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LBJ JOURNAL OF PUBLIC AFFAIRS

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LBJ JOURNAL OF PUBLIC AFFAIRS

The Lyndon B. Johnson School of Public Affairs was established in 1970, fulfilling a long-held dream of President Johnson for an academic institution aimed specifically at preparing talented men and women for leadership positions in public service. The school offers a master's degree in public affairs and a Ph.D. degree in public policy. For more information, write to the Office of Student and Alumni Programs, LBJ School of Public Affairs, Dravner Y, University Station, Austin, Texas, 78713-8925, or visit the school's website at <http://www.utexas.edu/lbj>.

In previous years, the LBJ Journal has included a list of professional reports recently completed by LBJ students. Professional reports, a required element of the LBJ School curriculum, are substantial policy papers typically produced by LBJ students in the second year of the program. The LBJ Journal will no longer print a list of these reports as this list can now be found online at <http://www.lib.utexas.edu/pal/2000/index.html>.

We would like to express our utmost gratitude to the following organizations for their generous contributions to the *LBJ Journal of Public Affairs*:

The LBJ School Graduate Public Affairs Council
The RGK Center for Philanthropy and Community Service
The University of Texas Co-Op

FROM THE EDITORS-IN-CHIEF

The *LBJ Journal* Editorial Board is proud to present the Fall 2004 edition of the *LBJ Journal of Public Affairs*. The seven articles selected for publication represent not only the best of a competitive field of submissions, but also the realization of a goal that the *LBJ Journal* has been working toward for the past three years: to become a forum for public affairs students throughout the United States to present their public policy research.

The pool of submissions from which the *LBJ Journal* selects articles has widened to include LBJ School alumni, graduate students in other departments at The University of Texas, and public affairs students at other universities. This expansion showcases the work of LBJ School students alongside the best public policy research in the country and puts the *Journal* on the same level as other professional venues for publishing research. This edition of the *LBJ Journal* brings together the original work of five LBJ School students, one UT Law student, and students from the Goldman School of Public Policy at the University of California at Berkeley and the Woodrow Wilson School of Public and International Affairs at Princeton University.

This goal could not have been reached without the hard work and forward thinking of last year's editors-in-chief, Vanessa Bouché, Stephen Palmer, and Kelly Ward. Following their example, we will continue to publish both Fall and Spring editions of the *LBJ Journal*. We will also continue to be the only student-published journal of public affairs with online-only content, with new student writing and Q&As with policy professionals published every two weeks at the *LBJ Journal Online* (www.lbjjournal.com).

This year we are excited to have formed two new partnerships within the LBJ School community that will provide new opportunities for policy discourse. First, we are working with LBJNow!—the new Web periodical jointly produced by the LBJ School and the LBJ Presidential Library—to provide op-eds and feature stories written by *LBJ Journal* staff. Second, in an effort to provoke dialogue on the role of nonprofit institutions in today's policy environment, the *LBJ Journal*, in conjunction with the RGK Center for Philanthropy and Community Service, is sponsoring the Philanthropy and Community Service Paper Contest. This contest will select a paper that presents original research, data, policy recommendations, and new management strategies in the areas of nonprofit organizations, philanthropy, community service, and volunteerism. The

Submissions to the LBJ Journal should be less than 5,000 words and on a topic relevant to public affairs. Citations and style should conform to the LBJ School Student Publishing Guide (http://www.utexas.edu/lbj/student_res/pubguide/) and/or The Chicago Manual of Style (15th ed. 2003).

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winning paper will be published in the Spring 2005 issue of the *LBJ Journal*.

As always, we have many people to thank. Publication of the *Journal* would not be possible without the hard work and calm guidance of Marilyn Duncan and Doug Marshall in the LBJ Office of Communications. The assistance of María de la Luz Martínez in conjunction with LBJNow! and Profes-

sor Curtis Meadows at the RGK Center has also been invaluable in establishing our new partnerships. We would also like to thank Professor Paul Burka, Dr. Betty Sue Flowers, Dr. Ken Matwiczak, Don Wallace, Joe Youngblood, and many others for their counsel and encouragement, and last but not least, the LBJ Graduate Public Affairs Council for all of its support.

ENSURING THE CONSENT OF THE GOVERNED:

AMERICA'S COMMITMENT TO FREEDOM OF INFORMATION AND OPENNESS IN GOVERNMENT

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. —That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.

Declaration of Independence, July 4, 1776

A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.

Letter from James Madison to W. T. Barry, August 4, 1822

For the last two decades, I have been blessed with the opportunity to serve my fellow Texans in a variety of government positions across all three branches of government. Yet these years of service in a diverse range of offices share some common and important threads. For example, as a former state attorney general, I continue to revere the rule of law as the bedrock of a civilized society. As a former judge, my belief in the fundamental importance of maintaining a proper relationship between the three branches still drives me to champion a restrained and independent judiciary and to oppose judicial activism. But as an American, my belief in the fundamental importance of maintaining a proper relationship between the government and the governed has driven me to champion openness in government.

Our nation's most beloved statesmen shared the common and core belief that a free society cannot exist without an informed citizenry and an open and accessible government. Patrick Henry, famously de-

JOHN CORNYN

John Cornyn was elected to the United States Senate in 2002. He is the first U.S. Senator from Texas since 1961 to serve on the Senate Judiciary Committee, which has jurisdiction over federal government information laws. He is also chairman of the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Property Rights. Senator Cornyn has previously served as Attorney General of Texas, Texas Supreme Court Justice, and state district judge in Bexar County. In 2001, the Freedom of Information Foundation of Texas presented him with its James Madison Award for his efforts to promote open government.

voted to liberty, well understood that "the liberties of a people never were, or ever will be, secure when the transactions of their rulers may be concealed from them." John Adams noted that "liberty cannot be preserved without a general knowledge among the people, who have a right . . . an indisputable, unalienable, indefeasible, divine right to that most dreaded and envied kind of knowledge, I mean of the characters and conduct of their rulers." U.S. Supreme Court Justice Louis Brandeis once wrote: "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman." But perhaps no one put it better or more succinctly when our beloved 16th President, Abraham Lincoln, said: "Let the people know the facts, and the country will be safe."

Grasping and realizing the lofty ideals of our nation's founding fathers and leading statesmen remains the promise of America. Our national commitment to democracy and freedom is not merely some abstract notion. It is a very real and continuing effort, and an essential element of that effort is an open and accessible government.

The cause of open government has been a top priority throughout my career in public service. The Attorney General of Texas is responsible for ensuring that Texas government is open and accessible to all citizens. And the state of Texas, I am proud to say, boasts one of the strongest open government laws in the nation. But just as our democracy is meaningless without an informed and vibrant citizenry, the open government laws on our books are meaningless without universal respect and robust enforcement. As Attorney General of Texas, I accepted the responsibility of enforcing Texas's Public Information Act with great enthusiasm.

When I took office, I immediately wanted to learn what the Office of Attorney General could do to facilitate the cause of open government in Texas. So I convened an Open Government Leadership Summit and invited the best and brightest minds to participate in that discussion. Three priorities emerged from those meetings: speed up the process of opening government to public scrutiny, be more aggressive in taking open government violators to court, and provide education and outreach to prevent violations of the Public Information Act from occurring in the first place.

I am pleased to say that the hardworking men and women of the Office of Attorney General rose

to the challenge. I immediately allocated greater resources to the Open Records Division. As a result, we issued over 20,000 open records rulings, and we dramatically reduced turnaround times on requests to ensure that all record requests receive a response within the statutory deadlines. My office also brought the first open records enforcement action Texas had seen in years.

In addition, we established a toll-free open records hotline, 877-OPEN-TEX, to facilitate inquiries and resolve open records matters quickly. Today, that hotline handles approximately 10,000 calls per year. We also convened dozens of well-attended open government conferences and seminars around the state, and trained countless local government officials on how to comply with open records laws. We worked closely with public interest organizations devoted to open government, such as the Texas Freedom of Information Foundation. Our office's record of success in opening government, I am pleased to say, received international recognition when the legislature of Mexico called upon us to provide technical assistance during drafting and passage of an historic open government act enacted in 2002.

As a result of these efforts, Texas government is more open and accessible today than ever. Texans have always been proud of their state, of course, and with good cause to be sure. Our state's commitment to open government provides an additional, important, and uniquely American source of Texas pride.

As I remarked on the campaign trail throughout the 2002 election cycle, the folks in Washington could use "a little Texas sunshine." As a member of the United States Senate, one of my top priorities is to work closely with our President from Texas, and with my colleagues in Congress, to bring Texas open government principles to Washington, D.C. And as a member of the majority party in Congress, I have a unique opportunity to play a leading role in championing the cause of openness in our federal government.

During my first two years in the Senate, I worked with Senators Corzine, Feingold, Leahy, Lieberman, and McCain to ensure that the institution of Congress itself is more open and accessible to the public. For our democratic system of government to function properly and robustly, the American people should have full and complete Internet access to legislation, voting records, and other Congressional

documents. The THOMAS Web site, which was launched in 1995 as a pet project of then-House Speaker Newt Gingrich, was a good start—but it can and should be much stronger. Too frequently, the current system is too confusing for the average person. It must be improved, and this bipartisan coalition of senators has worked closely with our colleagues on the Appropriations Committee and in the Senate as a whole, as well as with the Librarian of Congress, to make that happen.

I have also worked during the 108th Congress to reform our nation's broken system for classifying sensitive national security documents, to ensure that our government is not shrouded in excessive secrecy. As the recommendations of the 9/11 commission have made their way through Congress, I have fought to ensure that Congress maintains a strong oversight role over federal open government laws. Finally, one of my earliest acts as a member of the Senate Judiciary Committee was to cosponsor and aggressively promote bipartisan legislation (S. 554) to give federal judges greater flexibility to bring cameras into and otherwise expand media coverage of and access to federal courtrooms.

I have an ambitious open government agenda for the 109th Congress as well. It has been frequently remarked by members of the requestor community in Washington that, when it comes to openness in government, Texas law is stronger and better enforced than federal law. Toward that end, I plan to pursue an aggressive effort to examine and reform the federal Freedom of Information Act (FOIA). For example, I was amazed to learn that the Senate Judiciary Committee has not convened an oversight hearing to examine FOIA compliance issues since April 30, 1992. Moreover, the Senate Governmental Affairs Committee, which shares jurisdiction over federal government information laws with the Judiciary Committee, has not held an FOIA oversight hearing since 1980. The House record is better, but given the fundamental importance of openness in government to our nation's founding principles and ideals, both Houses should be more actively engaged in these issues. Indeed, it has been nearly a decade since Congress enacted the last series of substantive improvements to FOIA.

Accordingly, I plan to convene the first Senate hearing in over a decade to examine FOIA compliance, as early as possible during the 109th Congress. That hearing, in turn, will commence a comprehensive review of the federal FOIA law—leading up to, I hope, the first comprehensive upgrade and revision to that law in nearly ten years. A number of ideas for reform come quickly to mind, and I

plan to explore them all at the hearing. My ultimate goal is to shepherd legislation through the next Congress that will close loopholes in the law, help requestors obtain timely responses to their requests, ensure that agencies have strong incentives to act on requests in a timely fashion, and provide FOIA officials with the tools they need to ensure that our government remains open and accessible.

For example, government is outsourcing its functions at an increasing rate, and as a limited-government conservative, I certainly support measures that help make government function more efficiently. But as we undertake efforts to make government more efficient, we must also make sure that government remains open. Outsourcing should not be used as a justification for evading FOIA—yet there are numerous well-founded and well-reported fears that that very well may be occurring. If our laws need to be clarified to ensure that outsourcing does not place public records beyond public scrutiny, we should see to it.

In addition to closing loopholes, we must also ensure that the FOIA request process operates in a smooth and timely fashion. In an ideal system, requestors and government agencies should be able to work out timely and reasonable accommodations of all FOIA requests. To help make that happen, I have long supported the creation of an ombudsman to facilitate and expedite FOIA requests without having to resort to litigation. And when there is no choice other than to litigate, requestors must have the resources they need to litigate their cases in an effective and expeditious manner—and that includes the ability to recover reasonable attorney's fees whenever they prevail. Moreover, federal agencies face federal deadlines to comply with FOIA—just as Texas agencies face deadlines under Texas law. To be meaningful, however, deadlines must be enforced. Texas agencies that miss deadlines face real consequences; so too should federal agencies.

Finally, the FOIA law is administered by a corps of well-meaning public officials throughout the federal government. These officials must have all of the tools and training they need to get the job done. If there are additional steps that Congress can take to help FOIA officials do their job, we should take them.

This process of examining, reviewing, and reforming FOIA will take time. It will take patience. And to be truly meaningful and successful, it will require the accumulated wisdom of all who regularly participate in and have experience with the FOIA process. Naturally, any effort to reform our open government laws should itself be open. Accord-

ingly, I invite anyone with good ideas to contribute their thoughts and to make their voices heard.

* * *

Open government is, and must always remain, a nonpartisan issue. Whatever our differences on controversial policy matters, Democrats and Republicans alike should agree that those policy differences deserve as full and complete a debate before the American people as possible. The development and implementation of policy must be presumptively open and accessible to all. Thus, for example, as a cosponsor of the Independent National Security Classification Board Act of 2004, I was pleased to see a remarkably broad and bipartisan consensus emerge that the United States government overclassifies documents. Thomas H. Kean, chairman of the 9/11 commission, has said that "three-fourths of what I read that was classified shouldn't have been." Carol A. Haave, the Bush administration's deputy undersecretary of defense for counterintelligence and security, testified in August that "we overclassify information . . . say, 50-50." Under the leadership of Senators Ron Wyden and Trent Lott, a remarkable bipartisan coalition of Senators has vowed to reform our classification bureaucracy to ensure that our government remains as open as possible.

Just as the cause of open government is nonpartisan, however, so too are the sources of open government problems. Any party in power is always reluctant to share information, out of an understandable (albeit ultimately unpersuasive) fear of arming its enemies and critics. For example, according to the *Secrecy Report Card*—a recent report published by a remarkable coalition of journalists

and private organizations called OpenTheGovernment.org—today we spend \$6.5 billion annually to classify documents, compared to just \$54 million to declassify documents—an overwhelming ratio of 120 to 1. But that same report makes clear that this trend has occurred under both parties, noting that "the rise in government secrecy . . . did not begin during the current administration." Fourteen million documents were classified in 2003—up from 3.5 million in 1995.

President Lyndon B. Johnson famously signed the federal Freedom of Information Act on July 4, 1966—an appropriate day to further the principles of the Declaration of Independence. Yet even that day did not come easily. Open government advocates conducted a furious lobbying campaign out of fear that President Johnson would veto the bill. And a decade later, Congress successfully overrode an actual veto by President Gerald Ford; only then was Congress able to enact into law the 1974 Freedom of Information Act Amendments.

Yet principle must always prevail over party or power. Open government is one of the most basic requirements of any healthy democracy. It allows taxpayers to see where their money is going. It permits the honest exchange of information that ensures government accountability. It upholds the ideal that government never rules without the consent of the governed. President Lincoln once said that "no man is good enough to govern another without that person's consent." But of course, consent is meaningless unless it is informed consent. For that very reason, the cause of open government is as American as our commitment to our constitutional democracy itself.

LBJ

THE NEW ART AND SCIENCE OF TEXAS REDISTRICTING:

WHAT ABOUT PUBLIC POLICY?

ACCORDING TO THE TEXAS LEGISLATIVE COUNCIL'S technically correct definition, redistricting is "the process of redefining the geographic boundaries of individual election units such as legislative or congressional districts or county election precincts."¹ In reality, redistricting is much more; it is the art and science of balancing political and legal issues. The Voting Rights Act of 1965, as substantially revised in 1982, requires the State of Texas to obtain prior federal approval of redistricting plans and allows members of minority groups to challenge plans.² However, the standard that the United States Supreme Court has set for partisan gerrymandering by major political parties is exceedingly difficult to meet.³

Therefore, redistricting in Texas always has been, and always will be, political and partisan. The political and partisan question is one of degree. The new art and science of redistricting has changed the equation, and public policy is the big casualty. What is new as far as the art and science of redistricting?

THE ART AND SCIENCE OF REDISTRICTING

The art of redistricting has revolved around constitutions, statutes, and lawsuits. Federal law requires states to redraw congressional districts after release of the United States census every ten years.⁴ The Texas Constitution requires the Texas Legislature to draw new Texas House and Senate districts in the first regular Texas legislative session after the census results.⁵ For most of its history, the Texas Legislature has only undertaken redistricting as required after the census or as a result of lawsuits and subsequent court decisions. As we will see, this scenario, and the art of redistricting, changed dramatically when the Texas Legislature redrew congressional districts in 2003.

BY SHERRI GREENBERG

Sherri Greenberg served for ten years as a member of the Texas House of Representatives, completing her final term in January 2001. In 1999, she was appointed by the speaker of the house to chair the House Pensions and Investments Committee. After the 1999 legislative session, the speaker appointed her as chair of the Select Committee on Teacher Health Insurance. Greenberg served two terms on the House Appropriations Committee and served on the Appropriations Committee's Education and Major Information Systems Subcommittees. Other committee assignments included the House Economic Development Committee and the Welfare-to-Work Committee.

Greenberg's professional background is in public finance. She served as the Manager of Capital Finance for the City of Austin from 1985 to 1989, overseeing the City's debt management, capital budgeting, and capital improvement programs. Prior to that she worked as a Public Finance Officer for Standard & Poor's Corporation in New York, where she analyzed and assigned bond ratings to public projects across the country.

Greenberg has a B.A. in government from UT Austin and an M.S. in public administration and policy from the London School of Economics. At the LBJ School she teaches courses in public financial management, policy development, and public administration and management. Her teaching and research interests include public finance and budgeting, Texas state government, local government, health care, education, utilities, transportation, and campaigns and elections.

For many years the science of redistricting was a traditional exercise involving pencils, papers, and maps. The science of redistricting in Texas began a huge transformation with the introduction of computer technology in the 1991 legislative session.

***THE NEW SCIENCE OF REDISTRICTING:
1991 DAWN OF REDAPPL***

The computerized application, RedAppl, was in its infancy during 1991 redistricting. New districts were drawn using computerized modeling, but the system was cumbersome and limited.⁶ Members of the Legislature went, one by one, to the Texas Legislative Council, where a Legislative Council staff member used one of eight computers to draw district lines according to the legislator's specifications. However, the new computer technology allowed legislators to draw district lines with much greater precision than in prior years.

THE REALITY OF REDISTRICTING: 1990s

As a freshman member of the Texas Legislature in 1991, I experienced Texas House, Senate, and U.S. congressional redistricting firsthand. I made my appointments and went to the dark room in the Texas Legislative Council to sit with a staff member and use RedAppl. The experience was not user friendly, but it definitely was far superior to using pencil and paper.

In 1991, from a public policy standpoint, I and most other legislators saw redistricting as a necessary, but unpleasant, process for the good of democracy. I considered redistricting vitally important to maintain the sacrosanct democratic mandates of "one-person, one-vote" and "equal protection."⁷ However, redistricting was unpleasant because of its inherently tedious and political nature, with incumbents seeking protection, political parties seeking power, and other interests pursuing agendas. Also, as an elected state representative, I realized that redistricting was consuming the legislative agenda, leaving little time for the public policy issues important to my constituents. At the time, redistricting was not an endeavor that the majority of legislators would agree to engage in more frequently than the every ten years required by law.

During the 1991 regular session, the Texas Legislature passed redistricting bills for the new Texas House and Senate districts. It drew the new congressional districts in an August 1991 special session. Predictably, passing redistricting bills was far from the end of the process. Lawsuits were noth-

ing new and had been part of the art of redistricting for years.

COURTS AND SPECIAL SESSIONS

Various interests filed a number of voting rights lawsuits challenging the house, senate, and congressional districts that the Texas Legislature devised in 1991. The Governor called special sessions on redistricting in August of 1991 and January of 1992. Ultimately, the state of Texas held the 1992 Texas House and Senate elections in districts that the court redrew and substantially changed.⁸ As a result of court actions, the state held the 1994 house and senate elections in districts redrawn by the Legislature in 1992 with significant changes in the senate districts.⁹ After additional court actions, the Legislature made changes in the 1997 regular session to the Texas House and Senate districts for the 1998 elections.¹⁰

Plaintiffs filed a lawsuit in federal court in 1994, challenging the congressional districts. The court voided the primary elections in 13 of the 30 State of Texas Senate districts and required special elections in those districts according to court-drawn interim districts.¹¹ When the Texas Legislature was unable to draw new districts, the court required its plan to be used for the 1998 elections.¹²

1993 LEGISLATION: THE ART

The 1991 redistricting saw the debut of the RedAppl computerized system, but the art of redistricting remained largely unchanged. Incumbents attempted to draw districts to their advantage, challengers with sway attempted to draw districts to their advantage, the dominant political party sought to maintain power, and voting rights challenges occurred. After all was said and done, incumbent Republican State Senator Jeff Wentworth of San Antonio found that his house was no longer in his district, and he had to move.¹³

In the 1993 Texas legislative session, Senator Wentworth introduced a constitutional amendment to change business as usual and the art of redistricting in Texas. Wentworth's proposed constitutional amendment took legislators out of the process directly, but allowed the Texas House and Senate to each appoint two Democrats and two Republicans to a redistricting board. At the time, many Republicans, who were in the minority in the Texas Legislature, supported the constitutional amendment, and most Democrats did not.¹⁴ Needless to say, the constitutional amendment did not pass

the Legislature. Nevertheless, a number of other states are using some type of redistricting board. Senator Wentworth has continued to introduce his constitutional amendment in every regular legislative session since 1993.

THE NEW SCIENCE OF REDISTRICTING: 2001 AGE OF REDAPPL

By 2001, the Texas Legislative Council had made quite significant improvements to the computerized redistricting modeling application, RedAppl.¹⁵ The 2001 RedAppl system ran on a PC in each member's Capitol office, and it was much faster and more user-friendly, with new features.¹⁶ In addition, legislators were able to review and print some plans and maps in their offices, and proposed public plans were accessible to citizens on an Internet application called RedViewer.¹⁷

Not only was the 2001 version of RedAppl more convenient for legislators, it also was not limited any longer to legislators' use. Since RedAppl was available on PCs in the Texas House and Senate members' offices, political consultants, political party strategists, and a host of other players could draw districts and maps with laser-like precision. A whole new age in the science of redistricting had arrived with enhanced tools for incumbents seeking protection, political parties seeking power, and other interests pursuing agendas.

2001 HOUSE AND SENATE REDISTRICTING

In the 2001 regular session, the Texas House passed a bill redrawing the Texas House and Senate districts. However, the situation was much different in the Republican-controlled Texas Senate. There, Senator Jeff Wentworth chaired the Redistricting Committee, which had a membership of four Democrats and four Republicans. The Redistricting Committee devised a map that seven of its eight committee members voted for. Nevertheless, the map failed to pass the Texas Senate because the Republican majority believed that it could get a more partisan Republican map by letting the Legislative Redistricting Board draw the map.¹⁸

THE LEGISLATIVE REDISTRICTING BOARD (LRB) IN 2001

According to the Texas Legislative Council, "The LRB was created in 1948 by constitutional amendment to ensure that the state would 'get on with the job of legislative redistricting which had been neglected or purposely avoided for more than twenty-five years.'" ¹⁹ The LRB is authorized to

create Texas House and Senate districts if the Texas Legislature fails to do so in the first regular session after the census, as required by the Texas Constitution.²⁰ The LRB has five members: the lieutenant governor, speaker of the house, attorney general, comptroller, and land commissioner.²¹

The new Texas House and Senate districts devised by the LRB helped change the balance of political party power in the Texas House from Democratic to Republican, paired a number of incumbents against each other in the newly drawn districts, and assisted some challengers.

2001 CONGRESSIONAL REDISTRICTING

The Texas House passed a congressional redistricting plan in the 2001 regular session, but the plan died in the Texas Senate. Governor Perry refused to call a special session, even though the law allows special sessions for congressional redistricting. (In Texas, only the governor can call special sessions, and they are not allowed for Texas House and Senate redistricting.) Governor Perry stated, "I believe that Texans would be even more disappointed if we expend considerable sums of taxpayer money to call the legislature into a special session that has no promise of yielding a redistricting plan for Congress."²² Hence, the task fell to a three-judge federal panel, which added two new Republican congressional districts.

THE NEW DYNAMICS AND ART OF REDISTRICTING: 2003

The governor, lieutenant governor, speaker of the house, and Texas Legislature took actions in 2003 that dramatically changed the dynamics and art of redistricting. At the urging of Republican U.S. House Majority Leader Tom DeLay of Texas, the Texas Legislature took up a congressional redistricting bill in the 2003 regular session, without any statutory, constitutional, or court mandate.²³ DeLay wanted the congressional districts redrawn to increase the number of Republicans in the U.S. House of Representatives.²⁴ Months of mammoth political brawling ensued.

Of course, the Democrats in the Texas Legislature were not amused by the prospect of increasing the number of Republican U.S. House districts at the bidding of Tom DeLay. In May of 2003, at the end the regular session, most of the Democrats in the Texas House fled to Ardmore, Oklahoma, and broke the quorum. The 2003 regular session ended without new congressional districts, but

the saga was far from over. By its end, the 78th Texas Legislature had three special sessions on congressional redistricting.

FIRST SPECIAL SESSION

Governor Perry called the first special session on congressional redistricting in July of 2003. However, the special session ended with no action on congressional redistricting because the Texas Senate lacked the 16 vote, two-thirds majority to bring the bill to the floor for consideration.²⁵ Ironically, the Texas Senate has the two-thirds rule in order to require substantial bipartisan consensus before a bill reaches the floor.²⁶

SECOND SPECIAL SESSION

The second special session on congressional redistricting immediately followed the failed first special session in 2003. However, 11 of the 12 Senate Democrats already had fled to Albuquerque, New Mexico, leaving the Texas Senate unable to make a quorum. The 11 Democratic Senators voiced their disapproval of the lieutenant governor's decision to eliminate the Texas Senate's two-thirds support rule to bring a bill to the Senate floor.²⁷ Even the imposition of monetary fines and the removal of budgets, cell phones, parking places, and other privileges by the Republican Lieutenant Governor, David Dewhurst, and the Republican members of the Texas Senate (except Republican Senator Bill Ratliff, who stayed home in his district to express his disapproval) did not compel the Democrats to return. Thus, the second special session ended with, yet again, no action on congressional redistricting.²⁸

THIRD SPECIAL SESSION

Governor Perry called the third, and final, special session on congressional redistricting in September of 2003. Democratic Texas State Senator John Whitmire broke ranks with the Democrats in New Mexico, giving the Texas Senate a quorum and forcing the Democrats to return and fight in the Legislature. This time, with a quorum present and the two-thirds rule suspended, a congressional redistricting bill came to the floor of the Texas Senate and passed.

The congressional redistricting bill also passed the Texas House, and Governor Perry approved it. This phase of the Texas 2003 congressional redistricting saga came to an end not a moment too soon. Each special session cost the State of Texas approximately \$1.7 million, the public was fed up, and the governor's and lieutenant governor's approval

ratings dropped with each special session.²⁹ Many members of the public and press wondered why the Texas Legislature could spend time and money on congressional redistricting and not on important state issues. What about public policy?

PUBLIC POLICY CONSIDERATIONS

Redistricting is the art and science of balancing political and legal issues; the balance in the State of Texas has changed to the detriment of public policy. Redistricting in the Texas Legislature has always been political and partisan, but it has reached higher levels with the convergence of new art and science. Since the 1990s, the art of redistricting has changed with a willingness to redraw districts without a statutory, constitutional, or court mandate, and the science of redistricting has changed with computer technology enabling people to draw districts with laser-like precision.

The tools exist for incumbents of either party to draw extremely precise districts for self-preservation, and the motivation exists for whichever political party is in power to maintain dominance. A huge concern from the public policy standpoint is can we ever put the genie back in the bottle? The Texas Legislature cannot tend to important matters of public policy if it is constantly drawing new districts instead of only undertaking redistricting every ten years as required by law.

Public policy in the state of Texas has been the big casualty of the new art and science of Texas redistricting. The cherished bipartisan nature of the Texas Senate, which has been such an asset to public policy, has been called into question. Precious legislative time for considering major public policy matters has been squandered. As Senator Wentworth recently stated, "Voters want the Legislature to work on health care, tax policy, and public education."³⁰

A Travis County grand jury has indicted several of Tom DeLay's close associates for their alleged involvement with illegal corporate contributions in the 2002 Texas elections.³¹ For the 2005 Texas legislative session, legislators, in a bipartisan effort, have filed a new round of bills calling for recording all legislative votes and restricting corporate and union campaign contributions. Once again, Senator Wentworth will file his constitutional amendment to limit the Texas Legislature's direct involvement in redistricting by creating a bipartisan redistricting board.³² In a recent interview, Wentworth said that the process should be balanced and fair for Texans.³³ "I oppose a one-party Texas, and all in-

cumbents should be in danger of being tossed out if their constituents are not happy," he added.³⁴

The new congressional districts achieved Tom DeLay's goal in the 2004 congressional elections, with Republicans winning 21 of Texas' 32 seats in the U.S. House of Representatives. However, it may not be over yet. In a new twist, because of a ruling in another redistricting case, the U.S. Supreme Court sent the Texas Democrats' redistricting case back to the 5th U.S. Circuit Court of Appeals for reevaluation.³⁵ Redistricting could end up back at the Supreme Court, and then back in the Texas Legislature. There even could be new Texas congressional districts and special elections in two years, and, of course, there always could be a new round of lawsuits.

