

2009

The Millennium Challenge Account: Influencing Governance in Developing Countries Through Performance-Based Foreign Aid

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Rebecca Stubbs, The Millennium Challenge Account: Influencing Governance in Developing Countries Through Performance-Based Foreign Aid, 42 *Vanderbilt Law Review* 621 (2021)
Available at: <https://scholarship.law.vanderbilt.edu/vjtl/vol42/iss2/6>

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The Millennium Challenge Account: Influencing Governance in Developing Countries Through Performance-Based Foreign Aid

ABSTRACT

The United States actively impacts the legal and political environments of developing countries through the Millennium Challenge Account (MCA). This new approach to foreign development aid presents both an incredible opportunity to encourage good governance as well as a serious danger of U.S. political agendas manipulating foreign aid to serve partisan interests. The MCA should seek to develop a nonpartisan strategy and focus primarily on pure rule of law, governance, and political freedom indicators and programming in order to maintain its current successes in improving the legal and policy environment of developing countries competing for MCA funding.

The direction and mandate of the Millennium Challenge Account is important for several reasons. Although some might consider the U.S. position on foreign aid to be a policy issue, much of law encompasses policy and the two simply cannot be divorced. The United States, in organizing U.S. foreign aid around specific indicators of what it considers “good governance,” is necessarily impacting both the political and legal environments of developing countries seeking results-based foreign aid. Preliminary studies have documented the tangible impact of the MCA through the “MCA Effect.” Developing countries are changing domestic laws and policies specifically in order to qualify for MCA funding. MCA funding disbursements, or “Compacts,” are also directly influencing governance and the rule of law through various programming mandates.

As this paper will demonstrate, it is vital that the MCA develop a non-partisan approach to assessing countries and allocating foreign aid in order to maintain fair and consistent relationships with MCA countries. Past experience has demonstrated a tendency to use foreign aid for purposes of political expediency—such as rewarding political allies or

shoring up failed states—rather than for purely development or poverty alleviation purposes. However, because the MCA has been designed to reward good governance regardless of U.S. interests, it is vital to maintain the separation between political expediency and the development purposes of the MCA. This can best be achieved by cultivating a more direct focus on governance reform and the rule of law, both in determining aid eligibility and in disbursing funds for development initiatives.

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I. THE MILLENNIUM CHALLENGE ACT: RETHINKING U.S. FOREIGN AID

The ability of U.S. foreign aid to generate sustainable progress in developing countries has increasingly come into question as poverty and crisis continues to envelop much of the developing world. Despite increased levels of foreign aid spending, key indicators in the late 1990's pointed to negative trends in economic development in the poorest countries.¹ For instance, despite the U.S. contributing \$144 billion of foreign aid to 97 countries between 1980 and 2000, the median gross domestic product (GDP) per capita in countries receiving aid declined from \$1,076 to \$994.² Former Secretary of State Colin Powell emphasized the problem of poverty and potential implications to the U.S. in his 2003 op-ed introducing the Millennium Challenge Act to the American public:

Half the human race—3 billion people—still lives on less than \$2 a day. More than 1 billion do not have safe water to drink. Two billion lack adequate sanitation. Another 2 billion have no electricity. These aren't numbers but men, women and children who wake up each day to

1. LARRY NOWELS, CONG. RES. SERV., FOREIGN AFF., DEF., & TRADE DIV., THE MILLENNIUM CHALLENGE ACCOUNT: CONGRESSIONAL CONSIDERATION OF A NEW FOREIGN AID INITIATIVE, at CRS-4 (2003), available at <http://fpc.state.gov/documents/organization/39340.pdf>.

2. Representative Jim Kolbe, Remarks to the Advisory Committee on Voluntary Foreign Aid (ACVFA) (Oct. 9, 2002), available at http://www.usaid.gov/about_usaid/acvfa/acvfaKolberemark100802.pdf.

hunger, disease and despair. Lifting humanity out of poverty is one of the greatest moral challenges of the 21st century. And whether we, the world's greatest democracy, rise to that challenge carries profound implications for freedom, growth and security worldwide.³

The Millennium Challenge Act of 2003 (the Act) attempted a novel approach to the problem of ineffective U.S. foreign aid. According to Daniel Kaufmann and Aart Kraay of the World Bank, “[the Act] represents a major policy shift by a donor in moving to an allocation criteria which places governance issues center stage, and which relies on highly transparent and objective empirical allocation criteria.”⁴ The Act appropriates foreign aid to specific infrastructure and economic development grants in developing countries showing a commitment to (1) governing justly, (2) investing in their people, and (3) encouraging economic freedom.⁵ It allows eligible countries to design their own programs based on internally identified priorities and increases host-country ownership, accountability, and control.⁶ The Act was passed by Congress and signed into law by President George W. Bush on January 23, 2004.⁷ It established an independent government entity, the Millennium Challenge Corporation (MCC), and created the Millennium Challenge Account (MCA) as a clearinghouse for “results-based” foreign aid.⁸ The original MCA, funded with \$1 billion in FY2004, has been allocated approximately

3. Colin Powell, Op-Ed., *The Millennium Challenge Account: “Aid for the Enterprising,”* WASH. POST, June 10, 2003, available at <http://www.washingtonpost.com/ac2/wp-dyn/A37360-2003Jun9>.

4. Daniel Kaufmann & Aart Kraay, *Governance Indicators, Aid Allocation, and the Millennium Challenge Account*, pt. I (Dec. 2002) (Draft for Discussion, on file with the World Bank), available at http://www.worldbank.org/wbi/governance/pdf/gov_indicators_aid.pdf.

5. Millennium Challenge Act of 2003, 22 U.S.C. § 7701(2) (2006).

6. Millennium Challenge Corp., *Programs and Activities, Millennium Challenge Compacts*, <http://www.mcc.gov/programs/compacts.php> (last visited Feb. 13, 2009) [hereinafter *MCC Compacts*]; Randall Wood, *Incentives and Capacity at the MCC* (Apr. 13, 2006), <http://therandymon.com/content/view/77/97/>. Wood asserts the following:

MCC expects countries to deal with the challenge of designing, developing, and implementing their own programs to encourage a sense of ownership and to ensure popular support for the upkeep and continued involvement in the program. Too many projects completed with international funding have crumbled afterwards due to the country's failure to maintain them, since popular opinion holds that since the donor paid for the project, it is for all practical purposes the donor's project, and the donor should pay again if the project needs repair or additional funds.

Id.

7. USAID OFF. OF THE INSPECTOR GEN., *MILLENNIUM CHALLENGE CORP., SEMIANNUAL REP. TO CONGRESS: APRIL 1, 2004–SEPTEMBER 30, 2004*, at 1 (2004), available at http://www.usaid.gov/oig/public/mcc/mcc_sarc0409.pdf.

8. 22 U.S.C. § 7703 (2006); NOWELS, *supra* note 1, at CRS-2.

\$7.5 billion as of FY2008.⁹ As an example of the importance of the MCA in the foreign aid agenda, the MCA budget request constituted the single greatest line item increase in the foreign operations budget in FY2007.¹⁰ However, funding allocations decreased substantially in FY2008 and FY2009, placing the MCA in a precarious position in light of shifting political power in Washington.¹¹

Although co-sponsored by Republicans and Democrats in Congress, the Millennium Challenge Act was originally viewed by some critics as a Republican-led alternative to USAID, which was—and continues to be—primarily controlled by Democrats.¹² Several political and social factors led to the establishment of the MCA: the failure of compassion-based foreign aid to achieve measurable results;¹³ research by prominent scholars on the benefits of results/governance-based foreign aid;¹⁴ the Millennium Development Goals, adopted by 189 nations at the UN Millennium Summit in September 2000;¹⁵ the terrorist attacks of 9/11 and the new Bush security strategy;¹⁶ and the desire of politicians in both the Republican and Democratic parties to create a signature foreign aid entity.¹⁷

Now in its fourth year, the MCA faces serious pressure from a number of sources seeking to change the organizational structure and

9. S. REP. NO. 110-425, at 59 (2008), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_reports&docid=f:sr425.110.pdf [hereinafter FY2009 SEN. APPROPRIATIONS COMM.]; CURT TARNOFF, CONG. RES. SERV., FOREIGN AFF., DEF., & TRADE DIV., MILLENNIUM CHALLENGE ACCOUNT, at CRS-24, tbl.2 (2008), available at <http://www.fas.org/spp/crs/row/RL32427.pdf>.

10. KAYSIE BROWN ET AL., CENTER FOR GLOBAL DEVELOPMENT, US DEVELOPMENT AID AND THE MILLENNIUM CHALLENGE ACCOUNT: EMERGING TRENDS IN APPROPRIATIONS 1 (2006), available at http://www.cgdev.org/doc/MCA/USDev_Aid_MCA.pdf.

11. TARNOFF, *supra* note 9, at CRS-24, tbl.2.

12. Susanne Soederberg, *American Empire and 'Excluded States': The Millennium Challenge Account and the Shift to Pre-Emptive Development*, 25 *THIRD WORLD Q.* 279, 279 (2004) (calling the Millennium Challenge Account a “moment of American empire”).

13. NOWELS, *supra* note 1, summary.

14. See, e.g., Craig Burnside & David Dollar, *Aid, Policies, and Growth* (World Bank, Policy Research Department, Macroeconomics and Growth Division, Working Paper No. 1777, 1997), available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2000/02/24/000009265_3971023104021/Rendered/PDF/multi_page.pdf.

15. United Nations Development Programme, Millennium Development Goals, <http://www.undp.org/mdg/basics.shtml> (last visited Feb. 13, 2009).

16. THE WHITE HOUSE, THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA 1–4, 21–23 (2002), available at <http://www.globalsecurity.org/military/library/policy/national/nss-020920.pdf> [hereinafter NAT'L SEC. STRATEGY 2002].

17. Niels C. Sorrells, *State Department Bill Eyed as Vehicle for Foreign Aid: Legislative Analysis*, 61 *CONG. Q. WEEKLY* 409 (2003).

programming mandates of the MCA.¹⁸ Compounding these challenges is the recent change in political control in Washington, D.C., following the 2008 Presidential election. With the MCA seen as a Republican initiative and still in its infancy in terms of producing tangible results, it will be a substantial struggle to maintain the autonomy of the program and the consistent inflow of Congressional funding needed to prove the success of the Millennium Challenge Act concept.¹⁹ In fact, the MCC is already feeling the pains of political turmoil. A Democrat-controlled Senate Appropriations Committee recommended FY2009 MCC funding at \$254 million, a life-support budget by any standard.²⁰ President Barack Obama's foreign policy plan involves consolidating all foreign aid initiatives—including the Millennium Challenge Account—under a “restructured, empowered, and streamlined USAID.”²¹ This action would not necessarily

18. The White House has not provided the MCA with its originally-promised level of support. USAID—originally an ally of the Millennium Challenge Corporation—now feels threatened by the possibility of losing funding to the MCC and may be trying to incorporate the MCC into its own monolithic bureaucratic structure. *Foreign Affairs Reform: Successes, Failures, and Next Steps: Hearing Before the S. Comm. on Foreign Relations*, 110th Cong. (2007) (statement of Lael Brainard, Chair, CSIS-Brookings Task Force for Transforming U.S. Foreign Aid), available at http://www.brookings.edu/testimony/2007/0612development_brainard.aspx. Non-government constituents such as the Brookings Institute and the World Bank have been pressuring the MCC to change its corporate structure as well as certain programming and monitoring objectives. *Id.* Finally, Congressional budget appropriations to the MCA have fallen far short of originally promised levels and jeopardize the success of the MCC in delivering the tangible, positive results required for the future viability of the MCA. John Danilovich, MCC CEO Ambassador, Overview Remarks at the Post-Board Public Outreach Meeting (Sep. 14, 2007), available at <http://www.mcc.gov/press/speeches/2007/speech-091407-danilovichatpublicoutreach.php>.

19. See James Fox & Lex Rieffel, *Moving Toward Smarter Aid 1–2* (Brookings Institution, Policy Brief No. 145, 2005), available at http://www.brookings.edu/~media/Files/rc/papers/2005/08development_rieffel02/pb145.pdf (discussing decrease in funding for MCA in the years following its inception).

20. FY2009 SEN. APPROPRIATIONS COMM., *supra* note 9, at 61; Posting of Sheila Herrling to MCA Monitor Blog, http://blogs.cgdev.org/mca-monitor/archives/2008/07/responsible_app.php (July 28, 2008, 11:00 EST) [hereinafter Herrling Post]. By way of comparison, previous allocations had averages around \$1 billion annually. TARNOFF, *supra* note 9, at CRS-24 tbl.2. The Senate Appropriations Committee's recommendation has been postponed until March 2009. Given economic conditions in late 2008, Congress passed a Continuing Resolution ensuring the International Affairs Budget (including the MCA) will be funded at FY2008 levels through the first part of FY2009. U.S. Global Leadership Campaign, International Affairs Budget, FY2009 International Affairs Budget, http://www.usglc.org/index.php?option=com_content&task=view&id=168&Itemid=51 (last visited Feb. 13, 2009).

21. Obama for America, *Strengthening Our Common Security Through Investing in Our Common Humanity: Barack Obama and Joe Biden's Strategy to Promote Global Development and Democracy*, http://www.barackobama.com/pdf/issues/Fact_Sheet_Foreign_Policy_Democratization_and_Development_FINAL.pdf (last visited Feb. 13, 2009) [hereinafter Obama Global Development Strategy]. Obama's strategy includes the following goal:

eliminate the programmatic importance of the MCA, but would significantly limit its autonomy and its perception of independence within the international aid community.

In spite of these challenges, the MCC has generated some incredible success stories. A recent Harvard study found that MCA candidate countries improve an average of 25% more than non-candidate countries on development indicator scores.²² More importantly, countries continue that progress after receiving aid.²³ Madagascar, the first MCA Compact country, cut the cost of business registration by almost 60%, leading to a 26% increase in new business registrations in 2006.²⁴

This Note will attempt to highlight ways in which the Millennium Challenge Account, seen primarily as a policy initiative, is actually influencing the regulatory environment and rule of law in developing countries. It will also make a case for de-politicizing the Millennium Challenge Corporation and focusing primarily on governing justly and improving the rule of law in order to fairly and impartially interact with MCA-eligible countries. This Note proceeds in five parts. Part II briefly touches on the history of U.S. foreign aid and the inception of the Millennium Challenge concept. Part III describes the MCA process and analyzes it in the context of a partisan framework. Part IV highlights the documented successes of the MCA in enacting policy and legal reform, using empirical and anecdotal evidence. This Part then addresses the most significant

Elevate, Streamline and Empower a 21st Century US Development Agency. Barack Obama will lead an effort to modernize our foreign assistance policies, tools, and operations. Obama will coordinate and consolidate PEPFAR, Millennium Challenge Corporation, Middle East Partnership Initiative and many foreign assistance programs currently housed in more than 20 executive agencies into a restructured, empowered and streamlined USAID. He will ensure that this agency has the highest caliber leadership and plays a central role in the formulation and implementation of critical development and related foreign policy strategies. An empowered and elevated agency should be more nimble in the face of change and use tax dollars more responsibly. It is also essential to ensuring that development is established and endures as a key pillar of U.S. foreign policy.

Id.

22. Doug Johnson & Tristan Zajonc, Can Foreign Aid Create an Incentive for Good Governance? Evidence from the Millennium Challenge Corporation 1 (Kennedy School of Government, Working Paper Series, 2006), *available at* <http://ssrn.com/abstract=896293>.

23. *See generally* John J. Danilovich, *Africa and the MCC: Partnerships for Progress, A Legacy of Results*, AFR. J., Winter 2008, at 28, 30, *available at* http://www.africancl.org/AfricaJournal/AJ_WINTER_2008.pdf (documenting programs and success stories in eleven African countries receiving MCA Compacts).

24. Press Release, Millennium Challenge Corp., International Finance Corporation Report Identifies MCC Partner Countries as Leaders in Policy Reform (Sept. 27, 2007), *available at* <http://www.mca.gov/press/releases/2007/release-092707-ifcreport.php>.

challenges faced by the MCA to date, namely the danger of partisanship derailing the MCA's reform efforts and the implications of allowing the MCA to become a politically polarized organization. Part V suggests that the MCA focus primarily on regulatory and governance initiatives in both its initial indicators and in Compact development in order to avoid being overly influenced by either the Republican or Democrat political agenda. It also outlines ways the MCC can reinvent itself as an apolitical organization, utilizing the World Bank as a reference. Part VI concludes.

II. THE HISTORY OF U.S. FOREIGN AID: DISAPPOINTING RESULTS AND NEW APPROACHES

Foreign monetary assistance to support struggling economies is a well-established concept both in the United States and the international community.²⁵ However, disappointing results and increasing disenchantment with the established system of distributing aid led to heated academic discourse in the 1990s on the ability of foreign aid to generate sustainable results.²⁶ The development debate culminated with a consensus on the Millennium Development Goals in 2000.²⁷ This strategy shift in the foreign aid community coincided almost exactly with an increased U.S. national interest in foreign development precipitated by the terrorist attacks of September 11 and a growing sense of moral obligation by the American public.²⁸ Finally, the political environment in the U.S. was conducive to a major foreign aid initiative.²⁹ The primary aid agency, USAID, was increasingly seen as having a strongly liberal agenda

25. For instance, the World Bank and the International Monetary Fund were both created during the Bretton Woods Agreement, following World War II. WORLD BANK, A GUIDE TO THE WORLD BANK 29 (Paul McClure ed., 2003). These two systems were primarily designed to support struggling economies in the hopes of preventing future conflict. *Id.*

26. See, e.g., DAVID DOLLAR & LANT PRITCHETT, THE WORLD BANK, ASSESSING AID: WHAT WORKS, WHAT DOESN'T, AND WHY (1998), available at http://books.google.com/books?hl=en&id=y3T6Dnjxt1sC&dq=assessing+aid++what+works,+what+doesn%27t,+and+why&printsec=frontcover&source=web&ots=bLmB03y2PH&sig=AxMBGKeNXl4shib0frIWSsCca4&sa=X&oi=book_result&resnum=2&ct=resultP1,M1<http://go.worldbank.org/HNXL7DP3J0>. This research was primarily led by the World Bank and is discussed below. The World Bank remains heavily involved with the MCA by providing a majority of indicator data. Millennium Challenge Corporation, Selection Indicators, <http://www.mcc.gov/selection/indicators/index.php> (last visited Feb. 13, 2009). The World Bank Institute directly provides 5 of the 17 eligibility indicators to the MCC. *Id.*

27. United Nations Millennium Development Goals, Background, <http://www.un.org/millenniumgoals/bkgd.shtml> (last visited Feb. 13, 2009).

