

long-range national interest in deterring atrocities and bringing offenders to justice.” Meron, “The Court We Want.”

53. That proposal consists of the Proposed Text of Rule to Article 98 of the Rome Treaty accompanied by the Proposed Text to a Supplemental Document to the Rome Treaty (which would be a legal agreement between the UN and the ICC.) The proposal is reproduced at <http://www.igc.apc.org/icc/html/us2000.html>

54. Rome Statute, article 112(1) and (6).

## Why Is U.S. Human Rights Policy So Unilateralist?

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THE STORY OF U.S. “EXCEPTIONALISM” IN HUMAN RIGHTS POLICY—THE aversion of the United States to domestic application of international human rights treaties—has often been told. The apparent paradox is clear. The United States has a long tradition of unilateral action to promote domestic constitutional rights and international human rights.<sup>1</sup> The United States has helped establish and enforce global human rights standards through rhetorical disapproval, foreign aid, sanctions, military intervention, and even multilateral negotiations. It does so even in some areas—most recently humanitarian intervention in Kosovo—where the costs are potentially high. At the same time, however, the United States remains extremely cautious about committing itself to the domestic application of binding international legal standards for human rights. In particular, it has been hesitant to ratify multilateral human rights treaties, despite their acceptance among nearly all advanced industrial democracies, many developing democracies, and, in many cases, nondemocratic governments. When the United States does ratify such treaties, it typically imposes so many reservations that ratification has no domestic effect.<sup>2</sup>

The ambivalence of U.S. human rights policy is widely criticized by human rights advocates. Human Rights Watch and the American Civil Liberties Union (ACLU), for example, immediately denounced U.S. ratification in 1992 of the UN International Covenant on Civil and Political Rights (ICCPR) because they viewed reservations to restrict domestic application as a “half-step” based on “the cynical view of international human rights law as a source of protection only for those outside U.S. borders.”<sup>3</sup> The Lawyer’s Committee on Human Rights decried the implication that “one set of rules belongs to the U.S. and another to the rest of the world” and accused the U.S. government of outright hypocrisy.<sup>4</sup> Government officials and representatives of NGOs consistently maintain, in the words of Assistant Secretary of State Patricia Derian in 1979, that “failure . . . to ratify has

a significant negative impact on the conduct of our human rights policy," undermining its "credibility and effectiveness."<sup>5</sup>

What underlies this mixture of international activism and domestic obstruction? Why are international human rights issues so particularly controversial in the United States, while nearly all our closest allies—many with political ideologies and institutions as distinctive and cherished as our own—are far more likely to accept them?

Perhaps the most common explanation attributes U.S. unilateralism in human rights to a distinctive culture of "exceptionalism"—that is, a pervasive sense of cultural relativism, ethnocentrism, or nationalism. J. D. van der Vyver maintains that "the American approach to international human rights is as much a manifestation of cultural relativism as any other sectional approach to international human rights founded on national ethnic, cultural or religious particularities. American relativism, furthermore, also serves to obstruct the United Nations' resolve to promote *universal* respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."<sup>6</sup>

David Forsythe points to "American nationalism . . . intellectual isolationism and unilateralism."<sup>7</sup> Natalie Kaufman, a leading historian of postwar Senate deliberations, characterizes consistent concern among U.S. politicians to protect the sanctity of U.S. political institutions in a diverse world as evidence of "an ethnocentric world view, a perspective suspicious or disdainful of things foreign" dating back at least to the early 1950s.<sup>8</sup> Such charges make for powerful political rhetoric among global elites. In the international legal community, in particular, labeling a policy as an instance of "cultural relativism" is a sure means of delegitimizing it. For classical international lawyers, a nation either accepts, at least in principle, uniform application of all international human rights norms or it is "culturally relativistic."<sup>9</sup>

Yet as an explanation for U.S. behavior, "cultural relativism" is both incomplete and implausible. Labeling the United States "ethnocentric" or "culturally relativist," even if it were correct in a narrow sense, does not tell us precisely *why* the United States is opposed to universal human rights norms. Any effort to understand U.S. human rights policy, or to transform it, must rest on a precise empirical understanding of the "national ethnic, cultural and religious particularities" that, according to van der Vyver, underlie U.S. exceptionalism. (Anything less borders on the legalistic tautology, hinted at in the quotation above, whereby any government that resists the formal application of UN norms has by definition succumbed to cultural relativism.) Yet there exists, to my knowledge, no such empirical analysis. It has yet to be demonstrated that the fundamental political culture of the United States—its universalist civil rights tradition and polyglot culture—is significantly more "ethnocentric" in such matters than those of other major countries. Is the U.S. conception of domestic political values really more "exceptional" than that of Britain, France, Russia, Japan, Germany, or China? Of all the particularities of postwar U.S. foreign policy—its distinctive

geopolitical imperatives, national interests, and domestic political institutions, for example—why should we believe that it is cultural values that account for U.S. policy? And if so, what sustains these cultural values as against the spread of universal human rights norms? Are there not enduring political interests and institutions that promote "exceptionalist" beliefs? One reason to believe that "exceptionalist" culture offers only a superficial explanation for U.S. policy is that Americans manifestly do not share a common cultural predisposition toward international human rights norms. As we shall see in more detail, such norms trigger intense and partisan ideological conflict among domestic political interests. At best the charge of "cultural relativism" raises these essential causal questions; at worst it may be leading us in the wrong direction.

