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The US and Panama: The Evolution of an Asymmetric Relationship

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Abstract

This article examines the historic transition of the Panama Canal from the United States to Panama and analyzes how this transition transformed the relationship between the US and Panama. We argue that the relatively peaceful transition of the Canal from the US to Panama, despite its flaws, ultimately allowed Panama to overcome a history of occupation, to gain long-awaited sovereignty over its territory and to expand its role in the international community. With the acquisition of the Canal, and the lengthy transition period which allowed adequate time for Panamanians to master Canal operations, Panama has become an essential player in the global economy and now uses the Canal as a catalyst for national economic growth. The transition, as well as the divergent interests of both actors, changed the historically asymmetric relationship between the US and Panama. While the US remains dominant, Panama has solidified its sovereignty.

Key words: Asymmetry Theory, Panama, United States, Panama Canal, Carter-Torrijos Treaties, Deconcini, Liberalism, Noriega, Hay-Bunau-Varilla Treaty, Unexploded ordinances, Jimmy Carter, Neutrality Treaty

Panama recently celebrated its first decade of sovereignty over the Panama Canal and the former Canal Zone. Prior to this time, Panama had little to no control over this precious national resource. The French had begun construction of the Canal in 1880, when Panama was still a province of Colombia. Shortly after the US assisted Panama in achieving independence from Colombia in 1903, the US assumed the rights to build and indefinitely administer the Canal. The US completed construction of the Canal in 1914 and maintained control over the Canal until 1999, when custody of the Canal was finally granted to Panama. The turnover of the Canal did not happen without a fight. Given its economic and strategic value, the US was reluctant to cede this asset, in which it had invested so much time and resources. Nevertheless, an agreement was reached in 1977 to gradually transfer responsibility for the Panama Canal over to Panama. This monumental decision, reached between US President Jimmy Carter and General Omar Torrijos of Panama, was a controversial one. Many objected to this decision and speculated that Panama would prove incapable of running the Canal independently. US intentions and their commitment to this process were also questioned, given the asymmetrical relationship between these two countries. Ten years later, the asymmetrical relationship remains, yet Panama has proven that it is more than capable of running the Canal successfully. The peaceful transition of the Canal from the US to Panama, despite its flaws, ultimately allowed Panama to overcome a history of occupation, to gain long-awaited sovereignty over its territory and to expand its role in the international community.

As we examine this feat and the evolving relationship between the US and Panama, we demonstrate how this relationship lends credibility to University of Virginia professor Bradley Womack's work on asymmetry theory. Womack describes the two major precepts of asymmetry theory:

The first is that, contrary to multipolarity theory, the disparities between states can create fundamental differences of perspective between the more powerful and the less powerful. The differences of perspective produce structural misperceptions of the other's intentions, and can lead to a vicious circle of misunderstandings that can culminate in conflict. The second major point is that, contrary to unipolarity theory, and in general contrary to Western theories of realism and neo-realism, more powerful countries usually cannot impose their will on less powerful countries. (Womack 2004, 359-360)

A unique aspect of Womack's work is his assertion that asymmetry is not necessarily an inherently unfair situation

that must be remedied, but rather a fact of life that does not always lead to the dominant power “winning” (Womack 2006, 17). The example of Panama provides evidence that supports Womack’s contention that a weaker power can negotiate successfully with a stronger power. Both parties ultimately were better off for the change, although it was initially vehemently resisted by the US.

Our analysis also draws from the work of Andrew Moravcsik, who makes three assumptions about liberal international relations theory:

1. The fundamental actors in international politics are individuals and private groups, who are on the average rational and risk-averse and who organize exchange and collective action to promote differentiated interests under constraints imposed by material scarcity, conflicting values, and variations in societal influence;
2. States (or other political institutions) represent some subset of domestic society, on the basis of whose interests state officials define state preferences and act purposively in world politics; and
3. The configuration of interdependent state preferences determines state behavior. (Moravcsik 1997, 516, 518, 520)

This liberalist perspective looks primarily at state preferences and the outcomes of strategic interaction, such as coercion, negotiation, and bargaining (Moravcsik n.d., 13), which can be applied to the process through which Panama gained possession of the Canal. State preferences and strategic interaction between the US and Panama have historically reinforced the asymmetrical relationship between the two countries and the United States’ hegemonic status. Before and after Panama became a nation-state, the US dictated relations according to US interests. Years of occupation, the control the US exerted over Panama, the invasion of Panama in 1989, and US ownership of the key ten-mile wide swath through Panama made it impossible for Panama to control its own destiny. The acknowledgment of Panamanian sovereignty of the Canal Zone in 1977 and the transfer of the Canal to Panama in 1999 created an important turning point in this relationship.

With the acquisition of the Canal, Panama has become an essential player in the global economy and the government of Panama now uses the Canal as a catalyst of national economic growth. While the US maintains a dominant role in its relationship with Panama, Panama has increased its power and seeks to be treated as an equal. The transition, as well as the divergent interests of both actors, advanced the historically unequal relationship while maintaining its essential asymmetry. This historic turning point in US–Panamanian relations has inspired us to investigate the transition of the Canal to Panamanian control and the effect on relations between the two countries. We briefly review the history behind the Canal, touching on the United States’ involvement in the formation of Panama, the initial agreements concerning the Canal, and the growing nationalist sentiment in Panama, before delving into the transition to Panamanian control, the US invasion of Panama and the impact of the transfer of the Canal on US–Panamanian relations.

Independence and the early Treaties

US involvement was a key factor in Panama’s ability to gain independence from Colombia in 1903. The US military ensured the success of a Panamanian rebellion after negotiations with Colombia over a canal had stalled (Weeks 1985, 29). Several previous uprisings against Colombia that did not have the “benefit” of US intervention had failed. The new Panamanian constitution gave the United States permission to “intervene in any part of Panama, to reestablish peace and constitutional order if it has been disturbed” (Ropp 1984, 331). It could be said that Panama essentially lost sovereignty at the same time it gained it. The terms of the 1903 treaty precluded the Panamanian government from making many decisions, making it a protectorate of the US (Meditz and Hanratty 1987).