28. NAT'L SEC. STRATEGY 2002, *supra* note 16, at v, 21–22, 28.

29. See *id.* at iii–v (extolling America's opportunity to fight terrorism by spreading its values of freedom and democracy across the world).

and the Bush Administration was interested in creating its own signature foreign aid program.³⁰

A. Research and International Consensus

The concept of tying aid disbursement to countries demonstrating good governance and measurable results is not a new idea. However, prominent scholars in the late 1990s finally brought the ineffectiveness of foreign aid to the forefront of the political consciousness. In November 1998, the World Bank issued a study, *Assessing Aid: What Works, What Doesn't, and Why*, assessing foreign aid trends of the 1990s and their effectiveness in reducing poverty.³¹ Dollar and Pritchett reach two important conclusions relevant to the MCA. They first introduced the “selectivity” argument, suggesting that supporting good institutions, laws, and policies was at least as important in effective development assistance as providing capital.³² The authors also argue that “there is no relation between financial development assistance and economic growth, unless a differentiation is made between countries exercising good governance and those who do not.”³³ Following *Assessing Aid* was a significant 1999 report by Paul Collier and David Dollar: *Aid Allocation and Poverty Reduction*.³⁴ Finally, in 2000, Craig Burnside and David Dollar released a report, *Aid, Policies, and Growth*, revealing the results of an intensive study that tracked aid spending and results in 56 developing countries from 1970–1993.³⁵ The Burnside and Dollar report identified key issues hindering the effectiveness of foreign aid

30. “The president's decision to establish an independent agency was a clear vote of no confidence in the 10,000-strong Agency for International Development (USAID).” LAEL BRAINARD, *THE OTHER WAR 2* (2003). Numerous commentators, both supporters and critics, have recognized the MCA as Bush's “signature foreign aid program.” See, e.g., Michael A. Fletcher & Paul Blustein, *With New Leader, Foreign Aid Program Is Taking Off: Millennium Challenge Will Give More Grants to Well-Governed Nations*, WASH. POST, Jan. 31, 2006, at A15, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/01/30/AR2006013001415.html>; Joshua Kurlantzick, *Bush's Fake Aid: The President's \$5 Billion Program Does More for Foreign Banks Than the Needy*, ROLLING STONE, Mar. 10, 2006, available at http://www.rollingstone.com/politics/story/9448194/bushs_fake_aid; Center for Global Development, *MCA Monitor Blog, Who is Watching the MCC?*, http://blogs.cgdev.org/mca-monitor/archives/2005/06/who_is_watching.php (June 20, 2005, 19:06 EST).

31. See DOLLAR & PRITCHETT, *supra* note 26.

32. *Id.* at 14, 37, 53, 117.

33. *Id.* at 37.

34. See Paul Collier & David Dollar, *Aid Allocation and Poverty Reduction*, 46 EUR. ECON. REV. 1475 (2002), available at http://www.sciencedirect.com/science?_ob=MIimg&_imagekey=B6V64-44B6VR3-1-32&_cdi=5804&_user=86629&_orig=browse&_coverDate=09%2F30%2F2002&_sk=999539991&view=c&wchp=dGLbVlb-zSkWb&md5=27ca672965c9f8bd1cfc1a3d3982d281&ie=/sdarticle.pdf.

35. Burnside & Dollar, *supra* note 14, at 2.

and provided a conceptual and empirical impetus for implementing performance-based aid.³⁶ They found that aid has a positive impact on growth in developing countries with good fiscal, monetary, and trade policies but has little effect in the presence of poor policies.³⁷ These reports severely undermined prior aid strategies of USAID and other international aid programs—which focused more on compassion- or crisis-based aid disbursements regardless of governance—and paved the way for a performance-based program such as the MCA.³⁸

Research on aid effectiveness coincided almost exactly with increased international awareness of the necessity of foreign aid. World leaders met at the UN Millennium Summit in September 2000 and agreed to “a set of timebound and measurable goals and targets for combating poverty, hunger, disease, illiteracy, environmental degradation and discrimination against women.”³⁹ The eight Millennium Development Goals (MDGs) are to (1) eradicate extreme poverty and hunger; (2) achieve universal primary education; (3) promote gender equality and empower women; (4) reduce child mortality; (5) improve maternal health; (6) combat HIV/AIDS, malaria, and other diseases; (7) ensure environmental sustainability; and (8) develop a global partnership for development.⁴⁰ The Millennium Declaration, signed on September 18, 2000, established 2015 as the date to achieve these goals and set forth various implementation objectives and monitoring mechanisms.⁴¹

36. *Id.* at 5, 10–15, 33–34.

37. *Id.* at Summary Findings.

38. The seemingly conclusive findings of the Burnside and Dollar report have recently been questioned by several prominent foreign aid scholars. *See, e.g.*, William Easterly et al., *Aid, Policies, and Growth: Comment*, 94 AM. ECON. REV. 774 (2004) (using the same specifications with additional data points included, and finding an insignificant relationship between policies and aid success). Burnside and Dollar reexamined their initial conclusions using data from the 1990s and again concluded that aid would be more effective in a sound policy environment. Craig Burnside & David Dollar, *Aid, Policies and Growth: Revisiting the Evidence* (World Bank, Policy Research Department, Macroeconomics and Growth Division, Working Paper No. 3251, 2004), available at http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2004/04/21/000009486_20040421103444/Rendered/PDF/wps3251Aid.pdf. In a 2004 reply, Burnside and Dollar conclude, “aid directed to countries with good policies will be more likely to produce good results.” Craig Burnside & David Dollar, *Aid, Policies, and Growth: Reply*, 94 AM. ECON. REV. 781, 784 (2004).

39. Rajiv Fernando, *Development: A New Breed of Hero*, INTER PRESS SERVICE, Aug. 11, 2007, available at <http://www.ipsnews.net/news.asp?idnews=38864>.

40. United Nations, Millennium Development Goals, *supra* note 27.

41. Millennium Declaration, G.A. Res. 55/2, ¶¶ 19, 31, U.N. Doc. A/RES/55/2 (Sept. 18, 2000). The MDGs are an important initiative in developing countries, especially as the halfway point was reached in 2008. *The Mail & Guardian*, one of South Africa’s leading newspapers, in conjunction with the UN Millennium Campaign, is conducting exclusive interviews with African presidents about their countries’ progress towards achieving the MDGs. The October 10, 2008, edition interviewed Kenya’s president and published a full-page report documenting Kenya’s successes and

The Millennium Development Goals clearly influenced the creation of the MCA.⁴² The relationship between the MDGs and the MCA can best be conceptualized as an ends—means relationship. The Millennium Development Goals memorialize an international commitment to achieving the eight most vital development objectives by 2015, while the MCA represents the United States' primary strategy to help achieve those objectives through economic growth.⁴³

B. Altruism, Obligation, and the “Moral Imperative” in the United States

Including all of the world's poor in an expanding circle of development—and opportunity—is a moral imperative and one of the top priorities of [U.S.] international policy.⁴⁴

This statement by President Bush in 2002 exemplified the changing view toward foreign development assistance in the United

challenges in achieving the MDGs by 2015. Kenya Environmental & Political News Weblog, Interview: President Kibaki Talks About MDG Progress in Kenya (Oct. 22, 2008), <http://kenvironews.wordpress.com/2008/10/22/interview-president-kibaki-talks-about-mdg-progress-in-kenya/>.

42. President George W. Bush, Remarks by the President on Global Development to the Inter-American Development Bank (Mar. 14, 2002), available at <http://georgewbush-whitehouse.archives.gov/news/releases/2002/03/20020314-7.html>. President Bush said:

The needs of the developing world demand a new approach. In Monterrey, we have a tremendous opportunity to begin acting on a new vision of development. This new vision unleashes the potential of those who are poor, instead of locking them into a cycle of dependence. This new vision looks beyond arbitrary inputs from the rich, and demands tangible outcomes for the poor.

America supports the international development goals in the U.N. Millennium Declaration, and believes that these goals are a shared responsibility of developed and developing countries. To make progress, we must encourage nations and leaders to walk the hard road of political, legal and economic reform, so all their people can benefit.

Id.

43. *Id.* However, this unilateral, market-driven approach has not been fully embraced by all those in the foreign aid community. See, e.g., JEFFREY SACHS, *THE END OF POVERTY: ECONOMIC POSSIBILITIES FOR OUR TIME* 18, 73 (2005) (describing economic development as a “ladder with higher rungs representing steps up the path of economic well-being” and encouraging rich countries to “invest enough so that [the poorest] countries can get their foot on the ladder”). Many development scholars have taken issue in particular with the lack of multi-national collaborative aid efforts by the United States. See, e.g., Steven Radelet, *The Millennium Challenge Account: Transforming US Foreign Assistance Policy?*, 11 *AGENDA* 53, 65–67 (2004), available at <http://epress.anu.edu.au/agenda/011/01/11-1-A-4.pdf> (outlining the potential benefits of a multilateral approach); see also Gene Sperling & Tom Hart, *A Better Way to Fight Global Poverty: Broadening the Millennium Challenge Account*, 82 *FOREIGN AFF.* 9, 10 (Mar./Apr. 2003).

44. NAT'L SEC. STRATEGY 2002, *supra* note 16, at 21.

States. In addition to questioning the benefits of compassion- or crisis-based foreign aid, by the late 1990's the foreign aid community had renewed criticisms of the minimal amount of foreign aid donated by major donors, particularly the U.S.⁴⁵ In 2001, U.S. Official Development Assistance (ODA) totaled just under \$11 billion, amounting to 0.11% of U.S. gross national income (GNI), roughly similar to GDP.⁴⁶ The Organization for Economic Cooperation and Development (OECD) ranked the U.S. last of the twenty-two listed donor governments in terms of aid disbursed as a percentage of GNI.⁴⁷ These dismal statistics helped provide the incentive for increased government attention to foreign aid in the early 2000s. U.S. citizens also began more strongly supporting foreign aid funding, leading to a more receptive policy environment in which to introduce the MCA.⁴⁸

It should be noted that, despite increased foreign aid through the MCA and other aid initiatives, lack of funding remains a serious concern. The last official data, collected in 2005, reported the U.S. ODA at \$28 billion, the largest of all official donations by an individual country.⁴⁹ However, this still accounts for only 0.22% of GNI.⁵⁰ The OECD again ranked the U.S. poorly: 20 out of 22 listed donor governments in terms of ODA as a percentage of GNI.⁵¹ The *Index of Global Philanthropy* ultimately found that the U.S. was the largest donor of foreign aid, but the majority of donations (\$95.5 billion, or 79% of U.S. aid) came from private foundations,

45. SACHS, *supra* note 43, at 1.

46. Organization for Economic Cooperation and Development, Table 1: Net Official Development Assistance Inflows in 2001, <http://www.oecd.org/dataoecd/42/3/2087495.pdf> (last visited Feb. 13, 2009).

47. *Id.*

48. However, President Bush's renewed focus on foreign aid was not embraced by all. See, e.g., Bob Barr, Op-Ed., *U.S. Can Rest Easy; Vanuatu Is Secure—Put Terrorism Funds Where They're Needed*, ATLANTA J.-CONST., Apr. 19, 2006, available at <http://www.bobbarr.org/default.asp?pt=newsdescr&RI=738>. Barr, a former U.S. Congressman, had this to say about the Millennium Challenge Act:

When you read about a program such as the "Millennium Challenge Account," launched by Bush in an apparent move to prove he has an even "kinder and gentler" side than his father, and especially when you read in the laughable description of the program that the president actually believes it will help in the global war on terrorism, you really have to wonder what these folks in the nation's capital are smoking.

Id.

49. Jaroslaw Anders, *United States Is Largest Donor of Foreign Aid*, Report Says, AMERICA.GOV, May 24, 2007, <http://www.america.gov/st/washfile-english/2007/May/20070524165115zjsredna0.2997553.html>.

50. *Id.*

51. *Id.*

corporations, voluntary organizations, universities, religious organizations and individuals.⁵²

C. National Security

Despite ongoing academic discourse on the necessity of foreign aid, a substantial shift in U.S. foreign aid policy did not garner wide political support until after the terrorist attacks of September 11, 2001. Following the renewed focus on improving national security and actively combating terrorism, development assistance became a national imperative, laying the foundation for the introduction of the MCA.

What is absolutely obvious is that foreign aid is not optional for the United States. Its purposes are central to U.S. interests, values, and well-being The economic, political, and social issues in developing and transition countries, where well over 80 percent of the world's population lives, are now among the most critical foreign policy and national security challenges facing [the U.S.].⁵³

President Bush heavily canvassed for support of the MCA in his first National Security Strategy report on September 20, 2002, approximately twenty months after the beginning of his term and one year after the September 11 terrorist attacks.⁵⁴ Indeed, his National Security Strategy directly focused on the development of democracies as protection against terrorism.⁵⁵ This idea found immediate support as the entire nation was intently focused on protecting the United States against further attacks by any possible means.

[T]he United States will use this moment of opportunity to extend the benefits of freedom across the globe. We will actively work to bring the hope of democracy, development, free markets, and free trade to every corner of the world. The events of September 11, 2001, taught us that weak states, like Afghanistan, can pose as great a danger to our national interests as strong states. Poverty does not make poor people into terrorists and murderers. Yet poverty, weak institutions, and corruption can make weak states vulnerable to terrorist networks and drug cartels within their borders The aim of this strategy is to help make the world not just safer but better.⁵⁶

In addition to advocating economic reform and free markets in the developing countries, President Bush also encouraged civil liberties and personal freedom: "America must stand firmly for the nonnegotiable demands of human dignity: the rule of law; limits on the absolute power of the state; free speech; freedom of worship; equal

52. *Id.*

53. CAROL LANCASTER & ANN VAN DUSEN, ORGANIZING U.S. FOREIGN AID: CONFRONTING THE CHALLENGES OF THE TWENTY-FIRST CENTURY 13 (2005).

54. NAT'L SEC. STRATEGY 2002, *supra* note 16, at v, 7, 14, 16, 21, 31.

55. *Id.* at v, 21–23.

56. *Id.* at v.

justice; respect for women; religious and ethnic tolerance; and respect for private property.”⁵⁷

D. Failure of Previous Foreign Aid Vehicles and the Birth of MCA

Finally, the established foreign aid framework in the U.S. had earned a reputation as dysfunctional and inefficient by the time Bush was elected in 2000.⁵⁸ The primary foreign aid vehicle, USAID, was originally established to provide humanitarian support to developing countries, regardless of political expediency.⁵⁹ However, this mandate diminished over time as funds increasingly went to key political allies.⁶⁰ Fiascos such as providing massive foreign aid to the former government of Zaire substantially undermined faith in USAID and served as an additional incentive to find a workable system.⁶¹ Finally, USAID funds had become extremely earmarked, and a substantial portion of USAID funding was being funneled into pet projects and political interests of various congressmen.⁶² As Roger Bate stated in his article, *The Trouble with USAID*, “[o]ne reason the

57. *Id.* at 3.

58. See SAMUEL HALE BUTTERFIELD, U.S. DEVELOPMENT AID—AN HISTORIC FIRST: ACHIEVEMENTS AND FAILURES IN THE TWENTIETH CENTURY 218, 222 (2004) (describing USAID’s spending failures and lack of respect in Washington, D.C.).

59. See USAID, About USAID, USAID History, http://www.usaid.gov/about_usaid/usaidthist.html (last visited Feb. 13, 2009) (explaining that USAID was established in the face of perceived failures of the overly bureaucratic foreign aid programs that preceded it and was meant to foster long-term economic stability rather than to satisfy short-term political objectives).

60. GORDON CRAWFORD, FOREIGN AID AND POLITICAL REFORM: A COMPARATIVE ANALYSIS OF DEMOCRACY ASSISTANCE AND POLITICAL CONDITIONALITY 41 (2001). Note also that El Salvador was the third largest recipient of foreign aid in the early 1980s, at the height of state-sponsored terrorism in the country. *Id.* Extraordinary foreign aid assistance to Jordan provides a good example of foreign policy interests in peacemaking and security trumping development goals. CAROL LANCASTER, TRANSFORMING FOREIGN AID: UNITED STATES ASSISTANCE IN THE 21ST CENTURY 18 (2000), available at http://www.petersoninstitute.org/publications/chapters_preview/321/2iie2911.pdf.

61. Sorrells, *supra* note 17 (“[I]n the case of Zaire, most of the aid ended up in the Swiss bank accounts of former ruler Mobutu Sese Seko. . . . U.S. agencies are trying still to track down how their money was diverted, years after Mobutu died in exile in 1997.”).

62. CAROL LANCASTER, AID TO AFRICA: SO MUCH TO DO, SO LITTLE DONE 92 (1999) (noting that USAID is often subjected to outside pressure from Congress, including “earmarks’ in aid legislation or directives in legislative reports to USAID to undertake particular types of activities at specified levels of funding”). Even USAID as an organization has repeatedly expressed frustration with limitations placed upon it by excessive Congressional earmarks. USAID, BUREAU FOR POLICY AND PROGRAM COORDINATION, U.S. FOREIGN AID: MEETING THE CHALLENGES OF THE TWENTY-FIRST CENTURY 8, 14, 25, 26 (2004), available at <http://www.usaid.gov/policy/pdabz3221.pdf>.

Millennium Challenge Corporation . . . exist[s] today is USAID's poor performance."⁶³

Practices of funding dictatorships, supporting corrupt leaders, and using aid for political gain have understandably led to a great deal of skepticism as to the ability of monetary assistance to affect development in the poorest countries.⁶⁴ However, it is vital to remember the myriad policy interests served by foreign aid. Development and elimination of poverty has not been the primary focus of past aid.⁶⁵ Indeed, these goals have historically been secondary objectives to political expediency.⁶⁶ Thus, a blanket assertion that U.S. foreign aid had "failed" prior to the introduction of the MCA is not entirely accurate. A more accurate assessment may be that U.S. foreign aid programs by the late 1990s were no longer congruent with a renewed policy focus on sustainable long-term development. The combination of timely academic research and public education, the elevation of poverty alleviation to a national security imperative, and the general disillusionment with USAID provided a narrow window of political alignment and public support through which the Millennium Challenge Concept could pass.

III. ANALYZING THE MCA CONCEPT

The Millennium Challenge Act of 2003 was presented to the international community and the American public as a novel approach to the problem of ineffective U.S. foreign aid. However, while the MCA concept is fairly revolutionary in the field of U.S. foreign aid, the underlying idea of aid selectivity is not unique to the MCA.⁶⁷ Years of academic research and debate give credence to the idea that "aid can be more effective in achieving development goals if it is focused on nations with governments that are committed to

63. Roger Bate, *The Trouble with USAID*, AM. INT., Summer 2006, at 113, 119–20, available at http://www.aei.org/docLib/20060523_Bate.pdf.

64. See generally WILLIAM EASTERLY, *THE WHITE MAN'S BURDEN: WHY THE WEST'S EFFORTS TO AID THE REST HAVE DONE SO MUCH ILL AND SO LITTLE GOOD* (2006) (arguing that efforts undertaken by poor societies themselves—and not aid from western countries—will eradicate poverty in those places).

