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**BRITAIN AND THE CREATION OF THE UNITED NATIONS
HUMAN RIGHTS REGIME**

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ABSTRACT: In this preliminary analysis of postwar British policy toward the formation of a UN human rights regime, based on recently published documents, we find strong support for “republican liberal” theory. The core of British policy—support for rhetorical commitments but not for mandatory enforcement—remained essentially unchanged from 1945 through 1953, and that position reflected a broadly acceptable compromise position within the British government—a position that incorporated the considerations central to republican liberal theory. Four empirical findings are decisive: First, decision-makers draw a fundamental distinction between rhetorical commitments and enforcement mechanisms such as compulsory jurisdiction and individual petition. Second, the British government, arguably like nearly all other Western governments, viewed human rights regimes most fundamentally as devices to stabilize emerging and potentially unstable democracies against totalitarian threats that can eventually lead to tyranny and war. Third, established democracies like Britain tended to be ambivalent or opposed to effective international enforcement, because—as republican liberal theory argues—in a strictly self-interested sense they benefit less from domestic stabilization. Britain supported such commitments to the extent they believe that strengthening neighboring democracies enhanced the “democratic peace” by reducing the number of potentially aggressive non-democracies and by bolstering alliances among democratic states—both phenomena predicted by “republican liberal” theory—but, unlike transitional democracies like France, it did not view such regimes as contributing to domestic democratic consolidation. Fourth, other complex factors at the core of existing historical analyses, such as contingency, individual political personalities, and bureaucratic politics, played a secondary or epiphenomenal role.

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The negotiation of formal international human rights protection regimes raises a fundamental question of interstate politics: Why would a sovereign state choose voluntarily to subscribe to a supranational human rights regime with strong mechanisms of enforcement, thereby inviting intervention in its domestic affairs?¹ This puzzle, almost unique to human rights regimes in international relations, has been largely ignored by theories aimed at explaining the behavior of states. It seems to defy explanation in conventional terms, in large part because, unlike treaties involving economic transactions or the use of military force, external human rights regimes do not involve the threat of reciprocal action. Why, then, would a country accept the jurisdiction of a supranational court and grant individuals the right to bring suit against it before that court?

This issue arises most strikingly in the late 1940s and the early 1950s, during which time governments negotiated the United Nations Universal Declaration of Human Rights and began discussions on an enforceable UN instrument. The same period saw the establishment of the European Convention on Human Rights (ECHR)—a European regional human rights regime establishing a bill of rights and court for its over forty members whose functioning is, in the words of two leading international legal scholars, “as effective as those of any domestic court.”²

The establishment of such regimes poses a challenge to international relations theory. Traditional realist theories of international relations have sought to account for the creation of international human norms regimes as a function of the distribution of interstate power. In this view, human rights norms are imposed by hegemonic powers.³ Constructivist and social movement theorists have sought to account for the creation and enforcement of such norms as a

¹ On the problematic relationship between sovereignty and human rights regimes see Steiner and Alston 2000 at 572-5.

² Helfer and Slaughter 1997, 283, who draw on Shapiro 1981, 7, 26-36.

³ Waltz 1979, Hathaway 2002.

function the power of ideals transmitted by transnational advocacy groups.⁴ Neither appears to have been decisive in explaining the emergence of the UN human rights regimes in the 1940s, which were opposed by the great powers and supported by governments, notably in Latin America and Continental Europe, where the human rights advocacy movement was least developed. More recently, liberal theorists have linked support for human rights regimes to self-interested efforts by governments in bolster democratic institutions in new or unstable democracies.⁵ The central claim—to which we shall return shortly—is that transitional and threatened democracies use international regimes to “lock in” domestic democratic institutions—a policy established democracies will support only to the extent it furthers their own security interests by securing the “democratic peace” and expanding alliances among democratic states.

Yet all of these were theoretically-grounded conjectures about the origins of human rights norms have been, until recently, backed by short and suggestive case studies or comparisons, rather than detailed empirical analysis. In particular—and in striking contrast to many other areas of international relations—historians have until recently remained relatively silent on this issue. A number of books appeared at the 50th anniversary of the UN Universal Declaration. Most tended to be focused almost entirely on symbolic commitments, like the Universal Declaration itself, and most that were not devoted entirely to legal analysis were as much popular as scholarly books—as in the case of Paul Lauren’s magisterial introduction to human rights activism over the past two centuries or Mary Anne Glendon’s engaging study of Eleanor Roosevelt’s role in negotiating the Universal Declaration, which also seeks to document the document’s multicultural background. The only study to provide a comprehensive archival treatment of the negotiation of any international norms is Johannes Morsink’s admirable book on the origins of the Universal Declaration. But Morsink limited himself to symbolic rather than enforceable commitments, UN documents, and thus to interstate negotiations. The result: After this research, we knew little

⁴ Sikkink 1993, Risse 1999.

⁵ Moravcsik.2000.

about the internal motivations of the governments that, in the end, have to negotiate and approve human rights treaties.⁶

This changed with the recent publication of A. Brian Simpson's *Human Rights and the End of Empire: Britain and the Genesis of the European Convention*.⁷ For the first time, we have a balanced, comprehensive (1161 pp.) study, grounded in an exhaustive analysis of available primary documents, tracing how a government designs and implements an international human rights policy over slightly more than a decade. Britain is a particularly interesting case of an established democracy that remained skeptical about mandatory, binding human rights commitments. This is anomalous either from a realist perspective (whereby great powers externalize their ideology) or from a "liberal constructivist" account (whereby altruistic groups in established democracies promote global human rights norms).

The primary data reported in this study offers an opportunity to test existing theories of state behavior—and particularly regime creation—in the international human rights issue-area. Sampling on the primary-source content of secondary sources is a legitimate method of collecting data—generally superior to sampling on the conclusions of secondary sources, which does not permit fine-grained analysis and precludes a "revisionist" account. An important methodological danger in such a practice is, of course, bias in the selection of sources, particularly where there is heavy reliance on a single work. Yet Simpson's presentation of the archival material is extensive and appears to not to contain serious selection biases—either in available data or in Simpson's presentation of it—likely to bias our own findings.⁸ Over the next few months, we will follow up on this provisional analysis by consulting the most critical documents in the British archives.

⁶ Morsink 1999. The US is a partial exception, since there are numerous books on US human rights policy—though few written to a historian's standards. A potential exception is William Korey, *The Promises we Keep: Human Rights, the Helsinki Process and American Foreign Policy* (New York : St. Martin's Press in association with the Institute for East West Studies, 1993).

⁷ Oxford: Oxford University Press, 2001.

⁸ We considered two potential sources of bias. First is the absence of the relevant Home Office files, which have been destroyed for this period. We know that the Home Office was one of two leading bureaucratic opponents of human

What does this new trove of primary data teach us about the motivations of an established democracy engaged in negotiations over creation of a new international human rights regime? We argue that Simpson's data broadly supports the explanation for human rights regimes proposed by one of the present authors, drawing on "republican liberal" theory.⁹ In this paper we will focus on the data in the book relating to British positions on the construction of the UN regime between 1945 and 1948, when British policy was set. Elsewhere we have considered the European system and will do so again.¹⁰ We reach four basic conclusions.

First, there is a fundamental distinction between rhetorical commitments and enforcement mechanisms. Two aspects of enforcement are decisive: compulsory jurisdiction and individual petition.¹¹ We see this from the success of the ECHR. In nearly a half-century of its existence, there have been only 13 complaints brought by states, and 117,169 complaints brought by groups and individuals—of which over 1000 were declared admissible and considered by the court. Today the court renders around 130 judgments a year; nearly 50 are settled before judgment is reached.¹² Simpson's analysis demonstrates that the British government, as republican liberal theory predicts, tended to view symbolic commitments as relatively unimportant rhetoric and petition and jurisdiction as imposing real costs. Discussions about rhetorical commitments are "cheap talk" and reveal little. True underlying support for and opposition to reciprocal obligations

rights commitments, and thus Simpson's this treatment likely underestimates concerns about the effects of treaties on British domestic life. Second is Simpson's data selection, driven by his interpretation, may bias the available material. This bias runs in the direction of a more comprehensive treatment of all possible influences on British policy, rather than focusing on a few, and perhaps towards particular attention to the Foreign Office's advocacy of human rights treaties. We believe that both of these biases are unlikely to bias our own interpretation, or indeed bias the data collection away from our conclusions.

⁹ Moravcsik 2000.

¹⁰ Moravcsik 2000.

¹¹ Moravcsik 2000 at 231. "Two features of the convention...have turned out to be of critical importance. One was that it permitted, though it did not require, parties to accept that individuals or groups should have standing to initiate complaints...a right of individual petition...The other was that the convention [aimed] to protect human rights through judicial mechanisms, much as they are protected in domestic law." Simpson 2001 at 3. For a general argument, see Keohane, Moravcsik and Slaughter 2002.