The Isthmian Canal Convention, or Convention for the Construction of a Ship Canal, is more commonly known as the Hay-Bunau-Varilla Treaty. The US largely dictated the terms. The Panamanian president was pressured into accepting the treaty, which was signed by the US Secretary of State John Hay and the French engineer, Philippe Bunau-Varilla, formerly Chief Engineer of the French canal project in Panama, described as “Envoy Extraordinary and Minister Plenipotentiary of the Republic of Panama”(United States 1903, 2234); no Panamanian signed it. The arrangement allowed the French to recoup a bit of their losses from their endeavor to build a canal in the mid-1800s and granted the US enormous benefits and rights in the new country. The treaty gave the US sovereign rights over the Canal Zone “to the entire exclusion of the exercise by the Republic of Panama of any such

sovereign rights, power or authority" (United States 1903, 2234). It granted the US the rights "in perpetuity" to any land outside the Canal Zone that would be useful for Canal functioning (United States 1903, 2234). Panama was not allowed to tax any US worker or enterprise related to the Canal or the Railroad (United States 1903, 2234). Panama adopted the US dollar as its currency, giving it ample access to foreign exchange and facilitating commerce, but constraining the Panamanian government's ability to control its monetary policy (Zimbalist and Weeks 1991 22, 68-69). The US committed to defend Panama's independence, but at the price of US involvement in local Panamanian issues (Meditz and Hanratty 1987). These arrangements were reflective of the economic, political, and security interests of the US, but they did not compass the desires of the Panamanian people for their government and its relationship with the US. Panamanian civil society lacked any leverage at this point in time to bargain with the US, clearly the more powerful actor.

Work on the Canal began in 1907 and was completed in 1914. Initially, the US paid Panama a lump sum of \$10 million and a paltry \$250 thousand annually, starting with the signing of the treaty in 1903. Panama received no portion of toll revenues until the 1977 treaties. The annuity was increased gradually, mainly to offset inflation. A 1936 treaty raised the amount to \$430,000, retroactive to 1934. A 1955 treaty increased the annuity to \$1.93 million. This sum was later adjusted to \$2.5 million in 1975-79 (Zimbalist and Weeks 1991, 51-55). In contrast, the US paid Spain \$20 million a year and the Philippines \$15 million a year for military bases in those countries (Gorostiaga 1975, 26). The annuity that was paid to Panama was an indication of the asymmetrical relationship between the US and Panama, especially when compared to what the US was paying these other countries.

Under the US, the Canal was run as a non-profit. A loss in one year was generally offset by a surplus the next year. Tolls were charged according to a ship's cargo-carrying capacity, as they still are today. Canal tolls did not change from 1914 until 1974, when the Canal began losing a significant amount of money. The low tolls represented a subsidy to users, who saved thousands of dollars by not having to travel 7,872 miles around the entire continent (Zimbalist and Weeks 1991, 48-49). The US saved an estimated \$700 million annually by using the Canal (Gorostiaga 1975, 18). The Canal not only benefitted the US, but a multitude of actors active in world trade. One actor that was clearly dissatisfied with the arrangement was Panama. The treaty endeavored to keep the Canal Zone separate from the rest of Panama, generating resentment that still lingers today. The Canal Zone, a ten-mile wide strip of land through which the Canal runs, was governed by a US-appointed official until 1977. The Zone made its own laws and had its own economic activities. The Canal itself was run by the Canal Company (which later became the Panama Canal Commission), a US government agency that received appropriated funding, until 1951 when it was changed to a government corporation (Manfredo 1993, 110-112). Panamanians were employed by the Canal Company throughout the history of the Canal, but initially not in management or decision-making positions. Panamanians working in the Canal Zone, some 40% of the urban labor force in the 1930s, did not have to pay taxes to their own government (Looney 1976, 9). Panamanian businesses were proscribed from selling in the Zone, and all Zone employees shopped at US commissaries (Zimbalist and Weeks 1991, 22-23). Not surprisingly, Panamanians objected to the fact that not only were they benefitting minimally from Canal operations, but they were not profiting from the workers (as consumers or taxpayers) or businesses associated with the Canal. Panamanian civil society was not seeing the economic benefits that they felt they deserved from this arrangement. Nationalist groups, such as *Acción Comunal*, formed in reaction to US dominance and demanded change (Guevara Mann 2001), voicing concerns of Panamanian civil society that had been festering for years. The combination of Panamanian assertiveness and warming relations during the period of the Good Neighbor policy led to changes that were codified by subsequent agreements. For instance, in 1936 President Harmodio Arias and President Theodore Roosevelt agreed on a revision of the 1903 treaty that permitted Panamanian merchants to sell meat and beer in the Canal Zone. The 1936 treaty, the General Treaty of Friendship and Cooperation, also conceded Panamanian sovereignty over its airspace and rescinded the US right to intervene in national disturbances (Guevara Mann 2001). This is a good example of how the strategic purposes of states, as well as their foreign policy behavior and international diplomacy, are driven, at least in part, by their changing relationships to domestic and international civil society. In other words, this 1936 treaty was an attempt to overcome the shortcomings of the Hay-Bunau-Varilla Treaty and an effort to ensure that the interests and demands of Panamanian civil society were being met by their government with regard to its relationship with the US. The goodwill proved to be short-lived; President Arnulfo Arias, the younger brother of President Harmodio Arias, was an ardent nationalist and not afraid to demonstrate anti-American sentiment. His slogan was "Panama for the Panamanians," but his nationalism was both elitist and fascist. Arias made it clear he would do whatever was necessary to demonstrate independence from the US (Szok 2001, 113-114). Arias' demands, including \$25 million in aid, raising rent payments from the US to Panama on the Rio Hato base from \$2400 to \$30 million per year, and the repatriation of West Indians, were more than the US could stomach, and when the Panamanian National Guard tired of his restrictions and inquired how the US would react to a coup, the US indicated that it would remain neutral and not intervene (LaFeber 1993, 76). The US fervently denied any role in this coup, but did not deny that it was ultimately in the US and allied interests, given Arias' sympathies for Hitler (LaFeber 1993, 76-77). Arias was replaced by the less nationalistic

Ricardo Adolfo de La Guardia (Guevara Mann 2001), who better met US interests and security needs. The change in leadership strengthened US commitment to the treaty agreements.

