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LBJ JOURNAL OF PUBLIC AFFAIRS

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FROM THE DEAN

EMBRACING DIVERSITY

In recent years, the term “diversity” has come to be associated, almost exclusively, with our country’s racial and ethnic kaleidoscope. This is an important connotation, but it should not be the only one. In addition to exposing our students to this “traditional” concept of diversity, the LBJ School prepares them to deal with diversity in many other forms.

First, there is the diversity of career options that our graduates are confronted with. While all of our students are concerned about public policy and committed to service, they do not all choose to work in government. About 30 percent of our graduates take jobs in the private sector and another 20 percent join nonprofit organizations. We have adapted our curriculum to address these realities. For example, we have offered eight joint degrees, including the MBA/MPAff and Law/MPAff degrees, for a number of years, and we are developing a concentration in nonprofit management.

Second, there is the diversity of roles that professionals must be prepared to perform. Most of our graduates at first take staff positions in which they are expected to apply their analytic skills and policy-specific knowledge. At some point in their careers, however, virtually all professionals find that substantive expertise alone is not sufficient; in order to advance to the next level, they also need to know how to supervise, manage and motivate. We have developed a series of leadership courses that will help our graduates make the transition from expert, to manager, to executive.

Third, there is the diversity of political beliefs that our students hold and that our graduates must be prepared to deal with. One of our responsibilities as faculty members is to provide an environment in which a wide range of perspectives can be explored thoughtfully and respectfully. It is better to learn to deal with diverse beliefs here, in the relatively benign atmosphere of the classroom, than in the “real world.” If we fail to expose our students to a wide range of views, we will have failed to prepare the graduate.

Finally, there is individual diversity. Race, religion, gender and other demographic characteristics may tell us a bit about modal tendencies, but they do not tell us how a particular individual will react in a specific situation, or what he or she will find interesting. The last point is evident in the variety of topics covered in this edition of the *LBJ Journal*. Although all written by students interested in public affairs, these articles are both philosophical and practical in nature, they cover subjects ranging from high tech laws to the economics of those in need, and they examine issues that have an impact here in Texas and countries around the world.

This is the thirteenth edition of the *LBJ Journal*. It is a very high quality product, evidence of the quality of the training its authors have received and of the skills of its editors. I wish to give a special thank you to Senator Russ Feingold for his contribution.

Edwin Dorn

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, Drawer Y, University Station, Austin, Texas 78713-8925, or visit the school’s web site at <http://www.utexas.edu/lbj>.

FROM THE MANAGING EDITORS

We believe that the LBJ Journal of Public Affairs is an important asset of the LBJ School and the public affairs community. Consequently, as we assumed the leadership of the Journal this year, we wanted to develop this asset to its fullest potential. The first action that we took was to register the LBJ Journal with the Online Computer Library Center Public Affairs Information Service (OCLC PAIS). Our listing in this index anchors our presence in the public affairs community, and ensures that the work of our writers is available in libraries around the world to those who study public affairs. In the future, we will seek to be listed by other indexes, and continue to expand our presence in academic libraries.

Second, a decision was made to alter our Internet presence. For the past three years, the content of our online version has been entirely different than that of our print journal. While this did diversify our offerings, this was also proving a distraction to our primary mission, which is to publish an outstanding journal of public affairs research. As such, we refocused our web presence to display our primary publication and organization, and then will use this as a base to build further interactivity. This new LBJ Journal website can be found at our new web address: <http://www.utexas.edu/lbj/journal/>.

Third, we decided to expand the submission base of the Journal. Traditionally, this has been limited to the LBJ School, but this year, we expanded it to include all graduate students at The University of Texas at Austin. This resulted in a record year for submissions, and the inclusion of one article in the Journal from an author outside of the LBJ School. This expansion increases the diversity of academic disciplines and individuals that can participate in our discussion of public affairs.

Finally, we developed a number of ideas that we did not have the opportunity to implement this year, but hope to see done in the future. These include the development of a faculty and staff board to provide guidance to the Journal, an increase in the frequency of the printing of the Journal, and the further expansion of our base of submissions. We feel that these steps will help to further improve an already outstanding asset.

As usual, this year's edition of the *LBJ Journal* contains a fascinating diversity of authors and articles that represent the full depth of today's discussion of public affairs. Of course, such a work could not be produced without the help of many people and organizations. We appreciate the continued support of the LBJ Foundation and the LBJ School in this endeavor. In contributing to the larger discussion of public affairs, we hope that this work would ultimately improve the lives of citizens everywhere.

Joan Lim
Susan Vermeer
Wesley Wilson

The LBJ Journal welcomes submissions from all graduate students at The University of Texas at Austin. Submissions should be in the form of a double-spaced manuscript of less than 5,000 words with endnotes in the format of a printed document and a word processing file. 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 (14th ed. 1993).

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A DIFFERENT CURRENCY FOR THE BODY POLITIC:

HOW A NEW GENERATION OF ACTIVISM IS CHANGING POLITICAL INVOLVEMENT

U.S. SENATOR RUSS FEINGOLD

Russ Feingold was first elected to the U.S. Senate in 1992. In 1998, he won a second term after he limited his campaign spending to \$1 per voter, and disallowed party soft money from being spent on his behalf. Senator Feingold has been recognized repeatedly by the Concord Coalition and Taxpayers for Common Sense for his efforts to cut wasteful spending. His campaign to reign in government waste goes hand-in-hand with his bipartisan effort to clean up the federal campaign finance system. As a member of the Senate's Foreign Relations Committee, he works to make human rights a higher priority in U.S. foreign policy. He also serves on the Senate Budget Committee, the Senate Judiciary Committee, and the Senate's Special Committee on Aging. This article is adapted from a speech Senator Feingold originally gave at Brown University in Providence, Rhode Island, on March 17, 2000.

Today our democracy is flooded with money—currency that gives wealthy interests undue power and influence in our legislative process. But our democracy can run, and should run, on a different kind of currency. Currency can be more than just money; the efforts of moneyed interests to the contrary notwithstanding, our democracy is about more than just money. At its core, our democracy is about people, it's about activism, and it's about heart.

When I was growing up in the 1960s, youth activism seemed to be the prevailing currency. On the first inauguration day of that decade, President John F. Kennedy challenged us, saying: "[A]sk not what your country can do for you – ask what you can do for your country." We watched on television as, at the March on Washington, Martin Luther King said: "[A]s we walk, we must make the pledge that we shall always march ahead." We listened as, in his last campaign, Senator Robert F. Kennedy quoted Tennyson to exhort us: "Come, my friends, 'tis not too late to seek a newer world."

A generation of young Americans answered those calls, myself included. My path to public service began the day I heard President Kennedy's challenge to the nation. I greeted those days with the emotion of the teenager that I was. For me, there was no way that I wasn't going to try in some small way to continue the work I'd wit-

nessed these great men try to do. Our dreams and our emotion were our wealth. And we felt, at least for one brief moment, at least in some small way, that we owned the world.

It has become harder now to trade in that kind of currency, but it's not for lack of dreams or lack of emotion. A large part of the blame lies with the greater influence of money in politics. The flood of that moneyed currency has submerged the currency of heart and soul, and only the currency of heart and soul can reclaim our democracy from the wealthy interests.

During last year's presidential race, a reporter told me that at least one presidential candidate was soliciting young people to attend the kinds of fundraisers and special-access events previously reserved for older, wealthy donors. When 25 or 30-year-olds have to pay a thousand dollars to spend ten minutes with a candidate, the campaign finance system has truly warped our democratic process. Most people in the twenties have better things on which to spend a thousand dollars. No one should have to spend a thousand dollars to see a candidate, and candidates shouldn't be seeing only those who have a thousand dollars to spend. But worst of all, it troubles me that even young people, who have so much energy to contribute to our political process, are being sold the idea that money and politics are properly married together.

It troubles me because, in my lifetime, the energy and commitment of young people has been the greatest asset to counterbalance the mistakes made because of the power of money. The wealthy interests are trying to take that treasure away from today's younger generation, to teach them that politics comes with a price tag.

After I graduated from law school, I practiced law at a big Wisconsin law firm. I would talk to people back then, and I let them know that I was considering a career in politics. But people would advise me to wait until I had become a partner. They took me aside to say: "Make a living at the firm, make some money, and after 20 or 25 years, think about politics then."

But I didn't want to wait until I was 40 or 50 years old to spend the energy and passion for politics I felt when I was in my 20s. So, at age 29, I made my first run for office and won election to the Wisconsin State Senate. That decision, to seize the opportunity to run for public office at a relatively young age, allowed me to spend the currency of my youth while I was still young.

I'm not implying that it's wrong to work in a corporate environment or in a big law firm. But if

today's generation of young activists can use some of that energy when they are young, the rewards will be immense. It is the only way to balance out the power of wealthy interests in our civic society. Without the energy and activism of young people, that proper balance cannot occur.

Of course, there will be wonderful senior citizens in this country who have the energy of a college student. My favorite active senior citizen is Doris Haddock, who's known as Granny D. This 90-year-old woman from New Hampshire walked all the way across America to show the wealthy interests in Washington that Americans care about campaign finance reform. At age 90, Granny D was passionate enough about the issue to make U.S. Senators cower.

So just imagine what today's generation of students can do with the passion for issues they feel in the 20s. And imagine where we as a nation would be without that passion and idealism – the corporate and moneyed powers that already dominate our politics would wrest complete control.

As for me, in my 30s and 40s, I did not take that corporate road. I wanted to get involved in politics when I still had the currency of youthful energy and idealism to spend. And although it could have made me a richer man in the coin of the world if I had, I have had a far wealthier life of experiences in the road I have traveled.

Not everyone can or should do everything the same way that I did. For one thing, every time is different. When I was in school, there was less pressure to achieve financial success. In a sense it did not matter as much whether you made money or not. People in college did not have the expectation that they would make large amounts of money. These days, *Newsweek* found that 77 percent of college students expect that they will become millionaires, and 29 percent have a friend who already is a millionaire. I acknowledge that social pressures may be different.

But if young people are so inclined to spend some of the resource of their youth for the social good, then they are in an even better position than a partner at a law firm. The young are at an advantage, because they have a store of the currency of activism and youth and energy with which they can balance the inappropriate dominance of money in our society.

And today young people are deeply involved in promoting civic good and making profound social change. To truly see this new age of activism, we have to put aside the traditional yardstick of voting and campaign involvement. Using the old yardstick, this generation might appear uninterested in political issues simply because they are disengaged

from conventional politics. Northwestern University's Medill School of Journalism recently released a report finding:

- 58 percent of 18-to-24-year-olds don't pay attention to political stories in the newspapers or television.
- One-third rarely or never follow what's going on in government, and 37 percent do so only occasionally.
- Nearly half feel disconnected from government.

But the young are engaged and willing to take part on the grass-roots level. The National Association of Secretaries of State found the following:

- This is a volunteering generation. For example, while a decade ago, only 55 percent of 15-to-24-year-olds said they had helped an elderly neighbor in the past, 87 percent of today's youth say they had.
- Young volunteers see no political goal in their volunteering. The young are volunteering for social service, trying to help other people directly. Instead of the political campaign, you will find them volunteering in soup kitchens, in hospitals, and in schools.
- As the columnist E.J. Dionne summarized, the young have "hope and charity, but not much faith in conventional politics."

When we look at how this generation is providing a vital volunteer base for our communities, we see how they are shaking up politics.

There are some great examples of this activism at work, like the East Timor Action Network (ETAN). I have experienced the impact of this group's grassroots organizing firsthand. Today I am very active in my support of the people of East Timor, who for years have suffocated under Indonesia's brutal repression. But I hadn't always planned to become involved in East Timor, because I wasn't always aware of the situation there. But then, more than eight years ago, the Madison, Wisconsin, chapter of the East Timor Action Network—ETAN—brought the plight of the East Timorese people to my attention.

The situation in East Timor, which was once unknown or ignored in the U.S., is today an important

item on the foreign policy agenda. ETAN has been the driving force behind this sea change: Grassroots helped pressure Congress to cancel several weapons deals with Indonesia, and in November 1997, ETAN succeeded in getting Congress to enact a law that effectively prohibits the use of U.S.-supplied weapons in East Timor. ETAN has been instrumental in keeping the pressure on Congress in the wake of the violence surrounding the referendum in East Timor in 1999. And today, East Timor is on its way to becoming a sovereign nation. Thanks to ETAN, we've come a long way from the days when Indonesia invaded East Timor using arms supplied largely from the United States.

At the World Trade Organization protests in Seattle in 1999, and last year in Washington, D.C., we saw yet more evidence that student activism is alive and well in the U.S. Students played a leading role in these protests, which surprised a lot of people who didn't know realize what your generation was capable of. The anti-WTO movement showed many members of the Baby Boom generation that they did not have an exclusive franchise on political action.

Of course, the dedication of this new generation of activists to environmental issues also bears mention. On my trips to the Utah Wilderness, and to the strikingly beautiful Boundary Waters area in Minnesota, I met with people from many environmental groups. But throughout all these different groups, there was one constant – in every case young people were the real strength of these organizations. They embodied the commitment it's going to take from all of us if we want to protect our wilderness and clean up our environment.

Or take the anti-death penalty movement. As an active opponent of the death penalty, I know how what a tough issue this is, and I how difficult it is to change the status quo. But students today are doing just that. Law students at Chicago-Kent College, Cardozo School of Law and University of Wisconsin's law school have all worked to free death-row inmates. They have had astounding success, saving many inmates from certain death for crimes they did not commit.

As part of a class project, Northwestern University journalism students found the evidence that exonerated several men on death row in Illinois. I had the chance to listen to one of those former Northwestern students, Shawn Armbrust, who happens to be from Wisconsin. Shawn signed up for the investigative journalism class because she thought it sounded cool. But then she started learning about the case of Anthony Porter, an inmate on

death row in Illinois. She told how she found out that Anthony's lawyer had fallen asleep at trial. She told how they learned that his lawyer stopped investigating when Anthony's family ran out of money. She told how they discovered evidence and later made a videotape of a confession by the man who actually committed the crime for which Anthony was convicted and sentenced to die. And she told of how the judge ordered Anthony released. Shawn summed it up, "He got out because a bunch of 21-year-olds skipped class a lot."

Finally, I think the anti-sweatshop movement on college campuses around the country shows what talented political strategizers today's student activists have become. At campuses around the country, a powerful movement has taken root to end the use of sweatshop labor in the making of university apparel. United Students Against Sweatshops has led this movement and become a force to be reckoned with. To combat sweatshop labor generally, they have built a targeted campaign to call attention to one example of sweatshop labor and mobilized students from coast to coast. The movement against sweatshops is proof that today's younger generation not only cares about the issues, they also know how to fight for what they believe in and get impressive results.

Kenneth Roesslein, the editorial page editor of the Milwaukee Journal Sentinel, no fan of the left, contrasted anti-sweatshop protests at the University of Wisconsin with lawmaking activities at the Wisconsin State Legislature. He wrote:

"Somehow, that chant outside [the Chancellor's] office didn't quite cut it. . . .

"But still, the protest had a lot more going for it than the Legislature did, meeting on the other end of State St., tackling such huge issues as the tastiness of a mourning dove, the Sheboygan County vampire and how one addresses his or her classroom teacher.

"There are people in Wisconsin who would shoot anything for sport, so there's legislation proposed to establish a hunting season for the mourning dove, which happens to be Wisconsin's symbol of peace. . . .

". . . [L]awmakers tussled with legislation declaring it unlawful—a felony—for someone to induce or encourage children to cut themselves. . . .

"Don't enough existing laws cover such cases? . . .

"Then there's debate over a bill requiring students to use courtesy titles when addressing teachers in the classroom. . . .

"All in all, I think I'll take a student anti-sweatshop demonstration, minus the melodrama, any day of the week."

Take all those examples of real activism, and more. But there is still a role for voting and being involved in electoral politics. Voting still matters. As one former cabinet secretary once said: "Bad politicians are sent to Washington by good people who don't vote." If young people care deeply about what's happening in our communities, and what's happening to people on the other side of the world, then they should also care about who gets elected to their local school board, or to the U.S. Senate. Turning away from conventional political efforts will only make more and more of us feel disconnected from government.

In elections and politics, as in other spheres, in addition to the currency of emotion and enthusiasm, young people can provide indispensable knowledge. I have one example from my own reelection campaign in 1998. A young volunteer named Janet Sailor offered her expertise to create my web site. The web site she created was later selected the best campaign web site in the Nation. It helped me to reach out to a much wider range of people, particularly young people. Her knowledge catapulted my campaign into "cyber-politics," and helped me win a tough reelection race where support from young voters was one of the keys to victory. The ability to set up a web site may not seem like much of a feat to many students today, but to a 48-year-old, it's real power!

But even the young, with their tremendous potential for political power, cannot be as effective as they should be, unless we reform our campaign finance system. We cannot do for our country, we cannot always march ahead, we cannot seek a newer world, unless we fundamentally reform the immoral union of money and elections in this country.

The huge amounts of money in our political system today serve to cut public officials off from most people, by instead making them beholden to a wealthy few. If we can change that, then more opportunities will open in the future. Very simply, we need campaign finance reform to lessen the influence of wealthy special interests. We need it to

give everyday voters, who can't write a \$100,000 check to get noticed, a chance to be heard by their representatives.

Campaign finance reform is key to balancing the dominance of age and power and money. We need to change the currency of the body politic from the coin of money to the wealth of enthusiasm and devotion. We need to take big money out of the system and let the people back in. We need to transform the medium of exchange in politics from cash on the barrelhead to people on the job.

I would like to be able to say to every student I meet with that the door is open to participate at this level of politics. I don't feel I can say that today because of the influence of money in politics. It's hard to tell a young person that she can just go out and start campaigning or do something public-spirited and that somehow the political powers that be will see you as a good candidate. Too often now, to get a campaign started, to get the attention of the national campaign committee chairs, you have first to trade in the currency of money. And it will be only the very wealthy who can run for office in the future – if we don't do something about the money in politics today.

Instead of campaign money, I honor the value of what the young can do. Know that you have an emotional power. Last February, the NAACP's President Kweisi Mfume told the group's national convention to honor that power. He told the delegates there:

"Look around, before we leave, at the young people who are with us. You'll see them in the halls, you'll see them in the meeting rooms, you'll see them in the lounges. And when you look in their eyes, you can almost see, if you look close enough, see yourself. If you look through their eyes. And that reflection really is you. It's what we looked like and who we were 20 years ago, or 30 years ago, or 40 years ago. We got here because someone looked in our eyes.

"We didn't understand why they were looking at us so closely like that. We didn't understand why tears were welling up in their eyes as they looked at us, but they were looking at us and seeing themselves. And we must challenge ourselves to do that now with young people, because once you do that you can never look away again. Never look away."

Kweisi Mfume's words hold a powerful message for those in a position of leadership today, as he urged us to look to the younger generation as our guides. And he reminds every young person that we want to see our better selves in them. Young people can show us what we should be.

Robert Kennedy also said:

"This world demands the qualities of youth: not a time of life but a state of mind, a temper of the will, a quality of the imagination, a predominance of courage over timidity, of the appetite for adventure over the love of ease. . . . [I]t is young people who must take the lead."

And if the young people lead, we can keep alive the will, imagination, and courage of our great country, for as President Clinton said in the first State of the Union Address of our new millennium:

"After 224 years, the American revolution continues. We remain a new nation. And as long as our dreams outweigh our memories, America will be forever young. That is our destiny. And this is our moment."

So I say to today's new generation that this is your moment; spend the currency of youth while you are still young, before your youth has been spent. For when we spend our youth on our dreams, it will yield far more than we spend. We will live a much richer life, and we will be a much richer nation.

LBJ

THE SECOND LEVEL OF PRESIDENTIAL INFLUENCE ON THE NEWS MEDIA:

A LONGITUDINAL ANALYSIS OF AGENDA SETTING

Persuasion is the essence of presidential power.¹ Since the mass media are the primary means for a society to connect politics and the public, the President cannot help considering the media as strategically important for persuading the public to support his positions in politics.² Thus, presidential power to mobilize public opinion can be gauged as presidential influence on political news.

The media agenda-setting studies, which primarily investigate the question of who puts an issue on the media agenda, suggest one possible way to assess presidential impact on the news media. McCombs and Shaw initially demonstrated the agenda-setting function of the mass media in 1972.³ Subsequent studies have extensively investigated the agenda-setting process, which is comprised of the media agenda, the public agenda, and the policy agenda, and the interrelationships among these three elements.⁴ Researchers, however, have relatively ignored the question of who sets the agenda for the media until recently, although the question might be particularly important "if the media agenda differs somewhat from reality."⁵

Studies examining the media agenda as a dependent variable have reported external sources such as government officials or experts,

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other news media, medium technology, news-gathering routines, journalistic practices, or ideology as the most influential independent variables.⁶ Among these independent variables, the *New York Times* and the President of the United States have been considered the most influential media agenda-setters.⁷ As for the *New York Times*, researchers have provided consistent evidence of its leading role in setting the agenda for other newspapers or network newscasts.⁸ As to presidential influence on the media agenda, however, previous studies have not showed consistent results.

The original agenda-setting study of the President-media relationship was conducted by Gilberg et al. in 1980 and examined the impact of the State of the Union address on news coverage.⁹ This study and three subsequent studies replicating it suggested contradicting results: President Nixon in 1970 and President Reagan in 1982 were found to influence the hierarchy of issue salience on the media agenda, but President Carter in 1978 and President Reagan in 1985 were found to be influenced by the news media's judgments of what was important.¹⁰ This inconsistency suggested the need for a more sophisticated method for exploring the multifaceted President-media relationship, beyond the simple before-and-after design examining the impact of the State of the Union address on subsequent news coverage.¹¹

More recent studies, which have imported various intervening variables and have employed more sophisticated methods, have demonstrated that the relationship is mutual rather than one-way, flexible rather than fixed, and complicated rather than simple.¹² Wanta and Foote's study is especially noteworthy in that it improved upon the methodology in a few important ways.¹³ First, the presidential agenda was not defined as that expressed in the State of the Union address but was instead measured with the *Weekly Compilation of Presidential Documents*. Since these documents provide many data points over time, using the documents to measure the presidential agenda allows for more sophisticated statistical analyses. Second, the study employed a time-series analysis that can determine the optimal time lags for presidential influence on

the news media agenda and the direction of influence between the two agendas.

In addition, it is important to note that most agenda-setting studies of the President-media relationship have been conducted in terms of the first level of agenda-setting theory, which focuses on the transmission of issue salience between different agendas. The inconsistencies in the results provided by the first-level presidential agenda-setting studies have recently begun to draw attention to the second level of agenda-setting theory. This theory focuses on the transfer of attribute salience between different agendas. It extends the dimension of presi-

dential influence on the news media from the President's influence on issue selection to that on issue presentation.

Recall that, despite the limited evidence, many have pointed to the President as the most influential media agenda-setter. It is vital to establish empirical evidence to support or refute this intuitive assumption of presidential power. In this regard, the present study aims to investigate presidential influence on the news media agenda based upon the second level of agenda-setting model. That is, this study will examine how the attributes of an issue emphasized by the President

correspond with the ways the news media present the issue. In order to determine the direction of causality in the President-media relationship, this study will employ a cross-lagged correlational analysis.

The present study, which is the first attempt to explore the second level of presidential agenda-setting, could contribute to illuminating the collective process of agenda building in which media, government, and citizens reciprocally influence one another.¹⁴

LITERATURE REVIEW

The half-century of agenda-setting studies have focused mainly on the agenda of objects such as public issues, political candidates, the presidential campaign, and others.¹⁵ Recently, the theoretical focus has moved to a second level of attention—the attributes of each object. This new frontier of agenda-setting studies suggests that

Recall that, despite the limited evidence, many have pointed to the President as the most influential media agenda-setter. It is vital to establish empirical evidence to support or refute this intuitive assumption of presidential power.

"the mass media set the agenda of attributes, those characteristics and properties filling out the pictures of the objects beyond setting the agenda of the objects themselves."¹⁶ The second level of the agenda-setting model can adequately be applied to the exploration of the President-media relationship, as suggested by McCombs, Shaw, and Weaver:

The salience of elements, objects or attributes on the media agenda influences the salience of those elements on the public agenda. . . . By extension, of course, we can talk about the transfer of salience from any agenda to another, the president of the United States to the news media, the *New York Times* to other newspapers, and so forth.¹⁷

The theoretical movement toward a focus on attribute agenda-setting has been expedited by its convergence with framing theory. According to Entman, "to frame is to select some aspects of a perceived reality and make them more salient in a communicating text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation for the item described."¹⁸ Tankard et al. defined a frame as "a central organizing idea for news content that supplies a context and suggests what the issue is through the use of selection, emphasis, exclusion and elaboration."¹⁹ Comparing a "frame" to an "attribute," Ghanem argued that the two theoretical constructs could be interchangeably used since they both conceptualize the aspects of issue presentation.²⁰ In using the vocabularies of the second level of agenda setting, however, it seems more appropriate to define a frame as a principle organizing the salience hierarchy of the attributes that an issue has, rather than to equate a frame with an attribute.

Based upon the preceding discussion, it can be hypothesized that the President not only tells the media what to cover but also tells them how to cover public policies, political debates, or himself. In other words, the President can frame the ways an issue is covered by the news media by emphasizing certain attributes of the issue.

Ghanem suggested the following four issue attributes: subtopics, framing mechanism, affective elements, and cognitive elements.²¹ Benton and Frazier explored the attributes of the economy issue on one hand in terms of specific problems, causes, and proposed solutions associated with the issue; and on the other hand in terms of pro and con ra-

tionales for proposed solutions and the persons and groups making the proposals.²² In a study of Spanish elections, McCombs et al. examined the images of the candidates in terms of two dimensions of attributes—substantive and affective attributes.²³ The substantive attributes include the candidates' personalities, ideologies, and qualifications; the affective refer to whether the media and/or the public evaluate the candidates in a positive, neutral, or negative tone. In a study of Japanese elections, Takeshita and Mikami identified the sub-issues of the political reform issue, such as "eliminating corrupt political practices," or "banning political donations by private business," as the attributive aspects of the issue.²⁴

Relying on previous examinations of issue attributes, this study will determine the attributes of a policy issue on the presidential agenda in terms of substantive attributes. Specifically, it will evaluate the issue in terms of subtopics. This is primarily because the affective dimension of a public policy issue has little variation on the presidential agenda. The President, as a policy initiator, cannot deal negatively with his policy. In short, the present study hypothesizes that the subtopic salience of a policy issue on the presidential agenda would be significantly transferred to the subtopic salience of the issue on the news media agenda.

STATEMENT OF HYPOTHESIS

For this particular second-level analysis of presidential agenda-setting on the news media, the public welfare issue was determined to be one of the most salient policy issues on the presidential agenda through analyzing President Clinton's State of the Union address delivered in February 1997. This study predicts the significant transfer of attribute salience from the presidential agenda to the news media agenda. It specifically posits that:

The presidential emphasis on the public welfare subtopics will significantly influence the emphasis on the public welfare subtopics by the news media.

In other words, this study, employing a cross-correlational time-series analysis, hypothesizes that the cross-lagged rank-order correlation from the presidential agenda of subtopics to the news media agenda of subtopics will be significant.

METHODS

According to Gonzenbach and McGavin, agenda setting is by definition a time-related process. Many of the early agenda-setting studies, however, were based on cross-sectional data which could not directly capture the relationships of the agendas over time. There has, however, been a recent methodological progression toward more sophisticated research designs, including trend studies, panel studies, time-series analyses, and non-linear approaches, in every domain of agenda-setting research.²⁵ Suggesting the idea of parallel content analysis as a new strategy for research, Neuman also emphasizes the importance of time-series measurement.²⁶

In line with such methodological progression, this study employed a cross-correlational time-series analysis of two different agendas, the presidential agenda and the news media agenda of subtopics. The agendas of subtopics were correlated with each other at three data points—January, May, and September 1997. Each data point had a one month time frame, not only because previous cross-correlational analyses usually employed a one-month time frame,²⁷ but also because grouping one-point data by one month guaranteed robust samples. The particular year was selected because of two considerations. First, 1997 was the first year of President Clinton's second term. Wanta and Foote have noted "a President early in his administration usually enjoys a honeymoon-period with the press."²⁸ It can, therefore, be assumed that President Clinton exerted more influence on the news media during that year. Second, the choice of 1997, which was prior to the Clinton-Lewinsky affair that saturated news coverage, allowed the externally confounding factor of a presidential sexual scandal to be controlled.

A total of forty²⁹ presidential policy statements or speeches concerning the issue at the three data points in time were retrieved from the *Weekly Compilation of Presidential Documents* in order to determine presidential emphasis on the subtopics of the public welfare issue. The *New York Times* provided the importance hierarchy of the public welfare subtopics on the news media. The *Times* was considered a representative of the news media based upon two

rationales. First, many agenda-setting studies have demonstrated its leading role in setting an agenda for other news media. Second, as Beinhoff pointed out, the *Times* has a high proportion of elite readers, whom the President might wish to influence.³⁰

A total of 363³¹ news articles relevant to public welfare policy issues were retrieved from the Lexis-Nexis database, at the three data points. These news stories were stratified in terms of day of the week in order to control possible cyclic variations of content for different days of the week. Among the news articles grouped per day of the week, about 25 percent of the stories were proportionally sampled using random numbers, and a total of 89 stories were obtained for the final sample.

By carefully pre-reading the presidential addresses and news articles published in January and in May, respectively, the subtopic categories of the public welfare issue were determined as follows: child welfare, residential welfare, family welfare, minority welfare, public health welfare, workfare, others, and errors. The

Once the controversies surrounding the issue are settled by legislative procedures, however, the President has much more power to define the way in which the news media cover the issue.

specific definition of each subtopic is displayed in Appendix A. Using two coders, this study tested the coder reliability of the subtopic categories for a random subsample consisting of two presidential addresses and eleven news articles, and obtained .76 for Holsti's reliability coefficient and .69 for Scott's Phi.

Each presidential address or news story as the unit of analysis was examined for any mention of the above seven subtopics. If an address or a news story contained more than one subtopic which were judged to be almost equally emphasized, the address or news story was multiple-coded.³² The six subtopics, excluding such categories as "others" or "error," on the presidential agenda and those on the news media agenda were rank-ordered respectively, according to the frequency of the codes assigned to each subtopic category, at the three data points in time. As a result, six sets of ranks were obtained.

The association between two different sets of ranks was measured with Kendall's tau correlation, since, as Gray and Kinnear put it, Kendall's tau correlations have advantages over the Spearman correlation, especially with small data sets in which there are tied assignments.³³

RESULTS

Table 1 summarizes the relative emphasis placed on each subtopic by the President and by the news media in January (Time 1), May (Time 2) and September (Time 3) 1997. Since a new welfare reform bill was passed in Congress in 1996, President Clinton continuously brought the main points of the bill to the fore. Hence, such subtopics as workfare and public health welfare were made most salient on the presidential agenda through the use of the three data points in time. The news media also most frequently covered workfare related items but emphasized child welfare more than public health.

The results shown in Figure 1 demonstrate that the President-media relationship is very complicated. Among a total of 15 President-President, news-news, and President-news or news-President rank-order correlations, only the rank-order correlation between the presidential agenda of subtopics in Time 2 and the news agenda of subtopics in Time 3 is statistically significant ($p < .05$); this verifies the second level of presidential influence on the news media.

Comparing each cross-lagged correlation with the Rozelle-Campbell baseline reveals mutual influences between the President and the news media. That is, from Time 1 to Time 2, the President was influenced by the news media's judgments of what was important concerning public welfare, but, from Time 2 to Time 3, the President's evaluation of subtopic impor-

tance influenced the salience hierarchy of the public welfare subtopics on the news media agenda.

