

Kennedy School Review

JOHN F. KENNEDY SCHOOL OF GOVERNMENT
HARVARD UNIVERSITY

VOLUME VI • 2005



HALFWAY THROUGH THE DECADE

ISSUES, OPTIONS, AND BARRIERS

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Jules M. Delaune

Looking Forward: An Interview
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Jeremy Neuner

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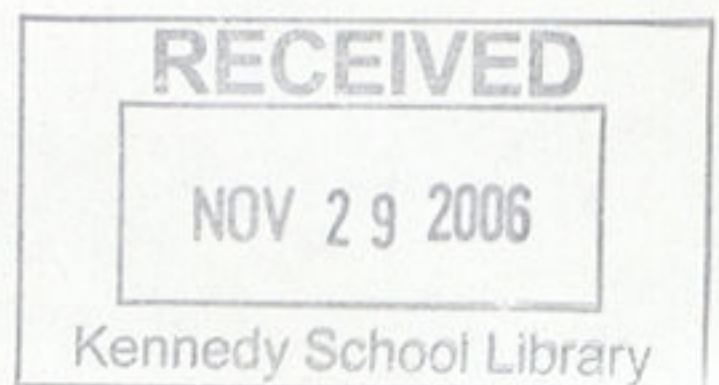
HALFWAY THROUGH THE DECADE

ISSUES, OPTIONS, AND BARRIERS

Editors-in-Chief

Roshana Arasaratnam, M.P.A. 2005

Jules M. Delaune, M.P.A. 2006



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This volume of the *Kennedy School Review* represents the hard work, support, and efforts of many individuals. Without their contributions, there would be no *Review*.

We owe thanks to many people but especially to the talented group of editors that began work months ago reviewing submissions, making difficult choices about the content of the journal, and dedicating many long hours to the process of making the finished product a source of pride.

We also extend our thanks and appreciation to the many colleagues who submitted their work to us. Space constraints prevented our publishing all of the submissions, but they were all worthy of publication. We recognize, and are grateful for, the effort and dedication shown by the authors to complete the editing process and to distribute the journal to our readers. We are particularly thankful to Senators Hillary Rodham Clinton (D-N.Y.) and John McCain (R-Ariz.) and their staffs for graciously working with us to bring their timely commentary to the journal.

Lastly, we are indebted to Christine Connare, our publisher, for her commitment to the journal; Dean Joseph McCarthy and the Kennedy School Student Government for their moral and financial support; and to Dr. Richard Parker, our faculty adviser, for allowing us to make this installment of the *Kennedy School Review* a reality. His vision for the journal was instrumental in making Volume VI a success.

Roshana Arasaratnam
Editor-in-Chief

Jules M. Delaune
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EDITORIAL INTRODUCTION

HALFWAY THROUGH THE DECADE

ISSUES, OPTIONS, AND BARRIERS

This year, the agenda for the *Kennedy School Review* was set by students. Rather than setting a theme for the journal, we allowed the students at the John F. Kennedy School of Government at Harvard University to tell us what they thought was important through the topics they chose and the passion with which they addressed those topics. We are gratified with the results. Two main concerns emerged. First, reflections on the 2004 elections highlighted the many domestic issues that remain politically difficult but unaddressed, including the environment, health care, and immigration policies. The second concern addressed the rancor of deep partisanship and thoughts about how to heal divided societies, both in the United States and abroad, as we all seek to make our world a better place. Inevitably, the implications of the 2004 election gave rise to a number of thoughtful pieces on the forgotten issues of 2004 and future strategies for 2008. How can the Democrats rebuild their platform? What will be the influence of the Latino vote in future elections? What happened to the environment during 2004, and how can activists put this issue back on the table?

We were fortunate to be able to have a discussion with Senator Hillary Rodham Clinton (D-N.Y.) and bring her thoughts to you. We are also indebted to Senator John McCain (R-Ariz.) for his ideas about defense, Social Security, and the partisan divide in Washington today. Both Senators Clinton and McCain provided compelling visions for the years to come.

Neither the environment nor education reform received serious, informed debate in 2004, but in a remarkable piece of original research, Chrisanti Haretos explored the measurement of effective education reform, and Pete Didisheim considered what it will take to get the environment on the political agenda.

At a time when pressures are building on all sides of the immigration issue, Aili Palmunen provided a thoughtful look at current and potential policy. Glenda L. Giron's piece on child trafficking in Guatemala exposed the pervasiveness of this little-considered injustice and begs us to address this issue seriously. Liana Tuller's article on the use of "truth and reconciliation" processes in Boston struck us as an opportunity to explore confronting domestic problems with international techniques. Cynthia E. Smith and Tony Pipa evaluated the continuing failure of the international community to act in Darfur, and particularly the United States' reluctance to act forcefully.

Two articles address issues related to increasing multiculturalism in the United States. K. Shiek Pal's discussion of racial profiling compels us to consider the real and total cost of terrorism legislation, and to examine who pays the price for increased security. Rafael López, Liz Montoya, and Miguel Santana examined the changing face of the Latino electorate and the implications for both political parties. Lastly, because of the inexorable link between politics and policy, we have presented two views on future Democratic and Republican strategies.

This year, we have also tried to give student authors a forum for presenting shorter opinion

pieces. Although these pieces are short in words, we think that they trigger a much longer debate on a range of topics including organ transplantation, military culture, trade, and human capital creation.

The diversity of problems highlighted in this volume of the *Review* demonstrates that Kennedy School students are concerned not only about political strategy, but also about building effective communities in troubled societies and monitoring the success of their efforts. Our hope is that these articles stimulate discussion, reflection and—most importantly—action both within and outside the walls of the Kennedy School, domestically and internationally.

Roshana Arasaratnam

Editor-in-chief

Jules M. Delaune

Editor-in-chief

HEALTH CARE IN THIS DECADE:

AN INTERVIEW WITH SENATOR HILLARY RODHAM CLINTON (D-N.Y.)

Many observers believe that health care is the unspoken elephant in the room in American politics. It is a politically charged, emotional, and expensive issue that over the past fifty years has generated a lot of discussion, but very few answers. Rapid advances in medical technology and aging populations raise concern that the current patchwork of government and employer financing is not sustainable. Quality improvement is still a lofty but often subordinated goal. Because of disparate and powerful interests, politically feasible reform remains elusive. In the 2004 presidential campaign, neither candidate offered more than incremental changes. With the Bush administration's views on reform widely known, we asked a scarred veteran of this debate, Senator Hillary Rodham Clinton (D-N.Y.), to relay her take on the issues and politics of health care in the United States, and her ideas of where this debate is going in the short run.

Jules M. Delaune interviewed Senator Clinton via e-mail on 18 April 2005.

KSR: What do you see as the similarities and the differences in the health care systems of 1993 and 2005?

Senator Clinton: Sadly, the problems we had in 1993 have only gotten worse. At that time, we had 37 million uninsured Americans. Now, 45 million Americans are uninsured, and the vast majority of them are in working families. Health care costs have also skyrocketed since 1993, and about a quarter of our health care dollars are directed to administrative costs, not care.

We're also facing increased challenges in providing access to quality care. While we've made many advances in our understanding of disease and ability to use information technology to enhance health care delivery, translating these advances into improved care has not been easy. The genome research work completed during the Clinton administration is giving researchers the ability to link specific genes with appropriate treatment, but it has also led to discrimination for patients with genetic predispositions to certain diseases. And although we do have the technology necessary to institute electronic medical records, the health care industry as a whole lags behind the rest of the country in adopting information technology as a means to improve efficiency and quality of care.

KSR: How have your ideas evolved over the last twelve years, and what kind of reforms would you support today?

Senator Clinton: In addition to supporting efforts to increase access to quality health care and strengthen and secure Medicare and Medicaid, we need to harness the real potential of information technology. The dramatic growth of information technology has revolutionized the way that we live, work, and learn. We should be using this technology to revolutionize the way health care is delivered in the United States. With information technology, we can increase the quality of care delivered to each patient, reduce the number of medical errors, and counter the increasing administrative costs faced by our health care system each year.

By building a fully interoperable information technology infrastructure, we can also share information and empower patients to become active participants in maintaining their health while ensuring their privacy. An information technology system will allow us to measure health outcomes, reduce costly duplication of health care services, and, with appropriate risk adjustment, ultimately develop a system that rewards physicians who provide high quality care.

KSR: Where do you foresee health care policy going in the short run?

Senator Clinton: We can't let reforming health care fall off our radar screen. There are plenty of people—both Democrats and Republicans—who are working on innovative policies that will improve both quality and access to care for millions of Americans. For example, I am a cosponsor of legislation introduced by Senators [Gordon] Smith [R-Ore.] and [Jeff] Bingaman [R-N.Mex.] that will create a bipartisan commission to formulate recommendations for sensible Medicaid reform.

Unfortunately, the health care priorities of the administration often amount to the gutting of our health care safety net—Medicare and Medicaid. I did not support the *Medicare Modernization Act*, which reduces access to quality care for our seniors and disabled. The Congressional Budget Office estimates that the new law will cause 3.8 million retirees to lose their employer-sponsored prescription drug coverage. I am especially concerned with the upcoming implementation of the new Medicare drug benefit for the 6 million individuals who are dually eligible for both Medicare and Medicaid benefits, who as a result of the new benefit will lose their existing drug coverage. The administration has simply not done enough to ensure continued access to drugs for these individuals.

I am also extremely worried about the billions of dollars in funding cuts to Medicaid that were proposed as part of the Senate and House budget resolutions, and was proud to be a cosponsor of an amendment that successfully staved off \$15 billion in Medicaid cuts from being included as part of the Senate budget resolution.

Finally, I am also concerned about the administration's proposals to expand health insurance coverage to more Americans through association health plans, health savings accounts, and limited tax credits for health insurance coverage. These proposals do nothing to help the needs of the uninsured—most of whom are members of working families—and will likely increase the numbers of uninsured if implemented.

KSR: What is your view on increased individual accountability, as advanced by consumer-driven plans and health savings accounts? Do you think they are a good idea, and do you think accountability alone is adequate?

Senator Clinton: I strongly support efforts that would get people more involved in decisions about their care with their health care providers. Studies have shown that when patients have a greater stake in their own care, they make better choices. That's why I support giving people access to their medical records and making them more portable, so people and their health care providers can connect the dots of care over the years.

However, some people believe that "consumer-driven care" and "increasing individual accountability" mean shifting costs and risks onto individuals without doing anything to address the problems of the underlying health care system. Stand-alone efforts like health care accounts and individual health insurance tax credits do nothing to increase access to health care, promote better health, or provide better quality care. Instead, they deter people from seeking needed preventive and primary care services, making their health care needs more expensive down the road when they do seek acute or emergency care.

KSR: The pharmaceutical industry is the focus of several policy proposals. Do you have any thoughts concerning price and/or profit controls for big pharmaceutical makers?

Senator Clinton: The price of medications is rising faster than inflation, consuming a larger and larger portion of the incomes of seniors, the chronically ill, and low-income individuals. The increasing cost of these drugs means that many Americans face tough choices about their health and may do without medications to pay for other basic necessities, like food and housing.

I believe that we need to take measures to make prescription drugs more affordable. We need to make drug reimportation safe, we need to make drug reimportation legal, and we need to do so as quickly as possible. The bipartisan Dorgan-Snowe legislation, of which I am a cosponsor, will help create a safe environment to access less expensive drugs. This bipartisan bill will allow Americans to safely access drugs from Canada and other industrialized nations.

I believe that the government should be allowed to negotiate the prices of drugs it purchases under the new Medicare prescription drug benefit, so as to get the best bargains for both seniors and taxpayers.

I also think that we need to do a better job in helping consumers get the best value for their money. That is why I support comparative effectiveness studies, which allow us to determine the most appropriate, safe, and cost-effective treatment for a specific condition. I pushed for inclusion of comparative effectiveness studies in the recent Medicare law, and one of the first studies to be carried out under this provision is a systematic review of Cox-2 drugs, like Vioxx®. I believe that the information from comparative effectiveness studies will help reduce inappropriate uses of treatments that are expensive but fail to offer true benefits to patients.

KSR: Speaking of Vioxx®, would you support the creation of an independent federal agency charged with the task of identifying post-approval adverse drug events?

Senator Clinton: For many years, the FDA and its approval mechanisms have been considered the gold standard among the world's drug safety bodies. And I believe that the agency's many employees are committed to its mission of keeping our drug supply safe for all Americans.

In the 1990s, we passed several landmark pieces of legislation that allowed the FDA to considerably shorten the approval processing time for drugs. These changes meant that patients suffering from serious diseases, like AIDS and cancer, could gain quicker access to potentially lifesaving medications.

Unfortunately, the controversies over Vioxx® and antidepressants are evidence of breakdowns at the agency. At times, it has taken too long for the FDA to act when a drug may pose a threat to Americans, and I believe we should develop guidelines for ways to monitor drugs once they reach the market.

With my work on both the *Pediatric Rule [Pediatric Research Equity Act of 2003]* and the *Best Pharmaceuticals for Children Act*, I have tried to encourage both the FDA and drug companies to implement changes to the system in which they test, approve, and market drugs for use in the pediatric population. From these experiences, I know that there are a variety of methods through which we can involve both the industry and the FDA in helping to ensure the safety of products on the market. I look forward to working with stakeholders to examine ways to improve safety.

KSR: We now have 45 million uninsured citizens in this country. Many Americans feel that basic health care should be a right in the richest country in the history of the world. How do you feel about health care as a right of citizenship?

Senator Clinton: The problem of the uninsured and underinsured affects everyone. A recent Institute of Medicine study estimates that eighteen thousand twenty-five- to sixty-four-year-old

adults die every year as a result of lack of coverage. But even if you are insured, if you have a heart attack and the ambulance that picks you up has to go three hospitals away because the nearby emergency rooms are full, you will have suffered from our inadequate system of coverage.

Our goal should continue to be what every other industrialized nation has achieved—health care that's always there for every citizen. The Institute of Medicine recommended that by 2010 everyone in the United States should have health insurance. Such a system would promote better overall health for individuals, families, communities, and our nation by providing financial access for everyone to necessary, appropriate, and effective health services.

It will, as I have been known to say, take the whole village to finance an affordable and accountable health system. Employers and individuals would share in its financing, and individuals would have to assume more responsibility for improving their own health and lifestyles. Private insurers and public programs would work together, playing complementary roles in ensuring that all Americans have the health care they need.

KSR: What is keeping us from getting those 45 million people insured?

Senator Clinton: One major obstacle to getting individuals insured is the financing structure of our current health care system. The way we finance care through an employer-based system is so seriously flawed that if we fail to fix it, we face a fiscal disaster that will not only deny quality health care to the uninsured and underinsured, but also undermine the capacity of the system to care for even the well insured. For example, automakers in the United States and Canada pay taxes to help finance public health care. But in the United States, automakers also pay about \$1,300 per midsize car produced for private employee health insurance.

And many new jobs, especially those in the service sector and part-time jobs, don't include comprehensive health benefits. More uninsured and underinsured workers impose major strains on a health system that relies on employer-based insurance. Those who pay for health care—insurance companies and employers—increasingly deal with employees who change jobs every few years. This has the effect of not only increasing the numbers of uninsured, but also of decreasing the incentive for employers to underwrite access to preventive care.

One solution to making health care more affordable is to allow uninsured individuals to buy into existing health insurance programs. I support efforts that would allow families to buy into the State Children's Health Insurance Program, which would help 5.3 million uninsured parents gain access to insurance and lower prices for health care services. I also support efforts to help small businesses provide insurance to their employees using mechanisms such as tax credits and large, voluntary purchasing groups.

KSR: Senator, I think that we can all agree that things may get worse before they get better. What advice would you offer my colleagues at the Kennedy School who want to make a difference in this area?

Senator Clinton: We have to find a way to move beyond partisanship and find common ground. If we can act to reform what we know needs to change, we can build a health care system that provides access to affordable coverage and improves the quality of all our lives. But if we continue to dither and disagree, divided by ideology and frozen into inaction by competing special interests, then we all will share in the blame for the collapse of health care in America.

**LOOKING FORWARD:
AN INTERVIEW WITH SENATOR JOHN MCCAIN (R-ARIZ.)**

Senator John McCain (R-Ariz.) has a long and distinguished career serving the American public. First elected to the Senate in 1986, Senator McCain has developed a reputation for straight talk and issues-oriented politics, particularly as an outspoken advocate for national defense, free trade, lower taxes, deregulation, and the reduction of pork barrel spending. Senator McCain is the chairman of the Senate Committee on Indian Affairs and serves on the Armed Services and Commerce, Science, and Transportation Committees.

The editorial board of the Kennedy School Review chose to include an interview with Senator McCain in this issue because we hoped his penchant for political straight talk would offer some forward-looking insights into the issues of foreign policy, Social Security reform, and the partisan divide in Congress. True to form, Senator McCain's thoughts are clear and on point.

Jeremy Neuner interviewed Senator McCain in his Capitol Hill office on 16 March 2005.

Just prior to this interview, Senator McCain had been on the floor of the Senate where the chamber had voted on an amendment to ban oil exploration and drilling in the Arctic National Wildlife Refuge. With energy policy presumably fresh on his mind, I began by asking the senator about his views on the possibilities for energy independence.

KSR: There's been a lot of discussion the last few years about energy independence, including calls for a new "Manhattan Project" that would focus America's scientific and business talent on creating technologies that would make us completely independent of foreign energy sources. What are your views?

Senator McCain: Well, I agree. And I also think that if you're going to make significant short-term advances towards energy independence, you're going to have to go back to the nuclear option. The psychology associated with Chernobyl and Three Mile Island is unfortunate, but nuclear power is one of the only options that could, in the short-term, provide a significant reduction in dependence on foreign oil. I'm all for alternative sources of energy—solar, wind, tides, waste, whatever you want to do—but none of those will have anything but very small impact on our overall energy requirements.

KSR: What about the connection between energy policy and foreign policy? Can an increase in energy independence allow us to put more pressure on states like Saudi Arabia to move towards democratic reform?

Senator McCain: I think we're moving away from the idea that there is a link between the two. The president has made that clear in his inaugural address and in specific comments about the Saudis that democratic reforms will happen of their own accord. It may be a risky way of thinking, but I think that most people believe, as I do, that if the Saudis continue with the form of government that they have—of oppression and repression—then sooner or later they'll go the way of the Shah of Iran. And the only way out for the Saudis is to make a transformation to an open society. And if they don't, they're doomed to failure.

KSR: Let me move on to the military and the transformation of how we structure the military. The move these days is towards a lighter, faster, more mobile military force and away from a

heavier, capital-intensive force. Even aircraft carriers may be on the chopping block. Have we accurately assessed the threats that our military will be forced to face in the future, and are we designing the right force to meet those threats?

Senator McCain: We're moving in the right direction. But I still believe that if you accept the premise that China will be the next challenge—hopefully it will be a peaceful challenge, but in case it's a military challenge—then aircraft carriers and sea power remain vital. But the transformation of the Army and Marine Corps is much needed, and I think they're doing the right things. The turn of events that has put a crimp in all this, of course, is the war in Iraq. It has reduced the availability of funds. The war has made it much more difficult to achieve the kind of transformation we're talking about when we have significant numbers of troops deployed in combat. And I believe [Defense] Secretary Rumsfeld has made a mistake in not increasing the size of the Army and the Marine Corps to meet the threat of the insurgency in Iraq. And for that we paid a very heavy price.

However, I do agree that the cancellation of big, expensive projects like the Crusader self-propelled howitzer and the Comanche helicopter was absolutely appropriate. These would have been vital weapons systems in the Cold War, but certainly not now. In terms of fighter aircraft, we have a huge looming problem coming down the road because no one knows how you're going to afford both the [F-22 fighter] and the Joint Strike Fighter. No one believes we can afford both, but Congress and the Department of Defense are just putting off the decision on what will be cut.

KSR: You mentioned how important sea power will continue to be in the future. What about the cuts that are looming, or have already taken place, in the number of ships in the Navy?

Senator McCain: I'm very concerned about the overall reduction in ship building. Next year we're building four ships. Given the thirty-year life cycle of a ship, if we build ships at that rate, we'll eventually reach a low point of 120 ships. That's not enough for us to carry out the rudimentary functions of the navy of the world's only superpower. But part of the problem is the inflation rate of the cost of building these ships. When that rate goes up to 400 percent, the ship builders are pricing themselves right out of existence. You can't have those kinds of costs associated with ships.

KSR: I want to shift back to domestic policy issues and talk a little bit about Social Security. There are several possible solutions to the impending Social Security crisis. What's the right solution? And can the Congress and the president agree to get anything done?

Senator McCain: The right solution is to do what we did in 1983: Tip O'Neil and Ronald Reagan took the results of a well-credentialed commission and said we're going to work together to save Social Security. That's the answer. Unfortunately the environment around here is so partisan and bitter that this kind of cooperation would be a very difficult place to arrive at.

So the right solution is a combination of financial decisions that would make the system whole again. Yes, I strongly believe in the private retirement accounts because people can make a heck of a lot more out of a private retirement account than they can from the interest in Social Security. And it's not much more complicated than that. So it's a matter of will, not a matter of ways, to save Social Security.

In 1983 they made some tough decisions. They raised the retirement age and they increased taxes. But they said, "Look, we've got to make these tough choices to save Social Security."

And everybody in Congress accepted it, and the American people accepted it because it was bipartisan.

KSR: What about the problems with other entitlement programs like Medicare? Very few people are talking about that. In fact, few people are talking about the overall growth of entitlement programs in general and what effect that will have.

Senator McCain: The so-called non-discretionary spending continues to go up at a dramatic rate, mostly driven by the overall aging of the population. Yes, we're going to have to do something about it. So if we finish with Social Security and make it physically sound again, then we're all going to have to sit down and talk about Medicare. And that will be much, much more difficult than Social Security.

KSR: It's just a bigger problem?

Senator McCain: It's a huge problem. That's why we didn't take it up and why so few people are talking about it.

KSR: I'd like to move back to foreign policy and ask you about the recent demonstrations and demands for democratic reform that we've seen in Lebanon.

Senator McCain: What's happening in Lebanon is a replica of what happened in Georgia and in Ukraine, and what I'd like to see happen in Belarus and Kyrgyzstan. The winds of change are blowing across the world, particularly in the Middle East, and may prove that our European friends were on the wrong side of history. We're seeing profound changes: what's happening in Lebanon; the Saudis announcing that they'll have elections; what's happening in Ukraine; the fact that the Israeli-Palestinian peace process is showing some real bright prospects for the first time ever. I believe the ideas that the president put forth in his second inaugural speech are being authenticated. I'm sure there's going to be significant setbacks in the process of democratization, but the movement is inexorable.

KSR: If it's an exorable movement, what will it take in the short term to deal with some of the more hard-line regimes like Syria, Iran, and North Korea? Should we simply wait them out, or do we move more decisively?

Senator McCain: Well, on Syria, I think Asad is going to have some difficulties maintaining power as a result of the Syrian withdrawal from Lebanon. Now that could be good news. But it also may be bad news because Baathist elements, which have a great deal of influence on him now, may gain even greater ascendancy. In the case of Iran, I think the movement towards reform really is inexorable. There's just too much information flowing into Iran and too many educated young people for reform not to happen. In the short term, though, I think we should join with our European friends and offer the Iranians incentives for reform. In return, I'd like to see the Europeans promise to go to the United Nations with us for sanctions against Iran if incentives fail.

North Korea is the place where the situation, in my view, has continued to deteriorate. In 1994 we entered into the so-called agreed-upon framework. We built them power plants and gave them hundreds of millions of dollars, which did not deter the North Koreans in any way from developing their nuclear capabilities. Now the South Koreans, because of their fear of the collapse of North Korea, are acting in the most craven fashion, propping up a regime which oppresses their countrymen to the point where people in the North are actually three inches

shorter on average than their counterparts in the South.

Meanwhile, North Korea continues to improve their nuclear capability and the means to deliver nuclear weapons. I think the key to the situation is obviously China. China should understand that when North Korea develops nuclear weapons, then Japan will likely develop ballistic missile defense at a minimum and then perhaps develops nuclear weapons themselves. A situation like that would be very destabilizing in the region and certainly not in China's interest.

KSR: Returning to Iran for a moment, you said that too much information is flowing into that country, making democratic reforms inevitable. I presume that much of that information comes from the United States and other Western countries?

Senator McCain: Yes, the Iranian diaspora is very large.

KSR: Then this seems like a good opportunity for the United States to take a look at how we market our foreign policy and what we have to offer as a country in terms of our culture and values. If we could get that kind of information to flow into Iran, then if we ever did opt for military intervention, the Iranians would more likely welcome us with open arms, in the same way that we thought the Iraqis might.

Senator McCain: Well, you've got to remember that starting two years ago, some brutal repressions began in Iran. The mullahs made a real move backwards, disqualifying candidates for office, jailing dissidents, things like that. So in the short term, the situation looks bit gloomy. In the long term, I just don't see how they survive.

KSR: The last thing I want to talk about is the partisan divide in Congress and in the country. A moment ago you referred to it as bitter. We've heard from several members of Congress about just how ugly it's gotten: members not behaving in a civil fashion or not even saying hello to each other. How are we going to get good policy done if members can't even have a civil conversation across the aisle, let alone work across the aisle? What are some ways to break through that ugliness? Who do you see as potential allies, both on the Hill and elsewhere, to break the partisan impasse?

Senator McCain: Well, I'm a little bit pessimistic going into the short term. I think in the long term Congress will become bipartisan again when their constituents demand it. They'll demand bipartisanship when they see the Congress gridlocked on issues such as Social Security, which should transcend partisan politics. In the long term, the voters will become disenchanting, and they'll want people who will go to Washington and engage in meaningful relationships on issues that are not partisan in nature.

KSR: But in the short term?

Senator McCain: We remain very partisan. When the voters express their extreme dissatisfaction at the status quo, then I think politicians will react. That may mean some members will have to leave office.

KSR: Does anyone look for the president to take a leadership role on this issue of partisanship?

Senator McCain: No, I think voters blame the partisan gridlock on members of Congress more than the president.

KSR: What about the president and his ability to set the national agenda? I think it's fair to say that he's been underestimated in his ability to put his priorities on the agenda and to push them through. So on an issue like Social Security, will the president's leadership be the thing that brings about change, or will it be a demand from the electorate?

Senator McCain: No, what I see is that the Democrats, by their failure to come to the table or come forward with a proposal of their own will be viewed as recalcitrant. And if they see the polls turning against them, then they will sit down and negotiate. Right now they're doing pretty well.

KSR: So, can I ask you to make a prediction about whether we'll be able to tackle some of these tough issues in the 109th Congress?

Senator McCain: I think it's still a little too early to tell.

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LETHAL LEGISLATION

ROBERT BERMAN

Imagine for a moment you are terminally ill and someone magically has the antidote to your illness buried in his body. He is willing to have it surgically removed, but only if you pay him for his pain, recuperation time, and the risk of having surgery. You would gladly agree, but there is one catch: U.S. law prohibits it. As a result, you die.

Welcome to the world of organ failure, where demand for organs far outstrips supply and buying organs is illegal. Over the past decade, the number of people waiting for organs has grown from thirty-five thousand to eighty-seven thousand, while the number of organ donors has remained flat. By and large, all attempts to increase organ donation rates have failed. Giving monetary compensation to incentivize live kidney donors is, in many cases, the last chance for life for the fifty thousand Americans awaiting a kidney. Yet due to U.S. legislation that prohibits the selling and purchasing of organs, more than sixty-five hundred Americans die unnecessarily every year.

In 1984, without much debate, Congress hastily passed the *National Organ Transplant Act* (NOTA) that, *inter alia*, makes it a federal crime to purchase or sell human organs for use in human transplantation. NOTA was enacted, in part, to protect poor people from being exploited. Ironically, it does just the opposite, *de facto* discriminating against poor people in two ways.

First, since NOTA makes buying an organ illegal, the only avenue to obtain one, given that fact that demand far outstrips supply, is the black market. Every year, approximately three hundred wealthy Americans travel to the third world, where law enforcement is often more lax, in order to acquire kidneys. Poor Americans, on the other hand, cannot afford the airfare, let alone the price of a kidney, which often exceeds \$100,000.

Second, as an act of misguided paternalism, NOTA deprives poor people the right to sell their kidneys in an effort to "protect" them from their own "poor judgment." If the government desires to address economic inequality, it should provide the poor with better access to basic necessities, such as health care. In the absence of providing thorough health coverage, the government should allow poor people the agency to act in their own best interest. Outlawing the sale of organs will not correct underlying social inequalities.

The unregulated and illegal nature of the growing black market for organs results in artificially inflated kidney prices (research shows that under a regulated free market kidneys would sell for \$3,000 rather than \$100,000), brokers absconding with deposits without delivering the organs, and an increase in medical risks due to the back-room operating environments found in the Far East and South America. Back-room organ procurement today is the illegal abortion of yesteryear.

Historically, the public feels that to donate an organ is divine but to sell an organ is sinful. The objections most often heard can be divided into two categories: ethical and pragmatic. Selling a body part seems, at first blush, unethical. Yet current U.S. law allows a person to do just that. It is legal for men to sell their sperm, women to sell their limited number of reproductive eggs, and people to sell their blood and hair, all of which specifically render the body a commodity. To apply a different standard to organ donation is inconsistent and, in fact, unethical.

Ethical support for financial compensation for organs is found in some religious law: the past three chief rabbis of Israel have all ruled that it is ethically permissible for both donor and recipient to exchange financial remuneration for an organ by explaining that ultimately accruing economic gain from this act would not deprive the life-saving donation of its original ethical quality.

Another concern is that poor people need to be protected from the pressure they might feel to sell an organ in order to receive the income. Yet pressure can stem from sources other than financial needs. A family member most likely feels obligated to “voluntarily” donate an organ to a relative due to feelings of guilt or pressure from other family members. These pressures might be even greater than those that a poor person feels due to economic desperation. Yet the government chooses not to prohibit altruistic family donations on these grounds of pressure. (If the government is adamant to “protect” the poor from selling their organs, it could legalize payment for organs and ban the poor from the donor pool while at the same time offering a higher price per organ to induce the middle class to sell. Of course this too is discrimination against the poor.)

There are two commonly raised pragmatic objections to permitting the sale of organs. First, the government doesn’t want to encourage people to undergo the medical risk of surgery. But the government does so by encouraging altruistic donations, and getting paid for it doesn’t increase this risk. Also, the medical establishment finds this risk of surgery to be acceptable (1 in 20,000 chance of dying).

Second, there exists the concern that life without an organ (e.g., liver lobe or kidney) will shorten one’s life span. This fear is muted by the fact that a liver cut in half grows back to full size and functions perfectly, and empirical evidence shows that one can live a normal life span with only one kidney. Accordingly, risk-conscious insurance companies do not raise their rates for someone who donated a kidney or a liver lobe.

Additionally, it is not unheard of for society to pay someone to bear a health risk for the benefit of others. Examples of such arrangements include the hazard pay offered to journalists in war zones, coalminers, bridge builders, firemen, and bomb disposal experts.

NOTA mandated the creation of the United Network of Organ Sharing (UNOS), the quasi-governmental organization that holds a monopoly on organ procurement. It is UNOS that persists in supporting the no-sale policy regardless of the organ shortage and the rising number of accompanying deaths.

To make matters worse, UNOS creates more obstacles by prohibiting donors from donating organs based on the recipient’s ethnic or religious affiliation. UNOS requires that a good Samaritan donate blindly, not knowing anything particular about the recipient that would motivate the donor to donate. To do otherwise, UNOS believes, would be discrimination.

But this approach effectively removes all incentives for altruistic donation. It is human nature to want to help a person who belongs to the group that you identify with. Favoritism toward one’s own group, known as particularism, is a natural sociological phenomenon. So as a result of people not being able to direct their donation to group members they identify with, people simply don’t donate at all. UNOS would rather operate in the fantasy of a normative politically correct world rather than in reality.

In fact, footprints of particularism are nonetheless visible in other legally and socially acceptable acts. A Black person may leave all his assets to a college fund that supports only Black students, and expectant mothers are allowed to “discriminate” when selecting their unborn child’s adoptive parents.

Furthermore, people are allowed to donate all of their money to the religious institution of their choice, such as a church, and they are not required by law to donate blindly to the charity that needs the money the most or to equally divide their money between all the different faiths.

If particularism is allowed in allocating one’s financial assets, why shouldn’t it similarly be permitted with one’s physical assets—especially when this policy would increase overall organ donor rates? If UNOS’s policy were applied to the charitable sector, it would greatly reduce charitable giving. People have a right to choose the recipient of their kidneys as well as their money.

By depriving sick Americans access to means that can save their lives, NOTA violates the Universal Declaration of Human Rights (to which the United States is a signatory) that recognizes a citizen's right to life. The International Forum for Transplant Ethics has recommended lifting the ban on kidney sales from living kidney donors pending better justification for the prohibition of such transactions. Their call should be heeded.

Tens of thousands of Americans have needlessly died because selling organs is illegal and altruistically donating organs to a person based on similarity of faith or race is prohibited. This appalling loss of life is avoidable. UNOS needs to be challenged to allow directed donation, and NOTA legislation must be changed to allow for financial remuneration. Paying for an organ is morally odious only to one who is not dying to get one.

MARKETS, HIGHER EDUCATION, AND THE CREATION OF HUMAN CAPITAL IN INDIA

SAMIR SOMAIYA

What role do markets play in expanding market access to higher education, and does that build human capital? Does the focus on equity sometimes produce a counterproductive response? I will examine these questions in the context of market-based higher education in India.

India, like the United States, is characterized by a vibrant private nonprofit involvement in the delivery of higher education. When an organization or individual wished to develop an institution, permission was granted only if the state could provide funds to provide a "revenue" grant to finance the institution, so that there was virtually no tuition the student had to pay. This focus on affordability kept demand very high, and supply was kept low due to government finance constraints.

In the late 1970s, private institutions began to start engineering and management institutions in the four states of Andhra Pradesh (Hyderabad), Karnataka (Bangalore), Maharashtra (Mumbai), and Tamil Nadu (Chennai). This was later followed by similar initiatives in nursing, medicine, dentistry, and education.

Predictably, the result was a huge increase in the number of institutions offering instruction in these subjects. In 2004, there were 1,265 colleges of engineering in the country, and of these, 974 were private. Further, 666 of these 974 were in the four states that took the lead in allowing these colleges to start (India has a total of thirty-five states and union territories).¹ Until the 1980s, all engineering education was delivered by government colleges, which never numbered more than 291.

It is apparent that the country is reaping the benefits of the human capital so created, and primarily in the states that took this initiative over twenty years ago. Would India have been a participant in the IT revolution had it continued to focus on the state as the sole provider and financier of education? Could it have done so without private involvement?

The markets met an unmet need, but many students have been unable, for financial reasons, to take advantage of these opportunities. The private institutions are now addressing ways to fund students who are unable to afford tuition, but there may not be enough time. The state is considering limits on tuition that threaten the schools before they may be able to find a solution. I am afraid that this will lead to the closure of some institutions that have added to my country's human capital.

I believe that equity and access are important and that public policy must address market failure, but policies should not be created to make markets fail. The tremendous expansion of intellectual capital in India resulting from market enterprise contributes greatly to the economy and should be preserved.

Endnotes

1. All India Council of Technical Education, <http://www.aicte.ernet.in/>.

THE TRANSATLANTIC PARTNERSHIP: TRADE WAR OR PEACE?

LISA GEORGE

Bananas, bananas, bananas. Do not be alarmed; they are not back, but for several years, it seems they were all anybody could talk about with respect to the transatlantic trade relationship. Thankfully, bananas have now been resolved, but a number of trade issues still cloud the horizon for the United States and the European Union. As the reins pass from outgoing E.U. Trade Commissioner Pascal Lamy to Peter Mandelson of the United Kingdom, what does this mean for the future of the all-important trade relationship?

There are several important lessons to take away from the banana dispute that could help Mandelson manage the ongoing trade relationship. The first lesson is not to let one issue dominate the transatlantic trade relationship. The second lesson is to develop a genuine working relationship with his U.S. Trade Representative counterpart to resolve some of the current trade disputes and show some successes. The third lesson is to focus on other trade relationships in addition to the transatlantic one, so that perceptions of the European Union's trade policy are not guided by one country. Integrating these lessons into a single strategy will be crucial to the future of transatlantic relations.

The first lesson is really a public relations one more than anything else. During the "banana wars," this dispute came to define the transatlantic relationship. Everyone seemed to forget that over 90 percent of U.S.-E.U. trade was dispute-free. So for the future, Mr. Mandelson (and the European Union) should not get hung-up on the disputes but rather continue to work successfully on other aspects of the trade relationship. More should be done at the negotiating table rather than in front of microphones, so that tangible results emerge.

There are currently several disputes between the two parties, including Foreign Sales Corporation provisions of the U.S. Internal Revenue Code, genetically modified organisms (GMOs), and airplane subsidies. Mandelson should focus on negotiation rather than litigation to resolve these issues if the relationship is to remain strong. Mandelson should also carefully consider how success or failure in one dispute would affect the outcome of other disputes. And while resolution may not be found easily, particularly with the GMO case because it is linked to different approaches to risk management and public opinion, failure should not be an option.

The second lesson is harder to grasp because it depends on personality and leadership. Pascal Lamy and his U.S. counterpart Robert Zoellick were great partners and good friends who respected each other's work, which made diplomacy much easier. Mandelson will now be challenged to follow this act. While he does not need to have the close relationship that Zoellick and Lamy enjoyed, a good rapport with the U.S. trade representative would greatly enhance the trade relationship. Striving for a similar relationship should be part of Mandelson's strategy. This is why focusing on negotiation rather than being hampered by litigation will be key. A relationship that is mired in disputes will be anything but fruitful.