What about public policy? We shall see.

LBJ

NOTES

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2. Texas Legislative Council, *State and Federal Law Governing Redistricting in Texas* (Austin, Tex., March 2001), p. 2.
3. *Ibid.*, p. 116.
4. *Ibid.*, p. 7.
5. *Ibid.*, p. 5.
6. Texas Legislative Council, *Guide to 2001 Redistricting*, p. 1.
7. *Ibid.*, p. 3.
8. *Ibid.*, p. 13.
9. *Ibid.*
10. *Ibid.*, p. 14.
11. *Ibid.*, p. 13.
12. *Ibid.*, p. 14.
13. Telephone interview by Sherri Greenberg with Senator Jeff Wentworth, December 2, 2004.
14. *Ibid.*
15. Texas Legislative Council, *Guide to 2001 Redistricting*, p. 1.
16. *Ibid.*
17. *Ibid.*
18. Wentworth interview.
19. Texas Legislative Council, *State and Federal Law Governing Redistricting in Texas*, p. 8 (endnote 25).
20. *Ibid.*, p. 9.
21. Texas Legislative Council, *Guide to 2001 Redistricting*, p. 8.
22. Dave McNeely, "Perry, GOP do a 180 on redistricting," *Austin American-Statesman* (July 3, 2003).
23. *Ibid.*
24. *Ibid.*
25. *Ibid.*
26. Dave McNeely, "Dewhurst at crossroads in redistricting in Senate," *Austin American-Statesman* (July 16, 2003).
27. Editorial, "Time to Deal," *Dallas Morning News* (August 15, 2003).
28. Ken Herman, Laylan Copelin, and David Pasztor, "Democrats face another slap on the wrists," *Austin American-Statesman* (August 16, 2003).
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33. *Ibid.*
34. *Ibid.*
35. "Back to the Congressional drawing board?" *Austin American-Statesman* (October 18, 2004). Online. Available: <http://statesman.printhis.clickability.com/pt/cpt?action=cpt&title=statesman.com+%7C>.

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TIME FOR CHANGE:

UNITED NATIONS CHARTER RULES ON THE USE OF FORCE

But it is not enough to denounce unilateralism, unless we also face up squarely to the concerns that make some States feel uniquely vulnerable, since it is those concerns that drive them to take unilateral action. We must show that those concerns can, and will, be addressed effectively through collective action. Excellencies, we have come to a fork in the road. This may be a moment no less decisive than 1945 itself, when the United Nations was founded.

Kofi Annan, Address to the UN General Assembly, 2003

The drafters of the United Nations Charter created a framework for handling problems that did not envision the threat of terrorism. The Charter developed from the principles of Westphalian diplomacy, in which nation-states were the only significant actors in international relations. Today, nonstate actors pose an increasing threat to international peace and stability. Terrorist attacks planned, financed, and executed by nonstate organizations have a high potential for humanitarian tragedy. Terrorism affects not merely one region or nation; it is a global concern. While this growing menace requires a global response, the primary mechanism for addressing terrorist threats, the UN Charter system, is under severe strain.

Nations have been willing to work outside the Charter's collective security agreement to protect their interests. Recently, the United States deviated from the UN's legal framework to combat terrorism in Afghanistan and protect America from a perceived threat in Iraq. Critics allege that U.S. action threatens the very existence of the Charter system and that American unilateralism undermines established international laws governing the use of force. But this criticism is misplaced, for it fails to address the proximate cause of American action: the inability of the Charter system to ensure the security of its members. Moreover, the use of force outside the Charter framework is not a new phenomenon, nor is it isolated to the problem of terrorism. Rather, international response to recent events highlights the structural problems that have always existed within the Charter. International law regarding the use of force, as articulated in the Charter, creates an unworkable system for addressing threats to international

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peace and security. The international community has a choice: revise the Charter and ensure that the UN remains a viable body responsive to the world's problems, or risk a continued divergence between state practice and international law.

THE UNITED NATIONS CHARTER: PROVISIONS REGARDING THE USE OF FORCE

In 1945, the drafters of the Charter met in San Francisco, where they agreed on the Charter's structure, language, and provisions. Having suffered through two world wars within 25 years, much of the industrialized world was in ruins. The UN sprung from a hope among nations that, through dialogue and cooperation, states could prohibit aggression. Article 2(4) embodies the Charter's ambition of limiting armed force, stating that

All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the purposes of the United Nations.

As a further limit on states' use of force, the Charter asserts that the Security Council, not member states, will "determine the existence of any threat to the peace, breach of the peace, or act of aggression."¹ The Charter makes the Security Council the supreme authority for the determination of any threat and the body solely entrusted with the power to use force.

Signatories of the Charter cede to the Security Council the authority to decide when force may be used, with one exception. Article 51 states, "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations." A state's right to act in self-defense comes into being only once attacked, lasts only until the Security Council acts, and in no way affects the Council's authority to restore peace. While the Charter purports to leave untouched the "inherent" right of self-defense, in fact it makes an important revision to customary international law² regarding the use of force in self-defense.

Customary international law recognizes the right to self-defense when three criteria exist: necessity, proportionality, and imminence. Necessity requires that states exhaust all alternatives to force. Proportionality obliges states to apply only the force necessary to deter attack or defeat an ongoing at-

tack. Imminence involves an attack so near in time that there is no opportunity for deliberation. Daniel Webster first enunciated this principle while negotiating the *Caroline* case, in which the British military seized and destroyed the American steamship the *Caroline* at Fort Schlosser, New York, after it had been repeatedly used to aid Canadians rebelling against the British Crown.

The British defended the raid on the steamboat *Caroline* against claims that it violated U.S. sovereignty, arguing that their actions constituted a legal exercise of self-defense. Webster argued that force used in self-defense requires a showing of "a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation."³ Furthermore, any such acts could not be "unreasonable or excessive." Webster's standard is now universally recognized as the justification for the use of force in self-defense.⁴

Rather than codify this traditional justification, the UN Charter limits the permissible use of force to a much narrower circumstance. States may only use force in self-defense *if an armed attack occurs*. This principle greatly circumscribes customary international law⁵ and seems counterintuitive, particularly in the age of nuclear weapons. Recent terrorist events have prompted some scholars to interpret the Charter's language broadly, arguing that military preparations undertaken as a prelude to an attack should be understood as part of the attack.⁶ Nonetheless, minutes from the meetings in which the drafters created this language illustrate the authors' contrary intentions.

Recognizing the proposed Charter's strictures on state action, the State Department's legal adviser, Green Hackworth, alerted the deputy head of the U.S. delegation, Governor Harold Stassen, that this language "greatly qualified the right of self-defense."⁷ Governor Stassen acknowledged this concern, but insisted that the wording "was intentional and sound. We did not want exercised the right of self-defense before an armed attack had occurred."⁸ Another member of the U.S. delegation worried about "our freedom under this provision in case a fleet had started from abroad against an American republic, but had not yet attacked."⁹ Governor Stassen answered, "we could not under this provision attack the fleet but we could send a fleet of our own and be ready in case an attack came."¹⁰

These remarks reveal two important points about the Charter's draftsmanship. First, the armed attack requirement was purposeful. The delegates wished to create a bright-line test that clearly demarcates when a nation may legally invoke the right to

defend itself. Furthermore, Governor Stassen's comments defeat attempts to broaden the right of self-defense. If an approaching enemy fleet would not justify action in self-defense, then neither would enemy preparations to deploy the fleet.

The second observation regarding the drafters' remarks is a corollary to the first. The drafters envisioned a world in which victim states would discover an enemy's approach. But the threat has changed since the Charter's creation, and as the Madrid bombings show, force does not require weapons to be easily detectable. The enemy may not wear the uniform of his state's armed forces, and the technology necessary to wreak havoc on a state's populace is now widely available to those willing to use it. Rather than adapting the language to the realities of modern threats, the body charged with interpreting the Charter, the International Court of Justice, has further restricted states' ability to claim a justifiable use of force in self-defense.

NICARAGUA V. UNITED STATES: FURTHER DILUTION OF THE RIGHT OF SELF-DEFENSE

In *Nicaragua v. United States*, the International Court of Justice even further narrowed Article 51's meaning, foreclosing arguments over the term "armed attack" and again impairing the "inherent right . . . of self-defense" the Charter claims to leave untouched.

Nicaragua filed suit against the U.S. in 1984, claiming that America was responsible for the paramilitary activities of contras acting against Nicaragua.¹¹ The U.S. responded that Nicaraguan support for rebels in El Salvador constituted an act of aggression, and therefore U.S. actions were justified pursuant to the principle of collective self-defense and U.S. obligations under the Inter-American Treaty of Reciprocal Assistance. The Court wrote that, if in fact Nicaraguan action constituted an armed attack as the U.S. claimed, the U.S. could legally invoke the principle of collective self-defense. Such a determination required an examination of the meaning of "armed attack."

In a decision with enormous implications for the campaign against terrorism today, the Court

concluded that Nicaraguan assistance to rebels in El Salvador did not constitute an armed attack, and did not justify action in self-defense. An armed attack does not include "assistance to rebels in the form of provision for weapons or logistical or other support," a "mere supply of funds to the contras," or the provision of arms to the opposition in another state.¹² Rather, armed attack can entail two different scenarios: action by regular armed forces across an international border or the sending of armed bands,

mercenaries, or irregular forces against another state. A state only incurs responsibility for the action of an irregular force when two conditions exist. First, the state must be "substantially involved" in the acts of the irregular forces.¹³ Second, these irregular forces must carry out an attack of such gravity and effect that the force is equivalent to that used by a regular army.

Thus, the Court gives two different standards for armed attack: one involving the use of

a nation's armed forces and the other involving irregular forces hosted within a nation's boundaries. When a state's regular army prosecutes a war across international boundaries, the legal requirement of an armed attack is clearly satisfied. But when irregular forces attack another state, the victim state may only respond if it can show the host state's substantial involvement in the irregular group's activities and if the irregular group inflicts considerable damage.

The Court does not define what action would constitute "substantial involvement." However, extrapolating from the language cited above, logistical support, financial assistance, and provision of weapons do not constitute an armed attack and therefore logically could not be considered as substantial involvement. The Court leaves the world with an obvious question: A nation may play host to armed bands and provide them with logistical support, funding, and weapons without being "substantially involved" in their activities—so what type of support *would* make the host nation liable under international law? The Court has not answered that question. As will be discussed below, the state of the law after *Nicaragua* creates a legal dilemma for the world community.

International law regarding the use of force, as articulated in the Charter, creates an unworkable system for addressing threats to international peace and security.

CHARTER PROVISIONS ON THE USE OF FORCE: TIME FOR CHANGE

The current system of international law is untenable for three reasons. The Charter forces states to disobey its precepts to maintain international peace and security. It allows tyrants and dictators to hide behind the walls of Westphalian sovereignty. Finally, the Charter provisions on the use of force do not describe and never have described state behavior.

ACTION OUTSIDE THE CHARTER FRAMEWORK

Charter provisions on the use of force compel states to act outside the legal boundaries established by the UN framework. Several examples illustrate this problem: NATO action in Kosovo, U.S. action in Afghanistan, and more recently, U.S. action in Iraq.

By the fall of 1998, hostilities in Kosovo had already forced 280,000 Kosovars from their homes, an estimated 50,000 of whom fled into the surrounding mountains. With the approach of winter, the Security Council recognized an "impending humanitarian catastrophe" and declared that the deteriorating situation "constitute[d] a threat to peace and security in the region."¹⁴ Although the Security Council demanded an end to hostilities and the start of a meaningful dialogue, members could not agree on military action to force the sides to the negotiating table. When international diplomatic efforts failed, NATO took military action against a sovereign state.

NATO forces acted without prior UN Security Council authorization. In fact, European nations and the U.S. did not even seek such authorization as they understood that Russia would veto any resolution. Nor could NATO justify its actions as self-defense. The acts of aggression in Kosovo were essentially within the domestic jurisdiction of Yugoslavia, and the intervention was illegal.

Following the successful air campaign, Sweden assembled an international panel of commentators and key foreign policy makers to examine the case for intervention and the future implications of the NATO campaign. In a report to the UN in October 2000, the Independent International Commission on Kosovo concluded that the intervention was "illegal, but legitimate."¹⁵ It is difficult to overstate the implications of this conclusion. An international legal system in which legitimacy and legality are no longer coterminous risks the future disdain of member states, precisely what happened in Kosovo.

Operation Enduring Freedom presents another example of the difficulties of working within the Charter. This time, the use of force was not for hu-

manitarian reasons, but in response to the terrorist attacks of September 11, 2001. Again, there are two situations in which a state may legitimately use force: after suffering an armed attack or after receiving Security Council authorization. American use of force against the Taliban in Afghanistan met neither of these criteria.

Some have argued that Security Council resolutions both recognized a right to act in self-defense and gave tacit authorization for U.S. strikes in Afghanistan. Although language in the Security Council resolutions seems to support this point, the opposite is true. Immediately following the terrorist attacks, the Security Council passed a resolution "reaffirming the inherent right of individual or collective self-defense."¹⁶ Subsequent resolutions declared that terrorist attacks "constitute one of the most serious threats to international peace and security in the twenty-first century," and that "any . . . form of support for acts of international terrorism [is] . . . contrary to the purposes and principles of the Charter of the United Nations."¹⁷ The Council "[c]ondemn[ed] the Taliban for allowing Afghanistan to be used as a base for the export of terrorism by the Al-Qaida network . . . and for providing safe haven to Usama Bin Laden."¹⁸ Nonetheless, the same resolution reaffirmed the Security Council's "commitment to the sovereignty, independence, territorial integrity and national unity of Afghanistan."¹⁹

Security Council resolutions mentioning both the inherent right of self-defense and the sovereignty and territorial integrity of Afghanistan send an ambiguous message about the use of force against Afghanistan. Invoking the inherent right to self-defense seems to sanction U.S. response to the September 11th attacks, while noting the territorial integrity of Afghanistan recalls the general prohibition on the use of force from Article 2(4). But the authoritative interpretation of Article 51 by the International Court of Justice in *Nicaragua v. United States* makes clear that U.S. action against the Taliban cannot fall within the self-defense exception to the general prohibition on the use of force. Mere provision of funds, weapons, or logistical support cannot constitute an armed attack. The Court's analysis has left one scholar to conclude that even if "the government of Afghanistan had directly provided the terrorists with airplane tickets, funds for flight lessons, and the box cutters used to hijack the aircraft that crashed into the World Trade Center and the Pentagon . . . such support still would not constitute an armed attack."²⁰ Absent evidence that the Taliban was directing the attacks on the New York and Washington, D.C., "mere provision" of

logistical support is inadequate justification for action in self-defense.

Nor did the Council authorize the U.S. strike on the Taliban by passing a resolution explicitly sanctioning American actions. Resolutions expressed support for the efforts of the *Afghan people*, not the coalition, and called on member states to provide long-term assistance and humanitarian relief, not military force.²¹ Perhaps more important, the U.S. never sought such authorization.

The recent international row over Iraq is the strongest commentary on the effectiveness of the UN Charter. Resolution 687 enumerated the terms on which the Security Council conditioned the cease-fire and end of the Persian Gulf War.²² The resolution required the destruction of all chemical and long-range missile stocks and Iraq's submission to an international monitoring and inspection regime. In the following years, Iraq repeatedly hampered the United Nations Special Commission's (UNSCOM) efforts to inspect and dismantle Iraqi weapons programs, culminating with the Iraqi designation of 68

"presidential and sovereign sites" exempt from UNSCOM's jurisdiction. A Security Council resolution declared Iraq to be in "flagrant violation" of four previous resolutions and demanded that Iraq cooperate fully with UNSCOM.²³ The President of the Security Council promised "serious consequences" if Iraq failed to comply.²⁴

Five years and several Security Council resolutions later, President Bush declared that Saddam Hussein was a serious threat to the U.S. and to the world.²⁵ On March 19, 2003, the U.S. attacked Iraq, without the Security Council's explicit authorization, and without having sustained the prior attack necessary to characterize the action as self-defense under the Charter. Operation Iraqi Freedom was illegal under international law.

FORCIBLE HUMANITARIAN INTERVENTION

Among the purposes listed in Article 1 of the Charter is the "promot[ion] and encourage[ment] of respect for human rights and for fundamental

freedoms for all without distinction as to race, sex, language, or religion."²⁶ Nonetheless, the Charter impedes the protection of human rights abuses in three ways. First, the body charged with deciding when human rights violations justify intervention, the Security Council, cannot be counted on to act quickly. Second, even if the Security Council identifies violations, the UN lacks the tools to implement its directives. Finally, the Charter makes illegal the unilateral use of force to prevent humanitarian crises and disallows unilateral intervention even

for the most egregious human rights abuses. Charter provisions inadvertently shelter tyrants and dictators behind the rampart of territorial integrity, barring a Security Council authorization to intervene and an effective coalition of nations willing to execute the Security Council's will.

Recent history demonstrates the problems with the assumption that the Security Council could be counted on to act quickly and objectively. In 1998, when Slobodan Milosevic initiated a campaign of ethnic cleansing in Kosovo, Europe and the U.S. relied not on the UN to intervene,

but on NATO. The threat of a veto from Russia, a permanent member of the Security Council, prevented any Security Council authorization. The structure of the Security Council makes action even in these more clear-cut cases difficult. One member can frustrate the efforts of a large coalition of nations to protect an entire people from extermination.

The genocide in Rwanda showcases the problems that exist when the Security Council agrees that something must be done but fails to secure appropriate resources to act. On May 17, 2004, the Security Council authorized 5,500 troops as part of an expanded United Nations Assistance Mission for Rwanda (UNAMIR).²⁷ Over a month after this authorization, only one member state, Ethiopia, had contributed a military unit to UNAMIR.²⁸ Lt. Gen. Romeo Dallaire, commander of the UNAMIR forces, estimated that it would have taken just 5,000 troops to end the killing.²⁹ Instead, another month would pass before the mission had enough troops to stop the genocide, and then the soldiers

As Robert Kagan noted, "nations decide for themselves, guided by their own morality and sense of justice and order, when war is justified or not. That . . . is the only world we have ever lived in. It is a world in which those with power, believing they have right on their side, impose their sense of justice on others."

wore not the blue UN helmets, but the uniform of France's armed forces. Even assuming a quick and objective response, the Security Council lacks the tools to be effective. But the alternative to a force under a UN banner—a force under a single nation's control—is illegal according to the Charter. Unilateral intervention is illegal unless authorized by the Security Council. Furthermore, according to Charter language, the Security Council itself is powerless to intervene to stop human rights abuses that are internal to a state.

State sovereignty is the bedrock on which the Charter is premised. Article 2(1) states that the "Organization is based on the principle of the sovereign equality of all its Members." Article 2 goes on to state that "[n]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state."³⁰ Without a member state's consent to intervention, the UN is powerless to prevent a civil war or stop a state's mass murder of its own people. The Charter requires the Council to find first that a problem is international in nature before authorizing force. An increasingly interconnected world is less willing to tolerate human rights abuse, regardless of whether the problem is international or domestic. However, international will to intervene requires creative interpretations of Charter language to conform to Charter law.

THE CHARTER AND STATE BEHAVIOR

The framers of the Charter envisioned a utopia, in which nations would cede to the Security Council the authority to decide when the use of force was appropriate. But the UN Charter does not reflect state behavior or expectations. Rather, the Charter reflects international optimism following two horrendous wars and a hope among nations that they could prevent destruction through cooperation and dialogue. State practice since the Charter's adoption has not borne out this optimism. As Robert Kagan noted, "nations decide for themselves, guided by their own morality and sense of justice and order, when war is justified or not. That . . . is the only world we have ever lived in. It is a world in which

those with power, believing they have right on their side, impose their sense of justice on others."³¹

State action taken after the Charter's signing shows that nations ignore treaty provisions when they believe those provisions do not serve their interests. On September 22, 1980, Saddam Hussein invaded Iran to seize the oil-rich border province of Khuzestan, without Security Council authorization and without any claim of self-defense. The U.S. responded to the 1998 embassy bombings in Nairobi and Dar-es-Salaam by striking facilities in Sudan and Afghanistan. The 19 NATO nations chose not to seek Security Council authorization for

the air campaign in Kosovo. Examples of states using force contrary to the UN Charter abound. Law professor Michael Glennon has suggested that states do not regard international "rules" on the use of force as obligatory.³² Instead, the world now recognizes two separate legal systems: one *de jure* and the other *de facto*. The *de jure* Charter system governs a Platonic world of Forms,³³ while

in the *de facto* system, states weigh the costs and benefits of any action in wholesale disregard of the Charter framework.

Some might argue that this total departure of state practice from the Charter's precepts is meaningless. However, that argument discounts the role of legitimacy in international decisionmaking and the fact that states now view the UN as an organization able to dispense legitimacy. States may decide for themselves when war is justified, but that decision is not made in total isolation. For example, with the world divided over which course of action to take in Iraq, the UN was the forum in which heads of state argued their case. The nations of Europe looked to the Security Council for a decision. And with key ally Tony Blair's political future in jeopardy, the U.S. engaged in a flurry of diplomatic activity to pass a new Security Council resolution. When the world accords the UN a certain amount of authority, even the most powerful nation cannot blithely ignore that body.

Furthermore, the U.S. and the international community have a long-term interest in a viable institution able to constrain and encourage certain state practices. But the authority of that institution

Increasingly, the international community has demonstrated a willingness to infringe on state sovereignty in certain cases. States sometimes feel obliged to violate the sovereignty of a fellow state to terminate particularly egregious behavior.

diminishes when its signatories are able to disregard select rules when they see fit. History shows that nations flout the legal regime when the benefits of doing so outweigh the costs in treasure, blood, or international censure. That there are so many examples is a product not so much of bad behavior, but of bad rules. The rules were not created to better govern this world, but to create a better world. They must be modified now or nations will continue to dispense with them.

WHAT NEXT?

The international rules governing the use of force are clearly inadequate. Even at its signing, the Charter did not create a realistic framework for guiding state action. Its collective security arrangement does not sufficiently protect international security. Provisions are not backed up with the threat of effective enforcement and are therefore ignored. If the world community truly desires a more effective system governing the legitimate use of force, states must significantly revise the Charter.

REDEFINING THE SELF-DEFENSE EXCEPTION

The Charter's self-defense exception is too limited in a world where small, nonstate actors threaten global security and stability. Because a first strike may employ weapons of mass destruction, a reasonable state will not suffer an armed attack before using force, particularly if the state may prevent the threat from materializing. A revised definition of legitimate self-defense must allow a state to defend itself proactively against both state and nonstate actors. This broader definition also must permit a defender state to hold accountable state sponsors of violent nonstate groups. Ironically, Webster's definition of self-defense seems a more suitable starting point than Article 51. A return to the requirements of necessity, imminence, and proportionality would provide the Security Council with greater flexibility in evaluating a state's invocation of self-defense. Such a definition would also allow threatened states to protect themselves without venturing outside the Charter's legal bounds.

REVISING THE METHOD BY WHICH THE CHARTER SYSTEM AUTHORIZES FORCE

Under the current system, the Security Council alone determines threats to international peace and authorizes the use of force. There is no reason to alter this regime, as the permanent members of the Security Council are theoretically those states that bear the

greatest burden in maintaining the world's stability and economic well-being. However, it is necessary to re-examine the Council's composition to ensure that its permanent members are those states most responsible for the maintenance of order.

The current Council membership represents the Second World War's victorious powers, rather than contemporary influence and power in the world. The world in which France should be a permanent member, but not Germany or Japan, no longer exists. Permanent Council membership must include those most capable of providing effective leadership and resources toward the maintenance of international peace. However, expansion must be limited to avoid a Council so large that it is incapable of swift action. In addition, any modification to Council membership must include statutory requirements for a review of the Council's composition at least once every 25 years. Periodic review will ensure that the Council includes those members both willing and able to undertake its obligations.

Any discussion regarding the Security Council must also involve a review of the veto power. As demonstrated above, Kosovo provides a powerful example of a permanent member impeding justifiable international action. A single permanent member of the Security Council should not be able to derail the effective management of international peace. Members may not be willing to accept decision by a majority vote, but might accept government by some form of super-majority, maybe all but one. Alternatively, two-thirds of the greater Security Council could override the veto of a single permanent member. Or even more radically, the Council could eliminate the veto mechanism altogether. Regardless of the exact measure adopted, the veto power requires some restriction.

ERODING THE WESTPHALIAN ORDER

Increasingly, the international community has demonstrated a willingness to infringe on state sovereignty in certain cases. States sometimes feel obliged to violate the sovereignty of a fellow state to terminate particularly egregious behavior. Michael Ignatieff suggests that there are five instances in which the UN could authorize intervention:

when, as in Rwanda or Bosnia, ethnic cleansing and mass killing threaten large numbers of civilians and a state is unwilling or unable to stop it; when, as in Haiti, democracy is overthrown and people inside a state call for help to restore a freely elected government; when as in Iraq, North Korea, and possibly Iran, a

state violates the nonproliferation protocols regarding the acquisition of chemical, nuclear, or biological weapons; when as in Afghanistan, states fail to stop terrorists on their soil from launching attacks on other states; and finally, when, as in Kuwait, states are victims of aggression and call for help.³⁴

The Charter must formally acknowledge that certain behaviors will not be protected by claims of domestic jurisdiction. The permanent members of the Security Council should explicitly annotate those instances of egregious behavior. A clear enumeration of these cases would facilitate the development of standards and monitoring mechanisms that allow for rapid identification and adjudication. As time passes, new challenges facing the world may demonstrate that this list needs amendment. The UN needs a statutory mechanism for re-examining and amending the Charter to account for these challenges.

ENFORCING THE WILL OF THE SECURITY COUNCIL

Finally, any modifications to the Charter must address the problem of enforcement. The UN does not have a military force available on call, as the drafters envisioned. Waiting for the nations of the world to contribute on a case-by-case basis allows problems like Rwanda to fester and additional thousands to die while the world community deliberates. Some states likely would object to a standing international armed force under UN direction. Nonetheless, the ad hoc basis on which current missions are staffed and supplied is lacking. The member states must find consensus on a more predictable and manageable system for enforcing UN provisions and Security Council resolutions, or again, the Charter regime's authority will ebb.

The Charter system was unworkable from the moment of its signing. Current events and the emerging threat of international terrorism have highlighted the need for its revision. The evolution of technology, the availability of global transportation, and new modes of transmitting information have transformed the world. With that transformation have come new pressures on individual nations and on the collective system those nations chose for regulating international behavior. The nations of the world have reached a fork in the road, a moment of tremendous opportunity. Modifying the Charter may not bring about the peace and prosperity its drafters dreamed of, but with the appropriate changes, the Charter can provide a normative framework that states are both willing and able to follow. The alternative—a world in which the Char-

ter is unworkable and ignored—risks the eventual dissolution of the current forum for settling world disputes, the United Nations.

LBJ

NOTES

1. UN Charter, art. 39.
2. The phrase "customary international law" describes those practices that have evolved over time such that States believe a certain act engenders a legally binding obligation.
3. Letter from Daniel Webster, Secretary of State of the United States, to Henry S. Fox, Esq., Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty (April 24, 1841), reprinted in *British & Foreign State Papers*, vol. 29 (1857), p. 1138. Quoted in Michael N. Schmitt, "Preemptive Strategies in International Law," *Michigan Journal of International Law* 24 (Winter 2003): 530.
4. For a number of excellent examples of Webster's standard still in use today, see Michael N. Schmitt, "Preemptive Strategies in International Law," *Michigan Journal of International Law*, Winter 2003, p. 530.
5. Richard H. Fallon et al., *Hart and Wechsler's The Federal Courts and the Federal System*, 5th ed. (The Foundation Press, 2003), p. 735.
6. Guy R. Phillips, "Rules of Engagement: A Primer," *Army Lawyer* 4 (July 1993): 12. Quoted in Thomas Graham, Jr., "Is International Law Relevant to Arms Control?: National Self-Defense, International Law, and Weapons of Mass Destruction," *Chicago Journal of International Law* 4 (Spring 2003): 4.
7. U.S. Department of State, *Foreign Relations of the United States: Diplomatic Papers*, 1945 (Washington, DC: GPO, 1967), 707-709. Quoted in Thomas M. Franck, "When, If Ever, May States Deploy Military Force Without Prior Security Council Authorization?" *Washington University Journal of Law & Policy* 5 (2001): 58–59.
8. *Ibid.*
9. *Ibid.*
10. *Ibid.*
11. *Military and Paramilitary Activities (Nicar. v. U.S.)*, 1986 I.C.J. 14, para. 1 (June 27).
12. *Ibid.*, at para. 195, 228, 230.
13. *Ibid.*, at para. 195.
14. Security Council Resolution 1199, 23 September 1998.
15. Independent International Commission on Kosovo: *The Kosovo Report: Conflict, International Response, Lessons Learned*, 186 (2000), available at: <http://www.reliefweb.int/library/documents/thekosovoreport.htm>.