¹² Simpson 2001 at 4.

only become visible when commitments are costly, that is, when we examine discussions about binding enforcement. This was true both in the UN and European negotiations.

Second, the British government, like nearly all other Western governments, viewed human rights regimes as devices to stabilize emerging and potentially unstable democracies against totalitarian threats that can eventually lead to tyranny and war. For this reason, human rights commitments were seen as essential support for broader foreign policy objectives. This was a far more powerful motivating force in Britain—and, near as we can glimpse in this book—on the Continent than abstract idealism about human dignity, memories of the Holocaust, or political partisanship. Those parties that were most actively anti-Communist tended to be most strongly supportive of regional human rights cooperation.

Third, established democracies like Britain tended to be less enthusiastic about effective reciprocal enforcement than transitional democracies, because—as republican liberal theory argues—in a strictly self-interested sense they benefit less from domestic stabilization. However, governments of established democracies will support such commitments to the extent they believe that strengthening neighboring democracies enhances their national security by reducing the number of potentially aggressive non-democratic governments and bolstering alliances among democratic states. Both expectations are consistent with the general literature on the distinctiveness of democratic states, and with republican liberal theories about human rights.¹³ Simpson's analysis suggests that Britain's concern with the human rights in the late 1940s and early 1950s reflected, in particular, its desire to maintain its leading position in the Western alliance.

Fourth, other complex factors highlighted by Simpson played a secondary role. Simpson argues that contingency, individual political personalities, and bureaucratic politics converged at

¹³ Moravcsik 2000.

a particular point to suddenly empower the British Foreign Office to play a positive, even decisive, role in constructing postwar international human rights regimes. We argue that this exaggerates the level of British support for international human rights enforcement. The British position was fundamentally defensive, and its basis—support for rhetorical commitments but not for mandatory enforcement—remained essentially unchanged from 1945 through 1953, and that it reflected a broadly acceptable compromise position in the British government—and thus owed little to the bureaucratic prerogatives of the Foreign Office.

On balance, then, Simpson’s close analysis of the British case confirms “republican liberal” theory, and can thus serve as a constructive model of the kind of research that should be conducted in future, comparative case studies.

Simpson on Causal Explanation in History

Assessing the underlying question of British motivations is a task of broad theoretical significance. If theories ascribing actions in international relations to interest are correct, Simpson wonders, then some basic questions arise:

Why did Britain take these remarkable steps, and what role did she play in the negotiation of the European Convention and the First Protocol? To what extent were there fears and misgivings at the time? How were they overcome? And, if it is really the case that in international affairs states primarily pursue their own interests, what was then thought to be in it for Britain? This book both asks and tries to answer these and other related questions....¹⁴

This is, Simpson notes, “a real puzzle.” When in 1956 Greece lodged a complaint before the Commission of the European Convention system against British policy in Cyprus, British officials wondered why, starting just a few years before, “we have got ourselves committed to this wretched Covenant and can’t get out of it now.”¹⁵

¹⁴ Simpson 2001 at v.

¹⁵ Simpson 2001 at 11.

Simpson's contribution to solving this puzzle is shrouded in his considerable diffidence about advancing a distinct causal interpretation. He introduces the book (despite its length) as a prologue to explanation rather than an explanation.

The establishment of a narrative account of the European Convention is a necessary precondition to any useful theoretical enquiry. The book is indeed written in the spirit which inspires the journalist who... after contemplating the scene of some disagreeable yet attractively newsworthy disaster, consoles himself with a gin and water, and thus refreshed, *wonders how it came about*. So it is, for me, with the European Convention.¹⁶

And this passage understates Simpson's aversion to explicit causal explanation. Systematic explanation, in his view, is not simply premature in this particular case; it is generally not possible in a world dominated by "conflicts, compromise and happenstance."¹⁷ Like the most conservative among traditional diplomatic historians, Simpson doubts our ability not just to subsume cases into simple uncausal explanations of broad applicability, but also to develop *any* precise explanation of a single case—even a multi-causal weighting of various causes. "In the world of diplomacy, as in everyday life," Simpson asserts, "decisions are taken for complex reasons, and it is commonly difficult if not impossible to assign to each the weight it bore."¹⁸ Simpson nowhere attempts to draw an explicit balance among competing factors, and his narrative history provides "no simple answer" to the question of what factors underlay British human rights policy—because, he argues, no simple answer exists.¹⁹

Simpson offers no justification for his radical skepticism about causal explanation in history, and it is a curious, if not inconsistent, position for him to take. After all, Simpson describes his colossal work as a "narrative history" aimed at solving the "puzzle" of why Britain accepted the provisions of the ECHR for itself and its colonies, and determining how "fears and

¹⁶ Simpson 2001 at vii.

¹⁷ Simpson 2001 at vii.

¹⁸ Simpson 2001 at 510. Simpson takes a similar view on other issues, such as the impact of the UN Universal Declaration, of which he says, "any contentions ... if the claim is empirical in nature, are incapable of either verification or falsification.

¹⁹ Simpson 2001 at vii.

misgivings at the time” were overcome. A mere demonstration of “complexity” would hardly justify 1100 pages of text in response. Moreover, it is unclear on what ground Simpson is so confident about the empirical inadequacy of certain causal arguments, if he remains skeptical about our ability to assess others—or causal factors in general.²⁰ Also, radical skepticism would be inconsistent with Simpson’s rather bold, if sporadic, interpretive claims. At times (as we shall see) these involve sweeping causal counterfactuals, such as the notion that if British politicians would never have approved the system, had they grasped its consequences.²¹ And, indeed, a closer reading reveals—as is so often the case with traditional historians—that Simpson’s modest disclaimer belies the full range of his interpretive ambitions.

Human Rights and the End of Empire in Light of Liberal IR Theory

To see just what Simpson’s interpretive ambitions are, it is useful to place his work in a social scientific context. As he points out, there has been little historical work on the European Convention system, or on national human rights policies of European countries. Yet the origins and consequences of international dispute resolution systems in general, and international human rights adjudication systems in particular, have been the subject of considerable contemporary debate among political scientists and legal academics.²²

By and large, Simpson ignores the theories and analysis advanced in this broad theoretical literature, but one important exception is a brief passage in which he considers the “republican liberal” explanation advanced by one of the present author—whom he terms the

²⁰ There is a tension between the claim that we know one particular cause to be insufficient to explain social behavior, yet to maintain that the data does not permit us to discern anything useful about the relative weight of other causes.

²¹ Simpson 2001 at 4.

²² Moravcsik 2000; Hathaway 2002; Risse et al 1999; Lauren 1998.

“only writer” to have “really addressed the problem of explaining the genesis of the European Convention.”²³

Republican liberal theories stress the impact of varying domestic political institutions—in particular, the scope and bias of political representation—on foreign policy. The most prominent example are institutional theories of the “democratic peace.”²⁴ In the case of formal international human rights protection, one useful starting point is to assume that international institutional commitments (like domestic institutional commitments courts, administrative agencies, central banks, and other independent bodies) are self-interested means by which political winners “lock in” particular preferred domestic policies at home and abroad. In other words, institutions are formed when politicians seek to commit the polity to preferred policies in the face of potential future political uncertainty.²⁵

From this perspective, international human rights regimes are advocated primarily by transitional or threatened democracies as institutional protection against backsliding into authoritarian or totalitarian rule, while established democracies tend to take a more skeptical view. A rational decision to delegate to an independent body requires that a sitting government weigh two crosscutting considerations: restricting government discretion and reducing domestic political uncertainty. On the one hand, governments surrender national discretion—the “sovereignty cost” of delegation to an international authority. International judges, in particular, may negate government actions by nullifying them outright or failing to enforce them effectively.

²³ Simpson 2001 at 13.

²⁴ Three among the most prominent are institutional theories of the “democratic peace”, theories of the role of cartelized elites and independent militaries in provoking war, and theories of interest group capture (or the countervailing delegation of authority to strong executives) in foreign economic policy.

²⁵ “Most political institutions...arise out of a politics of structural choice in which the winners use their temporary hold on public authority to design new structures and impose them on the polity as a whole. . . . [Institutions are] weapons of coercion and redistribution . . . the structural means by which political winners pursue their own interests, often at the great expense of political losers.” Moe 1990 *Ibid.*, 222, 213. In the domestic constitutional context, provisions are locked in by the fact that only a supermajority is typically able to amend it. Supermajorities bind subsequent majorities. The case we are analyzing here, like the case of administrative delegation, is more complex, since treaties are generally ratified by majority, and the nondemocratic opponents are constrained not by their majority but by the extent of their coercive power. Pasquino 1998.

From this perspective, the defense of “national sovereignty” may be not just a defense of particular policies, but of the legitimate national ideals, political culture, and even democratic practices they embody. On the other hand, in the republican liberal view, governments have an incentive to delegate power to human rights regimes to prevent political retrogression or “backsliding” into tyranny by constraining the behavior of future national governments.²⁶ From this perspective, human rights norms are expressions of the self-interest of democratic governments, who seek to “lock in” liberal democratic institutions by placing public interpretation of basic domestic legal norms in the hands of independent authorities managed in part by foreign governments.

