

# TOP DOWN VS. BOTTOM UP: APPROACHES TO HUMAN RIGHTS ACTIVISM AND SOCIAL CHANGE

Case studies by the Global Human Rights Scholars at  
the Kenan Institute for Ethics

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This report was written by the Global Human Rights Scholars at the Kenan Institute for Ethics, a group of Duke Undergraduates (2015-2016). HR Global Scholars Ebony Hargo helped with the formatting of this report and Bochen Han and Michael Bleggi have created a corresponding website that can be found [here](#).

### **About the Institute**

We are an interdisciplinary “think and do” tank committed to promoting moral reflection and commitment, conducting interdisciplinary research, and shaping policy and practice. At Duke we serve as a central node for analysis, debate, and engagement on ethical issues at and beyond the university. We currently feature work in five core areas: Human Rights, Global Migration, Rethinking Regulation, Moral Attitudes & Decision- Making, and Religions & Public Life.

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## Overview

How can we understand the dynamics of human rights activism and social change? The Kenan Institute for Ethics' Global Human Rights Scholars chose to explore this question through pursuing case studies involving "top-down" and "bottom-up" approaches to social change. We conducted a range of case studies implicating one or both dynamics, and extracted potential lessons across diverse settings about how and why human rights and social change does, or does not, emerge.

We view the conceptualizations of "top-down" and "bottom-up" as dynamic and context specific; our understandings of the two terms vary according to the setting. In an examination of different approaches **to protecting women human rights defenders**, "top-down" denotes government, UN and NGO elite-led change, and "bottom-up" means change led by individuals -- the women human rights defenders themselves. In the context of writing about **Sweden's unusual track record in supporting refugees**, we equate the "top-down" with the government-led change -- primarily through legislation. But writing about the **2015 climate change negotiations in Paris**, "top-down" has a narrower meaning, and is limited to only powerful states. "Bottom-up" not only includes civil society and those most affected by climate change, but also weaker states advocating at the UN on their behalf. In an analysis of the **Black Lives Matter movements at Duke and Yale**, "top-down" encompasses the university administration and faculty, and "bottom-up" is shorthand for change led by the student body. Finally, writing about **transitional justice in post-conflict settings**, "top-down" is understood to be the legalist paradigm centered on obtaining individual criminal accountability, whereas "bottom-up" signifies a more collective, communitarian approach that prioritize other forms of redress, like reconciliation.

Our analyses of diverse cases offer a set of cohesive insights into the dynamics of social and human change:

- Some Women Human Right Defenders chose to "opt-out" of the top-down UN system of protection and instead designed their own protection networks only to find their efforts so successful that they are now in a position to reform the top-down approach altogether. *When individuals at the grassroots successfully carve out alternative systems, they may, for better and for worse, find that policymakers at the top are increasingly interested in emulating their alternative models and in collaborating as partners.*
- At Yale, the administration or the "top" is more fragmented than the student body in their positions on the black lives matter movement, allowing for more connections and bi-directional conversations between diverse groups. By contrast, at Duke, the administration and faculty appear more unified than the student body, leading to student engagement of administrators in a unidirectional and perhaps less cohesive way. *Fractures and fissures at the top and bottom matter, but in different ways: at the top they may enable change and at the bottom they may deter it.*

- The long-standing “Swedish Anomaly” —the high degree of acceptance of citizens from other countries—that is captured in public opinion polls can be traced to an expansive legislative approach to accepting foreigners dating back to the end of World War II. Despite rising tensions and some backlash in the current refugee crisis, the reality is that for decades, a “top-down” approach that was unusually protective of refugees has deeply shaped the Swedish public’s support for foreigners in need. *Progressive legislative can lead to powerful social change and inclusive norms, rather than simply emerge from it.*
- In the 2015 climate change negotiations, the fierce debate among states about whether to incorporate human rights language into the agreement illustrates how human rights language can function as a tool both for marginalized communities speaking for themselves and for weaker states speaking to more powerful ones. Before this language, there had been no one to blame when environments were destroyed or when islands disappeared. With it, marginalized communities and weaker states could, at the least, force a debate. *Rather than only be a tool available to those at the top, human rights language can be used by weaker actors at the “bottom” to pressure powerful actors to, at minimum, engage criticisms of their policies and positions. This is an important form of accountability in its own right.*
- In the context of transitional justice, the legalist paradigm, which is centered on vertical relationships between states and individuals and prioritizes individual punishment over goals like structural change, may do more harm than good. It presents a normative problem of indeterminacy of the moral “right to punish” in conflicted societies and an empirical challenge concerning the gap between law’s basic presuppositions of ahistoricity and personal culpability and the realities of collective violence. By contrast, a bottom-up conception of redress as rehabilitating horizontal social bonds offers more promise. Grassroots associations take justice and redress into their own hands and the distance of such projects from state institutions allows for attention to the needs of victims and the community, and is less diluted by extrinsic considerations. *In post-conflict situations, grassroots approaches and horizontal conceptions of redress serves as a solution to the problems of legalism: ahistoricism, overemphasis on individual actors, and the uncertain right to punish given the absence of legitimate institutions.*

## Women Human Rights Defenders: Top Down vs. Bottom Up

Laura Roberts

In 2013, the UN passed a landmark resolution concerning the protection of women human rights defenders (WHRDs). Recognizing WHRDS as “women of all ages who engage in the defence of all human rights and all people who engage in the defence of the rights of women and those related to gender,” the General Assembly called upon nations to “exercise due diligence in preventing violations and abuses against women human rights defenders” and to combat a culture of impunity “by ensuring that those responsible for violations and abuses, including gender-based violence, committed by State and non-State actors...are promptly and impartially brought to justice.”<sup>1</sup> While this resolution marked a watershed in international recognition of WHRDs, the specific threats of violence they face, and the protection they very much need, the situation of WHRDs on the ground remains dire. WHRDs face a number of targeted threats on account of their gender and/or their work promoting women’s rights; in the absence of sufficient protection from states or regional bodies, many WHRDs have chosen to “opt out” of these frameworks and instead have formed protection networks between individual WHRDs and organizations. In recent years, these protection networks have either become formalized and grown into larger NGOs or have come to partner with international NGOs to create a more effective form of protection. This dynamic illustrates how the decision to opt out of “top down” approaches to human rights may yield opportunities to create a separate system – one that involves upper-level actors but stems from action at the bottom.

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<sup>1</sup> UN General Assembly Resolution 68/181, “Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: protecting women human rights defenders.”  
[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/68/181](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/181).

Though all human rights defenders working in dangerous or oppressive environments face grave threats to their safety and well-being, WHRDs suffer doubly. Seen as transgressing both societal constraints on women as well as the status quo on human rights, they are targets of murder, kidnapping, legal harassment, imprisonment, and torture as many human rights defenders are.<sup>2</sup> They are doubly at risk for gender-based violence and attacks, including rape, sexual assault, character attacks, public shaming, and threats to family members.<sup>3</sup> Rape and sexual assault are seen as some of the most effective ways of silencing WHRDs and clearly target their identification as women or protectors of women's rights. The "shaming" form of violence against WHRDs is also unique to women who defend human rights, as in fundamentalist contexts, women are typically assigned proscribed roles and human rights activism transgresses these boundaries. Attacks on family members are also specifically directed at WHRDs; as most cultures view women as the primary caregivers for spouses, children, and relatives, those looking to silence WHRDs often target their family members for retaliation. All of attacks may come from state actors, non-state groups, or even from within a WHRDs own community, making effective protection from outside organizations extremely challenging.

While the UN Resolution on WHRDs represented the apogee of international and regional bodies' attention on the plight of WHRDs, their efficacy has been somewhat minimal. Though this resolution and other international attempts to ameliorate WHRDs' situation do bring visibility to conditions on the ground and provide instruction for willing states, the general apathy and difficulty enforcing protections for WHRDs has generally led to a continuation of the status quo violations against WHRDs. Many WHRDs came to see these

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<sup>2</sup> United Nations Office of the High Commissioner for Human Rights, "Women Human Rights Defenders," <http://www.ohchr.org/EN/Issues/Women/WRGS/Pages/HRDefenders.aspx>.

<sup>3</sup> Kaavya Asoka, "Global Report on the Situation of Women Human Rights Defenders," *Women Human Rights Defenders International Coalition*, [http://defendingwomen-defendingrights.org/wp-content/uploads/2014/03/WHRD\\_IC\\_Global-Report\\_2012.pdf](http://defendingwomen-defendingrights.org/wp-content/uploads/2014/03/WHRD_IC_Global-Report_2012.pdf).

failed efforts as “broken promises,” reflecting a disappointment in the efficacy of such international pronouncements.<sup>4</sup>

As a result, many WHRDs chose to “opt out” of the protection networks established by the UN and other regional bodies, such as the Inter-American Commission of Human Rights and the African Commission on Human and People’s Rights. While these bodies did offer approaches to protecting WHRDs, such as documenting abuses and providing information to Special Rapporteurs or task forces, many WHRDs felt as though this did not adequately protect their mental and material safety. Focusing instead on creating networks of WHRDs to provide solidarity, support, and advance warning about possible attacks or unsafe conditions, WHRDs (especially in Latin America) created their own protection networks.<sup>5</sup> These networks aim to

“pull together the experiences, knowledge and resources of a wide range of organisations and women, regardless of their self-definition, workplace or hierarchy within their organizations and movements...these also denounce and document attacks faced by WHRDs...they support specific cases of women defenders at risk in coordination with a wide range of organisations...and they develop protection skills from a gender perspective.”<sup>6</sup>

With a focus on inclusivity, community, and addressing the immediate needs of WHRDs on the ground, these networks provide a valuable avenue for WHRDs seeking to protect their rights. They also represent a uniquely bottom-up approach; while still calling on the UN, other regional bodies, and states to protect the rights of WHRDs, they do not wait for top-level actors to take action. WHRDs can essentially create their own system of protection, a powerful step for a group that has suffered from inaction and inattention.

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<sup>4</sup> “Mesoamerican Women Human Rights Defenders Initiative,” *Just Associates*, <https://www.justassociates.org/en/ally/mesoamerican-women-human-rights-defenders-initiative-im-defensoras>.

<sup>5</sup> Marusia López Cruz and Cristina Hardaga Fernández, “The Need for Protection Networks for Women Human Rights Defenders,” *International Service for Human Rights*, <http://www.ishr.ch/news/need-protection-networks-women-human-rights-defenders>.

<sup>6</sup> *Ibid.*



These networks have not just remained local or informal, however. Many leading INGOs, including Amnesty International, Freedom House, and FrontLine Defenders, have taken note of these protection networks and the general situation of WHRDs and incorporated them into their activism. Due to outreach and awareness-raising from WHRDs, large INGOs now partner with these defenders and their networks, providing both material aid and a larger platform from which WHRDs can broadcast their message and raise support.<sup>7</sup> Many of these NGOs focus on women's rights as their core mission, contributing the language and theory of feminism and women's rights to the protection of WHRDs and gaining feedback on necessary action from WHRDs themselves.<sup>8</sup> Furthermore, protection networks themselves have even expanded and become NGOs themselves, ranging in organization from the NGO Mesoamerican Women Human Rights Defenders Initiative (IM-Defensoras), which organizes WHRDs and protection networks in Mesoamerica, to the Women Human Rights Defenders International Coalition (WHRDIC, which represents WHRDs and WHRD networks from across the globe in a coalition intended to provide support to embattled WHRDs and raise awareness about women's rights advocacy.<sup>9</sup>

These NGO networks have not only formed effective protection networks for WHRDs but have also contributed substantially to improving global awareness and top-level support and response. The WHRDIC, for example, submits multiple reports a year with recommendations for states and international bodies on how to incorporate a feminist perspective in addressing WHRD violations, how to effectively meet the needs of women on the

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<sup>7</sup> For an example of this kind of relationship, see "Bravely Defending Women's Rights Worldwide," *Amnesty International*, <http://www.amnestyusa.org/our-work/issues/women-s-rights/women-s-human-rights-defenders>.

