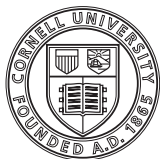


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*Correction:* In the Fall 2011 edition (vol. 2, no. 1), we inaccurately listed the university affiliation of author Anne-Marie D. Dao as the University of Southern California. In actuality, Ms. Dao is a 2011 graduate of the University of California, Davis School of Law. We deeply regret this error.

## E d i t o r ' s   N o t e

A friend recently posed the question: “What exactly is policy?” Unfortunately, there is no simple answer: policy is complicated. Here at *The Cornell Policy Review*, we strive to shed light on the question, “What exactly is policy?” We hope that you find some answers on the pages that follow.

In this third edition of *The Review*, we are pleased to present pieces submitted by current CIPA Fellows, colleagues from peer institutions, guests of the Cornell Institute for Public Affairs Colloquium series, and policy practitioners. Bruno J. Vander Velde introduces us to a new conservation paradigm and examines sources of dissonance that may prevent the proposal from going forward. Thomas Day presents a topical discussion of historical factors that have contributed to partisan voting in United States, adding his own data to expand the argument Dr. Larry Bartels offers in his seminal paper, “Partisanship and Voting Behavior, 1952-1996.”

In a staff editorial, Miriam Edelman draws attention to the arguments for and against adding permanent members to the United Nations Security Council, ultimately warning us of the possible dangers in expanding this international policymaking body. My own editorial examines threats to non-federally recognized American Indian tribes operating as 501(c)(3) nonprofit organizations and accompanying inefficiencies in the nonprofit sector.

Finally, we are honored to publish a piece by Dr. Yaron Zelekha, former Accountant General for the State of Israel, based on his presentation to the CIPA student body in April 2011. Dr. Zelekha discusses the corruption in the Israeli financial sector and his attempts to stabilize the economy. We also have the privilege of presenting an interview with Mr. Gene Dodaro, Comptroller General of the United States and head of the U.S. Government Accountability Office (GAO). Mr. Dodaro answers questions regarding his perspective on the role of GAO and the government’s ability to operate under current budget constraints.

I would like to thank my Managing Editor, Marquis Hawkins, my Editorial Board, and the entire staff for their hard work in bringing this edition together. Furthermore, it would not be possible to print this journal without the support of the CIPA staff and Cornell University. We hope that this journal educates you about some of the policies and programs that deserve your attention, and encourages you to join the discussion.

—**Michael Donovan**, MPA 2012, Editor-in-Chief



# The Dissonance of Ecuador's Yasuní-ITT Initiative

*Bruno J. Vander Velde*

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## ABSTRACT

*Decades of oil extraction in Ecuador's jungles have left a toxic legacy, poisoning land and people in this resource-rich, revenue-starved country. Now, the government is pursuing a novel proposal to keep some 850 million barrels of newly discovered oil buried beneath the ground in a portion of the Amazon rainforest. This area, within the Yasuní National Park in eastern Ecuador, is widely recognized as the most biodiverse patch of land on Earth. The Yasuní-ITT initiative is a payment-for-ecosystem-services scheme with a twist, in which developed countries would pay Ecuador a portion of its forgone oil revenues in return for Ecuador's protection of the area from development. The proposal is a test case for a new mode of international environmental governance and a new economic development model in Ecuador—one based on sustainability, unlike the destructive extractive model on which the country has relied. This paper will describe the Yasuní-ITT proposal and explore the obstacles to its implementation. Chiefly, this paper will discuss how actions taken by the Ecuadorian government have created dissonance that could torpedo this proposal and threaten attempts at replicating it elsewhere.*

## ABOUT THE AUTHOR

**Bruno J. Vander Velde** is a Fellow at the Cornell Institute for Public Affairs at Cornell University, pursuing a Master of Public Administration degree with a concentration in Environmental Policy. Before attending Cornell, he was a journalist, most recently at the Chicago Tribune. A native of Chicago, Vander Velde earned his Bachelor of Arts in Journalism from Columbia College Chicago in 1999.

## Introduction

**E**ccuador, a small country of 14 million people in the northwestern corner of South America, is endowed with uncommon natural resources and biodiversity. The tropical rainforests of the Amazon River basin in eastern Ecuador represent one of the most biodiverse areas on Earth—and nowhere more so than in Yasuní National Park, a remote 6,100-square-mile nature preserve established in 1979 near the country’s border with Peru. (*See Appendix 2 on page 30.*) An average hectare of forest in this park contains more distinct species of trees and amphibians than the entire North American continent; additionally, the estimated 100,000 insect species that are present in a given hectare of the Yasuní park is the highest diversity per unit area in the world for any plant or animal group (Bass 2010). With an eye to this extraordinary natural treasure, the Yasuní National Park was designated a UNESCO World Heritage site in 1989 (UNESCO 2011).

Indigenous people inhabit this area as they always have. Two indigenous groups native to the region, the Tagaeri and Taromenane, have chosen voluntary isolation from the outside world, and to respect these tribes’ wishes, Ecuador has declared the southern arm of the Yasuní park as “Zona Intangible,” or off-limits to all development.

Just as they are home to extraordinary habitats, the country’s eastern jungles are endowed with oil, which Ecuador has been exporting since 1972 (Larrea 2009). Ecuador, the smallest member of OPEC (Organization of Petroleum Exporting Countries), produced 486,000 barrels of crude per day in 2010 and has plans to boost output to 600,000 barrels a day by 2013 (EIA 2011)(Emery 2011). (*See Appendix 1 on page 29*) Petroleum is Ecuador’s most important commodity, accounting for 54 percent of total exports in the past decade. Additionally, revenues from petroleum made up, on average, 26 percent of government revenues between 2000 and 2007 (Larrea 2009).

In the 1990s, oil was discovered under the Yasuní National Park itself. The park’s status as a nature preserve would normally exempt it from resource extraction activities, but a loophole in the Ecuadorian constitution permits it if the president and Congress determine oil exploitation in the area to be in the national interest—and so it was with the Yasuní (Finer 2010). All but one 175,000-hectare block of the northern arm of the nature preserve were leased for oil extraction.

(See Appendix 3 on page 31) Coincidentally, this block is where a massive reserve of oil—between 850 million and 900 million barrels—was found in the late 1990s (Acosta 2009). Ecuador began laying the groundwork for extracting it.

Ecuador by this time was reeling from the effects of oil exploitation gone awry. In 1993, some 30,000 Ecuadorians filed suit against Texaco (now Chevron), alleging that the company had committed gross negligence in its oil drilling activities in the Amazon from 1964 to 1990. The prosecution claimed that Chevron/Texaco had dumped 18 billion gallons of toxic waste into the jungle, poisoning land, water and people (McAvoy 2011). The case, one of the largest environmental lawsuits ever, dragged through the courts for 17 years until February 2011, when an Ecuadorian court convicted Chevron of negligence, fining the company an astounding \$9.5 billion (BBC 2011). Chevron has since appealed.

Against this backdrop, a group of academics and environmentalists (including members of the Ecuadorian environmental group *Acción Ecológica*) led by Ecuadorian economist Alberto Acosta, devised a scheme that would keep the oil in the ground while ensuring that the country could be compensated for some portion of the opportunity cost—in this case, the decision to forgo billions in oil revenues (McAvoy 2011). With the election of leftist president Rafael Correa in 2007, many of the architects of the proposal became members of the government—Acosta, for one, became Minister of Energy and Mining—and they presented the Yasuní-ITT proposal (named for the region’s Ishpingo-Tiputini-Tambococha oil fields) to the president. While Correa was amenable to the proposal, he also directed work to begin on “Plan B,” should the Yasuní-ITT initiative not come to fruition (McAvoy 2011). Plan B was to drill for oil. This directive set the stage for the dissonance to come.

## **The Yasuní-ITT initiative**

In short, the Yasuní initiative is a quasi-PES (payment-for-ecosystem services) scheme in which developed countries would pay Ecuador not to drill for oil in the area in question. As payment, Ecuador has sought less than the full market value of the oil underground. This number has fluctuated over the years, but has settled at \$3.6 billion—half the oil’s estimated \$7 billion price on the international market. Ecuador touted the proposal as a way to protect biodiversity by averting the deforestation caused by oil exploitation activities; to protect indigenous people in the region by safeguarding the habitats that sustain them; and to combat cli-

mate change by avoiding the release of the 400 million tons of carbon dioxide (CO<sub>2</sub>) that would be emitted by the burning of the extracted oil (UNFCCC 2011). But the proposal also had an additional and even more ambitious, goal: “social development, nature conservation and implementing the use of renewable energy sources, *as part of a strategy aimed at consolidating a new model of sustainable human development in the country*” (UNFCCC 2011, emphasis mine). More than just a vehicle for preserving the rainforest, preventing deforestation, and avoiding carbon emissions, the Yasuní-ITT initiative is meant to usher in a whole new development paradigm for Ecuador.

President Correa introduced the initiative to the world in a 2007 speech to the United Nations. Initially, the plan to secure funding for the scheme was to invite countries, or private donors, to pay Ecuador for the Yasuní proposal in return for certificates that could function as tradable carbon offsets under the framework of the Clean Development Mechanism created by the Kyoto Protocol (Acosta 2009). However, it was eventually determined that this manner of prevention of carbon emissions was not permitted under the rules of Kyoto. Alberto Acosta explains:

It can be easily argued that leaving the ITT oil reserves underground prevents the emission of greenhouse gases in the long run and Ecuador should be duly compensated. However, such a mechanism is not included in the Kyoto Protocol. ... The volume of carbon dioxide sequestered depends on the surface area of the forest and so in the case of the Yasuní the contribution [as would have been specified under a Kyoto-style agreement] would be limited since it does not take into account the ecological contribution of the oil that would not be burned. ... The current international framework for “carbon markets” includes a condition that limits the applicability of the ITT Initiative: “carbon credits” only apply to offset emissions of industrialized countries and countries in transition, *but do not apply to the source of the fuel that is burned*. Once oil is extracted, it can be consumed in any part of the world, so there is no way to state that it will reduce emissions in any particular country. The current mechanisms are based on specific sites such as factories or sanitary landfills. (Acosta 2009, emphasis mine)

This was a setback for the initiative, but soon an innovative alternative was devised: Instead of carbon credits, Ecuador would issue Yasuní Guarantee Certificates (known by their Spanish-language acronym, CGYs) corresponding with the value of the money received. The CGY would be issued to the donating party in value equivalent to the amount donated and would include the metric tons of CO<sub>2</sub> avoided according to the price at that date, according to the Leipzig Carbon



Market, should the Kyoto Protocol or its successor ever accommodate the trading of such an instrument (UNDP 2010). The CGY — which does not earn interest nor have an expiration date — can be tendered to Ecuador for reimbursement at full face value should the Ecuadorian government decide to extract the oil in the area (UNDP 2010). This mechanism built in some accountability, addressing a critical aspect of the initiative.

In order to provide accountability regarding specifically where the money will go, Ecuador also established the Yasuní Trust Fund, to be administered with the assistance and oversight of the United Nations Development Programme (UNDP). The United Nations Framework Convention on Climate Change (UNFCCC) states:

**The fund's capital** will be invested in renewable energy projects in Ecuador, which have been selected due to their potential to generate stable and safe returns... The implementation of those projects will contribute directly to the National Development Plan goals for the country to overcome its current dependence on fossil fuels ...

The interest earned from this fund will be invested by the State for the following purposes...:

1. **Effectively conserving and preventing deforestation in 43 protected areas**, totaling 4.8 million hectares, and appropriately administering five million hectares of remaining original ecosystems. The total area protected would amount to about 38% of Ecuador's territory, one of the highest percentages in the world....
2. **Reforestation, afforestation, natural regeneration and appropriate management of one million hectares**, mostly among small landholders. In addition, a substantial reduction in the current rate of deforestation, one of the highest in South America.
3. **Increase national energy efficiency and savings.**
4. **Promote social development in the initiative's zones of influence**, with programs that include health, education, training, technical assistance and productive job creation in sustainable activities, such as ecotourism, agriculture and agro-forestry.
5. **Research and development in science and technology for:** a) the creation of goods and services based on bio-knowledge, b) sustainable development and integrated water-basin management, and c) a shift in the national energy matrix (UNFCCC 2011, emphasis UNFCCC's).

Thus, the UNFCCC trumpeted the fund will “promote the transition from the current development model, based on petroleum extraction,” to a new one “based on equality and sustainability” (UNFCCC 2011). This captured the attention of many environmentalists and activists, raising the possibility that a responsible and truly “green” social development project such as this could be successful and perhaps replicated elsewhere. With the structure of the deal in place thanks to the assistance of UNDP, which helped establish the terms of reference of the Yasuní project, Ecuador launched a public relations campaign to the world and hoped for donor money to trickle in. The Correa government gave until the end of 2011 to have \$100 million in hand, or it would commence Plan B—to drill for oil.

Ecuador’s economic and political history, however, merits concern for potential donors, and it is necessary to understand it before venturing further.

## **Economic Reality and Correa**

Data paint a rather dismal picture of the country’s socioeconomic state, as Carlos Larrea notes:

Ecuador...ranks in position 89 among 177 countries by its Human Development Index, and belongs to the medium human development group. Within Latin America, it is clearly a less developed country, with a per capita income just above half the regional average. In Ecuador, economic diversification is low, and primary products still represent 90 percent of exports, mostly composed of petroleum, bananas, shrimp, coffee, cacao and flowers....Social, ethnic and regional disparities, which have historically affected the country, remain pervasive, and 49 percent of the population lived below poverty lines in 2006 (Larrea 2009).

For this reason, according to Alberto Acosta, “The impact of the ITT Initiative and its relationship to the new constitution make it a public policy, in the same way that health and education are public policies. The initiative should not be pigeon-holed as a specifically environmental policy since it also has major repercussions in social and economic areas” (Acosta 2009). Indeed, this must be considered an international policy as well—it relies on international assistance for its very success, and it would have global repercussions if it is replicated elsewhere.

In light of the aforementioned socioeconomic indicators, it is clear why Ecuador has made plans to drill for the oil it purports to want to abstain from. To under-

stand Ecuador's recent trajectory, it is helpful to understand the current government of Ecuador, which tries to exert firm control over the economy and development.

Rafael Correa's rise to power in Ecuador—he was elected in free, fair and democratic votes in 2006 and again in 2009—was part of an ongoing leftward swing in Latin American politics in the late 1990s and early 2000s. This was in no small part a reaction to years of unbridled neoliberal governance in the country. Market-based policies and a healthy dose of economic austerity measures prescribed by Western governments did spur some Latin American growth and development, but even when such policies did produce beneficial effects, they ultimately always took “a heavy toll on the poor and the environment,” and Ecuador was no exception (Arsel 2011). In recent years, this new development model, in which the state is the key actor in societal dynamics—economic, political, social, environmental—has emerged in Ecuador, Bolivia and Venezuela. These three countries in particular have embodied what has come to be called “21st century socialism”—in short, an amalgam of socialist-style welfare combined with tightly regulated capitalism (Kennemore 2011).

In a very general sense, the leaders of each of these countries—Correa in Ecuador, Evo Morales in Bolivia and Hugo Chavez in Venezuela—has, in his own way, sought to consolidate power and instill loyalty by pitting his large, mostly poor electoral base against the smaller upper-class urban base that wields most of its respective country's wealth. Additionally, each of the three leaders has sought to portray his country as a victim of neo-colonialist policies from the developed world, chiefly the United States and Europe—a tactic that plays well at home. To wit, Correa's “promise to refound the Ecuadorian state and to reclaim national sovereignty back from global actors was widely considered to be a popular, if also populist, mandate” (Arsel 2011).

In his first months in office, Correa doubled poverty assistance payments, subsidized electricity rates for low-income customers and funneled millions of dollars into social programs, which was funded by an increase in taxes on foreign oil companies (Arsel 2011). In the face of growing social expenditures and flat revenues—not least because of a dip in oil revenue—Correa announced he would refuse to appeal to traditional lenders, such as the World Bank, and would seek financing from political allies (Arsel 2011). When in 2008, for the second time in less than a decade, Ecuador defaulted on its international debts (in this case, an interest payment of \$10 billion), the government accused foreign bankers from

profiting unfairly and irresponsibly; Correa told the BBC in December 2008 that “as president I couldn’t allow us to keep paying a debt that was obviously immoral and illegitimate” (Kennemore 2011).

While Correa’s tenure as president has been a comparatively stable period for Ecuador (the country had seven presidents and two constitutions from 1996 to 2006), a tense and violent standoff in October 2010 between Correa and a rebel faction of police officers—who were revolting against Correa-backed austerity measures—raised new concerns about Ecuador’s stability (Walsh 2011, Hernandez 2010). Correa was quick to brand the tear-gas-punctuated protest as a coup attempt—not the last time he would react stridently to opposition: A March 2012 protest march by indigenous groups against a mining contract was, in Correa’s words, nothing less than an attempt to “destabilize the government.” (Garcia 2012)

The implications of Ecuador’s government and political culture loomed large for the Yasuní-ITT initiative. Not surprisingly, Western countries demonstrated apprehension about donating to the initiative. Against this cultural backdrop, it is necessary to touch on Ecuador’s social and developmental history.

## **Environmental Protection in a Developmental State**

With the introduction of the Yasuní-ITT initiative, Ecuador is affecting some of the trappings of a so-called environmental state, while it is still universally considered a “developmental state.” As mentioned earlier, the country is seeking to change its development paradigm—based as it is on agricultural and raw materials exports—but the country may not be economically or politically developed to do so in short order. The conflict between an ecological paradigm and a developmental one is playing out in the Yasuní initiative, and is further exacerbated by governmental actions.

The concept of a “developmental state” has been well established. Developmental states are marked by strong state-led macroeconomic planning, intervention and regulation (Low 2004). East Asian countries, particularly Japan, South Korea and Taiwan in the latter half of the 20th century, are developmental states. Japan is widely considered an archetypal developmental state, and Mark Beeson explains a bit why:

At the centre of the Japanese developmental state...was a highly competent bureaucracy dedicated to devising and implementing a *planned* process of eco-

conomic development. One of the key elements of a developmental state—and an essential prerequisite for managing the developmental process—is the existence of a ‘pilot agency’, like Japan’s celebrated Ministry of International Trade and Industry (MITI) (Beeson 2004).

Ecuador in 2011 seems to be following this model closely; in place of Japan’s MITI, it has the National Secretariat for Planning and Development, known by its Spanish acronym, SENPLADES. Correa has made this planning ministry “central to his agenda,” endowing it with a great deal of power and resources (Arsel 2011). But Ecuador, via SENPLADES, aspires to move beyond the manner of development that turned Japan into an economic powerhouse and has attempted to imbue its core mission with a new type of paradigm altogether—one of an “ecological state.”

Defining an environmental (or ecological) state is a bit more problematic; indeed, few agree on the definition, or even that such a state exists. But for the purposes of this paper the following definition will be used: “The Ecological State is a state that to a certain degree succeeds in transforming our current socio-technical systems into a more sustainable one” (Holm 2011). Andreas Duit explains further:

Environmental economists have long argued that environmental degradation can (and should) be understood as a case of externalisation of environmental costs... The environmental state, then, is one that internalizes these externalities—Much like the welfare state made externalization of human costs more difficult through legislation and taxation, as well as mitigated the impact of market economy by producing public goods such as health care systems, unemployment support, daycare, and so on, the green state can make exploitation of natural resources more difficult through laws, taxes, and fees, and mitigate environmental impacts through the production of public goods such as public transport systems, green energy systems, habitat preservation and restoration, sustainable resource utilization, and so on (Duit 2008).

Ecuador surely had a similar vision in mind when it introduced the concept of “*buen vivir*”—in Spanish, “good living” or “well-being”; the concept itself is derived from “*sumac kawsay*,” a Quechua term. In the past several years, this “notion of good living... as a new framework of political, legal and natural governance” has emerged in Ecuador (indeed, Ecuador’s five-year national development plan, launched in 2009, is called “Plan Nacional para el Buen Vivir”) (Davalos 2009). Reflecting this new vision of development, even the Ministry of Mines and Oil was renamed—to the Ministry of Non-Renewable Natural Resources (Arsel 2011).

It must be noted that alongside this notion of “good living,” a recent change in Ecuadorian governance has been the nationalization of extractive industries, the main purpose of which is to increase revenues from these activities. The increase in state revenues that this move is anticipated to produce is “critical to the implementation of social, political and economic agenda of the Correa government and therefore central to understanding contemporary Ecuadorian politics.” (Arsel 2011)

## **The Money and the Deadline**

Having focused on the historical and cultural lens through which to view Ecuador’s current sociopolitical climate and its conception of the Yasuní-ITT initiative, this paper will return to the details of the initiative and the dissonance that threatens to derail it.

The ITT initiative was introduced during a time of economic crisis, and European countries whose support was critical for the success of the initiative have been grappling with more pressing financial priorities. Despite keen interest in the initiative, the funding that Ecuador initially sought—a \$100 million “down payment” of sorts—was slow to materialize.

The biggest blow came when Germany, which had initially lauded the initiative and spoke of giving up to \$50 million a year—the most of any prospective donor—pulled out. But money wasn’t the German government’s problem: It had problems with the initiative itself. In a letter dated Sept. 14, 2010, to a spokeswoman for the Green Party, German Minister for Economic Development and Cooperation Dirk Niebel declared that the German government would not contribute to the Yasuní-ITT initiative (Niebel 2010). Niebel wrote that the Yasuní initiative “lacks a consistent rationale, a clear goal structure”; said that significant questions of accountability and logistics remained unanswered; and expressed some concern about guarantees that the oil would in fact remain underground (Niebel 2010). Niebel considered the initiative an insufficient method to prevent deforestation or reduce greenhouse gas emissions, and recommended that Ecuador instead work more closely with REDD (Reducing Emissions from Deforestation and Forest Degradation), a UN-backed mechanism that uses financial incentives to halt deforestation (Niebel 2010).

It could be argued that Niebel’s letter betrayed a lack of imagination—the Yasuní-ITT initiative was unprecedented, encompassing issues of biodiversity, so-

cial justice and social development, in addition to the deforestation and carbon emissions issues that REDD addresses. Still, Germany remained undecided until June 2011 when Gudrun Kopp, the parliamentary state secretary to the minister for Economic Cooperation and Development, told a parliamentary commission that “a direct payment into a fund of this type would set a precedent that could ultimately prove very costly.” (Ortiz 2011) Kopp said Germany could conceivably come under pressure from other countries to finance similar proposals (Ortiz 2011).

Facing difficulties raising money, Ecuador looked within. By the end of 2011, the trust fund held less than five million dollars; other, much larger foreign pledges—such as an Italian debt swap that would have added tens of millions of dollars to the trust fund—never materialized (La Hora 2011). The proposal looked doomed.