16. Security Council Resolution 1373, September 28, 2001.
17. Security Council Resolution 1377, November 12, 2001.
18. Security Council Resolution 1378, November 14, 2001.
19. *Ibid.*
20. Michael J. Glennon, "The Fog of Law: Self-Defense, Inherence, and Incoherence in Article 51 of the United Nations Charter," *Harvard Journal of Law & Public Policy* 25 (Spring 2002): 543.
21. Security Council Resolution 1378, November 14, 2001, and Security Council Resolution 1383, December 6, 2001.
22. Security Council Resolution 687, April 3, 1991.
23. Security Council Resolution 1134, October 23, 1997.
24. Statement by the President of the Security Council, UN Doc. S/PRST/1997/49, October 29, 1997.
25. Remarks by the President in Minnesota, The White House, November 3, 2002, <http://www.whitehouse.gov/news/releases/2002/11/20021103-2.html>.
26. United Nations Charter, art. 1(3).
27. Security Council Resolution 918, May 17, 1994.
28. Fernando R. Teson, "Collective Humanitarian Intervention," *Michigan Journal of International Law* 17 (Winter 1996): 364.
29. "Rwanda, remembered," *The Economist*, March 27 – April 2, 2004, 11.
30. While Article 2(7) states that the UN is not entitled to intervene in matters within the domestic jurisdiction of any state, it excludes from this provision any enforcement action taken under Chapter VII of the Charter. Chapter VII allows the UN Security Council to determine the existence of any threat to the peace, breach of the peace, or act of aggression, and to take such measures as the Security Council thinks appropriate to maintain or restore international peace. One could argue that the Chapter VII exception permits the Security Council to take measures to correct any breach of the peace, regardless of whether the problem is internal to a state, or across international borders. However, the better interpretation supports the conclusion that the Security Council may only determine threats to international peace, for two reasons. First, Article 2(7) deals with determining problems and taking measures to restore international peace—indicating that the problems the Security Council must address are international in nature. Second, any interpretation allowing the Security Council to intervene within the domestic jurisdiction of a state runs directly contrary to the Charter's most important stated principle: the sovereign equality of every member. The distinction is an important one, for again, if the Council can only act in situations that threaten international peace, violence of the worst kind, such as the genocide in Rwanda, would remain essentially a domestic matter and outside the UN's authority, unless the UN takes action and declares the genocide a threat to international peace.
31. Robert Kagan, "Renewing U.S. Legitimacy," *Foreign Affairs* 83, no. 2 (2004): 77.
32. Glennon, "The Fog of Law: Self-Defense, Inherence, and Incoherence in Article 51 of the United Nations Charter," 540.
33. Plato uses "Forms" to describe the standards or ideal models against which all sensible perceptions of the world are measured. All things in our material world are imperfect examples of their pure and perfect Form. Plato, *The Republic*, 2nd ed. (Basic Books, 1968), Book VI.
34. Michael Ignatieff, "Why are we in Iraq? (And Liberia? And Afghanistan?)." *The New York Times Magazine*, September 7, 2003, sec. 6.

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TEXAS SCHOOL FINANCE:

RETURN ON INVESTMENT ANALYSIS OF THE ROBIN HOOD ERA

TEXAS HAS A LONG HISTORY of voicing strong support for public education while lagging nationally in education spending. Even today, a recent public opinion survey showed Texans choosing education as the most important issue facing the state.¹ Texas, however, ranked 32nd nationally in per-student state expenditures for primary education during the 2002-2003 school year.² The state's educational shortfalls can be blamed in part on the fact that the Texas education finance system depends largely on revenue from local property taxes. This system of funding K-12 education creates sizeable spending inequities between wealthy and poor districts.³ For nearly 30 years, in Texas courtrooms, legislative chambers, and political backrooms, policymakers have struggled over how to strengthen and equalize public education funding. Many of these debates center on competing definitions of an equitable education system. Over the years, politicians, bureaucrats, and academics defined many different standards for educational equity, including spending per student, educational inputs, dollars raised per penny of local tax effort, and academic outcomes. No one standard ever won universal acceptance in Texas. This study offers a new perspective in the school finance debate by defining equity according to financial inputs paid with taxes by local communities, compared with outputs received through total education expenditure in the local school districts.

After briefly tracing the historical evolution of Texas school finance debate, this study examines a variety of weighted return-on-investment ratios. Our research looks at how those ratios differ between districts grouped into three categories: low-wealth, medium-wealth, and high-wealth. The four time intervals chosen demonstrate how return on investment in each of these district types has changed in accordance with legislative reforms to the Texas school finance system. Additionally, we explore three new potential funding formulas by calculating the potential benefits or harms sustained by the three different district groups if these reforms were implemented. The three

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potential formulas represent three of the school finance alternatives that the state legislature is expected to consider in the 2005 legislative session.

Comparative analysis of all our data yields a more in-depth understanding of what it means to pay for education in the state of Texas. Through this analysis, our research seeks answers to several fundamental questions:

- Who gets the most return on investment in education?
- Do taxpayers in poorer districts contribute a greater portion of their income than their counterparts in wealthier districts?
- Do those same taxpayers contribute more or less of their wealth than their more affluent counterparts?
- Which system among the current and proposed reform schemes creates the most equitable return on investment?

In brief, this study aims to reframe the issue of educational equity by examining the return on investment from the Texas public education system for taxpayers from a wide array of economic circumstances and financial perspectives.

A BRIEF HISTORY OF SCHOOL FINANCE IN TEXAS

In the United States, the federal government delegates most of the responsibility for funding primary and secondary education to the states. The 1909 Texas Constitution reflects this policy by declaring that "it shall be the duty of the Legislature of the State to establish and make suitable provisions for the support and maintenance of an efficient system of free public schools."⁴ Funding responsibility in Texas is shared by local school districts, the state, and the federal government. Federal dollars, never more than about 8 percent of total K-12 funding, generally fund only a few specific program areas, such as free lunch and breakfast programs for poor children and special education. Most K-12 funding comes out of a complex give-and-take scheme between the state and local school districts. According to the Texas Legislative Budget Board, "the state's portion of public education funding decreases in relation to growing local property values. . . . The state's . . . contribution is driven, in part, by efforts

to maintain certain standards of equity within the school finance system. These equity standards are a result of nearly 20 years of litigation."⁵ The Texas system of school finance has been repeatedly tweaked and rewritten through a continuous cycle of litigation and legislation. Despite this, the current system faces criticism and scrutiny from all branches of the Texas government.

The first legal challenge to the system occurred in 1968, when Demetrio Rodriguez asserted in a federal lawsuit, *Rodriguez v. San Antonio Independent School District*, that the state's funding system violated the equal protection clause of the 14th Amendment.⁶ The U.S. District Court found that the system of finance depended too heavily on local property taxes.⁷ However, in 1973 the U.S. Supreme Court reversed the U.S. District Court's position in a 5-4 decision, ruling that education "is not among the rights afforded explicit protection under our Federal Constitution."⁸ The Texas Legislature was therefore under no obligation to change the system, but awareness of the disparity in school funding spurred House Bill 1126, which established what is presently referred to as "Tier 2" of the current system.⁹ Tier 2 tried to make up for lower tax bases by giving the poorest districts a higher return per penny of property tax effort.¹⁰

The next challenge came in 1983 when the Mexican American Legal Defense and Education Fund filed *Edgewood v. Bynum* in state district court, claiming that the current system violated the "equal protection" and the "efficient system of public education" clauses of the state constitution.¹¹ The plaintiffs cited large disparities in per-pupil spending between the state's wealthiest and poorest school districts.¹² Further, it noted that poorer school districts could tax their property at much higher rates and still fall far short of the funds raised in more affluent districts.¹³

In 1985, the Texas Legislature responded by creating House Bill 72, which instituted many school finance reforms still in existence today.¹⁴ The legislation attempted to address the problems facing poorer districts by adding new weights to the system that increased funding for disadvantaged students.¹⁵ However, H.B. 72 did not prevent the plaintiffs from proceeding with their case, and by 1987 it had been reclassified as *Edgewood v. Kirby*.¹⁶ The district court ruled for the plaintiffs, but this ruling was overturned by the appeals court.¹⁷ The Texas Supreme Court reversed the appeals court decision and ruled that education was a fundamental right and that the "glaring disparities" in per-pupil spending violated the state constitution's

efficiency clause.¹⁸ The court established a standard of “substantial equal access to similar revenues per pupil at similar levels of tax effort.” The legislature needed to craft a school finance system that could meet this standard.¹⁹

Lawmakers responded to the courts again in June of 1990 with Senate Bill 1, adding a facilities component to the system.²⁰ The legislation increased state funding for low-wealth districts on capital expenditures such as buildings and large maintenance items, but failed to limit the ability of wealthier districts to enrich their own schools to levels far beyond what the state could equalize.²¹ In January 1991, the Texas Supreme Court rejected Senate Bill 1 on the basis that it did not sufficiently overhaul the system.²² The court ruled that “the system would be more efficient simply by utilizing the resources in the wealthy districts” and told the legislature to take action immediately.²³ The legislature then passed Senate Bill 351, which created 188 “county education districts” and consolidated the tax bases of several school districts in order to create a more equalized system.²⁴

In June of 1991 several wealthy districts challenged the new system in state district court, alleging that it created a statewide property tax, which is banned under the Texas Constitution. The districts argued that, because the law required all districts to set their rate at a minimum of 72 cents per \$100 of appraised property value, the property tax floor amounted to a statewide minimum tax.²⁵ The legislature attempted to overcome this constitutional challenge by placing the issue in front of the voters in May of 1993 as a proposed amendment.²⁶ Voters rejected the amendment by a large margin, forcing legislators to devise a new school finance plan, outlined in Senate Bill 7.²⁷

The key component of the new system was the recapture formula, popularly referred to as “Robin Hood.” Recapture forces high-wealth districts to send property tax revenue collected over a certain capped amount to poorer districts, either directly or through the state.²⁸ This system was challenged in 1993, but the Texas Supreme Court upheld the system as constitutional with two important cave-

ats.²⁹ First, the court pointed out that the inequity of facilities funding still had the potential to be held unconstitutional if more evidence was gathered, and it encouraged the legislature to find new remedies.³⁰ It also warned that the current system risked future constitutional dangers if at some point a large number of school districts were forced to set their tax rate at or near the \$1.50 maximum, which could be interpreted as a statewide property tax.³¹ In May 1999, the Texas Legislature made several changes to the school finance system in order to guarantee a greater yield per tax rate for all districts statewide and increase assistance for school facilities.³²

Currently, another lawsuit challenging the school finance system is working its way through the Texas courts. This lawsuit, *West Orange Cove Consolidated I.S.D. v. Nelson*, was first filed in 2001 by a group of high-wealth districts that are subject to recapture.³³ These districts claim that the current system is unconstitutional because it creates a statewide property tax.³⁴ However, several low-wealth districts later joined the suit,

making two additional arguments. First, they claimed that the state has failed to provide adequate funding to meet the minimum needs of students. Second, poorer districts claim that the current system has drifted away from the equity standards set forth in the previous *Edgewood* cases. In September 2004 District Court judge John Dietz ruled in favor of the plaintiffs on all three counts, but by November 2004 Judge Dietz had not yet released his written ruling explaining the grounds for his decision.³⁵ Judge Dietz’s initial remarks made it clear, however, that he did not find recapture unconstitutional. Instead, he found that the state school finance system has evolved to the point at which the current structure is inefficient and underfunded. The state appealed the decision, and lawmakers hope to address the problem during the 2005 legislative session.³⁶ The 2003 legislative session, as well as a special session called in the spring of 2004, attempted to reform school finance through several proposals to redesign the system, but none gained enough support to reach a final vote.

For nearly 30 years, in Texas courtrooms, legislative chambers, and political backrooms, policymakers have struggled over how to strengthen and equalize public education funding. Many of these debates center on competing definitions of an equitable education system.

POTENTIAL SCHOOL FINANCE SOLUTIONS

An important aspect of our study compares state taxpayers' historical and current return-on-investment for education equations with the same equations resulting from new reforms in the near future. Obviously, the legislature could come up with a potentially infinite number of ways to deal with the current system's taxing and revenue distribution problems. However, it is reasonable to assume that the revenue distribution system will maintain some type of minimum yield, relatively similar to the current system. Major change will likely come in the area of taxation, and there are currently only three major proposals under serious consideration. Even though the legislature will likely pass some sort of hybrid taxation system, much insight can still be gained by looking at how return-on-investment equations change if one type of tax is used exclusively. Each alternative demonstrates how the burden of each type of tax falls more heavily on one group than another.

The least likely of all the proposed reforms is a statewide income tax. This proposal has very limited political support, but advocates point out that it is a very stable and progressive way to tax.³⁷ A state income tax that mirrors the national income tax would be highly progressive compared to other taxes, since it taxes higher incomes at higher rates. The next possibility is increasing the sales tax rate. This increase would be offset partially by a decrease in property tax rates, but it would serve to increase the proportion of school funding provided by the state. The last possibility is a statewide property tax. Like the income tax, a statewide property tax may be deducted from a taxpayer's federal income tax liability. However, many opponents point out that this tax can be somewhat regressive, since everyone must pay property tax on the place they live, either directly (if they own the property) or through higher rents passed on by their landlord.

METHODOLOGY

This study focuses on the return-on-investment (ROI) equation and the two weighted measures that change the equation, average property value and average household income. These three equations form the basis for our analysis. The seven school districts chosen were arranged into three categories: high property wealth, medium property wealth, and low property wealth. Three medium-wealth districts were chosen to show a range of wealth distribution within this broad category. The state of Texas also serves as a data set in order

to represent different districts' variance from the statewide norm.

Each of these districts and the state has four separate sets of data representing 1990, 1995, 2000, and 2002. Each data set has five categories of data. The first category is demographic data. The demographic data collected for each district in each year are county population, average household income in the county, average residential property value in the school district, local property tax rate by school district, school district student enrollment, average daily attendance (ADA), and weighted average daily attendance (WADA).³⁸ The only missing piece of data is WADA for 1990. WADA for 1990 is missing because the weighted system had not yet been implemented at that time.

The second data category is input data. These data reflect the district's total investment in the education system. The data include property tax paid to the district, sales tax paid to the state, and total taxes paid into the system, which is calculated by adding the sales and property tax together.³⁹ The sales tax contribution to education is determined by taking the total sales tax and multiplying it by the percentage of state expenditure on education as a fraction of the state's entire budget.⁴⁰ The third category is outputs, representing the return portion of the equation for districts. These data take property tax in the districts and subtract transfers out due to recapture in order to create a data set for the property tax remaining.⁴¹ The other data sets are the state's financial contribution to education and the federal government's financial contribution to education.⁴²

The fourth data category is comparative analysis. This represents all the calculations made using the data from the first three categories. The first comparative analysis data are the nonweighted data analyses. Four population sets are used for these calculations. In each case, total inputs and total outputs are divided by four demographic numbers: population, enrollment, ADA, and WADA. The resulting equations are the nonweighted return on investment, or total outputs divided by total inputs. The next two sets of data are calculated in the same way, only with a weighted factor included. This weighted factor is added in two steps. First, the input measure is divided by the average property value in each county for each year. Second, the output measure is divided by the statewide property value for each county for each year. The new output is divided by the new input, and the new result is the weighted measure. The weighted income measure uses this same process. The nonweighted input measures are divided by average local household income, and the output measures are

divided by the statewide average household income. We created these comparative data sets for all four population categories.

The final data category consists of alternative solutions analysis. We created three new scenarios, reflecting the potential school finance solutions offered by state legislators. The data for 2002 are unchanged in each county, with the exception of the amount of input and output placed in each category.

It is very important to note at this time, before we present our analysis, that the data collected for this study faced some limitations. There were two primary limitations to the data collection: geographic scope and time period. With regard to geographic scope, some of the data covered a county-wide area, while some covered a school district. Ideally, all of the data should represent information specific to each school district. However, either this information is not calculated at the district level (in the case of the U.S. Census data) or we lacked the time and resources to track this information down. For this reason, in many cases we used county-wide data as a rough approximation for school district data. With respect to time period, some data were more readily available because they fell on a census year (in the case of 1990 and 2000), and some data were more readily available because the information was from a more recent year (in the case of 2000 and 2002). Data from noncensus years at times had to be estimated, as did data from earlier years. However, in spite of these limitations and imperfections, it is our assertion that they do not invalidate our conclusions. On the contrary, the data allow for significant insight into the ROI equation.

ANALYSIS

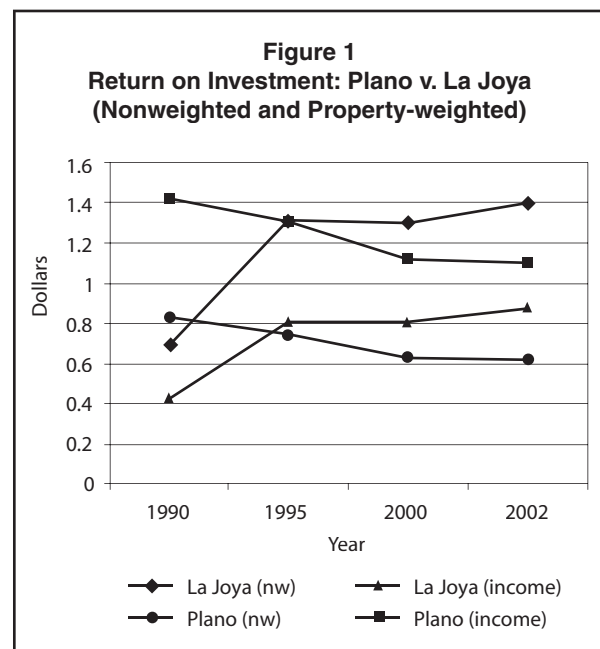
Several interesting conclusions can be drawn from analysis of the data. Since the data are limited to seven counties and some of the data collected have potential for significant error, it is important to look at the findings that yielded the clearest results and were least prone to data distortion. If this type of data were collected on a statewide level, it could serve an even wider range of purposes for governments and education policy groups. Further, if more precise data were collected over each year for each district, school districts and the Texas Education Agency could use the data to design better taxing and distribution systems. We focus on five important conclusions that can be easily drawn from these data.

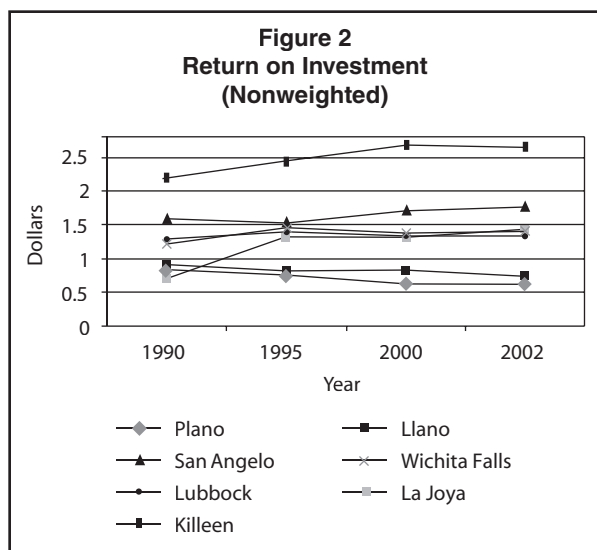
"Robin Hood" largely equalized spending and return on investment—Lawmakers intended the recapture system, also known as "Robin Hood," to be a tem-

porary fix to the state's constitutional crises, with the express purpose of creating funding equity. The system has been widely criticized, and evidence suggests that significant flaws exist, but there is no doubt that recapture brought poorer districts closer to richer districts in terms of per-pupil expenditures. We took that question one step further and asked if the recapture system also brought the ROI equation into greater equity. As can be seen in Figure 1, recapture altered the ROI equation significantly. In 1990, Plano, one of the wealthiest districts in the state, had a higher ROI, 0.83, than La Joya, one of the poorest districts in the state, which had an ROI of 0.69.

The equation itself clearly shows the advantage that wealthier districts had under the old system and gives credence to the many legal challenges that altered the system over the last decade. The figure shows a clear reversal of direction for both Plano and La Joya in 1995, and that trend continues into 2002. Figure 2 adds all seven counties into the mix. Even though the change in ROI is less dramatic, with districts closer to the state average, it is still clear that recapture improved the ROI for poorer districts at the cost of the wealthier districts.

The figure also makes clear that medium-wealth districts have been largely unaffected by the recapture system. In fact, they benefit slightly in most cases, though not to the extent of poorer districts. Simply put, recapture successfully brought the broad range of wealth among districts closer to the court-ordered concept of "equity" in terms of spending and return on investment.





It should also be noted here that Killeen appears to be an outlier throughout our figures. This is likely due in large part to data collection errors resulting from the geographical scope problems discussed previously. Killeen is a property-poor district that benefits heavily from recapture, but it would likely be placed somewhere between La Joya and Lubbock in most of our figures if the data were ideal.

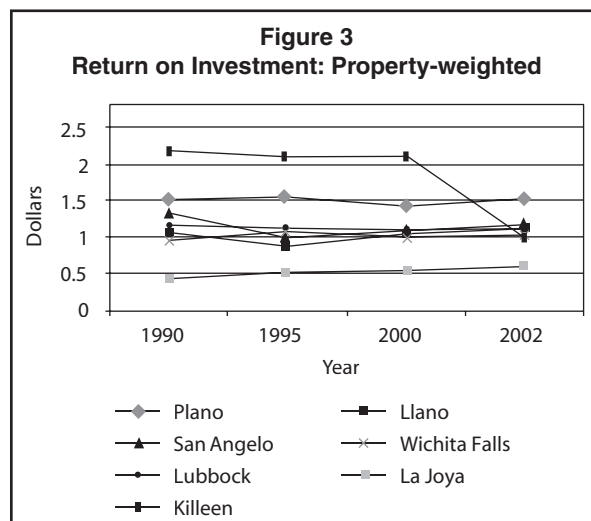
Robin Hood only partially eliminated the ROI equity gap when accounting for property wealth—Wealthier schools clearly contribute more money to the system under recapture, but it is equally clear that they still garner the best return on investment when their relative wealth is taken into consideration. The property-weighted function in this study allows us to ask a more nuanced return-on-investment question: How much investment does an average taxpayer contribute to the system, considering how much wealth they have to draw from? Many of the poorest school districts have a small fraction of the property enjoyed by wealthier districts. In some cases it would require tax rates of anywhere from 10 to 100 times the rate charged by the wealthiest districts to raise the same amount of revenue. The weighted factor takes this reality into consideration and leads to greater insight about how much return the average citizen really gets for his investment.

Figure 3 looks at the same seven districts equation over the same time frame as Figure 2, but the numbers are now weighted by property value. The most striking feature of this figure is how in 1990 the ROI varied broadly compared to 2002, where there is a great amount of convergence in ROI, with the exception of the wealthiest district, Plano, and the poorest district, La Joya. Plano maintained its weighted ROI

despite increasing recapture contributions to poorer districts. La Joya made slight gains, but did not come close to the medium-wealth districts.

This figure helps us draw two important conclusions. Recapture brought equity to the large number of districts in the middle of the wealth spectrum. The tiered system of finance that gave districts a guaranteed yield for their property tax effort brought most districts to a similar ROI. In essence, districts received equal money for equal taxation effort. Further, as these districts have moved toward the \$1.50 cap, they have reached an even higher level of equity, but that equity may come at the cost of capacity. These districts have little or no room to increase their investment, and thus they will likely run into major financing problems as the cost of education continues to increase. This convergence could be considered both an accomplishment and a source of future crisis.

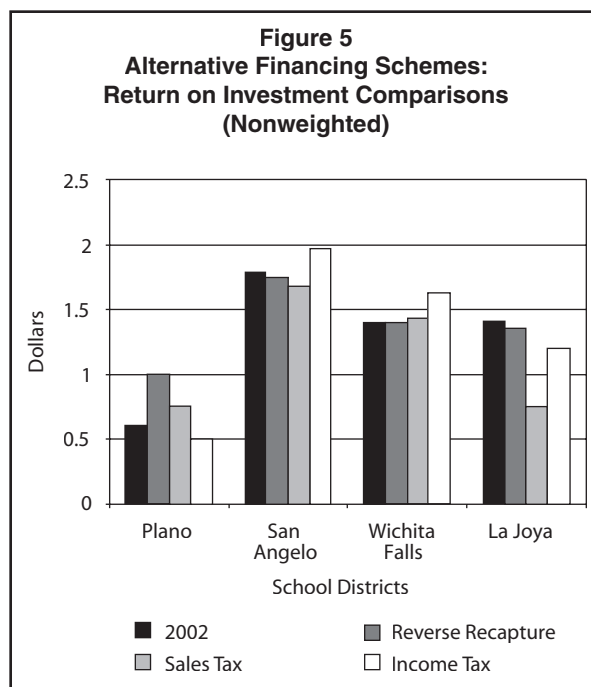
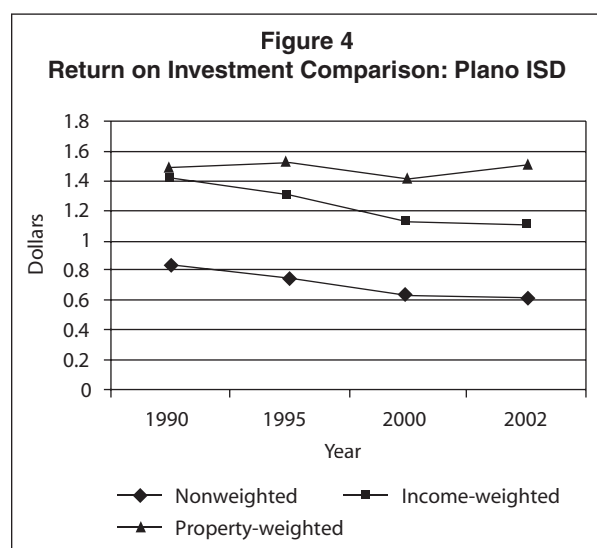
Second, the fact that the two districts at the extreme ends of the wealth spectrum did not see their ROI equations merge leads to an equally valuable insight. Increasing the disbursement amount to property-poor districts will not bring equity to the ROI equation. The poorest districts may have similar expenditures per pupil, but they are contributing a disproportionate amount of their wealth, considering their property wealth relative to the rest of the state. This phenomenon appears to result from the regressive nature of the two taxes used to fund the system. La Joya has a significant disadvantage compared to the rest of the state when it comes to average household income and average property wealth. Citizens in these poorer districts pay a much higher percentage of their income in both property tax and sales tax than their richer counterparts throughout the state. This means that they



will continue to pay more of what they have even if the legislature implements a system of complete equity. Plano represents the same phenomenon in reverse. Plano residents benefit from the regressive natures of both the sales tax and the property tax, and their contributions to poorer districts do not offset their wealth. These two conclusions show both the strengths and weaknesses of the recapture system. Recapture brought ROI equity to the vast midwealth districts throughout the state, but it failed to do the same for the districts at the extreme ends of the wealth spectrum.

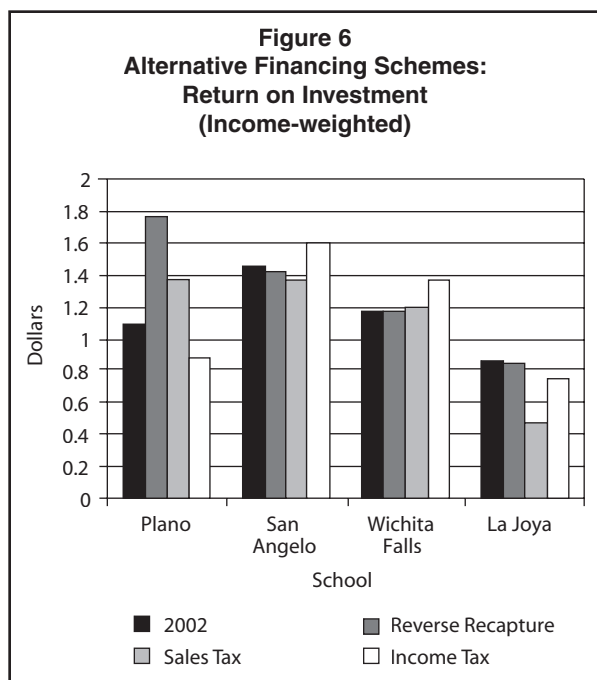
Property wealth protects the richest school districts—This insight explains why the high-wealth districts are not pulled down toward the norm in the property-weighted ROI equation. The wealthiest districts often complain that they should not be forced to send their local money to other districts in order to meet the court-ordered mandates. These districts argue that they suffer unduly from the recapture system. If this is true, how do these districts continue to maintain the high property-weighted ROI as seen in Figure 3? There are two important explanations for this phenomenon. The first has to do with the regressivity of the tax system, as previously discussed. The second involves the unique nature of high property values. Property values generally increase over time in all districts, regardless of wealth level. However, high-value property increases at a faster rate than low-value property, which offers high-wealth districts a measure of immunity to the recapture system.

As can be seen in Figure 4, ROI decreases when it is nonweighted or, to a lesser extent, when it is weighted by income. However, when weighted for property value, the ROI actually remains relatively



constant. This means that the property wealth increased at roughly the same rate as the amount of recapture money the high-wealth districts sent to the poorer districts. These districts will likely continue to have this property-wealth immunity as long as property taxes remain the centerpiece of school finance. As a source of fast-growing wealth, property tax revenue will continue to challenge the equity equation for years to come.

