attitudes, namely ableism. Ableism is the combination of beliefs and practices that assert a typical body is essential to be fully human, which means that disabled bodies are viewed as less than human.<sup>30</sup> Ableist attitudes lead to structural stigma, which are "societal-level conditions, cultural norms, and institutional policies that constrain the opportunities, resources, and well-being of the stigmatized".<sup>31</sup> In the case of guardianship in Wyoming, the preponderance of evidence standard does not adequately protect the individual rights of Wyomingites, especially those with disabilities. In addition, it provides a legitimate legal avenue that perpetuates and even exacerbates the inequality and power differentials experienced by people with disabilities.

<sup>25</sup> Wyo. Stat. § 3-2-104, "Appointment of Guardian."

<sup>26</sup> Benish, "WY Behind in Guardianship," 392.

<sup>27</sup> Kaplow, "Burden of Proof," 752-56.

<sup>28</sup> Kaplow, "Burden of Proof," 779.

<sup>29</sup> Kaplow, "Burden of Proof," 743.

<sup>30</sup> Reber et al., "Ableism and Attitudes," 3.

<sup>31</sup> Hatzenbuehler, "Stigma and Psychological Implications," p.445-46.

### *Guardianship Issue #4: Voluntary Guardianship Petitions*

Before explaining voluntary and involuntary petitions, the age loophole in Wyo. Stat. § 3-2-102(ii) must be understood. In some guardianship petitions, the person proposed for guardianship has a legal right to be notified, except when the person proposed for guardianship is under 18 years old when the petition is filed.<sup>32</sup> It is common practice for a guardianship petition to occur before the person proposed turns 18 years old. Unfortunately, this results in many people never being notified of their petition. Even with involuntary guardianship petitions—which are understood to typically offer more legal protection than voluntary ones—people are still denied their legal rights to notice.

Involuntary petitions, when the age loophole described above is not used, require that the person proposed for guardianship be notified.<sup>33</sup> A voluntary guardianship petition happens when the person proposed for guardianship either requests it themselves or does not oppose the request for guardianship.<sup>34</sup> With voluntary cases, notice of the petition filing is not required.<sup>35</sup> This is an issue for both the guardian—82% of whom are family members<sup>36</sup>—and people proposed to live under a guardian, because both groups are misinformed about what guardianship is and does.<sup>37</sup>

Parents with guardianship of their adult children have reported that they petitioned for guardianship because they believed their children were unable to make decisions for themselves. They also believed that getting guardianship would result in better protection for their adult children. However, when guardianship was defined for these parents, they were surprised to learn that plenary guardianship completely removes the individual rights of their adult children by defining them as “mentally incompetent.” We can conclude from this that adult children with developmental disabilities may have guardianship unintentionally misrepresented to them when they voluntarily petition the courts for guardianship.

### *Guardianship Issue #5: Lack of Legal Aid*

One way to assist people proposed for guardianship through court processes is a guardian ad litem or a court visitor. Guardians ad litem are typically attorneys and court visitors are typically social workers or public health professionals. Guardians ad litem generally inform people who may potentially live under guardianship of their rights during guardianship

<sup>32</sup> Wyo. Stat. § 3-2-102(ii), “Notice, When Required.”

<sup>33</sup> Wyo. Stat. § 3-1-205, “Rights of Proposed Ward.”

<sup>34</sup> Wyo. Stat. § 3-3-301, “Voluntary Petition”; Dorsey, “Uncontested Guardianships.”

<sup>35</sup> Wyo. Stat. § 3-2-102(ii), “Notice, When Required.”

<sup>36</sup> HSRI & NADDDDS, “In-Person 2018,” 35-36.

<sup>37</sup> Millar, “Disconnect: Self-Determination and Guardianship,” 125.

proceedings. Court visitors typically determine whether a person needs a guardian once a petition has been filed.

Some states have required that guardians ad litem and/or court visitors be assigned in guardianship cases.<sup>38</sup> Wyoming law states that a person proposed to live under guardianship has a right to guardian ad litem.<sup>39</sup> However, in a survey of 256 guardianship cases petitioned to the Wyoming Supreme Court in 2021, only 102 (40%) cases had appointed guardians ad litem and only 2 (.7%) had an attorney representing them.<sup>40</sup> Further, guardian ad litem offices in Wyoming are inadequately funded, which contributes to their limited usefulness.<sup>41</sup> With court visitors or guardians ad litem, informed consent for the voluntary petition could be assessed more accurately. This lack of legal representation contributes to the high rate of plenary guardianship in Wyoming and reveals the undemocratic nature of guardianship practices in Wyoming.

### *Guardianship Issue #6: Guardianship is Antithetical to Wyoming Values*

One way to understand guardianship in Wyoming is through the lens of its political culture which emphasizes traditionalism, moralism, constitutionalism, and individualism.<sup>42</sup> Traditionalistic values can reinforce ableism by creating a hierarchy where able-bodied individuals are considered "fully human," while those with disabilities are viewed as less than human.<sup>43</sup> However, this perspective contradicts three other core values present in Wyoming's political culture: moralism, constitutionalism, and individualism, which all support equality, personal rights, and autonomy.

Wyomingites have a moral desire to advance public interest and generally oppose government intervention in individuals' lives.<sup>44</sup> That is good news for Wyoming's culture because research shows that the best way to promote wellbeing, and therefore, public interest, is to promote individual rights and self-determination.<sup>45</sup> Current guardianship practices and laws in Wyoming do not promote individual rights or self-determination. Wyoming's strong adherence to constitutionalism is in conflict with current guardianship law. Legal scholars within Wyoming have claimed Wyoming's guardianship law is unconstitutional.<sup>46</sup>

<sup>38</sup> Crowe, "Provisions for Guardians ad Litem."

<sup>39</sup> Wyo. Stat. § 3-1-205, "Rights of Proposed Ward"; Wyoming Rules of Civil Procedure Rule 17c.

<sup>40</sup> Dow, "State-Mandated Service Not Available."

<sup>41</sup> Wyoming Legislature Mental Health and Vulnerable Adult Taskforce meeting 2023

<sup>42</sup> King, "Wyoming Political Culture."

<sup>43</sup> Hatzenbuehler, "Stigma and Psychological Implications", 45-46.

<sup>44</sup> King, "Wyoming Political Culture".

<sup>45</sup> Lachapelle et al., "Quality of Life and Self-Determination"; NCD, "Alternative to Guardianship Promote Self-Determination"; Wright, "Well-Being of Respondents," 391-94.

<sup>46</sup> Benish, "WY Guardianship Law Behind", 392.

Further, guardianship law incontestably contradicts the strong individualistic culture of Wyoming. By allowing guardianship to exist in its current state, Wyoming is allowing significant government intervention to restrict individuals' rights, despite the availability of alternative measures that align more closely with the state's culture.