<sup>8</sup> "Women Human Rights Defenders," *Association for Women's Rights in Development*, <http://www.awid.org/priority-areas/women-human-rights-defenders>.

<sup>9</sup> "Presentation," *Mesoamerican Women Human Rights Defenders Initiative*, [http://im-defensoras.org/?page\\_id=94](http://im-defensoras.org/?page_id=94); "History," *Women Human Rights Defenders International Coalition*, <http://www.defendingwomen-defendingrights.org/about/whrdic-history/>.

ground, and how to better monitor and prosecute violations against WHRDs.<sup>10</sup> This approach has created a new way of addressing a human rights issue – many WHRDs chose to “opt-out” of the top-down system of protection, only to find their efforts so successful that they are now in a position to reform the top-down approach altogether. The trend of forming partnerships with existing NGOs or creating NGOs themselves may have its drawbacks (especially if the issue of WHRDs goes out of fashion in the human rights world), but it seems to have largely been successful in implementing more effective protections for women and raising awareness on a global scale.

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<sup>10</sup> “Resources,” *Women Human Rights Defenders International Coalition*, <http://www.defendingwomen-defendingrights.org/our-work/resources/>.

**The Black Lives Matter Movement: Duke and Yale**  
Amulya Vadapalli, Kalif Jeremiah, Coleman Kraemer

In 1996, *The Agony of Education: Black Students at White Colleges and Universities* was printed. It detailed how black students at universities were confronted with a traditionally white spaces, forced to adjust into an educational system that was not intended for them. Eighteen years later, the Black Lives Matter movement gained steam at elite universities as students loudly proclaimed a hidden truth — nothing had changed. This article considers how this truth is present at two different universities, Duke University (Durham, North Carolina) and Yale University (New Haven, Connecticut). Our analysis has largely been focused on news articles written at the time, including student publications such as *The Chronicle* (Duke University) and *Yale Daily News* (Yale University). This article focuses on how different actors have interacted within this movement, and to what end these tactics and networks have been successful. More specifically, we explore whether top down approaches and networks or bottom up tactics have been more beneficial<sup>1</sup> to the student movements concerned. Rather than take a blanket interpretation of the movements that confines them, we examine each of them contextually and conclude with the lessons this activism holds for future and current social movements at college campuses and universities in the US.

We first justify the use of network theory against competing sociological arguments, and then outline our body of evidence for both colleges. We subsequently use network theory to visually map nodes of interaction between communities and conclude with a summary of our results and further areas for research. Our research allows us to infer some different conclusions about the top-down and bottom-up dynamic in both movements. At Yale, the administration or the “top” is more fragmented than the “bottom,” allowing more connections between diverse groups. This is evidenced by the variety of connections between student advocacy groups and different parts of administration. However, at Duke, there is more unity under the

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<sup>1</sup> Defined as meeting student groups’ declared demands

administration “line.” Fewer faculty have spoken out against the administration; at Yale, faculty have marched with students. This disparity results in a more top-down dynamic at Duke, where administrators, faculty and university employees from the “top” are often spoken unidirectionally to by student groups. At Yale, there is a mix of bottom -up and top-down dynamics where both students and administration engage in two-way dialogue, resulting in more interaction.

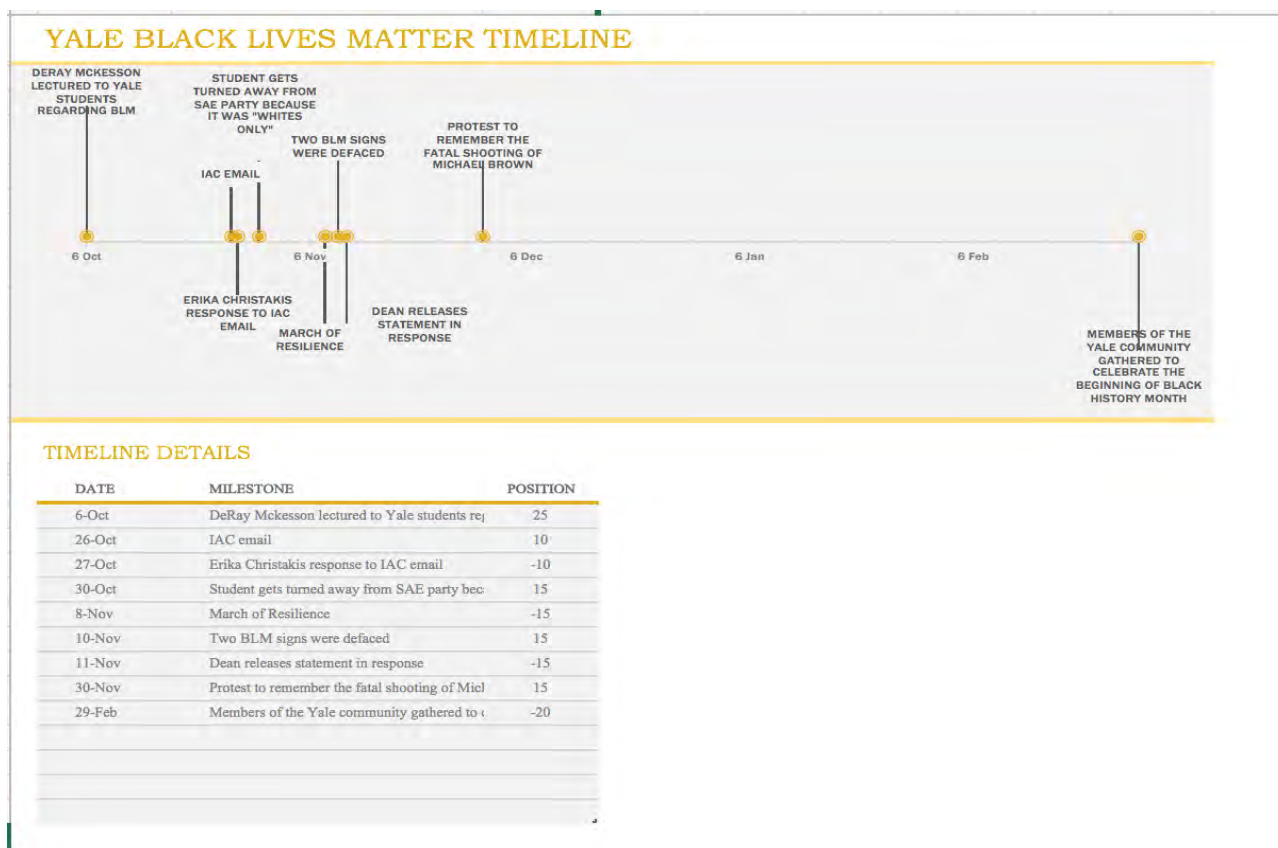
### Methods

We have chosen to analyze the movements from the perspective of network theory for several reasons. Our framework of contrast for these movements at both universities is based on how student groups have effectively used a top-down or bottom-up dynamic in their vision for change. The nature of these student protests have differed from traditional understandings of social movements mainly due to the use of Twitter, Facebook and Yik Yak to mobilize and galvanize members of the community, as well as places of debate. Though they are very clearly public spaces, social movement theory has been slow to adapt to these challenges presented by this advance of technology. Network theory has captured the imagination of academia in the recent past (Kadushin 2015) for several reasons. In particular, applicable to this project, are its flexibility to take into account both individual and group actors, as well as map connections with them. This allows us to take into account the dual role of heads of student associations, as individual actors but also as representative of communities (Mario Diani 2003). This mapping of a set of relationships will allow us to be flexible in terms of actors, allowing us to include diverse platforms like Yik Yak and Facebook, which played pivotal roles in these movements. In addition to placing actors in relation to each other, it visually places actors in larger contexts, thereby providing a basis for comparison and contrast (as we will do with Duke and Yale).

### Timeline: Yale

The Black Lives Matter movement has had a significant presence on Yale University's campus. This is a compilation of events regarding events effecting this movement and its responses. On October 6, 2015, a Black Lives Matter activist, DeRay Mckesson, spoke to about 250 students at Yale regarding the BLM movement. Many criticized the lecture, including Fox News, due to Mckesson likening looting to many of the actions performed by the Boston tea Party. On October 28, Yale's Intercultural Affairs Committee sent a email to the student body instructing students to avoid wearing offensive and culturally insensitive emails. One of Yale's professors and administrators, Erika Christakis, responded to this email by instructing her residents questioning this control over the student body. This event produced national attention on social media and many students felt outraged and requested her resignation from Yale's administration. A day before Halloween, a female student of color was told by a brother in the Sigma Alpha Epsilon fraternity that entrance to a certain Halloween party was "white girls only." (Yale Daily News). In response to these two events, on November 8<sup>th</sup>, approximately 1,000 Yale students, administrators, and faculty had a March of Resilience, where people marched in solidarity from the Afro-American Cultural Center to the Cross Campus section. On November 10, 2015, racist messages referencing black criminality, violence, and rape were written on two different Black Lives Matter signs. The Dean released the following statement "The University condemns these messages, which are an affront to us all. As President Salovey and I wrote just a short time ago, Yale embraces our community's diversity, and it is committed to increasing, supporting and respecting that diversity; it is what makes our campus such a vibrant and dynamic place, built on mutual respect" (Yale Daily News). On November 30, Yale students held a protest to remember the fatal shooting of Michael Brown by a Ferguson police officer—the protesters silently held their hand up for four and a half minutes to commemorate the four and a half hours that Brown's dead body lay on

the street after he was killed. To celebrate the beginning of Black History members of the Yale and New Haven communities gathered to have Sunday brunch on February 29, 2016.<sup>2</sup>



There is a significantly positive relationship between the Yale Student body, the Yale black student body, and the Yale administration. The protests began shortly after the SAE incident barring a black student from entering a “whites only” party. There is not much backlash of the Black Lives Matter movement at Yale and many students seem to be in favor of the changes it elicits. In addition, the students have a successful job getting their point across and the progress they want achieved due to their resilience communicating with the Yale administration. When certain events do not go their way, Yale’s black student body

<sup>2</sup> More details on the specific events shown can be found in Appendix one

successfully gets their point across. An example of this is their persistence in showing up at President Salovey's house in the middle of the night to address the problems of racism on Yale's campus, along with a list of additional demands. This persistence along with a possibly more accepting campus and national prestige, explains Yale's success in address problems of racism and inclusion and gaining more national attention than other similar universities.

As shown in the chart above, while there is almost equal communication from the student body and the administration, with the administration responding to many of the complaints and concerns the student body has. The administration and faculty also plays a significant role in the Black Lives Matter movement at Yale. Unlike other schools, the faculty has criticized the administration, has spoke out against Yale's lack of diversity. For example, Seyla Benhabib, a political science professor, stated that Yale has failed to recruit and retain enough faculty minority members (The Washington Post).

It is interesting to note that there are a variety of different individual nodes playing a key part in the Black Lives Matter movement, such as DeRay Mckesson and Erika Christakis's involvement.

#### Timeline: Duke

Last spring, on the first of April 2015, a noose was found hung on a tree on the plaza outside the Bryant Center. After a thorough investigation the person responsible was found. Despite the hanging of a noose being illegal in North Carolina, the person was allowed to stay at Duke, only taking a semester off to think about what they did wrong.

A Poster advertising Patrisse Cullors Speech was vandalized. Someone scratched out the "black" in "Black Lives Matter" and wrote "White", then adding "No Ni\*gers" on the top right corner. A group of Duke students, led by BSA president Henry Washington took to the chapel steps in a demonstration of solidarity. Keizra Meckay, president of DSG, attended and said more must be done to solve the problem racism on campus. Patrisse Cullors came, as

scheduled, a few days later and spoke to the students about the incident. She said, “there is a difference between a shooting happening at your school, and someone defacing a flyer. But the allowing of defacing a flyer and nooses on trees leads to shootings inside schools.” The crowd was majority black and minority students. Larry Moneta said he is, “disgusted every time something like this happens,” and wishes we lived in a world “where racism and sexism and homophobia” didn’t exist, “but that’s unlikely.”