Different funding schemes benefit different districts—Figures 5 and 6 clearly illustrate how different types of districts will benefit in very different ways depending on which school finance system lawmakers ultimately choose. The wealthy districts clearly benefit the most from a simple reversal of recapture. However, it is equally clear that they also benefit from a system relying largely on sales tax revenue. Wealthy districts lose out only under an income tax-reliant system. The reasons are obvious. The current system and a reversal of recapture both are systems based heavily on a regressive property tax. The sales tax is regressive as well, and the benefit to wealthy districts is equally clear. Under a progressive income tax system, the wealthiest districts contribute the largest amount of tax revenue, thereby decreasing their ROI significantly. Low-wealth districts, on the other hand, benefit from the same taxing schemes that hurt high-wealth districts. They benefit from a property tax in both the weighted and nonweighted comparisons. They are injured the most by the sales tax because it is even more



regressive than the current property tax. Both the current system and a reversal of Robin Hood are also harmful to these poor districts.

The medium-wealth districts gain the same benefit from the income tax, but to a lesser degree than the poorest districts. The other funding systems have only minor effects on the ROI equations of medium-wealth districts. Medium-wealth districts receive more revenue under some school finance systems and less under others, but these differences are not as dramatic as the differences for districts on the extreme ends of the wealth spectrum. This helps explain why the equity debate has been framed as a clash between the rich and the poor. Medium-wealth school districts have only recently jumped into the funding debate. They enter the debate now because many of these districts recently reached the \$1.50 property tax cap, but they have not yet taken a strong stance on how to increase school funding. Taxpayers in medium-wealth districts may be unaware of how different school finance systems would affect their districts.

CONCLUSION

How to tax citizens in order to fund education is an issue on the minds of many Texans as the 2005 legislative session gets underway. This study looked at the equity question at the center of the school funding debate from a new, broader perspective.

By examining ROI equations, we attempted to draw conclusions about the overall equity of the Texas school finance system. It is clear that recapture brought various school districts to a more equalized ROI equation. However, it failed to bring districts at the extreme ends of the wealth spectrum together. Further, it is clear that wealthy districts can retain high weighted ROI ratios because they have property wealth that protects them from the regressive tax system currently in use. The poorest districts make up for this deficit by paying high percentages of their incomes into regressive property and sales taxes. The current system of funding clearly will not change these realities anytime soon.

Finally, it is clear that different school finance systems benefit different types of districts, depending on the progressive or regressive natures of the taxes used to fund education expenditures. The Texas Legislature must develop some new system that protects equity without limiting localities' ability to raise taxes. However, given the state's current political environment, the timeline for enacting such policy changes is anything but clear.

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PUBLIC-PRIVATE PARTNERSHIPS IN PARKLAND MANAGEMENT:

BUENOS AIRES, ARGENTINA

Unique mixtures [of partnerships] reflect a metropolitan area's individuality and its social and political mores: There is no perfectly replicable approach to public-private partnerships . . . each city must start its own course.

*Andrew Schwartz, in Public Parks, Private Partners:
How Partnerships are Revitalizing Urban Parks*

BY KATHERINE CLARK

Katherine Clark is a master's degree candidate at the Maxwell School of Citizenship and Public Affairs at Syracuse University. She graduated from Clark University in Worcester, Massachusetts, with bachelor's degrees in geography and art history. After teaching English for a year in Venezuela, Kate accepted a position with the New York City Parks Department, where she served as librarian and director of the Historical Signs Project. In 2002, she received a Fulbright Scholarship to study park administration in Buenos Aires, Argentina.

Government coalitions with nonprofits, neighborhood groups, and business communities have proven effective tools for administering public parkland worldwide. In the early 1980s, many municipal parks departments faced limited budgets, the changing needs of new generations of park users, and increased distrust of government by civil society, which led urban park administrators to rethink their established role. By formally integrating the community's key players into park decision making, public-private partnerships have augmented park budgets, volunteer bases, and management accountability, and have helped park design reflect the needs of the surrounding community. Most important, the mutual responsibility engendered by public-private partnerships has facilitated a sense of ownership and respect by users—characteristics essential to a healthy park system.

In Argentina, public-private partnerships emerged as a new form of parkland administration following the country's 1976-1983 dictatorship.¹ Yet citizens' deep distrust of the government and the state's hesitancy to promote public-private partnerships have rendered unsuccessful most attempts to establish parkland collaborations. Successful partnerships are fueled by trust. Park administrators must

adjust the boundaries of their authority to include the community in important decisions and their partners must respect the government's role as the primary decision maker for this public good.

This paper examines the factors that have undermined successful parkland partnerships in Buenos Aires by exploring the primary causes of citizen distrust, comparing the partnership models that have been implemented, and identifying the steps the government should take to become an effective and willing partner.²

BACKGROUND

The City of Buenos Aires contains roughly 600 hectares of parkland, which encompass 4.5 percent of its total surface area—a mere 1.9 square meters of parkland per inhabitant.³ This scarcity of recreational space, which has resulted in overuse, coupled with the historic significance of the landscape architecture, makes effective parkland management essential.⁴

Parkland in Buenos Aires is currently managed in five ways:

- Sole government responsibility for park maintenance and administration.
- Government leasing of public land to private companies to administer through for-profit concessions.⁵
- Incorporating the assistance of neighborhood “friends groups” into traditional government care.
- An “adopt-a-park” initiative called the *Programma Padrinazgo* (Padrino Program).
- Long-term legal collaborations with non-profits to administer individual parks such as *La Reserva Ecológica del Costanera Sur* (the Ecological Reserve) and *Parque Avellaneda* (Avellaneda Park).

TRUST BETWEEN CIVIL SOCIETY AND GOVERNMENT

In Buenos Aires, citizen distrust of the government's intentions stemming from past abuses of power has generated two attitudes from park users, one that is apathetic and the other that is hostile toward the

government. Because parks are such a visible part of public life, generating more partnerships would enable the government to openly display its interest in redressing the lack of public confidence.

THE APATHETIC REACTION

Apathetic park users exhibit neither ownership of nor respect for their parks because they believe that these spaces belong to a government that has abused their trust.⁶ Citizens who are disconnected from their parks have encouraged others to mistreat the spaces, which has created low morale among park workers and has caused support groups and potential donors (such as adopt-a-park sponsors) to view parks as futile causes.

Almost every successful park has a strong community supporting it.⁷ One of the fundamental theories regarding partnerships holds that by involving the community in the life of a park, a sense of ownership arises, which ensures proper utilization and cleanliness, which in turn brings more people into the park and creates a safer environment. In Buenos Aires, however, apathy has taken root as a reaction to the military dictatorship and the privatization of public parkland. During the 1976-1983 dictatorship, there was no democracy, nor any concept of public space. The dictatorship eliminated one of the primary uses of parkland by making it illegal to congregate in parks and plazas.⁸ These empty meeting points were a visible manifestation of what the dictatorship had robbed from Argentina's citizens—the freedom to assemble. Since the fall of the dictatorship, parks have been used extensively for leisure and recreation, and as a stage for demonstrations. The symbolism of empty public spaces during the dictatorship, however, remains in the minds of many Argentines, and the sentiment that these spaces do not belong to anyone, instead of to everyone, prevails.

A second reason for citizen apathy is the government's history of corruption. Argentina's unsuccessful economic privatization program caused tremendous resentment toward the government.⁹ In Argentina, privatization is a charged word that for many citizens invokes what they perceived to be the impulsiveness of President Carlos Menem's privatization agenda during the 1990s.¹⁰ The divestiture of public companies, such as railroads, water facilities, telephone companies, and airlines, did not achieve the traditional privatization goals of increasing output and efficiency, introducing market competition, increasing revenues, and lowering costs.¹¹ Instead, privatization severely damaged the relationship between the state and its citizens because the process

was marred by scandals and political favoritism.¹² The private companies exploited their contracts, created monopolies, evaded regulation, instigated major layoffs, and caused prices to skyrocket.¹³

The goal of park partnerships is not to transfer full control to the private and nonprofit sectors, but to involve park communities in important decisions and to supplement government services. Yet during the 1990s, the government permitted and promoted private-sector domination of public spaces. Not only did it sell valuable parkland to private developers, but it leased public land to private companies to administer, seriously curbing public access.¹⁴ Sports clubs, restaurants, and nightclubs, which are permitted to make money in parks for private purposes, have been accused of illegally withholding portions of the gains that are supposed to be directed into the city's coffers.¹⁵ Although many leased areas retain their recreational character, they are not available to the public at no charge. Only 13 percent of the 688 hectares of *Parque Tres de Febrero* (February 3rd Park) is completely open to public access because of concessions and roadway construction.¹⁶

If the public could access all of the city's parkland, Buenos Aires would possess 5 square meters of parkland per inhabitant. Yet excluding parks that are leased to private companies, there are only 1.9 square meters of parkland per inhabitant.¹⁷ This contrasts dramatically with statistics from 1904, when citizens enjoyed 7 square meters of parkland per inhabitant.¹⁸ The government justified the leasing of parkland by asserting that it could not properly care for the parks, an argument that has generated considerable controversy.¹⁹

Since 1984, the Buenos Aires Parks Department has delegated park maintenance to private companies.²⁰ This controversial arrangement has negatively affected popular attitudes toward the government and its ability to administer parks. When the city privatized maintenance, the Parks Department spokesman explained: "For this work, private companies have the equipment that we do not have, like trucks, lawnmowers, and carts."²¹ The maintenance staff has decreased from 2,900 employees in 1984 to 1,207 in 2002. Today, almost three-quarters of the Parks Department budget is devoted to salaries, yet three outside companies

tend to 70 percent of the city's parks. Concerned citizens believe that Parks Department employees can complete the work that the private companies are doing, and that the government is contracting out services that the department is capable of handling, in order to transfer responsibility.

The maintenance controversy has negatively affected the public's opinion of partnerships. There is a misconception that partnerships are a form of outsourcing park administration and that the government is shirking its administrative responsibility. The government needs to convey to the public that the goal of partnerships is not to evade its obligations to parks, but to supplement them.

THE HOSTILE REACTION

The second reaction to government management of parkland is hostility, which is evinced by a

In Argentina . . . deep distrust of the government and the state's hesitancy to promote public-private partnerships have rendered unsuccessful most attempts to establish parkland collaborations.

constituency of park advocates hostile toward the public sector. This hostility is rooted in the history of park privatization. The "antigovernment" parkland movement emerged in 1993 with the creation of the *Asemblea Permanante por los Espacios Verdes Urbanos* (Permanent Assembly for Urban Parkland—APEVU), a network of more than 50 neighborhood groups and nonprofits with the stated

goal of bringing together different sectors of civil society to fight for the "defense, recuperation, and amplification of urban parkland."²²

APEVU has struggled to block the sale, concession, or illegal use of parkland by contributing newspaper articles, participating in debates, and sponsoring no fewer than ten citywide conferences.²³ It has sued numerous political officials for illegally selling parks and has helped augment the city's parkland by more than 50 hectares.²⁴ The group continually lobbies the government for more, better-quality parks, focusing its attention on the 350 hectares of national land currently in disuse in Buenos Aires.

Without proof that Buenos Aires can care for and maintain its existing parks, it is difficult to convince politicians and citizens to fight to acquire more land. APEVU seeks more public-private parkland partnerships, but its underlying motive is to monitor government, not work with it.²⁵ Setbacks, such as the rejection of proposed legislation to create more

partnerships, have made joint administration seem unobtainable. APEVU's unwillingness to compromise and work with, not against, the public sector has led the government to deny it a representative voice in important parkland decisions, which has fueled an army of frustrated citizens and further impeded a constructive dialogue between the public and private sectors.

PARTNERSHIPS IN BUENOS AIRES

Three parkland-management partnership models exist in Buenos Aires: the Ecological Reserve, the Padrino Program, and Avellaneda Park. Although very different in structure, these collaborations have one thing in common: they are based on legal contracts and exist as permanent entities within the government's structure. In most cities around the world, partnerships do not base their collaborations on formal contracts, but on trust. If legal legitimacy is the precedent in Buenos Aires for a partnership to exist, why is there not a greater dedication to passing bills that emulate and improve on these models?

The idea of creating legal documents to ensure continuity was proposed by the nonprofit partners when the partnerships were created. Because the collaborations were created under an administration that stood to benefit immediately from their formation, the private/nonprofit partners were skeptical that subsequent administrations would share the same commitment. The duration of partnerships can be attributed to legal status, yet the existence of a formal contract does not necessarily imply partnership success, nor does it remedy the distrust that has undermined collaborations. In fact, the legal nature of partnerships has thwarted their proliferation; it is difficult to pass a partnership bill, and without legal status, the barriers to creating new partnerships are formidable.

The Secretary of the Environment oversees the Parks Department, which is responsible for the majority of parkland. Other parks belong to a special category called *fuera de nivel* (out-of-structure), which is also overseen by the secretary.²⁶ The three partnerships were once part of this special group, but only the Ecological Reserve remains today. A combination of government budget constraints and power conflicts caused Avellaneda Park and the Padrino Program to be placed under the direct supervision of the Parks Department.²⁷ Each of the partnerships strives to be out-of-structure because out-of-structure status would permit park admin-

istrators to control their park's financial resources, assume more management accountability, and distance themselves from the Parks Department's bureaucracy and corruption.²⁸

MANAGEMENT COUNCIL MODEL:

THE ECOLOGICAL RESERVE

In 1986, the city initiated its first partnership model for the Ecological Reserve, the largest and most visited park in the city. The reserve director, a government employee, manages the park in conjunction with a private partner called the management council.²⁹ The management council consists of volunteer representatives from the University of Buenos Aires biology department and three nonprofits, *Amigos de la Tierra* (Friends of the Earth), *Aves Argentinas* (Argentine Birds), and *Fundacion Vida Silvestre* (Wildlife Foundation). Each of the council members was instrumental in the partnership's formation. The collaboration emerged three years after the fall of the military dictatorship, during a time when nonprofit enthusiasm for, and participation in, the democratic restructuring of the country was at its height.³⁰ The collaboration served as one of many symbolic gestures by the government that democracy had returned to Argentina.

Despite this auspicious beginning, the government and private partners have lacked coherency as an administrative body. There is no set policy for group meetings, attendance is sporadic, and decisions are rarely consensual.³¹ The partnership members lack communal office space, and no money from the city budget is allocated specifically to partnership efforts. These factors have contributed to low work morale and lack of commitment, which has limited the council's ability to lead. The partners pursue self-interested agendas, motivated by the objectives of their own organizations, and rarely consult or collaborate with each other, which has resulted in shifting goals and undefined focus.

This dissonance largely revolves around a lack of communal trust between the management council members. In addition, the government does not trust the partnership's potential, causing private partners to conclude that the government is an absent collaborator. Concerned community members and other nonprofits believe that the council no longer reflects the partnership's original intent to represent civil society and that it ignores the desire of citizens to be included in important decisions because of a fear that the community's inclusion will result in more disorganization and will be a threat to its control.³² The management council, however, must understand the vision of both park

administrators and park users to successfully govern the reserve.

The city legislature recognized this issue and passed a bill in March 2001 to change the composition of the management council.³³ The goal of the new structure was to eliminate the four permanent positions and instead incorporate three rotating positions that would be democratically filled every three years from a registry of environmental nonprofits. To date, the law has not been implemented. Because leadership continuity and project momentum are essential features for a successful administration, the government's hesitancy to enact the law appears prudent. Consistent and stable private partners are necessary to compensate for the high turnover of politically appointed reserve directors. However, the fervent lobbying of members of civil society to propose a new bill, which was passed but not enacted, points to a serious problem in achieving consensus on partnerships. The government fears the inclusion of civil society and the ceding of control to it, but so does the management council. Lack of trust among the government, nonprofits, and citizens has made this collaboration less than optimal.

ADOPT-A-PARK MODEL: THE PADRINO PROGRAM

In 1989, the city initiated an adopt-a-park program called the Padrino Program.³⁴ Its creation mirrored the spirit of Argentina's privatization policies by looking toward the private sector to relieve government financial difficulties. Through a three-year contract, private partners pay landscape companies for park upkeep or do the work themselves in exchange for the placement of a sign within the park recognizing their donations. To date, roughly 80 of the 590 plazas and small parcels of parkland are sponsored. While padrinos include nonprofits, embassies, and individuals, the overwhelming majority are businesses. This model is the only instance of a government-facilitated partnership; all other attempts at collaborations have been initiated by the nonprofit sector.

Because the padrino model is very visible, it is the most criticized of the three partnership models. By becoming sponsors, businesses have improved parkland, primarily in the northern, more-affluent areas of the city, where most of their clients live.³⁵ The southern part of the city, however, has few sponsored parks, and the government makes no effort to promote their adoption. While an advantage of this partnership is that it is transparent (donors pay private firms, not the "distrusted" government), the primary motivation for adopting a park is as

an advertisement, because maintaining a park in Buenos Aires is less expensive than advertising by billboard.³⁶ Citizens believe that the donation signs are a form of privatizing public spaces and that the advertising advantage encourages donors to overlook the parks most in need, such as those in poorer neighborhoods.³⁷ Citizens also believe that the Parks Department has a budget sufficient to maintain the adopted parks without transferring responsibility to the private sector.

The Parks Department has realized significant savings as a result of the sponsorships, but the money has not been redirected toward improving failing parks; in fact, there is no record of how it is reinvested.³⁸ The government has also given padrinos the privilege to use their adopted parks privately, curbing public access.³⁹ Because many adopted parks are less than adequately cared for, observers suspect that padrinos are pocketing money through arrangements with maintenance companies.

The three-year contracts prevent the program from facilitating long-term community commitment. Although there have been 40 steady sponsors since the program's inception, the majority of padrino adoptions have been short-lived.⁴⁰ Many of the padrinos have halted their contracts or decided not to renew their sponsorship. Sponsors believe that citizen mistreatment of parks negates the work they have put into the spaces and that the government is not supportive of their efforts because it does not educate citizens on how to properly use and respect their parks.⁴¹ Keeping a park in an acceptable state is severely deterred by government bureaucracy; the processes to simply fix amenities or respond to dangerous situations can be tortuous.⁴² In addition, in order to become a padrino, the sponsor must be or possess a foundation, which places small neighborhood groups at a disadvantage.

PARTNER ADMINISTRATION MODEL: AVELLANEDA PARK

In 1996, a new partnership model was created for Avellaneda Park called partner administration.⁴³ It was instigated by the nonprofit *Centro de Estudios Sociales y Actividades para Parque Avellaneda* (Center for Social Studies and Activities at Avellaneda Park—CESAV) with the help of the *Facultad Latinoamericana de Ciencias Sociales* (the Latin American Social Sciences Faculty—FLACSO). This partnership emerged contemporaneously with Buenos Aires's 1994 constitution and reflects that document's key features of decentralization and citizen participation in public decision making. The coalition consists of a government-employed director, the director's staff,

and a network of volunteers. They administer the parkland through a complex structure that includes committees dedicated to management, culture, neighborhood networks, regional strategy, ecology, sports, and history.⁴⁴

Since the partnership began, there have been constant power struggles between the volunteers and their government partners. The collaboration was created during the administration of a former vice-mayor, Enrique Olivera, whose ancestors owned the property. One of the primary reasons for his administration's insistence on rejuvenating the park through a public-private collaboration was his personal interest in the park's well-being.⁴⁵ Volunteers believe that subsequent administrations have not supported the partnership and have wanted to phase it out.

Since 1998, the public advocate for the environment has made several attempts to pass a bill to create more partner-administration partnerships.⁴⁶ Twenty-nine community groups, looking to Avellaneda Park as a model to manage their parks more efficiently, created master plans geared specifically toward this type of administration. Yet the city legislature has not passed the bill because it believes that the model is inefficient and fears that empowering the community will lead to the government's loss of parkland control. In 2003, the partnership's independent, out-of-structure status was rescinded and the park was placed under the supervision of the Parks Department.

Another source of contention concerns employment. Within the past few years, select volunteers have become government-paid employees. Neighborhood participation has waned since this new policy was implemented because the new employees have discouraged help from other volunteers, believing their work is sufficient. Conflicts during the selection process led many volunteers to conclude that the decisions were arbitrary and biased.⁴⁷ As with the Ecological Reserve, there are no public funds dedicated to the partnership itself, which, coupled with the loss of an autonomous budget, makes projects difficult to implement and has caused volunteers to conclude that their efforts are unrecognized or unappreciated.

PARTNERSHIPS AND THE GOVERNMENT

CONSIDERATIONS

As the primary caretaker of public goods, the government must be open to and enthusiastic about partnerships in order for collaborations to succeed. As John M. Bryson argues in *Leadership for the Common Good: Tackling Public Problems in a Shared-Power World*: "[I]n order to marshal the legitimacy, power, authority, and knowledge required to tackle any major public issue, organizations and institutions that share objectives must also partly share resources and authority in order to achieve their collective goals."⁴⁸ Understanding the benefits of cooperation and sharing resources will enable the government to assume an active role in initiating partnerships.

In each of the partnership models, the private partners perceive the government to be an absent partner, which is clearly inconsistent with the idea of collaborative support. A remedy for this situation would be to create an internal mechanism, such as a division within the Parks Department or the office of the Secretary of the

Environment, dedicated to partnerships. A partnership division would prove that the government is a mature and willing partner and that partnerships are part of the government's permanent policy. Such a division would not only enable the government to be in the position to facilitate and monitor collaborations, but would provide support for existing partnerships. This would lead to dialogue about future partnership models and seriously address problems involving partnership bills and laws.

The key role in the structure of a parkland partnership is the park administrator or director, a government employee whose focus is geared toward a large, individual park. (In areas with smaller parks, a park administrator might be in charge of a district.) The park administrator increases not only management accountability and efficiency, but the likelihood that private partners will work with a park, because park administrators are the link between the government and the community and spur collaborations. In other countries, government-employed park administrators become part of the structure of the private partner. In New York City, for example, the park administrator for Central Park is the senior vice

Keeping a park in an acceptable state is severely deterred by government bureaucracy; the processes to simply fix amenities or respond to dangerous situations can be tortuous.

president for operations and capital projects for the Central Park Conservancy. In Prospect Park, the park administrator is the president of the Prospect Park Alliance. This has increased communication between the two partners and created project and leadership continuity.

The park administrators at Avellaneda Park and the Ecological Reserve have been able to move through the government's bureaucracy, yet are not permanent parts of the private partners' structure, which has caused disparities in decision making and partnership unity. The park administrator at Avellaneda Park, however, is notable for his efforts to insert himself into the community, which has facilitated communication between his staff and park users.⁴⁹ Despite the success of citywide alliances such as APEVU, there is fragmentation among the special-interest community groups, which the government has failed to mediate.⁵⁰ Working on a daily basis with the community, park administrators can assume stronger leadership roles and transform disorganization into unity.

PARTNERSHIP BENEFITS

By taking the initial steps to form public-private collaborations, the government can benefit from the results typically associated with partnerships. First, private partners are not subject to the high political turnover of government employees and can offer continuity.⁵¹ The Ecological Reserve, for example, has had five different directors in the past seven years, but the management council has provided stability to train new directors and ensure project momentum.

Second, the government can profit from institutionalized park master plans. When a partnership is initiated, the first step is for the partners to assemble a participatory and comprehensive master plan. Master plans create official, long-term vision and planning. The Ecological Reserve, Avellaneda Park, and the padrino-sponsored parks, because of their partnership status, are the only parks in Buenos Aires with official master plans.⁵² Although the Ecological Reserve's plan is limited and outdated, the document's existence is part of the park's permanent policy, and will

eventually be updated. The Padrino Program creates three-year plans for each park and plaza that is adopted. Although they are not long-term plans and address only maintenance issues, the plans provide structure. The most comprehensive and successful document is the master plan for Avellaneda Park.⁵³ It was created at the start of the partnership after numerous participatory workshops with representatives of the government, neighborhoods, and nonprofits. Other parks in Buenos Aires do not have formal master

plans, but numerous community groups have informally authored plans that could be officially implemented after a legal partnership is created.

Volunteerism and fundraising, which lead to partnership formation in the United States, could benefit parks in Buenos Aires. Volunteerism has the potential to enhance park upkeep, provide citizens the opportunity for recreation, and facilitate a sense of ownership. In Buenos Aires, there is no set government policy toward volunteer work, but the government has not encouraged it.⁵⁴ The city is unwilling to pay for insurance for volunteers, and unions oppose partnerships and volun-

teerism.⁵⁵ Volunteer efforts that do exist are either organized by nonprofits or carried out by concerned citizens without proper guidance. Communicating with park advocates through the park administrator and the proposed partnership division will help the government to position itself to organize a strong volunteer base and "find, connect, and mobilize the gifts and resources of the people who live there."⁵⁶

Fundraising is essential to partnership success because it provides resources for the coalitions to function and endure. Donations increase park programming and amenities and can support private-partner staff salaries. Except for the Padrino Program, fundraising is not a priority of any of the partnerships in Buenos Aires because citizens believe they should not pay for basic public services. Yet fundraising for parks is intended not to replace government funds, but to supplement them.⁵⁷ Because the government cannot receive direct contributions for individual parks, nonprofits can help by receiving and distributing funds.

The duration of partnerships can be attributed to legal status, yet the existence of a formal contract does not necessarily imply partnership success, nor does it remedy the distrust that has undermined collaborations.

CONCLUSION

Urban parkland is an important platform for communication between citizens and their government. The state of public-private partnerships in any given city serves as a fundamental reference point that citizens and their government can use to gauge the success or failure of their relationship. Through analyzing collaborations in Buenos Aires, it is apparent that the struggle to jointly administer parks represents a microcosm of a larger, national struggle to repair the historically tumultuous relationship between the state and its citizens.

As Luis Alberto Romero noted in *A History of Argentina in the Twentieth Century*: "[T]he public interest is disappearing as a concept of the common responsibility, one that is built and upheld by solidarity with one's fellow citizens. . . . With the idea of social citizenship in tatters, and social equality increasingly impaired, the new society encourages few practices beyond electoral participation with which to sustain democracy."⁵⁸ Citizen and government efforts to create public-private parkland partnerships should be encouraged in Buenos Aires. Institutionalized collaboration, once it is recognized as a mechanism to foster trust and communication, will enable public spaces to serve as a visual testimony to democratic exchange.

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NOTES

1. The 1976 military coup ousted Isabel Perón, Juan Perón's wife. Jorge Videla served as the first "president" during the dictatorship, which lasted until 1986. It is estimated that 30,000 leftist activists, workers, and intellectuals were killed. Roughly 10,000 lawyers, teachers, and students were also victims of the military and paramilitary secret police.
2. This research was conducted from November 2002 to August 2003 on a Fulbright Scholarship in Argentina. The majority of information in this report comes from more than 50 interviews conducted in Buenos Aires from October 2002 to September 2003. Most of the scarce literature on partnerships in Buenos Aires comes from *Facultad Latinoamericana de Ciencias Sociales* (www.flacso.org.ar), which was essential to the creation of the Avellanda Park partnership.
3. The 600 hectares include 28 mid- to large-sized parks, 14 gardens, 163 plazas, 289 plazoletas, and 140 boulevards. General Information, "Sólo Quedan 160 Guardianes en las Plazas de la Ciudad," *La Nación*, June 9, 2003.
4. For a historical discussion of Buenos Aires's parks, see Sonia Berjman, *Las Plazas y Parques de Buenos Aires: La Obra de los Paisajistas Franceses 1860-1930* (City of Buenos Aires: Argentina, 1998).
5. This is an old practice that started in 1875 with the leasing of public land to the Argentine Hippodrome Society. Although leasing parkland continued throughout the years, it was minimal in comparison to that of the 1990s. Among the many examples today are the national airport, the Buenos Aires Lawn Tennis Club, the Japanese Gardens, and the City Zoo. Diego Rosemberg and Marcelo Massarinc, "Palermo Perdio mas de 300 Hectareas de Parques Publicos," *La Magna*, December 15, 1993.
6. Surveys indicate that in the last five years, seven to eight out of every ten Argentines do not feel confident in the country's politicians, who they believe represent their own interests and not those of the people. Liliana De Riz, "La Política como Proyecto de Futuro," *La Nación*, May 22, 2001. For a discussion of political corruption, see Luis Alberto Romero, *A History of Argentina in the Twentieth Century* (translated by James P. Brennan, Pennsylvania State University Press, Pennsylvania, 2002), pp. 308-314, 324.
7. Andrew Schwartz, "Parks as Places: What's on our Bookshelves," *Places, A Forum of Environmental Design*, vol. 15, no. 3, p. 75 (study executed by Projects for Public Spaces).
8. During the dictatorship, the Parks Department created more plazas than during the current democracy. Landscaped with cement, the plazas were not user-friendly; they functioned as a means to convey to the citizenry that they were being cared for, yet with restrictions. Interview with Fabio Marquez, Assistant Parks Department Commissioner.
9. Romero, *A History of Argentina in the Twentieth Century*, pp. 314, 324.
10. Melissa H. Birch and Jerry Haar, "Privatization in the Americas: The Challenge of Adjustment," in *The Impact of Privatization in the Americas* (University of Miami: North South Center Press, 2000), p. 2. See also Pablo Gerchunoff and Guillermo Canovas, "Privatization: The Argentine Experience," in *Bigger Economies, Smaller Governments: Privatization in Latin America*, edited by William Glade with Rossana Corona (Boulder: Westview Press, 1996), pp. 193-194.
11. Birch and Haar, "Privatization," p. 3.
12. Glade, *Bigger Economies, Smaller Governments*, p. 197.
13. Birch and Haar, "Privatization," p. 227.
14. Parkland is generally leased for 20-year terms; however, the time allotted has not been respected by most private companies, and many still exist after their leases have expired (Rosemberg and Massarinc).
15. Interview with Antonio Brailovsky, Public Advocate for the Environment, December 19, 2003.