Abruptly, in early December 2011, Ecuador’s government announced that all the \$100 million had materialized, just weeks ahead of the deadline (Wyss 2011). The government stated that pledges of private donations had arrived, saving the proposal after all (Wyss 2011).

In any case, the Yasuní-ITT initiative has survived; however, the next phase in the proposal—Ecuador is seeking \$350 million a year for 12 to 13 years—will be more challenging.

## **The Dissonance of the Yasuní-ITT initiative**

Aside from the quagmire of technical details regarding financing and oversight, the initiative suffers from several notes of dissonance—some inherent, some manufactured by human actors.

Regarding the Yasuní-ITT proposal, two notes of inherent discordance were quickly evident. The first was the very framing of the initiative—i.e., “Pay us, or the rainforest gets it.” This idea was framed as being akin to ransom; indeed, many mainstream media accounts of the initiative painted it as such: A headline in the *Financial Times* blared, “Ransom: Rainforest held hostage by oil interests unless the world pays to preserve the biosphere” (Mapstone 2011). Nevertheless, in the very same breath in which media accounts likened the scheme to ransom, they could not deny the novelty and potential of the initiative. A 2011 op-ed piece in *Time* magazine heralding the Yasuní-ITT initiative put it this way:

Of course, from another perspective, the Yasuní initiative might look like en-

vironmental blackmail by Ecuador: Pay us or the forest gets it. And since the proposal was first floated a few years ago, Ecuador has struggled to get international partners to sign on, in part because momentum on climate policy has ebbed in the face of the prolonged global economic crisis. Nor does it help that Correa himself has sent mixed signals on the project, simultaneously preparing for drilling even as he asks for donations (Walsh 2011).

This passage touches on the second inherent note of dissonance: that Ecuador is planning to drill anyway. Even German critics of their country's refusal to donate money to the initiative couldn't help but acknowledge this fact. Thomas Brose, the director of German NGO Climate Alliance and a supporter of the Yasuní-ITT initiative, conceded to German news broadcaster Deutsche Welle: "The president of Ecuador is playing a double role. On the one hand he is using the initiative to say, 'Look how green we are and how hard we are working to protect the environment,' but on the other, he grants licenses for the drilling of oil in other regions." (Walker 2010)

Given the potential for irreversible ecological harm to the Yasuní if drilling commences, how can Ecuador ethically square this notion with resource extraction in this area? How can Correa's government express concern for Ecuador's environment and for its indigenous people—in a speech about the ITT project at the UN in September 2011, Correa waxed panegyric about the country's many indigenous groups—while at the same time making plans to plunder the resources under these peoples' feet? (Correa 2011)

One could argue that Ecuador's poverty sufficiently tempers any misgivings about this disconnect. In Garrett Hardin's words, "The morality of an act is a function of the state of the system at the time it is performed," and at this time, Ecuador is in need of the revenue that could be gained from extracting this oil—in-deed, it has a sovereign right to do so (Hardin 1968).

These two inherent points of dissonance, then, can be argued away; however, there are other, deeper problems of man-made dissonance in the Yasuní-ITT initiative that must be addressed and resolved if the project is to have any hope of implementation (and replication). They are the government's willful incoherence on natural rights and indigenous issues; the willfully glossed-over conflict between the government's ends and its means; and its willful enervation of civil society institutions, including the very institutions that gave birth to the Yasuní-ITT proposal.



## The Rights of Nature, and of the Indigenous

In 2008, Ecuador rewrote its constitution; among the new additions to the constitution was a passage granting inalienable rights to nature. The passage states: “Natural communities and ecosystems possess the unalienable right to exist, flourish and evolve within Ecuador. Those rights shall be self-executing, and it shall be the duty and right of all Ecuadorian governments, communities, and individuals to enforce those rights.” (Klare 2008)

The statute as written is effectively unenforceable. While it appeased global environmentalists, it was “derided” by many Ecuadorians, given the history of pollution from state-run and private oil companies in the Amazon, as well as “the government’s need to keep oil flowing to sustain the economy” (Revkin 2008). Still, it seems clear that on paper, at least, this initiative is in line with the same ideals that had given life to the Yasuní-ITT initiative.

With these ideals etched into the constitution, one would expect them to have an effect on the country’s public policy. This article in the constitution is recognition that cost-benefit analyses are no longer the only metric of policy and development, and it is recognition that environmental values are part and parcel of greater social values, in that they are similarly unquantifiable.

Developmental states, though, tend by nature to rely on cost-benefit models, and in Ecuador this is an instance of dissonance. As the architect of the ITT initiative himself declares, a cost-benefit model “gives zero value to that which it does not recognize, or utilitarian value to resources that can be exploited, and it has problems in determining a discount rate, or in deciding what timescale to consider. Ironically, this type of analysis applied to a biodiversity hotspot is one of the greatest threats the region faces. *Cost-benefit analysis justifies extinction*” (Acosta 2009, emphasis mine). This is exemplified in Ecuador’s presentation to the UNFCCC, which cites the cost-effectiveness of the Yasuní-ITT initiative (UNFCCC 2011).

The new constitutional passage also represents recognition of the inalienable rights of Ecuador’s indigenous populations, some of which have no representation in the government, having chosen isolation. But here the dissonance is obvious—oil extraction is against the spirit of the constitution in this case. It is not a matter of whether oil extraction would affect local indigenous people, but to what degree. Financial watchdog BankTrack noted that introducing the requisite oil platforms to the Yasuní region would cause “such broad and direct secondary

environmental and social impacts that 43 concerned scientists from Ecuador, the United States and Europe wrote to the President of [Ecuador] and its Environment Minister ... recommending that no new drilling be undertaken in Yasuní. The letter informs that regardless of the drilling method used impacts of the existing plan, the lack of full consultation and informed consent of significant elements of the indigenous population affected outweigh all indications that the project should proceed.” (BankTrack 2012)

In this light, Ecuador’s use of a Quechua concept to guide its development paradigm not only rings hollow — something that even German supporters of the Yasuní project were able to pick up on — it also could reasonably be construed as a whitewash of the facts: that to Ecuador’s government, the need to reap revenue and pursue social development via oil extraction outweighs the rights it has bestowed upon the indigenous people who will pay the price for this activity.

### **Ecuador’s Ends vs. Its Means**

The dichotomy between developmental and environmental states serves as a backdrop with which to better understand the history of Ecuador’s moves and motives. This dichotomy also serves to demonstrate how the tension between the two sides causes a fundamental conflict between Ecuador’s development ends and its means of getting there.

In addition to growth in its entitlement and social welfare programs, Ecuador has seen major infrastructure improvements, particularly in the paving of hundreds of miles of roads and highways. These infrastructure programs are an effect of the country’s state-interventionist philosophy. As mentioned earlier, Correa’s rise was a direct response to neoliberalism, and his state-centered approach to social service provision requires significant investment that his neoliberalist predecessors eschewed. Herein lies the problem, which simply put is a fundamental tension within its developmental-state policy. These expenditure increases must be funded somehow, but given Ecuador’s credit defaults — as well as the consequent plummeting of the country’s credit rating and Correa’s rejection of such institutions as the World Bank — borrowing the requisite funds on the global market is not an option. Ecuador has little choice but to look to its natural capital:

The combination of a rich natural resource base and limited ability to raise financing through development aid or borrowing, coupled with the demands of an electoral democracy that requires political figures to produce quick and

easily identifiable outcomes, creates the conditions in which an extractivist development model is inevitable. ... It creates a fundamental tension between the means and aims of development policy in Ecuador (Arsel 2011).

Just as Ecuador is caught between a developmental and environmental divergence, the country's indigenous people are caught in the middle of this conflict. Many indigenous communities have long incorporated the idea of "*buen vivir*" and harmonious relationship with nature into their way of life, but now, this way of life is more tenuous. This is because, as Arsel and Avila masterfully encapsulate,

the financial requirement of [Ecuador's] first goal—ensuring the ability of all groups within the society to 'enjoy their rights'—necessitates, especially within a state-centered development model, the expenditure of vast sums in order to create the preconditions of such enjoyment through healthcare, education, social and infrastructure expenses. This puts the second goal—respect for nature and the integrity of its ecosystems—into substantial peril as the financing necessary for the first goal, at least in the short term, can most easily come from an extractivist development model, whose negative impacts, while not necessarily always and everywhere inevitable, are certainly extremely difficult to keep in check. *Said differently, the resulting paradigm has conflict at its heart, as respect for the integrity of nature becomes both the foundational stone of post-neoliberal ideology of development but also the primary financing mechanism to achieve the strategy* (Arsel 2011, emphasis mine).

Correa himself acknowledged this reality. On the subject of a proposed gold mine in an area of southern Ecuador that is sacred to the indigenous Quechua people, Correa said on national television, "We cannot live like beggars while we are sitting on a mountain of gold... Ecuador has great mineral potential. *We cannot negate the development of our country for absurd irrational beliefs.* We cannot do away with education and health" (Aanestad 2011, emphasis mine).

This is the socio-economic and political environment the Yasuní-ITT initiative finds itself. The proposal amounts to an environmentalist idea in a squarely developmentalist state—a state that is wracked with an internal ends-vs.-means conflict caused by the very ideology that drives it—in this case, a post-neoliberal, quasi-socialist model that has promised "good living" and ecological justice along with more quotidian social-welfare and infrastructural development. To fulfill one goal, Ecuador must essentially reject the other. This is the very definition of dissonance.

## Civil Society's Role

The ITT initiative faces daunting hurdles to overcome; making matters more daunting is the fact that the government of Rafael Correa has weakened the very sector that devised the initiative, and which is engaged, interested and knowledgeable enough to help make it reality: civil society. This marginalization of civil society actors causes further dissonance that results in an accountability deficit, further damaging the ITT initiative's prospects.

That Correa would be given to such maneuvering comes as no surprise to many observers of Ecuador. Correa has sought to consolidate power since his election in 2007; Forrest Colburn and Alberto Trejos offer further detail: "Correa maintains a constant and thunderous verbal assault on opposition figures and institutions, doles out state resources in exchange for political support, and presents Ecuador as a victim of international machinations" (Colburn 2010).

Correa's response to his political opposition mirrors his response to critical civil-society actors. With the passage of Correa's new constitution in 2008—the one that famously granted rights to nature—Correa became even bolder,

attacking the private sector—and other groups—and employing newly granted legal authority to demoralize, intimidate, or silence critics. In a country that has long suffered from political instability, with three recent presidents unable to finish their terms, Correa was re-elected in April 2009. A well-educated Ecuadoran laments, "Today we only have an illusion of democracy." (Colburn 2010).

Environmental activists and indigenous activists have felt the ire of Correa on numerous occasions. Significantly, many of them initially supported Correa's election and his development goals, which themselves were built on the very ideas that civil society promoted in the first place (the Yasuní initiative among them). In 2010, for example, the Ecuadorian Health Ministry ordered Acción Ecológica, one of the country's most important and outspoken environmental NGOs, to shut down, charging that the organization had undertaken activities beyond the bounds of its charter. The ministry "later changed tack, saying that it was simply a matter of needing to move Acción Ecológica's registration to the Ministry of the Environment, a body that did not exist at the time of Acción Ecológica's founding. In a press release, the Health Ministry said, "the suspension of the environmentalist NGO Acción Ecológica has nothing to do with persecuting this organization" (Denvir 2009).

But Acción Ecológica leader Ivonne Ramos called the government's action arbitrary: "If the elimination of our legal status is a retaliation against our organization's opposition to government policies such as large-scale mining and the expansion of the oil frontier, it would set a precedent for authoritarianism that is intolerable in a democratic regime" (Denvir 2009).

The United States government even harbored concerns about Ecuador's campaign against NGOs. A classified U.S. diplomatic cable from 2009, released by Wikileaks in 2011—a document that helped precipitate Ecuador's eventual ejection of the U.S. ambassador from the country—stated, "Given the Correa government's limited tolerance for dissent, its obsession with bringing everything in line with state planning, and the negative precedents elsewhere in the region, we do not take NGO concerns lightly" (El Universo 2011).

Acción Ecológica's closure was short-lived; it reopened and resumed operations shortly after being closed, thanks in part to international outrage over its forced shutdown. Indigenous activists, though, have been less fortunate; some have paid dearly for their dissent, including some of those who protested against mining in the aforementioned "mountain of gold." At a 2009 protest against the mine, one indigenous leader was fatally shot during confrontations with police—his killer was never found—and, several months after the protest, another of the protests' leaders, Pepe Aacho, was arrested, whisked away to a Quito prison, and charged with terrorism (Aanestad 2011).

The media, a key institution for safeguarding democracy and accountability, has been marginalized in Ecuador as well. Among the examples:

- In June 2011, Correa won a \$40 million civil judgment against El Universo newspaper over an op-ed piece that referred to Correa as a dictator (and for which the former opinion editor was sentenced to three years in prison) (CNN 2011). In February 2012, one of the judges in the case fled to Colombia to seek political asylum, claiming that lawyers for Correa "promised her \$3,000 a month and steady work if she would rule against the newspaper" (Wyss 2012).
- In a speech to Columbia University's World Leaders Forum in September 2011, Correa called privately owned media a "dangerous" power "with no democratic legitimacy" (Gittelsohn 2011).

- The Correa government “controls one newspaper and two TV channels and has come under scrutiny from both Reporters Without Borders and the Inter-American Press Association for pressuring journalists” (Kennemore 2011).

Correa has struck a more conciliatory tone in recent months. In late February 2012—days after news broke of the judge’s allegations in the case against El Universo—Correa announced he would pardon the newspaper and its employees, relieving them of court-imposed prison terms and the civil settlement (AP 2012).

But regardless of this welcome change of course, the Correa government has alienated civil society by appropriating the Yasuní-ITT initiative as its own. As Arsel and Avila explain:

The practical aspect of leading the initiative has been associated with Correa, as a recent *Financial Times* piece demonstrates: “Rafael Correa, president, is asking for \$3.6bn over 13 years in return for leaving the reserves in the ground.” In this formulation...it is President Correa who is doing the asking, rather than the institutional structures of the government of Ecuador or the society itself. Reading such statements, it would be easy to assume that the Yasuní-ITT proposal is indeed the brainchild of Correa himself and that it has been developed and implemented mainly by the state in recent years. Indeed, Correa himself suggested such ownership when stating that the Yasuní-ITT initiative represents an “emblematic project of the citizen’s revolution”, of which he is the leader (Arsel 2011).

Alberto Acosta’s experience in the past 10 years is illustrative of the problems faced by civil society institutions during Correa’s regime. Plucked from his position in civil society and appointed as the Minister of Energy and Mines by Correa in 2007, Acosta was

only the most prominent of a spate of appointments that brought individuals coming from a civil society background to work for the state. Many of these had been involved in the discussions leading to the unveiling of the proposal. Espinoza Martínez, for example, states that Acción Ecológica had already discussed the Yasuní proposal before the Correa government took it up, with “at least five of the people who went on to become ministers in this government” (Arsel 2011).

The appointments of Acosta and his colleagues were seen as a step toward greater credibility and political power for their ideas. However, as a result of these

appointments, according to one political appointee, “civil society weakened to a great extent due to a shift of several civil society figures to positions within the state’s machinery”; the agenda of civil society, especially with respect to environmental and human rights issues, was “consigned to oblivion” (Arsel 2011). This conquest-through-hiring of civil society institutions did not extend solely to environmentalists and academics. Correa has been accused of eliminating the autonomy of indigenous institutions, also “by incorporating them into various ministries centralized in the government” (Kennemore 2011).

Thus, as Arsel and Avila concisely explain: “What had started as part of a long-standing indigenous and environmentalist resistance against oil exploitation in the Amazon and later became articulated as an idea of the civil society to reshape Ecuadorian democracy, had effectively been appropriated by a state machinery whose actions and processes – regardless of their intent – had marginalized the very people that advocated the proposal in the first place. Thus... the Yasuní-ITT proposal had become the ‘State’s strategy’ ” (Arsel 2011). Once the Ecuadorian state became involved, its formidable bureaucracy took over. This bureaucratic system, “given its complexity and insularity ... inhibits the participation of actors from the civil society” (Arsel 2011).

Acosta left the government within a year of his appointment and has publicly distanced himself from Correa, his former ally (in an interview with *El Comercio* newspaper, Acosta called the government’s move to shut down *Acción Ecológica* “a form of violence” (Denvir 2011)). Acosta and his counterparts had expected that the development and announcement of the ITT initiative would be inclusive and participatory; the actual process however, has turned out to be something far less (Arsel 2011).

This marginalization of civil society—thereby treading upon mechanisms for innovation, inclusion and accountability, all three of which are crucial to the Yasuní-ITT initiative—represents dissonance and a threat to the project’s success.

## **Conclusion**

The central theme, in regards to the dissonance of the Yasuní-ITT initiative as it relates to the political and economic realities of contemporary Ecuador, is the primacy of the state over all other entities within the country, and in particular the inherent conflict between the state’s twin goals of environmental protection

and social development. The state must always be present in any form of environmental or developmental governance system, but it is less effective when it is the *only* institution of governance.

Ecuador is particularly ill-suited and ill-prepared to make any shift from a developmental state to one that has the wherewithal to “undertake the defense of nature” (Arsel 2011). As Arsel and Avila write, “Whereas in affluent (post-)industrial societies it might be possible to envision a transition from a welfare state to an eco-state, in developing nations such as Ecuador the role of the state as both the developer and the preserver need to be undertaken simultaneously. This is perhaps why Correa [in a 2009 speech] ... affirmed not only that “[like] friendship, happiness and security, the environment is priceless” but also that the income the Ecuadorian state could earn from exploiting the oil under the Yasuní... “is needed for schools, hospitals, [and] hydroelectric dams” (Arsel 2011).

Many countries attempt to balance development with environmental protection, and all fail in one capacity or another—it is an ambiguous and fiendishly difficult balance to strike effectively. Even when successful, measures that seek to balance the two can take the whole of a society—state, markets and the public—to support and administer them. Ecuador, on the other hand, has rejected the markets (associated with the failed neoliberal policies that ultimately propelled Correa to power) and excluded the public (as represented by activists and the press); only the state remains. This situation relegates Ecuador’s Yasuní-ITT initiative to incoherence as a policy, and even if the proposal receives all the donor funds that Ecuador requires, it could still doom the proposal’s implementation.

It is imperative that the Correa government understand that it is potentially hurting its own cause—unless of course, the cause all along has been to extract the oil, then point to an international capitalist conspiracy as the “bogeyman” that prevented Ecuador from being able to do “the right thing.” Having cast the future of the Yasuní-ITT proposal in stark terms, Correa has limited room for maneuvering. The United Nations’ stewardship of this proposal will be tortured and delicate, and it would do well to build a coalition of representatives from rich countries that are willing to work patiently with Ecuador on funding the project. For their part, countries representing the G-20 major world economies should consider at least a token donation to the proposal—as some already have—as a means of goodwill and a tangible step toward the realization of a sustainable



world economic system based on the “good living” metric that Ecuador claims to want to adhere to.

If the Yasuní-ITT proposal can be made to work in the context of Ecuador — a tall order — there is hope that the scheme can be replicated elsewhere around the world, and this replicability is also at stake. Many governments that would be inclined to donate to the proposal are keen to know more about accountability and replicability before investing — for example, the government of Norway, which has studied the issue closely (Rosendal 2008). The issue of funding represents an inherent challenge to the possibility of replicability, but if Ecuador, with an infusion of international capital, can truly make strides to shed its extractivist model for one based on sustainable stewardship, perhaps the notion of an ecological state need not exist only in theory.

Indeed, one reason for hope is the growing global interest in sustainable ecotourism, which is one of the UN’s objectives for the Yasuní proposal. Studies have shown that ecotourism actually led to better environmental outcomes in a nearby part of Ecuador, and other studies show that ecotourists’ willingness to pay is much higher than what they are actually paying (Wunder 2000, Widmark 2006, Baral 2008). With an uncommon abundance of natural riches, Ecuador is no stranger to ecotourism, but it is a sector that by all measures could amply be expanded.

Even if a new sustainable development paradigm is unattainable in the near future, a donation to the Yasuní-ITT trust fund would make a significant impact in protecting bio-diversity. The Yasuní ecosystem is unique in the truest sense of the word: *There is literally nowhere else like it on Earth*. Concerns over “precedent” or politics should be summarily disregarded: Paying a relative pittance for the right of this irreplaceable ecosystem — including the people who are sustained by it — to continue to exist in its natural state, unsullied by extractive development, is a moral obligation. Provided that the UN can provide proper oversight of the funds, it seems that \$3.5 billion is a small price for the world to pay today to keep this jewel of the Amazon intact. It is incumbent on Ecuador to be transparent and accountable for the success of the initiative; some pre-emptive international goodwill could be just the catalyst for this to happen. ▀

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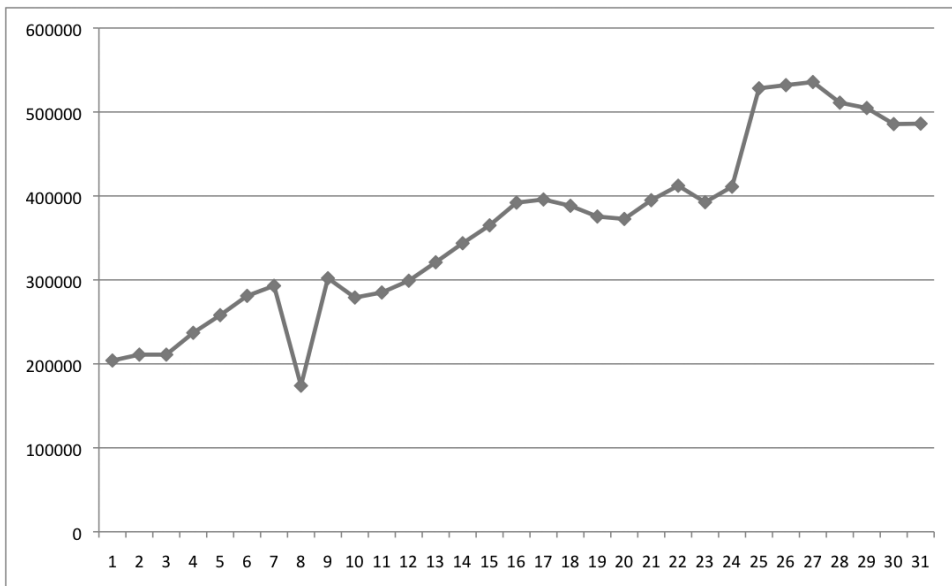
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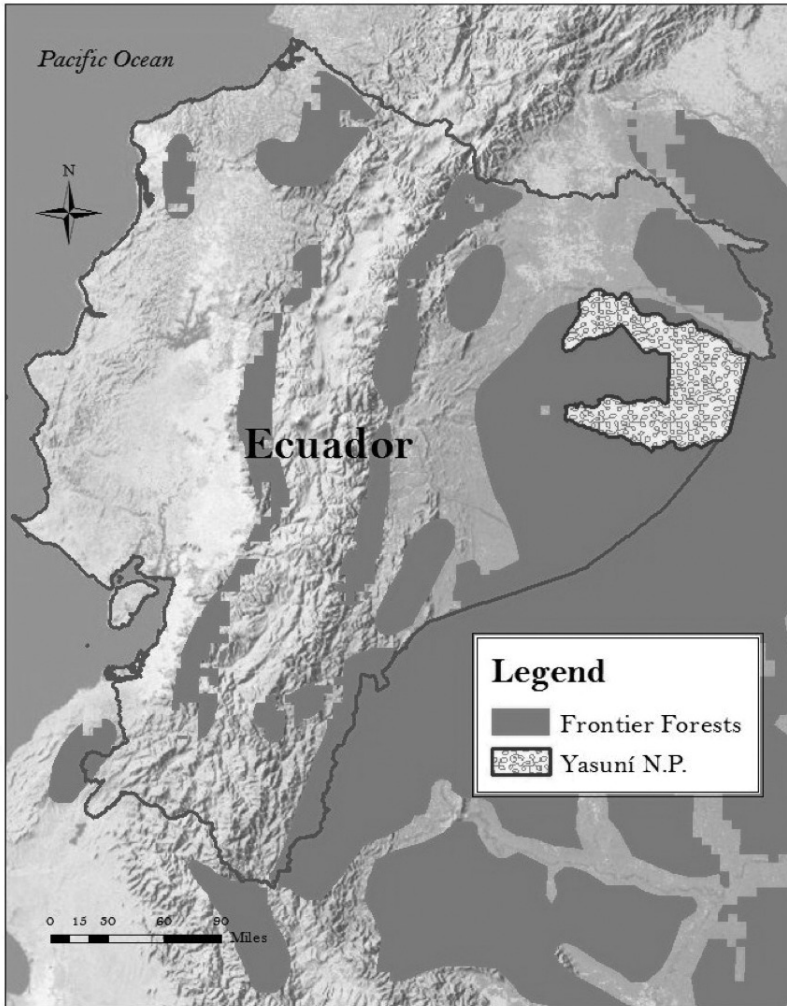
## [ Appendix 1 ]

Crude oil production in Ecuador, 1980-2010, in barrels per day.