A boost for the Panamanian economy was negotiated in 1955. The Remón-Eisenhower Treaty limited many of the Zone's manufacturing, agricultural and service activities. This treaty also revoked the rights of Panamanian employees in the Canal Zone to use the Zone's commissaries or have import privileges (thus forcing them to buy locally), and placed Panamanian and US employees on the same wage scale. These measures enlarged Panama's internal market and contributed to industrial growth (Zimbalist and Weeks 1991, 24). This helped meet the economic interests of Panamanians but did not satisfy their desire for sovereignty. Panamanian leaders and nationalist groups became increasingly vocal about Panama's right to acquire sovereignty over a territory that was so central to their country but that they had never controlled.

Panama protested the 1903 treaties through the OAS and UN, eventually leveraging the influence of the UN. The Panamanian ambassador to the US argued in 1960 that treaties allowing indefinite leases are illegitimate. In 1962 Panama appealed to the UN, arguing that legal principles had progressed such over the years since the 1903 treaty that reconsideration of terms was needed (Kontou 1994). The Hay-Bunau Varilla Treaty was a relic of colonialism and morally repugnant by international standards during this time period.

Riots in 1964 brought home to the US the fact that political stability of Panama might require a re-negotiation of the treaty. The conflict started when a group of US Zonians¹ decided to raise only the American flag over Balboa high school, rather than the Panamanian and US flag as had been agreed, or neither, as a provisional measure mandated (Jackson 1999). On January 9, 1964, hundreds of Panamanian students marched to Balboa to rectify the situation. In the ensuing melee, the Panamanian flag was torn, spurring three days of riots. The Canal police force used tear gas and bullets in response to rock throwing by Panamanian crowds; the result was 23 Panamanian and four US soldier deaths² (Guevara Mann, 2001). Panama cut off diplomatic relations with the US (Global Perspectives 1999-2002). This decision demonstrates how state policy and international relations can be influenced by social interests and the demands of civil society. It also reflects how "the behavior of states – and hence levels of international conflict and cooperation – reflect the nature of and configuration of state preferences" (Moravcsik n.d.,10). By cutting off relations, Panama was sending a clear message not only to the US but the international community. The international spotlight now shone on the US to see how it would atone for these events and make things right by Panama.

Panamanians had requested control of the Canal and the Canal Zone for years, both for economic and political reasons. The deaths of the martyrs, as they came to be known, brought the demands for Panamanian ownership of the Canal to a fever pitch and an even brighter spotlight on the international stage. Panamanians felt that the US had dominated Panama, its territory, and its economy for long enough (Looney 1976, 28). General Omar Torrijos, who came to a power in a coup in 1968, vowed that his government would gain control of the Canal (Zimbalist and Weeks 1991, 51). Under Torrijos, Panama joined with the Organization of Non-Aligned Countries, which took up its cause (Jorden 1984, 291). While the death of the martyrs in Panama was the cataclysmic event that spurred the US to negotiate in earnest, Panama had embarked on a calculated strategy to obtain the Canal before that tragic event took place. The negotiation process was long and painful, lasting over a decade (Jorden 1984, p. xiii).

Torrijos strategically called on international organizations like the United Nations (UN) and Organization of American States to pressure the US into capitulation (Jorden 1984). The Organization of American States (OAS) facilitated the resumption of relations between the US and Panama in 1964 (Guevara Mann 2001) and negotiations slowly and ponderously resumed (Jorden 1984). To quicken the pace of talks on a new treaty, Panama invited the United Nations Security Council (UNSC) to hold a series of meetings in Panama in 1973. The UNSC agreed to this rare trip abroad, much to the dismay of the US. The meetings in Panama culminated in a draft resolution calling on the United States to negotiate a "just and equitable" treaty (Global Perspectives 1999-2002). The US blocked this effort on the grounds that the resolution's language was too broad (Kontou 1994). William Jorden, who was on Henry Kissinger's National Security Staff at the time of the transition negotiations, commented during negotiations that if a quicker resolution to the problem of transferring the Canal was not found "the final solution might come in the year 1990 with a canal filled with dead bodies" (Jorden 1984, 183). During negotiations, General Omar Torrijos threatened to disable the Canal if an agreement couldn't be reached. Torrijos went as far as training a national guard unit to close the Canal in the event the key vote in the Senate did not go Panama's way (Jorden 1984, 624-626). Tensions ran high, and at times, a resolution did not seem possible.

Political turmoil presented a continuing obstacle for negotiations. To combat leftist influence, the US-supported the Panamanian National Guard, providing weapons and training at the School of the Americas. When President Arnulfo Arias took office again and attempted to diminish the power of the National Guard, he was removed from

office and eventually replaced by General Omar Torrijos, who had been on the US payroll as an informant since 1955 (Guevara Mann 2001). Panama rejected draft treaties in 1967 for many reasons, including that they guaranteed the US the right to maintain a military presence in Panama indefinitely, as well as the right to build a sea-level canal³ (Jordan 1984). Negotiations stalled again after the resignation of President Richard Nixon (Guevara Mann 2001). Nixon's successor, Gerald Ford, changed his position on Panama when attacked by Reagan in the 1976 Republican primaries, which further compromised treaty negotiations (LaFeber 1989, 149).

Evolving international norms led US actors to see benefits in negotiating with Panama. Jimmy Carter committed in his presidential campaign to formulate a deal with Panama that would benefit all parties (LaFeber 1989, 150). This change in attitude was partly due to the advice Carter received and studies that were conducted at the time. Zbigniew Brzezinski, who became Carter's national security advisor, advised Carter that "most Americans saw the Monroe Doctrine as a 'selfless US contribution to hemispheric security; but to most of our neighbors to the south it was an expression of presumptuous US imperialism'" (Smith 1995, 140). Brzezinski believed it was time to make an explicit move to abandon the Monroe doctrine: "nothing could be healthier for Pan-American relations than for the United States to place them on the same level as its relations with the rest of the world" (Smith 1995, 140). This reflected a shift in US foreign policy, an interest in balancing the asymmetric relationship with Panama, and an increasing need for the US government to balance its relationships with domestic and international civil societies. In 1975, the Commission on United States-Latin American relations (also known as the Linowitz Commission) recommended a complete revamping of US policy toward Latin America, including a decrease in both military aid and covert action, as well as a new treaty with Panama, transferring ownership of the Canal (Smith 1995, 140-141). It was also a logical move in keeping with asymmetry theory. According to Womack, "When larger states are prudent, consultative, and cooperative, then smaller states are less likely to be anxious about their vulnerability. They will tend to accept the international order led by the larger state because it is inclusive of their interests" (Womack 2004, 365). It was in the US interest to cooperate with Panama to maintain its own dominant status. Thus, Carter's administration believed a new approach to Latin America, including new treaties with Panama, was in the best interest of both the US and Latin America.