The republican liberal theory predicts, therefore, that the strongest support for binding human rights regimes should therefore come not from established democracies but from recently established and potentially unstable democracies. Only where democracy is established, but non-democratic groups (military officers, communists, fascists, and religious fundamentalists, for example) pose real threats to its future, is the reduction of political uncertainty likely to outweigh the inconvenience of supranational adjudication. It is obvious that opposition will come in part from dictatorships (or transitional regimes), since such governments both lack any interest in democracy and suffer particularly large inconveniences from persistent challenges to their (nondemocratic) domestic order. One striking prediction of this view is that *well-established* liberal democracies will naturally possess a certain skepticism as well, since they incur an increased, if modest, risk of de facto nullification of domestic laws without a corresponding increase in the expected stability of domestic democracy—the latter already being high. Governments of established democracy thus have good reason—indeed, a democratically legitimate reason—to reject any reciprocal imposition of international adjudication and enforcement of human rights claims.

²⁶ As Moe explains, a politician must always calculate that “while the right to exercise public authority happens to be theirs today, other political actors with different and perhaps opposing interests may gain that right tomorrow.”

This is not to say, however, that established democracies have no incentive to support formal human rights instruments. The very same republican liberal approach that gives rise to this prediction is the basis, of course, of one variant of the “democratic peace”—the notion that democracies have little incentive to wage war against one another and tend to ally with each other against non-democratic states. It follows that established democracies have a self-interested incentive to bolster their security by fostering democracy in neighboring countries. For this reason, they may promote multilateral institutions to assure human rights even when such institutions may involve some risk of triggering future domestic pressure. But their enthusiasm for this approach is likely to be less than that of transitional democracies, and their ideal point (unlike that of transitional democracies) is more likely to be a system in which other governments are bound, but they are not.²⁷ Accordingly, we would expect postwar British governments to be profoundly ambivalent, with something between apathy and opposition from those policy-makers concerned with domestic and colonial policy balanced by support from those concerned with the stability of democracy and the Western alliance as an objective of British foreign policy.

Simpson deems the “republican liberal” interpretation “broadly convincing,” insisting only that that “over some matters...the explanation is more complex, as the account given in this

²⁷ In game theoretical language, the preferences of regimes as regards binding international human rights adjudication within a common institution are as follows: Established democracies prefer not to commit themselves, and in some cases, such as the British position in the negotiations we are analyzing, prefer autonomy so strongly that they would prefer to destroy or withdraw from the regime rather than do so. The preference orderings are thus either a prisoner’s dilemma ($DC > CC > DD > CD$) or, as with Britain, ($DC > DD > CC > CD$). By contrast, transitional democracies desire to commit themselves to enforcement no matter what, though they would prefer a reciprocal commitment. The ordering is ($CC > CD > DC > DD$). With these respective preference orderings, the equilibrium outcome is for the established democracy to defect and the transitional democracy to commit. There is no reason why the established democracy should ever commit itself to binding human rights adjudication, if it is possible to achieve an outcome—an optional enforcement mechanism—that provides enforcement in the transitional democracy, with the support of the established democracy, but does not extend enforcement to the latter. Yet ordinal preferences are misleading here. In the real world, the ability of an established democracy to encourage participation and enforcement by transitional democracies appears to depend, in part, on its own membership in the group, even if it does not accept enforcement provisions. In such cases, the probability of its own future adherence may perhaps be slightly higher than it would otherwise be. Assessing whether this prospect is attractive requires that an established democracy weigh the “sovereignty costs” (the extent to which $DC > CC$) as against the value to it—in foreign policy terms—of commitment by the transitional state.

book shall make clear.²⁸ During the Second World War it came to be widely believed, in Simpson's phrase, that:

A new order should be established ... an alternative to the new order offered by Hitler ... Clearly peace was a common objective, but there were disagreements about how to preserve it. One theory attributed past troubles to the failing of unregulated capitalism ... The other theory saw future salvation in restoring the primacy of the individual against the over powerful state, in establishing civil and political freedom, and in restoring and safeguarding democracy.²⁹

Governments viewed international human rights norms as further insurance against a resurgence of totalitarianism.

Continental Europeans were particularly concerned in part because they had experienced Fascism (and, in Simpson's view, occupation), which convinced them that greater international protections were required—though he does not back this with comparative analysis.³⁰ In Simpson's words:

It could hardly be the British government's view that it was necessary to secure international backing for the protection of British subjects from its own possible excesses, though occasionally Foreign Office officials flirted with the idea that the Colonial Office might need to put its house in order. Nor was there fear in Britain—here the position in Continental Europe was different—that such a weapon might be needed in the future, to prevent a decline into totalitarianism....So the rationale for promoting an international bill of rights which would apply to Britain ... had to be that it was proof of sincerity.³¹

From the British perspective, international human rights protection was also viewed as a means to bolster the anti-Communist domestic and foreign policies of Continental West European governments by highlighting the differences between East and West. Consistent with this approach is the British desire to deflect embarrassing anti-British propaganda disseminated by the Soviet Union. As Simpson puts it:

From the viewpoint of Foreign Office officials there is a sense in which the convention was not primarily about human rights at all, but rather a means to convince Europeans

²⁸ Simpson 2001 at 13. For a similar moment of structural explanation, see also Simpson 2001 at 18.

²⁹ Simpson 2001 at 157.

³⁰ See Simpson 2001 at 601-2, 620, 680-1. The claim that occupation was important seems questionable, given that Norway, Denmark, and the Netherlands all opposed either individual petition or a court with binding jurisdiction. See Moravcsik 2000 at 234.

³¹ Simpson 2001 at 338. These are Simpson's words and he provides little primary evidence for this motivation.

that Britain was a good European, and to strengthen the coherence of the Western European bloc which they were anxious to promote.³²

All this broadly supports the “republican liberal” explanation of national motivations for human rights enforcement.³³

Consistent with the “republican liberal” account is also Simpson’s analysis of bureaucratic politics in Britain. He finds that those who actually enforced human rights domestically in an established democracy like Britain (or in the colonies)—the Home Office and Colonial Office—saw nothing but the costs of accepting international enforcement.³⁴ By contrast, the primary bureaucratic supporter was the Foreign Office, which was concerned primarily with international rather than colonial or domestic matters. Only the FO perceived benefits.

The explanation why the United Kingdom promoted and ratified the convention must be sought not in the history of English constitutional thought, but in the general political history of the period. It was a product of British foreign policy, not of the British legal tradition, much less of British domestic policy. The belief in governmental circles that it was in Britain’s interests to take the most prominent part of any of the major powers in the human rights movement, both in Europe and in the United Nations, arose as an aspect of the conduct of international affairs.³⁵

This viewpoint was a function of the official tasks of the FO. In a critical passage, Simpson describes precisely a weighting of gains and losses with the FO concerned with the legitimacy of British foreign policy and the Colonial and Home Offices concerned with the costs to British domestic and colonial policy. Simpson describes it as follows:

Plainly human rights, if actually protected, come with a price: a restriction on the powers of those in authority. That was not a price which Foreign Office officials had to pay. They ran no prisons, police forces, or courts, organized no executions and no floggings, ordered no deportations or exiles, put down no insurrections. In so far as the Foreign

³² Simpson 2001 at 5.

³³ Many liberal theories—e.g. democratic peace theory—are concerned with security. They differ from realist theories in that security threats emerge and are addressed based on the distribution and manipulation of military power, with the preferences of governments held constant. Here the logic is classical liberal, namely one gains allies by fostering ideologically and institutionally compatible forms of government among potential enemies or allies. For a more extensive discussion, see Moravcsik 1997.

³⁴ See, e.g., Simpson 2001 at 269, 275, 295, 309-17, 338, 723.

³⁵ Simpson 2001 at 18.

Office was concerned with government at all, it was with government in other countries.³⁶

The primary FO concern, as we shall see, was that Britain take a positive position on human rights issues in order to bolster its stature and credibility in the emerging Cold War conflict with the Soviet Union. Officials were also aware that European integration was viewed as a means to keep the peace in Western Europe. As Beckett wrote in July 1947, albeit in a draft designed for eventual public consumption:

It is impossible to exaggerate the importance of adequately safeguarding human rights [which] provide the means through which individuals in each state...can check the reckless courses in which those in power are sometimes prone to plunge their populations. Therefore the establishment of human rights...as part of international law...is an essential safeguard against the danger of war.³⁷

Insofar as such officials expressed idealistic sentiments, it was in the context of the role of tolerance and rights as a distinguishing characteristic of the West as against the Marxist Soviet bloc, rather than any concern for individual dignity *per se*. Accordingly, as republican liberal theory predicts, the British FO favored stronger international human rights norms, while the Colonial Office and Home office resisted.