“Black Lives Matter” was spray painted on the James B. Duke statue in front of the chapel on November 13, 2015, ahead of an organized meeting between the administration and student body.. Many, including parents on the parents page of Duke, called for immediate action. Some were advocating for legal action in fact, for those who vandalized the statue. Expulsion was another term that was used.

Not enough students were able to attend first meeting with President about state of campus (Nov. 13), so organized another meeting the following Friday (Nov. 20) The first meeting was at 12pm on Friday - an inconvenient time for many. Ahead of second meeting over 150 Facebook users shared an album of offensive, discriminatory yik yaks aimed towards black students, some suggesting those students leave campus rather than advocate for change. At this meeting students read through a list of demands with various deadlines, some as soon as one week. President and administration allowed to speak very little during meeting. One of main requests was for an official hate speech policy implemented. Multiple different minority groups on campus came to stage and read their own list of demands.

Finally, Duke created a University Task Force on Bias and Hate Issues. They sent out applications for those interested in the student body to apply.

Many of the relationships, portrayed by the source node to destination node setup, are mutual, with both sides interacting with the other. For example, the Duke Student Body and the administration. Each was a destination node to the other. While this is not true for the more

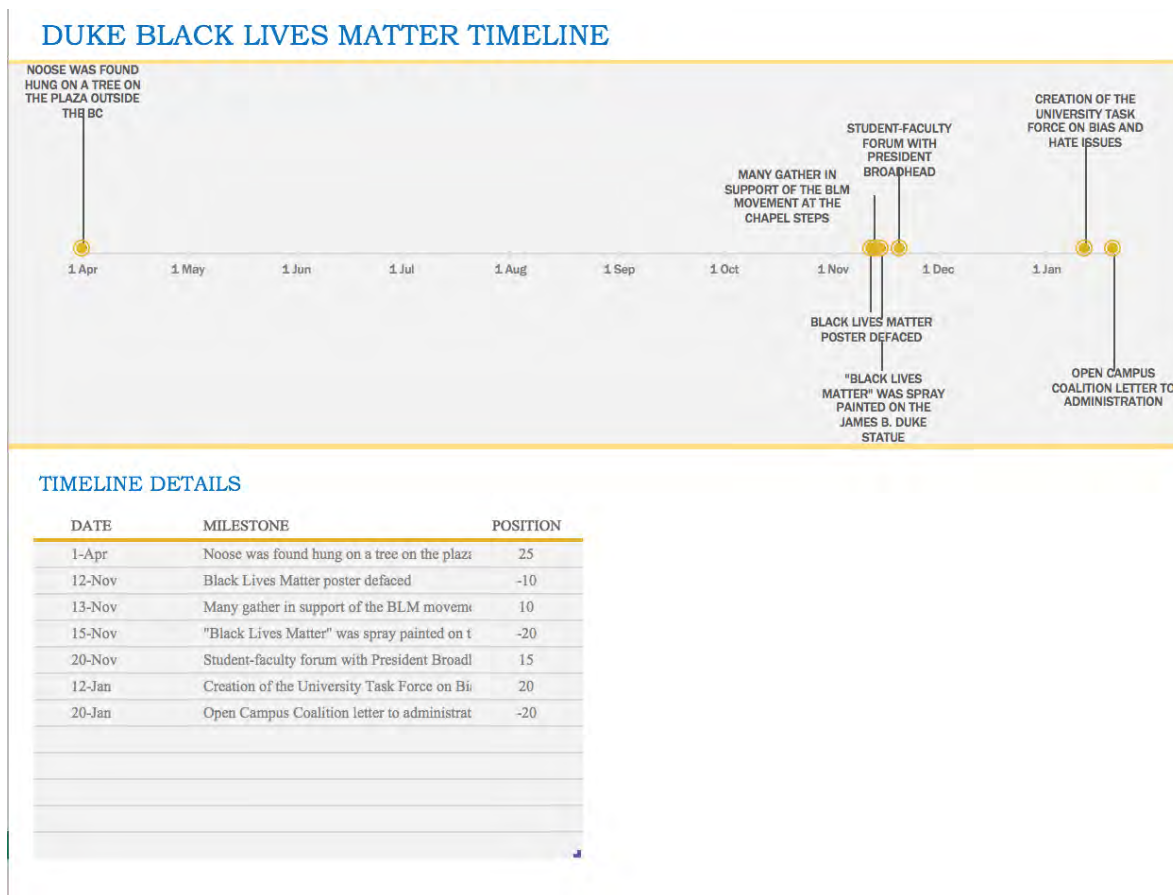


radical groups, specifically Duke Enrage and Open Campus Coalition, these groups fall under the larger umbrella of the Duke Student Body as groups newly made to address the situation at hand. Both groups were present at the forums. Other relationships are purely one sided, such as the relationship between Yik Yak and BSA. Yik Yak, with its anonymous posters, has been used as a platform to attack representatives and members of BSA, without rebuttal by anyone from BSA.

As shown by the above chart, there is far more communication towards the administration than there is from the administration to the concerned (or supportive) groups on campus. Such is expected as the student body far outnumbers the administration, but also, there is a very large bureaucratic system that must be sifted through before the administration can officially respond. Contrarily, any student can simply file a complaint or take to social media to address the administration. Out of the people addressing the administration only one group (Open Campus Coalition) supported the administration, telling them that they were going about things the right way. The rest of the groups (BSA, Duke Enrage) requested more of the administration, with Duke Enrage producing a list of demands that was read to the administration.<sup>3</sup>

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<sup>3</sup> Further analysis can be found in Appendix 2

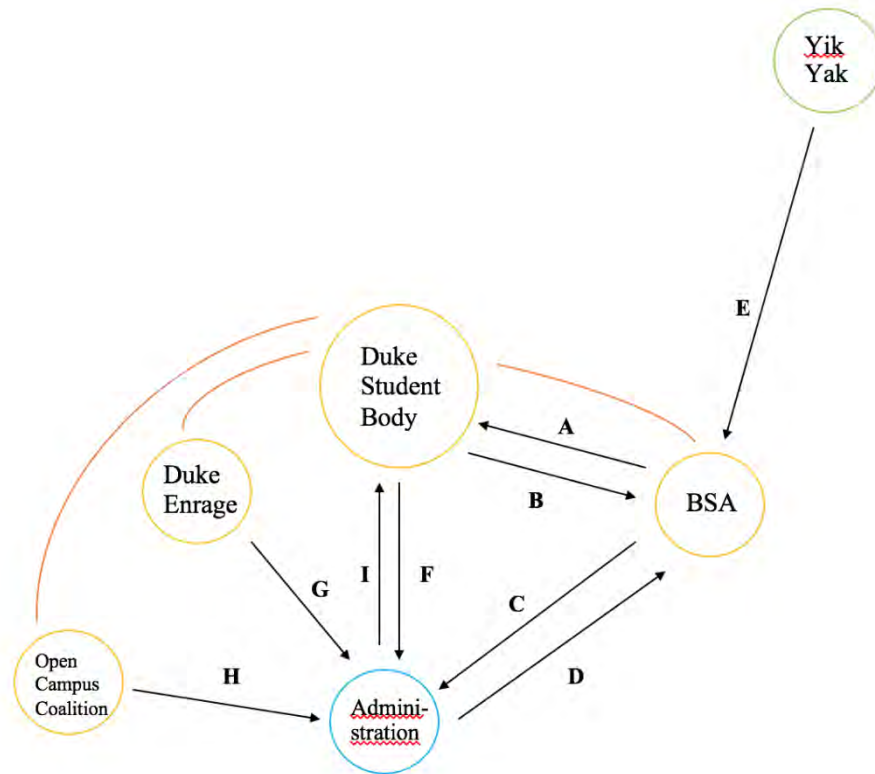


### Points of Comparison

For the compare and contrast purposes of this article we have highlighted, in a table below, the elements standardized across schools.

Table 3: Points of Comparison

	Yale	Duke
Administration	Jonathan Halloway, Peter Salovey, Erika Christakis	Prez Broadhead, Larry Moneta
Student Activist Groups involved	BSA, Next Yale	BSA , Open Campus Coalition, Duke Enrage, DSG



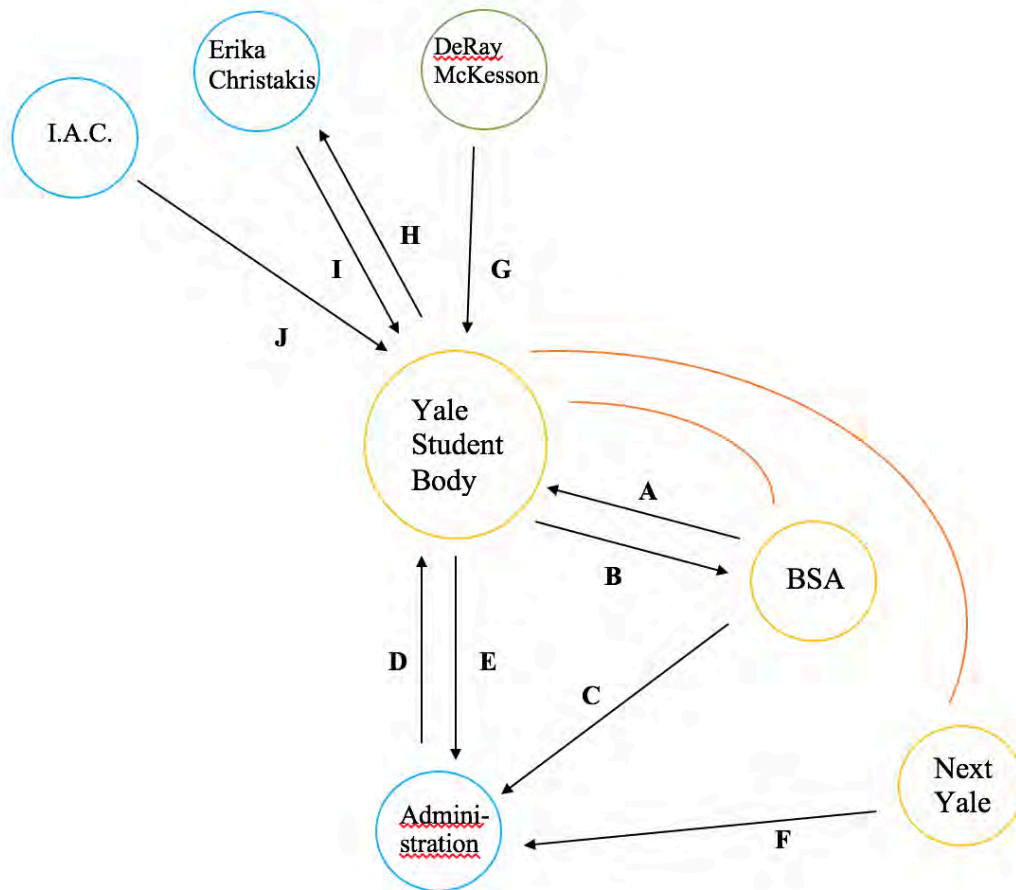

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*Duke Enrage, Duke BSA, and Open Campus Coalition all have orange curves connecting them to the Duke Student Body because while they have branched out and fostered their own relationships and identities, these groups are ultimately subsets of the larger Duke Student Body. That is also the reason why their respective nodes are outlined in the same color.*

- A. BSA regularly interacts with the student body through events and conversations it puts on. In addition, immediately after the defacing of the poster advertising Patrisse Cullors, BSA reached out to anyone who was upset by the incident to join them in solidarity. With many unaffiliated members of the community BSA was able to gather a crowd of substantial size on the chapel steps.

