

LAYERS OF IDENTITY & PRIVILEGE IN LEGISLATION:
A CRITICAL DISCOURSE ANALYSIS OF SENATE BILL 744

by

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ABSTRACT

This research examines Senate Bill 744 (S.744) from the 113th Congress of the United States, and its findings will be used as a model to reveal problems in similar legislation. Senate Bill 744 was proposed by the 113th Congress in an attempt to accomplish bi-partisan immigration reform. The bill was viewed (and still is) as a comprehensive compromise, in that neither Democrats nor Republicans were completely satisfied with its result. The outcome was that the legislators who were involved in S.744's creation were satisfied that something on the topic of immigration reform had been *accomplished* (the bill passed the Senate, but never came up for a vote in the House), even if it was not what they, nor their constituents really wanted. S.744 addressed, what the researcher perceives, as the key Democratic and Republican issues concerning immigration reform in the United States, which were status for undocumented immigrants on the left, and increased border security on the right. However, the researcher also notes that neither of these issues were handled well in the bill because of their exclusionary nature, and that is what led her to this research.

This study is important because it will highlight legislative failures and look at how representatives can be held more accountable for their use of disingenuous language. This research looks at aspects of identity and privilege as they relate to exclusions from the dominant culture, and consequently the legislative process. The researcher would like to disclose that as an immigrant herself she has first-hand experience of the system's failures, and is approaching this project with personal invested interest in the success of future legislation.

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CHAPTER ONE: INTRODUCTION

The purpose of this research is to look at how policy can be made more inclusive of all persons it claims to include by studying its language through critical discourse analysis. The aim of this research is to make strides in predicting when policy has the ability to live up to its rhetoric, and look at the repercussions when rhetoric and language in policy are misleading by examining the language in which it is written and presented to the nation. This research will look at which stakeholders the legislative language gives the most agency to, and how critical discourse analysis contributes to making language more transparent.

The presence of layers of privilege in policy, that make its benefits inaccessible to large sections of the population, is certainly nothing new. What we can learn from the failed policy discourse of the past is how it can be improved by examining the consequences of what has not worked. When policy is sold to the general population as something that will benefit them and make the lives of their families better, when in fact it will not, there is a responsibility of communication researchers to examine it. This is especially the case when the disenfranchisement is embedded in the language itself and how that language is delivered.

Synopsis of Bill

S.744 was written in 2013, and to put that in context of historical political moments, that was right after the second inauguration of President Barack Obama. At this point in time there was a Democratically controlled Senate and a Republican House. One of the main selling points of this bill was that it was bi-partisan, and was crafted by the “Gang of Eight.” This meant four Democrats and four Republicans, in the 113th Congress, came together in the Senate to finally

write something that both parties could agree on. The Senators in the “Gang of Eight” included Michael Bennet of Colorado, Dick Durbin of Illinois, Jeff Flake of Arizona, Lindsey Graham of South Carolina, John McCain of Arizona, Bob Menendez of New Jersey, Marco Rubio of Florida, and Chuck Schumer of New York. Some of the main issues that the bill was designed to address included the large undocumented population, as well as an overhaul of the system in general so lost green cards could be recovered, family-based immigration could be limited, and a points-based merit system could be implemented to ensure that the United States was prioritizing the best and brightest immigrants from around the world.

The bill passed the Senate on June 27, 2013, but was never taken up in the House. This stalling on immigration by Congress prompted the Obama Administration to issue the Executive Order called Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) on November 20, 2014. This Executive Action was an extension of Deferred Action for Childhood Arrivals (DACA) that was announced in 2012, that granted relief to certain young undocumented individuals. DAPA was consequently designed to help the parents of those helped by DACA. DAPA is currently facing legal action because it was believed by some elected officials and courts to be unconstitutional, but DACA on the other hand is up and running.

Personal Connection

As a researcher studying immigration, it is important for me to note my personal connection to this issue. I am an immigrant myself, and moved to the United States from the United Kingdom with my family when I was ten years old. I have always been documented, but even after abiding by any and all regulations, I still have seen the way that the immigration system can personally impact peoples’ lives and separate families. The system is unjust and

particularly punishes children and young people by not providing them a pathway to permanent residency as adults (whether they are documented or undocumented). I want the reader to know that I am aware of my privileged immigrant status. I came to the United States as a documented child, but that was not a choice that I made. If my parents had been undocumented, I would have been undocumented as well, and my life would be infinitely different. That is why I feel it is important for me to do this research.

There is, of course, considerable discussion about immigration in public discourse, but the majority of it comes from people who have never experienced the system firsthand. That is why I feel as though it is important for me to address this issue. Since I have experienced the fear of having to leave the country and community where I grew up simply because of a line, or lack thereof, on a piece of paper somewhere in Washington, I have a deep understanding regarding the emotional toll of these policies. For individuals who have not experienced this, it is easier to simply not think about them at all. It is ineffective qualitative research, or really just ineffective research in general, if the populations affected are not part of the discussion on the topic, and that is why I came to this project – as an immigrant, and a researcher.

Terms

There are many terms that are used when referencing immigration policy, and they can be complex and confusing. The following is a list of the terms used in relation to this project.

Citizen – a person who is granted the full legal rights of the nation, with the ability to live, work, and travel, without consequence.

Permanent Resident – this for all intents and purposes is someone with a green card. This person can live, work, and travel freely to-and-from the United States, but they are slightly more restricted than citizens. Permanent Residents cannot vote, and they have to be present in the United States for so many days of either three or five years (depending on how they acquired their green card) in order to be eligible for citizenship.

Immigrant Visa – this visa does not grant permanent residency, but it is a visa that leads to permanent residency. This does not mean that all immigrants who have immigrant visas will get green cards, but it means that there is the possibility that they could. Immigrant visas do not require proof of an intent not to stay in the United States when crossing the border into the country.

Non-Immigrant Visa– this is on a temporary visa to the United States, and in order to maintain one's status, a non-immigrant has to prove an intent to leave the United States whenever crossing the border into the country. Some of the most notable types of non-immigrant visas are student visas.

CHAPTER TWO: LITERATURE REVIEW

Policy and Discourse

In an attempt to look at the way that policy and politics are viewed and created, Schmidt takes the position that a focus on discourse (how something is written and communicated) is a better means to understanding the process and its consequences, than previous emphasis on what she labels as rational choice, or historical and sociological constructs (2008). Schmidt sees this as a shift towards the ideas behind policy and politics, rather than “fixed rationalist preferences, self-reinforcing historical paths, or all-defining cultural norms” (2008, pg. 304). Discourse has the ability to constantly change in both the way it is created and the way it is interpreted, and this is an example of why there are so many lawsuits regarding policy and law, and that is what makes discourse somewhat unique when using it to analyze policy (Schmidt, 2008). Examining the way policy is written, and the way it is communicated outside of the norms that we might generally expect, is an essential component to comprehending the reality of legislation and how it impacts society (Schmidt, 2008).

Specifically analyzing discourse and the way it is used to define and describe policy, we need to be aware of the way it is capable of, and most often caters best to the needs of those who are creating it, i.e. those who are privileged in society (Bacchi, 2000). Although discourse has the ability to be all encompassing, it equally has the ability to discount entire groups of people (Bacchi, 2000). Bacchi (2000) suggests that discourse can reduce participation in matters of policy when it is created in a way that is inaccessible to the masses, and in particular, to underrepresented groups. This could not be more applicable to the current effort to revise

immigration policy in the United States, where hundreds of pages of legalese are released to the public as a means of transparency, even though it is presented in a way that the vast majority of the population will not comprehend. This means that many groups of people with stake in such legislation cannot digest the discourse for themselves. They instead have to rely upon an outside interpreter, such as a media outlet, or interest group. When there is only a privileged section of the population who is not only writing discourse on policy, but interpreting it as well, we as a society are at a disadvantage due to a lack of participation (Bacchi, 2000).

When it comes to legislation there are three stages: The idea (the problem that causes the need for new or revised legislation), the discourse and rhetoric (how the legislation is written, created, and sold), and the action (the implementation) (Eleveld, 2013). Often times the most well-known parts of this process are the first and third, which leaves the second (the creation of the legislation) untouched by the majority of the population and the majority of groups it will impact (Eleveld, 2013). Eleveld argues that when analyzing policy we do ourselves a disservice when we measure its success or failure on an overarching (and in this case national) level (2013). Instead of determining whether or not a policy is “good policy” by large standards it does or does not meet, that determination should be made after consideration of language, inclusion, and whether or not it meets *all* standards it sets out to uphold (Eleveld, 2013). In terms of immigration policy, we can undoubtedly see this emphasis on ideology instead of the actual and incremental accomplishments and failures of the policy. This is especially true when the vast majority of the population is getting their interpretation of policy from media (because it is not designed for them to consume themselves), and therefore, there needs to be less of a focus on the winning and losing of political battles, and more a focus on tangible long-term achievements.

In her study of Austrian nationalism, Wodak (2009) makes the case that discourse is how a national identity is established and perpetuated, and discourse is also how that identity can be changed. If this is indeed the case, then are we really paying enough attention to the members of the privileged group creating national discourse in the United States? In addition to a mindful acknowledgment of who is writing the discourse that has the ability to impact the lives of entire populations, there also needs to be an acknowledgment of who is not included in the creation of that discourse (Wodak, 2009). If we are to establish that discourse is indeed a primary means of creating a national identity, then it makes one wonder how loud certain groups have to be to be included in that narrative (Wodak, 2009). What might be even more alarming is the reality that, for many people, inclusion in such discourse (policy) is not an option. It is not as though everyone has the equal luxury to choose not to be involved in policy decisions, because for some people whose priorities are instead, for example, taking care of their family from one day to the next, extra activities and involvements beyond this are not an option.

This then poses the question of what interests do certain populations have to serve before their interests are considered worthy of inclusion? (Wodak, 2009). In the United States this comes down to leveraging one's power in a single vote and potentially the votes of an entire community. Therefore, when it comes to immigration and populations who are not given the opportunity to vote, there is an added layer of silence when it comes to policy decisions.

Theoretical Analysis of Discourse

Critical Discourse Analysis (CDA) is defined as research that looks at the way that discourse relates to developments in society, i.e. social movements (Phillips & Jørgensen, 2002). According to Phillips and Jørgensen (2002) there are five key aspects of CDA. The first is the

cultural and social identification that comes from the way that discourse is produced and received; the second is the idea that discourse has the ability to interact with other discourse, in that discourse can potentially be used to describe the product of another discourse because it does not only create components of society, but also defines them; the third describes how discourse should be studied based on its lexical choices through content analysis; the fourth is that there are “ideological effects” of discourse that play a role in the power struggle between the privileged and unprivileged groups in society; finally, the fifth is that discourse analysis is a means of social change because it takes the position of the underrepresented with the aim of attempting to shift the power dynamic (Phillips & Jørgensen, 2002).