To that end, one potential means for collaboration should be a successful conclusion of the World Trade Organization's (WTO) Doha Round. This is where the United States and European Union can showcase their cooperation and turn attention away from their disputes. A successful partnership on Doha would translate into strengthened personal ties and signal more cohesion in the transatlantic partnership. It would also be a step in the right direction in terms of reducing trade barriers and making the European Union more globally competitive, thereby strengthening its economy. Furthermore, a reduction in both E.U. and U.S. protectionism would decrease the occurrences of trade disputes in the first place.

The final lesson from the banana case is that the European Union should focus on other trade relationships in addition to the transatlantic one. If not, the European Union will continue to be defined by its relations (and disputes) with the United States. By turning its eye

towards China, India, or South America, trade disputes with the United States will not rise to an alarming level, as they have in the past. That is not to say that it should ignore its most important trading partner. Instead, by diversifying its trade portfolio even more, the European Union will be forced to focus on the key issues with the United States and not stall over the details of disputes. The world would benefit from a decrease in U.S. hegemony in trade, and the European Union could provide the necessary balance.

Mr. Mandelson's success as trade commissioner will inevitably be determined by how he handles the transatlantic relationship. Keeping the United States as a strong trading partner will be the only way forward. The key to this is reducing both the number of disputes and the temperature of the current disputes. By following the strategy outlined above, Mr. Mandelson will be remembered for his political and diplomatic success.

CAPITALOCRACY AND DEMOCRACY: EUROPE, CHINA, AND THE UNITED STATES

LUC ROULLET

At a time when European enlargement is at the heart of many debates, European citizens' main question is not only if new countries are ready to join Europe, but also if Europe is ready to welcome new countries. A strong Europe is based on a clearly defined identity. Let us compare Europe's identity with the other two main powers exercising or aiming at a global leadership: China and the United States. While Europe promotes social democracy as model of society, China and the United States present common characteristics of "capitalocracies."

Europeans perceive their society as less unequal than the rest of the world and are proud of it. The Gini index calculated by the United Nations Development Programme, UNDP, (measure of inequality) confirms this fact: European countries' Gini values range from 25 to 35, whereas China and the United States' exceed 40, joining the group of the most unequal societies. Europe has got a century-long history of political and social struggles to maintain decent standards of living for the poorest. On the other side, since the 1980s, both China and the United States embarked on a liberalization of their economy that has dramatically increased the level of inequality, albeit in two very different contexts.

This growing inequality is the result of deliberate and legitimate strategies that aim at maximizing business growth. While *democracy* is power by the people and *plutocracy* power by the wealthy, I define *capitalocracy* as a political regime in which the capitalist interests (private, public, or state-owned) tend to initiate and lead reforms, more than citizens do. If China has not yet embarked on extensive democratic reforms, the mechanisms at stake to mobilize and generate capital apply lessons from Western capitalism, and the government centralizes, supports, and encourages these developments. Ironically enough, the People's Republic of China has given up communist economic teaching but has not yet given political power back to its people: far from being a democracy, China appears to be a performing capitalocracy.

Drawing a parallel picture with the United States is easy and risky. Easy because it is indeed well known that corporate voices in America are better heard than many others. Risky because one could easily blame the usual scapegoats. I do not want to blame American capitalism; neither will I blame George W. Bush. I prefer to point to the weaknesses of the political system, namely the "capitalocratic drift of the American democracy."¹

Until the *Bipartisan Campaign Reform Act of 2002* (the McCain-Feingold bill), there were very few restrictions on corporate financing of political parties, especially compared to most European countries, where such money is simply illegal. Look at the importance of expensive TV ads and heavy spending on marketing during presidential campaigns. Clearly the president owes his election not only to the American citizens, but also to the corporations that wrote the biggest checks. In this type of system, the whole attitude of the American government is legitimately pro-business, be it for internal or foreign affairs. From Eisenhower's famous speech in 1961 against the military-industrial complex to the tireless reminders of Ralph Nader's presidential campaigns, voices warning against the capitalocratic drift of American democracy still remain unheard on Capitol Hill.

European democracies, both at national and European levels, are certainly not as healthy as they used to be or would like to be: low electoral turnouts show lack of trust or at least lack of interest in the political institutions. The number of corporate lobbies in Brussels keep growing, which is one of the few similarities one could find between the European capital and Washington. Nevertheless, resistance against capitalocratic trends and persistence in true social democracy are European projects worth fighting for, that will consolidate European identity and strengthen its democratic legitimacy more than any Brussels directive.

Endnotes

1. Luc Roullet, "A Paradigm Shift: Democratic Dream or Capitalocratic Nightmare?" *Newropeans Magazine*, 6 September 2004, http://www.newropeans-magazine.org/index.php?option=com_content&task=view&id=927&Itemid=110.

DEMOCRATIC VALUES

BRENDAN F. BOYLE

The election for chairman of the Democratic National Committee is over, and Howard Dean has won. As Mr. Dean carries boxes into his new office and takes a look around his new environs, the question might strike the new leader of the Democratic Party: "What exactly did I just win?" Let us examine.

Not since before the New Deal has the Democratic Party been in a worse electoral state. Republicans occupy the White House. They have won the White House in seven of the last ten presidential elections. Not once in those ten presidential elections did the Democratic candidate receive 51 percent of the vote. The GOP has controlled the U.S. House of Representatives since 1994, its longest reign of power since before the Great Depression. The Republicans also control the U.S. Senate by fifty-five to forty-four. This is the lowest number of Democratic senators since the 1920s (when there were only forty-eight states). Columnist Bob Novak recently observed, "For the first time in my lifetime, there are now a majority of Congressmen who would have voted against the New Deal."

Things are just as dire for Democrats in the states. Republicans hold a majority of the governorships. Republicans also control a majority of state legislatures. Since 1932, Democrats have held a sizeable advantage nationwide in party registration. Not anymore. The two parties are now at parity in voter registration. Specifically, in new registrations, Republicans heavily outnumber Democrats. Of the one hundred fastest-growing counties in the nation, ninety-seven of them voted Republican in 2004.

As Mr. Dean settles into his new position, the most pressing question he must answer is, Why is the Democratic Party at its lowest point in eighty years? There are many theories on this subject. But the best one-word answer is "values."

Republicans are crushing the Democrats in public perception on the values issue. According to exit polls from the recent presidential election, voters cited "moral values" as the single most important issue (22 percent). Of those who rated moral values most important, George W. Bush defeated John Kerry by a margin of 80 percent to 18 percent. It is hard to find an issue in which one candidate or party enjoys a 62-percent majority.

For most of the twentieth century, working class Americans voted their pocketbooks and supported the Democrats. But there is now a large group of working and middle class Americans who vote against their economic interests by voting Republican. Why?

Thomas Frank observed this phenomenon in Kansas. He traced, over a twenty-year period, how working class voters drifted from the Democratic Party to the Republican Party. In his book *What's the Matter with Kansas?*, Frank argues that the values issue is the root cause of this exodus. Frank is right, and it is not just in Kansas. The values issue is the single biggest reason why Democrats are receiving an increasingly smaller percentage of working class votes.

How can the Democrats bridge the values gap, especially in red-state America? They can begin this effort by at least communicating to values voters that they understand, appreciate, and respect religious values. As presidential candidates, Dean and Kerry seemed to typify the modern Democrats' official religion of secularism. The Democratic Party badly needs to shed the perception that it views religion with disdain and the religious with condescension.

George W. Bush successfully peppers his speeches with religious references that millions of Americans understand. This tactic enables Bush to convey his political message in a language that many Americans speak. It is hard for Democrats to get across a political argument when they do not even speak some voters' language.

But the Democrats' problem runs deeper than style. On substance, they have problems among values voters, most notably on abortion. The modern Democratic Party's enthusiastic

and unquestioning support for choice is arguably its greatest handicap in winning values voters.

Contrary to what some in the media may believe, the evidence shows the abortion issue hurts the Democrats. In the 2000 presidential election, the *Los Angeles Times* found that "14 percent of voters cited abortion as the most important issue in deciding their vote for president." Of this group, 58 percent voted for George W. Bush and 41 percent voted for Al Gore. This 17-point pro-life majority netted Bush approximately 2,500,000 additional votes in an election decided by only 540,000 votes. Shortly after the 2004 presidential election, according to the 23 December 2004 *Los Angeles Times*, John Kerry surprised a group of supporters by telling them the abortion issue "hurt him politically" and that the Democratic Party needed to "devise a new way to deal with this issue."

The Republicans are quite shrewd on the abortion issue. They have a majority position, which is pro-life. But they then make an effort to reach out to pro-choice voters, particularly in the Northeast and West Coast where the pro-choice position is the more popular view. At its national conventions, the Republican Party often features in prime time prominent pro-choice speakers like Rudy Giuliani, Colin Powell, and Arnold Schwarzenegger. In the last decade, pro-choice Republicans have won the governorships of important states like New York, Pennsylvania, California, New Jersey, and Massachusetts. This "Big Tent" approach to abortion is a smart strategy that has helped the GOP become the majority party in America.

By contrast, the Democratic Party, which often likes to loudly boast about tolerance, has actually been quite intolerant toward its pro-life minority. Unlike the Republicans, the Democrats do not allow speakers at their conventions who disagree with the party's position on abortion. In 1992, the Democratic Party even barred a popular two-term governor of Pennsylvania from speaking simply because he was pro-life.

What has been the result of this ideological purity purge? In addition to the aforementioned problems at the presidential level, the Democrats have had problems at the congressional level. In 1978, the Democrats had a massive majority in the House of Representatives. There were 292 Democrats in the House, and 125 of them were pro-life. But in the last Congress, the number of House Democrats had dropped to 203, and only twenty-eight of them were pro-life. The Democrats have been almost wiped out in the culturally traditional Midwest and South. "There are a number of districts that could be won by a pro-life Democrat," but which are held by Republicans "because of the pro-life issue," wrote Kristen Day, executive director of Democrats for Life, in the 2 December 2004 *National Review*.

In the aftermath of the 2004 election defeat, some prominent Democratic leaders finally seem to get it. As reported by *Newsweek* in December 2004, Kerry himself said, "We have to find a way to bring right-to-life Democrats back to the Democratic Party." *On Meet the Press* in January 2005, Kerry added, "We should welcome more pro-life candidates into the party and embrace the language of 'life' used by pro-life advocates." Hillary Clinton gave a speech to abortion rights supporters in January in which she reached out to opponents of legalized abortion and praised "the influence of religious and moral values." Even Howard Dean himself said on *Meet the Press* that the Democratic Party needed to be more welcoming of pro-life Democrats.

The inclusion of pro-life Democrats could make the party competitive again in many parts of the country. Just as Republicans strategically support pro-choice candidates in states like New York and California, the Democratic Party would benefit from supporting pro-life candidates in states like Ohio and Missouri. Furthermore, the presence of pro-life Democrats might bring the party's position on abortion closer to the center, which is where a majority of Americans are on this issue.

Finally, rather than running from a campaign about values, the Democrats could actually benefit from engaging the Republicans in a debate about values. The Democrats could begin

to chip away at their 62-point deficit on the issue by redefining and expanding the term. True, abortion is a values issue. But is not poverty also a values issue? Are not homelessness, inequality, and racial justice also values issues? Millions of voters, in fact, support the Democratic Party because of its values on social justice. Maybe voters do not see that the Democrats have values because Democratic candidates never talk about them and are too quick to concede the issue to the Republicans.

Howard Dean has his work cut out for him. But if he leads the Democratic Party to change its current approach to the values issue, then history may well record that the man best known for a scream will have been the one who helped the Democratic Party find its voice again.



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CANDID TALK ON TROOP REQUIREMENTS NEEDED

LAWRENCE J. VERBIEST

Ever since former Army chief of staff Gen. Eric Shinseki was sharply rebuked by civilian defense officials for testifying before a congressional committee on potential troop requirements for postwar Iraq, senior military officers have been reluctant to state publicly what they uniformly believe: There are not enough troops available to properly secure Iraq.

Junior military officers learn much of their craft by observing the actions of their superior officers. As an Army officer who recently left active duty, many of my peers and I are disappointed by the reticence we have observed on the part of the senior military brass when it comes to a candid dialogue on the troop requirements for Iraq. It did not start out that way.

Two years ago, in the weeks prior to the U.S.-British invasion of Iraq, former Army chief of staff Gen. Eric Shinseki testified before a congressional committee that a force of several hundred thousand troops would be necessary to provide security in postwar Iraq. His candid assessment earned Shinseki a sharp rebuke from Deputy Defense Secretary Paul Wolfowitz, who stated that the estimate was "wildly off the mark." Wolfowitz, who recently departed the Pentagon to head the World Bank, was never popular with most of the senior Army brass.

Shinseki took a lot of heat from the Defense Department's civilian leadership in the aftermath of his testimony, and he quietly retired as scheduled in June 2003. The reality is that Shinseki's estimate was on target, yet the civilian leaders at the Pentagon will never admit it. Former Secretary of the Army Tom White failed to rebuke Shinseki and support Wolfowitz's view. He was asked to resign shortly after the fall of Baghdad, allegedly for his failure to publicly criticize Shinseki's estimate.

For the uniformed military leadership, the message was clear: Don't depart from the party line on troop assessments. The issue of troop-level strength in Iraq comes up frequently at press conferences and briefings, especially in the aftermath of bloody insurgent attacks that occur daily throughout Iraq. Although the need for more troops to provide security is obvious, the topic usually gets passed around like a hot potato between leaders in Iraq, at Central Command in Tampa, and at the Pentagon. The dialogue generally ends when Secretary of Defense Donald Rumsfeld blithely comments that nobody has asked him for more troops.

There are two reasons that the commanders in the field have been reluctant to ask for more troops. First, they remember what happened to Gen. Shinseki and are obviously reluctant to make a recommendation that runs counter to the Pentagon's optimistic assessment for post-regime-change Iraq. Second, they understand better than anyone that there are not many fresh troops available to reinforce existing forces in Iraq.

In spring 2004, at the one-year anniversary of the invasion of Iraq, U.S. troop strength was scheduled to fall from 140,000 to about 105,000. However, with the increasing violence in the Sunni triangle, most notably in Fallujah, as well as south of Baghdad in Shia-controlled Najaf, the United States and its coalition partners were unable to restore security in several cities. Compounding these difficulties was the abysmal performance of the Iraqi security forces, which refused to deploy to Fallujah.

Last summer, Gen. John Abizaid, commander of U.S. Central Command, extended the tours of three Army brigades during the transition of power to the provisional Iraqi government. This incremental increase was a drop in the bucket compared to the force level needed but was all that was practical given the strain on the force and the political reality of needing to keep the situation in Iraq stabilized in the months preceding the U.S. presidential election.

For soldiers in Iraq, the extension meant a delay in reuniting with their families, as well as the prospect of undertaking additional dangerous missions of rooting out insurgents. Some

troops from the First Armored Division had already flown back to their bases in Germany before being ordered back to Kuwait to link up with their equipment, which had yet to be shipped from the port. Soldiers like Capt. John Prior, an infantry company commander, had to postpone wedding plans and return to Iraq.

A similar extension of tours of duty was imposed on several other Army and Marine units prior to January's Iraqi elections. Soldiers and marines are continuing to perform admirably under these arduous conditions. Many of them are on their second and third tours in Iraq. They are unlikely to see any significant reinforcements join them.

The United States faces a long-term open-ended commitment to provide security in Iraq. The administration has failed to convince other nations to contribute forces in adequate numbers. Coalition troop strength has actually declined in the past year, and several nations have withdrawn all of their troops from Iraq. The United States is unlikely to increase its troop commitment. Consequently, the race is on to train Iraqi security forces in sufficient numbers to eventually provide security throughout Iraq. The outcome is still in doubt.

It is too bad that Gen. Shinseki's estimate was dismissed so cavalierly two years ago. It is likely that had a larger force been committed at the outset in post-regime-change Iraq, the security situation would be far better today and Iraq would be well on the way toward recovery.

Unfortunately, the lesson being learned today by junior military officers is to keep your mouth shut and not stray from the party line once you achieve high rank. The lesson these officers should be learning from their senior military leaders is to always provide candid military advice to the nation's civilian leadership. Anything less would be a disservice to the nation. The top brass who decide to speak candidly may face a similar fate as Gen. Shinseki, but at least they will have performed their duty.

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THE *NO CHILD LEFT BEHIND ACT OF 2001*: IS THE DEFINITION OF “ADEQUATE YEARLY PROGRESS” ADEQUATE?

CHRISANTI HARETOS

Abstract

The purpose of this study is to examine the effectiveness of the No Child Left Behind Act of 2001 (NCLB) in determining students' annual academic progress, also known as adequate yearly progress (AYP). Specifically, it examines the extent to which the outcomes of an achievement-based accountability system—on which NCLB is based—and a growth-based accountability system agree. It builds on previous studies by conducting a state-wide examination of Tennessee schools that served students in grades three, four, and/or five during the 2002–2003 school year. This data set encompasses 992 schools that collectively served 497,171 students. The results underscore previous findings that the current, achievement-based definition of AYP does not adequately indicate student academic progress, and this paper discusses two specific cases in which current determinations of AYP must be interpreted with caution. The results also illustrate the negative unintended consequences of an achievement-based definition of AYP in regard to schools that serve racial and ethnic minorities and economically disadvantaged students.

Introduction

Defining student academic progress for the purposes of education policy is a hotly debated issue, particularly since the passage of the *No Child Left Behind Act of 2001* (NCLB). NCLB not only requires states to define students' adequate yearly progress (AYP), but it also requires school districts to determine whether its schools, and subgroups of students within the schools, have made AYP; publicly report these outcomes; and implement prescribed actions in schools that do not make AYP—which range from offering students the opportunity to transfer to another public school to restructuring the school's governance.¹

Student academic progress may be evaluated by using either achievement- or growth-based measures; AYP is currently expressed in terms of achievement levels. In Tennessee elementary schools, applying this definition of AYP has resulted in an unintended negative consequence: over two-thirds of the schools that are closing the Black-White achievement gap are subject to penalties instead of rewards.

As such, the current definition of AYP is not adequate, and reforms to NCLB are needed. Specifically, broadening the definition of AYP to include consideration of students' academic growth would provide a more complete sense of their yearly progress than the current AYP metric.

The first George W. Bush administration made education a top priority and successfully passed the *No Child Left Behind Act (NCLB) of 2001*. NCLB introduced substantial accountability measures, particularly with respect to closing the achievement gap for poor or minority students. As Bush's second term gets under way, this paper presents an opportunity to evaluate how effective those measures actually are and examines potential inconsistencies in the definitional framework of the accountability systems. In fact, Secretary of Education Margaret Spellings has recently indicated a potential willingness to give states the flexibility to use “growth models”—as discussed in this paper.

—K. Shiek Pal, editor

Increasing Focus on Educational Accountability

The United States has been moving toward increased accountability for its primary and secondary education systems since the 1983 publication of *A Nation at Risk*, the National Commission on Excellence in Education's report to the nation, which warned that "the educational foundations of our society are presently being eroded by a rising tide of mediocrity that threatens our very future as a Nation [*sic*] and a people."² In the process, the country's conversation about education has been shifting from inputs to outcomes. Citizens are increasingly evaluating their schools based on student academic progress, versus the level of per-pupil spending, teacher salaries, and class sizes.

"Accountability in education has been described as a 'tripod' made up of standards, tests that measure whether those standards have been reached, and penalties or rewards linked to performance on the tests."³ Beginning with the Reagan administration and standards-based reforms, the federal government has proposed and implemented various components of such an accountability system.⁴ Congress established the first federal education "accountability mandate" for states in 1994, requiring "local schools to show, by means of tests, annual student progress toward a state-designated standard of educational proficiency."⁵

Policy makers' interest in, and support for, educational accountability continued to grow. In 2001, accountability provided "a unifying theme for the NCLB debate that could garner broad agreement in principle."⁶ As a result, Congress provided strong bipartisan support to NCLB: it "passed the Senate 87–10 and the House 381–41."⁷

The No Child Left Behind Act of 2001

NCLB built on the work of previous administrations and made federal education funding to states contingent on their implementation of the law's provisions. It includes:

Testing: every year, states must test all third- through eighth-grade students in math and reading, and test students once more during tenth, eleventh, or twelfth grade;

Public accountability: test results must be "released to the public;"

Performance standards: each year, the overall student body of every school (as well as students in various subgroups "of significant size") must make adequate yearly progress "toward full educational proficiency;" and

Performance-based consequences: "schools that do not measure up to standard will be identified as 'in need of improvement,' and their parents will have the option to place their child in another public school within the same district. Schools that fail to improve after five years will be 'restructured' by the district, with new personnel in charge. States must take an analogous approach with persistently underperforming districts."⁸

Thus, accountability under NCLB includes all three legs of the tripod described above. The standard is that all students meet or exceed their state's definition of academic proficiency by the 2013–2014 school year.⁹ Student testing determines the extent to which the proficiency standard is met, and insufficient performance leads to varying consequences.

The Challenge of Defining Adequate Yearly Progress

NCLB states that "'adequate yearly progress' shall be defined by the State [*sic*] in a manner that . . . includes . . . measurable annual objectives for . . . the achievement of all public ele-

mentary school and secondary school students.”¹⁰ In other words, states must define AYP in terms of student academic achievement, i.e., scores on standardized tests. Three challenges are associated with this definition of AYP, however: the limitations of standardized testing, the negative unintended consequences for racially diverse schools, and the difficulty in comparing AYP results across states. These challenges are discussed in more detail below.

Limitations of Tests

As evaluative methods expert Dr. Stephen Raudenbush notes, “Even if tests flawlessly reveal proficiency, equating percentage proficient with school quality cannot withstand serious scientific scrutiny.”¹¹ Factors that are external to a student’s current academic experience are reflected in his test score, as well as classroom and cohort effects.

Test scores reflect many factors beyond a student’s academic status. These include their family background, their health, their socioeconomic status, their peers, their prior educational experiences, and cultural/ motivational factors.^{12,13} Test scores differ significantly by race, on both norm-referenced and standards-based tests.¹⁴ For example, “in most states’ standards-based tests, average scores for white and minority students are between half and three-quarters of a standard deviation apart.”¹⁵ Accordingly, “status scores may be deceptive, since accountability consumers may attribute them only to recent education experiences (say, the past year) when they are also determined by earlier schooling and extramural experiences including those in early childhood and peer groups.”¹⁶

Test scores are also subject to classroom effects and cohort effects, which may yield measurement error.¹⁷ Classroom effects occur when student outcomes are affected by a factor that is external to the students and their teacher; for example, noises outside the classroom or an uncomfortably cold classroom. Similarly, cohort effects, such as a perpetually disruptive student, may affect the class’s overall performance. Economist and education policy expert Dr. Thomas Kane and co-authors Douglas O. Staiger and Jeffrey Geppert argue that such cohort effects create “natural volatility in school test scores” which is not specifically addressed in NCLB’s requirements for determining AYP.¹⁸ They note that “such volatility is a particular problem in elementary schools, since there are only 68 kids per grade level in the average school nationally. When there are so few kids in a class, a few stars or a few class clowns can generate large fluctuations in mean test scores.”¹⁹

Negative Consequences for Racially Diverse Schools

Kane et al. also argue that the volatility in test scores makes it difficult for racially diverse schools to make AYP, since every racial and ethnic subgroup must do so.²⁰ They claim, for example, that having both the White and African American subgroups at a school make AYP “is analogous to having them flip a coin twice each year and get heads every time.”²¹ Thus, when AYP is based on academic achievement levels, the subgroup rules create negative unintended consequences for the students they were designed to help, by disproportionately subjecting racially diverse schools to sanctions under NCLB.

Incomparability of AYP Results across States

Another challenge associated with defining AYP in terms of student academic achievement is that the definition of proficiency is state-specific. For example, say that Student A lives in a state with a low passing score for proficiency and Student B lives in a state with a high passing score for proficiency, and that both students score at exactly their respective states’ passing level. These two students perform at very different levels, as evidenced by their very different

test scores, but both would be deemed proficient. In order to identify these discrepancies, NCLB requires that students from all states participate in the National Assessment of Educational Progress (NAEP), a national test. In one eye-opening example published by the *Knoxville News Sentinel*, “26 percent of fourth-graders scored proficient in reading on NAEP in both Tennessee and South Carolina. But 80 percent of Tennessee students passed the state test while only 31 percent of South Carolina students passed their exam.” The difference in passing rates on the state exams is due to South Carolina employing a more rigorous definition of proficiency. Such inconsistencies make it difficult for parents, policy makers, and the general public to have an accurate sense of students’ true academic proficiency.

An Alternative Approach to Accountability: Value-Added Assessment

In contrast to achievement-based measures of student academic progress, value-added assessment is a growth-based measure of such progress. It is concerned with student academic gains, or growth, instead of a student’s absolute achievement level. Growth is determined by comparing “each student’s achievement to that of the previous year.”²² With this method, “many of the exogenous influences most often cited as influencing academic progress—educational attainment of parents, socioeconomic level, race, and so on—could be partitioned without having direct measures of each one.”²³ Using data for students in Tennessee, Sanders found that student academic growth was “virtually unrelated to the racial composition of schools, the percentage of students receiving free and reduced-price lunches or the mean achievement level of the school.”²⁴

A school can have high mean achievement yet low growth, indicating that although students may be high performing, they are not progressing to their fullest. On the other hand, a school can have low mean achievement and high growth, indicating that students are making at least one year’s academic progress in a school year; keeping the student population constant and maintaining high growth, these schools’ mean achievement levels will increase over time.

However, “scholars do not completely agree on how [value-added scores] should be calculated and employed.”²⁵ One example of such debate involves whether growth calculations should explicitly control for student background.²⁶ Other concerns are that value-added assessment may over adjust for a school’s contribution prior to the initial year of testing and that growth differences between schools may reflect differences in students’ entry status.²⁷ As a result, several different approaches to calculating growth are currently in use.²⁸

Different Accountability Systems Yield Different Outcomes

Accountability systems “focus attention on some details of performance and leave others as irrelevant,” based on the indicators they employ.²⁹ For example, consider the current, achievement-based definition of AYP, in which a specific percentage of students must meet or exceed their state’s definition of academic proficiency. In schools that already have the required percentage of students at the specified proficiency level, this type of accountability system does not create incentives for teachers to challenge their students. In a growth-based accountability system, however, schools are expected to meet a standard of growth for all students (e.g., at least one year’s academic growth in one school year). As a result, a growth-based accountability system provides incentives for teachers to challenge all of their students, every year, regardless of their achievement level. Education reform experts Dr. Anthony Bryk, Yeow Meng Thum, John Q. Easton, and Stuart Luppescu note, “If we want meaningful long-term school improvements, it is critical that we get the incentives right.”³⁰

Raudenbush describes the importance of selecting appropriate indicators for educational

accountability systems, noting that if the results of a proficiency-based system and a value-added system yield different results, and if the consequences associated with those results differ significantly, “then proponents of high-stakes uses of accountability data have a problem. They must decide which approach to use and, presumably, justify this decision based on some reasoned argument. Otherwise, those who are penalized by the results of the accountability can justly dispute those penalties.”³¹ As a result, researchers are now comparing the outcomes of the two types of accountability systems, as well as the associated merits of each. Accountability based on student achievement, the approach used in NCLB, equates the quality of a school with the percentage of its students that meet its state’s standard of proficiency. Accountability based on growth equates the quality of a school with the rate of student learning.³²

Raudenbush determined the outcomes for several data sets under both types of accountability systems, in order to examine the comparability of the results. He found that

in a data set of kindergartners and first graders, “by first grade, the two kinds of indicators display weak to modest agreement in reading and no agreement in math;”³³

in data sets for grades two through five, “concordance between the two kinds of indicators is modest;”³⁴ and

in a data set for grades eight through twelve, “agreement is comparatively high in the case of science and somewhat more modest in the case of math.”³⁵

He extrapolated these findings to conclude that, while the outcomes under the two accountability systems may be the same for a number of schools, there would be many schools for which the outcomes would conflict: one accountability system may find that a given school is performing adequately while the other accountability system may yield the opposite conclusion.³⁶ Raudenbush also found that, “at every level of schooling considered here, high-poverty schools would fare much worse under a mean proficiency regime than under a value-added regime”³⁷ due to “entry status differences between high- and low-poverty schools,” i.e., selection bias.³⁸

Bryk et al. also examined this issue, using data for “49,993 students flowing through 102 public elementary schools in Washington, D.C., from 1998 to 2002.”³⁹ Correlations between change in school-average proficiency and change in value-added were 0.07 for reading and 0.15 for math.⁴⁰ These findings are consistent with those of Raudenbush, as described above: achievement-based and growth-based accountability systems often yield different conclusions regarding a given school’s performance.

Because value-added assessment methodology “[provides] a statistical adjustment”⁴¹ for exogenous factors that affect student achievement levels, growth-based accountability systems are considered “a more scientifically plausible and fairer account of school contributions to learning.”⁴² These systems “[avoid] the problem of large differences in baseline performance . . . by focusing on changes in performance.”⁴³ Growth-based accountability systems also have “a strong intuitive appeal,”⁴⁴ as schools are “held responsible for the learning that occurs while students are under instruction in that school.”⁴⁵

Finally, an achievement-based accountability system may cause schools to focus on only a subset of students: for example, under NCLB, schools may concentrate their attention on students whose scores are near the passing score for proficiency, in order to maximize the school’s likelihood of making AYP. A growth-based accountability system does not have this unintended consequence since “the performance of each individual student affects the final results.”⁴⁶ the schools that “do best under value-added assessment are those who provide academic growth opportunities for students of all levels of prior academic attainment.”⁴⁷

Purpose

The purpose of this study is to determine the extent to which the outcomes of achievement-based and growth-based accountability systems agree. It builds on the previous work of Raudenbush and Bryk by conducting a statewide examination of Tennessee elementary schools.

Data

This study examines the 992 Tennessee schools that served students in grades three, four, and/or five during the 2002–2003 academic year, and for which achievement and growth data are available. These schools collectively served 497,171 students. The data set includes

- whether the school made AYP in math;
- a value-added measure, the school's cumulative gains index for math;
- the number of students enrolled in the school;
- the percentage of students receiving free or reduced-price lunches; and
- the percentage of students in each of NCLB's racial and ethnic classifications.

The study examines math results because student performance in this subject is more variable than it is for other tested subjects, making any differences in student performance more readily discernible.⁴⁸ The 2002–2003 academic year is the most recent year for which all of these data were available.⁴⁹

In Tennessee, AYP for math in the 2002–2003 school year is defined as 72.4 percent of students performing at or above the criterion-referenced proficient level.⁵⁰ The cumulative gains index is the difference between a school's three-year average cumulative percentage of the state's norm gain and 100 percent of the cumulative norm gain, divided by the corresponding standard error.⁵¹ Schools with a non-negative gains index "met the state standard for growth when compared to the norming sample."^{52,53} The gains index is based on norm-referenced test results.⁵⁴ The norm- and criterion-referenced math tests used in Tennessee in 2002–2003 are highly correlated (approximately 0.95), allowing for the subsequent comparison of AYP and growth in this study.⁵⁵

Methodology and Results

If the standard for an achievement-based accountability system is defined as making AYP, and the standard for a growth-based accountability system is established as making at least one year's growth, then the outcomes of these two types of accountability systems are readily comparable. When examining the agreement between AYP and growth, four possible scenarios exist for a given school:

- The school made AYP and made at least one year's growth.
- The school made AYP but did not make at least one year's growth.
- The school did not make AYP but made at least one year's growth.
- The school did not make AYP and did not make at least one year's growth.

I classified the 992 schools included in this study accordingly. Table 1 indicates both the number of schools in each category, as well as the percentage of the 992 schools in that category.

I then examined the schools based on their racial and ethnic composition. Of the 992 schools, 147 have student bodies with over 70 percent minority students (high-minority schools). Another 684 schools have student bodies with less than 30 percent minority students (low-minority schools). The results for these schools, provided in Tables 2 and 3, include the number of schools in each category and the percentage of the subject schools in each category.

Next, I examined the schools based on socioeconomic status (SES). Of the 992 schools, 285 have student bodies with over 70 percent economically disadvantaged students (low-SES schools). Another 150 schools have student bodies with less than 30 percent economically disadvantaged students (high-SES schools). The results for these schools, provided in Tables 4 and 5, again include the number of schools in each category and the percentage of the subject schools in each category.

Discussion

Comparison of AYP and Growth for All Schools in the Study

As shown in Table 1, an achievement-based accountability system and a growth-based accountability system yield the same outcome for 626 of the 992 schools studied: the 530 that made both AYP and at least one year's growth, and the ninety-six that made neither. However, the two systems yield different outcomes for the remaining 366 schools, 37 percent of the sample. As a result, the current AYP determinations for these 366 schools warrant further examination.

The ninety schools that made a year's growth but did not make AYP disproportionately serve economically disadvantaged and minority students: on average, their student bodies consist of 67 percent minority students (compared with an average 27 percent for all schools studied) and 85 percent economically disadvantaged students (compared with an average 56 percent for all schools studied). However, these schools have an average cumulative gains index of 3.2, compared with an average index of 1.1 for all schools studied. This information is summarized in Table 6.

As evidenced by such growth, these schools are closing the achievement gap between White and minority students. They are overcoming an obstacle that has stymied educators for decades. However, because AYP is based solely on achievement levels, the primary message the current accountability system sends to these schools is one of failure. As a result, the feedback provided to these ninety schools by the current accountability system should be interpreted cautiously, and placed in context. Specifically, these schools must guard against the possibility that the additional paperwork associated with not making AYP (due, for example, to creating school improvement plans required under NCLB), as well as the demoralizing influence of not making AYP, do not deter them from the work that they have actually been performing quite well.⁵⁶

On the other hand, the 276 schools that did not make a year's growth but did make AYP disproportionately serve White students: on average, their student bodies consist of 16 percent minority students (again, compared with an average 27 percent for all schools studied) and 53 percent economically disadvantaged students (compared with an average 56 percent for all schools studied). However, these schools have an average cumulative gains index of -2.5, compared with an average index of 1.1 for all schools studied. This information is summarized in Table 7.

As evidenced by these values, these students are not making at least one year's academic growth, and are falling behind their statewide peers. However, because AYP is based solely on

achievement levels, the primary message the current accountability system sends is one of success. This is dangerous, as it gives schools and parents a false sense of student progress. As a result, the feedback provided to these 276 schools through the current accountability system should also be interpreted with great caution.

Comparison of Outcomes Based on Race and Socioeconomic Status

The data in Tables 3 and 5 indicate that only 4 percent of the low-minority schools and a mere 1 percent of the high-SES schools did not make AYP. As shown in Figures 1 and 2, these outcomes contrast starkly with the 78 percent of the high-minority schools that did not make AYP (Table 2) and the 54 percent of low-SES schools that did not make AYP (Table 4).

As stated in its title, the intent of the federal educational accountability provisions is to leave no child behind. Such a goal obviously requires attention to low-performing schools, which predominantly serve minority and low-SES students. These figures illustrate how the use of AYP brings just such attention to these schools. AYP defines “left behind” on an absolute basis: if a student does not perform at the proficient level or above, he is considered to have been left behind. As shown in Tables 2 and 4, however, a number of the high-minority and low-SES schools that did not make AYP are making at least one year’s growth, i.e., their students are making at least one year’s academic growth in one academic year. These schools are *not* only not leaving students behind, but they are also advancing them faster than the norm—and thus closing the gap between these students and their peers. This relative definition of “left behind” —academic progress, or growth—is not reflected in the current accountability system. Thus, the negative unintended consequences of the current definition of AYP become evident: frustration, discouragement, and additional work for high-minority and low-SES schools that are working hard and making at least one year’s gains, as they are subject to escalating sanctions for each year that they do not meet AYP.

Conclusion

These findings support those discussed in the introduction to this paper regarding the different outcomes yielded by different accountability systems. As Raudenbush notes, “These two approaches [to accountability] produce pictures of school quality that are, at best, modestly convergent.”⁵⁷ In math, Tennessee’s achievement-based accountability system yields the same outcomes as would a growth-based accountability system for approximately 60 percent of the schools serving third-, fourth-, and/or fifth-graders. However, the differences that exist for the remaining 40 percent of these schools are cause for concern: they exaggerate concern for some schools and provide a false sense of comfort for others. Examining the math results for schools with high and low percentages of minority and economically disadvantaged students demonstrates that Tennessee’s current achievement-based accountability system is little more than an indicator of a school’s racial and socioeconomic composition. This topic should be investigated further, encompassing additional academic subjects, additional grade levels, additional states, and multiple years.