This chapter takes a different approach. The exceptional ambivalence and unilateralism of the U.S. human rights policy, I argue in the first section, is a function of four general characteristics, none of which invokes the "ethnocentrism" of U.S. culture. The United States is skeptical of domestic implementation of international norms because it is geopolitically powerful, stably democratic, ideologically conservative, and politically decentralized. To restate the claim in general terms, support for multilateral institutions is less likely to the extent that a nation possesses strong unilateral bargaining power, stable domestic institutions, preferences about substantive rights that diverge from the international consensus, and decentralized political institutions that empower small veto groups. Any of these four general characteristics render governments less likely to accept binding multilateral norms.

I argue in the second section that the United States, alone in the modern world, exhibits all four of these characteristics. A historical overview of domestic cleavages and debates uncovers direct evidence of the importance of these four factors in postwar U.S. human rights policy. Further empirical support is provided by close examination of the contemporary debate over ratification of the Convention on the Rights of the Child, as we shall see in the second section of this chapter.

Yet, I conclude in the third section, little currently available evidence supports the claim of human rights activists that U.S. ambivalence undermines U.S. foreign policy, U.S. human rights policy, or the global enforcement of human rights. The primary influence of U.S. unilateralism appears instead to be restricted to U.S. citizens, who might otherwise be able to plead a broader range of rights before U.S. courts.

#### Four Determinants of U.S. Human Rights Policy

The United States has been, almost since its founding, a liberal democracy with a history of intense concern about domestic civil rights and a sense of solidarity with other liberal democracies. Yet four general factors constrain the willingness of U.S. leaders to adhere fully to multilateral human rights

treaties: geopolitical power, stable democratic governance, ideological conservatism, and political decentralization. Let us consider each in turn.

### *The Ambivalent Superpower*

The first general factor influencing U.S. multilateral human rights policy is its superpower status in world affairs.

A straightforward "realist" argument links great-power status to unilateralism. Multilateral commitments tie governments down to common rules and procedures designed to promote reciprocal policy adjustment. In deciding whether to enter into a multilateral arrangement of this kind, rational governments must make a cost-benefit calculation as compared with unilateral or bilateral alternatives. For any given state, the costs of multilateralism lie in the necessity for each participant to sacrifice a measure of unilateral or bilateral policy autonomy or legal sovereignty in order to impose a uniform policy. All other things being equal, the more isolated and powerful a state—that is, the more efficiently it can achieve its objectives by unilateral or bilateral means—the less it gains from multilateral cooperation.<sup>10</sup> Powerful governments are therefore more likely to be skeptical of procedural equality than their smaller neighbors. This is not to say that, on balance, great powers will always oppose multilateralism, for the benefits of intense cooperation may outweigh the costs. Yet, all other things equal, there is reason to expect great powers to feel greater ambivalence toward multilateralism than their less powerful neighbors.<sup>11</sup>

Great power ambivalence toward multilateralism seems to pervade many areas of U.S. foreign policy, including trade, monetary, financial, and security policies. In postwar international trade policy, to be sure, the United States emerged as a strong and consistent supporter of liberalization under GATT and the WTO. Yet it was the United States that in 1947 rejected the stronger enforcement capabilities of the International Trade Organization (ITO) and subsequently developed highly controversial capacity (mostly under Section 301) for "aggressive unilateralism"—a capability not yet matched by other major trading partners. Similarly in international financial and monetary relations, the United States has remained engaged yet acted unilaterally between 1971 and 1973 to undermine the system of pegged exchange rates established under the postwar Bretton Woods system. It continues to jealously defend its disproportionate voting power, and the de facto veto this confers, in the IMF. The United States helped create the UN yet maintains its Security Council veto and finds itself in a continually antagonistic financial relationship with it. Finally, in NATO, the United States retains a de jure veto (as do others) and a recognized position of *primus inter pares*.

We might expect the ambivalence of powerful countries to be particularly pronounced in the area of human rights because the typical model of multilateral human rights enforcement is judicial rather than legislative. Whereas the international organizations we just examined provide forums

for interstate bargaining—a mode of interaction in which the powerful tend to retain disproportionate influence—human rights norms are typically enforced through formal legal adjudication at the domestic or international level. To participate fully in such arrangements, in contrast to most legislative institutions, powerful countries sacrifice much of their bargaining power. It has long been argued that there is a general tendency for great and regional powers—the United States, Soviet Union, Britain, China, Brazil, Mexico, and India, for example—to remain aloof from formal international human rights enforcement.<sup>12</sup>

Three salient characteristics of postwar U.S. human rights policy, beyond its general skepticism toward multilateral commitments, appear to confirm the importance of these realist considerations:

- *Consistent U.S. support for treaty reservations.* The United States, often backed by Britain, France, China, and Russia, has consistently opposed efforts by smaller states, backed by international tribunals, to restrict the scope of permissible reservations to human rights treaties.<sup>13</sup> Recent treaties on the ICC and landmines, for example, permit no reservations, and the United States has stayed aloof.<sup>14</sup>
- *Concern for U.S. military forces abroad.* Two international agreements, the Genocide Convention and the ICC, have raised the possibility (albeit remote) that U.S. soldiers might be prosecuted. Is it just coincidence that other governments with significant foreign military involvements (i.e., Israel, China, Russia, France, and initially Britain) were among the initial skeptics of a strong ICC?
- *Concern about allied noncommunist dictators.* As part of its Cold War alliance strategy, the United States long sought to defend non-democratic leaders of South Vietnam, Pakistan, Iran, the Philippines, Nicaragua, Chile, Taiwan, South Korea, Saudi Arabia, and even the People's Republic of China. Through the realist lens, by which "the enemy of my enemy is my friend," these were viewed as essential "second-best" tactics in the Cold War. Even the Carter administration, though ideologically inclined toward the enforcement of human rights, was selective about human rights enforcement—a policy perhaps best symbolized by the image of Zbigniew Brzezinski waving an M16 rifle at the Khyber Pass in support of Islamic fundamentalists fighting against the Soviet invasion of Afghanistan. This may help explain why the United States seems slightly more willing to ratify multilateral human rights treaties now that the Cold War is over. The Senate ratified no legally binding treaty in the 1950s and one each in the 1960s, 1970s, and 1980s, but four during the early 1990s.