When discussing Fairclough’s Three Dimensional Model, which consists of “social identities,” “social relations,” and “systems of knowledge and meaning,” the authors define two layers of discourse that are set in place by the power dynamic and can also be disrupted by the power dynamic (Phillips & Jørgensen, 2002). The first is “*the communicative event*” which is the moment in time that a form of discourse is spoken, printed, read, or seen; the second is “*the order of discourse*” which is how various types of discourse are presented and exposed to society (Phillips & Jørgensen, 2002). Both of these aspects are crucial in critical discourse analysis because the context of any particular discourse needs to be considered in its entirety for thorough analysis to take place, as well as be considered alongside other social discourse to which it is related (Phillips & Jørgensen, 2002).

As Fairclough (1995) notes in his work, CDA can bring about sociocultural change because it is a way of examining the texts that form our society. A point made by Fairclough (1995) is that there are two conflicting sides to language. First, language is shaped by society,

and second, language is part of the narrative that shapes society in the future (Fairclough, 1995). This is a dynamic that could not be more applicable to the policy and the way that it is created (Fairclough, 1995). This “tension” in language, and subsequently the documents that are created from it, are vital to explore so society is not stagnated by outdated norms and conventions that are no longer applicable (Fairclough, 1995, pg. 93). It is important to note the influence of power when it comes to language, which should not only be considered in the way that it is used to create language, but also in the way that it is used to consume language (Fairclough, 1995). When examining policy, it is clear from the format and consistent references to former policy, that the way it is addressed in contemporary society is in a way that perpetuates the “domination” of those who are already in power (Fairclough, 1995, pg. 97).

Politics dictate who is writing policy, and who votes on policy to make it law, and the system, for better or worse, is one that coddles the status quo. Although the culture of politics in the United States is a topic that is hotly contested, and one that is not being addressed in this paper, it is undeniable that politics should not be a determining factor in policy, but unfortunately it is. When elected officials who are voting on policy are constantly worried about the politics of their next election, it can (and does) cloud the purity of creating policy for the betterment of society. This means that not only does the political discourse make its way into influencing the way that policy is drafted, but so does the money, and that is an undeniable dynamic that only disenfranchises the powerless. That is why this research will focus on the way that society constructs the language of policy, so it can add to the conversation of the powerful having to address the language and discourse choices they have made that impact less powerful groups, and in this case immigrants – a group who cannot vote, so has even less agency in society than

any other. Fairclough (1995) points out that this power struggle is only going to continue tipping in the favor of those perpetuating the dominant culture if the language that dictates the actions of society is not examined.

When discussing the way that policy is created in society, Fairclough (1995) uses the term “technologisation of discourse,” which has three components to the way that contemporary language, and policy, are created (pg. 126). The first is the way that social structures construct language, and the way that impacts how they will continue to construct language; the second is looking at how that process can be redesigned, particularly in reference to the powerful; and the third is retraining the structure below the powerful to ensure that they are also working within a new system and not continuing the methods of policy creation that have contributed to a culture of disenfranchisement (Fairclough, 1995). The consistency in the culture of not questioning what has been, or the way things have been done, is what halts the growth and development of societal structures (Fairclough, 1995). The hegemonic forces dictating the conversation will never change if they are not reassessed with the goal of making them more inclusive. The concept of power and what it means in society is an overwhelming subject to think about revolutionizing, so the way to go about it is piece by piece. Although material power through wealth or stature may be inaccessible to many, language and words are not. Language, by design, is something that is accessible to all, so by approaching social change through this lens it is automatically more accessible to more people. This is not to say that there are not language barriers, because there certainly are (including the complexity of language, its structure, and whether or not it is in a language that is understood), but the basic tenet that it is possible for language to be made

accessible to all is why this research is based off of Fairclough's position that social change can be prompted by the analysis of discourse (1995).

The way that those using CDA interpret power within a society is crucial to understand and must be defined (Wodak & Meyer, 2009). The reason being that if the aim of the research is to offset an unequal balance of power between at least two social groups or populations, there must be a clear definition of who those groups are, and what power it is they have in the creation of discourse and society as a whole (Wodak & Meyer, 2009). In the case of contemporary immigration reform, those two groups would first of all be the legislators and their staff who have the ability and authority to write legislation (as well as the media, in their role of interpreter), and second of all the groups that the legislation will affect (groups without the ability to physically participate in the writing of the discourse that will impact them most).

Critical Discourse Analysis of course has its critics, as with any form of analysis. In her overview of CDA, Breeze (2011) addresses six of these criticisms. The first is that CDA is always critical, which has some academics questioning the method because it may seem as though researchers are "moved by personal whim" in their analyses, instead of having reasons for exploration that are purely cut and dry (Breeze, 2011, pg. 498). The second is that the method used is not standard among researchers, because it will be different depending on the type of text used for analysis, as well as the context in which the text was written and in which it is received (Breeze, 2011 pg. 502). The third criticism is that researchers who use CDA may mistakenly be under the impression that each text is consumed and interpreted the same way by all audiences (Breeze, 2011, pg. 508). The fourth criticism is that there is discrepancy among researchers in the amount of text that is an appropriate amount for proper analysis (Breeze, 2011, pg. 512). The

fifth criticism is that the majority of texts that are analyzed using CDA as a whole are approached negatively at a higher rate than they are approached positively (Breeze, 2011, pg. 516). Finally, the last criticism that Breeze lists is that researchers think that they can objectively evaluate the social implications of a particular text even though they are likely part of that society themselves (2011, pg. 517).

It is the researcher's belief that all of these criticisms can be overcome as long as thoughtful and responsible social research is taking place. Any researcher comes to a project because they see a problem, or can ask a question that cannot be answered, and the research that takes place through Critical Discourse Analysis is no different. Fairclough (1995) wrote that CDA is a method to create social change, and shift the barriers that hold back some members of society. Therefore, when looking to create social change, researchers will inevitably have a negative view of what they are analyzing, because if the view was positive, no change would be needed. This, however, does not mean that objectivity is not important, because it most certainly is. Any good research will be realistic, will not be based in assumptions, will take all involved populations into consideration, and realize that there are many ways to look at one issue, especially in regards to something as interpretive as discourse.

Tools of Discourse

The Fill in Tool

When looking at the many uses of discourse analysis, Gee (2011) proposes the use of The Fill in Tool, which asks the questions: "What needs to be filled in here to achieve clarity? What is not being said overtly, but is still assumed to be known or inferable?" (pg. 12) These questions

lead to the question of how much misinterpretation is intended by the writers of legislation when using terms such as “comprehensive,” or even if it is not intended, how much is unintentionally created. Gee (2011) points out that even though it is impossible to know all the intentions a person may have (in the case of this research, the writers of legislation), this raises the question of whether it is ethical for them not to disclose this information to their constituents. If disclosure about motives and intentions was expected from those writing legislation, it would be a huge step in the direction of accountability from our elected officials.

The Doing and Not Just Saying Tool

Another discourse analysis tool from Gee (2011) is The Doing and Not Just Saying Tool, where Gee raises the point that “for any communication, ask not just what the speaker is saying, but what he or she is trying to do, keeping in mind that they may be trying to do more than one thing” (pg. 45). This tool suggests that when it comes to the analysis of legislation, we should really be looking at what those creating it are really trying to accomplish. Since legislation is so closely tied to politics (since it is written, introduced, amended, and passed by politicians) it is difficult not to consider the political motivations behind what is proposed. For example, let us consider how potential donors, key voting groups, and potential campaign endorsers are impacting legislative decisions. It would be nice to assume that all legislation is proposed with the purpose of improving the lives of constituents, but as Gee (2011) points out, we have to look at the multidimensional nature of peoples’ actions.

Discourse Frames

Although framing is typically thought of as an occurrence from the product of media, Gruszczynski and Michaels (2012) make the case for the prevalence of framing in legislation and policy. The authors specifically focus on what they label as “elite framing” because of the privileged position held by legislators (Gruszczynski & Michaels, 2012). Privileged in that they both are able to take part in framing a certain issue and directly receive the benefits from it (Gruszczynski & Michaels, 2012). Gruszczynski and Michaels (2012) make the claim that there is no obligation to tell the complete truth to the population as a whole when legislators take the liberty to only discuss what is most beneficial to them without any pressure to be more inclusive in their language. The authors come to interesting conclusions about the effects of elite framing and subsequently what is missing from the literature (Gruszczynski & Michaels, 2012). They posit that delays in implementation of policy cause policy frames to be used and altered much more than was intended – something that could possibly be a factor in improper implementation and less-than-desired outcomes (Gruszczynski & Michaels, 2012). A gap in this literature that this research will attempt to fill is how language and policy frames change and potentially deteriorate how successful policy is over time, specifically as it relates to contemporary immigration reform in the United States.

Specifically looking at frames surrounding welfare reform policy, Brown (2013) identifies two frames as the most prevalent, the “legality frame,” and the “racial frame.” She finds that the first separates the immigrant population into two groups: documented immigrants who are commended and undocumented immigrants whose status is being diminished in their own communities (Brown, 2013). The second frame deliberately attempts to undermine the

Hispanic community by privileging the White population in the area (Brown, 2013). The author makes the case for how racialized language can impact how policy is sold to and communicated with constituents (Brown, 2013). This is relevant to the research in this study because it will be telling to analyze the difference and variation in lexical choices of those legislators who are overwhelmingly pro-immigration reform, and those who are not.

In looking at the way that the discussion around immigration policy has changed in the United States since September 11, 2001, Frederking (2012) points out the divide in immigration rhetoric between the path that the United States has taken towards a focus on terrorism and security, versus the rhetorical path that Canada has maintained around inclusion and growth. Given the unpredictable challenges that face any nation, it is understandable that rhetoric, discourse, and the framing of policy may change depending on the severity of the event and the devastation it may have caused (Frederking, 2012). In terms of the historical context that is necessary to examine current immigration policy, it will be beneficial to consider the way past events, both national and local to each legislator, are playing into the way they are choosing to frame potential immigration reform. Whether the frames they create are politically based, historically based, or both, will be something that this research takes into consideration.

Definitions of Identity

When examining the way that policy is created and interpreted, we have to consider the role that identity plays in the process. Identity is a concept that not only plays a large role in the way any one person creates discourse, but also how they interpret it. Identity is also something that cannot easily be defined since it is so dependent on one's own self-discovery, paired with many social implications and stereotypes. When describing identity, the first thing that Cavallaro

(2001) points out in an explanation of “Subjectivity” is the importance of considering identity in the form of a “subject,” instead of considering it automatically synonymous with “I” (pg. 86).

The idea being that when identity is associated with “I” it runs under the perception that there is a total self-awareness and it is completely self-determined (Cavallro, 2001). Whereas when identity is instead associated with the idea of being a “subject,” it implies that it cannot only act, but be acted upon by outside factors (Cavallro, 2001). The way that Cavallaro (2001) structures the idea of identity emphasizes its fluidity, and performative nature. Identity is not only the way we describe ourselves, but it helps to shape the actions we “perform” to interact with others and society (Cavallro, 2001).

In addressing the concept of “The Other,” Cavallaro (2001) initially discusses its place in the human mind by saying that in order for people to comprehend themselves they must see how they are different from the people around them (pg. 120). Creating “The Other” has been an easy way for humans to prioritize themselves, their own needs, and the needs of people with whom they can relate to, without having to do too much work – like considering the perspective of anything or anyone unfamiliar (Cavallaro, 2001, pg. 121). Cavallaro (2001) cites Kristeva who makes the case that in situations where humans are able to label differing groups as “The Other,” it is a result of the oppressive group attempting to resolve a dissonance within themselves and “projecting [those feelings] outward” (pg. 130). Cavallaro (2001) also talks about the “right to difference,” and acknowledges that differences are not something that should be ignored, but embraced and accepted (pg. 130).