These results suggest that the current accountability system, with its achievement-based definition of adequate yearly progress, is inadequate. In fact, criticism of achievement-based accountability systems is growing. Economist and education policy expert Dr. Dale Ballou and co-authors William Sanders and Paul Wright argue that:

Holding teachers and administrators accountable for student outcomes without regard for differences in students’ backgrounds is manifestly unfair and, in the long run, counter-productive. Such policies will alienate

educators, making it more difficult to staff schools serving the neediest population. The perception that educators are being held accountable for student achievement without due regard for factors beyond their control may ultimately discredit the standards movement itself.⁵⁸

Raudenbush states, "To reward schools for high mean achievement is tantamount to rewarding those schools for serving students who were doing well prior to school entry."⁵⁹

At the same time, the appeal of using value-added assessment for accountability purposes is growing among educators and policy makers: as of mid-November 2004, sixteen states have requested permission from the U.S. Department of Education to use value-added results to satisfy NCLB's accountability requirements.⁶⁰ Policy makers are interested in the ability of value-added assessment to provide "a more direct assessment of individual student change" than that offered by measures of average achievement.⁶¹ Others see value-added assessment as a means to address the disparity among states' definitions of proficiency under NCLB.⁶² Still others view value-added assessment as a correction to some of the scientific weaknesses associated with measuring student achievement levels and basing accountability systems on them, including the weaknesses discussed in this paper.⁶³

This growing interest coincides with states' increasing abilities to employ value-added assessment. Annual student testing data are required to perform value-added assessment. Prior to NCLB, many states did not test students in every grade level every year, and thus, did not have the necessary information to evaluate individual student growth. However, under NCLB, states must test students in grades three through eight every year, and as a result, are creating the data sets necessary for conducting value-added assessment.⁶⁴

Recommendations

What is the solution? NCLB's accountability system could be improved by including consideration of student growth. In this manner, schools that make at least one year's growth but do not make AYP may find potential relief from sanctions, as well as support for continued high growth, so that they can attain the required proficiency level in time. In addition, including student growth in accountability systems would provide incentive for schools to challenge all students to their fullest. In the current achievement-based accountability system, schools may give less attention to the progress of their high-performing students in order to increase the performance of their lower-performing students, particularly those who are close to the standard for proficiency.

Perhaps the solution requires a combination of several factors for evaluating school performance. Others have suggested combining student outcomes and evaluation of school organizational and instructional practices,⁶⁵ combining "the learning gain trends and output trends" as a measure of "changing school productivity over time,"⁶⁶ and combining measures of status and progress.⁶⁷ Researchers in three organizations are currently addressing this third area, developing "models to combine value-added analyses with absolute measures of performance, so that students would be on track to achieve proficiency by a specified point."⁶⁸ Such models should use data pooled over several years, to address issues such as test score volatility⁶⁹ and the regression to the mean effect.⁷⁰

An accountability system that combines status and progress makes sense for schools, students, and society. Including value-added measures makes sense for schools, as they should be held accountable for students' progress under their instruction. Including achievement measures makes sense for students and for society. If the United States' public education systems do not produce students who are truly academically proficient, they are doing an injustice to students and to the country's future.

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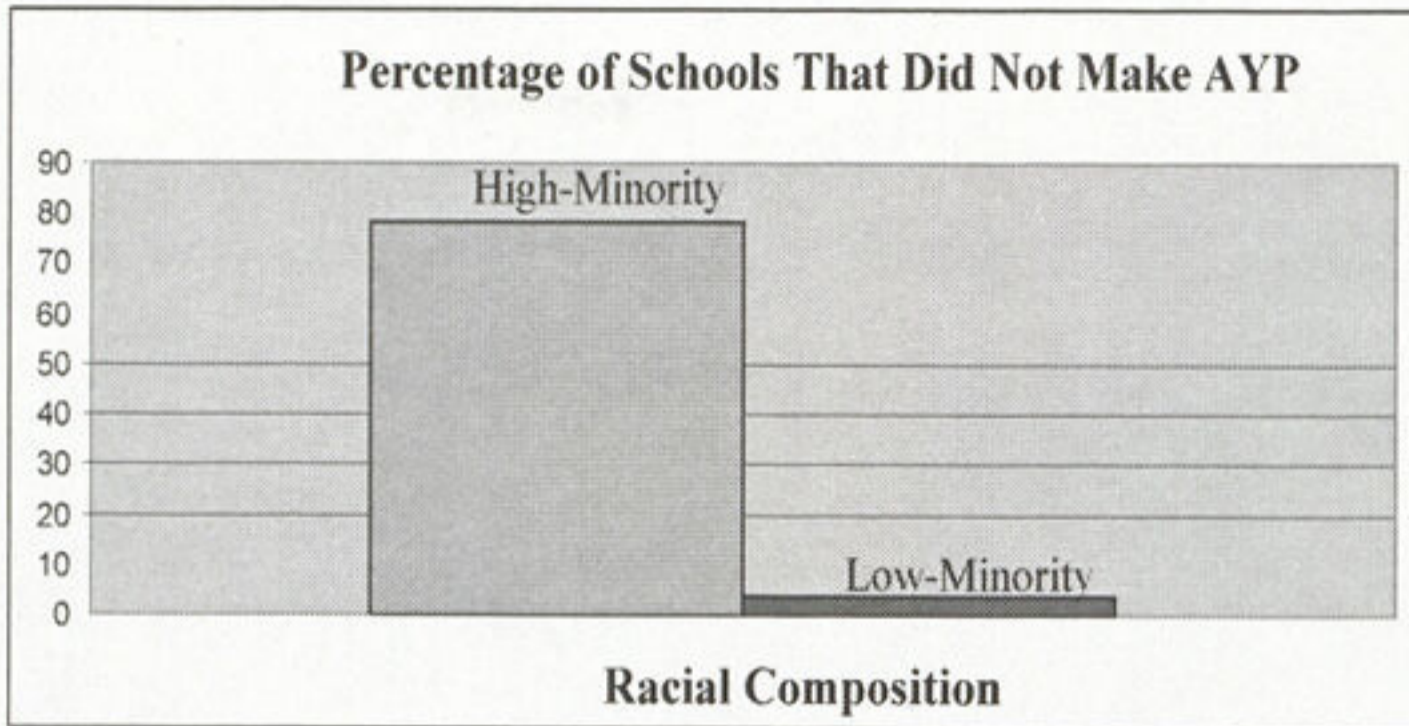
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30. Anthony Bryk et al., "Assessing School Academic Productivity: The Case of Chicago School Reform," *Social Psychology of Education* 2 (1998): 109.
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32. Even though NCLB requires that the percentage of students meeting the standard must grow to 100 percent by the 2013–2014 academic year, this is not considered a growth-based accountability system in the context of this paper. I use the term "growth-based accountability system" to refer to a standard that is based on a student's academic progress from one year to the next. Under NCLB, the standard is the percentage of students performing at or above the proficient level, and thus, NCLB is an achievement-based accountability system. States are required to raise their standards over time, so that the standard is 100 percent proficiency by 2013–2014. However, that is not "growth" in the same sense as that used in growth-based accountability systems.
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34. *Ibid.*, 24.
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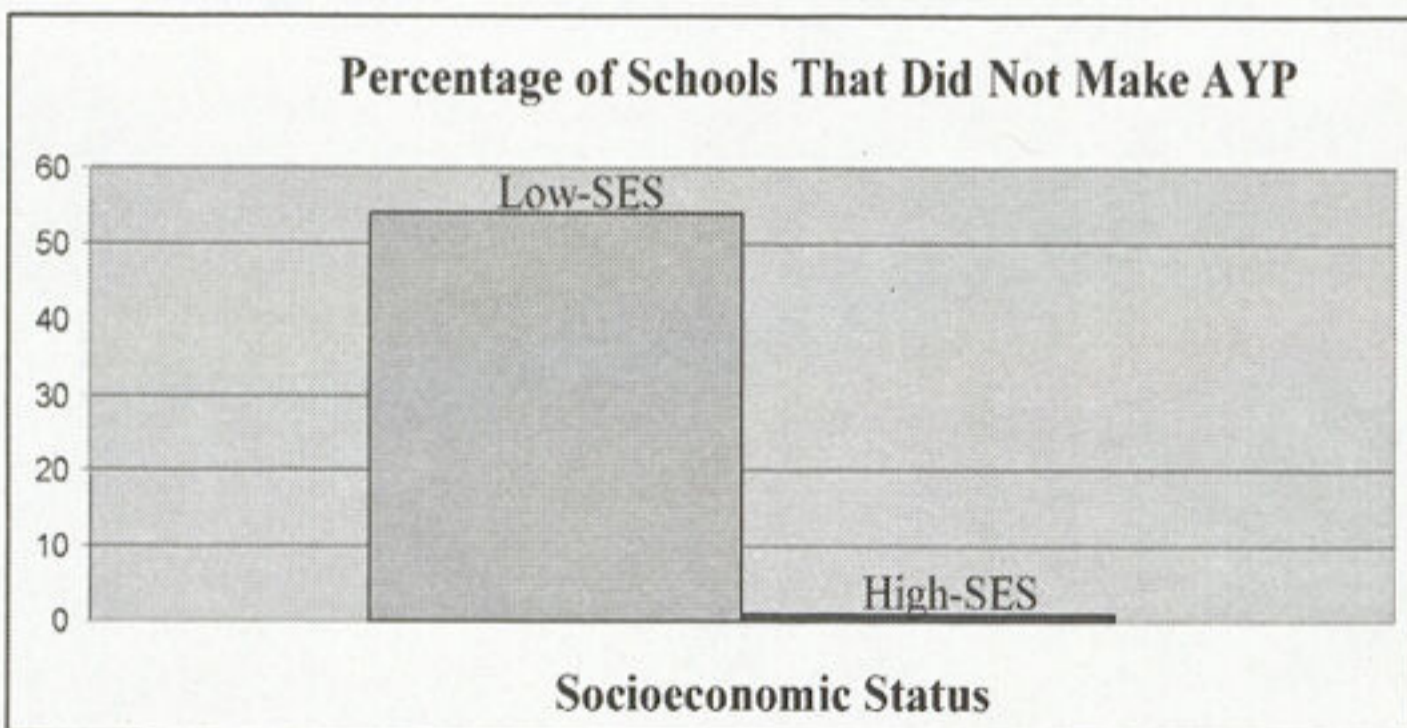
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45. Bryk et al., 121.
46. *Ibid.*, 108.
47. Sanders, 26.
48. June Rivers, telephone interview, 1 November 2004.
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64. *Ibid.*, 14.
65. Raudenbush, 37.
66. Bryk et al., 124.
67. Walberg, 322.
68. Olson, "'Value Added' Models Gain in Popularity," 15.
69. Kane, Staiger, and Geppert, 10.
70. Paul Peterson, personal interviews with author, 16 November 2004 and 23 November 2004.

FIGURE 1. PERCENTAGE OF SCHOOLS THAT DID NOT MAKE AYP BY RACIAL COMPOSITION



Source: Tennessee Department of Education, "Tennessee School System 2003 Report Card," http://evaas.sas.com/tn_reportcard/welcome.jsp.

FIGURE 2. PERCENTAGE OF SCHOOLS THAT DID NOT MAKE AYP BY SOCIOECONOMIC STATUS



Source: Tennessee Department of Education, "Tennessee School System 2003 Report Card," http://evaas.sas.com/tn_reportcard/welcome.jsp.

TABLE 1. COMPARISON OF AYP AND GROWTH FOR ALL SCHOOLS IN THE STUDY

ALL SCHOOLS (N=992)	MADE \geq 1 YEAR'S GROWTH	DID NOT MAKE \geq 1 YEAR'S GROWTH
Made AYP	530 schools (53%)	276 schools (28%)
Did Not Make AYP	90 schools (9%)	96 schools (10%)

Source: Tennessee Department of Education, "Tennessee School System 2003 Report Card," http://evaas.sas.com/tn_reportcard/welcome.jsp.

TABLE 2. COMPARISON OF AYP AND GROWTH FOR HIGH-MINORITY SCHOOLS

HIGH-MINORITY SCHOOLS (N=147)	MADE \geq 1 YEAR'S GROWTH	DID NOT MAKE \geq 1 YEAR'S GROWTH
Made AYP	22 schools (15%)	11 schools (7%)
Did Not Make AYP	54 schools (37%)	60 schools (41%)

Source: Tennessee Department of Education, "Tennessee School System 2003 Report Card," http://evaas.sas.com/tn_reportcard/welcome.jsp.

TABLE 3. COMPARISON OF AYP AND GROWTH FOR LOW-MINORITY SCHOOLS

LOW-MINORITY SCHOOLS (N=684)	MADE \geq 1 YEAR'S GROWTH	DID NOT MAKE \geq 1 YEAR'S GROWTH
Made AYP	428 schools (63%)	227 schools (33%)
Did Not Make AYP	19 schools (3%)	10 schools (1%)

Source: Tennessee Department of Education, "Tennessee School System 2003 Report Card," http://evaas.sas.com/tn_reportcard/welcome.jsp.

TABLE 4. COMPARISON OF AYP AND GROWTH FOR LOW-SES SCHOOLS

LOW-SES SCHOOLS (N=285)	MADE \geq 1 YEAR'S GROWTH	DID NOT MAKE \geq 1 YEAR'S GROWTH
Made AYP	80 schools (28%)	50 schools (18%)
Did Not Make AYP	78 schools (27%)	78 schools (27%)

Source: Tennessee Department of Education, "Tennessee School System 2003 Report Card," http://evaas.sas.com/tn_reportcard/welcome.jsp.

TABLE 5. COMPARISON OF AYP AND GROWTH FOR HIGH-SES SCHOOLS

HIGH-SES SCHOOLS (N=150)	MADE \geq 1 YEAR'S GROWTH	DID NOT MAKE \geq 1 YEAR'S GROWTH
Made AYP	114 schools (76%)	35 schools (23%)
Did Not Make AYP	0 schools (0%)	1 school (1%)

Source: Tennessee Department of Education, "Tennessee School System 2003 Report Card," http://evaas.sas.com/tn_reportcard/welcome.jsp.

TABLE 6. COMPARISON OF SCHOOLS THAT MADE A YEAR'S GROWTH BUT NOT AYP TO ALL SCHOOLS STUDIED

	SCHOOLS THAT MADE A YEAR'S GROWTH BUT DID NOT MAKE AYP (N=90)	ALL SCHOOLS STUDIED (N=992)
Average Percentage Minority Students in the Student Body	67%	27%
Average Percentage Economically Disadvantaged Students in the Student Body	85%	56%
Cumulative Gains Index	3.2	1.1

Source: Tennessee Department of Education, "Tennessee School System 2003 Report Card," http://evaas.sas.com/tn_reportcard/welcome.jsp.

TABLE 7. COMPARISON OF SCHOOLS THAT DID NOT MAKE A YEAR'S GROWTH BUT MADE AYP TO ALL SCHOOLS

	SCHOOLS THAT DID NOT MAKE A YEAR'S GROWTH BUT MADE AYP (N=276)	ALL SCHOOLS STUDIED (N=992)
Average Percentage Minority Students in the Student Body	16%	27%
Average Percentage Economically Disadvantaged Students in the Student Body	53%	56%
Cumulative Gains Index	-2.5	1.1

Source: Tennessee Department of Education, "Tennessee School System 2003 Report Card," http://evaas.sas.com/tn_reportcard/welcome.jsp.

**LEARNING FROM THE MISTAKES OF THE PAST:
AN ANALYSIS OF PAST AND CURRENT TEMPORARY
WORKERS POLICIES AND THEIR IMPLICATIONS FOR A
TWENTY-FIRST CENTURY GUEST-WORKER PROGRAM**

AILI PALMUNEN

Abstract

During the recent presidential campaigns, President George W. Bush announced his new plan for reforming American immigration policy. The main objective is to introduce an organized guest-worker program to regulate legal and illegal economic migrants. Yet little word has come from the president's administration regarding how such a policy will affect the number and composition of immigrants entering the United States or the gains and losses the country will face. This paper attempts to answer these questions through the lens of past and current temporary worker programs, including the post-World War II Bracero Program and the current H-2 visa schemes. It concludes that based on previous experiences with guest-worker programs, the United States should not expect to see any major changes in the number or composition of workers crossing its borders each year. Moreover, it can expect mixed economic results. Nonetheless, certain aspects of the president's proposal might be worthwhile to implement.

Introduction

On 7 January 2004, President George W. Bush announced his plan to reform major aspects of American immigration policy by instituting a guest-worker program under the guise of his "Fair and Secure Immigration Reform Policy." In his own words, the plan President Bush proposed "will help return order and fairness to our immigration system, and in so doing we will honor our values, by showing our respect for those who work hard and share in the ideals of America."¹

This is not the first time America has experimented with a guest-worker program. During and after the Second World War, America instituted the Bracero Program in an effort to control economic immigration through orderly, fair, and legal methods. By 1964, however, the program was no longer fair or orderly. By most accounts, the guest workers who came to America through this program were ill-treated and underpaid. America's history with guest-worker programs reveals important wisdom for the implementation of a modern-day temporary worker policy.

Some of this wisdom may be gleaned from a strong understanding of the successes and failures of the Bracero Program. As this paper will discuss, the economic results of the Bracero Program were mixed at best. On the one hand, there is research indicating that the low wages paid to the workers depressed local wages, so that domestic workers were less inclined to take jobs in the agricultural sector. On the other hand, there is research indicating that the *braceros*

Many months of debate on President Bush's proposed guest-worker program are likely ahead of us. Author Aili Palmunen helps us put this potentially heated immigration issue in perspective by sizing it up next to two previous attempts to regulate those who cross the U.S. border in search of work.

—Beth Trask, editor

played an important role in filling the post-war labor shortages in the agricultural sector, so that the price of agricultural products remained low. This “winners” and “losers” trade-off is typical of most literature on the economic impact of immigration and is important to keep in mind when evaluating modern-day immigration policy. Moreover, there are non-economic repercussions for having the government run a wide-scale guest-worker program. In fact, the Bracero Program was riddled with human rights violations and exploitative labor practices—both of which will need to be addressed in the president’s proposed temporary worker plan.

Other wisdom can be gleaned from current temporary visa schemes and present-day immigration trends and flows. This paper will point out the major flaws in previous plans that should be considered in any proposed policy, the major questions that need to be addressed when designing and implementing a guest-worker program, and the recommendations that should be heeded throughout this entire process. I will conclude with the position that the guest-worker program can be an overall positive step towards comprehensive immigration reform.

Historical Background: The Bracero Program

Instituted and run by four different government agencies—the State Department, the Department of Labor, the Immigration and Nationalization Service, and the Department of Justice—the Bracero Program brought in hundreds of thousands of Mexican agricultural workers over twenty-two years to fill the agricultural labor shortages that started in World War II.² Workers were primarily recruited in a coordinated effort by both the American and Mexican governments to work on farms in California, Texas, and Arizona.³ As the recruited Mexicans were given legal status to work in the United States, the American government agreed to pay Mexican workers the same wages as American workers and to allow elected *bracero* representatives to discuss and negotiate complaints with their employers.⁴ Until the end of World War II, the program ran fairly smoothly under these terms.

By 1947, the Congress was ready to terminate this program, stating that it was only meant to alleviate wartime labor shortages. Fearing that American farms would still be short-handed, however, the agricultural lobby petitioned Congress to continue the program.⁵ Eventually the Congress relented and maintained the broad outlines of the program. Many of the key details, however, changed considerably. Government-negotiated contracts gave way to contracts negotiated directly by the growers and the *braceros*. The government passed the burden, financial and otherwise, of recruiting and transporting the guest workers on to the growers.

To reduce costs, the growers chose to relocate the recruitment centers closer to the border, moving them from the more populated areas in central Mexico.⁶ They also bent the rules regarding minimum wage and working conditions. Indeed, there has been widespread documentation of the abuse and exploitation Mexican workers endured during this postwar period.⁷ In addition, a portion of their relatively small earnings were withheld in “savings accounts.” Approximately 10 percent of the workers’ earnings were placed in these sham accounts, and the *braceros* claim they never received their money.⁸ Only very recently, the Mexican government announced that it would compensate the former *braceros* for their losses, a sum reported as approximately \$27 million in the *Los Angeles Times*.

As the program evolved under these conditions, illegal immigration exploded. The combination of worker exploitation, lax housing standards, poor recruitment policies, and withheld wages prompted many *braceros* to desert their posts and work illegally for other employers.⁹ Moreover, by moving the recruitment centers away from populated, urban areas of Mexico to the American-Mexican border, illegal immigration increased. If after paying his own way to a recruitment center, the prospective Mexican worker was turned down for the Bracero Program, he could more easily enter the United States illegally in hopes of making a return on his investment of time and risk. Often, these rejected *braceros* found employment on American farms,

working for substantially less than the legal guest workers. Thus illegal immigration from Mexico skyrocketed during this period,¹⁰ and wages became depressed wages in the Southwest farming industry.¹¹ Eventually, the program collapsed under pressures from opponents of illegal immigration, the erosion of farm-worker wages, the need to increase domestic employment, and the growing awareness about the squalid conditions in which these workers lived.¹²

Present Temporary Worker Programs

All that legally remains from the Bracero Program is a provision of the *Immigration and Nationality Act*, as amended by the *1986 Immigration and Reform Act*, which allows for temporary work permits for special agricultural workers.¹³ Unlike the policy proposed by President Bush, which involves significant organization and involvement by the federal government, the current methods by which a foreigner can apply for non-immigrant low-skilled temporary work visas are ad hoc.

Employers wishing to hire temporary foreign laborers must file an I-129 petition with the United States Citizenship and Immigration Service asking for permission to hire non-immigrant foreign temporary workers.¹⁴ The types of immigrant workers that may be hired through this ad hoc process include specialty high-skilled workers, nurses, agricultural workers, entertainers, and clergy to name a few.¹⁵ Low-skilled workers fall into the H-2B and H-2A categories, with the latter referring specifically to agricultural workers.

When applying, employers must prove that there is a sufficient domestic shortage in the type of worker they need. The Department of Labor is responsible for certifying that "the admission of foreign workers into the United States on a permanent or temporary basis will not adversely affect the job opportunities, wages, and working conditions of U.S. workers."¹⁶ When an employer applies for this certification, the Department of Labor notifies the state employment agency where the employer is located. This agency recruits domestic workers for a specified period, and if the employer has not then filled the jobs with citizens, it grants approval to hire foreign workers.¹⁷ Once a person is certified to be an H-2A worker, he may apply for an H-2A visa through the Department of State.¹⁸

There is no cap on the number of H-2A visas that are issued, but in recent years, the American government has authorized approximately fourteen thousand annually.¹⁹ Employers who hire these workers must offer wages equal to or higher than those offered to American workers in order to prevent the depression of wages. They also must provide free housing.²⁰ However, as with the Bracero Program, H-2A workers generally do not have the opportunity to review their work contract, as it is negotiated between the employer and the Department of Labor. Mexicans and Caribbeans make up the majority of those who enter under H-2A visas.

The Proposed "Fair and Secure Immigration Reform" Policy

President Bush's "Fair and Secure Immigration Reform" policy sets out five main goals:

1. Increased homeland security through improved border control;²¹
2. Efficient matching of employers with available domestic workers and then, only if there are no available domestic workers, with foreign guest workers;²²
3. Insertion of compassion back into the immigration system by giving temporary legal status to illegal workers;
4. Improved efficiency in the citizenship application process;
5. Improved incentives for temporary immigrants to return to their coun-

tries of origin through tax-preferred savings accounts and credits towards retirement systems in their home countries.

A cursory reading of the president's proposal could lead one to believe that it is not making any significant changes from the existing temporary worker policies. While there is little to no concrete or detailed information on how the plan will be executed, the broad steps that the president suggests do differ significantly from current immigration policy. Indeed, the "Fair and Secure Immigration Reform" policy has generated stringent disagreement among members of the president's own political party.

One of the primary reasons why there has been little political support for a guest-worker policy is the widespread belief that there exists a pool of willing and able domestic workers who are displaced by foreigners paid comparatively low wages. With his second stated goal, the president intends to combat this perception by developing a job recruitment database where willing employers and willing domestic or foreign employees can make connections.²³ Although the president does not reference what the system would entail, his plan asserts that employers must make "every reasonable effort" to find an American to fill a job before the job can be filled by a foreign worker.²⁴ Moreover, to enforce this policy, the government will be stricter in sanctioning employers for hiring illegal foreign workers.²⁵

Another reason why the president is having trouble garnering support is the policy's temporary legal status provision. Contrary to popular portrayal, goal three is not an amnesty; illegal workers will not be granted permanent legal status. The policy puts forth a window whereby illegal workers can apply to work temporarily in the United States as a legal migrant.²⁶ When approved for this three-year work permit, the migrant is allowed cross the border freely.²⁷ When the temporary period concludes, the migrants must reapply for legal status or return home. In addition, unlike foreigners applying for the temporary program from abroad, current illegal immigrants must pay a fee in order to be registered in the guest-worker system.²⁸ When the initial "adjustment" period has expired, the temporary worker program will only be eligible to those workers who are outside the United States. There is little information, however, on how the actual application process would proceed.

Then, there is the worry that illegal immigrants and guest workers will be given priority over those who are already "in line" for citizenship. Again, there are few details available, but the president states that illegal immigrants will not have priority.²⁹ Immigrants in the United States will be given the opportunity to apply for a green card, but only through the existing methods (i.e., getting a green card via marriage, permanent sponsorship from an employer, etc.).³⁰

Other significant changes that the president is proposing include:

- Changing the visa holder-employer ties: People currently holding temporary work visas must stay with the employer who is sponsoring them. Under the Bush proposal, temporary workers will be able to switch jobs without losing legal status.³¹
- Removal of caps: In some sectors, there are caps on the number of temporary workers visas that may be allocated. In the new proposal the number of visas offered will be dictated by the number of jobs that need to be filled.³²
- Sector specificity: Past immigration reform has focused on particular sectors (e.g., the Bracero Program and the agricultural sector), but this plan is non-sector specific.³³

Although the plan was proposed over a year ago, only recently has the Senate begun hearings

on the topic of comprehensive immigration reform. Senators John Cornyn (R-Tex.), chairman of the Immigration, Border Security and Citizenship Subcommittee, and Jon Kyl (R-Ariz.), chairman of the Terrorism, Technology and Homeland Security Subcommittee, co-chaired the first hearing on 14 April 2005 and announced that they hope to bring legislation to the floor by the end of the summer.³⁴ Given that Republicans are divided about the president's proposal,³⁵ these hearings will be important to watch.

Number and Composition

Understanding how a guest-worker policy will affect the number and composition of immigrants entering the country is speculative at best. Nonetheless, by looking at both historical trends and current statistical figures, we may be able to extrapolate the number and composition of workers who may apply for temporary work permits on the Bush plan.

Historically, Mexico has been the largest sending country of agricultural workers to the United States. Between two hundred thousand and four hundred thousand Mexican *braceros* entered the United States each year from 1951 to 1962.³⁶ Yet, as America's economy has changed drastically in the past half century, these figures may not be the best ones to use. Instead, this paper looks at the three sources of people who might apply for temporary work status under the president's proposed plan:

- 1) those currently working legally under temporary visa regimes such as the H-2A or H-2B visa;
- 2) those currently working illegally in the United States; and
- 3) those who choose to enter the United States illegally each year in order to work.

An examination of recent immigration statistics shows that the average number of foreigners entering the United States on temporary work visas has been relatively constant since 2000. Between 2000 and 2003, approximately 1.2 million people entered on temporary work visas each year.³⁷ Mexico continues to supply the highest number of all temporary workers—at approximately 10.26 percent³⁸—as well as the most agricultural or other low-skilled workers; in 2003, Mexicans held 9,924 of the 14,094 H-2A visas and 65,878 of the 102,833 H-2B visas.³⁹ Canada is the second largest individual sending country, but Europe and Asia are the two largest sending regions for temporary workers of all types.⁴⁰

Looking at the number of H-2A and H-2B visas issued per year is only the first step in understanding how many people will take advantage of the program. There needs to be a critical examination of how many illegal immigrants living within the United States will take advantage of the opportunity for status adjustment. These figures will primarily depend on:

- 1) whether illegal immigrants understand the new policy enough to take advantage of it;
- 2) whether illegal immigrants trust the government not to punish them when they apply for legal status; and
- 3) whether illegal immigrants can afford to pay the fee.

There exist a number of incentives for taking advantage of the adjustment of status. First, those who have legal status will be able to travel freely across American borders, allowing them to return to their families and communities at will. Second, those forced to work in exploitative conditions will be able to escape and work in more "legitimate" jobs. Third, those enjoying

temporary worker status are not tied to one specific job and can renew their status every three years. Still, even with these incentives, there are important drawbacks for coming forward:

- 1) former employers who hired them illegally at low wages may refuse to hire them legally;
- 2) if no job is available for these newly legal workers, it is unclear how long they can remain in the country while unemployed; and
- 3) although the visa is renewable, it is still not a permanent amnesty.

The last major status adjustment of illegal immigrants into legal immigrants took place in 1986 with the *Immigration and Reform Control Act* (IRCA), with several minor adjustments occurring in the two decades hence. Almost 2.7 million people were eligible for status adjustment under IRCA, yet 3.1 million people applied for it.⁴¹ Obviously there was an overabundance of demand for status adjustment in 1986, and this pattern could repeat if the president's proposal passes. Based on estimates from the 2000 U.S. Census, there are approximately seven million illegal aliens living and working within American borders.⁴² Of that amount, approximately 4.8 million unauthorized foreigners are from Mexico.⁴³ While it is not clear how many of these illegal immigrants would be eligible for status adjustment, the demand could be significant.

Finally, we need to understand whether the proposed policy will provide enough incentives for the approximately 350,000 illegal immigrants who enter the United States each year (of whom 69 percent are from Mexico) to forgo illegal entry and apply for visas under the temporary work program. Since the program does not tie workers to one particular employer, they are allowed to freely move across the border, and they are required to earn wages appropriate for the region and industry, there are clear incentives for applying to this program. Other considerations that could affect the number of people applying for a guest-worker program include:

- 1) the ability of family members to accompany the migrants and work legally;
- 2) support for housing and transportation costs;
- 3) the ease of the recruitment process; and
- 4) the assurance that working conditions will be humane.

In summary, current trends in the number and composition of temporary and illegal immigrants seem to indicate that these communities will take advantage of the legal reprieve and apply for the temporary work permit. Still, given the number of uncertainties, it is difficult if not impossible to give a concrete estimate of who will participate in this program.

Costs and Benefits

Basic economic theory suggests that with an increase in supply of workers, wages will decrease. With a decrease in wages, some people (presumably American-born workers) will be pushed out of the labor force as those who are willing to work at lower wages (presumably foreigners) will be hired instead. Indeed, a month after President Bush announced his proposal for a new guest-worker program, the Congressional Research Service (CRS) prepared a report on the economic impact of guest workers on American farmers suggesting that this would be the case.⁴⁴

The CRS evaluated the Bracero Program and found that its effect "was consistent with eco-

conomic theory: the Bracero Program was estimated to have increased total farm employment, reduced domestic farm workers' employment, and lowered farm wages."⁴⁵ Although the CRS did academic due diligence by citing a contradictory study done by Lamar Jones and Randolph Rice (one that shows little changes in wage rates before and after the Bracero Program), the CRS hypothesizes that this may have been due to the fact that many bracero workers became illegal immigrants in the same area, thus maintaining the same level of labor supply.⁴⁶

Its conclusions regarding the economic impact of the current H-2A visa program on domestic wages are less concrete. The relatively small number of H-2A migrants makes it difficult to understand how they affect the national labor market, and there is a lack of research on the local labor markets—in Kentucky, New York, North Carolina, and Virginia—where H-2A migrants are most heavily concentrated. The CRS calls for further research on these areas.

Nonetheless, there appears to be general agreement that an increase in workers being paid below-average wages will depress wages for American workers in the same region. To help prevent adverse wage effects such as these, the Department of Labor has mandated the appropriate wages that H-2A migrant must be paid in each state, so that there is not a discrepancy between foreign and domestic agricultural workers.⁴⁷ Theoretically, then, H-2A migrants should not depress regional wages.

The CRS report, however, was not entirely negative. For example, the report cites that guest workers make up shortages in labor supplies during the harvest season of "perishable, labor-intensive crops."⁴⁸ The CRS records the perspective of grower advocates, who claim that foreign and domestic workers do not compete for jobs. Foreign workers make up the gap between supply and demand, and in the end this keeps the supply of perishable goods high and the price of perishable goods low.⁴⁹ In other words, everyone benefits. Yet the notion that domestic and foreign-born workers do not compete for the same jobs is highly contentious. For instance, there is evidence that competition from the Bracero Program eventually resulted in a situation where farms have become highly dependent on foreign-born work.⁵⁰ Employers purportedly saved 26 percent in wage costs versus a 9 percent decrease in overall wages in the agricultural sector by hiring such foreign workers during the Bracero Program.⁵¹ These savings, however, may be misleading, as the workers in the Bracero Program were often victims of exploitative working conditions.

The question, then, becomes, What would happen if the millions of illegal immigrants working in the agricultural sector for lower wages become legal under the president's proposal? If the theory of labor supply and demand hold true, producers will lose out when forced to pay appropriate wages for the work temporary immigrants are performing. Much of this work is now being done by illegal workers, but President Bush's policy will encourage them to declare legal status. Employers are bound by minimum wage laws when hiring legal employees, whether they are foreign- or American-born.⁵² Employers will do a cost-benefit analysis to determine whether they should start hiring legal guest workers or skirt by hiring illegal immigrants. The outcome will depend on the particular economics of the situation (i.e., unemployment rate, wage rate, etc.) as well as the employer's risk aversion. In other words, the employers will hire those workers who they feel are the least expensive, taking into account the risk of fines and sanctions for hiring illegal workers. It is important that a study be done to determine what choice employers will make in order to fully understand the economic impact of a guest-worker program.

Policy Recommendations and Conclusions

Despite the mixed results from previous guest-worker plans, certain aspects of the president's proposal look very appealing. First, it forces employers to be more proactive in recruiting American workers into low-skilled jobs, thus partially alleviating unemployment among the

American working class and potentially improving cultural relations between immigrants and citizens. Second, greater government influence in the recruiting process of agricultural and other low-skilled workers could provide better protection for temporary migrants against poor working and housing conditions. As mentioned earlier, guest workers were exploited and abused during the Bracero Program as soon as the government turned primary recruitment responsibilities over to the employers. Also, present-day illegal immigrants often find themselves in squalid working conditions, outside the protection of American labor laws. If the president recognizes the mistakes of the past and increases government enforcement of humane working conditions, the guest-worker policy has the possibility of markedly improving human rights standards. Third, it legally secures jobs for migrants who want to come to the United States to improve their standard of living. Finally, it allows temporary migrants to pass across the border in a safe and humane manner.

Nonetheless, there are numerous policy considerations that must be addressed before the program is put into place. I have identified five key considerations:

Employer Preference for Illegal Migrants: As mentioned above, employers with less risk aversion may prefer to hire illegal migrants over legal guest workers. We need to determine whether it will be more cost-efficient for employers to hire illegal migrants or guest workers. Once that is determined, the government should consider how this will affect the enforcement of employee sanctions and what such enforcement will cost.

Recruitment Policies: Under the Bracero Program, when recruitment centers moved to the border, illegal immigration appears to have increased. Therefore, transportation and recruitment costs need to be examined and divided between employers and the government in a manner that is cost-efficient for both parties.

Desertion Possibilities: No guest-worker program in any country has been entirely effective at preventing migrants from staying in the host country. While temporary savings accounts may be one incentive for workers to return, it will not be a perfect solution. Comparative studies of guest-worker programs in Germany, France, and Canada, where similar incentives were used, may be necessary in determining an optimal policy.

Remittances: One of the primary reasons migrants come to the United States to work is in order to send remittances to their families. While it is not possible to fully address the implications of money being taken out of the American economy for this purpose, it is important to remember that remittances play heavily in a worker's decision to stay in the United States. If the government helps streamline remittances in a more efficient and cost-effective manner, temporary migrants could reach their savings goals quicker, accelerating their departure.

American versus Foreign-Born Job Competition: The president's proposal calls for employers to search for American workers before offering the job to foreign workers. It may be possible to increase the number of Americans who earn jobs that would otherwise go to guest workers, but there will undoubtedly be competition between locals and guest workers as employers learn which individuals are more capable, willing, and hard-working. The government may want to fund more job retraining programs in anticipation of such competition. In addition, it is important that the government continue to monitor regional wages, maintain minimum wage

guidelines for low-skilled workers in the agricultural sector, and perhaps extend these guidelines for other service sectors (i.e., such as restaurant workers, hotel workers, etc.).

No immigration policy is perfect and despite the benefits I have just outlined, there will be some sectors that “lose” from immigration. In the end, much of the decision falls back on what values American immigration policy should uphold. With recognition that the plan will not work perfectly, careful contingency planning, and flexible, knowledgeable, and compassionate administration, the program has the potential to benefit American workers, consumers, and employers as well as uphold the nation’s commitment to immigration.

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UNDEREXPOSED CHILD SEX TOURISM INDUSTRY IN GUATEMALA

GLENDAL. GIRON

Abstract

With the international spotlight pointed on the child sex tourism trade in Southeast Asia, Central American countries such as Guatemala have become the new haven for child sex tourists. This morally complex human rights dilemma stems from socioeconomic disparities, cultural perceptions, governance issues, and globalization. Yet the simple moral indignation at the exploitation of children is not the best guide to effective public policy. This paper offers a series of practical short- and long-term recommendations focused on legalized child labor, a nationwide human rights educational curriculum, the increase of the compulsory education, legislative reform, and nationwide awareness campaigns.

Introduction

One Internet site quotes a sex tourist, "When it comes to sex, it is not far from the truth to describe Guatemala as the Thailand of Central America. You only have to look in the newspapers, under the headings of 'massages' to find what you want. If you are charged more than US\$50, you are being robbed."¹

The increased level of international awareness about the prevalence of child sex tourism in Southeast Asia has forced the illicit industry to relocate to Central American countries. According to estimates provided by National Plan of Action against Sexual Exploitation of Children in Guatemala, at least fifteen thousand children suffered sexual exploitation in Guatemala in 2001.² Indeed, the 2002 report by the United Nations special rapporteur on the sale of children, child prostitution, and child pornography estimated two thousand minors in prostitution in Guatemala City alone.³ Despite international public opposition to sexual exploitation of children—and legal prohibitions articulated in the United Nations Convention on the Rights of the Child⁴—the underexposed child sex tourism industry in Guatemala poses a morally complex human rights dilemma. Children are forced into the sex tourism industry to provide for their poverty-stricken families.

