

Latino Identifiability and Public Policy: Seeking Presence and Voice in U.S. Civic Culture

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ABSTRACT

Public policy initiatives in the U.S. target Latino identifiability in order to constrain its expression in U.S. civic culture. As Latino identifiability increases in U.S. society, so does its perceived threat to valued resources. As a result, public policy initiatives are promoted by the dominant group that seek to constrain the access of Latinos to valued resources. In addition, these public policy initiatives utilize racial profiling to limit the participation of Latinos in other areas of civic life – the right to vote, the freedom to travel, and the privilege of self-identification. A general systems model for Latino identifiability and public policy is presented to illustrate how public policy targets Latinos in the U.S.

Keywords: Latinos, identifiability, public policy, racial profiling, discrimination, driver's license, nativism, perceived threat.

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RESUMEN

Las políticas públicas en los Estados Unidos tienen como objetivo la identificabilidad de los latinos con el fin de limitar su participación en la cultura cívica estadounidense. A medida que aumenta la identificabilidad de los latinos en la sociedad de los Estados Unidos, también lo hace la percepción de amenaza a los recursos valiosos que ellos suponen. Como resultado, las políticas públicas, promovidas por el grupo dominante, buscan limitar el acceso de los latinos a los recursos valiosos. Además, estas políticas públicas utilizan perfiles raciales para limitar la participación de los latinos en otras áreas de la vida civil - el derecho al voto, la libertad para viajar y el privilegio de auto-identificación. En este artículo se presenta una imagen general de los sistemas de identificabilidad de los latinos y de las políticas públicas para ilustrar cómo se dirigen las políticas públicas a los latinos en los Estados Unidos.

Palabras clave: Latinos, identificabilidad, políticas públicas, perfil racial, discriminación, carnet de conducir, percepción de amenaza.

1. INTRODUCTION

Pro-immigrant rights groups and advocates for Latino immigration in the United States might have breathed a collective sigh of relief on July 28, 2010 when U.S. District Court Judge Susan Bolton blocked several components of Arizona's controversial SB 1070. Judge Susan Bolton issued a temporary injunction against parts of SB 1070 that would require police to determine the status of people they lawfully stopped and suspected were in the country illegally (Archibold; Riccardi & Gorman). Arizona's legislature passed SB 1070 in April, 2010 that made it a state crime to be in the country illegally and allowed police officers engaged in a lawful stop, detention or arrest to ask about a person's legal status when reasonable suspicion existed that the person was in the U.S. illegally (Aguirre 2012). SB 1070 also made it a state crime to stop a vehicle in the road to hire a day laborer if it impeded traffic and to transport, harbor, conceal or shield an illegal immigrant while committing a separate criminal offense.

In June of 2012, the U.S. Supreme Court, while striking down several provisions of SB 1070, upheld the "show me your papers" clause which requires that police officers check the immigration status of persons detained or arrested and allows them to stop and arrest persons they believe to be undocumented immigrants. The ruling exacerbates both

the potential for discriminatory practices against Latinos based on their identifiability in U.S. society and the perceived threat among dominant group members engendered by the rapid population growth of Latinos in the United States. One can consider SB 1070 as the most egregious use of public policy to constrain the movement and presence of Latinos in U.S. society. Consider that over three hundred immigration related laws and resolutions have been enacted by states that limit the presence of Latinos by prohibiting undocumented immigrants from renting property or working (Gorman). Along with SB 1070, immigration-related laws and resolutions that have been enacted by states are a clear signal that Latino identifiability, as a direct outcome of their increased numbers in U.S. society, is a catalyst for creating public policy that seeks to silence Latinos and make them invisible in the United States.

Our purpose in this paper is to discuss how social perceptions influence public policy regarding the Latino population in the United States. A basic premise in this paper is that public policy is instrumental in defining and reinforcing structured social relations for target populations or groups in U.S. society. For the purpose of discussion in this paper Latinos are treated as a target population in the United States. We use Anthony Giddens' (1984) notion of *structure* as only existing in the actions of human agents, and which gives form and shape to social life, but is not in itself the form and shape. In this paper then we regard public policy as an outcome of collective human agency that seeks to structure the flow of social perceptions focused on target populations or groups in U.S. society. Specifically, public policy is a social practice rooted in identification processes for making public behavior intelligible, and for making them appear as rational actions that target public behavior.