- B. Many students have shown their support for BSA and its efforts to achieve equality of presence on campus. At the demonstration on the chapel steps many students unaffiliated with BSA attended in order to extend their support. At the same time, there are also students who do not support BSA and find them to be more divisive rather than helpful.
- C. BSA continues to appeal to the administration for more representation and action to protect its black students and actually make them feel like they belong on the campus as much as their white counterparts. BSA and the administration have been working together, in the aforementioned PCOBA, as well as a few other capacities that allow for the flow of dialogue.
- D. The administration has made efforts to reach the demands of BSA. They continue to work with the BSA in order to try and improve the experience of black students on campus. One way in which they do this is through PCOBA – President’s Council on Black Affairs, a group of hand selected students and faculty that meet once a semester with the President in order to gauge the current experience and sentiment of the general black student body and try to determine what can be done to improve it.
- E. Many posts on Yik Yak have attacked BSA and its representatives. One yak put forth the idea that BSA president, Henry Washington, does not improve the Duke community and would be better off leaving. Students who wish to hide behind anonymity have taken to Yik Yak a number of times to bash the organization. An album of over 150+ Yik Yaks still exists on Facebook, many of them directed towards BSA, its representatives, its members, and the black community in general.
- F. Duke students turned up to the forum held by the administration in order to listen as well as voice their own concerns. Many were upset with the response of the administration to the many events that occurred on campus. While not all of these students affiliated themselves with one of the two opposing groups, Duke Enrage and Open Campus Coalition, many still asked that the administration do more.

- G. Duke Enrage is a group of Duke students who are unsatisfied with the job that the Duke administration has done to create a campus climate that supports and protects all of its students. Their Tumblr page states: “We are a coalition of students who have come together in solidarity to collectively resist and dismantle the oppressive systems that attempt to deny our capacity to be whole. We are determined to survive, thrive, and radically re-imagine a way of being that allows us to love, nurture, and affirm ourselves and each other. The imperialist, colonialist, capitalist, white supremacist cis-heteropatriarchy affects us all differently, but we understand that each of our existences are intimately connected. We are united in love and liberation struggle; we know that none of us are free until all of us are free.” Duke Enrage was responsible for calling for a second meeting with the administration when a large amount of students could not make the first meeting that was scheduled by the administration. At this meeting they brought forward a list of demands to be met by the administration.
- H. Many students have come forward to let the administration know that in their opinion they do not need to do anything to improve the campus climate – it is just fine. These students believe that the open exchange of ideas and opinions allows radical statements to be made, even if they offend some of the population. Combating the trending hashtag #dukeyouareguilty they proclaim that Duke is in fact not guilty, and should not cave to “PC police”.
- I. The administration held a meeting with the student body on 12pm on November 13 in order to hear the concerns of the students voiced in an open forum. Transparency and collaboration were main aims of the forum, allowing for students and administrators to come together and discuss the problems on campus and what could be done to improve it. The forum also allowed for the students to see vital members of the administration and know that real people are hearing what they have to say.



*Next Yale and Yale BSA both have orange curves connecting them to the Yale Student Body because while they have branched out and fostered their own relationships and identities, these groups are ultimately subsets of the larger Yale Student Body. That is also the reason why their respective nodes are outlined in the same color. The nodes "Administration", "Erika Christakis", and "I.A.C." are also the same color because the I.A.C. is a part of the administration.*

- A. Students marched together alongside the BSA in the March of Resilience, coming to the defense of their peers
- B. Students marched together alongside the BSA in the March of Resilience, coming to the defense of their peers

- C. The BSA at Yale gave the administration a set of demands, or possible steps, the administration could take to address the correct dialogues on campus, such as the possible administrative responses, abilities for Black people and other people of color to have input on administration and faculty hiring. Salovey admitted his failure by stating: "I would say that to have about 50 minority students in a room with me saying to me that their experience was not what they hoped it would be, I take personal responsibility for that and I consider it a failure." Salovey responded by sending out an email to the student body stating that he was researching the SAE incident and supported the message by the IAC.
- D. Dean released a statement in response to the defaced posters: The Dean released the following statement "The University condemns these messages, which are an affront to us all. As President Salovey and I wrote just a short time ago, Yale embraces our community's diversity, and it is committed to increasing, supporting and respecting that diversity; it is what makes our campus such a vibrant and dynamic place, built on mutual respect"
- E. Administrators, faculty, and students marched through campus in solidarity in response to the events that occurred around Halloween, called the March of Resilience.
- F. Students delivered demands to the president of Yale at his home, asking Salovey to eliminate the title of "master" for the twelve different heads of Yale's residential communities. The administration has not given into this particular demand. The President did however stated that Yale will create four new positions for scholars working on the histories of minorities and a \$50 million initiative dedicated to increase faculty diversity.
- G. Spoke to 250 students about the Black Lives Matter Movement. This lecture received national attention because he supported the act of looting, likening it to the actions of the Boston Tea Party. This was not a dialogue— the destination node did receive a specific response.

- H. Hundreds of students signed an open letter to Erika Christakis. This is an excerpt of that letter: “In your email, you asked students to “look away” if costumes are offensive, as if the degradation of our cultures and people, and the violence that grows out of it is something that we can ignore. We were told to meet the offensive parties head on, without suggesting any modes or means to facilitate these discussions to promote understanding.” This relationship was a dialogue between Mrs. Christakis and these members of the Yale Student Body, however, Mrs. Christakis did not respond to this open letter.
- I. Sent an email responding to that of the intercultural committee, questioning the validity of the email urging cultural sensitivity. This email received a significant backlash from members of the Yale student body and gained national attention. A small group of these students requested her resignation.
- J. Sent an email to the Yale student body urging people to be culturally sensitive while picking their Halloween costumes.

### Conclusion

Our research offers several important conclusions for activism at universities across the United States, but particularly for student activism at elite colleges like Duke and Yale. Two key differences emerge from a network theory mapping of the Black Lives Matter movements at Duke and Yale.

First, diverse administrative views lead to more meaningful dialogue, or two sided connections. At Yale, there was a clear disagreement between official statements from Salovey’s office and the personal rebuttals from members of faculty such as DeRay Mckesson and Erika Christakis. In contrast, at Duke, the administration did not disavow professors who been accused of bias against African American students, and the connections in the network quickly turned one sided. The administration chose to respond through different channels to students, instead of engaging with representative student groups, the way the administration at Yale did.



Second, as the timelines show, the movement at Duke reached stasis as the BSA and other student groups demanded more of the administration, but the administration continued to defer to the University Task Force on Bias and Hate Issues. In contrast, the debate at Yale was far more focused on actions they demanded President Selevy take. This connection presents an important challenge in bureaucratic systems. As the nodes from the demanding group and the responding group grow further apart, the process becomes more opaque and creates a vacuum where frustration festers.

Despite these apparent differences in organization, there has been only minor differences in outcomes of the movements. There have been small steps taken at both universities, including the renaming of places on campus to honor an African-American(Duke), and the hiring of new faculty (Yale). However, there has been little systematic change and further directions for research include how different analytical issues could have altered the direction of the movement.

*Author's Note :*

*This work would not have been possible without the guidance of Dr. James Moody, the Robert O. Keohane professor of sociology at Duke University. The authors also wish to extend their deepest gratitude to Professor Suzanne Katzenstein for her patience and guidance.*

*All the data for this article was obtained from secondary sources and no interviews were conducted. All three authors are currently enrolled Duke undergraduates.*

## Appendix 1 : Yale

Network Theory Analysis

Source Node	Destination Node	Time Stamp	Qualitative Data
DeRay Mckesson	Yale Student Body		Spoke to 250 students about the Black Lives Matter Movement. This lecture received national attention because he supported the act of looting, likening it to the actions of the Boston Tea Party. This was not a dialogue— the destination node did not have a specific response.
Intercultural Affairs Committee	Yale Student Body		Sent an email to the Yale student body urging people to be culturally sensitive while picking their halloween costumes.
Erika Christakis	Yale Student Body		Sent an email responding to that of the intercultural committee, questioning the validity of the email urging cultural sensitivity. This email received a significant backlash from members of the Yale student body and gained national attention. A small group of these students requested her resignation.
Yale Student Body	Erika Christakis		Hundreds of students signed an open letter to Erika Christakis. This is an excerpt of that letter: "In your email, you asked students to "look away" if costumes are offensive, as if the degradation of our cultures and people, and the violence that grows out of it is something that we can ignore. We were told to meet the offensive parties head on, without suggesting any modes or means to facilitate these discussions to promote understanding." This relationship was a dialogue between Mrs. Christakis and these members of the Yale Student Body, however, Mrs. Christakis did not respond to this open letter.

Member of SAE	Yale black community		It was reported that a member of the Sigma Alpha Epsilon fraternity told a black girl that she was not allowed to enter the halloween party because the party was only for whites. The Yale community did not specifically respond to SAE's allegedly themed party, however the community marched in solidarity in the following days. The university later concluded that there was not enough evidence to conclude that SAE had a "whites only" themed party.
Yale community	Yale faculty and administration		Administrators, faculty, and students marched through campus in solidarity in response to the events that occurred around Halloween, called the March of Resilience.
Yale Student Body	Yale black community		A variety of posters were defaced with racist messages, referencing black incarceration and violence. This was likely committed by a member of the Yale student body.
Yale Administration	Yale Student Body		Dean released a statement in response to the defaced posters :The Dean released the following statement "The University condemns these messages, which are an affront to us all. As President Salovey and I wrote just a short time ago, Yale embraces our community's diversity, and it is committed to increasing, supporting and respecting that diversity; it is what makes our campus such a vibrant and dynamic place, built on mutual respect"
Yale BSA	Yale Administration		The BSA at Yale gave the administration a set of demands, or possible steps, the administration could take to address the current dialogues on campus, such as the possible administrative responses, abilities for Black people and other people of color to have input on administration and faculty hiring.

			Salovey admitted his failure by stating :“I would say that to have about 50 minority students in a room with me saying to me that their experience was not what they hoped it would be, I take personal responsibility for that and I consider it a failure.” Salovey responded by sending out an email to the student body stating that he was researching the SAE incident and supported the message by the IAC.
Minority students of Yale (Next Yale)	Yale Administration	November 13, 2015	Students delivered demands to the president of Yale at his home, asking Salovey to eliminate the title of “master” for the twelve different heads of Yale’s residential communities. The administration has not given into this particular demand. The President did however stated that Yale will create four new positions for scholars working on the histories of minorities and a \$50 million initiative dedicated to increase faculty diversity.

## Appendix 2 : Duke

Network Theory Analysis

Source Node	Destination Node	Time Stamp	Qualitative Data
Duke Student Body	BSA		Many students have shown their support for BSA and its efforts to achieve equality of presence on campus. At the demonstration on the chapel steps many students unaffiliated with BSA attended in order to extend their support. At the same time, there are also students who do not support BSA and find them to be more divisive rather than helpful.
Yik Yak	BSA		Many posts on Yik Yak have attacked BSA and its representatives. One yak put forth the idea that BSA president, Henry Washington, does not

			improve the Duke community and would be better off leaving. Students who wish to hide behind anonymity have taken to Yik Yak a number of times to bash the organization. An album of over 150+ Yik Yaks still exists on Facebook, many of them directed towards BSA, its representatives, its members, and the black community in general.
Administration	BSA		The administration has made efforts to reach the demands of BSA. They continue to work with the BSA in order to try and improve the experience of black students on campus. One way in which they do this is through PCOBA – President’s Council on Black Affairs, a group of hand selected students and faculty that meet once a semester with the President in order to gauge the current experience and sentiment of the general black student body and try to determine what can be done to improve it.
Open Campus Coalition	Administration		Many students have come forward to let the administration know that in their opinion they do not need to do anything to improve the campus climate – it is just fine. These students believe that the open exchange of ideas and opinions allows radical statements to be made, even if they offend some of the population. Combating the trending hashtag #dukeyouareguilty they proclaim that Duke is in fact not guilty, and should not cave to “PC police”. The official letter to the administration, from the Open Campus Coalition was released by The Chronicle on January 20, 2016.
BSA	Administration		BSA continues to appeal to the administration for more representation and action to protect its black students and actually make them feel like they belong on the campus as much as their white counterparts. BSA and the administration have been working together, in the aforementioned PCOBA, as well as a few other capacities that allow for the flow of dialogue.
Duke Enrage	Administration		Duke Enrage is a group of Duke students who are unsatisfied with the job that the Duke administration has done to create a campus climate that supports and protects all of its students. Their Tumblr page states: “We are a coalition of students who have come together in solidarity to collectively resist and dismantle the oppressive systems that attempt to deny our capacity to be whole. We are determined to