(On x-axis, 1 = 1980, 2 = 1981, etc.) Source: U.S. Energy Information Administration

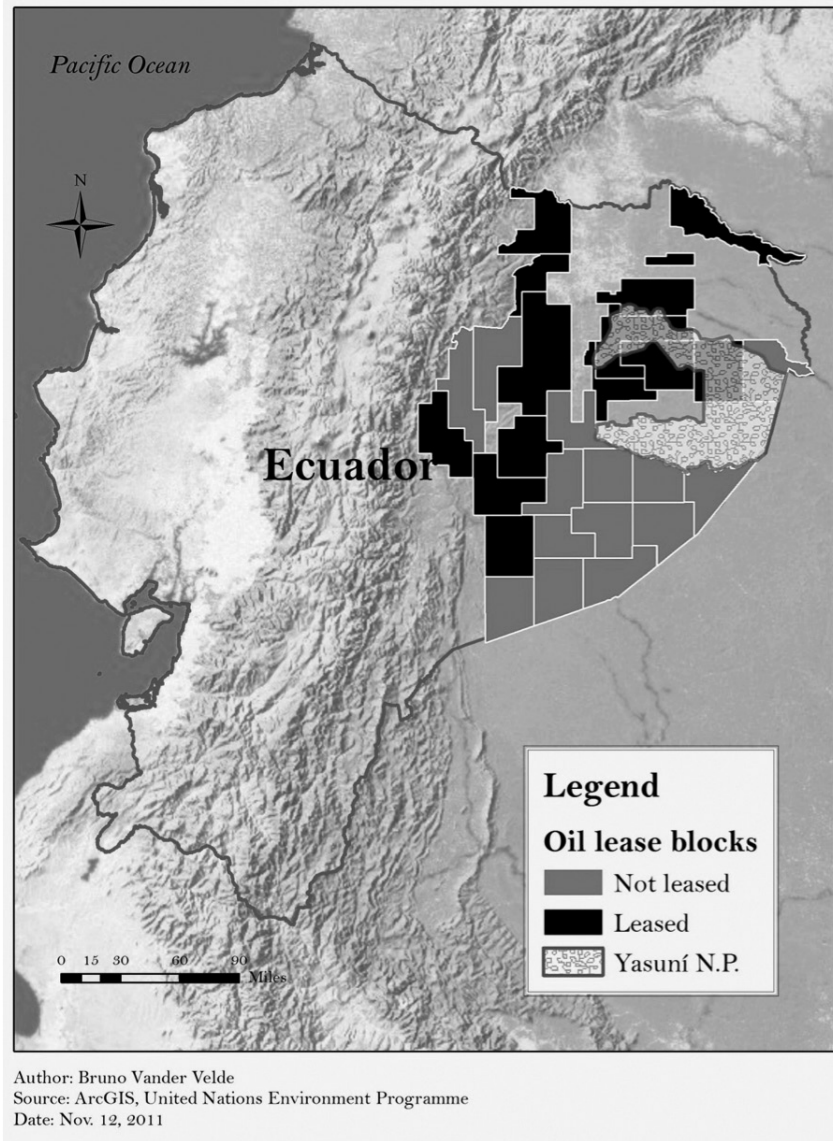
[Appendix 2]



Author: Bruno Vander Velde  
Source: ArcGIS, Global Forest Watch  
Date: Nov. 12, 2011

Map shows Yasuní National Park in Ecuador, as well as Global Forest Watch “frontier forests” in the country. “Frontier forests” are described as healthy forests that are largely unmanaged by humans and untouched by human development.

[Appendix 3]







# Hyper-Partisan Sorting in the American Electorate, 1976-2008

Thomas L. Day

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## ABSTRACT

*The American body politic is increasingly defined by its hyper-partisanship. Where a generation ago the nominees from both the Republican and Democratic parties could compete for moderate voters of the other party, presidential elections are becoming an exercise of partisan unity, where voters across the ideological spectrum almost uniformly vote for the nominee of their own party. I attribute this trend to three historical developments: the flight of southern social conservatives from the Democratic Party, the rise of micro-targeting technologies and the decline of objective broadcast news.*

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Television coverage of the 1976 election results began at 6:30 p.m. Eastern Standard Time. Thirty percent of all televisions tuned into CBS and its longtime venerable news anchor, Walter Cronkite. Another 28 percent and 18 percent tuned into NBC and ABC, respectively.<sup>1</sup> Those who tuned in witnessed the most anxious presidential election night since 1960. Former Georgia Governor and Democratic Party nominee Jimmy Carter scored victories in the states of South Carolina, Tennessee and Texas. Republican President Gerald Ford carried Illinois, New Jersey and California. Later that evening, from a hotel room in downtown Atlanta, Carter phoned New York City Mayor Abraham Beame, inquiring about voter turnout in key precincts.<sup>2</sup> Carter could not win without New York in his column, and the networks had not called the state as the evening labored on. At 1:00 a.m. on the east coast, the states of Alaska and Hawaii had cast their final votes, and neither Carter nor Ford had surmounted the 270 Electoral College vote mark needed to win the presidency.

It was not until 3:30 a.m. that NBC and ABC were ready to announce a winner. At the White House, Chief of Staff Richard Cheney pulled Ford into a private room to brief the President on the latest returns.<sup>3</sup> Moments earlier, a wire report from United Press International read simply: “FLASH: WASHINGTON—CARTER WINS PRESIDENCY.” CBS, having corrected its premature report that Carter had won the state of Oregon a half-hour earlier, waited. The state in doubt was Mississippi. When NBC and ABC made their announcement, CBS could no longer wait. Cronkite, the most trusted man in America, told the country just before 4 a.m. that the election was decided. President Ford went to bed a lame duck and Jimmy Carter emerged the next morning as the 39<sup>th</sup> President of the United States.

After the 1976 election, the political map would have to be redrawn. Jimmy Carter was the last Democrat presidential nominee to hold what had been known as the “solid South” for Democrats. The century-long Democratic dominance of the south—dating back to Reconstruction—was finished. For the Republicans, the rise of social conservatives would gradually strengthen the party’s hold on rural voters, conceding states with large urban populations to the Democrats.

A generation hence, the Democrats do not even bother competing to win South Carolina, Tennessee or Texas in presidential politics. The state of Mississippi is invariably called by the news networks the moment the polls close. Similarly, the Republicans have largely conceded Illinois, New Jersey, and California—all states that went for Ford in 1976—to the Democrats in the most recent

presidential elections. The “solid South” for the Democrats is now the solid for the GOP. States north of the Mason-Dixon Line invariably fall to the Democrats. If the Democratic nominee for president saw it necessary to call supporters in New York City on election night, pleading for good news, the campaign’s fate would already be sealed. When it comes to electoral strategy, we hardly live in the same country we did in 1976.

A survey that year by the American National Election Studies group (ANES) asked voters if they saw “important differences in what the Democratic and Republican parties stand for.” 46 percent of respondents said yes, they did perceive significant ideological differences between the two parties, and 44 percent responded that they did not. ANES posed the same question to voters again in 2008. 78 percent of respondents said that they saw differences; only 21 percent said they could not.<sup>4</sup> This political environment did not come to be without fundamental changes in the American political institution. The dominant ideologies of the aforementioned states have not changed.<sup>5</sup> Voters have simply found an ideological home in one party or the other, and have increasingly voted with that party. Somewhere on the ideological continuum, a distinct and growing divide has separated the Democrats from the Republicans. Once this division was established, a dramatic increase in partisan voting for both Republican and Democratic voters has redefined the American body politic so much so that it scarcely resembles the one that guided the Carter and Ford campaigns 35 years ago.

While the 1976 election stands as a turning point in the continuum of history — at which the political map of one era was discarded in favor of a new map to define American presidential politics — it is important to note that this process of change was incremental. In this paper, I will show how the American political landscape has evolved, plotting three moments in the timeline of history that fundamentally changed how voters identify themselves and vote. The first moment comes with the signing of the 1964 Civil Rights Act, continuing through the urban riots of the 1960s. The second moment comes with the rise of “micro-targeting” technologies, which parties use to efficiently send clear messages directly to subgroups of voters. Finally, the emergence of partisan programming on television news networks and the explosion of blogs, correlates with a decline of objective broadcast television news. These three turning points in history define the current American body politic. While other trends and movements, such as the rise of the “Religious Right” for example, are important to understanding the current

American body politic, these three moments in history have fundamentally altered and defined American voting patterns, where Republican voters vote for Republicans and Democratic voters vote for Democrats.<sup>1</sup> This rise in partisan voting will be quantified using the same metrics employed in Princeton University professor Larry Bartels' influential 2000 paper, "Partisanship and Voting Behavior, 1952-1996," published in the *American Journal of Political Science*. In that paper, Bartels demonstrates that partisanship increasingly guided voting behavior in the latter half of the 20th Century.<sup>6</sup> I conclude that partisanship has continued to drive voters' choices since Bartels published "Partisanship and Voting Behavior." In fact, the trend toward increasingly greater partisan voting accelerated in the 2000 and 2004 Presidential elections.

I measure partisanship with the American National Election Studies seven-point party identification scale.<sup>11</sup> Respondents who strongly identified with the Republicans, Republicans who identified with the Republican Party and independents who lean toward the Republican Party are all coded +1; strong Democrats, weak Democrats and independents who lean toward the Democratic Party are coded -1. All other respondents are coded 0. Voting behavior is also coded using Bartels' original indicators in "Partisanship and Voting Behavior;" Republican voters are coded +1 and Democratic voters are coded 0. Voters who voted for a third-party candidate and nonvoters are omitted from the data set. Table 1 was included in the original Bartels paper. The coefficients of his probit model measure the how strong identifiers, weak identifiers, and independent leaners depart from the vote choices of pure independents.

## **When Conservatives Started to Leave the Democratic Party**

It is difficult to track trends in ideological self-identification among voters from one time period to another, as the terms "conservative" and "liberal" seem to take on entirely fluid meanings relative to temporal political context.<sup>111</sup> Self-identified liberals largely supported military operations in Vietnam at the beginning stages of the conflict; however, by 1968, they were so outraged by the war that they pushed Lyndon Johnson off the Democratic presidential ticket.<sup>7</sup> Self-identified conservatives have championed the cause of limited government, yet flocked to the defense of George W. Bush in 2005 when a series of articles in the *New York Times* revealed the Bush Administration's approval of extensive domestic surveillance and warrantless wiretapping.

**TABLE 1** Party Identification and Presidential Votes, 1952–1996

Election Year	"Strong" Identifiers	"Weak" Identifiers	Independent "Leaners"	Republican Bias	Goodness of Fit Statistics
1952 (N = 1181)	1.600 (.096)	.928 (.077)	.902 (.106)	.633 (.057)	log likelihood = -490.1 pseudo-R <sup>2</sup> = .39
1956 (N = 1266)	1.713 (.097)	.941 (.075)	1.017 (.118)	.644 (.055)	log likelihood = -489.8 pseudo-R <sup>2</sup> = .43
1960 (N = 885)	1.650 (.114)	.822 (.079)	1.189 (.153)	.208 (.057)	log likelihood = -345.9 pseudo-R <sup>2</sup> = .44
1964 (N = 1111)	1.470 (.094)	.548 (.067)	.981 (.122)	-.339 (.048)	log likelihood = -448.9 pseudo-R <sup>2</sup> = .36
1968 (N = 911)	1.770 (.121)	.881 (.080)	.935 (.120)	.442 (.059)	log likelihood = -363.9 pseudo-R <sup>2</sup> = .42
1972 (N = 1587)	1.221 (.079)	.603 (.058)	.727 (.078)	.589 (.040)	log likelihood = -789.0 pseudo-R <sup>2</sup> = .24
1976 (N = 1322)	1.565 (.102)	.745 (.062)	.877 (.088)	.122 (.042)	log likelihood = -604.3 pseudo-R <sup>2</sup> = .34
1980 (N = 877)	1.602 (.113)	.929 (.086)	.699 (.107)	.487 (.058)	log likelihood = -376.3 pseudo-R <sup>2</sup> = .37
1984 (N = 1376)	1.596 (.092)	.975 (.072)	1.174 (.096)	.451 (.048)	log likelihood = -514.1 pseudo-R <sup>2</sup> = .45
1988 (N = 1195)	1.770 (.107)	.771 (.073)	1.095 (.094)	.162 (.048)	log likelihood = -440.3 pseudo-R <sup>2</sup> = .47
1992 (N = 1357)	1.851 (.109)	.912 (.072)	1.215 (.092)	-.113 (.047)	log likelihood = -443.4 pseudo-R <sup>2</sup> = .52
1996 (N = 1034)	1.946 (.129)	1.022 (.083)	.942 (.101)	-.233 (.056)	log likelihood = -327.3 pseudo-R <sup>2</sup> = .54

Note: Probit coefficients with standard errors in parentheses; major-party voters only.

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The American National Election Survey has attempted to measure changing ideologies by asking voters to place themselves on a seven-point issue scale, by which the most liberal response is a 1 and the most conservative response is a 7. For example, ANES has continued to survey voters on “women’s rights,” asking respondents if they believe women deserve an “equal role...in business, industry, and government” at one extreme, or if they believe a “woman’s place is in the home” at the other extreme.<sup>8</sup> For a generation of Americans that has long accepted women in the workplace, the question seems antiquated. By 2008, the median respondent was at the most liberal extreme of the scale.<sup>9</sup>

We can, however, observe ideological self-identification as it relates to liberal and conservative *political symbols*, at least in recent history. In the current discourse, the images of the financial crisis of 2007-2009 have provided powerful political symbols. We clearly see how the image, or the political symbol, of a Wall Street banker has galvanized liberals under the “Occupy Wall Street” movement. For a previous generation, the images of police beating civil rights demonstrators as they marched through Selma, Alabama, on March 7, 1965 (“Bloody Sunday”) fundamentally altered national views of the symbols associated with the civil rights movement.

On July 2, 1964, Johnson signed the Civil Rights Act into law, outlawing segregation in schools and public facilities. The act passed after national (if not southern) public opinion swung in favor of its passage as response to the violence in Selma. A bloc of southern Democrats, led by Georgia Senator Richard Russell, had filibustered the bill for more than two months. Moments after signing the bill, Johnson told an aide, “We have lost the South for a generation.”<sup>10,11</sup> Whatever conservatives’ feelings are about the Civil Rights Act of 1964 now, at that moment in history, conservatives viewed the Civil Rights Act as an infringement on states’ rights, and they saw a Democrat signing it into law.

It was during the Johnson presidency that ideology relative to political symbols began to take a form resembling the current political landscape. Before the Johnson presidency and his “Great Society” program, the term “liberal” had a far different connotation than it carries today. “Liberalism was conjoined with pictures of workers, often unionized and almost always white, hard-working people, playing by the rules, and trying to get ahead,”<sup>12</sup> noted Bucknell University professor Christopher Ellis and University of North Carolina professor James A. Stimson in their 2009 paper, “Symbolic Ideology in the American Electorate.” After the Great Society, with its dramatic increase in welfare programs, liberalism took on an association with an “unsympathetic portrait of a largely non-white under-class,”<sup>13</sup> Ellis and Stimson noted.

Never were middle- and upper-class whites more unsympathetic to underclass, non-white beneficiaries of the Great Society than during the wave of urban riots from 1965 to 1968. “The riots were a body shock to American politics, events which were not unprecedented in American history but certainly unprecedented in the television age,”<sup>14</sup> Ellis and Stimson argued. “Quite probably they are a big part of the story of declining support for the idea of liberalism as well.”<sup>15</sup> After Johnson assumed the presidency and signed the Civil Rights Act of 1964, conservatives, particularly Southern conservatives, began gravitating toward their natural ideological allies in the Republican Party. The 1976 election would be the last time that the Democrats would even compete in, much less win, much of the Deep South.

After the Civil Rights Act, conservatives in the Republican Party demanded their national ticket reflect a conservative platform and, to a lesser extent, liberals in the Democratic Party expected their ticket to push the left-of-center agenda. In 1964, Arizona Senator Barry Goldwater captured conservative hearts that were

longing for a true conservative after the middle-of-the-road Richard Nixon ticket failed them in 1960, and ultimately the GOP nomination with his galvanizing campaign slogan: “A choice, not an echo.” Eight years later, the Democrats nominated South Dakota Senator George McGovern, an extreme liberal who pledged to redeploy all U.S. troops from Vietnam within 90 days of taking the oath of office. Both Goldwater and McGovern were soundly defeated, but succeeded in pulling their parties toward their respective ideological bases.

## Micro-Targeting

The partisan voting trend accelerated in 1980 with the emergence of Republican political strategist Lee Atwater and the ever-refining art of voter targeting. Richard Nixon had instantly grasped the opportunity to exploit southern resentment of the Civil Rights Act of 1964 to turn the conservative southern Democrats into Republicans; Atwater, with his thick South Carolina draw, was the one who solidified the deep red Deep South. Before Atwater, there were conservatives in the South who remained in the Democratic Party. After Atwater, there were next to none. He ended the Democrats’ dominance of the South by doing exactly what Barack Obama bemoaned twenty years later in Boston during his keynote address to the 2004 Democratic National Convention: by slicing and dicing the United States into a liberal America and a conservative America, a white America and a black America, gay and straight, Christian and Jewish, and other potential divides.<sup>17, 18</sup>

A self-described “political nymphomaniac,”<sup>18</sup> Atwater skyrocketed up the GOP ranks from the college Republicans into the White House before turning 30 years of age. He would make a name for himself in the 1980 GOP South Carolina primary, where Ronald Reagan, having defeated George H.W. Bush in New Hampshire, was looking to shore up the nomination. Atwater, Reagan’s South Carolina campaign manager, had assembled a legion of volunteers to identify and mobilize Republican voters before Reagan stepped foot on Palmetto State soil. With less than a week before the primary, more than a quarter of a million GOP voters had been contacted from Atwater’s web of phone banks.<sup>19</sup>

The Reagan campaign’s *coup de grace* of Bush came with a television advertisement attacking Reagan’s future Vice President as a liberal, narrated by Reid Buckley, brother of conservative hero William F. Buckley (the two men had virtually indistinguishable voices<sup>20</sup>). It was the sort of dog whistle that the Republicans would soon make into an art form. Only the rock-solid conservative

voters of South Carolina would recognize and respond to the voice of William F. Buckley (or an imitation of it). Reagan soundly defeated Bush in South Carolina and coasted to the Republican Convention from there.

Messages no longer were aimed at a mass audience, but instead they targeted smaller, more defined audiences and voting blocks. One unmistakable “dog whistle” was particularly effective for the Reagan campaign. In August of 1980, Reagan opened his general election campaign with a speech about “states’ rights,” a coded phrase for resistance to desegregation during the civil rights movement, to an audience in Philadelphia, Mississippi, where members of the Ku Klux Klan murdered three civil rights activists 16 years earlier. For many observers, Reagan’s speech was a direct appeal to southern whites who had shunned Richard Nixon in 1972, voting instead for Alabama Gov. George Wallace, an arch segregationist.<sup>21</sup> It was certainly effective. Reagan easily won the state of Mississippi and swept every state in the south except Carter’s home state of Georgia.

After he defeated Carter to win the presidency, Reagan hired Atwater to join the White House Office of Political Affairs. Consigned to the bowels of the Old Executive Office Building, Atwater penned several memos that would guide Reagan’s reelection strategy and his Vice President’s campaign for the White House in 1988. One Atwater memo, a 72-page manifesto penned in March 1983, divided the Southern voting electorate into three blocs: African-Americans, country-club elites, and populists. African-American voters were to be conceded to the Democrats, and country club elites were assumed to go for Reagan.<sup>22</sup> Atwater called for the Reagan campaign to aggressively target the populists, defined as middle-class, church-going, blue-collar voters who usually vote with the Democrats, but who could be persuaded. Increasingly voluble Christian evangelicals had begun to coalesce around a strongly conservative social agenda. Reagan’s 1984 campaign, steeped in patriotic imagery and social conservatism, would be largely defined by this target voting bloc.