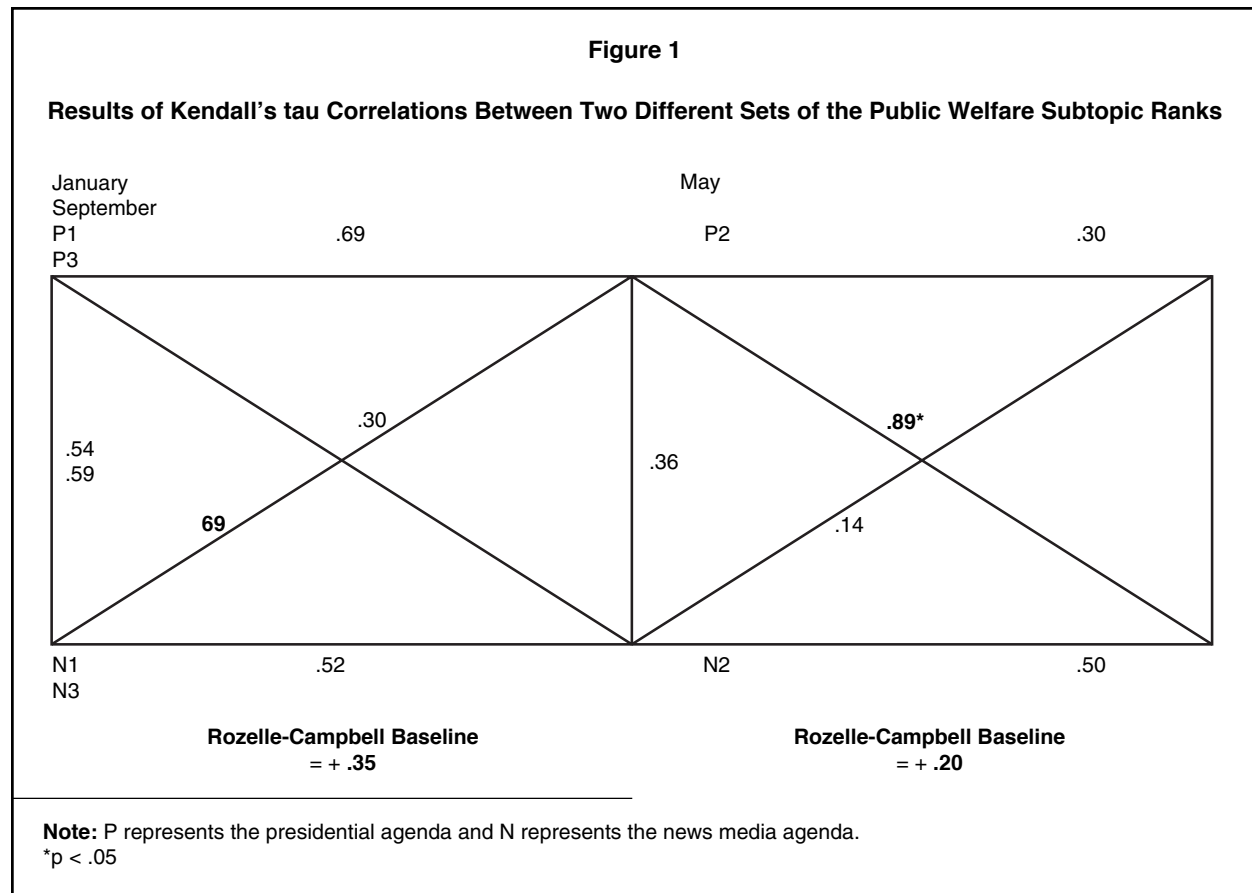
The month of May, when the direction of influence between the President and the news media was reversed, actually formed a watershed in the development of the public welfare issue in 1997. At the beginning of that month, Democrats and Republicans, based on their historic balanced budget agreement, had newly arranged public welfare spending. There were also more presidential policy statements or speeches and news stories related to the public welfare issue during the month. From this, it can be tentatively inferred that the way in which the news media cover a public policy issue most effectively influences the presidential emphasis on the issue attributes while the issue remains controversial. Once the controversies surrounding the issue are settled by legislative procedures, however, the President has much more power to define the way in which the news media cover the issue. Thus, the issue-development cycle, which parallels the issue-attention cycle suggested by Downs³⁴ to some extent, can be considered an intervening variable in presidential influence on the news media agenda of issue attributes, although this needs further investigation.

In addition, looking at the President-media relationship over a longer time period (from Time 1 to Time 3) resolves the inconsistency in the current findings. As shown in Figure 2, the cross-lagged President-news correlation from Time 1 to Time 3 is substantially bigger than the opposite cross-

Table 1

**Emphasis on the Public Welfare Subtopics by the President
and by the News Media in January, May, and September 1997**

Time Points	January		May		September	
	President	News	President	News	President	News
<i>Subtopics</i>						
Child	6.3%	19.4%	19.5%	21.9%	23.8%	20.0%
Environmental		6.5%		12.5%		
Family	6.3%	6.5%	12.2%	3.1%	19.0%	15.0%
Minority	18.8%	22.6%	19.5%	15.6%	4.8%	15.0%
Public Health	18.8%	16.1%	12.2%	6.3%	28.6%	5.0%
Workfare	50.0%	6.5%	26.8%	21.9%	23.8%	25.0%
Others		9.7%	9.8%	18.8%		20.0%
Total number of identified subtopics	16	31	41	32	21	20
The presidential addresses (N = 2) and news articles (N = 16) identified as errors were excluded in the computation of the percentage accorded each subtopic.						



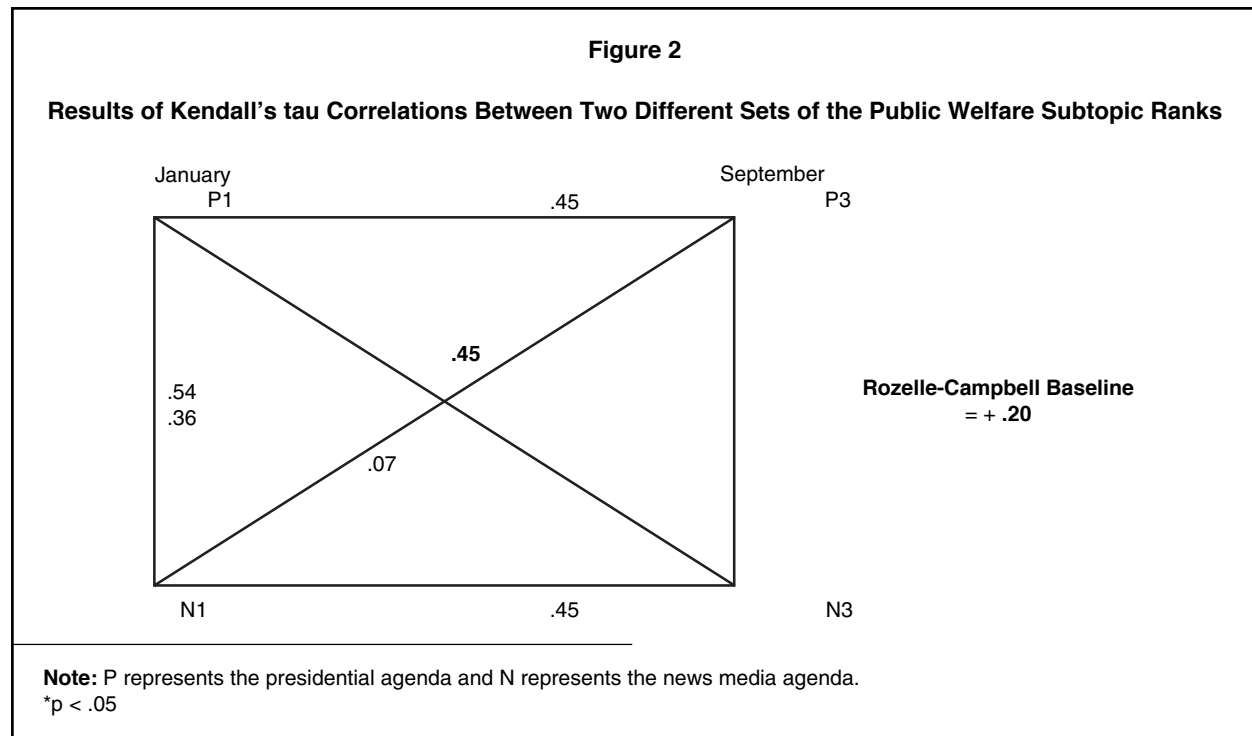
lagged correlation and also than the Rozelle-Campbell baseline. Thus, overall, it can be concluded that the President influences the ways the news media cover the public welfare issue rather than is influenced by the news media's judgments of which aspects are more important or less important concerning the issue. This tentatively supports the hypothesis of this study.

The findings in this study, which verify presidential influence on the news media agenda of issue attributes, contradict some previous first-level findings. For instance, Wanta and Foote suggested that, for social problems that mainly included public welfare issues, the President might use the media as a guide to the importance of issues to which he should respond, rather than affect the media's evaluation of issue importance.³⁵ Such contradiction, however, indirectly demonstrates the advantage of the second-level analysis of agenda setting. That is, even when significant presidential influence on the news media's evaluation of issue importance is not found, presidential influence on the media's judgments of issue attribute importance, in other words, presidential framing of issue reporting, can be verified.

That all three cross-sectional correlations between the presidential agenda of subtopics and the news media agenda of subtopics are not significant implies that the optimal time lag for the second level of agenda setting between the President and the news media is more than one month. Recalling that Winter and Eyal suggested the optimal time lag for public agenda-setting as four to six weeks,³⁶ the optimal time lag for the second level of presidential agenda-setting seems longer than that for public agenda-setting. To estimate more accurately the optimal time lags for presidential influence on the news media agenda of attributes, however, requires employing a more sophisticated time-series analysis dealing with much more than three data points in time.

DISCUSSIONS

As demonstrated by the findings of the present study, the second level of the agenda-setting model provides a way to resolve the inconsistencies in previous findings on the president-media relation-



ship. As an advocate of certain attributes or frames, the President may have the power not only to tell the news media what to cover but also to tell them how to cover certain political objects.

It is, however, important to note that the direction or extent of the second level of agenda-setting effects between the President and the news media is mediated by a variety of contingent factors. Previous studies have demonstrated that such variables as presidential approval rating³⁷ or issue characteristics³⁸ mediate the agenda-setting process between the President and the news media. Although, in her first level of agenda-setting analysis, Beinhoff failed to find the intervening role of medium difference in the President-media relationship,³⁹ that variable can also be entered into the second-level relationship. This study suggests the issue-development cycle as a possible intervening variable.

The greatest challenge to the present study lies in its low coder-reliability of the subtopic categories. Since the distinction between issue and subissue remains controversial, high reliability of issue categories or subissue categories is essential for agenda-setting studies. The dimensionalization of issue attributes or operationalization of issue frames is also still problematic. The present findings about presidential influence on the news media's evaluation of issue subtopic importance, therefore, should be supplemented by other evidence about other

dimensions of presidential attribute-setting on the news media.

In Robert Dahl's classic formulation, political power consists of the ability of A to get B to do something that B would not otherwise have done.⁴⁰ In applying such a definition of political power to the study of presidential influence on the news media agenda, it would be difficult to assess the changes in issue or attribute emphasis on the news agenda which have been caused purely by the President. The present attempt to determine the direction of causality between the presidential agenda and the news agenda could have possibly been confounded by uncontrolled factors influencing both the agendas, e.g., real world events. It, therefore, seems very important for future research on the President-news media relationship to develop a much stronger research design for controlling confounding variables.

The inconsistency in previous findings suggests that further examination of the first level of presidential influence on the news media agenda is necessary. More importantly, the complicated relationship between the transfer of issue salience and that of attribute salience between the President and the news media should be explored further. For instance, it would be an interesting interrogation whether the President has more power to tell the news media what to cover or how to cover politics.

The compelling argument model, which investigates how the issue attribute salience on one agenda is correlated with the issue salience on the other agenda,⁴¹ can also be adopted in the agenda-setting analysis of the President-media relationship.

In this way, studies examining the agenda-setting process between the President and the news media have the potential to methodologically and theoretically enrich agenda-setting research. Further research in this area can also illuminate the agenda-building process among the President, the press, and the public, especially by investigating the origins of the news media agenda of issues or attributes and indirectly assessing presidential influence on the public.

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NOTES

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APPENDIX A.

CODING INSTRUCTIONS FOR THE STUDY OF THE SUBTOPICS OF PUBLIC WELFARE ISSUE

The general meaning of welfare is health, happiness and general well-being; prosperity; public relief.

We will analyze the welfare-related 1997 presidential policy statements or speeches, and *New York Times* articles, in terms of the subtopics of public welfare issue. You should try to find which subtopic is most saliently or predominantly reported on in the analyzed presidential addresses or news story among eight subtopics introduced below. If you find more than one subtopic that are judged to be almost equally emphasized in the analyzed presidential address or news story, however, please check all the subtopics on the multiple coding sheet.

We will deal with only one variable, the public welfare subtopics. Code carefully according to the definition of each subtopic, and record your codes on the coding sheets. Also, do your coding without consulting other coders. Please, indicate the month of publication of the presidential address or news story being analyzed by filling Alphabet capital initial in the coding sheet. For instance, if the news story is published in January 1997, you should record "J" on the appropriate space assigned to the month of publication.

THE DEFINITIONS OF SUBTOPIC CATEGORIES

Child Welfare

Welfare for children's well-being. Welfare programs for protecting children's physical and mental health; child foster program or programs to prevent children abuse.

Residential Welfare

This subtopic category mainly refers to housing welfare such as public housing policy, rent regulations for the city poor, etc. In addition, this category would include the issues concerning spending for

the transportation convenience or leisure facilities for the city poor.

Family Welfare

Family assistance programs such as tax-cut benefits for middle-income or low-income families and the programs to support single-mother or single-father families.

Public Health Welfare

Welfare policies, laws, or debates related to improving public health. This subtopic category mainly includes such issues as health insurance, Medicaid or Medicare, and also teen-pregnancy issue.

Minority Welfare

Legal immigrants welfare, mainly including food stamps or health care benefits provided for them; welfare for ethnic minorities like Indian people; welfare for the elderly; welfare for the disabled.

Workfare

Welfare mainly related to welfare-to-work programs, job-creating or job-training programs. Emphasis placed on self-reliance welfare instead of government-dependency welfare and low cost welfare. Under new welfare law enacted in 1996, the current able-bodied welfare recipients are required to work within 2 years rather than remain as welfare-check recipients. This subtopic category also would include the news stories or presidential addresses mentioning several incentives for improving the employment of welfare-recipients like tax benefits given to the companies that employ welfare recipients. Also the welfare issues for working people like minimum wage will be also included.

Others

Welfare-related BUT not applicable to any of the above categories. For instance, welfare in foreign countries or welfare as an issue in political elections.

Error

This category is set up to identify the stories which are not related to welfare issues but retrieved through the Lexis-Nexis database simply by mistake, or the stories which are only marginally related to welfare.

POLITICAL REALISM RECONSIDERED:

U.S.-CUBA RELATIONS

Morality, then, as the channel to individual self-fulfillment—yes. Morality as the foundation of civic virtue, and accordingly as a condition precedent to successful democracy—yes. Morality in governmental method, as a matter of conscience and preference on the part of our people—yes. But morality as a general criterion for the determination of states and above all as a criterion for measuring and comparing the behavior of different states—no. Here other criteria, sadder, more limited, more practical, must be allowed to prevail.¹

George F. Kennan,
Realities of American Foreign Policy

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U.S. foreign policy is often morally barren. In their pursuit to further U.S. national interests, American policy makers hide behind the words of Mr. Kennan to justify some of the more unsavory actions taken by the U.S. government abroad. Mr. Kennan's oft-quoted statement encapsulates the dominant school of thought in international relations: namely, political realism. Political realism posits that moral judgments have no place in discussions of international affairs or foreign policy.² Stated more generously, it argues that moral consideration should not play a decisive role in shaping foreign policy. Rather, a state's national interests, however defined, should guide its international relations.

As a result, the normative notions of justice, liberty, and human

dignity have been long ignored in international relations. These political ideals are part of the ethos of democratic societies. Their absence from the international level should strike citizens as troubling. National interests pursued in a moral vacuum invite abuses of power unacceptable in most democratic societies. Yet, they are deemed justifiable beyond U.S. shores. U.S. strategic security interests, realist proponents argue, require that moral considerations be sacrificed at times to ensure a nation's greater interest in maintaining its national security, as was the case during the Cold War. The fundamental question then is twofold: first, does the doctrine of political realism withstand scrutiny; and second, if so, when is its use justifiable?

The following article explores this question. It deconstructs the assumptions implicit in political realism and examines how the doctrine has been used in U.S. foreign policy. The analysis reveals that while justifiable at its core, political realism is riddled with dark moral consequences and ripe for self-interested abuse. Political realism has been inappropriately used to characterize the international context as decidedly uncertain and indeterminate in order to justify omitting moral consideration and using practical means-end reasoning. Its illegitimate application raises problematic issues about the proper role of morality in shaping U.S. foreign policy. The article explores these issues by examining the role of political realism in U.S. foreign policy towards Cuba in the 20th century. The examination tries to better articulate the proper role of political realism in U.S. foreign policy and the moral obligations the U.S. has to other nations in conducting its foreign policy. The extent of these obligations may ultimately be more than U.S. leaders and citizens are willing to accept.

U.S. FOREIGN POLICY RECONSIDERED

The fundamental nature of international relations has not changed over the millennia. International relations continue to be a recurring struggle for wealth and power among independent actors in a state of anarchy.³

Robert Gilpin,

War and Change in World Politics

State of anarchy. State of war. State of nature. All have been used to describe the environment in which nation-states operate. These three closely related paradigms generally depict the international scene as a natural, lawless state of competition. In such an

environment, nations face constant threats to their relative positions as they vie to secure and protect their varied national interests. Absent a higher political authority to appeal to or a mutually agreed upon international system, nations discount moral scruples because other nations cannot be trusted to adhere to the same implicit normative international code. Consequently, no one adheres to any international moral code. This describes, as defined earlier, the dominant doctrine of political realism.

Political realism was the rational and normative foundation of much of U.S. foreign policy during the 20th century. Today, it continues to serve as a basis for much of U.S. foreign policy. Political realism's legitimacy, however, does not go unchallenged. Its dismissal of, or lack of concern for, political morality is disturbing, especially to those weaker, less developed nations who feel its effects most gravely. An analysis of the role of political realism in the history of U.S.-Cuba relations is instructive. The analysis suggests that U.S. foreign policy often inappropriately applies the doctrine of political realism as a rationalization to justify its pursuit of national interests, irrespective of its effects on Cuba.

POLITICAL REALISM DECONSTRUCTED

Political realism is grounded in the notion that the very nature of international relations makes it imprudent to allow normative principles to govern a nation's foreign actions and policies in the global context. That is, foreign policy operates in an environment of uncertainty. Such an environment is often characterized as anarchical, warlike, and Darwinist. It is anarchical in the sense that it is a lawless state devoid of a higher political and/or governmental authority. It is warlike in the sense that its members, the nations of the world, struggle for power in securing their respective national interests. Finally, it is Darwinist in the sense that there is a natural order dictated by the rule of survival of the fittest. Together, these conditions pose a substantial threat to nations seeking to preserve or enhance their interests. A wrong move or miscalculation could have potentially disastrous consequences for a nation and its people. Thus, according to the political realist, it is imprudent to adhere strictly to normative international principles given the harsh, indeterminate state of the world.

Accepting the realist rationale, it becomes reasonable and morally palatable to pursue policies abroad that would be prohibited in the domestic context. For example, during the Cold War the U.S. supported right-wing dictatorships throughout

Latin America and Africa (e.g., Chile, Haiti, Guatemala, Angola). These repressive regimes reportedly murdered thousands of their citizens, typically characterized as leftist sympathizers, and abrogated citizens' civil and political liberties. Such oppressive governmental actions are not tolerated in democratic societies. However, U.S. support of these regimes was deemed justifiable on grounds that it was a necessary action in the context of the Cold War. At the time, the international political climate was highly charged and warlike as the U.S. and Soviet Union competed to protect their national security and respective interests. The United States, convinced of the Soviet Union's global intentions, acted on the belief that the Soviets were bent on exporting the Marxist revolution to all nations across the world. Consequently, it adopted a policy of containment to protect the U.S. and its allies from communist infiltration.

Countries like Chile and Guatemala, the realist argues, became unfortunate victims of the Cold War.⁴ While U.S. leaders and policy makers would have preferred that these countries were governed by democratic regimes, it was deemed necessary to support these authoritarian, anti-communist regimes even if it violated the spirit of democratic principles. U.S. national security interests superceded the U.S.'s desire to conduct foreign policy in a manner that fostered democratic principles as well as any moral claims made by the oppressed peoples of these countries. If U.S. national security had been compromised and the Soviet Union had won the Cold War, much more would have been lost. Not only would U.S. citizens be subjugated to the Marxist revolution, members of these affected countries would have suffered the same fate as well. In other words, freedom and liberty are hollow words if there is no one around to enjoy them.

The realist argument is compelling. It appeals at a fundamental level to the right to self-preservation and self-determination. If the Soviet Union had won the Cold War, the United States, as we know it, would have perished. Moreover, individual citizens would have been robbed of their ability to choose for themselves the future course of their nation. In this respect the Cold War presented the U.S. with distinct, stark choices: contain the spread of the Marxist revolution or die as a nation. It becomes easy to sacrifice moral scruples when the choice is

presented in that fashion. Indeed, one may wonder whether the U.S. even had a choice. This rationale may be justifiable at its core, but it is riddled with dark moral consequences and is ripe for self-interested abuse.

The strength and danger of the realist's argument lies in its sharpness and clarity. It reduces rational consideration of foreign policy to a simple choice: act to pursue the nation's interests independent of moral judgment or risk undermining and jeopardizing the nation's interests. The argument allows a nation to justify practical means-end reasoning by eliminating the Kantian concern for using individuals or groups of individuals as a means without

their consent. Moral accountability is dissolved through the argument's appeal to the epistemological excuse of insufficient knowledge. In an environment of high uncertainty, a nation's pursuit of its national interests to the detriment of others cannot be construed as morally deficient.

It is questionable, however, whether the preceding paradigm fits the international reality.

While an investigation of the

Cold War remains outside the scope of the article, it is more than plausible to suggest that the tight, East versus West bipolarity of the Cold War was somewhat overstated. Neither NATO nor the Warsaw Pact was as monolithic as presumed. The Sino-Soviet split was real and the Eastern Europe nations were not uniform in their embrace of communism. Nor were the Allied nations unified in their policies, as evidenced in the U.S.'s inability to convince the Allies to multilateralize the trade embargo against Cuba. The point is that the international context was not as simple and clear cut as the realist conception may suggest. The choices available to the U.S. were not simply containment at all costs or risk losing the war. There were a multitude of choices beyond this stark dilemma. Furthermore, even if one were to concede the realist conception of the Cold War, today's international scene is dramatically different.

The danger of the political realist argument is that it makes it too easy to dismiss moral consideration from the international context in favor of means-end reasoning. John Rawls, a noted political philosopher, articulates this concern well when he states, "This reasoning justifies too much, too quickly, and provides a way for the dominant forces in government to quiet any bothersome moral scruples."⁵ Within democratic society individual

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citizens possess liberty and freedom to pursue their interests as they see fit. This pursuit, however, is restricted in that it must be conducted in a fashion consistent with society's principles of justice, as expressed through its laws and moral norms. That is why the strongest cannot bully the weakest and the majority cannot tyrannize the minority. In this way citizens can acknowledge each other's claims and interests as legitimate and fairly pursued and achieved. In international relations, the political realist argument removes this fundamental democratic tenet from consideration.

The negative consequences of political realism are clearly written on the pages of U.S. history. The U.S. atomic bombings of Nagasaki and Hiroshima during World War II illustrate the horrific potential for harm implicit in political realism. In the summer of 1945 the United States was deciding whether to use atomic bombs on Japan. By this point, World War II was presumably won and the major point of contention was determining the best way to hasten the end of combat. Dropping the atomic bomb was viewed as the best manner in which to achieve the objective. It was reasoned that it would serve several purposes: first, it would save the lives of countless American soldiers; second, it would provide Japanese leaders a way to save face, an important matter given Japanese military samurai culture; and third, it would supposedly impress the Soviet Union with American power and make the Soviets more amenable to meeting American demands.⁶ This may be sound means-end reasoning, but it is replete with moral hazards.

Political realism allows nations' leaders to forgo moral consideration without sufficient investigation of the specific context. In this case, it was not a stark choice between drop the atomic bomb or lose the war. There were other, more morally acceptable alternatives that could have achieved the objective of ending the war. However, they would have been costlier to U.S. interests. For example, if the U.S. instead had chosen to invade Japan by conventional means it would have meant the lives of thousands of American soldiers. Implicit at some level in the U.S. decision to use the atomic bomb is the belief that Japanese lives, both military and civilian, were worth less than the lives of American soldiers.

This is morally troubling. The Japanese people had no active role in the decision to attack Pearl Harbor or join in the war against the United States. Japanese military commanders, with the approval of the Emperor, made these decisions. The Japanese people had little choice. So why should their lives be devalued? President Truman offered one reason,

stating that the Japanese were beasts and should be treated as such.⁷ The fact that the president employed such racist rationale to justify the devaluing of the Japanese strongly suggests the lack, or rejection, of moral consideration in the decision-making process. Such rationale is inconsistent with the democratic principles of equality and human dignity. Political realism allowed U.S. leaders to sidestep this sticky moral issue and secure U.S. national interests at minimum costs. More broadly, it is important to realize that the use of political realism is especially perilous for the United States, the world's only superpower, because the consequences of its actions reverberate around the world. What, then, is the alternative?

The challenge of discarding the doctrine of political realism is that it forces a nation, both its leaders and citizens, to confront the problematic issue of a nation's moral obligations to its fellow countries and their peoples. Political realism allows states to evade the issue. By recognizing that operating in the international context is not always a stark choice between "us and them," states, especially democratic states, can no longer ignore moral judgment in conducting foreign policy. They cannot pursue their national interests irrespective of its effects on other nations. Each nation must now determine, for itself, principles of conduct in international relations consistent with its own internal principles of justice. And if inconsistent, then it must provide public reasons for why principles accepted in the domestic context do not apply in the international context.

The framework for setting U.S. foreign policy would have to be reexamined in such a system. First, strict guidelines would have to be set for determining when political realism is applicable. At its core, political realism is a justifiable and unfortunately necessary doctrine. Emergency crisis situations, characterized by high uncertainty and risk, arise in international relations that merit its application. The challenge lies in delineating those situations and preventing the application of political realism in situations that are not crises. Next, U.S. foreign policy would have to define the moral boundaries of U.S. interaction with other nations and their peoples. For example, how does the U.S. differentiate, if it does at all, its moral obligations to a nation's government versus those to its people, especially in countries where the government was not democratically elected and is a repressive regime? Furthermore, what is the extent of the U.S.'s moral obligation to burdened nations whose people suffer extreme hardship and poverty due to being born into a country lacking the requisite natural

resources? These types of questions, and many others, would have to be addressed in order to begin shaping a foreign policy that takes morality and moral duties in the international context seriously.

The following analysis is not meant to provide complete responses to these difficult questions. That would be an immense task outside the scope of the article. Rather, it intends to explore these issues through a thoughtful discussion of how U.S. foreign policy towards Cuba in the 20th century has answered, or failed to answer, these questions. It is but a first step.

POLITICAL REALISM EXAMINED: U.S.-CUBA RELATIONS

We must destroy everything within our cannons' range of fire. We must impose a harsh blockade so that hunger and its constant companion, disease, undermine the peaceful population and decimate the Cuban army. The allied army must be constantly engaged in reconnaissance and vanguard actions so that the Cuban army is irreparably caught between two fronts and is forced to undertake dangerous and desperate measures.⁸

The Breckenridge Memorandum, 1897

U.S.-Cuba relations have always been troubled. The tempestuous nature of the relationship stems from the simple fact that for the better part of the history of their relationship, the United States has dominated the political and economic life of Cuba. This dominance generally has not been in the best long-term interests of the Cuban people. Whether intentionally or not, the U.S. has applied the doctrine of political realism in its foreign policy towards Cuba and pursued its national interests, indifferent to its negative impact on Cuban interests. Indeed, prior to the Civil War many Southern politicians felt that the United States should annex Cuba.

PRE-REVOLUTIONARY PERIOD

Notable U.S. involvement with Cuba began in trade at the turn of the 18th century. Located 90 miles south of the United States, Cuba was a natural trading partner. In 1850, trade with the United States represented 39 percent of Cuba's total foreign trade.⁹ This figure grew over the next several decades as the U.S. influence in the area grew and Spanish influence declined. By 1877, the United States accounted for 82 percent of Cuba's total exports.¹⁰ Over the next twenty years leading up to the

Spanish-American War, Cuba's economic reliance on the U.S. continued to grow.

U.S. entry into the Cuban War for Independence in 1898 ushered in a new phase in U.S.-Cuba relations. No longer certain that Spain could protect American interests on the island, the U.S. sent the U.S.S. Maine to Havana. The U.S.S. Maine's subsequent destruction and the brief war that ensued removed the yoke of Spanish colonialism only to replace it with the yoke of U.S. imperialism. As clearly demonstrated in the Breckenridge Memorandum cited earlier, the U.S. never intended to allow Cuba sovereignty. Secretary of War Elihu Root expressed plainly the U.S. position at the time when he said, "although it [Cuba] is technically a foreign country, practically and morally it occupies an intermediate position, since *we have required it to become part of our political and military system* (emphasis added)."¹¹

U.S. involvement in the Cuban War for Independence in 1898 is a clear example of the danger inherent in political realism. Sovereignty is the foundational right of a "people." The Cuban people had the right to determine for themselves the future political course of the island. By requiring that Cuba become part of the U.S.'s political and military system, the U.S. usurped unjustly this basic right. The usurpation was justified on the realist premise that democratic principles of justice are not applicable to the international context, specifically the U.S.-Cuba context. In the Cuban context, the argument for dismissing moral consideration was not the presence of an imminent threat to U.S. national interests, as used during the Cold War. Rather, it was more insidious.

The disregard for morality was premised implicitly on the notion that Cubans, as a people, did not merit equal moral consideration to American citizens. Democratic principles safeguard the right to self-determination. Cubans were not granted this right due to their inferior nature. Like Truman's denunciation of the Japanese as savages, the U.S., or at least some of its leaders, characterized Cubans as morally incapable. Undersecretary of War Breckenridge captures this belief when discussing the possible annexation of Cuba when he states,

... They [Cubans] only possess a vague notion of what is right and wrong, the people tend to seek pleasure not through work, but through violence. As a logical consequence of this lack of morality, there is a great disregard for life. It is obvious that the immediate annexation of these disturbing elements into our own federation in such large numbers would be sheer madness, so before we do that we must clean up the country, even if this means

using the methods Divine Providence used on the cities of Sodom and Gomorrah.¹²

Some may want to dismiss these remarks as the biased rhetoric of an earlier, less enlightened time. Yet, the vestiges of this biased, paternalistic attitude continued to manifest themselves in U.S. foreign policy towards Cuba.

After the Spanish-American War, the U.S. installed a provisional military government in Cuba. The initial U.S. occupation of Cuba ended only when the Cuban government agreed reluctantly to incorporate the Platt Amendment into its 1901 constitution. The Platt Amendment stipulated, "Cuba has only a limited right to conduct its own foreign policy and debt policy. It also gives the U.S. an open door to intervene in Cuban affairs."¹³ Two years later, the Cuban government signed a treaty leasing Bahía Honda and Guantánamo to the U.S. This coerced treaty did not contain a 99-year clause, and could only be terminated when both governments agreed to the termination.