To understand the factors that make the child sex industry in Guatemala a complex policy dilemma, we need to identify its key players and take into account previous attempts made by the international community in countries such as Thailand and Bangladesh. Subsequently, we can formulate a multilateral, comprehensive plan composed of short- and long-term recommendations that incorporates sociocultural, legislative, and economic reforms.

Key Players in the Child Sex Industry

In order to understand the magnitude of the problem and its human rights implications, one

In an increasingly globalized world, the problem of the child sex industry has become too large and too close to home to ignore. This article provides fresh analysis of the industry by shifting our attention to the problem in Guatemala. Author Glenda L. Giron rolls up her sleeves to tackle the tough questions: what works and what doesn't in dealing with this growing human rights crisis?

—Ben Kidder, editor

must set clear parameters to describe who is considered a child victim and who are the abusers, the duty holders, and the key NGOs involved in this predicament.

The Children

There are conflicting views about who should be considered a child and whether we should differentiate between children and adolescents. Article I of the 1989 *Convention on the Rights of the Child* establishes that a child is “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”⁵ It is important to note that under Guatemalan law, majority is also reached at age eighteen. The victims tend to be children between the ages of eight and sixteen who have been sold by their parents to traffickers or pimps. Other children, who come from the countryside, are being lured in with promises of jobs as housekeepers but are instead sent to brothels in inner cities. While most of the victims are local children, there seems to be an increasing proportion of children trafficked from other neighboring countries such as El Salvador and Honduras.

The Abusers: Customers and Suppliers

Different actors take part in the underworld industry of child sex tourism in Guatemala. The supply network is made up of not only traffickers and pimps, but also taxi drivers, managers, owners of hotels and bars, and even lawyers who falsify documents.⁶ When it comes to the actual child sex tourists, there is a common misconception that the abusers are exclusively foreigners. According to a report by ECPAT International, most international child sex tourists in Guatemala are Europeans, Americans, Canadians, Japanese, and South Americans. However, internationals are not the only sex tourists in Guatemala; many are domestic.⁷ In the same way, there is a tendency to believe that pedophiles are the only customers of the child sex tourism industry. Although pedophiles clearly fit the criteria of child abusers, typical male tourists represent a large portion of the population of child abusers. As long as the sex partner meets the desirable physical requirements of the sex tourists, legal age of consent is not a concern. In her testimony before the Senate Foreign Relations Committee on 7 March 2002, ECPAT-USA’s coordinator, Carol Smolenski, declared:

There are other sex tourists who are not pedophiles . . . These are men who wish to experiment by having children as sexual partners when they are in a situation where they believe this is acceptable behavior, for example in a foreign country, with a racial group different from their own. Or they have sex with children because they simply do not care whether their sex partner is twelve, eighteen, or twenty-five as long as that partner meets certain physical requirements that the men consider attractive.⁸

As in any other human rights issue, if there are “right bearers” (in this case, the children) there must be “duty holders.” Through the Secretariat of Social Welfare, the Guatemalan government is responsible for the wellbeing and safety of Guatemalan children. Therefore the government of Guatemala has the obligation to implement adequate measures to combat the child sex tourism industry within its jurisdiction. If we subscribe to the idea that countries have the duty to “do no harm,” we must include “sending states” (countries from which the customers hail) such as the United States, Canada, and European countries as bearers of partial responsibility.

Factors Contributing to the Child Sex Tourism Dilemma

Simply cracking down on the industry while failing to analyze the reasons that force minors

into prostitution is a futile endeavor. In the case of Guatemala, these reasons include socioeconomic disparities, cultural perceptions, governance issues, and globalization.

Socioeconomic Disparities

As developing countries struggle to increase prosperity, the child sex tourism industry has emerged as a *de facto* tool to combat extreme poverty. Like Thailand in the early 1970s where large gaps in wealth between urban and rural communities evolved, Guatemala's current economic situation is defined by high levels of poverty, and the pressure to increase revenues from services rather than agricultural production has the potential to produce the next haven for the child sex tourism industry. According to a recent country report by the U.K. Foreign and Commonwealth Office, Guatemala has the world's third most unequal wealth distribution, as measured by its Gini coefficient.⁹ Although no child should be forced, directly or indirectly, to enter the vicious cycle of sexual exploitation for commercial means, the reality of this dilemma is embedded in an economic framework of high demand for child sex tourism and the readily accessible supply of economically marginalized Guatemalan children.

Ironically, there are cases in which the abusers are seen as saviors of impoverished communities. This was the case of Thomas Frank, an American man accused of sexually abusing up to seventy-nine Mexican boys.¹⁰ Yet after having financed the installation of potable water in the community, he was seen as the rescuer of the disadvantaged town. Even after the abuse cases were disclosed, many residents believed that he had done more good than harm to their community.

Cultural Perceptions

In all economic, social and political levels of the Guatemalan society, gender perceptions are entrenched in the ideology of machismo, which views females as sexual objects and has contributed to the societal tolerance to exploitation of vulnerable minors, especially girls. Men are encouraged to have sex before marriage while women are encouraged to remain virgins until marriage, creating the demand for prostitution. Another factor is the misleading perception that masculinity is measured by the numbers of virgins with whom men have sex.

Machismo and other cultural beliefs deeply rooted in the idea that men are superior to women negatively affect the self-esteem of young girls. Even more alarming are the findings of a study conducted by Casa Alianza activists who infiltrated the dangerous child prostitution network in Central America. They found that many of the female minors spoke of their exploiters in positive terms.¹¹ Moreover, Guatemalan families make daughters take significant responsibility for their economic wellbeing. Based on these cultural practices that perpetuate gender discrimination and inequality, sex tourists often believe that it is culturally acceptable to have sex with minors in developing countries such as Guatemala. They even justify their actions by arguing that they are helping these deeply impoverished children by giving them money.¹²

Governance Issues

The Guatemalan government's failure to truly recognize that the problem exists is characterized by the lack of adequate legislation to protect child exploitation, and persistent corruption among law enforcement officers is a key factor contributing to the present situation. Due to the illegal nature of this industry, estimates of the total number of victims are very difficult to establish. I argue that by using this limitation as a pretext, the Guatemalan government fails to acknowledge that the child sex exploitation industry constitutes an alarming problem. The current policies dealing with children's issues are inadequate, outdated, and paternalistic. For

instance, the 1969 *Children's Code* in Guatemala allows judges to incarcerate children for their own protection.¹³ There is no surprise that most victims choose not to report abusers since they are afraid of the police.

A central problem stems from the government's inability to stop corruption among law enforcement. It is common for sex tourists to pay police officers a *mordida* (bribe), a small amount of money that allows them to go home with no criminal record. Corruption also affects other branches of the government that are needed to protect children from child exploitation. In 2001, the Discipline Unit of the Guatemalan Supreme Court investigated 503 cases of wrongdoing, which resulted in fourteen judges being sanctioned, thirty-two being suspended, and four being sanctioned with the recommendation to be removed.¹⁴ The persistent problem of corruption in the judicial system results in ineffective prosecution of child exploiters, especially child traffickers.

Even honest law enforcement officials are part of the problem. They fail to be effective due to lack of proper training and adequate knowledge of the legislation on how to deal not only with child sex tourists, pimps, and traffickers, but also the victims.

Globalization

Globalization has brought unprecedented levels of mobility, but also convergence in law. More countries are signing international treaties that deal with the protection of universal human rights, such as the 1989 *Convention on the Rights of the Child* that Guatemala has also signed and states in Article XIX:

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.¹⁵

Unfortunately, globalization has also produced greater economic disparity and has opened the doors to unlawful markets such as the sex child tourism industry, especially in poor, developing countries that suffer from corruption, lax enforcement of laws, and socioeconomic inequality. The Casa Alianza study collected a list of 173 direct or indirect links to Web sites on the Internet promoting child sex tourism in Central America. As Ron O'Grady puts it:

Two of the key contributors to globalization—tourism and the Internet—have provided an unexpected bonus to child abusers, making the opportunity for child abuse more accessible. One could draw a causal relationship between the rapid expansion of globalization and the growth of child sex trade.¹⁶

Current Efforts by the International Community

Recently many prosperous Western countries have accepted responsibility for the acts of sexual exploitation of children committed by their citizens abroad, and they are passing laws to prosecute child sex tourists. The United States has put into effect the most stringent law of any "sending state," the 2003 *Protect Act*, which makes it a crime for a U.S. citizen to travel abroad for the purpose of having sex with children, punishable with fifteen to thirty years in jail.¹⁷

Most NGOs have taken the role of investigators, whistle-blowers, and defenders of the victims. The major NGOs in the region are Casa Alianza, the Latin American branch of the New York-based child advocacy organization Covenant House, and ECPAT International, an organ-

ization founded by the UNICEF when the child sex industry was first exposed in Southeast Asia. With the help of the international media, they have been successful in exposing abuses and helping global organizations pass international laws such as the International Labor Organization's *Convention on the Worst Forms of Child Labor* and the UN *Convention of the Rights of the Child*. The latter has revolutionized the way we used to view children as property of their parents. Now, children are endowed with inalienable rights and have the same rights as other disenfranchised minorities.¹⁸

Lessons from Thailand and Bangladesh

One of the turning points in the fights against the child sex tourism industry in Thailand was a 1993 *Time Magazine* issue. Since then, Thailand has passed laws against customers buying sex from children under fifteen. This year the United States has helped fund airport billboards warning child sex tourists of the penalties. Moreover, Thailand has received financial support for awareness campaigns, training of law enforcement bodies, and full participation of international organizations to ensure transparency and efficiency.

However, not all interventions yield positive results. With all good intentions, the United States passed the *Child Deterrence Act* in order to ban imports of goods made by children younger than fifteen.¹⁹ In response to this short-sighted policy, Bangladesh dismissed thousands of child workers from their jobs, who immediately ended up in the streets, mainly working as child prostitutes. Although UNICEF eventually realized the problem and intervened, children had already been traumatized by the experience.

Words of Caution: The Larger Threat of HIV/AIDS

For policy changes to be effective, we need to ensure accountability through constant assessment of progress. On the final question of why the Guatemalan government and the international community should take all the steps necessary to fight child sex tourism, global health issues are too dangerous to be ignored. Children have a greater risk of contracting AIDS. According to a 2002 report of the Special Rapporteur on the sale of children, child prostitution, and child pornography,

The forced penetration of a child by a larger individual is more likely to cause injuries and bleeding by which HIV is transmitted. Children are physically weaker, less experienced and therefore less empowered to negotiate the terms of the abuse, such as an insistence on the use of a condom or refusal to be subjected to particularly violent and physically damaging sexual activity . . . This is particularly the case in the countries of Africa, Asia, and South and Central America.²⁰

Practical Short- and Long-Term Recommendations

There is no single, instant, straightforward solution to this dilemma. As such, I propose a comprehensive plan focused on economic, sociocultural, and legislative reforms and local, regional, and international participation.

Legalized Child Labor and Increased Compulsory Education

Because the severe economic desperation cannot be ignored, I propose legalized, regulated, and safe child labor as an alternative. If the main reason why Guatemalan children are facing commercial sexual exploitation is to earn money for their survival, those above the age of

twelve should be allowed to work in strictly non-dangerous jobs and with full legal worker protection and benefits. To avoid labor exploitation, international organizations must oversee the program and provide reports to UNICEF.

The government must ensure that children under fifteen attend school and be allowed to work only on a part-time basis. To do this, the compulsory school level needs be raised from sixth grade to at least the ninth grade. We cannot expect children to be successful in the job market if they only complete elementary school. Possible financial sources are UNICEF, national taxes, and USAID.

Additionally, we must have a microeconomic plan in which poor families can take out small loans in order to become entrepreneurs. The World Bank must add stipulations about child sex exploitation and should give additional consideration to those countries that are willing to combat the child sex tourism industry, but have no financial means to do so.

National Awareness Campaign and Human Rights Curriculum

In order to deal with the local demand for young girls in Guatemala, high media exposure of the horrible reality of child sex exploitation should be initiated. As in the case of Thailand, a national media campaign would educate the general public about the detrimental effects of gender discrimination and machismo. This awareness campaign could be financed with the help of the private sector in Guatemala, as well as the sending countries. To avoid misappropriation of funds, the United Nations should assign and fund ECPAT International or another appropriate international organization to oversee the program.

As a long-term approach, a human rights education curriculum should be incorporated into the Guatemalan educational system. The curriculum for both primary and secondary education should include core ideas from the UN *Convention on the Rights of the Child*; however, gender discrimination should be a priority at the secondary level. This subject should be explicitly taught as a single subject for at least seventy-five minutes per week. The educational campaign can be financed by national tax revenues and the national lottery as well as UNESCO.

Finally, more female participation in the political system must be encouraged, not only to address problems of discrimination and abuse previously described, but to provide positive role models for young girls.

Legislative Reform and Governmental Transparency

Current policies and laws need to be reformed in a way that protects victims and punish the abusers. The penalties for all who participate in the sexual exploitation of children should be increased, targeting first the brothel owners and child traffickers. At the same time, the practice of incarcerating rescued children must be changed. Guatemala's Secretariat of Social Welfare should be responsible for the creation and maintenance of shelters that provide psychological and educational services in key regions of Guatemala. The shelters should also provide job training, so rescued children can learn a trade and begin to earn an income.

However, simply reforming or passing laws is futile unless law enforcement officials become part of the solution. The penalties for law enforcement agents who accept bribes should be higher, while a new rewards system could acknowledge officers who demonstrate high levels of dedication and honesty. As part of the rewards system, recipients would be featured in the campaign ads against sexual exploitation of children.

As a long-term goal, the Guatemalan government needs to ensure the protection of local and foreign journalists and human rights advocates in order to guarantee freedom of expression and the collaboration between local and foreign investigative entities. The Guatemalan Ministry of Foreign Affairs must support the foreign experts and scholars who are interested in conducting research and gathering more reliable data.

Since the Guatemalan government still faces low levels of public approval regarding transparency issues, an independent judiciary body should be created in collaboration with international human rights organizations.

Globalization Can Be Part of the Solution

In an attempt to greatly diminish the foreign demand for child sex tourism, the level of international attention should be raised through an international awareness campaign focused on the travel industry to warn tourists of the penalties. As part of this campaign, brochures should be given to tourists at main ports of entry, and billboards should strategically be placed in tourist locations. Also, the creation of a hotline where the general public anonymously can report suspected cases of child sex exploitation should be a priority. Like in the case of Thailand, wealthy sending states should be responsible for paying for the campaign since it is targeted to child sex tourists from their countries.

Another long-term strategy should be international cooperation in the development of universal standards for the collection of evidence in cases of child sex exploitation in order to guarantee efficiency and accuracy. We should take advantage of the opportunity provided by globalization to create common, more effective parameters.

I concur with the vision of the World Congress against Sexual Exploitation of Children in which it was declared that child prostitution “constitutes a form of coercion and violence against children.”²¹ I believe that the way we treat the most vulnerable members of our society reflects who we are, and the development and wellbeing of children should be a primary concern to all nations. Nevertheless, policy makers must understand that when faced with this complex human rights issue, simple moral indignation is not the best guide to effective public policy. The Guatemalan government must take a realistic approach to combat the child sex tourism industry. Most child rights advocates may oppose child labor; however, when faced with a strong demand for child sex tourism and a supply of impoverished Guatemalan children, responsible societies must choose the lesser of two evils.

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MYTH AND REALITY: IS THE LATINO VOTE UP FOR GRABS?

RAFAEL LÓPEZ, LIZ MONTOYA, AND MIGUEL SANTANA

Abstract

This paper challenges the Democratic Party's commonly held belief that Latinos are part of its base. Rather, Latinos are increasingly demonstrating the political leanings of "Purple America"—the growing ranks of swing voters whose complex political views do not fit neatly into the "blue state/red state" dichotomy. Without a dramatic change in how the Latino vote is approached, a plurality of Latinos is likely to vote for a Republican candidate in the 2008 presidential election and beyond. The paper focuses on eight specific myths that have blinded the Democratic Party to the current political realities of Latino voters and offers a counterpoint to redirect its behavior and attitude toward this emerging electorate. In fact, a strategy that effectively incorporates the values and ideals of most Latinos offers the added benefit of helping the party connect with "Purple America" at large.

Introduction

The Democratic Party is in trouble and in need of a new approach to understanding the role of Latinos in American politics.¹ We challenge the commonly held belief by party insiders that Latinos are part of the Democratic Party base and that the best way of solidifying their support is through traditional campaigning and outreach. Rather, Latinos are increasingly demonstrating political leanings more characteristic of swing voters. We caution the party that without a dramatic change in how the Latino vote is approached, under the right circumstances, a plurality of Latinos is likely to vote for a Republican candidate in the 2008 presidential election and beyond.²

We also argue that by better understanding the complexity of Latino voters, the party will gain insight into "Purple America." The color purple symbolizes the increasingly complex American voter who does not fit neatly into the "blue state/red state" dichotomy; a voter whose values and life experiences capture elements of both traditional Republican and Democratic dogma. Hispanics represent this growing political ideology in American politics. The party that best articulates itself to their "purple" leanings will, in the end, earn their support.

Fighting Myths

The Democratic Party is consumed by myths rather than the political reality of Latino voters. This paper addresses these myths and offers a counterpoint to redirect the Democratic Party's behavior and attitude toward this emerging electorate.

Failing to understand the changing political landscape within the Latino community contributed to the Democratic Party's losses in 2000 and 2004. The following article is a must read for political insiders and students of politics who want to better understand the emerging Latino community and electorate in America.

—Robin Engel, editor

Myth #1: Latinos are loyal to the Democratic Party and its leaders.

Reality: The Latino vote is increasingly up for grabs.

There has been significant debate about the role of Latinos in the 2004 presidential election. Is the Latino vote up for grabs? Or is the Latino vote a solid part of the Democratic base? A recent study by the Pew Hispanic Center found that while most registered Latinos may identify themselves as Democrats, there is more diversity of party registration than critics expect. "Nearly half (45 percent) of registered Latinos consider themselves Democrats. Two in ten (20 percent) say that they are Republicans. Another two in ten (21 percent) say they are Independents, 8 percent say they are 'something else,' and 5 percent say that they do not know their party affiliation."³

More importantly, just take a look at the vote breakdowns for the last three presidential elections, and you will see the trend: the Latino vote is turning Republican. Table 1 illustrates the percentage of the Latino vote for Democratic and Republican presidential candidates between 1996 and 2004.

There is much debate within the party and the Latino community over the accuracy of these numbers. The various exit pollsters who tracked the 2004 presidential vote came up with different numbers. Some argue that Bush won as much as 44 percent of the Latino vote nationally. Others say he only captured 31.4 percent.⁴ Perhaps former Clinton administration secretary of housing and urban development Henry Cisneros said it best: "Yes, it is important to get the final numbers, but there is truth to the perception. The Republicans won this battle with Latinos. The reality is that the Democrats are now playing catch-up."⁵ Former Clinton secretary of transportation Federico Peña added, "Democrats may have a head start, but Latinos are definitely swing voters."⁶

Myth #2: A strong get out the vote (GOTV) campaign is all we need to get Latino voters.

Reality: Latinos must be courted like all other swing voters.

The 2004 presidential election was an important turning point in American political life given that, according to the *Washington Post*, no such election has garnered such turnout—60.7 percent—since the 1968 election between Republican Richard Nixon and Democrat Hubert Humphrey, in which 61.9 percent of those eligible cast ballots. Most important for this analysis is that minority communities—Blacks, Hispanics, and others—also turned out in record numbers. However, the Democratic Party's traditional assumption that an increased voter turn-out among Latinos would translate into a large net increase in Democratic votes did not hold true. As noted above, Republicans garnered a significantly larger percentage of the vote.

The Democratic Party assumed that historic Latino support in national, state, and local elections equaled a steadfast loyalty to the party and its leaders.⁷ The Democrats' Latino strategy was, therefore, to galvanize voters through GOTV campaigns and targeted advertising through Democratic partners such as labor unions, state parties, the New Democratic Network (NDN), political action committees, and voter mobilization organizations.⁸ Through this strategy, the goal is to register as many voters as possible, keep them engaged during the election, and attempt to coordinate ground operations to ensure that voters participate on election day.

However, in contrast to this traditional GOTV approach used in most parts of the country, the NDN broke ranks and spent a significant amount of money months before the election on a message-driven campaign for Latino voters in Florida and other swing states. Overall, the NDN spent over \$6 million to court Latino voters with advertising on Spanish language television.⁹

To some degree, this approach worked. Democratic gains made with Latino voters in states

like Florida compared to 2000 resulted from the Hispanic Project ads run by the New Democratic Network on Spanish language television.¹⁰ Gil Meneses, vice president of communications for the NDN and director of the Hispanic Project, said, "Our ads were so successful that towards the end of the Kerry campaign, Senate candidate Mel Martínez [R-Florida] was running ads in Spanish urging Latinos to split their vote: 'You can vote for Kerry and for Mel Martínez.'" ¹¹

Unfortunately, the groundwork laid out by the NDN was never effectively utilized. According to Sergio Bendixon, pollster and senior advisor to the NDN Hispanic Project Campaign, "We paved the way for them, but they just didn't get it. We could not, by law, urge voters to support Kerry. We could only give a positive Democratic message."¹² Instead, the Democratic Party continued to focus only on voter turnout and did not attempt to follow up on the NDN efforts and convince Latinos why they should vote for Democrats. It is the belief of many leaders within the Latino community that this approach of minimal outreach and GOTV kept Kerry from winning Florida.

Several other Latino leaders cited mistakes made in other parts of the country, such as running ads on Spanish television in Arizona and New Mexico that were simply translations of English language ads run in Ohio—rather than ads specifically created for Latinos in the Southwest.¹³ Others cited concern that the party removed itself from any responsibility for courting Latinos by placing that work solely on community leaders—rather than as part of the nationwide strategy. To this end, chair of the Los Angeles County Board of Supervisors, Gloria Molina noted, "It is not good enough to simply round up all the Latino leaders and place our mugs on TV."¹⁴

Senior vice president of the AFL-CIO and Democratic National Committee vice chair Linda Chávez-Thompson agreed, "We are constantly told [by the Democratic Party], 'You can have the best Hispanic Project in the world, but you have to raise the money.'" She added, "They say, 'Our money is going after swing voters.' What they don't realize is that we are swing voters."¹⁵

Myth #3: Latinos have little impact on national elections because they are only a small percentage of the overall vote.

Reality: The Latino vote is growing.

The Latino electorate is growing, approximately six times faster than the non-Latino electorate. Contributing significantly to this growth is the young population within the Latino community.

Every year since the 2000 elections an average of 425,000 native-born Latinos has turned eighteen years old and become eligible to vote. While Latinos make up 8 percent of eligible voters, they represent 12 percent of the electorate that is between eighteen and twenty-four years old. Given their fast rate of growth, Latinos will account for 68 percent of the increase in this segment of the electorate between the 2000 and 2004 elections.

Similarly, these young voters represent the lion's share of growth in the Latino electorate. Nearly eight out of every ten (78 percent) new Latino eligible voters since the last presidential election is a native-born U.S. citizen who has become old enough to vote as opposed to an immigrant who has become a citizen through naturalization.¹⁶

Cultivating Democratic Party loyalty among these young Latino voters is critical to a long-term party strategy.

Privately, party insiders will argue the impact of the Latino vote is overrated because their representation in the overall population grossly outweighs their representation in the voting population. A large share of the Latino community is under age eighteen, and among adults they are less likely to be citizens, to register to vote, and to vote.

It is exactly this kind of misguided thinking that has limited the party from investing significantly in not only earning the Latino vote but in understanding its potential. At the national level, the number of Latino voters has been steadily increasing. "Since 1980, the number of Latinos who have turned out at the polls for presidential elections has increased on average 18 percent," wrote *Brandweek's* Becky Ebenkamp.¹⁷ According to the U.S. Hispanic Leadership Institute Research Department, an estimated 7,378,399 Latino votes were cast in the 2000 presidential election. This represents an increase of 2.4 million over the nearly 5 million Latino votes cast in 1996 presidential election. These numbers represent a 50 percent increase in the Latino vote from 1996 to 2000 compared to a 10 percent increase for the general population.

The Latino share of the total vote cast went from 5 percent in 1996, to 7 percent in 2000, to over 8 percent in 2004. This increase in the impact of the Latino vote to the national election occurred even though the overall turnout was higher than previous elections.¹⁸ Latinos accounted for 25.6 percent of the growth among all voters from 1996 to 2000.

Myth #4: Latinos are concentrated in blue states, so their impact in national elections is limited.

Reality: The Latino population is growing fastest in red states.

An analysis of the U.S. Hispanic population across the one hundred largest metropolitan areas found unique patterns of growth among the Latino population. "Established Latino metros such as New York, Los Angeles, Miami, and Chicago posted the largest absolute increases in Latinos between 1980 and 2000."¹⁹ However, the fastest growth rates occurred almost exclusively in red states. More specifically, as Tables 2 and 3 highlight, five of the ten major areas with the largest Latino populations are also located in red states. Moreover, fifteen of the eighteen most rapidly growing Latino populations are in cities located in red states.

The growth of Latino communities is not only in large and small metro areas across the country. In fact, Latinos are headed to the suburbs, like their White counterparts, in record numbers. Latinos, concerned with the very same issues of education, crime, raising families, etc., are becoming suburbanites at a rate that far outpaces many other ethnic communities. Suro and Singer noted from a Brookings Institute Survey, "In 1990 the Latino population was almost evenly split between suburbs (8.7 million) and central cities (8.6 million) in the top one hundred metropolitan areas. However, Hispanics flocked to the suburbs during the 1990s. During the decade their numbers increased by 6.2 million to nearly 15 million as compared with a four million increase to 12.6 million in the central cities. These changes implied a 7 percent increase in the number of Latinos living in the suburbs . . . By 2000, 54 percent of all Latinos resided in the suburbs."²⁰

Myth #5: Latinos are overwhelmingly immigrants who don't want to become citizens.**Reality: The majority of Latinos are native-born.**

Nationally, 56 percent of all Latinos are native-born. Table 4 uses Census 2000 data to juxtapose the two types of populations in five states where large numbers of Latinos have traditionally resided.

In addition, many critics skeptical of Latinos' willingness to participate in the American political process cite statistics on the foreign-born vs. native population and simply end their debate there. Such an analysis is far too simple and fails to look at the complexity and bureaucratic nature of the petition for naturalization process. On one hand, greater political potential may very well come about when those Latino immigrants become citizens. On the other hand, there is potential for political inclusion in multiple ways by Latino non-citizens.

More explicitly, speaking to immigrant voters can build long-term party loyalty. The Democratic Party should reach out to future-citizen Latinos to build allegiance and party loyalty given the high percentage of American-born children to immigrants. Active engagement and inclusion of the adult non-citizen population does have implications on the civic life of communities that serve as new gateways for immigrants. In one of only a few research studies ever conducted on political participation by non-citizen Latinos, it was concluded that "participation is not random but boosted when the non-citizen is more informed about politics, perceives differences between the two major parties, is interested in politics, has a strong ethnic identity, is younger and plans to naturalize."²¹

Myth #6: Latino voters are all the same.**Reality: Latinos are diverse and complex.**

A closer look at the diversity of Latinos living in the United States provides us with a greater understanding of the changing demographics of Latino communities. Table 5 illustrates the Hispanic population by origin and as a percentage of the U.S. population.

Roberto R. Ramírez noted in a Census report, "Among Hispanic or Latino groups, Mexicans were the largest with 20.9 million, while other Hispanics (5.5 million) and Puerto Ricans (3.4 million) were second and third respectively."²² To say that the 35.2 million Latinos think and vote alike is to fall victim to the same dubious default setting that has cost the Democratic Party much-needed votes. For example, major political differences exist among newly arrived immigrants from Central and South America as compared to second- or third-generation Mexicans, Cubans, and Puerto Ricans.

Myth #7: Latinos only care about "Latino issues."**Reality: Latinos care about American issues.**

Many Latino leaders have cautioned the party that they could see a growing disconnect between the Latino electorate and the Democratic Party in relation to the issues about which most Latino voters care. This gap is hard to see given that the overwhelming majority of Latino elected officials in this country are Democrats.²³ But as one prominent Latina elected official indicated, Democrats have gotten a "free ride" in that the Democratic position, in the past, has generally been aligned with most Latinos on issues traditionally important to the Latino community.²⁴

However, this is changing as the community becomes increasingly upwardly mobile; concerns about maintaining programs for the poor have been replaced with concerns about oppor-

tunities for small businesses, educational choice through vouchers, fiscal responsibility, lower taxes, and patriotism. Moreover, the party's stand on "moral" issues such as gay marriage and abortion also run contrary to more traditional values in many Latino households. Recently elected Senator Ken Salazar (D-Colo.) argued, "Hispanics are more conservative than Democrats as a whole when it comes to abortion and gay rights issues."²⁵

What the party has not recognized is that Latinos vote on issues. According to Supervisor Gloria Molina, "Our party and our candidates must speak to our issues, and our issues are basic: opportunity, education, safe streets, and a better future for our children."²⁶

Within the Latino community, the segments most vulnerable to seduction by the Republican message are those sectors who most subscribe to more traditional values of opportunity and those with no history of loyalty towards the Democratic Party. "The party will always get 50 percent plus one of Latino voters, but the remainder is up for grabs, particularly new immigrants and second- and third-generation upwardly mobile Latinos who move to the suburbs," according to Harry Pachón of the Tomás Rivera Policy Institute.²⁷

The profile of the Latino voter is also increasingly independent. Of those Latinos registered to vote, 31 percent identify themselves as independent or "other," compared to only 23 percent of registered non-Latinos. While Latinos are more likely to be registered as Democrats (49 percent vs. 20 percent who report that they are Republicans), this doesn't necessarily mean they vote along party lines. For example, in the 1998 gubernatorial and senatorial races in Florida, Latinos voted overwhelmingly for both Republican Jeb Bush (giving him 60 percent of the Latino vote) and Democrat Bob Graham (giving him 65 percent of the Latino vote). Also, in California's last gubernatorial race, Latinos favored Arnold Schwarzenegger over Lieutenant Governor Cruz Bustamante, the Democratic candidate.²⁸

Moreover, a more in-depth look at the issues that most shaped Latinos' vote is illuminated in the findings by the Pew Hispanic Center's pre-election report.²⁹ Issues extremely important to Latino voters included:

Education	54 percent
Economy and jobs	51 percent
Health care and medicare	51 percent
U.S. campaign against terrorism	45 percent
War in Iraq	40 percent
Crime	40 percent
Social Security	39 percent
Moral values	36 percent
Taxes	33 percent
Federal budget deficit	30 percent
Immigration	27 percent

Latinos fundamentally believe, as have Americans for centuries, in a country that provides them with opportunity. Education, the highest-ranking issue for most Latinos, is a window into this framework. Latinos want for their families the opportunity to receive a high-quality education and a respectable means by which to support their families and way of life.

Myth #8: Republicans only want a small percentage of the Latino vote.

Reality: Republicans are actively targeting Latinos as a long-term political base.

Conservative political insiders have seized upon the conservative leanings of the Latino voters by targeting “family values” messages to them. Indeed, *Brandweek* reported that “80 percent of Latinos consider religion important compared with 46 percent of the general population.”³⁰

According to Richard Nadler, an adviser to the Republican Leadership Coalition, “among Hispanics, 36 percent are self-described conservatives, 61 percent were in favor of the Bush tax plan of 2001, 65 percent are pro-life and 83 percent support school vouchers. Yet fewer than one Latino in three votes Republican.”³¹ For conservatives like Nadler the challenge is that “Republican policies are popular among minorities, but Republicans are not. In other words, minority affinity for key Republican platform issues exceeds minority affinity for the party that champions them by factors of two, three, five, and even more.” Nadler argues that the Republican Party must “break the monopoly! Re-establish the GOP brand. Reattach the Republican Party label to its signature issues, and attack the Democratic Party on theirs. And do so in the same venues, with the same frequency and the same passion that Democrats use.”³²

Republican Messages Resonate with Latinos

Indeed, the Republican message was centered on traditional conservative messages that resonated with Latinos. Of thirty-two Republican messages presented to Latino audiences in 2004, only two defended the president and his policies. “But the overwhelming preponderance of the spots dealt with traditional conservative issues. Scripts advocated traditional marriage, tax breaks for families and small business, school choice, military preparedness, the right to life, personal savings accounts, and faith-based social-service delivery. Given the steeply rising percentage of Hispanics who supported George Bush in the ‘527 program’ states, one may conclude that conservative issues gained considerable traction among them.”³³

The Kerry campaign encountered the Republican Latino strategy well into its development, but it was too late. “Unlike the Democrats, who go into a state three or four months before the election and expect all the Democrats to fall in line, the Republican plan to woo Latinos took years of work and investment,” stated the director of Hispanic outreach for the Kerry campaign.³⁴

Conclusion

As Latinos become a more integral part of the larger American political culture, their values and attitudes also begin to look more like the rest of nation. Candidates who ran on moderate issues but with sensitivity to the Latino community garnered the Latino vote. “I attribute the support I earned from Coloradoans, particularly Latinos,” said Senator Salazar, “not because of my Hispanic background, but because I reflect the moderate positions on the issues most important to a majority of the residents of my state.”³⁵

As the party engages in this period of soul searching, it can learn a great deal about “middle American values” by evaluating and more closely understanding the Latino community. Many leaders are concerned that following their 1992 and 1996 Republican losses of the presidency, the Republican Party has reemerged as the party of opportunity and the American dream, while maintaining a commitment to its core conservative constituencies.

The Democratic Party must do more than re-evaluate its technical approach towards Latino voters. The antiquated approach must be discarded altogether. Its new approach should be one

that actively includes Latinos as a major force in the party's overall game plan and message. Moreover, we argue that values and political tendencies at the core of most Latino voters are in fact not unique to them. When studied closer, they reflect the values and political tendencies of "Purple America."³⁶ A Democratic strategy that effectively incorporates the values and ideals of most Latino voters will help the party speak more effectively and reach more American voters.

At this point, many Latino leaders are evaluating their options and are ready to give up on the Democratic Party as an authentic vehicle for securing the Latino vote. Further division in our party is not what we need at this critical time. A December 2004 letter from the Congressional Hispanic Caucus illustrated the mounting frustration over the party and its presidential nominee's failure to continually "get it." Those willing to engage in a Latino strategy must be aware of the existing frustration and work on restoring the Democratic National Committee's credibility on this issue.

This piece began with the argument that the Democratic Party is in trouble. Indeed, it is. But it is far too easy to argue that change is impossible. Fundamental party reconstruction is critical if Latinos are to reenergize, mobilize, and consistently produce the Democratic vote. We must enlighten the Democratic Party leadership about the diversity of the Latino community and work to develop a comprehensive and targeted strategy if we are to cultivate long-term party loyalty among Latinos. There is too much at stake to concede the emerging Latino vote to the Republican Party. In the end, it is time to get to work.

Endnotes

1. Latino and Hispanic will be used interchangeably. The United States Census coined the term Hispanic in 1970. The federal government defines Hispanic or Latino as a person of Mexican, Cuban, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.
2. We argue that the "right circumstances" includes a Republican candidate who is perceived as sensitive or familiar with Latinos and their values such as Florida governor Jeb Bush and a Democratic candidate from a state with a small percentage of Latino residents.
3. Pew Hispanic Center and Henry J. Kaiser Family Foundation, "The 2004 National Survey of Latinos: Politics and Civic Participation," Publication No. 7129 (2004), <http://pewhispanic.org/files/reports/33.pdf>, 2.
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5. Henry Cisneros, telephone interview with co-author Liz Montoya, 18 January 2005.
6. Federico Peña, telephone interview with co-author Liz Montoya, 12 January 2005.
7. Harry Pachón (director of the Tomás Rivera Policy Institute at the University of Southern California), telephone interview with co-author Miguel Santana, 18 January 2005.
8. Gil Meneses (vice president of communications for the New Democratic Network and director of the Hispanic Project), telephone interview with co-author Miguel Santana, 18 January 2005.
9. Sergio Bendixen (pollster and a senior advisor to the New Democratic Network Hispanic Project), telephone interview with co-author Miguel Santana, 18 January 2005.
10. Luis Elizondo-Thompson (director of Hispanic Outreach for the Kerry for President Campaign), telephone interview with co-author Liz Montoya, 12 January 2005.
11. Gil Meneses.
12. Sergio Bendixen.

13. Elizondo-Thompson.
14. Gloria Molina (chair of the Los Angeles County Board of Supervisors and Democratic National Committee vice chair), telephone interview with co-authors Rafael López and Miguel Santana, 11 January 2005.
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20. *Ibid.*
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22. Roberto R. Ramírez, "We the People: Hispanics in the United States," Census Bureau, CENSR-18 (2004), <http://www.census.gov/prod/2004pubs/censr-18.pdf>.
23. Arturo Vargas (president of the National Association of Appointed and Elected Officials), telephone interview with co-author Miguel Santana, 19 January 2005.
24. Gloria Molina.
25. Senator Ken Salazar (D-Colo.), telephone interview with co-author Liz Montoya, 18 January 2005.
26. Molina.
27. Pachón, interview.
28. Ebenkamp.
29. Pew Hispanic Center and Henry J. Kaiser Family Foundation, "The 2004 National Survey," 4.
30. Ebenkamp.
31. Richard Nadler, "Should the GOP Undertake More Outreach to Minorities during Campaign 2004?" *Insight on the News*, 1 April 2004, <http://www.insightmag.com/media/paper441/news/2004/04/13/Symposium/Symposiumq.Should.The.Gop.Undertake.More.Outreach.To.Minorities.During.Campaign-645525.shtml>.
32. *Ibid.*
33. Richard Nadler, "Bush's 'Real' Hispanic Numbers," *National Review*, 8 December 2004. <http://www.nationalreview.com/comment/nadler200412080811.asp>.
34. Elizondo-Thompson.
35. Salazar.
36. Jonathan Alter, "Seeing Purple: Barack Obama, A Rising Star Who Wants to Get Beyond Blue vs. Red," *Newsweek*, 3 January 2005.