We will also examine the discursive nature of agency in public policy in order to make some observations regarding the types of public policy issues that will emerge for Latinos in the 21st century. To this end, the first part of this paper presents a framework for identifying agency as a feature of public policy. The second part of this paper presents a social relations model that focuses on the concept of "identifiability" for discussing how Latinos become targets of public policy. The third part of this paper provides some examples of public policy that target the increased identifiability of Latinos in the United States. Finally, the paper concludes by discussing public policy initiatives and Latino identifiability in the 21st century.

2. AGENCY AND PUBLIC POLICY

Public policy is generally regarded as the study of policy-making by government, and it identifies plans, actions, or behaviors government chooses to implement (Cochran, Mayer, Carr, et al.). Since the practice of making public policy resides within the context

of government, a context perceived by the general public as an arena in which actions or decisions are the product of participatory and deliberative democracy, the general public perceives public policy as a reflection or collective representation of their (public) interests. Paradoxically, the perception that public policy represents the general public's collective interest shields special group interests (lobbyists) from oversight in their advocacy for policy initiatives that do not represent the public's interest. According to public choice theory, political decision-making is often the outcome of special group interests lobbying against the preferences of the general public (Buchanan & Tullock). For example, the inclusion of "pork barrel" projects into congressional budget decision-making generally serves special group interests rather than the general public. One outcome of this paradox is that public policy is perceived as action or behavior that seeks to normalize social relations in society, as serving societal benefits, and shielding the public's resources from illegitimate or illegal access. For example, the bailout of banks during the home foreclosure crisis in the U.S. was constructed by Congress as a necessary and responsible policy for shielding banks from a possible financial meltdown; that, in turn, would protect the public's financial assets (Barofsky).

In order to discuss the concept of "agency" in public policy one must identify the core elements that underlie a discursive framework for public policy. First, society is conceived as a "cluster, or system, of institutionalized modes of conduct. To speak of 'institutionalized' forms of social conduct is to refer to modes of belief and behaviour that occur and recur [...] [they] are socially reproduced - across long spans of time and space" (Giddens 1986: 8). The modes of belief and behavior that occur and recur in society suggest that social forces exist in society that are external to persons and which organize the behavior of persons in society. There is, as a result, a material social structure in society that institutionalizes modes of conduct in society, e.g. repetitious and predictable behavior. By situating public policy in material social structure, e.g. government or political state, one of its purposes is to institutionalize behaviors, actual and perceived, that maintain a degree of predictability in social behavior. In a sense, public policy constructs a mindset in persons that legitimates the social world as they (persons) expect it to function; that is, this is "how society is possible" in their perspective of everyday social and institutional life.

Second, public policy is conceived as governmental actions that are the product of political decisions that seek to achieve societal goals (Cochran & Malone). Peters describes public policy as governmental actions that either act directly or through agents, and which influences the public. One can believe either one of two things about public policy: it is the outcome of governmental actions or behaviors independent of

social forces or agents in society, or it is the outcome of mediating social forces or agents in society. Given the notion of “participatory democracy” we promote as an ideal in the U.S., it is often assumed that public policy is an outcome of negotiated actions between government representatives and outside agents (e.g., lobbyists). In this sense, a purpose of public policy is to structure the manner in which persons behave and orient their behavior toward the maintenance of order in society. For example, public policy organizes the public’s perceptions of what needs to be done in order to maintain order in society; a road map that assists persons in perceiving the social meaning of public actions. However, what happens when public policy is constructed as a tool for constructing social identities for populations or groups that limits their participation in society?