Of course, not everyone agreed that giving the Canal to Panama was the correct course of action. Two treaties were drafted and signed on September 7, 1977, one concerning a twenty-year transition process, the other designed to safeguard the neutrality of the Canal; the battle then began to ratify them both in the US and Panama. US opposition centered around two major objections. First, the Canal was being entrusted to a country run by a dictatorship. According to Carlos Guevara Mann, one of the failures of the transition process was the fact the treaties were negotiated with a military dictator, resulting in an extension of cronyism and corporatism in the distribution of resources transferred while the military regime was still in power (Guevara Mann 2009). Not surprisingly, "Imperfect representation permits concentrations of power to form, both inside and outside the state apparatus, which 'capture' the state and use it to extract private gains (or 'rents') from international conflict, while passing the costs on to others or to society as a whole" (Moravcsik n.d. 10). Carter, a president known for his commitment to human rights, was determined to see the transfer through, despite the military dictatorship. This reflects the seriousness with which he took Panamanian desires to take control of the Canal and their territory. To appease US critics, General Torrijos agreed that Panama would transition to a democracy (Meditz and Hanratty eds, 1987).

Second, critics within US civil society questioned whether the terms of the Neutrality Treaty gave the US sufficient leeway to protect the Canal and US economic and security interests. The Neutrality Treaty states that:

The United States of America and the Republic of Panama agree to maintain the regime of neutrality established in this Treaty, which shall be maintained in order that the Canal shall remain permanently neutral, notwithstanding the termination of any other treaties entered into by the two Contracting Parties. (Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal 1979)

Thus, the US has the right to defend the neutrality of the Canal and could intervene if the Canal were under attack. However, the treaty does not specifically permit the US to intervene in the event that the Canal was not being well run. This caused much consternation both in Congress and among the US public as critics worried that the Canal would be run into the ground, leaving the US helpless to intervene. Roberto Roy, current Minister of the Metro and longtime member of the Panama Canal Commission, reports that even some Panamanians thought that Panama might misuse the Canal, and use it for events like Carnival, the celebration that takes place forty days before Holy Week (2009). US predictions were far more dire, with skeptics envisioning regional instability and the collapse of the Canal under Panamanian ownership. Testifying before the Senate, Ronald Reagan raised this specter:

Whether or not these treaties ever go into effect, we can expect trouble from leftist elements in Panama and elsewhere. Yes, failure to ratify the treaty will offer an excuse for demonstrations and riots in Panama and very possibly in the United States. And, behind the scenes, the Russian Bear will do all it can to destabilize the security of the hemisphere and cause a global whirlwind of unfavorable press aimed at us. It is not because we didn't ratify the treaty but because that is their normal procedure where we are concerned. (Senate Subcommittee on Separation of Powers 1977, 13).

Reagan's comments reflect the belief that Panama was a vulnerable actor, needing US protection and inclined to riot when their demands are not met.

In an effort to satisfy the interests of US civil society, the US Senate added the "Deconcini reservation," which maintained US ability to intervene in Panama if any disruption in Canal service were to arise. This amendment to the Neutrality Treaty states that

...if the Canal is closed, or its operations are interfered with [the United States and Panama shall each] have the right to take such steps as each deems necessary, ... including the use of military force in the Republic of Panama, to reopen the Canal or restore the operations of the Canal. (Doc 17, Jimmy Carter library).

The DeConcini reservation was ratified by the US Senate, but Panama refused to ratify it, and ultimately signed a version of the treaty without the amendment.⁴ They considered both the reservation and the tone of the Senate debate to be a slap in the face (Pastor Doc. 17, National Security Memorandum 1978; Clymer 2008, 102). For instance, in his testimony, Ronald Reagan again voiced the fears of many:

We cannot be certain, if these new treaties go into operation, that key personnel now operating the canal will not leave a great deal sooner than expected, thus bringing into question the smooth operation of the canal. We cannot be certain that, as the American presence withdraws from the Canal Zone, new demands for accelerated withdrawal will not be made under threat of violence. We cannot be certain that outside influences hostile to hemispheric security will not make their presence felt much greater than before in Panama. We cannot be certain that Americans operating the canal will not be harassed by an unstable and power-hungry dictator. (Senate Subcommittee on Separation of Powers 1977, 11)

This kind of speculation, along with the discussion of whether or not Panama was capable of running the Canal, was insulting to Panamanians. The Reservation, while going a long way in pacifying concerned elements of US civil society, caused an outcry in Panama's civil society that nearly derailed the process (Jordan 1984). As demoralizing as it was for Panamanians, the Deconcini Reservation was an important step in pacifying US critics and allowing its ratification by the US Senate.

Panamanians voiced the concern that the treaties violated the UN convention on non-intervention (Pastor Doc. 17, National Security Memorandum 1978). Subsequent agreements between Panama and the US attempted to clarify these provisions and assuage Panamanian concerns that the US would use the Neutrality Treaty as an excuse to intervene. The Joint Statement of Understanding between Carter and Torrijos qualified the Neutrality Treaty by saying:

This does not mean, nor shall it be interpreted as a right of intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the Canal will remain open, secure and accessible, and it shall never be directed against the territorial integrity or political independence of Panama. (Joint Statement of Understanding 1977)

This statement reflects an effort to legitimize and calm Panama's fears about US intentions. The two treaties, regarding the transition and neutrality of the Canal, were finally ratified by the Senate in the spring of 1978, passing by the narrowest of margins. 67 votes were required for passage. In separate votes on each treaty, 68 senators voted in favor, 32 opposed (Jordan 1984, 554, 620). The treaties took effect October 1st, 1979 (Guevara Mann 2001).