65. LANCASTER & VAN DUSEN, *supra* note 53, at 10–12.

66. *Id.*

67. See generally DOLLAR & PRITCHETT, *supra* note 26, at 117 ("Effective donor agencies need to create internal mechanisms and incentives that foster selectivity and that focus large-scale finance on developing countries with good policies."); Collier & Dollar, *supra* note 34, at 1476 (explaining that aid is generally more effective in countries with good policy); Burnside & Dollar, *supra* note 14 (arguing that foreign aid is more effective when policy considerations in the receiving countries, rather than just recipient interest, is considered by donors).

establishing policies and institutions conducive to economic growth and poverty reduction.”⁶⁸

At first glance, the MCA concept closely tracks this principle of results-driven aid, as evidenced by the MCA’s selection criteria and Compact development philosophy. However, a closer analysis reveals significant partisan influence and the potential for aid selectivity based on political expediency.⁶⁹ This Part will outline the core MCA structure. It will then analyze that structure in context of a partisan framework.

A. The Conceptual Model of the MCA

1. Indicators and Country Selection

An objective and monitorable set of criteria for determining MCA eligibility is highly desirable, both in terms of the process of aid allocation, and also in terms of creating clear incentives among potential recipients of aid.⁷⁰

The basic MCA structure is deceptively simple. The MCC, an independent government corporation, allocates foreign aid through Compacts and Threshold programs in developing countries demonstrating a commitment to (1) ruling justly, (2) investing in their people, and (3) encouraging economic freedom.⁷¹ Each of the three fundamental MCA “pillars” is measured by a series of indicators: six indicators measure “Ruling Justly”; four indicators measure “Investing in People”; and six indicators measure “Economic Freedom.” The following is a list of indicators along with the independent source responsible for collecting assessment data.⁷²

68. STEVEN RADELET, CHALLENGING FOREIGN AID: A POLICYMAKER’S GUIDE TO THE MILLENNIUM CHALLENGE ACCOUNT 19 (2003).

69. See *infra* Part III.

70. Kaufmann & Kraay, *supra* note 4.

71. Millennium Challenge Act of 2003, 22 U.S.C. § 7701(2) (2006). Potential recipients compete within two income categories: (1) low income countries, with an average GNI of less than \$1,785 per capita, and (2) lower middle income countries, with an average GNI between \$1,786 and \$3,705 per capita. Millennium Challenge Corporation, Selection Criteria, Step 1: Identify Candidate Countries, <http://www.mcc.gov/selection/step01-identify.php> (last visited Feb. 13, 2009).

72. MILLENNIUM CHALLENGE CORPORATION, REPORT ON THE CRITERIA AND METHODOLOGY FOR DETERMINING THE ELIGIBILITY OF CANDIDATE COUNTRIES FOR MILLENNIUM CHALLENGE ACCOUNT ASSISTANCE IN FISCAL YEAR 2009, at 3 (2008) [hereinafter FY2009 MCC INDICATORS], available at <http://www.mcc.gov/documents/mcc-report-fy09-criteriaandmethodology.pdf>; Millennium Challenge Corporation, Selection Indicators, *supra* note 26.

FY2009 Eligibility Indicators⁷³

Ruling Justly

- Civil Liberties (Freedom House)
- Political Rights (Freedom House)
- Voice and Accountability (World Bank Institute)
- Government Effectiveness (World Bank Institute)
- Rule of Law (World Bank Institute)
- Control of Corruption (World Bank Institute)

Investing in People

- Immunization Rates (World Health Organization)
- Public Expenditure on Health (World Health Organization)
- Girls' Primary Education Completion Rate (UNESCO and World Bank)
- Public Expenditure on Primary Education (UNESCO and national sources)
- Natural Resource Management (CIESIN and YCELP)

Encouraging Economic Freedom

- Business Start-Up (IFC)
- Land Rights and Access (IFAD and IFC)
- Trade Policy (Heritage Foundation)
- Regulatory Quality (World Bank Institute)
- Inflation (IMF)
- Fiscal Policy (National Sources; cross-checked with IMF)

These indicators are unchanged from the FY2008 Eligibility Indicators.⁷⁴ A range of third-party sources provide data used to assess each indicator, the most heavily relied upon being the World Bank Institute.⁷⁵ These databases in turn often draw from a broad range of secondary sources. For instance, the World Bank Institute index on "Voice and Accountability" is comprised of an index of up to seventeen polls and surveys, each receiving a different weight based on their estimated precision and country coverage.⁷⁶ This method of collecting data from transparent and generally apolitical third party sources reduces the risk of manipulation and increases the

73. FY2009 MCC INDICATORS, *supra* note 72, at 3.

74. *Id.* at 1.

75. *Id.*

76. *Id.*

transparency and legitimacy of the entire MCA process.⁷⁷ Furthermore, using indicators which draw from large data pools substantially decreases margins of error.⁷⁸

In order to be eligible for MCA funding, a candidate country must (1) fall within per capita income limits; (2) score above the median relative to other potentially eligible countries on at least half the indicators in each category; (3) score above the median on the “control of corruption” indicator; and (4) not be barred from receiving U.S. aid (i.e., trade sanctions).⁷⁹ The MCA requires candidate countries to overcome these hurdles “to ensure that resources are channeled towards countries that are performing well in a variety of dimensions of governance, and in which corruption especially is relatively low.”⁸⁰

Although the performance indicators are the primary method of selecting countries for MCA funds, the MCC Board reserves the right to designate countries as MCA-eligible even if they do not strictly meet the indicator minimums, and to exclude countries that may technically qualify.⁸¹ The official MCA statement on its selection process authorizes this discretion:

The indicators methodology will be the predominate basis for determining which countries will be eligible for MCA assistance. In addition, the Board may exercise discretion in evaluating and translating the indicators into a final list of eligible countries. In this respect, the Board may also consider whether any adjustments should be made for data gaps, lags, trends, or other weaknesses in particular indicators. Likewise, the Board may deem a country ineligible if it performs substantially below average on any indicator and has not taken appropriate measures to address this shortcoming.⁸²

77. See RADELET, *supra* note 68, at 7 (describing the “public, transparent process” used by the MCA to select countries to receive aid); Johnson & Zajonc, *supra* note 22, at 10 (noting that the MCC collects data from “a number of independent sources”); Kaufmann & Kraay, *supra* note 4, pts. II, III.2 (explaining the importance of relying on aggregate data from multiple sources).

78. Kaufmann & Kraay, *supra* note 4, pt. III.2. The relationship between margins of error and the number of data sources is strongly negative. *Id.* For instance, margins of error for countries with four or five data sources are half as large as margins of error for countries with only one data source. *Id.*

79. FY2009 MCC INDICATORS, *supra* note 72, at 2 (supporting requirements (1) and (4)); Kaufmann & Kraay, *supra* note 4, at 45 (supporting requirements (2) and (3)). Further, a country should not score disproportionately low on any one or more indicators. FY 2009 MCC INDICATORS, *supra* note 72, at 2 (“A country may be determined ineligible if it performs substantially below average on any indicator (i.e. the bottom 25th percentile) and has not taken appropriate measures to address the shortcoming.”)

80. Kaufmann & Kraay, *supra* note 4, pt. II.

81. MILLENNIUM CHALLENGE CORPORATION, REPORT ON THE CRITERIA AND METHODOLOGY FOR DETERMINING THE ELIGIBILITY OF CANDIDATE COUNTRIES FOR MILLENNIUM CHALLENGE ACCOUNT ASSISTANCE IN FY 2004, at 2 (2004), available at http://www.mcc.gov/selection/reports/FY04_Criteria_Methodology.pdf.

82. *Id.* at 2.

Board discretion is necessary given the inconsistencies and margins of error inherent in data collection in the developing world.⁸³ Numerous scholars have warned against the *exclusive* use of indicators—particularly governance indicators, which can be quite nebulous—in determining eligibility.⁸⁴ For example, Kaufmann and Kraay noted that

[g]overnance indicators have substantial margins of error, so that special empirical scrutiny is needed for borderline cases These substantial margins of error mean that for many countries it is difficult to assign them with a high degree of confidence to a definitive performance category according to their estimated level of governance.⁸⁵

In 2002, during the debate on the MCA eligibility methodology, Kaufmann and Kraay found that 23 of 61 countries within the income range of MCA eligibility—a full 37% of countries being considered—had a statistically significant probability of being misclassified in the “control of corruption” index.⁸⁶ As the MCA and its sources have refined their data collection and assessment methods over the last four years,⁸⁷ these significant margins have probably decreased to some extent but remain a substantial concern. Thus, it is imperative that a method of qualitative assessment in the form of Board discretion is incorporated into the selection process.

2. Funding Allocations—Compact Development and Threshold Programs

Countries who pass the minimum indicator thresholds and are selected as candidate countries by the MCA Board of Directors may then submit Compact proposals to the MCA.⁸⁸ A Compact is “a multi-year agreement between the Millennium Challenge Corporation and an eligible country to fund specific programs targeted at reducing poverty and stimulating economic growth.”⁸⁹ The MCC encourages eligible countries to submit proposals based on the felt needs of the country, as determined by the country’s leaders in conjunction with citizens, civil actors, and development partners. Compact proposals must meet be:

83. *Id.*

84. *See, e.g.,* RADELET, *supra* note 68, at 24; Kaufmann & Kraay, *supra* note 4, pt. IV.

85. Kaufmann & Kraay, *supra* note 4, pt. III.1.

86. *Id.* pt. III.2.

87. *See* FY2009 MCC INDICATORS, *supra* note 72, at 1 (“MCC reviews all of its indicators and methodology annually to ensure that the best measures are being used and, from time to time, recommends changes or refinements if MCC identifies better methodologies, better indicators, or improved sources of data.”).

88. MCC Compacts, *supra* note 6.

89. *Id.*

- Developed in consultation with a country's citizens—including women, non-governmental organizations, and the private sector;
- Able to measure both economic growth and poverty reduction;
- Implemented, managed and maintained by the country.⁹⁰

The MCA is unique among aid organizations in the level of control given to recipient countries.⁹¹ In fact, the eligible country has nearly complete ownership in developing the Compact proposal, including identifying specific ways in which the proposed program will reduce poverty and stimulate economic growth.⁹² A Ghanaian minister summarized the Compact development process as follows, “Unlike other traditional development assistance programs where the donor proposes how funds are used, countries selected under the Millennium Challenge . . . propose programs to receive funding [It] is designed to allow developing countries to take ownership and responsibility for funds provided by the Millennium Challenge Corporation.”⁹³ MCC works with the country to ensure the proposed programs are reasonable, measurable, and attainable.

For those countries barely missing MCA eligibility, the Threshold Program provides assistance in improving low indicators scores and making the country competitive for MCA Compact funding.⁹⁴ “A Threshold Program Agreement is a contract between the United States and a country that provides financial assistance to help improve a low score on one of MCC's 17 policy indicators.”⁹⁵ Threshold Program Agreements go to countries whose plans

90. MCC Compacts, *supra* note 6.

91. For instance, USAID has historically used a top-down approach whereby USAID staff develop country-specific strategies, interventions, and programs to be implemented in recipient countries. Steve Radelet, *Will the Millennium Challenge Account Be Different*, WASH. Q., Spring 2003, at 171, 181–82. This approach has been criticized as lacking recipient-country ownership in successful outcomes, requiring minimal coordination with a country's overall development strategy, and placing excessive staffing and resource demands on USAID. *Id.*

For evidence of the MCC's methodology, see Millennium Challenge Corporation, About MCC, <http://www.mcc.gov/about/index.php> (last visited Feb. 13, 2009) (describing “high-level engagement and leadership” required by governments of countries which receive MCC aid); Jessica Davidson & Cate Johnston, *Bush's Millennium Challenge Corporation: A New Approach to Overseas Development, or the Same Old Strategy?*, COUNCIL ON HEMISPHERIC AFF., Aug. 16, 2005, <http://www.coha.org/2005/08/bushs-millennium-challenge-corporation-a-new-approach-to-overseas-development-or-the-same-old-strategy/> (“Taking each country's individual priorities and unique needs into consideration and allowing governments to develop their own proposals represents a marked departure from the typical U.S. approach to international aid after World War II.”).

92. *Id.* (follow “maintaining eligibility” hyperlink).

93. Danilovich, *supra* note 23, at 30.

94. Millennium Challenge Account, Program and Activities, Threshold Program Agreements, <http://www.mcc.gov/programs/threshold.php> (last visited Feb. 13, 2009) [hereinafter MCC Threshold Program Agreements].

95. *Id.*

demonstrate a meaningful commitment to reform and a high likelihood of successful implementation.⁹⁶ Per Congressional mandate, ten percent of MCA funds may be allocated to Threshold Programs.⁹⁷ The MCC Board selects countries based on: (1) overall performance on all 17 policy indicators; (2) demonstrated commitment to improving scores on failing indicators; and (3) ability to undertake reform.⁹⁸ Once selected to receive Threshold assistance, countries must create their own plan that identifies measurable ways to improve a specific indicator score and then submit that plan to the MCC for review and approval. Over twenty countries had received Threshold assistance through FY2007.⁹⁹ As discussed in Part IV.A.2., many of these Threshold recipients have made notable improvements in indicator scores, making them eligible for MCA Compact funding.

B. Analyzing the MCA Concept Through a Partisan Framework

1. Indicators and Aid Selectivity

The range and hierarchy of the three MCA pillars provides substantial insight into the political process behind the Millennium Challenge Act. Although myriad factors influenced the decision to ultimately use good governance, economic freedom, and investing in people as the three pillars of MCA eligibility, political motivations provide a straightforward framework for analyzing their influence on the MCA model.¹⁰⁰ The eligibility indicators have been relatively fluid in the last several years as the MCA seeks to strike a balance between conservative free-market ideals, evidenced in the Economic Freedom indices, and more liberal social-development ideals, evidenced in the Investing in People indices.¹⁰¹ However, the “good governance” indicators remain the most fundamental, as they include the only two mandatory hurdles for eligibility.¹⁰² This is proof of both

96. *Id.* (follow “selection methodology” hyperlink).

97. Millennium Challenge Act of 2003, 22 U.S.C. § 7715(d) (2006).

98. Millennium Challenge Account, Selection Step 2: Publish Country Selection Criteria & Methodology, <http://www.mcc.gov/selection/step02-publish.php> (last visited Feb. 13, 2009)

99. *Id.*

100. Millennium Challenge Account, Selection Indicators, *supra* note 26.

101. CURT TARNOFF, CONG. RES. SERV., FOREIGN AFF., DEF., & TRADE DIV., MILLENNIUM CHALLENGE ACCOUNT, AT CRS-2 (2007). As can be seen by Tarnoff’s review of Congressional Appropriations Sessions and subsequent changes in MCA Indicators, congressional feedback has been a driving force behind many of the modifications to MCA eligibility criteria.

102. See discussion *infra* Part III.B.1.c. All MCA Compact recipients must satisfy the MCC’s “Control of Corruption” requirement, FY2009 MCC INDICATORS, *supra* note 72, at 3; furthermore, democracy has seemingly become a *de facto* hurdle based on an analysis of MCA country selections, WIL HOUT, THE POLITICS OF AID

the importance of the good governance indicators and their ability to transcend political biases.

a. Economic Freedom

The Economic Freedom indicators

measure the extent to which a government encourages economic freedom by assessing, *inter alia*, demonstrated commitment to economic policies that encourage individuals and firms to participate in global trade and international capital markets, promotion of private sector growth and the sustainable management of natural resources, strength of market forces in the economy, and respect for worker rights.¹⁰³

The six Economic Freedom indicators are: Regulatory Quality, Fiscal Policy, Trade Policy, Business Start Up, Inflation, and Land Rights and Access.¹⁰⁴ Using a partisan framework, this pillar can most accurately be categorized as advancing a conservative, free market-oriented Republican agenda. Indeed, the Bush Administration and key Republican congressmen touted the development of free markets and international trade as a primary goal of the MCA and heavily influenced the Economic Freedom criterion.¹⁰⁵

Regardless of partisan interest, there is strong justification for the inclusion of the Economic Freedom indicators. Economic freedom and open markets have been foundational in recent successful developing countries.¹⁰⁶ The governments of emerging development powerhouses such as South Africa, India, and China have all substantially liberalized their markets.¹⁰⁷ There is also empirical support for the link between economic freedom and good governance.¹⁰⁸ For instance, no democracy has ever failed in a country where the GDP per capita is over \$6,050.¹⁰⁹ Economic freedom and governance have evinced a direct correlation in the MCA eligibility indicators as well, as reported in the 2005 Harvard Report:

SELECTIVITY: GOOD GOVERNANCE CRITERIA IN WORLD BANK, US AND DUTCH DEVELOPMENT ASSISTANCE 95–96 (2007).

103. MILLENNIUM CHALLENGE CORP., MILLENNIUM CHALLENGE ACCOUNT—INDICATOR DESCRIPTIONS 6, http://www.mcc.gov/selection/indicators/indicators_extended_descriptions.pdf (last visited Feb. 13, 2009) [hereinafter MCA INDICATOR DESCRIPTIONS].

104. *Id.*

105. Bush, *supra* note 42 (“The advances of free markets and trade and democracy and rule of law have brought prosperity to an ever-widening circle of people in this world.”); John B. Taylor, Under Sec’y for Int’l Aff., U.S. Dep’t of the Treasury, Speech before Cato Institute, Washington, DC, Economic Freedom and the Millennium Challenge Account (July 15, 2004), *available at* <http://www.treas.gov/press/releases/js1787.htm>.