Four years later, Atwater was the campaign manager for George H.W. Bush. He not only saw the need to remake Bush’s image—that of a blue-blooded, formerly pro-choice, Yale son of a U.S. Senator—into that of a cornpone Texan, but he actually succeeded in doing it. The strategy was simple and aggressive: approach conservative Democrats, speak to their concerns, and rope them into the GOP fold. The appeals sometimes exploited race, as with the infamous Willie



Horton advertisement. Horton, a black man convicted in a 1974 murder case of a 17-year-old gas station attendant, was permitted 10 weekend furloughs from his life sentence at a Massachusetts state prison. On his tenth furlough, Horton fled to Maryland, broke into a home, stabbed and pistol whipped a man and raped his fiancé. The man who signed off on his furlough, Massachusetts Governor Michael Dukakis, was Bush's general election challenger. A brutal campaign ad, produced by a GOP-allied political action committee, recalled the Horton furlough with the sardonic bookend, "Weekend prison passes: Dukakis on crime." Horton's mug shot appeared in the ad, darkened.

The Bush campaign aggressively painted Dukakis as unpatriotic, giving prominence to "wedge issues," or issues that pit voters of an opposing party against one another. Bush campaigned on a proposed Constitutional amendment to ban the burning of the American flag (which Dukakis opposed), and charmed the emerging "religious right" by choosing archly conservative Indiana Senator Dan Quayle as his running mate. For the populist voters in the Democratic fold that Atwater had targeted, the effect was magnetic.

The product of his campaign was evident in post-election surveys archived by the American National Election Studies. The Republican Party brand had become clearer. Blue-collar voters—frequently from rural areas, socially conservative, and white—began migrating to the GOP. In the 1976 election, an election that sent Jimmy Carter to the White House by 2.1 percent of the popular vote, only 34 percent of voters identified as "blue-collar" workers voted for President Gerald Ford. On Election Day 1988, the Bush-Quayle ticket would get 50 percent of the self-identified blue-collar vote.<sup>23</sup>

Bush rewarded Atwater by naming him the chairman of the Republican National Committee. A year into his term, Atwater collapsed at a fundraiser for Texas Senator Phil Graham. He was diagnosed with an inoperable brain tumor shortly after. Atwater wouldn't make it to see Bush's 1992 reelection campaign. Another strategist would emerge from the 1970's generation of college Republicans to carry on Atwater's legacy: Karl Rove.

Rove's first notable job in politics was to raise money for Bill Clement, a Republican candidate in 1978 for governor of Texas. Clement started out a long shot. All Republicans in Texas were long shots then. In 1978, of the 18 members of the Texas delegation in the U.S. House of Representatives, two were Republicans. In

the Texas State Senate, three of 31 senators were Republicans. Not one of the 22 statewide elected officials was a Republican.<sup>24</sup> Yet, the Texas Democrats shared little in common with the liberals that dominated the party in New England. By 1978, the Christian right was emerging in full splendor in Texas. Social conservatives only needed a nudge to leave the Democratic Party. They got it when Texas Attorney General John Hill, the Democratic nominee for governor, sued a network of Christian boarding schools over alleged abuse of the students. Texas conservatives sided with the schools, and then turned to Clement and Rove, who already knew their names and their phone numbers.<sup>25</sup> In one year of work for Clement, Rove took a list of about 5,000 donors and expanded it to nearly 50,000, collecting \$1 million in donations, which was a tremendous amount of money to fund a run for governor.<sup>26</sup> Clement would become the first Republican governor of the state since Reconstruction. Once in Austin, Clement would hire Rove to be his chief of staff, and Rove's path would soon converge with a young George W. Bush.

The 1990s and 2000s saw the appeals to subgroups become more and more refined. Where Reagan targeted southern conservative Democrats, the campaigns of the next two decades targeted much more narrowly defined groups of voters. Technological advances allowed campaigns to not only assemble names and phone numbers, but data on personal beliefs, habits, and lifestyles. Campaigns in turn figured out how to push the right buttons to get liberals and conservatives to come to their ideological homes.

Perhaps the goals of micro-targeting were most eloquently explained in *Applebee's America*, a 2006 book coauthored by Matthew Dowd, chief political strategist for George W. Bush and Douglas Sosnik, Bill Clinton's political director. (Former Associated Press reporter Ron Fournier also coauthored the book.) Similar to how Applebee's tailors its restaurants to fit the character of the local area they serve—like posting an image of a local high school football hero at the front door—the authors explain that political strategists must also tailor their messages to subgroups of voters based on their individual preferences: “Who are their friends? Where do they get their information? Who do they turn to for advice? What are their hobbies? What magazines do they read? Where do they live? What car do they drive? Where and how do they shop? What do they do for vacation? What angers them? What makes them happy? What do they do for a living? These and thousands of other lifestyle questions form a vast constellation of data points that Presidents Bush and Clinton (employed).”<sup>27</sup>

As the Clinton reelection campaign headed into the home stretch of 1996, his team had amassed a vast database of phone numbers of voters all across the country, subdivided into 55 groups based on identifying characteristics.<sup>28</sup> With the data on hand, the Clinton team went about pushing the right buttons. Micro-targeting so strongly guided the Clinton election strategy that the President would pick vacation spots — hiking through Yellowstone National Park, for example — on their appeal to subgroups of voters.

If the Clinton team introduced micro-targeting data mining, George W. Bush's reelection campaign eight years later would perfect the technique. Initially reluctant to spend large sums of money on micro-targeting, Rove immediately directed \$3 million in Bush campaign funds toward micro-targeting when told that he could reach nearly 12 million “unreliable Republicans,” ten million more than his staff estimated the Bush campaign could reach without micro-targeting.<sup>29</sup>

Voters may not vote according to what candidate is closest to *all* of their beliefs on the issues, but on the issues that matter, they often do. That's where micro-targeting enters the equation. By identifying the issues that matter most to a certain group of voters, campaigns are able to take their messages right to the people they want to reach and none that they do not. Candidates will frequently take soft positions on issues when they know they are speaking to a broad audience, then take much harder positions when they know they are speaking to a group of voters who are strongly and primarily concerned with one particular issue. For example, as the 2004 campaign began, President Bush endorsed amending the constitution to ban legally sanctioned gay marriage. Then he hardly ever said another word about the subject. Not one of his television advertisements mentioned his support for the constitutional amendment.<sup>30</sup> The Republican Party and groups aligned with the GOP flooded Christian conservatives with direct mail holding Bush as the only man standing between liberals and legally sanctioned gay marriage. Focus on the Family alone sent direct mail to 2.5 million households.<sup>31</sup>

“Persuadable voters in the electorate — those most likely to be receptive to a candidate's campaign appeals — are often cross-pressured between their partisan loyalties and policy preferences,” wrote Harvard University's D. Sunshine Hillygus and the University of Arkansas' Todd Shields in their 2008 book, *The Persuadable Voter: Wedge Issues in Presidential Campaigns*. “Information and communication technologies have made it more efficient for candidates to narrowly target these persuadable voters on the specific issues they care about,” Hillygus and Shields add.<sup>32</sup>

## The Emerging Dominance of Ideologically-Biased News

In the last ten years, one element of the American political institution has reinforced the partisan battle lines: the media, particularly the blogosphere and television news during prime-time hours.

We can now safely write the obituary of broadcast news, at least the broadcast news enjoyed by previous generations. If there were still only three main news programs—the three network evening news programs—to inform one’s world, it’s possible that evening news programs would continue to thrive. However, since the explosion of cable news and the emergence of online news, news media aimed toward a broad audience have seen their viewership and readership sharply decline. This is the natural consequence of the multitude of news outlets that exist today, and requires news networks to target specific audiences more. In 1970, as televisions reach near-universal integration into the American landscape, 80 percent of all viewers tuned into the three network news broadcasts. That figure is now less than 40 percent.<sup>33</sup> (More than half of all television screens tuned into ABC, NBC and CBS to watch the 1976 election night returns; on election night 2008, 30 percent of all television screens tuned into the three networks.)<sup>34</sup>

In their stead has come a wave of 24-hour news networks with increasingly ideologically driven programming. It should now be clear that conservative news watchers turn to Fox News, where they have their views reinforced, and liberals turn to MSNBC, where they too avoid the inconvenience of having their beliefs challenged. As Eric Lawrence, John Sides and Henry Farrell note in their 2010 paper, “Self-Segregation or Deliberation? Blog Readership, Participation, and Polarization in American Politics,” this is a reflection of the public’s social need to interact with those who agree with us, while protecting ourselves from those who do not. “Individuals prefer social contexts populated by others who share their core political values and avoid social discourse with people who disagree with them profoundly over politics,” Lawrence, Sides and Farrell note. “Ultimately, homophily within networks likely coincides with polarization—that is, the divergence of competing partisans or ideologues, such that individuals who initially leaned to the left find themselves moving farther left over time, and individuals who initially leaned to the right move farther right.”<sup>35</sup> Online news sites have also proven skilled at filtering out the disagreeable. Unlike television news, it is difficult to fault the online news industry for presenting a diverse platform of opinions; if someone has an opinion, there is someone else blogging that opinion.

In 2005, just as the blogosphere was beginning to emerge as a platform for political discourse and the Fox News Channel strengthened its dominance of the television news ratings, Princeton University's Markus Prior surveyed 2,358 U.S. residents on their media preferences and consumption. His findings, published in "News vs. Entertainment: How Increasing Media Choice Widens Gaps in Political Knowledge," found that media consumers responded to the increase in media choices not by finding the best, most informative reportage, but by simply finding the sources that best reflected their own views, or by declining to consume news altogether. A logical consequence of the explosion of media sources might have been a more informed electorate; alas, no increase in voter information was found. "In the low-choice broadcast environment, access to the medium and exposure to the news were practically one in the same, as less politically interested viewers had no choice but to watch the news from time to time," Prior noted. No longer. Television and online news sources do not simply compete amongst themselves for consumers, but with unrelated sources of entertainment. This reality has mandated that news sources tailor their programming toward consumer preferences. "Accidental exposure should become less likely in a high-choice media environment because greater horizontal diversity (the number of genres available at any particular point in time) increases the chance that viewers will find the content that matches their preferences," Prior argued.<sup>36</sup>

I conclude that the cumulating effect of this media environment has been the quarantining of voters into their own ideological fortress. Where Walter Cronkite told his viewers "that's the way it is," his famed tagline now seems more apt for news consumers, not the news reporters. Consumers are informing the news networks and news websites of "the way it is," and finding news that reflects their views. As voters vote on how they view the previous four years—a view reinforced by their chosen news sources—they have been increasingly likely to vote according to their party. In other words, voters are increasingly viewing the previous four years through the lenses of their party—a trend that is no doubt reinforced by the news they receive.

### **Updating Bartels' "Partisanship and Voting Behavior"**

It is conventional wisdom that the GOP "base" carried George W. Bush into the White House in 2000, then kept him there four years later. Conversely, by nearly any measure, no president in modern times has been as reviled by voters in the opposing party as the 43rd Chief Executive. This logic is reflected in the Table

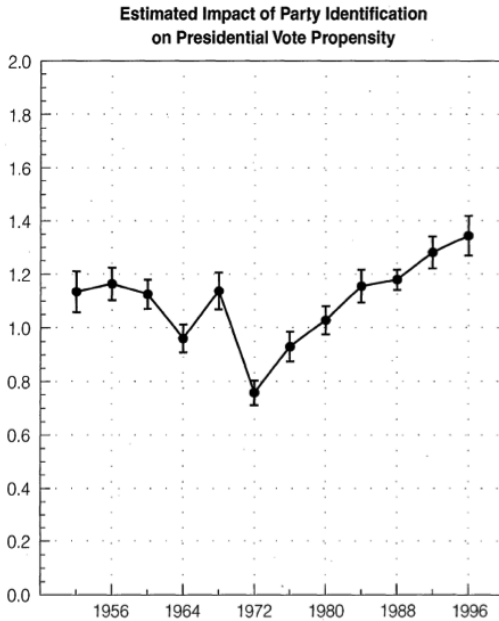
2 and Figure 1, which extend Larry Bartels’ data through the 2008 presidential election.<sup>v</sup> In the two election cycles after Larry Bartels’ study, the trend toward greater and greater partisan voting increased to unseen levels in the modern era.<sup>37</sup>

To see how strongly party attachment has increasingly influenced voting behavior, perhaps it is best to match the 1976 election against the 2004 election. Both Jimmy Carter and George W. Bush won the 1976 and 2004 elections, respectively,

**Table 2 Party Identification and Presidential Votes, 2000-2008<sup>38</sup>**

Election Year	“Strong” Identifiers	“Weak” Identifiers	Independent “Leaners”	Republican Bias	Goodness of Fit Statistics
2000 (N=1120)	2.000 (.132)	1.168 (.092)	.917 (.086)	.028 (.053)	log likelihood = -355.477 pseudo-R <sup>2</sup> = .523
2004 (N=815)	1.967 (.150)	1.089 (.103)	1.200 (.114)	.097 (.064)	log likelihood = -243.156 pseudo-R <sup>2</sup> = .569
2008 (N=1539)	1.731 (.093)	1.169 (.082)	1.054 (.084)	-.210 (.046)	log likelihood = -464.052 pseudo-R <sup>2</sup> = .523

**Figure 1: Partisan Voting in Presidential Elections<sup>39</sup>**



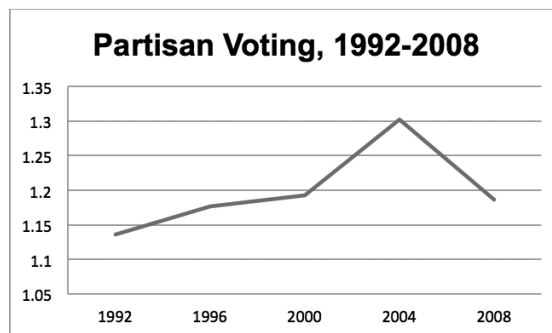
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with fewer than 300 Electoral College votes and a popular vote victory of less than three percentage points. Yet, the movement of strong and weak identifiers from 1976 to 2004 toward their own parties is evident.

It is important to note that a slight downtick in partisan voting is evident in the 2008 election data. This is certainly a reflection of then-Senator Barack Obama’s success in luring moderate independent and Republican voters into the Democratic fold. Is it also a reflection that the trend toward partisan voting has ebbed? I would argue not. There did not seem to be a fundamental change in the partisan dynamic of American politics during the 2008 election. A true decline in partisan voting would have brought an increase in Democrats voting for McCain as well as Republicans supporting Obama. Of course, no such increase happened. While the 2008 election marked a decline in partisan voting relative to the 2004 election, the data demonstrates that it was still a more partisan election than 1996, and a significantly more partisan election than 1976. Gerald Ford in 1976, even in losing, won a far greater share of Democratic voters than did McCain in 2008. Where Gerald Ford earned the vote of 22 percent of Democrats, John McCain only received the votes of ten percent of Democrats 32 years later.<sup>40</sup> This is a reflection of an electorate more likely to vote based on party affiliation.

President Obama’s appeal did not, to a great extent, transcend party boundaries. Even during his “honeymoon,” Obama’s approval rating among Republicans, according to Gallup, never reached above 40 percent. After August of 2009, Obama’s approval rating among Republicans sank below 20 percent and has yet to

Figure 2<sup>41</sup>



Using Bartels’ metrics, we see that trend of partisan voting accelerated through the George W. Bush elections, then decreased in 2008, but is still well above pre-Bush levels.

reach above that marker. There does not seem to be any evidence that the Democrats have gained significant support among social conservatives, rural voters, and the voters in the “solid South.” It is inconceivable that Obama will compete in this coming election with the Republican nominee in states like Alabama, Mississippi, or South Carolina.

In other words, more so than a generation ago, Republican voters remain in the Republican camp, Democrats in the Democratic fold. Perhaps we will know more in a year’s time. However, the 2012 campaign begins with President Obama’s approval rating among Democrats near 80 percent, and his approval rating among Republicans in the single digits, according to Gallup.<sup>42</sup> This is roughly the inverse of President George W. Bush’s approval rating among Republicans and Democrats on Election Day 2004. Given the likelihood of a closely contested 2012 election, it is logical to assume that the trend toward greater partisan voting will resume.

## **Conclusion**

In this paper, I have concluded that partisan voting in presidential elections has continued to trend upward during the past three election cycles. Drawing on previous research, I have attributed this trend to three developments in the timeline of history: (1) The movement of conservative voters — conservative relative to political symbols — away from the Democratic Party in response to the Civil Rights Act of 1964 and President Lyndon Johnson’s Great Society, (2) the development of micro-targeting technologies, which have enabled political parties to speak to finite subgroups of voters, and (3) the emerging dominance of ideologically-biased new programming, particularly during the primetime television news hours and in the blogosphere. This trend has been confirmed and quantified by Princeton University’s Larry M. Bartels; I have demonstrated that partisan voting has continued to increase well after Bartels completed his research.

I would strongly encourage future research into the interaction between voting behavior and media consumption as news networks continue to abandon objective news coverage in favor editorialized news programming, and as more voters consume news from blogs and other ideologically-biased online news sources. It would be logical that party identification would continue to gain strength in influencing voting behavior as voters continue to turn to more partisan sources for news consumption. ►



## ( End notes )

- I. The rise of the Religious Right, as we will see, would not have buoyed the Republicans without the rise of micro-targeting strategies and technologies.
- II. The survey asks, “Generally speaking, do you usually think of yourself as a Republican, a Democrat, an Independent, or what?” (If Republican or Democrat) “Would you call yourself a strong (Republican/Democrat) or a not very strong (Republican/Democrat)?” (If Independent) “Do you think of yourself as closer to the Republican or Democratic party?”
- III. Three regular surveys can quantify trends in self-identification, no one more accurate than the other. Public opinion research firms have frequently asked respondents if they “identify” or “regard” themselves as a conservative or a liberal. The Gallup Organization and the Opinion Research Corporation surveyed voters from 1936 to 1964, asking voters after the reelections of Franklin Roosevelt and Dwight Eisenhower, and the election of Lyndon Johnson, “Should (the President’s) second Administration be more liberal, more conservative, or about the same as the first?” From 1945 to 1979, Gallup asked respondents: “Which of the three policies would you like to have (the President) follow: 1. Go more to the left, by following more of the views of labor and other liberal groups? 2. Go more to the right, by following the views of business and conservative groups? 3. Follow a policy half-way between the two?” This final question demonstrates how ideology relates to the political symbols of labor unions against business interests.
- IV. While Obama’s soaring rhetoric of cross-cultural unity in his 2004 Democratic National Convention keynote address no doubt propelled his national figure into the history books, his own campaigns have also sent direct messages to closely identified communities of voters.
- V. The measure of partisan voting in Figure 2 is calculated as Bartels did in Figure 1: by multiplying the coefficients by percentage of voters who identify themselves as a Republican, Independent, or Democrat. For example, the 2008 measure of partisan voting is calculated as follows:  $(1.731 * .32) + (1.169 * .28) + (1.054 * .29) = 1.1869$ .

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# **Fiscal Inefficiency, Corruption and Growth**

## The Israeli Case Study

Yaron Zeleka

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### ABSTRACT

*The unique characteristics of the fiscal policy in Israel, which created one of the largest public sectors in the West, and the high level of inefficiency and perception of corruption, assumed many similarities to the characteristics described in economic literature as related to non-Keynesian effects. Against this background, it was interesting to examine the effect of the gradual fiscal expansion that carried out in the Israeli economy since the stabilization program of 1985 and up until 2002. The expansion created non-Keynesian effects on the gross domestic product. The results point to significant asymmetrical negative effect of public consumption on product in Israel that exist even among minor fiscal changes and has long-term effects. Therefore, the possibility of considerable unutilized potential growth in Israel emerges, which can be realized by means of drastic contraction of public spending and of tax burden in parallel to a significant reform in the proper conduct and ethics and norms in the government.*

### ABOUT THE AUTHOR

**Dr. Yaron Zeleka** served as Accountant General of the State of Israel from 2003 through 2007. During that time, Dr. Zeleka initiated reforms to make the Finance Ministry's budgeting processes more transparent. He received dual degrees in Accounting and Economics from Bar-Ilan University in 1994, and earned the top annual prize for academic excellence by Israel's Institute of Certified Accountants. Dr. Zeleka also received his Ph.D. from Bar-Ilan before beginning his career in the public sector. He has also worked in the private sector as Head of Strategy and Business Planning for Partner Orange Telecommunications, Israel's leading telecommunications company, and as Senior Vice President and CFO of Derech Eretz Highways, sole operator of the Trans-Israel Highway. After serving as Accountant General, Dr. Zeleka took his current position at Ono Academic College.

## Introduction

In economic literature there are three different approaches that attempt to explain the possible effects of fiscal corrections. The first is the traditional Keynesian theory, which gained prominence following the success of the New Deal in United States during the 1930's and up until 1960's. According to the theory, fiscal expansion will increase the GDP in the short term. The second is the Neo-classic theory, which took root in Western economic thought once the Keynesian approach failed to revive the world economy during the significant slowdown in the 1960's. The Neo-classic theory states that fiscal corrections do not affect the product, which is determined mainly by the aggregate supply, the economy's ability to produce products, and services. The third approach, which attacks Keynesian theorists for neglecting the role of consumer and investor expectations, is the result of a number of significant fiscal corrections which ended with surprising outcomes. All of them occurred in Europe during the 1980's and 1990's and produced unique, non-Keynesian effects.

The first event occurred during the years 1983-1986 in Denmark, which made significant cuts in the budget deficit by raising taxes and by decreasing government investment. The second event occurred during the years 1987-1989 in Ireland, which also made a significant cut in the budget

deficit by focusing on the reduction of budgetary spending, particularly with regard to social welfare transfer payments and public sector wages. Both events brought about surprising increases in economic activity and production, primarily, in each case, due to an increase in private consumption and private investment. This outcome seems to conflict with Keynesian theory, which would predict an economic slowdown. The third event occurred in Sweden during 1991-1992 in which fiscal expansion led, unexpectedly, to a sharp decrease in economic activity and production. Further challenging Keynesian assumptions was the fact that dramatic fiscal expansion in Japan during 1990's and the early 2000's--marked by an increase in government investment and a decrease in taxes--did not contribute to an increase in economic activity.

## Theoretical Background

In view of these economic developments, a number of studies were carried out during the 1990's which attempted to characterize the circumstances under which the result of fiscal corrections would not be Keynesian.

The conceptual foundation for most of the studies was provided by Feldstein (1982). Feldstein's assertion was that the contraction in public expenditure can bring about an expansion of economic activity if the cutback is perceived as a sign indicating a future,

permanent reduction in taxes. For example, if the government will cut down government salaries, which is a current expense repeated every year, it will be able to cut down in parallel taxes while keeping the same budget deficit.

Giavazzi, Tullio and Pagano (1999), following earlier articles, expand this view by claiming that contraction of the budgetary deficit positively affects the product by suggesting three transmission mechanisms. The first influences the expectations of the public regarding future tax levels and, indirectly, expected permanent income of consumers and investors. The second influences monetary markets to favor the contraction of long-term interest, which increases the market value of public capital--particularly stocks, bonds, real estate, and human capital. The third positively influences public confidence in economic stability and decreases uncertainty and risk premiums. This may occur as a result of decreased inflation expectations, decreased local long-term interest rates, or improvement in the country's foreign rating.