			<p>survive, thrive, and radically re-imagine a way of being that allows us to love, nurture, and affirm ourselves and each other. The imperialist, colonialist, capitalist, white supremacist cis-heteropatriarchy affects us all differently, but we understand that each of our existences are intimately connected. We are united in love and liberation struggle; we know that none of us are free until all of us are free." Duke Enrage was responsible for calling for a second meeting, on November 20th, with the administration when a large amount of students could not make the first meeting that was scheduled by the administration. At this meeting they brought forward a list of demands to be met by the administration.</p>
BSA	Duke Student Body		<p>BSA regularly interacts with the student body through events and conversations it puts on. In addition, immediately after the defacing of the poster advertising Patrisse Cullors, BSA reached out to anyone who was upset by the incident to join them in solidarity on the chapel steps that day (November 13). With many unaffiliated members of the community BSA was able to gather a crowd of substantial size on the chapel steps.</p>
Administration	Duke Student Body		<p>The administration held a meeting with the student body on 12pm on November 13 in order to hear the concerns of the students voiced in an open forum. Transparency and collaboration were main aims of the forum, allowing for students and administrators to come together and discuss the problems on campus and what could be done to improve it. The forum also allowed for the students to see vital members of the administration and know that real people are hearing what they have to say.</p>
Duke Student Body	Administration		<p>Duke students turned up to the forum held by the administration in order to listen as well as voice their own concerns. Many were upset with the response of the administration to the many events that occurred on campus. While not all of these students affiliated themselves with one of the two opposing groups, Duke Enrage and Open Campus Coalition, many still asked that the administration do more.</p>

## **The Swedish Approach towards Mass Immigration: A Successful Top-Down Model for change in the European context of the Current Migrant Crisis?**

Rinzin Dorjee

### **Introduction:**

In what was mostly a homogenous country, fourteen per cent of the population in Sweden is now foreign-born, and the number keeps rising. The open Swedish immigration policy, unique in Europe, of extending permanent residency to all asylees, and the continuing migration of refugees to Europe continue to add to the influx of migrants to Sweden, as has the lack of a coherent E.U system for handling asylum seekers. After taking in more asylum seekers per capita than any other nation in Europe, figures from Eurobarometer Survey (Source: "L'OPINION PUBLIQUE DANS L'UNION EUROPÉENNE" Terrain: December 2014) still show that over 72 percent of Swedes are either "fairly positive or very positive" towards immigration from countries outside the European Union.

The Swedish approach towards mass immigration suggests that top-down humanitarian change is indeed possible and can be very effective, in spite of its myriad challenges that need to be recognized to avoid backlash from the bottom-up. The Eurobarometer Survey further showed that an even greater 82 percent of swedes are willing to welcome immigrants from other EU countries. No other country in the E.U. comes anywhere close to these levels of receptivity. A clear majority of Swedes believe that immigration is good for Sweden and are in favor of it. These survey findings can be explained by a long-standing tradition of government openness towards foreigners/refugee/immigrants. Sweden stands out from all other EU states in its expansive legislative approach to accepting foreigners into the country. This broad "top-down" approach to refugees has deeply shaped the Swedish public's unusual degree of openness to and support for foreigners in need (or refugees/immigrants etc.)

## Part I -What is Unique about Sweden's Legislation and how it originated:

Sweden did not become a country of immigration until World War II. Its modern era of immigration can be categorized into four stages, with each stage representing different types of immigrants and immigration as following:

- 1) Refugees from neighboring countries (1938 to 1948)
- 2) Labor immigration from Finland and southern Europe (1949 to 1971)
- 3) Family reunification and refugees from developing countries (1972 to 1989)
- 4) Asylum seekers from southeastern and Eastern Europe (1990 to present) and the free movement of EU citizens within the European Union.

Historically, the current Swedish immigration policy was in its infancy after the World War II when the first refugees arrived from its immediate neighboring countries (1938 to 1948). Thousands of Finnish children and Jews from Norway and Germany were accepted and provided with work in Swedish factories, agriculture and forestry to fill in for thousands of Swedish citizens who were called up for national defense service by the government. Furthermore, in the 1950s and 1960s, it appears that the recruitment of immigrant labor became very vital for generating the tax-base required for the expansion of its public sector. However, also during this period, on 28<sup>th</sup> July 1951, Sweden became an official signatory of the 1951 UN Convention Relating to the Status of Refugees and the 1967 Protocol. So, its acceptance of refugees was not entirely non-humanitarian. Through its commitments to these UN conventions, it continued to provide asylum channels to individuals who managed to escape from the Soviet Union or Warsaw Pact countries, thousands of Hungarians during the 1956 Budapest uprising and thousands of Czech refugees when Prague was taken over by Soviet tanks in 1968. Sweden accepted another wave of refugees (1972 to 1989) mostly as a result of family reunification and refugees from developing countries including all the Ugandan Asians expelled in 1972 by Idi Amin, whose Africanization policies stripped Asians of their citizenship.

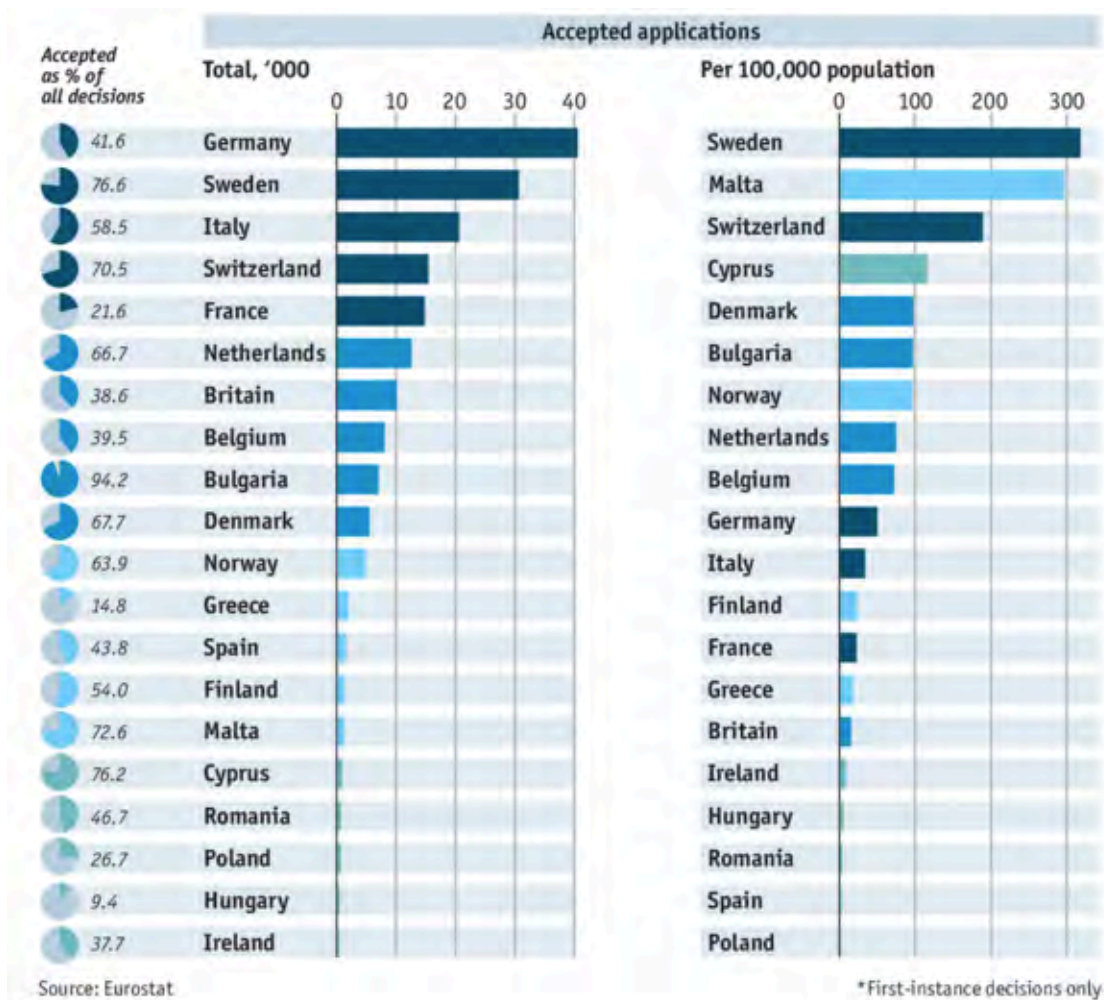


Furthermore, Sweden also readily accepted Christian Orthodox Syrian refugees from the Middle East who sought asylum on the grounds of religious persecution and the Kurds from Iraq, Iran and Turkey during the period of 1970s to 1980s. The final wave of refugees, which initially consisted of asylum seekers from Eastern Europe in 1990s, has extended to the present day consisting of asylum seekers from beyond Europe.

Sweden more than lived up to its commitment to the United Nations by taking in more refugees than any other European state. Moreover, it clearly also felt the need to grant asylum on wider humanitarian grounds than the ones codified by the UN or the joint E.U. regulations. Hence, in 1989, Sweden spearheaded a wider humanitarian response to immigrants by establishing its National Aliens Act, which entered into force in July 1990 and this historically marks its departure from not just strictly following the UN conventions but also having additional grounds on which it can grant asylum and permanent residence to immigrants seeking asylum in Sweden. As a country that signed the UN Convention Relating to the Status of Refugees, it continues to examine each asylum application individually to determine the need for protection like any other European state. However, in comparison with other European states and UN requirements, it takes a much more progress approach towards immigration as well, starting from the definition of refugee codified in its National Aliens Act takes For instance, the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees, both define a refugee as someone who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country." This universal definition of refugees falls short in terms of ensuring protection to the maximum number of persons fleeing persecution and for reasons not outlined in the definition in spite of its efforts at spearheading universal humanitarian response. Sweden's definition of refugees, as outlined in its 1990 National Aliens Act is more progressive: in addition to the UN provisions,

and also to EU "Subsidiary Protection" regulations, Sweden's legislation has an extra "Other Protection" provision, a category that exists only in the Swedish Aliens Act; it has no equivalent in international conventions and in EU legislation. To be more specific, a person who is not a refugee in accordance with the definition of the UN Convention Relating to the Status of Refugees or the additional "Subsidiary Protection" provided by the joint E.U. legislation is still eligible for asylum or residence permit as a person in need of protection in Sweden. "Other Protection" under Swedish legislation provides protection to an asylum seeker "who cannot return to their native country due to armed conflict or due to serious opposition in the native country, feels a well-founded fear of being subjected to serious violation or cannot return to their native country due to an environmental disaster." A person granted a residence permit through "Other protection" is eligible to receive refugee status declaration and this is possible only in Sweden. The same Act goes much further with its "Exceptionally Distressing Circumstances" clause that states, "Asylum seekers may, in exceptional cases, be granted a residence permit, even if they do not need protection from persecution." According to the Act, an "exceptional case" could be personal circumstances such as "health issue or distressing situation in their native country." The considerable diversity among Sweden's immigrants is indeed reflective of this very progressive, open and humanitarian nature of its immigration legislation and its continuous success in its immigration history on humanitarian grounds indicates that top-down change is indeed possible and effective.