106. Taylor, *supra* note 105.

107. *Id.*

108. *Id.*

109. *Id.*

[The Report] shows the link between economic freedom and good governance. . . . Countries in the top 20 percent in terms of economic freedom scored nearly eight out of ten on average in the Transparency International corruption perception index, where ten is the best score a country can receive. Those in the bottom 20 percent scored only 2.5 out of ten.¹¹⁰

Of course, there is the notable issue of causality with this statistic—whether lack of corruption breeds economic success or whether more economically advanced societies are better at reducing corruption. Nonetheless, it does draw a strong connection between good governance and economic freedom and strengthens the case for measuring economic freedom in determining MCA funding eligibility.

b. Investing in People

The Investing in People pillar is probably the most contentious category. Investing in People aims to measure “investments in people, particularly women and children, by assessing programs that promote broad-based primary education, strengthen and build capacity to provide quality public health, and reduce child mortality.”¹¹¹ This category speaks to the very heart of development and poverty alleviation and addresses the most basic needs of society such as health and education. However, this category has also been the most politically polarizing of the three categories.¹¹² Democrats in Congress have consistently challenged the MCC to address these issues more effectively and to expand the base of social investments considered in the eligibility indicators.¹¹³ The MCA currently uses only five Investing in People indicators, some of which have significant overlap: total public expenditure on health; immunization rates; total public expenditure on primary education; girl’s primary education completion rate; and natural resource management.¹¹⁴

Legislative history during the creation of the MCA and subsequent House and Senate Committee reports demonstrate the desire of Democratic Congressmen to see a greater focus on the Investing in People indicators.¹¹⁵ Key congressional figures have

110. Johnson & Zajonc, *supra* note 22.

111. MCA INDICATOR DESCRIPTIONS, *supra* note 103, at 11.

112. TARNOFF, *supra* note 101, at 4.

113. *Id.*

114. FY2009 MCC INDICATORS, *supra* note 72, at 3.

115. See TARNOFF, *supra* note 101, at CRS-4–CRS-5. The MCC is required to send proposed eligibility indicators to Congress for review annually. While the proposed MCC criteria is generally approved, lawmakers have included some significant additional factors upon which the MCC must evaluate a country’s performance. These factors almost always relate to “Investing in People.” Examples of additional congressional factors are a demonstrated track record in:

voiced concerns regarding the lack of indicators addressing environmental sustainability, women's rights, worker's rights, and the rights of people with disabilities.¹¹⁶ The MCC has addressed these concerns in part by creating a "Natural Resource Management" indicator, used as supplemental information for FY2007 eligibility determinations and introduced as a full indicator beginning FY2008.¹¹⁷ This indicator measures a government's commitment to "sound management of water resources and water systems, proper sewage disposal and sanitary control, air quality standards, habitat preservation, and biodiversity protection."¹¹⁸

Any social development indicators must be determined with caution as there is increased danger of mistaking causal relationships. Many of the social objectives argued for under the Investing in People category will hopefully improve *as a result* of development aid invested through the MCA into stable governments and economies, but might be difficult to enact *ex ante* with limited resources and institutional support from donor organizations such as the MCC. Furthermore, social indicators may be greatly influenced by factors outside the government's immediate control, making it difficult to adequately measure the direct impact of policy and regulation in affecting change. For instance, the girl's primary education completion rate indicator is influenced by numerous social factors such as family resources, teenage pregnancy, societal stigma, and lack of respect within the family and the community for the rights of the girl child. Therefore, substantial reliance on this indicator risks undermining the principle mission of the MCA—long-term and sustainable growth—which will then create increased internal capacity to address social crises and invest in the overall wellbeing of all citizens.

-
- recognizing the rights of people with disabilities;
 - respecting worker rights;
 - supporting a sustainable management of natural resources; and
 - making social investments, especially in women and girls.

Id. at CRS-5.

116. *Id.* at CRS-4–CRS-5.

117. MILLENNIUM CHALLENGE CORPORATION, GUIDE TO THE MCC INDICATORS AND THE SELECTION PROCESS: FISCAL YEAR 2008, at 25 (2008), *available at* <http://www.mcc.gov/documents/mcc-fy08-guidetoindicatorsandtheselectionprocess.pdf> [hereinafter FY2008 MCA INDICATORS]. The Natural Resource Management indicator was used as supplemental information in FY2007, but did not immediately become a mandatory indicator in order to allow countries time to assess their performance and ways to improve 'natural resource management' scores. *Id.* Natural Resource Management was finally established as a full-fledged indicator in FY2008 and will continue to be used in FY2009. Millennium Challenge Corp., Natural Resource Management Indicator Search, <http://www.mcc.gov/selection/indicators/naturalresourcesearch.php> (last visited Feb. 13, 2009).

118. FY2008 MCC INDICATORS, *supra* note 117, at 25.

Notwithstanding the call for caution, Investing in People remains a key pillar of the MCA concept. Countries demonstrating a commitment to improving citizen welfare are more likely to use aid money to further those goals. Socially responsible laws and policies, well-functioning social welfare structures, and committed leadership set the foundation for successful aid investment. The Investing in People pillar also helps to link the MCA to the Millennium Development Goals, which are primarily concerned with improvements in social welfare.¹¹⁹ Because the MCA is meant to be the U.S. vehicle for contributing to the achievement of the MDGs, it is important that the two initiatives provide a coherent and cohesive system of indicators, inputs, and results.

c. Ruling Justly

The third and arguably most important pillar is Ruling Justly, which addresses good governance and the rule of law.¹²⁰ Ruling Justly, as defined by the MCA, measures “just and democratic governance by assessing, *inter alia*, a country’s demonstrated commitment to promote political pluralism, equality, and the rule of law; respect human and civil rights, including the rights of people with disabilities; protect private property rights; encourage transparency and accountability of government; and combat corruption.”¹²¹ The six indicators in the Ruling Justly category are: civil liberties, political rights, voice and accountability, government effectiveness, rule of law, and control of corruption.¹²²

Given the great possibility for partisan politics to play into the indicators, there is a strong case to be made for making good governance a higher priority than either social or economic indicators. In fact, numerous MCA experts such as Lael Brainard, Steven Radelet, and Wil Hout have all suggested placing greater emphasis on governance indicators.¹²³ The MCA has already done this to some extent.¹²⁴ By making control of corruption the only mandatory hurdle, the MCA has created a minimum standard of transparency and accountability in government, regardless of the political

119. See *supra* Part II.A.

120. MCA INDICATOR DESCRIPTIONS, *supra* note 103, at 1.

121. *Id.*

122. *Id.*

123. *U.S. Foreign Assistance: Reinventing Aid for the 21st Century: Hearing before the H. Comm. on State, Foreign Operations, & Related Programs, 110th Cong. (2008)* (statement of Lael Brainard, Vice President and Director, Global Economy & Development), available at http://www.brookings.edu/testimony/2008/0123_foreign_assistance_reform_brainard.aspx [hereinafter Brainard Testimony—Reinventing Aid]; HOUT, *supra* note 102, at 19; RADELET, *supra* note 68, at 2.

124. See HOUT, *supra* note 102, at 117–18 (describing the six governance indicators relied on by the MCA).

environment.¹²⁵ However, as evidenced by Georgia's inclusion despite a comparatively low score on controlling corruption, this is not an absolute bar to eligibility.¹²⁶

The MCC has also seemingly made democracy a de facto hurdle.¹²⁷ Three of the Ruling Justly indicators—political rights, civil liberties, and voice and accountability—implicitly measure democracy.¹²⁸ In 2004, the MCC excluded Bhutan, Mauritania, and Vietnam from eligibility despite them scoring above the median on more than half of the indicators.¹²⁹ Although Bhutan, Vietnam, and Mauritania technically “passed the test” for MCA eligibility, they scored below the median on the three democracy indicators and are “not considered by the international community to be democracies.”¹³⁰ The MCA Monitor, an arm of the Centre for Global Development, has suggested that the MCC is setting a precedent that non-democracies will generally not be selected for MCA eligibility.¹³¹ “In effect, the Board implicitly has made democracy a ‘hard hurdle’ for MCA eligibility.”¹³² Many commentators have recommended making democracy an explicit mandatory requirement in order to increase transparency and remove from Board discretion the determination of whether a country is “sufficiently democratic.”¹³³ However, the MCC to date has not taken this approach.¹³⁴

125. See *id.* at 129 (“[T]he significant and negative coefficients of control of corruption . . . bear witness to the programme’s focus on corruption, as selected countries tend to score low on the corruption variable.”).

126. Fact Sheet, Millennium Challenge Corp., Georgia: Compact-Eligible Country Report (Nov. 2007), available at <http://www.mcc.gov/documents/csr-georgia.pdf>.

127. HOUT, *supra* note 102, at 95–96; see also Sarah Lucas & Steve Radelet, *An MCA Scorecard: Who Qualified, Who Did Not, and the MCC Board’s Use of Discretion* pt. 3 (Ctr. for Global Dev., May 2004), available at http://www.cgdev.org/doc/commentary/MCAScorecard_0528.pdf (describing how “the Board has implicitly made democracy a ‘hard hurdle’ for MCA eligibility”).

128. HOUT, *supra* note 102, at 96.

129. Lucas & Radelet, *supra* note 127, pt. 3; Millennium Challenge Corporation, 2004 Country Scorecards, <http://www.mcc.gov/selection/scorecards/2004/index.php> (follow Bhutan, Mauritania, and Vietnam “country scorecard” hyperlinks) (last visited Feb. 13, 2009).

130. Lucas & Radelet, *supra* note 127, pt. 3.

131. *Id.*

132. *Id.*

133. HOUT, *supra* note 102, at 96; see, e.g., Stephen Radelet & Sheila Herrling, *The MCC Between a Rock and a Hard Place: More Countries, Less Money and the Transformational Challenge* 5 (Ctr. for Global Dev., Oct. 26, 2005), available at <http://www.cgdev.org/content/publications/detail/14132/>.

One clear option would be to introduce a hard democracy hurdle similar to the current one for control of corruption. It is perfectly reasonable for an American aid program intended to support a select number of countries to target that aid to democracies. In past years, a number of non-democracies and questionable democracies that passed the indicators were not selected by the MCC Board. The formal response provided was that the Board invoked the “substantially

Regardless of whether democracy is a mandatory requirement, the control of corruption requirement demonstrates that good governance is central to MCA eligibility. It is also central to the MCA concept that aid is more effective in countries with a demonstrated track record of transparency and control of corruption.¹³⁵ This pillar is also vital to the continued success of the MCA because it introduces a nonpartisan element into the MCA selection process and the MCA concept in general.

2. The Partisanship of Compact Selection

Compact selection can also be analyzed by means of a partisan framework. A statement in the MCA charter advancing “market-driven economic growth” implicitly sets the stage for most Compact proposals.¹³⁶ The MCA has taken an increasingly free market and pro-business approach to Compact funding.¹³⁷ Recent Compacts have focused on funding such activities as “remov[ing] barriers to foreign and local private sector investments” in Lesotho, “increas[ing] economic activity . . . including exports, by improving the country’s rail network” in Mongolia, and “rehabilitat[ing] electric power distribution systems [and] add[ing] new generation and transmission capacity” in Tanzania.¹³⁸ Recently, the MCC announced its intent to more closely collaborate with the private sector in MCA Compact countries in order to further expand economic growth opportunities.¹³⁹ The headline of the MCA press release is

below” exception for cases where a country performs substantially below the median on at least one indicator. When used this way, as time goes on, “substantially below” looks increasing like a politically-correct way out instead of a transparent pass or fail test. Introducing a hard democracy hurdle—scoring above the median on the voice and accountability indicator, for example—would reduce a lot of the exceptions made and would publicly recognize that the Board is putting more weight on being a democracy.

Id.

134. See FY2009 MCC INDICATORS, *supra* note 72, at 3 (demonstrating that control of corruption remains the only mandatory hurdle). Other factors measuring democracy are technically still categorized along with the other 14 indicators, and countries must only score above the median on half of these. *Id.*

135. See *generally* Bush, *supra* note 42 (noting that the Millennium Challenge Account will reward nations that root out corruption, respect human rights, and adhere to the rule of law).

136. All-Gov, Millennium Challenge Corporation, http://www.allgov.com/Agency/Millennium_Challenge_Corporation (last visited Feb. 13, 2009).

137. Press Release, Millennium Challenge Corp., MCC Compacts Totaling \$2.55 Billion Enter Into Force in September (Sept. 28, 2008), *available at* <http://www.mcc.gov/press/releases/documents/release-092308-billions.php>.

138. *Id.*

139. Press Release, Millennium Challenge Corp., Millennium Challenge Corporation Holds Private Sector Dialogue Sessions to Explore Collaborative Trade

informative in gauging the MCA's increasing trend towards opening markets to trade, "Millennium Challenge Corporation Holds Private Sector Dialogue Sessions to Explore Collaborative Trade and Investment Opportunities."¹⁴⁰

The MCA has funded some social or welfare oriented programs, such as access to healthcare.¹⁴¹ However, as evidenced by the Madagascar Compact, these elements are not MCA priorities.¹⁴² As one MCA critic explains in frustration,

Madagascar asked for aid for hospitals and schools—but none of the money in its compact is allotted for either health or education. Instead, roughly a third of the aid will be used to improve credit standards and assist financial institutions, including \$21 million to help banks in Madagascar clear checks.¹⁴³

This highly partisan bias in funding allocations detracts from the original mission and potential success of the MCA. It is hoped that a stronger Democrat presence in Washington, D.C., will balance this increasing trend towards pure market-oriented Compacts.

IV. SUCCESSES, CHALLENGES, AND THE NEED FOR REFORM

Although founded in empirically-sound research and common sense, the Millennium Challenge Account is a revolutionary initiative whose success was far from guaranteed. Now in its fourth year of existence, the MCA has achieved tangible results, proven both anecdotally and empirically.¹⁴⁴ It has been responsible for regulatory reforms *ex ante* through the MCA Effect and has generated results *ex post* through the MCA Compacts. The MCA is also revolutionizing less stable governments through judicial and legal reform in its Threshold programs.¹⁴⁵ However, despite these successes, partisan interests continue to undermine the impartiality and development mission of the MCA. This is evidenced both by distinctly partisan criterion in the eligibility indicators, questionable uses of discretion

and Investment Opportunities (June 9, 2008), available at <http://www.mcc.gov/press/releases/documents/release-060908-psdialogues.php>.

140. *Id.*

141. For example, Compacts in Cape Verde, El Salvador, and Ghana as well as Threshold programs in Indonesia, Moldova, and Kenya have some health-related component. Millennium Challenge Corp., MCC Recognizes World Health Day, <http://www.mcc.gov/features/worldhealth/index.php> (last visited Feb. 9, 2009). The Threshold programs in Kenya and Moldova are particularly interesting because they combine health and governance by combating corruption in the healthcare sector. *Id.*

142. See Fact Sheet, Millennium Challenge Corp., Madagascar Compact Progress (Jan.–Mar. 2009), available at <http://www.mcc.gov/documents/qsr-imp-madagascar.pdf> (focusing on economic development).

143. *Id.*

144. See *supra* Part I.

145. See *supra* Part III.A.2.

by the MCA Board of Directors, and a program focus skewed disproportionately towards industry and agricultural development.¹⁴⁶ The danger of partisanship cannot be overstated. The MCA's disproportionate focus on economic development has labeled it as a purely Republican initiative.¹⁴⁷ It faces serious pressure from a Democrat majority in Congress to modify its core model and focus instead of short-term humanitarian assistance and politically motivated aid.¹⁴⁸ In order to resist this, the MCA must refocus on governance and the rule of law and then champion the benefits of its approach to a bipartisan constituency in Congress and the foreign aid community.

A. Empirical and Anecdotal Successes Achieved by the MCA

1. The MCA Effect

The MCA has impacted the rule of law and principles of good governance in developing countries through the "MCA Effect."¹⁴⁹ The MCA Effect refers to fundamental reforms undertaken by developing countries in order to be eligible for MCA funding.¹⁵⁰ This was an original goal of the MCA, as explained by President Bush in 2002. "The goal is to provide people in developing nations the tools they need to seize the opportunities of the global economy. In return—in return for this additional commitment, we expect nations to adopt the reforms and policies that make development effective and lasting."¹⁵¹ Bush stressed that the MCA was designed to "reward nations that root out corruption, respect human rights, and adhere to the rule of law."¹⁵² In fact, some scholars have argued that MCA Compacts could actually be "*less important* than the policy changes countries undertake to qualify for MCA assistance."¹⁵³

Anecdotal evidence by MCA-eligible countries further supports the MCA Effect and suggests that countries are modifying their behavior and regulatory environment in hopes of gaining access to

146. See *supra* Part III.B.

147. See *supra* Part I.

148. See *id.* (discussing the future of the MCA in a newly-Democratic Washington).

149. See Johnson & Zajonc, *supra* note 22, at 2 (describing attempts to estimate how much the incentive for funding is actually improving conditions in developing nations and referring to such impact as the "MCC effect").

150. *Id.*

151. Bush, *supra* note 42.

152. *Id.*

153. Johnson & Zajonc, *supra* note 22, at 5 (quoting FRÉDÉRIC SAUTET ET AL., THE CHALLENGE AHEAD: MAINTAINING A FOCUS ON INCENTIVES TO ENABLE DEVELOPMENT 6 (2005), available at http://www.mca.gov/selection/reports/Mercatus_Center_Comment_FY06.PDF) (emphasis added).

MCA funds.¹⁵⁴ For instance, Armenian Foreign Minister Vartan Oksanian used MCA funding to plead with his countrymen for increased openness in the upcoming election stating, "We are now in a situation where any step away from democratization and a repeat of electoral fraud would have an economic cost. And I can name that cost: 235 million dollars."¹⁵⁵ The Minister of Finance in Bangladesh recently pointed to his country's exclusion from MCA eligibility as one of the most serious consequences for its high level of corruption.¹⁵⁶

One of the most surprisingly conspicuous and positive outcomes of the MCA Effect has been an improvement in the business regulatory environment of many countries.¹⁵⁷ Representatives of MCA candidate countries have pointed to MCA funds as the principle rationale behind these reforms.¹⁵⁸ According to a World Bank *Doing Business* report (a source of two MCA indicators), twenty-four countries enacting reforms making it easier to start a new business claim to have done so in order to potentially receive MCA funds.¹⁵⁹ Of course, a recent Harvard study suggests that many non-candidate countries have also enacted business regulatory reforms, undermining to some extent the MCA's exclusive impact.¹⁶⁰ Nonetheless, it appears from testimonial evidence that country officials perceive the possibility of receiving MCA funds as a sufficient incentive for undertaking fairly tangible reforms.¹⁶¹ Furthermore, it

154. Press Release, Millennium Challenge Corporation, Millennium Challenge Account: Already Paying Dividends (Apr. 2005), available at <http://www.mcc.gov/press/factsheets/2005/factsheet-040005-mcdividends.php> [hereinafter MCA Paying Dividends]. See generally Millennium Challenge Corp., Success Stories, <http://www.mcc.gov/press/successstories/index.php> (last visited Feb. 13, 2009) [hereinafter Success Stories] (highlighting Millennium Challenge Corporation success in countries around the world).

155. Oksanian Warns of 'Economic Cost' of Vote Rigging, Armtown.com, Dec. 29, 2005, <http://www.armtown.com/news/en/rfe/20051229/200512293/>. The MCC has granted funds to Armenia conditional on corrective steps that would improve the government's human rights record and rule out voting irregularities in the future. *Id.*

156. MCA Paying Dividends, *supra* note 154.

157. Doing Business, Reforms in Africa, 2006–07, <http://www.doingbusiness.org/Reformers/Africa2007.aspx> (last visited Feb. 13, 2009) [hereinafter Reforms in Africa].

158. *Id.*

159. John Danilovich, Remarks at Third Anniversary Forum Hosted by the Society for International Development (Jan 17, 2007), available at <http://www.bread.org/learn/global-hunger-issues/millennium-challenge-account/MCC.pdf>. Benin, Burundi, and Guinea Bissau reduced the cost of registering property by reducing the registration or transfer tax. Reforms in Africa, *supra* note 157. These measures were in part motivated by the desire of these countries to pass the Millennium Challenge Corporation eligibility threshold. *Id.* The World Bank's Doing Business Blog recently made an impassioned plea for continued funding of the MCA, citing its important work in tying aid to quantifiable metrics. Posting of Simeon Djankov to Doing Business Blog, <http://blog.doingbusiness.org/2007/12/viva-la-millenn.html> (Dec. 9, 2007).