Before moving on, it is worth noting that Simpson's evidence tends to disconfirm other major structural theories. There is no evidence—as realists might expect—that Britain sought to coerce or induce any other country to support or oppose global human rights norms, and the British government certainly did not take a hegemonic leadership position. Nor is there evidence of much involvement by altruistic “advocacy networks.” To be sure, the fact that the subject was mentioned at all in the UN Charter owed much to efforts led by religious and legal groups, largely in the US. Yet the strongest and most effective support for human rights in the UN came not from those governments with active private groups, such as the US, but from the smaller countries of Latin America and Continental Europe. Either way, skeptical governments rather easily watered

³⁶ Simpson 2001 at 337.

³⁷ Simpson 2001 at 346.

down any effort to generate real enforcement.³⁸ On the Continent, the Assembly of the Council of Europe organized party politicians and leading Europeans, including some lawyers, behind a human rights convention, but this appears to have been as much a self-interested one aimed at securing the peace and opposing Communism in Western Europe as an altruistic project aimed elsewhere.³⁹ Particularly striking in this regard is the lack of mention by British officials and politicians of the Holocaust—a reticence shared by their US counterparts and by most Continental advocates of international human rights enforcement.⁴⁰ Whatever the origins of the UN and European Convention, Simpson argues, they do not lie in the deaths of millions of ethnic, religious and lifestyle minorities.⁴¹

Simpson's Argument: Ideology, Personality, Bureaucracy

To a substantial extent, then, Simpson's account confirms existing "republican liberal" theories of international human rights enforcement. What does he mean, then, when he calls the "republican liberal" account insufficiently "complex" to explain British policy? In fact a sharper and more provocative theoretical argument about the underlying causes of British acceptance of the Convention lurks beneath Simpson's elliptical prose. It focuses on what he terms a "fairly obvious...message," namely that "political, legal, and institutional development is the product of extremely complicated interrelationships between individuals, institutions, and governments, with their varied ideological commitments and perceptions of reality, history and self interest."⁴² A close reading in context reveals that Simpson is not simply repeating that events are complex and thus resistant to explanation—the argument we have considered above. To explain British policy,

³⁸ Simpson 2001 at 157-268.

³⁹ Simpson 2001 at 574-7, 605. The policies of other governments and of the European movement require more research.

⁴⁰ Teitgen was the exception.

⁴¹ Simpson 2001 at 195-6.

⁴² Simpson 2001 at vii. Simpson finds Moravcsik's explanation "broadly convincing", but thinks that "over some matters [...] the explanation is more complex" (13).

more is required than simply a cost-benefit calculation about Western unity and the British role in the Cold War.

Simpson's central contention is that the key to understanding the complexity lies in "individuals," "institutions", and "varied ideological commitments and perceptions."⁴³ More specifically, he repeatedly invokes as decisive three factors: (a) incorrect beliefs about the future domestic and colonial impact of regional human rights norms; (b) the idiosyncratic personalities of individual politicians; and (c) bureaucratic politics among competing ministries of the British government. Let us consider each in turn.

The first set of factors comprised *incorrect and ideologically-shaped beliefs about the consequences of international commitment*. Although today the ECHR has developed its own jurisprudence aimed at effective harmonization of basic human rights practice, Simpson asserts that this was not the case at the start, nor was it expected to be the case in the future. It was not perceived as a binding regime and would probably have been opposed outright by Britain if it had:

The sheer scale of the activities of the convention's institutions, and their intrusiveness into what were once viewed as purely domestic matters, was never dreamt of back in 1950. Indeed had the politicians then been able to foresee this intrusiveness it is most improbable that the convention would ever have been ratified.⁴⁴

Such systems were novel in 1945, and no one understood their potential impact.⁴⁵ British officials believed that the ECHR was viewed as "too loosely drafted" to be effective.⁴⁶ It was unlikely to be ratified by the eight states required to bring it into force.⁴⁷ Britain insisted that the right of

⁴³ Simpson's investigation also demonstrates, at least in the British context, the relative unimportance of the experience of the Holocaust and of the actions of non-governmental organizations. References to the Holocaust were almost entirely absent in this period and indeed played relatively little role in public discourse until the 1960s. In Britain, as on the Continent, the major carriers in civil society of human rights ideas were not public interest groups, but political parties. See Simpson 2001 at 195-6. We return to this point below.

⁴⁴ Simpson 2001 at 4.

⁴⁵ Simpson 2001 at 4.

⁴⁶ Simpson 2001 at 11.

⁴⁷ Simpson 2001 at 2-3.

individual petition or the compulsory jurisdiction of the court—the critical enforcement provisions—be made optional, and when it ratified refused to invoke either option. This meant that only states could initiate cases against Britain, which was unlikely, and that they would go to a Commission manned by national representatives rather than an autonomous court, which made any effective action less likely.⁴⁸ This proved largely correct, yet, as Simpson points out, within a few years Britain was nonetheless defending itself against an annoying action brought by Greece regarding British actions in Cyprus. At that time, British officials expressed their dismay at the fact that they had committed the United Kingdom to “this wretched Covenant and can’t get out of it now.”⁴⁹

The belief that the convention would have little impact was, Simpson notes, widely held among British politicians and officials. One reason involved the unique English legal tradition of informal rights enforcement. British officials and politicians were rather certain that Britain “had invented effective protection of fundamental individual rights, or liberties, through the rule of law.”⁵⁰ To be sure, colonies and dominions constituted an important area of ambiguity, but overall Britain was believed to be an exemplar for rather than a subject of international norms. British officials and politicians felt Britain could and indeed should teach the world about human rights. The result was deep-set view that human rights were “for export only,” and Britain “had nothing to fear from a properly drafted convention.”⁵¹

The second set of factors comprised *individual political personalities*. The existence of the Council of Europe, and thus of a forum for subsequent negotiations over the European Convention, was, in Simpson’s reading, in large part the result to Winston Churchill’s wartime and postwar advocacy. Churchill’s public positions on European unity were changeable and

⁴⁸ Simpson 2001 at 4.

⁴⁹ Simpson 2001 at 11.

⁵⁰ Simpson 2001 at 18.

⁵¹ Simpson 2001 at 45; cf. 347.

contradictory—Simpson at one point terms them “bizarre”—but they did help promote the Council. Ernest Bevin, Foreign Secretary under the Labour government that came into office in 1945, was diffident, indecisive, uninformed—and ultimately ill. He tended to cede the initiative on foreign policy matters to permanent civil servants at the FO, whose primary concern was to avoid the embarrassment of opposing European human rights efforts. At other junctures, British representatives (such as Charles Dukes to the UN Human Rights Commission) imperfectly understood (or deliberately exceeded) their mandate at critical junctures. Some Foreign Office officials—notably the Legal Adviser, Eric Beckett, who probably had more influence on British policy than any other FO official—had reasons to support international human rights protection. Beckett, Simpson explains in considerable detail, was something of an idealist, having worked with the League of Nations to codify international law, favoring a stronger role for the International Court of Justice, and advocating (without success) the elimination of the UN Security Council veto.⁵² These idiosyncrasies of personality and ideology worked to promote a British policy open to human rights.

The third and most important factor was *bureaucratic politics*. In Simpson’s view, international human rights protection was advocated and advanced primarily through the autonomous actions of a bureaucracy—the Foreign Office (FO). Throughout the period from 1945 through 1950, on Simpson’s reading, FO officials consistently promoted the construction of international and regional human rights institutions without the explicit support of leading politicians and over the opposition of other departments. The critical moment for postwar British policy on human rights came in 1946-47 when, in Simpson’s words, “the Foreign Office establish[ed] a policy.”⁵³ Some younger FO officials became “enthusiastic” about human rights.⁵⁴ Thereafter the FO was the leading force in the British government supporting international human

⁵² Simpson 2001 at 45.

⁵³ Simpson 2001 at 323ff.

⁵⁴ Simpson 2001 at 343. Higher officials, such as Undersecretary Gladwyn Jebb, and Foreign Secretary Ernest Bevin, were less enthusiastic, and viewed the issue as relatively unimportant.

rights norms, and played a leading role in shaping British policy. Simpson terms the ECHR (like the Council of Europe itself) is a “feather in the cap” of the FO.⁵⁵

The FO came to dominate the international human rights issue, Simpson argues, as a result of its bureaucratic prerogatives—human rights was an international issue, and one about which domestic departments were largely ignorant—rather than a rational weighing of substantive considerations. The FO was able to edge out other bureaucracies for control over the issue and, on Simpson’s reading, deliberately sought to keep the issue out of the Cabinet.

So far as the Cabinet was concerned the last thing Foreign Office officials wanted was for it to become involved in the details of foreign policy, about which most of its members knew virtually nothing. Where other departments were concerned and there was controversy the preference was always for not using the cabinet as arbitrator.⁵⁶

Control over lower-level processes, according to Simpson, permitted the FO to influence the proceedings in a way that underestimated the true costs of human rights enforcement to an established democracy like Britain.