These three transmission mechanisms positively influence private consumption and private investment while offsetting the direct negative Keynesian influence of the fiscal correction, sometimes leading to upheaval. In contrast, a fiscal expansion may activate the three transmission

mechanisms in an opposite direction, thereby actually causing a decrease in production.

Perotti (1997) noted that the chance of positive influence of fiscal contraction increases if the public debt is large or increasing steadily, and also when the composition of the contraction strengthens public expectations regarding the decisiveness of the new policy. The European Central Bank (ECB) supports this view in its monthly publication (August 2001) by noting that changing the public expectations to favor future tax reduction is conditional upon the credibility of the new fiscal policy. Contraction of social welfare transfer payments, national insurance payments, and public sector wages greatly strengthens the credibility of the policy; all three forms of spending are unpopular and politically difficult to implement, so cutting them demonstrates the government's commitment to the correction.

Furthermore, Perotti also emphasizes the importance of the stability of exchange rates in the success of fiscal corrections carried out in Denmark and in Ireland (a result of substantial devaluations carried out in both countries before the corrections and throughout their duration and the stability of the exchange rates afterwards) as well as the implementation of disinflationary policies to assist in decreasing uncertainty and interest rates. Conversely, the two emphasize

the negative influence of credit and liquidity shortages which may thwart the success of fiscal corrections as it may have thwarted the fiscal correction in Ireland earlier in the early 1980s.

Giavazzi and Pagano (1996) emphasize the importance of the corrections size (at least accumulative five percent of GDP during the adjustment process) and the consistency of the new policy.

Giavazzi, Jappeli and Pagano (1999) show, following earlier work, and in cross section research of the OECD countries during the years 1970-1996, that fiscal corrections can have asymmetrical and non-continuous effects. In this framework, as Bertola and Drazen (1993) showed, fiscal corrections beyond a certain level are those that create an upheaval in public expectations and subsequently produce non-Keynesian effects. Furthermore, the strength of the realized non-Keynesian effects are not identical between expansion and contraction, and they are considerably more noticeable following a sharp contraction than after a sharp expansion. At the same time, raising taxes negatively influences the product, as expected according to Keynesian theory, in the framework of routine fiscal corrections, but the negative influences become smaller and sometimes negligible in the framework of fiscal corrections which extend beyond a threshold because of an offsetting increase in private consumption. Moreover, Keynesians claim, that the main source

of a lack of continuity of the influence is the size of the fiscal correction and its consistency and not the size or rate of growth of the public debt.

Afonso (2001) also found a lack of symmetry and continuity in the influence of fiscal corrections on private consumption in fifteen European countries between 1970-1999. In this framework it was found that the fiscal policy influenced in a Keynesian manner during routine times, however, irregular fiscal corrections were expressed in non-Keynesian effects. At the same time, the non-Keynesian effects stand out again in the framework of irregular contractions and are negligible during periods of fiscal expansions. Contrary to the findings of Kormendi and Meguire (1990) who found that elasticity of public consumption relative to private consumption is negative (-0.25), and to the findings of Giavazzi and Pagano (1990) who found that elasticity of public consumption in production relative to private consumption in production is negative (averaging between -0.18 and -0.27, though the standard deviation of the elasticity in relation to the ten Western countries examined was high), it was found that elasticity of the public consumption in relation to the private consumption during routine times was positive (0.17) and in periods of irregular fiscal corrections the elasticity decreases significantly (0.07). A similar phenomenon was found in estimating the influence of



government tax revenue in relation to the private consumption with one significant difference according to which an irregular raise in taxes changes the direction of influence from negative to slightly positive. When Afonso separated between fiscal expansions and contractions he found that during periods of irregular fiscal contractions the positive elasticity (0.17) changes to slightly negative (-0.001) and the negative elasticity of government tax revenue changes to significant positive elasticity. Opposing this, during periods of irregular fiscal expansion the influence remains essentially positive and therefore Keynesian to a large extent.

Burger and Zagler (2008) found indications for non-Keynesian effects in the American economy in the 1990's while de Castro (2003) indicate for similar findings in Spain. Giudice et. al. (2007) examine few European episodes and show that non-Keynesian effects were achieved mainly through contraction of public expenses and not tax raises in a product gap environment.

### **The Israeli Case Study**

When approaching the unique characteristics of the 2003 Israeli economy in general, and the behavior of the multi-year fiscal policy, specifically, many similarities can be found in the characteristics described in economic literature as associated with non-Keynesian effects.

Standing out in this framework are the scope of the overall public expenditure, the public consumption, and the ratio of the debt to product, which in 2003 were all among the highest in Western countries. More specifically, the noticeable impediments that primed the non-Keynesian effect were the gradual fiscal expansion, which continued since the economic stabilization program in Israel in 1985; a heavy and persistent tax burden combined with a government that was quick to increase taxes in an attempt to create short-term solutions during times of economic distress; the consumption of the state budget which includes large shares of social transfers and wage payments and which grow almost automatically as the populations grows; and lastly, a common public perception of government inefficiency and corruption.

It should also be noted that, according to the Transparency International Index, Israel is perceived to have a relatively high rate of corruption, ranking 32nd in the Index, second only to Italy among Western countries.

With all of this in mind, the question remained: had the gradual fiscal expansion, carried out by Israel since the stabilization program of 1985 and up until 2002, created non-Keynesian effects on the gross domestic product? The answer had relevance beyond just academia. In 2003, Israel witnessed its worst recession ever, hiking the

poverty ratios to all times levels, and the government nearly went bankrupt; policy-makers were helpless, and in desperate need of guidance.

The examination was conducted by the writer of this article at Ono Academic College (Zelekha, 2010) using an estimator equation for quarterly log linear product, which directly includes the public consumption and its increase from period to period. Public consumption, to be clear, is the part of government budget spent on products and services which contributes to the gross domestic product GDP. Therefore, if the effect of the public consumption on the product will be found negative, it will be obvious that the negative non-Keynesian effects of the total government budget are even worse.

As a consequence, it may be that the government policy of dealing with the recession by increasing government expenditures is making the situation worse. In addition to the public consumption variables, the estimator included, as is customary, the population, interest rates in the short term and long term, the tax burden, world trade, Israel's export and import price indices, the return on capital and labor and a constant that represents the technological developments. Furthermore, the estimator included the level of inflation and its standard deviation as measures of uncertainty in general and that which is founded in inflation specifically and also a dummy vari-

able for the Intifada, the Palestinian Israeli war at the beginning of the decade.

The results point indeed to effects, which go beyond even the most extreme of the aforementioned findings. In this framework the negative significant effect of any changes in public consumption on the product stands out, and not only through irregular changes. Concurrently, it seems that an important part of the negative influence of the public consumption on the product exists also in the medium term and not only in the short term.

Therefore, serious questions arose regarding the goals of fiscal policy in Israel dating from the time the program for stabilization of the economy was implemented in 1985 and until 2002 in general and government policy towards the recession in particular. These emphasize the decrease in the government expenditure weight in product by means of raising the product and not by means of absolute decrease in the scope of annual expenditure. The research results encouraged a new economic policy that was implemented in Israel after the 2003 elections that utilized the possibility for considerable potential untapped growth of the product in Israel. This potential for growth was realized by means of drastic contraction of public expenditure and reduction of the tax burden to rates acceptable in the West.

In this regard, it should be noted that in 1985 the Israeli economy collapsed under hyper-inflation caused by very large government debt and deficits. As a result the entire government fiscal policy had to be restructured by putting emphasis on cutting down debt and deficits. However, there was not enough emphasis on the level of government budget and taxes on production, or on government in efficiency and even corruption, which all led to the Non Keynesian effects.

### **The New Israeli Economic Policy**

After the elections of March 2003 Benjamin Netanyahu was appointed as Finance Minister and he, in turn, appointed the writer of this article as the new Accountant General of the state.

In Israel, the Accountant General is responsible for implementing the state budget through two channels: 1) only the Accountant General has the legal right to make financial commitments on behalf of the government, sign contracts or approve the issuance of tenders; 2) only the Accountant General has actual money in the government so no one is able to pay besides him. In addition, the Accountant General is the legal owner of all the state assets.

After the new government was formed, the new Minister of Finance and Accountant General declared a new economic recovery plan, based

on the research mentioned, aimed at contracting the government budget, through changing the inefficient and corrupt manners that were entrenched in governmental bureaucracy. The Accountant General office, which was staffed with 3000 people, was the vehicle for this change.

The plan started by dividing the government budget into new theoretical subdivisions, each one under the responsibility of a newly appointed taskforce of accountants, outside hired experts, advisers and legal consultants which were headed by one of the Accountant General's senior deputies. The taskforce's mission was to present and execute a working plan to cut the budget under their supervision without cutting government services—to achieve the same functions with fewer resources.

Naturally, we had to change the structure and personnel of the Accountant General management by creating coherent departments for each budget subdivision and by establishing new divisions and working methodologies for auditing, controls, checks and balances. Eight such divisions were established.

The first division was established for wages, pensions and all the accompanying payments including perks like cell phones, cars, etc. The taskforce implemented a simple supervision procedure to enforce the existing law. Under the law, only contracts signed

by the Accountant General's office are binding. However, the politicians and government offices joined hands a long time ago and hired thousands of people illegally, raised salaries and issued all kinds of financial subsidies to their employees without the Accountant General's permission. Consequently, the government never met its wages budget.

The new taskforce made it clear that from January 1, 2004 a contract or a raise not signed properly by the Accountant General would not be paid and charges would be prosecuted against any Director who signed illegal contracts. In addition, hundreds of accountants were sent for thorough auditing in each government office to check each wage contract and to make sure it was legal; to ensure that the wages level was aligned with the government wage table and whether proper taxes were being paid. It is difficult to believe that the government was avoiding the deduction of proper income tax for its employees—a criminal offense in Israel that would make it the biggest tax criminal in Israel. The office that “excelled” most in this regard was the Israeli IRS itself.

The second division established was for government procurement. Procurement is a business that belongs to professionals. The difference in the outcome of a tender that is well-prepared can be upwards of 30-50 percent. The difference in the outcome

of a contract well-managed through its life cycle can easily be another 10-20%. Unfortunately there was no professional government procurement agency, so every government office bought products and services for itself, with no exercise of the government advantage of size. Here was an immediate opportunity for efficiency on the basis of economies of scale. Often, there was a lack of coordination between government offices. Some offices would buy excess of a service or good, where another may have not had enough in its budget to purchase the same goods.

The portion of the national budget allocated for purchasing totals many tens of billion shekels per annum. Of this amount, approximately NIS 30 billion (\$7.9 billion USD) is used for current purchases—meaning purchases not related to investments. However, despite this large amount and until 2003, everything related to purchasing—like other expense lines in the budget—suffered from an atrocious lack of professionalism. In fact, the situation here was worse than in other areas. Over the years, purchasing had become the “private property” of the ministries and their expenditures expanded accordingly. Also, extreme use of illegal, improper, non-transparent waivers was found during tender procedures. Thousands of contracts worth many billions of Israeli Shekel were never subjected to a proper tender and this situation had been going on for

ten and twenty years in most offices, and in some cases, even thirty years.

First, although purchasing is itself a profession with its own methodology, procedures and tools, and it requires professional experience, most of the people filling purchasing positions in government offices did not have the requisite education and some cases had no academic education at all. Some found themselves in key purchasing posts after serving as quartermasters, drivers and logistical personnel. In fact, it was found that among the few hundreds of procurement managers, 90% were without any training and without any academic degree, not to mention a relevant one.

Furthermore, contrary to the accepted practice in large business concerns, the government did not have a centralized purchasing authority that was responsible for establishing a purpose-built purchasing system, accumulating experience and transmitting it to purchasing officers in the ministries, developing advanced tender methodologies (for example, dynamic online tenders), establishing procedures and controlling expenses, or removing needless obstacles and thresholds conditions. It had no way to manage centralized tenders for purchasing items needed by several ministries in order to take advantage of the size of government.

Third, the government did not strictly enforce separation between the agency

ordering the goods and the purchasing office, which is not only an essential condition for proper internal control but also essential for streamlining the entire purchasing procedure. Without this separation it is difficult to maintain the proper balance between the needs of the agency ordering a system and the organization's overall need to economize. Thus, for example, the government purchases sophisticated systems but does not use them fully, because the agency that placed the order is not required to reduce its expenses but only to not to exceed its predetermined budget. In other words, because government agencies are not rewarded for saving, rather for remaining within the budgetary limits, they do not have an incentive to adapt the systems they purchase to their needs. Instead, they purchase the most sophisticated systems possible within their budget. When there is separation between the agency that uses the system, and the agency that purchases it, the latter's only obligation is to save as much money as possible.

The third division established was for the subsidies and the social transfer's budget, which had never been audited or regulated properly. We found that over 90% of the transfers were allocated to NGO's whose management and general expenses exceeded the level of 50% of their income, and that over 50% were allocated to NGO's whose management and general expenses exceeded the level of 90% of their in-

come. In short 30% of the government transfers never reached the needy people.

The fourth division established was for large infrastructure projects. It should be stressed that the way in which the government managed its large projects was completely third world. Entirely different legal documents were issued for the same tenders, artificial offers were submitted in tenders and after winning, the government opened signed contracts and raised the price to a level that should have lost in the tender. There were no basic know-how or dissent contract documents; no reasonable risk allocation and subsequently, illegal political interference was rampant.

For example, during the 1990s, the government of Israel decided that the market for electricity should be opened to competition. At the time, the market was completely controlled by the Israel Electric Company (IEC), which is hardly known for its efficiency. Therefore, the government believed that if private entrepreneurs were encouraged to begin producing electricity, IEC would have an incentive to become more efficient. The government assumed that sometime in the distant future, it might be possible to allow producers of electricity to compete against each other without its intervention. It decided to begin the process by issuing a series of tenders for the construction of private power stations, and grant entrepreneurs in-

centives and guarantees to make the opportunity more attractive for them. However, like many good government plans, it would be an understatement to say that the implementation was flawed. In the end, the State lost more than it gained.

Implementation of the plan failed in two ways, First and foremost, the government created a system of incentives and guarantees that made it worthwhile for entrepreneurs to sell most of the power they produced to IEC, rather than to private consumers. In other words, it did not create competition for consumer's business. Furthermore, the specific types of generating plants included could only be built by giant international corporations, like the German Siemens or the American General Electric, which also build for IEC. The effective result was that rather than IEC building power stations via a direct contract with an international supplier, the government forced it to enter an agreement with the winning entrepreneur, who then contracted with the international supplier. What exactly did the wise men achieve with this arrangement? The government began with IEC and finished with IEC, only now there was an entrepreneur in the middle, which demanded its commission. Therefore, the price of electricity set by the "private" production tenders was necessarily more expensive than that produced directly by the notoriously

inefficient IEC. The expensive electricity would then be sold to IEC and, in turn, push up the cost of electricity for all consumers in the country.

However, this was not the only shortcoming. Management of the tender was scandalous, and became perhaps the most outstanding example of the substandard tender culture practiced by the government at the time. Selection of the winning bid signaled the beginning of interminable negotiations, accompanied by the incessant demands by contractors to reopen signed contracts; to insert changes that were always to their benefit.

In the late 1990s, seven competitors submitted bids for building a power station in the Ramat Hovav Industrial Zone. One group submitted a bid that was unrealistically low, reflecting a cost of USD 170 million for building the station. It was awarded the contract even though realistic estimates for construction were 20 percent or even 30 percent higher. At a certain stage, after winning, the group demanded that the contract it had signed be reopened, and its conditions improved. Unfortunately, the State displayed its weakness and capitulated to this demand. The contract was opened and re-signed at a price reflecting a cost of USD 235 million. Not only was the new price was 40% higher than the winning bid but if it had been submitted in the original proposal, it is unlikely that the group would have

been awarded the contract in the first place. It can only be imagined what the other competitors in the tender, who submitted losing bids, felt at the time. Moreover, when the undersigned took office as Accountant General, he received a second demand to reopen the signed contract and improve the contractor's conditions, this time reflecting a construction cost of USD 315 million, almost twice the original cost. However, a new policy had been introduced, and it is superfluous to spell out how the State responded this time.

The fifth division established was the debt office. It was found that the government local debt issues were working in a unique trade system that the multinational banks refused to participate in, for the good fortune of the local Israeli banks. When the system was changed and competition was introduced, a 30 basis point cut appeared among the government 150 billion dollar debt equal to half a billion dollars of interest per year. It was also found that the government was issuing ten-year debt in order to finance two week gaps in government finance and that it kept a huge un-invested cash flow with enormous carry and more.

Next, the sixth division established was for assets management. For the first time in the history of Israel the government started registering its entire assets in the government financial statements.

The seventh division established was the information systems division of the government that was reformed, in order to introduce an ERP (Enterprise Resource Planning) system to support all the other reforms.

The eighth division established was the accounting division, which introduced annual outside audits and in addition changed the Israeli local government Government Accepted Accounting Principles (GAAP) to International GAAP. The meaning of the reform in government accounting is inherent in the Hebrew word for an accountant, which is derived from the Jewish legal tradition and based on the root meaning “to see.” The most important concept in the world of accounting, “full disclosure,” points in the same direction. Indeed, the purpose of accounting is to reveal the accounts and their significance so that the potential audience of the financial statements (which, in the case of a government, is the general public) so that the reader can see for him or herself that the organization is being managed honestly and efficiently. The essence of the accountant’s task is to observe the situation on behalf of the public and present it to them. Therefore, “looking the other way” is not an option for an accountant; anyone who does turn a blind eye effectively disqualifies him or herself.

Jewish-American Supreme Court Justice Louis Brandeis took matters one

step further when he wrote, “Sunlight is said to be the best of disinfectants; electric light the most efficient policeman,” from which we learn that transparency is the best gatekeeper. The accounting reform approved by the Israeli government in July 2004 eventually allowed sunlight to infiltrate the darkest corners of the government’s fiscal behavior; the sun’s rays penetrated a system that had long been accustomed to operating in darkness.

Practically speaking, accepted accounting practices in Israel require that the financial statements include a full and complete explanation for any serious irregularities in the management of assets, obligations and budgets. All substantive shortcomings, any missing asset and every contract that was changed in an improper manner must be exposed. Any budgeted activity that was not actually implemented requires an explanation that includes the reasons for the omission; any unlawful activity that was budgeted must be revealed, whether or not it was actually implemented. Everything must be open and available for auditing, whether by the State Comptroller, to whom copies of the complete financial statements and all related working papers must, by law, be submitted, or the public, the media and various movements for good government. Not only are the flaws exposed and documented, but also the rate of progress towards correcting them (or not) and the names of the people responsible for their correction.



The reform itself was implemented in two stages. First, the State's balance sheet was prepared in accordance with International Accounting Standards. This stage was completed with the publication of the financial statements for 2004 on June 30, 2005. The second stage was accomplished with preparation of the budget utilization report (the governmental equivalent of a profit and loss statement in the business sector) which was submitted with the financial statements for 2005 on April 30, 2006. Simultaneously, the schedule for translating the international standards from English into a binding Hebrew version was moved forward from September 30 to March 31, so they could be used for the 2006 statements, which were indeed published on March 28, 2007, according to the accepted practice in the business sector. Financial auditors were appointed in the Accountant General's office of each government ministry in order to improve the quality of the ministries' financial reporting, on which the reporting by the government as a whole is based. A Standards Board for Government Accounting was established, including representatives from the Institute of Certified Public Accountants in Israel, the Securities Exchange and the Israel Accounting Standards Board. No longer would the Accountant General prepare both the statements themselves, and the standards by which they are prepared. The days of creative, dangerous account-

ing were over. The actual preparation of the statements was entrusted to external auditors who were chosen through a tender process. In 2007, we also initiated the process of submitting the statements for complete external auditing by other auditors, who are appointed specifically for this purpose. The process will take a few more years to be completed.

When the 2005 statements were published, it was an important international achievement. At that time — when some businesses still did not publish financial statements under GAAP — the State Comptroller, the Knesset and the entire Israeli public received, for the first time in the history of the State, trustworthy financial statements from the Government of Israel, prepared in accordance with international standards. With this step, Israel joined five leading Western nations — the US, Canada, Great Britain, New Zealand and Australia — in publishing financial statements of the quality and transparency required of publicly-traded companies. Israel, like the other countries named, was now far ahead of most other countries in the world including those in the European Union.

This accomplishment was widely praised by many in both Israel and abroad. Israel's representative to the international committee for establishing governmental accounting standards, International Public Sector

Accounting Standards Board, immediately became an international leader in the field. Investment banks, credit rating agencies and the International Monetary Fund all commended the reform. Even the auditor of the European Union complimented Israel, and noted that it was now several years ahead of EU institutions.

In any case, when the reform was completed, financial statements became a highly effective management tool. In this context, it is important to understand that accounting includes much more than the narrow, albeit important, matter of financial reporting; it relates to all aspects of fiscal management. Although accounting is based on providing information about all types of expenses and revenue, it can also be used to better understand the overall economic substance and significance of those expenses and revenues, the processes that accompanied them, their ramifications for the government's financial management and the consequences of its policies. For example, employment contracts signed by the government or changes in stipends or pensions are all explicated with their full actuarial significance in the financial statements.

Furthermore, accounting raises questions regarding the assets in which the government invested large sums of money. If the benefit derived from an asset is far below its cost, this must be reported and the financial state-

ments adjusted in a way that exposes the decision-makers who decided on the initial investment to criticism. This put an end to the tradition of "white elephants." Furthermore, if the government attempts to delay critical decisions and mortgage the future of its citizens, its shame will be evident in the reports that clarify the actuarial significance of the previously concealed crisis. For example, the lack of investment in maintaining roads to the detriment of their long-term condition requires accountants to increase the depreciation recorded for them. No longer can politicians prettify their lack of responsibility.

Therefore, the statements have become an important, accessible basis for evaluating the fiscal performance of the Government of Israel and its financial stability. In my experience, the government's ministries and subunits often lacked reliable financial information that would be able to help them make intelligent decisions and reduce financial and budgetary risks.

Furthermore, transparency of the data and consistent reporting over many years make it possible for the senior management levels in the civil service, as well as members of the Knesset Finance Committee, to compare one year to another, and Israel to other advanced countries that prepare their financial statements according to the exact same principles, both while preparing the annual budget and when

monitoring its implementation. This type of comparison was entirely unavailable to ministers, Knesset members and managers prior to the reform.

All of these processes contribute to a better understanding of the economic and financial processes in the government, and provide an incentive for responsible people in government offices to prevent shortcomings before they happen or, at the very least, to repair them immediately, lest the accountants expose them to the State Comptroller and the general public. In other words, the government accounting reform led to a secondary reform of unprecedented importance in the behavior of both the government and politicians.