Similarly, in his research on identity, Goodwin (2007) looks at it as “how one views him or herself” (pg. 3). However, he also makes the point that although identity may be self-

determined, it is not singularly formed. It is “through interactions with others” that individuals are able to decide for themselves their role, purpose, and place where they are comfortable (Goodwin, 2007). This is a very important point to make when we are talking about identity in groups, because although personal identities can sway the direction of others, the group identity can begin to change personal classifications as well. Individuals cannot think of themselves as removed from groups of which they are a part, and similarly groups cannot distance themselves from their many individual parts.

In a more theoretical interpretation of identity, Mokros (2003) discusses it as an independent entity. This independent identity is interpreted as something that exists whether we are willing to take the time to interpret it or not (Mokros, 2003). Mokros’s (2003) discussion of identity explains that identity is not only something that individuals can create for themselves, but it is something that can be found through self-discovery.

Also alluding to the independent nature of identity, Jackson (2002) likens one’s connection to their identity as similar to a relationship with another person in that it must be “fair” and “equitable” in order to have the best possibility for success (pg. 362). A good point that Jackson (2002) brings up about identity is that in addition to it being a like a relationship with a part of one’s self, it is also a negotiation with society. Identity is described a result of a connection to those outside of ourselves, and therefore as our situations change, so does identity (Jackson, 2002).

Identity in Social Movements

Chávez (2012) argues that there is a lack of intersectionality within groups that are all working towards the same cause in a social movement. When speaking of the subject, Chávez

(2012) says that “individuality challenges the field’s emphasis on singularity, by revealing singularity to always already be a fiction...” (pg. 31). The point that the author is trying to make here is that when there is a lack of acknowledgement of the complexities that exist within a group, then the group as a whole is already failing to some degree. Assuming that a single identity can be adopted by an entire movement is a falsehood from the beginning, because any success that is achieved is not comprehensive if it predominantly caters to the dominant culture. bell hooks (2000) discusses her first-hand experience with this concept in the 1970s as a student at Stanford, when she remembers her exclusion from the feminist movement there due to a lack of inclusion from White women who perceived the voices of Black women *okay* because they brought another dimension to the cause, but certainly not as necessary (pg. 12). Putting this concept of the divisive nature of social movements in the context of the feminist movements of the 20th and 21st centuries, hooks (2000) writes about one of the main challenges that she encountered was the fact that a definition of “feminism” could not even be decided upon (pg. 19). When we think of this in terms of the resurgence of this discussion in contemporary pop culture, with celebrities like Beyoncé Knowles displaying the word “FEMINIST” behind her onstage at the 2014 MTV Video Music Awards, it is difficult not to think just how far we still have to go as a society when it takes Beyoncé to get people excited about labeling themselves as feminists, and not issues like equal pay and workplace discrimination (Bennett, 2014). The question then arises of who is the Beyoncé of the immigration movement? Will it be another 40 years before we see him or her? If the immigration reform movement can learn anything from the long and continuing battle of feminists, it is that cohesion in ideas sooner rather than later will be what most benefits the cause. Another takeaway is that even when a group’s own

personal interests are involved, it is not a given that the entire group will be on board with the movement (like women not supporting equal pay); therefore, broad inclusion of all of the affected groups, no matter their participation, will be the key to long-term and comprehensive success. As hooks (1994) notes “We cannot be easily discouraged. We cannot despair when there is conflict.” because those things are inevitable and cannot be distractions from the goal (pg. 33-34).

DeTurk (2011) discusses the power of those in dominant social groups advocating for social injustice that may not necessarily directly impact them, and the term used for this in the research is “allies.” DeTurk (2011) makes the clear distinction that although being an ally is a choice, and receiving discrimination is not, it is not an easy task. It is through the collaborative effort of both allies and the communities at risk that social change can be a reality. This is a different spin on the similar point that Chávez makes, because instead of excluding minorities from the goals of the group, they are instead incorporating the voice of the dominant culture. This means that in these instances the social movement is able to add positive momentum by not focusing on the trials of the dominant culture, but rather the influence of the dominant culture (DeTurk, 2011).

In another perspective, Cain (2012) points out that in regards to the way that multiculturalism is addressed in society, and especially the education system, that it is set up for failure by design. Examples include that although educators may make attempts to teach about diversity, when it is structured as though we are going to learn about "those people who are different than us, and that will make us more multiculturally aware," that itself is enforcing the divide that it is attempting to bridge (Cain, 2012, pg. 202). Cain (2012) cites some of this divide

coming from the fact that we do not want to think of ourselves as bad people, and educators do not want to alienate students who might feel uncomfortable with the realization that they and/or their family members may be discriminatory. Something key here, as it relates to identity, is that in order to really face the reality of social divides (because of things like race), we must first acknowledge how that is applicable within ourselves, which is something that has the tendency to be avoided (Cain, 2012).

In more specific research from Chávez (2011) on group identity, and specifically about how rhetoric is used in coalition building, she discusses the very real need for activists to establish their own individual identity and the identity of the group and coalition they are forming. Chávez (2011) notes, much of the work that it takes to build powerful social groups takes place “behind the scenes,” because the most impactful relationships are developed on an interpersonal level. It is important when social groups are looking to impact things like legislation and policy that they do so with a united front, and that is why much of the disagreement and resolution of differences is not seen in the rhetoric (2011). It is in these safe and “encouraging environments” that the strongest coalitions can be created (2011).

Peterson and Lamb (2012) look at groups and the role that the political plays in identity and empowerment. The researchers argue that feeling a sense of autonomy personally has become more important than seeing that autonomy being represented in the law (Peterson & Lamb, 2012). One point that the researchers make is that without a clear movement with which to identify, singular acts towards empowerment may be completely pointless, if they end up going unrecognized (Peterson & Lamb, 2012). This makes Chávez’s focus on the recognition of collective identity and the creation of coalitions even more poignant. The researchers end on a

very powerful line: “The personal can be political, but sometimes we all need a light shone on just how,” and this is where the need for recognizing how individual identity has the power to strengthen collective identity becomes so important (Peterson & Lamb, 2012, pg. 763).

Limitations of Identity Research

Jung (2011) discusses the concept of the “identity gap” and how it can be broken down into four layers. The first layer is how a person considers identity within themselves, the second layer is the identity that others assign to the individual (and how this is felt by the individual), the third is how an individual’s communication practices represent their identity, and the fourth layer is one’s identity within their community (Jung, 2011). The idea of the “identity gap” represents a limitation in identity research because it outlines the obstacles that can get in the way of identity being established and the differences between the four layers being resolved (Jung, 2011). Things about one’s identity that they may not be comfortable with or willing to face can be made easier when that person has advantages like good communication practices and support from their community, but when these things are not present then it becomes apparent that researchers cannot consider identity in the same way for all groups (Jung, 2011).

Conceptualization of Privilege

One of the first things to recognize regarding privilege is that many people want to avoid this topic altogether. The idea of looking at privilege particularly as it relates to oneself, can often be uncomfortable, but that is exactly why it is so necessary. To delve into these concepts, we can first look at how hooks (1992) talks about “The Other.” She describes “othering” as

occurring when the dominant culture fails to recognize themselves as a group within society, and rather thinks of themselves as the norm (hooks, 1992).

The lack of connection between neighboring identities can create divisions that are only made worse by a lack of understanding and acceptance, and escalated through social constructions such as stereotypes. hooks (1992) describes stereotypes as the product of distance between groups in society – that they are created by one group and then projected onto another in an attempt to internally explain what is unfamiliar.

When hooks (1992) discusses “political self-recovery,” she argues that our society tries to cover-up the fact that racism and cultural divisions still exist among us. As hooks (1992) points out, many of us hide behind a self-constructed veil of “diversity” to make ourselves feel better about the fact that those divisions in our past (that make us so uncomfortable) still exist.

These divisions can be considered in the way that Alley-Young (2008) outlines three constructs for the way privilege and race are intertwined. The first is “The Mind-Body Dichotomy,” which is the idea that the privileged are able to let their minds overcome the body and its desires, whereas groups that are “othered” do not have that same control (Alley-Young, 2008). The postcolonial perpetuation of this idea has created the falsehood that whoever was seen as a part of the dominant culture was expected to be rational and analytic, whereas those who were “othered” in a society were not expected to have that same mind-over-body control (Alley-Young, 2008). This has led to things such as the hyper-sexualization of native cultures (Alley-Young, 2008).

The second construct is “The Performative,” which focuses on the way that members of society perform the characteristics that make up their identity, and can even do this as an attempt

to assimilate into the dominant culture (Alley-Young, 2008). An example of this would be performing society's definition of femininity, and then expecting to be accepted by society in a category viewed as "feminine." This same idea can then be applied to whiteness and an individual's ability to perform an identity that aligns with what they associate with privilege and dominance. However, as Alley-Young (2008) points out, in order to change this dynamic and "disrupt whiteness," those who are witnessing the performance must understand its disruption, and that will not always be the case.

Finally the last construct that Alley-Young (2008) defines is "The Gaze." The idea of "The Gaze" is that the privileged get to look, and the disprivileged get to be looked at (2008). This concept, historically described by Mulvey (1975) in her work on narrative cinema, describes the way that the action of men is often inspired by the female body and not by the woman herself, and how the male/patriarchal figure is himself immune to a similar "gaze" (pg. 11-12). When thinking about privilege in society and the way that it is so unbreakable, the researcher always come back to The Gaze. When there is a group of people who do not see themselves as being seen or identified by groups outside of their own, but just see themselves as being, then "The Other" is always going to exist (Alley-Young, 2008). It is only when each person can recognize their own vulnerabilities (which include seeing the advantages they have over others) that privilege and dominance will start to take a back seat to the inclusion of all identities.

Nakayama and Krizk (1995) also discuss the concept of the "other," in terms of how it varies from the "whiteness" that they claim society is centered around (pg. 295). Within this center there is a lot of confusion as to exactly where the power structures lay, which makes it

difficult to pinpoint what needs to change because of the fluidity of power within the dominant structures (Nakayama & Krizk, 1995). The authors explain this by citing Nakayama and Peñaloza (1993), who say: “If whiteness is everything and nothing, if whiteness as a racial category does not exist except in conflict with others, how can we understand racial politics in a social structure that centers whites, yet has no center?” (pg. 54). An understanding of “whiteness” that ties the concept very closely to immigration policy, is the way that it is categorized and understood by some to be defined by the human-made borders surrounding nations (Nakayama & Krizk, 1995, pg. 300). When discussing this the authors cite a study they conducted where respondents noted that it was their perception that many times “American” becomes synonymous with the term “white” (Nakayama & Krizk, 1995, pg. 300). This is where the lines of race and nationality are blurred, and it is important to consider the impact this has on society, especially when immigration policy is being crafted that is supposed to serve the interests of the nation (Nakayama & Krizk, 1995). When race is not completely separated from what it means to be part of a nation, it becomes an example of that fluid power structure that is difficult to pinpoint, but nonetheless disenfranchise certain groups within society (Nakayama & Krizk, 1995). When the Constitution of the United States was written, it was mandatory that to become a citizen, one had to be “White,” and as the authors note, this language left courts with many rough and uncertain definitions of the word for centuries (Nakayama & Krizk, 1995). The authors point out the hypocrisy in this usage of the term “White” because it so starkly contradicts with the idea of “a nation of immigrants” of which the United States is so proud (Nakayama & Krizk, 1995, pg. 301). This is not to say that race should be ignored in discussions of nationality,

but it should be addressed as something that connects people to their familial heritage, not something that disenfranchises them from their society (Nakayama & Krizk, 1995).