During the next fifty-six years leading up to the Revolution, Cuba was plagued by corrupt democratic regimes and dictatorships. Whether democratic or dictatorial, the U.S. made certain that the Cuban government protected U.S. interests on the island, subordinating local considerations. In 1906, the U.S. military reoccupied and governed the island for three years following the resignation of President Tomás Estrada Palma. On two additional occasions, in 1912 and 1917, U.S. military forces took control of the Cuban government in order to protect American interests.¹⁴ In 1933, the U.S. collaborated with Sergeant Fulgencio Batista to overthrow the nationalist government of Ramón Grau San Martín. The Grau government had unilaterally abrogated the Platt Amendment, launched a host of reforms that diminished U.S. interests, and refused to bend to U.S. demands that reforms be moderated.¹⁵ The U.S.-backed Batista coup overthrew the nationalist government in January 1934.

From 1934 to 1940, the dictatorial Batista regime ran Cuba with U.S. backing. In 1940, Cuba adopted a new constitution and Batista was elected Cuba's fourteenth president. Declining to run in 1944, Batista left office and Ramón Grau San Martín was elected president. In March 1952, Batista overthrew the government again in a bloodless coup d'état, suspended the constitution, and canceled elections.

Assuaged by Batista's promise to attract private foreign capital and his strong anticommunist sentiment, the U.S. recognized a second dictatorial Batista regime.

U.S. political involvement with Cuba highlights the fact that from the end of the Spanish-American War until the Cuban Revolution, the U.S. treated Cuba not as a sovereign nation, but as a U.S. territory whose national interests were secondary to American interests. The U.S. controlled Cuba's political structure. Whenever Cubans sought to remove U.S. control and assert Cuban sovereignty, as with the nationalist government of Ramón Grau San Martín, the U.S. withdrew support and backed opposition leaders who would produce a more malleable, U.S.-friendly regime.

U.S. Ambassador Earl E.T. Smith expressed the point best when he bluntly remarked, "the American Ambassador was the second most important man in Cuba, sometimes even more important the President."¹⁶ Thus, prior to the Revolution, the doctrine of political realism allowed

This [realist] rationale may be justifiable at its core, but it is riddled with dark moral consequences and is ripe for self-interested abuse.

the U.S. to justify its imperialistic pursuit of national interests in Cuba on the grounds that Cubans did not merit moral consideration because they were incapable of applying it themselves.

The U.S.'s application of political realism in its economic foreign policy towards Cuba during this period is also problematic. Starting from 1902, the U.S. controlled or strongly influenced all Cuban socio-economic and political structures. Demonstratively, on the eve of the Revolution, U.S. interests and businesses controlled 40 percent of Cuba's sugar production, and held seven out of the ten largest agricultural enterprises, more than 90 percent of the telephone and electric utilities, and two of the three oil refineries.¹⁷ In effect, the U.S. economy absorbed the Cuban economy during the first half of the 20th century. U.S. direct investment in Cuba increased by more than 536 percent between 1913 and 1928.¹⁸ Indeed, in 1929 U.S. investments in Cuba totaled over \$1.5 billion, or 27.31 percent of total U.S. investments in Latin America.¹⁹ U.S. investors saw in Cuba an investment opportunity with a natural trading partner whose political stability was ensured by the U.S. government and on whom favorable economic terms could be imposed. The disproportionate level of investment in relatively small Cuba was due primarily to Cuba's unofficial

status as a U.S. territory in every way but name, until the Revolution.

The absence of an international moral standard to monitor the U.S. companies' actions in Cuba had a deleterious effect on the Cuban economy. American companies owned Cuba. Given the U.S.'s control of Cuban political structures, macroeconomic policies were not formulated with the objective of forwarding Cuba's long-term economic interests. Rather, they were designed with the objective of protecting or forwarding American economic interests. Economic integration, in this context, did not serve Cuba's long-term economic interests. This statement, however, does not deny that U.S.-Cuba economic relations had some positive economic impact on the island.

Cuba benefited from integration in the sense that U.S. investment brought with it the transfer of technology to Cuba. U.S. companies built much of Cuba's public infrastructure—its railroads, utility and telephone systems, and airports. Moreover, U.S. companies helped Cuba modernize its sugar production, moving it from antiquated 19th century methods to the then latest technology. In 1953 Cuba's GNP was surpassed in Latin America only by those of Argentina and Venezuela.²⁰ These positive developments enabled Cuba to raise its living standards to one of the highest in Latin America. Unfortunately, not all Cubans shared the benefits of these increased living standards.

Economic integration brought with it a displacement of agricultural workers. Between 1919 and 1957, the Cuban labor force employed in agriculture fell from 49 percent to 39 percent.²¹ And while employment increased in construction, commerce, and industry, these increases in effective labor demand were insufficient to absorb the urban labor force that was rapidly growing due to rural-to-urban migration. In 1958, 16 percent of the labor force was unemployed and an additional 14 percent found themselves in various forms of underemployment.²² Furthermore, general economic growth slowed considerably in the 1950s. Cuba's GNP grew only on an average of one percent annually from 1950 to 1958.²³ Finally, economic integration had the unfortunate effect of widening income inequality. Those who benefited

from integration (i.e., employed urban labor) gained in their share of national income, but at the expense of the rural peasants and the unemployed.²⁴

Despite the mixed socio-economic success of economic integration, Cuba's long-term economic interests were not being pursued. Temporarily setting aside the U.S.'s illegitimate political control of Cuba, should the promotion of Cuba's long-term economic interests even have been within the purview of U.S. foreign policy? It is widely accepted that unjustly robbing a people of their sovereignty is wrong. However, it is not as widely accepted that the U.S. has a moral obligation to ensure the betterment of Cuban economic interests. This point is especially relevant today as the U.S. and the other developed nations grapple with the effects of globalization on developing nations.²⁵ Looking at the role of political realism clarifies the issue.

The doctrine of political realism posits that nations should not consider moral judgments when acting in the international context. During this period, the U.S. followed the realist doctrine and secured the economic interests of U.S. companies on the island. Yet, if Cuba were a democratic nation today, it seems unlikely that U.S. economic policy towards Cuba would be any different. Today, the U.S.'s use of political realism in the economic sphere is not grounded on the presence of an imminent threat to U.S. national interests, or on the prejudiced opinions of individuals. Rather, it is grounded on the market notions of liberalization and free trade.

The terms *liberalization* and *free trade* have become part of the open market mantra of developed nations. They advocate the removal of governmental barriers in market transactions. Such actions are justified by their proponents on the belief that artificial barriers are economically inefficient and that unfettered markets would be optimally self-regulating. According to this interpretation, the "market" is an amoral entity that does not require that moral consideration be imposed on it. Given its amorality and, by implication, its neutrality, it does not favor one nation over another. Thus, its results are fair and consistent with internal principles of justice. Moreover, some free market proponents would argue that if free market

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reforms were implemented comprehensively that eventually this also would lead to greater economic prosperity for developing nations.

The amoral status of open market reforms, however, does not necessarily ensure their fairness or fulfill their promise of shared prosperity. By applying no normative standard to the international economic context one may merely reinforce the current economic distribution. Further, liberalization and free trade mean freedom from restraint to pursue one's self-interest. An international environment absent moral guidelines to temper a nation's pursuit of its national economic interests is unlikely to lead to a system that protects the weaker, developing nations. The Darwinist world of international relations historically has seldom witnessed such altruistic foreign economic policy. Rather, it is more likely that the absence of moral guidelines would lead to a system where the more powerful, developed nations take advantage of the weaker, developing nations in advancing their own interests, irrespective of their potentially harmful effects. This second characterization seems more consistent with the Cuban experience.

These actions would be unacceptable in the domestic context. Even the American open market economy places normative restrictions on the market. Monopolies are legally prohibited as incompatible with competition. Price controls are employed periodically to prevent consumers from being gouged. These same types of considerations should be used in the international context. If accepted, the critical question becomes to what extent international standards of conduct should protect the interests of less developed nations. In other words, to what extent was the U.S. obligated to protect Cuban economic interests? If normative standards are too restrictive for U.S. companies, there may not be a financial incentive to invest in developing nations—i.e., U.S. companies then would have never invested in Cuba. Conversely, if they are too lax then they allow for the type of exploitation evident in the Cuban case. Political realism produces the latter.

U.S. foreign economic policy needs to move beyond the realist perspective to strike a balance that allows for normative standards and still encourages investment and economic interaction. Such a balance would almost certainly come at a cost to American economic interests. However, the failure to strike a balance comes at the greater cost of undermining democratic principles of fairness and equality. It compels one to ponder and question what is more important—U.S. economic preemi-

nence or providing less developed nations the opportunity to share in economic prosperity.

POST-REVOLUTIONARY PERIOD

U.S.-Cuba relations changed fundamentally with the Revolution. U.S. political and economic control of Cuba was forcibly removed. The U.S. was summarily purged from the island and its assets expropriated. In response, the U.S. imposed in October 1960 a strict trade embargo on Cuba—one that stands to this day. Relations quickly worsened with the Bay of Pigs invasion in 1961 and the Cuban Missile Crisis in 1962. Over the next three decades, the combative, hostile state of U.S.-Cuba relations ebbed and flowed, reaching a tense high during the two aforementioned crises and a low temporary détente during the Carter administration. Nonetheless, throughout the period Cuba always maintained an aggressive, anti-American stance. Thus, a close, paternalistic relationship was transformed into an adversarial relationship.

Cuba managed to survive, and even thrive, during its adversarial stance towards the U.S. because it became a strategic pawn in the Cold War. Allied with the Soviet Union, Cuba was insulated from U.S. economic and political pressure. The effectiveness of the trade embargo was neutralized by Cuba's access to the Soviet Union and its socialist, trading bloc, the Council for Mutual Economic Assistance (CMEA). Moreover, the Soviet Union's political and military support also precluded the U.S. from contemplating aggressive military action. Combined with generous oil-for-sugar and cash subsidies, these Soviet policy measures enabled Cuba to maintain its autonomy from the U.S. (though not necessarily from the Soviet Union).

The Soviet Union bestowed generous aid on Cuba because it was the beachhead for communism in the Western Hemisphere during the Cold War. Cuba supported Marxist insurrection throughout Latin America and Africa, as highlighted by its actions in Venezuela, El Salvador, Angola, and Ethiopia. Moreover, it served as a Soviet knife (albeit, mostly psychologically) pointed directly at the underbelly of the U.S., as evidenced in the Cuban Missile Crisis. Consequently, removing Castro's regime was a high priority for U.S. national security. Cuba was perceived as a national security threat until the end of the Cold War.

The Cold War era brought an ironic shift in U.S. foreign policy towards Cuba. Prior to the Revolution, the U.S. was somewhat indifferent to the form of the Cuban government as long as it accepted the primacy of U.S. policy and interests. After the Revo-

lution, the U.S. became fixated on the form of Cuban government and strongly supported the establishment of a democratic Cuba. During this period, political realism was not truly an issue. Historically, there often has been a tension in U.S. foreign policy between the U.S.'s realpolitik interests of national security and what one might call its idealpolitik interests—its moral interest in supporting human rights and democracy. During the Cold War, the U.S.'s realpolitik interest of national security generally took precedence over its interests in promoting human rights and democracy.

U.S.-Cuba relations did not fit within this traditional paradigm. The U.S.'s policy toward Cuba served equally both the U.S.'s realpolitik and idealpolitik interests. The economic embargo addressed equally the U.S.'s national security concerns by attempting to isolate communism in the Western Hemisphere and its human rights concerns by expressing its opposition to Castro's repressive totalitarian regime. Thus, political realism became moot during this period as the U.S. policy of isolating Cuba promoted its national interests consistent with moral consideration. The convergence of these U.S. interests shifted in the Post-Cold War era.

The end of the Cold War altered dramatically the balance of power in U.S.-Cuba relations back to the United States. During the Cold War, Cuba managed to withstand U.S. pressure, especially economically, because of its considerable Soviet support. Soviet aid, however, ended with the Cold War. Lacking such support, Cuba's inefficient, socialist economy collapsed. From 1989 to 1993, Cuba's GDP fell almost 50 percent—from \$19.3 billion in 1989 to \$10 billion in 1993.²⁶ This massive reduction in Cuba's GDP was due primarily to a sharp decline in its import capacity. In 1989 Cuban imports totaled \$8.14 billion. This total dropped 75 percent to \$2.23 billion by 1993.²⁷ Severe food and consumption goods shortages resulted, leading to civil unrest and protests throughout the island at the height of the economic crisis. The U.S. contributed to and exacerbated the crisis by tightening its economic embargo.

The embargo was thrust back into the spotlight. During the Cold War it was essentially a non-issue because Soviet support of Cuba and its unilateral

nature (i.e., non-compliance of U.S. allies) rendered the embargo ineffective. However, sensing an opportunity to topple the weakened Castro government, the U.S. enacted two important pieces of legislation: first, the Cuban Democracy Act of 1992; and second the Helms-Burton Act of 1996. The Cuban Democracy Act (CDA) strengthens the U.S. embargo against Cuba by closing the loophole that had allowed foreign subsidiaries of U.S. businesses to conduct, as recently as 1991, upwards of \$700 million a year in trade with Cuba.²⁸ It also strongly encourages U.S. foreign aid recipient nations to avoid providing assistance to the Cuban regime.

The Helms-Burton Act (the Libertad Act) complemented the CDA by attempting to multilateralize the embargo. The Libertad Act punishes foreign companies that do business with Cuba. The expressed objective of both the CDA and the Libertad Acts was to weaken Cuba's repressive security apparatus and to increase pressure for democratic change on the island. Unfortunately, though having achieved some limited

success, these efforts have yet to be successful in toppling the Castro government.

On the surface, U.S. foreign policy towards Cuba has not changed since the end of the Cold War. The trade embargo is still in place, though more restrictive. The effects of the embargo, however, have dramatically changed since the end of the Cold War. It now has negative consequences for the Cuban people. The appropriateness of using political realism was a moot issue before because socialist Cuba presented an imminent threat to the national security of the American people. Moreover, the embargo also represented a moral choice to reject Castro's repressive regime consistent with the liberal principles of democracy. This dynamic, however, has changed.

While the embargo did exact a significant cost on the Cuban economy during the Cold War it did not significantly reduce citizens' access to the basic necessities of life. Since the end of the Cold War, this is not the case. Over the last decade Cuba has experienced periods of severe food and medical shortages. Though recent reports out of Cuba suggest that the food shortages and electrical blackouts have abated, access to medicines and medical supplies continues to be a major problem. In 1997 the American Association for World Health declared after a

The absence of an international moral standard to monitor the U.S. companies' actions in Cuba had a deleterious effect on the Cuban economy.

yearlong investigation that “the U.S. embargo of Cuba has dramatically harmed the health and nutrition of large numbers of ordinary Cuban citizens.”²⁹ The embargo makes it harder and more costly for Cuba to get access to medicines and medical supplies.

The Clinton administration has defended its Cuba policy by asserting that “the health care available to the average Cuban has deteriorated because the Castro government has made a conscious choice to direct its increasingly scarce resources elsewhere.”³⁰ Since the collapse of the Soviet Union, Castro has decreased his financial commitment to health care in order to safeguard the military and his internal security apparatus. Castro is undoubtedly responsible for the suffering of the Cuban people. However, the U.S. sullies its own hands when it pursues ineffective policies that inflict harm on the people it is intended to benefit.

For example, imagine a police officer firing shots at a bank robber. He intends to kill the bank robber, but knows that he will not succeed. Moreover, whatever his intention, he also knows that his actions will kill an innocent hostage being used as a human shield. While acknowledging the obvious guilt of the bank robber in this situation, society would find the officer’s actions morally unacceptable. He knew the fatal consequences of his actions, but refused to modify them. His decision disregards the value of human life. Similarly, the fact that the embargo is intended to cause the downfall of the Castro regime is immaterial. At this point it is readily apparent that the embargo is not going to topple the regime. Its “good” intention does not change the fact that the embargo exacerbates an already bleak health situation. Thus, for the U.S. to shirk any responsibility for contributing to the deterioration of the Cuban health situation is also morally unacceptable. It knowingly does so.

The trade embargo improperly applies the doctrine of political realism. Moral consideration is given, but inappropriately. The embargo is premised on the idea that it is immoral to support, via open trade relations, a political regime that fails to respect basic human rights. *Prima facie*, such a claim may appear compelling, yet it fails to recognize the important distinction between the Cuban state and the Cuban people. Its moral consideration needs to focus on the latter, not the former. Few will disagree that the Cuban state is a repressive, totalitarian regime. However, attacks against the state that have been repeatedly shown to be ineffective and do not adequately account for their negative effects on the people are morally irresponsible. Af-

ter all, the ultimate concern should be the general welfare of the Cuban people.

CONCLUSION

Despite Cuba’s independence from the U.S., the nature of U.S.-Cuba relations has remained, in an important sense, unchanged. The United States never has respected Cuban sovereignty. Prior to the Revolution, it exerted its political and economic will on Cuba, indifferent to the long-term effects on Cuba and its people. After the Revolution, it imposed its will through economic sanctions, attempting to isolate Cuba from the Western world. Today, it continues these efforts through policies specifically directed at toppling the government. Through its actions, the U.S. consistently has pursued its national interests. Cuba, meanwhile, has struggled to have its national interests recognized.

Political realism, like Rudyard Kipling’s *White Man’s Burden*, is a doctrine that has been abused by many nations to justify their pursuit of power and their national interests regardless of the negative effect on other nations. Its applicability should be limited to situations where there is an imminent threat to a nation’s sovereignty. Obviously, such a guideline is broad and leaves much discretion to the state. But that cannot be helped. Foreign policy often touches on sensitive matters that would be compromised if made public. However, what can be done is to foster a political culture that demands that the state provide good, public reasons for applying political realism. This requires that citizens and political leaders hold foreign policy-makers accountable for their actions. Political realism has been inappropriately applied because we, the public, allowed it. Policy will not change until we convey to our political leaders the unacceptability of dismissing democratic principles in the international context.

U.S. foreign policy makers have been unwilling to embrace moral judgment in the international context. This unwillingness is understandable. Moral consideration will hinder the pursuit of U.S. national interests. Indeed, it would force the United States to struggle honestly with the question of its political and economic obligations to its fellow nations. However, failure to incorporate moral consideration in U.S. foreign policy will be more harmful in the long run. A nation that claims to be the beacon for democracy and justice for the world cannot in good faith at the same time claim that these principles do not apply to its dealings with the rest of the world.

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NOTES

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3. Robert Gilpin, *War and Change in World Politics* (Cambridge: Cambridge University Press, 1981), p. 7.
4. It is important to note that when discussing the actions pursued by various nations we are speaking of the actions taken by the leaders and statespersons of these various nations.
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13. J.A. Sierra, "History of Cuba: Struggle for Independence." Online. Available: <http://www.historyofcuba.com/history/timetbl2b.htm>. Accessed: April 8, 2000.
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15. Thomas Patterson, *Contesting Castro* (New York: Oxford University Press, 1994), p.5.
16. U.S. Congress, Senate Committee on the Judiciary, *Communist Threat to the United States Through the Caribbean*, Part 9 (Aug. 30, 1960), p. 700.
17. Ana Julia Jatar-Hausmann, *The Cuban Way: Capitalism, Communism, and Confrontation* (West Hartford: Kumarian Press, 1999), p. 12.
18. Robert Freeman Smith, *The United States and Cuba: Business and Diplomacy, 1917-1960* (New Haven: College and University Press, 1960), p. 33.
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21. Carmelo Mesa-Lago, *The Economy of Socialist Cuba: A Two Decade Appraisal* (Albuquerque: University of New Mexico Press, 1981), p. 8.
22. Ibid.
23. Ibid., p. 7.
24. Ibid., p. 9.
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26. Eugenio Espinosa Martinez, *The Cuban Economy in 1990s: From Crisis to Recovery*. Online. Available: http://redem.buap.mx/t2_Eugenio.htm. Accessed: November 9, 2000.
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INEQUALITY OF DEVELOPMENT:

THE DILEMMA OF THE CHINESE INTERNET ECONOMY

On April 20, 1994, a 64K international leased line linked China to the Internet through the network of Sprint Communications Company, symbolizing the formal introduction of the Internet to China.¹ In January 1995 China Telecom built its own Internet connection with Sprint's network and began providing Internet services to the public. Since then, the Internet has expanded dramatically throughout China, and it is estimated that Chinese Internet population rose from 620,000 in October 1997 to over 16,000,000 in July 2000.²

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The expansion of the Internet, however, is also a catalyst for the uneven development of regional economies in China, paralleling the skewed geographical distribution of the Internet. The uneven development of the Chinese Internet economy is reflected in the fact that the majority of the Chinese Internet population and businesses are located in Eastern China, where the population only accounts for one third of the national total. What is the explanation for such an uneven state of the Chinese Internet economy? Is it due to the natural process of a new economy, or is it simply because of the unbalanced distribution of social wealth? Or rather, is this uneven distribution a reflection of the gap between the poor and the rich?

This article investigates the economic ramifications of the Internet in China and reveals that the uneven development of the Chinese Internet economy dates back to the post-Mao Chinese economic de-

velopment model initiated in 1978—the year when China launched its most dramatic national economic reform. The economic development model in China is the direct product of China's Open Door and Reform Policy characterized by a regional tilt strategy, which have provided a significant development advantage for the Eastern coast of China and pushed mid-Western China into a competitive disadvantage. As a result, Western China lags far behind Eastern China in terms of regional economic development as well as regional economic restructuring. The subsequent policy influence is twofold. The first aspect is an issue of affordability. Eastern China, the more developed region with a higher average personal income, is the first to enjoy the fruits of new technologies. The second aspect is an issue of openness. Given that the Chinese Internet is an exogenous entity and a byproduct of the global information infrastructure, it arrived and developed first in the East, where a more open economic system exists than in the West.³ A digital divide was thereby created between Western and Eastern China, and to reverse the technology gap, a revision of China's Open Door and Reform Policy must be considered.

This article is divided into four sections. The first section provides a background for post-Mao China's regional economic development model since 1978 by introducing China's Open Door and Reform Policy. The second section focuses on the regional penetration level of the Chinese Internet economy, where two key indicators of the Internet economy—Internet population and Internet business—are examined. The third section explores the relationship between the geographical structure of the Chinese Internet economy and China's regional economic development model. The fourth section focuses on policy implications and policy promotions for China.

CHINESE OPEN DOOR AND REFORM POLICIES

Long before the introduction of the Internet, China maintained a closed economy characterized by a centralized socialist planning institution. The turning point of the Chinese economy began with the end of the 1966-1976 Cultural Revolution, which symbolized China's entrance into a new period of rebuilding and transformation of its political and economic structure. In 1978 the Third Session of the Eleventh Communist Party of China (CPC) Central Committee affirmed the national goal of the *Four Modernizations*⁴ and officially launched its domestic

economic reform. By 1980 four special economic zones (SEZ): Shenzhen, Zhuhai, Shantou and Xiamen, were created in the Guangdong and Fujian Provinces⁵ Since then, the Open Door and Reform Policy has been continuously strengthened and deepened, and in April 1988 the State Council of China approved another special economic zone: Hainan Province.

These five economic zones benefited from the central government's preferential policies, and were unique in four aspects.⁶ First, each zone was highly dependent on foreign capital, which eventually dominated local economies. Second, foreign investors in each zone benefited directly from preferential policies, such as tax reductions or exemptions, low land-use fees, free or low-limit foreign currency exchange, and convenient entry and exit for Chinese employees. Third, economic activity in these zones was primarily market-oriented. Fourth, compared to non-SEZs, special economic zones had greater autonomy to develop local economies and to regulate and encourage local economic activities.

In addition to the SEZs, the CPC Central Committee and the State Council decided to open 14 more cities in the Eastern coast of China, classified as Coastal Open Cities (COCs) in April 1984.⁷ These COCs did not have the same open and policy-preferential level as the SEZs, but were entitled to greater local autonomy and more preferential policies to attract foreign direct investment than other inland areas. In February 1985, the Yangtze River Delta Area,⁸ the Zhujiang Delta Area,⁹ and the Delta Area of Xiamen, Zhangzhou, and Quanzhou in southern Fujian were built as the Coastal Open Economic Regions (COERs). The COERs were later extended to Liaodong Peninsula,¹⁰ Shandong Peninsula,¹¹ the Bohai area¹² and other counties and cities under the jurisdiction of the corresponding COCs. The SEZs, COCs, and COERs contributed to and widened the gap of economic development between coastal and inland regions. The gap was further entrenched into the Chinese economic landscape by the central government's 1986 decision to stratify China into three economic belts: the Eastern Economic Belt (EEB),¹³ Middle Economic Belt (MEB),¹⁴ and Western Economic Belt (WEB).¹⁵ In 1990, Shanghai Pudong New Area was created and opened to the global market. It enjoyed preferential policies similar to those applied in the SEZs, and two years later, the central government granted further preferential policies to this area.¹⁶

Since 1978, China's Open Door and Reform Policy has been characterized by a regional tilt policy that significantly contributed to the dispar-

ate economic growth patterns between Eastern and Western China over the past 22 years. Within the first decade of China's Open Door and Reform Policy, foreign businesses refrained from investing in inland provinces. In 1990, foreign investment in inland provinces accounted for 20.7 percent of the country's total foreign investment while their population represented 65 percent of the national total. The import and export sector in the inland provinces also lagged far behind the coastal provinces, particularly the coastal cities. Although inland areas were gradually opened since early 1990s, the total exports and the total imports of inland China in 1994 represented only 13.3 percent and 13.4 percent of the national total, respectively. When the trade-GNP ratio in the coastal provinces reached 64.9 percent in the early 1990s, this ratio in the inland provinces was only 14.0 percent—close to the national average ratio in early 1980s. To date, the inland provinces as a whole are about 15 years behind the coastal provinces with regard to the level of openness to trade.¹⁷

The success of SECs, COEDs, and COCs prompted the Chinese government to extend its Open Door policy to the inland and border areas over the past decade. Starting in June 1992, the State Council declared the opening of 10 major cities along the Yangtze River,¹⁸ and mandated that they be entitled to the same preferential policy as the 14 coastal open cities. In the same year, border cities were also opened in Inner Mongolia and Northeastern China.¹⁹ Trade and other economic activities with surrounding countries²⁰ were encouraged and many administrative restrictions were eliminated. Additionally, many provinces were authorized by the central government to formulate preferential policies for foreign investment in their affiliated cities and development zones.

Yet, these additional reforms have come too late to bridge the economic gap brought on by the original Open Door and Reform Policy in 1978. The loss of government revenues from tax incentives given to foreign investors over the past two decades has left Western China at a dire disadvantage, and China's government clueless about a remedy. In 1996, two years after China went online, the Chinese government began to change its preferential policies, with decreasing financial incentives given to foreign investors, e.g. tax incentives, as a key regional development strategy. These changes of preferential policies in SEZs, COEDs, and COCs, along with an extended Open Door policy to inland China, however, have not narrowed the gap of regional economic development between the East and

West. Inland China is still placed at a competitive disadvantage, especially now that Eastern China has accumulated a pool of skilled labor, a well-developed infrastructure, and a seasoned and advanced open-market system. This economic consequence of the Open Door and Reform Policy has had significant influence on the development of the Chinese Internet and has led to a large gap of the Internet economy between Eastern China and Western China.

UNEVEN DEVELOPMENT OF THE CHINESE INTERNET ECONOMY

The Chinese Internet has experienced a tremendous growth since China Telecom built its first connection to the Internet network of the U.S. in 1995. The number of Chinese Internet users has quadrupled each year from August 1998 to July 2000, and over the same period, the number of Chinese domain names, with the suffix of *.cn*, increased from less than 10,000 to nearly 100,000. Accompanying the rapid growth of the Chinese Internet has been an uneven development of the new economy, one that can be understood by looking into the geographical distribution of the Chinese Internet population and businesses.

This section examines the province-level distribution of Chinese Internet population as well as the province-level distribution of Chinese Internet businesses. Based on China Internet Network and Information Center (CNNIC)'s six survey reports on the Chinese Internet economy and the 1999 China Statistical Yearbook, a model of the geographical distribution of the Chinese Internet economy was developed as follows:²¹

$$\frac{p}{b} = \frac{p}{b}$$

where

- *p* represents population and *b* represents business;
- *p* and *b* represent the two development indicators, or penetration level indicators,²² of the Internet economy in a province, municipality or autonomous region with regard to the Internet population and the Internet business respectively;
- *p* and *b* represent the proportions of a

province, municipality, or autonomous region's Internet population and Internet business in the whole country respectively; and

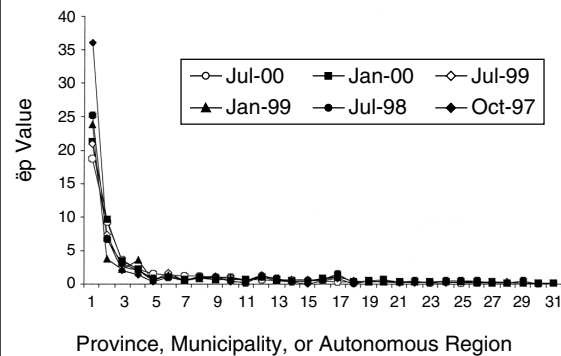
- $_p$ represents the proportion of a province, municipality, or autonomous region's population in the whole country.

In this model, the higher the value of $_p$ in a region is, the higher the penetration level of the Internet population is in the region. If the value of $_p$ is smaller than 1, the development extent of the Internet in terms of Internet population is less than the national average. If the value of $_p$ is greater than 1, then the region's Internet population penetration level is greater than the national average. The same logic applies to the relationship between the value of $_b$ and a region's Internet business penetration level. If both values of $_p$ and $_b$ are greater than 1, this suggests that the region's Internet economy is more developed than the national average level.

REGIONAL PENETRATION LEVELS OF THE CHINESE INTERNET POPULATION FROM JULY 1998-2000

Figure 1 shows that the nationwide distribution of the Chinese Internet population has two significant patterns. First, Chinese Internet users are unevenly distributed throughout the country to a fairly high extent, and the penetration levels of Internet population among different regions are varied. The value of $_p$ is particularly high in Beijing, Shanghai, Tianjin, and Guangdong—generally above two—in contrast to the value of $_p$ in Inner Mongolia, Guizhou, Henan, Shanxi, Qinghai, Yunnan, Gansu, Tibet, Anhui and Jiangxi, which is generally below 0.5. In fact, the total Chinese Internet population in Beijing, Shanghai, Tianjin and Guangdong accounts for more than 40 percent of the national total, though their population only accounts for 8.6 percent.²³ Inner Mongolia, Guizhou, Henan, Shanxi and Jiangxi, on the contrary, represent over 18 percent of the national population in China, but stands for less than 8 percent of the total Chinese Internet population.²⁴ Second, Figure 1 shows that there is little evidence that the geographical distribution of the Chinese Internet population is subject to equilibrium. To date, Chinese Internet users are still highly concentrated in several regions such as Beijing, Shanghai, Guangdong, Tianjin, Jiangsu, and

Figure 1
Regional Penetration Levels of the Chinese Internet Population (Six Development Stages: October 1997, July 1998, January 1999, July 1999, January 2000, and July 2000)



Sources: Data compiled from China Internet Network and Information Center, *Survey Report on the Internet Development in China*, July 2000, January 2000, July 1999, January 1999 and July 1998, Online. Available: <http://www.cnnic.net.cn/develst/e-index.shtml>. Accessed September 21, 2000; National Bureau of Statistics of the People's Republic of China, *China Statistical Information Network, China Statistical Yearbook 1999*, Online. Available: <http://www.stats.gov.cn/english/yearbookml.html>. Accessed September 21, 2000.