16. Rosemberg and Massarinc.
17. In 1995, when the majority of leasing took place, 38 percent of the city's parkland was publicly accessible and 23 percent of all parkland was on land that one had to pay a fee to enter. Alicia E. Toribio, "Los Espacios Verdes de Buenos Aires—Moneda de Cambio o Patrimonio de Todos?" Series: Medio Ambiente No-3, City of Buenos Aires, Buenos Aires, Argentina, 1995; p. 16. For a chart of all leased parkland, see Toribio, p. 21. See also Asociacion para Espacios Verdes Urbanas (APEVU), *Las Tierras Públicas Del AMBA: Recurso Urbano No Renovable El Movimiento Vecinal En El Área Metropolitana Buenos Aires* (2003), p. 2.
18. Ibid.
19. Ibid., p. 1.
20. To date, private companies care for 502 plazas, 28 parks, 13 gardens, 140 streets, and the Botanic Garden. Victoria Tatti, "No Pueden 1.207 Personas Mantener Todas las Plazas?," *La Nacion* (November 29, 2002).
21. The Parks Department has 167 administrative employees, 249 park maintenance workers, 221 botanic technicians, 252 tree specialists, 92 general service employees, 42 art and monument workers, and six padrino administrators. In addition, 151 department employees are in charge of the maintenance of 30 percent of the city's parkland and the three private companies are in charge of the other 70 percent (Tatti).
22. APEVU, p. 3.
23. For a detailed account, see APEVU, p. 1.
24. APEVU, p. 3.
25. Citizen mobilization as a result of distrust in the government can be seen in many other facets of Argentine political life; see Romero, p. 349.
26. For a chart on the structure of the City of Buenos Aires government, see www.buenosaires.gov.ar.
27. General Information Section, "Controversia por el Parque Avellaneda," *Clarín* (December 19, 2001).
28. APEVU, p. 1.
29. Ordenanza N.45.676—June 5, 1986.
30. Oscar Grillo, "Las Asociaciones Vecinales en Buenos Aires: Restricciones Sistemáticas y Experiencias Concretas," in *Público y Privado: Las Organizaciones Sin Fin de Lucro en la Argentina*, ed. Andres Thompson (Buenos Aires, Argentina: UNICEF, 1995), p. 131. See also Lester M. Salamon, *Partners in Public Service: Government-Nonprofit Relations in the Modern Welfare State* (Baltimore and London: Johns Hopkins University Press, 1995), p. 244.
31. Management Council Meeting interviews.
32. Rudolfo Domnanovich, in collaboration with AVINA, "Diagnostico de Usuario Visitantes de la Reserva Ecologica de la Costanera Sur" (Buenos Aires, Argentina, 2002).
33. Ley 560—March 21, 2001: Modify Article 3 of Ordenanza N° 45.676, B.M. N° 19.239.
34. Ordenanza N.43.794—September 14, 1989.
35. The most exceptional example is the Rose Garden in February 3rd Park, adopted by YPF-Repsol.
36. Interview with Ana Maria Castelli, marketing director for *Aguas Argentinas*, the padrino of the Boat and Rose Garden Lakes in February 3rd Park, November 5, 2002.
37. Asiduos Concurrentes de la Plaza Campana de Desierto, "No a los Padrinazgos en los Espacios Verdes," *5tas. Jornadas por los Espacios Verdes Urbanos* (Buenos Aires, Argentina, August 28-30, 1997).
38. There are currently 80 hectares of adopted parkland. Each hectare costs the department 230 pesos per month to maintain. Altogether, 220,800 pesos are saved on average per year. Interviews with Juan Comerio, Padrinazgo Director, and Antonio Brailovsky, public advocate for the environment.
39. Rosemberg and Massarinc, "Buenos Aires Tiene un Tercio de los Espacios Públicos Necesarios," *La Magna* (November 24, 1993).
40. Interview with Juan Comerio, Padrinazgo Director, November 4–8, December 23, 2002.
41. Interview with representative from Grupo SPM, padrino of *Plaza Rodriguez Pena*, December 29, 2002.
42. Most entities within parks are under the jurisdiction of other departments. For example, park lampposts and other lighting issues are the responsibility of the Lighting Department, and pathways within and surrounding parks are the responsibility of the Public Works Department. Regulations related to cleanliness and dog walking are created by the Department of Urban Hygiene, permits for events are controlled by the Culture Department, and landscape maintenance, street trees, and monuments are the responsibility of the Parks Department. *Noticias Urbanas*, July 30, 2002.
43. Ordenanza 48.892/95 art. 12, 1995.
44. For a detailed explanation of each group, see the *Jornadas de Actualización del Plan de Manejo del Parque Avellaneda* (Buenos Aires, Argentina, 2000).
45. Interview with Fabio Marquez, Assistant Parks Department Commissioner.
46. Ley de Régimen de Gestión, Coordinación y Participación de los Espacios Verdes—1998.
47. Marquez interview.
48. John M. Bryson and Barbara C. Crosby, *Leadership for the Common Good: Tackling Public Problems in a Shared-Power World* (San Francisco: Jossey-Bass Publishers, 1992), p. 4.
49. The Avellaneda Park Director is also the director of the local government board.
50. Marquez interview.

51. In discussing the scarcity of stable and dedicated politicians in Argentina, Felipe de la Balze states that in comparison to France, where in the 2001 administration change 250 publicly appointed officials were replaced, after the 2001 mayoral election in Matanza, a suburb of Buenos Aires, almost 3,000 officials were replaced. In addition, politicians are chosen by political favoritism and not for their ideology. Felipe de la Balze, "Nos Faltan Funcionarios Publicos de Calidad," *Clarín* (October 12, 2003).
 52. Interview with Lorena Gill, assistant to the Secretary of the Environment, February 27 and May 5, 2003.
 53. See Plan de Manejo Parque Avellaneda. Online. Available: <http://168.83.61.132/areasyproyectos/proyectos/pppyga/pdf/7.pdf>
 54. One instance of government interest in volunteerism is a short-lived initiative to involve community members in redesigning their parks. From February to June 2003 this pilot program, called *El Programa Diagnóstico Participativo del Paisaje* (the Diagnostic Participatory Landscape Program), worked with neighbors of ten plazas. The project was well received by the participants. One of the primary objectives was to educate communities about park landscape appreciation in order to provide citizens with the proper analytical tools to understand their park's needs. The program was halted. See www.buenosaires.gov.ar. See also an untitled report on volunteerism in parks <http://www.defensoria.org.ar/pdf/infobrailovsky.pdf>.
 55. The labor union has openly voiced opposition to partnerships and volunteerism. Many union members who do not fulfill their job duties are threatened by volunteers who have the potential to expose their lack of efficiency. Parks Department union members need to understand that partnerships will make their jobs easier. For a discussion on union corruption, see Romero, pp. 265-267, 337.
 56. John Kretzmann, "Forming Effective Partnerships," *Parks as Community Places*, Conference Proceedings, Lila Wallace, Reader's Digest (Boston, Mass.: Urban Parks Institute managed by Projects for Public Spaces Inc., May 3-5, 1997), p. 54.
 57. *Ibid.*, p. 36.
 58. Romero, *A History of Argentina in the Twentieth Century*, p. 328.
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DESIGNING REFORMS

DECENTRALIZATION PROGRAMS IN PERU AND BOLIVIA

THE LAST TWO DECADES have seen unprecedented waves of political and economic reforms in Latin American countries. These reforms have principally reflected the neoliberal ideology that has prevailed since the debt crisis of the early 1980s led to subsequent structural adjustment programs (known as the first generation of neoliberal reforms). The second generation of neoliberal reforms includes decentralization efforts that, from a technocratic perspective, seek to reap the economic benefits of transferring resources and decision-making power away from national governments and into the hands of regional and local governments.

Such ambitious reforms—although easily understood as part of a wave of neoliberal reforms—have often achieved popular support. Likewise, many perceive decentralization as integral to the consolidation of the region's democracies through redistribution of political and economic power away from major urban centers. Support for decentralization has come from both the political left, which focuses on its value for democracy, and the right, which focuses on its economic benefits, as well as from local and regional movements, multilateral agencies, academics, politicians, technocrats, and ordinary citizens.

Support for decentralization of the state in countries like Bolivia and Peru seems to present opportunities for governments to embark on what some analysts have called “audacious reforms.”¹ In the case of other second-generation institutional reforms, broad sectors of the population and powerful stakeholders with long-term interests in maintaining the status quo often resisted change.² However, the main resistance to decentralization has come from central governments. Yet, once national executives decide to embark on reform efforts, they often face great pressure to decentralize following political rather than technical criteria.

This pattern poses risks to the outcome of such ambitious programs. Literature reviewing worldwide decentralization efforts shows that decentralization is a highly complex undertaking. Success-

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ful programs require careful design and implementation that address the particular circumstances of each country in order to improve economic performance and democracy.³ Decentralization can take on many forms, and there is a growing recognition of the importance of political context for its success.⁴ Thus, although reformers sometimes present decentralization as a magic solution during electoral campaigns, it actually presents considerable risks and challenges to policymakers.

Not surprisingly, then, implementing successful decentralization processes has proven to be far more complicated than political discourse and public opinion previously suggested. The cases of Bolivia and Peru provide evidence that the political context during the design phase greatly impacts outcome of decentralization programs, with political interests sometimes overwhelming technical considerations. Focusing on the interaction between political interests and technical criteria, this paper compares the design and early implementation of decentralization in these two countries. In this way, it illustrates links between the political context at the onset of decentralization and the depth and coherence of the decentralization programs that subsequently developed.

BACKGROUND

After long periods of military rule, Bolivia and Peru saw the return of fragile democracies in the early 1980s, bringing a reawakening of demands for decentralization. Soon after being elected into office, the presidents of these two countries, both with neoliberal political ideas (Gonzalo Sánchez de Lozada in Bolivia in 1994 and Alejandro Toledo in Peru in 2001) faced pressures to decentralize the state. In these two neighboring countries with similar historical backgrounds and development challenges, the pressure to decentralize came from regional actors, civil society, technocratic elites, and international financial institutions.

In Bolivia, the earlier example, the impact of an ambitious and swift decentralization process appears to have been profound in terms of restructuring governance and changing public policies to better suit the priorities of local populations. In the more recent case of Peru, the still-unfolding process seems to be based on an unclear model, and its impact on governance and public policies is equivocal. Whereas Bolivia experienced a distinct and decisive transfer of power toward municipal governments and downward democratization beginning with

1994's *Ley de Participación Popular* (LPP—Law of Popular Participation), in Peru no single, coherent vision of decentralization arose in the implementation phase. Nevertheless, the two processes have faced some similar challenges, including the limited institutional capacity of subnational governments.

CONCEPTUAL FRAMEWORK

This paper focuses on the initial phases of decentralization programs (roughly the agenda-setting and policy formulation stages⁵) in these two neighboring Latin American countries. In Bolivia, this corresponds to the policymaking process leading to 1994's *Ley de Participación Popular*, while in Peru it corresponds to the policymaking process leading to the *Ley de Bases de la Descentralización* and *Ley Orgánica de Gobiernos Regionales* (Basic Law of Decentralization and Organic Law of Regional Governments) in 2002. The analysis focuses on understanding which actors were able to influence the design process, what their vision for decentralization was, and how they were able to influence the legal framework for the implementation of decentralization.

Three assumptions based on recent literature reveal that the design of a decentralization program is crucially important to the impact and success of the entire process:⁶

- Decentralization of government is not one distinct policy instrument, but a complex concept that comprises many possible modes of implementation.
- The implementation of decentralization is not just a technocratic decision, but the result of a political process that involves a number of actors within the state and beyond.
- Actors that participate in the political and policy process may favor particular models of decentralization that they identify as advancing their particular objectives.

The dispersion of power and governmental functions to the periphery can vary greatly in decentralization. The most frequent categories of decentralization of government (which focus on *what* is being decentralized) are *administrative*, *political*, and *fiscal*. There are three major modes of administrative decentralization that reflect varying degrees

of transfer of authority, responsibility, and financial resources. These include deconcentration, delegation, and devolution, where the latter is the "cession of sectoral functions and resources to autonomous local governments that, in some measure, then take responsibility for service delivery, administration, and finance" and is the only mode that actually grants autonomy.⁷

Finally, in considering the categories above, we must also consider to whom central governments are decentralizing, as there are different levels of subnational government. The cases of Bolivia and Peru illustrate the different possibilities, in which responsibilities and functions can transfer from central government to regional/departmental, provincial, or district governments.⁸

THE BOLIVIAN MODEL SINCE 1994: "MUNICIPALIZATION"

BACKGROUND

Since 1994, Bolivia has experienced substantial devolution from the central government to the provincial municipalities. Decentralization has involved a variety of policy areas and has been achieved through political, administrative, and fiscal decentralization. Also, since 1995, there has been a concurrent deconcentration of functions to the regional level (departments) that more clearly involves administrative decentralization. Although some weaknesses in the model emerged in subsequent years, all accounts of Bolivian decentralization cite the unusual swiftness and depth of reform.

For most of Bolivian history, regional divisions rooted in the country's geographic and ethnic diversity have constituted a serious challenge to national integration. Bolivia had a highly centralized national government for much of the 20th century, particularly since the revolutionary government of the 1950s that sought to strengthen the state and guide national development. Economic instability relating to the debt crisis of the 1980s led to the adoption of IMF-backed structural reforms and neoliberal economic policies, including trade liberalization and privatization.

THE ROAD TO DECENTRALIZATION IN 1994

Although the struggle for decentralization can be traced back to the regional divisions existent since independence, the pressures for decentralization of the Bolivian state—as a means to address the country's social and regional inequalities—gained considerable strength after the return to democracy

in 1982. These pressures on the executive came both from "below" (worker and peasant movements, regional civic committees, and other social movements) and increasingly from "above," notably, the international financial institutions that particularly supported the Sánchez de Lozada government.

After the 1952 revolution, the highly centralized state apparatus sought to direct Bolivian development and integrate the country by modernizing and industrializing the economy largely within the Import Substitution Industrialization (ISI) model. Local government was absent with large areas of the country lacking any type of municipal structure and experiencing little state presence at all. The groups pressing for decentralization (especially civic committees representing elite interests) were generally active at the regional level and pushed for decentralization to the intermediate level of government. A draft of a law for decentralization to the departmental level, which was the product of intense debate between state, political parties, and regional movements, reached the Senate in 1992, but failed because of hesitation by key actors.⁹

MAJOR ACTORS

The deep regional and ethnic cleavages in Bolivia have historically served as organizing elements in civil society. Organized labor and regional movements have long put pressure on the central government for decentralization to the intermediate level. Local actors such as indigenous groups and community associations, on the other hand, have traditionally been weak and have not constituted a major force in the decentralization debate. In fact, local government had been nonexistent throughout much of Bolivian territory during much of the country's history.

National political parties in Bolivia have generally functioned more as vehicles for leaders seeking to control state patronage at the central level than as institutions articulating the interests of social classes, regions, or individuals.¹⁰ Thus, while political parties were generally divorced from regionally based pressure groups related to labor, business, or other interests, local organizations such as civic committees often worked as articulators of interests at the departmental and city level.

The executive, especially since the 1950s, had been preoccupied with holding the nation together in the face of strong regional pressures. In response to the growing demands for decentralization in the early 1990s, and in light of recent instability, an incoming administration had to carefully consider

subnational demands and foster more equitable development throughout the country without jeopardizing national cohesion.

There has been great public and NGO (domestic and international) support for the decentralization process. Despite the initial opposition from groups that traditionally favored decentralization to the departmental level, the Sánchez de Lozada government was able to create a large contingent of stakeholders in the process as it empowered local governments and civil society. Intermediate-level groups gradually became more interested in engaging these actors.

CHARACTERISTICS OF DECENTRALIZATION POLICY DESIGN

The Sánchez de Lozada administration designed the long-awaited decentralization reforms in significant isolation from civil society and political debate.¹¹ The design of the Bolivian decentralization model was largely the result of work by a team led by Hugo Molina at Sánchez de Lozada's think-tank, *Fundación Milenio* (Milenium Foundation).

Contrary to what most actors, and even the president, had in mind, the Molina team proposed decentralization to provincial actors, largely bypassing powerful regional actors.

These major reforms were swiftly approved by Congress with very little debate. At first, regional actors presented strong resistance to the government's version of decentralization. However, the new administration took advantage of its popularity during its honeymoon period to consolidate popular support within a brief period.¹² The changes were implemented beginning in 1994 through constitutional reforms made in 1993. The LPP and other related laws—such as 1995's *Ley de Descentralización Administrativa* (LDA), which regulated decentralization at the departmental level—significantly changed relations between the state and society and between levels of government as well as altering the role of civil society in the policy process. The changes were effective within a rather short period of time.

INITIAL IMPACT OF THE DECENTRALIZATION PROCESS

Faguet lists four “stylized facts” about public investment prior to 1994 in Bolivia's centralized model:

1. concentrated economic infrastructure and productive activities at the expense of social services and human capital formation;
2. geographical concentration leading to a unequal geographic distribution;
3. regressive in terms of need;
4. economically regressive, for example, favoring wealthier districts.¹³

With LPP, these trends in public investment reversed within a few years. At the same time, there was national and local institutionalization of social participation. Traditional organizations

participated in planning, execution, and oversight of local government. In effect, thousands of local groups were engaged as a new level of government expanded. With the implementation of LDA in 1995, a simultaneous deconcentration at the departmental level occurred (a significant but far less dramatic process).

Thus, the general trend after 1994 has been one of “municipalization” of government.

LPP established that municipal governments must automatically receive 20 percent of central government revenues (see Table 1). This change was effective immediately and gave poorer municipalities access to much greater resources. The reforms established Territorial Base Organizations (TBOs) as community organizations to support popular participation, representation, and accountability within the districts and cantons of each municipality. These organizations perform a variety of planning, execution, and oversight activities and, in effect, formalized a variety of local groups.

Almost overnight, 198 new provincial municipalities were created, and local populations elected local leaders for the first time in Bolivia's history. The transfer of national tax revenues to municipalities in accordance with population especially benefited rural areas. The increase in resources available to local governments was often enormous in rural areas. Local governments had virtually total discretion over the use of these funds with the condition that no more than 15 percent of the transfers could cover operational (fixed) expenses. Along with increased

The implementation of decentralization is not just a technocratic decision, but the result of a political process that involves a number of actors within the state and beyond.

funds, local governments also gained responsibility for maintaining and supplying infrastructure and services in areas such as water supply, education, and health.

LPP also formalized a diverse set of local organizations at the territorial level, such as indigenous communities, peasant unions, and neighborhood groups.¹⁴ There has undoubtedly been a great increase in social mobilization at the local level since 1994; by 1997, 13,000 TBOs were formalized as well as 311 oversight committees (one per province).

Patterns of local investment and infrastructure have changed significantly as a result of Bolivia's municipalization. A study by Faguet found that decentralization increased the sensitivity of public investment to local needs as local governments provided different public goods than the central government had previously.¹⁵ With the municipalization of government also came much greater emphasis on social infrastructure in public investment.

ANALYSIS

Up until the approval of LPP, Bolivia's highly centralized system only had elections for national representatives, while departmental authorities lacked autonomy, and local government rarely existed. The allocation of resources to local governments was highly discretionary and politicized, with only about 10 percent of government revenues being transferred and with a heavy bias toward the city of La Paz.

As previously suggested, accounts of the design and implementation of LPP in Bolivia by Grindle

and Gray-Molina, et al.—among others—describe a design process that was largely free of negotiations with political parties, civil society organizations, and local groups.¹⁶ In fact, the team in charge of design was close to the president, but not subject to the ruling party's oversight. Moreover, the honeymoon period of an incoming president, who enjoyed a coalition majority in congress, helped the decentralization legislation receive quick approval, despite opposition from regional groups and labor organizations. Thus, even though decentralization *in general* was a demand from below that had existed since the return to democracy in 1982, depictions of the Popular Participation's municipalization as the expression of the will of civil society are questionable.

Somewhat ironically, many suggest that President Sánchez de Lozada, a believer in the neoliberal model, was fundamentally concerned with strengthening the Bolivian state, particularly in the face of three challenges: the lack of legitimacy of the state in many parts of Bolivia, the widespread corruption at the central level, and the long-standing centrifugal forces from the regions that threatened to disintegrate the nation. These issues, however, were not new concerns; in many ways, they had driven his party's centralization of Bolivia in the 1950s. The team of technocrats commissioned by the president came up with a decentralization plan that was a novel solution to old problems.

As previously mentioned, municipalization was not the most popular model of decentralization in the country, or the most obvious one, but the technocrats in charge of design saw their plan as the best way to deal with the challenges outlined above. They saw the reforms as an opportunity for the central government to directly engage with traditional and community organizations (for the first time), while bypassing the regional actors they perceived as dangerous. The technocrats also believed that corruption at the local level, if present, would be less harmful and easier to control than that which long existed at the central level. However, as many authors stress, their plan was a risky political wager, which sought to strengthen the Bolivian state by empowering newly formalized, institutionally weak, local bodies.

The swift approval and implementation of the laws facilitated the emergence of thousands of new stakeholders in the process within a short period. In the early period for the new administration, government virtually ignored civil society's opposition. In fact, the LDA, which followed the LPP, reasserted the central role of municipalities, rather

Table 1
Regional Distribution of Public Funds in
Bolivia, Before and After Decentralization

Department	Central-to-Local Revenue Sharing		
	1993	1995	% Change
La Paz	120,774	184,472	53
Santa Cruz	54,157	124,394	130
Cochabamba	29,279	114,601	291
Oruro	7,072	28,213	299
Potosí	1,835	57,346	3,026
Chuquisaca	4,881	47,790	879
Tarija	4,708	28,699	510
Beni	721	21,884	2,937
Pando	99	881	787
<i>Total</i>	<i>223,525</i>	<i>608,280</i>	<i>172</i>

Source: Jean-Paul Faguet, "Does Decentralization Increase Government Responsiveness to Local Needs?" Discussion Paper No. 999 (London: Centre for Economic Performance/ London School of Economics, 2000).

than regional governments, in the new decentralized governance structure of Bolivia.

The particular context in which the program was designed and implemented—free from political negotiations—was a key factor behind the uncommonly radical and rapid decentralization of the Bolivian state. The reforms' focus on decentralization to local government can be partly attributed to political calculation. While the Bolivian model still faces many challenges and is far from irreversible, its significant impact is clear.

THE PERUVIAN MODEL: "REGIONALIZATION"?¹⁷

BACKGROUND

Regional elections and the approval of the *Ley Orgánica de Gobiernos Regionales* (Organic Law of Regional Governments) in November 2002, together with the inauguration of 25 regional governments in January 2003, marked the beginning of a long-awaited decentralization process in Peru that had been one of the key promises of President Toledo's electoral campaign in 2001. However, unlike Bolivia and in contrast with electoral rhetoric, the change resulting from the approval of the initial legal framework was not profound enough to permanently shape the still-evolving decentralization process.

Peru shares Bolivia's past of highly centralized public policy and, to a lesser extent, its history of a weak state that has faced strong regional demands. In socioeconomic and political terms, Peru has been a highly centralized country for centuries. Most wealth and industry are concentrated in the capital and the coastal region.

Decentralizing Peru has long been a rallying cry for political leaders hoping to resolve the country's deep regional socioeconomic disparities. Most of Peru's 12 constitutions have specifically mentioned decentralization as state policy.¹⁸ Thus, it is particularly striking that the first thorough attempt at decentralizing the Peruvian state did not come until 2002.

The current decentralization framework includes a substantial increase in local- and regional-level participatory planning. Responsibilities for decision making and spending in a variety of programs (most prominently social programs) will gradually shift from the central government to the regional, provincial, or local (district) levels depending on the particular sector or program. The Peruvian model of decentralization is generally one of regionaliza-

tion, but less clearly than the Bolivian model is one of municipalization.

THE ROAD TO DECENTRALIZATION

The recent road to decentralization can be traced back to the Constitution of 1979 and the successive return of democratic government in 1980. A significant step in the direction of political decentralization was the election of municipal authorities in 1980, which continues uninterrupted to the present day.

Despite the constitutional call for decentralization, the structure of government remained basically unchanged throughout most of the 1980s. Public investment patterns remained severely centralized. In 1988, as the country descended into one of the worst economic and social crises of its history, the government of Alan García pushed forward the regionalization of the country, initially installing five elected regional governments among 11 total regions. However, after the 1992 self-coup, President Fujimori quickly derailed the short-lived and rather fragile regionalization of García. In the 1990s, Fujimori dissolved regional autonomy and carried out a recentralizing state policy that systematically weakened municipal governments.¹⁹ Peru under Fujimori remained a markedly centralized country.

In many ways, like Sánchez de Lozada, Fujimori sought to strengthen the state in the context of neoliberal reforms, but took a drastically different route, one of severe centralization and authoritarian rule with little concern for curbing widespread corruption. With the fall of Fujimori came electoral promises of decentralization and increasing demands of regional movements.

MAJOR ACTORS

The new administration under President Toledo clearly committed itself to decentralizing the country. Although he announced no specific plan during or immediately after the campaign, decentralization was central to the new president's discourse. After inauguration in July 2001, he announced regional and local elections for November 2002, though the actual planning of decentralization did not occur immediately. Eventually, the president delegated the task to the prime minister's office (*Presidencia del Consejo de Ministros*, or PCM), where Prime Minister Roberto Dañino, an international technocrat, drafted teams for preparing the modernization and decentralization of the Peruvian state. With support from the Inter-American Development Bank, a PCM team headed by Carlos Casas began working in early 2002 on developing the legal framework for

decentralization and engaging members of Congress in dialogue regarding decentralization.

Congress has played a fundamental role in providing the legal framework for decentralization (including constitutional reforms) and for the operation of the regional governments elected in 2002. The permanent congressional committee on decentralization plays an influential role in monitoring the new levels of government and the transfers of public functions to local or provincial levels. The numerous political interests involved in the decentralization process are most evident in Congress, where the debate on the powers of the regional presidents extended until a few days before the actual election.

Other significant actors include the *Consejo Nacional de Descentralización* (CND—National Decentralization Council), an intergovernmental organization within the executive, which since late 2002 has had the mission of promoting collaboration and training of subnational governments during the decentralization process. The council is also in charge of certifying the readiness of local governments to receive and administrate projects funded by social programs. The traditionally powerful Ministry of Economy and Finance (MEF) is another important actor in decentralization, wielding great influence on fiscal matters within the legal framework vis-à-vis both the design team at PCM and Congress.

CHARACTERISTICS OF DECENTRALIZATION POLICY DESIGN
Under President Alejandro Toledo, the government finally began the long-awaited decentralization of the state. Here, as in the Bolivian case, some pressure for decentralization came from below—from regional movements, NGOs, and civil associations. Also like Bolivia, support for decentralization developed from above, particularly among international financial institutions, which backed Toledo and his cabinet, as well as among technocratic elites. The Peruvian decentralization design sets up a gradual process of reaching the department, province, and district levels. Eventually, current regions should become part of larger subnational units. The legal framework that the technocratic team at PCM originally drafted in 2002 created a process of decentralization that maintained a complex balance

between the regional and existing local levels of government.²⁰ The designers hoped to establish a plan that would hinder regional governments from dominating local governments. Unlike Bolivia, there was no possibility of political gain by creating a new category of stakeholders in decentralization.

The work of the PCM team was largely reflected in the *Ley de Bases de la Descentralización* (Basic Law of Decentralization) of July 2002. While their model served as an initial reference for congressional debate, the approaching regional elections made shielding subsequent proposals from political compromises impossible. In Congress, the powerful opposition party, *Alianza Popular Revolucionaria Americana* (APRA), was the force behind a return to a regionalization model. The political party

with the best-developed regional bases and the best chances in the regional elections worked to stop decentralization from going beyond the regional level, successfully steering the *Ley Orgánica de Gobiernos Regionales* away from the original vision. On the other hand, Toledo's

party, *Peru Posible*, and its allies favored a more balanced model.

Unlike Sánchez de Lozada, Toledo was not able to effectively rally public or political support for a particular model of decentralization. The Toledo administration's honeymoon period was unusually short and his popularity levels were only about 30 percent just six months after taking office. For these reasons, debate on the *Ley Orgánica de Gobiernos Regionales* was not concluded until just a few days before the regional elections.

The disjointed model for Peru's decentralization is the result of tough political debate, rather than the reflection of a single, coherent vision of decentralization. Most analysts agree that the model is complex and often contradictory. The level of government to which functions are decentralized varies according to programs and sectors, but not necessarily in a manner that is elegantly balanced.

INITIAL IMPACT OF DECENTRALIZATION PROCESS

Proximity in time makes it difficult to provide quantitative assessments of the impact of Peruvian decentralization. Financial resources available to subnational governments, mainly at the regional level, have noticeably increased, but the change is

***The Sánchez de Lozada
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society and political debate.***

nowhere as dramatic as that in Bolivia after LPP (see Table 2).