TABLE 1. PERCENTAGE OF LATINO VOTE FOR DEMOCRATIC AND REPUBLICAN PRESIDENTIAL CANDIDATES, 1996–2004

YEAR	DEMOCRATIC CANDIDATE		REPUBLICAN CANDIDATE	
1996	72%	Clinton	21%	Dole
2000	62%	Gore	35%	Bush
2004	53%	Kerry	44%	Bush

Source: David Leal, Matt A. Barretto, Jongho Lee, and Rodolfo O. de la Garza, "The Latino Vote in the 2004 Election," *P.S.: Political Science & Politics* 28 (January 2005): 41–49; Ricardo Alonso-Zaldivar, "Election 2004: Bush Snags Much More of the Latino Vote, Exit Polls Show," *Los Angeles Times*, 4 November 2004, sec. A, p. 30.

TABLE 2. TEN METRO AREAS WITH THE LARGEST LATINO POPULATIONS, 2001

RED OR BLUE STATE	CITY	NUMBER OF LATINOS	PERCENT OF TOTAL POPULATION	LATINO GROWTH, 1980–2000
Blue	Los Angeles, Calif.	4,242,213	45%	105%
Blue	New York, N.Y.	2,339,836	25%	60%
Blue	Chicago, Ill.	1,416,584	17%	143%
Red	Miami, Fla.	1,291,737	57%	123%
Red	Houston, Tex.	1,248,586	30%	211%
Blue	Riverside-San Bernardino, Calif.	1,228,962	38%	324%
Blue	Orange County, Calif.	875,579	31%	206%
Red	Phoenix, Ariz.	817,012	25%	261%
Red	San Antonio, Tex.	816,037	51%	67%
Red	Dallas, Tex.	810,499	23%	324%

Source: Roberto Suro and Audrey Singer, "Latino Growth in Metropolitan America: Changing Patterns, New Locations," Brookings Institution Survey Series Census 2000 (July 2002), <http://www.brookings.edu/es/urban/publications/surosingerexsum.htm>, 6.

TABLE 3. "HYPER-GROWTH" NEW LATINO DESTINATIONS, 2000

RED OR BLUE STATE	CITY	NUMBER OF LATINOS	PERCENT OF TOTAL POPULATION	LATINO GROWTH, 1980-2000
Red	Raleigh, N.C.	72,580	6%	1,180%
Red	Atlanta, Ga.	268,851	7%	995%
Red	Greensboro, N.C.	62,210	5%	962%
Red	Charlotte, N.C.	77,092	5%	932%
Red	Orlando, Fla.	271,627	17%	859%
Red	Las Vegas, Nev.	322,038	21%	753%
Red	Nashville, Tenn.	40,139	3%	630%
Red	Fort Lauderdale, Fla.	271,652	17%	578%
Red	Sarasota, Fla.	38,682	7%	538%
Blue	Portland, Ore.	142,444	7%	437%
Red	Greenville, S.C.	26,167	3%	397%
Red	West Palm Beach, Fla.	140,675	12%	397%
Blue	Washington, D.C.	432,003	9%	346%
Red	Indianapolis, Ind.	42,994	3%	338%
Blue	Minneapolis-St. Paul, Minn.	99,121	3%	331%
Red	Fort Worth, Tex.	309,851	18%	328%
Red	Providence, R.I.	93,868	8%	325%
Red	Tulsa, Okla.	38,570	5%	303%

Source: Roberto Suro and Audrey Singer, "Latino Growth in Metropolitan America: Changing Patterns, New Locations." Brookings Institution Survey Series Census 2000 (July 2002).
<http://www.brookings.edu/es/urban/publications/surosingerexsum.htm>, 6.

TABLE 4. FOREIGN-BORN VS. NATIVE-BORN LATINO POPULATION BY STATE IN 2000

	TOTAL	FOREIGN-BORN		NATIVE-BORN	
		NUMBER	PERCENTAGE	NUMBER	PERCENTAGE
United States	35,300,000	15,741,000	44%	19,829,000	56%
Florida	2,682,715	1,920,066	72%	762,649	28%
Illinois	1,530,262	691,051	45%	839,211	55%
California	10,966,556	4,689,596	43%	6,276,960	57%
Texas	6,669,666	2,157,343	32%	4,512,323	68%
New Mexico	765,386	97,867	13%	667,519	87%

Source: Harry P. Pachón, "The Battle for Latino Voters," Democratic Leadership Council (2002), http://www.ndol.org/documents/Battle_for_Latino_Voters.pdf, 17.

TABLE 5. COUNTRY OF ORIGIN OF U.S. LATINO POPULATION

ORIGIN	NUMBER	PERCENTAGE OF U.S. POPULATION
Mexican	20,900,102	7.4
Puerto Rican	3,403,510	1.2
Cuban	1,249,820	0.4
Central American	1,811,676	0.6
South American	1,419,979	0.5
Dominican	799,768	0.3
Spaniard	112,999	-
Other Hispanic	5,540,627	2.0
Total	35,238,481	12.5

Source: Roberto R. Ramirez, "We the People: Hispanics in the United States,"
Census Bureau, CENSR-18 (2004).

CREATING A SUSTAINABLE DEMOCRATIC COALITION IN THE TWENTY-FIRST CENTURY: THE DEMOCRATIC PARTY'S QUEST FOR THE MISSING DOMINOES

CHIPMAN L. FLOWERS, JR.

Abstract

This paper provides an analysis of the current state of the Democratic Party and proposes recommendations to restore it to majority status by creating a sustainable Democratic coalition for the twenty-first century. The steps required can be equated to a series of dominoes needing to fall in an orchestrated manner to defeat the Republican machinery. In identifying these dominoes, this paper explores 1) the importance of regionalism in a "new democratic coalition," 2) the changing role of the Democratic National Committee and state parties in the presidential nominating process, and 3) the emerging Democratic ideas of governing in the twenty-first century. However, two critical dominoes are currently missing and must be secured in order for the party to create a sustainable coalition in the immediate future. By securing them, the party will create the foundation for election success.

Introduction

Over the past four years, Florida and Ohio have become rallying cries for a Democratic Party searching for its soul in the twenty-first century. Following the 2000 presidential election loss of former vice president Al Gore, the Democratic Party suffered another defeat by President George W. Bush in a divided electorate. The time has come to revive the Democratic Party by provoking critical thought among its leaders regarding the creation of a sustainable Democratic coalition to govern the United States in the twenty-first century. Borrowing an expression from the late Robert Kennedy, Democratic leaders must no longer look at the problems of the Democratic Party and ask why, but dream of a new Democratic Party and ask why not.

Sustainable party coalitions often follow successful presidential administrations, when the American electorate seeks to return such presidents' political parties to power for a prolonged period of time. With losses in seven out of the last ten presidential elections, the last sustainable party coalitions were accomplished following the administrations of the former U.S. presidents William McKinley and Franklin Roosevelt.

What are the necessary steps that must be taken by the Democratic Party to create a sustainable Democratic coalition? To answer this question, let us consider a political domino theory—in which the ability of the Democratic Party to create a sustainable coalition is akin to a series of dominoes. If properly aligned, they will fall in an orchestrated manner, securing Democratic electoral success for years to come. But the party's dominoes are not properly aligned now, and some of them are missing entirely, rendering the desired chain reaction unat-

Most writing about party politics starts with the daily back and forth of issues and personalities and ends with the next election campaign. In this article, Chipman L. Flowers, Jr., prods Democrats to take a longer view and proposes an approach for how the Democratic Party could build a foundation for sustained electoral success.

—Steve Altman, editor

tainable.

In this paper, I will begin by discussing the necessary steps for aligning four existing dominoes that are currently within the reach of the party. They are 1) refashioning a new Democratic coalition from the remnants of the New Deal coalition; 2) reinvigorating the role of the Democratic National Committee (DNC) in the current presidential nominating process; 3) refashioning the role of state Democratic parties in developing a sustainable Democratic coalition; and finally, 4) strengthening the Democratic Party's ideas of governing the American electorate in the twenty-first century.

However, to orchestrate a precision fall of the Republican Party's electoral strategy, the more challenging work is yet to come—that is, to identify and align two critical missing dominoes.

Let us now begin to place our existing dominoes in line . . .

The New Democratic Coalition: Domino 1

Democratic leaders continue to adopt electoral strategies based upon the geographic and demographic groups of the New Deal coalition, even though the fundamental components of the coalition have changed or shifted. The New Deal coalition was a coalition of voters encompassing seven key groups: Southern Whites, African Americans, Catholics, Jewish Americans, labor union members and their households, low-income Americans, and those individuals who regarded themselves as working class.¹ This coalition provided a successful combination of voters that resulted in a prolonged succession of five Democratic presidents beginning with the election of Franklin Roosevelt and ending with Jimmy Carter's defeat in 1980 (a span of fifty-eight years).² While the fundamental components of the New Deal coalition remain intact, evidence shows that a majority of Southern White and Catholic voters have defected to the Republican Party.³

Though the Democratic Party has been able to compensate for the loss of Catholic voters, the loss of Southern White voters has crippled it from a regional perspective. In the U.S. electoral system, a political party's ability to garner a large demographic section is given less weight than the ability to gather strength in a particular state because demographic groups may be spread across a large geographical mass. Focusing on the former results in increased numbers in the popular vote (irrelevant for U.S. presidential election purposes) while attention to the latter results in a bloc of electoral votes for the victor. Thus, the regional loss of Southern White voters has cost the party the electoral votes necessary for the New Deal coalition to win. Additionally, it has also marginalized key Democratic Party voting blocs (particularly, African American voters in the South), whom alone are unable to garner the necessary majority to win a Southern state despite their large populations. When one combines these factors with many others (i.e., an overall decline in the total number of union households nationwide), Democrats must recognize that the New Deal coalition, as it once was, no longer exists.

The critical issue facing the Democratic Party in the twenty-first century is how the remaining groups of the New Deal coalition can be combined seamlessly with a new bloc of voters to form a new successful Democratic coalition (the "new Democratic coalition") capable of winning presidential elections.⁴ In forming this new coalition, Democrats must acknowledge that it will contain two key components: 1) the remaining demographic elements of the New Deal coalition plus new Democratic constituencies, and 2) a regional component equivalent to or greater than the loss of the South.

The Democratic Party still enjoys a healthy margin among the remaining elements of the New Deal coalition, with African Americans and union households (constituting approximately 25 percent of the American electorate), voting in favor of the Democratic presidential candidates by margins of 86 percent and 53 percent, respectively.⁵ They can be joined by

Hispanic Americans (except the Republican-leaning Cuban community), females (primarily those having post-graduate degrees), individuals over the age of sixty-five, and secular individuals to form the demographic core of the new Democratic coalition.⁶ With margins over the Republican Party in each of these fast-growing groups, the demographic core of the new Democratic coalition has been laid.

However, the addition of demographic groups alone is not enough. In order to counter demographic dispersion, the new Democratic coalition must contain a strong *regional* component beyond the Democratic strongholds of the Northeast and the West. The Northeast and West already contain large concentrations of the demographic groups constituting the New Democratic Coalition, so “double-counting” voters would occur if these regions were added as separate components to the coalition. Thus, the critical regional component of the new Democratic coalition must lie within one of two existing Republican areas, the South or Midwest. The logical choice is to choose a region of the country where a new bloc of voters can be added to the new Democratic coalition without jeopardizing or losing any of the demographic groups discussed above. The answer is the Midwest.

The Midwest (Minnesota, Wisconsin, Illinois, Michigan, Nebraska, Kansas, Missouri, Indiana, Ohio, and Iowa—a total of 118 electoral votes) has three major characteristics that make it an appealing source of electoral votes for Democrats. First, with the exception of Nebraska and Kansas, the Midwestern states that have traditionally voted Republican in recent elections contain areas having large numbers of the demographic groups that constitute the new Democratic coalition. Second, empirical evidence shows that the Democrats fare well in the Midwest. In the last two presidential elections (2004 and 2000), Democrats won all of the upper Midwestern states, including Minnesota, Wisconsin, Illinois, and Michigan. These states constitute over half of the regions electoral votes (sixty).⁷ Finally, the Democratic Party has the ability to craft a message based upon region specific issues (i.e., farming, mining, and water rights) without losing voters from the new Democratic coalition’s demographic groups.⁸

While critics may argue that the Midwest is too difficult, it is the best option available for the immediate future. As U.S. Secretary of Defense Donald Rumsfeld once remarked to an American soldier during a town hall meeting in Iraq, “You must go to war with the army you have, not the army you want.” By recognizing the new demographic groups that comprise the new Democratic coalition, and focusing upon the Midwest as the regional source of electoral votes, the Democratic Party will have taken the initial step in lining up the first domino.

The Role of the DNC: Domino 2

A strong and central role for the DNC in the presidential nominating process constitutes the second domino. The current presidential nominating climate has not only reduced the role of the DNC in the selection process but has 1) created a system highly responsive to mass media, 2) eliminated many electable Democratic contenders who are unable to gain momentum early in the primary season, and 3) provided an advantage to those candidates who perform well in the early primaries and caucuses (i.e., Iowa and New Hampshire).⁹ The decline in the role of the DNC has resulted in the rise of candidate-centered campaigns, in which the winning Democratic candidate is only loosely affiliated with the national party structure¹⁰ and high-quality candidates are removed in the process. Therefore, the Democratic presidential nomination process must be revised, so the best candidate capable of assisting the party create a sustainable Democratic Party coalition is selected.

The DNC *should not* completely overhaul the Democratic presidential nominating system. Rather, it should reinsert itself into the nominating process in three ways: 1) develop an early four-state regional primary, 2) create a system of “peer review” to narrow the field of candidates to an acceptable number *prior* to the beginning of the primary season, and 3) require bet-

ter coordination between candidate campaigns and the DNC.

First, the DNC must limit the impact of the Iowa caucus and New Hampshire primary by allowing two other states, located in the South and West, to hold primaries on the same dates. The Democratic winners in Iowa and New Hampshire have a strong possibility of winning the nomination due to the tremendous momentum generated by the initial win(s) and the losing Democratic candidates, despite their strengths and qualities, often withdraw from the process after a poor showing in those outings. Recognizing that Iowa and New Hampshire, at least regionally, are part of the new Democratic coalition (the Midwest and Northeast, respectively), it is unclear if those two states alone will provide a presidential candidate capable of being elected nationally. In fact, in the last two presidential elections, President Bush won at least one of the two states. However, due to the high number of independent voters in both states, Iowa and New Hampshire are important to the Democratic presidential nominating process and should not be removed. Rather, the Democratic Party should add additional states to test the designated field of candidates in all regions of the country.¹¹ Democrats should allow two other states, one in the South and the other in the West, to hold primaries on the same dates as the Iowa and New Hampshire contests (one state added to each primary date). Such states as Florida and New Mexico are plausible choices. Regardless of the states selected, by adding two states in different regions, the Democratic Party is able to test the relative regional strength of each candidate and avoid eliminating an electable candidate from the outset.

Second, the DNC must adopt procedural safeguards to keep its field of contenders to a minimum prior to the beginning of the presidential election cycle. In 2004, the Democratic presidential race began with nine potential nominees. A tremendous amount of media attention, financial sources and party support was spread too thin among the large field of contenders. A superior system would begin with a peer review in the summer prior to the initial regional primaries, which would then send on only the party's best candidates to the primaries. While no one will argue in favor of reestablishing the smoke-filled rooms of the party conventions that excluded participation by minorities and women, the Democratic Party should adopt a new system wherein its activists, leaders, and legislators are able to eliminate fringe candidates who do not stand for the party's values.¹² Under this system, each of the party's super-delegates would vote for one of the declared candidates, but no "winner" would be declared. Rather, any candidate failing to receive at least 5 percent of the votes cast by the super-delegates would not receive an endorsement by the DNC during the primary season. While failure to obtain endorsement would not prohibit a candidate from seeking to obtain the nomination, such a crippling loss would likely significantly limit such candidates from securing the nomination and lead to the candidates' withdrawal soon thereafter. Adopting such a system would not only narrow the field of candidates and save precious party resources at the outset, but would ensure that the chosen candidates represent the values of the Democratic Party. *After all, the candidate is using the party's name.*

Finally, the DNC must regain some degree of control of the campaign process after a candidate secures the party's nomination. Currently, there is no requirement that candidates running on a party's label must allow the party to participate in their campaign,¹³ and in recent presidential elections, the nominee has utilized a separate candidate-centered campaign apparatus, sometimes in conjunction with the DNC effort. Confusion between the candidates' staff and DNC personnel regarding decision making and roles in the process results in an inefficient allocation of resources. The DNC should require (or strongly suggest) that the Democratic nominee base his or her Washington, D.C., office and get-out-the-vote operations inside the party's headquarters. Taking this step, along with other detailed levels of coordination (including a decision-making chain that includes, not excludes, DNC officials), will ensure that the Democratic Party is presenting a unified image to the American public and conducting a unified campaign. The bottom line is that if candidate is willing to accept the party's nomination

and the plethora of votes he or she will receive merely by being a Democrat, then the DNC must have prominent role in the campaign process.

If the DNC adopts these simple measures, the second domino will be in place.

The Role of State Democratic Parties: Domino 3

Next, the Democratic Party must secure a greater level of accountability from its state parties. Why is this important? State parties, through state legislatures, determine the operating rules of political parties, including establishing the presidential primary calendar and drawing district lines.¹⁴ Additionally, state parties also serve as the breeding ground for rising Democratic stars. In recent years, state Democratic parties have been relegated to servicing candidates, not achieving specific objectives on behalf of the DNC or recruiting potential stars to the party.¹⁵

Republican state parties tend to be a more important campaign resource for their candidates than Democratic Party organizations.¹⁶ They offer stronger, more professional, and better financed organizations;¹⁷ they also tend to be less labor-intensive and more capital-intensive.¹⁸ As the power of the New Deal coalition began to decline in the 1970s, the Republican Party began to focus its efforts on party building with its state party leaders.¹⁹ The GOP effort, particularly in the South, implemented a variety of initiatives, including building an internal activists network through its state parties and recruiting candidates at all levels of the ballot. Democrats rely more heavily upon affiliated interest groups such as labor unions, teachers, abortion rights advocates, minority groups, and environmentalists for campaign services while Republicans pay professional staff members.²⁰

While the DNC should not have a stranglehold over state parties, some level of accountability should be required for these parties to receive national funding. Recognizing that the DNC does mandate certain conditions with respect to diversification of the delegate selection process and the use of coordinated campaign funding, the DNC must enhance the level of services it provides to all states during each election cycle. In exchange, the DNC should expect its state parties to recruit high-caliber candidates and assist the party in targeting key legislative races within each state in order to impact the presidential election process. Without a greater level of accountability, one can expect the Democratic Party to suffer the same fate as our nation under the Articles of Confederation—a loose conglomeration of different units lacking purpose, vision, and common goals.

Assuming state Democratic parties are able to assume a larger role in the process, the third domino can be aligned.

Democratic Ideas of the Twenty-First Century: Domino 4

The fourth domino is comprised of the Democratic ideas for the twenty-first century. Though former president Bill Clinton may be remembered in history for his impeachment charges, he provided the Democratic Party with novel ideas to govern the country. By rejecting the notion of employing large bureaucracies to solve the nation's woes, Clinton and the "new Democrats" transformed the Democratic Party by redefining the political middle ground on the social issues, such as crime and family values, which had been the Achilles heel of the Democratic Party prior to 1992.²¹ According to the Democratic Leadership Council, the organization that provided Clinton the platform to begin his presidential campaign, Clinton's Third Way promoted three key principles: 1) the idea that government should promote equal opportunity for all while granting special privilege for none, 2) an ethic of mutual responsibility that equally rejects the politics of entitlement and the politics of social abandonment, and 3) a new approach to governing that empowers citizens to act for themselves.²² Clinton's Third Way has provided a successful rubric for managing the federal government in the twenty-first century. After all, Clinton was the first Democratic president reelected to a second term since Harry Truman.

In a world fraught with peril after the terrorist attacks on September 11, 2001, the Democratic Party must put forth ideas that reconnect people with politics as the electorate becomes increasingly more dependent on the federal government for protection in their everyday lives. While the nation must keep terrorists and other enemies of the state at bay, it cannot be done at the expense of bankrupting the nation. The Democratic Party can no longer run from the issues that may fracture the new Democratic coalition, but must show leadership by providing bold solutions to difficult problems. The very essence of democracy requires compromise, and the very essence of compromise implies a level of unhappiness by the parties affected. The Democratic Party must not be tempted to lose its core values and beliefs but must redefine the manner in which such values and beliefs are employed in an increasingly conservative society. Similar to the Republican Party after the 1968 presidential election, in the shadow of defeat, the Democratic Party must allow the politics of ideas to govern its future.²³

Remembering this lesson, the existing dominoes are now aligned.

The Missing Dominoes: Dominoes 5 and 6

Properly aligning dominoes one through four is well within reach of the Democratic Party in the near future but are not enough to secure the party's victory in 2008. The Republican Party stands poised to prepare Florida Governor Jeb Bush for a prominent role in 2008. The Republicans have twenty-seven electoral reasons for Governor Bush to have a spot on the Republican ticket in 2008. Smartly, the Republican Party in recent decades has viewed the presidential nomination process as a case of electoral math. While President Bush's effort to assist the tsunami victims of Asia was indeed sincere, Bush chose to send his brother to join then-secretary of state Colin Powell in touring the region with national and international media covering every move. The Republicans understand the need to have another heavy anchor to lead the electoral charge in their bid to the White House in 2008. Since Texas, California, and New York remain non-battleground states for the immediate future, the next large electoral prize is Florida. Assuming Florida is a lock for the popular governor if given the Republican presidential or vice presidential nomination in 2008, Democrats must wise up and play some electoral math of its own. The Democratic Party needs to maintain those states won by Senator Kerry in 2004 and strategically add at least fourteen electoral votes through the use of the presidential nomination system to make the race competitive. These fourteen electoral votes constitute the missing dominoes.

The first missing domino is Indiana. Indiana, a Midwestern state known for its Republican traditions, has provided signs of life for the Democratic Party in recent years. In 2000, the Democratic Party broke the Republican Party's thirty-year stranglehold on the city of Indianapolis by winning the mayoral race. With the exception of the 2004 election, Democrats have won the governor's race in every state election since 1988—largely due to the popularity of the state's former moderate governor and current U.S. senator, Evan Bayh.²⁴

Bayh, son of the popular former Indiana senator, continues to maintain favorable ratings around 70 percent.²⁵ In fact, Bayh's popularity in the state is evident even in years, including 2004, when Republicans carried all the state's major offices. In 2004, Bayh easily won reelection by an overwhelming margin, receiving 62 percent of the vote (1,495,808 votes), bypassing President Bush's vote count of 1,477,807.²⁶ In comparing Bayh, who carried all but four counties, with Kerry, the true nature of this missing domino becomes apparent. In Indiana, females and self-identified Democrats constitute 52 percent and 32 percent of the electorate, respectively. Bayh carried 67 percent of the female vote and 92 percent of the Democratic vote in the state, compared to Kerry who received 41 percent and 84 percent, respectively.²⁷

Additionally, Bayh received 35 percent of the Republican vote and an astonishing 73 percent of the independent vote in the state.²⁸ Kerry only received 5 percent and 46 percent of the vote, respectively, in those same groups.²⁹ In a state that was not targeted by the Democratic Party, Bayh and the Indiana state Democratic Party, with resources independent of the DNC, have managed to put together a successful Democratic strategy in a Republican state. By no

means should Senator Bayh have an automatic lock on the Democratic nomination in 2008, but his name on the ballot could provide the Democratic Party with Indiana's eleven electoral votes. Furthermore, Indiana is in the heart of the Midwest—assisting the party's in its quest to solidify the regional dimension of the new Democratic coalition. But three more electoral votes are needed . . .

The final missing domino surfaced in 1992 but is less apparent to the Democratic Party. Though many Democratic leaders missed it in 1992, the final missing domino resurfaced again in 2004. This missing domino is Montana. With three electoral votes, the state that the Democratic Party ignored for years is coming back into the fold. In 1992, Montana voters provided then-Governor Clinton with their electoral votes. While the Democratic Party was celebrating their entry into the White House, it should have noticed this traditionally red state voted blue. However, throughout the '90s, the Democratic Party failed to capitalize on this opportunity and the state has voted Republican in all subsequent presidential elections.

Despite providing Bush with three electoral votes, the rogue red state has resurfaced and commands Democratic attention. In 2004, those same Montana voters who voted for Bush also voted a Democratic governor into office, Brian Schweitzer. Schweitzer, a farmer with limited political experience, received 224,506 votes (50 percent) compared to his Republican challenger, Bob Brown, who received 194,567 votes (48 percent).³⁰ This feat was accomplished even though the Montana Republican Party managed to get a referendum on same-sex marriage and medical marijuana on the ballot to encourage their voters to go to the polls. Additionally, the state's senior U.S. senator, Max Baucus, is a Democrat (though conservative) who has served in the position since 1974.

Even though the Democratic Party and the Kerry campaign did not target Montana in 2004, Kerry received 173,363 votes (38 percent) compared to Bush's 265,473 votes in the state. Comparing Kerry's vote count to Schweitzer's, Montana looks very attractive for a party in need of three electoral votes. Recognizing Schweitzer is not ready for a shot at the Democratic nomination for years to come, the aforementioned facts seem to indicate that the Democratic Party can no longer ignore this missing domino and must choose a candidate that can win this state if it wants victory in 2008.

For those who question the odd combination of Indiana and Montana as the temporary key to the Democrats' future in 2008, remember that, prior to 1992, who would have thought a combination of Arkansas and Tennessee, two Southern states, would result in the winning combination without any link to the Democratic Northeast? In the twenty-first century, anything is possible, even the unthinkable. It seems plausible that a Democratic presidential nominee who can win the rural and urban counties of Indiana probably possesses the type of qualities needed to win the hearts of Montana voters.

It is important to note that the Indiana and Montana state Democratic parties have had a key role in winning voters in their respective states. While it is tempting to send a fleet of high-profile individuals into these states, the Democratic Party must proceed with caution and allow those state parties to take the lead in this effort. In other words, those state parties (and their Democratic candidates), not strategists and analysts based in Washington, D.C., or New York City, know how to speak to their constituents. The Democratic Party can actually do more harm than good if the missing dominoes are targeted like deer on a hunting range. The Democratic Party must be prepared to provide the resources to these states without sending a huge warning flare into Karl Rove's office in the west wing of the White House.

The missing dominoes have a unique benefit that is important to note: their location is strategically important for the Democratic Party. While the Democratic Party may be able to field another successful combination of states or candidates to win the presidency and provide the party access to the oval office for a brief stint, these missing dominoes, if aligned properly, help the Democratic Party *create a successful Democratic coalition by providing a regional threat to the Republican Party*. Though the domino theory as applied to U.S. foreign policy was discredited, the idea of establishing a foothold in enemy territory and working outward from such foothold does have merit in politics. By aligning the missing dominoes, the

Democratic Party can apply the domino theory to build its long term strategy of securing major Midwestern states. The strategic location of Indiana and Montana could serve as bookends for the Democratic Party in its quest of building a stronghold in the Midwest. Both missing dominoes are in close proximity to key electoral states, including Ohio, Iowa, and Missouri. So, by targeting the missing dominoes, the Democratic Party can indirectly apply pressure to other key Republican states in the Midwest. Even though Montana is not a Midwestern state *per se*, it is in close proximity to a cluster of Midwestern Republican states and could serve as the western boundary in the party's application of the domino theory. Moving eastward from Montana and westward from Indiana (with the exception of Ohio), Democrats could build a strong Midwest coalition to counter the impact of the Republican-controlled South, state by state. Recognizing that the Democratic Party may not be able to orchestrate a Republican fall in every Midwestern state in the short run, by toppling the missing dominoes in 2008, the initial phase of the domino theory will be complete.

Indiana's close proximity to Ohio means that the media markets in the eastern part of Indiana infiltrate the Republican strongholds of the southwestern Ohio. Furthermore, if Indiana falls to the Democrats, then Ohio would be buttressed between two Democratic states (Pennsylvania on the opposite side), thus creating a situation that is highly favorable to turning the Buckeye State into a permanent Democratic stronghold. Similar to the strategy adopted by the Republican Party in their quest to take the South, as the spillover effects of capturing the missing dominoes intensifies, the Democratic Party can realign the presidential electoral landscape in its favor for years to come through application of the domino theory.

By aligning the missing dominoes and strategically implementing the twenty-first-century political domino theory in the Midwest, the Democratic Party's quest ends and a sustainable coalition begins. The time has come to begin lining up the dominoes. No lengthy conclusion is necessary. Rather, the theory, analysis, and recommendations provided herein concludes with one final thought for Democratic Party: Just because a state is the last one called on election day does not mean it is the most important one.

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HOW THE GOP CAN TAKE BACK CALIFORNIA IN 2008

MATT MARX, JOHANN GUZMAN, AND DANIEL BERDICHEVSKY

Abstract

This paper explores the potential for California to become a “red” state in 2008, delivering its fifty-five electoral votes for the Republican presidential candidate. It begins with a review of the Golden State’s political history from 1892-2004, a period during which, contrary to popular misconceptions, the state largely supported Republican governors and presidential candidates. Interruptions in that support are explained in terms of exceptional events, such as the Great Depression. A discussion is then offered on California’s current demographic and voting trends—looking at the impact of the growing Hispanic community, as well as the divide between more conservative suburban and rural populations and more liberal Los Angeles and San Francisco—all of which are theorized to indicate strong potential for a Republican Renaissance. The paper concludes with an analysis of strategies and tactics that the Republican Party could employ to capitalize on this potential to secure a 2008 electoral victory.

I. Introduction: How the West Was Lost

For those who came of voting age during the last decade, the notion that California’s electoral votes might be won by the Republican presidential candidate must seem almost laughable. The Golden State adopted Bill Clinton as its golden boy, stood steadfastly by Al Gore, and delivered a resounding majority for John Kerry. The idea of GOP operatives spending time in San Francisco or Los Angeles seems nearly as quixotic as Dick Cheney’s pre-election-day visit to Hawaii.

But California was not always a “lock” for the Democrats. With rare exceptions, the home of Hollywood has been a Republican stronghold for most of the past century. Could it flip-flop back in 2008? Below we outline one way in which it could happen—and Democrats should be mindful of the possibility if they wish to preserve their present hold there.

1892–1990: The “Right” State?

In The Right Nation: Conservative Power in America, Micklethwait and Wooldridge argue that the Republican party’s success in recent years is due as much to intrinsic American exceptionalism as to strategy by Karl Rove and company.

One key factor they cite is that America “is, above all, a business civilization.”¹ This is nowhere more true than in California, home of the 1849 gold rush and the 1990s dot-com boom. Historian AnnaLee Saxenian² detailed the entrepreneurial practices that distinguish California from other regions. For instance, California does not allow employee non-compete

This paper provides a history of California’s political past and a demographic analysis of its future. It is an important paper for young people who don’t remember past the Clinton era, and a sobering paper for anyone who foolishly counts California as a safely Democratic state.

—Justin Weinstein-Tull, editor

clauses. This allows a free market for economic talent and boosts long-term productivity.³ Stanford law professor Ronald Gilson argues that California's pro-business policies are among the most "critical antecedent[s]" of the state's development into the world's fifth largest economy.⁴

California Governors, Inc.

California's pro-business bias may help explain why so few Democrats have settled in the governor's mansion. Between 1892 and 2004,⁵ Democrats held the office for only thirty years—Republicans, for eighty-four.⁶

California boasts a long list of high-profile Republican governors, from Leland Stanford to Earl Warren and Ronald Reagan. Of course, one party's stranglehold on the governorship hardly guarantees support for that same party's presidential nominee. George Pataki's decade as governor of New York has failed to produce electoral votes for any GOP presidential candidate; meanwhile, reliably Democratic Massachusetts has installed Republican governors such as Bill Weld and Mitt Romney. One theory is that states may send Democrats to Congress as *advocates* for their state's interests—to "bring home the bacon"—but then hire Republican governors as *managers* for those resources. While this might seem to explain California, given the recent Democratic dominance in its congressional and presidential elections, an empirical examination of presidential tallies since 1892 tells a different story.

Popular Vote in California Presidential Elections

We analyzed California's popular vote in presidential elections from 1892 to 2004.⁷ The data show that Californians predominantly supported the Republican nominee for president—except during the peak of the New Deal—until ten years ago.

Between 1892 and 2004, Republicans won seventeen contests compared to twelve for Democrats. Twelve of the Republican victories included majorities; the same was true for eight of the Democratic victories. Republicans enjoyed a higher percentage of the popular vote—both mean and median, at 48.79 percent and 49.11 percent, respectively—and greater margins of victory. In fact, the largest single percentage margin of victory belongs to the otherwise unexceptional Warren G. Harding, who in 1920 bested James Cox in California by a whopping 41.9 percent. Further, standard deviations of Republican vote totals are nearly a percentage-point lower (8.91 percent vs. 9.80 percent) than for Democrats, suggesting less volatility and more consistency. More revealing than calculations alone, though, are the trends over time.

Controlling for anomalies, including the disastrous Goldwater candidacy of 1964 and the Bull Moose challenge to the party in 1912, a cycle emerges with two forty-year stretches of Republican dominance punctuated by exceptional events.

Not surprisingly, these periods correspond roughly to Schlesinger's cycles of American history: conservative rule and Republican restoration, the New Deal, and the Reagan revolution.⁸ In particular, the New Deal represented an externality which disrupted Republican power in California for nearly two decades. However, the GOP recovered and re-established its dominance for a second forty-year period. The driving forces behind the most recent interruption, beginning in 1992, form the theoretical basis for the rest of this paper.

1992–2003: Fumbling the GOP's Future

Throughout the 1980s, a symbiotic relationship existed between California's growing influx of immigrants and the expanding economy. Newcomers, including Latinos, took low-paying jobs that at once enhanced their families' standard of living and fueled company profits. Latinos in particular grew to become 10 percent of each political coalition between 1988 and 1992.⁹

Fiscally liberal and socially conservative,¹⁰ Latinos are prime targets of what Flanigan and Zingale call cross-pressure.¹¹ Far from a monolithic voting bloc, as late as 1990 they were politically agnostic: 47 percent of Latinos voted for Pete Wilson in his first gubernatorial bid, according to the 28 August 2000 *Wall Street Journal*. If anything, given decreasing union membership,¹² the likelihood that Latinos will increasingly break through the \$30,000–50,000 income (the level below which most voters stay Democratic),¹³ and the tendency for new immigrants to settle in the suburbs, California Latinos appeared to represent an excellent opportunity for Republicans.¹⁴

The early 1990s recession changed all that. With jobs scarce, some groups came to resent illegal immigrants willing to work for low wages. Resentment begat referendum in Proposition 187, which denied medical and other services to and threatened to deport undocumented immigrants and their children—even if their children were American citizens born in California.¹⁵ Wilson is said to have privately despised Proposition 187, but as momentum grew he not only threw his support behind the measure but ran Willie Horton-style ads depicting the evils of immigrants gone wild.

One might ask whether why Wilson opted for such an extreme stance in the 1994 election. One possible reason was that his opponent was the state treasurer, the sister of former governor Jerry Brown, and the daughter of former governor Pat Brown. Her name recognition made her a formidable candidate. Wilson had also witnessed Ross Perot decimate the Republican base in 1992.

In 1992, Perot gained 21.4 percent share of the vote (even higher than his nationwide tally). Perot drew *much* more from the Republican side. Wilson may have feared he could be at risk of a similar coup if he did not play to his base. In their own self-defense, immigrants registered and naturalized in record numbers. The threat to their economic survival trumped any cross-pressure for traditional values, turning them against the Republican party. Although third-party candidate participation shrank after 1992, Republicans did not reclaim those lost immigrant voters.

The parallels between the “A New Deal, A New Party” interregnum and the “Perot, Pete, & Prop 187” period run deep. Both began as the result of exceptional events (the latter, arguably, self-inflicted). Both reversed forty years of mostly continuous victories for Republican candidates. Perhaps most significantly, both lost momentum over time. This lends support to the interpretation that these periods of Democratic dominance are ushered in by exceptional events but tend to lose steam over time. While this is far more pronounced in the case of the New Deal, when Democratic support spiked dramatically before falling off precipitously, it holds more recently as well.