Note: 1) The Internet population penetration level is defined as the proportion of a region's Chinese Internet population in the nation total divided by the proportion of this region's population in the national total. The higher the penetration level, the more developed this region's Internet economy.

2) As shown in Table 1, the numbers on the horizontal axis represent 31 provinces, municipalities and autonomous regions in Mainland China. Their average employee salaries are also included in the table.

Zhejiang—quite inconsistent with their proportion of the national population. Table 1 indicates the provinces, municipalities and autonomous regions that correspond to the numeral representation in Figure 1.

REGIONAL PENETRATION LEVELS OF THE CHINESE INTERNET BUSINESSES FROM JULY 1999-2000

When compared to the geographical distribution of the Chinese Internet population, the Chinese Internet business sector exhibits similar development pat-

Table 1
Average Employee Salary in Each Province, Municipality, or Autonomous Region in Mainland China

Number	Province, Municipality, or Autonomous Region	Average Employee Salary
1	Beijing	12451
2	Shanghai	13580
3	Hainan	6248
4	Guangdong	11032
5	Tianjin	9946
6	Zhejiang	9759
7	Fujian	8531
8	Jiangsu	8256
9	Liaoning	7161
10	Shandong	6854
11	Xinjiang	7121
12	Ningxia	6822
13	Shaanxi	6029
14	Yunnan	7667
15	Tibet	10987
16	Chongqing	6433
17	Hubei	6436
18	Jilin	6551
19	Hebei	6302
20	Heilongjiang	6238
21	Henan	5681
22	Shanxi	5641
23	Sichuan	6577
24	Inner Mongolia	5792
25	Guangxi	6208
26	Hunan	6558
27	Gansu	6809
28	Anhui	6117
29	Qinghai	8011
30	Jiangxi	5384
31	Guizhou	5775

terns. Figure 2 shows that the development of the Chinese Internet businesses is highly unbalanced. In the coastal areas of Beijing, Shanghai, Guangdong and Tianjin, the value of β is, by and large, greater than 2. In Beijing, the situation is particularly significant, where β is even greater than 36. The values of β in Qinghai, Gansu, Inner Mongolia, Guizhou, Henan, Shanxi and Jiangxi—all inland regions—arrive at very low levels, generally less than 0.4. On the other hand, the combined number of Chinese domain names in the three coastal regions that account for only 7.9 percent of the national population—Shanghai, Beijing and Guangdong—represents about 60 percent of total Chinese domain names. Again, Table 1 indicates the provinces, municipalities and autonomous regions that correspond to the numeral representation in Figure 2.

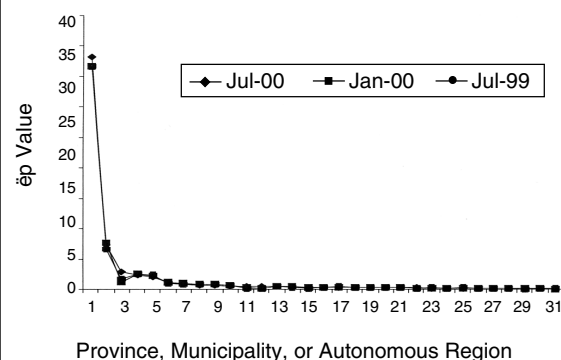
The dispersion of Chinese Internet businesses also exhibits no obvious trend towards a geographic equilibrium. The regions with less Internet business penetration levels are still lagging far behind those areas where Chinese Internet businesses are more heavily concentrated. In the three development stages of the Chinese Internet between July 1999 and July 2000, Chinese domain names in Shanghai, Beijing, Guangdong, Jiangsu, Zhejiang and Fujian persistently represented over 70 percent of the national total

INEQUALITY OF DEVELOPMENT

This section focuses on the fundamental issues underlying the unbalanced Chinese Internet development model by correlating it with the Open Door and Reform Policy in 1978. The average employee salary (AES) is used as the indicator of a region's economic development level, and the higher the AES, the higher the region's economic development.

Figure 2

Regional Penetration Levels of the Chinese Internet Businesses (Three Development Stages: July 1999, January 2000, and July 2000)



Sources: Data compiled from China Internet Network and Information Center, *Survey Report on the Internet Development in China* (online); China Statistical Information Network, *China Statistical Yearbook 1999* (online).

Note: As shown in Table 1, the numbers on the horizontal axis represent 31 provinces, municipalities and autonomous regions in Mainland China. Their average employee salaries are also included in the table.

Table 2**Correlation Between Economic Development Level and Internet Population Penetration Level**

	<i>p</i> All regions included	<i>p</i> Beijing & Tibet excluded
July 1998	0.60	0.85
January 1999	0.58	0.88
July 1999	0.65	0.87
January 2000	0.69	0.83
July 2000	0.68	0.83

Source: Data compiled from China Internet Network and Information Center, Survey Report on the Internet Development in China (online); China Statistical Information Network, China Statistical Yearbook 1999 (online).

Note: 1) Pearson value, *p*, refers to the correlation between AES and *_p*.
 2) AES refers to the average employee salary in a province, municipality, or autonomous region.
 3) *_p* refers to the Internet penetration level in a province, municipality, or autonomous region in terms of the Internet population.

Table 2 shows that the correlation between a region's economic development level and its Internet population penetration level is fairly high. If all province-level regions in Mainland China are counted, the correlation ratios between the two variables of AES and *_p* in the five stages are generally greater than 0.6. Yet, if Beijing and Tibet are excluded, the ratios become much bigger, and are over 0.8.²⁵ It can be concluded that a strong correlation exists between the economic development level and the Internet population penetration level of China: more developed regions are inclined to have more Internet users while a less developed region is more liable to have less access to the Internet. Shanghai, Beijing, Guangdong, Tianjin, Zhejiang, Fujian, and Jiangsu, the top seven most developed regions in China, have large values of *_p*, which by and large are greater than 1. However, in less developed regions such as Inner Mongolia, Guizhou, Henan, Shanxi, and Jiangxi, the values of *_p* are generally below 0.5.²⁶ (See Table 3.)

Thus, the degree to which the Internet is dispersed within a region is highly associated with the economic development level in this region. Less developed regions are less likely to have access to the Internet and to the economic opportunities

brought by the Internet. Left unchecked, the gap between the comparatively developed and underdeveloped regions will continue to widen. The uneven dispersion of the Chinese Internet economy is only partly explained by the economic development indicators such as the AES. The open level of a region's economy also explains its Internet economy penetration level. Table 3 exhibits regions under the top eight with respect to average employee salary—Liaoning, Shandong Hainan²⁷ generally have much higher values of *_p* than other regions²⁸—which is inconsistent with the economic development levels in the three provinces.

This tendency is more obvious in Table 4, where Liaoning, Shandong and Hainan have the highest values of *_b* among the top eight regions in regards to average employee salary.²⁹ It is important to note that Liaoning, Shandong and Hainan are all Eastern-coastal provinces, as are Shanghai, Tianjin, Guangdong, Zhejiang, Jiangsu, and Fujian. In fact, all of these nine provinces and municipalities as well as Beijing have comparatively more open and competitive economic systems and higher penetration levels of Internet economy than other inland Chinese regions.

China's Open Door and Reform Policy has caused the economic growth disparities between Eastern China and Western China, and has brought about regional growth disparities in the Chinese Internet economy. The regional tilt policy relative to the Open Door and Reform Policy has led to two policy consequences in the Internet era. First, the Eastern-coastal regions in China, based on comparatively developed economy and high employee salaries, are able to absorb and develop new technologies faster and more pervasively. Second, with more open and competitive economies, Eastern-coastal regions tend to be the first to have access to new technologies, and as a result, reflected through the Internet population and business penetration level, the 10 provinces and municipalities comprising the eastern coast of China have a much higher Internet penetration level than the rest of China.

RECOMMENDATIONS AND CONCLUSION

To balance the uneven spread of the Chinese Internet economy on the nationwide level, two key policy issues for the inland regions must be addressed. First, inland regions are comparatively less developed and have smaller purchasing power to invest in new technologies. Second, inland China still maintains a relatively closed

Table 3

**Adjusted Internet Population Penetration in Each Province,
Municipality, or Autonomous Region of Mainland China**

Ranking of AES	Province/ Municipality/ Autonomous Regions	Average Employee Salary	_p Jul-00	_p Jan-00	_p Jul-99	_p Jan-99	_p Jul-98
1	Shanghai	13580	9.22	9.58	7.44	3.71	6.67
2	Beijing	12451	18.72	21.24	21.02	23.93	25.3
3	Guangdong	11032	2.24	2.26	2.06	3.66	2.01
4	Tibet	10987	0.15	0.15	0.1	0.1	0
5	Tianjin	9946	3.62	3.48	2.66	2.18	3.12
6	Zhejiang	9759	1.38	1.26	1.67	1.3	1.09
7	Fujian	8531	0.73	1.02	1.41	1.16	1.17
8	Jiangsu	8256	1.18	1.02	1.18	0.92	1.06
9	Qinghai	8011	0.18	0.2	0.25	0.25	0.5
10	Yunnan	7667	0.21	0.19	0.31	0.13	0.15
11	Liaoning	7161	0.42	1.28	1.03	1.09	1.5
12	Xinjiang	7121	0.46	0.34	0.66	0.46	0.43
13	Shandong	6854	1.2	0.73	0.59	0.52	0.56
14	Ningxia	6822	0.42	0.37	0.44	0.58	0.23
15	Gansu	6809	0.28	0.28	0.36	0.29	0.2
16	Sichuan	6577	0.49	0.44	0.75	0.52	0.41
17	Hunan	6558	0.39	0.66	0.43	0.32	0.31
18	Jilin	6551	1.58	0.71	0.5	0.5	0.94
19	Hubei	6436	0.98	0.7	0.79	0.69	0.87
20	Chongqing	6433	0.75	0.77	0.59	0.6	0.24
21	Hebei	6302	0.42	0.49	0.39	0.31	0.51
22	Hainan	6248	0.45	0.82	0.73	0.87	0.67
23	Heilongjiang	6238	0.55	0.55	0.72	0.69	0.86
24	Guangxi	6208	0.24	0.36	0.42	0.52	0.43
25	Anhui	6117	0.23	0.2	0.31	0.28	0.53
26	Shaanxi	6029	0.98	0.68	0.96	0.83	0.49
27	Inner Mongolia	5792	0.23	0.27	0.35	0.21	0.21
28	Guizhou	5775	0.12	0.16	0.11	0.17	0.10
29	Henan	5681	0.3	0.28	0.21	0.29	0.45
30	Shanxi	5641	0.37	0.41	0.37	0.41	0.31
31	Jiangxi	5384	0.27	0.34	0.35	0.49	0.54

Source: Data compiled from China Internet Network and Information Center, Survey Report on the Internet Development in China (online); China Statistical Information Network, China Statistical Yearbook 1999 (online).

Note: 1) AES represents the average employee salary at the province level.

2) _p represents the Internet development level in a province, municipality, or autonomous region in terms of the Internet population.

economy, which greatly reduces its capacity to absorb or generate new capital. Therefore, China's original Open Door and Reform Policy has to be revised, deepened and promoted.

Since early 1980s, China's Open Door policy has gained significant successes in the Eastern coast of China. The preferential policies entitled to the SEZs, COEDs, and COCs should be balanced to limit further inequality of development between the West and the East. The Open Door policy should be ex-

tended to regions in Western and inland China and be opened to statewide free-market competition, where inter-regional trade barriers and provincialism are removed. The Chinese government should invest heavily in infrastructure, especially in transportation systems such as highways within inland areas and between inland and coastal areas to facilitate inter-regional communication and trade. The Chinese government should move the key task of economic development from the East to the West.³⁰

Table 4
Adjusted Internet Business Penetration in Each Province,
Municipality, or Autonomous Region of Mainland China

Ranking of AES	Province/ Municipality/ Autonomous Region	Average Employee Salary	_b Jul-00	_b Jan-00	_b Jul-99
1	Shanghai	13580	7.31	7.61	6.61
2	Beijing	12451	38.22	36.7	36.71
3	Guangdong	11032	2.42	2.53	2.62
4	Tibet	10987	0.4	0.27	0.1
5	Tianjin	9946	2.09	2.29	2.31
6	Zhejiang	9759	1.15	1.23	1.09
7	Fujian	8531	0.92	0.95	0.92
8	Jiangsu	8256	0.74	0.84	0.89
9	Qinghai	8011	0.13	0.1	0.08
10	Yunnan	7667	0.42	0.47	0.26
11	Liaoning	7161	0.72	0.78	0.83
12	Xinjiang	7121	0.5	0.31	0.18
13	Shandong	6854	0.59	0.68	0.69
14	Ningxia	6822	0.49	0.21	0.14
15	Gansu	6809	0.16	0.19	0.2
16	Sichuan	6577	0.23	0.23	0.31
17	Hunan	6558	0.17	0.18	0.17
18	Jilin	6551	0.32	0.26	0.31
19	Hubei	6436	0.37	0.39	0.44
20	Chongqing	6433	0.4	0.33	0.35
21	Hebei	6302	0.31	0.34	0.34
22	Hainan	6248	2.95	1.23	1.75
23	Heilongjiang	6238	0.3	0.28	0.27
24	Guangxi	6208	0.21	0.25	0.31
25	Anhui	6117	0.15	0.14	0.15
26	Shaanxi	6029	0.43	0.52	0.51
27	Inner Mongolia	5792	0.23	0.24	0.24
28	Guizhou	5775	0.08	0.08	0.09
29	Henan	5681	0.26	0.31	0.36
30	Shanxi	5641	0.26	0.24	0.18
31	Jiangxi	5384	0.12	0.13	0.13

Note: 1) AES represents the average employee salary at the province level.

2) _b represents the Internet development level in a province, municipality, or autonomous region in terms of the Internet population.

Local governments must be granted greater autonomy to develop their regions than is currently allowed. Decentralizing the administrative power from the central level to the local level should be enhanced to promote the efficiency of governmental operations.

Finally, knowledgeable workers are essential for building a regional high-tech economy. The inland provinces' failing economies, poor living conditions, and comparatively closed market make it difficult to attract skilled labor to the area. However, China's population migration policy makes the attractiveness of the East more permanent, and this attractiveness is cemented by China's limiting migration policy that stifles movement of labor capi-

tal. On the one hand, talented labor in the West—college graduates—are attracted to Eastern provinces' higher standard of living and would be less likely to stay in the West. On the other hand, knowledgeable workers in the East have far less incentives to move westwards given associated migration risks. These two factors are related to the Chinese Resident Institution, under which non-local residents may not have the same development opportunities as local residents.³¹

As a result, the population migration policy tends to drive out knowledgeable workers and dry up local entrepreneurship in the West. When entrepreneurship and knowledge-workers have become the keys to the growth of high-tech economy, with-

out significant changes in China's population migration policy it is difficult for inland China to win competitive advantage in the Internet era.

A substantial change of China's Open Door policy is long overdue. The preferential policies in coastal regions should be balanced and extended to inland regions so as to promote a free, open, and competitive national market. Special attention should be paid to the infrastructure development within inland regions and between inland and coastal regions to better facilitate inter-regional communication. Decentralization of the central government's administrative powers to the local level should continue and local governments should have greater autonomy to develop their economies. The population migration control policy should be revised to allow the free movement of labor throughout China.

As the Internet evolves and becomes a strong force driving the world's economy, and as China's accession to the WTO nears, China will want to reconsider its policies that may leave behind some of its citizens in the global economy. It is time for the Chinese government to refresh its Open Door and Reform Policy substantially, and only then will prosperity arrive and persist for the Great West and for all of China.

LBJ

NOTES

1. China Internet Network and Information Center (CNNIC), *Internet Development in China*. Online. Available: <http://www.cnnic.net.cn>. Accessed: September 19, 2000.
2. CNNIC, *The 6th Survey Report of the Internet Development in China*, (Beijing: July 2000). Online. Available: <http://www.cnnic.net.cn>. Accessed: September 19, 2000.
3. The Internet was first introduced to Beijing, Shanghai, and Guangdong, the three most open economies in China, and then dispersed to other comparatively closed economies.
4. The Four Modernizations represent the modernization of industry, agriculture, national defense, science and technology.
5. Shenzhen, Zhuhai, and Shantou are in Guangdong Province. Xiamen is in Fujian Province.
6. SEZs' development advantage was most pronounced at the beginning of the Open Door and Reform period, though recently weakened when market competition and open economic systems were introduced to other regions. However, the SEZs still enjoy much more competitive advantage and preferential policies.
7. They were Tianjin, Shanghai, Dalian (Liaoning Province), Qinhuangdao (Hebei Province), Yantai (Shandong Province), Qingdao (Shandong Province), Lianyungang (Jiangsu Province), Nantong (Jiangsu Province), Ningbo (Zhejiang Province), Wenzhou (Zhejiang Province), Fuzhou (Fujian Province), Guangzhou (Guangdong Province), Zhanjiang (Guangdong Province) and Beihai (Guangxi Province).
8. Including Shanghai and parts of Zhejiang and Jiangsu Province.
9. Located in southern Guangdong.
10. In Liaoning Province.
11. In Shandong Province.
12. Including parts of Tianjin, Hebei, Liaoning and Shandong.
13. The EEB includes Liaoning, Beijing, Tianjin, Hebei, Shanghai, Shandong, Jiangsu, Zhejiang, Fujian, Guangdong and Guangxi, all of them coastal cities except for Beijing.
14. The MEB includes Heilongjiang, Jilin, Shanxi, Inner Mongolia, Anhui, Jiangxi, Henan, Hubei and Hunan.
15. The WEB includes Sichuan, Yunnan, Guizhou, Xizang, Shaanxi, Gansu, Qinghai, Ningxia and Xinjiang.
16. They were: (1) approval of the establishment of Waigaoqiao free trade zone; (2) authorization for the Shanghai municipality to approve enterprises' import and export rights; (3) permission for the Shanghai municipality to approve non-productive investment projects of any scale; (4) permission for the Shanghai municipality to approve productive projects costing under 200 million yuan (or US\$37 million); and (5) allowing the Shanghai municipality to make decisions on the issuance of bonds and stocks.
17. Jun Ma, *China's Economic Reform in the 1990s: A manuscript prepared for researchers and students who study the Chinese economy*, (January 1997). Online. Available: <http://members.aol.com/junmanew/cover.htm>. Accessed: October 2, 2000.
18. They were Nanjing (Jiangsu), Zhenjiang (Jiangsu), Wuhu (Anhui), Tonglin (Anhui), Anqing (Anhui), Manshang (Anhui), Jiujiang (Jiangxi), Yueyan (Hunan), Wuhan (Hubei), and Chongqing (Sichuan).
19. They were Heihe, Suifenhe, Hunchun, and Manzhouli.
20. They included countries such as Russia, Mongolia, Myanmar, India, and Vietnam.
21. Due to the fast-growing nature of the Chinese Internet, the Internet population and business distribution is analyzed from a development perspective, covering the period between July 1998 and July 2000. Methodology: Population is examined to establish a model of

the Chinese Internet economy distributed to each province, municipality and autonomous region based on the density of the population. Compared to speed of the Chinese Internet's growth, the Chinese population growth is relatively stable and can be deemed unchanged in the short term. The development stages of the Chinese Internet are composed of five time periods: July 1998, January 1999, July 1999, January 2000 and July 2000, with the same population data in 1998 is applied.

The Chinese Internet population refers to the number of Chinese Internet users, defined as Chinese citizens who possess private or shared computer hosts or accounts. The number of Chinese domain names, i.e. top-level domain names with the suffix of .cn, serves as the criterion to gauge the level of a region's Internet business. Here, the number of domain names may not be an exactly precise measurement of the level of a region's Internet business, and the volume of e-commerce or the employment created by the Internet may be a better measurement. But there are few Chinese e-commerce data available and e-commerce in China is still preliminary, suggesting that the Chinese e-commerce has little comparable value. The proportions of a region's Chinese Internet population and Chinese domain names in the country are used to measure the development level of this region's Internet economy compared to the national Internet economy.

22. As the model indicates, the Internet penetration level is defined as the proportion of a region's Internet population or businesses in the country divided by the proportion of this region's total population in the country. The higher the penetration level, the more developed this region's Internet economy
23. Calculated from 1999 China Statistical Year Book and CNNIC's Survey Reports of the Internet Development in China: July 1998, January 1999, July 1999, January 2000, and July 2000.
24. Ibid.
25. Due to the fact that Beijing is the education, political and economics center of China, it is not surprising that Beijing has an extremely high proportion of Chinese Internet population. Though Tibet's average employee salary was only behind Shanghai, Beijing and Guangdong in 1998 is not indicative of comparative development to these cities. To the contrary, Tibet's high employee salaries result from the central government's regional policy of providing aid to ethnic regions.
26. The exception is Jiangxi, whose value of $_p$ in July 1998 is 0.54.
27. Different from other special economic zones (SEZs), Hainan province has a very low average employee salary. In 1998, Hainan's average employee salary was in the 22nd place in the whole country – not surprising considering that Hainan had a quite low overall development level and lacked infrastructure before mid 1980s and that Hainan Special Economic Zone as a province is much bigger than other SEZs. The unbalanced economic development within Hainan Island influences the aggregate economic condition in this province, which ultimately results in Hainan's low average employee salary.
28. In the five Chinese Internet development stages: July 2000, January 2000, July 1999, January 1999, and July 1998, $_p$ in Liaoning was by and large greater than 1 except in July 2000. In Shandong, in January 2000, it was 0.73 while in July 2000 it was 1.2. The value of $_p$ in Hainan was ranging between 0.73 and 0.82 in January 2000, July 1999 and January 1999, although it was quite low in July 2000.
29. The values of $_b$ in Liaoning, Shandong, and Hainan were 0.72, 0.59 and 2.95 respectively in July 2000, 0.78, 0.68 and 1.23 in January 2000, and 0.83, 0.69 and 1.75 in July 1999.
30. Developing the west has been a key policy issue in China since early 2000. In October 2000, the State Council declared four points in relation to preferential policies in developing the west: 1) increasing financial support from the central government; 2) promoting the investment environment such as tax-preferential policy and land-use preferential policy; 3) extending the Open Door policy both inter-regionally and internationally; 4) absorbing and retaining knowledge-workers and developing technology education.
31. According to China's population migration policy, a person cannot migrate freely from one region to another. This restriction mainly refers to the migration from rural areas to urban areas or from less developed areas to more developed areas. Under certain conditions, people may migrate legally among different regions, but it generally takes long time and many bureaucratic procedures. It is possible to work in an area without local residential identity authorized by the government, but the cost is usually very high. For example, residents may not benefit from some local public services, particularly the education services for their children. The policy further precludes urban elites and talented labor from migrating into rural areas while rural people are still moving into cities as the cost due to "illegal working" or temporary working in cities is not much more than the benefit, and sometimes even much less than the benefit.

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TURKISH-EU RELATIONS AND THE PROSPECTS FOR TURKEY'S ACCESSION

Founded in 1923, the Republic of Turkey has been a name on the European Union's (EU) dance card for a long time now. Yet, the likelihood of the two actually partnering up depends on many factors. Although Turkey has a strong desire to fulfill what it sees as its European destiny, there remains concern in Europe about Turkey's ability to meet the economic, cultural and political standards expected by the EU. Despite these concerns, the EU values Turkey's geopolitical position between Europe and the Soviet Union and is therefore reluctant to cut off ties with the country.

Known as European Economic Community (EEC) until 1993, the EU was originally created as a federation of nation states. Its evolution from an economic-based community to a union with an increasing number of political and social goals has changed its relationships with potential member states such as Turkey. This article explores the history of Turkish-EU relations and discusses the issues cited by the EU that have prevented Turkey from realizing full membership. These roadblocks include Turkey's strained relations with Cyprus and

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Greece, its unstable democracy, human rights abuses and its cultural incompatibility with the larger EU community. Since many of the same problems existed in other EU member countries at the time of their accession to the EU, the question remains in many Turks' minds as to whether the EU is using the above issues as an excuse to exclude Turkey from the Union.

THE EU-TURKISH DEBATE: A HISTORICAL PERSPECTIVE

IS TURKEY A PART OF EUROPE?

It has been argued that Turkey is not a part of Europe and that its accession should therefore be a moot point. While it is true that only three percent of Turkey's land lies within Europe's boundaries, if one takes former French Prime Minister Charles de Gaulle's definition of geographic Europe as extending from the Atlantic to the Ural Mountains, then Turkey is well within the borders.¹ Regardless of Europe's exact geographic boundaries, Turkey has always been viewed as a buffer zone on the exposed Southern border between Europe and the Soviet Union. For that reason, Turkey's accession to the EU would mean that a politically and strategically important area would be under European influence. Turkey has also been along the transit route for EU oil and has served as an ally to Europe in a region of international tension. With the Gulf War and the strife in Yugoslavia occurring on the heels of the Soviet Empire's collapse, Turkey's geographical importance as a neutral country has remained intact. In order to prove its dedication to Europe, however, Turkey has been forced to curtail trade relations with its Middle Eastern neighbors. Yet, this presents an obvious double standard since most European countries trade freely with Middle Eastern countries.²

Aside from facing geopolitical challenges, Turkey has been faced with cultural assimilation issues as well. Because of its Ottoman, imperialist past, Turkey's reputation in Europe had been historically that of an antagonist, and certainly not a European country. Therefore, since the mid-1800s, Turkey has been going to great lengths to reverse its reputation in the eyes of Europe. The first turning point in the relationship between Turkey and Europe was when, following the Ottoman *Tanzimat* reforms of 1839, Turkey fought on the side of France and Britain in the Crimean War of 1856. Then, in an effort to revitalize the empire, Turkey adopted European legal, political and cultural ideals.³ The more important turning

point, however, came with the reforms of the first president, Mustafa Kemal Atatürk, in the 1920s. Atatürk, known as "the father of modern Turkey," invoked sweeping reforms such as disestablishing the state religion and abolishing the Islamic courts system. Atatürk continued his reforms by adopting the European (Gregorian) calendar and the Latin alphabet in 1928, and changing the official day of rest from the Muslim Friday to the Christian Sunday. Turkey created a Western-style constitution by borrowing the Swiss Civil Code and the Italian Penal Code in 1926, and it followed Europe's example by giving women the right to vote only a short time after Britain. Atatürk even went so far as to prohibit traditional religious dress such as the fez and the veil. Since the Turkish people held Atatürk in such high esteem, his reforms were fairly well received. Nevertheless, there were, religious-inspired backlashes and revolts, all of which the Turkish government suppressed by force.⁴ As author John Redmond stated, "Europeanizing the elite was one thing, converting the masses was another."⁵

Turkey continued its move towards Europeanization by joining the League of Nations in 1919; forming the Balkan Entente with Greece, Romania and Yugoslavia in 1934; cementing alliances with Britain and France at the approach of World War II; joining the Council of Europe in 1949; and becoming a member of the North Atlantic Treaty Organization (NATO) in 1952. In 1985, the Dutch ambassador to Turkey, Peter Niemann, said, "Turkey is part of Europe. It is inconceivable to think otherwise but Turkey should precipitate its economic development so that it will attain the level of economic process of its European partners."⁶ Due to internal economic and political problems, however, this has not happened. Despite its strong and deliberate policy of Westernization, Turkey is nevertheless accused of being caught between two continents and two traditions, belonging fully to neither. Ultimately, however, due to these geographical and cultural reasons, along with internal political and economic reasons, Turkish-EU agreements have not been met and Turkey has not become a member of the EU.

JOURNEY TOWARDS EU-MEMBERSHIP

Turkey formally applied for EU membership on April 14, 1987, bringing to culmination almost a quarter century of Turkish effort aimed towards joining the EU. The 1963 Ankara Association Agreement (AA) laid the initial groundwork for Turkey's participation in the EU, but the actual goal of the Agreement was unclear. Turkey viewed the AA as

a means of achieving EU membership. Europe, on the other hand, viewed the Agreement as a way to keep Turkey under European influence without guaranteeing it full membership.⁷ Turks were very optimistic about their place in Europe following the initial signing of the AA when Walter Hallstein, then President of the European Commission, stated, "Turkey is a part of Europe."⁸

When the AA was signed on September 12, 1963, it was set up in three stages. The first stage, slated to last five to nine years, was called the preparatory stage, and was intended to prepare Turkey to meet the criteria necessary for EEC membership. It introduced tariff quotas for Turkey's four principle agricultural exports and provided a five-year, 175 European Currency Units (ECU) loan to assist Turkey's development. The transitional or second stage was intended to last 12 to 22 years. During that time, the EEC and Turkey were to move into a customs union and Turkey was to adopt the common external tariff. In addition, the EU would allow free movement of labor and capital, competition and transport.⁹ In the third and final stage, the EEC set conditions for Turkey's full EEC membership, but it did not set a timetable or a solid membership guarantee.

During the preparatory stage of the AA, the number of Turkish guest workers in the EEC increased, as did the presence of Turkish industry. However, along with an increased Turkish presence in Europe came an increased trade deficit with the EEC. Turkey had difficulties absorbing the EEC's financial aid and as a result, it failed to strengthen its economy in preparation for the second stage. This economic downturn, along with the Cyprus Crisis of 1963–67, eventually led to the demise of the AA. By 1970, the transitional stage had yet to be negotiated, and the EEC instituted the Additional Protocol instead. In terms of trade, the Additional Protocol called for the gradual creation of a customs union through the abolition of all duties on Turkish industrial imports to the EEC. It also called for the gradual decrease in Turkish tariffs on European imports. Turkey was to slowly adjust its agricultural sector over 22 years to reach the EEC's common agricultural policy. In addition, the free movement of labor and capital was to com-

mence within 12 to 22 years. Finally, a second financial protocol was put in place to provide loans of up to 300 million ECU after five and a half years to assist Turkey's development.¹⁰

The inward-looking policy that Turkey invoked before 1980 and the continuation of its import-substitution policy was incompatible with the Additional Protocol and did not foster its goal of building closer relations with the EEC. In 1978, Turkey was forced to request that the move towards a customs union be slowed because of its balance of payment problems.¹¹ Since the EEC changed its policies ac-

cording to its own needs, its approach to complying with the AA was also inconsistent. It seemed as if Europe's desire to make the AA work was hampered by the growing realization of the negative economic impact Turkish membership would have on

the EEC's social and regional funds.

Ultimately, due to both Turkey and Europe's failure to implement the Agreement, the AA eventually failed and Turkey was not admitted to the EEC. This failure was exacerbated by economic pressures during the 1970s and internal political chaos that led to a military coup in 1980. Despite these events, many in Turkey were nevertheless devastated by the AA's failure. Turkey still wanted to complete its Western orientation initiated by Ataturk in the 1920s.¹² Another motivating factor was Turkey's long-standing competition with Greece, who had also applied for membership to the EEC. Perhaps most important, however, was Turkey's desire to gain a favorable trade agreement with the large European market and to promote the development of the Turkish economy. Many politicians in Turkey believed that EEC membership would decrease domestic unemployment since the EEC could serve as an outlet for the Turkish labor force. Furthermore, they believed that EEC membership would remove the duties and restrictions on goods with regard to regional trade.¹³

Turkey signed the AA with the understanding that it would eventually become a full member of the EEC, but this was not the case. The events that led to the demise of the AA highlight the differences between Turkey and Europe's political agendas with regard to Turkey's membership. The EEC has always been hesitant to extend full membership to Turkey and never saw the AA as providing any

Despite its strong and deliberate policy of Westernization, Turkey is nevertheless accused of being caught between two continents and two traditions, belonging fully to neither.

guarantees. While the success of the AA and eventual accession to the EU had been a top priority for the Turkish government since the initial signing in 1963, the aforementioned factors have prevented Turkey from meeting its goal.