160. Johnson & Zajonc, *supra* note 22, at 9.

161. *Id.*

appears that these regulatory reforms are having a direct impact on the business environment as evidenced by a key outcome indicator: days to start a business.¹⁶² Madagascar is an excellent example.¹⁶³ Since signing a Compact with the MCC in 2005, Madagascar has decreased the time necessary to start a business from sixty-seven days to one week and cut the minimum capital requirement by eighty percent, leading to a 26% increase in new business start-ups.¹⁶⁴

In perhaps the most significant MCA-initiated policy change, the government of Lesotho, a small country in Southern Africa, enacted the "Legal Capacity of Married Persons Act" in direct response to MCA funding negotiations.¹⁶⁵ This Act abolishes a husband's exclusive marital power and grants women independent access to credit.¹⁶⁶ Prior to enactment of the Act, married women had the same legal status as minors and were prohibited from entering contracts or owning property.¹⁶⁷ Married women also had no standing in civil court.¹⁶⁸ Although Lesotho was technically eligible for Compact funding, the MCC strongly encouraged rapid action to correct this serious legal inequality.¹⁶⁹ The MCA built upon this MCA Effect by assisting with implementation of the new law through Lesotho's MCA Compact.¹⁷⁰ These and other stories suggest a direct correlation between governance and regulatory reforms and the incentive of receiving MCA Compact funds. It appears that social and legal reforms, such as Lesotho's law reform efforts, may be less robust and systematic than economic regulatory reforms.¹⁷¹ However, they do point to the incredible potential of the MCA to inspire positive legal reform.

In addition to the anecdotal evidence provided by developing country reports and the MCC, a recent Harvard study provides limited empirical evidence of the MCA's positive results.¹⁷² The

162. Danilovich, *supra* note 159.

163. *Id.*

164. *Id.*

165. S. Res. 103, 110th Cong. (2007) (enacted), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:sr103ats.txt.pdf ("Commending the Kingdom of Lesotho, on the occasion of International Women's Day, for the enactment of a law to improve the status of married women and ensure the access of married women to property rights.").

166. Buhle Angelo Dube, *The Law and Legal Research in Lesotho: Protection of Women's Rights*, GLOBALEX (Feb. 2008), <http://www.nyulawglobal.org/globalex/Lesotho.htm#>.

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. See *id.* (indicating the targeted and circumscribed nature of Lesotho's legal reforms).

172. See generally Johnson & Zajonc, *supra* note 22 (concluding that countries seem to respond to Millennium Challenge Corporation incentives by improving governance).

report, *Can Foreign Aid Create Good Governance? Evidence from the Millennium Challenge Corporation*, assessed the validity of the MCA Effect and questioned whether developing countries were improving their performance indicators in hopes of receiving MCA funds.¹⁷³ The Harvard study concluded that countries were indeed improving indicators in order to become eligible for MCA Compacts:

Even though the MCC is still in its infancy, we find substantial evidence that countries improve their indicators because of the MCC. Candidate countries—countries that are potential recipients of MCC funds—are more likely to improve their performance on the indicators used by the MCC and display greater absolute increases on these indicators.¹⁷⁴

The research used two primary methods of comparison to assess the performance of MCA candidate countries: (1) improvement on key indicators vis-à-vis non-candidate countries,¹⁷⁵ and (2) post-MCA performance on key indicators versus performance before the MCA was introduced.¹⁷⁶ In order to assess post-MCA performance, the study tracked results between 2002 (immediately following the introduction of the MCA) and 2004.¹⁷⁷ The empirical results were relatively consistent and generally positive in both of these assessments.¹⁷⁸

The study first found that candidate countries were improving more than non-candidate countries on a vast majority of indicators.¹⁷⁹ On eleven of fourteen indicators, candidate countries had a better mean rate of improvement than poor non-candidate countries after the introduction of the MCA.¹⁸⁰ “On five indicators—political rights, civil liberties, health expenditure, education expenditure and immunization rates—candidate countries are at least twice as likely as non-candidate countries to improve their performance.”¹⁸¹ In the three indicators where candidate country performance was worse than comparable non-candidate country performance—voice and accountability, government effectiveness, and control of corruption—the differences were only a few percentage points.¹⁸² “Compared to

173. *Id.* at 1.

174. *Id.* at 2.

175. *Id.* at 14. Insufficient data was available for comparison in two indicators: girl's primary education and business start cost. *Id.*

176. *Id.* Insufficient data was available for three of the eligibility indicators. *Id.* at 20–21.

177. *Id.* at 14–15.

178. *Id.* at 15.

179. *Id.* at 14–15.

180. *Id.*

181. *Id.* at 15.

182. *Id.*

the substantial positive differences these negative results are small.”¹⁸³

The study also found that candidate countries performed better after the introduction of the MCA than before, even when controlling for general time trends by using reform patterns of non-candidate countries.¹⁸⁴ On nine of thirteen indicators, candidate countries were more likely to improve performance after the formation of the MCA than they had before the MCA concept was introduced.¹⁸⁵ On five indicators—civil liberties, education expenditure, health expenditure, immunization rates, and regulatory quality—candidate countries were 25% more likely to reform after the MCA.¹⁸⁶ “In other words, on these five indicators candidate countries are more than 25 percentage points more likely to reform after the MCC was created than before it, even after subtracting the difference in reform between these two time periods experienced by poor non-candidate countries.”¹⁸⁷ Again, the four indicators with negative trends—voice and accountability, government effectiveness, control of corruption and trade policy—showed relatively small negative correlations as compared to the positive trends of the other indicators.¹⁸⁸

Any empirical research in developing countries is subject to disproportionately high margins of error due to lack of data availability and inconsistent collection.¹⁸⁹ Nonetheless, the Harvard study presents a compelling case for the MCA Effect. This study is vitally important to the MCA for several reasons. Most obviously, it provides underlying empirical evidence both for the concept of performance-based aid and for the Millennium Challenge Account itself.¹⁹⁰ Although very preliminary, these positive trends grant credence to the idea that developing countries respond well to a performance-based aid strategy.

The negative trends in the empirical evidence are equally important. In both comparisons (using time trends and comparing non-candidate country performance), MCA candidate countries showed slightly negative trends on three of the six governance indicators: voice and accountability, government effectiveness, and control of corruption.¹⁹¹ Johnson and Zajonc argue that these trends are not statistically significant vis-à-vis the substantially positive

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.* tbl.6.

187. *Id.* at 17.

188. *Id.* tbl.6.

189. *Id.* at 10; see Kaufmann & Kraay, *supra* note 4, pt. III.1 (discussing margins of error in governance indicators and ways to overcome them).

190. See generally Johnson & Zajonc, *supra* note 22 (analyzing the MCA Effect).

191. Trade Policy is the fourth indicator showing a slightly negative trend after the introduction of the MCA. Johnson & Zajonc, *supra* note 22, tbl.6.

trends in other indicators.¹⁹² However, these results do lead to the conclusion that the MCA Effect is not as robust in improving governance indicators as economic and social investment indicators. There are several possible explanations for this result. Some critics argue that certain indicators such as the business regulatory environment are subject to manipulation.¹⁹³ However, the Johnson Report found “most of the indicators to be sufficiently robust to the threat of manipulation to conclude that the majority of the majority of improvements observed are *due to changes in actual policies*.”¹⁹⁴ A less cynical and arguably more likely explanation for the lower governance scores is that it is more difficult to enact policy changes sufficient to rapidly improve governance scores in the course of a few years. Given the importance of good governance to the MCA concept, this lack of measurable improvement presents a potential weakness of the current MCA system and suggests a need to focus more proactively on governance both in the eligibility process and in actual MCA Compacts.

2. MCA Compacts and Funding Allocations

a. MCA Compacts

The MCA has also achieved early successes in Compact programs. As of December 2007, the MCC had committed over \$5.5 billion through Compacts with sixteen developing countries designed “to reduce poverty through economic growth,”¹⁹⁵ and these Compacts are beginning to deliver measurable results. The following examples were taken from the MCA website:¹⁹⁶

- Madagascar—Agricultural Business Centers are operational in five zones and nearly one million documents have been inventoried to enable better land use.
- Armenia—thousands of farmers, almost 23 percent of which are women, have been trained in on-farm water management, designed to ultimately increase agricultural production.
- Georgia—one portion of the Compact has been used to make emergency repairs to the North-South Gas Pipeline,

192. *Id.* at 2.

193. *Id.* at 20.

194. *Id.* at 3 (emphasis added).

195. Fact Sheet, Millennium Challenge Corp., Millennium Challenge Corporation Makes Headway: Achieving Results in the Fight Against Poverty (Dec. 7, 2007), available at <http://www.mcc.gov/documents/factsheet-120707-resultsmake-headway.pdf> [hereinafter MCC Makes Headway].

196. *Id.*

“improving the long term security of the country’s natural gas supply and providing Georgian citizens with electricity and heating as temperatures drop.”¹⁹⁷ Additional funds are being used as grants to new or expanding agribusinesses, helping them improve technologies and access markets.

- Nicaragua—land titles have been and continue to be distributed to thousands of beneficiaries.
- Burkina Faso—132 schools and 396 teachers residences have been built.

As demonstrated by the above examples, MCA Compacts are evincing an increasingly homogenous trend towards agriculture and industrial expansion and have shown little progress in tackling more complicated governance reform initiatives.¹⁹⁸ Indeed, the Bush Administration highlighted its macro-economic focus in an initial policy paper outlining the function of the MCA.¹⁹⁹ “In 2008, MCC will see an unprecedented level of implementation activity related to these major infrastructure projects.”²⁰⁰

b. Threshold Agreements

Given the underwhelming results in the MCA Effect’s ability to improve governance indicators, there has been surprisingly little focus on governance in MCA Compacts.²⁰¹ However, governance

197. *Id.*

198. *See id.* (focusing almost exclusively on economic development programs to the general exclusion of political reforms).

199. U.S. Government Background Paper, Implementing the Millennium Challenge Act 1 (Feb. 5, 2003), available at http://www.mcc.gov/about/reports/other/mcc_background_paper.pdf.

The goal of the MCA is to reduce poverty by significantly increasing the economic growth trajectory of recipient countries. This requires an emphasis on investments that raise the productive potential of a country’s citizens and firms and help integrate its economy into the global product and capital markets. Key areas of focus would include:

- Agricultural development
- Education
- Enterprise and private sector development
- Governance
- Health
- Trade and investment capacity building

Id.

200. MCC Makes Headway, *supra* note 195.

201. *See id.* (indicating mostly industrial and agricultural focus of MCA Compacts). *See generally* DANIEL KAUFMANN ET AL., GOVERNANCE MATTERS IV: GOVERNANCE INDICATORS FOR 1996–2004 (2005) (discussing the difficulty of measuring

reforms and the rule of law play an instrumental and highly successful role in Threshold Agreements to countries just barely missing eligibility. The Millennium Challenge Act allows ten percent of MCC funds to be allocated to Threshold programs.²⁰² The Threshold program is designed to support countries that have made substantial progress in achieving MCA goals but still fall short of meeting the minimum eligibility requirements for an MCA Compact.²⁰³ Two of the biggest stumbling blocks for these Threshold countries have been the country corruption and rule of law indicators in the "Governing Justly" category.²⁰⁴ Control of corruption is the only mandatory hurdle that must be overcome and many countries are declared ineligible for aid based on their failure to score above the median.²⁰⁵ As previously discussed, democracy has become a *de facto* mandatory hurdle as well.²⁰⁶ Therefore, a strong incentive exists for Threshold countries to undertake programs focusing on corruption and other governance indicators measuring their commitment to democratic ideals.

In 2006 and 2007, the MCA signed Threshold agreements containing substantial governance reform provisions with Yemen, the Kyrgyz Republic, and Tanzania.²⁰⁷ Tanzania implemented a program of professional training emphasizing government accountability as part of its \$11.15 million Threshold agreement.²⁰⁸ This training and

change in governance and the effect of programs such as the MCA on governance indicators).

202. 22 U.S.C.A. § 7715 (West 2009).

203. See MCC Threshold Program Agreements, *supra* note 94 (explaining that Threshold Program provides financial assistance to help countries improve a poor score on a particular selection indicator).

204. See *generally id.* (showing Threshold countries using MCC funds to improve country corruption and rule of law indicators).

205. See MILLENNIUM CHALLENGE CORP., MILLENNIUM CHALLENGE CORPORATION 2008 COUNTRY SCOREBOOK 3 (2008), available at <http://www.mcc.gov/documents/mcc-2008-scorebook.pdf> [hereinafter MCC 2008 COUNTRY SCOREBOOK].

206. Vietnam, Bhutan, and Mauritania, for example all technically scored high enough on at least half the indicators but were not declared eligible for funding. See *id.* at 5, 20, 59, 88 (enumerating list of countries eligible for funding as well as the individual scorecards of the three countries showing their performance on indicators).

207. See MCC Threshold Program Agreements, *supra* note 94; Millennium Challenge Corp., Tanzania Threshold Program, <http://www.mcc.gov/countries/tanzania/threshold.php> (last visited Feb. 13, 2009); Millennium Challenge Corp., Yemen Threshold Program, <http://www.mcc.gov/countries/yemen/index.php> (last visited Feb. 13, 2009); Millennium Challenge Corp., Kyrgyz Republic Threshold Program, <http://www.mcc.gov/countries/kyrgyzrepublic/index.php> (last visited Feb. 13, 2009).

208. See Millennium Challenge Account Threshold Program: Strategic Objective Grant Agreement Between the United States of America and the United Republic of Tanzania to Combat Corruption art. 3, U.S.-Tanz., May 3, 2006, available at http://www.mcc.gov/countries/tanzania/Tanzania_SOAG.pdf (delineating means to achieve goal of reducing corruption); Millennium Challenge Compact Between the United States of America Acting Through the Millennium Challenge Corporation and the Government of the United Republic of Tanzania Acting Through the Ministry of

awareness program led to print media publishing “thousands of stories exposing corruption in their country.”²⁰⁹ Tanzania’s efforts in exposing corruption and encouraging government accountability achieved the anticipated results, and Tanzania signed a \$698 million Compact Agreement with the MCC in February 2008.²¹⁰

In September 2007, the MCA approved a \$20.6 million Threshold program in Yemen, designed to address four Ruling Justly indicators—control of corruption, rule of law, government effectiveness, and political rights—as well as the fiscal policy indicator under Economic Freedom.²¹¹ Yemen is still engaged in implementing the Threshold programs, with anticipated results to include:²¹²

- Reduction in time needed to state a verdict in the commercial courts from 6 months to 3 months;
- Reduction in customs clearance procedures from 8 days to 4 days.
- Twenty-five percent of government staff submitting financial disclosure forms (currently none do);
- 2009 elections recognized as free and fair by Freedom House

In August 2007, the MCC signed a Threshold agreement with the Kyrgyz Republic supporting efforts to fight corruption and improve the rule of law.²¹³ This Threshold agreement provides perhaps the best example of how the MCC can programmatically influence governance reform. As the MCC announced on their website, “MCC’s Threshold Program will provide roughly \$16 million in assistance to help the Kyrgyz Republic address judicial, criminal justice and law enforcement reforms.”²¹⁴

Finance, U.S.-Tanz., Feb 17, 2008, *available at* <http://www.mcc.gov/documents/compact-tanzania.pdf> [hereinafter Tanzania Compact] (resulting Compact).

209. MCC Makes Headway, *supra* note 195, at 2.

210. Tanzania Compact, *supra* note 208, art. 2.1.

211. Memorandum from Frances C. McNaught, V.P. of Cong. & Pub. Aff., Millennium Challenge Corp., to Congress regarding Yemen Threshold Program 2 (Sept. 12, 2007), *available at* <http://www.mcc.gov/documents/cn-091207-yemen.pdf>.

212. *Id.* at 2, 4.

213. See Fact Sheet, Millennium Challenge Corp., Millennium Challenge Corporation Working with the Kyrgyz Republic To Fight Corruption and Promote Good Governance (Mar. 14, 2008), *available at* <http://www.mcc.gov/documents/factsheet-031408-kyrgyzrepublic.pdf> [hereinafter Kyrgyz Fact Sheet] (describing the MCC’s Threshold Program with the Kyrgyz Republic); Memorandum from Matthew K. McLean, V.P. of Cong. & Pub. Aff., Millennium Challenge Corp., to Congress regarding Kyrgyz Republic Threshold Program 1 (Feb. 11, 2007), *available at* <http://www.mcc.gov/documents/cn-021108-kyrgyz.pdf>.

214. Press Release, Millennium Challenge Corp., MCC Board Approves Assistance To Support Governance Reforms in the Kyrgyz Republic (Aug. 9, 2007), *available at* <http://www.mcc.gov/press/releases/documents/release-080907-kyrgyzrepublic.php>.

The judicial reform element is designed to decrease corruption in the judiciary and strengthen the rule of law through ten distinct proposed activities, including:

- Providing technical assistance to help implement new laws on judicial selection and dismissal, including establishment of the new National Council of Justice Affairs, which will oversee these functions.
- Helping to establish a system to implement adequate and transparent disciplinary procedures for judges through the newly established Judicial Council.
- Providing technical assistance to improve implementation of amended and improved commercial laws and increase the enforcement of judgments.
- Enhancing system for publishing court decisions and providing access to open court proceedings.²¹⁵

The criminal justice reform program is equally compelling. “Under the MCC program, the Government of Kyrgyzstan will seek to reduce public corruption in the criminal justice sector by strengthening the legal framework, providing training for prosecutors and judges, . . . and educating the public about anti-corruption measures.”²¹⁶ A sample of the nine proposed activities include:

- Revising the criminal procedure code to reflect the greater balance of powers between prosecutors and the judiciary.
- Evaluating the role of elder courts in handling minor crimes.
- Enhancing the prosecutor ethics code and its effective implementation.
- Creating a civilian-oversight board for the police force.
- Developing, with the involvement of mass media, a public awareness campaign on the detection, investigation, and prosecution of corruption.²¹⁷

Although these judicial and criminal law reform programs may not seem groundbreaking at first glance, they are revolutionary for developing countries lacking transparent judiciaries or fair criminal justice systems.²¹⁸ For those countries whose citizens can have no faith in the impartial and timely enforcement of their laws, governance reform is truly a gift. During a March 2008 presentation by the Iraqi Anfal War Crimes Tribunal, Judge Aref Abdul Razaq Al-

215. Kyrgyz Fact Sheet, *supra* note 213, at 1–2.

216. *Id.* at 3.

217. *Id.* at 1, 3.

218. See Open Society Justice Initiative, Central Asia and the Former Soviet Union, <http://www.justiceinitiative.org/regions/cafsu> (last visited Feb. 13, 2009).

Shaheed stressed the importance of a functional judicial system: “[T]he rule of law has to be seen as more powerful than the rule of fear. If . . . citizens have no confidence in the due process of law, they will look for other ways to build their society and new government.”²¹⁹ This statement exemplifies the significance of a strong rule of law and demonstrates why the MCA should shift its focus in part to governance reforms.