The link between material social structure in society and agency in public policy raises questions regarding the role of persons in society and society’s response to persons in society. For instance, what role do persons or groups play in the use of public policy to promote order in society? To what extent does public policy shape the participation of persons or groups in society? To what extent does public policy operate as an external social force on how persons or groups participate in society? Can persons or groups in society be perceived as marginalized such that public policy can disadvantage their participation in society? Implicit in these questions are two observations: 1) public policy has agency in its capacity to structure perceptions in society via the social construction of identity and meaning, and 2) public policy has the capacity to disadvantage persons or groups in society by promoting perceptions that it is necessary to do so for the common good. For our purposes in this paper these two observations are necessary for understanding how public policy is used to promote actions, behaviors, and perceptions that seek to disenfranchise persons or groups that are imagined as and presented to the public as threats to the social order.

As a way of illustrating the generalness of the two observations listed in the preceding paragraph consider the following examples. In order to attack contraception and abortion issues in society, the U.S. Congress passed the first national obscenity law in 1873 (Comstock Law) that constructed a category of “obscene literature” to include printed information about contraception and abortion (McGarry). In order to circumvent censorship debates, conservative political groups in the U.S. have attacked “controversial art exhibitions” in which the U.S. flag is burned or shredded, especially those funded by public monies, by lobbying government agencies and members of Congress to pass legislation labeling the burning or shredding of the U.S. flag as a criminal act rather than artistic expression (Welch). Chambliss and Stabile illustrate how public policy has been used by conservative politicians to construct a “war on crime and drugs” that treated

racial and ethnic minority groups in the United States as the root of criminal behavior in society. In these examples one can observe that public policy has the capacity (e.g. agency) to socially construct and promote fears and beliefs in society and to associate them with particular events, persons, or groups in society.

3. A SOCIAL RELATIONS MODEL

From the initial contact between White European immigrants and American Indians a system of ethnic stratification emerged in which White Europeans placed themselves as the dominant group (Vargas 1998). According to Perea, et al. (174), “Europeans crossed the ocean believing that lands inhabited by ‘heathens and infidels’ should be possessed by Europeans.” Europeans were intent on conquest – taking under their control land and its resources, as well as the people living on the land. Unsurprisingly, in *Johnson v. McIntosh* the Supreme Court ruled in 1823 that a doctrine of discovery justified a conqueror’s (e.g., White European immigrants) assertion of domination and title to lands that had been possessed by Indians.

A system of ethnic stratification emerged in the United States that was characterized by social relations between a dominant white population and subordinate non-white populations. The dominant white population constructed its own history to romanticize its immigrant roots in order to hide and/or legitimate the abuses it inflicted upon subordinate non-white populations (Fine; Stefancic & Delgado). It was a history that promoted the hegemonic interests of the white dominant population by excluding non-white populations; keeping them invisible kept them silent. According to Vargas (1998), a white ethnic narrative was constructed by the white dominant group to legitimate the transformation of U.S. society into a system of privilege that entitled it to identify as the true Americans. Historically, the white ethnic narrative has been embedded in judicial decisions and political documents that protected valued resources in society (e.g. educational and occupational opportunity) from subordinate non-white populations in U.S. society (Aguirre 2003; Vargas 1999).

The system of ethnic stratification that emerged in the U.S. was reinforced by prejudice and discrimination. As subordinate non-white populations became identifiable (e.g. increased visibility as an outcome of increased population numbers) in U.S. society, the dominant white population targeted them for discrimination in order to reduce their perceived threat to valued resources in society (Aguirre & Turner). As subordinate non-white populations, for example, increased their visibility in U.S. society through the use of non-English languages, religious and cultural practices that deviated from the Anglo-

Saxon core's focus on Protestantism, speaking English, and distinctive cultural practices, subordinate non-white populations became targets of prejudice and discrimination (Aguirre & Baker). Skin color has historically been a status characteristic in U.S. society that enhances a person's identifiability as it deviates from whiteness. Krysan, for example, reviews the research literature to examine the link between public opinion and racial policy attitudes – in particular, do racial policy attitudes become more negative as the size of the black population increases? What about Latinos?