## **Conclusion**

It took four years to implement controls in the entire government offices and to examine the thousands of contracts and hundreds of thousands of pensions and salaries. Unfortunately, little work was done on the 100 government companies or 250 municipalities. The successful outcome of the plan was a permanent savings of over 3 billion dollars in the 70 billion dollar budget, all allocated to finance permanent tax cuts, mainly in personal

income tax and a coherent system of management, checks and balances still in place today.

As a result, in 2004 Israel started its longest and strongest growth period ever (the GDP per capita rose from 18,000 USD at 2003 to 30,000 USD at 2011 or from 49% of the American GDP per capita to 62%) lasting up until today while the credit agencies improved the Israeli rating from -A to +A. The success of the new economic policy of 2003, stressing the dangers of long term expansionary fiscal policy and inefficiency of government budget, can serve as a lesson for several European states (Italy, Greece, Spain to mention a few), as well as a warning for the American economic policy since 2008.

However, Israel has still a long way to go on the road toward full western living standards. In addition to the work need to be done on the government companies or local municipalities - a new economic policy is still needed to be implemented regarding the highly uncompetitive structure of the local economy. Currently, Israel is ranked 83 in the world according to Fraser Institute which ranks countries by its level of economic freedom. (Gwarthy et al., 2011) ▀

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# **Non-Recognized, Non-Profit: Tribal Nations in the Non-Profit Sector**

A Case Study of Monacan Indian Nation, Inc.

*Michael Donovan*

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ABSTRACT

*There are currently 31 American Indian tribes in the United States officially recognized by the states in which they reside, but not by the federal government. These tribes lack access to the benefits available to federally recognized tribes, including the Secretary of Interior's authority to hold land in trust. Indian land held in trust by the federal government exists in a special legal category and is not subject to state taxation. In order to avoid taxes without this benefit, many non-recognized tribes have organized non-profit organizations to achieve tax-exempt status under the IRS definition of a 501(c)(3) charitable organization. When a non-recognized tribe holds land assets as a non-profit while lobbying for federal recognition, however, the long-term goals of the tribe and mission of the organization may diverge and place the tribe's tax-exempt status in jeopardy. This article uses the Monacan Indian Tribe of Virginia as a case study to examine some of the problems that arise when tribes must pursue tax-exempt status outside of the federal recognition process, and makes recommendations for operating under these fragile conditions without causing great harm to the tribes in question or the non-profit sector.*

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## Introduction

If managing a non-profit organization is fundamentally different from managing a private firm or government agency,<sup>1</sup> then managing an American Indian group operating as a non-profit organization while seeking federal recognition as a tribe<sup>1</sup> is an even more specialized task. Many tribal communities in the United States who do not enjoy the legal status of “Federally-recognized Tribe”<sup>2</sup> turn instead to the legal status of “501(c)(3) organization”<sup>3</sup> in order to attract tax-exempt contributions. This situation becomes complicated, however, when the tribe attempts to act simultaneously as a charitable organization and as a group advocating for its own benefit. The organization’s mission and tribal nation’s missions can diverge, causing funding and leadership issues. Contributions to the organization must go to support its charitable mission, meaning that lobbying efforts for recognition must proceed without financial backing. Moreover, tribal government and 501(c)(3) leadership may overlap, resulting in diminished capacity for leaders to manage either entity as effectively as possible.

This paper examines the Monacan tribe of Amherst, VA, which operates as the 501(c)(3) organization, “Monacan Indian Nation, Inc.,”<sup>4</sup> to address the following question: Is it effective for tribal interests and appropriate in the non-profit sector when tribal

nations seeking federal recognition operate as non-profit organizations? This case should not only interest non-recognized tribal nations seeking federal recognition, but also non-profit leaders and philanthropists. There are currently 31 state-recognized tribes without federal recognition,<sup>5</sup> with at least eight of them (including Monacan Indian Nation, Inc.) operating as non-profit organizations and soliciting tax-exempt contributions on their websites.<sup>6</sup> This figure does not take into account the even greater number of self-identifying tribes who lack recognition from any level of the United States government.

One of the major benefits of federal recognition is that Federally-recognized Tribes become (mostly) free of state interference, including the obligation to pay state taxes. Without this recognition, tribes can apply for non-profit status, which represents an attractive interim option for holding land and other assets tax-free while seeking recognition. The Internal Revenue Service (IRS), however, states the following in regards to 501(c)(3) organization tax exemption requirements:

To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3), and none of its earnings may inure to any private shareholder or individual. In addition, it may not

be an *action organization*, i.e., it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates.<sup>7</sup>

This definition is designed to prevent disingenuous organizations from reaping the benefits of tax exemption while serving themselves over others. But what are tribes to do when the appropriate avenue—federal recognition as an Indian tribe—for receiving their deserved benefits is inaccessible or made so difficult to navigate that an alternative becomes necessary?

Currently, tribes such as the Monacan Indian Nation have a schizophrenic existence, torn between their dual roles as non-recognized nation and non-profit organization. Some of the activities the Monacan tribe reports on its Form 990—specifically contact with legislators—have the potential to fall under scrutiny depending on how one interprets “substantial part of its activities.” This strange scenario, one of the many ripple effects of the United States’ history of oscillating and ambivalent policy towards Indians, is detrimental to both the interests of non-recognized tribes and the integrity of the non-profit sector. A tribe’s investment in the non-profit side of its operations may help it achieve a more unified pursuit of both missions without violating IRS regulations. For example, recruiting non-tribal members

to board leadership positions will lend greater perspective and legitimacy to the organization, while allowing tribal leaders more time to focus on recognition efforts. In addition, hiring professional fundraisers to expand their networks will allow tribes to increase their program offerings in the community, which will in turn increase the tribes’ political capital during their campaigns for federal recognition. Yet these improvements are insufficient to address the long-term problem of non-recognition. Unless the federal government amends its federal recognition policy, tribes will continue to be forced to seek aid elsewhere, and the non-profit sector will bear the brunt of the burden.

## **Background**

### ***Federal Recognition***

Federal recognition of tribal nations is an important but extremely complicated aspect of how American Indian tribes operate in the United States.<sup>11</sup> A comprehensive history of the federal-tribal relationship is beyond the scope of this essay, but understanding some of the main terminology and major inflection points within that history is essential to building a foundation for the argument that follows.

Congress stopped signing treaties with tribes in 1871,<sup>8</sup> signaling a shift in the federal government’s view of tribes. Whereas the treaty-making process had suggested recognition of tribes by



U.S. officials as foreign nations, the end of that legal relationship revealed that the federal government had begun to see tribes as lesser entities. Chief Justice John Marshall had previously articulated this new classification in the Cherokee cases decided by the Supreme Court in the 1830s when he designated tribes “domestic, dependent nations.”<sup>9</sup> Although the exact meaning of this ambiguous new label is still debated by legal scholars, tribal leaders and historians, among others, Marshall’s language and Congress’ subsequent cessation of treaty-making drastically altered the federal-tribal relationship.

Since this change, tribes wanting to engage the federal government in ways beyond those available to your average citizen—which is often essential to addressing distinct tribal interests brought about through treaty cessations of assets<sup>10</sup>—must achieve the status of Federally-recognized Tribe. Federal recognition makes tribes eligible for benefits from federal agencies and exempts them, to a large degree, from state regulation including taxation. Tribes can attain federal recognition in three ways. The first is by applying for federal recognition through the Bureau of Indian Affairs (BIA), a government office within the Department of the Interior. The BIA administrative process is the most widely used mechanism because it is the most accessible; however, it is also extremely time-consuming and financially burdensome. To secure

recognition, tribes must demonstrate that they meet seven mandatory criteria, including “Existence as an Indian tribe on a continual basis since 1900” and “Absence of federal legislation barring recognition.”<sup>11</sup> Satisfying this burden of proof often requires hiring attorneys, lobbyists, and other experts to find, interpret, and validate information. As a result, the BIA process can stretch tribal resources beyond their limits.

The second way for tribes to achieve federal recognition is through a Supreme Court decision. This route is also challenging because (1) the tribe must hire attorneys, bring a test case to court, and go through multiple appeal decisions spanning several years; and (2) because the Supreme Court has exhibited an unpredictable position on tribal sovereignty, ranging from recognizing the exclusive jurisdiction of tribal councils over crimes committed between Indians on reservations<sup>11</sup> to engaging in narrow readings of legislation that endanger the status of already federally recognized tribes.<sup>14</sup> As the recent *Carcieri v. Salazar* (2009) decision against the Narragansett Tribe of Rhode Island suggests, the conservative tilt of the U.S. Supreme Court under Chief Justice Roberts does not make this a promising avenue to federal recognition for tribes.<sup>12</sup>

The third and final way in which tribes can attain federal recognition is through federal legislation because

the Supreme Court has interpreted the language of the Commerce Clause—“The Congress shall have Power... To regulate Commerce... with the Indian Tribes”<sup>13</sup>—as a grant of plenary power to Congress to manage any and all dealing with Indian tribes.<sup>14</sup> Though scholars often interpret “plenary power” to mean that Congress has power *over* tribes, a more nuanced—and more accurate—reading of the plenary power doctrine is that Congress has a preemptive and exclusive right within the federal government to deal *with* tribes.<sup>15</sup> In other words, Congress is the proper federal agent in the federal-tribal relationship unless it specifically delegates that authority elsewhere. Given this legal structure, if Congress passes a statute recognizing an Indian tribe, that tribe is immediately eligible for all of the associated benefits upon passage of the statute. This last mechanism is the one the Monacan Indian Nation and its 1400-1700 members are currently pursuing. Senator Jim Webb (D-VA) recently sponsored a bill that would extend federal-recognition to the Monacan Indian Nation and five other Indian tribes.<sup>16</sup> Not surprisingly, the Monacan Indian Nation supports the proposed legislation, S.379: Indian Tribes of Virginia Federal Recognition Act of 2011, but the tribe’s interaction with legislators regarding its recognition efforts raises concerns about the compatibility of the tribe’s quest for recognition and fulfillment of the organization’s charitable mission.

### ***Organization Mission vs. Tribal Priority***

The stated mission of Monacan Indian Nation, Inc. as a 501(c)(3) charitable organization is “To share Native American culture, history, and education with the community.”<sup>17</sup> The organization pursues this mission primarily through its operation of the Monacan Ancestral Museum, which is “committed to preserving the rich legacy of the tribe’s history and culture,”<sup>18</sup> and its sponsorship of an annual powwow intended to “share a spirit of community not often found” and “entertain and educate people with the stories that have been passed down by ancestors for generations.”<sup>19</sup> Both the 2008 and 2009 Form 990’s list the museum as the organization’s top program, most recently receiving 325 visitors in 2008.<sup>20</sup> The powwow is recorded not as a program, but rather as the organization’s only fundraising event, bringing in net revenues of \$9,681 in 2009.<sup>21</sup> Additional programs include a food bank serving 240 Monacan Indians in 2008 and the Monacan News, a monthly newsletter with no paid advertising that circulates to approximately 325 people.<sup>22</sup>

Despite the charitable mission of the organization and the programs it provides in fulfillment of that mission, the top priority of the tribe is not to share Monacan culture with the community; it is to seek federal recognition. In an interview from June 2011,

Monacan Chief Sharon “Bear Woman” Bryant said, “she hopes to lead the Monacans to financial independence and build stronger ties to the local communities. But her number one priority, [*sic*] is something the tribe has coveted for years. ‘I will always, to the end of my days, fight for federal recognition because it is our birthright,’ said Bryant.”<sup>23</sup> This is not to say that the tribe, if it should be able to secure federal recognition, would abandon its charitable mission and dissolve the non-profit organization. Regardless of what the future holds, the current circumstances under which the tribe operates as a non-profit organization as it pursues federal recognition as a nation will lead to distraction from both functions without deliberate and careful attention to the respective missions.

### ***A Problem of Leadership***

A primary factor contributing to the concern that the bimodal nature of the Monacan tribe will debilitate both the nation and the non-profit organization is the consequently complicated nature of the leadership position created by the current arrangement. Chief Bryant serves as the leader of the tribal nation and is responsible for its interests as such; she is also the top official of Monacan Indian Nation, Inc. and thus responsible for fulfilling the mission of the non-profit organization.<sup>5</sup>

Without making any judgments regarding Chief Bryant’s personal

abilities to fulfill both roles, one can point out structural problems with this overlap in leadership. Indeed, Bryant has some innovative ideas for the non-profit, including collaborations with the private sector: “‘I think we are a seriously under-utilized tourist attraction,’ Bryant said, adding that she wants to build relationships with local chambers of commerce.”<sup>24</sup> The concern is that Bryant may not be able to pursue her top priority of federal recognition for the nation as vigorously as she might like without jeopardizing the tax-exempt status of the non-profit organization.

The Monacan tribe has been explicit in its desire to achieve federal recognition, and Senate Bill S.379 demonstrates that it has chosen to pursue this desire through legislation. Schedule C of the 2008 Form 990, Political Campaign and Lobbying Activities, confirms the tribe’s direct involvement in this legislative effort. The tribe reports that it “Contacted legislators for the purpose of trying to receive federal recognition as a federal Indian tribe. No funds have been disbursed for lobbying.”<sup>25</sup> This revelation begs the question: How does pursuit of federal recognition contribute to the organization’s stated mission?

Monacan Indian Nation, Inc.’s current leadership structure, which calls for Chief Bryant to pursue federal recognition for the tribe and simultaneously operate the non-profit organization,

opens up the non-profit to criticism under the IRS definition of a 501(c)(3) organization and raises questions about the validity of this subset of the non-profit sector more broadly. As Chief of the Monacan tribe, Bryant has stated that federal recognition is her top priority. In order to achieve this goal, she must contact legislators to lobby for her tribe's interest. Although she is not paid as a lobbyist for the tribe, her efforts could still run afoul of the IRS definition quoted above: a 501(c)(3) organization "may not be an *action organization*, *i.e.*, it may not attempt to influence legislation as a substantial part of its activities."<sup>26</sup> Therefore, as the top official of the non-profit organization, Chief Bryant is bound *not* to attempt to sway legislators on proposed bills such as S.379 as a substantial part of her activities. Whether or not you see this situation as a problem depends on whether or not one conflates a group's pursuit of its "top priority" and "a substantial part of its activities." Leaving this possibility open to interpretation does not seem to be a risk worth taking for non-recognized, non-profit tribal nations.

### **Analysis of Form 990's**

The only discernible difference between the tribe and the organization is on paper: because the tribe lacks recognition as a "Federally-recognized Tribe," it must interact with the federal government as a "charitable organization." As detailed above, this legal

distinction, though seemingly small, has important implications for how the Monacan nation may operate. To reduce the risk of potential challenges to its 501(c)(3) status, Monacan Indian Nation, Inc. must either alter its activities or effectively demonstrate that although Chief Bryant contacts legislators regarding federal recognition, this practice is not a substantial part of the organization's activities. Unfortunately, inspection of the non-profit organization's 2008 and 2009 Form 990's does not reveal much supporting evidence that the tribe is heavily invested in the organization's operations.

Given all these difficulties, one might wonder why non-recognized tribes do not organize themselves as some other tax-exempt entity to avoid the definitional restrictions of 501(c)(3) organizations. For example, if the tribe operated as a 501(c)(4) Social Welfare Organization, lobbying would be more feasible:

Seeking legislation germane to the organization's programs is a permissible means of attaining social welfare purposes. Thus, a section 501(c)(4) social welfare organization may further its exempt purposes through lobbying as its primary activity without jeopardizing its exempt status. An organization that has lost its section 501(c)(3) status due to substantial attempts to influence legislation may not thereafter qualify as a section 501(c)(4) organization.<sup>27</sup>

Upon closer examination, however, this definition is not as helpful to the tribe as it initially appears. Lobbying, though it may constitute a 501(c)(4)'s primary activity, must *further* the organization's *exempt* purpose; it cannot *be* the organization's purpose. Social Welfare Organizations are exempt only if they are "operated exclusively to promote social welfare... primarily to further the common good and general welfare of the people of the community... [A]n organization that... is primarily benefiting a private group rather than the community... does not qualify as a section 501(c)(4) organization."<sup>28</sup> The tribe's top priority of seeking federal recognition would benefit only the private group of Monacan Indians, and so 501(c)(4) status is inappropriate. Furthermore, the fact that lobbying would explicitly become the primary activity of the tribe would likely attract greater scrutiny, not less, than it does currently with the tribe operating as a 501(c)(3) organization.

Similar troubles arise when considering non-recognized tribes' potential to operate as tax-exempt Political Organizations. Whereas the political agendas of non-recognized tribes such as the Monacan are focused on lobbying to influence legislation, the IRS holds that "the exempt function of a political organization is influencing or attempting to influence the selection, nomination, election or appointment of an individual to a federal, state, or local public office or office in a politi-

cal organization."<sup>29</sup> In other words, a tribe would have to shift its efforts to helping elect candidates friendly to its attempt to gain federal recognition but this strategy would push them further away from recognition, because there is no guarantee that their direct efforts to place an ally in office would lead indirectly to the passage of legislation. Tribes have limited resources and face day-to-day challenges on the ground that demand their attention.<sup>30</sup> Consequently, they must allocate their time and political capital as efficiently as possible, which means leaning on politicians already in the Senate, such as Jim Webb, who support their efforts and have the political power to create change. There are certainly states in which tribes would benefit by campaigning for new elected officials who could displace anti-tribal incumbents. In California, Senator Dianne Feinstein (D-CA) has introduced more than one version of a bill that would severely restrict tribal gaming rights under Section 20 of the Indian Gaming Regulatory Act,<sup>31</sup> and her absence from the Senate would relieve a great deal of pressure on tribes seeking to advance their interests. But for tribes to organize all of their efforts and expend all of their capital in a tax-exempt Political Organization would preclude them from providing *any* services to their members and would not guarantee success in individual campaigns or in attempts for their chosen candidates to pass legislation favorable to tribes.

One final IRS organizational category that would accommodate at least part of the tribe's programming and still allow for tax-exempt status—Section 7871 of the IRS Code, which recognizes Indian tribal governments “as states for purposes of deductibility of contributions under section 170(c)(1) of the Code, pursuant to section 7871(a)(1)(A)”<sup>32</sup> —is unfortunately restricted to federally recognized tribes.<sup>6</sup> The Hopi tribe, for example, successfully operates an education fund under §7871 with a mission “to continually raise funds on behalf of Hopi educational endeavors.”<sup>33</sup> Such a mission aligns perfectly with the Monacan scholarship program and its attempt to provide modest financial aid to tribal members pursuing educational opportunities. The Hopi Educational Endowment Fund (HEEF) has awarded over \$4.2 million<sup>34</sup> since its creation in 2000<sup>35</sup> to programs advancing Hopi education. Yet, as HEEF Executive Director LuAnn Leonard confirms, “if the tribe is only state recognized this is not an option.”<sup>36</sup> The Monacan are thus trapped in a position that prevents them from operating in the ways most appropriate for achieving their mission, both as a tribe and as a non-profit organization. The 501(c)(3) organization, accordingly, is currently the best available option for non-recognized tribes to become tax-exempt organizations, leaving the lobbying problem. One could presumably make a budgetary argu-

ment about use of funding that would provide the tribe with a single layer of defense as a 501(c)(3) organization, resting on the fact that “No funds have been disbursed for lobbying.”<sup>37</sup> This claim, however, fails to protect the tribe against other potential inquiries into use of funds such as disbursement of scholarships and assistance to individuals. Furthermore, the quantitative approach opens the floodgates to audits of Chief Bryant's use of her time. For these reasons, the examination of the Form 990's that follows will (1) question how substantial tribal and organizational activities seem to be from a qualitative perspective; (2) challenge the way the tribe runs Monacan Indian Nation, Inc. in certain areas; and (3) make suggestions for improvements based on consideration of trends and standards in the non-profit sector.

### ***Status of the Non-Profit Organization***

Perhaps the most revealing piece of evidence that the tribe is not operating Monacan Indian Nation, Inc. as effectively as it could be is its use of cash accounting rather than accrual accounting. The former, a relatively unsophisticated method of tracking revenues and expenses, records cash as it comes into and goes out of the organization, rather than recognizing earned revenues and obligated expenses. Few organizations use the cash accounting method, suggesting that the tribe is behind the industry curve when it comes to monitoring its

accounts. In addition to indicating a lag behind other non-profit organizations, cash accounting creates operational uncertainties because it makes it more difficult for leaders to assess the organization's financial health. Large fluctuations in Monacan Indian Nation, Inc.'s end-of-year balances shown in Table 1 serve as partial proof of this difficulty.

TABLE 1

	<b>Program Service Revenue<sup>vii</sup></b>	<b>Grants Paid Out<sup>38</sup></b>	<b>Net Loss<sup>39</sup></b>	<b>End-of-year Cash<sup>40</sup></b>
<b>2007</b>	\$18,122	\$14,657	-\$13,934	\$25,085
<b>2008</b>	\$22,283	\$16,392	-\$31,081	\$9,591
<b>2009</b>	\$8,625	\$7,808	-\$10,165	\$17,331

Although the financial crisis of 2008 is almost certainly a contributing factor to some of this turmoil, cash accounting is also partially to blame for some of the discrepancies in Table 1. For example, although the large net loss in 2008 might explain the declines in program service revenue and grants paid out in 2009, it leaves one to wonder why these declines were accompanied by a significant jump in end-of-year cash. Furthermore, Monacan Indian Nation, Inc. does not have an endowment and reports an investment income of less than \$1,000;<sup>41</sup> therefore, the effect of the financial crisis on the organization is not as easily quantifiable as it is for universities who can point to measurable losses in their endowments. If the organization wants to attain greater understanding of its

financial position, it must convert to accrual accounting to track revenue and expenses more accurately and forecast potential cash flow problems.

Despite the difficulty of drawing definite conclusions from cash accounting methods, it is possible to point to qualitative factors to assess the status of the organization and, in some instances, use the available financial data to supplement understanding. The emphasis the tribe has placed on acquiring land, the channeling of resources into services available only to Monacan Indians, the small size of programs and a general lack of fundraising are all indicators that the tribe's dedication to the non-profit organization's mission may be suffering as a result of its quest for recognition and Chief Bryant's dual leadership role. Some of these factors point to an outward favoring of tribal priorities over the stated mission, while others merely suggest less-than-ideal strategies for ensuring the continued existence of the organization. Regardless, all are problematic and must be addressed if the current legal situation is going to continue.