Threshold program governance reforms have been a significant success in furthering the rule of law and spurring legal reform.²²⁰ These successes should inform future programs in both Threshold and Compact countries. The benefits of MCA governance reforms in Compact countries will be amplified to an even greater extent than in Threshold countries.²²¹ Compact countries have already proven their commitment to reform through being above the median in at least half of the seventeen eligibility indicators, and they have stronger institutional infrastructure in place to effectively implement governance reform programs.²²² However, as noted by the Harvard Report, Compact countries are not improving in governance indicators to the same extent as in economic and social indicators.²²³ This should be a call to action for the MCA in revising their Compact programs to focus on governance reform. If the MCA truly is committed to long term growth, a greater focus on creating legal and policy frameworks capable of managing this growth is warranted. Indeed, many Congress members share this sentiment and have asked the MCC to take a more proactive approach in shaping certain institutional reform elements of MCA Compacts.²²⁴

B. Challenges Ahead: The Danger of Partisanship

The previous parts demonstrate the early anecdotal and empirical success of the Millennium Challenge Account concept.²²⁵ Much of this success comes from sound methodologies implemented consistently and transparently.²²⁶ This is evident in the eligibility

219. Judge Aref Abdul Razaq Al-Shaheen, President of Iraqi Anfal Criminal Tribunal, Speech at Vanderbilt University Law School (Jan. 31, 2008) (video available at <http://www.youtube.com/watch?v=LoUWCL8Uo6s>) (speech begins at 7:40, quote begins at 19:30).

220. See *supra* notes 210–18 and accompanying text.

221. See *supra* Part III.A.2 (noting that Compact-eligible countries have demonstrated more positive signs of development and will be better equipped to handle comprehensive governance reform programs).

222. *Id.*

223. Johnson & Zajonc, *supra* note 22, at 15.

224. Kolbe, *supra* note 2.

225. See *supra* Part IV.A–B.

226. The MCA seeks to use “objective and quantifiable policy indicators” to assess all eligibility categories and has utilized substantially the same indicators and indicator sources since its inception. FY2009 MCC INDICATORS, *supra* note 72, at 4.

indicators as well as in MCA Compacts and Threshold Programs.²²⁷ The MCA also owes much of its success to maintaining a narrowly defined mission and avoiding much of the political maneuvering plaguing other aid programs.²²⁸ Unfortunately, the MCA is currently in danger of being influenced by politics in two key areas: (1) through the use of eligibility indicators to promote partisan interests globally; and (2) through the use of MCA funding for purposes of political expediency.²²⁹ Because certain elements of the MCA, such as Investing in People and Economic Freedom indicators, are more susceptible to partisanship, apolitical commonalities must be elevated in importance to combat any overly liberal or overly conservative leanings in the MCA.²³⁰ This Part first discusses ways in which the MCC is trending towards partisanship in eligibility indicators. This Part will then critique the influence of partisan politics on MCA funding allocations.

1. Eligibility Indicators

The increasingly apparent partisanship in eligibility indicators presents serious concerns as to the independence and soundness of the MCA model.²³¹ Past statistics indicating that per capita GDP actually *decreased* in a time of significant foreign aid expenditure suggests that the historic physicians' mantra, *First Do No Harm*, may also apply to foreign aid allocations.²³² Yet, partisan-focused eligibility criteria risks doing significant harm in developing countries. Empirical and anecdotal evidence suggests that countries are changing laws and policies in order to qualify for MCA funding,²³³ and established eligibility indicators significantly affect which laws and policies countries focus on.²³⁴ In a classic Pavlovian response, the MCA's stated preference for economic growth has led countries to focus on pro-business, free market reforms—perhaps at the expense of important social and governance reforms.

Focusing on Economic Freedom indicators also undermines the long-term success of the MCA model. Countries with advanced

These indicators have not changed significantly since the inception of the MCA in 2004. Compare *id.* at 2–4, with MILLENNIUM CHALLENGE CORP., REPORT ON THE CRITERIA AND METHODOLOGY FOR DETERMINING THE ELIGIBILITY OF CANDIDATE COUNTRIES FOR MILLENNIUM CHALLENGE ACCOUNT ASSISTANCE IN FY2004, at 1–3 (2004), available at http://mca.gov/selection/reports/FY04_Criteria_Methodology.pdf.

227. See *supra* Part IV.A.

228. See *supra* Part II.D (noting that the partisanship and earmarking of USAID created an opening for the MCA concept).

229. See discussion *infra* Parts IV.B.1–B.2.

230. *Id.*

231. See discussion *infra* Part IV.C.

232. Kolbe, *supra* note 2.

233. See *supra* Part IV.A.

234. *Id.*

economic policies may look successful in the short term. However, without rigorous institutional and legal frameworks, these apparently successful countries risk falling into the trap of greed and corruption that has befallen so many emerging markets in recent history. Zimbabwe provides perhaps the most telling example of this danger. Considered the “Jewel of Africa” until the late 1990s, Zimbabwe had strong agriculture, manufacturing, and banking sectors as well as a well-functioning justice system and strong legal framework.²³⁵ Now, Zimbabwe faces unemployment of over 90%, the world’s highest inflation rate, and shortages of food, fuel, and foreign currency.²³⁶ More than two million people are in severe need of food aid and one in four Zimbabwean children is malnourished.²³⁷ Analyzing this rapid freefall, academics point primarily to a breakdown in governance and the rule of law.²³⁸ Greed and corruption led to politically-motivated property rights reform and land reallocation.²³⁹ Economic growth disappeared almost instantly; foreign direct investment fell to zero by 2001, just one year after President Mugabe began farm seizures.²⁴⁰ Zimbabwe’s story presents a chilling reminder that, in the absence of sound governance and an established rule of law, economic prosperity can be fleeting. The MCA’s model advocates long-term sustainability and freedom from the poverty trap.²⁴¹ Though economic freedom is a vitally important component of this model, long-term success is far from guaranteed without the rule of law.

2. Partisanship in Funding Allocations

The MCA faces constant pressure to use aid allocations for political purposes, a strategy that significantly detracts from its original purpose and mission. Despite lessons from USAID, which has been heavily criticized for using foreign aid for purposes of political expediency, the MCA is in serious risk of following the same path.²⁴² The MCA—originally touted as being outside the realm of political influence—is increasingly selecting eligible countries and approving Compact proposals for political purposes.²⁴³ As previously noted, foreign aid serves many purposes, including use as a reward

235. Sue Fleming, *U.S. Wants Evidence of Reform*, NEWS24.COM, Oct. 17, 2008, http://www.news24.com/News24/Africa/Zimbabwe/0,,2-11-1662_2411473,00.html.

236. *Id.*

237. *Id.*

238. Craig Richardson, *How the Loss of Property Rights Caused Zimbabwe's Collapse* (CATO Economic Development Bulletin No. 4, Nov. 14, 2005), available at http://www.cato.org/pub_display.php?pub_id=9294.

239. *Id.*

240. *Id.*

241. *See supra* Part III.A.

242. *See supra* Part IV.B.1.

243. *See supra* Part IV.B.

for political allies.²⁴⁴ However, the stated purpose of the MCA is “Ending Poverty through Growth” and any deviation from this mission undermines the revolutionary development impact of the MCA concept.²⁴⁵

a. Board Discretion

As previously outlined, MCC Board discretion remains necessary given unreliable data in several key indicators.²⁴⁶ However, this discretion introduces an element of subjectivity capable of exploitation by partisan interests and political expediency. The MCA is unique in that its mandate specifically rejects distributing aid on the basis of U.S. interests.²⁴⁷ Indeed, it has been true to this calling by largely denying MCA Compacts to politically expedient countries in the Middle East in favor of countries in Africa, Latin America, and Asia, showing a greater commitment to progress and development.²⁴⁸ However, certain decisions point to the covert influence of politics on Board discretion. The inclusion of Georgia in the list of Compact-eligible countries in 2004 was widely questioned as demonstrating political bias.²⁴⁹ Georgia only passed two of the six Ruling Justly indicators, two of four investing in People indicators, and three of six Economic Freedom indicators.²⁵⁰ It also scored below the median in “control of corruption,” the only mandatory indicator.²⁵¹ In fact, Georgia ranked 124 out of 133 countries on the TI corruption index and 33 of 37 MCA countries being considered.²⁵² Yet, Georgia was ultimately selected for an MCA Compact.

The trouble with selecting Georgia and similar countries falling so far short of minimum eligibility criteria is two-fold. First, this presents a troubling example of the potential for the MCA to bow to political interests. Supporters of the decision have argued that the MCA Board wanted to support Georgia’s political transition and new,

244. See *supra* Part II.D.

245. Millennium Challenge Corporation, About MCC, *supra* note 91.

246. See *supra* Part III.A.1.

247. HOUT, *supra* note 102, at 75 (citing *Hearing Before the Committee on Foreign Relations: Millennium Challenge Account: A New Way to Aid*, 108th Cong. (2003) (statement of Andrew Natsios, Administrator, USAID), available at <http://foreign.senate.gov/testimony/2003/NatsiosTestimony030304.pdf>) (noting that the MCA “fully rejected the notion of conditionality”).

248. See generally Millennium Challenge Corporation, Countries, <http://www.mcc.gov/countries/index.php> (demonstrating small minority of Middle Eastern countries on the MCC’s aid roster).

249. See Lucas & Radelet, *supra* note 127, pt. 2 (noting that Georgia did not pass the indicator test but that other countries that did pass the indicator test were not selected).

250. *Id.*

251. *Id.*

252. *Id.*

democratically-elected president.²⁵³ Although this is a noble goal, the purpose of the MCA is to support countries with demonstrated good governance and sound policies rather than funding new governments as a political reward for unproven transitions to democracy.²⁵⁴ The second, and arguably more pressing concern, is that MCA funds are now invested in a country without a sufficiently proven government or a regulatory environment capable of ensuring those funds are utilized appropriately.²⁵⁵ The MCA could have negated this concern to some extent by investing in governance reform programs similar to the Threshold agreements discussed above in Part III.A.2. Instead, Georgia's MCA Compact is comprised of infrastructure, agriculture, and energy sector rehabilitation.²⁵⁶ While these activities are important, the MCA's ability to enact "transformative change" is undermined by investing in the economic development of a country without a supplemental investment in its governance and regulatory environment.

b. MCA Compacts

The trend in recent MCA Compacts also gives rise to political concerns. MCA-eligible countries develop their own Compact proposals based on the felt priorities of the government, civil actors and the private sector.²⁵⁷ Therefore, in theory the MCC has no direct influence in the types of Compact projects being submitted. However, there has been extraordinary homogeneity in Compact proposals, strongly biased towards heavy-output sectors such as manufacturing, transportation, and agriculture.²⁵⁸ The MCC itself has emphasized a primary focus on infrastructure projects, leading eligible countries to believe their funding chances will be greater if they submit Compact proposals with strong industry and agriculture components.²⁵⁹ Although there is substantial merit to these programs, both independent commentators and Democrats in Congress have criticized the MCC for this narrow focus in light of other significant development needs in MCA-eligible countries.²⁶⁰

253. *Id.*

254. *See supra* Part III.A.1.

255. Lucas & Radelet, *supra* note 127, pt. 2.

256. Millennium Challenge Compact Between the United States of America Acting Through the Millennium Challenge Corporation and the Government of Georgia, U.S.-Georgia, Sept. 12, 2005, *available at* <http://www.mcc.gov/countries/georgia/091205GeorgiaCompact.pdf>.

257. *See supra* Part III.A.2.

258. Millennium Challenge Corporation, Countries, *supra* note 248.

259. *See Kurlantzick, supra* note 30; *supra* Part III.C.2.

260. HOUT, *supra* note 102, at 86, 90; Kurlantzick, *supra* note 30 (suggesting that the MCC demonstrates a significant pro-business bias in approving MCA Compacts).

One of the biggest concerns raised is that MCA funds should be going to development efforts aimed at the poorest of the poor and should be at least partially funneled into social services such as education and health care.²⁶¹ Instead, MCA funds are being invested in sectors where capital inflows can be obtained by other sources including loans or foreign direct investment.²⁶² Despite the obvious merits of this argument, a case can be made for a strong focus in industry and agriculture. Investment in infrastructure and job creation may create more long-term sustainable economic growth—the primary goal of the MCA²⁶³—while short-term humanitarian crises are best handled through USAID.²⁶⁴ Furthermore, agricultural investment directly benefits all levels of society, including the most impoverished, given the percentage of truly poor engaged in small farming.²⁶⁵ This has already been seen in the Armenia project, which provides education and improved farming techniques to small farmers, 23% of whom are women.²⁶⁶

Most MCA experts would agree with a continued focus on infrastructure and agriculture as the MCA has developed substantial expertise in those areas.²⁶⁷ However, given the MCA's goal of

261. TARNOFF, *supra* note 101, at CRS-14, CRS-26; HOUT, *supra* note 102, at 86, 90.

262. Kurlantzick, *supra* note 30; see Press Release, World Bank, World Bank Group Directs U.S. \$5.5 Billion to Overcome, Poverty, Enhance Growth in South Asia (Sept. 16, 2008), available at <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/SOUTHASIAEXT/EXTSARREGTOPINTECOTRA/0,,contentMDK:21902741~menuPK:579464~pagePK:2865114~piPK:2865167~theSitePK:579448,00.html>.

263. HOUT, *supra* note 102, at 19.

264. See USAID, Humanitarian Assistance, http://www.usaid.gov/our_work/humanitarian_assistance/ (last visited Feb. 13, 2009) (noting that USAID plays a prominent role in humanitarian assistance).

265. See MILLENNIUM CHALLENGE CORP., 2007 GUIDANCE FOR COMPACT ELIGIBLE COUNTRIES, CHAPTER 22: SECTOR GUIDELINES FOR COUNTRIES PROPOSING AGRICULTURE 3–5 (2006), available at <http://www.mcc.gov/countrytools/compact/fy07guidance/english/22-countriesproposingagriculture.pdf> (noting the necessity of value-chain and market analysis in determining whether investment in agriculture is appropriate). According to William Cline, seventy-five percent of the 3 billion people living on \$2 per day or less live in rural or agricultural communities. William R. Cline, The Doha Round, Agriculture, and the Developing Countries, Remarks presented to the USDA's 83rd Agricultural Outlook Forum, Agriculture at the Crossroads: Energy, Farm & Rural Policy 2 (Mar. 1–2, 2007), available at http://www.usda.gov/oce/forum/2007_Speeches/PDF%20speeches/ClineW.pdf.

266. See MCC 2008 COUNTRY SCOREBOOK, *supra* note 205 (discussing Armenia's Compact and its impact on poor female farmers); Millennium Challenge Corporation, Armenia, <http://www.mcc.gov/countries/armenia/index.php> (last visited Feb. 13, 2009) (discussing that the Compact also includes a \$146 million project to increase the productivity of approximately 250,000 farm households (34% of which are headed by women) through improved water supply, higher yields, higher-value crops, and a more competitive agricultural sector).

267. See Millennium Challenge Corp., Impact Evaluation at MCC, <http://www.mcc.gov/programs/impactevaluation/sector-agriculture.php> (last visited

creating “transformative change,” the MCC must expand the scope of its Compact programs to support basic infrastructure development for social welfare such as building health care facilities, computerizing health records, or assisting with the implementation of law and policy reforms focused on social welfare.²⁶⁸ More importantly, the MCA should shift a substantial portion of its programming focus to improving governance, regulatory environments, and the rule of law.²⁶⁹

Regulatory reform *is* being undertaken indirectly through the agriculture and infrastructure projects. For instance, the MCA Compact with Madagascar involves a finance project whereby the banking sector is being substantially overhauled.²⁷⁰ This year, a team of financial and legal analysts will be submitting a comprehensive banking and financial sector reform proposal to be ratified by the Malagasy Parliament.²⁷¹ The Madagascar financial sector reform appears to be the type of foundational regulatory reform that the MCA should be encouraging. Both Democrats and Republicans can agree that improved transparency, efficiency, and rule of law in the financial sector will directly benefit many different aspects of Madagascar’s society in the long-term.²⁷² However, a closer look at the project reveals a significant pro-business bias and raises questions as to the MCC’s commitment to its true mission of *reducing poverty* through growth.²⁷³ Approximately one-third of the Compact will go towards improving credit standards and assisting financial institutions, including \$21 million to help banks in Madagascar clear checks.²⁷⁴ Republican Tom Lantos, who voted to authorize the MCC and was one of its earliest and most vocal supporters laments, “Four French banks and the richest one percent of Madagascar’s elite will be the primary beneficiaries of nearly

Feb. 13, 2009) (discussing the MCC’s role with supporting agriculture development and the infrastructure needed for this development).

268. See *Two New Compacts Signed: Trend to More “Transformative” Grant Sizes*, MCA MONITOR UPDATE (Center for Global Development), Winter 2007, http://www.cgdev.org/section/initiatives/_active/mcamonitor/newsletter/winter11, for an example of the emphasis on transformative change.

269. *Nomination Hearing for John J. Danilovich to Be CEO of MCC Before the S. Foreign Relations Comm.*, 109th Cong. (2005), available at <http://www.mcc.gov/press/speeches/documents/testimony-092705-danilovichtosfrsc.pdf> (statement of John J. Danilovich, Nominee for Chief Executive Officer of the Millennium Challenge Corporation).

270. Millennium Challenge Compact Between the United States of America Acting Through the Millennium Challenge Corporation and the Government of the Republic of Madagascar, Annex 1, Schedule 2, U.S.-Madag., Apr. 18, 2005, available at <http://www.mcc.gov/countries/madagascar/041805MadagascarCompact.pdf>.

271. Millennium Challenge Corporation, Madagascar: Compact-Eligible Country Report (2007), <http://www.mcc.gov/documents/csr-madagascar.pdf>.

272. See *supra* Part III.B.1.c.

273. See *infra* note 365 (describing the goals of the MCC).

274. Kurlantzick, *supra* note 30.

twenty percent of the entire compact . . . Millennium Challenge was meant to help the poor improve their plight through improved economic activity, not to subsidize rich foreign banks.”²⁷⁵ This comment by a Republican supporter of the MCA highlights just how detrimental the MCC’s obsessive pro-business focus has been to the organization’s original mission and support network.

C. Impact of a Partisan Foreign Aid Vehicle

Why is a partisan MCA so troublesome? Since its inception, the MCA has enjoyed relative autonomy as an independent corporation, allowing it to pursue core mandates largely free from political intervention.²⁷⁶ Yielding to partisan interests undermines this autonomy. There are significant problems with allowing either party’s development agenda to dominate the MCA criteria. First and foremost, the MCA is in real danger of being labeled strictly along partisan lines, and more specifically, along Republican lines. Many commentators view Bush’s decision to create a new foreign aid agency rather than reforming current programs as a vote of no confidence in USAID, a Democrat-backed program.²⁷⁷ The debate as to whether the current MCA model is becoming too focused on economic development and capacity building for international trade—evinced a conservative, free-market agenda—as opposed to its original mandate of alleviating poverty through long-term sustainable growth only give credence to such criticisms.²⁷⁸ Sadly, the MCA is in real danger of falling into the same partisan trap as USAID.