At a practical level this meant that negotiations were conducted by officials who were not themselves directly involved in the messy business of government. Plainly human rights, if actually protected, come with a price: a restriction on the powers of those in authority. That was not a price which Foreign Office officials had to pay. They ran no prisons, police forces, or courts, organized no executions and no floggings, ordered no deportations or exiles, put down no insurrections. In so far as the Foreign Office was concerned with government at all, it was with government in other countries.⁵⁷

The final sentence of the book credits, in an almost sentimental fashion, the initiative and tenacity of top FO officials. Insofar as Simpson’s account accords “credit” to anyone, it is to them.⁵⁸

⁵⁵ Simpson 2001 at 5.

⁵⁶ Simpson 2001 at 544.

⁵⁷ Simpson 2001 at 337.

⁵⁸ “If credit is to be given it would be unjust not to conclude this study with a mention of the work of the Foreign Office officials. Though sometimes today cast in the unhappy and, I suspect, unwelcome role of defending the indefensible on behalf of other departments of the British government at Strasbourg, they also deserve to have remembered the positive part their department played in the negotiations which I have described, and which the Foreign and Commonwealth Office has continued to play over the years which have followed.” Simpson 2001 at 1101.

This interpretation of British policy—or, at any rate, the distinctive aspects of his interpretation—rests on the influence of this potent combination of ideology, personality, and bureaucracy. These three factors were decisive—here we interpolate an argument Simpson only implies—because of the pervasive uncertainty about the consequences of dealing with new postwar notions of human rights protection. Human rights was a novel, complex, and low salience issue—one clearly of no more than “tertiary” importance to decision-makers, and one with, at most, long-term costs.⁵⁹ Short-term symbolic benefits to British prestige could, therefore, be gained while incurring only uncertain, long-term costs. This opened up an opportunity for political entrepreneurs—in Simpson’s account of Britain, foreign office officials—to push for the establishment of international human rights norms. In sum, unintended consequences of decisions taken in response to specific short-term imperatives were critical. Simpson argues—in another bold counterfactual—that had the treaty not been signed in the late 1940s and early 1950s, “it is in the highest degree unlikely that anything resembling it would even come into being.”⁶⁰ Commitments made under unique early Cold War conditions bore fruit many decades later.⁶¹

Political scientists will recognize that this account shares much, in this regard, with various “non-rationalist” accounts of state behavior in world politics, in particular models of “bureaucratic politics” and more recent “historical institutionalist,” “cognitive,” and “constructivist” theories. Like theories of bureaucratic politics, notably that of Graham Allison, Simpson stresses the distinctive interests of bureaucracies, derived from their functional position or the views of the individuals in them.⁶² Like historical institutionalist accounts of institutional evolution, Simpson stresses the long-term dominance of unintended consequences when dealing

⁵⁹ See, e.g., Simpson 2001 at 4, 39-41,

⁶⁰ Simpson 2001 at 9. Simpson seeks to explain away independent efforts in the UN and the Americas to create such systems.

⁶¹ Simpson 2001 at vi.

⁶² Allison 1999.

with low-salience issues with diffuse or unpredictable costs and benefits.⁶³ Like cognitive or psychological theories of decision-making, Simpson stresses the role of individual biases drawn from past experiences and individual temperament.⁶⁴ Like “liberal constructivist” accounts of human rights policy, Simpson stresses the power of ideals and symbols and the role of “political entrepreneurs”—though, in contrast to what most recent analysts of human rights argue, these entrepreneurs were not motivated by altruistic idealism and tended to be politicians and officials rather than activists and members of non-governmental organizations, social movements and other groups in civil society.⁶⁵

Refocusing the Empirical Analysis

Simpson’s argument raises the following empirical questions:

- (1) To what extent did bureaucratic actors voice the full range of stable national interests that republican liberal theory predicts should be important—including long-term considerations? Or did the interests that received consideration reflect individual beliefs, political ideology, partisan competition, or a short time horizon?
- (2) Were information, perceptions and beliefs regarding future costs and benefits broadly accurate and comprehensive, or did decision-making have unintended or heavily discounted consequences?
- (3) Were bureaucratic and social preferences aggregated in an unbiased manner consistent with longer-term priorities of the political leadership, or did particular groups (notably the Foreign Office) have a disproportionate say while other groups were diminished or excluded?

In general, we will argue, Simpson’s own evidence suggests that British decision-makers were remarkably broad-minded, well-informed, and far-sighted as to the potential consequences of their actions.

⁶³ Pierson 1996.

⁶⁴ Khong 1992.

⁶⁵ Risse, Ropp and Sikkink 1999.

Bureaucratic Autonomy? The Foreign and Colonial Offices and UN Policy, 1945-50

Simpson stresses the autonomous role of the Foreign Office—arguing that the FO exploited its power to drive British policy toward support for global human rights norms. He argue that FO autonomy was particularly important in the period from December 1947 through 1950. Although policy was made throughout this period in inter-ministerial groups, where the Colonial and Home Offices were also represented, Simpson argues that the Foreign Office took the lead.⁶⁶ Since the United Nations was a Foreign Office responsibility, and there was no domestic interest in the subject, it was Foreign Office officials, not themselves directly concerned with government, who became primarily responsible.⁶⁷ The bureaucratic derived in part from FO control over committee chairmanships in matters dealing with international issues, from the weakness of Foreign Secretary Ernest Bevin, and the low salience of the human rights issue, which permitted the FO to act independently of cabinet scrutiny. The primacy of the FO over the Colonial Office (and, by extension, the Home Office) was due in part to the way in which the latter viewed human rights at very early stages in the process. Although the Colonial Office viewed the United Nations “as a potential menace unless it could be prevented from intervention in colonial issues”, it did not fear human rights, because their protection “had not attained the prominence it was soon to achieve”. On the basis of this, Simpson concludes that “the Colonial Office initially did not conceive of the danger latent in the international protection of human rights.”⁶⁸ Once it did, the issue was already controlled by the FO through committee chairmanships.⁶⁹ Thus the acceptance, even occasional promotion, of international human rights protection was an unintended consequence of British bureaucratic politics within the context of general ignorance about the issue.

⁶⁶ See Simpson 2001 at 323: “It was for the United Nations that Foreign Office officials, in an uneasy relationship with other departments, first developed detailed policies on human rights”.

⁶⁷ Simpson 2001 at 39, emphasis added.

⁶⁸ Simpson 2001 at 269.

⁶⁹ In summing up his views on the role of the United Nations negotiations in the development of a human rights policy in Britain, Simpson returns to this argument and stresses it further.

Simpson is certainly correct in that human rights were new and virtually unknown at the time. He draws attention to the fact that many of the heads of the Foreign Office departments that handled human rights were not lawyers. According to Simpson's sources, Gladwyn Jebb, the most senior FO official responsible for the matter, did not consider international human rights instruments a high priority—even years after the fact.⁷⁰ And Simpson persuasively demonstrates that between 1945 and 1948, and perhaps with high hopes for the UN on several levels, Foreign Office officials developed a certain support for human rights—though “enthusiasm” is perhaps too strong a term.⁷¹ Eric Beckett, FO Legal Adviser from 1945 onward, had himself become a supporter and come to view tolerance as one of the distinguishing characteristics in the ideological conflict between the west and the states of the Soviet bloc.⁷²

Yet there is little evidence that quiet FO control over the issue led to concessions that would not have otherwise been justifiable. From the start, Simpson demonstrates, the Colonial Office was involved, and it (rightly) viewed the UN as a dangerous forum in which anti-colonialists could voice their objections to British policy overseas.⁷³ The inclusion of representatives from the Home and Colonial Offices shows that British officials were at least aware of the potential implications of a human rights instrument both for the colonies and dependencies, but also for Britain at home. Though the latter concerns have been obscured in part

⁷⁰ Simpson 2001 at 345. Simpson does not indicate the source of this information, although the following excerpt from Jebb's memoirs is revealing: My impression always was that in the Foreign Office much of the criticism of the San Francisco settlement came from Eric Beckett, who had succeeded Will Malkin as Legal Adviser. Eric was a man of great brilliance, but, as I always thought, of too theoretical a cast of mind. He had not been himself at Dumbarton Oaks or San Francisco. If he had been he might have had a more realistic impression of what we were up against and of what the world was actually like (Gladwyn 1972 at 180).

⁷¹ Simpson 2001 at 343.