Perhaps the most important reason for the AA's failure was the long-standing animosity between Turkey and Greece, which was worsened when Greece became a member of the EEC in 1981. As a member state, Greece gained the ability to veto EU policy relating to Turkish membership. In addition, it was in a unique position to shape the EU's opinion regarding Turkey. For instance, when Turkey invaded Cyprus in 1974 to protect the Turkish-Cypriot population from Greek-Cypriot aggressors, the Greeks, and in turn the EEC, perceived Turkey as the antagonist.¹⁴ This event heightened Europe's existing negative opinion about Turkey and caused the EEC to view Turkey as an aggressor. Contrary to the EEC's viewpoint, the Turks saw the invasion as a defensive rather than an offensive move since the

Treaty of Lausanne after World War I transferred Turkish sovereignty over Cyprus to Britain indefinitely.¹⁵ Yet Greek human rights abuses towards the Turkish minority living on Cyprus motivated Turkey to risk European condemnation and invade the island in order to protect the Turkish citizens. The invasion resulted in a partitioning of the island, with the northern half being controlled by the Turks and the southern half by the Greeks. To this day, the Turkish half has not been officially recognized by any world power. The 1994 inclusion of Greek Cyprus as a candidate for EU accession further exacerbated tensions between Turkey and the EU. Also, at the time of the AA, Turkey's outstanding conflicts with Greece and the Council of Ministers regarding Cyprus, along with its conflict with the European Parliament regarding human rights, prevented any kind of dialogue between Turkey and the EEC.

In spite of the AA's breakdown and Turkey's poor relations with Greece, it was not deterred from applying for EU membership again in 1987. In fact, the AA's failure caused Turkey to reexamine its relationship with the EEC and redefine its economic, political, strategic, and cultural priorities. In 1987, the EEC's principle economic concern was the low

level of Turkish development. Turkey was still a poor, underdeveloped country with 50 percent of its work force involved in agriculture. Despite the military coup and Turgut Ozal coming to power in 1980 leading to a more outward-looking economic policy, Turkey still had a number of economic peculiarities. The country suffered from a high rate of inflation and a downward spiraling exchange rate, both of which would preclude inclusion in the European Monetary Union (EMU). In addition, the EEC was concerned about the workers remittances, mostly from within the EEC, in Turkey's balance of payments and Turkey's large foreign debt burden.¹⁶

The cost in terms of grants and loans to Turkey that the EEC would assume would far outweigh any of the benefits of Turkish membership. Turkey would be eligible to receive loans from multiple EU development funds, but would contribute very little to the EEC's budget in return. In fact, the negative economic impact of Turkish membership in the EEC at this time could have been greater than that of Greece,

Spain and Portugal combined.

After a two-year delay, on December 20, 1989, the EEC commission again rejected Turkish membership. It did propose, however, to revise the AA with the "completion of the customs union, resumption and intensification of financial cooperation, the promotion of industrial and technological cooperation and strengthening of political and cultural links."¹⁷ Inwardly, Turks saw the EEC's alternative proposal as a slap in the face and felt there was a double standard with regard to their treatment as compared to that of the other Mediterranean applicant countries. The revival of the AA would merely create the same problems that Turkey faced previously when working towards accession.¹⁸ Outwardly, however, Turks welcomed the proposals for increased EEC-Turkish cooperation, and made clear that it saw this cooperation as a means to its ultimate goal of full membership.

Since then, Turkey's membership bid has followed much of the same up and down pattern as it has in the past. In 1995, Turkey signed the EU Customs Union Agreement, which allowed for the free movement of goods to and from Europe. However, the decision not to include Turkey as an EU candidate at the Luxembourg Summit in 1997 was unac-

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ceptable to Turkey, which then proceeded to cut off political dialogue with the EU. At the Cardiff Summit in 1998, largely due to U.S. pressure, the EU reversed its position and agreed to reconsider Turkey's application. Yet, Turkey still has not been able to meet the Copenhagen political criteria, which reflect the economic and political conditions necessary for EU membership. The Helsinki Conference in 1999 finalized Turkey's candidacy and, at present, an EU-Accession Partnership Document is being discussed in the Turkish Parliament. Meanwhile, relations between Turkey and the EU have been positively impacted by EU and Greek aid during the catastrophic earthquake of August 1999. Greece and Turkey have made attempts at mending relations by promoting cooperation in areas such as tourism, trade, culture, and terrorism prevention. The situation with Cyprus, however, remains the major sticking point in Turkish-EU relations. Despite continuing proximity talks regarding Cyprus, it remains to be seen if an acceptable agreement will be reached.

OBSTACLES TO TURKEY'S ACCESSION: THE CURRENT DEBATE

Although Turkey and the EU signed the Customs Union Agreement in 1995, Turkey is still butting heads with Europe as far as its membership is concerned, and many of the original problems facing Turkey's accession still exist. Turkey has a large and increasing population that is bigger than Greece, Spain and Portugal's combined. Its population would make it the second largest in the EU after Germany, thus raising a multitude of cultural issues. Turkey is considerably poorer than the other Mediterranean countries, although its economy is growing and is stronger than many of the potential Eastern European members. Still, its struggling economy would have a large negative impact on EU regional and social funds. The fear remains within the EU and especially Germany that Turkish accession would lead to a large emigration of migrant workers out of Turkey into countries where, even if unemployment were high, the social and unemployment benefits would exceed those offered in Turkey.¹⁹

Still, it is not just economic problems that hinder Turkey's entry into the EU. Political and cultural issues have come to the forefront. In its 1997 decision against Turkey's membership application, the EU cited an unstable democracy, the Cyprus dispute, the on-going Kurdish conflict and human rights as issues as matters requiring resolution be-

fore Turkey can become a full member. These issues remain the biggest obstacles to Turkey's membership in the EU.

UNSTABLE DEMOCRACY

Commonly referred to as 'Kemalism,' the principles set forth by Mustafa Kemal Atatürk during the Turkish Revolution, advocate the ideas of republicanism, secularism, populism, etatism, nationalism and revolution as the basis of the Turkish State. However, the basic principles of European nations – democracy, liberalism and recognition of civil rights – are noticeably missing in Kemalist ideology.²⁰ Due to Atatürk's notion of 'populism,' which means that all Turks are one, Turkish political parties cannot be founded on the basis of class, religion, ethnic group or region. If a group is perceived to go too far towards one of these leanings, it can be banned and its members may be imprisoned. This notion flies in the face of the liberalism that characterizes most Western democracies. Due to these inconsistencies between Turkish and European attitudes, many European leaders believe that Turkey is simply not ready for full democracy and, consequently, full membership in the EU.

Although Turkey has had a multi-party democracy since 1946, its strong military has played an active role in politics through political interventions in 1960, 1971 and 1980. The military is still viewed as the guardian of democracy, and Turks' trust in the military is much higher than their trust for any political party or politician.²¹ This is in sharp contrast to European democracy, where military bodies remain under civilian control and are not involved in politics. After civilian rule was restored following the 1980 coup, Prime Minister Özal implemented sweeping market reforms and voiced the hope that the EU would help support democracy in Turkey, announcing that Turkey had a "European vocation and a commitment to European unity."²² Countries emerging from military dictatorships, such as Greece, Spain and Portugal have been allowed to join the EU in order to bolster their democracies. Many Turks feel that the same argument should apply equally to Turkey.

THE CYPRUS CONFLICT

As it was in 1974, relations between Greece and Turkey still remain strained in regards to Cyprus. At the time of its own accession to the EU, Greece gave assurances that it would not block Turkish membership. This, however, has not held true. The continued Turkish presence in Cyprus remains a major stumbling block in Turkish-EU

relations. The Greek-Cypriot dream of reuniting with Greece and the socio-ethnic conflict between the Greek and Turkish populations on Cyprus that ensued resulted in Turkey's 1974 invasion of Cyprus. This invasion prompted outcries from the West and led to an arms embargo of Turkey by its Western allies. As it is, the self-proclaimed Turkish Republic of Northern Cyprus (TRNC) is not internationally recognized, a situation Turks view as unfair and blame on the worldwide Greek lobby. Yet, Greeks and Greek-Cypriots escaped criticism of their threats and violence against the Turkish-Cypriot community in the early 1970s. Despite its promises to the contrary, Greece now uses its EU veto power to negatively affect EU policy with regard to Turkey.²³

However, the main issue exacerbating tensions between Turkey and the EU is the fact that Cyprus has become a candidate for EU membership and it has been placed ahead of Turkey on the priority list. The EU may grant Cyprus membership, despite the fact that by treaty, Greece, Great Britain and Turkey are all guarantors of Cyprus' security and would all have to approve its membership. Furthermore, the EU has not guaranteed that both Southern and Northern Cyprus would be treated equally and fairly. If Greek-Cyprus is made an EU member before this situation is resolved, there will be a greater degree of animosity between Europe and Turkey, which could prompt Turkey to annex Northern Cyprus.

Europe had managed to avoid dealing with the issue of Cyprus until the Turkish application for membership forced the issue in 1989. Despite EU tolerance of past and present inter-member conflicts between Britain and Spain and between Britain and Ireland, the Cyprus conflict remains a major reason why accession talks are unable to proceed with Turkey.²⁴ Economically, it would probably be in the best interest of both Greece and Turkey to normalize relations. If Turkey were to become an EU member, it would provide a large and nearby market for Greek exports. At the very least, Turkish membership would provide Greece with an Eastern ally in an unstable political region.

HUMAN RIGHTS ABUSE

Other issues thwarting Turkey's accession is the EU's concern with Turkey's commitment to democracy and respect for human rights – issues over which the European Parliament has frequently blocked EU-Turkish relations. In 1989, an EEC-Turkish Joint Parliamentary Committee established a forum to discuss human rights in Turkey. The banning of political parties, capital punishment for political crimes, and police brutality and torture were the contested issues at that forum, and these issues are still being debated today.²⁵

The real crux of European concern with Turkey, however, is the Kurdish conflict. Since 1984, the Turkish government has been at war in the Southeast with the Kurdistan Worker's Party (PKK). Ankara refuses any dialogue with the organization,

which has been deemed a terrorist-separatist group. In addition, Kurdish-friendly political parties have been banned, and members of the Parliament have been expelled or arrested. While Kurds are not viewed as a minority in Turkey because they are Muslim, the country's policy of forced assimilation, in place since the 1920s, seems to have backfired where they are

Now, however, skepticism concerning the compatibility of Turkish and European culture is increasing, reflecting the shift in the European perception of its community and the increasing importance of a political rather than a solely economic union.

concerned. It is important to note, however, that the PKK does not speak for all Kurds in Turkey, many of whom are actively involved in national and political life. As a result, there is no unified Kurdish voice within Turkey. Nonetheless, Europeans view Kurds as a distinct ethnic minority who must be acknowledged and treated accordingly. Despite recent unrest, the Spanish Basque model is often upheld as an example for Turkey to emulate with regard to the Kurds.²⁶

When the PKK leader Abdullah Ocalan was arrested in Italy in 1998 after having been expelled from Syria due to severe Turkish pressure, the Kurdish situation in Turkey attracted international attention. Citing the legality of the death penalty in Turkey, Italy refused to extradite Ocalan, who was eventually sent to Kenya, where he was captured by Turkish commandos and returned to Turkey to stand trial. Before the trial, Turkey bowed to international pressure and removed the long-standing military judge from the judicial board. Although the

Turkish court has sentenced Ocalan to death, the punishment has been continuously postponed because the Turkish parliament has yet to ratify the decision. There is also the possibility that the case could be appealed to the European Court of Human Rights. Turkey would be able to prove to Europe that it has a commitment to human rights by rescinding Ocalan's sentence as a gesture of good will towards the Kurdish minority. Despite EU pressure, however, this outcome seems unlikely.

CULTURAL COMPATIBILITY

EU concerns about Turkish membership also rise from Turkey's national Muslim religion. With the election of the religiously oriented *Refah Partisi* (Welfare Party) in 1996, there has been a fear in the EU that Turkey is moving towards religious fundamentalism. Due to the secular orientation of the Turkish military, however, the Welfare Party was removed from office during a soft coup in 1997. While it is true that there are many pious Muslim Turks, naming Turkey as the next Iran or Algeria would be extreme. Due to its 77 years of secular tradition, it would be extremely difficult for religious fundamentalism to dominate public and political life. It has been said, "Turkish Islam as practiced in secular Turkey is as remote from Islamic fundamentalism as Italian Catholicism is from the Inquisition."²⁷ It is also curious that the EU prides itself on its commitment to pluralism, yet religious tolerance does not seem to be an EU priority. Although the EU is hesitant to accept this Muslim country, in reality, Catholics and Protestants in some parts of the Union dislike each other more so than either would dislike Muslims.²⁸

At the conclusion of the AA in 1963, cultural differences between the EU and Turkey seemed irrelevant. Now, however, skepticism concerning the compatibility of Turkish and European culture is increasing, reflecting the shift in the European perception of its community and the increasing importance of a political rather than a solely economic union.²⁹ In essence, Europe's borders are no longer based on geographic boundaries, but along cultural lines as well. This raises the question as to whether or not Turkey should so stringently follow the EU-prescribed guidelines for culture and thus run the risk of losing its own sense of Turkish identity.

CONCLUSION

Today, Turkey's business community, trade unions, intellectuals, and all but one of its political parties

are decisively in favor of Turkey's participation in the EU. The Turkish army, fearing the loss of its power, along with the religiously based Virtue Party (*Fazilet Partisi*) stand alone in their opposition to EU-membership under EU-prescribed conditions. Turkish expectations regarding EU membership have not changed. Turkey still hopes to gain the EU promise of an expanded market and the economic benefits which would follow the entrance of the Turkish labor force into the EU market. Integration with Europe and the contribution of EU financial aid would help regulate Turkey's unstable economy.³⁰ Increased foreign direct investment from EU member states and advantages from the development and institutionalization of a market economy would also benefit the Turkish economy.³¹ Still, many Turks have fears about joining the EU. Some worry about Turkey's ability to compete with European industry, while others worry about the harm that may come to Turkey's economic links to third party countries, and that differences between Turkey and the EU may negatively impact Turkish culture and traditions.

Similarly, the EU has fears about Turkey joining the Union, fears that have not changed much over the years. A country of Turkey's size could easily overwhelm the EU with social and economic problems. Germany fears that Turkey's accession would initially lead to an increased number of Turkish workers in Europe, adding to economic, social, political and cultural problems in the host countries. Furthermore, the EU's common agricultural policy, kept alive by subsidies designed to adjust to internal and external balances, would collapse under the weight of Turkey's immense agricultural potential. Europe is also worried about the effect Turkey's potential EU membership will have on its European homogeneity.

There would be, however, some substantial benefits from Turkish accession. The EU views the Turkish market as a Western market, with more than 50 percent of Turkish imports coming from the EU. Exclusion of this market would be economically disadvantageous to the EU. Moreover, a natural integration of Turkish and EU economies is occurring now in the form of industrial and commercial joint ventures. The number of technological agreements between Turkey and EU companies is also increasing. In addition, most of the foreign tourists visiting Turkey are from EU countries.³² Turkey's position as a link between Europe and the Middle East enables its political and military relations with the EU to continue. Due to continuing pressure from the U.S., the EU is anxious to keep the Turkish mar-

ket and economy inside the EU orbit and to keep Turkey inside the Western defense system.

In 1997, the EU moved the formerly communist nations of Eastern Europe ahead of Turkey in line for membership. This was a shock to a country that is the only NATO-member applicant, has the longest-standing association agreement of any applicant country, and is a member of the Customs Union. According to former EU-president, Jean-Claude Juncker, Turkey is "not worthy to sit at the EU table" because of its poor human rights record.³³ In the viewpoint of many Turks, this action confirmed suspicions that the EU wanted to remain a "Christian Club," something the EU vehemently denied.

If the EU continues to reject Turkey's pleas for membership, will Turkey break its ties and turn to its other neighbors for support? If not Europe, then who? As a result of their secularism and strong ties to the West, Turks are not well received by their Middle Eastern or Arab neighbors. The newly independent Central Asian Turkic republics do not hold many prospects for Turkey either. Thus, even if Turkey is never admitted into the EU, its own self-interest prevents it from breaking its economic and military links to Europe. Perhaps a more important question is whether Europe can ensure its stability and still keep Turkey within its grasp without accepting its full-membership to the EU. Turks continue to question whether the EU is using political reasons to justify the exclusion of a country that is culturally different from many EU countries. While Turks are willing to work on the issue of human rights, many Turks feel that the issue of cultural compatibility should be a moot point since all of the EU-member countries have strong, individual national identities. In the end, by leaving the membership possibility open, Europe may be able to work with Turkey towards domestic change rather than simply dictate economic and social policy.

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THE MEDICAL SAFETY NET FOR LEGAL IMMIGRANTS IN TEXAS:

CHALLENGES POSED BY THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996

In the past five years, both legislative and extra-legal barriers have been erected to diminish the medical safety net available to legal immigrants in Texas. What began with the congressionally-mandated program cutbacks in 1996 has evolved into a fear so pervasive that legal immigrants are refusing to access essential assistance programs for themselves and/or their eligible children. A General Accounting Office (GAO) study recently reported that almost one-third of Medicaid eligible children who are uninsured live in immigrant families.¹ Despite a slow start, the Texas Legislature has taken positive steps to address the medical needs of this population through state-funded extensions of Medicaid and the new Children's

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Health Insurance Program (CHIP). However, further efforts are essential. The purpose of this paper is three-fold. The first section presents both the numerous and confusing changes in immigrant eligibility mandated by the 1996 "Personal Responsibility and Work Opportunity Reconciliation Act" (PRWORA) and subsequent modifications that also affected immigrant access to benefits. Second, the options that PRWORA left open to the states is outlined, looking specifically at the choices that Texas made in terms of Medicaid and later CHIP. Finally, the barriers still thwarting legal immigrants' access to care is examined, alternatives are discussed, and recommendations for further action at the Texas state government level are offered.

PRWORA

On August 22, 1996, President Clinton signed into law the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), mandating "the end of welfare as we know it." The justification for this statute was moral and financial: that welfare recipients in general abuse the system, that welfare "hurts" people by encouraging dependency, and above all, that taxpayers should not have to foot the bill for immigrants who view the United States as, according to chairman of the Subcommittee on Immigration and Claims of the House Judiciary Committee Rep. Lamar Smith (R-TX), "nothing more than a taxpayer-funded retirement home." Among the most dramatic changes were those affecting the eligibility of legally present, documented immigrants for federal benefit programs. The original provisions of PRWORA drastically reduced immigrant access to the welfare safety net and gave states much greater power in determining eligibility for that aid. Of the \$60 billion projected savings from the welfare reform, approximately \$24 billion or 44 percent was to come from cuts in social services to immigrants.² Eighty-five percent of the savings came from reductions in Supplemental Security Income (SSI), Food Stamps, Aid for Families with Dependent Children (AFDC), and Medicaid.³ Federal savings from cuts in immigrant access to Medicaid alone were projected to affect 600,000 legal immigrants for a total savings of \$5 billion over seven years.⁴

BACKGROUND: PRWORA'S IMMIGRANT PROVISIONS

In order to understand PRWORA's impact on legal immigrant access to the medical safety net, it is important to examine the entire array of changes in immigrant eligibility enacted by that law. Immigrant access to health care was affected not only by changes in Medicaid availability, but also by the confusion and fear generated by PRWORA's comprehensive assault on the entire notion of immigrant entitlements.

The immigrant provisions of PRWORA created new categories of distinction among immigrants based not on their legal status, but on their date of arrival and perceived permanence in the U.S. In the past, access to federal benefits was based on the immigrant's legal status and was available as a safety net for any legally admitted immigrant after a period of deeming.⁵ Only refugees and asylees were exempt and could apply for benefits upon arrival. After the deeming period expired, legally present immigrants were eligible for most major and minor federal safety net entitlement programs on the same terms as citizens. Undocumented immigrants were excluded from all the major federal assistance programs including SSI, Medicaid, AFDC, and Food Stamps. With the inception of PRWORA, immigrants were recategorized as "qualified" or "unqualified," effectively replacing the "legal" or "illegal" dichotomy as it related to determining benefit entitlement. While the bulk of legal immigrants were deemed "qualified," several categories of legal immigrants suddenly found themselves "unqualified." In terms of eligibility for federal benefits, they were demoted to the same status as the undocumented group, meaning they were denied access, and any benefits they were receiving at the time of the law were terminated.⁶ The only exemptions to the ban for both the "unqualified" and undocumented were emergency medical assistance under Medicaid, short term non-cash emergency disaster relief, immunizations, testing for and treatment of communicable diseases, and non-cash, non-means-tested assistance necessary for the protection of life and safety like temporary shelters, soup kitchens, crisis intervention, etc. as specified by the U.S. Attorney General. Although the majority of legal immigrants fell into the "qualified" category, most saw their eligibility for federal safety net programs substantially altered.

A second distinction between legal immigrants under PRWORA was based on their date of arrival in the U.S. The "before" group, or those immigrants

who were legally present in the U.S. before the date PRWORA was signed into law, August 22, 1996, were allowed greater access to welfare benefits than those who arrived on or after that date—the “after” group. States were granted the right to differentiate between the two groups for state programs and those that operate with joint federal and state funds. After January 1, 1997, states had the option of continuing or terminating the participation of “qualified” immigrants in the “before” group for Medicaid and the AFDC replacement, Temporary Assistance for Needy Families (TANF), but were prohibited from using federal dollars to extend these benefits to those in the “after” group. Legal immigrants who arrived or adjusted to legal status after August 22, 1996, had to be barred from all “federal means-tested public benefits”⁷ for their first five years in the country except the life and safety provisions outlined above. This bar also prohibited states from using Medicaid funds for public health immunizations and for testing and treatment of communicable disease for “unqualified” and “after” group immigrants. After the five-year waiting period, states would have the option to decide if they would allow legal immigrants to participate in Medicaid and TANF, but only after deeming them “qualified.” Refugees and asylees retained eligibility for full Medicaid and TANF benefits, but were given a time limit of five years after entering or being granted asylum. After five years they would be subject to the same state decisions as other legal immigrants. Additionally, all legal immigrants were to be barred from SSI and food stamps until they naturalized. The only “qualified” immigrants exempted from the bar were those who could prove forty quarters or ten years of Social Security qualified work history,⁸ refugees, asylees and those granted withholding to deportation (but only for their first five years in the U.S.), and veterans and active duty military, their spouses and dependent children. Those “qualified” immigrants unable to prove an exemption were to be dropped from the rolls by August 22, 1997.

After the five-year waiting period for those entering the country after August 22, 1996, “qualified” immigrants technically become eligible for federal means-tested benefits, but are then subject to deem-

ing of their sponsor’s income. PRWORA created new restrictions for sponsoring immigrants, requiring that all persons bringing family members to the U.S. demonstrate that they have a household income of more than 125 percent of the poverty level (or \$21,313 for a family of four in 2000).⁹ Those legal residents and citizens who do meet the income requirements are required for the first time to sign a legally binding affidavit of support that holds them responsible for supporting the family member until he or she becomes a citizen or obtains forty work quarters.¹⁰ This provision effectively makes “qualified” immigrants in the “after” group ineligible for federal benefit programs until they become

citizens or work forty quarters, because even after the five year period, their sponsor’s income will now be considered as 100 percent available to the immigrant in determining income-based need. Programs exempt from deeming for “qualified” immigrants are: emergency services; public education and educational assistance ranging

from Head Start to student loans; programs offered under the Job Training Partnership Act; and child nutrition programs including school lunches.

New reporting requirements for agencies that administer federal benefits were also outlined in PRWORA. It mandated that these agencies report quarterly to the Immigration and Naturalization Service any persons “known to be unlawfully present” in the U.S. A similar provision makes it illegal for any public entity to adopt an official policy stating that it will not share information regarding immigration status with the Immigration and Naturalization Service (INS). Likewise, no local, state, or federal entity can prohibit employees from sharing this same information. Non-governmental organizations are not included in this requirement of PRWORA and can continue to serve their clients without requiring documentation of legal status.

Since PRWORA was signed into law, there has been a continuous stream of legislation amending it. The pressure for these changes has come from immigrant advocacy groups and from President Clinton himself, who vowed to soften the immigrant provisions of PRWORA even as he signed it. Several significant pieces of legislation, including

The immigrant provisions of PRWORA created new categories of distinction among immigrants based not on their legal status, but on their date of arrival and conceived permanence in the U.S.

the Balanced Budget Act of 1997 (BBA) and the Agricultural Research, Extension, and Education Reform Act of 1998, served to mitigate the harshest terms of the welfare reform law for the most vulnerable populations. For the most part, however, immigrant access to Medicaid was not affected by these amendments.¹¹ Of particular importance is that immigrants in the “after” group were not addressed by either law, leaving them subject to individual state decisions, but effectively excluded from Medicaid until naturalization.

STATE DECISIONS—TEXAS’S CHOICES

PRWORA rendered a major devolution of responsibilities from the federal government to the individual states. For the first time, states were given license to discriminate against non-citizens in their state and locally funded programs. Although PRWORA forbade the use of federal funds to extend coverage to those immigrants whose benefits were terminated, there is no provision preventing or prohibiting states from using their own funds to assist these immigrants or those in the “after” group who face the five-year wait. Most states took some action to make available funds for at least limited assistance programs for authorized immigrants.

Although over 7 percent of qualified immigrants affected by PRWORA live in Texas,¹² the 75th Texas Legislature did little to bolster the safety net for them in the immediate aftermath of PRWORA’s passage. The new TANF block grant could have been used to supplement existing state dollars in order to allocate additional funds to health and human services programs assisting legal immigrants affected by PRWORA. Instead of taking advantage of this opportunity to expand services, however, the Legislature used TANF funds to the maximum extent allowable to simply replace existing state spending on health and human services. Bills and resolutions sponsored by Texas State Senators Judith Zaffirini and Carlos Truan and Texas State Representatives Elliot Naishtat and Norma Chavez to help offset the PRWORA changes were filed, but all died in the legislature without much support.¹³ Also, a \$1 billion surplus that might have been partially appropriated to assist legal immigrants was instead earmarked in an unwritten consensus to be used to finance an increased property tax homestead deduction.¹⁴

MEDICAID

Although minimal, Texas did take a few measures to support specific groups of disintitled immigrants. Recognizing the reality that without Medicaid coverage, the costs of care for qualified immigrants would shift directly to city and county funded facilities, the Texas Legislature voted to exercise its option to continue using federal funds for “before” group Medicaid recipients who had been cut off from SSI as well as from TANF soon after the passage of PRWORA. Due to a technical barrier, however, Texas’s ability to follow through on this decision was complicated for a large portion of the 101,000 legal immigrants enrolled in Texas Medicaid.¹⁵ Essentially, Texas lacked a special category for the elderly poor and disabled persons who had previously been receiving Medicaid via their SSI eligibility. When SSI was terminated, there was no programmatic home in which to put them. Creating the administrative space, however, would ensure that no legal immigrants in Texas who were receiving Medicaid would lose their benefits and that any “before” group person turning 65 years of age or becoming disabled after August 22, 1996, would still be eligible. After the BBA restored SSI to most “before” group immigrants, Texas dropped its attempt to create the new administrative category. Because the BBA covered only most of the former SSI recipients, however, “before” group legal immigrants who turn 65 years of age in the future but are not disabled will not be eligible for Medicaid. In addition, Texas took no action on the provision of PRWORA that allows states to screen for undocumented children in determining eligibility for Women, Infants and Children (WIC), the Summer Food Service Program, or the Child and Adult Care Food Program. Texas will continue providing child nutrition programs to all poor children without regard to their immigration status.

At the same time as the 75th Legislature extended Medicaid coverage to qualified immigrants who were in the U.S. prior to PRWORA, it acknowledged the date of arrival distinction and refused to fill the gap for qualified immigrants who entered after August 22, 1996. Doing so would have required Texas to pay those immigrants’ Medicaid expenses solely with state funds. The Legislature also expressed its intention not to serve the “after” group when the five-year ban is up.¹⁶

CHIP

On August 5, 1997, President Clinton signed the federal budget reconciliation act for Fiscal Year (FY) 1998 into law. This, the Balanced Budget Act of 1997, encompassed many important provisions, including the Child Health Block Grant (formally titled the State Children's Health Insurance Program (CHIP) under Title XXI of the Social Security Act). This block grant allocated \$4 billion per year in matching funds for ten years to expand health care coverage for uninsured children whose families cannot afford private insurance, but who earn too much to qualify for Medicaid.¹⁷ Under the federal mandate, CHIP was intended to provide free or reduced cost coverage for children from birth through age 18. Although the funds first became available October 1, 1997, Texas did not begin the federal application process until the 1999 legislative session. Because of this delay, Texas was not able to begin accepting applications from CHIP-eligible children until April 2000.¹⁸

CHIP targets those children whose family incomes are above the limit for Medicaid, but are less than twice the federal poverty level (\$34,199 in 2000 for a family of four). These children account for a large portion of Texas's uninsured children—both citizen and non-citizen. State officials estimate the population qualifying for CHIP to be 471,000 out of approximately 1.4 million uninsured Texas children in 2001.¹⁹ There are no statistics available as to the proportion of these children who are legal immigrants.

The Texas CHIP program, enacted in 1999, will be paid for with state tobacco settlement funds²⁰ and matching federal funds.²¹ On average, Texas will receive \$423 million per year, or \$2.5 billion in the next five years alone, in federal CHIP dollars.²² As for the state share, approximately \$1.8 billion in tobacco funds were allocated for the 2000-2001 biennial budget, with just under 10 percent, or \$179.6 million earmarked for CHIP.²³ The state law specifically stipulates, however, that CHIP is not an entitlement program and that it must be reauthorized by the legislature in the event that federal matching funds or tobacco settlement dollars cease to be available in the future. Although there are provisions in the law directing the Texas Health and Human Services Commission to freeze enrollment in the event of inadequate funding, it also protects CHIP from minor fluctuations in the funding stream by granting CHIP "first call" on tobacco settlement funds in all future fiscal years.²⁴

By 1999, the Legislature's stance on immigrant benefits had softened sufficiently to extend medical

benefit eligibility to all legal immigrant children, regardless of date of entry. Federal CHIP covers all legal immigrant children who arrived prior to August 22, 1996. Per federal law, however, "after" group children will be subject to the five-year bar and subsequent deeming unless states decide to fill the gap using state funds exclusively. Unexpectedly, the 76th Texas Legislature decided to use state-only funds to cover all "qualified" immigrant children at Medicaid or CHIP income level regardless of their date of entry. This means that in Texas, all "qualified" legal immigrant children whose families earn up to 200 percent of the federal poverty level are eligible for CHIP benefits.

BARRIERS TO CARE

Although many of the institutional barriers to medical care are no longer germane to most legal immigrants in Texas (only "after" group adults still face terms different than citizens), a pervasive fear among the immigrant community, as well as confusion regarding eligibility changes, prevents many from accessing the needed services for which they are eligible. These fears generally stem from the INS/State Department public charge determinations and the INS reporting requirements outlined by PRWORA. Although no Texas-specific studies have been conducted to date, a 1998 Urban Institute study found that approved applications of legal non-citizen families for Medi-Cal and TANF in California fell 71 percent between January 1996 and January 1998 even though there was no change in legal immigrants' eligibility for either program and denial rates in the county were steady during the period.²⁵ A more recent Urban Institute study found that legal immigrants "accounted for a disproportionately large share of the overall decline in welfare caseloads between 1994 and 1997," with use of means-tested benefits by legal immigrant households falling 35 percent between 1994 and 1997.²⁶ Citizen household use fell only 14 percent during this same period. Medicaid use followed a similar pattern, dropping 22 percent among legal immigrant households while dropping only 7 percent among citizen households. The difference is even more striking when only households below 200 percent of poverty are examined. Medicaid use among legal immigrant households below 200 percent of the federal poverty level fell 19 percent while the decline among similar citizen households was negligible (less than .01 percent).²⁷

Because comparatively few legal immigrants were ineligible for public benefits as of December 1997, it appears that the steeper declines in noncitizens' than citizens' use of welfare, food stamps, and Medicaid owe more to the "chilling effect" of welfare reform and other policy changes than they do to actual eligibility changes. In addition, the fact that welfare [including Medicaid] use among noncitizens dropped as steeply as food stamp use (where new restrictions extended far more broadly) suggests that eligibility in one program may chill noncitizens' use of other programs.²⁸

Confusion about eligibility requirements has kept some legal immigrants from accessing benefits to which they are entitled. Because Texas opted to continue Medicaid eligibility for qualified "before" group immigrants there should have been no break in that group's access to medical care. Erroneously believing that PRWORA had discontinued all benefits to legal immigrants (as was originally the case for SSI and food stamps), however, many legal immigrants dropped off the Medicaid rolls when their food stamps were discontinued.