The MCA originally garnered broad bipartisan support in both the House and the Senate,²⁷⁹ and it simply cannot afford to lose this bipartisan base. With a Democrat-controlled Congress and a Democratic president, the MCA must avoid being labeled as a Republican initiative. According to the MCA Monitor, “the MCC arguably has a year and [a] half to prove its model and show results so that it survives the 2009 administration change with its model intact.”²⁸⁰

275. *Id.*

276. Millennium Challenge Act of 2003, 22 U.S.C. § 7701 (2006).

277. *See supra* Part II.D.

278. This classic political debate about the effectiveness of trickle-down economics is not likely to be solved by the MCA, but does raise significant issues with the current Compact focus on infrastructure and open markets. For an excellent critique of the MCC’s current approach, see Kurlantzick, *supra* note 30.

279. Kolbe, *supra* note 2. In fact, one of the only true complaints about the MCA at its inception was that it did not do enough to combat the issues facing developing countries. *See id.* (arguing that while the MCA is rightfully geared towards economic development, it should make sure it benefits those outside the formal economy as well).

280. Sarah Lucas, *Lessons from Seven Countries: Reflections on the Millennium Challenge Account*, MCA MONITOR, (Center for Global Development), Apr. 2007, at 8, available at www.cgdev.org/files/13710_file_Lucas_MCA.pdf.

Despite the gravity of the threat to the MCA mission, the MCC has been slow to strategically address or even recognize it. An interviewer recently presented the issue to MCC CEO John Danilovich, specifically addressing the possibility that Congress will “pull together aid under a foreign aid czar and that the MCC will get co-opted and lose its independence.”²⁸¹ The interviewer said, “You’re in the middle of that. How do you see the situation?” To which Danilovich replied, “Well, I don’t know if we’re in the middle of it. We’re sort of on the outside in a way because we are an independently constituted organization by Congress.”²⁸²

However, the reality of this threat cannot be overstated. In June 2007, the CSIS-Brookings Task Force found that fifty different offices currently manage U.S. foreign aid programs.²⁸³ Lael Brainard, chair of the Task Force, testified before the Senate Foreign Relations Committee, “The mark of a successful [foreign aid] reform will be a *reduction in the number of players within the executive branch*. . . . Instead of the 50 separate offices that currently manage U.S. foreign aid programs, we should have *no more than one integrated agency*.”²⁸⁴ Although Ms. Brainard repeatedly referenced the MCC as a successful U.S. foreign aid organization, she nonetheless clearly categorized the MCA as one of the fifty government agencies ripe for consolidation. Furthermore, the 2007 Senate Appropriations Committee recommendation stated, “the Committee remains concerned that compacts and country plans for MCC projects should be coordinated with, and complementary to, other foreign assistance efforts of the United States.”²⁸⁵

The rapidly changing political climate only serves to exacerbate the gravity of this situation. Although the Obama team has not stated any intention to eliminate the MCA altogether, it has proposed that all foreign aid initiatives, including the MCA, be conscripted under a reorganized and empowered USAID.²⁸⁶ This alone would not necessarily debilitate the MCA, but would make it much more difficult for the MCA to pursue its original apolitical objectives. The current structure of the MCC enables it to coordinate independently with recipient countries and maintain an aura of political autonomy.²⁸⁷ Although not ideal, the MCA may be able to retain its original mission, even as a part of the larger USAID framework. However, it must prepare for significant restructuring as a political

281. Interview by Robert McMahon with John Danilovich, CEO, Millennium Challenge Corp. (July 10, 2006), available at <http://www.cfr.org/publication/11086/danilovich.html>.

282. *Id.*

283. Brainard Testimony—Reinventing Aid, *supra* note 123.

284. *Id.*

285. S. REP. NO. 109-277, at 78 (2007) (Conf. Rep.).

286. Obama Global Development Strategy, *supra* note 21.

287. Millennium Challenge Act of 2003, 22 U.S.C. § 7701 (2006).

reality. In order to survive any proposed restructuring with its original mandate intact, the MCA must begin now to separate itself from the partisan fray and adopt an apolitical stance. This will allow it to continue independently negotiating with developing countries in fulfillment of its mandate of pure performance-based assistance outside the confines of political agendas. It will also make Democratic leaders more sympathetic with the MCA's mission.

Lest one assume this is a pure policy debate, it is important to note that a polarized and politicized MCA stands to have tangible legal implications for developing countries. More important than Washington politics, the move towards partisanship substantially undermines and dilutes the ultimate goal of promoting an established rule of law and rewarding good governance. It is also important to note that this is not a critique of the Republican influence on the initial establishment and development of the MCA nor of President Bush's motivations. Indeed, the MCA should be touted as a positive bipartisan achievement in an otherwise politically divisive presidency. Aid allocation along party lines in either direction—left or right—raises numerous issues. A Democrat-focused MCA, exemplified by an emphasis on Investing in People, threatens to conflate social outcomes with objective performance indicators and may lose sight of the long-term development goals of the MCA. A Republican-oriented MCA, exemplified by Economic Freedom, conversely threatens to subordinate true poverty alleviation to the interests of financial capital markets and U.S. business interests. The MCC must not be swayed by either side, but must remain true to its core mission—developing long-term sustainability in countries with stable governments and respect for the rule of law. Ruling Justly can be seen as the only primarily bipartisan indicator, and should become a much greater focus of both MCA eligibility and Compact programming in order to achieve this mission.

V. SOLUTION: DEVELOPING AN APOLITICAL ENTITY WITH A FOCUS ON GOVERNANCE AND THE RULE OF LAW

The Millennium Challenge Account concept has shown incredible promise in the last four years but is still in serious jeopardy of having its mission subverted by partisan interests.²⁸⁸ This would be devastating for the many developing countries competing for MCA Compacts and for the concept of performance-based aid in general. The MCA must recognize its core strength of improving the rule of law, regulatory reforms, and positive governance in developing countries and must focus on this non-partisan mission. It must shed current perceptions of being a purely Republican-oriented model of

288. See *supra* Part IV.C.

foreign aid and instead adopt an apolitical approach, similar to the position taken by the World Bank. Although development is not necessarily the primary objective of all foreign aid programs, it is—and must remain—the objective of the MCA. There are numerous other foreign aid vehicles such as USAID or the State Department through which aid can be distributed for political expediency or national security purposes. The original Millennium Challenge Account was intended to achieve aid through investment in countries showing a dedicated commitment to economic freedom, investment in citizens, and good governance,²⁸⁹ and it must remain true to that mission.

In order to successfully transition into the Obama Administration, the MCC should take the following steps. First, it must reposition itself as an apolitical organization and remove any vestiges of conservative, business-oriented control. Furthermore, it must raise awareness within Congress and in the foreign aid community as to previous successes and the fundamental soundness of its core mission. Secondly, the MCA must shift its major focus away from economic and infrastructure projects, which are more likely to help those who can already help themselves, and focus instead of good governance and the rule of law. This should happen at all stages of the MCA process—indicator selection, initial eligibility, and Compact and Threshold programs.

A. Create an Apolitical Organization

Although perceived by many to be a Republican response to the Democrat-controlled USAID, the MCA was originally designed as a non-partisan organization charged with allocating aid outside the realm of either national interests or political expediency.²⁹⁰ The MCC has done a commendable job in remaining true to this mandate, especially given the political constraints inherent in its close relationship with Congress for funding purposes. With a few notable exceptions, such as the questionable selection of Georgia for Compact funding,²⁹¹ MCA Compact countries have seemingly been chosen based on eligibility indicators rather than national interests.²⁹² In

289. 22 U.S.C. § 7701.

290. *Id.*

291. Lucas & Radelet, *supra* note 127. The inclusion of Jordan for Threshold funding is another example of a questionable and politically-expedient funding decision. Steve Radelet, MCA Monitor Blog, FY06 Threshold Countries—Some Disturbing Choices, http://blogs.cgdev.org/mca-monitor/archives/2005/11/fy06_thres_hold.php (Nov. 15, 2005, 18:31).

292. See generally Center for Global Development, MCA Monitor, http://www.cgdev.org/section/initiatives/_active/mcamonitor (last visited Feb. 13, 2009) (noting that independent experts from the non-partisan Center for Global Development

fact, the MCC has been criticized for providing funds to countries with no identifiable political importance to the United States.²⁹³ Former U.S. Senator Bob Barr, a vocal critic of the MCA, offered this assessment of the MCA's \$66 million Compact with Vanuatu, which he believes has "no conceivable national security value to the United States":²⁹⁴

Our Millennium Challenge Corporation Board of Directors proudly announced in a news release last month that the tiny, but by definition vitally important, island nation of Vanuatu (which was last known to the U.S. military as the New Hebrides during World War II), had been selected to receive \$66 million, or more than \$300 for every man, woman and child in its population Thank goodness we have thereby wrested this potential terrorist training ground from the clutches of al-Qaida.²⁹⁵

Although one might first read Mr. Barr's words to be very harsh criticism of the MCA, they actually provide evidence that the MCC is in fact remaining true to its mandate. However, past experience with USAID has demonstrated how difficult it is to remain free from partisan politics—difficult, but not impossible.²⁹⁶

1. A Model for Reform—Lessons from the World Bank

The World Bank exemplifies how aid organizations can be structured and managed according to an apolitical development agenda.²⁹⁷ "The World Bank's reputation is built on the premise that it is a technically competent institution that conducts its business without regard for politics."²⁹⁸ In fact, the Bank's Charter specifically prohibits any political involvement.

The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned.²⁹⁹

This neutral political role has provided wide latitude for Bank involvement in a number of political climates.³⁰⁰ In fact, the World

continually monitoring MCA activities have found it to be largely non-partisan and transparent in selecting candidate countries).

293. Barr, *supra* note 48.

294. *Id.*

295. *Id.*

296. *See supra* Part II.D.

297. MICHELLE MILLER-ADAMS, *THE WORLD BANK: NEW AGENDAS IN A CHANGING WORLD* 100 (1999).

298. *Id.*

299. World Bank Charter art. 4(10).

300. The World Bank currently lends to countries from every region of the globe. The World Bank website provides a list of aid recipients. World Bank, Projects and Operations, Country Aggregate Reports, <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,,menuPK:64383817~pagePK:64387457~piPK:64387543~theSitePK:40941,00.html> (last visited Feb. 13, 2009).

Bank has been able to gain and maintain sufficient legitimacy to engage with governments of vastly different political complexions only through emphasizing its technical and apolitical identity.³⁰¹ Paul Nelson writes, "The World Bank's apolitical posture . . . [is] a strategy for organization survival in a highly uncertain field of work . . . and a source of power and influence in daily operations."³⁰² Indeed, "[t]he World Bank's reputation is built on the premise that it is a technically competent institution that conducts its business without regard for politics."³⁰³

Although the bank remains apolitical, it has become increasingly involved in governance reform as a part of its larger mandate to create strong governments and financial institutions capable of effectively handling World Bank funds.³⁰⁴ This trend originated as a result of a 1989 World Bank report citing a "crisis of governance" in many African countries.³⁰⁵ The Bank originally defined governance broadly, including such concepts as political pluralism, respect of the rule of law, and protection of human rights.³⁰⁶ The Bank subsequently narrowed their definition to focus on the core goal of development and sustainable growth.³⁰⁷ "Governance is defined as the manner in which power is exercised in the management of a country's economic and social resources for development."³⁰⁸

The World Bank acknowledged the need to focus on governance and transparency for many of the same reasons cited by proponents of the MCA: growing concern over the effectiveness of foreign aid, insufficient capacity to implement ambitious reform programs, and increasing corruption which siphoned away resources from development projects.³⁰⁹ Numerous World Bank reports defined the

301. PAUL J. NELSON, *THE WORLD BANK AND NON-GOVERNMENTAL ORGANIZATIONS: THE LIMITS OF APOLITICAL DEVELOPMENT* 118 (1995).

302. *Id.*

303. MILLER-ADAMS, *supra* note 297, at 100.

The governance agenda that has emerged from these institutional constraints is a narrow, technical one that emphasizes issues of state capacity and accountability. Observers have drawn a distinction between the "liberal democratic" governance agenda of many bilateral aid agencies that links democratic institutions, market-oriented economic policies and respect for human rights, and the more limited "process of government" agenda pursued by the World Bank that eschews mention of the form of political regime in a borrowing country.

Id. at 102.

304. HOUT, *supra* note 102, at 25, 42-43.

305. MILLER-ADAMS, *supra* note 297, at 101.

306. *Id.*

307. *Id.*; Robert Archer, *Markets and Good Government*, preface (U.N. Non-Governmental Liaison Service Development Dossiers), available at <http://www.un-ngls.org/documents/publications.en/develop.dossier/dd.01/01.htm>.

308. WORLD BANK, *GOVERNANCE AND DEVELOPMENT* 1 (1992).

309. *Id.* at 101.

parameters of governance and its importance in the aid realm.³¹⁰ *Assessing Aid* and the Dollar & Collier report set the foundational groundwork for aid selectivity.³¹¹ The World Bank continues to strongly support this concept and encourages lenders to do the same.³¹² The Bank's 2003 Annual Review of Development Effectiveness states that in the absence of a "relatively good policy environment," donors should limit or postpone lending until there are "clear signals that reform is under way."³¹³

One of the strongest points of alignment between the World Bank and the MCA is that both have realized the strategic necessity of tackling corruption as a threshold development issue.³¹⁴ The MCC led in this role, but the World Bank also now closely assesses each country's control of corruption score in determining funding allocations.³¹⁵ Indeed, World Bank data plays into the MCA indicators in many levels of democracy and good governance.³¹⁶

Despite similarities, MCA governance efforts differ from the World Bank in significant respects. Most of these distinctions point to a greater competence and better alignment between governance reform and the MCA mandate. The MCA is better positioned strategically and in terms of expertise to undertake more ambitious and nebulous governance reforms. The World Bank historically focused on tangible short-term economic development projects such as bridges and infrastructure rather than less quantifiable and longer term policy reforms.³¹⁷ In contrast, the MCA developed substantial expertise in both policy objectives and infrastructure.³¹⁸ Furthermore, whereas the World Bank generally remains only superficially involved in projects following the disbursement of funds,³¹⁹ the MCA model includes substantial monitoring and support to ensure each project's success³²⁰—a strategy vital to

310. See *supra* Part II.A.

311. *Id.*

312. WORLD BANK, OPERATIONS EVALUATION DEPT., 2003 ANNUAL REVIEW OF DEVELOPMENT EFFECTIVENESS: THE EFFECTIVENESS OF BANK SUPPORT FOR POLICY REFORM 13–14 (2004).

313. *Id.* at x.

314. HOUT, *supra* note 102, at 92; MILLER-ADAMS, *supra* note 297, at 115.

315. HOUT, *supra* note 102, at 92–93.

316. FY2009 MCC INDICATORS, *supra* note 72, at 6–7; see *supra* Part III.A.1.

317. MILLER-ADAMS, *supra* note 297, at 102.

318. Policy objectives through the Indicators and Threshold Programs; infrastructure and agriculture development through MCA Compacts.

319. MILLER-ADAMS, *supra* note 297, at 102.

320. The MCA concept includes an exhaustive reporting structure. Depending on the stage in the process, countries must submit quarterly reports regarding Compact Development, Compact Implementation, and Threshold Program Implementation. Fact Sheet, Millennium Challenge Corp., The MCC Program Cycle (Mar. 6, 2008), available at <http://www.mcc.gov/documents/factsheet-031408-typicalprogramecycle.pdf> [hereinafter MCC Program Cycle]. In addition, the MCC reports on each Compact and Threshold program quarterly in the Federal Register and

difficult and nebulous reform efforts such as governance and regulatory reform.

Arguably the most important distinction between the World Bank and the MCA is the scope of “governance,” which in turn defines the extent to which each organization can engage in governance reform.³²¹ The MCA’s concept of governance encompasses social and political concerns whereas the World Bank focuses solely on the technical aspects of governance as related to economic development and free markets.³²² Most notably, the MCA approach implicitly equates democracy with governance while the World Bank absolutely forbids this approach.³²³

Observers have drawn a distinction between the “liberal democratic” governance agenda of many bilateral aid agencies [including the MCC] that links democratic institutions, market-oriented economic policies and respect for human rights, and the more limited “process of government” agenda pursued by the World Bank that eschews mention of the form of political regime in a borrowing country.³²⁴

Narrowly defining governance creates a relatively limited scope for World Bank governance reform in the context of its apolitical agenda. According to the World Bank’s legal counsel, “The Bank may not be involved in financing legal reform activities that do not have a direct and obvious link to economic development.”³²⁵ Most notably, the World Bank cannot favor democracies over alternate forms of governance. The following activities aimed at improving the legal framework of loan recipients are within the World Bank’s governance reform mandate: support for government efforts to effectively communicate laws; support for regulatory framework reform, including laws governing securities markets or financial institutions; and legal training and technical assistance to improve the judicial systems, rule of law, and conflict resolution.³²⁶ Governance reform has been focused strongly on regions such as Eastern Europe and Central Asia where the legal and institutional framework necessary for an effective market economy is lacking.³²⁷

on the MCC website, per Congressional mandate. Millennium Challenge Act of 2003, 22 U.S.C. § 7707(a).

321. See generally HOUT, *supra* note 102, ch. 7 (comparing the scope of governance in various aid selectivity metrics, including the United States and the World Bank).

322. MILLER-ADAMS, *supra* note 297, at 102.

323. Lucas & Radelet, *supra* note 127.

324. MILLER-ADAMS, *supra* note 297, at 102.

325. *Id.* at 115.

326. *Id.*

327. *Id.*

The MCA does not face these constraints and has in fact actively embraced democracy as a key element of “good governance.”³²⁸ This Note argues that embracing democracy as a threshold condition of aid is entirely within the discretion of U.S. foreign policy, especially given empirical evidence suggesting the benefits of this approach.³²⁹ The MCA can learn from the World Bank governance programs noted above. In fact such programs align closely with MCA objectives, but the MCA’s broader mandate would allow it to expand this list. Initiatives including social reform and strengthening democracies are not outside the MCA’s core mandate.³³⁰ However, in order to effectively implement such programs, the MCA must—like the World Bank—maintain high standards of transparency and remain free from either left- or right-leaning political agendas.

2. Repositioning the MCC as an Apolitical Organization

In order to continue pursuing its core mission, the MCA must begin to extract itself to the greatest extent possible from any type of partisan affiliation. This will be beneficial in the short-term—to institutionally survive an Administration change—and in the long-term—to ensure that MCA funding continues to reach the most worthy recipients.

The MCC has already engaged in this process to some extent through internal restructuring in October 2007 to focus its “core activity . . . on compact implementation.”³³¹ This Note advocates a more proactive and aggressive strategy. In addition to internal restructuring, the MCC must reposition itself politically as a non-partisan organization and shed any former vestiges of Republican control. It must return to its original, exclusive mission of facilitating economic, social, and political progress through results-based aid in impoverished countries with proven standards of governance, human rights, and political freedom.