⁷² Simpson 2001 at 343; see also 570-4. For early evidence of such views, before the Soviet threat became fully manifest, see pp 43-5. By 1948, these views had entered the mainstream. For an example of this, see Bevin's remarks in the House of Commons, which were made before the Soviet invasion of Prague (*The Times*, 23 January 1948). In the aftermath of Soviet aggression, they became established: in a 1949 lecture on the North Atlantic Treaty, Beckett argued that one of the distinctive features of the Brussels Treaty was “its emphasis on human rights and fundamental freedoms and the rule of law, as being in one sense the basis of the whole matter” and added that “these rights and freedoms are the essence of our way of life, and [...], in accepting obligations for collective self-defence and in co-operating in other matters, the parties are really defending the one way of life which their peoples would find tolerable” (Beckett 1950 at 23).

⁷³ Simpson 2001 at 275.

by the destruction of Home Office papers from this period, we know that the Home Office opposed effective enforcement well into the 1970s.⁷⁴

From the numerous papers and memos that were written on the issue of human rights, one gets the clear sense that since the beginning the Colonial Office was well aware of the dangers for Britain inherent in the establishment of supranational authorities, and blamed the FO for what it perceived as shortsightedness.⁷⁵ Where human rights specifically were concerned, the Colonial Office understood that it was in the peculiar position of presenting Britain as the proud exporter of rights to its colonies and dependencies (and therefore by example to the rest of the world), but at the same time viewing their institutionalization as the medium through which others could interfere in Britain's relations with those very colonies.⁷⁶ Accordingly the Colonial Office presented Britain's relationship with her colonies as a purely domestic matter and resisted attempts at intervention from external sources.⁷⁷

Accordingly, inter-ministerial meetings fairly represented competing concerns. From mid-1946 on, meetings of the interdepartmental Working Party on Human Rights were fraught

⁷⁴ Simpson himself provides the evidence for the Colonial Office's early interest in the issue of human rights at the United Nations. He cites evidence of a conflict between the Colonial and the Foreign Offices on the matter, which at the beginning centered on the issue of mandates versus trusteeship of the colonies (determined at the Yalta conference)—a bureaucratic battle that the Colonial Office lost. See Simpson 2001 at 269, especially on Jebb.

⁷⁵ See, for example, CO 936/108, quoted in Simpson 2001 at 309-10, as well as numerous other sources cited by Simpson at 309-17. The Colonial Office's concern dates back to at least 1944, and was particularly strong following the San Francisco conference of 1945 (see Simpson 2001 at 268-70..

⁷⁶ See Simpson 2001 at 295. The pressure felt by the Colonial Office was made all the more acute by the increasing force of the anti-colonial movement and the increasing calls for decolonization. Miles Kahler has observed that this pressure was channeled through the Labour Party: "The United Nations, increasingly attuned to the views of the newly independent and non-aligned nations, publicly pressed for accelerated decolonization. [...] The call of the Labour Party for recourse to the United Nations destroyed an initial political consensus in Britain during the Suez crisis. This domestic audience for the views of the United Nations and the non-aligned countries (many of them members of the Commonwealth) made at least a part of the British polity sensitive to international opinion." (Kahler 1984 at 365). See also Simpson 2001 at 303-5.

⁷⁷ Simpson 2001 at 300-1. Simpson disagrees with those who view the anti-colonial movement as a human rights movement, despite the fact that there are certain similarities between them and that the former often used rhetoric reminiscent of the latter. This he sees as confirmed by the fact that in many cases the success of the anti-colonial movement did not translate into more respect for human rights. Although Simpson's distinction is justified, it seems that the two movements became connected in practical terms and in such a way that developments in one had considerable consequences for the other. Simpson sees this conflict of interest between the Foreign Office and the other departments in that the former saw an international bill of rights as a tool for its policy, whereas the latter saw it only as a liability, something that Moravcsik sees as an integral part of republican liberal explanation. (2000 at 226).

with tension. In particular, representatives of the FO had to address the concerns of their counterparts who were in charge of dependencies.⁷⁸ In one of many examples, Simpson quotes Hilton Poynton, who warned of the danger that while “endeavouring to make the covenant as effective as possible as a means of curbing the totalitarian countries, we do not cause some of our Colonial territories serious difficulties and embarrassments in the conduct of their affairs at the present stages of development.”⁷⁹ Beckett himself was clearly aware of the difficulties, as the final phrase in the passage from his confidential note of September 1946 cited above makes clear:

Nothing, I think, will be more disastrous than to accept the doctrine that a declaration by four or five powers, or even a resolution of the Assembly which can be passed by a majority, can cut down the sphere of domestic jurisdiction, and I may say that a colonial power like ourselves ought to be pretty well aware of what will happen if the domestic jurisdiction principle is not upheld.⁸⁰

We will present below the scattered evidence—more is not possible, due to the destruction of the Home Office files for this period—of similar concern about domestic ramifications. (We have to assume that, absent the missing documents, the weight of such considerations is underestimated in Simpson’s account.) Inter-bureaucratic disputes within the committee were ultimately resolved at the ministerial level, and there is little evidence that the FO’s chairmanship was in any way decisive.⁸¹

Moreover—and more importantly for the underlying theoretical and interpretive issues at stake—these disputes were not just turf-wars of an Allisonian “where you sit determines where you stand” variety.⁸² The FO, Colonial and Home Offices did not take positions based on parochial concerns about funding, manpower or prerogative. Instead the positions of various ministries reflected distinct concrete and conflicting substantive interests of Britain. Moreover,

⁷⁸ Simpson 2001 at 368, also 344-345.

⁷⁹ Letter of 21 January 1948 in FO 371/72799/UNE271 quoted in Simpson at 368.

⁸⁰ FO 371/59727/UN1891/25/78 (note of 9 September 1946 by Hugh McKinnon Wood and comment by Beckett) quoted in Simpson 2001 at 273.

⁸¹ Simpson explicitly seeks to provide any, and none is evident from the record.

⁸² Allison 1999.

these interests are precisely those that “republican liberal” theory predicts should be central to the British calculation of its “national interest” with regard to international human rights enforcement—viewed from the perspective of a stable and established democracy. In sum, from a broader theoretical perspective this is best seen as part of a rational weighing of national priorities. In 1948, and in the context of the negotiations for the United Nations Universal Declaration of Human Rights, for example, Paul Gore-Booth explained that “the purpose of His Majesty’s Government in pursuing this Covenant has been twofold: in the first place they regarded it as a means of serious progress in the raising of the standards of human rights, and in the second place it was a weapon of political warfare.”⁸³

The FO took the view that the British had to avoid embarrassment of promulgating a double standard. In the context of the emerging Cold War, Britain could not afford to be viewed as hypocritical on the subject of human rights—opposing their formal enforcement in the dominions but supporting enforcement in Eastern Europe, the USSR and elsewhere. This appears to be the most important positive consideration, offsetting domestic and colonial concerns, in FO thinking from 1946 onward, well before Czechoslovakia, Berlin and Korea. At the first internal discussions in October 1946 of who was to represent the Britain at the Human Rights Commission, Hector McNeil, the FO Minister of State, wrote to Lord Chancellor Jowitt, as follows:

The qualities required will be pretty exacting. Some of the big battles in the UN on the fundamental ideological issue of Western democracy as opposed to Soviet totalitarianism may well be fought out here. The UK representative ought to be able to expound the virtues of our own system in a form that the representatives of other countries will understand and at the same time he must be able to stand up to attacks on our own system especially in relation to non-self-governing territories.⁸⁴

⁸³ Minutes of the Working Party on Human Rights, 22 January 1948, CAB 134/423 IOC (HR) (48) 5 quoted in Simpson 2001 at 347.

⁸⁴ Letter cited in Simpson 2001 at 349.

This task would be particularly delicate, since the English conception of rights and their enforcement. FO officials were well aware that the lack of a bill of rights, the tradition of “negative liberty,” and the judicial system in Britain were difficult to explain to foreigners.⁸⁵

A second FO concern was to promote human rights in Continental Europe, thereby stabilizing democracy against extremist groups and safeguarding against war. The notion that democracy in Europe was a bulwark against war—what we would now term the “democratic peace” theory—was a core tenet of postwar foreign policy in the US, Britain and elsewhere. In addition, the totalitarian threat was at this point associated with the threat of internal Communist power in Western Europe. During 1946 and 1947, Beckett wrote a series of papers aimed at formulating British policy with respect to human rights. :

It is impossible to exaggerate the importance of adequately safeguarding human rights and fundamental freedoms. The maintenance of these rights and freedoms, as we know from our own history, forms an essential curb on the ambitions of those who are in power in the individual states. They provide the means through which individuals in each state ... can check the reckless courses in which those in power are sometimes prone to plunge their populations. Therefore the establishment of human rights ... as part of international law ... is an essential safeguard against the danger of war ...⁸⁶

Simpson concludes, on balance, that this was an important consideration.⁸⁷

From Dumbarton Oaks in 1944 and San Francisco in 1945 onward, the British position was thus that it was impractical and undesirable for the UN to regulate matters in the domestic jurisdiction of governments. Britain favored statements and recommendations concerning rights, but not the establishment of institutional means to enforce them.⁸⁸ This friction notwithstanding, Simpson argues that there was a relatively widespread sense among all British officials that the United Kingdom had the least to fear from such an instrument, which also means

⁸⁵ Simpson 2001 at 350.