More worrisome even than the confusion surrounding eligibility, however, is the pervasive fear among immigrants that accessing benefits to which they know they or their children are legally entitled will adversely impact their ability to stay in the U.S. and/or their ability to naturalize. Primarily, the fears stem from concerns about being labeled a "public charge"²⁹ and from the PRWORA requirement that public agencies report any persons "known to be unlawfully present in the U.S." to the INS.

These fears are not unfounded. Until recently, the "public charge" label could and did occasionally apply to legal immigrants who took advantage of safety net programs. From the passage of PRWORA until its guidelines were clarified in June 1999, the INS and State Department threatened to make public charge determinations based solely on an immigrant's or an immigrant's family's current or past receipt of non-cash public assistance, including Medicaid. Contrary to Medicaid law, the State De-

partment began the Public Charge Lookout System. Under the guise of this program, past Medicaid recipients were detained at the border and denied entry until past benefits were fully repaid. It often took months of separation until family and friends were able to raise the thousands of dollars to remedy the "public charge" problem. INS and State Department personnel clearly told immigrants that utilizing Medicaid or other non-cash health or nutritional benefits would hamper future efforts to adjust immigration status or obtain citizenship. Immigration judges have also coerced immigrants to repay Medicaid benefits that they received legally, threatening adverse rulings for failure to comply.³⁰

The INS's June 1999 guidelines on public charge determinations should calm some of these fears.

The guidelines definitively stated that receipt of health care services, including Medicaid and CHIP, nutrition services, including food stamps, WIC and school meals, and other non-cash benefits would not affect an immigrant's ability to get a green card or to naturalize. While this was a very positive step that may

quell fears of being labeled a public charge, it does not address another major barrier to legal immigrants' accessing needed safety net programs—fear of reporting requirements.

The new reporting requirements instituted by PRWORA have profoundly impacted the medical safety net available to legal immigrants. Claudia Schlosberg of the National Health Law Program writes:

Publicity surrounding the welfare law and recent changes in immigration law have generated palpable fear in the immigrant community. A recent poll of Medi-Cal eligibility workers identified fear of INS as the number one barrier faced by persons applying for medical assistance. Providers too are confused and concerned. Increasingly, reports from the field strongly suggest that immigrants entitled to receive emergency health care, public health services and other health care (i.e. under a state-funded program), and citizen children of undocumented parents are 'on the run' medically because they fear being reported to INS.³¹

Although over 7 percent of qualified immigrants affected by PRWORA live in Texas,¹ the 75th Texas Legislature did little to bolster the safety net for them in the immediate aftermath of PRWORA's passage.

Although the reporting requirements exempt public health care providers reporting people to the INS, the agencies where they work are prohibited under PRWORA from having an official policy that they will not share immigrant status information with the INS. Neither can these health care providers forbid employees from sharing that information. Therefore, public hospitals and clinics cannot guarantee protection for undocumented patients. According to the Center for Public Policy Priorities in Texas, "Public health providers report that this is already having a chilling effect on the use of prenatal care, preventative care and primary care."³²

Fear that undocumented persons will be reported to the INS and subsequently deported hampers the ability of legal immigrants to access medical care for themselves and/or for their legal immigrant and citizen children. Undocumented parents fear exposing themselves or other undocumented family members to immigration authorities and so avoid accessing medical benefit programs for their eligible children. "Mixed households," in which there is at least one non-citizen family member living with at least one citizen family member, are pervasive. One in five children in the U.S. is either an immigrant or has at least one immigrant parent—many of whom have not become citizens.³³ Moreover, one in ten American children lives in a household where at least one parent is a non-citizen and at least one child is a citizen.³⁴ In Texas, 1998 Department of Human Services data identified 65,396 mixed households with approximately 9,000 legal immigrant and 144,975 citizen children living in them.³⁵ Certainly, if mixed households containing at least one undocumented family member were counted the numbers would be far higher. This creates a difficult situation for immigrant families which is reflected in the steep rise in uninsured rates for children in mixed households since welfare reform. Between 1995 and 1997, uninsured rates for non-citizen children rose from 36.4 percent to 43.9 percent, while for citizen children with non-citizen parents, the uninsured rate rose from 23.3 percent to 26.8 percent.³⁶

Although health care providers and Medicaid eligibility workers are not required to report their patients' / clients' immigration status to the INS,

TANF eligibility workers are required to do so under PRWORA. Moreover, PRWORA and federal Medicaid guidelines do require federal, state, and local government agencies to determine program eligibility through verification of citizenship and immigration status even though they are not required to share that information with the INS.³⁷ The crux of the problem is that most states have the same agency responsible for processing both TANF and Medicaid applications—many states even have a single application for the two programs. This causes confusion about reporting obligations and heightens immigrants' apprehensions. Such is the case in Texas, where

Fear that undocumented persons will be reported to the INS and subsequently deported hampers the ability of legal immigrants to access medical care for themselves and/or for their legal immigrant and citizen children.

TDHS determines eligibility for TANF—which has reporting requirements—as well as Medicaid and food stamps—which have no reporting requirements.³⁸ The problem is likely to extend to the new Texas CHIP program as well, given

that CHIP and Medicaid now have a common initial application.

Steps have been taken to address these problems. In September of 1998, federal Medicaid officials announced new guidelines that prohibit states from requiring parents, as a condition of either Medicaid or CHIP eligibility, to provide Social Security numbers (SSNs) or any other verification of immigration or citizenship status for themselves or other family members not applying for benefits. This means that states can only require SSNs and verification of status information for the child who will receive the Medicaid or CHIP benefits, and not from any other family members. The guidelines also encouraged states to proactively inform parents that only the applicant child's information will be required.³⁹

THE STATUS QUO: CONSEQUENCES

The federal government's efforts to clarify the "public charge" determinants and to publish guidelines specifically prohibiting states from requiring SSNs and/or citizenship/immigration status information from family members not directly receiving medical benefits represent proactive steps towards bolstering the weakened safety net for legal

immigrants and citizen children in mixed households. Although there is recognition of this effort, many advocates say that these guidelines do not go far enough in addressing immigrants' fears. The status quo, they contend, continues to support legislative and extra-legal barriers that deny qualified legal immigrants and many citizen children in mixed households fair access to the medical safety net. It is impossible to say how many people in Texas are directly affected by the current atmosphere of fear and confusion, but all Texans may pay the price. Denying people proper health coverage is a liability for all Americans. While immigrants and their children feel the immediate brunt, the consequence of their fears of reporting requirements and of being labeled a "public charge" is increased public health risks to all residents of the U.S., both immigrants and citizens.

The World Health Organization cites a strong correlation between access to health care and infectious disease.⁴⁰ In the fight against infectious disease, vaccinations and antibiotics are the most powerful tools, but their effectiveness depends upon timely identification of disease and appropriate treatment. When antibiotics are taken unnecessarily or for a shorter than necessary length of time, drug resistant strains of bacteria appear. Thus, without access to necessary medical care, immigrants pose a danger to themselves and those around them. Bruce M. Bullen, Medicaid Commissioner for the Commonwealth of Massachusetts, calls these barriers to care "a direct threat to the public health of the larger community."⁴¹ For example, since December 1997 the State of New York has been battling the nation's largest rubella outbreak. It started in Westchester County but has since spread to New York City.

The epidemic has been spreading through the Hispanic community among immigrants who have not been vaccinated against the disease. Public health officials acknowledge that one of the problems in fighting the epidemic is that many in the Hispanic community are afraid of the health department because they equate it with the Immigration and Naturalization Service.⁴²

Similar outbreaks, including a notable increase in tuberculosis and sexually transmitted diseases, are occurring along the U.S./Mexico border.⁴³

Moreover, advocates contend that the federal guidelines do not go far enough in ensuring unfettered access to medical safety net programs. States

are prohibited from *requiring* SSNs, immigration status, or citizenship status information from non-applicants, but they are not prohibited from *asking* for it—and that distinction, they say, makes all the difference. The Center for Budget and Policy Priorities (CBPP) recent publication "Assuring that Child Health Applications Do Not Deter Enrollment Among Eligible Children in Noncitizen Families" reports that the Texas Medicaid application "appears to require SSNs [and information about citizenship status] from parents who are not seeking coverage for themselves" and "appears to require SSNs [and information about citizenship status] from children who are not seeking benefits for themselves."⁴⁴ Texas' new CHIP/Medicaid joint application was lauded by program officials and immigrant advocates alike, but remains confusing as to whose information must be provided by requesting information about applicant and non-applicant children in the same section. According to the same CBPP, Medicaid/CHIP applications with ambiguous wording, such as the Texas application, are ineffective because:

[e]fforts to promote enrollment among eligible children in noncitizen families are likely to fall short of their goals if child health applications ask unnecessary questions about citizenship or inappropriately require Social Security numbers from people living in the household who are not applying for benefits for themselves. Such information is not necessary to determine a child's eligibility for health coverage under either Medicaid or a separate CHIP-funded program and is likely to deter families with noncitizen family members from completing the application process.⁴⁵

POLICY ALTERNATIVES

Several states have taken measures beyond the minimal federal guidelines to ameliorate the fear and confusion surrounding eligibility and public charge concerns. These state actions have centered primarily around clarifying applications and implementing aggressive outreach strategies and public education campaigns.⁴⁶

California and Illinois have gone to lengths to ensure that applicants know that they need only reveal specific information on Medicaid/CHIP applications. California's joint Medi-Cal/Healthy Families (California's CHIP program) application clearly states the information requirements and provides a

clear explanation about the rules regarding SSNs and other status information. There are separate sections in which to list "children under 19 and/or the pregnant women who want health coverage" and other family members who are not applying. SSN and citizenship information are requested in the section for applicant women and children, but in that same section it also clearly states, "Social Security numbers are not required for Healthy Families or for persons who want emergency or pregnancy related services only." The section of the application that asks about other family members makes no inquiries about SSNs or citizenship/immigration status. The Illinois KidCare application (Medicaid and CHIP) has a similar approach, asking for information about "all children and pregnant women living with you who want health benefits." The section does ask for SSNs, but it clearly states within that section that SSNs are optional for pregnant women.⁴⁷ Any of these clarifying measures could easily be incorporated into the Texas joint Medicaid/CHIP application.

Outreach and public education are widely viewed as the key to enrolling eligible persons in available medical benefit programs. Legal immigrants and citizen children in mixed households are not the only ones who would benefit from aggressive campaigns to increase awareness and rectify misconceptions. According to a recent Census Bureau report, Texas has the highest rate of uninsured children in the country.⁴⁸ Since PRWORA, Texas also has experienced one of the largest drops in qualified low-income kids receiving Medicaid, with 193,400 Texas children—citizen and legal immigrant—(or 14.2 percent) falling off the Medicaid rolls in those three years.⁴⁹ Many obstacles come between families with uninsured children and the health care coverage for which they are eligible and they are not only impacting legal immigrants. These obstacles include: a lack of information about available programs, confusion regarding eligibility, lengthy and/or complicated application procedures, inaccessible enrollment sites, and reluctance on the part of many families to participate in government programs.⁵⁰ Many eligible citizen children have lost their health care coverage because their families were ill-informed that changes in cash benefits under welfare reform were not intended to affect Medicaid eligibility. An aggressive outreach campaign can help clear the confusion for all eligible people.

Funding for such programs is often an issue for the Texas Legislature. Funding is available, however, for outreach and public education regarding Medicaid and CHIP. Federal CHIP law forbids

states from using federal matching funds for CHIP administrative spending (including outreach) exceeding 10 percent of the amount spent on actual health care coverage, but Medicaid administrative funds are available to fund outreach at a 50 percent matching rate. The 76th Texas Legislature allocated just \$7 million of CHIP funds for statewide outreach, but as the Medicaid matching funds are uncapped, there is no limit on the allowable amount of outreach. In addition, PRWORA created a special fund called the Medicaid "\$500 million fund" to be allocated among the states to help pay for activities to ensure that children and parents do not lose Medicaid coverage as a result of changes in the welfare system. More specifically, the money was intended to help delink Medicaid eligibility from eligibility for cash assistance.⁵¹ The cost of allowable activities can be reimbursed up to 90 percent. According to the Health Care Financing Administration allowable activities include:

eligibility determinations and redeterminations that arise as a result of delinking; beneficiary educational activities; the production and airing of public service announcements; outstationing, hiring and training eligibility workers; designing, printing and distributing new eligibility forms; . . . assuring access to Medicaid for low-income families who are not eligible for TANF but are eligible for Medicaid. . . .⁵²

Texas must first spend money on Medicaid/CHIP outreach and later submit a claim for the matching funds in order to access the federal matching dollars. The state share of outreach expenditure can come from state revenues, state or local intergovernmental transfers, or private funds, but it may not include federal funds from other programs, including block grants.

RECOMMENDATIONS

The State of Texas needs to act now to protect the health and well-being of legal immigrants and the citizen children of mixed households—and by extension the health and well-being of all Texans—by breaking down the barriers that prevent these groups from accessing the medical safety net. Relatively few, inexpensive alterations to the current situation would have a large impact. In order to achieve this, the Texas Legislature should take the following measures:

- Delink administration of TANF and Medicaid/CHIP. As TANF is required to report quarterly to the INS while Medicaid and CHIP are not, separation of program administration and location will go a long way in eliminating the fear of inadvertent reporting.
- Lobby federal lawmakers for an official clarification of INS reporting requirement. There must be an unambiguous policy that guarantees protection to non-applicant family members of qualified applicants who seek medical benefits.
- Rework the Texas CHIP/Medicaid joint application as well as the Medicaid-only application to eliminate any ambiguous wording that may heighten immigrant fears.
- Utilize available funds to plan and implement an aggressive public education and outreach campaign. Such efforts will help everyone involved (including health providers, social service agencies, community organizations, and immigrants themselves) to better understand what services remain available to legal immigrants since the passage of PRWORA and to clarify misconceptions about current verification and reporting requirements.
- Lobby federal lawmakers for an end to the deeming requirement for immigrants entering the U.S. after August 8, 1996. Texas is home to a large number of legal immigrants, and the number is certain to grow in the future. A change in federal law permitting legal "after" group immigrants to qualify for Medicaid after five years of U.S. residence, even if they choose not naturalize, would shift the fiscal responsibility for their care away from Texas state and municipal governments and back to the federal government.

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NOTES

1. Claudia Schlosberg and Dinah Wiley, *The Impact of INS Public Charge Determinations on Immigrant Access to Health Care* (Los Angeles: National Health Law Program, May 22, 1998). Online. Available: [http://](http://healthlaw.org/pubs/19980522publiccharge.html)

healthlaw.org/pubs/19980522publiccharge.html. Accessed: March 28, 2000.

2. Sheri Steisel and Ann Morse, "States, Federal Welfare Reform and Immigrants: The Challenges of the First Year," in *In Defense of the Alien*, Volume XX 1997, ed. Lydio F. Tomasi (New York: Center for Migration Studies, 1998), pp. 23-34.
3. Joyce Vialet, "Welfare Entitlement: The Congressional View," in *In Defense of the Alien*, Volume XX 1997, ed. Lydio F. Tomasi (New York: Center for Migration Studies, 1998).
4. The Immigrant Policy Project, *Medical Assistance and Health Benefits* (Washington, D.C.: State and Local Coalition on Immigration, 1997). Online. Available: <http://www.stateserv.hpts.org>. Accessed: March 28, 2000.
5. During the deeming period, the sponsor's income was also considered when determining the immigrant's eligibility for benefits. The deeming period before PRWORA was three years for Food Stamps and five years for SSI.
6. The group of newly-unqualified categories of legal immigrants included many people previously designated PRUCOL (Persons Residing Under the Color of Law): Temporary Protective Status; Family Unity Status; "non-immigrants" or temporary residents in the U.S. on time-limited visas to work, study or travel, including temporary agricultural workers.
7. What constituted "federal means-tested public benefits" was left vague in PRWORA. In August of 1997 they were defined to incorporate only SSI, Food Stamps, Medicaid, and TANF.
8. The work of a spouse or parent (for the years when the child is under 18) can count towards the forty quarters. To be credited, a person must earn at least the amount established by the Social Security Administration. Beginning December 31, 1996, quarters would not count if a person received federal means-tested benefits during that period.
9. A sponsor who cannot meet the requirement is allowed to have a joint sponsor. The government will also look at any significant assets that can be counted towards making up the deficit. Those who cannot prove they meet the income requirement will not be allowed to bring over family members, no matter how close the familial relationship.
10. The only exceptions are widows and widowers applying for immigrant status based on prior marriage to a U.S. citizen and certain battered spouses and children.
11. Refugee and asylee access to Medicaid eligibility for Medicaid was affected by the Balanced Budget Act. The length of time that refugees, immigrants whose deportation has been withheld, and asylees can collect benefits was extended from five years to seven years. This time change reflects the backlog of cases

- at INS offices—sometimes over a year—and was intended to give these groups a fair and realistic time frame in which to naturalize before their benefits were discontinued.
12. Claudia Schlosberg, Trish Nemore, and Josh Bernstein, *Continuing Medicaid Coverage for Qualified Aliens* (Los Angeles: National Health Law Program, November 21, 1996). Online. Available: <http://healthlaw.org/pubs/19961121aliens.html>. Accessed: March 28, 2000.
 13. Center for Public Policy Priorities (CPPP), "Health and Immigrant Benefit Issues Update: Part One," *Policy Page*, no. 52 (July 9, 1997).
 14. Anne Dunkelberg, *Impact on Immigrants* (Austin: The Center for Public Policy Priorities, 1997).
 15. CPPP, "Health and Immigrant Benefit Issues Update: Part One."
 16. Due to extensions and the eventual restoration of SSI and subsequently Medicaid, this program never went into effect. Texas has still not decisively announced how the "after" group will be treated when the ban begins to expire in 2001.
 17. CPPP, "The Balanced Budget Act of 1997: Highlights of Child Health Block Grant and Medicaid Provisions," *Policy Page*, no. 58 (September 24, 1997).
 18. The CHIP program began providing benefits to eligible children in May 2000.
 19. CPPP, "Children's Health Insurance Program Signed into Law," *Policy Page*, no. 90 (July 16, 1999).
 20. In the 2000-2001 budget, approximately \$1.8 billion in tobacco funds were allocated. CHIP was allocated \$179.6 million for the biennium.
 21. The matching rate is 70 percent of the current rate for Medicaid. In Texas this means a 26 percent state matching share for CHIP (Texas will receive \$3 in federal funds for every \$1 it spends on CHIP) compared to 38 percent for Medicaid. The federal program is funded partly by an increase in tobacco taxes.
 22. Texas CHIP Coalition, "CHIP Background," *Texas CHIP Coalition*. Online. Available: <http://www.main.org/txchip>. Accessed: January 27, 2001.
 23. CPPP, "Children's Health Insurance Program Signed into Law."
 24. *Ibid.*
 25. Wendy Zimmerman and Michael Fix, *Declining Immigrant Applications for Medi-Cal and Welfare Benefits in Los Angeles County*. (Washington D.C.: The Urban Institute, July 1998). Online. Available: <http://www.urban.org/immig/lacounty.html>. Accessed: March 31, 1999.
 26. Michael Fix and Jeffrey S. Passel, *Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform: 1994-97* (Washington D.C.: The Urban Institute, 1999). Online. Available: <http://www.urban.org/immig/trends.html>. Accessed: March 31, 1999.
 27. *Ibid.*
 28. *Ibid.*, p. 6.
 29. The term "public charge" refers to an individual who is found likely to rely on government benefits. Although it has been part of U.S. immigration law for over one hundred years, until recently no guidelines had ever clarified the grounds for a public charge determination.
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GLOBALIZATION, WOMEN AND DEVELOPMENT:

MICROFINANCE AND FACTORY WORK IN PERSPECTIVE

During the 1980s and 1990s international development efforts increasingly concentrated on providing women who have few resources access to small amounts of credit, a self-help marketable solution known as microfinance.¹ Despite its appeal, problems with the utilization of microfinance as a means of pulling women and their families out of poverty are many. The microfinance strategy is based on a creative grassroots alternative to reliance on informal lenders—loan sharks—as the source for credit in situations where people cannot get loans through banks. Initiated in Bangladesh in the late 1970s as a local community program, this model has been copied and expanded with little analysis of potential issues related to scale, culture, geography, political context, or the like. Although some women and their families have benefited, widespread success of microfinance as a tool for poverty alleviation has not been demonstrated.

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Yet, it has been heavily marketed and relied upon as a global development strategy for poor women.

During this same period, with the widespread implementation of neo-liberal policies and related globalized systems of production and trade, women, particularly poor women in the Southern Hemisphere's less-stable economies (the South), have turned to factory work. This has happened in countries where microfinance has been heavily supported, including in Bangladesh.² "Radical changes in labor market relations, involving erosion of protective and pro-collective labor regulations, decentralization of wage determination, erosion of employment security and a trend (away from) statutory regulation of the labor market"³ have accompanied the increase of women into factory work. According to Guy Standing, an economist at the International Labour Organization (ILO), production systems have become "feminized," relying on forms of labor that minimize fixed non-wage costs, resulting in greater insecurity and inequality for workers and presenting a significant labor and social policy challenge.⁴

However, policymakers and advocates concerned with women's economic security have focused very little on critical issues related to factory work, instead utilizing the limited bandwidth of the discursive space related to women and development on microfinance. The concept of bandwidth relates to the most elementary of economic principles: that all resources are limited. Nobel Prize winner Herbert Simon used this basic principle to construct a theory of bounded rationality in economics, which teaches that information and information processing power are specifically also limited. More recently, Peter Albin analyzed information processing in terms of economic systems, concluding that costs limit rationality and thus what gets into the pipe, and in what order, becomes critical.⁵ His contribution relates to a body of work that examines rhetoric and rhetorical devices in economic argument.⁶ As economic discourse becomes the basis for neo-liberal policies that encourage globalization, examining the implications of confined discursive space deserves attention, and thus provides the framework for this analysis.

The provision of credit for people with few resources has taken a prominent role in the foreground of policy discussions and decisions related to gender and economic development, leaving ills associated with women's rapid migration into factory work buried in the background. The political attention allotted a certain subject or policy area, such as development efforts aimed at women or

economic stability in the South, is usually limited, particularly when focused on marginalized groups. It is this domination of discursive bandwidth that threatens the visibility of the very real problems that characterize women factory workers' widespread participation in the global workforce, and in turn precludes policymakers from addressing the difficult policy issues associated with factory work, including long hours, tedious and unstable employment, low wages, restricted freedoms, and dangerous health conditions.

Given the growing emphasis placed on microfinance by policymakers and donors, who are those entities and individuals that fund development projects, multilateral institutions, regional banks, states, philanthropists, and corporations, the following questions require consideration:

- Are microlending programs effective as a strategy to achieve poverty reduction and economic empowerment for women, given women's situation in the current global setting?
- Do these programs merit the amount of energy, resources, and positive press they receive from multilateral international organizations, corporations, and development practitioners?
- Might microfinance serve as a sanitized neo-classical solution to poverty issues that risks crowding out the need to establish real policy alternatives that protect women workers internationally?
- Is microfinance a red herring, distracting feminists, Non-Governmental Organizations (NGOs), and governments from struggling to change the systems that continue to discriminate against women?

This discussion addresses these important questions by first examining the intense support for, and criticisms of, microlending, followed by a synopsis of globalization as it relates to women and factory work.

THE MICRO-FEMINIZATION OF FINANCE

Microfinance, a once little-known grassroots concept that makes capital accessible to low-income individuals, has become wildly popular due to sev-

eral factors that make it not only acceptable, but also desirable, to a wide spectrum of supporters. For example, development practitioners have known for some time that women play a significant role in the economic well-being of their families; given the resources, women prove more likely than men to utilize income for the good of their partners and children.⁷ Many heartwarming anecdotes have shown this to be true with microfinancing, making the concept easy to sell.⁸ In addition, enough lending organizations and donors took initial risks with demonstrated success. Microlending has caught the eye of old and new allies in the struggle for poverty alleviation in a political and economic climate focused on cost-effectiveness and critical of welfare-type programs.⁹

Microfinancing fits within the current neo-liberal framework by promising relief for the hardworking with diminishing need for ongoing governmental subsidies. The following excerpt from the 1997 hearing before the U.S. House of Representatives Subcommittee on International Economic Policy and Trade illustrates its support. The subcommittee chair, Ileana Ros-Lehtinen, in her opening remarks explains:

Simply stated, microcredit involves giving small, low-interest, startup loans to poor but aspiring entrepreneurs to develop into thriving businesses known as microenterprises. It is firmly embedded in the notions of self-reliance and the concepts of free market capitalism. It is credited with having the potential to help the poorest families in the world emerge from poverty and, by extension, help create . . . a world economy that works . . . for all who are committed and determined to work, to use their creativity, talents, and skills to create and control their own destiny. Microcredit is not a handout; it is an opportunity, an investment, an exercise in responsibility and accountability. It is categorized as an inexpensive program that builds businesses.¹⁰

Though not all practitioners and supporters of microfinance make such sweeping claims, many liberals and conservatives alike believe this strategy to be a good way to work within the existing framework to improve the plight of the poor. However, even early supporters have grown frustrated with the lack of substantial analysis or little more than anecdotal results that support the beneficial claims of microfinance.¹¹

Descriptions of microfinance organizations and

their roots vary, but the Grameen Bank, established in 1976 in Bangladesh and used as the model for numerous programs since, often receives credit for initiating the modern movement.¹² It represents one type among many lending institutions that use diverse methodologies and offer a range of services.¹³ Women's World Banking, a global non-profit network with affiliates throughout the world, has defined four main categories of entities that provide financial services to women. They are:

1. Commercial bank programs, e.g. Bank Rakyat Indonesia, BRI, KUPEDES Programme;
2. Poverty-lending banks, e.g. Grameen Bank, Self Employed Women's Association-SEWA, Banco Solidario- BancoSol;
3. Non-governmental organizations, e.g. Kenya Rural Enterprise Program, KREP; and
4. Affiliate network institutions, e.g. FINCA International, ACCION International.¹⁴

Their numbers have increased dramatically since the early programs attained high payback rates, showing the viability of making small loans to the poor.¹⁵

Over the last two decades, and particularly in the 1990s, microfinance organizations have received enormous attention and support from policy makers, NGOs, national and international governing bodies, and foreign aid entities.¹⁶ According to the World Bank's Sustainable Banking with the Poor (SBP) 1995 survey with a response rate of over 200 microfinance programs, 14 million loans were reported to have been made worth \$7 billion as of September of that year. The SBP estimated that as of mid-1996 over 1000 microfinance institutions in more than 100 countries had been doing business for at least three years with a minimum client base of 1000 each.¹⁷ The Grameen Bank alone had grown to 1046 rural branches covering 34,913 villages by early 1997 and its 1994 records showed a cumulative investment in rural Bangladesh of more than one billion dollars disbursed among 2.02 million members, 94 percent of whom were women.¹⁸ Attracted by these numbers, and impressive anecdotal stories, supporters of microenterprise development now include high profile donors, national and international institutions as well as politicians and figureheads.¹⁹

The Microcredit Summit held in February 1997 in Washington DC, attended by more than 2900 people representing 1500 institutions and 137 countries, founded a campaign to seek \$20 billion in order to lend to 100 million of the poorest households in the next ten years.²⁰ The 1995 Beijing Conference for Women inspired the Microcredit Summit and the organization that emerged claims that microcredit partially addresses the 12 critical areas of concern outlined at that watershed event. The Summit's most current numbers show that 1065 established microcredit practitioners reported reaching 23,555,689 active clients, serving 13,779,872 of the poorest families, 75 percent of whom are women.²¹

According to Linda Mayoux, a researcher who focuses on microenterprise development and women, "funding is set to further increase into the next century under initiatives by CGAP (Consultative Group to Assist the Poorest) and member donor agencies."²² She credits the expansion and the Summit with a financial sustainability ideology heralded by many of the high profile supporters like U.S. Agency for International Development (USAID), World Bank, United Nations Development Program (UNDP), and other members of CGAP.²³

However, despite immense enthusiasm across the political spectrum, those familiar with the movement also question the viability of microfinance as a strategy to reduce poverty and empower beneficiaries. Concerns generally center on the structure and mechanisms heavily promoted in providing financial resources and managing programs. In addition, they focus on the unsubstantiated beneficial claims or even increased potential harm stimulated by microfinance programs, and the futility of this strategy in addressing critical underlying issues.

Jonathan Morduch, a researcher based at Princeton University, in two recent journal articles summarizes the main debates that have been brewing within the microfinance sector in recent years.²⁴ Critics question the emphasis placed on attaining financial sustainability in the organizations that conduct microlending despite repercussions on program goals, target

clients (i.e. poorest households), size, or larger contextual situations (e.g. political or geographical). Next, analysts express concerns with the paucity of empirical data, systematic assessments, or substantive cross-country, cross-program analyses that exist. Morduch believes that this has led to replication of several basic models with little real innovation

evident in the creation of thousands of microfinance organizations throughout the world. If they had access to better information, practitioners could learn more from each other, while experimenting with new ideas that contribute to greater efficiency and appropriateness. This is especially important given the diverse spectrum of

existing conditions and environments. Nonetheless, the most prevalent concerns to which the others are linked seem to be in the widespread promotion of independent project sustainability.

Morduch calls this financially-minded ideology, often promoted by major donors under the rubric of "best practices," the "win-win" proposition. It claims that lenders can alleviate poverty while following principles of good banking, creating sound, sustainable institutions that will not need to rely on subsidies and should eventually turn a profit. He labels the gap between the theory and reality of this ideal a "schism" that must be looked at honestly by all who care about the future of microfinance as a development tool.²⁵ No concrete evidence supports the rhetoric and few programs claim actual sustainability. The ones that do have been found to charge higher interest rates and serve clients who often represent populations considered less poor than many. In fact, many fall just above the poverty line in their respective countries.²⁶

It is from the void of solid evidence necessary to explain and explore the microlending programs that the critique of the viability of both positive and negative relevant claims surfaces. As David Hulme, a researcher concerned about lack of solid data, reports, "microfinance programs and institutions are increasingly important in development strategies but knowledge about their impacts is partial and con-

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tested.²⁷ Nonetheless, the case studies, evaluations, and analyses that exist have stimulated critiques of the movement's professed beneficial results and concern for the potential harm that some microfinance programs might cause. Generally, these critiques claim that this development technique may prove to be ineffective, at best falling short of its proclamations. At worst, it can impede the improvement of people's lives or contribute to adversity.