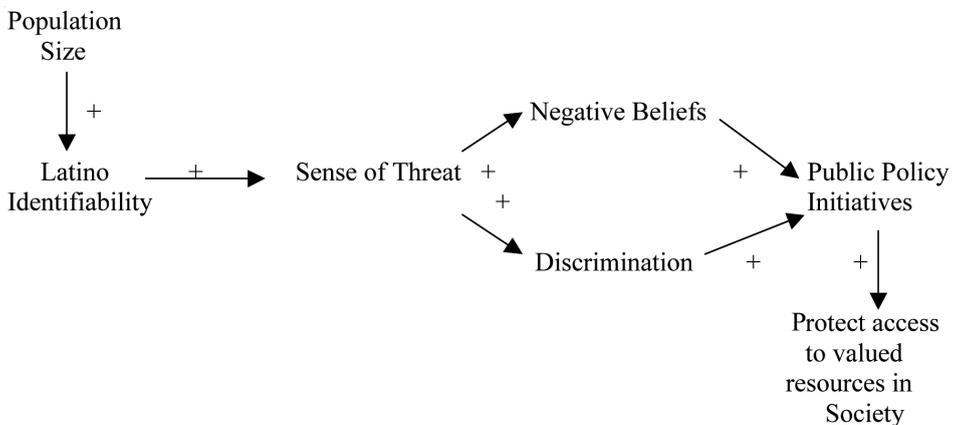
Nativism has often served as a guise for promoting public policy that seeks to constrain subordinate populations in U.S. society (Anbinder; Chavez; Higham). For example, as Latinos increased their identifiability in California society they became the targets of public policy initiatives designed to constrain their access to valued resources (Barkan). In 1986, California voters, an electorate overrepresented by White voters, approved Proposition 63 to amend California's Constitution. Proposition 63 instructed the California legislature to develop public policy that implemented English as the official state language. Proposition 63 was the brain child of U.S. English (the largest English-first organization in the U.S.) and the nativist rhetoric of former Senator S.I. Hayakawa and Stanley Diamond (Tatalovich). Proposition 63 depicted Latinos, both native-born and immigrants, as threats to the state's ability to govern in English. Latinos were portrayed as threats to stability in California society; a stability defined by the dominant white population as rooted in the use of English.

Twelve years later, Latinos in California found themselves the target of Proposition 227 ("English for the Children"). Proposition 227 passed by California voters in 1998 sought to dismantle bilingual education in California by mandating that teachers in public schools teach all subjects in English. The proposition provided for one year of immersion in English before students were mainstreamed into regular (English speaking) classrooms. Proposition 227 was written by Ron Unz, a multimillionaire and Republican gubernatorial candidate in the 1994 California election, and was chaired by Gloria Matta Tuchman who served on the U.S. English board of directors from 1989 to 1992. Proposition 227 portrayed Latino children, especially limited and non-English speaking children, as a threat to the state's educational resources (Aguirre 2002). Specifically, Latino children were portrayed as taking away valued instructional resources from children of the dominant white population.

Given the social relations model outlined in this paper, Propositions 63 and 227 were public policy initiatives designed to target Latinos in California society. The propositions were laden with images depicting Latinos as using their use of Spanish to challenge the state's ability to promote order and maintain stability. The images were

urgent in their message; something had to be done to control an uncontrolled population that posed significant threats to California society. The propositions were the outcomes of nativist fears that portrayed Latinos as threats to the social fabric in California society via their use of the Spanish language, and Latino children who were asking for language instruction resources were portrayed as a drain on school resources for the dominant white population. More importantly, the propositions were not just a direct response to the increasing numbers of Latinos in California's population. The propositions also sought to control the Latino population's identity and access to opportunity in 21st century California society. As their numbers increased, so did their identifiability, resulting in discriminatory actions via public policy, Propositions 63 and 227.

Figure 1: A general model of social relations for Latino identifiability and public policy.



NOTE: + = increase or positive effect

A descriptive interpretation of Figure 1 treats dominant group expectations for subordinate populations as a thick layer of normative materials for the social construction of public policy. Secondly, the notion of “identifiability” is used to illustrate how it is processed in the public sphere as a “sense of threat” that, in turn, fuels and mobilizes negative beliefs and discriminatory practices (Aguirre 2004). Thirdly, the “sense of threat” posed by Latinos in the public’s mind is expressed in the passage by voters of public policy initiatives to protect access to valued resources from Latinos. As a result, regarding the construction and application of public policy to Latinos one can make the following observations from Figure 1:

O₁: Latino identity is a status characteristic in U.S. society.