The Two Treaties & the Transition

On Dec. 14th, 1999, at the turnover of the Canal to Panama, President Carter pronounced:

Today we come together with a spirit of mutual respect, acknowledging, without question, the complete sovereignty of Panama over this region. It [The Canal] was a source of great pride in my country from the time I was a child until I became President of the United States and even now, of what was accomplished here but we didn't understand clearly enough the feeling of many Panamanians that the arrangements implied an element of colonialism and subjugation, and not an equal representation of leaders from two sovereign countries. This created a need for later Presidents to address the controversy. (Canal Transfer Ceremony 1999)

Former President Jimmy Carter's remarks reflect an understanding that Panamanians had long harbored a sense of injustice and resentment against the US for their domination of the Panama because of the Canal. The United States' exceptional rights to the Canal Zone allowed involvement and intervention in Panama to a degree that was unacceptable to Panamanians. The treaties, while not perfect, effectively transformed this historically paternalistic and asymmetrical relationship in response to the demands of Panamanian society and international pressure.

The Carter-Torrijos Treaty, signed September 7th, 1977, terminated all previous treaties and conferred ownership of the Canal to Panama, while stipulating that the US would continue to operate the Canal until December 31st, 1999. It mandated a gradual transformation of the US dominated workforce to Panamanians, including training of Panamanians for upper level positions. The monetary arrangements were immediately affected as well, with the yearly sum paid to Panama raised to ten million dollars for the duration of the treaty. A special fund for Canal money in the US treasury was created to officially separate Canal funds from US taxpayer money. The Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, known as the Neutrality treaty, assured that the operations of the Canal would not be affected by conflicts; in other words, the Canal authority would not deny passage to any ships based on sympathy for one side of a dispute (Articles I & II). All wartime vessels are guaranteed passage through the Canal, with US war vessels granted "expeditious" passage (Art. III and Art. VI).

The terms of the agreements were not up to many Panamanians' expectations. The transition time--more than 20 years--was much longer than the Panamanians wanted. Moreover, the US occupied five of nine positions on the board of directors Panama Canal Commission. Nonetheless, the transition can be seen as an essential time for the US to fully transfer the Canal to Panama, allowing Panamanians to gain the technical expertise and confidence to successfully run the Canal.

Perhaps the most important element of the transition was the form the new administrative agency of the Canal, previously the responsibility of the Panama Canal Commission under the aegis of the US government, would take under the government of Panama (GOP). Ultimately, the success or failure of the Canal would be determined by its careful management. While many in the US feared the Panamanians would act too quickly to maximize profits and not adequately consider maintenance concerns as well as keeping tolls priced competitively, the Panamanians proceeded deliberately in deciding how the Canal would be run after the US departure. First, the government formed a commission to determine the best structure of a new organization. This commission, composed of people from different sectors of society and the economy, deliberated for five years during the transition process. The commission unanimously decided the new authority must be autonomous from the Panamanian Government (Roy and Tarte, 2009). This decision to maintain a clear distance between the government and Canal Authority, as well as the legal structure to support the Canal, demonstrated the competence of Panamanian actors. The structure was encapsulated in the Ley Orgánica (or Organic Law), which became effective June 11, 1997 (Ley Orgánica 1997). The legislation surrounding the Authority was likely the single most important factor in the success of the Canal today (Tarte, Roy 2009). The agency's funding is separate from the national government's budget.

The Organic Law shows foresight in its provisions to ensure continuous service and in the importance of the Canal to the country:

The fundamental objective of the functions attributable to the Authority is that the Canal always remain open to the peaceful and uninterrupted transit of vessels from all nations of the world, without discrimination, in accordance with the conditions and requirements established in the National Constitution, international treaties, this Law, and the Regulations. Because of the nature of the highly essential international public service provided by the Canal, its operation shall not be interrupted for any reason whatsoever (Organic Law, Chapter 5 1997).

The success of the Canal, since its transfer on December 31, 1999, can largely be attributed to the ACP's ability to

operate autonomously from the government, wholly independent of involvement of any partisan politics (Joe Reeder, November 24th, 2010 e-mail message to the authors).

The Organic Law ensures continuity of service by restricting workers rights: "This probation against interrupting service includes strikes; Canal employees are proscribed from striking according to the Organic Law" (Organic Law Chapter 5 Sec 1). Workers are proscribed from striking to avoid interrupting Canal service; they do however, have unions, and Canal workers are paid better than the average Panamanian. There is considerable competition for jobs of any type on the Canal, from ship pilot to groundskeeper.

One important element of the transition that helped ensure its success was the gradual transformation of the Canal workforce from US to Panamanian citizens. The number of Panamanians on the Canal workforce slowly increased over the transition period. For example, the percentage of Panamanian workers rose from 69.5% in 1979 to 87.8% in 1992. Panamanian workers in "key skilled occupations" went from 38.1% in 1979 to 67.9% in 1989. Panamanians in professional and managerial positions increased from 13.8% in 1979 to 42.6% in 1989. The number of Panamanian ship pilots increased from a mere 1.7% in 1979 to 43% in 1992 (Panama Canal Commission 1992, 1, 28, 31). In 1983, the Pilot Understudy Program was initiated, encouraging Panamanians to train to guide ships through the Canal (ACP 1998-2010). The proportion of the Panamanian to US workers increased steadily throughout the transition period; by 1999, 97% of the workforce was Panamanian (US Department of Agriculture 2000).

Through the process of "Panamization" of the workforce, the asymmetrical power structure commenced a gradual evolution, as US dominance of management positions ended. During the transition, Panamanians were given the opportunity to train for upper management positions. Manuel Benítez presents an outstanding example of this newfound upward mobility. He began in Panama's apprentice program in 1978, where he spent the entire first day of his apprenticeship sweeping the floor. He gradually worked his way up to operations director, one of the most important executives in the ACP (Octavio and Aparicio S. 2009, 20-21), a position he still holds as of 2011.