While the desire to maintain the discretion and influence of the United States in world affairs surely contributes to U.S. ambivalence toward formal

human rights treaties, it does not tell the whole story. It fails to account in particular for the extraordinary virulence of general domestic opposition to treaty ratification and the specific arguments opponents advance. After all, if geopolitical flexibility were the goal, the United States could have its cake and eat it too by ratifying multilateral treaties and maintaining a parallel unilateral human rights policy. And it could aggressively employ specific reservations to cordon off areas of concern. Such a combination might indeed be viewed as more legitimate, and might thereby prove more effective in world affairs, than strictly unilateral policies. Presidents of both parties—whom one would expect to have had the superpower interests of the United States in mind, as they often did in pressing the country to accept other postwar multilateral commitments—rarely, if ever, held the United States back from full participation in multilateral human rights regimes. Since the controversy over the Bricker Amendment during the 1950s, the locus of opposition has lain in the Senate.<sup>15</sup> Congressional skepticism has persisted even though both parties have generally been internationalist and staunchly anticommunist in foreign policy, which has led them to overcome great-power skepticism to enter into more significant (although not unbounded) treaty commitments, such as NATO and other Cold War military alliances, trade institutions (GATT/WTO), and financial arrangements (IMF). In sum, U.S. views on human rights issues do not simply track the conventional geopolitical concerns of a superpower. To understand why U.S. legislators are so hesitant to cede sovereignty, we must therefore turn to the domestic determinants of U.S. human rights policy.

### *The Stable Democracy*

A second factor contributing to U.S. ambivalence toward multilateral human rights commitments is the exceptional stability of democratic governance inside its borders.

This assertion may seem puzzling at first glance. It is widely believed that well-established democracies are the strongest supporters of international human rights enforcement. Most interpretations of international human rights regimes stress the spread of democratic ideas outward from liberal societies through the actions of NGOs and public opinion, as well as the direct exercise of state power by established democracies.<sup>16</sup> In the broad sweep of history, to be sure, enforcement of human rights is closely linked to the spread of liberal democracy. Publics and politicians in established democracies have long encouraged and assisted democracy abroad, and even fought bitter wars to uphold that very institution, both for idealistic reasons and because they tend to view democracy—correctly so, it now appears—as integrally linked to world peace.<sup>17</sup>

Yet the relationship between stable democratic governance and international human rights regimes is more ambivalent than this simple account suggests. Established democracies are often skeptical of effective enforcement of

international human rights norms. This underlying ambivalence, I have argued elsewhere, was particularly evident at the founding moment of the major postwar international human rights regimes under the European Convention on Human Rights, the American Convention on Human Rights, and the UN system. In each case, the most stable and established democracies consistently opposed effective enforcement of international norms, a position that led them into alliances with their most repressive neighbors.

A simple theoretical insight drawn from “liberal” theories of international relations, and from well-established theories of domestic delegation to courts and administrative agencies, explains the ambivalence of established democracies.<sup>18</sup> No national government likes to see its discretion limited through external constraints imposed by a judicial tribunal, whether international or domestic. (The same logic holds for central banks, independent agencies, prosecutors, and other nonmajoritarian institutions.) In this case, why would a self-interested government, democratic or not, ever risk the unpleasant possibility that actions of the government would be challenged or nullified when individual citizens bring complaints before a supranational body?

The most important reason to nonetheless delegate authority to such an international institution is to “lock in” particular domestic institutions against short-term or particularistic political pressures. How would this logic apply to international human rights regimes?<sup>19</sup> Support for domestic application of international human rights is—at least in early phases of the development of a human rights system—an act of calculated national self-interest designed to serve an overriding purpose, namely to stabilize and secure democratic governance at home against threats from the extreme right and left. Governments defend international commitments that promote the enforcement of rights their constituencies favor against their domestic political enemies. Who benefits most from such an arrangement in the area of international human rights? Certainly not nondemocracies, which bear the brunt of enforcement. But also not well-established democracies, which are already confident in the stability of democratic governance at home and gain no additional stability from international delegation. They see only disadvantages. The major supporters are instead the governments of newly established and transitional democracies, which accept such international constraints because they serve to stabilize the democratic political system as a whole, even at the cost of potential short-term inconvenience. At the founding of the European Convention on Human Rights, the most effective system of international human rights enforcement in the world today, the governments of the most established democracies of Europe (Britain, the Netherlands, Sweden, Denmark, Norway, and Luxembourg) sided with Greece, Turkey, Spain, and Portugal against mandatory enforcement.<sup>20</sup>

From this perspective, the reluctance of the United States—an unusually stable democracy—to enter into international human rights commitments is not the exception but the rule. In strictly self-interested terms, the

United States gains relatively little from the domestic enforcement of international human rights norms. In contrast to Europe in the 1950s or Latin America in the past few decades, there is no overarching sense of the need to protect U.S. political institutions against a slow slide into right- or left-wing authoritarianism. This helps to explain why large coalitions of supporters for some human rights treaties—for example, the Genocide Convention—were consistently outmaneuvered by smaller and passionate groups of critics. This may also help explain why the rhetoric of opponents to human rights treaties in the United States tends to be replete with praise of the strong U.S. domestic constitutional tradition, the possibility that international treaties might dilute domestic enforcement of individual rights, and skepticism toward the legitimacy and effectiveness of newly created international institutions.