### *Guardianship Issue #7: Guardianship is Unnecessary*

Beyond opposing Wyoming's values, guardianship may lower quality of life and impose unnecessary barriers to individuals' decision-making. When people are labeled incapable, they have worse life outcomes compared to people who are labeled capable.<sup>47</sup> People subject to guardianship have long felt passive, helpless, self-critical, and have less ability to function.<sup>48</sup> Further, people with guardians are more likely to take medication for behavior challenges than those without, are less likely to work in a paid job, and are less included in their own lives.<sup>49</sup>

Alternatively, when people are assumed to be capable and have increased social support, quality of life indicators increased.<sup>50</sup> Things like increased self-assurance, employment, and positive social connections occur more often when supported decision-making and self-determination are respected.<sup>51</sup> Further, this lowering of quality of life under guardianship is unnecessary—there are alternatives to guardianship that give people with IDD the support they need while protecting their right to make their own decisions.

## **The Possibilities of Interdependence and Supported Decision-Making**

Discussing alternatives to guardianship must involve an understanding of interdependent methods of decision-making, which is common practice for all people.<sup>52</sup> Decisions like selling a car, buying a house, signing a lease, having surgery, changing medications, or going to college or trade school are decisions that typically involve the input of others. The legal and social assumption that people make decisions independently is inherently incorrect. It also

<sup>47</sup> Lachapelle et al., "Quality of Life and Self-Determination"; Skaggs, "Labeling Theory"; NCD, "Alternative to Guardianship Promote Self-Determination," 101-102; Wright, "Well-Being of Respondents," 391-94.

<sup>48</sup> Uchino et al., "Social Support and Physiology," 490-95; Hatzenbuehler, "Stigma and Psychological Implications," 445-46.

<sup>49</sup> Shogren et al., "Self-Determination and Post-School Outcomes," 260-64; Lachapelle et al., "Quality of Life and Self-Determination."

<sup>50</sup> Skaggs, "Labeling Theory"; Uchino et al., "Social Support and Physiology," 490-95

<sup>51</sup> Lachapelle et al., "Quality of Life and Self-Determination"; Shogren et al., "Self-Determination and Post-School Outcomes," 260-64.

<sup>52</sup> NCD, "Alternative to Guardianship Promote Self-Determination," 129.

imposes unnecessary barriers in decision-making for people with developmental disabilities. These barriers do not exist for people without guardians and do not have to exist for people with developmental disabilities.

A best practice for interdependent decision-making is called supported decision-making (SDM). SDM allows individuals to retain their human rights with help from family, friends, and professionals they choose to help them understand, consider, and communicate decisions.<sup>53</sup> In its least complicated form, SDM allows people to informally consult others in decisions they make. However, some SDM support networks want legal assurance that they may be involved in their loved one's care and decisions. In these cases, there are many tools that help facilitate a more formal form of SDM. These tools can protect people from harm while also promoting their self-determination. The tools detailed in this paper are not exhaustive, but they are important to consider when thinking about less restrictive alternatives to guardianship.

### **Legal Tools for Supported Decision-Making: Alternatives to Guardianship**

All these options are tools that may be used to formalize supported decision making while protecting the rights of people with disabilities. Importantly, these alternatives empower someone to choose their decision maker(s), which decisions can be made and allow for more choice and flexibility while providing legal protection. Most of these alternatives do not require a legal proceeding, meaning they save time and money – a win for the state of Wyoming and for families.

The broadest alternative to guardianship, called a durable power of attorney (DPOA), allows a person to choose someone else who can make choices for them when they are unable to (e.g., handling money or talking to doctors).<sup>54</sup> With certain powers granted (like medical and educational), the DPOA can cover many different areas of life.

In financial decisions, representative payees, living trusts, convenience accounts, and trusted contacts can allow others to help people manage their money. Representative payees can handle Social Security money,<sup>55</sup> living trusts provides someone the ability to look after important things (including money and property),<sup>56</sup> convenience accounts allow another

<sup>53</sup> NCD, "Alternative to Guardianship Promote Self-Determination," 129; ACLU, "Sample SDM Agreement."

<sup>54</sup> Lyttle, "DPOA," 3-4.

<sup>55</sup> SSA, "Guide for Rep. Payees."

<sup>56</sup> FreeWill, "Legal Will Online."

person to access personal bank accounts.<sup>57</sup> In addition, trusted contacts can be listed for bank accounts to allow the bank to talk to if they think someone is being scammed.<sup>58</sup>

In healthcare decisions, HIPAA releases of information, waivers of confidentiality, and advance directives can allow support systems to be involved in medical care.<sup>59</sup> For example, a HIPAA release of information and waiver of confidentiality are forms at doctor's offices that allows doctors to share patient information with others. Advance directives allow people to write down their wishes about the medical care they want in case they cannot tell doctors. It is a way to ensure that health care choices are discussed, known, and followed by support systems.<sup>60</sup>

In educational decisions, a FERPA release of information and waiver of confidentiality form lets someone choose who looks at their school records like grades, bills, transcripts, health records (K-12), and discipline files.<sup>61</sup> This grants someone access to information to help someone else make educational decisions.

## Recommendations for Change

Wyomingites have important roles to play in preventing unnecessary guardianship. Below are several recommendations for addressing guardianship concerns including changing the language of the law, ensuring informed consent, requiring stronger evidentiary standards, providing guardians ad litem, and providing more transparency and accountability. Many of these changes have been successfully implemented in other states, proving their efficacy and relative achievability.

### *Recommendation #1: Language of the Law*

Several sections of the law need updated language, particularly around the words: "ward," "mental deficiency," and "incompetence." We recommend the following changes throughout Wyo. Stat. § 3:

1. Change "ward" to "person with a guardian" and "proposed ward" to "respondent."

These changes empower and respect people living under guardianship and honor individuals' identity first and legal status second. The term "respondent" also implies that there

<sup>57</sup> Irving, "Convenience Accounts and POA."

<sup>58</sup> O'Shea, "Trusted Contact."

<sup>59</sup> Wyoming Dept. Of Health, "Auth. To Release Medical Records."

<sup>60</sup> Mayo Clinic, "Advance Directives, Living Wills Guide."

<sup>61</sup> U.S. Dept. Of Education, "Education Record."

should be a legal response from the person subject to guardianship processes, which is currently not standard practice in Wyoming.

2. Remove the “mentally incompetent person” definition of incompetence from the law.

The distinction only serves to further restrict the rights of people with “mental illness, mental deficiency, or intellectual disability.” Voting and owning property are among those restrictions.<sup>62</sup> These three groups of people are already included in the definition of “incompetence,” so the addition of the “mental incompetence” definition serves only to explicitly discriminate against people.