Fortunately, the MCC is strategically placed to be flexible and has the institutional strength to withstand repositioning. The MCC

328. ALICIA PHILLIPS MANDAVILLE, SR. POL’Y ASSOC., MILLENNIUM CHALLENGE CORPORATION, MCC AND THE LONG TERM GOAL OF DEEPENING DEMOCRACY 1 (2007), available at <http://www.mcc.gov/documents/mcc-112007-paper-democracy.pdf>.

329. See *supra* Part III.B.1 (noting empirical and anecdotal successes of the MCA Effect and Compact programs). Despite an implicit acceptance of democracy, the MCA remains reluctant to explicitly use this term. As Elizabeth Spiro Clark notes, “[g]iven that the MCA was developed in the Treasury Department, it is no surprise that it reflects the World Bank’s reluctance to use the “D” word.” Elizabeth Spiro Clark, *The Millennium Challenge Account: Spur to Democracy?*, Foreign Serv. J., Apr. 2005, at 31, 33.

330. MCC Program Cycle, *supra* note 320.

331. Press Release, Millennium Challenge Corp., MCC Announces Reorganization to Focus Agency on Compact Implementation (Oct. 1, 2007), available at <http://www.mcc.gov/press/releases/documents/release-100107-reorganization.php>.

has often been praised for its internal culture.³³² It was recently selected as one of the five best government agencies to work for, scoring 83.3 for “Employee Skills/Mission Match” and 74.7 for “Teamwork.”³³³ Its small and independent structure gives it significant autonomy in organizational form and direction. Furthermore, U.S. government agencies have successfully made this transition in the past.³³⁴ In developing a nonpartisan and apolitical stance, the MCC would benefit from the lessons learned by AmeriCorps in transitioning from the Clinton to Bush administrations. At the end of his term, Clinton had one mission, “to take [AmeriCorps] off the partisan political battlefield.”³³⁵ He accomplished this mission by first vowing to remove AmeriCorps from any political campaigns and to ensure that key AmeriCorps leaders were not involved in partisan politics.³³⁶ AmeriCorps then collaborated with non-profit advocacy groups from both sides of the political spectrum, achieved key relationships with the new Bush Administration, and finally convinced Congress through action rather than words that its nonpartisan stance was genuine.³³⁷

The MCC can affect the same transformation. Although commentators on the extremes have called the MCA concept simply an expansion of “American imperialism” and “neo-conservative definitions of democracy and freedom,” most international aid advocates view the underlying mission of results-based aid in the MCA as a legitimate and noble goal.³³⁸ Similar to AmeriCorps, the MCC should capitalize on this broad support by embracing non-partisanship; it can then educate constituents about its nonpartisan stance and collaborate with organizations able to reinforce this position.

At the core of developing a nonpartisan approach must be a fundamental shift in the stance of the MCA coupled with prominent outward manifestations of this new direction. For instance, the MCC should lobby Congress to remove most MCA positions from the realm of political appointments. They should also seek to realign the Board to be apolitical and non-partisan. Finally, staggering any political

332. See, e.g., Brainard Testimony—Reinventing Aid, *supra* note 123 (commending the MCA for its effective workplace environment).

333. The Best Places to Work in the Federal Government 2007, Millennium Challenge Corporation, available at http://www.bestplacestowork.org/BPTW/rankings/agency.php?code=M100&q=scores_small (last visited Feb. 25, 2009).

334. Harris Wofford, *The Politics of Service: How a Nation Got Behind Americorps*, BROOKINGS REV., Sept. 22, 2002, available at http://www.brookings.edu/articles/2002/fall_civilsociety_wofford.aspx.

335. *Id.*

336. *Id.*

337. *Id.*

338. See Soederberg, *supra* note 12, abstract (explaining that though the MCC has imperialistic overtones, its goals are meritable).

appointments will create consistency in the MCA's top management despite partisan power. A deeper analysis of steps to becoming apolitical in an admittedly political field is outside the scope of this discussion. However, it must be the focus of any future action taken by the MCC Board if the MCA hopes to survive through the next administration.

Importantly, the MCC must capitalize on its successes and on its shift towards a non-partisan approach by using its allies to support its cause. The MCA has demonstrated measurable successes on an individual Compact-country basis and more broadly through innovative programming strategies and the MCA Effect.³³⁹ However, as Sarah Lucas noted in the April 2007 MCA Monitor, "the MCA has not done a particularly good job of making the case for its approach."³⁴⁰

The MCA should "make this case" by actively communicating its successes and maintaining its broad constituency in Washington, D.C., and in the larger foreign aid community.³⁴¹ It is also vital that the MCA communicate the importance of its aid selection methodology. As evidenced by the FY2009 Senate Appropriations Committee report—in which the Committee essentially recommended a "life support" budget for the MCA³⁴²—many Congressmen hold dangerous misconceptions about the MCA's strategy of long-term, sustainable development. The Appropriations Committee recommended a FY2009 budget of \$254 million, \$1.97 billion below the MCC's budget request.³⁴³ The Committee then recommended reallocating the additional \$1.97 billion "to support programs . . . to address immediate and pressing humanitarian, development, and security needs."³⁴⁴ Although funding humanitarian needs is commendable, the Committee's comments make it clear that they prefer a compassion- or crisis-based aid approach and have not yet been convinced of the benefits of performance-based aid to generate long-term growth.³⁴⁵

Even more alarming, the Appropriations Committee actually criticized the MCA for basing country selections on performance

339. See *supra* Part IV.A.

340. Lucas, *supra* note 280, at 2.

341. "The [MCC] should let the voices of its greatest advocates—MCA country teams, NGOs and beneficiaries—be heard more loudly in Washington. They would do a lot to help build a D.C. constituency of support." *Id.* at 5–6.

342. FY2009 SEN. APPROPRIATIONS COMM., *supra* note 9, at 61–62; Herrling Post, *supra* note 20.

343. FY2009 SEN. APPROPRIATIONS COMM., *supra* note 9, at 61.

344. *Id.*

345. "While recognizing the development impact of child survival and HIV/AIDS programs, simultaneously cutting the complementary long-term MCC funding that builds economies to provide jobs and security for those individuals saved and could build health systems more broadly is ultimately short-sighted." Herrling Post, *supra* note 20.

indicators instead of political interests. The Committee report concluded with: “[T]he Committee underscores its strong support for additional assistance for countries *important to U.S. interests*. The Committee expects that should the MCC reprogram existing funds for new compacts, *priority will be given to such countries*.”³⁴⁶ This statement marks a devastating blow to the MCA concept and to developing countries struggling to meet MCA eligibility indicators.³⁴⁷ Rather than rewarding countries based on good governance, sound economic policies, and investment in their people, the Senate Appropriations Committee is once again expressing intent to use foreign aid for purposes of political expediency. The MCA must actively resist this trend or risk undermining all of the progress that has been made to date through the MCA Effect and Threshold and Compact programs. “The MCA program will lose value—and effectiveness—to the extent that publics in recipient countries identify it not with development goals but with U.S. foreign policy.”³⁴⁸

The Senate Appropriations Committee recommendations have been generally regarded as a near fatal blow to the MCA.³⁴⁹ However, this “life support” year may actually be good for the MCC. By taking a step back from new Compact development, the MCA can focus on repositioning and redirecting resources towards its original mission. It can also use this time to rebuild its support system within Washington, D.C., and develop new supporters in the incoming Administration. As Kurlantzick writes,

Even leading conservatives who initially supported the program are now blasting the MCC. “The great promise of the Millennium Challenge was met with tremendous hope and anticipation,” said Rep. Henry Hyde, who voted to authorize the initiative as chairman of the House International Relations Committee. But now, he said, “we see a program struggling to get off the ground . . . lacking the boldness necessary to break the cycle of poverty”—a failure that belies the original vision.³⁵⁰

Realignment as an apolitical entity alone will not save the MCA. However, by removing itself from partisan politics, the MCA will be able to focus more directly on educating constituents and garnering support from both sides of the aisle. If the Democrats no longer see the MCA as a Republican vehicle for opening markets to trade, but rather as a means of encouraging democracy and the rule of law,

346. FY2009 SEN. APPROPRIATIONS COMM., *supra* note 9, at 63 (emphasis added).

347. “Any language that suggests the MCC should reprogram assistance to ‘countries important to U.S. interests’ takes the poverty focus of the MCC political, thereby casting doubt on the degree of real support for the model.” Herrling Post, *supra* note 20.

348. Clark, *supra* note 329, at 35.

349. Herrling Post, *supra* note 20.

350. Kurlantzick, *supra* note 30.

there is a much greater probability of the continued existence of the MCA concept.

B. Focus on Good Governance and the Rule of Law

1. Focus on Governance Indicators

The MCC has developed a novel approach of performance-based aid and has proven the viability of its underlying concept. Empirical studies such as the Harvard Report as well as testimonial evidence from developing countries demonstrate the effectiveness of performance-driven assistance. Ruling Justly indicators such as rule of law and governance metrics remain the most apolitical method for measuring the performance of developing countries. The MCA should focus the majority of its efforts in refining eligibility indicators in these areas.

The MCA must use its unique position of influence to encourage and strengthen both democracy and good governance in the developing world. Democracy gives individuals a voice through representative governments.³⁵¹ Governance rather focuses on fair and consistent application of the law, restraint on corruption, and transparent and accountable government.³⁵² The MCA must focus on both to create the most fair and effective indicator metrics.

Even economic and social indicators should encompass tangible human and socio-economic rights. For instance, in addition to measuring girls' primary education, which may be influenced by a number of means such as cultural or family constraints, the Investing in People pillar might introduce an indicator pertaining more broadly to the protection of women's rights through laws and enforcement mechanisms. Lesotho's enactment of the "Legal Capacity of Married Persons Act" provides strong support for the proposition that developing countries would respond well to this indicator and take active steps to improve the status of women.³⁵³ Furthermore, there are objective and measurable methods for assessing women's rights in developing countries. Factors such as the number of women in decision making positions, enforcement of laws and policies protecting victims of gender-based violence, and percentage of women with access to basic resources are already tracked in most developing countries in response to international agreements like the Convention

351. LAEL BRAINARD, SECURITY BY OTHER MEANS: FOREIGN ASSISTANCE, GLOBAL POVERTY, AND AMERICAN LEADERSHIP 14 (2006). Although democracy generally cannot be forced, it can be encouraged and rewarded through aid and other incentives. *Id.*

352. *Id.*

353. See S. Res. 103, 110th Cong. (2007) (enacted), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:sr103ats.txt.pdf.

on the Elimination of All Forms of Discrimination Against Women (CEDAW).³⁵⁴ Creating incentives for countries to put good laws on the books is not in and of itself sufficient to change the legal environment. However, coupled with MCA Compact components aimed at improving the public awareness and enforcement of laws, policies changed through the MCA Effect could have real impact.

2. Encourage Governance and the Rule of Law in MCA Compacts

The MCA has recently recognized the importance of democracy and the rule of law, stating, "We are acting consciously on the belief that democracy and economic development are not competing aims, but rather fully complimentary objectives."³⁵⁵ However, the MCA primarily encourages democracy primarily by allowing country ownership in Compact development and implementation.³⁵⁶ While this is a positive step, it is insufficient without MCA Compacts designed to strengthen the institutional and legal framework of Compact countries.

Several reasons make good governance a necessary focus of MCA Compacts. The MCC was precipitated on growing international research recognizing that aid works best in countries with sound governance and policies.³⁵⁷ Indeed, President Bush explicitly stated this in his introduction of the MCA.³⁵⁸ Further, it appears that the MCC values governance as the most important eligibility indicator, evidenced by the absolute control of corruption hurdle and the de facto democracy hurdle minimums. Finally, Ruling Justly is arguably the only pillar almost entirely free from substantial partisan interests. Both Republicans and Democrats can agree that a transparent, fair, and effective government with a strong rule of law and limited corruption is vital to long-term sustainable development in the poorest countries. Unfortunately, the Harvard Study provides empirical evidence suggesting that MCA eligible countries are improving almost every indicator *except* for the key governance and rule of law indicators and are in fact showing slightly negative trends

354. See U.N. Convention on the Elimination of All Forms of Discrimination Against Women [CEDAW] art. 18, G.A. Res. 34/180, Annex, U.N. Doc. A/RES/34/180 (Dec. 18, 1979) (outlining CEDAW reporting requirement regarding women's rights issues); U.N. Div. for the Advancement of Women, Dep't of Econ. & Soc. Aff., Convention on the Elimination of All Forms of Discrimination Against Women [CEDAW], State Parties, <http://www.un.org/womenwatch/daw/cedaw/states.htm> (last visited Feb. 13, 2009) (listing signatories to CEDAW).

355. MANDAVILLE, *supra* note 328, at iii.

356. *Id.* at ii.

357. See *supra* Part II.A (describing research that suggested a results-based approach to foreign aid).

358. Bush, *supra* note 42.

in these indicators.³⁵⁹ The evidence suggesting that the MCA Effect is not sufficiently robust to encourage improvement in the Ruling Justly indicators presents a compelling case for a greater MCC focus on governance reform in Compact and Threshold program development.

Although there is strength in the current MCA strategy of allowing Compact-eligible countries to identify their own funding priorities, this must be balanced with the overall U.S. foreign aid policy of improving governance and regulatory reform in emerging markets. The MCC has developed relevant expertise in governance reform programs through drafting and implementing Threshold programs focused on improving governance, controlling corruption, and strengthening the rule of law.³⁶⁰ This broad catalog of governance reform initiatives such as reforming the judicial process, enhancing election processes, and creating government accountability programs can be effectively translated into more sophisticated programs for Compact-eligible countries.

While the immediate relevance of judicial reform and governance programs is apparent, the role of the MCA in other types of legal reforms is less clear. Many Congressmen and human rights organizations have called for a greater emphasis on social welfare and human rights reform programs.³⁶¹ However, the goal of the MCA is to “reduce poverty through economic growth” and to create sustainable economies capable of subsequently investing in their own social welfare.³⁶² While some social welfare initiatives, such as women’s right to own property, have implications for economic and governance reform, the MCA has rejected getting heavily involved in other programs not directly related to economic/infrastructure development or governance–policy reform. This is demonstrated by the fact that only two primary education programs are listed in the success stories section of the MCC website.³⁶³

Although unpopular with human rights organizers and NGOs, the strategic decision to relegate these programs to other aid programs such as USAID or PEPFAR (President Bush’s HIV/AIDS treatment initiative) is in fact consistent with the MCA’s mission.³⁶⁴

359. Johnson & Zajonc, *supra* note 22, tbl.1.

360. See *supra* Part IV.A.2.

361. TARNOFF, *supra* note 101, at CRS-4–CRS-5.

362. MCC Makes Headway, *supra* note 195.

363. Burkina Faso and Ghana have both improved access to primary education for girls through MCA funding. Success Stories, *supra* note 154.

364. A key strategy of the MCA is “reducing poverty through economic growth.” Millennium Challenge Corporation, About MCC, *supra* note 91 (“The MCC focuses specifically on promoting sustainable economic growth to reduce poverty through investments in areas such as transportation, water and industrial infrastructure, agriculture, education, private sector development, and capacity building.”); see also Lael Brainard, *Compassionate Conservatism Confronts Global Poverty*, WASH. Q.,

The World Bank has faced similar criticisms in many of its programs.³⁶⁵ “NGOs criticize the Bank’s work on governance as partial and one-sided, concerned mainly with the creation of a favorable investment climate and driven by the needs and concerns of private sector actors, rather than civil society as a whole.”³⁶⁶

While these are legitimate concerns, the MCA, like the World Bank, must remain true to its mission and long-term strategic plan. Social welfare programs are not specifically within the mandate of the MCA and can be more capably and efficiently implemented by USAID. However, a call for the MCA to remain true to its original mission is by no means an endorsement of the MCC’s current pro-business focus. Many MCA Compacts as currently administered subvert the goals of poverty reduction to the interests of free markets, big business, and international trade. At the moment, the MCA model appears to be on “life support”—both financially and programmatically—but it is not dead. Shifting the MCA’s focus away from big business and towards governance reforms, democracy building, and improving the rule of law is vital to regaining the MCA’s credibility and giving credence to this novel international aid experiment.

Compact and Threshold programs focused on democracy and the rule of law will eventually build the institutional capacity necessary for tackling larger human rights reforms and far-reaching development efforts. Successful economies, in the absence of transparent and accountable governments, create incentives for corruption and greed. One need only look at the current situation in Zimbabwe—once the “Jewel of Africa”—to see the effects of economic prosperity in the absence of a solid rule of law.³⁶⁷

Spring 2003, at 149, 156 (“Unlike the existing USAID Development Assistance and Child Survival and Health funds, which are allocated to countries whose development needs are most compelling, the MCA would attempt to isolate the highest potential investments by targeting only the best performing poor countries.”).

365. MILLER-ADAMS, *supra* note 297, at 103.

366. *Id.*

367. Club of Rome, What Happened to the Jewel of Africa? Political Debacle in Zimbabwe, <http://clubofrome.wordpress.com/2005/02/05/what-happened-to-the-jewel-of-africa-political-debacle-in-zimbabwe-salon-on-february-5th-2005/> (Feb. 5, 2005). The poster writes:

Zimbabwe was once viewed as a model for African economic management However, a combination of repression, mismanagement (a schizophrenic gyration between state controls and neoliberal policy), and corruption have brought the nation to hunger, hyper-inflation, political paralysis (including jeopardizing the independence of the judiciary and press) and the verge of mass civil disobedience.

VI. CONCLUSION

Although many see the Millennium Challenge Account as a pure policy initiative driven primarily by conservative interests, anecdotal and empirical evidence conclusively proves that the MCA positively impacts developing countries both through the MCA Effect and through Compact and Threshold programs. More importantly, the MCA is directly influencing candidate countries to make tangible improvements in governance, transparency, regulatory environments, and the rule of law. This presents an incredible opportunity to prove the effectiveness of results-based foreign aid. It also presents a very real danger of partisan politics compromising the integrity of the MCA concept. Early evidence of a partisan influence can be seen in the emphasis on Economic Freedom indicators as well as an increasing homogeneity in MCA Compact programs focusing on infrastructure and free market development. Furthermore, by playing to partisan interests, the MCA risks losing its autonomy and being manipulated by both Republicans and Democrats for purposes of political expediency.

In order to combat this threat, the Millennium Challenge Corporation must adopt a consistent, nonpartisan, and empirically-sound approach to determining eligibility indicators and aid distribution. Removing the MCA substantially from the political arena and shifting the primary focus of the MCA to democracy and the rule of law will greatly increase the effectiveness of U.S. foreign aid in creating lasting governance and policy reform in developing nations.

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* J.D. Candidate, Vanderbilt University Law School, May 2009; B.S.I.B., University of Arkansas, 2005. The Author is incredibly grateful and forever indebted to her wonderful family, friends, and mentors. Special thanks to Mama, Granny, Julia, Melissa, and Nora, along with gratitude to the Editorial Staff of the VANDERBILT JOURNAL OF TRANSNATIONAL LAW for their diligent work. This Note is dedicated to all of the "inquiring minds" I have met along the way—you keep each day interesting.