O₂: Status characteristics are assigned expectation states, either positive or negative, that are inversely associated with a population's or group's level of identifiability in society.

O₃: Expectation states are a primary influence on the public's response to a population's or group's level of identifiability.

O₄: The association of Latinos with a high level of identifiability and a "sense of threat" in the public's mind leads to the implementation of public policy initiatives that protect valued resources from them.

In summary, status characteristics are critical elements in the construction of interpretive filters for social relations in society. By assigning expectation states to status characteristics one can observe the differentiation of social relations into positive or negative evaluations. In order to complete the elaboration of the social relations model one must consider the following additional observational statements:

O₅: Status characteristics that are noticeably different from those of the dominant group increase a population's or group's identifiability in society.

O₅: Latino identity is a status characteristic that is noticeably different from the dominant group.

O₆: As Latino identifiability increases in society it is assigned negative expectation states in Latino social relations with the dominant group.

In the conduct of social relations, negative evaluations promote perceptions that Latino identity violates normal expectations in the material structure of society; as a result, public policy initiatives are tools for supervising and managing Latinos. In everyday language, public policy that targets Latinos is described as necessary for maintaining ordered and predictable social relations in society. In this sense, public policy both reinforces Latino identifiability in society and constrains its expression in society.

4. LATINOS AS TARGETS OF PUBLIC POLICY

With over 52 million people, or 16.7 percent of the total population, Latinos have an identifiable presence in U.S. society and almost two-thirds of Latinos self-identify as "Mexican". Moreover, clustering Latinos who identify as Mexican with the increasing number of immigrants from Central America (e.g., Honduras, Guatemala, El

Salvador, etc.) serves to revitalize the Latino population and reinforce its identifiability in the United States. Just consider the public outcry in the U.S. when sales of salsa leapt ahead of tomato catsup sales; an all-American condiment was losing to a foreigner (Aguirre & Turner). Also, it is not uncommon to find aisles in U.S. grocery stores with labels such as – Latino Foods, Latino Products or Latino Interest. By sheer numbers alone Latinos will become a formidable population in the twenty-first century. As their numbers continue to increase in the U.S. population so will their identifiability. Their identifiability will, in turn, serve as a catalyst for public policy initiatives that will seek to constrain the Latino population's access to resources perceived as valuable by the dominant group. As a final task in this paper, we will discuss the emergence of one public policy initiative that targets the enhanced identifiability of Latinos in U.S. society – limiting the privilege to obtain a driver's license.

4.1. Driver Licenses

Having a driver's license opens up more than just the opportunity to operate a motor vehicle. It serves as a state-issued form of identification that identifies a person as a recognized "governmental entity." With a driver's license a person can initiate economic transactions, such as writing checks and using credit cards, just like any other citizen. In short, possessing a driver's license identifies a person's privilege to conduct social relations in a legally recognizable manner. So why are Latino immigrants the target of public policy initiatives that seek to restrict their access to driver licenses?

Since 9/11, there has been a fear of persons whose identities are noticeably different from the dominant group. For non-Latinos in the U.S., it has increased their fear that Latinos are terrorists seeking to cross the U.S.-Mexico border in order to bring destruction to material culture and social identity (e.g., Huntington). For example, vigilante organizations such as American Border Patrol and Civil Homeland Defense use the issue of homeland defense to patrol the U.S.-Mexico border in order to limit the flow of immigrants entering the U.S. from Mexico (Bluey; Bunn; Fang). In particular, these vigilante organizations play to nativist fears in the dominant group by portraying Latino immigrants as potential terrorists.