3. Change “incompetent person” to “individual adjudicated in need of a guardian.”

Parents who are guardians of their adult children have reported being devastated to say their child is incompetent.<sup>63</sup> People who are labeled as incompetent also often feel passive, helpless, self-critical, and have less ability to function.<sup>64</sup> The term and its consequences have a severely negative impact, necessitating its change.

### *Recommendation #2: Provisions Specifying Alternatives to Guardianship*

Wyo. Stat. § 3 needs a provision that requires alternatives to guardianship be attempted before plenary guardianship. Data may indicate that Wyomingites are not aware of and/or do not have access to alternatives to guardianship.<sup>65</sup> This concern is partially addressed by explicitly including it in the law. It also gives legal authority to the “least restrictive and most appropriate guardianship” required by Wyo. Stat. § 3-1-205(v). This change could limit the excessive use of plenary guardianship and promote autonomy self-determination for Wyoming citizens.

Alternatives to plenary guardianship could include the three other types of guardianship (limited, emergency, or standby) allowed by law and other supports such as visiting nurses, homemakers, home health aides, adult day care and multipurpose senior citizen centers; powers of attorney, representative and protective payees; and board and care residential care facilities.

<sup>62</sup> Wyo. Stat. § 22-1-102(a)(xxvi), “Elections Qualifications”; Wyo. Stat. § 3-1-202(a), “Powers of Ward”; Wyo. Stat. § 3-1-203, “Title to Ward’s Property”.

<sup>63</sup> Millar, “Disconnect: Self-Determination and Guardianship,” 125.

<sup>64</sup> Lachapelle et al., “Quality of Life and Self-Determination”; Skaggs, “Labeling Theory”; NCD, “Alternative to Guardianship Promote Self-Determination,” 101-102; Wright, “Well-Being of Respondents,” 391-94.

<sup>65</sup> HSRI & NADDDDS, “Guardianship,” 32-33.

### *Recommendation #3: Stronger Evidentiary Standards*

The evidentiary standard for guardianship proceedings needs to change from “preponderance of the evidence” to “clear and convincing.” This change would mean that a court must find someone unable to care for themselves and their property substantially more likely than not (“clear and convincing”) as compared to more likely than not (“preponderance”). This prevents judicial overreach by requiring more evidence that plenary guardianship is the most appropriate solution. Remember that Wyoming is the only state with this low of an evidentiary standard in these cases that remove and severely restrict human rights.<sup>66</sup> Preponderance of the evidence does not adequately protect the rights of any Wyomingite, especially those with disabilities. In addition, this low burden of evidence provides a legitimate legal avenue that exacerbates the inequality experienced by people with disabilities.

### *Recommendation #4: Changes to Wyo. Stat. 3-2-102 to Prevent Loopholes*

People who petition for guardianship, whether voluntary or involuntary, should be notified. Currently, only those who have petitioned for involuntary guardianship are notified—but there is a loophole. Wyo. Stat. § 3-2-102(ii), provision (ii) states that a respondent is required to be notified except “(ii) When for good cause the court determines that no notice is necessary if the proposed ward is under the age of eighteen (18) years.”

If that line (ii) is struck from the law, there will be more accountability in the law. It is common for a proposed guardian to petition before the respondent turns 18 years old. This provision makes plenary guardianship easier on families, but often at the cost of someone’s legal right to due process.

The distinction between “involuntary” and “voluntary” petitions in Wyo. Stat. § 3 creates an improper legal mechanism that allows a respondent to be denied notification of their guardianship petition. With voluntary petitions, notice of the petition filing is not required.<sup>67</sup> The term “voluntary” does not carry its usual meaning in this context. Both proposed guardians and respondents may voluntarily petition for guardianship, but it may be a result of misinformation about what guardianship is and does.<sup>68</sup>

Evidence shows that when the full scope of plenary guardianship was defined for parents, they were surprised to learn that plenary guardianship completely removes the individual rights of their adult children by defining them as “mentally incompetent.” It is evident that the concept of “voluntary” needs to be carefully considered against informed consent in this context. Removing the distinction between voluntary and involuntary

<sup>66</sup> Benish, “WY Guardianship Law Behind,” 392.

<sup>67</sup> Wyo. Stat. § 3-2-102, “Notice When Required.”

<sup>68</sup> Millar, “Disconnect: SelfDetermination and Guardianship,” 125.

petitions in Wyo. Stat. § 3 achieves legal equality. The same due process would be afforded to all citizens and their families undergoing a guardianship proceeding – regardless of their understanding of guardianship.

#### *Recommendation #5: Enhancing the Effectiveness of Guardianship Law*

A success of Wyoming guardianship law is the requirement that a person proposed to live under guardianship has a right to legal representation and/or a guardian ad litem.<sup>69</sup> However, that right is not often provided in Wyoming.<sup>70</sup> One rationale to be advanced is guardian ad litem offices in Wyoming are inadequately staffed and funded, which contributes to their limited usefulness.<sup>71</sup> By supporting, fiscally and otherwise, guardians ad litem or court visitors, courts would be able to better assess people’s understanding of guardianship, as well as educate and advocate for less restrictive alternatives to guardianship.

Another achievement of Wyo. Stat. § 3 is that guardians are required to file a report with the court about the care and activities of the person living under guardianship every six months.<sup>72</sup> Further, the law requires that the "court shall maintain a calendar for the filing of guardianship reports"<sup>73</sup> and that the "court shall enter an order for the guardian to show cause why the guardian should not be held in contempt"<sup>74</sup> if the guardian does not file a timely report. These provisions suffer from a lack of enforcement, much like guardian ad litem requirements. We recommend that the Wyoming Judicial Branch follow these requirements of the law to actualize these legal rights protections.

#### *Recommendation #6: Transparency and Accountability*

Our final recommendation is for there to be more transparency and accountability in the guardianship process. For example, the Wyoming Judicial Branch does not record usable data on guardianship in their case management system. At a minimum, we recommend the Wyoming Judicial Branch collect and be able to publicly report the number of petitions for and awards of plenary, limited, emergency, and standby guardianships in the state. This will enable all individuals and organizations involved in guardianship to better understand and address the issue, fostering a more rights-informed citizenry and a clearer comprehension of how guardianship manifests in Wyoming.

<sup>69</sup> Wyo. Stat. § 3-1-205, “Rights of Proposed Ward”; Wyoming Rules of Civil Procedure Rule 17(c).

<sup>70</sup> Dow, “State-Mandated Service Not Available.”

<sup>71</sup> Wyoming Legislature Mental Health and Vulnerable Adult Taskforce meeting, 2023.

<sup>72</sup> Wyo. Stat. § 3-2-109, “Guardian’s Report.”

<sup>73</sup> Wyo. Stat. § 3-2-109(b), “Guardian’s Report, Calendar.”