2003–2004: A SILVER-GRAY LINING FOR THE GOP

The events since Gray Davis succeeded Pete Wilson suggest multiple reasons that the current Democratic margins of victory in presidential elections may drop even further. The year 2000 provided two reminders of potential Democratic weakness with the 61.4-to-38.6 passage of Proposition 22, which defined marriage as only between a man and a woman, and with a \$21.2 billion budget deficit following the dot-com bust, as reported by CNN.¹⁶ This, coupled with the 300 percent growth in energy prices, helped drive Davis’s job approval to an astonishing low of 24 percent, according to the 8 March 2003 *Los Angeles Times*. In 2003, he joined Lynn Frazier of North Dakota as the nation’s second recalled governor. (That Davis pushed through the legalization of driver’s licenses for illegal immigrants just thirty-two days before the recall election underscores the degree to which immigrants had become a linchpin of the California Democratic coalition.)¹⁷

The recall election demonstrated that immigrants were still open to crossing party lines to

back the GOP. Running as a social moderate and fiscal conservative, political newcomer Arnold Schwarzenegger won over 31 percent of the Latino vote. This is impressive considering that Lieutenant Governor Cruz Bustamante, the state's most visible Latino politician in history, was on the same ballot. Altogether, Republicans captured 61 percent of the recall vote.¹⁸ Note that similar percentages of the electorate opted for the defense of traditional marriage (Proposition 22) and for Republican gubernatorial candidates. This suggests a 61 percent soft ceiling of potential Republican voters reachable with the appropriate message and the appropriate candidates. Pete Wilson's colossal error in judgment may indeed have crippled the Californian Republican party, but not beyond repair. The continued drop in Democratic presidential victory margins—reminiscent of the tail end of the New Deal/new party era—coupled with Schwarzenegger's strong showing suggests that this story's ending is yet to be written. The remainder of this paper explores one way the GOP might put pen to paper.

II. California Demographic and Voting Trends

California may or may not be the heart and soul of America, but it certainly reflects America's general voting pattern. Turn a map of the state on its side and its county-by-county returns resemble those of the 2004 Electoral College, with swaths of red and isolated pockets of blue at either end and large areas of red in the center. One of these pockets, the Bay area, has favored Democrats since the Great Depression; the other, Los Angeles County, was much more reliably Republican until the arrival of Bill Clinton.

True, you could say that Bush would have won any state once you threw out all the Democrats—but in California they came densely concentrated for convenient disposal (at least in theoretical terms). Erase just two counties from California (Los Angeles and Alameda), and the vote for Bush versus Kerry would have been virtually even. Toss out densely Democratic San Francisco, and Bush would have won the state by more votes than he did Ohio.

Analysts have noted that Bush wooed twenty-five of the twenty-six states with the highest birth rates. Similarly, the regions of California that voted for Bush in 2004 are the fastest growing in California, and among the most independent spirited—possibly due to lower birth rates among the more educated, generally less-religious residents of the postindustrial metropolitan areas that favored Kerry.

Much of this difference in growth rates is also driven by migration patterns. Simply put, these so-called ideopolises are more expensive to live in and to raise families in. Their public schools tend to be more crowded, their streets less safe. This is not urban flight so much as it is a resurgence of the frontier spirit, to cities like Fresno and Bakersfield and to exurbs like Palmdale and Riverside, where a house still costs under \$200,000 and the sun shines just as many days of the year as in Santa Monica (and far more days than in San Francisco). There may not be gold anymore in El Dorado County, but there are churches, decent jobs, and bankers who know your name. Does the fact that Republican-leaning counties outnumber Democratic counties and are growing faster mean the GOP's best bet is simply to wait a few election cycles for California to become theirs by default?

To answer this, we projected demographics into the future. We took the state's official county-by-county projections for population in 2010, interpolated for 2008, then estimated the county-by-county vote totals for generic Republican and Democratic candidates, assuming turnout and vote breakdown remained the same as in 2004. These are tenuous assumptions, of course, but the rough numbers they produce are revealing: all else left alone, the differential growth of Democratic and Republican counties would *not* noticeably narrow the gap between the statewide Democratic and Republican presidential vote totals in 2008. Eventually they would, as areas like the inland empire and central valley continue their rapid growth—but this could take several election cycles.

One reason for this is that states don't have their own electoral colleges; less-populated counties don't have a disproportionate influence on the statewide outcome. Central California may resemble Kansas to dot-commers speeding down the I-5, but (discounting discrepancies in the quality of their voting equipment) the votes of those who live between Los Altos and Los Angeles matter no more than the votes of those at either end. In short, one person, one vote, and all votes equal: Al Gore would be pleased.

Another reason that differential birth rates matter less than one might expect in the short-term is that new immigration continues to swell the population of Los Angeles, the state's most populous county, compensating for a shortfall in Democratic baby-making there.

Looking further ahead, by 2040, official state projections indicate that people of Hispanic descent will compose more than half of California's population.¹⁹ Between now and then, their share of the population will continue to grow at an accelerating rate in all counties. Some of this is due to immigration—legal and not—but some also results from higher birth rates among Hispanics who have already been in California for one or more generations. One study has shown that more than 50 percent of U.S.-born Hispanics have "household incomes above the local average."²⁰ The path to securing California's electoral votes in the long term lies—for either party—in earning the loyalty of these newly Americanized voters.

For the GOP, this means wiping out the foul taste lingering from Proposition 187 and Pete Wilson's extremist rhetoric. George W. Bush has already moved in this direction, campaigning vigorously in Spanish (much to the delight of Jay Leno)²¹ and increasing his share of the Hispanic vote nationwide between 2000 and 2004.

Overall, "the number of foreign-born [California] residents who entered the U.S. more than twenty years ago is projected to soar by 364 percent from 1990 to 2020."²² The growth in the population of these long-term immigrants will come hand in hand with changes in what issues matter most to them. They will have long since created homes and seen their children through American schools. Even if not as socially or geographically mobile as naturally born citizens, by this point many of them will have had the chance to settle into communities and careers (or forms of retirement) of their own choosing. In short, their concerns may come to align more closely with that of any other voting bloc and to hinge more on factors such as age, income, and location than on their immigrant status. Mickelthwait and Wooldridge predict that Hispanic immigrants will follow the model of Italian Americans and other groups that, after assimilating into American culture, vote no longer as an ethnic bloc but instead more in line with their socioeconomic status.²³

With regard to race, GOP candidates must also keep in mind that while the overall number of Whites in California will decrease by 2010, the legacy of the Baby Boom means that in the 50–69 age range the number of Whites will continue to increase for the remainder of this decade. Assuming they don't all move to Las Vegas, this increase will temporarily maintain the strength of the elderly, White voting bloc, which votes in higher numbers and which neither party can afford to discount as a potential source of campaign donations and volunteers.

In the same time frame, the only age brackets where Hispanics will dominate are in the younger and middle-age brackets. This poses a dilemma for the GOP. If it focuses on the younger and middle-age Hispanics, hoping to make them and their children Republican in the long term, the party might alienate the older age brackets still dominated by White voters in the short term. The older age brackets vote more frequently than do the younger age brackets, so they cannot be ignored. In order for the GOP to be successful in both the short and long terms, they must choose a candidate and platform that balance the concerns of both demographics.

III. 2008 Campaign Strategy and Tactics

Anyone who at this point in the paper still believes California to be surefire Democratic territory should consider a few more statistics. Forty-two thousand more Californians voted for George W. Bush in 2004 than for Ronald Reagan in 1984—making him the Republican candidate who has won the most votes in California history.²⁴ And as we wrote earlier, in the gubernatorial recall election, the two leading Republicans together won 61 percent of the votes. Numbers like these show that Californians are not only willing to elect Republicans but to elect them in landslide proportions. As of March 2005, Schwarzenegger's approval ratings remain solid at 55 percent.²⁵ We consider this and its implications for 2008 in more detail later in the paper.

Building the Presidential Ticket

California voters are as important to GOP's prospects of a permanent ruling coalition as they are particularly choosy about which GOP candidates they support. However, primary voters in New Hampshire and Iowa will probably not litmus-test candidates for their level of appeal to what they may perceive as surfboard-toting, godless Golden Staters.²⁶ GOP leaders, already facing internal division among possible candidates, are unlikely to rally behind one simply based on his or her prospects in California.

Still, to maximize its chances of success, the GOP would want to make its California campaign as visible as possible. This means assessing and publicizing the electability of each candidate in California from the beginning of the primary season. Talk show hosts should be debating the topic on Saturday mornings. It should come up during debates and on Rush Limbaugh. In short, it ought to be a consciously defining theme of the 2008 Republican campaign.

We have argued that trends in California, demographic and otherwise, are pushing California toward the GOP column. By 2016 or a little later, California may even be reliably choosing GOP candidates even if they are not *per se* "moderate Republicans." Winning California in 2008, however, will require the GOP to field a candidate whose moderate stances (or perceived-as-moderate stances) and intangible appeal would allow the electoral conquest of California to take place ahead of schedule. Possible candidates who fit these criteria are already the subject of punditry and speculation—such as John McCain, Rudy Giuliani, and the seemingly reluctant Condoleezza Rice, who has strong California ties as former provost of Stanford University—and others may emerge.

Reversing the Curse: "My Fellow Immigrants . . ."

The demographic analysis of the previous section coupled with the saga of Proposition 187 leads to a simple conclusion: the successful Republican presidential candidate in this state must adopt a staunchly pro-immigrant stance. As discussed above, the fundamental dynamics of Latino cross-pressure—decrease in union participation, movement to suburbia/exurbia, rising affluence—all favor the Republican agenda. Moreover, decreasing party identification widens the opening for those wishing to influence the party in the electorate: the annual Harris poll of fourteen thousand voters²⁷ shows a drop from a 1977 high in Democratic identification of 45 percent down to 36 percent in 2002—only a few percentage points higher than Republicans.²⁸ Historically, the GOP has made its greatest positive short-term gains with cross-pressured groups by appealing to social issues, as people's positions on economic issues change on longer lifecycles and are less directly attributable to the work of a particular party.²⁹ Only by making immigration a defining issue in its favor can the GOP hope to turn the tide of cross-pressure and "reverse the curse" of Pete Wilson.

Fortunately for the party, it boasts the nation's most popular immigrant in Governor Schwarzenegger. Schwarzenegger laces every speech with pro-immigrant rhetoric, retelling his own story at every turn. Among the most memorable lines from his speech at the 2004 Republican National Convention was his addressing the audience as "my fellow immigrants." In so doing, he creates the kind of narrative that is so crucial in developing a sound campaign communication strategy.³⁰ The closest Democratic equivalents are Senator Barack Obama (D-Ill.), though he himself is not an immigrant (his parents were), and the Canadian-born governor of Michigan, Jeanne Granholm. Schwarzenegger enables the GOP to take the lead on the issue of immigrants gaining equality and acceptance—embodied in giving them the right to run for president. In the 2004 election, Republicans mobilized the evangelical base by proposing a constitutional amendment prohibiting gay marriage; they knew the amendment would not pass, but its passage was not the point. For the 2008 election, the GOP could influence Latinos and others by proposing a constitutional amendment to nullify one of the provisions of Article II, section 1:

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President.

Again, it does not matter whether the amendment passes or not; strategically, what matters is that the Republican party frames itself as the supporter of immigrant rights; Specifically, the message should be that the Republican party wants immigrants to be able to become president of a country of immigrants, while the Democrats don't care.³¹ Though this frame might be as misleading as President Bush contending that John Kerry would turn over our national defense to foreign nations, it could nonetheless stick.

As few legislators are likely to vocally oppose this amendment, the tactic is less like that of the gay-marriage amendment, which drove a wedge between the two parties, and more like the 2004 handling of national security: no one opposes national security in principle, but by speaking frequently and emphatically the GOP has won the "frame game." Moreover, the Democratic party may perceive that Republicans, with Schwarzenegger on tap, have more to gain by bringing the issue front and center—and their support for the amendment may therefore be more muted.

The timing of this initiative will be crucial for the GOP. They must not overemphasize it too early—certainly not before Schwarzenegger's reelection in 2006—lest it devolve into a question of whether the governor is using California as a platform to reach the White House. It would be better to save the issue until late 2007 or early 2008, when there is little enough time that few will expect the amendment to pass before the 2008 election.

The Ground Game

While pushing the constitutional amendment, the GOP will also need to smoothly execute its ground operations. George W. Bush's national 3.5-million vote margin in 2004 is often attributed at least in part to Karl Rove's mobilization of the party base, including evangelicals. In 2004, however, little of that effort focused on California. If anything, resources were drawn away from California to battleground states such as Nevada. In 2008, with more confidence in the electoral outcome, the GOP could "trade" Nevada, which is already trending Democratic, for a shot at California. Specifically, volunteers from solidly surefire GOP states like Utah and Arizona and from lost-cause states like Oregon and Washington should be directed to Republican counties in California.

The goals of the ground game are twofold. In the most visible part of the campaign, regis-

tration and get-out-the-vote (GOTV) efforts must increase significantly among the Latino population, and especially the churchgoing Latino population. The last seventy-two hours before the election must also demonstrate the same energy displayed in the election of Governor Schwarzenegger, when “Republican leaders dispatched thousands of volunteers across the state to go door-to-door in their strongholds to stoke widespread frustration with Davis”—making face-to-face contact with more than 150,000 voters.³²

President Bush, who made fundraising visits but otherwise did not campaign in California during the 2004 election, should make appearances on his potential successor’s behalf, giving targeted speeches in Spanish and appearing frequently with Governor Schwarzenegger and U.S. Attorney General Alberto Gonzales. Jeb Bush and the four Cuban congressional representatives from Florida should be visibly utilized. Governor Bush’s Florida Cuban connections should be fully utilized.

With the door opened by the GOP’s newly adopted pro-immigrant stance, the second, less visible part of the ground game must focus on awakening the social conservatism ascribed to Hispanics. Religion is an important factor here. One university study finds that nearly one-half of practicing U.S. Roman Catholics are Latino.³³ This would involve replicating the evangelical GOTV efforts that worked so well in Ohio and elsewhere. The frame (again, accurate or not) for this effort must be that *immigrant Californians cannot let Democrats erode the values they brought with them to this country*. California offers the GOP no shortage of local “villains.” For instance, the principal of Stevens Creek Elementary School in Cupertino allegedly prohibited a teacher from distributing excerpts from the Declaration of Independence because it referenced God.³⁴

Tactically, the California GOP should target church communities, with Sunday voter registration drives as soon as the mid-term elections. County chairmen and chairwomen should be drawn from church communities and immigrant groups wherever possible. Operatives should attend local Bible study groups in order to emphasize the interplay of religion and politics. Pro-life seminars should be set up, demonizing the opponents of the partial-birth abortion ban. To further inspire youth activism, Christian rockers such as Jars of Clay, P.O.D. (Payable On Death), and Lifehouse should be brought to local communities for benefit concerts.

In case these efforts alone do not suffice in 2008, the GOP can turn to “Reagan Democrats” to fill out the rest of a winning electoral coalition. The candidates and campaign must emulate Reagan in his moderate gubernatorial views (e.g., Reagan signed the 1967 *Therapeutic Abortion Act*, six years before *Roe v. Wade*). Schwarzenegger reflects Reagan in this sense, as do Giuliani, McCain, and even Colin Powell. While the evangelicals will bring out the base, having moderates around will help gather remaining swing voters. Pro-choice Republicans like Giuliani and Pennsylvania senator Arlen Specter must campaign in California to deliver the Reagan Democrats.

IV. Conclusion: Reagan Redux

In this paper, we have argued against the conventional wisdom that California’s fifty-five electoral votes are a lost cause for the Republican party. Our empirical analysis of presidential elections documents the state’s historically strong support for GOP presidential nominees and explains interruptions in that support in terms of exceptional events (Great Depression and Proposition 187). Our empirical analysis of demographic projections, coupled with evidence from the 2003 gubernatorial recall, suggests that coming conditions may favor a Republican renaissance. Core to this contention is the potential for intense cross-pressure on Latino and other immigrant voters, which continues to keep those groups’ party affiliations in play.

Far from a foregone conclusion, this outcome could be achieved in 2008 only if the GOP applies itself diligently to the Golden State. We have outlined a general strategy for undoing

the damage of the 1990s by re-appealing to immigrant-rich, culturally conservative voting blocs, as well as specific tactics for getting the vote out in the state's previously neglected exurban areas. Its adoption would serve Republicans not only in California but also nationally. While some argue that the oft-discussed realignment was confirmed with the "enormous" Republican victory in the 2004 election, others sense that the party can still be anachronistic at times and thus vulnerable among younger voters.³⁵ But there are bright spots for the GOP even in this demographic: pollster Frank Luntz suggested in the 27 October 2003 *Weekly Standard* that the emergence of Schwarzenegger means "you can be cool and be a Republican." Achieving "coolness" may not be at the top of the Republican agenda, but building a bigger tent for immigrants and social moderates should be. It wouldn't be the first time the GOP has been transformed by a B-movie actor.

Endnotes

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4. R. Gilson, "The Legal Infrastructure of High technology Industrial Districts: Silicon Valley, Route 128, and Covenants Not to Compete," *New York University Law Review* Vol. 74, Issue 3 June (1999): 575–629.
5. Data on governors is available back to 1850, just after California became a state. We have started our count forty years later for no other reason than to parallel our later discussion of presidential elections.
6. "Governors' Gallery," <http://www.governor.ca.gov/govsite/govsgallery/h/biography/index.html>.
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13. D. Gergen, "The Modern Voter III: Makings of Today's Democratic Coalition," lecture delivered in *Driving Forces in American Politics*, 6 October 2004, (Cambridge, Mass.), John F. Kennedy School of Government, Harvard University.
14. J. Barnes and E. Cohen, "The Manana Vote," *National Journal* (5 June 2004) Vol. 36 No. 23, 1760–1767.
15. S. Mailman, "California's Proposition 187 and Its Lessons," *New York Law Journal* (3 January 1995), 3.
16. *Poll: Schwarzenegger's approval rating slipping*. CNN. [cited 15 March 2005]. Available from World Wide Web: <http://www.cnn.com/2005/ALLPOLITICS/02/23/schwarzenegger.ap/>.
17. Wides, Laura, "Davis Hit on Immigrant Driver's Licenses," http://vikingphoenix.com/immigration/davis_illegal_cadl.htm.
18. It is possible to overstate both of these results. In the two-part recall ballot, voters first indicated yes or no on the recall, and next indicated which candidate they would want in case the recall passed. It is possible that many Democrats in a show of faith (or perhaps disbelief) did not bother to pick a candidate. The peculiarity of the situation led to Bustamante's awkward campaign slogan: "NO on the recall. YES on Bustamante."
19. It is important to realize that while census data considers Hispanic a race, it is more accurately an ethnicity that covers multiple races. Race generally (though not always) applies to skin color while ethnicity generally (though, again, not always) applies to cultural background. Hispanics span the White, Black, and Brown races. For instance, two of this paper's authors are Hispanic but might be taken for White on the basis of appearance alone; one of them is also substantially Jewish. This kind of diversity will require special attention when campaigning for the Hispanic vote.
20. Mickelthwait and Woolridge, 240.
21. Leno mockingly aired a series of segments titled "Bush's Spanish Is Better Than His English."
22. Population Dynamics Group, *Demographic Futures for California: Projections 1970 to 2020 That Include a Growing Immigrant Population with Changing Needs and Impacts*, School of Policy, Planning, and Development, University of Southern California, 2001, p.16.
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24. We are naturally wary of raw "most votes in history" figures because, after all, the electorate keeps expanding. However, they are worth noting as long as this proviso is kept in mind.
25. *Poll: Schwarzenegger's approval rating slipping*. CNN. [cited 15 March 2005]. Available from World Wide Web: <http://www.cnn.com/2005/ALLPOLITICS/02/23/schwarzenegger.ap/>.
26. As this paper has shown, that perception would be inaccurate: California is not a liberal bastion no matter what the peculiar mores (and Moores) of Hollywood and Haight-Ashbury.
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28. Humphrey Taylor, "Party Identification: Democrats Still Lead, But Their Lead (5 Points) Is As Low As It Has Ever Been," *The Harris Poll #8*, Harris Interactive, February 13, 2002, http://www.harrisinteractive.com/harris_poll/index.asp?PID=285.

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THE ENVIRONMENT 2004: PUSHED TO THE FRINGE OF PRESIDENTIAL POLITICS

PETE DIDISHEIM

Abstract

Many environmental organizations consider President George W. Bush to be "the worst environmental president in history,"¹ yet the environment barely surfaced as an issue in the 2004 presidential campaign. "The environment was a sleeper issue that never awoke," the New York Times proclaimed a few days after the election. Why? How should organizations and individuals who care about environmental policy and politics think about the 2004 presidential elections? And what does it mean for 2008?

The Environment in the 2004 Campaign

The contrast between the candidates in 2004 could not have been sharper. "It's hard to imagine another case where we've seen a more vivid contrast between the candidates than we see between George Bush and John Kerry on the environment," said Greg Wetstone of the Natural Resources Defense Council in the 26 October 2004 *Washington Post*. According to environmental attorney and Kerry supporter Robert F. Kennedy, Jr., "George W. Bush will go down in history as America's worst environmental president. In a ferocious three-year attack, the Bush administration has initiated more than two hundred major rollbacks of America's environmental laws, weakening the protection of our country's air, water, public lands, and wildlife."²

When Senator Kerry launched his campaign in the summer of 2003, he attacked President Bush for siding with industry on one environmental issue after another, he touted his extensive environmental credentials, and he vowed to campaign on the environment in his bid for the White House. In an interview with *Grist Magazine*, Senator Kerry said, "All over the country, people are responding to environmental concerns . . . You're telling me Americans don't care about these things?"³

Senator Kerry quickly earned endorsements from the environmental community. The League of Conservation Voters (LCV) awarded Senator Kerry an A for his lifetime environmental voting record, and they gave President Bush an F. In endorsing Senator Kerry in January 2004, LCV President Deb Callahan said:

Four days ago, in his State of the Union Address, George Bush stood before the nation and did not see fit to talk about the air we breathe, the water we drink, and the earth our children will inherit. The words "environment," "pollution," "clean air" and "clean water" were nowhere to be found in the text. The League of Conservation Voters has come away with one dominating thought for this election year: As environmentalists, we can say with conviction that George W. Bush should not be recycled as President [sic].⁴

Pete Didisheim's article offers an analysis of why the environment failed to find its way into the mix of issues that defined the 2004 presidential campaign. More broadly, Didisheim underscores how presidential politics set the tone and agenda for public discourse.

—Jeremy Neuner, editor

But as Senator Kerry gained momentum in the Democratic caucuses and primaries, the environment began to vanish from his speeches. Denunciations of the president's environmental record slowly disappeared, expressions of concern about global warming became increasingly rare, and the environment in general was mentioned only in the context of trade agreements and energy independence.⁵ A spirited address by Senator Kerry on 22 April 2004, Earth Day, would be essentially his last major campaign speech focused on the environment. Indeed, as the campaign advanced, the very words that LCV President Deb Callahan had complained as being absent from President Bush's 2003 state of the union address became increasingly absent from the Kerry campaign.

Between April 2004 and election day, Senator Kerry delivered seventy-four major speeches. A content analysis of these speeches reveals that the environmental issue slowly disappeared.⁶ From April through July, roughly 40 percent of Senator Kerry's speeches each month mentioned environmental protection at least once (generally only once).⁷ The environment was mentioned in only one of Senator Kerry's nine campaign speeches in August, none of his sixteen speeches in September, and only one of his seventeen speeches in October.

The environment had essentially no profile in campaign ads, either. Despite the enormous sums spent on political ads by the two campaigns (\$1.6 billion) and a staggering number of ads, the environment was essentially never mentioned, according to a 26 November 2004 article by Mark Memmott and Jim Drinkard in *USA Today*.⁸ Not a single ad produced by the Bush campaign mentioned the environment, and only one out of sixty-four different Kerry ads mentioned the environment.⁹ In contrast, thirty-two of Senator Kerry's ads focused on Iraq, thirty mentioned health care, and twenty-three discussed jobs and the economy.

Given the absence of the issue, it is not surprising that the environment was barely mentioned in media coverage on the campaign. Out of 2,705 articles in the *New York Times* and *Washington Post* mentioning both President Bush and Senator Kerry during the final two months of the campaign, only 107 (4 percent) contained the word "environment." In only twenty-six of the 107 articles (1 percent of the 2,705 total) did environmental issues comprise more than one-third of the content of the story.¹⁰ The environment received slightly more attention in state-level media, but generally only in battleground states where a significant local issue seemed to be of interest to voters.

Why the Environment Vanished

With such a strong contrast between the candidates, why did the environmental issue disappear? Or, as a *St. Petersburg Times* columnist posed to Robert F. Kennedy, Jr., in October 2004, "One big question looms. If the Bush administration is eviscerating thirty years of successful policies, how come the environment isn't a bigger campaign issue?" Kennedy's response in the *St. Petersburg Times* article was to blame the media¹¹ although a more convincing explanation can be found in a review of three major factors described below: political theory about issue definition in campaigns, polling data, and campaign strategy.

Political Theory

Political scientists contend that issues are selected in presidential campaigns through an ongoing "conversation" among voters, candidates, and the media.¹² This conversation, dubbed "crosstalk,"¹³ is likened to a negotiation in which the voters are active participants in constructing the issue preferences of the campaign. Over time, they harmonize their attention on an increasingly narrow and common focus for the campaign.

Through an analysis of the 1992 race between President George H. Bush and Gov. Bill Clinton, crosstalk shows how a consensus emerged among these players about the agenda and issues of the campaign. "Instead of the agenda becoming richer and more diverse as candidates

developed their campaign, . . . the opposite occurred: the agenda became more concentrated and consensual. Over time there was greater agreement across individuals about the central problems and a declining tendency for competing issues to disperse the public's attention."¹⁴ For the 1992 campaign, the focus became the economy, which meant "that the candidates and the media found it difficult to displace their attention onto other issues."¹⁵ The same dynamic of "agenda simplification" took hold in 2004 with regard to the war in Iraq and terrorism.

Opinion Polls and the Candidate Response

In early April 2004, the Gallup organization reported a significant increase in the number of Americans identifying the war in Iraq as the most important problem facing the country—rising to 26 percent from 11 percent the month before.¹⁶ The next most important issues were economy (22 percent), unemployment/jobs (17 percent), terrorism (13 percent), health care (6 percent), and education (5 percent). Only 1 percent identified "environment or pollution" as the most important problem facing the country. This general ordering of issue priorities remained fairly stable throughout the campaign. With the election less than a week away, Gallup reported that terrorism, the economy, and Iraq were the three top issues of concern, trailed by health care, social security, education, Medicare, and the environment.¹⁷

With the Iraq war and terrorism dominating news coverage and emerging as the top issues of concern to voters, the Bush and Kerry campaigns had little flexibility to talk about anything else. The campaigns demonstrated the behavior predicted by Just et al. of a narrowing of the campaign focus caused by influence moving from the ground up, not the top down. If a top-down model actually worked, then Senator Kerry might have been able to take advantage of his strength on domestic issues. Even with Senator Kerry's 60-31 performance advantage over President Bush with regard to handling of the environment, the biggest gap of any issue polled,¹⁸ he couldn't get any traction on the issue with voters or the media. The same was true for Vice President Gore in 2000.¹⁹ The declining salience of the environmental issue and the influence of electoral vote considerations help explain why this was the case.

Although voters continue to identify the environment as important, the intensity of concern has been steadily declining. In late October 2004, 58 percent of respondents to a Gallup poll said that the environment was "extremely important" (21 percent) or "very important" (37 percent) in affecting their vote for president,²⁰ yet when asked after the election to name the "one issue" that mattered most in determining how they voted, only 1 percent of the respondents to a Pew Research Center poll identified the environment.²¹ According to a Gallup poll in April 2004, "Americans are less worried today about the environment than they have been in the past," with 62 percent of Americans indicating that they worry a great deal or fair amount about environmental quality today, compared with 68 percent in 2003 and 77 percent in 2001.²²

This apparent declining salience of the environmental issue created an inherent limit on how far either Senator Kerry or his environmental supporters could actually go in trying to make the environment a decisive issue at the national level. This dilemma was identified in an April 2004 Gallup Poll report:

We can expect to see increased efforts by environmentalists and Democrats this year to highlight Bush's environmental record, and to contrast it with what is widely viewed as Massachusetts Sen. John Kerry's staunchly pro-environment record. But environmentalists should know they are swimming upstream.²³

The stream they were up against was not simply the fact that the environment has been a relatively minor issue in presidential elections for the past thirty years, as observed by Beth Daley

of the *Boston Globe*,²⁴ but also the real-world constraints of campaigning in a time of partisan parity—when the electoral and popular votes are so evenly divided between the two major political parties.

Campaign Strategy: The Environment and the Electoral College

Fighting for a handful of contested electoral votes, the Bush and Kerry campaigns targeting a small number of battleground states where discussion of environmental policies was a challenge. Ohio, Pennsylvania, and West Virginia were critical parts of the electoral vote strategy for the Kerry campaign, yet these states are major coal producers where talk about global warming and reducing air pollution could have been politically fatal. Recognizing this, Senator Kerry promised to invest \$10 billion over ten years in “clean coal” technologies, according to the *Boston Globe*, and he essentially stopped talking about global warming and pollution caused by coal-fired power plants. The electoral logic was obvious: James Dao wrote in the 13 October 2004 *New York Times* that Vice President Gore’s positions on global warming and coal were seen as a major reason why he lost West Virginia in 2000, and Ohio was “ground zero” for the campaign.

Michigan’s seventeen electoral votes also were seen as critical to the Kerry campaign, yet concern about alienating the auto industry blunted Senator Kerry’s environmental themes. Although Detroit is generally viewed as a laggard in creating fuel efficient, low-pollution cars and trucks, the *Boston Globe* reported that Senator Kerry in mid-2004 stopped calling for any specific miles-per-gallon fuel efficiency improvements in U.S. cars. The watering down of Senator Kerry’s message may have made sense for electoral purposes, but it was a big change from his tough-talking message about fuel-efficiency standards a year earlier, which he defended as saying: “You have to tell the truth and let the chips fall where they may.”²⁵

The Information Environment

Although the information environment for the 2004 presidential election was dominated by news of the war in Iraq, the year included significant events involving environmental issues that one might have thought would influence the campaign. For example, the seventh highest box office movie of the year was *The Day After Tomorrow*, a disaster film about the threat of global warming.²⁶ The fifth largest circulation magazine in the United States, National Geographic, ran a seventy-four-page cover story in September 2004 which detailed impacts of climate change already underway around the world. Business Week ran a cover story titled “Global Warming: Why Business Is Taking It So Seriously” two weeks before the Republican National Convention. NASA released new data documenting that global warming was causing an accelerated rate of temperature rise and sea ice melting in arctic regions.²⁷ A major report released by the Arctic Council also documented that the world’s northern ice cap was melting rapidly due to global warming.²⁸ And the 1 October 2004 Washington Post reported Russia’s announcement that it would ratify the 1997 Kyoto Protocol on global climate change, further isolating the United States from the 141 nations that have signed the agreement.

None of these developments seemed to have any impact on the narrative of the presidential campaign, creating a paradox for environmentally-minded voters and organizations: at a time when society appears to be facing its most serious environmental problem ever, in the form of global warming, the world’s most powerful nation didn’t even discuss the issue in its presidential election. Although the environment and global warming have become major political issues in other industrial nations,²⁹ the Gallup Organization reports that Americans are now less likely to see the environment as a long-term problem than in 2000,³⁰ public concern is waning across a broad range of environmental issues, and particular worries about global warming rank near the bottom of a long list of environmental issues polled.³¹ Where does this leave peo-

ple concerned about this issue who hope to make a difference in the 2008 presidential election?

Options for the Future

For pro-Kerry supporters who work on environmental issues, the 2004 presidential election was an enormous disappointment: a strong environmental candidate was defeated, the environment was barely mentioned during the campaign, and Americans seem more complacent than ever about the quality of our environment. Looking to the future, there appear to be three major options for those involved in environmental politics at the presidential level.

First, they can resolve that the environment is unlikely to become a significant issue in presidential elections at the national level (e.g., speeches, television ads, and debates). This is the status quo approach that fits with what Harvard professor Robert Blendon, an expert in public opinion research, refers to as the “two percent issues.” “Despite a multitude of polls that suggest voters care about environmental issues,” Blendon told the *Boston Globe* in October 2004, “only about two percent actually pick a candidate based on those beliefs. Mostly, these ‘two percent issues’ are local ones being used in swing states to sway voters.” The status quo option also would involve surrogates and political organizations trying to energize base supporters, much as was done in 2004. The dilemma about this approach is that if environmental protection is not part of the issue discussion at the national level, then candidates can avoid making specific commitments, take the “environmental vote” for granted,³² and/or compromise their positions in order to secure votes in swing states. All this makes it more difficult to implement sound environmental policies if the candidate is elected.

A second, more challenging option would be for the environmental community to throw its collective support behind elimination of the electoral college system, which forces the candidates to tailor their campaigns to many of the “rust belt” states. If the president were elected by the popular vote, then candidates would need to campaign where the most people live—including places like California, the Pacific northwest, and the northeast, where the crosstalk of the campaign likely would elevate the environmental issue. Along these lines, in a piece titled “Imagine If Texas and the Bronx Mattered,” *New York Times* columnist John Tierney mused, “Mr. Kerry, less worried about offending Michigan’s autoworkers than winning over environmentalists on both coasts, would probably spend more time on the stump discussing his plans for higher fuel-economy standards.”

A final option would be to build a broader, deeper movement of voters concerned about the environment from the ground up—connecting the environmental issue to the lives of American voters in new ways, so that the issue cannot be ignored. That’s easier said than done, and certainly this has been a goal for environmental groups for years. Some lessons from the 2004 presidential campaign are apparent, however. First, the one place where the Bush administration seemed to alter its environmental policies and heed the concerns of “conservationists” was when they heard from sportsmen. In response to an outcry from “the hook and bullet crowd,” as hunters and anglers have been called, the Bush administration backed down from plans for gas drilling in Montana’s Rocky Mountain front, according to Blaine Harden of the *Washington Post*. Both the Kerry and Bush campaigns worked hard to court the estimated fifty million hunters and anglers in the United States, many of whom have expressed concerns about energy exploration and wetland development that damages prime hunting and fishing habitat. An even more active effort to strengthen connections with these voters would make the environmental coalition more influential in presidential politics.

A second lesson is that the environmental issue has become too partisan. The Republican Party seems to have stripped the word “environment” from its language. The environment has not been mentioned by a Republican nominee in his acceptance speech for twenty-five years because it has been branded as a “Democratic” issue. Because it is not mentioned by

Republican candidates, the party's faithful don't hear it as being important, and vice versa. One week before the election, only 11 percent of Republicans identified the environment as "extremely important" to their vote for president, compared with 31 percent for Democrats and 22 percent for Independents.³³ As noted by Steven Hayward, a resident scholar at the conservative American Enterprise Institute, in the 18 October 2004 *Washington Post*, "What was a consensus issue is now a bitter partisan issue." The partisan divide is clearly apparent in how Republican senator James Inhofe of Oklahoma, chairman of the Senate Environment and Public Works Committee, characterized environmentalists in the same article: "They are really liberals. They're all strong pro-abortionists, they're all pro-gun control people, flying under the flag of environmentalism." As long as this type of characterization is allowed to circulate, there is little chance that the environment will become a central campaign issue for a president of any party. Building bipartisan approaches to protecting the environment will be more important than ever.

The final lesson is that the environmental community really has no choice but to work to achieve a broad-based, bipartisan movement, with ties to labor, Republicans, sportsmen, minorities, health care professionals, and many others. Without such a coalition, a truly environmental president is unlikely ever to be elected and the nation's existing environmental safeguards are almost certain to be unraveled. As reported in the *New York Times* within days of President Bush's victory, "With the elections over, Congress and the Bush administration are moving ahead with ambitious environmental agendas that include revamping signature laws on air pollution and endangered species and reviving a moribund energy bill that would open up the Arctic National Wildlife Refuge [ANWR] to energy exploration." The 16 March 2005 Senate vote to open ANWR to oil and gas exploration could mark the opening gambit of the environmental community's worst fears: an even more brazen unraveling of the nation's environmental safeguards.

If such efforts occur, they could signal a reawakening of the environmental issue, as Americans become aware of the implications of having not included environmental protection in the crosstalk of the 2004 presidential campaign. Yet a lot rests on how the environmental community responds. If the assault escalates, then the environmental community will need to do a better job than it has over the past four years in making such threats matter to American voters. They will need to find new ways of making the growing evidence about climate change salient to the public. And they will need to forge new alliances that help build political and electoral influence. Only then will the environmental issue move away from the edge of presidential politics and toward a place that can actually have influence on the outcome of the campaign.

Endnotes

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6. The author completed this analysis using the online archive of John Kerry's campaign speeches, available online at John Kerry's personal Web site, <http://www.johnkerry.com/pressroom/speeches/archive/july.html>.

7. The following sentence, which became a common line in many speeches starting in July 2004, was not counted: "In great movements for civil rights and equal rights, the environment and economic justice for all, we have come together as one America to give life to our mighty dream."
8. The 2004 presidential election was the largest communications campaign in history, with an estimated \$1.6B spent on campaign ads alone; more than double the previous record of \$771 million set in 2000.
9. The analysis in this paragraph is derived from viewing every campaign ad that was posted on the official Web sites for the two candidates: <http://www.JohnKerry.com> and <http://www.GeorgeBush.com>.
10. Total articles derived through LexisNexis search for 1 September 2004 through 2 November 2004 for articles containing "Bush" and "Kerry." Content analysis done on the 170 articles also containing the word "environment" to determine how it was used, and amount of the article devoted to environmental issues.
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RECONCILIATION AND DETERRENCE: A MENTAL HEALTH PERSPECTIVE

LIANA TULLER

Abstract

The types of disruptions and trauma experienced by residents of high-crime neighborhoods can be similar to the trauma experienced by children and adults in times of war. Methods used to resolve trauma experienced during war or during times of political violence, specifically methods that involve public actions to reconcile conflicting elements of society to live alongside one another, may also prove effective in reconciling communities plagued by criminal violence. Through the reconciliation of offenders with victims, the establishment of provisions for ex-offender reintegration into society, and the public establishment of new social norms, international approaches to post-political conflict reconciliation and social healing hold promise for reducing crime in high-crime neighborhoods in the United States, specifically through offender-victim reconciliation, community-law enforcement reconciliation, and ex-prisoner reintegration programs.