An understated but important detail of the tribe's asset portfolio is its apparent desire for land. Recall the background information on federal recognition: a Federally-recognized Tribe is eligible for certain benefits from various government agencies and departments. One of the great-

est of these benefits is the authority delegated to the Secretary of Interior by Congress to take land into trust for tribes and individuals.<sup>42</sup> Tribes with land held in trust may sell commodities such as cigarettes and gasoline tax-free, thereby attracting customers and generating revenue. Perhaps more importantly, tribes living on trust lands are largely immune from the interference of state and local governments, providing them with a much greater level of autonomy over their internal affairs.<sup>viii</sup>

At a time when many small non-profits are seeking to rent or share physical space as a cost-saving measure, Monacan Indian Nation, Inc. maintains large land holdings. As of 2005, the tribe had acquired over 100 acres of land on Bear Mountain<sup>43</sup> and the book value of its land on the 2009 Form 990 was \$116,877.<sup>44</sup> This figure is in addition to buildings with a book value of \$434,718.<sup>45</sup> For a non-profit organization with total assets of \$595,318,<sup>46</sup> physical space seems to a priority, accounting for almost ninety-three percent of total assets.

The emphasis on land can also be seen on the expense side of the tribe's operations. Of the organization's \$50,992 in total expenses, \$10,239 is attributable to occupancy expense and an additional \$16,827 to depreciation expense.<sup>47</sup> Because the extent of these land and building holdings is not necessary for the tribe to run its

comparatively small programs, it is reasonable to assume that the motivation for acquiring land and the willingness to pay high costs to maintain the title to that land come from an expectation that, eventually, the Secretary of Interior will take the land into trust. This, of course, requires federal recognition, and thus the emphasis on land seems to be more in line with the tribe's priority than the organization's mission.

Other aspects of Monacan Indian Nation, Inc.'s operations that seem to favor the tribe over the organization include the food bank and scholarship program. The food bank, identified on the 2009 Form 990 under programs as secondary only to the Monacan Ancestral Museum, served 240 individuals in 2008.<sup>48</sup> Notably, all 240 beneficiaries were Monacan Indians.<sup>49</sup> I do not wish to imply here that running a food bank is not a legitimate function of a charitable organization. I am concerned, however, that using contributions to feed only tribal members when the mission is "to share Native American culture, history, and education with the community" opens up the tribe to suspicion and therefore constitutes an operational weakness.

The scholarship program is potentially subject to similar scrutiny. The 2009 Form 990 reports that the tribe issued 23 scholarships worth a total of \$7,808.<sup>50</sup> These modest scholarships, averaging under \$340 each, would



likely not draw attention except for the requirement that recipients must be Monacan Indians.<sup>51</sup> Certainly, there exist myriad scholarships that target specific ethnic and racial groups; yet, this program is somewhat unique because it is administered in an extremely small and tight-knit community. The tribe seems to anticipate this concern by including a short disclaimer in the explanation of the program: “Funds are disbursed to local candidates who are known by the Scholarship Committee, therefore funds are monitored closely.”<sup>52</sup> Despite this preemptive acknowledgement, the scholarship program still seems only tangentially connected to the organization’s mission for the same reason as the food bank. Unless the organization defines “the community” as the tribal nation, programs serving only Monacan Indians are questionable, and defining the community as such would serve to solidify, not soften the criticism that tribal interests are privileged.

Despite these weaknesses, the existence of exclusive or selective services does not undermine the function of programs that are directly aligned with the stated mission. The Monacan Ancestral Museum and the Monacan News clearly represent efforts to share Native American culture and history. The small size of these programs, however, raises concerns about the tribe’s investment in offerings that directly fulfill the charitable mission.

As stated above, the organization considers the museum its top program but the museum only receives 325 visitors annually, or less than one per day. The newsletter is of similar size, circulating to approximately 325 people each month. Of course, this number of beneficiaries is predicated on categorizing the annual Powwow as a fundraising event and not a program. Although the number of attendees is not reported, with a gross income of \$33,703 in 2009<sup>53</sup> the Powwow undoubtedly reaches a large number of people in the community and plays an important role in supporting the mission. The tribe, however, lists the Powwow not as a program, but rather as the lone fundraising event of the year.

As a fundraising event, the Powwow highlights several concerns with the non-profit organization’s operations. Relying on one event for a significant portion of your revenue is risky, for reasons as obvious as poor turnout due to inclement weather and as subtle as tumultuous fluctuations in cash flow, the latter of which is of special concern due to the organization’s use of cash accounting. The \$9,681 generated by the 2009 Powwow represented nearly twenty-four percent of the \$40,827 in total revenue that year.<sup>54</sup> This percentage puts the tribe in a “feast or famine” situation each spring instead of having a steady income of fundraising revenue throughout the year. Given that the tribe does not receive steady income

from an endowment to cover operating expenses, this lack of a consistent, concerted fundraising effort is particularly troublesome.

TABLE 2

	<b>Net Loss<sup>IX</sup></b>	<b>Total Assets<sup>55</sup></b>	<b>Public Support Percentage<sup>56</sup></b>
<b>2007</b>	-\$13,934	\$636,564	68.71%
<b>2008</b>	-\$31,081	\$605,483	73.82%
<b>2009</b>	-\$10,165	\$595,318	80.72%

***The Need for Change***

The small size of Monacan Indian Nation, Inc.’s programs and its lack of fundraising create a need to pay more attention to the financial and operational health of the organization. Several indicators suggest that the organization needs to increase its program revenues and focus more energy on professional fundraising to build a network of donors. As Table 2 demonstrates, persistent net losses and a steady decline in the value of assets have occurred at the same time as a steady increase in the reliance on public support.

To combat losses, the organization should not attempt to cut costs, but rather to increase programming in an attempt to attract more revenue.<sup>57</sup> To take this course effectively, Monacan Indian Nation, Inc. must restructure its leadership and recruit additional fundraising staff to get on track.

**Recommendations for Monacan Indian Nation, Inc.**

***1. Recruit a non-Monacan director to run the non-profit.***

Recruiting non-tribal members into leadership positions will bring new perspective to the organization, along with the added bonus of freeing up Chief Bryant to pursue the tribal nation’s top priority of achieving federal recognition without having to worry about the limitations on her activities lurking in the language of the IRS definition of a 501(c)(3) organization. Though the tribe’s priority and the organization’s mission are not mutually exclusive, this paper has shown that pursuing both simultaneously has the potential to create tension. This is especially the case when one individual is expected to lead the same group of people—existing as one sort of entity on paper and as another in spirit—towards the two different goals. Hiring someone who is not a Monacan Indian, or finding a volunteer, to run the non-profit side of things would allow Chief Bryant to step down from her official position with the organization and thus allow her to lobby legislators and possibly even secure separate funding to help advance that interest.

***2. Recruit a part-time professional fundraiser to build networks and increase funding for programs.***

This recommendation, though it sounds concrete, is slightly more

abstract. Removing restrictions from Chief Bryant's activities by allowing her to step down from the organizational leadership position directly addresses the question posed at the beginning of this paper: a new, non-Monacan Director makes the tribe's dual existence as nation and non-profit potentially effective because the tribe can maintain a legal status while actively pursuing federal recognition; it also makes that arrangement more appropriate because the non-profit organization will no longer be contacting legislators, and having non-tribal voices on the Scholarship Committee and in other programmatic decision-making roles will help thwart criticism that the organization is merely a means to an end for the tribe designed to benefit members until they become eligible for federal benefits.

The recommendation to obtain a professional fundraiser also contributes to both the effectiveness and appropriateness of the non-federally recognized tribe operating as a 501(c)(3) organization, though perhaps less obviously so. It lends itself to the effectiveness of the tribe's pursuit of federal recognition precisely because the tribe is seeking recognition through legislation. Passing legislation requires political capital, which, not surprisingly, is often in short supply for non-federally recognized Indian tribes.

This recommendation will be difficult to fulfill because the tribe ran a deficit in 2009.<sup>58</sup> However, by redirecting the revenue spent on scholarships—the program arguably open to the most criticism for being exclusively tribal—the tribe should be able to attract a qualified candidate on a part-time/volunteer basis. Given the tribe's current lack of any formal fundraising outside the Powwow, it should prove a worthwhile investment.

Recruiting a professional fundraiser can help the Monacan tribe build political capital in two ways. First, it can extend its network of contacts in the community and target donors for major gifts. Philanthropists who are capable of making large contributions to non-profit organizations often have the money to achieve other things as well, and getting politically powerful people involved in the tribe's operations as donors could be helpful to the tribe's recognition efforts. Second, an increase in funding would allow the non-profit organization to increase its programming, which would improve the tribe's relationship with the community. In addition to helping the tribe build political capital, increased programming would also lend legitimacy to the tribe's existence as Monacan Indian Nation, Inc., thus making the arrangement more appropriate.

## Conclusion

The Monacan Indian tribe, like many non-federally recognized tribes, exists in a strange duality as non-recognized and non-profit. Though not ideal, if managed properly this odd straddling of identities can benefit the tribe in its quest for federal recognition as well as the community in which the tribe lives and operates as a charitable organization. By actively pursuing the mission of the non-profit organization, the tribe can advance its underlying interest of achieving the legal status of Federally-recognized Tribe. Furthermore, if the leadership of the organization is structured properly and funds are monitored and managed appropriately, there is no reason why the non-profit organization should not continue to exist even after that goal is reached. Members of the Shinnecock Tribe in New York state—the most recently federally-recognized tribe at the time this paper was published—continue to operate a non-profit organization separately from the tribal government with a mission to preserve their history and provide educational programs about their language and culture.<sup>59</sup>

In the meantime, the Monacan and other tribes in similar circumstances are at risk of losing their tax-exempt status as non-profit organizations for pursuing their political goals. They “choose” to operate as non-profit organizations only because their options

are limited: their inability to gain federal recognition forces them to turn to the non-profit system for the tax-exempt status they deserve, but it cannot be a permanent solution. Currently, part of the public sector obligation to support the tribes is translated into a non-profit sector burden. Instead of relying on the federal government for benefits based on a deserved special legal status, non-recognized tribes must solicit donations as non-profit organizations. As a result, they unnecessarily reduce the carrying capacity of philanthropists who might otherwise donate to other charitable organizations.

Furthermore, the harm caused to the non-profit sector is two-fold because this analysis of the Monacan Indian Nation, Inc. Form 990s has shown that the tribe does not operate as a non-profit organization for the same reasons that motivate traditional non-profits. Rather, the tribe turns to 501(c)(3) status for tax-exemption while explicitly stating that its primary goal is to achieve federal recognition and correspondingly focusing its efforts on maintaining its land holdings. The fact that non-recognition forces these tribes to settle for an existence as non-profit organizations and derive their benefits therefrom, rather than receive federal benefits, thus broadly undermines the goals of the non-profit sector while also directly harming the tribes. ▀

(Notes)

- I. 25 C.F.R. § 83.1 distinguishes between “*Indian group or group*” and “*Indian tribe*”: “*Indian group or group* means any Indian or Alaska Native aggregation within the continental United States that the Secretary of the Interior does not acknowledge to be an *Indian tribe*. Indian tribe, also referred to herein as *tribe*, means any Indian or Alaska Native tribe, band, pueblo, village, or community within the continental United States that the Secretary of the Interior presently acknowledges to exist as an Indian tribe.” 25 *CFR* 83.1 (1994). Please note that although this is the legal terminology the federal government uses, the Monacan people refer to themselves as a “tribe” and a “nation,” so I have given due preference to their self-identification in this paper.
- II. This author’s personal opinion is that the weight given to “federal recognition” has become too great in recent years. In *Joint Tribal Council v. Morton*, 528 F.2d 370, the Circuit Judge for the United States Court of Appeals for the First Circuit held that “while Congress’ power to regulate commerce with the Indian tribes ... includes authority to decide when and to what extent it shall recognize a particular Indian community as a dependent tribe under its guardianship, ... Congress is not prevented from legislating as to tribes generally ... There is nothing in the [Indian Nonintercourse] Act [25 *U.S.C.S.* 177] to suggest that ‘tribe’ is to be read to exclude *a bona fide tribe not otherwise federally recognized.*” (my emphasis) However, in *Carcieri v. Salazar* (555 U.S. 379) the Supreme Court’s decision suggests that in order to receive benefits, tribes must fit very narrow criteria determining that they are “federally recognized,” and arguments that they are “under federal jurisdiction” despite a lack of recognition will not hold.
- III. In *Ex Parte Crow Dog*, 109 U.S. 556 (1883), the Supreme Court found that federal courts had no right to try Crow Dog, a Sioux Indian, for murdering another Indian after he had been forced to pay restitution to the victim’s family according to Sioux tradition.
- IV. In *Carcieri v. Salazar*, 555 U.S. 379 (2009), the Supreme Court interpreted Congress’ use of the phrase “now under federal jurisdiction” to mean that tribes not under federal jurisdiction at the time Congress passed the legislation were not eligible for the benefits outlined therein.
- V. In 2009, Sharon Bryant was listed as a “Director” of the non-profit organization. The Chief of the tribe at the time, Kenneth Branham, was listed as “Chief” and classified as an “Officer.” Kenneth, however, was reported as spending an average of 15 hours per week whereas Sharon was reported as spending an average of 5 hours per week. [Form 990 (2009), 7]. In addition, Kenneth signed the Form 990 and included in parentheses “(President),” suggesting he was responsible for oversight of the organization’s activities and finances. [Form 990 (2009), 1]. Thus, although the organization is listed as having two directors besides the Chief, it seems that the tribal Chief is the principal officer of Monacan Indian Nation, Inc. As the current Chief, Bryant serves this role.
- VI. I have to thank Dr. Angela Gonzales for bringing this IRS category to my attention.

- VII. Figures for 2007 are taken from Form 990 (2008), 1. Figures for 2008 and 2009 and taken from Form 990 (2009), 1.
- VIII. Two notable exceptions to this statement are Public Law 280, which gave six states jurisdiction over many tribal criminal and civil matters, and the Indian Gaming Regulatory Act, which allows states a degree of regulation over tribal gambling enterprises.
- IX. Figures for 2007 are taken from Form 990 (2008), 1. Figures for 2008 and 2009 and taken from Form 990 (2009), 1.

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2. "Tribal Directory," U.S. Department of the Interior: Indian Affairs, accessed December 2, 2011, <http://www.bia.gov/WhoWeAre/BIA/OIS/TribalGovernmentServices/TribalDirectory/index.htm>.
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4. "Monacan Indian Nation," Monacan Indian Nation, Inc., accessed December 2, 2011, <http://www.monacannation.com>.
5. "Federal and State Recognized Tribes," National Conference of State Legislatures, accessed February 25, 2012, <http://www.ncsl.org/issues-research/tribal/list-of-federal-and-state-recognized-tribes.aspx#State>.
6. State-recognized tribes operating as non-profits include: Cherokees of Southeast Alabama, Inc.; The Echota Cherokee Tribe of Alabama, Inc.; United Houma Nation; Powhatan Renape Nation; Ramapough Lunaape Nation; The Waccamaw Siouan Tribe, Inc.; Monacan Indian Nation, Inc.; and Nottoway Indian Tribe of Virginia, Inc.
7. "Exemption Requirements," (original emphasis).
8. Indian Appropriations Act, 25 U.S.C. §71 (March 3, 1871).
9. *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831).
10. For example, tribes who practice subsistence fishing are uniquely affected by the release of polychlorinated biphenyls (PCBs), a man-made chemical used in electrical transformers prior to being banned by Congress, into the environment because PCBs bioaccumulate in fish. Thus tribes who consume more fish than the average U.S. citizen face a greater risk of health effects from PCB contamination in rivers.
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12. *Carciere v. Salazar*, 555 U.S. 379 (2009)
13. U.S. Const. art. I, sec. 8, cl. 3.
14. *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903).
15. David E. Wilkins and K. Tsianina

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16. Indian Tribes of Virginia Federal Recognition Act of 2011, S.379 (introduced February 17, 2011).
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  20. "Form 990 (2009)," 2.
  21. *Ibid.*, 9.
  22. *Ibid.*, 2
  23. Jeremy Mills, "Monacans Elect First Female Chief," ABC 13 News, Worldnow and WSET (posted June 20, 2011, 5:35pm EDT), accessed 12/2/2011, <http://www.wset.com/story/14943776/monacans-elect-first-female-chief?clienttype=printable>.
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  25. "Form 990: Return of Organization Exempt From Income Tax," Department of the Treasury: Internal Revenue Service (2008), *Monacan Indian Nation, Inc.*, Schedule C: Political Campaign and Lobbying Activities, 3.
  26. "Exemption Requirements."
  27. "Social Welfare Organizations," Internal Revenue Service, accessed February 26, 2012, <http://www.irs.gov/charities/nonprofits/article/0,,id=96178,00.html>.
  28. *Ibid.*
  29. "Exempt Function – Political Organization," Internal Revenue Service, accessed February 26, 2012, <http://www.irs.gov/charities/political/article/0,,id=175345,00.html>.
  30. For example, American Indian healthcare is tragically poor: "Native Americans are 770 percent more likely to die from alcoholism, 650 percent more likely to die from tuberculosis, 420 percent more likely to die from diabetes, 280 percent more likely to die from accidents, and 52 percent more likely to die from pneumonia or influenza than the rest of the United States, including white and minority populations." See Starla Kay Roels, Esq. "HIPAA and Patient Privacy: Tribal Policies as Added Means for Addressing Indian Health Disparities," in *American Indian Law Review* 31 (2006-2007) citing U.S. Comm'n on Civil Rights, *Broken Promises: Evaluating the Native American Health Care System* 7-8 (2004) (citing Reauthorization of the Indian Health Care Improvement Act: Hearing on S. 556 Before the S. Comm. on Indian Affairs and the H.R. Comm. of the Office of Native American and Insular Affairs, 108th Cong. (2003) (statement of Dr. Charles Grim, Assistant Surgeon General, Interim Director, Indian Health Service)). 7-8.
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# The United Nations Should Not Add Permanent Seats to the Security Council

*Miriam Edelman*

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ABSTRACT

*The United Nations (UN) should not add permanent member seats to the United Nations Security Council (UNSC). Several policymakers and member nations have criticized the council for reflecting post-World War II power structures that favor geographical representation from the Great Powers that emerged after the war.<sup>1</sup> Recent efforts to reform the UNSC have included proposals that would add more permanent member seats. While the UNSC has not changed its permanent member structure since its inception after WWII, there is little historical or empirical evidence that suggests adding additional seats would increase the Council's effectiveness. Adding more seats could actually be counterproductive due to existing power dynamics between members and the United States' tendency to act without regard to the Council. India is a prime example of these dynamics. India frequently votes against the United States; hence, if India were to become a permanent member, there would be more gridlock on the Council, rendering it less effective and efficient in responding to global security crises.*

ABOUT THE AUTHOR

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## Introduction

In recent years, Brazil, Germany, India, and Japan have wanted permanent membership on the UNSC. Proponents of adding these permanent seats argue that additional permanent members would resolve the lack of representation on the Council (only Europe, North America, and Asia are represented by the UNSC's permanent membership), making the UNSC more inclusive.<sup>2</sup> This expansion is not needed, however, for several key reasons: there are already geographically-representative non-permanent members built into the UNSC's governing structure; there is no historical precedent for adding permanent seats or changing the Council's structure; and current permanent members that lose power to additional seats might leave the UNSC and/or contribute less financially to the UN. Each of these potential factors negatively affects the UNSC's ability to efficiently govern itself and respond to crises.<sup>3</sup> If each additional new permanent member has veto power, it is likely that increased use of the veto would inhibit the UNSC's ability to act. As Professor Richard Hartwig states, "Adding more members with the veto power would render the organization ineffective and would reduce the influence of the U.S., Russia (former USSR), China, France, and Great Britain."<sup>4</sup> The UNSC would also be less effective because the United States would continue to pursue actions regardless of UN policy in the

face of increased opposition from new permanent members. Increased U.S. unilateralism would severely inhibit the Council's ability to respond cohesively to security crises as they arise.

## Background Information

### *The UNSC*

The UNSC is a major decision-making entity of the UN that the UN Charter charges to maintain international peace and security.<sup>5</sup> Main functions of the UNSC are investigating disputes that could cause global problems, recommending ways of settling such disputes, and taking military action when necessary.<sup>6</sup> The UNSC is currently composed of five permanent members and ten non-permanent members.<sup>7</sup> The UNSC's permanent members are China, France, Russia, the United Kingdom (U.K.), and the U.S.<sup>8</sup> After World War II, U.S. President Franklin Roosevelt developed his Four Policemen plan, wherein the Great Powers — the permanent members excluding France — would maintain peace in their respective geographic areas. As Robert Hilderbrand wrote in his book, *Dumbarton Oaks: The Origins of the United Nations and the Search for Postwar Security*, this plan, which created the UNSC, appealed to citizens and policymakers concerned about extensive U.S. power outside the Western Hemisphere.<sup>9</sup>

Permanent members of the UNSC have several benefits that the Council does not grant to non-permanent members;

veto power stands as the most significant. The veto power was created at the urging of the USSR, so that permanent members could annul majority votes that they opposed.<sup>10</sup> Throughout history, all permanent UNSC members — especially the U.S.S.R. and the United States — have used their veto power to stop certain international policies from going forth and to prevent their opponents from joining the UN.<sup>11</sup> In addition, permanent members have other benefits. Since permanent members have served on the UNSC since its founding in 1945, permanent members have institutional memory regarding policy issues and the UNSC. Non-permanent members must quickly become familiar with policies that the UNSC is considering.<sup>12</sup> Furthermore, permanent members and non-permanent members have asymmetric access to information. While permanent members and certain other nations form a global diplomatic network that provides them with useful information, most non-permanent members acquire information from only UN-produced papers and publicly-available information through media sources and the Internet.<sup>13</sup>

### ***The Ineffectiveness of the UNSC***

The UNSC has participated in meaningful work throughout the world, including peacekeeping and invoking sanctions such as embargoes of arms, restrictions of travel, and bans on trade; however, throughout history,

the UNSC has not been as effective as it could have been.<sup>14</sup> For over 40 years, the UNSC was not able to do significant work because of the intense rivalry of permanent members then-USSR and the U.S.<sup>15</sup> In addition, the UNSC has been criticized for not providing adequate international assistance in a timely fashion. For example, critics have asked why the UNSC did not do more to stop the human rights abuses in Darfur.<sup>16</sup>

Historical precedent suggests that simply adding additional powerful, emerging countries to the Council does not necessarily make the Council more effective. For example, in 2011, India, South Africa, Brazil, Germany, and Nigeria — all of which would like to become UNSC permanent members — served as UNSC non-permanent members. In 2010, the nonprofit organization Security Council Report stated: “By any standards, the Council in 2011 could be the strongest group of UN and global stakeholders ever assembled on the Council. This could create a unique dynamic. However, it is difficult to predict whether this will in fact foster a more proactive and effective Security Council.”<sup>17</sup>

Despite predictions that the Council would be the strongest assembly in its history, the 2011 Council was fraught with disagreements and stalemates. In 2011, the UNSC had trouble with acting on major issues because of disagreement among the five UNSC per-

manent members.<sup>18</sup> If the UNSC had even more permanent members, it is likely that it would have had an even more difficult time coming to resolutions on important subject matters.