<sup>74</sup> Wyo. Stat. § 3-2-109(c), “Guardian’s Report, Contempt.”

## **Conclusion**

Guardianship, especially in its most extreme form—plenary guardianship—is often seen as a protective measure, yet it functions more as a tool of oppression. In Wyoming, plenary guardianship is overused to an alarming degree, stripping away basic human rights that our constitution so fiercely protects. The restrictions placed on individuals under plenary guardianship are as severe as those of incarceration or involuntary commitment, yet the legal safeguards protecting these rights are alarmingly weak.

Ironically, Wyoming—a state that champions individual freedom and self-determination—has allowed the most restrictive decision-making option to become the default. This should raise concern for every citizen, whether able-bodied, disabled, or anywhere in between. Nearly anyone can be affected. The current guardianship system stands in direct conflict with the democratic ideals Wyoming prides itself on—values that must be upheld by all its citizens for all its citizens. Our declaration of “Guardianship as Wyoming’s Most Pressing Human Rights Concern” was not made lightly. It is a call to action, a reminder that the freedoms we cherish must be fiercely protected.

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# Restorative Justice and the Way Forward for Natural Resource Communication

Emma Jones

## Introduction

Equitable decision-making practices are becoming even more important as we recognize the full extent of the impacts that we have on long term ecosystem health and communities. In order to achieve equitable solutions to pressing environmental problems, it is essential to consider the processes of communication and public participation. As a result, my research focuses on the following key question: What tools can we use to improve the way that we communicate and collaborate on addressing natural resource issues? Environmental decision-making processes take many forms and incorporate public outreach in a number of different ways. I advocate for the potential of restorative justice to transform the practice of public input. By focusing on addressing harms and centering community members in decision-making, restorative justice can shift public input on environmental management from something hierarchical and passive in nature to an active and empowering part of interacting with landscapes.

Restorative justice finds its greatest potential in incorporation into collaborative governance practices, and ought to have greater consideration by the agencies and other entities attempting to navigate complex issues in environmental justice and natural resource management. Whereas existing public engagement efforts often rely on a predetermined set of stakeholders shaping land management policy, restorative justice asks the key question of who is being excluded from this process. It invites members of the public to share their stories and ideas in a way that has the potential to allow for greater inclusion of diverse voices. In this paper, I discuss how principles of restorative justice might fit into a collaborative understanding of environmental problem solving. In order to do that, I needed

to learn more about what restorative justice actually looks like—what settings can it take place in, and how practical is it for developing decisions that have impacts at a community, ecosystem, or even landscape scale?

Traditional public input, while important, reinforces existing inequalities- in a sterile environment where the decisions seem predetermined by an in-group of stakeholders, restorative justice seeks to create a deeper sense of community. In this way, restorative justice can be a tool for a natural resource management that truly embraces democratic principles. Restorative justice seeks, ultimately, to address harm via community action. When it comes to natural resource management, the true harm can often be the reality that the desires and needs of community members aren't always met- or that those needs are ignored entirely. Natural resource management in the United States has traditionally been exclusionary on principle, federal public lands the direct result of the genocide of indigenous people <sup>1</sup> and subsequent exploitation of tribal lands.<sup>2</sup> I argue that public engagement in solving complex issues requires a foundation of trust and buy-in from all stakeholders, which may allow for restorative justice to become a larger part of the conversation around land management in the U.S.

## **Natural Resources and Why Communication Matters**

The full range of human emotion, inspiration, and anger, can be found in the public comments on any public land management action proposal. Stories are told in our relationships with landscapes, and those stories are often told through the opinions that people share in official decision-making processes. Perhaps the reason why public comments are so full of emotion is because we (the public) care a lot about the idea of conservation and having healthy ecosystems. In Wyoming, for example, a recent study conducted through the University of Wyoming (UW) found that “Nine out of ten Wyoming voters said conservation issues involving public lands, waters, and wildlife are as important, if not more important, than other issues related to the economy, health care, and education, when deciding whether to support an elected official.”<sup>3</sup> It is clear that Wyomingites understand the need for good resource management practices.

<sup>1</sup> Indian Removal Act, 4 Stat. 411 (1830).

<sup>2</sup> Lee et al., "Land Grab Universities."

<sup>3</sup> Freedman, "Public Opinion on Natural Resource Conservation in Wyoming – 2018."

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However, we are also witnessing increasing tensions, especially between community members and land management officials. In 2023, for example, the Bureau of Land Management faced backlash after the release of its management plan for the Rock Spring Field Office in South-Central Wyoming. In short, members of the public expressed outrage at the BLM field office for making decisions concerning limitations on activities like ranching and mineral leasing without proper public involvement. Some claimed that this outrage was fueled, at least in part, by miscommunication on the part of BLM representatives<sup>4</sup>. This example is a reflection of a larger pattern when it comes to land management in the modern day: As resources become more threatened due to increases in demand and the impacts of climate change, exchanges between stakeholders and managing agencies are only going to become more tense. It is also important to understand the human elements of polarization—how do we find common ground when having particularly tense disagreements? It is clear that whatever the management decision is, communication is at the center of any plan that wants to see amicable interactions with key local players. This is the central point of my argument: that the most essential stepping stone for management agencies and communities alike is improving the processes that we use to communicate with each other.

## How Do We Manage Landscapes?

The U.S. is a tapestry of public land agencies, private landowners, and networks of stakeholders. As a result, the process of stewarding landscapes is often a complicated one. Briefly discussing what the regulatory framework for U.S. lands looks like is helpful as we try to understand the decision-making process and the process for addressing environmental harms and including stakeholders. Federal land management agencies such as the United States Forest Service (USFS) the Bureau of Land Management (BLM) and United States Fish and Wildlife Service (USFWS) all rely on the guidelines set forth in the National Environmental Policy Act of 1970 (NEPA) in order to engage the public on matters concerning changes to land management practices. Essentially, NEPA sets guidelines for how agencies adopt and monitor federal land management actions and make other decisions concerning activities on public land.<sup>5</sup> U.S. environmental policy is guided in large part by the North American Model of Conservation (NAM). The NAM is focused primarily on promoting democratic resource management and regulating resource use from the perspective of the common good.<sup>6</sup> Notably, a game species has not faced extinction since its adoption and it has emphasized a democratic approach to public lands and natural resources. Our notions of political influence

<sup>4</sup> Tan, "Misinformation Steers the Public's Outrage at the BLM's Plan."

<sup>5</sup> United States Environmental Protection Agency, "What is the National Environmental Policy Act?"

<sup>6</sup> Mahoney and Geist, *The North American Model of Wildlife Conservation*, 112.

on landscapes are very much shaped by our struggle to grapple with notions of region, governance, and the influences that shape our concepts of place.<sup>7</sup> In other words, policy is guided by our relationships with the land: what we value, political influence, and how we interact with natural resources in our daily lives.