In her work on narrative cinema, Mulvey (1975) explores the patriarchy that is present in the male “gaze” of the female body in society. This is explained by women being seen as separate from men because they pose a threat to masculinity, and therefore must be objectified in order to maintain the status quo (Mulvey, 1975). This is very similar to the idea of a center of “whiteness” discussed by Nakayama and Krizk (1995) because it is the idea of keeping one segment of the population separate by means of oppression because they are seen to pose a threat to the underlying structures of power (Mulvey, 1975). To describe this phenomenon in film, Mulvey points out how women are often “fetishized” which weakens her and makes her less of a threat to men (1975). Although this type of classification and “othering” is present in society, it is particularly poignant when represented in film because each viewpoint can be idealized into whatever the creators want – the most powerful of powerful men, alongside the weakest women (Mulvey, 1975). The implications of women being depicted this way in film include that this socially approved gazing translates into society, and then consequently these behaviors become socially approved (Mulvey, 1975). The male ego is something that Mulvey discusses in relation to how society caters to the fears of the dominant culture, even parts of society that have nothing to gain from this dynamic, i.e. the women who are being objectified (1975). Something that the camera provides that is not available to this same kind of perpetual oppression in society is the distance that is produced by the camera (Mulvey, 1975). If everything that happened on film happened in real life, then there would be more pushback than from it just happening on the screen (Mulvey, 1975). Cinema creates a socially acceptable platform for men to have their

dominant gaze reinforced, and altogether the depiction may be dramatic (because of its setting) (Mulvey, 1975). When this happens enough on-screen, it glorifies the offset power dynamic, which makes it easier to translate into reality (Mulvey, 1975). Gazing into these depictions of women through the invisibility of the camera gives the impression that it is always okay to “gaze” at women, or the “others” in society, even when they have not given the consent that (hopefully) the actors on screen have (Mulvey, 1975).

Privilege in Communication

When it comes to looking at how privilege plays a role in the study of communication, it can be best categorized as something that is always present within society, but is seldom given the attention it deserves. Moon and Flores (2000) highlight this by pointing out that some may see the discussion of “white” privilege as a springboard for more discrimination, supremacy, and separation (pg. 103). However, Moon and Flores (2000) make the point that it is only through the recognition of whiteness, and the place it holds in dominant culture (no matter how uncomfortable it might be to face), that the bonds of elitism from the dominant culture can be broken.

Moon and Flores (2000) specifically talk about “race traitors,” a phenomenon of new abolitionism that wants to “opt out of whiteness” because it is seen as “an inherently evil social construction” (pg. 97). What this movement does not recognize, however, is the power that comes with embracing cultural differences and choosing to no longer embrace oppression (Moon & Flores, 2000). The two do not have to be mutually exclusive.

Limitations of Privilege Research

Major limitations of studying privilege and whiteness include that it can oftentimes be difficult for people to not only identify, but be vocal about their own privilege in society. Warren (2010) notes that when it comes to talking about whiteness (and the privilege that many people experience because of it), many people do not want to acknowledge its existence because it makes them feel uncomfortable. When the topic of whiteness is brought up it can be immediately associated with racism, and therefore immediately avoided (Warren, 2010). However, what is lacking is the recognition that facing it and acknowledging where it exists is the only way to change the conversation (Warren, 2010). When societies develop a mainstream assumption that whiteness (or privilege) is invisible, the only thing they are really accomplishing is fostering a culture that maintains the existence of “The Other” (hooks, 1992).

Analysis of Identity and Privilege in Policy

Similarly to Eleveld’s (2013) three steps of legislation, according to Rist (1994) identifies three stages of the policy cycle. The first is policy formulation, and there are three clusters of questions within this stage (Rist, 1994). The questions that first arise include those that look at why this particular policy is being created at this time under a specific set of circumstances (Rist, 1994). The next questions include those that ask what has happened in the past to cause the creation of this policy in the present, and finally the last questions look at the past and how it has shaped the events of the present (Rist, 1994).

After formulation, the next stage in the policy cycle is to assess the logistics of how the policy will be implemented (Rist, 1994). This is the action stage of the cycle, where the language

that was initially created is operationalized (Rist, 1994). Lastly, the third step in the cycle happens after there has been the chance to assess implementation, and it is where those responsible for the creation of the policy are held responsible for the consequences, whether they are positive or negative (Rist, 1994). After looking at all of the steps that go into the policy process, Rist (1994) concludes that there is no better way to learn from their actions than through qualitative research. This analysis is beneficial not only to the people who are impacted by the policy, but the policy makers themselves, because it creates room for improvement all around (Rist, 1994).

McKinnon (2011) has used qualitative research to evaluate the way that policy has the ability to marginalize certain groups. When examining case studies of women claiming political asylum in the United States, McKinnon (2011) identified the way that they are looked upon as The Other, and could be denied refuge if they were not perceived as “‘good’ women” in the eyes of the state and dominant culture (McKinnon, 2011, pg. 178). McKinnon (2011) focuses on the notion of “rhetorical borders,” and how in many of the cases of women looking for asylum, the women are seen as “subjects of the state,” which just further highlights the need for accurate and inclusive legislative language (pg. 194).

Representation in Policy

When reviewing immigration policies and how they impact the American South, Winders (2011) considered the way that the inclusion or exclusion of a population in society can play a big role in whether that group is represented favorably in terms of passing legislation. Therefore, this highlights how representation in immigration policy can so often be impacted at the local level even if the law attempting to be passed is federal (Winders, 2011).

In social movements in the United States that have the ultimate goal of passing legislation, Johnson (2008) found that specifically when it comes to environmental causes, the size of the population that is voicing their opinion on the subject is correlated with how much legislators speak on the issue. One unexpected caveat to those findings is that increased discourse on a particular issue did not mean an increased likelihood of successful policy (Johnson, 2008). It would be beneficial to the future of the immigration reform movement to find out if overcoming the representation and identity politics in inclusion in social movements is just the first of many hurdles in making sure that meaningful legislation is passed on the issue. It would be interesting to find out if greater representation in social movements is an indicator for success in accomplishing the ultimate goal of inclusive policy.

Immigration in the United States

The power of public opinion is undeniable, especially as it relates to policy, since the jobs of those writing it depend on the opinions of their constituents. Immigrants to the United States who are currently residing in the country are now at their largest percentage than at any time since the mid-twentieth century (Espenshade, 1997, pg. 89). The states with the most foreign-born residents are California, New York, Texas, Florida, and New Jersey, and not surprisingly these states have the highest instances of legislative agendas centered around topics of immigration (Espenshade, 1997). However, these agendas are not focused on making the lives of immigrants less burdensome (Espenshade, 1997). Instead, they are focused on initiatives such as making English a primary language, or denying state-based aid to even the most needy of immigrants (Espenshade, 1997). Overall, not just in states where immigration rates are high, the majority of Americans are more in favor of immigration when the rest of the country is in

relatively good shape, especially the economy (Espenshade, 1997). However, public opinion on immigration goes far beyond just what U.S.-born citizens think about the issue. To see the whole picture, the opinion of immigrants themselves should be taken into account. When interviewing immigrant women from various cultures who have made their homes in the United States, Pearce, Clifford, & Tandon (2011) found that most of the women did not consider themselves a part of a group of other immigrant women. As previously stated, these women came from a variety of different backgrounds – near, far, documented, undocumented – but if as a whole they are feeling unconnected to other people in similar situations to their own, then their disconnect (or their perception that they are not welcome, especially in such uncertain economic times) is not only detrimental to their well-being, but to the country as a whole (Pearce et al., 2011). An “us” vs. “them” mentality within the borders of one nation is not only nonsensical, but it has the potential to divide communities for decades to come.

Although issues with immigration to the United States may seem like a contemporary issue, it is far from contemporary. Immigration is an issue faced by every generation, and is something that challenges every generation (Keogan, 2010). Given that identity is something that is developed over time through experiences, self-discovery, and one’s history, it is safe to say that identity defining processes are different for immigrants, just like they are unique to any particular group (Keogan, 2010). Something unique that immigrants experience is that the identity of where they come from and/or where they belong may conflict with their immigration status (Keogan, 2010). For example, an undocumented child who has grown up in the United States, may consider themselves American, until they are older when they are told they are not American by society, because of their lack of paperwork. This is not to say that this conflict in

identity is just experienced by undocumented immigrants, but by all people who, even with a documented immigration status, would have to leave the United States if that piece of paper were for some reason to be taken away. As social beings, people are quick to place others in categories, and that kind of social categorization can become more apparent with groups of immigrants who may not only speak different languages, but often at least have accents that signify them as “not American” (Keogan, 2010, pg. 9). However, even beyond that, the categorizations that immigrants are put into come with their own set of cultural and legal connotations (Keogan, 2010). Keogan (2010) notes that basically there are three categories: Refugee, Immigrant, and Illegal Immigrant (pg. 10). “Refugees” are culturally seen as “victims,” and are generally treated with an “inclusionary” attitude (legally); “immigrants” are often perceived as “newcomers,” and generally treated with a sort of “ambivalence” in the legal system (as long as they have paperwork); and finally “illegal immigrants” are culturally seen as “deviants,” and are often treated in an “exclusionary” manner by the legal system, despite their circumstances (Keogan, 2010, pg. 10).

In contemporary times the term “illegal immigrant” is most often associated with people coming to the United States from Mexico, even though Canada, Poland, Italy, and Ireland also contribute in large amounts to the undocumented population in the United States (Keogan, 2010, pg. 11) Keogan (2010) notes that immigrants from places considered to be in the “West” are suspected or considered to be “illegal” at a much lower rate than anyone entering the country from its Southern border (pg. 11). This is where the binaries of human social classification are magnified because when considering immigrants it is so much easier for people to think of categories to place people into two at a time; for example, “American/foreign” or “legal/illegal”

(Keogan, 2010, pg. 12). The way that people, correctly or incorrectly define other people is a way of life and will never change; however, that does not mean that it cannot become a more positive experience. If people are associating binaries with one inherently being good, and the other inherently being bad, then there will always be conflict between the opposing sides (Keogan, 2010). However, if we can broaden the conversations that we have about immigrants to include understanding and compassion, and go beyond merely categorizing people by their “status,” then what it means to be an “immigrant” can change in the public discourse (Keogan, 2010).