On the other hand, the qualitative indicators are quite clear; although decentralization has drawn widespread approval from Peruvian citizens, many sectors that once stood in consensus regarding the need to decentralize now criticize the reform measures carried out by the Toledo administration. Today the public is increasingly skeptical; by early 2004, polls showed general public disapproval of the once popular regionalization process. As evidenced in the news media and in academic and policy circles, observers perceive a failure of coordination among the key actors in charge of the process. The reforms seem to lack clearly defined autonomy and delimitation of responsibilities for regional governments.

The capacity of regional governments, provincial governments, and district municipalities to assume greater responsibilities under new arrangements seems also to be limited. Increasing responsibilities

without a corresponding rise in financial resources particularly challenge regional and local governments. A fiscal safeguard for the decentralization process, which was part of the original design and became law, makes it impossible for regional governments to directly borrow money. Moreover, their capacity to directly raise their own taxes is limited, but not clear, in the legal framework. This level of government is largely restricted to transfers from the central government and to taxes on the extraction of natural resources, which vary greatly from region to region.

Additionally, the new law that regulates local and provincial government activities in the context of decentralization, the *Ley Orgánica de Municipalidades* (Organic Law of Municipalities, May 2003), reinforces the upper hand of regional governments in the decentralization process. Many feel that it is poorly coordinated with other elements of the legal framework for decentralization.

The most undeniable impact of the current process is the development of a new level of elected government in Peru, which is responsible for coordinating various social sector and infrastructure activities. These regional institutions have a structure that is unique in the Peruvian state, particularly because of the permanent role of civil society within them.

ANALYSIS

Toledo came to power with the support of many regional movements and civil organizations that demanded regionalization and he had overcome a rival, García, who also had decentralization as a key theme in his campaign. Toledo did not have a comfortable majority in a Congress that had just returned to a multiple-district system of representation, and regional pressures for empowerment were strong. The delay in presenting decentralization legislation to Congress (relative to Bolivia) and the rapid loss of popularity of the administration were also reasons that a single, coherent model of decentralization did not develop. The president could not shield his plan from political debate and carry the intact design into the implementation phase. The decentralization program that surfaced was, thus, not the result of initial technical considerations, but was the result of hard fought compromises between competing political interests. Moreover, neither the political incentives nor the appropriate political context existed for implementing a swift devolution as in Bolivia.

Table 2
Changes in the Budgets of
Peruvian Regional Governments
(Annual Expenditures in
Current Nuevos Soles)

Region	1999	2003	% Increase
Lima/Callao	114,514,077	152,068,327	32.8
Amazonas	98,721,385	146,529,845	48.4
Ancash	313,814,003	403,780,771	28.7
Apurimac	130,247,538	185,703,600	42.6
Arequipa	329,966,225	442,972,444	34.2
Ayacucho	186,185,145	256,666,474	37.9
Cajamarca	286,907,445	409,505,092	42.7
Cuzco	321,164,321	397,346,228	23.7
Huancavelica	110,871,127	179,961,392	62.3
Huanuco	164,021,645	218,472,165	33.2
Ica	216,693,074	277,764,092	28.2
Junin	345,822,791	439,648,183	27.1
La Libertad	363,956,137	479,548,630	31.8
Lambayeque	225,936,731	298,036,077	31.9
Loreto	346,465,205	436,522,660	26.0
Madre De Dios	41,199,596	65,288,528	58.5
Moquegua	64,435,831	97,268,486	51.0
Pasco	77,842,627	111,412,049	43.1
Piura	393,375,471	461,450,560	17.3
Puno	351,034,310	477,676,217	36.1
San Martin	193,809,380	265,747,084	37.1
Tacna	111,441,230	146,140,739	31.1
Tumbes	88,691,020	117,312,692	32.3
Ucayali	148,774,126	185,233,002	24.5
Total	5,025,890,440	6,652,055,337	32.4

Source: Ministerio de Economía y Finanzas, "Sistema Integrado de Administración Financiera del Sector Público." Online. Available: <http://www.mef.gob.pe>. Accessed: July 15, 2004.

CONCLUSION

A review of the cases of Bolivian and Peruvian decentralization programs suggests that the different levels of ability of each executive to shield the design and initial implementation of decentralization programs from open political negotiation has resulted in significantly different forms of decentralization.

Decentralization was a high priority on the policy agenda of each country's incoming administration after the return to democracy. The pressures from above and below ensured that decentralization would need to be a focus of the national government. However, once the decision to decentralize was made, each administration had a different capacity to shelter the technical formulation of the process from arduous political compromises.

Under two presidents associated with neoliberalism and facing many similar social and political challenges, the design phases in Bolivia and Peru yielded programs that were not only distinct in terms of an initial guiding model, but more importantly, distinct in terms of their overall depth and coherence. It is clear that the political context in which agenda setting and policy formulation took place was very different in each case. The contrast between the two experiences suggests preliminarily that the depth of decentralization reforms can depend on whether a presidential administration can protect technical aspects of program design from political debate, even when there is public and political support for decentralization of the state.

In Bolivia, a model of decentralization was imposed from above and designed to fulfill objectives of the executive. The implementation of the reforms was swift and occurred within an advantageous context. Moreover, the Bolivian government was able to carefully calculate the challenges and opportunities for gaining popular support for the reforms and acted strategically.²¹ Paradoxically, decentralization reforms that are meant to enhance values like participation and accountability may be more effectively implemented when the details of its design are shielded from public debate, even in a context of widespread support for reform.

LBJ

NOTES

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3. Richard Bird and F. Vaillancourt, "Fiscal Decentralization in Developing Countries: An Overview," in *Fiscal Decentralization in Developing Countries*, eds. Richard Bird and F. Vaillancourt (Cambridge: Cambridge University Press, 1998); Jennie Litvack, Junaid Ahmad, and Richard Bird, *Rethinking Decentralization in Developing Countries* (Washington: World Bank, 1998); Remy Prud'homme, "On the Dangers of Decentralization," Policy Research Working Paper 1252 (Washington: The World Bank, 1995).
4. Prud'homme, "On the Dangers of Decentralization"; Dennis A. Rondinelli, John R. Nellis, and Shabbir Cheema, "Decentralization in Developing Countries: A Review of Recent Experiences," World Bank Staff Working Papers No. 581 (Washington: World Bank, 1984).
5. The reference to the traditional stages model of public policy is adopted for heuristic value and does not at all imply that the processes in these countries neatly fit this framework.
6. Tulia Falleti, "Of Presidents, Governors and Mayors: The Politics of Decentralization in Latin America" (paper presented to the Latin American Studies Association Conference, March 2003); Kathleen O'Neill, "Decentralization as an Electoral Strategy," *Comparative Political Studies*, vol. 36, no. 9 (November 2003); Eliza Willis, Christopher da C. Garman, and Stephan Haggard, "The Politics of Decentralization in Latin America," *Latin American Research Review*, vol. 34, no. 1 (1999).
7. Thomas Bossert, *Decentralization of Health Systems in Latin America: A Comparative Analysis of Chile, Colombia, and Bolivia* (Cambridge: Harvard School of Public Health, 2000), p. 4; Victoria Rodríguez, *Decentralization in Mexico: from Reforma Municipal to Solidaridad to Nuevo Federalismo* (Boulder, Col.: Westview Press, 1997); Rondinelli et al., "Decentralization in Developing Countries."
8. Privatization is often also considered a type of decentralization; however, we shall not include it in this discussion as it has not been an integral part of either case.
9. José Blanes, *La descentralización en Bolivia: Avances y Retos Actuales* (La Paz: Centro Boliviano de Estudios Multidisciplinarios, 1999).
10. United States Library of Congress, *Country Study: Bolivia*. Online. Available: <http://countrystudies.us/bolivia/>. Accessed: April 15, 2004.
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13. Jean-Paul Faguet, "Decentralization and Local Government in Bolivia: An overview from the bottom up," Working Paper No. 29 (London: London School of Economics, 2003).
14. Blanes, *La descentralización en Bolivia*.
15. Jean-Paul Faguet, "The Determinants of Central vs. Local Government Investment: Institutions and Politics Matter," Working Paper Series No. 02-38 (London: London School of Economics, 2002).
16. Grindle, *Audacious Reforms*; Gray-Molina et al., "La economía política."
17. Some background information on the Peruvian process has been obtained through interviews in July-August 2004. Three key sources used here are Johnny Zas Friz, formerly a senior consultant with PCM's design team, Hillman Farfán, representative of the Ministerio de Economía during the design phase, conversations with Congress' decentralization committee, and Luis Pacheco, former consultant at CND, 2002-2004.
18. Manuel Dammert, "La descentralización en el Perú a inicios del siglo XXI: de la reforma institucional al desarrollo territorial," Serie Gestión Pública, No. 31 (Santiago, Chile: CEPAL, 2003).
19. Ibid.; Johnny Zas Friz Burga, *La insistencia de la voluntad: El actual proceso de descentralización política y sus antecedentes inmediatos (1980-2004)* (Lima: Defensoría del Pueblo/PRODES, 2004).
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21. Grindle, *Audacious Reforms*.
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FAILURES IN U.S. DECISION MAKING IN THE MIDDLE EAST

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THE WAR IN IRAQ has fueled intense debate about the use or misuse of intelligence information by the United States government and about the conflict's long-term impact. The Bush administration asserts that it made the decision to topple Saddam Hussein based on the best available intelligence and that the U.S.-led intervention will allow democracy to develop in Iraq and other Middle Eastern countries. Critics argue, however, that the administration manipulated intelligence about Iraq's weapons of mass destruction and its ties to Al Qaeda and that the war has damaged U.S. national security by inflaming anti-American hostility worldwide. Thus far, the critics have a stronger case on both counts, though only the passage of time will indicate whether the overthrow of Saddam Hussein sparked a democratic transformation or served primarily as a valuable recruiting tool for Al Qaeda and like-minded groups.

Regardless of the outcome of this debate, deliberations on whether or not to go to war in Iraq would have benefited from consideration of an earlier U.S. intervention in the Middle East. Fifty years before the 2003 invasion of Iraq, a different generation of U.S. policymakers faced a decision about whether to overthrow the prime minister of Iran, Mohammed Mossadegh—a decision that holds valuable lessons for foreign policymaking today. In the spring of 1953, Secretary of State John Foster Dulles and Director of the CIA Allen Dulles advised President Dwight Eisenhower to topple Mossadegh in order to prevent a communist takeover of Iran. To support their recommendation, the Dulles brothers distorted State Department and CIA assessments of Iran's political climate and ignored much excellent reporting from the U.S. Embassy in Tehran, which had argued against a coup attempt. While the preceding administration of Harry Truman had generally shared the Embassy's perspective, the Dulles brothers tried to shape political reporting to fit their own

preconceived notion that the United States had to remove Mossadegh from power. Eisenhower ultimately followed their advice and approved a coup plot in July 1953, which by August 19 succeeded in replacing Mossadegh with the pro-Western Mohammed Reza Shah, who subsequently asserted absolute control over the country.

Eisenhower's decision to back the coup represented a major failure of the U.S. foreign policy machinery. In backing the coup, Eisenhower and his advisers failed to consider characteristics of Iran's history that made it particularly hostile to foreign intervention and the negative, long-term consequences that could result from replacing a democratically elected government with an authoritarian regime. The coup developed into one of the worst mistakes of 20th century U.S. foreign policy, as it set the stage for the 1979 Islamist revolution in Iran, which continues to have harmful consequences for U.S. national security today. While the full story of the Iraq war has not yet been written, the story of this earlier U.S. intervention offers an important cautionary tale about unsound foreign policy decision making.

THE TRUMAN ADMINISTRATION

The Iran crisis was born in 1951, when the liberal nationalist Mossadegh led a movement in the Majlis, the Iranian parliament, to assert Iranian control over its oil industry. For 50 years, the Anglo-Iranian Oil Company (AIOC) profited tremendously from a lucrative monopoly on the production and sale of Iranian oil. Under its 1901 contract with Iran, AIOC kept 84 percent of its profits and paid no taxes to Iran, and Iranians were not authorized to audit the company's books.¹ AIOC also interfered deeply in Iran's political life, bribing politicians and placing false articles in Iranian newspapers in cooperation with the British government in order to promote its interests.² A new generation of Iranian nationalists, led by Mossadegh, rose to power in the Majlis after World War II arguing that Iran should benefit more from its oil and reduce British and AIOC influence in the country. This nationalist movement was inspired not just by AIOC's abuses, but also by the long history of British and Russian interference in Iranian affairs, which dated back to the 19th century.³ As the Majlis unanimously approved nationalization in April 1951, Britain considered staging a coup to block it and sought the support of the United States.

The Truman administration found itself torn

between its desire to protect its most important ally and Western economic interests, on the one hand, and its desire to back independent, nonaligned political movements in the developing world as a bulwark against communism, on the other. The British argued to the administration that preventing nationalization was essential to maintain Western access to oil, preserve the sanctity of economic contracts, and prevent a communist takeover of Iran. But President Truman and Secretary of State Dean Acheson believed that the British approach to Iran was woefully misguided and threatened to drive Iran into the hands of the Soviets. They decided to support Mossadegh and seek a diplomatic resolution to the oil dispute.

Political reporting from the U.S. Embassy in Tehran solidified the Truman administration's inclination to oppose the British on nationalization. The U.S. Ambassador to Iran, Henry Grady, argued in cables to Washington that support for nationalization was extremely deep among Iranians and that Mossadegh was a liberal anti-communist whom the United States should support. In a May 7, 1951 telegram, he wrote, "The oil question is a symbol for the expression of the present intense nationalist drive. Iranians can for the first time defy the powers that have dominated them in the past. . . . This is not by any means all bad as it also affects their attitude toward Russia." Grady also noted that the United States was popular among Iranians precisely because it had not interfered in Iranian affairs, and he urged increased U.S. aid to the Iranian government: "The Iranians believe in the U.S. . . . They are genuinely disappointed that our aid has been so slow and is as yet so small, but we can make up for that in the months ahead. Russia is doing nothing for them, so time is on our side."⁴

Grady was particularly critical of the British for their imperialist approach to Iran and for their failure to recognize the rising tide of Iranian nationalism. In a July 1 telegram, he wrote: "The British . . . seem to be determined to follow the old tactics of getting the government out with which it has difficulties. . . . Mossadegh has the backing of 95 to 98 percent of the people of this country. It is utter folly to try to push him out."⁵ Grady also argued that the British were wrong to consider Mossadegh a communist sympathizer, asserting in an interview with the *Wall Street Journal* that "Mossadegh's National Party is the closest thing to a moderate and stable political element in the national parliament."⁶ Grady emphasized that if Mossadegh were overthrown, the country would descend into chaos, making a communist takeover more likely. Grady

urged that the United States serve as a mediator between Britain and Iran with the goal of producing a negotiated settlement to the oil dispute.

Truman and Acheson generally adopted Grady's recommendations and sought to restrain the British while supporting Mossadegh. Seeing Iran's nationalist movement as part of a worldwide trend toward decolonization, they believed the United States would risk losing influence to the Soviet Union if it was on the wrong side of that trend.⁷ Acheson felt that British policy was "depressingly out of touch with the world of 1951" and that only governments capable of proving their independence would be able to blunt Moscow's anti-imperialist propaganda.⁸ He commented that Mossadegh represented "a very deep revolution, nationalist in character, which was sweeping not only Iran but the whole Middle East."⁹ Expressing the competing pressures the United States felt on the issue, Acheson wrote to the U.S. Embassy in Tehran that while the United States would support the British where it could because of the importance of the U.S.-U.K. alliance, opposition to nationalization "might result in the loss of Iran to the Soviets."¹⁰

The Truman administration tactfully pressed Britain to rethink its approach to Iran and to enter into negotiations with it. Assistant Secretary of State George McGhee urged British officials to seek a compromise that would allow for accommodation to the principle of nationalization; 50-50 profit-sharing or its equivalent; and progressive Iranianization of the company.¹¹ Truman conveyed the same message to British Prime Minister Attlee, emphasizing that neither Britain nor the United States should take any steps that would "appear to be in opposition to the legitimate aspirations of the Iranian people."¹² Truman also expressed in letters to both Attlee and Mossadegh his desire to balance the concerns of Britain with those of Iran. He wrote to Mossadegh: "The U.S. is a close friend of both countries. It is anxious that a solution be found which will satisfy the desires of the Iranian people for nationalization of their petroleum resources, and that at the same time will safeguard basic British interests and assure the continued flow of Iranian

oil into the economy of the free world."¹³ Privately, Truman was more sharply critical of the British, writing that Britain had dealt "ineptly and disastrously" with the oil issue and that AIOC looked like "a typical 19th century colonial exporter."¹⁴ Similarly, Acheson commented that "the British were so obstructive and determined on a rule-or-ruin policy in Iran that we must strike out on an independent policy."¹⁵

The Truman administration's policy on Iran was articulated in a new National Security Council (NSC) statement on June 27, 1951. The statement expressed concern that British policy was creating instability in Iran and asserted: "It is of critical importance to the United States that Iran remain an independent and sovereign nation firmly aligned with the free world."

The statement recommended increased military, economic, and technical assistance to Iran, to "demonstrate to the Iranian people the intention of the U.S. to assist in preserving its independence, and strengthen the ability and desire of the Iranian people to resist communist subversion and pressure."¹⁶ Subsequently, U.S. aid to Iran

rose sharply, increasing from \$500,000 in 1950 to \$24 million in 1952.¹⁷

U.S. efforts to broker a compromise between Britain and Iran made little progress in 1951, and in September Britain began privately to threaten the use of military force. Around the same time, the U.S. Ambassador to Iran, Henry Grady, was dismissed by Acheson because of his outspoken public support for Iranian nationalism, which angered the British. Grady was replaced by Roy Henderson, who was less enthusiastic about Iranian nationalism but shared Grady's view that the United States should not support British subversion in Iran.¹⁸ As Britain moved warships toward Iran in the fall, Henderson urged the State Department to firmly oppose the use of force: "Our whole foreign policy for the last five years has been based on opposition to aggression. If now we acquiesce in action smacking of aggression on the part of our ally and friend, we shall stand before the world stripped of all pretense to idealism and obviously guilty of the grossest hypocrisy."¹⁹ In subsequent telegrams, Henderson emphasized the strength of the nationalist movement in Iran, assert-

Fifty years before the 2003 invasion of Iraq, a different generation of U.S. policymakers faced a decision about whether to overthrow the prime minister of Iran, Mohammed Mossadegh—a decision that holds valuable lessons for foreign policymaking today.

ing that Mossadegh's removal "will not eliminate Iranian nationalism."²⁰ The Truman administration urged Britain to refrain from using force, and this pressure caused the British to abandon their military plans.²¹

The U.S.-facilitated negotiations between Britain and Iran continued through 1952 with little progress, as the British and Mossadegh demonstrated a mutual unwillingness to compromise. The British refused to give up control of Iran's oil, while Mossadegh insisted that the nationalization could not be reversed. Even as little progress was made, Henderson held out hope that it was possible to achieve an agreement in January 1953, writing after one conversation with Mossadegh that "it will be easier to obtain agreement from Mossadegh than from any prime minister who has any likelihood of succeeding him."²² But over the course of the talks, Henderson became as exasperated with Mossadegh as he had with the British, and he complained to Washington about Mossadegh's emotional, intransigent, and erratic behavior during negotiations.²³ In February 1953, Henderson concluded that Mossadegh was not seriously trying to reach an agreement.²⁴

Around the same time, Henderson began expressing concern that Iran was becoming more unstable and that Mossadegh's hold on power was weakening. On November 5, 1952, he wrote in a telegram that "there has been a strengthening of a spirit of extremism in the National Front [Mossadegh's party]," and that "this irresponsible extremism . . . causes us to believe that we should not take it for granted that communists cannot capture the national movement." Henderson emphasized that the Soviet-backed Tudeh Party was infiltrating Mossadegh's government and that this infiltration could allow the communists to "creep almost imperceptibly into power." He predicted that Mossadegh's government would not survive another year and that a successor regime would be "increasingly responsive to Tudeh pressures."²⁵ Henderson's alarmist assessments later provided support for Eisenhower officials who favored subverting the Mossadegh government.

The Truman State Department remained more optimistic than Henderson during its last months in office, telling him that it believed the National Front "will remain in power during 1953 and will actively prevent [Communists] from obtaining any substantial control over Iran's affairs."²⁶ But Truman and Acheson shared Henderson's frustration with Mossadegh and his concern that the trends in Iran favored the Communists. A revised Truman National Security Council statement on Iran as-

serted that "if present trends continue unchecked, Iran could be effectively lost to the free world." To prevent this outcome the document stated the United States should help Iran restart her oil industry and secure markets for her oil, which had been blocked by a British embargo, and should provide prompt U.S. aid to Iran to halt the deterioration of its financial and political situation, even if Britain opposed these steps.²⁷ But the incoming Eisenhower administration would have other ideas.

THE EISENHOWER ADMINISTRATION

As the Eisenhower administration took office in January 1953, disagreement grew within the United States government about the character of Mossadegh's government and the threat from the Soviet-backed Tudeh Party. Henderson continued to emphasize that opposition to Mossadegh's government was growing and that his regime "now rested on a narrow and narrowing base of support." But he also asserted that there was little evidence the Tudeh Party had gained in popular strength and that Mossadegh continued to pursue a foreign policy of "neutrality" grounded in good relations with the United States.²⁸ Despite his concerns about political trends in Iran, Henderson argued that it would be inadvisable for the United States to back a coup because it would not gain the Shah's backing and would probably fail.²⁹

United States intelligence agencies provided varying perspectives on Iran during early 1953. A January National Intelligence Estimate stated that Iran was so unstable that the intelligence community could not predict what Iran's government would look like in a few months. But a State Department intelligence analysis issued the same month asserted that although the Tudeh Party was well-organized and had increased its influence over the past two years, Iran's security forces could and would put down any attempt by the Tudeh to seize power. The State Department report noted that both the army and paramilitary forces were trained, equipped, and advised by the United States and that U.S. intelligence had penetrated Tudeh at a very high level.³⁰ In addition, Iran specialists in the State Department and the CIA also believed that Mossadegh's hold on power remained fairly strong, arguing that he maintained considerable support in Tehran and in parts of the military. The CIA station chief in Iran continued to argue, as Truman and Acheson had done, that an attempt to overthrow Mossadegh would be counterproductive

because it would risk driving Iran into the arms of the Soviets.³¹

But the Dulles brothers had already decided to push for a coup by the time they took office in January 1953. They shared the view of a minority of CIA officials, such as the Middle East division chief, Kermit Roosevelt, that Mossadegh had allied himself with the Soviets and that a communist takeover of Iran was imminent if the United States did not act to prevent it.³² Britain had begun plotting a coup in June 1952, but was unable to implement the plan because Mossadegh found out about it and expelled all British diplomats from the country. After that failure, the British needed the United States to take the lead on a coup effort, and the Dulles brothers were eager for the U.S. to fill that role.

Eisenhower was concerned about the possibility of a communist seizure of power in Iran, but he was not immediately convinced of the desirability of a coup, and in early 1953 he still hoped an accommodation could be reached with Mossadegh. Like Truman, he felt that Mossadegh was a non-communist whom the United States could live with and that it was important for the United

States to reach out to emerging leaders in the developing world. During a National Security Council discussion of Iran, Eisenhower commented that it was a matter of great distress to him that "we seemed unable to get some of the people in these down-trodden countries to like us instead of hating us."³³ And in a March 7 meeting with British Foreign Secretary Anthony Eden, Eisenhower stunned the Foreign Secretary by stating that he considered Mossadegh "the only hope for the West in Iran" and that he would "like to give the guy ten million bucks" to induce him to reach an agreement with the British.³⁴

The Dulles brothers were frustrated by Eisenhower's position and lobbied him vigorously to overthrow Mossadegh. This effort included the presentation of biased information about the political situation in Iran that overemphasized the threat of a communist takeover. For instance, following a riot near the home of Mossadegh on February 28, Allen Dulles sent Eisenhower an intelligence estimate

suggesting that the riot showed that "a communist takeover is becoming more and more of a possibility," even though the riot was not communist-oriented, but rather was organized by a religious figure backed by the CIA.³⁵ To help ensure that future intelligence reports would be to his liking, Dulles also replaced the CIA station chief in Iran, Roger Goiran, who was strongly opposed to a coup, with someone who shared Dulles's perspective.³⁶

The Dulles brothers pressed their case for opposing Mossadegh at several meetings of the NSC. At a March 4 meeting, John Foster Dulles told Eisenhower that Iran was moving toward a dictatorship under Mossadegh and that if he were assassinated the communists might easily take over. The latter assessment was one that the

Truman administration had shared, but Dulles went further by arguing on dubious grounds that if Iran became communist, "there was little doubt that in short order the other areas of the Middle East, with some 60 percent of the world's oil reserves, would fall into communist control."³⁷

The Dulles brothers also exaggerated the power of the Tudeh Party, selectively draw-

ing on the most alarmist assessments available to assert that Tudeh controlled a vast network that was ready to seize power as soon as Mossadegh fell. Years after the coup, American diplomats and CIA agents posted in Tehran at the time criticized the use of intelligence information by the brothers, asserting that they "routinely exaggerated [Tudeh's] strength and Mossadegh's reliance on it."³⁸ In the words of Mark Gasiorowski, one of the leading experts on the coup, "The fears of a communist takeover that prompted a coup . . . seemed to have originated at the highest levels of the CIA and the State Department, and were not shared by lower-level Iran specialists."³⁹ Most scholars believe that while a Tudeh seizure of power could not be ruled out, it was at best a distant prospect, given the sparse Iranian support for communism and the internal divisions within Tudeh.⁴⁰

The growing perception of instability in Iran, Mossadegh's apparent unwillingness to compromise with the British, and the determined lobbying

The Truman administration found itself torn between its desire to protect its most important ally and Western economic interests, on the one hand, and its desire to back independent, nonaligned political movements in the developing world as a bulwark against communism, on the other.

of the Dulles brothers finally convinced Eisenhower to authorize a coup on July 11, 1953. By that time, the CIA, with the support of the U.S. Embassy in Tehran, had already spent several months bribing Iranian politicians to withdraw support from Mossadegh, recruiting Iranian Army officers to back a coup, paying mobs to create chaos on the streets of Tehran, and disseminating misinformation depicting Mossadegh as a communist sympathizer and fanatic.⁴¹ These covert activities contributed to sharply increasing violence and instability in Tehran, perversely helping the Dulles brothers convince Eisenhower that the United States needed to intervene before the Soviet Union took advantage of the deteriorating situation. Eisenhower's approval of the coup allowed the CIA to implement additional elements of the plot and led to the overthrow of Mossadegh on August 19 by a mob of CIA-funded Iranian military officers, soldiers, and agents.⁴² Mohammed Reza Shah used the power he gained as a result of the coup to name the U.S.-backed General Zahedi as Iran's new prime minister, and on August 22 the Shah returned to Iran from Rome as a triumphant monarch. The entire plot, called Operation Ajax, cost the CIA about \$20 million.

One of the more striking elements of U.S. activity during this period was the evolution in Henderson's behavior and reporting during 1953. He became intimately involved in the coup plotting during the spring and summer and at times acted like a covert CIA agent, even blatantly lying to Mossadegh in one case to advance the coup plot.⁴³ This conduct was inappropriate for an ambassador. Additionally, Henderson's later reporting about the coup presented a distorted picture of how and why it took place. In a lengthy October 1953 telegram on Iranian political developments in the months leading up to the coup, Henderson described the August 19 riots as an "obviously popular uprising" that "suddenly exploded spontaneously," a ridiculous assessment that completely ignored the huge CIA role, of which he was a part, in fomenting and stage managing the coup.⁴⁴ Indeed, it is very unlikely that a coup could have succeeded in 1953 without British or U.S. backing.⁴⁵

CIA reporting on Iran also became more biased during 1953, most likely as a result of pressure from the Dulles brothers and other top officials. Following the removal by Allen Dulles of Tehran station chief Goiran, CIA reports from Tehran became more sharply critical of Mossadegh and emphasized the need for toppling him, confirming Dulles's views.⁴⁶ An after-action CIA report on the coup written by Donald Wilbur in March 1954 falsely suggested

that it was obvious that Mossadegh needed to be overthrown to prevent a communist takeover: "By the end of 1952, it had become clear that the Mossadegh government in Iran was incapable of reaching an oil settlement with interested Western countries, was motivated mainly by Mossadegh's desire for personal power, and had cooperated closely with the Tudeh Party of Iran. . . . No remedial action other than . . . covert action could be found to improve the existing state of affairs."⁴⁷ In fact, as noted above, at the end of 1952 Henderson and other U.S. officials still believed it was possible to reach an agreement between Britain and Iran, and there is no evidence that Mossadegh was working closely with Tudeh.⁴⁸ Moreover, many Eisenhower administration officials, including the Assistant Secretary of State for Middle East Affairs and the Director of the Policy Planning Staff, continued to believe that it would be better to deal with Mossadegh than to attempt to replace him.⁴⁹ The post-coup CIA assessment that the overthrow was the only available and reasonable option does not square with the way other analysts viewed the situation before the coup.

FAILURES IN THE FOREIGN POLICY DECISION-MAKING PROCESS

The changes in Embassy and CIA reporting on Iran in 1953 reflected the highly politicized atmosphere in the Eisenhower foreign policy apparatus. Allen and John Foster Dulles deserve the bulk of the blame for this politicization because they demonstrated a desire to see their subordinates conform political assessments to their policy preferences. As Stephen Kinzer points out in his book *All the Shah's Men*: "Even before taking their oath of office, both brothers had convinced themselves beyond all doubt that Mossadegh must go. . . . History might view their action more favorably if it had been the result of serious, open-minded reflection and debate. . . . Ideology, not reason, drove the Dulles brothers."⁵⁰ Eisenhower also deserves blame for allowing this politicization to occur, whether it was through inattention or because he did not see anything wrong with it.