The following table indicating "European Decision on Asylum Applications in 2014" is a clear evidence of the openness of the Swedish immigration system compared to other European nations. Germany tops the list of acceptances in terms of number, but when taken as a proportion of existing citizens it drops to tenth place, granting asylum to just 50.2 per 100,000. Sweden however, much smaller than Germany, is highly accommodating by both measures by ranking second in positive decisions overall, and first in proportion of population, taking 317.8 per 100,000. (Source: Eurostat 2014)



## Part II – What is the Impact of Sweden’s Legislation on Society’s Receptivity toward Contemporary Refugees? Evidence from the Current Crisis

The success of the progressive Swedish immigration policies through its history of myriad waves of incoming refugees since becoming a signatory of the UN Conventions and furthermore since its establishment of the National Aliens Act 1990 seem to have contributed strongly towards creating an unusual degree of bottom up support. According to the International Organization for Migration (IOM), the number of refugees and migrants arriving by land and sea in the European Union passed one million in 2015. Many streamed into the E.U., fleeing increasing conflict and deprivation in the Middle East, Africa and Asia. More than a fifth, 35,000, of those that arrived in Sweden have been unaccompanied children. When the

small, crumpled body of 3-year-old Alan Kurdi washed up on the Aegean coast on Sept. 2, 2015, both the Swedish government and the citizens rallied harder than ever through various community-based fund-raising events to house refugees fleeing for their lives. Moreover, the Swedish regulation on “Threat and Risk Assessment” established in 1992 allows the government to use summer homes of its citizens in a time of crisis. This means that, the citizens are to, voluntarily or by law, hand over the keys of their extra houses and apartments to help the government house the asylum seekers. While the rest of Europe and its citizens struggled with the uncomfortable moral dilemma regarding how much solidarity and humanitarian sentiment they should conjure for refugees who arrive at their borders, the Swedes did not simply hesitate.

This “Swedish Anomaly,” the high degree of acceptance of citizens of any other country, is evident in public opinion data. According to figures from the Eurobarometer Survey, no fewer than 72 percent of Swedes said they were either “fairly positive or very positive” towards immigration from countries outside the European Union, with an even greater 82 percent welcoming immigrants from other EU countries. No other country came anywhere close, with only 48 percent of the citizens of the next most open countries, Croatia and Spain, saying they felt positive to immigrants from outside the EU. According to another survey conducted by pollsters Ipsos commissioned by Swedish newspaper Dagens Nyheter, more than 60 percent, a clear majority of Swedes believe that immigration is good for Sweden and are in favor of it. Furthermore, The Local, a Swedish newspaper states that Sweden is “expected to receive up to 105,000 asylum seekers next year, according to official estimates.”

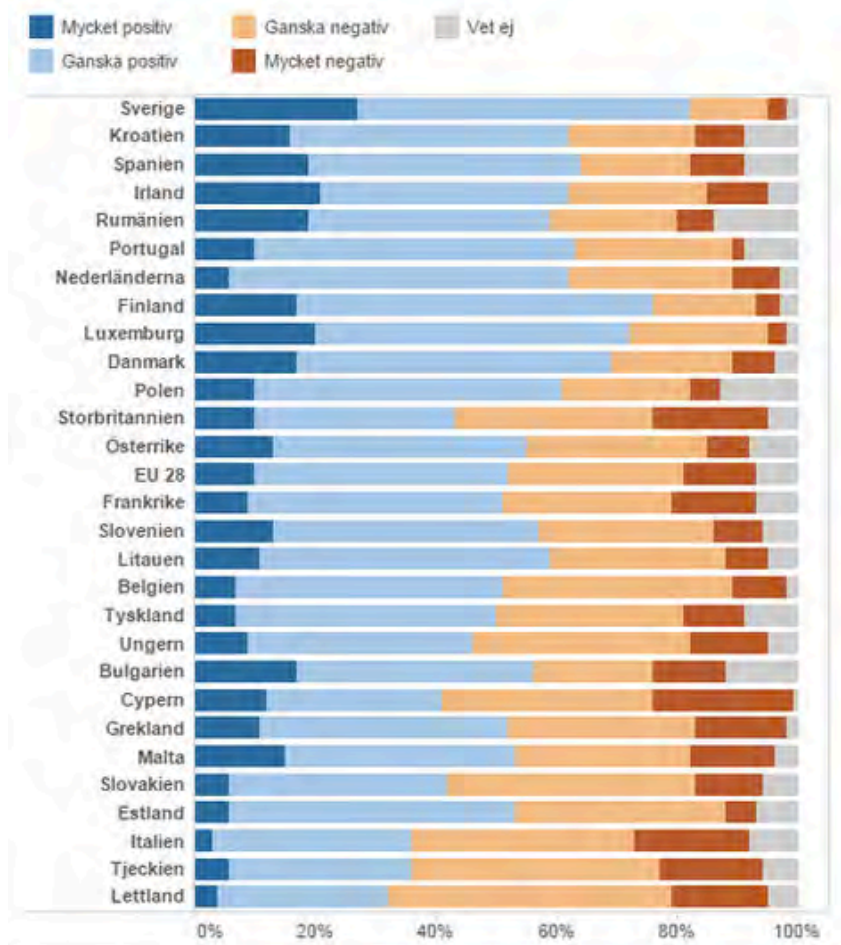
Swedish immigration policies seem to have played an important role in what, Lars Trägårdh, the Swedish historian describes as “a change of ideals” that Swedish citizens are experiencing. According to him, the traditional Swedish ideal and self-image took a great deal of “pride in recognition of the nation-state, where citizens work hard and pay taxes.” But a more recently developed Swedish ideal, “held by the majority of the Swedish citizens, has more

of a universal human-rights focus that places the instinct to help as many refugees as possible ahead of the traditional priorities of a nation-state, such as securing high employment levels, insuring housing and social welfare for existing citizens, and protecting its borders.” From Sweden’s immigration history, it is clear that the State has played a strong role in forming this more human rights-oriented legislation to respond to the waves of incoming refugees, that departed from the traditional priorities of a nation-state and its citizens.

The following chart by Eurobarometer provides a comparison of different attitudes to non-E.U. immigration of E.U. citizens by state.

(Source: Eurobarometer Survey:

[http://ec.europa.eu/public\\_opinion/archives/eb/eb82/eb82\\_anx\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb82/eb82_anx_en.pdf))



### Part III- Brief caveats: conditions under which the success of the Swedish Top-Down Model for change is hindered

As much as it is possible for top-down change to mobilize change as demonstrated by Sweden's approach towards mass immigration since the first incoming refugee wave in the early 1930s and the inception of its Aliens Act, some challenges inevitably limit its ability to do so at the optimum. For instance, nearly overwhelmed with the human tide of 2015 and with arrivals outpacing the government's ability to find shelter, the government struggles with finding measures to fulfill its promise to provide asylum seekers with housing and the fiscal costs to do so. Thus, asylum seekers have been forced to sleep on the streets since November 2015 and there are now more than 7,000 applications (the maximum peaking at 10,000 applications) for political asylum a week in Sweden. This issue of scarce resources faced by the current government is exploited by the Swedish Democrats, a party with roots in

the neo-fascist fringe. With its defiant anti-immigrant and anti-refugee message, warning the Swedes that refugees will destroy the country's finances and Swedish culture with poverty, and crime, the party has recently surged toward the top of opinion polls. Its growing popularity has put pressure on the center-left government to take a harder line on refugees and plays an important role in encouraging backlash of the Swedish citizens against the government. For instance, anger from some Swedish citizens over the refugee influx led to the burning down of two Swedish schools that had been converted into shelters for asylum seekers, riots in the city of Malmö over the demolition of a migrant camp, and an increasing incidences of violence and assaults at centers for minors.

But, the bigger picture should not be lost. That is, in spite of these challenges, Sweden, one of the smallest states in the E.U., still ranks first in refugee acceptance, measured both in absolute number of immigrants and as a proportion of the existing citizenry. With its humanitarian immigration policies Sweden still is a leading country advocate for immigrant and refugee rights, and a clear majority of its citizens are remain in favor of an open policy in spite of the current challenges faced by the government.

### Applications for asylum received by Sweden

(By month, in thousands)



Note: 2015 data is up to November.

Source: Swedish Migration Agency

LAZARO GAMIO/THE WASHINGTON POST

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**Challenging the Idea that Human Rights Language is a Top Down Tool: The 2015 Paris Summit on Climate Change**  
Ekim Buyuk

The Inuit Petition submitted by the Inuit Circumpolar Conference of Canada to the United States in 2005 was the first instance human rights language was used to address climate change in a major document. The Inuit people live in the Arctic region of Canada, an area where temperatures are rising at almost twice the speed as any other region in the world due to climate change. The petition argued that the United States' industrial activities were causing serious environmental damages that were wiping away their environment, on which they relied almost completely for their survival. The Inuits thus claimed that because the actions of the United States were destroying their way of life, the United States was in violation of their collective basic human rights.

The Inuit Petition is a particularly interesting case of activism using a rights based approach because the human rights language in it functions as a bottom up tool. Human rights language has primarily been viewed as a top down enterprise, an "elite-focused activity."<sup>1</sup> James Ron, David Crow and Shannon Golden's survey research indicates that human rights is a concept that is much more familiar to the elite than to marginalized communities, an idea imposed by the west on the rest of the world.<sup>2</sup> Furthermore, there is a fear that human rights based approaches on the local level are drained of political power and thus impossible to implement at the national levels.<sup>3</sup> In fact, human rights framework and rhetoric operates with national governments as the principal duty bearers. Therefore, human rights are intrinsically linked to the state, including in their formulation, interpretation and implementation<sup>3</sup>.

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<sup>1</sup> James Ron, David Crow, and Shannon Golden. "The struggle for a truly grassroots human rights movement." Open Democracy, June 18, 2013.

<sup>2</sup> Moyyattu Banya. "Human rights for whom? A closer look at elitism and women's rights in Africa." Open Democracy, December 2, 2013.

<sup>3</sup> Banik, Dan. "Implementing Human Rights-Based Development: Some preliminary evidence from Malawi." Paper presented at the excerpt seminar for Extreme poverty and human rights in Geneva, Switzerland, February 23-24, 2007

However, human rights language can function not only as a top-down tool for and of the elite, but also as a bottom-up tool by disempowered communities to raise the moral pressure on states and hold them accountable.<sup>4</sup>

The Inuit people argued against the United States' industrial activities on the basis of human rights violations. When the United States continued its activities, the Inuits submitted another petition to the Inter-American Commission on Human Rights. This represented an instance in which a threatened community attempted to use human rights language to hold a foreign nation accountable. This is not an isolated incident but holds important insights more than 10 years on. The universal, legally binding global climate deal created during the 2015 Paris Summit on climate change initially included a commitment for countries to respect indigenous rights and human rights as part of their plans to end climate change. The language gave disempowered communities the legal power to hold both their own state and foreign states accountable. It also indirectly let weaker states hold stronger, foreign states accountable.

The Philippines, Mexico, Costa Rica, Canada and other Pacific nations all actively campaigned for the inclusion of this language in the legally binding articles. These countries are all home to many different indigenous peoples, many of whom are island peoples. The Philippines are made up of thousands of islands, many of which are in danger of disappearing completely under water due to rising sea levels as a direct consequence of climate change. Other Pacific nations are wrought with the same fear. Similarly, the Inuit people of Canada who rely directly on their Arctic environment for survival are seeing their way of life wiped out day by day. These nations' peoples are all directly harmed by climate change but currently have no one to hold accountable.

Latin American countries have used human rights language before as a way to encourage a commitment to fight against climate change. In February of 2015, Costa Rica

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<sup>4</sup> Varun Gauri, Siri Gloppen. "Human rights-based approaches to development: Concepts, evidence, and policy." *Polity*, 2, January 2012.

announced the Geneva Pledge for Human Rights in Climate Action, a *nonbinding* agreement where members pledged to share ideas and information regarding the best ways to promote and respect human rights in climate action. It emphasized the fact that the poorest and most vulnerable groups of peoples are often disproportionately affected by the impacts of climate change. This was why it was important to stand together and collaborate. At the time, 18 other governments signed the pledge. The Geneva Pledge is an example of states uniting together to hold each other accountable for the environmental damages inflicted by one another that eventually, hurt them all. The human rights language present in the global climate deal presented at the Paris Summit was extremely important for these countries because it gave them the legal right to hold other nations accountable, as well.

Following severe protests by Norway, the United States and Saudi Arabia, this segment of Article 2.2 was never approved. The language was instead moved into the Preamble, which is purely aspirational text and not legally binding in any way. The largest commonality between these three countries that protested is easily the extent of their industrial activities. The United States is the world's second largest greenhouse gas emitter. Saudi Arabia is the world's largest exporter and producer of oil and only very recently accepted that climate change is even linked to human rights.<sup>5</sup> Further, Norwegian greenhouse gas emissions rose by 3.5% from 1990 to 2014 and they are expected to have a long-term trend of a rise in total emissions towards 2020.<sup>6</sup> However, the fact that these countries are huge emitters does not completely explain why these countries fear this legally binding language. After all, Mexico and Canada are also huge emitters but they adamantly championed for the legally binding language.