Fernando Manfredo served as the first provisional Panamanian administrator until Gilberto Guardia was sworn in as Panama Canal Commission Administrator in 1990 (ACP 1990-1999). The fact that Panamanian citizens were now in charge of the Canal represented a milestone of utmost importance to the Panamanians. Alberto Alemán Zubieta took over in 1996; in 1998 he was appointed to be administrator of the newly formed Panama Canal Authority (ACP). Thus, for two years Alemán held both positions, which enabled him to ensure consistency and continuity between the old and new agencies. Alemán is now renown throughout the world for his management style and business practices has received numerous awards (ACP 2008). Joe Reeder, Secretary of the Army and President of the Bi-national Board of Directors of the Canal Commission describes Alemán as enjoying "an international reputation for leadership, eloquence, and integrity." Reeder asserts that:

Over the past 14 years, he has proven himself worldwide as a leader of towering strength. Hopefully, when Alberto Aleman is replaced (which is required by law in Panama in 2012), the Panamanians will do their best to appoint a proven leader of similar talent, stature and integrity, as this will be occurring before completion of the ongoing, \$5.25 billion Canal expansion, which literally will double the capacity of the Canal. (Joe Reeder, November 24th, 2010 e-mail message to the authors).

To maintain the high standards of Canal service, it is imperative that Panama continue the tradition of excellence and political independence among its upper management.

Reeder himself was instrumental in the transfer process. He ensured training and education during the transition (Roy 2009) and moved the process forward even through times Panamanian leaders indicated they wanted to delay. US officials like Reeder, worked very hard throughout the transition to shift decision-making power and authority to Panamanians, while Americans were still officially in charge. US officials studied closely the turnover of Hong Kong by the British Government, and approached the Canal transition much more collaboratively with the Panamanians, who effectively were in charge even before the turnover, with the quiet guiding assistance of the US as needed. The Panamanians steadily became integral to and empowered to participate in extremely important and complex legal decisions that would set the future course of the Canal. According to Reeder, when the Panamanians finally took full control in December 1999, the leadership change over was seamless (Joe Reeder, November 24th, 2010 e-mail message to the authors).

Areas of Contention

While the transition to Panamanian control of the Canal was a remarkable success, the turnover of property from

the US to Panama proceeded less smoothly. Panamanians were anxious for a tangible benefit from the treaty, and the Panama Railroad had been identified early on as an item with which the US would be willing part. It soon became evident why. In 1979, the Panama Railroad was transferred to Panamanian ownership. By the mid-80s, the railway had deteriorated such that the US Southern Command (SOUTHCOM) prohibited military personnel from riding on it because it was considered unsafe (Koster 2010). Many people shared the sentiment that “after it was handed over to the Panamanian authorities, it was quickly brought to total ruin” (“Panama Railroad” n.d).⁵ By the 1990s, the Railroad was losing an estimated four million dollars a year (“A new era” n.d.) it was held up as proof positive that handing over assets to the Panamanian government would result in their destruction. On the surface, the government of Panama appeared completely incompetent and negligent. However, there is more to the story. The Railway was, in effect, obsolete, or as Thomas Kenna, President of Panama Canal Railway Company, put it, “a dead duck” (2010). One reason that the railway was no longer as useful as it had once been was that its track was non-standard gauge (broad gauge); it used the same gauge that a single East European railroad used, since they shared the same engineer that built them. No other place in the world used this size track. Thus, locomotives and cars had to be specially modified. This was a costly procedure. Even more importantly, with the advent of containerization in the 1970s, the port system that supported the railroads became outmoded. Whereas the ports supported shipping freight under the old “break bulk” system by offloading palletized, shrink-wrapped cargo from ships directly into covered port sheds, the use of containers meant that the infrastructure of the ports had to change markedly. Freight remains in the containers in which they are shipped during the whole transport process from its origin to its final destination; cranes unload containers from the train and stack them in open areas, then gantry cranes load the containers onto the ships. All players in the transport chain had to undergo major transformation to adapt to the new age of containerization. This included the railway, ports and trucks (Kenna 2010). When the Panamanian government privatized the railway in 1998, it was quickly modernized and today forms an integral part of the intermodal system in Panama, transporting some 8,000 containers a week (Panama Rail Way Company “The Project” n.d.).

Other resources that required extensive attention included extensive land and buildings from the military bases. The government of Panama had to convert these former military bases to civilian use. Careful planning and success were both slow in coming. Carlos Guevara Mann points to the flaws in Panamanian society that led to long delays in using reverted lands. One problem was the lack of capacity to receive infrastructure to handle all of the areas handed over. Panama's weak public sector and arbitrary, corrupt bureaucracy meant that some property was used as favors to privileged (2009). According to Guevara Mann (2001), “In the hands of the military government, much property transferred by the United States was assigned to non-productive uses, such as facilities for an expanding bureaucracy and National Guard or housing and recreational services for regime favorites.” Panama's government failed to plan adequately for the windfall of property it would receive. This lack of planning can be attributed to a culture of corruption present in the governments of the period. Ranking officials simply did not care about the reverted areas except as they might benefit personally (Koster 2010). For lands that were transferred more quickly, a prominent businessman in Panama remembers the frustration of seeing the best reverted areas going to a small group of military elite (anonymous interview with the authors 2010).

While Panama, on the surface, was attempting to transition to a democracy, the process was fraught with problems. A form of democratization began in the late 70s, with restricted legislative elections in 1980; only 19 of 57 seats were open for elected, rather than appointed, representatives. This weak beginning was stymied by Torrijos' death in 1981 (Meditz and Hanratty eds, 1987). However, after Torrijos' death, General Manuel Noriega became the most powerful man in Panama. US support of Noriega through the CIA, as well its role in building up the National Guard, was perhaps its most costly mistake during this time period. Instead of encouraging democracy, the US supported someone they believed was their ally against both rising nationalism in Panama and communist elements (Guevara Mann 2001). Their belief that Noriega was the best option for the US and Panama both led to an underrepresentation of Panamanian interests. This miscalculation led to the invasion of 1989, to depose Noriega and restore democracy. This military incursion, while successful in its goal of removing Noriega, was extremely destructive to the country and people of Panama (Guevara Mann 2001), as well as damaging to the relationship between Panama and the US. US dominance and attempts to manipulate politics in Panama clearly contributed to the invasion, the effects of which are still felt in Panama. The invasion itself was a show of force by the US that clearly demonstrates the imbalance of power between the two countries that had been presumably put on more equal footing by the revised Canal treaties. The damage done by the invasion and legacy of it have left an indelible imprint on Panama. Had the US supported democratic forces over Noriega sooner, it might have led to a smoother transition and far less trauma and bloodshed.