Yet the stability of U.S. democracy does not provide a fully satisfactory explanation for U.S. reluctance to ratify multilateral human rights commitments. While the opposition of strong democracies to binding human rights treaties may have been the norm in the 1950s and 1960s, it no longer is. In opposing recent treaties, such as the Convention on the Rights of the Child or the ICC, the United States finds itself today in the company of a handful of rogue and failed states. Why has the United States failed to evolve as far in the same direction? From the start, moreover, attitudes toward human rights treaties have not been characterized by apathy and ignorance, as one might expect if the problem were simply the lack of clear benefits. Instead, domestic debate over human rights has been bitterly partisan and intensely ideological, led by those who feel that international human rights norms posed a fundamental threat to the integrity of U.S. political institutions. Any explanation of U.S. policy must account, therefore, for the significantly greater intensity of opposition in the United States than within any other advanced industrial democracy, even as the latter become stably democratic. We must investigate the values and interests underlying domestic cleavages on this issue.

### *The Conservative Nation*

The third general factor helping to shape U.S. international human rights policy is the general conservatism of U.S. politics.

Increasingly, international relations theorists link varying fundamental social purposes of societies to the varying foreign policies of their governments.<sup>21</sup> Particularly important are national ideas concerning the proper provision of public goods—national identity, political institutions, socioeconomic redistribution—that underlie fundamental policy goals. This perspective highlights the partisan and ideological identities of those who support or oppose full participation in human rights regimes. At the crudest level, one would predict that those countries most committed to human

rights at home would also be most committed to multilateral policies to promote human rights abroad. Yet the central political problem of human rights enforcement does not lie only in the level of support for universal human rights in theory, but in the tensions among distinctive national conceptions of how to define and enforce those rights in practice. At the heart of most international cooperative ventures are one or more interstate bargains that set the common substantive standards to which states will be held, in this case the precise definitions of human rights. One would expect those countries whose views about the definition of human rights are supported by a majority in the organization (the “median country” in the international system) to be least inconvenienced by the imposition of multilateral norms, and therefore most supportive of them. Governments whose views are furthest from the global norm have sound reasons to be skeptical of the domestic application of binding international norms they do not share.

There is reason to believe that the United States finds itself in this extreme position more often than many other advanced industrial democracies. In comparative perspective, the bundle of constitutional rights generated over more than 200 years by the U.S. political and legal system is distinctive, even idiosyncratic. The United States guarantees exceptionally broad constitutional protections for expression, property, freedom from improper search and seizure, and the right to bear arms, but exceptionally weak protection for welfare rights, labor rights, rights against cruel and unusual punishment, and some cultural rights. In the latter areas U.S. policy varies greatly across states and localities. In the twentieth century federal jurisprudence created a stronger and more uniform set of rights, but much variation remains. Current conservative criticism of international human rights treaties focuses on the possibility that international treaties would override understandings of rights that have evolved organically over a long period through domestic democratic discussion and judicial interpretation.<sup>22</sup> As a result, Lincoln Bloomfield has observed, “For many non-Americans, the most important human rights are not those that Americans regard as paramount.”<sup>23</sup>

Yet the idiosyncratic nature of the U.S. conception of specific rights cannot by itself explain the virulence of domestic opposition to unilateral human rights treaties in general. Many other political systems are based on idiosyncratic understandings of particular rights. Concerns about the death penalty, the First Amendment, and so on could in any case be handled through specific U.S. reservations. What explains the depth of political mobilization around binding international human rights treaties?

One important factor is that the entire U.S. political spectrum lies to the right of those found in most other advanced industrial democracies, with the result that the enforcement of international human rights norms triggers central political cleavages different from those in other advanced democracies. These cleavages help explain the intensity and bitterness of

ideological and partisan debates over human rights—controversies peculiar to the United States. Two of the most important cleavages lie in U.S. attitudes toward racial discrimination and socioeconomic rights.<sup>24</sup> In both cases, conservatives viewed international human rights treaties as part of a broader movement to impose liberal federal standards—in particular, provisions banning race discrimination and imposing labor standards—on the practices of certain states, notably those in the South.

Since the nation's founding U.S. politics have been deeply influenced by race, and senatorial skepticism toward formal human rights obligations reflects this. When the issue of human rights treaties first emerged, in the immediate post-World War II period, human rights enforcement was inextricably linked to the U.S. civil rights movement. Civil rights remained among the most salient issues in domestic politics from 1945 through the present, generating exceptionally strong domestic opposition and eventually triggering an epochal partisan realignment. International human rights proved bitterly controversial at home. Those who supported or opposed aggressive federal enforcement of civil rights tended, respectively, to support or oppose full adherence to international human rights norms.

The link between race and human rights was quite evident in Senate hearings on the Genocide Convention in 1949, a series of hearings about which one commentator observed that "the major arguments enunciated against *all* human rights treaties were first articulated."<sup>25</sup> Opponents of the convention, who succeeded in capturing the American Bar Association (ABA) and using its resources and prestige to block ratification, stressed the tendency of international human rights treaties to limit U.S. rights. The most persuasive cases involved racial discrimination.<sup>26</sup> In the 1950s, concerns about race were linked to the fear that other minorities, notably Communists, would mobilize around the race issue.<sup>27</sup> One supporter conceded: "You have to face that . . . in getting down to realities . . . the practical objection, the thing that is behind a lot of people's minds on this convention is—is it aimed at lynching in the South? You have to face that."<sup>28</sup>