Those who support microcredit provision as a development tool assert that it alleviates the effects of austerity measures and economic crises. They claim that it targets the world's poor, in the process empowering the disenfranchised, particularly women. Though initially embraced by advocates for women and even feminist organizations from the South, skepticism as to the potential of microfinance as an effective strategy seems to be rising as the large donors and development researchers begin to take a closer look at the movement and its specific programs.²⁸ Admittedly, access to seed money has proved beneficial for many; however, this mechanism seems to fall short of claims made by officials from USAID and the UNDP that it serves as "the key instrument for poverty alleviation."²⁹

In essence, critics charge that microfinance often does not reach the poorest; that significant positive effects beyond short-term benefits have not been demonstrated or studied sufficiently; and that claims of empowerment also remain unsubstantiated.³⁰ They also submit that intense pressure, inflicted through repayment mechanisms and strategies, frequently increases debt-liability, i.e. through loan recycling, as well as tension and frustration among the household members of borrowers, which can lead to new forms of dominance over women and increased violence.³¹ Furthermore, advocates for women and the poor fear that the financial support and involvement of high-profile institutions like the World Bank's CGAP exacerbate these problems.³² They question CGAP's strategies that pressure lenders to become commercially viable and governments to promote policies supposedly beneficial for microfinance practitioners, e.g. the removal of ceilings on interest rates, removal of subsidies, and stronger debt collection laws.³³ They raise specific concerns about impacts on women.

Additional misgivings specifically related to women, development, and microfinance involve more theoretical concerns. For example, researchers question the quality of work women actually produce when they are given small loans to develop "enterprises," as well as the additional burden these activities add to the unpaid labor most must con-

tinue to perform.³⁴ Preliminary studies seem to indicate that women use loans within the boundaries of traditionally defined occupations.³⁵ In addition, given the years labor advocates and feminists have struggled to obtain a quality space for women in the formal sector, critics wonder whether it makes sense to promote a mechanism that builds on already high numbers of women confined to the informal sector.

Discussions regarding women's labor role in the informal sector are complex. While some believe the blurring of lines between home and work give credence to women's historically unrecognized power, others fear conditions at home cannot be regulated and can therefore be exploitative, while success in microenterprise remains vulnerable to the fluctuations of macroeconomic systems.³⁶

Without data that show comprehensive and significant beneficial impacts realized as a result of the microfinance movement, it seems wise to heed the warnings and apprehensions presented thus far. Whatever its merits, microfinance alone has not proven a convincing aid in women's struggle to achieve financial stability given the realities they face in the globalized economy. As Nan Dawkins Scully and Daphne Wysham warn,

Microcredit is not a silver bullet for poverty eradication and it cannot replace the need for resource allocation toward health, education, and 'social capital.' Further, CGAP (Consultative Group to Assist the Poorest) represents less than one-tenth of one percent of overall Bank lending. Meanwhile, devastating structural adjustment lending continues unabated to the tune of billions of dollars.³⁷

At the very least, support for this initiative that claims to improve the plight of women throughout the world must be seriously questioned, particularly if it serves to distract from bigger systemic problems, such as labor issues.

WOMEN AND GLOBALIZED FACTORY WORK

The undeniable result of globalization for many women worldwide has been a mass migration into factory work, particularly in manufacturing sectors.³⁸ In the industrial sector in general, women are concentrated in labor-intensive operations both in the Northern Hemisphere's more industrialized economies (the North) and the South.³⁹ Specifically in the South, women's movement into manufacturing has undoubtedly been influenced by regional shifts from

agricultural to industrial economies. The effects of structural adjustment policies (SAPs)⁴⁰ and related changes in production and service distribution systems have pushed women into formal low-skilled employment.⁴¹ Women's entry into manufacturing jobs contributes to what some economists have termed the "feminization" of the labor force, a phenomenon recognized in the late 1980s and dating from the 1970s.⁴² It includes the conversion of jobs previously considered secure, offering regular wages, benefits, and opportunity to progress, to static jobs which offer little security, benefits or regular wages and rely on contract labor and outsourcing.⁴³ Thus, while women's growing involvement in labor force activities can be positive, the way it has occurred has had negative repercussions.

Though solid data de-aggregated by sex do not exist for many countries and sectors, women's measurable participation in the labor force has increased dramatically with the process of globalization, especially in the manufacturing and service industries.⁴⁴ Trends show that women migrate great distances and tolerate negative working conditions in order to earn wages. Due to a variety of socially determined reasons, women generally work for lower wages than men in the same and similar jobs.⁴⁵ Formal, enforceable labor agreements frequently do not exist for much of their work, leaving women in very difficult positions with little bargaining power. Some governments even advertise the absence of union and other worker organizations in export processing zones (EPZs) as an incentive to attract production facilities and investors.⁴⁶ Not surprisingly, women are usually fired first and have little recourse given the mobile nature of many of the industries in which they are employed, such as textiles, apparel, leather, computer chips, etc.⁴⁷ Firms can shut down and move production facilities if workers manage to organize and achieve better living and working conditions. This temporary nature of production work characterizes women's employment in developing nations where job security is rare and where women suffer disproportionately from the financial crises that have wracked the world in recent times.

In the past two decades, many countries in the South have been unable to repay the large foreign

bank debts they had amassed, and became subject to International Monetary Fund (IMF) and World Bank prescriptions to undergo structural adjustments. As Martin Khor, Director of the Third World Network, contends, "the mechanism of making loan disbursement conditional on these policies has been the main instrument driving the policy moves in the indebted developing countries towards liberalization, privatization, deregulation, and a withdrawal of the State from economic and social activities."⁴⁸ In basic terms, governments in struggling countries cut back most spending on social programs in order to make debt payments so that they might be eligible for additional international financial support. Given already high rates of unemployment in many of these countries, the reduction in health, education, and even pension benefits has made life extremely difficult for

people. The disproportionate ways women absorb extra work required by austerity policies represents one of the complex effects of global integration.

Structural adjustment policies that the World Bank and IMF require governments to implement in order to receive loans often dismantle state-subsidized social systems, presenting particular complications for women.⁴⁹ Women generally are displaced disproportionately

from public sector jobs related to cuts and they step in when social services break down, improvising safety nets in their communities to maintain families, often doing informal work outside the home, organizing neighborhood food provisions such as soup kitchens, and pooling resources. Meanwhile, the free market systems that now dominate local as well as international economies require them to secure income-generating work in addition to the unpaid household work they continue to perform.⁵⁰ In addition, researchers have identified a connection between structural adjustment conditions and women's increased entry into the formal, or measurable, sector.⁵¹ Given the opportunity to earn a consistent wage after exposure to serious deprivation, most women jump at the chance.

Labor data show that women will migrate to fill factory jobs, even in the often isolated, specially created EPZs spurred by the rapid expansion of transnational corporation (TNCs).⁵² However, ac-

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According to a recent review of global trade and gender, "women work in factories, not only in EPZs, but also more broadly in clothing, food-processing and electronics industries, and, generally, in industries with a high propensity to export."⁵³ The same report contends that existing research examining women and trade is weak in the informal and service sectors and "consists primarily of several case studies of EPZs and of export-oriented manufacturing firms, some household-level case studies of women with jobs in such firms and two cross-country studies."⁵⁴ Often factory jobs are women's first opportunity to earn wages. This translates into a low-wage workforce for the export-oriented sector, frequently kept flexible by repressive labor practices, that promises productivity at very low costs.

The garment industry, in particular, warrants mention: women dominate production worldwide and it offers one of the easiest ways for poorer countries to enter manufacturing because TNCs, despite their overall predominance in manufacturing, have less relative importance in the world clothing market.⁵⁵ Some of the most current data available in manufacturing come from the garment industry, exemplified by recent case studies in Bangladesh. Bangladesh's garment industry has grown rapidly since the late 1970s, reportedly employing some 1.2 million people in about 2500 factories by 1995.⁵⁶ Women in the labor force grew concurrently from 6 percent in 1980 to 41 percent in 1994, and they are reported to constitute anywhere from 65-85 percent of all factory workers.⁵⁷ Likewise, Sri Lanka, which has in effect become an island EPZ, boasts a doubling of its industrial exports from 1981-1990 and a further 85 percent increase in the next half decade.⁵⁸ By December 1998, 1358 export-oriented projects existed employing an estimated 294,000 workers, of which garments and textiles account for one-third of total export earnings.⁵⁹ Women make up about 90 percent of Sri Lanka's official EPZ workforce and dominate the garment workforce, both formal and informal.⁶⁰ These numbers do not include the estimated thousands of women who work from home or in unregulated sweatshops (categorized as the informal sector), a growing phenomenon in the

manufacturing industries where reports of exploitation are common.

This manufacturing data correspond to larger trends and analyses that recognize the feminization of the global labor force.⁶¹ Unfortunately, this means that jobs have become more, instead of less, segregated with women's employment clustered in low-skill, low-wage, repetitive motion positions. Mainstream international institutions such as the United Nations (UN) and the International Labour Organization (ILO) recognize the negative repercussions that rapid trade,

finance, and income liberalization have had on women.⁶² Their reports show that increasing job fragmentation, inequality, and asymmetrical growth accompany global economic integration and affect women and men differently. They caution that while women's numbers in the formal economy have increased with globalization, the jobs they occupy

are the least desirable ones. The agency reports generally suggest that globalization breeds ambiguous and often contradictory effects on gender and that important statistical data must be collected to better understand the extent of opportunities and risks for men and women.⁶³

Poor work conditions, long hours and low wages for many of the world's women, particularly in the South, lead to health problems and diminishing social well-being. Results of SAPs and related policies leave women with little social protection.⁶⁴ Factory work conditions often present occupational hazards that result in illness and disease and require workers to endure inhumane labor conditions.⁶⁵ Risks for women are high, particularly in export-oriented industrialized production jobs where they are often exposed to toxic chemicals, fumes, and poorly maintained automated devices. According to one report:

They are susceptible to muscle-strain injuries, intoxications from long periods of exposures to chemical pollutants, hearing loss from machinery noise, respiratory problems . . . conditions as a result of target-oriented work, long working hours, conflicting demands and lack of control over working pace or conditions.⁶⁶

The numbers of women who have flocked to factory work in the current global economy, despite access to microfinance, perhaps provide the most compelling reason to re-examine the success attributed to microlending programs and their potential.

Reports of abhorrent factory conditions and mistreatment of workers from Latin America, Asia, and Africa all point to unregulated serious hazards, yet comprehensive hard data remains scarce.⁶⁷

Reported exploitative methods utilized in the formal sector in factories in the South include forced pregnancy tests, strip searches, lock-ins, and violence against workers and suspected labor rights organizers.⁶⁸ Women are frequently paid a pittance and forced to work extremely long hours. They are considered expendable and their employment can be terminated if they are found to be pregnant or sick.⁶⁹ Factory bosses and supervisors use intimidation and fear tactics to keep women from organizing, and workers suspected of leading or participating in such efforts could be beaten and killed.⁷⁰ Additionally, young women who work in manufacturing factories, such as the maquiladoras in Mexican border cities, have been raped, murdered, and abandoned.⁷¹ Unbalanced power relations both inside and beyond factory walls make the investigation and prosecution of such heinous crimes rare.

TNCs, which dominate the manufacturing industries in the global economy, are not bound by overriding labor regulations and many of them distance themselves from reports of exploitation by using contractors, a practice often referred to as production outsourcing. Globalization seems to have left a regulatory void that remains wide open. Despite efforts by the ILO, Organization for Economic Co-operation and Development (OECD), and the UN to introduce international codes of conduct, no such codes have been adopted and self-regulatory agreements are left up to the will of TNCs.⁷²

Similarly, the World Trade Organization (WTO), the body that emerged from the Uruguay Round negotiations in 1995 to govern global economic interactions and to decide trade disputes, has not actively supported women.⁷³ As the only entity of its type, the WTO has recently drawn heavy criticism from NGOs for excluding important segments of the population from decision-making, including women.⁷⁴ The director of Women's EDGE—an economic watchdog organization for women—points out, “of the 159 members of the Dispute Settlement Body (of the WTO), 93 percent are men. None of the seven members appointed to the WTO high court is a woman.”⁷⁵ In addition, advocates for women express concerns that the WTO Trade Policy Review Mechanism (TPRM) focuses only on a country's success in trade liberalization without looking at the fallout of trade policies.⁷⁶

Women's labor within industrial production

raises concerns in terms of political voice. Clearly, the high number of women impacted by this globalization effect should move the labor issue to the top of policy and development agendas. Though academic research continues to grow, few policymakers have attempted to address the many issues involved with labor and globalization, including quality of work, exploitative conditions, low wages, long hours, few benefits, serious negative health repercussions, outsourcing, and the right of free association. NGOs have made some progress in terms of labor rights legislation, and international organizations like the ILO have increasingly joined the struggle. However, no organized high-profile movement such as that undertaken in the name of microfinance has emerged to confront the systems that allow these discriminatory conditions. The numbers of women who have flocked to factory work in the current global economy, despite access to microfinance, perhaps provide the most compelling reason to re-examine the success attributed to microlending programs and their potential.

CONCLUSION

The primary issue facing advocates for women seems to be less a question of the value of microfinance as a strategy itself and more a problem of its dominance in a limited discursive space. Political discourse that focuses on women's lives remains limited in policy circles throughout the North and the South. Microfinance has moved comfortably into the small rhetorical space allotted to strategize solutions related to women and poverty, despite the fact that women in the global economy increasingly seek wage labor when faced with economic instability. Even the major international institutions involved with development increasingly recognize that complex interactions resulting from economic globalization have affected women adversely. But, they seem to have selected support for microenterprise development as a primary plank, if not the only one, in their strategies for addressing related serious problems. They proudly publicize their support for microfinance initiatives before women and their advocates worldwide, expecting accolades for their efforts. The appeal of this strategy becomes evident when one examines how neatly microfinance fits with the dominant economic models guiding global integration.⁷⁷

One might say that microfinance fits the neo-liberal framework like a glove on a fist, snugly adhering to its values while threatening none of its power.

Microfinance entities provide credit, generally charging higher interest rates than banks, allowing enterprising individuals to supply goods or services to the market with the idea that they will earn a profit after paying off their debt, giving them the opportunity to buy additional goods and services. Ideally, the lender earns a profit as well, which will sustain the whole system. This process fits with neo-liberal economic values that rely solely on supply and demand systems to maintain equilibrium. Support for microfinance does not challenge macroeconomic policies that allow for minimal or no regulation of labor conditions in globalized manufacturing and service industries. Such an approach to poverty reduction leaves negative labor conditions faced by an increasing number of women and men untouched. In so doing, it ignores the problems with global integration policies that place value on investment and profit at the expense of equality and workers rights.

This discussion began by posing some questions related to women's economic development in the global context. The examination of the available literature on labor trends and microfinance efforts in the context of limited political space provides some clear answers. First, microlending programs do not demonstrate an effective solution to poverty alleviation. While microfinance may be useful at the local level in some places for some individuals, it has not proven worthy of the enthusiastic support it has been receiving from donors, policymakers, and NGOs. In fact, systematic evaluative techniques that address issues of scale, program design, and context should be undertaken before this strategy receives further backing and expansion. The widespread support for microfinance despite recent criticisms and the need for credible assessments should give pause to development practitioners and advocates for social and gender equity. It does seem to serve the purpose of larger neo-liberal economic strategies, while easily avoiding exposing and addressing problems related to liberalization policies, thus safely filling the limited political space given to these issues without threatening the status quo.

Microlending efforts that provide access to small amounts of credit frequently allow women opportunities that may lead to limited gains. However, as a major policy tool meant to improve the economic situation for women as a group, microfinance seems a misguided direction at best and can potentially be harmful at the worst. The rhetoric and discourse that accompanies the microfinance movement complies with a larger economic and political model that, in its current workings, systematically dis-

criminates against women, keeping them from obtaining positions of power in most spheres of society. Advocates for equity and representative policy processes must not be distracted or persuaded by token efforts such as microfinance. The economic and social justice issues are much larger and must be addressed with the limited resources, including the limited bandwidth of the discursive space, currently available. Precious resources must not be wasted on well-meaning but insufficient development efforts.

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NOTES

1. Refer to U.S. Agency for International Development's (USAID) Microenterprise Innovation Project online at <http://www.mip.org/> and related links to get a sense of the magnitude of support for microfinance and microlending programs.
2. Julie Delahanty and Mashuda Khatun Shefali, "From Social Movements to Social Clauses: Assessing Strategies for Improving Women's Health and Labour Conditions in the Garment Sector," *Development*, vol. 42, no. 4 (1999), pp. 98-102.
3. Guy Standing, "Global Feminization through Flexible Labour: A Theme Revisited," *World Development*, vol. 27, no. 3 (1999), p. 584.
4. *Ibid.*, pp. 583-602.
5. Peter S. Albin, *Barriers and Bounds to Rationality: Essays on Economic Complexity and Dynamics in Interactive Systems* (Princeton, N.J.: Princeton University Press, 1998).
6. The use of rhetorical devices in economics argument has been analyzed extensively by Dierdre McCloskey in a sequence of books beginning with *The Rhetoric of Economics* (Madison, Wisc.: University of Wisconsin Press, 1985). The concept of rhetorical space as a limited resource finds early development in James K. Galbraith's essay on McCloskey, "The Grammar of Political Economy," in *The Consequences of Economic Rhetoric*, ed. Arjo Klamer, Donald McCloskey, and Robert Solow (Cambridge, U.K.: Cambridge University Press, 1988).
7. Naila Kabeer, "Conflicts over Credit: Re-Evaluating the Empowerment Potential of Loans to Women in Rural Bangladesh," *World Development*, vol. 29, no. 1 (2001), pp. 63-84, succinctly presents this argument, validating it in her own study and her analysis of other studies. See also United Nations, *World's Women 1995—Trends and Statistics*, (New York: United Nations Statistics Division, 1995), p. 118, note 2.
8. See any of the promotional material by groups that support microenterprise development, such as the

- stories featured in the descriptions of relevant World Bank funded programs (available online via their website at <http://www-esd.worldbank.org>).
9. Jonathon Morduch, "The Microfinance Promise," *Journal of Economic Literature*, vol. 37, no. 4 (December 1999), pp. 1569-1614; and Tom Dichter, "Non-Governmental Organizations (NGOs) in Microfinance: Past, Present and Future- An Essay," *World Bank Case Studies in Microfinance* (May 1999). Online. Available: <http://www-esd.worldbank.org/html/esd/agr/sbp/home.htm>. Accessed: December 4, 2000. USAID was also reported to have a significant impact on the funding and evolution of the movement according to Elisabeth Prugl, *The Global Construction of Gender: Home-Based Work in the Political Economy of the 20th Century* (New York: Columbia University Press, 1999), p. 84.
 10. U.S. Congress, House Subcommittee on International Relations, *Microcredit and Microenterprise: The Road to Self-Reliance*, 105th Congress, 1st Session (July 23, 1997), pp. 7-8. Online. Available: http://commdocs.gov/committees/intlrel/hfa44603.000/hfa44603_0.htm. Accessed October 16, 2000.
 11. For an example, see Jonathan Morduch, "The Microfinance Schism," *World Development*, vol. 28, no. 4 (2000), pp. 617-629.
 12. House Subcommittee on International Relations, *Microcredit and Microenterprise*; and Dichter, "Non-governmental Organizations (NGOs) in Microfinance."
 13. Morduch, "The Microfinance Schism," pp. 617-629.
 14. In United Nations, *World's Women 1995*, pp. 118-121, from Women's World Banking, based on data from the institutions. Microfinance program distinctions vary, see Dichter, "Non-Governmental Organizations (NGOs) in Microfinance," p. 3, description of the World Bank's SBP 1995 survey that defined these categories of lenders: savings banks, credit unions, commercial banks, and NGOs.
 15. For an example, see Dichter, "Non-Governmental Organizations (NGOs) in Microfinance"; and Morduch, "The Microfinance Promise," pp. 1569-1614.
 16. A. Rahman, "Microcredit Initiatives for Equitable and Sustainable Development: Who Pays?" *World Development*, vol. 27, no. 1 (1999), pp. 67-82.
 17. Dichter, "Non-governmental Organizations (NGOs) in Microfinance," p. 3; the author estimates that without the criteria of three years and 1,000 clients, the number of projects and programs could be five to ten times more.
 18. Rahman, "Microcredit Initiatives," pp. 67-68; In Morduch, "The Microfinance Promise," pp. 1573-1575, he puts the Grameen Bank's 1998 membership at 2.4 million, receiving loans totaling \$30-40 million per month.
 19. According to Elisabeth Prugl and Irene Tinker in "Microentrepreneurs and Homeworkers: Convergent Categories," *World Development*, vol. 25, no. 9 (1997), p. 1474, Hillary Rodham Clinton, Queen Sofia of Spain and Tsutomu Hata (former Prime Minister of Japan) co-hosted a 1997 international conference.
 20. Sergio Navajas et al., "Microcredit and the Poorest of the Poor: Theory and Evidence from Bolivia," *World Development*, vol. 28, no. 2 (2000), p. 334; and Microcredit Summit Campaign, *2000 Microcredit Summit Campaign Report*. Online. Available: <http://www.microcreditsummit.org>. Accessed: October 10, 2000.
 21. Microcredit Summit Campaign, *2000 Microcredit Summit Campaign Report* (online).
 22. Linda Mayoux, "From Access to Empowerment: Gender Issues in Micro-Finance" (draft paper presented at the UN Commission on Sustainable Development (CSD) virtual conference, October 1999). Online. Available: <http://www.gdrc.org/icm/wind/mayoux.html>. Accessed: December 4, 2000. CGAP is part of the World Bank.
 23. Ibid., p. 1. The World Bank has also produced and distributed best practices publications that encourage programs to be profitable and ultimately competitive, weaning themselves from reliance on subsidies.
 24. Morduch, "The Microfinance Schism," pp. 617-629; and Morduch, "The Microfinance Promise," pp. 1569-1614. See both for more sources of relevant studies from which he draws.
 25. Morduch's schism article outlines specifically what must be examined and emphasizes the need to acknowledge honest projections (from sustainability-minded experts) that only 1 percent or fewer of current microfinance programs are sustainable, and that no more than 5 percent will probably ever be (p. 618 and note 3 on p. 627).
 26. Morduch details BancoSol, Bolivia's operation, for example, in 1998 (with inflation only at 5 percent) which lent to borrowers at an annual base rate of 48 percent, charging an additional 2.5 percent initial fee, and cites a 1998 study that identified clients as the 'richest of the poor' clustered just above the poverty line (Morduch, "The Microfinance Promise," p. 1576). He also cites a 1998 MicroBanking Bulletin report stating that a survey showed that poverty-focused programs aiming for sustainability could only cover about 70 percent of their costs (p. 1571).
 27. David Hulme, "Impact Assessment Methodologies for Microfinance: Theory, Experience and Better Practice," *World Development*, vol. 28, no. 1 (2000) p. 79. 1996 studies conducted by Hulme and Mosley have provided some of the best evaluative information to date, according to Morduch. See Morduch, "The Microfinance Schism," p. 626.

28. Prugl, *The Global Construction of Gender*, pp. 79-99. Also, in Albert Park and Changqing Ren, "Microfinance with Chinese Characteristics," *World Development*, vol. 29, no. 1 (2001) analysis of three microfinance program sites in China (funded by two large foundations) they conclude that "microfinance will help only some of the poor and is not a panacea" (p. 42).
29. Comments were made by the administrators of both organizations in interviews printed in the September 1997 issue of the Microcredit Summit Campaign newsletter and cited in Prugl, *The Global Construction of Gender*, p. 84 and note 20, p. 182.
30. See especially Kabeer, "Conflicts Over Credit," for the most comprehensive published account of microcredit and empowerment studies. See also Morduch, "The Microfinance Schism" and Navajas et al. "Microcredit and the Poorest of the Poor" for current critiques of the other claims.
31. Rahman reaches these conclusions in his anthropological in-depth case-study of the Grameen Bank in one rural community in Bangladesh. Rahman, "Microcredit Initiatives for Equitable and Sustainable Development." Also, see Kabeer, "Conflicts Over Credit," for her discussion of violence in relevant studies.
32. Nan Dawkins Scully and Daphne Wysham, "The World Bank's Consultative Group to Assist the Poorest: Opportunity or Liability for the World's Poorest Women" (policy critique for Sustainable Energy and Economy Network). Online. Available: <http://www.seen.org/cgapxsm.html>. Accessed November 20, 2000.
33. Ibid.
34. International Labour Organization (ILO), *Decent Work for Women: An ILO Proposal to Accelerate the Implementation of the Beijing Action Platform for Action* (2000). Online. Available: <http://www.ilo.org/public/english/bureau/gender/beijing5/contibu/report.htm>. Accessed: October 10, 2000.
35. See for example Kabeer, "Conflicts Over Credit."
36. Martha Chen, Jennefer Sebstad, and Lesley O'Connell, "" /scidirimg/sci_dir/line.gif" Counting the Invisible Workforce: The Case of Homebased Workers," *World Development*, vol. 27, no. 3 (1999); Prugl, *The Global Construction of Gender*; Prugl and Tinker, "Microentrepreneurs and Homeworkers;" and Charles Hennon, Suzanne Loker, and Rosemary Walker, *Gender and Home-Based Employment* (London: Auburn House, 2000) for a comprehensive discussion of the issues.
37. Scully and Wysham, "The World Bank's Consultative Group to Assist the Poorest."
38. See generally Adrian Wood, "North-South Trade and Female Labour in Manufacturing: an Asymmetry," *Journal of Development Studies*, vol. 27, no. 2 (1991), pp. 168-189; Standing, "Global Feminization: A Theme Revisited," pp. 583-602; and Susan Joekes, *Trade-Related Employment For Women In Industry and Services in Developing Countries*, United Nations Fourth World Conference on Women Occasional Paper No. 5 (Geneva: UNRISD, 1995).
39. Joekes, *Trade Related Employment*, p. 2.
40. Structural adjustment policies (SAPs), covering macroeconomic, social, and structural issues, are generally created in the Bretton Woods institutions (the World Bank and IMF) and imposed on indebted countries.
41. Standing, "Global Feminization: A Theme Revisited," pp. 583-584; and Korkut Erturk and William A. Darity, Jr., "Secular Changes in the Gender Composition of Employment and Growth Dynamics in the North and the South," *World Development*, vol. 28, no. 7 (2000), p. 1231.
42. Standing, "Global Feminization: A Theme Revisited," pp. 583-602; and Guy Standing, "Global Feminization through Flexible Labour," *World Development*, vol. 17, no. 7 (1989).
43. Standing, "Global Feminization: A Theme Revisited," p. 585.
44. UN, *World's Women 2000—Trends and Statistics*, no. 3 (New York: United Nations Statistics Division, 2000), chap. 5, shows that over the past two decades women's employment increases in every region except sub-Saharan Africa, parts of Eastern Europe and Central Asia, and Oceania. In South America their involvement rose from 26 to 45 percent between 1980 and 1997.
45. Joekes, *Trade-Related Employment*, pp. 2-3.
46. Organization for Economic Cooperation and Development (OECD), *Trade, Employment and Labour Standards: A Study of Core Workers' Rights and International Trade* (Paris, 1996), p. 100.
47. Standing, "Global Feminization: A Theme Revisited"; and UN, *1999 World Survey on the Role of Women in Development: Globalization, Gender and Work* (New York: United Nations, 1999).
48. Martin Khor, "Globalization and the South: Some Critical Issues," *UNCTAD Discussion Paper no. 147*, New York: United Nations Conference on Trade and Development, April 2000, p. 5. Online. Available: http://www.unctad.org/en/docs/dp_147.en.pdf. Accessed: November 1, 2000.
49. "Special Issue on Gender, Adjustment, and Macroeconomics," *World Development*, vol. 23, no. 11 (1995).
50. Haleh Afshar and Stephanie Barrientos, *Women, Globalization and Fragmentation in the Developing World* (Great Britain: Macmillan Press, 1999) p. 5.
51. Patricia Alexander and Sally Baden, *Glossary on Macroeconomics from a Gender Perspective*, Bridge Report no. 48 (Brighton, U.K.: Institute of Development Stud-

- ies, 2000). Online. Available: http://www.ids.ac.uk/bridge/reports_gend_ec.html. Accessed: March 10, 2001.
52. OECD, *Trade, Employment and Labour*, p. 99, suggests that in the early to mid 1990s women held about two-thirds of TNC jobs in EPZs. United Nations, 1994 *World Survey on the Role of Women in Development: Women in a Changing Global Economy* (New York, 1995), p. 49, reports that in South-East Asia women have been reported to comprise 80 percent of the workforce in EPZs (where the largest percentage of EPZs exist in the world).
 53. Fontana, Marzia, Susan Joeques, and Rachel Masika. *Global Trade Expansion and Liberalisation: Gender Issues and Impacts*, BRIDGE report no. 42 (Brighton, UK: Institute of Development Studies, January 1998) p. 8. Online. Available: http://www.ids.ac.uk/bridge/reports_gend_ec.html. Accessed: March 10, 2001.
 54. *Ibid.*, p. 9-11.
 55. Joeques, *Trade-Related Employment*.
 56. Delahanty and Khatun Shefali, "From Social Movements to Social Clauses," pp. 98-102.
 57. *Ibid.*
 58. Centre for Women's Research (CENWOR) Sri Lanka, "Invisible Women-Workers in Subcontracted Industries in Sri Lanka—Part 2 of 16," *Invisible Women-Workers in Subcontracted Industries in Sri Lanka: NA* (2000). Online. Available: <http://search.rdsinc.com/texis/rds/>. Accessed: December 6, 2000.
 59. *Ibid.*
 60. *Ibid.*
 61. Standing, "Global Feminization: A Theme Revisited"; and Kucera and Milberg, *Gender Segregation and Gender Bias*.
 62. Refer to United Nations Development Fund for Women (UNIFEM), *Progress of the World's Women 2000* (New York: United Nations, 2000); the United Nations Development Programme (UNDP) *Human Development Report 1999* (New York: Oxford University Press, 1999); and a list of UNDP Gender Publications for Beijing +5. Available: http://www.undp.org/gender/beijing5/gen_pub.htm. Also see the International Labour Organization (ILO) *Decent Work for Women: An ILO Proposal to Accelerate the Implementation of the Beijing Action Platform for Action* (2000). Online. Available: <http://www.ilo.org/public/english/bureau/gender/beijing5/contibu/report.htm>. Accessed: October 10, 2000.
 63. *Ibid.*
 64. Standing, "Global Feminization: A Theme Revisited," p. 600.
 65. Most information about occupational hazards and related illness and disease involve case studies or remain anecdotal. Reliable data in this area has not been collected and most studies focus on men. See R.H. Loewenson, "Women's Occupational Health in Globalization and Development," *American Journal of Industrial Medicine*, vol. 36, no. 1 (1999), pp. 34-42.
 66. In a study of women workers in Thailand, it was reported that they tend to develop eye deficiencies after the first five years of employment in electronics, garments, and lace textile manufacturing industries. See Melody Kemp, "The Wages of Work: Occupational Health and Women," *Women in Action*, vol. 92, no. 2 (1999).
 67. *Ibid.*; and Loewenson, "Women's Occupational Health," and E. Wasserman, "Environment, Health and Gender in Latin America: Trends and Research Issues," *Scandinavian Journal of Work, Environment and Health*, vol. 25 no. 3 (1999), pp. 296-300.
 68. Women's International League for Peace and Freedom, "Export Processing Zones and Their Effects on Women," *International Peace Update*, vol. 64, no. 4 (August 1999). Online. Available: <http://search.rdsinc.com/texis/rds/>. Accessed: December 6, 2000.
 69. Jin Kyung Bae, "Report on the International Meeting," *Working Women*, vol. 20, no. 11 (Seoul: Korean Women Workers Associations United, 1999), pp. 31-34. Online. Available: <http://search.rdsinc.com/texis/rds/>. Accessed: December 6, 2000.
 70. *Ibid.*
 71. *Ibid.*; and Human Rights Watch, "Women's Human Rights" (part 3 of 3), *Human Rights Watch World Report 2000* (November 1999). Online. Available: <http://search.rdsinc.com/texis/rds/>. Accessed: December 6, 2000.
 72. Ans Kolk, Rob van Tulder and Carlijn Welters, "International Codes of Conduct and Corporate Social Responsibility: Can Transnational Corporations Regulate Themselves?" *Transnational Corporations*, vol. 8, no. 1 (April, 1999), p. 143.
 73. The World Trade Organization (WTO) replaced the General Agreement on Tariffs and Trade (GATT) established after World War II. For more information see World Trade Organization, *The WTO in Brief*. Online. Available: <http://www.wto.org/>. The WTO has no formal mechanism to address gender. In 1996, members formed the Informal Working Group on Gender and Trade (IWGGT), but it has no resources and information regarding its function is not available on the WTO website.
 74. For an example, see Ritu Sharma, "Women and Trade," *Women's EDGE*. Online. Available: <http://www.womensedge.org/trade/feminist/expo.htm>. Accessed October 10, 2000.
 75. Sharma, "Women and Trade."
 76. BRIDGE, "Trade Policy," *Development and Gender In Brief*, Issue 8 (Brighton, U.K.: Institute of Development Studies, 1998). Online. Available: <http://>

- www.ids.ac.uk/bridge/reports_gend_ec.html. Accessed: March 10, 2001.
77. Scully and Wysham, in "The World Bank's Consultative Group to Assist the Poorest," noted, for example, that "CGAP has reaped enormous public relations benefits as an initiative which attempts to redress the Bank's poor performance on gender issues. Indeed, CGAP is persistently and specifically used by Bank staff to defend themselves against charges of failing to adequately address the needs of women." They also point out that "CGAP's strategy for facilitating microfinance is based on the traditional hallmarks of World Bank development initiatives: privatization, deregulation, and policy reforms which favor the agenda of bilateral donors, commercial banks, transnational corporations, and others who benefit from open markets and free trade."
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THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT: A WELL BUILT FENCE OR BARBED WIRE AROUND THE INTELLECTUAL COMMONS?