⁸⁶ FO 371/67607/UNE1429 IOC (HR) (47) 19 of 24 July 1947 quoted in Simpson 2001 at 346. This passage comes from a draft for external use, and thus may not reflect British thinking.

⁸⁷ See, e.g., Simpson 2001 at 337-40.

⁸⁸ Simpson 2001 at 239-272.

that there was no “fear in Britain—and here the position in Continental Europe was different—that such a weapon might be needed in the future, to prevent a decline into totalitarianism.” Instead, he argues, British officials saw their commitment to such an instrument primarily as a sign of Britain’s sincerity, “which assisted Britain in encouraging other countries, which did not enjoy the British liberal tradition, to put their houses in order”⁸⁹.

In this general context of support, the departments concerned formed the Steering Committee on International Organizations in 1946, which included representatives from the Foreign, Colonial, and Home Offices, as well as numerous other government departments⁹⁰. In addition to this committee, the Foreign Office set up a United Nations Department, which was supervised by Jebb.⁹¹ The front line of this battle shifted in 1945 to the possibility of more general norms governing the treatment of subjects by colonial powers.⁹² The Colonial Office successfully worked with the FO to water these down substantially, though they could not eliminate the danger entirely. To be sure, the United Kingdom and other colonial powers suffered some setbacks thereafter at the United Nations, primarily in the formation of the Special Committee on Information from Non-Self Governing Territories and a series of hostile resolutions in 1949.⁹³ These developments with respect to the colonies affected Britain’s relationship with all the major parties concerned, including the USSR and the United States, and therefore also “the work of the Human Rights Commission.”⁹⁴ But they were hardly a function of previous British policy.

Human rights reemerged on the agenda in 1946. From the beginning, Simpson’s history confirms, British officials believed that any UN treaty that undermined domestic jurisdiction in

⁸⁹ Simpson 2001 at 338.

⁹⁰ This committee replaced the Advisory Committee on the United Nations. Simpson lists some of the departments that participated and notes the conspicuous absence of representatives from the Office of the Lord Chancellor until 1950 (343-4).

⁹¹ Simpson 2001 at 343. According to Simpson, “Jebb often chaired the Steering Committee”. The United Nations Department split into a Political and a Social and Economic Department in 1947.

⁹² Simpson 2001 at 261-272.

⁹³ See Simpson 2001 at 305-6.

⁹⁴ Simpson 2001 at 307.

human rights matters would not secure the support or compliance from the great powers on the Security Council, and thus would be ineffective.⁹⁵ Thus Legal Adviser Beckett, cited by Simpson as a primary FO “enthusiast,” consistently advocated absolute respect for domestic jurisdiction—the same policy pursued by his predecessor one year previously.⁹⁶ Early on he argues:

The domestic jurisdiction provision of the Charter is an absolutely fundamental provision and any serious disregard of it will render U.N.O. completely unworkable. U.N.O. intends, if it can, to ensure that the freedoms or the rights of man are recognized throughout the world, but the Charter is so framed that this object is to be achieved by conventions and so forth accepted freely by its members ... Nothing, I think, will be more disastrous than to accept the doctrine that a declaration by four or five powers, or even a resolution of the Assembly which can be passed by a majority, can cut down the sphere of domestic jurisdiction, and I may say that a colonial power like ourselves ought to be pretty well aware of what will happen if the domestic jurisdiction principle is not upheld.⁹⁷

Simpson correctly infers from the logic of Beckett’s position that “all the United Nations could do was to draft and promote human rights conventions, and hope that states would sign up to them, a possibility which would be enhanced if they were largely vacuous.”⁹⁸ There is not a shred of idealism in this statement—it reflects a policy set in 1945, if not before, and left unchanged until the mid-1960s.

Beginning in late 1946, Simpson argues, the FO began to “establish a policy.”⁹⁹ Here emerges the tension between FO internationalism and Home and Colonial Office opposition.

For the Foreign Office an international bill of rights was a weapon to be deployed against other governments; for the Home Office, and more obviously the Colonial Office, it was a rod which might fall upon their own backs. The Home Office officials believed that they presided over the very home of human rights, and so thought there was very little to fear...The Colonial Office, increasingly beleaguered by the anti-colonial movement, was both nervous, and deeply suspicious of the Foreign Office. Ideally it had no use for the international protection of human rights, but in public it was quite impossible to say so.¹⁰⁰

⁹⁵ On 4 July 1945, Foreign Office Legal Adviser Sir William Malkin was killed in an air accident returning from the San Francisco Conference and was replaced by Eric Beckett Simpson 2001 at 41.

⁹⁶ On his enthusiasm, Simpson 2001 at 343; on previous statements, Simpson 2001 at 245.

⁹⁷ FO 371/59727/UN1891/25/78 (note of 9 September 1946 by Hugh McKinnon Wood and comment by Beckett) quoted in Simpson 2001 at 273.

⁹⁸ Simpson 2001 at 273.

⁹⁹ Simpson 2001 at 323.

¹⁰⁰ Simpson 2001 at 338.

Simpson argues that in December 1946 this dispute was resolved bureaucratically, by making human rights primarily an FO responsibility.¹⁰¹ It did not go before the Cabinet before October 1947, when ministers, consulted on a technical matter, voiced some doubt as to whether the effort was worthwhile but failed to generate any action. A real cabinet-level discussion was not had until 1950.¹⁰²

In Simpson's reading, which places the British FO at the center of postwar human rights norm creation, this is the critical turning point. British officials, unlike their US and Soviet counterparts, were "prepared...to subject herself domestically to an international regime of human rights protection." Elsewhere he states: "With very limited exceptions, international human rights instruments were always thought to apply to British domestic affairs."¹⁰³ To be sure, Simpson immediately qualifies this statement with "albeit one which was not expected to alter existing arrangements at home," yet he appears to believe that sanguine expectations resulted from overweening pride in the British system—pride which also led the British to seek to explain the virtues of their domestic arrangements to foreigners.¹⁰⁴ This claim permits Simpson to portray Britain—and within Britain, the FO—as a leader in international human rights during this period. This would indeed have been a revolution in British policy.

Yet Simpson provides little evidence to support this claim. Far from being an impetus to postwar human rights norm-setting, the British position was consistently defensive. Others placed human rights on the agenda. Positive proposals, such as the enumeration of rights, were adopted, Simpson shows, quite deliberately as means to keep discussions bogged down. At the UN, the consistent proponents were Latin Americans, backed by a smattering of Continental Europeans. On the Continent, the European movement continued to press for a regional system. As Simpson

¹⁰¹ Simpson 2001 at 337.

¹⁰² Simpson 2001 at 336-337.

¹⁰³ Simpson 2001 at 348.

¹⁰⁴ Simpson 2001 at 347.

himself out it, Churchill, Roosevelt, and Stalin may have issue issued a statement that included a general reference to the world organization but also that the idea of a Western bloc in Europe “refused to go away.”¹⁰⁵ The issue was likely to find itself on the international agenda no matter what; the only question was whether the British could find a respectable way to limit its impact.

The FO policy pursued in the inter-ministerial Working Party, as Simpson notes, was “largely settled in a memorandum of 17 June 1946...drafted by Beckett, and once Beckett had adopted a position he was extremely difficult to shift”.¹⁰⁶ The policy had five elements:

- (1) Stress the distinctive British tradition of human rights, in particular its minimalist conception of individual political rights, thereby setting aside rights to democratic participation and to socioeconomic equality.
- (2) Press for binding legal obligations to a precise International Bill of Rights “and refrain from dissipating [energies] in discussion of other problems.”
- (3) Oppose any effort to discuss specific human rights violations before the bill of rights is complete.
- (4) Define rights clearly rather than, as others had proposed, leave them for subsequent judicial interpretation.
- (5) Postpone any discussion of central enforcement procedures.¹⁰⁷

Simpson presents evidence that Beckett understood that only a system with enforcement would be effective, and that such a system risked taking on a jurisprudential life of its own. There is no evidence, on the other hand, that he was secretly seeking to advance global human rights norms; his opposition to enforceable mechanisms, at least at the moment, appears genuine—as was that of the FO.¹⁰⁸

Nor should the domestic power of the FO be exaggerated. There is little evidence that procedures changed decisively in late 1946. The FO still had to answer to other ministries, and it

¹⁰⁵ Simpson 2001 at 230, 232.

¹⁰⁶ Simpson 2001 at 368ff.

¹⁰⁷ Simpson 2001 at 368-372.