The deficient foreign policy decision-making process in the Eisenhower administration fell victim to a tendency highlighted by Richard Neustadt and Ernest May in *Thinking in Time: The Use of History for Decision Makers*—the tendency of political advisers to confuse factual reporting with policy advocacy. Neustadt and May emphasize that one of the first steps in considering a policy choice should be for

advisers to convey objectively to policymakers the issue's history. But the Dulles brothers' story about the situation in Iran was filtered through the lens of the brothers' preexisting belief that the United States needed to intervene to prevent Iran from becoming communist. They interpreted every action of the Tudeh Party as an indication of the danger it posed and failed to see signs that the party was probably not as strong as they tended to believe.

The Eisenhower administration's consideration of Iran also suffered from an inadequate understanding of Iranian culture and history and misconceptions about the longer-term trends shaping the world. Neustadt and May explain that too often policymakers misinterpret history and misuse analogies. With respect to Iran, U.S. policymakers needed to have understood that Iran's history of frequent and oppressive intervention by Britain and Russia made the Iranian people particularly nationalistic and resistant to outside interference in their internal affairs. Moreover, Iran's nationalist movement gained strength from the worldwide anti-colonial movement taking place in the 1950s. The Truman administration displayed a keen awareness of this historical trend, as Truman and Acheson believed that the United States needed to support countries such as Iran that were seeking independence from colonial powers. Additionally, Truman and Acheson recognized the deep-seated character of Iranian nationalism and did not think that replacing Mossadegh would tame that powerful force. The Eisenhower administration, on the other hand, viewed Iran not as a country with a unique history and special character, but rather as a key pawn in a global battle against communism. Its attitude was that the United States needed to prevent a Soviet takeover by installing its own client government first.

This emphasis on preventing the spread of communism was understandable considering the world climate of the early 1950s, when the Cold War was in its tense, early stages and the United States was fighting communist forces on the Korean peninsula. Indeed, the Truman administration was just as concerned with communism as the Eisenhower administration, although its policy for dealing with it was somewhat

different. In Iran, however, both administrations failed to see the whole picture because their obsession with communism blinded them to the possibility of another, longer-term trend that later became more important—the merging of Iranian nationalism with a powerful new movement of militant and vehemently anti-American Islamism.

Supporters of the 1953 coup today would argue that it purchased 26 years of peace and stability in Iran and prevented communists from seizing power. That much is true, but the real cost of the coup came later, with the 1979 Islamic Revolution and the direction Iran took thereafter. The Shah's repressive, pro-Western, and secular rule alienated many Iranians, and America's support for him stirred and increased Iranian resentment of the United States. This resentment boiled over in the 1979 revolution, which produced a radical Islamist government that has probably done more to undermine U.S. interests than any other current government in the world. Today

The growing perception of instability in Iran, Mossadegh's apparent unwillingness to compromise with the British, and the determined lobbying of the Dulles brothers finally convinced Eisenhower to authorize a coup on July 11, 1953.

there is ample evidence of Iranian involvement in providing funding, training, and other assistance to militant groups like Hezbollah and Al Qaeda that perpetrate acts of terrorism against the United States and its interests and violently oppose a peace process between Israel and the Palestinians.⁵¹

Neustadt and May emphasize in *Thinking in Time* that policymakers should analyze issues by breaking them down into elements that are known, unknown, and presumed. The Truman and Eisenhower administrations both knew that the Soviet Union posed a threat to American interests, and the Eisenhower administration presumed that the Soviets would soon attempt to seize power in Iran. What neither administration knew was that 40 years later the global struggle against communism would be over and the United States would be battling new enemies with a radical Islamist agenda whose influence today can be traced in part to the fallout of the 1953 coup in Iran that was sponsored by the United States.⁵² It might be asking too much to claim that Truman or Eisenhower should have foreseen this unfortunate outcome, but the critical lesson is that policymakers must take into account possible unintended consequences of their deci-

sions. The unpredictability of those consequences should make leaders pause before perpetrating the overthrow a foreign government.

This lesson would have been of great value to U.S. policymakers in 2002 and 2003 as they considered whether to use force to overthrow Saddam Hussein. More specifically, Bush administration officials should have given greater consideration to the possibility that going to war in Iraq would foster the spread of Islamist terrorism, rather than reduce it. At the very least, they should have recognized that the long-term consequences of toppling Hussein were uncertain and that there was a significant probability that they would be negative for the United States.

Just 18 months after the toppling of Saddam Hussein, the long-term impact of the war remains to be seen, but there is ample evidence that the Bush administration's decision-making process on Iraq suffered from some of the same problems as that of the Eisenhower administration on Iran—the politicization and manipulation of intelligence information and the failure to consider adequately the potential negative long-term consequences of U.S. action. Let us hope that 50 years from now the impact of the Iraq war will be more positive than that of the first major U.S. intervention in the Middle East and that policymakers will learn from it and other past mistakes.

LBJ

NOTES

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3. *Ibid.*, pp. 30-82.
4. Telegram from the Ambassador in Iran (Grady) to the Department of State, May 7, 1951, in *Foreign Relations of the United States, 1952-1954*, vol. X, Iran, 1951-1954, pp. 46-47 (hereinafter *FRUS*, Iran, 1951-1954, followed by page numbers).
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6. Kinzer, *All the Shah's Men*, p. 93.
7. Taheri, *Nest of Spies*, p. 22.
8. David Painter, "The United States, Great Britain, and Mossadegh," *Institute for the Study of Diplomacy*, Case 332, Part A, p. 5.
9. *Ibid.*, pp. 89-93.
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11. Memorandum of Conversation between the British Ambassador to the United States and the Assistant Secretary of State (McGhee), April 17, 1951, *FRUS*, Iran, 1951-1954, pp. 30-35.
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13. *Ibid.*; Letter from President Truman to Prime Minister Mossadegh, June 1, 1951, *FRUS*, Iran, 1951-1954, pp. 61-62.
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15. Kinzer, *All the Shah's Men*, p. 145.
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19. Telegram from the Ambassador-Designate in Iran (Henderson) to the Department of State, September 27, 1951, *FRUS*, Iran, 1951-1954, pp. 177-178.
20. Telegram from the Ambassador in Iran (Henderson) to the Department of State, October 22, 1951, *FRUS*, Iran, 1951-1954, pp. 236-241.
21. Kinzer, *All the Shah's Men*, p. 112-113.
22. Telegram from the Ambassador in Iran (Henderson) to the Department of State, January 3, 1953, *FRUS*, Iran, 1951-1954, pp. 577-580.
23. Telegram from the Ambassador in Iran (Henderson) to the Department of State, January 17, 1953, *FRUS*, Iran, 1951-1954, pp. 621-627.
24. Kinzer, *All the Shah's Men*, p. 156.
25. Telegram from the Ambassador in Iran (Henderson) to the Department of State, November 5, 1952, *FRUS*, Iran, 1951-1954, pp. 513-517.
26. Telegram from the Acting Secretary of State to the Embassy in Iran, October 31, 1952, *FRUS*, Iran, 1951-1954, pp. 508-510.
27. Statement of Policy Proposed by the National Security Council, November 20, 1952, *FRUS*, Iran, 1951-1954, pp. 529-534.
28. Telegram from the Ambassador in Iran (Henderson) to the Department of State, April 24, 1953, *Iran Political Diaries, 1881-1965*, vol. 14: 1952-1965 (1997), pp. 79-102.
29. Telegram from the Ambassador in Iran (Henderson) to the Department of State, March 6, 1953, *FRUS*, Iran, 1951-1954, pp. 701-702.

30. Painter, "The United States, Great Britain, and Mossadegh," pp. 12-17.
31. Mark Gasiorowski, "The 1953 Coup d'Etat in Iran," *Journal of Middle East Studies*, No. 19 (1987), p. 22.
32. Painter, "The United States, Great Britain, and Mossadegh," p. 16.
33. Memorandum of Discussion at the 135th Meeting of the National Security Council, March 4, 1953, *FRUS*, Iran, 1951-1954, pp. 692-701.
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36. Gasiorowski, "The 1953 Coup d'Etat in Iran."
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38. Kinzer, *All the Shah's Men*, pp. 205-206.
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40. *Ibid.*, p. 24.
41. Donald Wilbur, *Clandestine Service History: Overthrow of Premier Mossadegh of Iran, November 1952-August 1953*, CIA report (March 1954), published on *nytimes.com* (June 18, 2000).
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46. Kinzer, *All the Shah's Men*, p. 164.
47. Wilbur, *Clandestine Service History*, p. iii.
48. Gasiorowski, "The 1953 Coup d'Etat in Iran," pp. 22-24; Kinzer, *All the Shah's Men*, pp. 205-206.
49. Kinzer, *All the Shah's Men*, p. 164.
50. *Ibid.*, p. 208.
51. On Iranian assistance to Al Qaeda, see National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report* (New York: W.W. Norton & Co., 2004), pp. 240-241.
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IN SUPPORT OF DEMOCRATIZATION:

FREE TRADE UNIONS AND THE DESTABILIZATION OF AUTOCRATIC REGIMES

THE THEORY OF “DEMOCRATIC PEACE” provides that free and open societies, in the form of liberal democracies, do not go to war with one another.¹ Since the Wilson administration, spreading democracy around the world to ensure peace has been a pillar of American foreign policy. Today, “encouraging free and open societies on every continent” is a cornerstone of the Bush administration’s national security strategy.²

The Bush approach to achieving democratization has been described as “defiant unilateralism” and “an evangelical, militarist agenda.”³ The neoconservative foreign policy espoused by many members of the Bush administration seeks to promote American ideals—such as democracy—by exerting hard power.

The exertion of hard power by the current administration coincides with its loss of soft power.⁴ If the Bush administration hopes to succeed in the spreading democracy, it should consider a more nuanced approach. As an aspect of soft power, the United States should dramatically increase support for labor movements and free trade unions in developing countries. Special attention should be paid to the plight of labor in countries ruled by autocratic regimes. With the support and international recognition afforded by American diplomatic efforts, the role of labor movements in bringing together diverse peoples to exert political pressure on autocratic regimes will be strengthened and will result in a new wave of grass-roots democratization.

In order to explain how revitalized and refocused labor diplomacy can support the Bush administration’s goal of democratization, this paper will describe the natural relationship of unions to autocracies and democracies. It will also review the history of labor involvement in destabilizing autocratic regimes and outline the political, as opposed to the economic, role of unions. Additionally, the involvement of the American government and international organizations in sup-

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porting labor movements in foreign countries will be examined, and suggestions will be presented for strengthening American diplomacy in the international labor arena.

UNIONS AND AUTHORITARIAN REGIMES

Unions are a natural enemy of authoritarian regimes. Former Secretary of Labor Ray Marshall writes, "unions are an independent source of power and almost always bring together groups that totalitarian groups seek to keep separate."⁵ Likewise, Edmund McWilliams, former director of the U.S. Department of State's International Labor office, argues that "trade unions have bridged ethnic, tribal and religious cleavages."⁶ For example, labor unions in Spain brought together Catholics, Protestants, and Muslims as well as Basques, Catalonians, and Castilians. In Nigeria, the unions bridged the gap between Christians and Muslims as well as historically antagonistic tribes. In Poland, Solidarity provided a meeting space for workers, farmers, and intellectuals, both Jewish and Catholic.⁷ South African trade unions broke the color barrier long before other sectors of civil society. In the former Yugoslavia, various ethnic groups toiled together for the same union goals and struck together for the same democratic ideals. History provides no other mass-based organization with such broad social appeal.

When such diverse factions of society come together in collective organization, it becomes difficult for authoritarian regimes to formulate an adequate response. Pitting one tribe or religion against another, a tactic used by many dictators to foster disputes between potential rivals for power, becomes very complex when these groups stand together to make consolidated, collectively determined demands based on a shared economic, social, or political interest. The difficulty in dealing with organized mass-based movements, such as labor movements, often exacerbates hard-line versus soft-line divisions within regimes. In many cases, some described later, internal divisions rooted in disagreements over how to handle labor unrest constitute an initial step toward the destabilization of autocratic regimes.

Additionally, unions and labor movements have resilience. Unions are among the "most stable, or-

ganized and consolidated representative organizations in society."⁸ Most have been in existence, in some form, for decades prior to becoming political actors in the fight for democracy. Weathering a series of shifting economies, political environments, and periods of outright repression, labor unions continue to function. The internal organization of unions is a major source of their staying power. Made up of both "locals" and "federations," unions tend to spread power and leadership across a relatively wide spectrum, from the various workplaces to federation headquarters. While it is relatively easy for an autocratic regime to arrest and depose

of leaders at the national or federation level, shop-floor unionism and local leadership are harder to identify and neutralize. Additionally, unions sometimes claim to speak for an entire working class and have shown the ability to galvanize support beyond their formal membership. In summary, regardless of repressive

actions taken by some regimes, the ability of labor to mobilize protest still exists.

Finally, labor unions have the tendency to diffuse wealth and power to a broader audience than an authoritarian regime might desire.⁹ Aside from basic demands for democratic rule, unions often lobby for more equitable pay, better training and education programs, and general improvements in social welfare. Successful negotiation of such demands by organized labor can damage the monopoly of power and wealth that a dictatorial regime requires.

UNIONS AS NATURAL FRIEND OF DEMOCRACY

Unions are a natural ally of liberal democracies because they act as models of democracy, they share the goals of free and fair economic development, and they often advocate for democratic rule. Unions have "played an important role in supporting democracy" and "defending broader citizens' rights."¹⁰

First, unions are models of representation and democracy. They are usually founded to represent the collective desire of a mass of people, protect and advance basic rights and freedoms, and provide a political and economic voice to an entire class of people. At their best, unions possess internal mechanisms that promote debate, dispute resolution, negotiation, and most importantly, fair elections.¹¹

History provides no other mass-based organization (free trade unions) with such broad social appeal.

Few, if any, organizations practice democracy to the extent of local unions and their representative federations. By the very nature of the organization they belong to, free-trade unionists are democrats. Second, unions in developing countries and their members share the goals of free and fair economic and social development espoused by many democracies. As agents of economic change, unions look to secure the best working situation for the people they represent. Initiatives such as ensuring freedom of association, ending child labor, and fighting employment discrimination improve the lives of members as well as assist in leveling the playing field for international trade.

Third, unions often advocate for democratic rule. While many people assume unions to be strictly economic actors, this is not the case. In order to legally exist, unions require democratic protections, especially the freedom of association. Thus, many union struggles are political, coalescing around the promotion of free and open society and democratic reform. Unions, through their political rather than their economic capacity, contribute to the destabilization of autocratic regimes.

UNIONS AND DEMOCRATIC REFORM: CASE STUDIES

The role of labor movements is not specific to any one region, but has been felt broadly in democratization efforts across the globe. This section examines the role of labor in the fall of autocratic regimes in Europe, Africa, and Latin American and analyzes the common characteristics of those cases.

EUROPE

In Europe, labor movements were instrumental in the destabilization of autocratic regimes in Spain (1977), Poland (1989), and Czechoslovakia (1990).

Many accounts of the democratization of Francoist Spain begin with the death of Franco in 1975. These accounts understate the crucial role that labor unions played in the years leading up to the transition to democracy.¹² In response to political activism of independent unions in the late 1960s, hardliners in the Franco government pursued a policy of labor repression. However, the repression failed to neutralize union activity. On the contrary, it contributed to an unprecedented level of labor unrest, marked by an astounding 1,500 organized strikes in 1970.¹³ Trying another approach, Franco appointed Carlos Arias Navarro, a moderate, to the post of prime minister in 1973 and charged him with

creating a "softer dictatorship."¹⁴ Labor unions, sensing Franco's political game, refused to settle for a partial solution and presented Navarro with a series of labor protests in 1974 and 1975 that, coupled with Franco's death and Navarro's subsequent loss of political support, forced his 1976 resignation.¹⁵ Adolfo Suarez assumed the prime ministership and within months initiated a transition plan that called for democratic elections within a year. Labor unrest subsided. Despite Suarez's skill at negotiating, one cannot overlook the role of the independent labor unions in forcing the hand of the government. Had it not been for the continuous mobilization of the trade unions, the difficult decision regarding how to deal with civil unrest would not have been forced onto Franco and the Spanish conservatism movement may have pushed forward.

The Solidarity movement in Poland offers one of the best-documented and most memorable instances of a labor union destabilizing an authoritarian regime. Forged in the 1980 strike at the Gdansk shipyard orchestrated by the Worker's Defense Committee and Committee for Free Trade Unions of the Coast, the Solidarity union's initial demands focused on workers' rights.¹⁶ Eventually, as it became a general political movement, legitimized by foreign recognition and the tacit blessing of Pope John Paul II, Solidarity demanded increased freedoms and a more open civil society. In 1989 the communist leadership of Poland agreed to some degree of democratization, in the form of limited free elections, which led to wider democratic reforms over the next several years.¹⁷ The overwhelming electoral support for Solidarity in the competitive parliamentary elections of 1991 marked the conclusion of the Communist monopoly on political power in Poland.

Labor unrest was a critical factor in exposing the weakness of the Communist regime during Czechoslovakia's "velvet revolution" in 1990. While the government's repression of student demonstrations sparked widespread protests, it was a general strike on November 27 that "telegraphed the defection of the workers from the Communist leadership" and "induced the previously inflexible Communist rulers to abandon their resistance to change."¹⁸ By June of 1990 fully competitive parliamentary elections ushered in an era of political freedom. While not as crucial an actor as in Spain or Poland, the labor unions in Czechoslovakia, leading the organizational effort associated with the general strikes, were instrumental in destabilizing the Communist regime and pushing the country toward democracy.

AFRICA

In Africa, labor movements were critical actors in ending the apartheid regime in South Africa. Additionally, labor unions brought international attention to the struggle for democracy in Nigeria in the 1990s.

The first democratic elections in South Africa, held in April 1994, were largely a result of the ongoing work of the African National Congress (ANC). But overlooking the role of the Congress of South African Trade Unions (COSATU) would be folly. From 1979 to 1994, union density grew from approximately 15 percent of the working population to over 56 percent, with the highest rate of growth amongst black workers.¹⁹ Union membership not only provided black workers with a voice, it also exposed them to democratic structures. The exposure to democratic structures, the growing numbers of unionists, and formal partnership with the ANC were critical factors in the shift of COSATU from an industrial union to a political force. Throughout the 1980s the unions associated with COSATU staged numerous protests, strikes, and demonstrations.²⁰ The failure of the government to contain such

action through traditional tactics of repression forced "a choice: intensify the repression toward the labor movement and risk alienating capital with no guarantee of eliminating mobilization from below or turn toward more fundamental political reform."²¹ In 1989 President F.W. De Klerk chose the latter path and signaled his intention to reform apartheid. This reform eventually led to the democratic elections of 1994. Clearly, labor unions were instrumental in destabilizing the apartheid government. In fact, Nelson Mandela writes in his biography of crucial contributions of the COSATU to the struggle against authoritarian rule and apartheid in South Africa.²²

In Nigeria in 1993, General Ibrahim Babangida annulled the results of a presidential election and appointed General Sani Abacha to power.²³ Abacha abolished all democratic institutions and installed a military dictatorship to rule Africa's most populous country. Within a year, the National Union of Petroleum and Natural Gas Workers (NUPENG) and the National Labor Congress (NLC) organized a general strike calling on the government to "resolve

the political crisis by respecting the democratic and sovereign will of the people as expressed in the last presidential elections. All democratic structures must be restored."²⁴ The government reacted harshly, arresting labor leaders and replacing them with their own appointees, effectively slowing the movement.²⁵ While unsuccessful in the initial destabilization of the regime, the union efforts helped to draw international attention to the Nigerian struggle for democracy. This exposure and subsequent pressure applied by international institutions, non-governmental organizations, and foreign diplomats contributed to the eventual transition from dictatorship to nascent democracy, signaled by free elections held in 1998.

LATIN AMERICA

Finally, as Ruth Collier and James Mahoney have noted, labor played a great role in the shift from au-

thoritarian democratic rule in Latin America. Peru (1978), Argentina (1983), and Chile (1990) provide solid examples of the transitional power of organized labor.

The labor movement in Peru played an important role in the fall of two different authoritarian regimes over the

Unions are a natural ally of liberal democracies because they act as models of democracy, they share the goals of free and fair economic development, and they often advocate for democratic rule.

course of five years.²⁶ Persistent labor unrest precipitated the fall of General Velasco's government in 1975. Upon assuming power in 1976, General Morales Bermudez was also confronted by a labor movement dedicated to the end of authoritarian rule in Peru. Throughout 1976 a continuous string of labor rallies and mobilizations orchestrated by the General Confederation of Peruvian Workers consumed the government. The union action culminated in "the single most important event in triggering the Peruvian democratic transition," a widely observed general strike on July 19, 1977 that called for "basic democratic freedoms" in addition to expansion of workplace rights.²⁷ The strike succeeded in forcing Bermudez to announce a timetable for a return to civilian rule. Labor protests, including another general strike, continued until democratic elections took place in June 1978.

Conventional wisdom dictates that the Argentine military dictatorship of the 1970s collapsed as a result of the ill-fated invasion of the Falkland Islands and subsequent defeat at the hands of the British.²⁸ While this is certainly the case, we

can dig deeper to determine the conditions that caused the generals to make such a disastrous decision in the first place. Some analysts have argued that “labor protest contributed to a division within the military between hardliners and softliners” that the invasion of the Falklands was “intended to overcome” by stoking nationalist fires in the populace.²⁹ In 1981 the General Confederation of Workers (CGT) and the Union of Argentine Workers (CUTA) openly opposed the military regime and conducted a series of general strikes that exposed the government’s inability to control organized workers and culminated in the resignation of the moderate General Viola. Viola’s ouster led to the rise of hardliner General Galtieri. Galtieri’s ascension to the presidency, facilitated by his promise to crack down on unions, further exposed the divisions within the military regime that were exacerbated by the issue of dealing with organized labor unrest. Despite changes to labor law intended to weaken unions, labor demonstrations continued through 1982. Internal debate regarding how to deal with the unrest intensified, and in an effort to overcome the divisions, Galtieri proposed the Falklands invasion to unite the population in a nationalist cause. The invasion was, then, a response by a regime in trouble and unable to control popular protest. The gamble failed, and soon afterward the military regime announced that general democratic elections would be held in the autumn of 1983. As some analysts have argued, and historical review supports, the continuous labor unrest in Argentina contributed to the creation of an environment that forced the dictatorship to pursue a self-destructive course.

The democratization of Chile post-Pinochet follows a slightly different path.³⁰ Rather than acting as one of the primary destabilizing factors leading to a transition, labor unions worked to organize opposition to ensure the loss of Pinochet in the 1988 referendum on his continuation in power. Pinochet assumed power in 1973, and harshly repressed the labor movement. The unions, however, refused to give in, and initiated a series of strikes and protests that swept through the mines, ports, and factories between 1977 and 1979. Recognizing that outright repression failed to contain working-class protest, Pinochet called for a “constitutional project” that required plebiscite or referendum elections on his rule in 1980 and 1988. Pinochet won the 1980 plebiscite, and the labor movement immediately began organizing for the next election. The labor movement, led by the Confederation of Copper Workers, secured its role as a vanguard political

force in July 1983 by leading a massive protest that called for “the participation of all popular organizations” in “a call for the return to democracy.”³¹ A national strike in the winter of 1984 and “days of protest” in September 1985 followed. By 1986, the union-led opposition had grown into a multi-party organization that became known as the Coalition of Parties. The Coalition of Parties, an organization owing its existence to the courageous role of the labor unions, directed the successful 1988 campaign against Pinochet’s ratification. By December of 1989, democratic elections were held and the transition to democracy was complete.

COMMON CHARACTERISTICS IN UNION-LED DESTABILIZATIONS

A number of common characteristics unite the efforts of unions described in these cases. First, in each case labor unions, traditionally viewed as economic agents, made political demands, insisting that governments be accountable to their citizenry and make progress toward democracy. Second, each case displayed the ability of labor unions to galvanize broad-based support and mobilize masses of people including members and nonmembers. Finally, in the majority of cases, labor unions destabilized autocratic regimes without any significant external support. Lacking explicit international support (except in the cases of Poland, Nigeria, and to some extent Chile), labor unions organized themselves and remained defiant in the face of repressive regimes. The unions receiving external support from the likes of the United States and International Labor Organization did so in the later stages of their destabilization efforts, having established their organization and missions without input from external sources. To have accomplished regime changes without significant explicit support and without external organizations or governments bestowing legitimacy on their struggles is truly remarkable.

Common characteristics of the regimes themselves or the political environment also exist. The majority of regimes were either initially ambivalent toward organized labor or outright hostile, but all eventually grew to disfavor the union activity and employed repressive labor policies. The populist character of the Peruvian dictatorship and initial support for and by the working class provides the lone exception, but in time an antagonistic relationship between the government and the unions developed.³² In almost all of the cases, the labor question—to crack down on labor unrest or to allow it—exacerbated existing hard-line versus

soft-line divisions within the regimes. The difficulty in handling the labor situation contributed to the destabilization of the regimes by widening already existing internal divisions.

PROMOTION OF FREE TRADE UNIONS ABROAD

Mechanisms do exist for promoting labor movements in foreign countries. This section briefly outlines the historical and current roles the United States government and the International Labor Organization play in supporting free trade unions.

HISTORICAL AMERICAN ENGAGEMENT

The labor attaché program at the U.S. Department of State represents the primary diplomatic avenue for supporting foreign labor movements. Established in 1943, the program was designed to “go beyond the boundaries of traditional diplomacy and complement the work of embassy political and economic officers by developing contacts with . . . workers and their trade unions.”³³ The Cold War gave purpose to the attachés as they focused their efforts on minimizing communist influence in labor movements around the world. The anticommunist mission made it difficult for the United States to fully involve itself in union efforts against totalitarian governments since a number of the unions involved were suspected of, and in some cases did have, ties to communist parties. Additionally, a number of the union-led efforts described above took place when United States foreign policy favored stability in certain countries or regions over true promotion of democracy, providing another explanation for the relative lack of American influence. There are some exceptions, such as strong American support for Poland’s Solidarity union, but overt diplomatic connections to democracy-promoting unions are hard to find in the relevant literature.

RECENT AND CURRENT AMERICAN ENGAGEMENT

The end of the Cold War saw the decline in perceived importance of labor diplomacy in American foreign affairs. Administrations eliminated labor programs at USIA and USAID. The number of labor attachés within the State Department decreased by over 50 percent.³⁴ Additionally, the Office of the Secretary of State/International Labor Affairs was abolished and the remnants of the program appeared several levels down in the State Department bureaucracy.³⁵ The second Clinton administration took steps to reinvigorate the labor program by slightly increasing staffing,

coordinating Department of Labor/State operations and beginning constructive engagement with the International Labor Organization. But these efforts were coupled with a shift of the concentration of the program away from “political labor” and toward an “economic-labor emphasis.”³⁶ The economic-labor emphasis centered on the promotion of fundamental labor standards worldwide as part of a concerted U.S. effort to “put a human face on the global economy” and to create a “level playing field” in international trade for the benefit of both American business and American workers.³⁷ The Clinton focus on globalization and the economy overlooked the potential political gains of supporting labor movements in foreign countries.

The Bush administration, “led by ideologues convinced that unions distort the beneficent workings of the market and interfere with important government policies, including the war on terrorism,”³⁸ continues to push an economic-labor policy, all but discounting the political benefits of engaging labor movements. The Bush administration’s frequent clashes with the American labor movement over trade agreements and its reluctance to sign International Labor Organization conventions signal an unwillingness to support the rights of workers across the globe. The Bush administration is either unaware of potential political benefits of labor diplomacy or it views the economic cost to American corporations to be greater than the political benefits. The recent inclusion of “encouraging . . . free trade unions” as part America’s “forward strategy of freedom”³⁹ in President Bush’s 2004 State of the Union address may signal a change of heart, but no visible action has yet to be taken diplomatically, cooperatively with American unions, or in collaboration with international institutions. At best, the Bush administration has provided slightly increased funding to the National Endowment for Democracy, a Washington, D.C.-based nonprofit organization whose mission is to “strengthen democratic institutions around the world through nongovernmental efforts” by providing grants and technical assistance to organizations that support free trade unions and other democratic institutions abroad.⁴⁰

INTERNATIONAL FRAMEWORK

Founded in 1919, the International Labor Organization, the only surviving major creation of the Treaty of Versailles, became the first specialized agency of the UN in 1946.⁴¹ The ILO seeks the promotion of social justice and internationally recognized human and labor rights by formulating basic, minimum international labor standards in the form of conventions and recommendations that each member state is encouraged “to respect, promote and realize.”⁴²

Upon adoption of the Declaration on Fundamental Principles and Rights to Work in June 1998, the ILO focused its efforts on the promotion of a set of four core worker rights areas, including freedom of association and the right to collective bargaining, elimination of forced and compulsory labor, abolition of child labor, and ending of discrimination in the workplace.