The Uniform Computer Information Transactions Act (UCITA) is a proposed state contract law developed to regulate transactions in intangible goods such as computer software, online databases and other digital products.¹ UCITA was intended to act as Article 2B of the Uniform Commercial Code (UCC). Article 2 comprises the law governing commercial transactions in the sale of goods and ensures consistent contract laws from state to state. The stated goal of UCITA is to provide clarity regarding computer information transactions.

HISTORY OF UCITA

UCITA is a response to, and an attempt to override, existing contract law. Contract law in the US has a long history, both in statutory form and in the courts. The UCC forms the basis of American commercial law and is the primary state law governing sales of goods. In other words, it forms the basis of contract law and guides all sales and purchases of products. The UCC was developed in 1942

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as a joint project of the American Law Institute (ALI) and the National Conference of Commissioners on Uniform State Laws (NCCUSL)² and has been enacted in 49 states.³

There is no specific law that applies to sales of computer goods and software, rather, as information technology emerged, courts have handled software transactions under Article 2 of the UCC.⁴ Article 2, however, does not specifically address circumstances raised by information technology. UCITA's drafters' main argument in favor of their statute is that just such a specialized contract law is required to govern computer related transactions.

Initially, UCITA was to be included as Article 2B of the UCC statute specifically to regulate "computer information transactions" including licenses to use software. The drafting process for UCITA ran into trouble early on, however. On April 7, 1999, in an action unprecedented in the 50-year history of the UCC,⁵ the ALI pulled its sponsorship of 2B as a new UCC article. Breaking with the ALI, NCCUSL proceeded to advocate passage of the bill on its own without the sponsorship of ALI, and renamed the proposed legislation the "Uniform Computer Information Transactions Act."

The proposed statute is currently being introduced in each state as a stand-alone addition to each state's legal codes.⁶ Maryland and Virginia have passed the legislation and Microsoft Corporation is reportedly lobbying the Washington Legislature to introduce and pass UCITA.⁷ UCITA legislation has been introduced in Texas, Hawaii, Iowa, Illinois and Oklahoma, and is likely to be introduced into all state legislatures by 2001.

STAKEHOLDERS IN UCITA DEBATE

The primary proponents of UCITA are publishers and large software producers.⁸ Proponents assert that UCITA has been under intense review and discussion for over ten years by a variety of parties including consumer advocates, software developers, information providers, and both small and large software and information licensees.⁹ Consequently, NCCUSL has adequately balanced competing interests to create a fair and balanced statute, according to proponents.¹⁰ Opponents respond that the current draft "represents little more than the narrow commercial interests of the major software companies," and say the drafting process has been "industry-controlled."¹¹ As many as 26 State Attorneys General have indicated their opposition.¹² Library associations, state and federal consumer protection

groups, commercial customers, law professors, Federal Trade Commission senior staff, computer professionals, and a number of businesses have expressed concerns or actively opposed the enactment of UCITA.¹³

UCITA'S GENESIS AND DEVELOPMENT

A variety of factors converged to accelerate the drafting of UCITA, including the White Paper produced by the Commerce Department under the Clinton Administration in 1995. The White Paper was completed in part to respond to concerns that cyberspace threatened traditional copyright protections.¹⁴ Other major concerns have been a perceived need for certainty in the state of the law and questions regarding the validity of new and controversial types of licensing agreements. State legislatures will soon be called upon to adopt UCITA. As such, a review of the stated need for the legislation as well as a review of its promised benefits is in order.

NEED FOR STATUTORY CLARITY

At present, proponents say, there are no clear, uniform rules governing agreements for the licensing or sale of software, multimedia products, or databases, and no certainty regarding how to form enforceable contracts over the Internet.¹⁵ Proponents point out that traditional contract law, as governed by the UCC, is based on the sale of goods, whereas computer information transactions generally involve licensing agreements. Priscilla Walter, a Washington D.C. attorney who is active in the practice of cyber law, notes that Internet transactions often involve free speech issues, which can affect the enforceability of licensing agreements.¹⁶ Additionally, the lifecycle of technology and information products is extremely short. Products are frequently delivered with known bugs, which may be corrected a few months later when the software is upgraded or replaced. Software developers are also concerned that, although users can acquire software fairly inexpensively, errors in the software could cause huge losses. Developers wish to avoid liability for those losses if possible.

DUPPLICATION CONCERNS

The main impetus behind the push for legislation stems from the concerns of copyright holders regarding electronic challenges to ownership. Digital files can be copied with little or no quality degradation, and exact duplicates of the original can be made with ease.¹⁷ Information and software are ex-

pensive to develop, but, once developed, can be copied and distributed at low cost by those in possession of the software.¹⁸ Copyright holders are concerned that advances in technology are making it more difficult for them to retain control over their product. They believe more control would ensure remuneration for their works.

On the other side of the debate, programmers such as Ian Clarke, creator of Freenet, openly oppose copyright law and advocate fluid, unconstrained sharing of all information.¹⁹ Opponents such as Clark note that, in the past, artists and publishers have successfully adapted to technologies such as photocopiers and magnetic tape. Clark argues that, therefore, just as authors and creators learned how to profit from those innovations, they will successfully adapt to new copying and distribution technologies as well.²⁰ Internet expert Lawrence Lessig also observes that copyright has always been at war with technology.²¹ Lessig points out that law itself is not the only remedy for perceived copyright infringement. Increasingly, software developers are pursuing technological solutions such as "worms"²² which seek out unauthorized copies on end-users' hard drives. In the meantime, however, software companies are pursuing a two-pronged approach to protect their interests. Producers are aggressively litigating and enforcing contract provisions that prevent unauthorized copying or resale of software and are simultaneously pushing for strong legislative changes to protect ownership and profit interests.²³

EVOLUTION OF "SHRINK-WRAP" AND "CLICK-WRAP" LICENSES

Software companies would like to eliminate their legal vulnerability regarding the applicability of the "first sale doctrine" to their products. The "first sale doctrine"²⁴ allows purchasers to resell, lend or otherwise dispose as they see fit of the physical embodiment of creative works such as books, or, by extension, packages of software.²⁵ For example, if you buy a book, you may subsequently choose to

resell the book to a used bookstore, or you may give the book to a friend as a gift.

Software producers, however, are uncomfortable with such an easy circulation of their product in the marketplace. As a response to this well-worn exception to copyright, software related contracts have evolved to "shrink-wrap" licenses and more recently to "click-wrap" agreements presented on consumers' screens.²⁶

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"Shrink-wrap" licenses, which take the form of a contract of sort slipped beneath the clear plastic packaging and the software box, claim that ownership remains in the hands of the software publisher, not the user. Any purchaser who opens a software package is assumed to have accepted the terms of the license. Click-wrap licenses appear on computer screens when the user downloads a given software program. They require consumers

to click on an "I agree" or "I disagree" icon before moving forward. These licenses move software out of the realm of "goods" and into the realm of "licenses." If these licenses are enforceable, consumers no longer can rely on standard copyright exceptions, nor can consumers rely on being covered by the standard law of contracts as embodied in the UCC and subsequent court decisions.

Software companies assert that they are not selling their products, but are merely creating licensing agreements for the use of the program to the purchaser under the condition that users accept limitations on copying or resale of the product. Proponents of UCITA argue that legal standards on how to interpret and enforce these licenses are needed. UCITA fills this alleged gap by setting up a new "law of licenses" that will govern transactions in computer related goods.

BENEFITS OF UCITA

Proponents of UCITA argue that it will create a unified legal framework specifically tailored to transactions in computer information. The uniformity will provide greater legal certainty for ongoing transactions.²⁷ The framers hope that additional certainty will encourage the continued growth of the digital

information industry. Advocates of the legislation also seek to clarify that “shrink-wrap” and “click-wrap” license agreements are enforceable.²⁸ At present, no cases have adjudicated the enforceability of the “click-wrap” license methodology.²⁹

Because software often contains bugs or glitches, it runs afoul of the provision in Article 2 of the UCC requiring delivery of goods that conform to the contract. UCITA softens this standard by allowing for substantial performance. In addition, UCITA contains a provision regarding where litigation will take place on covered products, and contains a framework for dealing with electronic commerce, implied warranties for informational content, and provisions dealing with the electronic control of the license.

POLICY IMPLICATIONS OF UCITA

Three major concerns regarding the proposed licensing rules of UCITA will have a direct impact on the average consumer.³⁰ First, legal rules embodied in UCITA may weaken consumer rights, and run counter to the “common sense expectations” of average buyers and sellers.³¹ Second, UCITA has the potential to lock citizens out of the intellectual commons of the electronic age. Finally, UCITA is premature and upsets the traditional balance of contract law.³²

UCITA AND CONSUMER PROTECTION

UCITA’s drafters state that it leaves in place basic consumer protection laws and even adds some additional protections.³³ Twenty-six State Attorneys General, however, have reviewed the consumer provisions of UCITA and found them to be insufficient to adequately protect consumers.³⁴ In particular, they note that UCITA actually reduces rights, such as contract formation and modification, which consumers have come to rely on when purchasing other types of goods.³⁵ The statute degrades long-standing consumer protection guarantees and introduces confusion regarding others.³⁶

Applicability of Consumer Protection Statutes

Currently, courts treat mass-market software transactions as “sales of goods” and evaluate them under Article 2 of the UCC. The Act, by contrast, characterizes mass-market software transactions as “licenses” of “computer information.” UCITA would codify the legal standard advanced by software companies that they are not selling “goods,” but are simply issuing licenses. Put simply, software companies are arguing that ownership of the soft-

ware remains in the hands of the software company, not the end purchaser. The end purchaser, software companies argue, is simply given permission to use the product in accordance with the guidelines set forth by the manufacturer.

Jean Braucher, a law professor at the University of Arizona and an expert in the consumer implications of UCITA, observes that most state and federal consumer protection statutes do not specifically reference licenses or computer information because they were drafted before consumer software transactions became common. Since the industry characterizes the vast majority of software as “licensed” work, UCITA throws doubt upon the applicability of existing consumer protection statutes on software transactions. Software producers and access contract providers could argue state consumer protection laws do not apply to computer transactions because they are not goods or services.

Consumer Law Disclosure Standards and Contract Changes

UCITA preempts most consumer protection disclosure requirements, including those which require a person to act with knowledge, by eliminating standards that allow consumers to learn material facts before making a purchase.³⁷ UCITA creates automatic assent when a licensee double clicks on a mouse in order to continue to use the information, even when this “assent” occurs after payment or delivery. This “pay first, see the contract terms later” approach permits license holders to withhold contract terms until after the sale, incorporating those terms into the contract if the purchaser accepts them after the sale.³⁸ Disclosures could comply with UCITA, but not be readily understood by the average consumer. At best, UCITA provides an environment where sellers will be simply unconcerned whether buyers understand what they are purchasing, and it may favor unscrupulous sellers who wish to deceive consumers. These provisions are particularly problematic for libraries whose ability to use the product may be severely abridged by contract terms that are not noted until after purchase.

Implied Warranty of Merchantability

UCITA also fails to require disclosure of known defects. Under Article 2 of the UCC, buyers automatically get an implied warrant of merchantability—a promise that the merchandise is fit for ordinary use. In order for a typical business to disavow the warranty, they must post conspicuous signs. Increasingly, software companies are placing limited warranties and licensing agreements inside

the shrink-wrapped box of their product, which often escapes a customer's attention. The customer can remain unaware that he is purchasing defective merchandise or that he has no remedies if the merchandise is flawed.³⁹

Certainty in Software Transactions

UCITA supporters state that the Act sets out clear, consistent rules, creates certainty in commercial transactions, allows users and vendors to understand and agree on their respective rights and obligations, and provides a firm foundation upon which to build the e-economy.⁴⁰ Certainty, however, is not an end in itself, and should be weighed against eroded consumer protection. State consumer law experts who have examined the law believe that UCITA fails in its purpose of "facilitat[ing] commerce by reducing uncertainty and increasing confidence in commercial transactions."⁴¹ Many assert that UCITA's rules deviate from traditional consumer expectations and may invite overreaching that could interfere with the development of e-commerce. Consumers may be better served by rules that build upon accepted notions of contract to protect their interests and expectations. Braucher believes that UCITA, as drafted, would take decades of litigation to sort out. She concurs with Lessig that consumers are better off under current law, which includes the common law⁴² of contract, UCC Article 2, state and federal consumer law, and federal intellectual property right law.⁴³

UCITA AND THE UNDERMINING OF THE FREE FLOW OF IDEAS

Through both common law and statute, our society has constructed a system in which the public has a right to access information and use creative works for noncommercial purposes in community forums such as libraries. Taken together, rules such as fair use, first sale, and the limited term of copyright give the creator significant control over the use of what he produces. These rights are balanced by giving the public some, but not complete access to information.⁴⁴ Observers call the arena of free exchange of

ideas created by these exceptions to copyright "the intellectual commons."⁴⁵ But public access to information, created by negotiation and consensus over a period of generations, may be replaced by UCITA, which creates expansive licensing agreements for software and other digital information that favor the seller or manufacturer and that displace other access rights and participation in the marketplace of ideas. Public discourse may be narrowed as the intellectual commons becomes restricted to those who can pay for access.

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The Intellectual Commons

Copyright. Current United States copyright law balances the rights of authors, publishers and copyright owners to receive remuneration with society's need for the free exchange of ideas.⁴⁶ One traditional component of copyright was to protect the right of remuneration. Its primary objective, however, is not necessarily to reward the labor of authors, but rather "to promote the Progress of Science and Useful Arts" in our society.⁴⁷ Copyright encourages others to build upon the ideas and information conveyed by a work, while assuring au-

thors the right to their original expression.⁴⁸ This principle, known as the idea/expression dichotomy, is how copyright advances the progress of science and art.⁴⁹ Indeed, the Supreme Court has observed that the "very object of publishing a book on science or the useful arts is to communicate to the world the useful knowledge which it contains. But this object would be frustrated if the knowledge could not be used without incurring the guilt of piracy. . . ."⁵⁰ Thus, although copyright creates a property interest, its primary purpose is to promote the public interest by encouraging the creation and widespread availability of socially useful innovation.⁵¹ Copyright represents a delicate bargain our society has struck between commercial remuneration for original work and the need to serve the public interest by placing knowledge in the public domain.

Fair Use. To ensure the viability of this delicate balance, the law has historically placed certain limita-

tions on copyright owners. For example, "fair use" limits a copyright holder's property rights in order to achieve social goals such as free speech and the promotion of knowledge.⁵² The 1976 Copyright Act allows the reproduction of copyrighted material for criticism, comment, news reporting, teaching, scholarship, or research. Fair use and other public rights to utilize copyrighted works constitute doctrines that allow the dissemination of knowledge to society as a whole. Because these exceptions are limited, copyright protects the creative work and the economic investment of authors and publishers.⁵³

The First Sale Doctrine. The "first sale doctrine" holds that, although the author retains copyright over content, ownership of the physical book ends at the time of the first sale, thereby allowing purchasers to resell the physical embodiment of the text.⁵⁴ The copyright holder still controls the total number of books published, and, by extension, in circulation. As such, the owner retains some control over the value of each new copy.⁵⁵ Anyone wishing to duplicate the book, even by photocopying, must ask permission from the copyright holder and pay royalties. In *Civilizing Cyberspace: Policy, Power and the Information Superhighway*, Steven E. Miller notes that it is precisely this limitation on the right of the copyright holder that allows libraries to lend books to patrons, thereby allowing all citizens, regardless of income, to access our nation's intellectual capital.⁵⁶

In the information era, however, first sale doctrines could be interpreted to give the software publisher rights over the programming code while allowing the person who bought the disk full rights to resell it or lend it to someone else.⁵⁷ Software publishers are concerned that once individuals purchase or borrow a piece of software, they may legally resell or distribute copies. If these duplicate copies are resold, copyright owners fear their revenue stream will be reduced. Software owners have also expressed fears that "loaning" the use of a piece of software will slip into duplication.

UCITA'S POTENTIAL EFFECT ON THE INTELLECTUAL COMMONS

The provisions in UCITA which respond to software publishers' fears would, if enacted, likely place tight restrictions on the flow of electronic information. Section 307(b) of the Act restricts the use of information more narrowly than copyright law. Section 503(2) permits a license to prohibit transfer of software or other information. These provisions allow terms in software licenses which eliminate uses of informational resources that allow copying

for educational purposes (fair use) and sharing or lending of those resources (first sale).

Nothing in the statute appears to acknowledge the traditional limitations placed on private owners' control of information in the public interest. Some online databases already require academic libraries to sign licenses agreeing not to allow anyone except students and faculty to read the electronic versions of scholarly articles they provide.⁵⁸ Other agreements limit the number of pages of electronic materials that a library user can print. With the passage of UCITA, the public space carved out by judicial and statutory exceptions to copyright could be replaced in an instant.

The Seduction of Click-Wrap Licenses

Many software and information products are sold as shrink-wrapped packages or as products downloaded from a vendor's web site.⁵⁹ Consumers can obtain software and information products conveniently; however, that convenience cloaks increased restrictions. This is because shrink-wrap and click-wrap licenses, which UCITA would validate, demand that consumers waive rights otherwise allowed under traditional copyright law. Such licenses usually show a screen with three buttons: "print," "I accept," or "I decline." It is a reasonable assumption that most people simply click on "I accept," not realizing they have just agreed to a contract. Only later will the user engage in examining the detail, if at all. Again, the buyer does not know she has agreed to contract terms, nor is it likely the buyer has examined those terms. Pamela Samuelson, professor of information management and law at the University of California at Berkeley, observes, "Most of us do not consider ourselves bound by these agreements because we never really agreed to them."⁶⁰

Click-Wrap or Consumer Give Away?

These contracts are controversial because users have no opportunity to negotiate the terms. These terms often restrict uses which fall within the reasonable expectations of consumers, such as making a copy, lending software to a friend, reselling used software, or providing access to other users.⁶¹ Under UCITA you can redistribute a licensed copy only if you have specially contracted for the right to do so.⁶² Accordingly, if UCITA passes, libraries could no longer assume they can legally lend electronic information to library users. Nor can library patrons be certain they are allowed to quote from a work, make a copy of a portion for personal use, or use the product in a non-profit or educational set-

ting. Click-wrap licensing terms allow no time for adequate review. In traditional contract terms, scenarios which entail uneven bargaining power are known as "contracts of adhesion:" consumers unwittingly agree to conditions buried in pages of small type, with no time for adequate meeting of the minds or true negotiation.

Charles C. Mann, a writer for the *Atlantic*, has noted a number of particularly shrink-wrap and click-wrap license provisions.⁶³ For example, Microsoft Agent's license tells customers they can't "rent, lease or lend" the program or use the program to "disparage" Microsoft. McAfee Virus Scan contains a license term that no person may publish a review of the program "without prior consent," and finally, Phone Disc software states that the software cannot be used in any way or form without prior written consent of the software manufacturer. Worst of all for libraries, current licenses often forbid copying or lending intellectual property. These license terms cede protections of copyright to owners, while arguably putting a stranglehold on public access to electronic information.

The courts have yet to decide the enforceability of shrink-wrap and click-wrap licenses. In *Vault v. Quaid*, federal judges refused to enforce a Louisiana law validating shrink-wrap licenses because the terms interfered with consumer rights under federal copyright law.⁶⁴ By contrast, in a 1996 decision, *Pro-CD v. Zeidenberg*, the federal appellate Judge Frank Easterbrook authored an opinion that enforced a shrink-wrap license restriction under a contract theory.⁶⁵ Professor Samuelson notes that most judicial opinions have refused to enforce shrink-wrap licenses because consumers have not meaningfully assented to the terms.⁶⁶ UCITA would make them presumptively valid.⁶⁷ Such broad approval could allow software companies to circumvent, through non-negotiated mass-licensing contracts, traditional practices such as copyright exceptions for fair use, first sale and preservation. Consequently, the space afforded to the public by exceptions to copyright

could be displaced through the private mechanism of contract, causing the intellectual commons to shrink, and inexorably tipping the societal balance.

The implications for consumers and public libraries of validating restrictive licensing terms are immense. Increasingly, authors are choosing to publish on-line,⁶⁸ through software or in an electronic format. According to James G. Neal, dean of university libraries at John Hopkins University, libraries purchase significant

amounts of electronic products.⁶⁹ Because of the insistence of software manufacturers that all users are actually licensees, not owners, libraries may have to examine the contents of mass-market contracts to evaluate what rights libraries and library patrons have.⁷⁰ Since shrink-wrap and click-wrap contracts remove some

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of the negotiation power of the buyer, libraries will have to enter negotiations with numerous software companies. The additional costs this would entail may result in serious limitations regarding which electronic materials libraries may purchase, and limitations on how materials may be used once they are purchased.

UCITA Will Reduce the Free Flow of Ideas in Society

As the Supreme Court has noted, society has an interest in the free exchange of ideas. Extremely restrictive licensing laws, such as UCITA, may hinder the progress of science and useful arts by reducing public access to information. Richard Stallman, activist, programmer, MacArthur Genius Grant recipient and founder of the Free Software movement, argues that society needs information that is truly available to its citizens, freedom, and the spirit of voluntary cooperation.⁷¹ Traditionally, the United States has nurtured these values by ensuring that every citizen had access to significant amounts of information in all media at no cost through the public libraries.

The Association of Research Libraries notes that fair use, as well as the right of libraries to reproduce materials under certain circumstances, helps

ensure the access of researchers, students, and the public to all types of knowledge in our society.⁷² "Free" information has always been an integral component in our society to helping people break through class barriers, assisting people to broaden their intellectual horizons, and creating a sense of community and civic spirit. These lofty goals have been assisted in a simple way by sharing of resources such as books, magazines, maps, music, films, and increasingly, software.⁷³ Information resources help create a more literate, informed and involved populace, which in turn creates a more robust, economically productive, democratic society. Information resources will increasingly include digital works such as those to be regulated by UCITA. The right of the public to access them, and the right of libraries to archive electronic materials, must be taken into account.

The balance put in place by fair use and other limitations on copyright must be maintained in the emerging electronic environment. Maintaining this balance ensures the free flow of information in American society, guarantees that information resources are made available to all parts of our society, and encourages the development of an information infrastructure that serves the public good.⁷⁴ Society should carefully consider the public policy implications of creating an environment where information resources are only available to those who are able to pay. In an era when the term "digital divide" is on every pundit's lips, policy makers should take note that statutes like UCITA will surely accelerate the existing educational polarization of our society and aggravate the problems between technology "haves" and "have-nots."⁷⁵

UCITA Disturbs the Traditional Balance of Contract Law

Lessig believes that UCITA, as it is currently drafted, fundamentally alters the traditional balance in contract law between business and consumers established through decades of court decisions.⁷⁶ Priscilla Walter, a software industry advocate, acknowledges that some critics of UCITA would like to see the balance between vendors and users fall more heavily on the side of users.⁷⁷ However, she dismisses such concerns, stating, "It is clear that software and information vendors won't agree to a law granting users significantly more rights than UCITA does. They have made that clear in the UCITA discussions and, after all, why should they agree to anything that weakens their right when existing law already protects them?"⁷⁸ The rejoinder to Walter, and to the backers of this statute, is that

the software industry should agree to keep negotiating in the interest of fairness. The purpose of statute or judicial decision is to regulate conduct in society in a way that balances all of society's interests. If software vendors will not agree to a law giving users reasonable rights, then consumers and their legislative advocates should walk away from the bargaining table.

CONCLUSION

Proponents of UCITA may argue that current laws do not neatly encompass transactions such as those governed by UCITA, and assert that this creates an urgent need for the passage of new legislation. This sense of urgency is artificial. Established principles of copyright, commercial, and contract law provide sufficient guidance for courts to develop a body of common law in the interim. Industry advocates complain that trying to figure out how to create enforceable agreements or arguing in court about whether we did so successfully is a waste of time and resources.⁷⁹

But, as Lessig points out, good law is generally the result of just such a time-consuming process of legal wrangling between different interests in society which results in established industry practice that can then be codified, such as occurred with the UCC. Lessig advocates allowing parties to write the contracts they want and letting courts test them under existing statutes and established principles.⁸⁰ After practice has been codified, drafters can look to the common law to develop a statute that balances the interests of consumers and businesses. Although waiting for this process to occur is time-consuming, it also builds stability and credibility into a system of commerce.

The process of allowing practice to develop before proceeding with codification will give the drafters of legislation ample time to develop a statute that strikes the proper balance between stakeholders. As stated in the principles of the techno-realism movement, "It is true that cyberspace and other recent developments are challenging our copyright laws and frameworks for protecting intellectual property. The answer, though, is not to scrap existing statutes and principles. Instead we must update our old laws and interpretations so that information receives roughly the same protection it did in the context of old media."⁸¹

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NOTES

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2. The NCCUSL, comprised of representatives of all 50 states and territories, drafts and approves proposed legislation on issues of nationwide interest to provide a consistent framework of law from state to state. The proposed legislation is then introduced as a bill for adoption by the state legislatures.
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15. Micalyn S. Harris, *Is Article 2B Really Anti-Competitive?* Online. Available: <http://www.winpro.com/articles/anti-competitive.htm>. Accessed: July 5, 2000; Priscilla Walter, *UCITA: Establishing a Legal Infrastructure for E-Commerce*. Online. Available: <http://www.siiia.net/sharedcontent/govt/issues/ucita/upgrade-may.html>. Accessed: July 5, 2000.
16. Walter, *Establishing a Legal Infrastructure* (online).
17. Steven E. Miller, *Civilizing Cyberspace: Policy, Power and the Information Superhighway* (New York: ACM Press, 1996), p. 363.
18. Walter, *Establishing a Legal Infrastructure* (online).
19. John Markoff, "The Concept of Copyright Fights for Internet Survival," *The New York Times on The Web* (May 10, 2000). Online. Available: <http://www.nytimes.com/library/tech/00/05/biztech/articles/10digital.html>. Accessed: June 25, 2000.
20. Ibid.
21. Lawrence Lessig, *Code and Other Laws of Cyberspace* (New York: Basic Books, 1999), p. 124.
22. The digital worm is a bit of computer code that acts like an electronic sniffing dog, roaming through cyberspace looking for targeted digital items.
23. Miller, *Civilizing Cyberspace*, p.365.
24. As will be explained in detail later in this article, the "first sale" doctrine holds that although authors retain copyright over the content of a book, the copyright holder's ownership of the physical book ends at the time of first sale, thereby allowing purchasers to resell the physical text.
25. Miller, *Civilizing Cyberspace*, p.365.
26. A typical click wrap contract can be fairly benign, as it is in the Adobe PDF contract.
27. Cohn and Dively, *A More Objective Look* (online).
28. The Software and Information Industry Association, *Summary of Benefits: Uniform Computer Information Transactions Act*. Online. Available: <http://www.siiia.net/govt/issues.asp>. Accessed: June 30, 2000.
29. Ibid.
30. An opposing opinion by Raymond Nimmer argues that contract law will supersede copyright law in importance with regard to online transactions and asserts new property interests in transmission, extraction and access will be created. Raymond T. Nimmer, *Breaking Barriers: The Relation Between Contract and Intellectual Property Law*. Online. Available:

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32. Attorneys General letter, July 23, 1999, p. 1.
33. National Conference of Commissioners on Uniform State Laws (NCCUSL), *Uniform Computer Information Transactions Act* (October 7, 1999). Online. Available: http://www.law.upenn.edu/bll/ulc/ucita/ucita_99.htm. Accessed: July 1, 2000.
34. Attorneys General letter, July 23, 1999, p. 4.
35. Exhaustive discussions of UCITA's flaws may be found in Jean Braucher, *Proposed Uniform Computer Transactions Act: Objections From the Consumer Perspective*. Online. Available: <http://www.cpsr.org/program/UCITA/braucher.html> and Cem Kaner, *Proposed Article 2B: Problems from the Customer's View*. Online. Available: <http://www.badsoftware.com/uccpart1.htm>.
36. Braucher, *Objections from the Consumer Perspective* (online).
37. Attorneys General letter, July 23, 1999, p. 1.
38. *Ibid.*, p. 4.
39. Charles C. Mann, "Information Anxiety," *The Atlantic Monthly* (September 1998). Online. Available: <http://www.theatlantic.com/issues/98sep/copy3.htm>, p. 9. Accessed: July 6, 2000.
40. Walter, *Establishing a Legal Framework* (online).
41. Attorneys General letter, July 23, 1999, p. 8.
42. Common law refers to law made by judicial decision, as opposed to statute.
43. Braucher, *Objections from the Consumer Perspective* (online).
44. Lessig, *Code and Other Laws of Cyberspace*, p. 133.
45. *Ibid.*
46. Association of Research Libraries (ARL), *Intellectual Property: An Association of Research Libraries Statement of Principles*. Online. Available: <http://www.arl.org/scomm/copyright/principles.html>. Accessed: June 24, 2000.
47. *Feist Publications, Inc v. Rural Telephone Service Co.*, 499 U.S. 340 (1991).
48. *Fogerty v. Fantasy, Inc.*, (92-1750), 510 U.S. 517 (1994)
49. *Feist v. RTS*.
50. *Ibid.*
51. Miller, *Civilizing Cyberspace*, p. 360.
52. *Ibid.*, p. 363.
53. ARL, *Intellectual Property* (online).
54. Miller, *Civilizing Cyberspace*, p. 364.
55. *Ibid.*
56. *Ibid.*
57. *Ibid.*
58. *Ibid.*
59. Statement by James G. Neal, dean of University Libraries, John Hopkins University before the Maryland General Assembly's Joint Meeting of the Senate Finance Committee and the House Economic Matters Committee, February 3, 2000. Online. Available: <http://www.ala.org/washoff/neal3.html>. Accessed: June 24, 2000.
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63. Mann, *Information Anxiety* (online).
64. Samuelson, *Legally Speaking* (online).
65. *Ibid.*
66. *Ibid.*
67. ALA Office of Government Relations, "The Uniform Computer Information Transactions Act (UCITA)," *Issue Brief* (May 2000). Online. Available: <http://www.ala.org/washoff/ucitaogr.pdf>. Accessed: July 7, 2000.
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