The ways in which decisions are considered and adapted is changing. First, the importance of ecosystem services- the intangible ways in which ecosystems benefit human activities are gaining increasing importance for land management agencies.<sup>8</sup> Incorporating public engagement into iterative forms of adaptive management is an important part of ensuring that decision-making will be met with support and that agencies are fully understanding the needs of the communities they impact. The question left for us after understanding this section is what are the limitations of the approach laid out in NEPA? Mainly, it seems as though it is difficult to fully build a comprehensive sense of engagement as an agency with wide reaching priorities. In other words, how does a federal agency cater to local needs and values while grappling with issues that are incredibly broad in scope and impact? The other issue is that the vast majority of public comment seems to be feedback based, rather than collaborative in nature. If an agency is committed primarily to public input on management proposals that have already been developed, how impactful can that public input truly be on the process of managing natural resources? This is not to say that public comments as they currently occur are not valuable, and managing agencies have an extraordinary task of balancing public interest with scientific management principles. It isn't always feasible or sensible from a scientific perspective to have the general public making every decision along the way. However, it is crucial to acknowledge that the public has as much stake in natural resource management as the decision maker. With this consideration in mind, perhaps experts would benefit from focusing as much on educating the general population as much as they focus on communicating with decision makers. In order for science to be truly effective, it must be understandable for those directly impacted.

## Collaborative Governance

There is an increasing need for public policy built around stakeholder inclusion. Collaborative governance is one management practice that has grown more visible in recent decades and has been used in diverse areas of conservation, including water resources and various ecosystem restoration projects.<sup>9</sup> Collaborative governance is a process that focuses on consensus based resource management, and centers participation from stakeholders in solving environmental challenges.<sup>10</sup> Essentially, collaborative governance is meant to be a way of

<sup>7</sup> Foucault and Gordon, *Power/Knowledge*, 68-69.

<sup>8</sup> Moore et al., "Application of Ecosystem Services in Natural Resource Management," 15.

<sup>9</sup> Gerlak, Heikkila, and Lubell, "The Promise and Performance of Collaborative Governance," 415.

<sup>10</sup> Emerson, Nabatchi, and Balogh, "An Integrative Framework for Collaborative Governance," 23.

facilitating stakeholders as not merely surface level participants, but guiding forces in solving environmental challenges. At the University of Wyoming, the Ruckelshaus Institute focuses on facilitating collaborative governance for regional land management issues. Collaborative governance has been used to mediate natural resource issues in partnership with agencies such as the Wyoming Game and Fish Department to tackle issues from disease management among game animals to addressing watershed management.<sup>11</sup>

One might wonder why collaborative governance has grown so much more popular as an alternative to conventional environmental problem-solving processes. One key argument is that its use is driven, in general, by an increase in global natural resource conflict, which in turn is exacerbated by climate change and other human driven natural resource crises. While collaborative governance is appealing as a means of navigating the complex social and ecological elements of resource management, it is not without its criticisms. For example, there have been instances of overly influential local interests “capturing” the collaborative process.<sup>12</sup> Furthermore, the democratic nature of collaborative governance also means that consensus can be a difficult thing to achieve. As Gerlak puts it, the idea of consensus decision-making “makes it very easy for single actors to veto any particular decision with which they do not agree”.<sup>13</sup> Here is the central issue- collaborative governance, while important and in many cases, successful, still struggles to achieve a true sense of equity among stakeholders.

Trust is central to the discussion of how restorative justice might work to create a greater sense of trust between community members and respective land management agencies who may not be as directly connected with the land they are creating management plans for. Another important point to consider is the potential differences in trust of individuals versus trust in the institutions they represent.<sup>14</sup> At the same time, it is also important to understand the relationships between those stakeholders and established decision-making processes. In creating an integrative stakeholder framework, Hirsch and Brosius emphasize the importance of understanding the relationship between stakeholder values, governing processes, and power in understanding successful attempts at addressing conflict over natural resources.<sup>15</sup> Others focus primarily on methods of implementing effective communication techniques in different settings,<sup>16</sup> while Agrawal (2019) emphasizes the importance of community buy-in.<sup>17</sup> If some of the main issues with collaborative governance are creating a sense of inclusion and grappling with the complicated nature of democracy, how can a tool like restorative justice be used to navigate these challenges? The answer may lie in the idea

<sup>11</sup> Ruckelshaus Institute, "Collaborative Solutions Brochure."

<sup>12</sup> Mcloskey, "Problems with Using Collaboration," 423.

<sup>13</sup> Gerlak, Heikkila, and Lubell, "The Promise and Performance of Collaborative Governance," 420.

<sup>14</sup> Rapp, "Collaborative Governance, Natural Resource Management, and the Trust Environment," 17.

<sup>15</sup> Hirsch and Brosius, "Navigating Complex Trade-Offs in Conservation and Development," 105.

<sup>16</sup> Jurin, Roush, and Danter, *Environmental Communication*, 45.

<sup>17</sup> Agrawal and Gibson, "Enchantment and Disenchantment," 629.

of buy-in- perhaps environmental management is most effective when it is built on a sense of community and common ground.

## Restorative Justice

Restorative justice is, in the simplest terms, a way of addressing harm in a community, or even a way of restoring a broken sense of trust. If governance is rooted in historical patterns of power and inequality, a natural resource management practice like collaborative governance can only be truly effective when these historical inequities are addressed. Whereas a traditional justice system is focused mainly on punishment for harm done, restorative justice is focused on addressing the needs of victims and on community healing.

Justice as it exists in our current legal and social system tends to be focused on retribution: we set expectations for how people ought to treat each other, and if those expectations are violated, usually some sort of punishment follows. The issue is that this system often doesn't address the underlying cause of harm, perpetuating a cycle of recidivism and continued damage to communities. In cases concerning environmental justice, the same trend is often true- the true impact of environmental disaster as a result of mismanagement or negligence is primarily the burden of community members. In the United States, several jurisdictions have experimented with utilizing restorative justice as a juvenile diversion tool.<sup>18</sup> Restorative justice is an evolving process that has a long history, although we may not attach the term "restorative justice" to many evolving traditions of justice, historians argue that RJ as a concept can be tied to many examples across human civilization,<sup>19</sup> in which forgiveness and transformative action is central to principles of justice.

A significant contributor to the success of restorative justice is voluntary participation. Forsyth et al (2021) frame restorative justice as something that "has long emphasized the need for skilled facilitators, significant investments in preparatory work and 'buy-in' from all key players."<sup>20</sup> In terms of structure, it seems as though successful application of restorative justice in court systems have also been in response to a very specific harm done to a specific group(s) of people, which suggests that restorative justice benefits from a clearly defined process. Successful implementation is reliant on buy-in from stakeholders and requires a fair and communicative mediator- particularly when tensions are high. At the same time, restorative justice is not merely focused on giving stakeholders equal voice, but on specifically empowering victims of environmental harm.