The ILO is designed as a nonpartisan and nonpolitical organization lacking enforcement mechanisms. It operates under the United Nations' sovereignty and thus requires an invitation by a sovereign state before it provides assistance to the government, businesses, or unions of the country. As a result, the ILO has been less involved in supporting dissident labor movements than might be expected. The public admonishment of governments and the critiquing of the annual labor rights progress reports that member states submit presents the only true method of intervention available to the ILO. The "public shaming" approach has had mixed results, bringing international attention and some level of legitimacy to the Nigerian struggle, but being ignored in other countries such as China and Sudan.

The ILO operates in a complex international environment, often overshadowed by international financial institutions such as the World Bank and the International Monetary Fund that possess not only much larger budgets, but enforcement mechanisms as well. As a result, the ILO and its demands tend to take a back seat in the development of the structural adjustment programs.

The historical relationship between the United States and the ILO has been largely dysfunctional. While a partner in the initial creation of the organization, the United States has kept its distance from any sort of concrete, collaborative relationship. In 1977 the United States withdrew from membership in protest of the perceived focus of the ILO on providing assistance to developing countries in the Soviet sphere of influence.⁴³ American involvement upon reentry was uninterested and at times hostile, with the United States refusing to sign almost all conventions generated by the organization. Although the United States helped draft the 1998 Declaration on Fundamental Principles and Rights at Work, the government has ratified the

conventions in just one issue area, relating to the elimination of forced labor.⁴⁴

RECOMMENDATIONS

Unions are political actors. Unions and labor movements have destabilized and can continue to destabilize autocratic regimes. If democratization is a goal of U.S. foreign policy, then support for labor movements should be an integral part of the policy. To hasten the destabilization of autocratic regimes and speed the spread of democracy, the United States government should dramatically strengthen its international labor diplomacy. The focus should be on promoting the core principles and rights at work as described in the 1998 ILO Declaration with

special attention paid to the freedom of association. This paper makes the following specific recommendations:

The United States should reestablish a true working relationship with the International Labor Organization. Ratifying all of the conventions pertaining to the four core labor standard areas laid out in the 1998

In almost all of the cases, the labor question—to crack down on labor unrest or to allow it—exacerbated existing hard-line versus soft-line divisions within the regimes.

Declaration on Fundamental Principles and Rights at Work is a start. But the United States must also work to strengthen the monitoring and enforcement mechanisms of the ILO. Most important would be the addition of a formal mechanism to recognize labor unions, thus legitimizing the organization and, in turn, their struggle. Gaining legitimacy in an international forum provides some level of protection for the unions. If a regime is openly hostile or moves to arrest or kill members, then the international community, having legitimized the union and thus its struggle, would be compelled to react.

The Bush administration should increase the budget and staffing levels at the State Department's Bureau of Democracy, Human Rights and Labor. In particular, every embassy in the developing world should have a well-trained, full-time labor attaché whose primary responsibility is to establish contacts with local labor leaders and provide them with the diplomatic support their anti-autocratic movement requires. Placing a labor attaché in every embassy enlivens and emboldens unions, warns autocratic regimes, and sends the message that the administration is serious about international labor diplomacy.

The Bush administration should increase funding to nongovernmental organizations, such as the National Endowment for Democracy and the American Center for International Labor Solidarity, that support the creation and sustenance of free labor unions and other democratic institutions throughout the world. Additionally, relationships with international organizations such as the International Confederation of Free Trade Unions (ICFTU), a confederation of national trade union federations in over 150 countries, must be further developed. Appointing an ambassador to the ICFTU is a start, but the U.S. government should also seek to support the ICFTU training, education, and technical assistance services by providing expertise and sharing knowledge. Unlike the ILO, the ICFTU can and does intervene in countries without the invitation of the government. The ICFTU may prove to be a valuable portal into anti-autocratic movements and an international legitimizing forum in the event that suggested reforms of the ILO are not successful.

The administration should encourage the State Department's Intelligence and Research Division and the Central Intelligence Agency to work with the labor attachés in each embassy to identify labor leaders in that country. Identifying and developing the leaders of future labor movements provides the United States with a powerful cadre of grass-root agitators and eventual allies in the fight for democratization.

The United States should include enforceable labor rights in free trade agreements and work with other related international organizations to promote the spread of democracy through labor rights, especially the freedom of association. Special efforts should be made to include the four core ILO labor standards in the clauses of the World Bank and IMF loans. As the freedom of association spreads, so will labor unions. And labor unions are a necessary political and social ally in the fight against autocratic regimes.

The United States government should step up the rhetoric regarding labor rights. When speaking of democratization efforts in countries such as Afghanistan and Iraq, administration officials continually mention the importance of women's rights and a free press. Including basic labor rights, especially the freedom of association, in speeches by high-level officials would indicate a serious commitment to the cause.

CONCLUSION

The search for security in a dangerous world defines the American national interest. The Bush adminis-

tration's neoconservative foreign policy argues that the spread of democracy will ensure security. Some commentators have gone so far as to state that the U.S. government considers the democratization of societies more than just a means to security, but an end in itself.⁴⁵ Regardless, the neoconservative approach, stressing hard power to achieve idealistic goals, limits the tools that the Bush administration has at its disposal.

Employing a self-limiting, neoconservative approach is a poor choice. Meeting the challenges of the new, post-September 11 world requires a review of all possible mechanisms for the advancement of American national interest, defined by the Bush administration as the spread of democracy. Labor unions possess broad social appeal. In addition to the traditional role of economic agent, labor unions often speak out for democracy and galvanize mass support for political change. Supporting labor movements and unions in countries with autocratic rulers will hasten the demise of such regimes, leading the way for democratic reform and thus promoting American security.

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NOTES

1. See Spencer Weart, *Never at War: Why Democracies Will Not Fight One Another* (New Haven: Yale University Press, 1998), and United Nations Development Programme, *Human Development Reports 2002: Deepening Democracy in a Fragmented World* (Oxford, England: Oxford University Press, 2002), Ch. 4, among others.
2. National Security Strategy of the United States of America, Executive Summary (September 2002).
3. Suzanne Nossel, *Smart Power*, vol. 83, no.2, *Foreign Affairs* (March/April 2004), p. 134.
4. Joseph Nye, "The Decline of America's Soft Power," vol. 83, no. 2, *Foreign Affairs* (May/June 2004).
5. Ray Marshall and Julius Getman, "Democracy and Unions Go Together," *Los Angeles Times* (July 6, 2003), op-ed page.
6. Edmund McWilliams, "There's Still a Place for Labor Diplomacy," *Foreign Service Journal* (July/August 2001). Online. Available: <http://www.afsa.org/fsj/julaug/mcwilliamsjulaug01.cfm>.
7. See Jerome Karabel, "Polish Intellectuals and the Origins of Solidarity: The Making of an Oppositional Alliance," *Communist and Post-Communist Studies*, vol. 26, no. 1 (March 1993), pp. 24-46.
8. Maria Lorena Cook, "Unions, Markets and Democracy in Latin America," in *The Future of Labor Unions: Orga-*

- nized Labor in the 21st Century, ed. Julius Getman and F. Ray Marshall (Austin: LBJ School, 2004), p.248.
9. See Dietrich Rueschemeyer, Evelyn Stephens, and John Stephens, *Capitalist Development and Democracy* (Chicago: Chicago University Press, 1992), Ch. 3, 4, and 7, and Samuel Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman: University of Oklahoma Press, 1991), Ch. 3, 4, and 6.
 10. Cook, "Unions, Markets and Democracy in Latin America," p. 247.
 11. McWilliams.
 12. See Jose Maravell, *The Transition to Democracy in Spain* (London: Croon Helm, 1982), cited in Ruth Collier and David Collier, "Adding Collective Actors to Collective Outcomes: Labor and the Recent Democratization in South America and Southern Europe," *Comparative Politics*, vol. 29, no.3, (April 1997), pp. 285-303, for detailed analysis of labor movement involvement in Franco's Spain.
 13. Jose Maravell, *Dictatorship and Dissent* (London: Tavistock, 1978), cited in Collier and Collier, "Adding Collective Actors to Collective Outcomes."
 14. Collier and Collier, "Adding Collective Actors to Collective Outcomes."
 15. Maravell, *The Transition to Democracy in Spain*.
 16. See Gerardo Munck and Carol Skalnik Leff, "Modes of Transition and Democratization: South America and Eastern Europe in Comparative Perspective," *Comparative Politics*, vol. 29, no. 3 (April 1997), pp. 343-362.
 17. Collier and Collier, "Adding Collective Actors to Collective Outcomes: Labor and Recent Democratization in South America and Southern Europe."
 18. Ibid.
 19. E.C. Webster, "The Politics of Economic Reform: Trade Unions and Democratization in South Africa," *Journal of Contemporary African Studies*, vol.16, no. 1 (January 1998), p. 40.
 20. Ibid., pp.45 and 46.
 21. Ibid., p.46.
 22. Marshall and Getman, "Democracy and Unions Go Together."
 23. The history described in this paragraph relies heavily on information from the Human Rights Watch Web site, Nigeria page, available at www.hrw.org/nigeria.
 24. Katherine Issac, "A Strike for Democracy," *Multinational Monitor*, vol. 17, no. 6 (June. 1995).
 25. Marshall and Getman, "Democracy and Unions Go Together."
 26. Historical information in this section draws heavily from Ruth B. Collier and James Mahoney, *Labor and Democratization: Comparing the First and Third Waves in Europe and Latin America*. Paper iirwps'062'95. University of California at Berkeley, Institute of Industrial Relations Working Paper Series 1995.
 27. Issac, Nigeria- A Strike for Democracy.
 28. Historical information in this section draws heavily from Collier and Mahoney, *Labor and Democratization*.
 29. Andreas Fontana, *Armed Forces and Political Parties in Democratic Transition in Argentina* (Buenos Aires: Estudios CEDES, 1984), p.35.
 30. Historical information in this section draws heavily from Collier and Mahoney, *Labor and Democratization*.
 31. Manuel Barrera and Samuel Valenzuela, "The Development of Labor Movement Opposition to the Military Regime" in *Military Rule in Chile: Dictatorship and Opposition*, ed., Samuel Valenzuela and Arturo Valenzuela (Baltimore: The Johns Hopkins University Press, 1986), pp. 260-261, cited in Collier and Mahoney, *Labor and Democratization*.
 32. Collier and Mahoney, *Labor and Democratization*, p. 37.
 33. Nicholas Stigliani, "Labor Diplomacy: A Revitalized Aspect of U.S. Foreign Policy in the Era of Globalization," *International Studies Perspectives*, vol. 1, issue 2, (August 2000), p. 178.
 34. Edmund McWilliams, "There's Still a Place for Labor Diplomacy," *Foreign Service Journal* (July/August 2001). Online. Available: <http://www.afsa.org/fsj/julaug/mcwilliamsjulaug01.cfm> 2001.
 35. Stigliani, "Labor Diplomacy," p. 179.
 36. Ibid., p. 180.
 37. Ibid.
 38. Marshall and Getman, "Democracy and Unions Go Together."
 39. Presidency George W. Bush, State of the Union Address (Washington, D.C., January 20, 2004).
 40. See National Endowment of Democracy Web site for details, available at www.ned.org.
 41. The historical and procedural information in this paragraph draws from the International Labor Organization Web site, available at www.ilo.org.
 42. Stigliani, "Labor Diplomacy," p. 184.
 43. Rorden Wilkinson, Nigel Hawthorth, and Stephen Hughes, "Recasting Labor Diplomacy," *International Studies Perspectives*, vol. 2, no. 2 (May 2001), pp. 208-209.
 44. Ibid., p.209.
 45. Robert Jervis, "The Compulsive Empire," *Foreign Policy*, vol. 137 (July/August 2003), p.86.

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ELECTRONIC TRASH:

MANAGING WASTE IN THE NEW CENTURY

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CREATING SOUND ENVIRONMENTAL POLICY for the safe and efficient disposal of electronic waste is a 21st century problem. Any solution will require the involvement of private and public entities to eliminate hazards to human health, the environment, and international markets. Journalists and social scientists often label the United States a "throwaway society" because of the high-volume disposal of consumer products in the country each year. The U.S. Environmental Protection Agency (EPA) estimates 2.12 million tons of consumer electronic waste were generated in the United States in 2000. The estimate projects 91 percent of this waste either remained unused in personal storage or was placed in the trash.¹ Nationally, only about 9 to 10 percent of electronic waste, which includes commonly discarded items like television sets and computer monitors, ends up in recycling centers. The majority of electronic waste winds up in overcrowded landfills.² An estimated 63 million desktop personal computers (PCs) were thrown away in 2003, posing a challenge for businesses, state and local governments, and communities charged with managing and funding their cleanup and disposal.³

Policies need to be in place to counter the steady influx of products that quickly become obsolete once new technological advances are developed. Most consumers replace electronic goods after four years, regardless of condition.⁴ Successful strategies for waste reduction would therefore address consumer and corporate behavior through source reduction (an attempt to prevent waste and produce products with longer life expectancies), recycling and reuse programs, and the continued development of the existing regulatory framework within the United States.

REGULATORY FRAMEWORK

Disposal of electronic waste is difficult to regulate because "electronic waste" is a general description for the many different types of electronic goods. Electronic waste can include computers, monitors, copiers, fax machines, printers, televisions, and video games that are near the end

of their useful life. However, there is currently no standard legal definition for electronic waste used by all regulatory agencies.⁵ Traditionally, states have considered these products to be examples of municipal solid waste (MSW) or household hazardous waste (HHW) subject to federal and state regulations. However, enforcement is complicated by the arrival of new products that fall outside any legal category. No agency has even established whether old electrical appliances such as microwave ovens or coffeemakers should be included in the loose definition of electronic waste. Because of this, pollutants continue to enter the waste stream as products destined for landfills with the potential to leak toxins into the environment.

Many of these products contain components that are considered hazardous waste. Computer monitors and cell phones can contain lead, cadmium, barium, mercury, arsenic, and PCBs—all potential sources of soil or drinking water contamination. Very often, electronic products are not subject to hazardous waste regulation if they are intact and intended for reuse or resale. Producers of electronic goods that meet only part of these definitions do not share the costs of the disposal or benefit from the markets created under state or federal legislation for recycled or remanufactured electronic goods.

Refurbishing or recycling electronic goods helps reduce dependence on landfills, assists in meeting federal and state pollution prevention goals, and addresses future demands for primary products. According to the EPA, “source reduction (including reuse) is the most preferred method [of environmentally friendly electronic disposal], followed by recycling and composting, and, lastly, disposal in combustion facilities and landfills.”⁶ Most states now have laws and programs that support recycling and reuse efforts. However, 56 percent of all MSW generated in the United States is still disposed of in landfills, which occupy larger and larger expanses of real estate that could be used in alternative ways more beneficial to the environment and economy.⁷ Alternative waste management practices such as recycling have resulted in the decrease in the total number of landfills from 8,000 in 1988 to 1,858 in 2001.⁸ These practices are part of a larger trend toward resource management and waste prevention that can trace its roots to the Great

Depression and World War II, when attempts were made to protect the supply of raw materials in times of shortage.

Domestically, environmental regulation of hazardous and nonhazardous waste reduces the volume and impact of electronic waste generated in the United States. However, many of these products are shipped to less-developed countries (LDCs), where environmental laws are lax or nonexistent. The lack of key environmental laws can lead to the exposure of residents to hazardous waste and contaminated drinking water sources. Electronic products from the United States are frequently shipped illegally to foreign nations. Many nations rarely place a limit on the amount that can be shipped into a

recipient country to support businesses that use the byproducts of waste for economic gain. For example, China accepts PCs to extract their copper, aluminum, and gold innards. Unfortunately, workers in China lack legal or physical safeguards from exposure to

these and other substances such as the four pounds of lead found in each monitor.⁹ Electronic waste is therefore a global problem that must be addressed by international organizations, including the United Nations, multinational corporations (MNCs), non-governmental organizations, and trade blocs and trade organizations like the World Trade Organization (WTO).

In many sovereign states where discarded PCs are shipped, governments are following the United States and European Union to develop better laws to decrease the harmful influence of electronic waste. Therefore, industry resistance to government regulation needs to be taken into account when developing new environmental policies for electronic waste management. The basic legal framework for solid waste management in the United States is laid out in the Resource Conservation and Recovery Act (RCRA) enacted by Congress in 1976. In 1984, RCRA was amended in response to growing public concern about the dangers of hazardous waste disposal practices. According to the EPA’s Office of Solid Waste (OSW), RCRA’s goals are to “protect us from the hazards of waste disposal; conserve energy and natural resources by recycling and recovery; reduce or eliminate waste; and clean up waste which may have spilled, leaked or been improperly disposed.”¹⁰

Policies need to be in place to counter the steady influx of products that quickly become obsolete once new technological advances are developed.

The federal hazardous waste law established standards for disposal, storage, and treatment. The law prioritized energy and resource conservation and waste reduction. The provisions apply to generators, transporters, and disposal sites and contain both forward-looking standards for waste prevention and retrospective standards for civil liability imposed on past toxic substance disposal facilities.¹¹ Most states have adopted and codified provisions in state law and delegated enforcement and regulation (that is, permitting for disposal facilities) to state and local government agencies. The EPA provides national standards for landfills and guidelines on safe and proper disposal of hazardous and nonhazardous wastes as defined by RCRA. It coordinates enforcement with its ten regional offices. In addition, the EPA enforces RCRA by collecting information on amounts of hazardous waste generated, treated, stored, or disposed on site from businesses and disposal facilities and publishing the information in monthly and annual reports.

In the late 1980s and 1990s, the EPA was involved in several important court cases that attempted to resolve questions about the extent to which RCRA "covers materials that are recycled or held for future recycling."¹² The central question centered on at what point materials could be considered recycled or discarded. In *American Mining Congress v. EPA* (AMC I), the divided D.C. Circuit Court ruled that "Congress did not intend RCRA to regulate 'spent' materials that are recycled and reused 'in an ongoing manufacturing or industrial process.'"¹³ The Court later sided with the EPA in AMC II (1990), stating that the Mining Congress was still liable for wastes "managed in land disposal units that are part of wastewater treatment systems" because such wastes can be considered discarded since they are "part of the disposal problem" and are no longer "part of ongoing industrial processes."¹⁴ In *American Petroleum Institute v. EPA*, the D.C. Circuit Court ruling broadened the interpretation of "discarded material" by stating that even recycled materials can be considered wastes at the time of recycling (if discarded before subject to reclamation) and therefore are "subject to RCRA regulation."¹⁵ In light of the court rulings, the EPA attempted to clarify its definitions and provided lists of harm-

ful substances subject to RCRA regulation, but confusion and tension among members of private industry remained.

During the 1980s, elected officials and industries began pushing for the deregulation of regulatory power. Members of private industry challenged government agencies in court and expressed a desire for greater consultation on new regulatory policies. States were burdened with devising economically feasible means to enforce RCRA requirements and resorted to charging private waste collectors a per-ton disposal fee, called a tipping

fee, or forming Councils of Local Governments (COGs) to leverage funding for new or enhanced disposal facilities. Counties such as Montgomery County in Maryland typically must coordinate disposal fee amounts with nearby jurisdictions to reduce inter-jurisdictional competition for waste disposal services.¹⁶ In addition, state officials saw the need to work with private industry to share some of the costs and provided tax or other economic incentives to create private

recycling programs and markets for recycled products. The federal government retained oversight of enforcement but yielded more room for flexibility and local control.

In response to consumer complaints about confusing standards and corporate complaints of costly regulatory burdens, the EPA issued a more comprehensive Universal Waste Rule in 1995. According to the EPA, the rule "is designed to reduce the amount of hazardous waste in the municipal solid waste (MSW) stream, encourage recycling and proper disposal of certain common hazardous wastes, and reduce the regulatory burden on businesses that generate these wastes."¹⁷ The rule applies to batteries, pesticides, mercury-containing thermostats, and lamps and is supported by more recently proposed rules that include mercury-containing equipment. Many industries supported the new rules because they claimed that the new rules facilitate the establishment of collection and take-back programs now required by many states. The Universal Waste Rule also distinguishes between Large and Small Quantity Generators (LQGs and SQGs), exempting those businesses that produce less than 100 kilograms (220 pounds) of universal waste per month. State adoption of the Universal

***Computer monitors
and cell phones can
contain lead, cadmium,
barium, mercury,
arsenic, and PCBs—all
potential sources of
soil or drinking water
contamination.***

Waste Rule was optional because it is "less stringent than the previous requirements under RCRA," resulting in 50 or more different sets of standards and lists of regulated wastes.¹⁸ Some states, such as California, have enacted laws that are more stringent than the Universal Waste Rule (including banning certain wastes from incinerators and landfills), while others such as Maine and Washington have excluded pesticides and North Dakota has excluded thermostats. The rule does stipulate that regardless of the actual list of wastes included, "state standards must provide equivalent protection" and cannot "regulate fewer handlers."¹⁹

CURRENT POLICY AND LEGAL ENVIRONMENT

The federal government has responded to pressure from environmental groups and state agencies to issue new rules and guidelines for specific components of electronic goods, such as mercury and cathode ray tubes (CRTs), that contain lead and radioactive substances. The State of California is leading the way by recognizing the need to work with private industry to develop effective electronic waste regulation mechanisms. California adopted emergency regulations for CRTs in 2001, and the EPA issued its own rule to promote more recycling and reuse of electronic wastes and mercury-containing equipment by adding it to the Universal Waste Rule in 2002. Since 1989, the State of California has relied on its California Integrated Waste Management Board (CIWMB) to enhance public awareness about regulatory issues related to electronic waste by publishing updates in online reports, hosting technical training conferences for law enforcement officials, and organizing electronic waste collection events around the state. The Web site now includes links to federal, state, and local government agencies, in addition to private-public coalitions seeking change through self-regulation.

California enacted a new law, Senate Bill 20 (the Hazardous Electronic Waste Recovery, Reuse and Recycling Act of 2003), in September 2003 that establishes a funding system for the collection and recycling of electronic wastes that is expected to serve as a model for other states. Under the act, electronic waste collection fees collected "at the point of sale of certain products" would cover the costs of state-sponsored recycling programs.²⁰ Existing programs are funded in part by grants awarded by the state. Former Governor Gray Davis recognized that with California's budgetary constraints, he could only support a proposal that

would be revenue-generating.²¹ Originally, the bill's intent was to "make companies responsible for recycling their own products," supporting the concept of product stewardship included in recent EU legislation, but lobbyists for U.S. companies protested that it would cost them \$30 per computer.²² The final version prohibits companies from selling devices to the State of California after 2007 that do not meet EU rules, "mandating a gradual phase-out of toxins," and requires "tech companies to disclose the levels of hazardous materials in their products" every two years.²³

Inside and outside of the EU, product stewardship is gaining popularity as a means to clarify "who should bear the costs of managing, either through recycling or disposal, consumer products ranging from beverage containers to computer monitors," and to bring all stakeholders to the table.²⁴ Past legislation focused on regulation of products at the end of their useful life, while product stewardship attempts to make all "actors in the lifecycle of a product" (manufacturers, retailers, consumers, and environmental regulators) responsible for minimizing its environmental impact and sharing the costs of doing so. The principle is an umbrella for current strategies, such as "Design for the Environment, greening the supply chain, pollution prevention, resource conservation, take-back, and product to service transition," that promote sustainable development.²⁵

In the United States, product stewardship councils comprised of members from the private, nonprofit, and public sectors participate in regional and national dialogues on the merits of different recycling infrastructures and funding mechanisms for those programs. At its March 2002 meeting, the National Electronics Product Stewardship Initiative (NEPSI) agreed on a "front-end financed system" that would include management costs in the purchase price of the product.²⁶ Participants also agreed to make recommendations about how to prevent the exporting of used electronics for unregulated recycling in Asia. Industry leaders are also forming coalitions such as the Electronics Industry Alliance (made up of all the major players in the electronics industry from Sony to HP to Kodak) to promote consumer protection, compliance, and corporate responsibility by designing innovative recycling and take-back programs for their products.

While the concept has gained popularity, as proven through increased participation in conferences and national dialogues, it is still difficult for members with competing interests to achieve a consensus on policy and program specifics such as what proportion of recycling costs each stakeholder

should bear. Participants also differ on whether product stewardship goals would be best achieved by implementing a national environmental infrastructure or allowing for more flexibility and local control within the private and public sectors. The experiments are paying off because states are helping companies publicize their take-back programs and facilitate the effort through scheduled collection events around the state. Industry alliances also help give the electronics industry a common voice in the legislative process, making it easier for legislators to anticipate and respond to opposition before the dispute results in a costly lawsuit. Regulated industries can therefore influence legislation rather than retaliating against the old "command-and-control" approach characteristic of the EPA in the 1970s.

Elsewhere, product stewardship is a concept that is adopted because of membership in the EU or as an attempt to protect citizens and markets from illegal dumping of used electronics. The EU directives on Waste Electrical and Electronic Equipment (WEEE) and the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (ROHS) must be incorporated into law by all member states by August 13, 2004.²⁷ Under WEEE, manufacturers will assume total responsibility for their goods and will help establish recycling centers by August 13, 2005. Under ROHS, electronic waste containing lead, mercury, cadmium, and chromium will be banned from the market after July 2006. These countries have six years to comply with WEEE and ROHS. According to the Sierra Club, the EU proposed more stringent rules for electronic waste in 1999, but U.S. industry representatives pressured then-President Clinton to threaten to file a WTO complaint, and the EU modified its rule to only cover what the Sierra Club called "toxic computer junk."²⁸ In an effort to achieve uniform results, the EU has also issued recycling and collection quotas for each regulated waste for 2006 and will review them again in 2008. In November 2003, the Chinese government announced plans to enact the Manufacturer Extended Responsibility Principle (synonymous for Product Stewardship) to regulate domestically generated and imported electronic waste with the support of many mobile phone manufacturers and "resource recycling enterprises" such as Motorola and Ningbo Renewable Resource Process Park.²⁹ Motorola has taken the initiative

by creating a Green China Project that will accept "brand waste mobile phones, batteries, and other components" for recycling and could be expanded to accept nonbrand waste in the future.³⁰

REMAINING CHALLENGES AND RECOMMENDATIONS

Many of these developments seem to indicate a strong collective will among various stakeholders to share responsibility for this electronic waste disposal problem. However, many of the groups have different timelines for achieving their common goals, which could delay implementation of new legislation or policies. The different strategies and targets proposed by the EU and the United States could result in greater friction among trading partners, causing both communities to challenge each other at WTO meetings. Policymakers need to involve their international counterparts in the discussions or risk damaging relations and disrupting trade through price or trade wars for legally preferred electronic goods. They must also commit to policies that prevent the

Alternative waste management practices such as recycling have resulted in the decrease in the total number of landfills from 8,000 in 1988 to 1,858 in 2001.

export of used electronics to the last remaining pollution havens, or countries not having sophisticated legal systems and environmental regulations.

On the other hand, the Bush administration favors the stewardship approach because it caters to business interests and state's rights and also supports existing recycling infrastructure to develop markets for recycled or remanufactured goods. Unless challenged by a foreign state, President Bush may not take an official position on this issue, making his support of these various domestic initiatives uncertain. This might be problematic for U.S. business groups seeking to export their products to countries that threaten to take their concerns about the safety or quality of these products to the WTO or the environmentally conscious EU.

Federal-state tension over which products or components to regulate will remain as long as the EPA defers to state governments to decide where these management strategies fall within their spending priorities. To be effective, laws and programs need to be updated every few years as new types of electronic products are developed. California and several states in the Northwest have

good recycling and reuse infrastructures that might be threatened by changes in administration or the election of government officials seeking to reduce debt by eliminating or slashing state programs. Program cuts might reduce the ability of governments to educate the consuming public about selecting products that can be recycled and taking them to the appropriate disposal facility. Fees imposed on the end user might be viewed as a sales tax and become politically unpopular regardless of the policy's good intentions to account for negative externalities like pollution. It is therefore imperative that all new policies are created with adequate public participation and that policy decisions are based on accurate information. Generators of electronic and household hazardous waste must be held accountable for reporting precise figures of waste generated, treated, and stored on site.

Consumer groups and journalists need to continue to monitor industry efforts at self-regulation and provide information on their programs. This action will hold all stakeholders more accountable for meeting pollution prevention and recycling goals and protect the authority of RCRA. No business should be granted a reporting or publication exemption under the guise of privacy. All relevant hazardous or electronic waste generation data must be made public. Advertising and economics make it hard for consumers to change their behavior, so policies must be designed that make disposal or management consumer-friendly, including providing software that scrubs older computers of personal data before donations or recycling take place. Consumers also need to be updated on developments in the recycled market, including incentive programs like rebates or free shipping and handling for goods returned for recycling. Consumer behavior can also be changed over generations as research universities include electronic waste management courses in engineering and business school curricula.

CONCLUSION

The 21st century poses new challenges for governments, businesses, NGOs, and communities seeking to maximize consumer welfare and minimize pollution and waste generated by economic activity. Consumer demand for electronic products is likely to increase as populations grow and intergenerational gaps are bridged by common usage of technology. Because waste generation is tied to trade, countries need to establish international agreements on the exchange of used or recycled electronic goods to

promote a more efficient allocation of resources and reduce unfair trading practices. International law is difficult to enforce, but agreements reached by including diverse stakeholders have more legitimacy and a greater mandate. This is starting to become clear as the product stewardship model becomes more prevalent in the world. The proper balance between government regulation and industry self-regulation, or inducement through incentive programs like tax breaks and grants, needs to be achieved so policies are economically feasible to implement and enforce.

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