### ***Need for Reform***

Similar to efforts to make the World Bank and the International Monetary Fund more inclusive, developing countries and policymakers advocate for further democratization of the United Nations, especially the UNSC. In *The Security Council: A Study in Adolescence*, Richard Hiscocks writes that it is unfair that the U.K. and France have the same power as China, Russia (former Soviet Union), and the U.S., while arguably more powerful countries like India, Japan and Brazil do not wield that authority.<sup>19</sup> The UN has recognized the need for reform, not just expansion, of the UNSC. In 1993, the General Assembly set up a working group to draft an expansion proposal. The members of that committee met multiple times with each other, individual countries, and groups of nations.<sup>20</sup> Legitimacy was a major issue during the expansion debates.<sup>21</sup> The Council's composition would be changed in order to garner more global support. If the UNSC had more equitable representation, then the UNSC's decisions would be perceived as more legitimate in the eyes of UN member countries. However, that working group did not make much progress because its members did not

agree on which countries would join as permanent members.<sup>22</sup> In April 2007, that committee's report, *The Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council*, concluded that "Security Council enlargement is an integral part of the United Nations reform process."<sup>23</sup> Many UN countries thought, and still think, that the UNSC should be larger in order to solve the under-representation of developing nations.<sup>24</sup> Then-Secretary General Kofi Annan warned that that Council's reputation and influence would decrease if reform did not happen.<sup>25</sup>

Reform is difficult, however, as member states try to gain as much power in the UNSC as possible.<sup>26</sup> In order to add new permanent member seats to the UNSC, the UN Charter would have to be amended.<sup>27</sup> Article 23 of Chapter V of the UN Charter stipulates that "The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council."<sup>28</sup> Chapter XVIII of the Charter details the amendment process. The Charter is amended once two-thirds of the UN General Assembly adopts the amendment and the same proportion of the UN members, including all UNSC permanent members, ratify it.<sup>29</sup> Thus, all UNSC permanent members must approve any UNSC expansion.

## **Current Efforts to Expand**

During the past several years, Brazil, Germany, India, Japan, Nigeria, South Africa, Indonesia, and Egypt have all indicated interest in becoming permanent members.<sup>30</sup> The first four countries have the strongest chance of becoming permanent members.<sup>31</sup> Brazil, Germany, India, and Japan have been or are currently non-permanent members. They have conducted public outreach campaigns in their bid for permanent seats. In addition, they have worked together for these positions. For example, India and Japan publicly support each other's efforts to become permanent members.<sup>32</sup> So far, these efforts have been met with varying levels of success. Generally, each of those four countries' efforts is supported by at least one UNSC permanent member.

There has been opposition to these bids, however. In 2004, Brazil, Germany, India, and Japan all faced (and sometimes still face) large opposition from within their own continents. For example, Argentina opposes Brazil's bid because it feels that it is being relegated to a lower place in relationships between North and South America.<sup>33</sup> Even though most Latin American countries support Brazil's efforts, Brazil as the sole Latin American permanent member might be problematic in accelerating Brazil's rise as the dominant power in South America.<sup>34</sup> In a European example, Italy does not sup-

port Germany's efforts.<sup>35</sup> If Germany were to become a permanent member, then Italy would be the sole European power of the previous century not to have that position.<sup>36</sup> South Korea contests Japan's bid because Japan occupied South Korea during World War II.<sup>37</sup> Pakistan does not want India to join the UNSC until the Jammu and Kashmir issues are resolved.<sup>38</sup> All of this opposition questions the merits of adding certain countries as permanent members because they might not adequately represent their region.

## **Reasons for Additional Permanent Seats**

### ***The UNSC Would Become More Representative***

Currently, the Council is a remnant of post-World War II powers.<sup>39</sup> Proponents of UNSC reform argue that the UNSC would become more representative geographically and politically if additional permanent seats were added. Since the world has changed, advocates of more UN permanent members feel that the Council's membership should also be altered to reflect global power dynamics post-WWII. Policymakers in this camp argue that although the non-permanent members are required to be from different regions, the Council as a whole is not representative. While four permanent members are Western, only one (China) is a developing country. In addition, there are no permanent

members from the Southern hemisphere, Latin America, Africa, or the Middle East.<sup>40</sup> Arguably, the UNSC no longer consists of the world's five most important countries.<sup>41</sup>

Based on India's population and emerging economic status, India is considered one of the world's most important nations, and as such is at the heart of this debate. India is the second most-populous country in the world and an emerging economic power, causing many to argue that India should become a permanent member. As then-United Kingdom Prime Minister Tony Blair said, "India is a country of 1.2 billion people. For India not to be represented on the Security Council is, I think, something that is not in tune with the modern times in which we live."<sup>42</sup> In addition, India is the world's largest democracy and has one of its top economies.<sup>43</sup> An emerging economic power of approximately one-sixth of the world's population would seem to have a legitimate right to be on any modern-day, reformed UNSC.<sup>44</sup> However, India as an additional permanent member would likely add more complications to UNSC power dynamics that would make the Council's operations less effective for all countries involved.

### **The Case Against Additional Permanent Seats**

For multiple reasons, there should not be additional UNSC permanent seats.

Since there are already non-permanent members from throughout the world, new additional permanent seats would be redundant. Additional permanent members with veto power would make it more difficult for the UNSC to function. Furthermore, more such members would likely cause the U.S. to act unilaterally more frequently. On the whole, these arguments make a compelling case as to how additional permanent seats would not be feasible.

### ***There Already Are Geographically-Representative Non-Permanent Members***

There are already non-permanent members from the different regions of the world. In addition to the permanent members, the UNSC consists of ten non-permanent members who are geographically representative of the world. The UN General Assembly, which consists of all UN members, chooses these members for two-year terms in staggered elections.<sup>45</sup> Non-permanent members cannot run for immediate re-election to the UNSC;<sup>46</sup> therefore, they would not be able to serve on the UNSC for more than two years at a time. The geographic distribution of those members is the following: five from Africa and Asia, two from Latin America, two from Western Europe and other regions, and one from Eastern Europe.<sup>47</sup>

The UNSC does not have to add more permanent members to fully represent other areas, including Africa and South America. Even though



non-permanent members may wield less explicit power than permanent members, they are not necessarily less influential.<sup>48</sup> In early 2011, India was given the duty of chairing the UNSC post-September 11, 2001 committee in charge of fighting terrorism.<sup>49</sup> They still have voting power, although not the veto power. They could still convince other UNSC members to act in certain ways.

### ***More Permanent Seats Would Make it Harder for the UNSC to Operate***

The addition of permanent seats, especially if they have veto power, would make it even more difficult for the UNSC to function. Already, any substantive action of the UNSC could be null if one permanent member votes against it. Additional permanent members would only increase the chance of such occurrences. Even if they could not issue vetoes, expansion of permanent membership would lead to more nations having to agree on resolutions, as shown in the 2011 UNSC power dynamics. Thus, it still would be more challenging for the UNSC to operate. Furthermore, the increased difficulty in the functioning of the UNSC would cause the UNSC to be less effective, and even the decision about which countries to grant permanent membership to would be a resource and time-intensive initiative that would divert the Council from its international peacekeeping mission.<sup>50</sup>

### ***United States Unilateralism in the UN and the UNSC***

During the early years of the UN, the U.S. dominated UN councils.<sup>51</sup> Even now, the U.S. is the most powerful UNSC member.<sup>52</sup> For example, when it was clear that the UNSC was not going to do what the U.S. wanted regarding Iraq in 2003, the U.S. acted on its own without the UNSC. The U.S. is the largest financial contributor to the UN, with a share of 22 percent of the UN's budget in 2009.<sup>53</sup> The U.S. has been an important player to the current effectiveness of the UN and the UNSC.

The U.S.'s handling of the invasion of Iraq in 2003 shows that the U.S. can act unilaterally, without regard to the UN or the UNSC. While France, Russia, and China opposed the use of force to address the Iraqi political situation, the U.S. and the U.K. wanted the UNSC to pass a resolution that would authorize force to disarm Iraq.<sup>54</sup> When it was known that the UNSC would not pass the resolution,<sup>55</sup> the U.S. and the U.K. acted without the UN's approval and launched Operation Iraqi Freedom on March 19, 2003.<sup>56</sup> The U.S.'s action shows that the UN and the UNSC are not completely effective in influencing the actions of the most powerful countries. Without the approval of the UNSC, the U.S. attacked Iraq.

In "Above and Beyond International Law: George W. Bush as the Austinian Sovereign," Washington University School of Law Professor Ali Khan

wrote, “President Bush has gone to war on Iraq without the approval of the UN Security Council. The question remains whether the United Nations... has now, in the President’s own words, become ‘irrelevant.’”<sup>57</sup> In addition, Khan wrote, “George Walker Bush is willing to be guided by the principles and maxims of the United Nations Charter. He would have been pleased to obtain a resolution that supported his option for war. But international law cannot be allowed to restrain his options, for President Bush, as the Austinian Sovereign, is fully empowered to ‘abrogate the Charter at his pleasure.’”<sup>58</sup> In the same article, Khan wrote, “The norms of international law are valid only if the President says so. And if the President says a norm of international law is binding on other nations, it is, even if the same norm is not binding on the United States.”<sup>59</sup> Therefore, based on historical precedent, additional seats would not make the UNSC more equitable or representative if the U.S. continues to exercise this kind of power and legal interpretation regarding UN legitimacy and authority.

## India Case

So far, this article has discussed general arguments for and against UNSC permanent seat expansion. India stands as an appropriate case study to develop this argument. As shown in the Tony Blair quotation from earlier, India is a flashpoint of debate. India is

one of the most likely possible permanent members because at least four of the five permanent members support India’s bid to become a UNSC permanent member.<sup>60</sup> Familiar with the UN and the UNSC, India was an original UN member.<sup>61</sup> In addition, India has participated in much of UN’s peace-keeping work.<sup>62</sup> India is a current UNSC non-permanent member. It has had that role several times in the past: 1950-51, 1967-68, 1972-73, 1977-78, 1984-85, and 1991-92.<sup>63</sup> This India case study, however, is illustrative of why there should not be additional seats.

India has been trying to become a permanent member as part of Indian Prime Minister Manmohan Singh’s agenda. India has reciprocal arrangements with other countries seeking permanent seats on the UNSC.<sup>64</sup> In the past, the U.S. had opposed this bid because of the Indo-Pakistan centric South Asia policy. Since Pakistan had been viewed as a key ally of the U.S. in the U.S.’s war against terrorism, and Pakistan opposed India becoming a permanent member, the U.S. did not want to upset Pakistan by supporting India’s bid.<sup>65</sup> Now, however, India’s effort is supported by the U.S., the U.K., France, and Russia.<sup>66</sup>

The addition of India would cause more gridlock and stalemates in the UNSC. Since India is an opponent of permanent member China,<sup>67</sup> the veto might be used more frequently. If this leads to increased stalemates and

makes the UNSC less able to act on major actions, the UNSC would be less effective. Furthermore, even though the United States would have approved India's status as a new permanent member, the U.S. would sometimes disagree with India based on India's UN voting record and might act more unilaterally without regard to the UNSC. If the UNSC adds permanent members, the U.S. would see its veto power diluted; the U.S. would also come into conflict with new permanent members. Five of the leading candidate countries to join the UNSC as permanent members have voted against the U.S. more than 70 percent of the time in the UN.<sup>68</sup> In addition, India has opposed sanctions against Tehran and did not support UN General Assembly resolutions regarding human rights violations in Iran, Myanmar, and North Korea. India has been criticized for its voting record at the UN Human Rights Council, which aligned India with autocratic countries such as Saudi Arabia and Cuba rather than other democracies.<sup>69</sup>

Thus, although the U.S. might directly support new permanent members, perhaps partly as a matter of fairness, it seems likely that the new members would continue trends of voting against the U.S. most of the time. Hence, the U.S. might use its veto more frequently, preventing the UNSC from taking action on substantive matters and causing the UNSC to be less effective. Already, since 1984,

with 43 vetoes, the U.S. has used the veto more than the other permanent members combined.<sup>70</sup> As this case illustrates, even the best candidate for permanent membership brings its own set of problems.

## **Alternative Proposals**

Adding permanent members is problematic, but there are other proposals for UNSC reform. In recent years, there have been multiple proposals to add seats to the Council. Those plans vary in the number and types of potential new additional seats proposed (including permanent, non-permanent, and semi-permanent seats). Some also call for permanent members, but would not require these new members to have veto power.

The two main proposals in this camp come from the Group of Four (Germany, Japan, India, and Brazil), and the Uniting for Consensus group. The Group of Four's idea is to expand the Security Council from 15 to 25 members by adding six permanent members without veto power (one each of those four nations and two for Africa) and four non-permanent seats. While the U.K. and France support this plan, China opposes it.<sup>71</sup> The Uniting for Consensus Group, which Italy relaunched in 2006, opposes the addition of permanent seats because those positions violate sovereign equality. As President Musharraf said, "We are against creating new centers of pow-

er.”<sup>72</sup> Instead, Uniting for Consensus advocates adding 10 non-permanent members to the Council. Argentina, Canada, Italy, Mexico, Pakistan, South Korea, Spain, and Turkey are the main advocates of this plan.<sup>73</sup> They developed this plan because as secondary powers in their regions they would not like the major countries to become permanent members.

Calls for reform have also come from UN leaders. When Malaysian Razali Ismael held the symbolic role of President of the UN General Assembly for a year in 1996, he wanted to reform the UNSC. Feeling that the UNSC was a pawn of the powerful countries, he favored expanding it so that it could be more representative.<sup>74</sup> In March 1997, Razali introduced his plan, which would have added five permanent members (from three developing countries and two developed ones) without veto power and four non-permanent members to the UNSC. Most members of the non-aligned group thought that his plan favored industrialized nations too much.<sup>75</sup> During the following September, Razali’s plan failed, satisfying the five current permanent members.<sup>76</sup>

Another idea for the expansion of the UNSC would be the creation of semi-permanent members. Under this plan, only some non-permanent members would be able to run in an immediate

reelection. Those members would be semi-permanent members. This idea is less drastic than other proposals, but it would create an intermediate category that many countries would want to join.<sup>77</sup> However, as some countries would want to remain on the Council, this proposal would result in a lower turnover of non-permanent members.<sup>78</sup> There is not much agreement about this proposal’s content, including which countries would get the proposed long-term seats.<sup>79</sup>

## Conclusion

The UNSC reflects the post-World War II power structure, and thus, it is the subject of proposals of reform. Adding permanent member seats to the Council, however, would be counterproductive because they would cause further gridlock and cause the UNSC to be even less effective. Some proposed reforms that do not call for the addition of permanent member seats may be options for making the Council more representative without sacrificing functionality and effectiveness. These options need to be investigated further. Countries such as India and Brazil should consider other means of working their way on to the UNSC, as additional permanent member seats with veto power would be problematic. ▀

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## Interview with Gene Dodaro

*Interview by Marcus Cerroni*

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**Gene L. Dodaro** became the eighth Comptroller General of the United States and head of the U.S. Government Accountability Office (GAO) on December 22, 2010, when he was confirmed by the United States Senate. He was nominated by President Obama in September of 2010 and had been serving as Acting Comptroller General since March of 2008. Mr. Dodaro has testified before Congress dozens of times on important national issues, including the nation’s long term fiscal outlook, efforts to reduce and eliminate overlap and duplication across the federal government and GAO’s “High Risk List” that focuses on specific challenges from reducing improper payments under Medicare and Medicaid to improving the Pentagon’s business practices. In addition Mr. Dodaro has led efforts to fulfill GAO’s new audit responsibilities under the Dodd-Frank Wall Street Reform and Consumer Protection Act, under the American Recovery and Reinvestment Act—the stimulus legislation designed to combat the economic downturn, and under the TARP program to help stabilize financial markets and institutions. As Comptroller General, Mr. Dodaro helps oversee the development and issuance of hundreds of reports and testimonies each year to various committees and individual Members of Congress. These and other GAO products have led to hearings and legislation, billions of dollars in taxpayer savings, and improvements to a wide range of government programs and services.

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**How would you describe the mandate of the GAO and the primary functions it performs? How would you characterize the role the GAO plays in the public sector?**

The U.S. Government Accountability Office (GAO) is an independent agency

in the legislative branch. We’re sometimes called the “investigative arm of Congress” or the “congressional watchdog” because we examine how taxpayer dollars are spent and advise lawmakers and agency heads on ways to make government work better.

Our mission is to support Congress in meeting its constitutional responsibilities and to help improve the performance and ensure the accountability of the federal government for the benefit of the American people. We audit agency operations; investigate allegations of illegal and improper activities; report on how well government programs and policies are meeting their objectives; perform policy analyses and outline options for congressional consideration; and issue legal decisions and opinions, such as bid protest rulings and reports on agency rules.

GAO provides Congress with oversight of federal programs, insight into ways to improve government, and foresight into long-term trends. GAO issues hundreds of studies each year that examine the full breadth and scope of federal activities and programs—both nationally and internationally. Recent GAO work has addressed the use of Recovery Act and TARP funds, overlap and duplication in federal programs, the conflicts in Iraq and Afghanistan, problems in mortgage financing, food safety, climate change, postal reform, and the financial pressures facing state and local governments. We've also begun to carry out important new responsibilities under the Dodd-Frank Wall Street Reform and Consumer Protection Act and the Patient Protection and Affordable Care Act.

Although much of our work reviews the effectiveness of day-to-day gov-

ernment operations, GAO also stays alert to emerging trends that warrant policymakers' attention—from new security threats and the impact of globalization to the challenges posed by our aging population. By making constructive recommendations to improve government operations, GAO not only enhances government efficiency but also helps build public trust in government.

**In your keynote speech to the National Academy of Public Administration, you argued that there are many more things that the federal government should do: from inspecting a higher percentage of foreign drug production, to limiting the error rates in unemployment insurance, to more efficiently managing government contracts. In your opinion, what are the top issues for our public representatives to address?**

Beyond the immediate need to spur economic growth and job recovery, our central challenge is to return government to a more prudent long-term fiscal path. The financial crisis and the resulting economic downturn occurred against a backdrop of fiscal trends that were unsustainable even before these shocks.

For several years, GAO has published long-term economic fiscal simulations illustrating this structural imbalance. GAO's most recent update on the government's long-term fiscal outlook



showed that the provisions of the Budget Control Act of 2011, which requires at least \$2.1 trillion in deficit reduction through 2021, have improved the federal government’s fiscal outlook.

Even with this legislation, however, GAO’s simulations show that there is still a longer term problem that needs attention. Returning to a sustainable path will require addressing the major drivers of the federal budget—demographics, rising health care costs, and revenues.

Given the government’s fiscal pressures, the need to wring every excess dollar out of the federal budget and ensure that taxpayers are getting their money’s worth has never been greater. Government efficiency and effectiveness are imperative. Three areas where progress is essential are federal contract management, improper payments, and the “tax gap”—the difference between taxes owed and paid.

**Many of the solutions you suggest rely on the influence and discretion of federal managers, and you prescribe what seems to be a clearly defined management philosophy for these individuals. How did you develop this philosophy?**

As a career civil servant, I know the difference that dedicated federal employees have made and continue to make on behalf of our country. My management philosophy was developed over a 30-plus year career in

the federal government reviewing the operations and the structure of federal departments and agencies and developing internal controls and other standards for evaluating their performance.

At GAO, I make it a point to get to know people and try to match their strengths and interests with our institutional needs. People are key to producing the high-quality reports and testimonies that are at the heart of what GAO does for Congress and the nation. Having the right person in the right job is essential. I’ve also made it a point to meet with as many members of Congress as possible, particularly the committee chairs and ranking members. There’s no better way to understand and be responsive to their information needs and priorities.

**Some of the solutions you recommend in your speech will also require funds the government does not seem to have. How effective can your proposals be if the current budget conditions do not change?**

Clearly, lean federal budgets are likely for some time to come. In many cases, however, the ability of managers to deliver better results depends less on the appropriation of additional funds than on the reprioritizing of resources to provide the greatest possible return on investment. In recent work, GAO has identified many opportunities across government for agencies to reduce duplication and overlap in federal programs.

Across government, federal managers must think more strategically and creatively. They will need to work smarter and, in some cases, figure out ways to do more with less. Are their agencies properly shaped and sized? Do they have the right people in the right jobs? Have they planned for changing resource levels?

**How have the recent cuts in the federal budget affected the GAO's ability to perform its current oversight functions?**

Agencies across government are having to tighten their belts, and GAO is no exception. Over the past two years, GAO has absorbed budget reductions totaling \$45 million—an 8-percent budget cut. By looking ahead and being prepared, we were able to avoid reductions in force, furloughs, and field office closings while ensuring our ability to produce high-quality work.

For now, we've eliminated all but essential hiring. My concern is that further staff reductions could undermine GAO's ability to provide Congress with the timely, insightful analyses it needs to tackle our nations' challenges. In fiscal 2012, for the first time in more than 75 years, GAO's staffing level will drop below 3,000 employees. In the long-run, investments will be needed to rebuild GAO's workforce to replace departing staff and purchase new technology so that we can continue to meet Congress' information needs.

**Some of the issues you discuss, particularly regarding our long-term fiscal outlook, require a large amount of political cooperation. How would you describe the political climate in Washington in light of the recent failure of the super-committee? How does political polarization affect your agency's work?**

GAO works hard to maintain its reputation for being nonpartisan and nonideological. We routinely reach out to members of both parties and the executive branch to develop constructive solutions to our nation's problems. We've faced divisive periods and issues in the past, but the American people have always come together for the sake of the greater good. I'm an optimist at heart and believe, in the end, that will hold true for the challenges we face today. ▀

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## S u b m i s s i o n   G u i d e l i n e s

**W**e solicit contributions for consideration with a view to publication. *The Cornell Policy Review* is the public policy journal of the Cornell Institute for Public Affairs (CIPA). We are a student-run, non-partisan journal dedicated to publishing interdisciplinary work that focuses on a range of political, social, economic, and environmental policymaking issues. *The Review* welcomes submissions that will advance the journal's mission to showcase critical work shaping the body of knowledge of policymaking and administration issues in the years to come. Submissions should present a well-supported point of view and offer provocative policy recommendations.

Article submissions should range from 5,000 to 7,000 words and must include a 100-word abstract. Commentary submissions should run roughly 3,000 to 5,000 words. Work must be original and unpublished. Citations must be formatted as endnotes according to the Chicago Manual of Style. All text must be double-spaced and submitted with Times New Roman font size 12. A cover letter should include the author's name, address, e-mail address and phone number.

Please submit one (1) electronic copy in Microsoft Word (.doc) format to email: [thereview@cornell.edu](mailto:thereview@cornell.edu)

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