Also addressing the binary of good and bad, Ono and Sloop (2002) discuss how “citizenship” and who should be considered part of the “nation” are defined. Who is allowed to belong is often defined through a binary of those who are “moral” and follow the rules, versus those who are determined to have “disobeyed” the system, and so are “illegal” (Ono & Sloop, 2002 pg. 27). Upholding these definitions operates under the false assumption that the immigration process is equally accessible to all people (Ono & Sloop, 2002). Ono and Sloop cite the reason for pitting those within the nation against “outsiders,” goes back to the Cold War and the idea that there is America and those who are looking to “invade” America (2002, pg. 35). This emphasis on needing to have an enemy is something that the media has embraced, and the technology that makes media so accessible is actually also changing communities in very interesting ways that are impacting immigration (Ono & Sloop, 2002, pg. 36). The authors discuss a need for society to identify an “other” so the dominant culture can be secure in its own identity; however, with the proliferation of technology, communities are growing, and people are feeling more connected transnationally (Ono & Sloop, 2002). There is a concern that this loss of

the “other” could lead to a confusion as to who society is “against,” since the need for an enemy has theoretically not changed (Ono & Sloop, 2002). In addition to that concern, there is also the possibility that the explosion of technology could finally be the way that human-made borders and restrictions are broken down along with the “us vs. them” mentality (Ono & Sloop, 2002).

Research Questions

In order to fully explore this bill through its language, the researcher will focus on two primary research questions.

RQ1: How does Critical Discourse Analysis make legislative language more transparent?

RQ2: Which stakeholders does the legislative language give the most agency to?

CHAPTER THREE: METHODOLOGY

This study examines the role that discourse plays in how legislation is received, and how changes in discourse can make it more accessible. The ultimate purpose of this study is to uncover ways U.S. legislation may exclude certain members of society and examine ways it could potentially be more inclusive. In order to accomplish this, the study looks at the lexical choices in the legislation and how they operate as tools of potential exclusion, as well as how third party interpreters of the legislation impact how it is consumed by the general population. The researcher has chosen feminist qualitative methods of content analysis because this research ultimately looks at disenfranchised groups of immigrants and the social change (through legislation) that can improve the immigration system, and consequently the immigrant experience (Hesse-Biber & Leavy, 2007). Through a discourse analysis of exclusionary and damaging legislation, the goal of this analysis of sections of S.744, using grounded theory and theme identification, is to produce applicable conclusions that will determine how future legislation can more effectively serve the communities that it is attempting to help (Hesse-Biber & Leavy, 2007). S.744 was not written with a feminist perspective and it is the researcher's hope that this critical analysis of the text will be the first step in adding that voice to future legislation.

Sample & Selection

This study is a discourse analysis of Senate Bill 744, from the 113th Congress of the United States. The researcher has selected Senate Bill 744 to examine because it is legislation that has been sold as all-encompassing, and has been designed by its creators to impact members of society at all levels. Since this legislation is not law, an aim of this research is to conclude

whether or not the failures and/or successes of S.744 could have been prevented or predicted in the early stages of the process. Examination of the language included in the bill could lead to conclusions that will be beneficial for identifying issues in future legislation.

This bill is the most recent attempt to reform the current immigration system, which is why this legislation is the most appropriate for the study of how privilege and identity are addressed in immigration policy. Even though Senate Bill 744 did not become law, it is still a document that is vital in telling the story of contemporary immigration. The priorities in the bill, the inclusion, and the exclusions, speak volumes about what is valued in contemporary U.S. society.

Sections Pulled from S.744

After reading over the 844 page bill, the researcher pulled out parts that stood out as needing further analysis. Using the tenets of Critical Discourse Analysis, the researcher identified sections of the bill (both positive and negative) that could demonstrate how the text is received in a contemporary context. The bill is hundreds of pages long; therefore, an analysis of the bill page-by-page, line-by-line, is beyond the scope of this thesis. That is why the researcher chose sections from the bill that are representative of the whole in terms of their language choices, and what they represent about the message of the legislation.

Interviews

In addition to analyzing the text of S.744, the researcher also conducted interviews to supplement what could be gained from a content analysis. The researcher came to interviewees after inquiring with her connections about people who had experience working with immigration

policy process in general, and/or had specifically worked on Senate Bill 744. After finding three positive leads, the researcher ended up with two comprehensive interviews from experts in the field. Interviewee A had been involved in crafting the attempts at comprehensive immigration reform during the Bush Administration, and Interviewee B had been directly involved in writing the language of S.744 as a Senate staffer. These interviews were infinitely valuable to the study and the complex process of policy creation, and the politics that go along with it. The personal connection to the language, how it was formulated, and being able to get a sense of the attitude in the room when S.744 and prior legislation was written, are things that are not always coupled alongside a contextual analysis of policy; therefore, the interviews add considerable value to the larger discussion.

CHAPTER FOUR: ANALYSIS

This research applied Critical Discourse Analysis (CDA) as a means to analyze the way that the language in Senate Bill 744 had been created, and how it consequently impacts the populations that it both includes and excludes.

Again looking at the way that Fairclough interprets CDA, Phillips and Jørgensen (2002) define the steps of the methodological approach to examining a text, and the approach that will be adopted for this research. The first is Discursive Practice, which looks at the way the text was created, who created it, and for what purpose (Phillips & Jørgensen, 2002). Discursive Practice also looks at the intended audience of a text by examining the “intertextual chain,” or the many versions of the text that have existed and led to its current state (Phillips & Jørgensen, 2002). By doing this it is possible to consider the way the legislation has been coded by privileged members of society who have written it, and decoded by the general population who is intended to consume it (Phillips & Jørgensen, 2002).

The next step of Fairclough’s approach that is relevant to this research is an examination of the structure of the text, and more specifically: Interactional control, wording, and grammar (Phillips & Jørgensen, 2002). An examination of interactional control will include an examination of the layout of the text, and look at things such as priorities in the legislation – determined by the physical placement of text (Phillips & Jørgensen, 2002). The wording and grammatical choices in the text will be analyzed by consideration of their transitivity and modality (Phillips & Jørgensen, 2002). Transitivity will be examined in terms of how subjects are named or conversely disenfranchised in the word choices, and will also examine how

mechanics such as passive voice are used and how frequently they appear in the text (Phillips & Jørgensen, 2002). Modality of the language will be examined by looking at both the extent and lack of ownership the writers take in the text, and its proposed societal implications (Phillips & Jørgensen, 2002).

In her analysis of education policy Liasidou (2008) poses important questions to keep in mind while analyzing policy, questions that this research will seek to answer. These questions include: Who is privileged by this text? How are the recipients of the outcome of the legislation identified in the text? And, what is the social context in which this text lives? (Liasidou, 2008). Liasidou specifically looks at “interdiscursive analysis,” and the way that micro events (discourse choices in the legislation) impact macro structures (society and the populations directly impacted by the legislation) (Liasidou, 2008).

The researcher will look for common themes that appear in Senate Bill 744 by using the aforementioned methods. These themes will then be used to evaluate the successes and failures of the legislation, as well as draw links to the study of future legislation – specifically immigration legislation that is signed into law.

Through a CDA of Senate Bill 744 (S.744), the following themes were identified as ways to analyze the text, and examine its impact on society. Language of Action will examine the lexical choices and placement of the text to determine priorities in the legislation, and Rhetoric vs. Reality will examine the feasibility of the actions proposed by the legislation.

Language of Action

In assessing language of action the researcher has chosen to look at the segment of S.744 that addresses border security. This part of the bill was chosen for this section because of its placement at the beginning of the document, indicating its primary importance by the authors.

Wording

The words that are chosen and placed in the legislation are one of the most telling, if not the most telling indication of the biases of those who wrote the document (Phillips & Jørgensen, 2002). The words chosen to classify groups of people and areas of land indicate cultural precedent, potential political pandering, and represent the connotation and interpretation of the text that writers think will make it the most successful when it comes up for a vote.

An example of what has the appearance of political pandering is apparent in the first definition of the border security section. In TITLE I–BORDER SECURITY, Section 1101. Definitions, the first definition listed is:

- (1) **RURAL, HIGH-TRAFFICKED AREAS.**–The term “rural, high-trafficked areas” means rural areas through which drugs and undocumented aliens are routinely smuggled, as designated by the Commissioner of U.S. Customs and Border Protection.

Upon looking at this choice of language, immediately there is the question of why the word “rural” is used, and why it is considered the most important adjective to identify the area of land that is referenced. Given the political climate around the creation of S.744, it is clear that the “rural, high-trafficked areas” referenced in the text are referring to the area of land that borders

Mexico in the Southwest United States. However, if that is known to be the case, why is that not specifically stated in the text? Without an explanation by the authors, it is easy to draw the conclusion that the political climate surrounding the issue may not have been favorable towards naming specific areas.

The question arises of why it is necessary to specify “rural,” since that would imply that the same amount of attention is not needed in more urban areas that line the border into the United States. Are the “rural” desert areas of the border hotbeds for desperation and struggle, and that is why they need to be ambiguously defined and over-policed? The word “urban” is not listed in the entire document, which is suspect in itself since there are dozens of international city crossings on both the northern and southern borders. It is also interesting that the only other reference to “rural” in the document, when it is not coupled with “high-trafficked,” is when it is coupled with the term “economically disadvantaged” (S.744, pg. 670). Given these two instances of adjective pairings, it could be concluded that the writers of S.744 find the terms “rural,” “high-trafficked,” and “economically disadvantaged” synonymous for their purposes, which poses the question of why the bill states that “rural” areas be targeted, instead of indicating that the areas, for example with a history of the highest crime rates, be targeted? Since undocumented border crossings are what is intended to be avoided and reduced by this language, that should be specifically stated instead of being left up to interpretation by the Commissioner of U.S. Customs and Border Protection.

The use of terms such as “border protection” and “border security” play into the idea that immigrants are something that the United States needs to be protected against, instead of something that enrich the country and make it better than it was before. The reason that S.744

was developed was to address, not only the entirely dysfunctional immigration system, but to address the large population of undocumented immigrants in the country. This bill, if it had been passed, certainly addresses those immigrants, but it also perpetuates the system that caused such a large population of people to be undocumented against their will. The part of the bill (and the current immigration system as it stands) that addresses this, are the categories of non-immigrant visas. The purpose behind these categories is to give workers and students the opportunity to come to the United States, without the intent to ever let them qualify for any type of permanent residency. People who acquire these visas have to prove no intent to stay in the United States, although they often bring their families, and establish professional and community ties for decades. It is naïve to think that none of these immigrants will want to stay in the United States in a permanent status, but when they enter as non-immigrants, the transition to immigrant status is not always smooth, and in some cases is not attainable at all.

In the media the case of non-immigrants has notably been pleaded on behalf of students. Students who are educated in the United States and are then mandated to leave if they cannot find an employer right after graduation and make it under the visa cap. However, we rarely hear this case made on behalf of investors or agricultural workers. It is as though legislators are perpetually overlooking a gaping hole in the system, and they do not realize that non-immigrant visas are not practical, since they promote the establishment of a non-permanent life.