¹⁰⁸ Simpson 2001 at 372.

still lost battles. FO officials failed to name a competent representative to the UN Human Rights Committee, for example. Charles Dukes, a former Labour MP with a union background and secure status as a “crony” of Foreign Minister Bevin, was selected over Whitehall and academic figures.¹⁰⁹ At the same time, Simpson mentions Dukes’ unwillingness to follow FO instructions—whether out of incompetence or personal conviction—as an example of complexity that promoted international cooperation. He left for New York with instructions to ensure as “innocuous” an allusion to political rights as possible and to oppose institutional enforcement, given that it was unlikely that the issue would not come up¹¹⁰. Indeed, for a brief period at the start of the meetings of the Human Rights Commission in 1947, Dukes publicly supported a court, individual petition and minorities clauses at the UN. He stated that “Great Britain hopes that the United Nations Human Rights Commission ... not only will draw up an international bill of human rights but will set up a United Nations agency to which appeals may be made by victims of persecution or discrimination anywhere.”¹¹¹

Yet this is an exception that proves the rule. If the FO was pursuing a positive policy toward human rights, it should have quietly supported such a policy. Instead Beckett at the FO was “horrified” by Dukes’ actions, just as, one presumes, were his Colonial Office colleagues.¹¹² The consistent British line—discuss definitions of rights but not institutional enforcement mechanisms—was soon reinstated. In other words, the FO’s effort to avoid embarrassment only went so far. Britain should avoid overt opposition to symbolic declarations of rights, but should not—and, after this brief interlude—did not, support any provisions for mandatory institutional enforcement of human rights norms by the UN.¹¹³

¹⁰⁹ Simpson 2001 at 348-352

¹¹⁰ Telegram No. 206 of 20 January 1947 quoted in Simpson 2001 at 375.

¹¹¹ Simpson 2001 at 376, where he also quotes a cable in which Dukes is reported as having said: “His Majesty’s Government have no definite plans, but envisage a sort of Court of Appeals to which aggrieved parties can bring their case. But first Human Rights must be defined.”

¹¹² Simpson’s judgment based on the documents. See Simpson 2001 at 376.

¹¹³ Simpson 2001 at 376.

Nor, finally, was the FO so naïve as to believe that enforceable human rights norms would have no impact on Britain—as Simpson sometimes seems to imply. FO officials understood that active steps had to be taken to assure that it had no impact. From the first they worked alongside the US and USSR to make sure that proposals for individual petition and independent judicial review (mostly from smaller countries and legal academics) were quashed. From the very first meeting to the last, the British position was that the UN can set ideal international norms, but should not establish enforcement mechanisms that infringe domestic jurisdiction—the same policy that had been pursued since 1945.¹¹⁴ In response to one set of enforcement proposals they wrote:

We have all along maintained a view opposed to that of Professor Lauterpacht, namely that the words of the Charter to *promote* universal respect for and observance of human rights confer no legal obligation on the United Nations of member states, except that of elaborating an international bill of rights.¹¹⁵

British policy remained unchanged for several decades.

The same broad approach was taken at the first meeting of the UN Human Rights Commission in January 1947 when the issue arose about the inclusion of political rights—voting and other sorts of democratic participation. The Colonial Office raised many potential difficulties. It viewed the inclusion of “political rights”—the right to participate in democratic procedures—in the UN definition of human rights as “particularly dangerous from the Colonial point of view and highly prejudicial to the political development of Africa.” The FO, represented by Jebb, responded: “I wonder if we can continue to stand up for political (human) rights for East Europeans if we take the view that such rights are outside the scope of the Human Rights Commission.” Minister of State at the FO, Hector McNeil, minuted: “I am not sure I understand what Human Rights are if they do not include political rights.” Members of the FO’s UN team thought that pushing the point would “draw useless odium on the United Kingdom

¹¹⁴ Simpson 2001 at 352ff.

¹¹⁵ Simpson 2001 at 357.

representative.” The instructions telegraphed to the British representative at the Human Rights Commission stressed that “there are members of the United Nations whose views are totalitarian and whose conception of Human Rights is opposed to our own.”¹¹⁶ The Colonial Office may, as Simpson claims, have thereafter “adopted a tone of gloomy resignation,” but the policy was a predictable outcome of competing domestic interests.¹¹⁷

Conclusion

The case of postwar Britain is a decisive one for theoretical debates, for it is on the role of established democracies that major theories of international relations differ most fundamentally. Realist and social movement theories would suggest that any human rights regimes reflect great power interests or pressure from altruistic advocacy groups based in such democracies, respectively. For reasons we have presented above, by contrast, liberal theory maintains that established democracies have important reasons to be reticent.

In this preliminary analysis, based on Simpson’s exhaustive study of British policy, we find strong support for liberal theory. We find a fundamental distinction between support for rhetorical commitments and support for enforcement mechanisms such as compulsory jurisdiction and individual petition. We find that the British government, like nearly all other Western governments, viewed human rights regimes as devices to stabilize emerging and potentially unstable democracies against totalitarian threats that can eventually lead to tyranny and war. We find that established democracies like Britain tended to be less enthusiastic about effective reciprocal enforcement than transitional democracies, because—as republican liberal theory argues—in a strictly self-interested sense they benefit less from domestic stabilization. However, the British case demonstrates that governments of established democracies will support such commitments to the extent they believe that strengthening neighboring democracies enhances

¹¹⁶ Simpson 2001 at 373-374. It is unclear to whom precisely Simpson attributes the final quotation.

¹¹⁷ Simpson 2001 at 456.

their national security by reducing the number of potentially aggressive non-democratic governments and bolstering alliances among democratic states. Finally, we find that other complex factors highlighted by Simpson, such as contingency, individual political personalities, and bureaucratic politics played a secondary role. Above all, Simpson's interpretation rests on the assumption that the FO took a positive stance toward human rights, whereas we argue that the British position was fundamentally defensive. Its core—support for rhetorical commitments but not for mandatory enforcement—remained essentially unchanged from 1945 through 1953, and that position reflected a broadly acceptable compromise position within the British government. The bureaucratic prerogatives of the FO played little role, except to advance considerations that would have been essential to any comprehensive foreign policy analysis.

All of this is, however, a contingent finding based on the examination of one country's interaction with one international institution—even if Britain and the UN are important exemplars of each. Simpson's close analysis of the British case may confirm “republican liberal” theory, but it also serves as a constructive model of the kind of historical research that must be conducted in future comparative case studies before we can understand the emergence of postwar human rights regimes.

At the beginning of his history, Simpson places considerable explanatory weight on two factors: he claims that many were unaware of what they were getting themselves into, and that one way to account for the differences of opinion between the British and their continental counterparts is to focus on their different experiences of occupation. Unfortunately, Simpson never attempts to evaluate his theory in light of the evidence that he has gathered, but the evidence which he cites makes it abundantly clear that this was only partly the case. Although in some cases officials tried to ‘sell’ unsatisfactory decisions as the unavoidable consequences of circumstance, it is not clear that this meant that these consequences were surprising—that they were undesirable does not necessarily mean that they were unforeseen. This is reinforced by the

fact that the great majority of those involved in the making of the ECHR in all capacities was quite aware of the potential consequences, as evidenced by the plethora of warnings and the staunch opposition of the Colonial Office, the Home Office, and even certain departments and officials of the Foreign Office itself, from the very beginning of the process. Where the experience of occupation is concerned, Moravcsik has shown that although in some cases it accounts for the difference between Britain and *some* Continental countries, its potency is lessened by the fact that it fails to account for differences *between* countries that *had* experienced occupation¹¹⁸.

Simpson's account shows that the pursuit of domestic preferences, which included stability in post war Europe, but also victory in domestic elections¹¹⁹, determined Britain's role in the genesis of the ECHR. Surprisingly, there is a sense in which Moravcsik's 'locking in' explanation can be applied to Britain as well. Jebb attributed the inevitability of the course of events that led to the ECHR to the fact that the United Kingdom had become locked into the idea of a united Europe by signing the Brussels Treaty¹²⁰. Having done so, it needed to save face with the rest of Europe and the world, by showing that its commitment to human rights was in earnest. What resistance there was manifested itself in the persistent attempts to weaken the convention, which ultimately led Paul-Henri Spaak to proclaim: "The Convention on Human Rights will be signed by fifteen countries at 3 pm at the Palazzo Barbarini [sic]. It is not a very good Convention, but it is a lovely Palace"¹²¹.

Despite its weaknesses, Simpson's study of the British case is extremely useful in two important ways. First, it provides a model on the basis of which other cases can be investigated. Second, by making good use of the rich British government archives, it supplies some

¹¹⁸ Moravcsik 2000 at 234.

¹¹⁹ See, for example, Marston 1984 at 824 on the role of public opinion, as well as the negotiators' own views on the matter, in TP, i at 10-2.

¹²⁰ See Marston 1984 at 801.

¹²¹ Quoted in Kilmuir 1964 at 183-4.

information which may be indispensable in cases in which public and private records are nowhere near as good. The next step in this process, then, would be a comparative study that combines Moravcsik's theory with Simpson's model for the case study, so that the making and workings of these strange instruments of human rights and international politics can be understood.

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