Such statements may seem somewhat anachronistic today, but the underlying issue is still relevant. The aggressive enforcement of civil rights in the United States remains controversial, albeit in a more subtle form, thereby calling international human rights treaties into question. International human rights advocates critical of U.S. policy focus on the potential of international human rights norms to suppress racial, gender, and linguistic discrimination, as well as to ameliorate U.S. policy on closely related issues like prison conditions, police brutality, and the death penalty—each an area of strong partisan conflict in the United States.<sup>29</sup>

Perhaps an even more striking divergence between the U.S. and other democratic governments lies in the status of socioeconomic rights. In comparative perspective, the United States has a relatively informal and underdeveloped (i.e., nonsolidaristic) conception of economic rights, particularly

in the areas of labor and social welfare policy.<sup>30</sup> There has long been opposition, not least in the South and West, to aggressive centralized enforcement of labor and socioeconomic rights.<sup>31</sup> The tendency of the United States not to recognize socioeconomic rights finds few parallels in the former communist world, the developing world, or even among most other advanced industrial democracies. On socioeconomic issues, the central contemporary cleavage in the United States between left and right fits into the conservative half of the political spectrum found in most advanced industrial democracies. Europe and Canada are far more committed to the recognition of economic redistribution and social spending as basic rights. In postwar continental Europe, political alignments were generally reconfigured to create at least one socialist bloc and one center-right bloc, each of which was committed to these rights. For them, the international promulgation of political and economic rights simply acknowledged what had already been conceded at home. Accordingly, as we shall see in more detail below, international treaties were viewed as means to ward off, rather than encourage, radical change at home.

This was a central source of conflict in the early years of postwar international human rights diplomacy. During the Cold War, the topic of socioeconomic rights was a critical point of contention between the developing world, backed by the Soviet bloc, and the United States. The New Deal—itsself a modest program by postwar European standards—was just two decades old when the president of the ABA, a prominent conservative lawyer (and admirer of Senator Joseph McCarthy) named Frank Holman, mobilized that organization to oppose ratification of international human rights treaties without reservations, rendering them non-self-executing and inapplicable to state law. As Holman wrote in 1953: "Internationalists . . . propose to use the United Nations . . . to change the domestic laws and even the Government of the United States and to establish a World Government along socialistic lines. . . . They would give the super-government absolute control of business, industry, prices, wages, and every detail of American social and economic life."<sup>32</sup> The Universal Declaration and covenants constituted a program, in Holman's opinion, that would "promote state socialism, if not communism, throughout the world"—a charge that was often repeated in subsequent debates over the UN covenants.<sup>33</sup>

For a half-century these two salient elements of conservatism in the United States, racial discrimination and economic libertarianism, placed the nation distinctly outside the mainstream of the global consensus on the definition of human rights. The result has been intense partisan conflict. The conservatism of the ideological spectrum in the United States means that firm adherence to international human rights norms does not command support from a broad centrist coalition, as is generally true in Europe, but instead creates a deep left-right split between liberals and conservatives. Competing views are represented, respectively, by the Democratic and

Republican parties. Support for adherence to international human rights treaties comes disproportionately from Democratic presidents and members of Congress, while opposition comes disproportionately from Republican presidents and members of Congress. Although there are of course numerous individual exceptions to this rule, it holds up well as a generalization.<sup>34</sup> During the 1950s, partisan opposition was led by Southern Democrats opposed to federal civil rights policy; today it is led by Republican senators due to their (globally idiosyncratic) stand on socioeconomic and racial rights, and also on religious, educational, and cultural issues.

One indicator of the partisan nature of international human rights is the nature of the criticism by international human rights groups of U.S. policy. In 1993, as a response to U.S. ratification of the ICCPR the previous year, Human Rights Watch and the ACLU jointly issued a report entitled *Human Rights Violations in the United States*. The list of violations focused, as it happened, almost exclusively on issues championed by the Democratic Party: discrimination against racial minorities, women, linguistic minorities, and immigrants, as well as on prison conditions, police brutality, the death penalty, freedom of information, and religious liberty.<sup>35</sup> Clearly the domestic application of international standards would favor one party over the other.

Another indicator of the decisive importance of partisan cleavages over human rights is the record of executive submission of and Senate consent to major legally binding human rights treaties. The twelve major human rights treaties found in Table 14.1 are arguably the most important such documents of the postwar period. What patterns do we observe in U.S. human rights policy?

The policies of the two parties diverge.<sup>36</sup> Democratic senators tend to support the enforcement of international human rights norms; Republican senators tend to oppose such enforcement. Accordingly, strong Democratic control of the Senate appears to be a necessary condition for the ratification of international human rights treaties. The Senate has never ratified a binding international human rights treaty when the Democrats held fewer than 55 seats. At least nine of eleven submissions to the Senate for advice and consent were made by Democratic presidents. Eight of twelve postwar agreements have been signed by Democratic presidents.<sup>37</sup>

The rhetoric of congressional and public debates, along with public opinion data, lends further support to this interpretation of U.S. policy. To judge from Senate hearings and speeches, as well as interest group activities, domestic debates have been concerned almost exclusively with the domestic implications of adherence to human rights treaties.<sup>38</sup> Senators and presidents have debated the detailed implications of human rights treaties for U.S. constitutional law in general and for legislation and judicial decisions in sensitive areas like race, education, gender policy, children's policy, labor relations, and the provision of social welfare. Polling reveals that the strongest supporters of human rights enforcement (as well as for the UN

Table 14.1 The United States and Multilateral Human Rights Treaties, 1945–2000  
Executive Action and Congressional Consent