Case law cites the need for clear structure in order for RJ to be useful in addressing environmental harms. Some courts referred to the United Nations Office on Drugs and Crime's (UNODC) Handbook on Restorative Justice Programmes, which currently states

<sup>18</sup> Sliva, "A Tale of Two States," 255.

<sup>19</sup> Braithwaite, *Restorative Justice and Responsive Regulation*, 27.

<sup>20</sup> Forsyth et al., "A Future Agenda for Environmental Restorative Justice," 30,

that “the broader objectives of restorative justice can include dialogue, closure, reconciliation and healing which would normally dictate a deeper approach and require a genuine empowerment of the primary participants.”<sup>21</sup>

## **Applying Restorative Justice: Laramie Waters**

### *Introduction and Background*

Restorative justice creates an alternative to traditional justice systems by placing victims on equal ground with the accused. In an effort to both better understand how the management of water resources impacts Laramie residents and explore the applicability of restorative justice in addressing local resource issues, I decided to create a simple outline for a restorative justice circle surrounding water resources in Laramie, Wyoming. Laramie has an active community concerning the management of local water supplies, which for Laramie are primarily the Casper Aquifer and the Laramie River, according to the latest version of the City of Laramie’s Casper Aquifer Protection Plan adopted in 2023.<sup>22</sup>

Policy for protecting the Casper Aquifer has been an evolving process for the past several decades and is a current topic of conversation in formal and informal public spaces. Upon recognizing the need for a comprehensive plan to protect the quality of water in and around Laramie,<sup>23</sup> the city has since adopted multiple versions of the Casper aquifer protection plan, the most recent of which was approved in 2023. The plan addresses the water needs of City and County residents, along with the University of Wyoming, which functions as a state entity. The city balances the accessibility of water resources with precautions designed to prevent contamination. The City of Laramie faces the task of protecting the Casper Aquifer by collaborating with county and state entities, while simultaneously representing the varied interests of different community members. I thought that this case was particularly important to focus on considering the changing dynamics of water resources in the west<sup>24</sup> and the varying public interests involved in the creation of the plan—Albany County, the City, and the University all had to come to an agreement on how to best manage a local resource.

<sup>21</sup> United Nations Office on Drugs and Crime, *Handbook on Restorative Justice Programmes*, 45.

<sup>22</sup> City of Laramie and Albany County, *Casper Aquifer Protection Plan Update*.

<sup>23</sup> Laramie City Ordinance No. 1404 (2002).

<sup>24</sup> Wyoming Anticipating Climate Transitions, "Project Activities."

## *The Process*

Using the guidelines for restorative justice we discussed earlier and the framework for restorative justice circles established through the University of Wyoming Dean of Students' Office, I worked to develop a facilitated conversation directed at community members in Laramie. For this circle, I wasn't necessarily seeking to address a specific harm that had occurred—i.e. there was no immediate problem impacting community members as a result of harm done to Laramie's watersheds—merely the *potential* impacts of a contaminated ground water supply and more long-term concerns over water resources in a changing climate.

I wanted to better understand how the concept of a talking circle actually works to build a greater sense of community and common ground; the goal of the talking circle, then, was to explore the process of restorative justice- what do we actually say, and how can language and custom serve to promote a sense of trust among people from different backgrounds? I also wanted to explore the sense of ownership that people have when it comes to their communities and a resource as precious as water. While not everyone can be an expert on natural resource management, everyone has a stake in what happens in their communities. With this in mind, I wanted to explore the following set of key questions in this exercise:

- How does the public perceive water resource issues in Wyoming?
- How is inviting the public different from holding a typical public comment period?
- How does this method of conversation enforce and subvert existing power structures?
- Does structuring a conversation like this actually build trust in a way that traditional public participation does not?

By asking these questions, I sought to reframe the traditional models that dictate how we decisionmakers and community members talk with each other. I frame restorative justice in the context of a local natural resource issue and, in turn, reflect on the goal of democratic resource management set forth in the NEPA process and in the principles of the North American Model of Conservation. I think it is useful to explore the implementation of restorative justice as a practice in community building- after all, it is community members who must face the consequences of wherever the decision-making process leads.

The University of Wyoming utilizes a “talking circle” approach to restorative justice, where the program is focused mainly on community building. The goal of the talking circle on Laramie water was essentially the same. It was meant to be a space to share stories and better understand the values that drew people together. I invited members of the public to attend a gathering at a local coffee shop, where around a dozen of us worked our way through the following discussion over pastries. The discussion was facilitated by myself and UW's Restorative Justice Program Manager, Connor Novotny, on April 4, 2024.

## *“Introduction to Restorative Justice” Talking Circle Plan*

### **Community Guidelines**<sup>25</sup>

- Respect the talking piece.
- Be present and curious.
- Speak and listen from the heart.
- Speak and listen with respect.
- Say just enough.
- Participation is voluntary.
- Explore intentions and tend to impact.
- Take the learning, leave the stories.
- You may hold space for silence (passing on your turn if you choose).
- Feel encouraged to respond also to the other comments in the circle, not just the prompt at hand.

**Purpose.** The purpose of this discussion circle will be, first and foremost, to build a greater sense of community among Laramie residents and introduce the concept of restorative justice as a tool for talking about issues we may face in our community. Being able to communicate about water and other natural resources is especially important because at the same time as collaborative environmental governance is being used more often, there is also increased tension concerning resource scarcity, and the subsequent management of resources like water. As a result of participating in the circle, individuals will hopefully be able to better understand how restorative justice can be used to encourage productive conversations. Additionally, the feedback from participants will allow for a better understanding of how this tool can be improved and where it might be most useful in other settings.

### **Centering.** 3 Deep Breaths

**Introductions.** Please introduce yourself as you’d like to be known in the circle, and let us know what your main role is in Laramie.

**Check In.** To check in today, share how you are currently feeling based on a type of weather. Then, as comfortable, explain why that metaphor fits your state.

**Connection.** You are all here because you are invested, in some form or another, in the Laramie community. What do you value about living in Laramie, and what is a story you

<sup>25</sup> Community guidelines are reviewed at the start of a talking circle to establish norms and to ensure that everyone is on the same page. The “talking piece” in the first guideline refers to a physical object used to define who the speaker is, and who the listeners are. It often has meaning attached to the conversation. In this case, we used a rock from the Laramie River.

can tell about your experience as a citizen that exemplifies that value. Write that value on a plate, and place plate in the center of the circle when finished speaking.

**Core Issues.** In order to brainstorm ways to strengthen our water resource governance and work towards meeting the needs of the Laramie community, it is necessary to identify the core issues facing water in Laramie. What are some of the core challenges present in how we manage water resources? Co-Facilitator take notes on markerboard and summarizes at the end of the round.