It is interesting that S.744 “TITLE II–IMMIGRANT VISAS” not only houses sections of the proposed legislation that deals with permanent immigration, but still includes a sub-section focused on “non-immigration.” There are two sections that explain this point: “CHAPTER 1–PROGRAM FOR EARNED STATUS ADJUSTMENT OF AGRICULTURAL WORKERS,

SUBCHAPTER A–BLUE CARD STATUS, SEC. 211. REQUIREMENTS FOR BLUE CARD STATUS” and “CHAPTER 2–NONIMMIGRANT AGRICULTURAL VISA PROGRAM.”

To begin, CHAPTER 1 reads:

(2) APPLICATION PERIOD.–

(A) INITIAL PERIOD. – Except as provided in subparagraph (B), the Secretary may only accept applications for blue card status from aliens in the United States during the 1-year period beginning on the date on which the final rule is published in the Federal Register pursuant to subsection (f).

This section indicates that in order for one to become eligible for a blue card one has to have already entered the country as a non-immigrant, worked for a set period of time, for a set employer, before they can then apply for permanent status. S.744 does have an option for agricultural workers to acquire permanent status, which is an improvement on the lack of such a provision in the current immigration code, but it is still not a suitable solution to meet the needs of all who will fall under this category. One of the main issues with this blue card provision is the cap that was put in place by the writers of the bill. If the bill had passed in the 113th Congress, the cap would have been 112, 333 cards per year for the first five years, which would only encompass a fraction of those applying for it, and would leave hundreds of thousands, if not millions, of workers left in an uncertain non-immigrant status (Feinstein, 2013).

Chapter 2 of the provision, titled: “(2) TERM OF STAY FOR NONIMMIGRANT AGRICULTURAL WORKERS” states:

(A) IN GENERAL.–

- (i) INITIAL ADMISSION.—A non-immigrant agricultural worker may be admitted into the United States in such status for an initial period of 3 years.
- (ii) RENEWAL.—A nonimmigrant agricultural worker may renew such worker’s period of admission in the United States for 1 additional 3-year period.

What can be inferred from these sections that address agricultural workers is just a repeat of the currently broken system. If immigrants can only apply for blue card status after having to risk entering the United States with their families as non-immigrants, then because of obstacles such as visa caps and financial hurdles there is going to be a whole new group of potentially undocumented immigrants in the United States. This applies to any and all non-immigrant visa categories, including students and investors, but because of the blatant opposition of language, this research focuses on agricultural workers to point out this flaw in the legislation.

If the U.S. government is proposing that immigrants move themselves and their families to the United States to fill quotas in job categories that need filling, this whole concept of a “non-immigrant” needs to be taken out of the language and recognized as outdated. A major concern and flaw in this language is what it means for children who are brought to the United States as non-immigrants. There is no visa category for those who are brought to the United States as children, under a visa whose conditions they did not agree to, and who at a certain age may be required to abandon the home and community their “non-immigrant” parents established.

Another requirement of the blue card program is that since it is a “non-immigrant” visa, it can only be renewed for up to six years and then the petitioner has to “reside outside of the U.S. for three months before obtaining another visa,” while according to the rate of compensation for

work, the maximum a person would be making hourly is \$11.87 (Feinstein, 2013). This would be a job with no benefits that is just barely paying a person minimum wage. To expect that person to take an arbitrary three months off of work, even if they cannot afford to do so, could by many standards be considered unreasonable. However, if these immigrants do not take this required three month hiatus outside of U.S. borders, they will violate the terms of their status. This language does not take into consideration families with children who cannot take three months off of school, or families that are just barely surviving paycheck-to-paycheck. And all of this is to say nothing about the fees one must incur just to apply for a blue card and keep it current, which would at a minimum be \$500 (Feinstein, 2013).

One thing that is commendable about the blue card program is that it does eventually lead to permanent residency in the United States, once all requirements have been met. However, before that happens, this is basically another problematic temporary immigration status. Problematic, not only for the adults who are applying for it, but most notably for their children. If blue card holders do not have permanent residency by the time their children turn 21, then even if these children grew up in the United States, they will no longer have a legal status to transfer into, leaving them to start over again in a country they call home.

Immigration legislation is written in a complex manner, and because of that the Congressional Research Service (CRS) has conducted multiple studies that point out how complicated immigration legislation is to understand, which is something that has yet to be reformed (Viña, 2005). The CRS quotes a report conducted after 9/11 that states: “Every immigration benefit has its own set of rules, regulations, and procedures. Many are complex and time-consuming to adjudicate. Some are so difficult to process that specialists must handle them”

(Viña, 2005, pg. 3). The report also quotes the former director of the United States Citizenship and Immigration Services, Eduardo Aguirre, speaking to the House Appropriations Subcommittee on Homeland Security to the 109th Congress as saying:

We are saddled with administering what my legal friends tell me is the most complicated set of laws in the nation. I am told it beats the tax code. And as the Immigration and Nationality Act, which you from time to time see fit to modify or add a layer or take one away, each application we receive seems to be slightly or largely different from the other. Six million to seven million applications have to be administered – adjudicated – against a body of law that is very complex and sometimes contradicting each other (Viña, 2005, pg. 3).

This only highlights that if the text of immigration law is not relayed clearly to the professionals who are tasked with processing it, then as legislation (while it is still working its way through Congress), it becomes infinitely inaccessible to anyone who is not a lobbyist or does not have the ability to hire one. This means that having an impact on the legislation before it is passed is unlikely. How can someone protect themselves against something preemptively, if they do not know that it affects them until it is too late?

As can be seen from Mr. Aguirre’s testimony, there are countless legal issues with millions of applications per year, which makes it unrealistic that everyone can receive the justice they deserve (Viña, 2005). Inevitably this leads to an unbelievable amount of discretion being left to officials at the borders who are not judges, dealing with immigrants who do not have lawyers. For example, when an immigrant comes to the border and has to prove “non-immigrant intent” in order to be admitted into the country, they are being assumed as guilty while having to

prove their innocence – which is the opposite of how any court works in the United States. The law basically permits the assumption of guilt before innocence in a court with no lawyers and untrained judges.

Transivity

The importance of transivity in the analysis of a text looks at the way groups can be disenfranchised by word choice (Phillips & Jørgensen, 2002). When thinking of the way that disenfranchisement can most heavily be bestowed upon any one person, there are few things more disenfranchising than incarceration – possibly with the exception of incarceration in a country where you have no political influence. In TITLE I–BORDER SECURITY, Section 1104. Enhancement of Existing Border Security Operations, the text states that a goal upon passage of S.744 will be to:

- (A) increase the number of border crossing prosecutions in the Tucson Sector of the Southwest Border region to up to 210 prosecutions per day by increasing the funding available for–

Note that no context is given in the document for how many cases produce the need for “border crossing prosecutions” per day along the aforementioned United States border. Therefore there is no context given to indicate whether “210 prosecutions per day” is in fact a small percentage of the number of anticipated prosecutions, an exact estimate, or an overreach in the numbers that is up to interpretation by those who would be enforcing the legislation. Instead of giving an exact (and from context seemingly an arbitrary number of prosecutions), there should be a goal set in percentages.

Without a ratio goal that is in proportion with how many crimes are actually committed, it is as though the document is setting itself up for failure in accomplishing its stated purpose of comprehensive immigration reform. Consider a scenario where S.744 is made law, and eventually serves its purpose in decreasing the amount of undocumented immigration into the United States; would the enforcers of the legislation at the border still be required to arrest up to 210 people per day? First of all, without the appropriate context it is unclear if “210 prosecutions per day” is already an over exaggeration of the number of immigration crimes that occur per day, but even if it is not, but eventually is, this language raises the concern of what will be required of those enforcing border security in order to reach their goals. Since the language leaves no room for adjustment in the fluctuation of immigration crimes, it creates a scenario where crime may be sought out of potential progress, instead of celebrating a reduction in the number of overall crimes committed.

Layout

The way that a particular text is laid out takes intertextual control into consideration, which is the way that the text interacts, compliments, and contradicts with other parts of the document (Phillips & Jørgensen, 2002).

In the segment of S.744 under TITLE I–BORDER SECURITY, Section 1105., Border Security on Certain Federal Land, Subsection (1), Paragraph (C) which is entitled “Programmatic Environmental Impact Statement,” the text outlines all the ways in which patrolling and surveillance activity on areas labeled as “Federal lands” under the jurisdiction of the Secretary of Agriculture will take place. What is problematic about the placement of this language is that it seems to be encouraging the protection of “land” over the protection of the people impacted by

this legislation if it were to become law. It is possible that the reference of the term “land” could inherently include all those living and/or dwelling on the land as well, but that is an assumption, and something that is left up to the interpretation of the enforcer.

In the same segment of the document under TITLE I–BORDER SECURITY, Section 1112., Training for Border Security and Immigration Enforcement Officers the text states:

(a) IN GENERAL.–The Secretary shall ensure that U.S. Customs and Border Protection officers, U.S. Border Patrol officers, U.S. Immigration and Customs Enforcement agents, and agriculture specialists stationed within 100 miles of any land or marine border of the United States or at any United States port of entry receive appropriate training, which shall be prepared in collaboration with the Assistant Attorney General for the Civil Rights Division of the Department of Justice, in–

(1) identifying and detecting fraudulent travel documents;

(2) civil, constitutional, human, and privacy rights of individuals;

Not only is this part of the document that lists the “civil, constitutional, human, and privacy rights of individuals” listed eight pages after the provisions protecting “Federal lands,” but it also lists the humanitarian concerns as second to “identifying and detecting fraudulent travel documents.” It is not unreasonable to assume that the primary concern of all those enforcing laws in the United States would be uphold the human rights of those they encounter. However, it appears due to the layout of this text that the priority indicated in this section is instead to document enforcement. When thinking about this in terms of identity, this goes back to the relationship that one has with oneself versus the negotiation of identity with society’s

perceptions (Jackson, 2002). According to Jackson (2002), identity can change due to situation, so even though one would think it is not unreasonable to assume that the primary concern of all those enforcing laws in the United States would be to uphold the human rights of those they encounter, that may not always be the case (2002). When people are marginalized by text that is then turned into action (a goal of legislation), they are then more likely to be marginalized by society, which can end up negatively altering how the self is perceived (Jackson, 2002). It appears due to the layout of this text that the priority indicated in this section is document enforcement, rather than the safety and dignity of the individuals involved.

Modality

The willingness of the writers and creators of a text to take responsibility for the consequences that arise from its implementation can be assessed by looking to the modality in the text (Phillips & Jørgensen, 2002). One of the places that modality is most prevalent in this segment of the document is in the concluding words of the “Border Security” part of the bill.

TITLE I—BORDER SECURITY, Section 1116. Severability, states:

If any provision of this Act or any amendment made by this Act, or any application of such provision or amendment to any person or circumstance, is held to be unconstitutional, the remainder of the provisions of this Act and the amendments made by this Act and the application of the provision or amendment to any other person or circumstance shall not be affected.

The first question that arises from reading this excerpt is why constitutionality is not a priority when writing the legislation. Adding this scapegoat clause to the concluding paragraph of this segment of text creates a situation where the Senate of the United States, and potentially

the House of Representatives, could vote on a bill where the creators are not ruling out that parts of it could potentially be found unconstitutional. It is not only alarming that the creators of this text found it appropriate to add this clause to rid them of any fallout caused by unconstitutionality, but even more alarming that members of the United States Senate would deem it appropriate to not check the constitutionality of every single clause before taking it up for a vote.