Another area of contention was the issue of unexploded ordinances (UXOs), which included a variety of explosives, including landmines. The language used to outline US responsibility for this is contained in the Agreement in Implementation of Article IV of the Panama Canal treaty:

At the termination of any activities or operations under this Agreement, the United States shall be obligated to take all measures to ensure insofar as may be practicable that every hazard to human life, health and safety is removed from any defense site or military area of coordination or any portion thereof, on the date the United States Forces are no longer authorized to use such site. Prior to the transfer of any installation, the two governments will consult concerning: (a) its condition, including removal of hazards to human life, health and safety. (Quoted in Lindsay-Poland's Test Tube Republic, 1998)

The vague language "insofar as may be practicable" leaves much room for interpretation. Complicating matters is the fact that detecting unexploded ordnances in the jungle often involves cutting through thick jungle, causing loss of vegetation and soil erosion (Sullivan 2009). Thus, some areas could not be cleaned without threatening the Canal watershed. Many of the areas used by the US military were triple canopy jungle, places where people rarely used to step foot (Joe Reeder November 24th, 2010 e-mail message to the authors).

Moreover, it was difficult for Panama to assert its rights to the fullest on this issue, out of fear that the US would balk and the transfer of the Canal would be delayed. When the topic arose, US negotiators became brusque and indicated the transfer could be jeopardized if Panama was too aggressive on this issue (Lindsay-Poland 2003). The interests of each actor, ironically, led to the issue remaining unresolved.

John Lindsay-Poland chronicles the history of this problem in *Emperors of the Jungle* (2003). Areas with munitions include three former shooting ranges, Empire, Piña and Balboa West, which at the time of the US departure were relatively isolated (Hua, 2002). However, the areas near these former rangers have been growing, which becomes increasingly hazardous. As of 2005, "the ranges" 7,671 acres, or about 2% of the total former Canal Zone area, are officially uninhabitable" (Kraul 2005). Furthermore, UXOs have been found in other areas, such in a new construction area in Arraijan, where twenty "military artifacts" were discovered in 2004. ARI explained that one of these artifacts was a "bangalore torpedo," used for blasting holes. Eric Jackson contends that ARI has history of minimizing the dangers of these "artifacts" so that the land and properties do not lose value (Jackson 2004). Twenty-four people have died from munitions left behind by the military since 1979 (Hua 2002).

Panamanian officials have brought up the issue repeatedly over the years; US officials, including Presidents Clinton and George Walker Bush, as well as Secretaries of State Madeline Albright and Colin Powell, have declared that the US has complied with its obligations, while some dangle the possibility of further investigation or talks. According to Mark Sullivan, Specialist in Latin American Affairs for the Congressional Research Service, "US officials maintain that it is not possible to remove the unexploded ordinance without tearing down the rain forest and threatening the Canal's watershed" (2009, 23). Nonetheless, due to the expansion project, the ACP must bear the cost of cleaning areas around the Canal that are still unsafe, some 350 hectares of land with unexploded munitions. In fact, the ability to clear unexploded ordnances (UXO) is part of the contract for bidders vying for work on the expansion project. In August of 2009, the ACP posted the requirements for the fourth dry excavation project of the expansion. One of the expectations includes: "Clearing of approximately 80 hectares of Unexploded Ordnance (UXO)" (ACP 2009b). Only 3% is being cleaned, the area is simply too large and the costs too high (Arosemena 2009). The limits of Panama's influence, absent pressure from any outside powers, are clearly evident in this instance. Despite the costs of removing UXOs, the expansion project is proceeding well.

Conclusions

Today, there is no question that the Canal is a huge economic success. The decision to run the Canal as for-profit business and the decision to insulate the ACP from the historically corrupt and clientelistic Panamanian government has served the ACP, and Panama as a whole, quite well. Despite the corruption in the government of Panama, the ACP is "meritocratic and impartial," according to Guevara Mann. The ACP has transformed the Canal into a profitable business. In fiscal year 2008, the Canal produced more than \$2 billion in revenue, the highest annual profit yet recorded. This figure is emblematic of the success Panamanians have achieved since the departure of the US. In one year, profits exceeded the total amount Panamanian government received when the US operated the Canal for all years combined, 1914-1999 (Jordán and Morales 2009, A1). This is especially impressive during a time of global economic recession (ACP 2008, 80). Panama can take great pride in the fact that her citizens took charge of the Canal, formulated an agency that is by all accounts practically free of corruption and now has thriving business that contributes to the government of Panama.

The ACP has won numerous awards for efficiency and has served as business model for others. In a country swimming in a sea of corruption, the ACP is an island of honesty and integrity. The OAS recently commended Panama, on the 30th anniversary of the ratification of the Canal treaties, for its outstanding management of the Canal (ACP 2009a). The Canal celebrated its millionth transit in 2010 (ACP 2010) and the \$5.25 billion dollar

expansion project is well underway. Although Panama has managed the Canal remarkably well, it now faces a challenge, as the tenure of Alberto Alemán, the administrator of the Canal since 1996, is due to come to an end and a suitable replacement must be found. How Panama handles that challenge, and the remainder of the expansion project, will be important indicators of the success of the Canal in years to come.

Since taking control of the Canal, Panama has formed increasingly close ties with both Taiwan and China. The international community is actively involved in the Canal, both through the board of advisors, the PANAMAX exercises (military exercises in which many countries participate in simulations to protect the Canal), and the companies that have won contracts to work on the Canal expansion. According to Don Winner, "the international maritime industry will benefit directly from the expansion through lower shipping costs, and global consumers will eventually benefit from the greater capacity and efficiency of the Panama Canal" (2010). While the US Free trade deal festers without ratification, Panama has successfully signed free trade deals with Canada, Taiwan, Singapore, Chile, El Salvador, Taiwan, Guatemala, Honduras, Nicaragua, and Costa Rica (State Dept. 2010). Panama is also seeking to become a member of Forum of the Asia-Pacific Economic Cooperation (APEC) (La Prensa 2010). Panama has become an international player in its own right, with an increasing degree of independence from the US.