The differentiating factor between these two groups of countries could be that the governments opposed to the language are extremely fearful of being held legally accountable, both by foreign nations and by local communities. Consider again the case of the Inuit Petition,

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<sup>5</sup> Juhasz, Antonia. "Suicidal Tendencies: How Saudi Arabia could kill the COP21 Negotiations in Paris." *Newsweek*, December 9, 2015.

<sup>6</sup> Solberg, Erna. "Norway gives COP21 a cold shoulder." *EurActiv*, December 14, 2015.

in which the Inuit people directly blamed the United States' industrial activities for the changes in their environment. With this language in the articles of the Paris Summit climate deal, states confront the possibility of being held legally responsible for the effect of their industrial activities on other countries. Saudi Arabia is another nation that has been seriously affected by climate change. The country has already experiences a severe rise in temperature, leading to increased dust storms, drought and the consequent effects on agriculture. Local communities are severely affected by these environmental changes, especially those that directly rely on agriculture for sustenance. If human rights language were included in the global climate deal, these communities would be able to hold their government legally responsible for the environmental damages it caused through the expansion of their industrial activities. Thus, it may be that the nations that seek to expand their industrial activities are fearful of being sued by both local and foreign communities, which is why they do not want the legally binding language included in the deal.

Human rights language could thus function as a tool both for marginalized communities speaking for themselves and for weaker states speaking to more powerful ones. Nations could use human rights language to protect their people and hold nations accountable for actions that exacerbate climate change. In this way, the language functions as a bottom-up tool to try to deter powerful industrial nations from continuing to cause disproportionate harm to poor countries. Before this language, there had been no one to blame when environments were destroyed or when islands disappeared. The mere existence of this language – even though ultimately not included in a legally binding form – enabled a fierce debate among states at the UN with weaker states putting more powerful ones on the defensive – an important form of accountability in its own right. In fact, human rights language may be the key to addressing climate change related issues more effectively in the future. More broadly, the COP21 agreement shows that human rights language should not continue to be considered a discourse exclusive to the elite.

## Challenging Legalism: Transitional Justice from the Bottom Up

Jenna Zhang

The field of transitional justice has historically looked to law as the primary mechanism of redress for mass atrocities.<sup>1</sup> In the post-Nuremberg decades, the legalist paradigm has gone largely uncontested, with advocates for alternative mechanisms such as truth commissions framing their criticisms within its boundaries, while heavily incorporating both substantive and procedural characteristics of law into restorative justice practices. Criminal tribunals, and truth commissions to a lesser extent, are grounded in a legalistic conception of redress as reconstituting vertical relationships between states and individuals. This vertical model prioritizes the punishment of individuals over other critical goals of redress, such as reconciliation at the local level and rectification of structural problems. As a result, legalistic institutions run the risk of becoming detached from on-the-ground communities, while failing to adequately address group tensions—religious, ethnic, nationalist, or otherwise—responsible for the mass atrocities which have occurred. In place of the top-down paradigm, I propose a different theoretical framework of redress grounded in a bottom-up conception of redress as rehabilitating horizontal social bonds. As a case study, I examine grassroots reinventions of transitional practices in the United States as an alternative on the local level.

As discussed by Judith Shklar in her seminal text on legalism<sup>2</sup>, the term can be defined as an “ethical attitude,” which tends to regard the principles and practices of law as universally applicable. “A common failing” among legal theorists, Shklar argues, is “the tendency to abstract legal concepts from their social setting and thereby to exaggerate the scope of their relevance.”<sup>3</sup> In recent years, a number of scholars have incorporated Shklar’s critique of law’s presumptions to universality into arguments against the ubiquity of legal procedure and thought in transitional or post-conflict justice: Kieran McEvoy advocates for “legal humility” and more holistic processes

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1 Teitel, R. G. (2003). Transitional justice genealogy. *Harv. Hum. Rts. J.*, 16, 69.

2 Shklar, J. N. (1964). *Legalism: Law, morals, and political trials*. Harvard University Press.

3 Shklar, J. N. (1966). In Defense of Legalism. *Journal of Legal Education*, 19(1), 51-58.

involving indigenous or local actors<sup>4</sup>, while theorists and transitional justice practitioners alike have argued that aggrandizement of law can come at the cost of neglecting critical socio-economic or developmental reforms<sup>5</sup>. This paper examines the ways in which legalistic thinking is misaligned with the particular circumstances of transitional justice and in this regard, may do more harm than good. Western's laws normative foundations in social contract theory ensures that it is divorced from history, social, and cultural contexts, highly individualistic, and irretrievably grounded in state institutions. These fundamental characteristics of law become particularly problematic when applied to post-conflict settings, in which state and judicial institutions have often been decimated and conflict cannot be extricated from historical group tensions. Two prominent issues arise: one normative, the other empirical. The normative problem concerns the indeterminacy of the moral "right to punish" in conflicted societies, whereas the empirical problem concerns the gap between law's basic presuppositions of ahistoricity and personal culpability and the realities of collective violence.

### Liberal Foundations of Law

Legal mechanisms of post-conflict redress have largely adopted the liberal reasoning of Western law, which can be separated into two strands: the deontological argument for individual culpability and the social contract-based argument for retributivism. Deontological ethics conceptualizes individuals as autonomous agents. The idea of free will resides at the heart of human dignity and individual rights, as well as individual responsibility for rights violations. Given that individuals possess the capacity to choose freely, infringements upon the rights of others can only be a mark of poor character. In this respect, retributivism constitutes a response to exercises of individual agency:<sup>6</sup> offenders are imagined to bear full or near full responsibility for wrongdoing. The use of mitigating circumstances in sentencing allows juridical institutions to recognize offenders as socially situated subjects to a limited extent; nonetheless, the practice implicitly pre-

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4 McEvoy, K. (2007). Beyond legalism: towards a thicker understanding of transitional justice. *Journal of Law and Society*, 34(4), 411-440.

5 See Arbour, L. (2007). Economic and social justice for societies in transition. *NYUJ Int'l L. & Pol.*, 40, 1; De Greiff, P., & Duthie, R. (2009). *Transitional Justice and Development. Making the Connections*, New York: SSRIC.; and Miller, Z. (2008). Effects of invisibility: In search of the 'economic' in transitional justice. *International Journal of Transitional Justice*, 2(3), 266-291.

6 Scheffler, S. (2000). Justice and desert in liberal theory. *California Law Review*, 965-990.

supposes individualized culpability as the normative point of departure.<sup>7</sup> Deontological theory and social contract theory are closely associated: deontological ethics serves as the foundation for the state's moral imperative to punish crime as a breach of the hypothetical contract.

In the social-contract tradition of both Hobbes and Kant, the moral character of punishment originates from the legitimacy of the state itself. Social contract theory presupposes individuals as ontologically prior to the state. As rational agents, they enter—and break—freely the hypothetical contract by which the state is formed and from which its attendant legal and juridical institutions derive their authority.<sup>8</sup> Hobbes's theory of sovereignty holds that in making their covenant, the social contract, individuals relinquishes their right to punish others but the sovereign does not: the sovereign retains the moral authority to punish from the pre-existing state of nature.<sup>9</sup> In this regard, the justification for punishment emerges from state formation: the Kantian conception of law, in particular, demands a preceding political collective whereby the contractual relations on which its moral imperative to coercion depends are constituted. Justice, according to Kant, concerns the "compatibility of the freedom of one individual with other individuals according to universal law," which state coercion serves to protect.<sup>10</sup> Though juridical law is legitimated through universal law, it does not in practice apply beyond the external relations between individuals in a society, with juridical law acting on the individual as a political rather than moral subject<sup>11</sup>. Rawlsian liberalism relies on a similar notion of contractually legitimated community as the grounds for its conception of individual criminal responsibility and moral desert.<sup>12</sup> The moral authority to punish thereby rests with the state in the liberal tradition.

## Challenging Legalism

### *Mass Atrocity as Collective Crimes*

The 1948 Genocide Convention defined genocide as "acts committed with the intent to

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7 Aviram, H. (2008). How Law Thinks of Disobedience: Perceiving and Addressing Desertion and Conscientious Objection in Israeli Military Courts. *Law & Policy*, 30(3), 277-305.

8 Norrie, A. W. (2012). *Law, ideology and punishment: retrieval and critique of the liberal ideal of criminal justice* (Vol. 12). Springer Science & Business Media.

9 Ibid.

10 Ibid

11 Ibid

12 Rawls, J. (2009). *A theory of justice*. Harvard university press.



destroy, in whole or in part, a national, ethnical, racial or religious group.” Article 3 of the Statute of the International Criminal Tribunal for Rwanda (ICTR) defines crimes against humanity in a similarly collective sense as violations “committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds.”<sup>13</sup> The definition of crimes against humanity upheld by the ICTR Statute resembles the definition of genocide with respect to its specification of a discriminatory motive. It is not sufficient that violations should be directed against a civilian population; in order for these violations to constitute genocide or crimes against humanity per the ICTR Statute, they must occur against backdrop of historical tensions between groups<sup>14</sup>. As an example, Fletcher notes that the widespread murder of bald men would not amount to “genocide,” since no history of violence or structural oppression exists between those with and without hair<sup>15</sup>. Hence, the discriminatory motive specification places individual acts of violence not only within the context of structures and associations by which the recent conflict was forged but also past collectives and their attendant histories of violence and oppression. It is evident that collectivity cannot be extricated from the basic understanding of mass atrocity: the idea of war, genocide, and crimes against humanity as violations perpetrated by groups upon a groups is built into the foundations of international criminal law. Hence, the state-based conception of crime under domestic law is incongruous with the transnational character of mass atrocity.

Law’s basic presuppositions of individualism and historicism are incompatible with the systemic, deeply historical dimensions of conflict. Contract-based Western law cannot encapsulate the historical, social, and systemic dimensions of mass atrocity, precisely because of its individualistic presuppositions. By imagining crime as committed by individuals, upon individuals, legal institutions neglect the collective dimensions of mass atrocity. Although courts and tribunals may acknowledge the role of collectives in their discourse, most systems of Western law have few criteria for assessing group rights or responsibilities<sup>16</sup>. The preclusion of discourse around the

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13 Definitions of Crimes Against Humanity. (n.d.). Retrieved March 16, 2016, from [https://law.wustl.edu/harris/crimesagainsthumanity/?page\\_id=469](https://law.wustl.edu/harris/crimesagainsthumanity/?page_id=469)

14 Fletcher, G. P. (2002). The Storrs lectures: Liberals and romantics at war: The problem of collective guilt. *The Yale Law Journal*, 111(7), 1499-1573.

15 Ibid

16 Morris, M. W., Menon, T., & Ames, D. R. (2001). Culturally conferred conceptions of agency: A key to social perception of persons, groups, and other actors. *Personality and Social Psychology Review*, 5(2), 169-182.

historical and cultural backdrops of individual crimes inadvertently prioritizes ethical over structural narratives of genocide, war crimes, and crimes against humanity. Ethical narratives which emphasize individual “bad apples,” obfuscates persisting tensions and inequalities between groups within a society and detracts from political will toward broader-scale reconciliation projects<sup>17</sup>. Even more problematically, failure to account for—and adequately rectify—the collective and structural problems which contributed to mass atrocity in the first place can result in serious consequences for the stability of the post-conflict regime<sup>18</sup>. “Never again” cannot be ensured without dismantling the structures which have, and may again, enable mass atrocity.