	Negotiated (U.S. Vote)	Submitted to the Senate	Senate Consent (Seats/Majority)
Genocide Convention	Truman (Y)	Truman	1986 (55 Dem.)
Convention on the Political Rights of Women	Truman (Y)	Kennedy	1974 (56 Dem)
Supplemental Slavery Convention	<i>Eisenhower</i> (Y)	Kennedy	1967 (68 Dem.)
ILO Convention on Forced Labor	<i>Eisenhower</i> (Y)	Kennedy	1991 (56 Dem.)
Convention on Racial Discrimination	Johnson (Y)	Carter	1994 (57 Dem.)
Covenant on Civil and Political Rights	Johnson (Y)	Carter/ <i>Bush</i>	1992 (56 Dem.) <sup>a</sup>
Optional Protocol to the ICCPR	Johnson	NO	NO
Covenant on Economic and Social Rights	Johnson	Carter	NO
American Convention on Human Rights	Carter (Y)	Carter	NO
Convention to Eliminate Discrimination Against Women (CEDAW)	Carter (Y)	Clinton	NO
Torture Convention	<i>Reagan</i> (Y)	<i>Reagan</i>	1990 and 1994 <sup>b</sup> (55 and 57 Dem.)
Convention on the Rights of the Child	<i>Bush</i> (Y)	Clinton	NO

Notes: Republican presidents are shown in italics.

a. No implementing legislation has been passed. b. The Senate consented in 1990 subject to subsequent passage of implementing legislation, which became law in 1994.

itself) include Democrats, blacks, and the Jewish community. Among its strongest opponents are Republicans, evangelical Christians, non-Hispanic whites, male veterans, and regular talk radio listeners.<sup>39</sup>

Yet, in order to explain U.S. human rights policy fully we need to go beyond the power of conservative ideology in the United States. Even taken together with the two factors of superpower status and stable democratic institutions discussed above, this explanation leaves critical questions about support for U.S. human rights policy unanswered. Most important, why have consistent legislative, electoral, and public opinion majorities in favor of stricter adherence to international human rights norms failed to achieve reform? As we are about to see in more detail, ratification of human rights treaties has at times been supported by a coalition of interest groups claiming to represent over half the U.S. public, as well as by over half of incumbent senators. Presidents, even Republican presidents, have been at times relatively supportive.<sup>40</sup> To explain the consistent victories of minorities that oppose such treaties, we must consider the structure of the U.S. political system. This system is almost unique in that not merely a simple majority of a unicameral legislature, but rather a two-thirds majority in an elite upper chamber, is required to secure ratification. An exceptionally large and diverse coalition of elites is therefore required to ratify human rights treaties, which is a rare occurrence in any political system.<sup>41</sup>

### *The Decentralized Political System*

The fourth and final determinant of U.S. human rights policy is the decentralized and divided nature of political institutions.

In comparative perspective the U.S. political system is exceptionally decentralized, with the consequence that a large number of domestic political actors often must approve many major decisions. All other things being equal, the greater the number of "veto players," as political scientists refer to those who can impede or block a particular government action, the more difficult it is for a national government to accept international obligations.<sup>42</sup> Two decentralizing elements of the U.S. political system are of particular importance in limiting U.S. support for domestic enforcement of international human rights norms. One is the existence of supermajoritarian Senate voting rules on treaty ratification; the other is the strong separation of powers among the three branches and between federal and state government.

The most obvious veto group, namely recalcitrant senators, is created because the U.S. Constitution requires a two-thirds supermajority vote by the Senate to advise on and consent to an international treaty—higher than in nearly all other advanced industrial democracies, which ratify by unicameral majority or even executive action. It is not surprising, therefore, that the primary barrier to the ratification of human rights treaties has been the inability to gain the necessary senatorial majority. The decentralized U.S. electoral system rarely generates a result decisive enough to give one party (in this case, as we have seen, the Democratic Party) such a Senate majority. Accordingly, the set of domestic veto players almost always includes marginal conservative senators from the majority party, as well as some from the minority party. Senate rules impose, in addition, a supermajority requirement to override the decision of a committee chairman to block consideration of a treaty on the floor. The need to secure the support of the Foreign Relations Committee chair may render ratification difficult if that position is held by, as in the recent case of Republican Senator Jesse Helms of North Carolina, a politician with extremely conservative views.

The resulting history of senatorial opposition to liberal multilateralism spans the twentieth century—from the debate over Woodrow Wilson's proposal for a League of Nations in 1919–1920 to the present. The importance of political institutions is illustrated by the lack of ratification in many cases where there existed (simple) majority support in the Senate. This was true of the League of Nations, which was blocked by a Senate minority. The Genocide Convention was backed by groups claiming a combined membership of 100 million voters, including veterans, racial minorities, religionists, workers, and ethnic Americans. The opposing side contained, by way of organized groups, little more than the ABA. Yet what mattered most were the attitudes of the senators themselves, who disproportionately represent Southern and rural Midwestern and Western states.<sup>43</sup> More recently, more than fifty Senators have publicly declared their support for the Convention

on the Elimination of All Forms of Discrimination Against Women (CEDAW), yet this treaty has remained bottled up in committee by Senator Helms and most probably lacks the requisite two-thirds majority support needed to pass on the Senate floor.<sup>44</sup> The specific constitutional role of the Senate helps explain why U.S. government action to support international human rights norms, whether unilateral or multilateral, has tended to come either from the executive branch or the House of Representatives. Presidents have employed executive foreign policy instruments to promote human rights, while members of Congress have employed their control over foreign policy appropriations.<sup>45</sup>