**Impacts.** Looking at these central concepts, how do those things listed here impact you, or the community? How do they impact your ability to thrive in your personal life, in the roles that you have in Laramie, in thinking about the future? Example: “A core issue listed previously is that I feel anxious about whether water access will remain abundant and affordable in the future. I pay a utility fee in order to use city water and I’m concerned about that fee increasing over the next several years.”

**Alternative Narratives.** In order to understand the complexities of the work here, it is helpful to look for narratives that can tell different stories about how water is managed in Laramie. We can look towards these examples while looking at inspiration for change, collaboration, and action. Looking at the previous round of impacts, what are some examples of situations or interactions that counteract or complicate the previous narrative. Example: “Even though there is a lot of conflict over water resources, the Casper Aquifer Protection Plan is an example of how scientists, city officials, and citizens were able to come up with a long-term plan to protect the health of an important water resource for Laramie.”

**Preferred Narratives.** Looking at these previous rounds, what are the desired narratives you’d like to be able to tell about the Laramie community? What would be the impact on you if you could tell them as the dominant narrative? Example: “Having a community where we are willing to use science in order to formulate water management plans would contribute to the overall health and wellbeing of me and my family.”

### **Closing Round**

- What do you think about this process?
- What are the strengths and challenges of using this process in discussions of natural resource issues?
- In what settings would this be most useful?
- Where can this process be improved or tailored to fit communities like Laramie or Wyoming in general?
- What is something someone else shared that resonated with you?

**Check Out.** Time allowing, close the circle by sharing one word that describes your thoughts at this moment.

### *Results: What did We Learn?*

Upon collaborating with the working group of participants on this project, several strengths were made apparent: First, bringing people together in the more informal environment created by a circle talk made it easier to promote a sense of community. Often, participants felt that traditional meeting settings- i.e., those set up to allow the public to speak to officials- create “ivory towers” in the sense that they don’t allow for the managing agency to be approachable. In contrast, the informal setting of the circle, in which participants were given equal time to voice their opinions and concerns, made people feel a sense of connection with each other. Approachability is essential for forming a restorative justice circle. Things like where the meeting is being held, who is facilitating the circle, whether and how notes are being taken, are all important considerations for what is meant to be a very personal and tight knit process. In relation to the idea of approachability, participants acknowledged that not everyone arrives to conversations around natural resources with the same amount of prior knowledge. Just as in collaborative governance processes and in other methods of encouraging public participation, everyone has a different story of a particular issue. While restorative justice allows communities to share these stories, it also requires facilitators to understand that not everyone has the same background knowledge when they decide to participate.

Let’s return to the questions set forth at the beginning of the process and provide some reflections. One of the common themes that emerged when it came to water resources in Laramie was the need for greater collaboration and education. When asked about potential solutions to perceived issues in water use, participants mentioned things like setting limits on certain activities, collaborating with entities like the University of Wyoming to address overwatering, and promoting greater awareness of community water resources. Participants also identified potential harms: when it comes to accountability for environmental impacts on water, the “big players”- corporations, businesses, and larger government entities like the University of Wyoming- often *don’t* take responsibility in a way that attendees thought was fair. For example, participants cited the fact that the University operates a golf course using water from the Casper Aquifer while not paying for the water resource as a state entity.<sup>26</sup>

Most importantly, when citizens were invited into a space where they could speak their minds, they did. And they weren’t just passive actors voicing their concerns- they had *ideas*. They understood the stake that they had in the future of water resources, and they pointed

<sup>26</sup> Hesse, "Water Below."

out gaps in the current understanding of the issue. They imagined a future in which the burden of caring for resources is shared by the public, and education is consistent and wide-reaching. Rather than a one-sided public comment process, restorative justice is formatted as a conversation between decision makers and the public. And this is its greatest strength. Even if managing entities can't always fully take into account the desires of the public, they can use restorative justice as a means of building trust- as a means of building relationships.

Perhaps the most important thing to consider was that these participants were regular citizens with various levels of understanding of natural resource management and hydrology. One participant knew very little about water resources and said that she was simply curious about natural resources. She viewed the restorative justice circle as an introduction to the City's management of water. Another had extensively studied hydrology and was able to contribute a perspective rooted in his experiences and existing knowledge of water. The restorative justice circle allowed all stakeholders to voice not only their concerns, but also potential solutions. In terms of other outcomes from the discussion, we were able to get an idea of what people valued, what they knew (and didn't know) about water in Laramie.

Participants highlighted both a sense of responsibility for protecting water resources and, oftentimes, a sense of powerlessness when it came to interacting with governing entities and even private corporations, listing the following reflections:

- Pressure on individuals vs. corporations: Individual actions can only do so much when compared with the influence of corporate entities.
- Water contamination: Something that impacts everyone but is often traced back to individual entities.
- A sense of powerless can create a sense of apathy around natural resource management.
- Water is an essential element of everything.
- Sense that the current economic model doesn't support change.
- There is a need for creative solutions.

In terms of alternative narratives—that is, alternatives to the sense of powerlessness discussed earlier in the talking circle, participants noted the following ideas:

- Public responsibility and sharing the burden: Common resources belong to everyone, and so does the responsibility of stewarding them.
- Funding for projects is equitable. This is a necessary part of making sure that resource management is truly democratic and a means of righting the scales of power.
- Frequent and more intensive public input on management decisions.
- Greater stakeholder interaction, especially utilizing resources like talking circles.
- Using tech to incentivize sustainable action, i.e., working with corporations to develop solutions

- More opportunity for education, especially when it comes to issues that people generally have a limited understanding of.

The circle itself allowed for mediators to connect to a circle of people who were interested in doing more in their community. In the future, it seems as though informal talking circles would be valuable for outreach especially considering that participation was driven by informal processes itself; Rather than reaching out to specific stakeholders beforehand, I put out an open call to anyone who wanted to participate. I wasn't dictating who had a voice before the process had even started.

## **Guide for Restorative Justice in Natural Resources**

After the talking circle, I reflected on ways in which this process can be useful for managing agencies in the future. Restorative justice seems to have the most impact as a means of building trust and community in the preliminary phase of environmental management. This could mean that, prior to the comment period in municipal, state, or federal decision-making processes, managing entities take the time to arrange for small scale discussion in individual communities. Whereas public comment hearings are formal and generally don't serve to promote conversation, talking circles can be a means for officials to address potential concerns in a more open way. Whereas collaborative governance identifies stakeholders to play a direct role in decision-making, restorative justice can be a means of learning more about individual community members and exchanging stories.