Introduction

The killer of Isaura Mendes's son, Bobby, stabbed ten years ago while trying to break up a fight, is still at large. Isaura, whose two sisters have also each lost sons to street violence, goes to church, shops, and walks the streets in her Uphams Corner neighborhood of Boston, aware that her neighbors may know the whereabouts of her son's murderer, but are too afraid to speak to authorities. Some of her neighbors are part of the same gang as the person who killed her son, reported the *Boston Herald*.

In another Boston neighborhood, freshman Tanisha Brown¹ exited her high school to witness a speeding car spraying bullets into the crowd of kids. Now Tanisha has anxiety attacks when she is in crowded areas, like the school lunchroom, and frequently stays home because of panic attacks. She missed so much school last year that she is repeating ninth grade.

Like many big cities, Boston, Massachusetts, is home to a number of crime-ridden neighborhoods, like Dorchester, Mattapan, and Roxbury, whose residents suffer from mass trauma—the type of trauma that begets more violence because people become, by necessity, distrustful of their neighbors, reluctant to let their children out on the street, and unconvinced of the sincerity of law enforcement officials. When the violence never stops, how can communities recover from mass trauma? How can people establish shared social values that condemn violence when they distrust their neighbors *because* of ongoing violence and when perpetrators live, frequently unpunished, alongside victims and bystanders?

While there are no easy answers, we can look to countries that have emerged peacefully from long periods of intense political violence for practical models that offer hope for our own neighborhoods. Peruvians who lived through their nation's civil war and South Africans who

Those of us from industrialized countries often arrogantly assume that all good ideas about development are exported from west to east, and from north to south. Liana Tuller turns that assumption on its head, by showing Americans how to move beyond, and prevent, inner-city violence by learning from communities who have suffered from violent political unrest in South Africa and Peru.

—Beth Trask, editor

confronted apartheid's political violence suffered similar trauma to that experienced by residents of violent urban U.S. neighborhoods. Yet reconciliation efforts in Peru and South Africa have accomplished some degree of both psychological recovery and relative peace. Public ceremonies can help societies achieve recovery and peace in several ways: by relieving cognitive dissonance associated with living alongside perpetrators who have not faced consequences for their actions, by reintegrating reformed perpetrators into society, and by harnessing the performance aspects of the process through which social bonds are, in a sense, created in the community via a demonstration of public morality.

Although the crime prevention benefits of such public ceremonies may appear to be abstract and immeasurable, examples of community reconciliation in international and domestic contexts demonstrate the power of this approach in ending long periods of violence. Public safety officials, parole boards, police, politicians, and community activists in Boston can learn from these attempts to achieve reconciliation after political violence.

Psychological Effects of Community Violence and War

In order to evaluate the essentially therapeutic processes of public reconciliation ceremonies, it is first necessary to understand the psychological effects of trauma on individuals, as well as the process by which communities formulate and establish the social norms that reconciliatory processes aim to change.

Since the 1980s, researchers and practitioners have established the effects of community violence on children's mental health, which can include post-traumatic stress disorder (PTSD) and other stress-related disorders.² In their compilation *Minefields in Their Hearts*, Robert Apfel and Bennett Simon highlight the similarities between children's psychological reactions to war and to violence in inner-city communities.³

On an individual level, the developmental outcomes of stressors such as violence, poverty, divorce, or marital discord include learning disabilities, behavioral problems, developmental delays, and aggressiveness leading to further violence.⁴ In psychological terms, with repeated trauma, children's capacity to feel competent, a necessary precondition for the sublimation of aggression and other developmental phases, is "overwhelmed by poverty, family dysfunction, over-stimulation, and threatened or actual physical danger."⁵ However, not all children who experience trauma have learning and behavioral problems. In fact, specific interventions to help children appropriately formulate the personal meaning they attribute to a traumatic event can impact their psychological and behavioral outcomes.

Take Beverly, a six-year-old girl in New Haven, Conn., who witnessed the shooting, in the head, of her school bus seatmate when the bus was caught in cross fire. She believed that she was responsible for her friend's injury because earlier, in a surge of jealousy, she had wished her baby brother would die.⁶ Or consider Mark, a fifteen-year-old New Haven boy who was robbed at gunpoint, and was incapacitated by the idea that he had not adequately stood up for himself and put the robbers into their place.⁷ Child and adolescent witnesses to communal violence may not be able to assimilate what they have seen into their schemata of what "should be," and so they may fit what they have seen into the structure provided by internal fantasies and fears.⁸

The youth in the previous two examples were able to find resolution when mental health professionals helped them to reconceptualize their experiences in the context of what they could still control. However, conceptions of self and community formed under situations of ongoing violence and unresolved trauma may extend to social trust and beliefs about community norms. Individuals who have experienced past traumas are sensitized to new ones. They have a harder time putting their new trauma behind them since violence has come to seem pervasive.⁹ In some neighborhoods where gang-related violence is prevalent, residents may be

particularly inhibited from “shar[ing] the burdens of other community members” because of fear of retribution,¹⁰ exacerbating the isolation that trauma victims experience. Often what is needed is a mechanism by which individuals in high-crime communities can safely create narratives in which they exert some degree of shared control over the events that surround them.

Peru: Reestablishing Social Norms

Anthropologist Kimberly Theidon examined the post-civil war level of conflict and mental health in Peruvian highland towns. She concluded that for those communities in which members were able to administer justice through punishment, repentance, and reparations, there was more possibility of ex-Shining Path guerrillas (Senderistas) and their one-time sympathizers living side by side. In contrast, she writes, “Where local processes were blocked, by laws that demanded amnesty for example, life is more full of conflict, more people suffer from stress-linked disorders, and there is more alcoholism.”¹¹

In fact, the people of Ayacucho highlands, the subjects of Theidon’s ethnography, created highly ritualized public ceremonies by which ex-Senderistas could return to their villages of origin after they had met several conditions, including sincere apologies, pledges never again to collaborate with the Senderistas, and being whipped. Community members conceptualized the ex-Senderistas’ return to the village as “a return to being human.”¹² After a time of wandering in the puna (wilderness), homeless, disconnected from human society, and, the villagers believed, marked by abnormal physical qualities, the ex-Senderistas regained their connection to the village.

Three main functions can be identified in the public reintegration ceremonies of the Ayacucho villages. First, the ceremonies created the possibility of perpetrators being reintegrated into the society. This took away most of their motivation to be a continued threat since their fate was now tied closely to the fate of others in the community. Second, the ceremonies relieved the tension that would have arisen from living alongside someone who had participated in the murder of family members, friends, neighbors. By conceptualizing the ex-Senderistas’ return as a kind of rebirth, where alien or demonic qualities were shed and human qualities regained, the community saw the ex-Senderistas as new people, not the same ones who had committed the crimes against their loved ones. Finally, by the insistence that such forgiveness would not be issued again, the ex-Senderistas pledged never to kill a community member again, and by granting them land, new norms of civility and *convivencia* were established that helped reestablish a feeling of control over the village’s destiny and a more healthy, cooperative future.

The public aspect of these reintegration ceremonies is essential to affirm social norms about acceptable behavior. Across social groups, people tend to believe that their peers are far more tolerant of deviant behavior than is actually the case. This belief reinforces the deviant behavior.

For example, in the United States, residential mobility is proportionally associated with crime rate.¹³ Because individuals in neighborhoods with high rates of residential mobility rarely have the opportunity to form social relationships, they may not learn that their neighbors share their own low tolerance of deviance.¹⁴ For this reason, the fact that crime goes unchecked around them causes them to assume that this extreme behavior is more widely tolerated than it actually is. This, in turn, makes individuals reluctant to communicate with neighbors, further reducing the opportunity to discover that their neighbors share their disapproval of criminal behavior; simultaneously, individuals on the end of the continuum that is more tolerant of deviance may engage in more extreme behavior because it is not publicly condemned.¹⁵

Exposure to the moderate attitudes held by most members of the community succeeds in establishing moderate patterns of behavior.¹⁶ In Ayacucho, where social bonds had been

destroyed by years of violence and fear of neighbors, it was all the more important to publicly and forcefully acknowledge shared norms of acceptable behavior, reestablishing trust as well as an explicit understanding that the society would continue to enforce these norms.

South Africa: The Truth and Reconciliation Commission

The great challenge of reconciliation is to manage the tension between punishing perpetrators enough to reinforce the law and signal a return to the community's safety, and forgiving perpetrators enough so that they can reestablish a productive life in the community. In *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*,¹⁷ Martha Minow describes the power of the politically negotiated Truth and Reconciliation Commission (TRC) in South Africa. The TRC's goal was not to cover up past injustices, but instead to obtain and publicize descriptions and explanations of acts of torture and murder that would otherwise not have been available.¹⁸ Minow notes that in obtaining these confessions as a matter of public record, the TRC sought a type of "restorative justice:"¹⁹ that of restoring to the society information about past events that had been denied to them by the former regime's secrecy and lack of accountability.

In contrast to commissions like TRC, trials are inherently too limited to help a nation undergo the process of truth-telling. In litigation, there is a strong disincentive for defendants, plaintiffs, and witnesses to tell the whole truth. Instead, they endure cross-examination by an attorney who takes great effort to make their stories appear false or weak. As Minow notes, "The chance to tell one's story and be heard without interruption or skepticism is crucial to so many people, and nowhere more vital than for survivors of trauma. So, too, is the commitment to produce a coherent, if complex, narrative about the entire nation's trauma, and the multiple sources and expressions of its violence."²⁰ The truth commission's focus on healing survivors of trauma goes beyond simple restitution or vengeance.

It is tempting to suggest that what the truth commission affords the victim is precisely the regaining of control and agency that allows for type of mental healing that trained therapists and allies were able to provide for the traumatized children in the individual New Haven cases.²¹ Yet the jump from individual psychological healing to societal healing is a large one, especially since cultural psychology, or psychology with an anthropological approach, is a relatively new and unexplored field, albeit one with promising beginnings.²² While, as Tina Rosenberg notes, individuals in the context of both therapeutic processes and truth commissions need to be able to tell their narratives of atrocities and violence in order to regain psychological control over these events and reintegrate them into their life stories,²³ too much memory can also prevent healing in cases where the victim is stuck in a continual replaying of the atrocities he or she has experienced, and in any case where healing is an absurd and fragile notion for survivors.²⁴

Nonetheless, the links between individual psychological healing and societal healing are important because rather than a series of discrete, idiosyncratic processes, all individuals within a society undergo a similar process in order to work through their trauma. First, by telling their stories publicly, trauma victims transform their narratives and are seen as people of "dignity and virtue;"²⁵ furthermore, by constructing a testimony of the past, they distinguish to themselves between past, present, and future and may avoid reproducing their traumas in emotional disturbances later on by consciously isolating them.²⁶ Victims' knowledge that their suffering is not a private experience but the result of a shared social catastrophe can partially remove the stigma and feeling of isolation created by torture and violence, especially when the traumas have not been acknowledged by the government in the past or were seen to be a punishment for a shameful wrong.²⁷ Additionally, truth commissions provide sympathetic witnesses for survivors' stories; in South Africa, audience members would join testifiers in crying,

song, and prayer—further adding to the collective healing.

These gains can also be seen in terms of the benefits of societal reconciliation on a micro-level as distinguished in Theidon's research on Ayacucho. New norms are established that will govern future social interactions, enabling the society to move forward without doubt as to "moral right" and without need to continue in a cycle of vengeance and retribution. Theidon observes that towns that employ these processes of rehumanizing perpetrators, reconciling victims and perpetrators, and establishing new social norms exhibit lower rates of mental health disorders, alcoholism, and other pathologies than do towns that have not undergone these processes. This provides hopes for the mental health of individuals in South Africa following the TRC, as compared with individuals in countries emerging from political violence where comparable procedures have not taken place.

United States: Project Return

Positive examples can also be found within the United States. One program that has been successful in reducing violence and recidivism rates among former convicts in Louisiana is Project Return. This three-month, full-time reintegration program combines GED preparation, job training, and drug rehabilitation services with intensive "community-building" sessions in which participants confront personal and interpersonal issues, pledge to do no violence, do "grief work," and develop listening, conflict resolution, cooperative and collaborative skills.²⁸ The recidivism rate for the eighteen hundred men and women who completed the program was under 25 percent within three years, compared with 75 percent within three years for former prisoners who did not complete the program. While 40 percent of Project Return participants were originally convicted for a violent crime, only 6 percent of the recidivists who had completed Project Return had a subsequent conviction for a violent crime.²⁹

Robert E. Roberts, the creator of Project Return, claims that the success of the program is due primarily to the community-building sessions, where, for the first time, ex-offenders enter a safe environment to unload emotional burdens. The fact that they have held onto these traumas for years alone creates what Roberts terms a "rage" that prompts violent behavior and that cannot be released until these individuals have a forum in which to process their grief—"lowering their propensity for self-destruction and violence."³⁰ Much like the TRC in South Africa, the grief workshops at Project Return require ex-inmates to sit with a group of peers (half of the program directors are ex-inmates themselves), tell the truth about what has happened, and bear witness to one another's grief. In listening to one another and recognizing the destructive role traumatic events have played in the lives of these men and women, the group both implicitly and explicitly generates the norm that such traumatic events are wrong. While for the first time openly recognizing that wrong has been done to them and grieving this wrong, participants also appreciate that such wrongs must not be repeated.

Finally, Project Return was developed after three years of piloting experimental versions of the program with current prison inmates. According to administrators, "analysis of the data obtained in the experiment supported the effectiveness of the community-building model in producing significantly greater improvement in reading skills and behavior for the treatment group compared to two control groups."³¹ This result may imply that, once trauma is acknowledged and reframed through what is here termed "grief work," it is easier to address other developmental and learning abilities.³²

While the community building sessions of Project Return do not reconcile perpetrators of violent crimes with their victims, they accomplish the powerful goals of giving ex-inmates skills to become reintegrated into the community. By processing past traumas as a group, each participant comes to realize that the others do not view violence as an acceptable behavior.

Recommendations for Boston

On 21 April 2005, former gang member Mario Rodrigues stood up at a public prayer meeting in Boston and wished a happy Mother's Day to all the assembled mothers who had lost a child. Explaining that "prayer works," Clementina Chery, whose son was killed in gang cross fire in 1993, introduced Rodrigues, the founder of the Unity Outreach Group for former and current gang members.

This is an example of a reintegrative process, bringing together former criminals, victims, and community members and incorporating similar therapeutic and norm-establishing steps as the South African TRC and the village justice in Peru that could reduce crime in Boston and similar urban areas. Like members of the Ayacucho highlands communities and people in South Africa, victims and perpetrators or their accomplices often live side by side in Boston. Although survivors' interests are theoretically protected by the law, law enforcement is often unable to find those who shot their family members. Gang members intimidate bystanders to the crimes and others in the community, so that they do not divulge information that might be helpful to the police. According to Boston criminal justice officials quoted in the 8 December 2004 *Christian Science Monitor*, "witnesses are still intimidated in almost every case involving gangs or other violent crime." A code of silence prevails not only because of gang intimidation, but because of reluctance of many members of the community to be seen as collaborating with law enforcement authorities, who have an unresolved institutional history of racism and are seen in many high-crime communities as ineffectual or corrupt.³³

Living in a high-crime neighborhood, with victims alongside perpetrators and bystanders, many of whom overlap,³⁴ can be tremendously traumatic in similar ways to living in a country torn by political violence.³⁵ A scattering of groups in Boston, such as the Unity Outreach Group—a collaboration between the Louis D. Brown Peace Institute and former members of gangs in Boston—are working to try to relieve the stress of living alongside perpetrators; other groups, such as the Ten-Point Coalition, have worked to publicly proclaim anti-violence community norms. Some initiatives of the Boston Gun Project, such as the community forums—where suspected gang members were put "on notice" that they would be punished harshly if they continued their violent behavior—functioned as a method by which public norms were established and reinforced by community members standing alongside law enforcement, social service agencies, and potential or actual perpetrators to condemn gang violence and demand new behavior.³⁶ With targeted audiences and reference to a focused set of violent activities that must not be repeated, these interventions have succeeded in preventing further violence and even in getting enough word-of-mouth publicity so that some gangs who had not been put on notice and whose members did not attend the forums came forward to the police and said that they would not commit further acts of lethal violence.

These functions can be expanded and refined to create a dynamic similar to that realized through the Ayacucho reintegrations and the South African TRC. Today, as formerly incarcerated gang members return to the neighborhoods where they wreaked havoc, often without education or job prospects, this imperative is even more urgent. The ideal social reintegrative process would contain all the elements found in Peru and South Africa: reconciliation of cognitive dissonance of living alongside former perpetrators, reintegration of perpetrators into society—especially former convicts—and the public establishment of social norms.

Specific recommendations include the following:

Mayor Menino should recognize and financially support the efforts of groups similar to the Unity Outreach Group, which functions as a forum for current and former gang members to publicly establish a community norm that is intolerant of violence.

The Boston Police Department should embrace a civilian oversight mechanism in order to

Raise performance measures for crime reduction.

Raise performance measures for criminal justice.

Establish a TRC wherein police representatives and members of communities with a history of distrust of the police publicly put forward their versions of past conflicts and establish expectations of future cooperation.

The implementation of civilian oversight should represent a break with past objectionable police practices and community non-cooperation and an opportunity to move forward.

The Massachusetts Department of Corrections should institute a prisoner reintegration program similar to Project Return, providing a therapeutic environment as well as extensive job training and employment opportunities.

Neighborhood activists should seek to hold TRCs in a public setting with returning ex-prisoners convicted of violent crimes, asking them to explain to the community the extent of their activities and to listen to survivors and others affected by their actions as they describe the physical, emotional, and financial effects the ex-prisoners' actions have had. Even when no person is convicted of a violent crime, community members should still have a public forum for individuals to express the effects of the event on their lives.

Truth and reconciliation commissions on the neighborhood level—where fears, feelings, and traumas are simply expressed publicly for the first time—are imperative to improving the mental health of individuals in the community as well as deterring future crime. Unlike the South African TRC, they would not replace punishment for offenders, but they would still create a space for social healing and reconciliation. First, they would allow individuals to express personally held beliefs and shape perceptions of community norms, reaffirming the right of residents to live in peace and security. Second, they would relieve the tension inherent in feeling angry, afraid, and betrayed by neighbors but not being able to say anything about it. Third, they would provide perpetrators and silent bystanders the opportunity to express regret for past actions and redeem themselves in the eyes of the community. Ideally, such neighborhood TRCs should involve law enforcement authorities, not as organizers, but as fellow testifiers. Their willingness to contribute their perspective, doubts, and feelings could go a long way toward repairing relations of distrust and seeding the ground for future collaborations. The groundwork for such efforts have been laid in Boston through community policing efforts, church-law enforcement collaborations, and grassroots organizations committed to reducing violence; the promise lies in the success of similar ventures in reducing conflict and improving mental health in areas torn apart by political violence.

Endnotes

1. Not her real name.
2. Spencer Eth, "PTSD [Posttraumatic Stress Disorder] in Children and Adolescents," *Review of Psychiatry* 20, no. 1 (2001).
3. Roberta Apfel and Bennett Simon, eds., *Minefields in Their Hearts: The Mental Health of Children in War and Communal Violence* (New Haven, Conn.: Yale University Press, 1998).
4. Steven Marans, Miriam Berkman, and Donald Cohen, "Child Development and Adaptation to Catastrophic Circumstances," in *Minefields in Their Hearts*, 106.

5. *Ibid.*, 107.
6. *Ibid.*, 119.
7. *Ibid.*, 121.
8. *Ibid.*, 108.
9. Kaethe Weingarten, *Common Shock: Witnessing Violence Everyday—How We Are Harmed, How We Can Heal* (New York: New American Library, 2003).
10. Marans, Berkman, and Cohen, 109.
11. Translated from the original by author [Liana Tuller]: “[D]onde los procesos locales fueron obstaculizados, po leyes que ortorgaron amnistia por ejemplo, la vida es más conflictiva, sufren más de los males vinculados con el estrés, y hay más alcoholismo.” Kimberly Theidon, “Entre prójimos: Violencia y reconciliación en el Perú,” *Ideele: Revista del Instituto de Defensa Legal* 157 (September 2003): 96.
12. Translated from the original by author [Liana Tuller]: “Convertirles [a los senderistas] en seres humanos nuevamente.” Kimberly Theidon, *La Micropolitica de la Reconciliacion: Practicando la Justicia en Comunidades Rurales Ayacuchanas*. Revista Allpanchis, special issue on Justicia Comunitaria en los Andes, vol. 60:113-142.
13. According to Sampson and Jeglum Bartusch, tolerance of deviance is lower among African Americans and Latino Americans than Whites and is lower among people of low socioeconomic status than people of medium and high socioeconomic status in ways that defy conventional beliefs about subcultures of deviance or violence among traditionally disadvantaged populations. Robert J. Sampson and Dawn Jeglum Bartusch, “Legal Cynicism and (Subcultural?) Tolerance of Deviance: The Neighborhood Context of Racial Differences,” *Law and Society Review* 32 (1998): 777–804.
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31. *Journal of Offender Rehabilitation* 20 (1994), quoted in Project Return, "Breaking the Cycle of Crime: Organizational History," http://www.projectreturn.com/index.php?name=organization_history.
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RACIAL PROFILING AS A PREEMPTIVE SECURITY MEASURE AFTER SEPTEMBER 11: A SUGGESTED FRAMEWORK FOR ANALYSIS

K. SHIEK PAL

Abstract

The events of September 11, 2001, marked the beginning of the United States' renewed war on terror, and introduced racial and ethnic profiling as a tool in that struggle. This paper reviews the body of law and policy concerning profiling prior to and after September 11, and through statistical analysis the impact of preemptive profiling of individuals "of Middle Eastern appearance" to both society and those affected. The author draws attention to the collateral costs associated with broad population screening, and the disproportionate burden borne by the targeted group. Several courses of possible refinement and future research are developed.

Introduction

September 11, 2001, marked a tragic day in the nation's history and ended an era of American innocence and isolation. Americans were no longer absolutely secure in the belief that they were safe within their own borders, and similarly many Americans were no longer secure in the belief that race or ethnic origin would not deprive them of the same civil liberties afforded other Americans. The casualties of September 11 included a massive loss of innocent life, financial losses in the billions, and also the loss of the bedrock American value that race or ethnicity should not be a factor in predicting criminal behavior. This development undermines an extensive body of law and public policy enacted over decades that delineated the appropriate consideration of race in such areas as jury selection, profiling, and internment.¹

The question of racial and ethnic profiling after September 11 focuses on two new issues: the preemptive use of profiling as a prophylactic against terrorism and the identification of the so-called "of Middle Eastern appearance" (OMEA) group as the primary target of such profiling.² The OMEA group is broadly defined to include any individuals whose physical characteristics could plausibly serve as a proxy for Arab, Middle Eastern, or Muslim affiliations.³ This proxy is theoretically used to identify threats against the United States emanating from extremist Islamic terrorists and is premised on the idea that all prospective terrorists representing this threat will fall into this category.⁴ However, the use of preemptive profiling is a dangerous proposition because it carries inherent costs that must be evaluated against the potential benefits that would be derived from a foiled terrorist plot. These costs include the proportion of OMEA citizens falsely identified as threats and the associated harms of social stigma and further deprivation of civil liberties through detention, intensive interrogation, and invasive searches. This paper assesses these social costs as a means of evaluating the appropriate role of profiling under the current federal guidelines.

The terrorist attacks in New York and Washington on 11 September 2001 have resulted in both an intensification of law enforcement activities and the loss of some freedoms for all Americans, but especially those commonly dubbed "of Middle Eastern appearance." The question of whether individual freedoms subserve the greater good, particularly in the United States, remains difficult. K. Shiek Pal presents a valuable framework for considering this question and for guiding further analysis.

—*Jules M. Delaune, editor*

Preemption

Preemption is controversial because it involves morally ambiguous questions of acceptable loss and calculated risk. However, in a global society increasingly susceptible to nontraditional forms of devastating attacks oriented at amassing massive casualties, preemption offers an inevitable and effective method of protection. Categorically discounting preemption compromises a state's ability to defend its citizens against enemies who do not adhere to similarly defined boundaries, and therefore preemption appears to be an inevitable future policy decision. The distinction between preemption and prevention turns on immediacy—preemption employs various tools to terminate a perceived threat prior to its effectuation, whereas prevention takes a less aggressive and more protracted approach to create an environment where such threats are less likely. Preemption becomes necessary because prevention is not a viable option in situations where the harm is imminent and there is insufficient time to implement a more comprehensive response.⁵ The tools of preemption are more controversial than those of prevention because of the greater associated risks and costs. One such preemptive tool employed by authorities in the war against terrorism is racial profiling.

Preemption through Racial Profiling

The concept of racial profiling—attributing a predisposition for certain behavior to an individual's racial or ethnic heritage—arouses impassioned debate and moral outrage because it necessarily implicates a belief that race determines conduct in some discernable part.⁶ This notion fundamentally contradicts cherished bedrock values of equality in the American democratic system, and the Associated Press quoted President Bill Clinton's description of profiling as "a morally indefensible, deeply corrosive practice." However, in a world where any incremental advantage in winning a war against terrorism must be considered, there must be room to incorporate the benefits of preemptive profiling if it sufficiently advances the cause of security. The controversy arises when entire classes of people are treated as suspects based merely and solely on their racial or ethnic heritage. This type of race-based assumption harkens back to periods of American history when discriminatory laws and policies resulted in a stratified citizenship wherein people were denied rights and liberties because of the color of their skin. Considering the costs borne by the targeted group on behalf of the overall society is important in evaluating the actual preemptive mechanism used to screen the group because of the legal, social, and philosophical principles that argue for equal treatment between races, with limited narrow exceptions.

Defining the Problem

Proponents of profiling as a means of preempting terrorism point to the demographic commonalities of the September 11 hijackers, who were uniformly Muslim males of a certain age and primarily of Saudi origin.⁷ The basic argument of these proponents is that, given these commonalities, it is ineffective to allocate scarce resources towards screening passengers outside this defined group, particularly when the process of randomized searches results in very young children or elderly women being selected for such scrutiny.⁸ By noting that a broadly disseminated threat is emanating from a specific "identifiable" group (i.e., Muslim terrorists), those in favor of such profiling distinguish the measures they endorse from a mere assumption of criminality based on race.⁹ While it is true that the threat effectuated on September 11 can be attributed to a group of men sharing some identifiable characteristics, it is equally true that there are also additional, less easily discernable factors that distinguish this particular subset of Muslim men from all those that would be captured under a more targeted screening process focusing on the general profile (young Muslim men of Middle Eastern appearance.) These additional

factors include religious extremism, political ideology, and adherence to a socioreligious cultural war known as a jihad.¹⁰ Thus the fundamental problem with a preemptive profiling system using the OMEA standard is that this does not reflect these salient additional factors and therefore improperly captures far more innocent people than intended.

DOJ Guidelines on Racial Profiling

The U.S. Department of Justice has issued guidelines on racial profiling that prevent the use of race in routine domestic investigative procedures but allow for particularized suspect descriptions incorporating racial characteristics.¹¹ The guidelines state that “general enforcement responsibilities should be carried out without any regard to race or ethnicity,”¹² and that “stereotyping certain races as having a greater propensity to commit crimes is absolutely prohibited.”¹³ These provisions guard against the most common notions of racial profiling, such as discriminatory traffic stops or targeted searches of minorities. However, these guidelines do not completely constrain the use of racial/ethnic profiling in combating terrorism insofar as there is substantial latitude for national security applications.¹⁴ Specifically, the guidelines use contradictory language and examples in delineating the scope of permissible racial profiling in the war on terror. Compare the following excerpts from the guidelines:

In investigating or preventing threats to national security or other catastrophic events (including the performance of duties related to air transportation security), or in enforcing laws protecting the integrity of the nation’s borders, federal law enforcement officers may not consider race or ethnicity except to the extent permitted by the Constitution and laws of the United States.¹⁵

Given the incalculably high stakes involved in such investigations, federal law enforcement officers who are protecting national security or preventing catastrophic events (as well as airport security screeners) may consider race, ethnicity, alienage, and other relevant factors.¹⁶

Because terrorist organizations might aim to engage in unexpected acts of catastrophic violence in any available part of the country (indeed, in multiple places simultaneously, if possible), there can be no expectation that the information must be specific to a particular locale or even to a particular identified scheme.¹⁷

This latter excerpt carves out an exceptionally broad set of circumstances wherein the precautions enunciated in the first excerpt do not seem to apply. The elasticity in defining national security exceptions to the general prohibition against racial profiling creates an ambiguous environment without clear delineations of appropriate and inappropriate behavior. The danger identified by the Bush administration, and that which the administration sought to foreclose by issuing these guidelines, is that the unchecked use of racial profiling would completely destabilize the notions of transparent authority, accountability, and equality for many racial and ethnic minorities.¹⁸ However, the lack of precise language in determining the extent to which such profiling may be applied in certain limited (but again, not clearly defined) situations results in an ongoing threat of racial profiling being used in an abusive manner against targeted groups.

The inherent inconsistency in the terms and conditions presented in these guidelines poses a problem for law enforcement agents, civil rights activists, legal theorists, and targeted minorities because it allows virtually unregulated profiling to occur under the exception for national security. The weakness of the guidelines and the glaring loopholes contribute to the opaque nature of the discussion of preemptive profiling. Evaluating the social costs of profiling and

reconsidering the guidelines through the lens of those bearing these costs allow for a more comprehensive analysis of what measures are needed to effectively implement any form of racial consideration.

The Costs of Racial Profiling . . . and the Costs of Not Racially Profiling

In evaluating the costs and benefits of preemptive racial profiling in a security context, a comprehensive understanding of each of the potential outcomes for every person identified as being part of the suspect class and subjected to profiling is essential. An analysis of the probabilities of each outcome given certain factors provides a basis to evaluate whether the costs outweigh the benefits. But as discussed below, there is ample room for subjective weighting of the various outcomes, and therefore a clear quantifiable answer may not be feasible. The process by which the weighting takes place may ultimately be more instructive.

In considering the probabilities of how preemptive racial profiling will affect both security and civil rights, two factors must be incorporated into the analysis—the accuracy of the screen used in the profiling process, and the actual correlation between race and criminality (i.e., the percentage of people in the profiled group who are actually terrorists).¹⁹ Each factor has two possible outcomes, positive and negative. Assume *arguendo* an extremely exaggerated hypothetical case wherein one out of every ten thousand Middle Eastern Arabs is actually a terrorist (0.0001 percent) and that an extraordinarily effective screening mechanism is developed (incorporating racial profiling) that is 98 percent accurate;²⁰ multiplying out the possibilities produces four potential outcomes for each person subjected to the screen, as displayed in Table 1.

These results indicate that 98 percent of actual terrorists will be identified as such, and that only 2 percent of innocent Arab passengers will be falsely identified as terrorists. The respective probabilities of falling into each category are displayed in Table 2.

The correlation numbers used are extremely exaggerated given the overall global population of people meeting the basic OMEA definition and the relatively small subgroup of terrorist extremists. But as demonstrated in Table 2, these numbers still produce an extremely high number of false positives—ten thousand false positives for every false negative.

The Trade-Off in Errors—Designing a Better System

The purpose of this type of analysis is to measure the accuracy of a screening system as depicted by the relative proportions of the type I and type II errors generated by it. The practical comparison is between false positives (type I errors) and true positives, *i.e.*, how many innocent people are caught up in the additional security measures for each true terrorist actually apprehended. But the comparison that best illuminates the possibilities for improving the system is between the false positives and false negatives (type II errors). Generally, American society prefers false negatives to false positives.²¹ But this preference cannot be sustained in the context of terrorism because of the devastating consequences of events such as September 11. Therefore finding the appropriate balance between the two types of errors is essential.

Given the criminal disposition of the terrorist, there are no associated harms inherent in the true positive category—the threat is successfully identified and controlled. However, there are substantial associated harms with the false negatives—those terrorists that slip through the system and ultimately engage in criminal behavior with massive casualties. Thus an appropriate comparison might be between the two groups with the greatest associated harms—the harms borne by the false positives in order to minimize the potential harms caused by the false negatives. Thus the crux of the deliberation is the balance between false positives and false nega-

tives, and how each of these outcomes is weighed. The remainder of this paper focuses on how to consider and derive this balance.

The Associated Costs and Effects—What Matters More?

One false negative is not worth the same amount as one false positive because the false negative left unto itself will lead to massive casualties, whereas the false positive may lead to a weakened state of support or security among the wider racial/ethnic pool from which the false positive is drawn but will not produce greater casualties in and of itself. In evaluating false positives, a distinction must be made between casualties and other harm, so that the erroneous assumption that false positives create no harm is not perpetuated. Rather the harm to false positives must be carefully considered and balanced as a cost against the benefits to be derived from minimizing the false negatives.

False positives (innocent travelers who are identified as risks) can face a range of consequences, depending on the severity of the misidentification, contextual security concerns, and length of time required to rectify the false identification. However, even the most onerous and severe of these outcomes cannot rationally be equated to the loss of life resulting from a false negative. At the same time, these costs can be extremely painful and burdensome for those who have to bear them and cannot be minimized.

But substantial false positives will necessarily accompany each true positive and any false negatives. Recalibrating the screening process to reduce the false negatives correspondingly increases the number of false positives. Finding the appropriate and ideal balance between the two extremes is the challenge in devising such a system. Further complicating this calibration is the political impossibility of acknowledging the necessity of incurring any false positives or false negatives to each respective constituency, and therefore this is a calculation that must be sheltered from public scrutiny because the reality of each outcome is socially repugnant.

But the overwhelming numbers of false positives bear the costs of such a system, therefore these costs need to be carefully evaluated. The false positives here are the innocent travelers who are eyed with suspicion, or perhaps removed from a flight because their ethnic appearance causes distress among other “non-OMEA” passengers, such as reported by the IndUS newswire. In a more extreme case, a false positive can be placed on a no-fly list or detained for a lengthy period due to mistaken identity, irregularities in immigration status, or outstanding questions about social connections or affiliations.²² For the false positives, the intensity of their experience is compounded by the lack of distinction between true and false positives in the eyes of those witnessing the screening process. These are just some of the costs of a preemptive system of racial profiling—others are less tangible and include the effects on the psyche, security, and comfort of American citizens who fall, rightly or wrongly, into the OMEA pool. These are the costs that need to be examined and weighed.

A false negative (an actual terrorist that is not identified as such) carries the most substantial harm because a consummated terrorist act could result in the loss of hundreds or thousands of innocent lives. The impossibility of truly quantifying the impact of such losses makes potential false negatives devastating to society and makes the overall tolerance for such false negatives nearly zero, irrespective of the actual number of casualties for a given incident. The purpose in considering, let alone implementing, a system of preemptive racial profiling is precisely to address the heightened intolerance for such casualties. In the aftermath of September 11, there was popular rhetoric arguing that in a time of war, citizens should be willing to sacrifice their own civil liberties for the sake of national security, but interestingly, this rhetoric was not being generated by the same segments of society that would have to bear the requisite costs or make those sacrifices.²³

Therefore the balancing must turn on properly valuing the false positives. Given the pre-

mium placed on saving innocent lives, there is a legitimate question as to whether there are any limits on what an acceptable cost would be for a mechanism to prevent such losses. However, the system is not fail-proof, and therefore it seems logical that there should be some cap on the cost for a system that is less than 100 percent effective. It is even more so when the costs are borne disproportionately by one constituency although the benefits are shared by all. Thus, the key consideration in evaluating preemptive profiling is how to weigh the false positives because that is where the social costs of the program will be borne.

The effects of a false positive identification carry associated costs that have prolonged effects. These costs range from the pervasive awareness of a being in an inferior tier of citizenship, to a loss of faith in the security and identity of an America where equality is not predicated on race, and a lingering bitterness that corrupts the integration of different races and ethnicities into a unified society. This type of long-term effect magnifies the weight that needs to be attributed to the costs of false positives. An apt comparison might be to death row prisoners who are acquitted before execution—they still bear the costs of time served, emotional trauma, social stigma, and resentment against the system. These costs are not alleviated by the eventual acquittal.

Further complicating the current situation is the fact that the compromised civil rights are not limited to one isolated individual, but rather an entire class of people broadly (and vaguely) defined to be “of Middle Eastern appearance,” which in practice encompasses not only those of Arab descent, but also South Asians, Mediterranean peoples, some Latinos, and generally “brown” people.²⁴ The fundamental problem with the OMEA description is that the particularized threat against America comes not from a narrow ethnic group, but rather an extreme subset of one of the world’s major religions—one that has a sizable following in this country.²⁵ The OMEA description is not well designed to serve in a future prophylactic capacity but rather is premised entirely upon some selected characteristics of the group of terrorists who successfully attacked America on 11 September 2001.²⁶ The danger of relying on this description is that the source of the threat is broader than that narrow group, and as previously noted, the description itself is vague and overbroad. Thus, the OMEA description is simultaneously overbroad and too narrow by failing to capture Muslim extremists from other ethnicities but including non-Muslim, non-Arab, non-extremist people, as well as the vast majority of peaceful, law-abiding Arab Muslims.