Constitutional separation of powers also grants the U.S. judiciary a strong independent role and establishes important prerogatives for the states vis-à-vis the federal government, which in turn has generated a suspicion of such delegation on the part of conservatives. The nexus of states' rights and federal judicial power was at the center of opposition to international human rights treaties. In the early 1950s, many senators opposed to the application of international human rights norms were concerned about the quite real threat of judicial challenges to the policies of the states, notably those having to do with race. Some of these critics voiced fears that a ban on discrimination might be imposed by an international organization ("world government") in which the United States possessed a "distinctly minority vote."<sup>46</sup> Yet even if adjudication had remained domestic, opponents were concerned that documents like the Genocide Convention and the UN covenants would strengthen the federal judiciary at the expense of the states. States' rights was the salient constitutional principle around which conservative defenses against federal civil rights legislation and international human rights treaties were constructed.<sup>47</sup> In the 1950s ABA spokesmen argued that "minority groups in this country are not vigorously seeking to have . . . discrimination abolished by Federal legislation. Can there be any reasonable doubt that if Congress fails to enact the civil rights laws now being urged upon it and if this convention is ratified as submitted, members of the affected groups will be in a position to seek legal relief on the ground that this so-called Genocide Convention has superceded all obnoxious state legislation?"<sup>48</sup>

This is why "the main opposition to the treaty was rooted in states' rights."<sup>49</sup> In most advanced industrial democracies, the constitution can be amended far more easily than in the United States, and such concerns would more easily have been overcome.

### **Contemporary U.S. Debates: The Rights of the Child**

We have seen so far that the structural conditions under which U.S. human rights policy is made have blocked full adherence to multilateral norms. No other nation is characterized by the same combination of geopolitical

power, democratic stability, conservative ideology, and institutional decentralization. The result is an ambivalent policy: the United States maintains unilateral options for promoting global human rights, but remains less committed to membership in multilateral human rights institutions than any other advanced industrial democracy.

These structural constraints continue to influence the most recent of debates, including those surrounding the Convention on the Rights of the Child (CRC), a document adopted unanimously by the UN General Assembly in 1989.<sup>50</sup> The CRC recognizes four underlying principles applying to children: the right to life, the right to be heard in matters affecting them, the right not to suffer discrimination, and the right to have their best interests furthered. It enumerates specific rights that follow. Original drafts focused primarily on social, economic, and cultural rights, as befits a document initially advanced by Soviet bloc countries during the Cold War. To monitor compliance, the CRC established a Committee on the Rights of the Child. This group of elected officials from ten states party reviews reports submitted every five years by member nations and makes recommendations for improvement, though neither the committee nor any other body can investigate or punish states party or individuals.

The U.S. government became involved in the negotiations after some delay and played an active role. It strongly insisted upon the inclusion of civil and political rights, resulting in the drafting of articles 12–17, which promulgate freedom of opinion, expression, religion, and association, as well as the right to privacy and access to appropriate information. The first Bush administration voted for the final agreement. Since then, however, the United States has reverted to its typical ambivalence about domestic application of international norms. More countries have subsequently ratified the CRC than any human rights treaty in history, and they have done so with unprecedented speed and enthusiasm. Within three years the CRC had gained 127 adherents, and, to date, 191 nations have ratified it, including all but two UN member states—the United States and Somalia.

The classic pattern of domestic contestation over human rights dating back to the Bricker Amendment has resurfaced. The ongoing political battle pits liberals against conservatives, each with a differing assessment and evaluation of the domestic consequences, material and symbolic, of ratification. Predictably, Democratic politicians have tended to support ratification, while Republican politicians oppose it. Continuously divided government since 1994 created a stalemate between the executive and legislative branches. With a Republican colleague, Indiana Senator Richard Lugar, Democratic Senator Bill Bradley of New Jersey drafted and secured passage of Senate Resolution 231, which urged the president to forward the CRC to the Senate for its consent. Bradley claimed bipartisan support for ratification, and the Democrats controlled both houses, but President Bush refused to sign it or submit the treaty. In testimony before the Senate, New

Jersey Representative Christopher Smith conceded that many compromises had to be made for the differing cultural, legal, and religious views of the countries involved, but nonetheless maintained that “because we recognize the importance and desirability of adopting the convention without further delay, we do not wish to reopen negotiation on any part of the text.”<sup>51</sup> President Clinton did not take advantage of the period from 1992 through 1994 to submit the CRC. The issue of ratification arose again in 1995, but executive-legislative relations were reversed. President Clinton signed and submitted the convention despite a Senate resolution sponsored by Senators Jesse Helms, Trent Lott, and fellow Republicans, who controlled the Senate, urging him not to do so.

Why does the United States remain such a skeptical observer? Neither rhetoric nor domestic cleavages suggest that the issue has much geopolitical relevance. The convention’s enforcement provisions are weak, and the United States would sacrifice none of its unilateral bargaining power in the (highly unlikely) event that it sought to deploy it to promote the rights of children. Neither advocates nor opponents lay particular weight on substantive international goals, that is, the traditional “national interest” in foreign policy. Both sides tend to raise generic, often second-order procedural concerns. Advocates point out that by ratifying the convention, the United States would be able to participate in the CRC monitoring committee, the Committee on the Rights of the Child, and assert that the United States would thereby exert greater influence on future decisions concerning the application of international norms. Advocates also maintain that ratification of the CRC is incumbent on the United States as a world leader—the closest thing to a major foreign policy argument for ratification. Yet none of these “national-interest” concerns mobilizes widespread and passionate support or opposition among U.S. citizens and interest groups. One senses that such arguments are tactical. Even where national-interest arguments do play a prominent and apparently sincere role, the real underlying concern is most often the alleged ideological bias of the institution in U.S. domestic politics (for most domestic opponents, a “liberal” or “socialist” bias), rather than the concrete international policy consequences of pursuing it.