Recommendations for those involved in the process of natural resource decision-making, including local and federal officials and mediators of environmental conflict:

- Focus on training good facilitators, regardless of the type of governance being used; facilitators should fully understand where and how to apply processes like restorative justice and should also be well-versed in the interests and values of local stakeholders.
- Successful governance is built around trust; ideally, any restorative justice process be focused on developing a sense of trust and community.

The following is a template of questions that natural resource managers may find useful to ask as they navigate the task of building a sense of community. This table is a reference to frame how managing entities approach education and create conversations that will allow participants to emerge with a better understanding of how other community members and decision makers are thinking about a particular issue.

## Guiding Questions for Environmental Restorative Justice

<u>Topic</u>	<u>Sample Questions</u>
Identifying the Issue	<p>What is the scope of the issue?</p> <p>What harm is being done, and who is defining that harm?</p> <p>What context will be needed for the average participant?</p> <p>What are the desired outcomes in discussing the issue?</p> <p>How much time/resources are available to devote to this particular issue?</p>
Finding Common Ground	<p>What do people value about their community?</p> <p>Is there a common culture people relate to?</p> <p>How can we use the format of restorative justice to establish common ground from the beginning?</p>
Formulating Problem and Solution Based Questions	<p>How does each question help to better understand the issue?</p> <p>What aspects of the problem are not currently being addressed?</p> <p>How can the questions encourage participation from multiple perspectives?</p>
Empowering People: Identifying Action Items	<p>What can we do, right now?</p> <p>Is another restorative justice circle an appropriate action?</p> <p>How do we decide the process for future action (e.g., choosing a facilitator, communication with various stakeholders, etc.)?</p>

Identifying a Specific Issue of “harm” seems to give clear direction to the restorative justice circle, which is important for not only formulating questions, but also for narrowing the scope enough so that the circle is approachable for everyone. If we are trying to talk about too complex of an issue, it can be difficult to provide enough context and to properly discuss the issue in a limited amount of time. In identifying key stakeholders, two elements are crucial. First, understanding the interests and influence of stakeholders- if restorative justice requires buy-in, how do we encourage buy-in from people who may have historically been excluded from decision-making? The issue, again, is ensuring all stakeholders are considered “equal” in the context of environmental decision-making. Of course, all individuals ought to have an equal say in how community resources are managed, but in Wyoming, for

example, those in ranching communities and the oil and gas industry tend to have a much larger influence over land management policy in the state than, say, indigenous tribal representatives. The second part of fully engaging stakeholders is reaching out to those stakeholders in the “right way.” In other words, facilitators must be mindful of how they approach stakeholders and ensure that they are actually communicating to potential participants in an effective way.

Finding common ground is probably the most important step in starting any kind of productive conversation- RJ or not. This can also be the most difficult part of formulating a dialogue outline, especially in contentious issues where stakeholders are seemingly at odds with one another. Finally, formulating problem and solution-based questions should be centered around potential harms done towards individuals or communities. If we can't fully understand the problem we are trying to address, we can't begin a conversation around that problem.

## **Conclusions and Reflections**

The example I explored is at a very small scale and based on a relatively small community that shares a common local culture. But what would a restorative justice approach to decision-making look like at a broader level? Is it even possible? What works for one issue, community, or injustice may not work for others, and as a result, it is difficult to gauge with certainty (at this time) whether restorative justice could be a truly effective tool to incorporate into the decision-making processes set forth in regulatory schemes. Like collaborative governance, restorative justice seems to be rooted in the need for trust among community members and stakeholders. It is ultimately a lack of trust and a shared sense of direction that I think leads to breakdowns in communication, especially in hierarchical systems such as the current U.S. system of land management.

Returning to the public engagement process as it currently exists under federal land management policy: what do we envision as truly effective engagement? Who do we want to include? Again, we have to understand that community-based action is based on an idea that everyone has at least a basic level of knowledge surrounding the issue on the table. But what if they don't? Not everyone in Laramie can be an expert on water resource issues, but a restorative justice circle can be a space for asking questions as much as it is a space for answering them. And, finally, if we return to the idea outlined in the North American Model of Conservation of land as something held in the public trust, and natural resource management as something that ought to be democratic in nature- how can restorative justice help to fulfill that process? Restorative justice is reliant on the stories we tell about ourselves and our communities- it is about giving greater voice to those harmed by environmental mismanagement.

Ultimately, what I learned from the process of exploring what restorative justice might really mean for addressing environmental harms is that public involvement is complex. To truly address harms in a meaningful way and understand the power structures that governance processes enforce is to continually challenge the framework we use to solve environmental problems.

### **Limitations, Future Directions, and Recommendations**

Given the results of our informal Laramie Waters talking circle, what can we say about future applications of restorative justice in localized settings? A holistic incorporation of restorative justice into public engagement by land management agencies clearly requires all stakeholders to voluntarily come to the table. In other words, restorative justice cannot be forced upon any particular situation; instead, it has to happen as an organic process in which all parties have the opportunity to share their stories and speak to the personal and community impact of environmental harms. Pilot programs may be implemented on a local level in order to better understand the efficacy of restorative justice as a method for improving collaborative governance. Additionally, I think it would be helpful to compare restorative justice in U.S. legal systems to other places where restorative justice is successfully implemented, in order to gauge how RJ can be adapted to different legal environments. Furthermore, restorative justice as a vehicle for building trust could also be explored.

Many of the criticisms of restorative justice are rooted in ideas of power- in other words, when we set out to use restorative justice to establish productive communication networks, who is the “we” doing the organizing? Are restorative justice practices being implemented in a truly equitable way, or are they only serving to reinforce the same power structures that ultimately leave certain stakeholders out of the process of decision-making? There is no shortage of research interested in the power dynamics present in stakeholder engagement, including attempts to create an integrative understanding of the processes, values, and inequalities present in decision-making.<sup>27</sup> At the same time as we acknowledge the strengths of restorative justice, it is also important to ask questions about the purpose that RJ is truly trying to serve in a given setting, and whether it is achieving that purpose effectively. One of the most difficult challenges of creating a just system of governance in general is in creating and implementing the standards for who will be included and how the process will be defined. If we assume that the application of restorative justice requires a clearly defined set of harms, affected groups, and appropriate buy-in, then it is important to ask who or what is doing the defining. From the perspective of trying to implement restorative justice as an equitable process, it serves to ask questions about who the victims are of a particular harm,

<sup>27</sup> Hirsch and Brosius, "Navigating Complex Trade-Offs in Conservation and Development," 105.

who should have a voice in the first place, and how things like harm are even being measured.

These recommendations are focused mainly around relationships, but also around the idea that restorative justice isn't a catchall for solving challenging environmental problems. Rather, it is a means of changing the historical hierarchical narrative of resource management and is a resource for those who seek to move towards a greater sense of democracy when it comes to environmental decision-making. A truly democratic form of governance is one which works not only to address harms as they happen but also includes citizens at every stage of the process.

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