Something that S.744 would have fixed concerning the non-intent section of some non-immigrant visas, is addressed in Section 4401 concerning student visas. The section reads:

SEC. 4401. AUTHORIZATION OF DUAL INTENT FOR NONIMMIGRANTS
SEEKING BACHELOR'S OR GRADUATE DEGREES.–

(1) IN GENERAL.– Section 101(a)(15)(F) (8 U.S.C. 1101 (a)(15)(F)) is amended to read as follows:

“(F)(i) an alien having residence in a foreign country who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 214(m) at an accredited college, university, or language training program, or at an established seminary, conservator, academic high school, elementary school, or other academic institution in the United States, particularly designated by the alien and approved by the Secretary of Homeland Security after consultation with the Secretary of Education....

What is most concerning about the non-intent section of non-immigrant visas as they currently stand is that depending on the border officer an immigrant comes in contact with, one's participation in social movements would violate the "non-intent" part of a visa if one were to leave the country and seek re-entry on the same visa. Given the plethora of situations of people seeking non-immigrant visas there are countless situations where it is unrealistic to show non-immigrant intent, especially for people brought to the United States as children. This means that any effort to try and establish your life in the country in which you grew up could automatically disqualify you from being able to stay. These visas were clearly intended for people coming to the United States, who are settled in other countries, but do not take into consideration the young people already in the United States looking to study and make a life for themselves. These kinds of stipulations leave many people completely and utterly powerless in the eyes of the system, and what is disheartening is that many legislators and elected officials do not even realize the hypocrisy in the system that they are signing off on. That is why Section 4401 of S.744 would have helped people on student visas if S.744 had passed. Although this section does not address the issues with all non-immigrant visas, it is a step in the right direction.

Rhetoric vs. Reality

When assessing the feasibility of a document of legislation labeled as comprehensive, it is important to examine what the rhetoric outlines, versus what is reasonably realistic for the populations impacted by the language to accomplish. In this case, the researcher will look at "realistic" in terms of the financial feasibility of the intended populations being able to abide by and benefit from the legislation. This is an important investigation into the text, because when the focus is on what sounds good or fits in with a particular political ideology, instead of what

the long-term effects of the legislation will be, it may be easy to measure success upon superficial milestones instead of tangible results (Eleveld, 2013).

Under the section of the bill entitled “SEC. 2101. REGISTERED PROVISIONAL IMMIGRANT STATUS – (2) PAYMENT OF TAXES” beginning on page 68 of the document, the language outlines the procedures for payment of taxes to meet the requirements for provisional immigrant status. S. 744 does not explicitly define “registered provisional immigrant status,” but it can be interpreted as a classification of temporary legalization of immigrants leading to permanent residency. The language states:

(A) IN GENERAL.—An alien may not file an application for registered provisional immigrant status under paragraph (1) unless the applicant has satisfied any applicable Federal tax liability.

(B) DEFINITION OF APPLICABLE FEDERAL TAX LIABILITY.—
In this paragraph, the term ‘applicable Federal tax liability’ means all Federal income taxes assessed in accordance with section 6203 of the Internal Revenue Code of 1986.

S.744 does not define the provisions of section 6203 of the Internal Revenue Code of 1986, but it can be determined that what applies to this text is in reference to section 6203 stating a “summary of assessment” of taxes must be provided to those charged with paying taxes before they are required to pay that money to the Internal Revenue Service (Section 6203–Method of Assessment).

The aforementioned language states that in order for even provisional documented status to happen, those applying for it must pay all the taxes that it is determined they have avoided

while in an undocumented status. This language sounds like a wonderful talking point for politicians; however, it is unclear if the reality of this provision has been considered by those who wrote it and passed it. If one is to assume that it is possible to calculate taxes for work and services that have not been recorded, how realistic is it that those wishing to obtain registered provisional immigrant status will be able to meet the financial requirement of doing so? It is important to examine whether this language is just a rhetorical addition to legislation that sounds good to extremists and political party influencers; or if it is really a provision that is made to sound reasonable, but intentionally excludes, based on socio-economics, almost all of the population that it was intended to benefit. When additional financial restrictions are added to something that should be a fundamental right (not being afraid of deportation for yourself and your family members simply because of documentation), there will inevitably be people who are excluded. Therefore, if our policy cannot apply to everyone, despite financial status, then it is not good policy.

Without directly mentioning fees, paragraph (4) of section 2101 entitled APPLICATION FORM, states that in order to file documentation for registered provisional immigrant status, one will be required to include the forms detailing Documentation titled Required Information and a Family Application. Though a price is not specifically outlined, from current United States Customs and Immigration Services (USCIS) prices, it can be inferred that the cost for providing this information could range from \$325 to \$1,500 per family member (Form G-1055). In addition to these application fees there is also the requirement (listed in paragraph (8) of section 2101) of providing Biometric and Biographic Data, which again as determined from current USCIS prices could cost an immigrant in the range of \$85 per family member – a fee that will mostly likely not

include what it costs to meet the biometric requirements, but rather just a basic biometrics assessment (Form G-1055).

According to the Pew Research Hispanic Trends Project, in 2007 the average median income for an undocumented worker was \$36,000 per year, with one out of five undocumented immigrants living below the poverty line (Passel & Cohn, 2009). The study also notes that undocumented immigrants are almost twice as likely to have children to support when compared to residents born in the United States (Passel & Cohn, 2009).

In addition to the fees that would be assessed for the mere application for adjustment to registered provisional immigrant status, S.744 also includes an additional penalty for all those merely applying for this status. Section 2101, paragraph (10), subparagraph (C), entitled PENALTY reads:

(i) PAYMENT.—In addition to the processing fee required under subparagraph (A), aliens not described in section 245D who are 21 years of age or older and are filing an application under this subsection shall pay a \$1,000 penalty to the Department of Homeland Security.

Although this section goes on to explain that the penalty can be paid in installments of \$500 at the time of application and then undefined smaller installments of the remaining \$500, this is assuming another layer of financial privilege by adding this financial burden to the application process (pgs. 83-84). When strict financial amounts are set as barriers to what many would consider the human right of being able to live in the United States without fear, we are embracing a culture of oppression instead a culture that celebrates differences that span the entire economic spectrum (Moon & Flores, 2000).

Something that keeps making a bad situation worse, in terms of limitations on who may realistically be able to apply for registered provisional immigrant status, are the time constraints that are placed upon applicants. It is under the same section of the document (2101), that outlines the application period for application. Beginning on page 69, the text states:

(A) INITIAL PERIOD.—Except as provided in subparagraph (B), the Secretary may only accept applications for registered provisional immigrant status from aliens in the United States during the 1-year period beginning on the date on which the final rule is published in the Federal Register pursuant to paragraph (1).

(B) EXTENSION.—If the Secretary determines, during the initial period described in subparagraph (A), that additional time is required provisional immigrant status for other good cause, the Secretary may extend the period accepting applications for such status for an additional 18 months.

This text does not outline what would constitute a “good cause,” even though it can be assumed that many proponents of the legislation would hope that financial burden of applicants would be good cause enough to extend the deadline so as many qualified immigrants as possible are able to apply. Beyond the times defined in the text as “Initial Period,” and “Extension” it seems as though the determination of these time constraints is relatively arbitrary given the fact that there is no explanation for them. If anything, given the data indicating the financial burden cast upon undocumented immigrants, it could be inferred that these time constraints are on the implausible side of reality. Therefore, the researcher is concluding that the rhetoric derived from the fact that all undocumented immigrants will pay back taxes, pay expensive application fees, and be able to get in the proverbial line, is more political rhetoric than anything else.

Gruszczynski and Michaels (2012) discuss the way that delayed implementation of legislation can lead to outcomes that were not initially intended. Given the short timeframe allotted for registered provisional immigrant status applications, an undesirable outcome from this legislation could be that there will be a large percentage of undocumented immigrants who will not be able to get their application submitted before the deadline. Therefore, these immigrants could again be in limbo and in fear of deportation.

What is most frustrating about the immigration policy process is the line between looking like something is being accomplished, and something actually being accomplished. All too often government officials feel as though they can pat themselves on the back because they have given something their “best effort” (like S.744), but ultimately if nothing materializes from what they do then it means nothing, and it helps no one. This is where the politics of the issue start to cloud the reality of the policy (Interview A). When you have two political parties competing for power, who are vying for the approval of constituents (who for the most part have no personal vested interest in immigration), can we really call a “compromise” between those two entities fair? Immigrants are in a peculiar situation in terms of their influence in society that is unique only to them. They are a group of society that consists of millions of people who cannot vote (so therefore do not have traditional agency in society) and do not get the attention they should from elected officials, who can have no official part of the legislative process (until they are naturalized citizens), and in some cases can be penalized (by having their status revoked) if they are forced to be on non-immigrant visas that mean they can legally show no intent to want to stay in the United States.

Something that greatly hinders any development towards a system that works is the way that the agencies that handle immigration are set up. Prior to 9/11, all immigration and immigration services were housed under the Department of Homeland Security and the Immigration Naturalization Service (INS) (Interview A). After 9/11 this was then split into three parts: The United States Citizenship and Immigration Services (USCIS) who are responsible for processing all applications, Customs and Border Patrol (CBP) who are what we would consider border patrol, and Immigration and Customs Enforcement (ICE) who enforce regulations and investigate immigration cases (Interview A). To say that these agencies are overwhelmed is an understatement, and to think that everyone who works for these agencies is properly trained in one of the most complex and lengthy policy documents in the country is unrealistically optimistic. Although the legislation that is written to create immigration policy is the part of the process that is most vital to make more accessible and reasonable, since it is the backbone for the entire system, it would be remiss not to mention other things that would make the system work more effectively. People who work in these agencies are often the sounding board for immigrants who call them and ask questions about their very complicated applications, so it is remarkably important that these employees are providing only the most up-to-date and accurate information. If an immigrant gets incorrect information from one of these agencies, they may not know, because it may not have even occurred to them to double check it. This is especially detrimental to immigrants who do not have access to lawyers who will make sure procedure is being followed correctly. This only adds another layer of privilege and access to a system that is fundamentally biased.

Interviews

Timeline of Events Leading up to S.744

Interviewee A is an expert in immigration policy who has worked not only in Congress, but in the aforementioned agencies, and is now a practitioner of immigration law. Because of his experience, Interviewee A outlined a timeline of events that led up to the creation of S.744 in 2013. In 2003-2005 there were increased numbers of unauthorized migrant border crossings, which meant that the border became a hot topic because of the influx of people entering the country. There have always been unauthorized entries into the United States, but not to the extent that there were during this time period. This prompted an increase in border bills coming up in Congress. The House then passed the Border Protection, Anti-Terrorism and Illegal Immigration Control Act of 2005 that the pro-immigration groups thought was extreme. It addressed border security, as well as some temporary visas. In 2006 the 2006-2007 Congressional immigration effort began again with Senate Bill 1348 and Senate Bill 1639; however, the House and Senate never went into conference with these two bills before the end of that Congressional session. The Border Security Act of 2006 did pass though, which authorized fencing around the U.S. Southern border.