Our society has historically rejected state conduct that broadly targets an entire class of people based on their appearance, but here that appearance seems to have a stronger predictive value (although still miniscule) than in other contexts.²⁷ Similar arguments and considerations have previously been made in support of racial profiling in other security contexts, for example, in drug trafficking or urban street crime.²⁸ Courts have generally disallowed or severely limited the use of such tactics because of the lack of evidence of a reliable predictive value based on race or ethnicity, as weighed against the substantial intrusion upon civil liberties embodied by these types of policing measures.²⁹ However, the use of racial profiling to prevent terrorism may be distinguishable from these other cases because of the ethnopolitical and religious foundations of the threat against America.³⁰ As previously discussed, the more nuanced argument considers the use of race or ethnicity in the terrorism context as an example of “preemptive suspect description” based on an articulated threat rather than traditional profiling. However, the DOJ guidelines on racial profiling outline a slightly more stringent standard for this approach by noting that there must be an explicit, temporally limited threat in order to look for a suspect.³¹

But even within the hypothetical situation outlined in the guidelines, there is sufficient ambiguity to complicate the use of profiling in a controlled and limited manner. For example, there are no restrictions on how specific information must be or how imminent a threat must be before profiling can be appropriately used. The guidelines cite an example of a credible

threat against an airline from a terrorist organization in “the next week” and use this threat to justify an undefined period within which the strict prohibitions on racial profiling can be bent or suspended.³² This is a critical point to understand the difficulties of instituting such a program because the ambiguity of the terms combined with the elasticity of the loophole create a situation where civil rights can be substantially diverted for an extended period without proper oversight or accountability—the only requirement is a “credible threat” against national security, and in the contemporary global war on terror, such threats are frequent.

Given the historical burdens of racial prejudice and discrimination in this country, there should be a clearly compelling state reason to employ profiling tactics, and those tactics should be narrowly constructed so as to minimize the costs borne by the profiled group in terms of the compromise that members of that group must make in their civil liberties. The DOJ guidelines meet the compelling reason by noting that a credible threat is required, but by failing to precisely outline the minimal thresholds, the guidelines are not narrowly tailored enough to be acceptable. There are no limits within the guidelines that would restrict the use of profiling if even a minimal argument can be mounted, as evidenced in the previous example. This results in undue costs being borne by the target group, which in this case would be the OMEA group—and more specifically the false positives within the OMEA group.

Balancing the Costs of Racial Profiling

Part of these costs on OMEA passengers come in the insecurity of knowing that there are no clear parameters for the circumstances under which profiling can be instituted. This undermines the ability of OMEA citizens to be secure in their faith in the protections of the system because the decisions as to when the conditions are appropriate for profiling are somewhat arbitrary. This insecurity is a substantial cost because it is only borne by the targeted group, as opposed to all citizens broadly or those engaging in illicit conduct. The costs of profiling also bear a linear relationship to the effectiveness of the profiling system, insofar as the most minimal forms of profiling may not make a discernible difference to the overall effectiveness of the security process, whereas greater degrees of profiling may yield substantial results. Thus the challenge is to determine the equilibrium point between the costs and the effectiveness of profiling.

Balancing more onerous forms of profiling against the benefits of apprehending a terrorist implicate the mathematical calculations of the likelihood of successfully achieving a true positive. Here the probability analysis indicates a far greater likelihood of yielding false positives than true positives, which means that in sheer numbers there will be far more innocent OMEA members subjugated to the higher scrutiny (and consequently greater harm) than there will be actual terrorists apprehended. However, it also seems probable that these measures will be much more valuable in preventing or impeding terrorists, and offer greater payouts from a utilitarian perspective. Thus in order to implement a screening system that is even moderately effective, it seems clear that the costs borne by the OMEA group will be at least at the intermediate level discussed above, if not greater. Any system that requires a lower level of intrusion will not be effective.

The burden placed on all OMEA members will need to be balanced against the benefits of preventing even a single terrorist activity. Because of the difficulty in quantifying the value of a life as compared to varying degrees of harm associated with the practical costs of racial profiling, there is not a clear or easy answer as to whether the potential benefits justify these costs. Theoretically, there can be another level of analysis that attempts to quantify not just the value of a saved life against the infringement of civil rights, but seeks to determine *how many* lives must be saved in order to impose the highest level of scrutiny. It may be difficult to argue that saving one solitary life justifies the costs borne by an entire group of citizens, but it is equally

difficult to enunciate a rationale by which to measure how many lives are necessary to balance that equation.

On the other hand, if an innocent life is lost in a terrorist act, it is extremely difficult to explain to the victim's family that there were additional screening measures which could have been taken and that might have reduced the likelihood of that act by 0.0001 percent, but that those measures were not taken because the costs imposed upon the OMEA class were not deemed to be proportionate. In that type of scenario, a plausible argument can be made that no cost is too great and no imposition unwarranted if it furthers the objectives of national security and contributes to the safety of innocent civilians. It is impossible to articulate to the family of a victim the rationale that the life of their loved one was not valuable enough to outweigh the civil rights of another group. At that point, lives and rights become two separate and unrelated issues, and the notion of balancing them in an equation seems devoid of human emotion.

Ultimately, the political decision determining which side of this balance should be given preference will depend entirely on which constituency the authorities would prefer to answer to—the OMEA population or those who lose loved ones in a terrorist act that could *perhaps* have been made more difficult by imposing these measures. This decision necessarily requires consideration of earlier historical lessons, but also turns significantly on the nature of a new modern threat that perhaps undermines the traditional analysis of balancing rights and lives because the perpetrators themselves devalue lives (including their own) to such a great degree. Perhaps the degree of danger we face as a society, and the level of commitment on the part of those who threaten us, requires addressing our fundamental values as a nation in order to defend ourselves. But if so, then the question of how far we are willing to deviate from our values, and for how long, must be answered in the interests of preserving the continuity and integrity of our most cherished freedoms.

Conclusion

There is no right answer as to whether the potential payoffs of racial profiling justify its costs, but the key to making that determination is posing the right questions such that an informed decision can be made. Here, those questions turn on the measurement and balancing of the costs and benefits borne by each of the affected parties. This analysis indicates that even the most highly developed profiling system will still result in massive amounts of false positives for each true positive. But the false positives in this case may be an acceptable cost given the enormous benefit of identifying the true positives and preventing false negatives. An alternative approach is to broaden the screening process by incorporating other nonracial factors into the process such that race is only one measure. These more informative measures can include travel patterns, professional or familial connections, criminal records, financial history, and affiliations with other groups/individuals. Race can be an effective element in such a portfolio of criteria, and the other factors can reduce the false positives. In fact, race can even be used as an *exclusionary* factor to draw conclusions about individual passengers whose overall passenger profile may otherwise arouse suspicion. For example, computerized data indicating frequent travel between Pakistan and the United States is a trigger for further scrutiny, but can be partially mitigated if racial data supports family connections that would explain regular visits. This additional information can then help distinguish those cases that require further investigation from benign ones.

The costs of racial profiling realized upon the false positives cannot be diminished or minimized in pursuit of a most critical goal, namely eliminating the false negatives. The key is striking a balance on a macro level that ensures the overall integrity of the system for all parties. There will always be individual cases of false positives, but as long as the system works on the group level, that might be an acceptable and necessary consequence. But creating a system that fails to incorporate some measures to defend the rights of the OMEA group is inappropriate because it does not consider the burden of the false positives and is therefore not bal-

anced. To make this system work, at the very least the OMEA definition must be redrawn more precisely, and race should only be one of several contributing factors—not a dangerously determinative one. The tremendous costs associated with racial profiling and the disproportionate burden of these costs on the false positives appears to outweigh the incremental security benefits. Therefore, notwithstanding the fact that there could be some marginal improvement in security, ultimately the social costs of a preemptive profiling system are not sustainable, and the system cannot be recommended without the aforementioned adjustments.

Endnotes

1. Randall Kennedy, *Race, Crime & the Law* (New York: Pantheon Books, 1997), 3–28, 174–175.
2. John Derbyshire, “At First Glance: Racial Profiling, Burning Hotter,” *National Review Online*, October 5, 2001, <http://www.nationalreview.com/derbyshire/derbyshire100501.shtml>.
3. *Ibid.*
4. *Ibid.*
5. A related argument has been raised in the context of using torture under similar circumstances. Alan M. Dershowitz, “Tortured Reasoning,” in *Torture: A Collection*, ed. Sanford Levinson (New York: Oxford University Press, 2004), 258–259. (Dershowitz discusses the hypothetical case of a suspect tortured to reveal the location of a “ticking bomb” that would otherwise harm hundreds of civilians.)
6. Department of Justice (DOJ), “Fact Sheet on Racial Profiling,” http://www.usdoj.gov/opa/pr/2003/June/racial_profiling_fact_sheet.pdf.
7. Michael A. Smerconish, *Flying Blind*, (Philadelphia: Running Press, 2004), 14–18.
8. *Ibid.*, 51–55.
9. *Ibid.*, 58–60.
10. *Ibid.*, 38.
11. DOJ, “Fact Sheet on Racial Profiling,” 6. There is an open question as to the extent to which these guidelines are binding upon law enforcement officers or can actually be enforced. For the purposes of this analysis, it is assumed *arguendo* that these guidelines will be implemented and enforced as written. The jurisprudential basis for the guidelines is enunciated in *Brown v. Oneonta*, 221 F.3d 329, 337–338 (2d Cir. 2000). In *Oneonta*, a woman was assaulted in her home and only managed to see the forearm of her assailant. In her description to the police, she noted that the assailant was a Black male with a cut on his forearm. The police then canvassed the town for all Black males, and given that the town was predominantly White, the canvass resulted in a majority of the town’s Black population being questioned. The court held that the use of race in this manner was not illegal because it was based on an eyewitness account of the actual perpetrator and was particularized to the suspect (through the description of the forearm cut) and because the search was geographically and temporally limited in scope. The court specifically noted that even though the police canvass resulted in a large number of Black men being questioned, the racial commonality of these men was directly and relevantly associated with the victim’s eyewitness account. Most importantly, this use of race does not infer any type of generalized tendencies or greater proclivities for criminal behavior to Black men, but rather uses race only as a means of identifying one specific suspect. The manner in which the information was obtained, and the subsequent canvass conducted, did not incorporate any broad generalizations of criminality upon Black men but rather was oriented to collecting the most salient information required to make a timely arrest.
12. DOJ, “Fact Sheet on Racial Profiling,” 2.
13. *Ibid.*, 3.

14. *Ibid.*, 5-6.

15. *Ibid.*, 5.

16. *Ibid.*, 5.

17. *Ibid.*, 5.

18. *Ibid.*, 1 (comments from Attorney General John Ashcroft, 28 February 2002).

19. There is another complicating factor in this particular case that has been excluded from the analysis for illustrative purposes. This factor is the lack of clarity inherent in the OMEA designation.

Theoretically, the profile relied upon to screen out potential Islamic terrorists is Arab or Middle Eastern males, between the ages of eighteen and fifty, who are Muslim. But using visual assessments will not always capture religious affiliation and will be over-inclusive by capturing other ethnicities that are frequently mistaken for Arab, such as South Asians and other Mediterranean peoples. Moreover, examining basic passport data will still lead to errors in identification along religious lines and possibly even ethnic lines. These inherent problems with this particular profile make it particularly problematic in terms of generating excessive false positives, but for the purposes of illustration, the discussion of analysis above assumes an accurate ethnic identification and then conducts the rest of the analysis from that assumption.

20. Note that for illustrative purposes, extreme numbers were deliberately used in these hypothetical calculations. The realistic numbers would be far more conservative, and accordingly the results of this analysis would be much more dramatic. The hypothetical numbers portray the best-case scenario—in actuality the percentage of actual terrorists is much lower and screening mechanisms are far less reliable. Thus the number of false positives would be much greater.

21. Paul Rosenzweig, "Civil Liberty and the Response to Terrorism," *Duquesne Law Review* 42 (2004): 663, 680 (citing *Winship*, 397 U.S. 357, 372 (1970)).

22. American Civil Liberties Union of Northern California (ACLUNC), "Caught In the Backlash: Arshad Chowdhury," <http://www.aclunc.org/911/backlash/chowdhury.html>.

23. Compare Peggy Noonan, "Profiles Encouraged," *Wall Street Journal*, 19 October 2001, <http://www.peggynoonan.com/article.php?article=72> (editorial advocating that citizens be proactive when seeing "mid-eastern looking" men acting in "suspicious" manners) with Raywat Deonandian, "Profile This!" <http://podium.deonandian.com/profiling.html>.

24. Derbyshire.

25. *Ibid.*

26. *Ibid.*

27. Mathias Risse and Richard Zeckhauser, "Racial Profiling" *Philosophy & Public Affairs* 32(2004): 132.

28. Kennedy, 13.

29. *Ibid.*, 147.

30. Smerconish, 14–19.

31. DOJ, "Fact Sheet on Racial Profiling," 4.

32. *Ibid.*, 6.

TABLE 1. PROJECTIONS OF TERRORISTS AND NON-TERRORIST IDENTIFIED

	TERRORIST	NOT TERRORIST	TOTAL
POSITIVE	.98	199.98	200.96
NEGATIVE	.02	9799.02	9799.04
TOTAL	1	9,999	10,000

TABLE 2. POSSIBLE PROJECTIONS OF TRUE AND FALSE POSITIVES AND NEGATIVES

CATEGORY	DESCRIPTION	PROBABILITY OF OCCURRENCE
True Positive	Actual terrorist identified as such	0.000098
False Positive	Innocent passenger identified as terrorist	0.019998
True Negative	Innocent passenger identified as such	0.979902
False Negative	Actual terrorist identified as innocent	0.000002

**THE POLITICS OF GENOCIDE:
U.S. RHETORIC VS. INACTION IN DARFUR,
7 APRIL – 26 SEPTEMBER 2004**

CYNTHIA E. SMITH AND TONY PIPA

Abstract

This paper considers the role played by the United States in negotiations that took place between 7 April and 26 September 2004 in an attempt to stop the humanitarian crisis in the Darfur region of the Sudan. By analyzing the stakeholders and their interests, as well as the public statements and actions of key U.S. political figures, the authors lay out their interpretation of the evolution of the Bush administration's strategy in Darfur, in particular how its use of the word "genocide" served political purposes while doing little to affect the crisis itself.

Introduction: Haunted by Rwanda

On 7 April 2004, the day on which the world recognized the tenth anniversary of the genocide in Rwanda, the specter of that catastrophe drew attention to an unfolding crisis in the Darfur region of the Sudan, where thousands of Black African farmers were fleeing their homes and facing massacre from bands of nomadic Arab militiamen called the *janjaweed*. In the United States, President George W. Bush released a formal statement, publicly condemning—for the first time—the worsening situation and stating that he had expressed his views directly to President Bashir of Sudan. Though he did not directly mention Rwanda or use words like "genocide" or "ethnic cleansing," the implication was clear: the United States was worried that the developing situation in Darfur might eventually approach that level of horror.

The timing and substance of Bush's statement demonstrate that the administration was beginning to feel a moral imperative to use U.S. influence and power to bring a halt to the humanitarian abuses that were occurring in Darfur. In commemorating Rwanda, the United States, as the other major actors in the international community, faced urgent questions of responsibility and response: what would its leaders do to avoid the repeat of such a catastrophe, where eight hundred thousand people died in four months while little was done to stem the violence?

This paper interprets the evolution of the Bush administration's strategy on Darfur by analyzing the public statements and actions of the president, secretary of state, and other key U.S. political figures, examining what is publicly known about the administration's decisions, and placing those decisions within the context of domestic and international concerns and obligations. The authors do not purport to know the exact nature of discussions that occurred behind closed doors but utilize negotiation analysis tools to make judgments about the motivating factors underlying each decision; the strategy evolves in step-by-step fashion, and the shifts are

This paper argues for getting beyond the rhetoric and taking action when genocide is determined—even at the cost of political and economic interests. What is the point of uttering the word "genocide" if the necessary action does not accompany its usage? This study of U.S. internal decision-making processes is particularly relevant given that the United States is trying to ensure international legitimacy as it attempts to "democratize" the world. Not only is the word "genocide" rendered impotent by inaction, but the United States' credibility to "do good" suffers from selective application and enforcement.

—Indunil Ranaviraja, editor

subtle. Yet this chronological analysis of U.S. actions from the beginning of April 2004 through September 2004 demonstrates that many of its moves are focused on placating domestic pressures and constituencies rather than applying the full force of its political capital and influence necessary to stop the atrocities. In fact, many of the administration's actions appear calculated to provide maximum political impact at home while committing the minimum of resources abroad, all while keeping the United States in the forefront as a moral leader in this cause.

Inextricably interlinked with this strategy is the question of whether the crisis in Darfur constitutes "genocide" as defined by the 1948 Geneva Convention on the Prevention and Punishment of the Crime of Genocide, and if so labeled, what actions are subsequently required and by whom: the United States or the United Nations.

Background: Darfur

The situation in the Darfur region had been building since the end of 2003. Western Sudan has historically been one of Africa's most ethnically diverse areas but over two decades had been experiencing dwindling resources and constant drought, which helped increase ethnic hostilities between African farmers and nomadic Arab tribes over the competition for land. When tribal leaders were replaced by a state government, traditional ways to resolve conflict eroded, and the subsequent tensions sometimes grew into violence. In addition, bands of western Sudanese rebels had recently emerged, fighting to force their grievances before the central government in Khartoum, which had for years had been focusing primarily on civil unrest in southern Sudan. Though the Sudanese government claimed that it had little control, experts suspected that Khartoum was sanctioning the *janjaweed* in an effort to suppress the rebel forces that had materialized in the Darfur region. Feeling threatened with extermination, non-Arab farmers in the area began fleeing their homeland.

Evolving U.S. Interests

Before September 11, the Sudan had been a key early target in the U.S. efforts to wipe out terrorism, accused of harboring Osama bin Laden and other al-Qaeda members. After the attacks on the World Trade Center, the United States had changed its hard-line policy toward the country to try to win the Sudan's cooperation in the war on terror. In addition to maintaining this new alliance, the administration also did not want to jeopardize a peace process that was close to ending a twenty-one-year civil war raging between the government in the north and rebels in the south; copious oil reserves were at stake, from which U.S. business interests had been barred because of economic sanctions. The State Department had played a significant role in brokering and furthering talks that were close to achieving peace in the north-south struggle and was conscious of protecting that fragile progress.

That war had also attracted the white-hot attention of one of the administration's core constituencies, the evangelical movement, since Christians were being singled out and killed in the conflict. Franklin Graham, Billy Graham's son and the director of Samaritan's Purse, had asked President Bush personally upon taking office to "do something in the Sudan,"¹ and several conservative congressman with close ties to the president—including Rep. Frank Wolf (R-Va.), Sen. Sam Brownback (R-Kans.), and Sen. Bill Frist (R-Tenn.), the Senate majority leader—had followed Sudan for years. Their initial interest in the country had by now transformed into moral obligation, and though Christians were not part of the conflict arising in Darfur, all began to take a great deal of interest in the unfolding situation.

All would also be important allies in President Bush's upcoming reelection campaign, an event that added another element to this political equation. Bush had to be wary of being vulnerable on this issue, either to charges of double standards (if he did nothing, compared to the U.S. military action in Iraq) or weak response (which resulted in disaster at Rwanda).

By the time of Bush's first public statements on Darfur in April 2004, the director of the U.S. Agency for International Development (USAID), Andrew Natsios, had already announced that the agency would begin to provide humanitarian relief to refugees from the area.

April–May 2004: First Attempts

As April began, the administration seemed content to take a back seat to proactive measures declared by the UN. In his commemoration of Rwanda's tenth anniversary, UN Secretary-General Kofi Annan announced a new UN action plan to prevent genocide and addressed the crisis in Darfur directly, announcing the dispatch of a high-level team to assess the situation and claiming that "the international community must be prepared to take swift and appropriate action,"² hinting that military action might ultimately be necessary. Annan looked determined to respond to the unfolding crisis in Darfur in a manner that would counteract any image of ineptness promulgated by the UN's own tepid response in Rwanda.

The declarations by Bush and Annan, made the same day, were likely timed to influence negotiations, facilitated by Chad, that were underway between the government of Khartoum and the rebels. Soon there appeared some cause for relief, as the next day the government of Khartoum and the rebels announced a cease-fire for humanitarian purposes. The parties gave the African Union the authority to monitor the negotiated cease-fire and oversee a political process toward long-term peace.

Unfortunately, the cease-fire did little to stem the actual violence. The UN high-level team that had been announced by Annan on 7 April was denied actual physical access to the region of Darfur. On 25 May 2004, members of the UN Security Council heard direct testimony from the staff of Médecins sans Frontières (Doctors without Borders), the relief agency with the largest presence in Darfur, in which they described continuing atrocities and the inability of agency workers to get access to those who were victimized.

May–June 2004: Increasing Domestic Pressure for Action

On the U.S. side, USAID released a mortality report in early May, declaring that even with an increase in aid, three hundred thousand more people were likely to die in Darfur before December 2004 and that if the United States did nothing, the number could approach one million. Though—from a policy standpoint—the agency probably could not publicly declare the cease-fire a failure, the report sent a strong signal to its superiors at the State Department about the need for additional action. The U.S. media and nongovernmental organization (NGO) community continued to keep the crisis in the public eye; a series of articles by Nicolas Kristof ran throughout May and June in the *New York Times*, and the International Crisis Group, an international NGO focused on resolving deadly conflict, issued a report in May that documented worsening of the situation.

In early June, Senator John Kerry (D-Mass.), the presumptive Democratic nominee for president, made a public statement exhorting the United States to apply "effective pressure" on the government of Sudan, hinting that military intervention might ultimately become necessary. Republican pressure also intensified when Senator Brownback and Congressman Wolf made a personal fact-finding journey to the region, taking video footage and interviewing refugees and survivors of attacks by the *janjaweed*.

At this point, the administration was probably anxious to re-exert control over the U.S. response to the current happenings and display firm resolve, not just to bring the crisis to a halt, but to deflect any potential criticism of the president from Senator Kerry. At the same time they were likely interested in demonstrating to their own evangelical constituency the seriousness of the administration's intent. Thus Secretary of State Colin Powell announced his own trip to the Sudan.

July 2004: At the Negotiating Table

The visit gave Powell the opportunity to engage directly with key actors in the negotiations, including Annan and President Bashir of the Sudan. With the U.S. military overextended due to the Iraq campaign, and the voting public beginning to raise doubts about the administration's decision to enter Iraq without full UN support, the administration likely felt that if military intervention became necessary to curb the violence, it must come through the UN rather than as unilateral action from the United States, especially since Darfur did not possess as compelling a link to U.S. security concerns as Iraq. U.S. policy thus focused on influencing the UN to act. Powell's actions during this trip support this theory.

During his 1 July meeting with Annan, Powell floated a UN resolution to be submitted to the Security Council that included an arms embargo and travel ban on Arab militia. According to the *Daily Texan*, Powell thought that such a resolution might act as a stick to prod the Khartoum government into controlling the *janjaweed*, for apparently he believed that Khartoum was sensitive to a UN resolution being successfully passed. The proposed resolution, however, was still weaker than many activists had hoped, probably because Powell anticipated resistance from Security Council members China and Russia.

Though the proposed resolution never came to a vote, it appears to have indeed acted as a stick since two days later Khartoum agreed to a joint communiqué with Secretary-General Annan, pledging their commitment to provide humanitarian access to those who had already been displaced and to disarm the *janjaweed*. The communiqué gave the government ninety days to effect these actions. Although it did not provide for any punitive measures should the Sudanese government fail to uphold its commitment, at least Powell could return home to the United States pointing to a new agreement as some measure of UN action—and success.

Domestic pressures, however, continued to mount. New reports, both in the media and from the NGO community, highlighted continuing atrocities. Despite the commitments that the United States and the United Nations had been able to extract from the Sudanese government, Khartoum was taking little action and indeed was probably complicit in the killing that continued to take place. Letting the ninety days pass might result in substantially more death.

Genocide: Legal and Moral Implications

Since the commemoration of Rwanda, many in the activist community had been arguing whether the term “genocide” should be applied to Darfur, and a genuine split existed among those working on the situation at the grassroots level. Now, however, the clamor to use the word began to be picked up by policy makers.

Genocide, as defined by the 1948 Geneva Convention on the Prevention and Punishment of the Crime of Genocide, “means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.”⁴

The term has distinct legal implications—if a signatory to the treaty finds that genocide has occurred or is under way, it is obligated to act to prevent, suppress, or punish the responsible

party. However, the particulars of such action, especially for a single country, are never clearly defined. As Kenny Gluck of Médecins sans Frontières says, "There is a common opinion that if a situation is defined as genocide, then military intervention is required by international law. We don't believe this to be the case. The law is quite vague on the nature of the actual obligations."⁵ In the absence of precedent, the United States had space in which to create a response if it made a determination that the situation in Darfur constituted genocide.

How to make such a determination—and whose responsibility it is—is itself uncertain. The United Nations has not declared "genocide" early in an emerging situation; it has typically been after the fact or once a significant number of deaths have occurred. Once declared, the implications for the United Nations are fairly apparent—for example, it is accepted practice for the United Nations to convene an international tribunal or refer the case to the International Criminal Court. For the United Nations to declare genocide early, as at this point in the Darfur situation, Annan would be very wary to ensure that sufficient power and support were lined up beforehand, so that the United Nations would have the best possible chance to stop the violence. Thus any strategy to work through the United Nations by the United States—if the United States was primarily focused on stopping the atrocities—would require significant use of its political capital within the UN Security Council to force action.

It is also important to recognize that the term has emotional and moral significance that transcends its legal implications. By attempting to describe the intent to exterminate an entire people, the word encapsulates one of the worst crimes against humanity, screaming for action against its perpetrators by those who have the capacity. To utilize the term, yet undertake a course of action that fails to stop the violence, runs the risk of severely undermining its applicability and power for future situations.

Powell, like Annan, had resisted utilizing the word "genocide." But as the situation persisted throughout July 2004, others involved in U.S. domestic politics were not so circumspect.

July 2004: Changing the Discourse

On 15 July, in a speech to the Ninety-fifth Annual NAACP Convention, Senator Kerry declared that these "government-sponsored atrocities should be called by their rightful name: genocide."⁶ Surely Kerry was concerned about the situation in Darfur, but understanding the emotional content of the word, he was also attempting to consolidate the support of an African American constituency for his campaign. Just the previous day, Charles Rangel (D-N.Y.), an African American congressman, was arrested in an act of civil disobedience at the Sudanese embassy protesting what he and the Congressional Black Caucus had already termed genocide.

One week later, Congress itself passed a unanimous resolution in agreement. Senator Brownback and Congressman Wolf had returned from their fact-finding trip to the Sudan and sponsored a resolution that urged the Bush administration to "call the atrocities . . . by their rightful name: genocide"⁷ and to provide leadership in forcing the international community to address the situation, hinting that if the United Nations failed to act, the United States should consider unilateral action. The resolution had no formal power but sent a strong message to the executive branch that the moral dimensions of the situation required action.

Both Senator Kerry and Congress had the luxury of making such a declaration without having to act upon it (at least in the short term), but by using the word they were elevating moral interests above all others. Senator Kerry's primary purpose was to strengthen his standing as a candidate, but in doing so he applied pressure on the administration, and Bush would want to display similar strength and resolve on the issue. Congress was being more direct, and while their resolution had no real ability to force the administration to take substantive action, it signaled the position of the administration's internal conservative constituency as well as provided public impetus for Powell to reassert authority over U.S. foreign policy.

Throughout the summer, public awareness was also increasing. A poll by the Program on International Policy Attitudes taken in July showed that the majority polled thought the United Nations should get more deeply involved; that the United Nations and the United States should act to stop the genocide, even if it required military force; and that what was occurring constituted genocide. Two out of three polled supported the idea of a UN peacekeeping force to enforce the cease-fire agreement in Darfur, with the United States contributing a quarter of the troops and the balance supplied by Europe and Africa.⁸

Unlike Kerry and Congress, if the State Department declared genocide, Powell knew that the United States would be obligated to take some kind of action, however unclear the nature of that obligation. Also, the administration risked charges of political manipulation, especially if they did not act forcefully upon its declaration; political opponents and even some of their core constituency might hold them to the standard of being prepared to act unilaterally, as Congress had hinted in their resolution. Undertaking unilateral military action when the army was overextended in Iraq, in a volatile situation at a time so close to the election, seemed politically untenable. So while the administration might have felt pressure to act on the moral imperative that others were forcefully presenting, they were still balancing other interests that precluded making Darfur the highest—or only—priority.

July–August 2004: Reengaging through Negotiation

Another reason existed for cautiousness. If the United States was not only unwilling to act unilaterally, but was also unwilling to commit significant political capital to change the nature of negotiations within the Security Council (a theory supported by the U.S. actions, described later in this paper, during the passage of UN Resolution 1556), “genocide” in fact constituted the last best chip in bargaining with the United Nations, a final attempt to which U.S. leaders were not yet willing to commit.

The political maneuvering by Senator Kerry and Congress, combined with inaction by Khartoum, brought Secretary Powell back to the forefront, as the administration sought to deflect the attention being paid by other actors and reestablish its leadership by initiating direct negotiations. Powell again took up the formal resolution to the Security Council that he had proposed but that had been tabled due to the announcement of the joint communiqué at the beginning of July, and this time it wended its way through the process. The U.S.-proposed resolution, which recommended severe sanctions should Khartoum fail to act, met resistance from seven members of the Security Council.

The countries comprising this coalition had varying interests. China was unwilling to jeopardize the substantial oil reserves that it received from the Sudan; Russia did not want to risk contracts for fighter jets that the Sudan had purchased. Pakistan and Algeria both styled themselves defenders of Islamic brethren, and three European countries hinted at their oft-repeated dissatisfaction with how the United States had treated the United Nations while going it alone in Iraq.

Rather than attempting to link the interests of each member of this blocking coalition to other bilateral or future interests with the United States that could have provided real impetus to support the measure in its original form, Powell seemed content to let Annan work the group process and water down the resolution so that it would pass. Resolution 1556 was approved 13-0-2 by the Security Council on 30 July, with China and Pakistan abstaining, and though it reiterated the duty of the Sudanese government to disarm the *janjaweed* and to enact an arms embargo and accelerated the timeline to thirty days for the secretary-general to issue a report on progress towards these goals, the resolution stopped short of specifying punitive measures in the case of inaction. Other than facing a formal resolution and a quickened time frame, Sudan experienced little motivation to deviate from the status quo, and as August passed, it did

little to improve the situation.

As required by Resolution 1556, Secretary-General Annan issued a report at the end of August concerning the situation. He found that the Sudanese government had not met its obligations under that agreement and that civilians continued to be attacked while the government neglected to disarm the *janjaweed* or even identify the perpetrators. However, whereas Resolution 1556 threatened the use of sanctions (or even force) if these minimum standards were not met, Annan refused to declare specific actions to be taken against Khartoum.

September 2004: The United States Declares Genocide

It is under these conditions that Colin Powell was asked to testify before the Senate Foreign Relations Committee on 9 September. The administration most certainly continued to feel internal political pressure. The Republican National Convention had just finished, and the presidential election campaign was in full swing, with Kerry continuing to call Darfur a genocide, suggesting that the United States take military action if necessary. Senator Frist, the majority leader, Senator Brownback, and Representative Wolf continued to be concerned about the worsening situation, and Senator Jon Stevens Corzine (D-N.J.), one of the sponsors of the congressional resolution, had recently visited Darfur. It was obvious that Powell's attempts to work through Annan and the UN Security Council, though mildly successful—at least in achieving a formal resolution—had done nothing to actually stop the massacre, and forced displacement of black African farmers continued in the region.

During his testimony, Powell declared that “the evidence leads us to the conclusion, the United States to the conclusion, that genocide has occurred and may still be occurring in Darfur.”⁹ Having made the declaration, he referred to the obligations of the United States as a signatory under the Genocide Convention, explaining that the treaty requires action to prevent and punish the perpetrators. He then stated that the U.S. course of action would be to continue to push the United Nations to undertake strategies that eventually resolve the crisis, advocating specifically for an increased presence of soldiers from members of the African Union, who had assumed the primary monitoring role after UN Resolution 1556 passed. This characterization relied upon the vagueness regarding specific action in the convention, allowing him to invoke the moral outrage inherent in the term without obligating the United States to do anything in addition to what they were already doing.

Analyzing this move in context surfaces some crucial points. Powell did not make the declaration in a UN setting or directly to Annan, but to the U.S. Senate Foreign Relations Committee. This can be construed as a signal that domestic politics were holding sway for the administration, rather than the happenings at the international level. Granted, Powell's declaration may have had the potential to change subsequent negotiations within the Security Council, providing ammunition for Annan to make a similar declaration or at least prod other members of the Security Council to elevate moral interests above all others. But it seems apparent that the administration was relying heavily upon this strategy in lieu of others and appeared unwilling to risk too much U.S. political capital in influencing the intransigent members on the Security Council. This declaration seemed to be a calculated risk to force the Security Council further than it had yet to go, without putting much more at stake for the United States.

In using the word in the heat of a reelection campaign, the administration walked a fine line, trying to demonstrate its moral leadership while avoiding a change in the course that it was already following. In effect, Powell invoked a word heavily weighted with emotion in a manner that shed a positive light on the administration, but which continued to lay the primary responsibility for action at the feet of the United Nations. Though this made him and Bush susceptible to charges of manipulation to score political points, the declaration was made in a friendly environment and in response to concerns that have been repeatedly raised by congress-

sional leaders. Its timing also made it appear that the administration had come to this conclusion through its own analysis rather bowing to congressional pressure.

The Senate subsequently added support to Powell's declaration by passing an additional resolution less than two weeks later. Senator Frist was the prime moving force behind the legislation, which called for the United Nations to suspend Sudan's membership on the UN Human Rights Commission and for Powell to pressure the United Nations to declare the situation a genocide and report back in sixty days. This added political cover at the domestic level for the administration while providing some additional ammunition at the negotiating table regarding Darfur.

One week later, on 26 September, a U.S.-sponsored resolution was approved by the Security Council. Simply having its declaration of genocide in hand, however, was not enough to sway resistant members of the Council, and again the United States declined to apply pressure through bilateral trades and was forced to water down language that explicitly threatened sanctions against government officials or the country's oil reserves. However, Resolution 1564 did establish a UN commission of inquiry to investigate whether Sudanese officials were responsible for committing genocide. The resolution passed 11-0-4, with China, Russia, Algeria, and Pakistan abstaining. The declaration of genocide by the United States seemed to force Annan to increase the United Nation's advocacy, but it had obviously not pushed him to make a similar declaration, and it had done little to change the interests of those in the blocking coalition, as evidenced by the abstentions. As the commission of inquiry embarked on its process of investigation into the determination of genocide, violence continued to rage in Darfur.

Conclusion: Turning U.S. Rhetoric into Meaningful Action

Determining when to undertake humanitarian intervention in a situation such as Darfur requires identifying the point at which individual human rights—*i.e.*, the lives of individual black African farmers who are facing massacre and displacement—trump state interests. This analysis consciously limited its scope to U.S. actions within a particular stretch of time to highlight the complexity of competing interests, both domestic and international, that a state actor balances when deciding such a course of action. States will take the opportunity to analyze for themselves the balance of a particular situation to guide their actions accordingly. To its credit, in this case the U.S. leadership brought an increased level of attention to the situation in Darfur compared to that of Rwanda.

By the same token, however, when a state has declared genocide to be occurring, that signifies precisely the point at which it admits individual human rights—and lives—have taken precedence and risen to the level of utmost priority. No loophole exists here; that is precisely the spirit in which the concept of genocide and the international conventions that surround it were created after World War II. As such, those countries with the necessary military capacity must execute their responsibility to protect those under siege. The ability to use the term genocide—which derives its power and significance from its moral authority—for political points and purposes provided too much space for the U.S. leadership to speak loudly yet do little in Darfur.

U.S. policy should be strengthened to state that any determination of genocide, by itself or the United Nations, requires immediate willingness to employ military force to prevent further atrocities. Military deployment need not be unilateral or immediate, though a time frame that reflects the urgency of the situation must be put in place upon such a determination. In Darfur, for example, the United States need not act alone on the ground, even in light of military inaction by the United Nations. Its forces could work with and strengthen those of the African Union, who are providing limited troops and have expressed their willingness to do more but

have limited capacity and resources. In future situations, the United States may attempt a similar focus on strengthening regional efforts or look to act bilaterally with other parties in addition to working through the United Nations. The main point is that U.S. leaders—such the president, secretary of state, and Congress—be willing to risk the lives of its military to protect the lives of those being victimized once it is determined that genocide is occurring.

Such a policy would diminish the term from being used for domestic political purposes and help protect its moral authority and meaning. With such a standard as the norm, U.S. threats in specific negotiating situations would be that much more credible, and the United States may also be willing to utilize its political capital more forcefully—*i.e.*, offer more substantial carrots or more threatening sticks—in multilateral negotiations to influence other partners to join its coalition.

If this policy were enacted, it seems likely that the political discourse would then revert to focus more specifically on making a determination of genocide, fueling further debates as to what criteria constitute the use of the word: that list is context-specific and requires judgment in each particular situation. With a strong policy in place, the United States might simply defer such judgment to the United Nations and could in certain situations conceivably become a foe, rather than a facilitator, of such a determination. But this analysis demonstrates that considerable pressure can come from diverse constituencies—Congress, the international NGO community, domestic political supporters—and that such pressure can produce real effect. A list of general, comprehensive criteria that is easily applied to each situation will never exist; most important is that the political and economic interests of the determiner, such as the United States or the United Nations, not enter into the equation and that determinations be based upon what is actually occurring on the ground. Some precedence does exist as to what constitutes genocide, and using the word without taking the action necessary to end the atrocities would over time make the term meaningless anyway—surely a worse outcome than having no policy in place.

The situation in Darfur continues unabated today. Thousands flee their homes, and thousands continue to die.

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