So, just how much has the relationship between Panama and the US changed since Panama took possession of the Canal? As mentioned previously, the US has distanced itself from the Monroe Doctrine. Looking at the larger context of US relations with Latin America, an independent task force report by the Council on Foreign Relations concludes that:

For over 150 years, the Monroe Doctrine provided the guiding principles for US policy toward Latin America, asserting US primacy in the foreign affairs of the region. Over the past two decades, those principles have become increasingly obsolete. Washington's basic policy framework, however, has not changed sufficiently to reflect the new reality. U.S. policy can no longer be based on the assumption that the United States is the most important outside actor in Latin America. If there was an era of U.S. hegemony in Latin America, it is over. (CFR 2008, 26).

While we agree that the relationship between the US and Latin America has changed significantly, we believe that US hegemony is evident in the asymmetric relationships it maintains with Latin American countries. In other words, the principles of the Monroe Doctrine may have been modified, but they have not disappeared entirely. The Monroe Doctrine is no longer invoked, and Latin America is no longer solely in the US sphere of influence. Yet, the US maintains a hegemonic role in Latin America, particularly in regard to Panama, which has had a special relationship with the US since its inception. Panama has grown considerably in power and stature, yet the asymmetrical relationship with the US remains, and will likely continue into the foreseeable future. The tension between Panama and the US over the outstanding UXO issue, as well as US failure to ratify the 2007 free trade agreement with Panama, demonstrates that the US is still in the driver's seat. Nonetheless, asymmetry does not mean dominance. For the future of US-Panamanian relations, the US should work out a reasonable agreement with Panama on funding munitions clearing. While the US can argue that it did it all it conceivably could at the time, it would be a gesture of goodwill to assist Panama in its efforts to clean areas required for the expansion project. Perhaps even more important to US-Panamanian relations would be for the US to ratify the Free Trade Agreement (FTA).

The transition process itself was important because of the lessons that can be gleaned from it, as well as the course it should set for the future. Reeder notes that, while the future success of Panama largely lies in the hands of the Panamanians, it is very much in the best interest of the United States that Panama truly succeed. Reeder asserts:

It is important, critically important, that countries the world over (and, in particular, here in the Western Hemisphere where the Panama Canal Treaty is of highest prominence) see and understand firsthand that those countries that enter into treaty agreements with the United States inevitably flourish as a result. With the possible exception of NAFTA, there is no treaty in this hemisphere that enjoys higher profile than the Panama Canal Treaties. It is in the interests of the United States that Panama flourish in every way (Joe Reeder, November 24th, 2010 e-mail message to the authors).

When the US negotiates with a weaker actor, the weaker actors are more accepting of their position (Womack

2004, 365). At a time when the US influence in Latin America is waning, it behooves the US to work on solutions with Panama to issues such as the UXOs and resolving any remaining barriers to the FTA in order to ensure Latin American cooperation on trade and the drug war. Addressing the UXO issue has the benefit of demonstrating to the many companies and countries involved in the Canal expansion that the US takes responsibility for its actions and will not leave the countries it is involved in to clean up its mess. The FTA can benefit both countries, perhaps the US more than Panama, given the potential for Panamanian producers to be hurt by larger US producers. Although the FTA presents risks to the Panamanian economy, it also brings the opportunity for benefits; approval would represent a psychological boost to the US-Panamanian relationship and affirm Panamanian strides in reforming the labor code and making their tax system more transparent (Sullivan 2011, 1, 25). Of course, the fact that Panama is continuing to have to make changes to meet US demands to approve the FTA is a clear sign of the continuing asymmetrical nature of their relationship.

Despite obstacles, including inequality between the two parties and unresolved issues, the negotiations between the US and Panama effectively resolved the conflict over the Canal and produced an agreement that was acceptable to both countries. The negotiation process captures the efforts of these two governments to balance the interests and needs of US, Panamanian, and international actors. Even with the challenges inherent in a negotiation that involves an asymmetrical relationship, Panamanians ultimately achieved what they sought: sovereignty over their territory, ownership of the Canal, and assets worth millions, even billions of dollars (Ormsbee 2005-2008). The economic and security interests of US citizens were also safeguarded with this new relationship. Additionally, the US benefitted from an improved international image, maintained the integrity of the Canal (avoiding damage that would have resulted from sabotage or a prolonged conflict with Panama) and avoided a worse international conflict with Panama that would likely have resulted in additional loss of life on both sides. The US and Panamanian governments remained responsive to civil society and both fulfilled their goals of restoring democracy in Panama, a key element of US foreign policy and long-thwarted desire of the Panamanian people.

Dr. Marco A. Gandásegui suggests “the transition should be a model for the rest of the world of a peaceful resolution of conflict; a model for how to solve international problems” (2009). The negotiations leading up to the transition allowed both governments to represent and meet, to varying degrees, the needs of their people. The length of time that was planned for the transition phase was generous enough to ensure adequate training and education. This helped facilitate not only a smooth transition, but the long term success of the Canal. In addition, the transfer of the Canal reflected a turning point in the relationship between the US and Panama, as well as the US and the rest of Latin America. It demonstrated in no uncertain terms that the US was willing to leave colonialism (at least traditional colonialism) behind. Miguel Antonio Bernal, a Panamanian lawyer, academic and legendary crusader, opined that Dec. 31st 1999 was the first time Panama was a real state with the integrity of its own territory (2009). For Panamanians, it wasn’t just control over the Canal that was delivered into their hands that day. It was the sovereignty they so deeply desired. The evolution of the US-Panamanian relationship illustrates how a mutually beneficial agreement can be reached, working within the confines of an asymmetrical relationship. While the US and Panama may never fulfill Jimmy Carter’s vision of “harmonious” and equal partners, the relationship between these two governments evolved, the sovereignty of Panama was finally established, and an international treasure was preserved in the end.

Notes

1 US citizens who were residents of the Canal Zone [Return](#)

2 These numbers vary by different sources; Jorden for example notes a claim of 24 deaths (1984 page 63). He adds that a full report was never issued. [Return](#)

3 According to Jorden (1984, 5), in the 1960s it was believed the this canal could be created using a nuclear blast [Return](#)

4 While President George Herbert Walker Bush invoked this amendment as part of his justification for invading Panama (Deconcini papers), the legality of it is questionable (Bunn, 2005). [Return](#)

5 One of the authors lived in Panama from 1995-1998 and often heard statements to the effect of, “if they can’t run a railroad, how are they going to run the Canal?” among the American military community. [Return](#)

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