The assumption of individual responsibility embedded into the structure of law conflicts with the reality of mass atrocity as a fundamentally collective venture. Current mechanisms rely on a liberal conception of justice which cannot easily translate from domestic to post-conflict contexts: liberal justice hypostasizes individual criminality, whereas in reality, its atomizing constructs of crime and redress belie the fundamentally collective nature of mass atrocity<sup>19</sup>. Both criminal tribunals and truth commissions treat violations which constitute mass atrocity, genocide, and war crime as primarily individual offenses. However, mass atrocity almost inevitably require a significant degree of orchestration and frequently involve sophisticated infrastructure to organize the killings.<sup>20</sup> Since law itself contains few mechanisms to account for group crimes, collectivity can often only be taken into account in the duration of sentencing. Legal procedure rarely adumbrates group responsibility in great clarity or detail; moreover, due to the relative youth of international human rights law, little precedence exists for sentencing in the particular context of mass atrocity.<sup>21</sup> Combined, the lack of precedence and basic capacity on part of the law to account for collectivity leaves determinations of sentencing subject to the limitations of human agency in the form of individual judges. As Drumbl notes, judges in the ICTR and ICTY had almost “unfet-

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17 Drumbl, M. A. (2010). *Collective Responsibility and Post-Conflict Justice*. Washington & Lee Legal Studies Paper, (2010-5).

18 Mironko, C. (2004). Igitero: means and motive in the Rwandan genocide. *Journal of Genocide Research*, 6(1), 47-60.

19 See Mégret, F. (2002). Three dangers for the International Criminal Court: a critical look at a consensual project. *Finnish yearbook of international law*, 12, 195-247. See also van der Wilt, H., & Nollkaemper, A. (2009). *System criminality in international law*. Cambridge University Press; and Drumbl, M. A. (2005). Collective violence and individual punishment: The criminality of mass atrocity. *Northwestern University Law Review*, Winter.

20 Robinson, D. (1999). Defining “crimes against humanity” at the Rome Conference. *The American Journal of International Law*, 93(1), 43-57.

21 Drumbl, M. A. (2007). *Atrocity, punishment, and international law*. Cambridge University Press.

tered discretion” to sentence: an unbounded authority which has led inexorably to “an erratic quantification of sentence.”<sup>22</sup> Judicial discretion, furthermore, renders sentencing decisions more susceptible than usual to political climate, plea bargaining, and other extrajudicial considerations.

#### *National and International Courts*

The question of jurisdiction remains deeply problematic for many post-conflict societies, wherein the normative authority of both national and international systems of law can be called into question. For national courts, the most pressing problem remains the paradox of retroactive or ex post facto justice.<sup>23</sup> At stake here is the *nullum crimen sine lege, nulla poena sine lege* principle of legality, according to which “no conduct may be held punishable unless it is precisely described in a penal law” and “no penal sanction may be imposed except in pursuance of a law that describes it prior to the commission of the offense.”<sup>24</sup> Acts considered criminal under the post-transition regime may not only have been legally permitted under the previous regime but also deemed acts of patriotism. Post-transition regimes thus face a conundrum: the norms of law stipulate that people cannot be punished for crimes which were not legally codified as such during the time of commission; however, if post-transition courts choose to prosecute according to the laws of the former regime, it is inevitable that the majority of perpetrators will escape punishment.<sup>25</sup>

The retroactivity problem associated with prosecutions through national courts can be circumvented by relinquishing the responsibilities of post-conflict justice to international institutions. However, international courts face a normatively greater problem with legitimacy than national courts. State-based laws derive their legitimacy from not only codification but also general public recognition, in the same respect that the social contract does not merely constitute the state but the corresponding public and political values by which it is made a substantive community. Rule-of-law arguments, or “expressivism,” uphold retributivism as an affirmation of legal norms and values; hence, punishment as reinforcement of law—and subsequently, the state—itsself. International law has no such expressive power, as it is not bolstered by public recognition. If it can-

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22 Ibid

23 Huyse, L. (1995). Justice after transition: On the choices successor elites make in dealing with the past. *Law & Social Inquiry*, 20(1), 51-78.

24 Ibid

25 Ibid

not derive its authority from the traditional groundings of domestic law, it is left with the burden of self-justification.

The problems of prosecution in both national and international courts are further compounded by substantial empirical challenges. Where national courts are concerned, the post-transition regime must confront the difficulties of upholding fair and efficient proceedings when the majority of post-conflict legal institutions are dilapidated or entirely dysfunctional<sup>26</sup>. International courts, on the other hand, can potentially face greater obstacles in ensuring that its proceedings are perceived as legitimate and relevant locally<sup>27</sup>. Both national and international institutions can be highly bureaucratic, inefficient, and costly, while ultimately convicting no more than a handful of perpetrators. Over the course of its first thirteen years, the ICTY alone was allocated \$1.2 billion and convicted 78 individuals<sup>28</sup>. The Special Court for Sierra Leone, a joint enterprise between the government of Sierra Leone and the United Nations, has spent over \$250 million in convicting nine people<sup>29</sup>.

### Communitarian Re-Imaginations of Justice

Currently, the penology of international law strongly resembles domestic law.<sup>30</sup> Given that international human rights law is still comparatively new, it is unsurprising that much of its normative and procedural content have been borrowed. However, the shortcomings of the top-down legal approach point to the necessity of a different model. In order to adequately resolve these issues, it is necessary not only for an instrumental change; as I have shown, the empirical problems with legalism arise from its theoretical underpinnings grounded in social contract theory. A model which accounts for the collective and historical dimensions of mass atrocity cannot be derived from the vertical social contract, which is intrinsically individualizing and ahistorical. Instead, what post-conflict redress requires is a normative conception of justice which incorporates

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26 Sirleaf, M. V. (2014). The Truth About Truth Commissions: Why They Do Not Function Optimally in Post-Conflict Societies. *Cardozo Law Review*, 35, 2015-03.

27 Lambourne, W. (2009). Transitional justice and peacebuilding after mass violence. *International Journal of Transitional Justice*, ijn037.

28 Wippman, D. (2006). The costs of international justice. *The American Journal of International Law*, 100(4), 861-881.

29 The Future of International Justice: National Courts Supported by International Expertise. (2011). Retrieved April 07, 2016, from <https://www.ictj.org/news/future-international-justice-national-courts-supported-international-expertise>

30 Mégret, Op.cit.p.243

the notion of collectively-situated actors and historical, systemic circumstances at its heart.

In place of the legalist approach, I propose a different theoretical framework of redress for mass atrocities grounded in a bottom-up conception of redress. Such a re-envisioning of redress demands a different conception of both the individual and the communities they comprise. Political theorists critical of liberalism's conception of the individual have argued for more holistic and situated idea of the self. The creation of the state is conceptualized as the point at which community and constitutive social groups are formed in liberal thought. Against this "thin" conception of community associated with liberal thought,<sup>31</sup> communitarians such as Michael Walzer have argued it is not individuals which constitute communities but communities which constitute individuals: "It is in the very nature of a human society that individuals bred within it will find themselves caught up in patterns of relationship, networks of power, and communities of meaning. That quality of being caught up is what makes them persons of a certain sort," Walzer writes<sup>32</sup>. Theorists of identity politics such as Iris Marion Young have further argued for the recognition of group memberships as the first step in redress for structural injustices.<sup>33</sup> The communitarian vision of pre-existing communities and social groups does not preclude the need for formalized state institutions; however, they do enable one to envision social relationships without the state. Hence, it becomes possible to re-configure redress in terms of the horizontal bonds between the individual members and social groups which constitute a community, rather than the top-down contract between states and individuals.

The horizontal conception of redress serves as a solution to the problems of legalism which arise in the application of law to post-conflict situations: ahistoricism, overemphasis on individual actors, and the uncertain right to punish given the absence of legitimate institutions. Based on communitarian thought<sup>34</sup>, horizontal redress is not ahistorical but to the contrary, deeply enmeshed in the history, culture, and particular circumstances of the community to which it applies. Hence, it does not constrain itself to a particular system of law nor does it assume the mantle of universal applicability; rather, horizontal forms of redress must vary depending on

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31 Cochran, C. E. (1989). The thin theory of community: the communitarians and their critics. *Political Studies*, 37(3), 422-435.

32 Walzer, M. (1990). The communitarian critique of liberalism. *Political theory*, 18(1), 6-23.

33 Young, I. M. (2011). *Justice and the Politics of Difference*. Princeton University Press.

34 Walzer, M. (1990). The communitarian critique of liberalism. *Political theory*, 18(1), 6-23.

the particularities of the situation at hand. It does not emphasize autonomous or unencumbered agents—cannot, so to speak—for in communitarian theory, the individual is inseparable from their circumstances. And finally, the horizontal conception of redress does not require the existence of legitimate, state-ratified institutions, or accordingly, punitive mechanisms: what must be rehabilitated is not the individual’s contract with the state but the individual or group’s relationship with other individuals and groups part of the same political community; hence, punishment—the consummate expression of state power<sup>35</sup>—is neither requisite or perhaps even desirable for the achievement of redress.

The particular characteristics of this normative conception of horizontal redress align most closely with restorative justice mechanisms, which have gained traction in the past few decades. The key stakeholders in restorative justice processes are the victim, the offender, and the local community<sup>36</sup>; the state is left out of the picture. Restorative processes can involve but not be limited to truth telling, apologies, forms of reparation, deliberative process, and punishment mutually agreed upon by both offender and victim<sup>37</sup>. The purpose of these measures is to restore the victim’s sense of dignity, arrive at a constructive solution for rehabilitating the offender, repair broken relationships, and reaffirm community values<sup>38</sup>. In post-conflict settings, restorative justice has most notably been embodied in truth commissions.

Though restorative mechanisms may consist of state institutions, many of which adopt practices and discourse similar to their legal counterparts, they can also take the form of grassroots associations on the local level. Grassroots associations approach justice and reconciliation “from the bottom up”: rather than anticipating state interventions, they take redress into their own hands by holding truth-telling events, conducting their own investigations, or mobilizing locally to push for state-level change<sup>39</sup>. These groups tend to have deeper familiarity with the particular historical, cultural, and social circumstances of their communities, as well as greater capacity to adapt their chosen practices to those circumstances<sup>40</sup>. In this regard, they are less prone to

35 Feinberg, J. (1965). The expressive function of punishment. *The Monist*, 397-423.

36 Braithwaite, J. (2002). *Restorative justice & responsive regulation*. Oxford University Press on Demand.

37 Ibid

38 Zehr, H. (2015). *The little book of restorative justice: revised and updated*. Skyhorse Publishing, Inc..

39 Lundy, P., & McGovern, M. (2008). Whose justice? Rethinking transitional justice from the bottom up. *Journal of Law and Society*, 35(2), 265-292.

40 Ibid

many of the “formalistic tendencies” and “remoteness” from local communities, which characterize international law<sup>41</sup>. The distance of grassroots projects from the state’s institutions and broader political agendas allows for attention to the needs of victims and the community less diluted by extrinsic considerations<sup>42</sup>. However, the same detachment often results in problems with funding and mobilization which many of these associations face<sup>43</sup>.

## Conclusion

In this paper, I have contested the vertical model of transitional justice in favor of a horizontal framework. While the legalist paradigm is constructed around vertical configurations of the state-individual relationship, the horizontal model reorients the focus toward person-to-person relationships within the community. On the theoretical level, the horizontal approach is more capable of addressing the group dynamics underlying mass atrocities to the extent that it is equipped with the conceptual vocabulary of histories and collectivities, which current individualist models lack. On the instrumental level, it oversteps a number of the practical challenges inherent to the legalist approach—institutional, political, and financial. Grassroots associations, which have emerged in a number of post-conflict societies to fill in the gaps between legal provision and community need, can be seen as examples of the horizontal approach. Nonetheless, more empirical research is needed to realize the full restorative and restitutive potential of these associations. What studies have already been conducted show that grassroots associations face many of the same monetary and organizational dilemmas which plague legal institutions, if on a significantly smaller scale. If this is the case, it may be the responsibility of international institutions and post-conflict regimes to furnish grassroots associations with the resources they require to maximally satisfy their aims.

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41       McGregor, L. (2008). International law as a ‘Tiered Process’: transitional justice at the local, national and international level. Kieran McEvoy–Lorna McGregor. *Transitional Justice from Below. Grassroots Activism and the Struggle for Change*. Portland: Hart Publishing.

42       See Lundy & McGovern, Fn. 23

43       Ibid