In 2007 the Bush Administration put the full weight of the White House behind passing a bill on immigration. It was supported by the extreme Right and the extreme Left, but it was not supported by enough of the middle, and because it was considered not “good enough,” it did not pass – which meant that nothing passed. This has been a common theme in the history of immigration policy, and S.744 is no exception. It seems as though many politicians want to pass

something “comprehensive,” even though that type of legislation has been proven to fail over and over again. It was after this that the economy began to take a serious downturn, and the United States experienced the financial crisis, and the consequently declining economy of 2008 and 2009.

During the Presidential Election of 2008 immigration was again brought up by the candidates, but the economy, and health care, were the main concerns of the day. During the elections of 2012 immigration was again a main topic of conversation. Most notably the DREAMers (undocumented youth) put pressure on the Obama Administration to do something about their situation, and it was in 2012 that Deferred Action for Childhood Arrivals (DACA) was announced. After President Obama was elected for his second term, there was again another push for immigration reform in 2013, and that began and ended with Senate Bill 744.

It is the opinion of Interviewee A (who worked on the 2006-2007 legislation) that although the immigration effort of 2013 was supported by the Obama Administration, the full weight of the White House was not behind it. In fact, it is the opinion of Interviewee B that S.744 was a piece of legislation that could have made it into law because so much was discussed, and taken into account, and so many people with differing interests were consulted.

What Needs to Happen for Immigration Reform to Become a Reality?

Both Interviewee A and Interviewee B were asked by the researcher what it would take in their opinion for immigration reform to become a reality, and their answers were remarkably similar. Both said that the politics of the day will play a massive role in not only who will take up this issue, but how it will be handled if it is to come up. It is so important to consider the political factors that not only get someone elected to office, but also influence their voting

behavior after they have been elected. In the 1980s the Republican Party was seen as the “pro-immigration” party, and Democrats were the opposite because of their alliance with unions who did not want to hinder access to American jobs (Interview A). It was the Republican Party of President Reagan who passed the 1986 legalization, but in today’s political climate it is the Left who are the proponents of a legalization effort, and it is unthinkable that many Republicans would vote for that. Even within a generation, or less, things have flipped so much, and despite the current Congressional gridlock, it is possible for it to happen again in the future – hopefully in a less divisive way.

Interviewee A also noted that something that is critical to immigration reform becoming a national priority is that the economy has to significantly improve. He makes the point that no elected official is going to give the attention to immigration reform that it needs if their constituents are suffering because of the economy. This just highlights the importance of more immigrants becoming involved in immigration policy at every step of the process. If immigration, which deeply impacts the lives of so many, is thought of as a secondary issue then it may be decades before it is resolved.

Those Who Worked on the Bill vs. Those Who Did Not

Interviewee B worked on S.744 for one of the members of the “Gang of Eight” and when asked about the viability of this legislative effort was very positive – just as Interviewee A spoke highly of the 2006-2007 immigration efforts that included their personal contribution. Each Interviewee believed that the work they were doing on immigration policy could truly pass Congress and gain enough votes to become law. Although neither comprehensive effort was ultimately successful, it is reassuring to know that, despite the politics of the day, at least when it

comes to those who are writing the legislation, there is a full faith effort to write something that will actually improve peoples' lives. This is not to say there is not room for drastic improvement. There can be the best intentions in the world behind a piece of legislation, but if it never comes to fruition, then it loses its value tenfold. It then becomes a talking point for legislators who "gave it their best effort," which ultimately helps no one.

The Reality of "Comprehensive"

Something important addressed in the interviews was how realistic it was to address something as large as the entire immigration system in one bill. It seems to be at the political advantage of those involved to address immigration reform in one swoop, which really just emphasizes Congress's overall lack of expertise in the area. Immigration policy is so complex, and so convoluted, and has so many rules and exceptions, that addressing it all at once may not be the best way to move forward. Even though both interviewees promoted the full-faith efforts of the legislation they worked on, there was definitely an air of seeing the benefit of tackling this social issue piece by piece.

CHAPTER FIVE: CONCLUSION

The implications of this analysis have been that there are undoubtedly many improvements that need to be made in the way that immigration policy is approached and written. Not only does the complexity of the process make the legislation inaccessible while it is being written (i.e. competing interests really need lobbyists in order to be heard), but the complexity also makes immigration difficult to navigate both on the side of the Federal government, and on the side of immigrants themselves. Someone reading through Senate Bill 744, or any other piece of legislation, may get the impression that it makes sense methodically, but without taking into consideration the human consequences that are faced by the millions of immigrants in this country, it will never be a success.

Critical Discourse Analysis makes legislative language more transparent in that it reveals who is disenfranchised and addresses the reality of the language's consequences. When addressing the stakeholders that the language gives the most agency to, we can see that it is most often the elected officials who approve and vote on the legislation. These are individuals who have no personal stake in the legislation's outcome (because even if they were immigrants at one point in their lives, they are now citizens of the United States). Immigrants are in an unusual situation in that they cannot be elected officials and move into the group in society with the most agency in legislation until they are citizens of the United States, and are therefore no longer directly impacted by the consequences of the language.

This type of research, a discourse analysis of policy, is important for communication researchers to explore so that failures in the legislation can be highlighted and not be repeated

over and over again. This insight into the legislation allows us to see how we can make our representatives more accountable for the language that they vote on and promote in their political agendas. It is also the hope of the researcher that an increased analysis of legislation and its real-world impacts will work to decrease general apathy towards issues such as immigration, and raise the level of participation by having more people invested in the process. It is vital to examine language that impacts society and look at how it impacts peoples' lives, because it allows us to take a deeper look into the lived experience of individuals. Words have meaning and consequences, so looking at them on a micro-level through content analysis is vital task for communication scholars.

Note on Intertextuality

It is necessary to point out the difficulty that intertextuality creates in processing and understanding S.744. For example, this analysis references Section 6203 of the Internal Revenue Code, which is not easily accessible with internet access, and would only be exponentially more difficult to access without internet access. Even when references to other sections of the text are made, it is not always clear exactly where in the text said reference may be referring.

Given these difficulties, the issue has to be raised of how much comprehension there is of this text (and legislative texts like it) by the general population, before it is voted on to become the law of the land. In addition to access to the necessities of the application process, such as substantial financial resources, the fact that the text is difficult to understand adds another layer of privilege in being able to investigate the language before it is voted on to become law. Therefore, this layer of privilege is not only limiting who is technically qualified under the provisions of the bill (for example, in terms of financial resources), but also by design it is

limiting the population of people who have the resources to assimilate the text. This could be described as “othering” in that those who wrote the text are failing to acknowledge or fix its inaccessibility, by assuming that accessibility is the norm (hooks, 1992). The distance that is created through discourse between the people writing legislation and those who are impacted by it has the potential to further divide the two groups, and perhaps even the nation (hooks, 1992).

Making the Document User-Friendly

The writers and legislative stakeholders in this proposed legislation (elected officials, government agencies, etc.) should strive make bills user-friendly documents. This could be accomplished by offering a plain text version of the bill alongside the legislative version that has been written for the Senate or House floor. The consequences of not providing a plain text version of the bill is that third-party interpreters will be the sole entities interpreting the text for the public. Third-party entities could include news and media outlets, advocacy groups, lobbying groups, etc., who may willingly or unwillingly misinterpret the document for their audience. The detriment to the general population in this situation is that those invested in the outcome of this potential legislation may not realize, and therefore, may miss their opportunity to make this document one that is truly comprehensive and inclusive of all immigrants.

Future Research

Suggestions for future research include adding interviews from communities of immigrants. Even though the researcher herself is an immigrant, including the perspectives of those with varied backgrounds and cultures would be immensely valuable to work on this topic. An in-depth analysis of media coverage around the time of the creation, and Senate vote, of

S.744 would also be beneficial to further studies on this topic. Understanding the influence of the media on the public, and on those in Congress, during all stages of the legislative process is something that should undoubtedly be addressed.

APPENDIX A: INTERVIEW GUIDES

Contributor to S.744

- Is it alright if I record our conversation?
- What is your current position and/or line of work?
- How did you become involved in with S.744?
- What were the dates what you were involved with S.744?
- Please describe your involvement and contribution to S.744.
- Do you think that S.744 is a good piece of legislation? Please explain.
- Would S.744 have been a viable piece of legislation, had it been made into law?
- What are the best parts of the bill? What are the worst parts of the bill?
- What is your perspective on whether any one elected official (or their staff) has read the bill in its entirety and considered the implications of each section on the next?
- Do you think it is necessary for elected officials to read an entire piece of legislation before they take a vote on it?
- How would you classify the input of immigrants in the creation of this legislation? By this I mean, would you say the bill took a more people-centered approach or a more political-centered approach?
- Will it ever be possible to reach a comprehensive solution to immigration reform?
- Are you proud of your contributions to this legislation? Please explain.
- Personally, would you have wanted this bill to pass as is? If not, what changes would you have made?

Agency Worker

- Is it alright if I record our conversation?
- What is your current position and/or line of work?
- Please describe what your job entails.
- Have you read or heard of S.744? If so, what is your opinion of the viability of the proposed legislation?
- Do you have quotas in your job? If so, please explain.
- From your perspective, how is Federal immigration policy translated into the regulations that you use in your job?
- What are those regulations?
- What is your perspective on the current state of our immigration system?
- What are some of the biggest problems you see with the immigration system as it is?
- What are some of the biggest successes you see with the immigration system as it is?
- Will it ever be possible to reach a comprehensive solution to immigration reform?
- If you could change one thing about the ways that immigration policy is enforced, what would it be? What would you keep the same?

APPENDIX B: IRB APPROVAL LETTER



University of Central Florida Institutional Review Board
Office of Research & Commercialization
12201 Research Parkway, Suite 501
Orlando, Florida 32826-3246
Telephone: 407-823-2901 or 407-882-2276
www.research.ucf.edu/compliance/irb.html

Approval of Exempt Human Research

From: **UCF Institutional Review Board #1
FWA00000351, IRB00001138**

To: **Jessica E. Hewkin and Co-PI: Jennifer A. Sandoval, Ph.D.**

Date: **October 08, 2014**

Dear Researcher:

On 10/08/2014, the IRB approved the following activity as human participant research that is exempt from regulation:

Type of Review: Exempt Determination
Project Title: Layers of Identity and Privilege in Legislation: A critical
discourse analysis of Senate Bill 744
Investigator: Jessica E. Hewkin
IRB Number: SBE-14-10573
Funding Agency:
Grant Title:
Research ID: N/A

This determination applies only to the activities described in the IRB submission and does not apply should any changes be made. If changes are made and there are questions about whether these changes affect the exempt status of the human research, please contact the IRB. When you have completed your research, please submit a Study Closure request in iRIS so that IRB records will be accurate.

In the conduct of this research, you are responsible to follow the requirements of the [Investigator Manual](#).

On behalf of Sophia Dziegielewski, Ph.D., L.C.S.W., UCF IRB Chair, this letter is signed by:

A handwritten signature in black ink that reads "Joanne Muratori".

Signature applied by Joanne Muratori on 10/08/2014 11:12:40 AM EDT

IRB Coordinator

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