The issue of driver licenses for Latinos is complex because it involves a negative evaluation of immigrants based on a specific status characteristic; namely, undocumented status. The question then is, should undocumented Latino immigrants not have access to a driver license even though they are noticeable in developing the economic output of, for example, service and laborer occupations in the U.S.? Governor Davis in California tried to answer the question by signing into law a bill to

allow undocumented immigrants to apply for a driver's license (Bernstein; Templin). Unfortunately, the law never went into full effect because Davis was recalled in the 2003 gubernatorial recall election. His successor, Arnold Schwarzenegger, quickly vetoed the bill signed into law by Davis. Schwarzenegger's principal opposition to driver licenses for undocumented immigrants was that such immigrants would skirt around security measures implemented by Homeland Security designed to catch terrorists. While he remained steadfastly opposed to issuing driver licenses to undocumented immigrants, Schwarzenegger did indicate willingness for compromise if the driver licenses issued to undocumented immigrants bore a unique mark to set them apart from other driver licenses. For instance, some states, Tennessee and Utah, issue driving privilege cards to undocumented immigrants with a warning in bold red letters that they cannot be used as a legal form of identification (Reid & Fears).

In an effort to resolve the issue of driver licenses for undocumented immigrants, in January 2005, Wisconsin Republican Rep. F. James Sensenbrenner Jr. proposed the Real ID Act, which was passed in May 2005. The Real ID Act established standards for a "national driver license," toughened asylum requirements, and provided funds to expedite completion of a fence on the U.S.-Mexico border near San Diego. Opposition to the Real ID Act focused on the potential use of a national driver license for federal identification purposes, such as boarding an airplane. Supporters of the Real ID Act argued that since driver licenses are a *de facto* form of identification in the U.S. making them available to undocumented immigrants would improve national security by having immigrants undergo an intensive security screening process. Supporters also argued that the terrorists involved in 9/11 used driver licenses for airplane boarding identification not passports (Jacoby; James).

The driver license issue is detrimental to Latino identifiability because it is nested within discussions of terrorism and unfavorable social identities. The dominant group in U.S. society is unwilling to differentiate between U.S. citizens who are Latinos and undocumented Latino immigrants. As such, all Latinos become suspect and targets of public policy initiatives that seek to constrain their access to valued resources in U.S. society and their right to participate in civic life. Consider that more and more states want to establish a requirement that driver licenses be used for identification in order to vote in public elections (Carter & Baker; Simonich; Stanford). One reason that states offer for pursuing such a requirement is that it will prevent undocumented Latino immigrants from voting and reduce voter fraud (Foy). However, such a requirement has the potential of deterring not only undocumented Latino immigrants but also Latinos

who are U.S. citizens. As a result, Latinos will be disenfranchised in the political process and will be portrayed as unwelcome in U.S. civic culture.

5. CONCLUDING REMARKS

In a perfect society one could probably argue that all persons have the same agency and that material culture in society promotes equitable social relations. But, the reality is that social processes such as public policy initiatives have agency in their attempt to constrain or eliminate social forces, persons or groups that pose a threat to valued resources in society. We have argued in this paper that public policy has agency because it intervenes in the social events that shape social relations in society. We have pursued this view of agency in order to illustrate how Latino identifiability is associated with public policy initiatives. We have suggested in this paper that as Latino identifiability increases in society its perceived threat by the dominant group to valued resources increases, resulting in public policy initiatives that seek to constrain the material transference of Latino identifiability into everyday social relations. For example, denying driver licenses to undocumented Latino immigrants, and requiring a driver's license in order to vote, has the potential of making all Latinos suspect in the civic culture. Being suspect in the civic culture, in turn, reinforces stereotypes of Latinos in U.S. society that portray them as threats (e.g. terrorists) to the material culture in society (e.g. citizenship).

The general model for Latino identifiability and public policy (see Figure 1) we have elaborated in this paper will hopefully enhance our understanding of the types of public policy initiatives most likely to target Latino identifiability. In a sense, the driver license issue is an aspect of racial profiling for Latinos because it seeks to constrain their participation in the civic culture – the right to vote, freedom to travel, and privilege of self-identification. The participation of Latinos in U.S. civic culture is becoming more important as the number of Latinos continues to increase in the U.S. population. Understanding how public policy initiatives have the potential of targeting Latinos with the intent of constraining their access to valued resources offers Latinos the opportunity to develop strategies that challenge the manipulation of U.S. material culture by the dominant group in society.

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