Consistent with the argument of this chapter, most domestic debate (particularly domestic criticism) focuses instead on the substantive consequences of the treaty provisions in the United States.<sup>52</sup> This is paradoxical, since the convention would seem to have relatively few domestic implications for a country where children’s rights are already strongly embedded in national law. Still, the issue triggers deep domestic ideological cleavages.

Supporters are led by human rights and child welfare activists, who maintain that governments should do more to combat the abuse and exploitation of children. Prominent supporters of the CRC have included Democratic politicians and political liberals, as well as human rights groups like Amnesty International, Human Rights Watch, and the ABA; child welfare

groups such as the Children's Defense Fund; general humanitarian groups such as the American Red Cross; and over 300 other organizations.

Behind Republican Senators stand numerous conservative groups, of which the best organized, best funded, most vocal, and most influential are linked to religious groups. These include the Christian Coalition, Concerned Women for America, Eagle Forum, Family Research Council, National Center for Home Education, John Birch Society, and numerous conservative think tanks. Such groups maintain that the CRC is unnecessary and, moreover, threatens the right of parents to care for their families. It usurps their primary role and supplants them with the state—an assessment supported by some legal academics. Opponents defend the opposing concept of "parental rights." They maintain that it is the duty of parents to make decisions regarding the upbringing of their children, and that the UN and its U.S. supporters are attempting to supplant this traditional role with state intervention in the form of social policies dictated by an international organization. These critics reject the supporters' view that children should be considered autonomous human beings, which creates, in the view of one critic, "a vacuum that deprives children of an affirmative source of support and guidance." The CRC, they argue, removes rights that parents should have to protect their children and gives them to minors, who do not necessarily have the information, maturity, or rational capacity to use them appropriately. According to one prominent opponent, who served as deputy assistant to the secretary of health and human services under the first Bush administration, if the UN truly wanted to help children, it should work to reinforce the role of families and parents rather than eroding their authority.

Supporters of the CRC, critics charge, are pursuing a "far-left radical feminist agenda" to degrade the family, eliminate the importance of marriage, and place women at the center of society—a form of "cultural Marxism" in which the family is seen as an obstacle to the state and therefore must be destroyed. Legal scholars point out also that the CRC might have a major influence on domestic law.<sup>53</sup> It may require the provision of some health care, education, and other services not now universally provided. It is significant that the 1995 Senate resolution urging Clinton not to submit the CRC states that if ratified, the CRC would take precedence over state and federal laws pertaining to family life and usurp traditional parental prerogatives, as well as surrendering U.S. sovereignty. Conservatives link these substantive concerns, as they have since the Bricker Amendment, to the power of the domestic judiciary to interpret federal and state law.<sup>54</sup>

Supporters respond that the United States is generally already in compliance with the convention, in the sense that it has established social programs addressing the issues raised in the CRC, and that the language of the convention would be unenforceable without domestic law detailing more precise terms. They add that the CRC establishes standards for national policy to improve the condition of children all over the world, but creates few,

if any, enforceable rights. The convention is in fact vague or neutral on many issues, such as abortion and parent's rights, on which conservatives stake their case. In any case reservations can be taken to particular points. This has been common U.S. practice, as we have seen, though the status of such reservations is increasingly disputed. If the United States were to ratify the CRC, even supporters accept that it would probably take reservations to (1) the ban on juvenile execution, as the United States already did in ratifying the ICCPR; (2) article 29, which demands a curriculum teaching values even for private schools, in order to avoid both violating the First Amendment and antagonizing home-schoolers, who fear the CRC will dictate the curriculum taught at home and in school; and (3) the self-executing nature of the treaty, which would all but eliminate the threat of domestic litigation on the basis of the convention (given the CRC monitoring committee's lack of power to investigate or prosecute individuals).

Whatever the substantive merits, the domestic debate over ratification of the CRC has been dominated by its opponents. The CRC has triggered visceral opposition among religious conservatives mobilized by any hint of a threat to their agenda on family issues. These opponents appear to be better organized, better funded, and more motivated than supporters. Senate staffers report that they receive 100 opposition letters for every letter in support of the CRC. While the general human rights community remains convinced of the importance of participating in the international promulgation of the rights of the child, the bulk of liberal public and elite opinion remains uninformed and apathetic.

Perhaps the primary reason for the imbalance between supporters and opponents is the lack of a compelling domestic justification for U.S. adherence—which follows directly from the stability of existing U.S. democracy and the lack of an incentive to further stabilize the status quo against radical threats. At the very least, it is much easier for the opposition to convince U.S. citizens that the CRC threatens their home and family life than for supporters to clarify common misconceptions about the rights of children. But, in addition, public support for strengthening the rights of children in the United States is weak. Many of the most important child advocacy groups, such as the Children's Defense Fund, perhaps the most prominent such group, focuses primarily on the direct provision of services to children rather than lobbying for rights—and have therefore been criticized for placing a low priority on ratification of the CRC. The absence of any such justification in the case of the United States undermines support for the convention. One point on which advocates and opponents agree is that the United States already has a stable constitution and effective judicial system that guarantees extensive rights for both adults and children. For this reason, and because the United States does not face serious institutionalized violations of children's civil and political rights, the CRC seems to be of no immediate concern to most Americans. This situation, which

stands in stark contrast to that prevailing in many countries where more systemic abuse of children exists, means that there is little compelling domestic justification for ratification. According to one leading activist, partisan Democrats simply do not care enough about the issue to move it up on the agenda.

Even so, passionate opposition from a small minority might have been overcome were it not for the decentralized nature of U.S. political institutions. We have seen that as recently as 1994 a majority of senators supported similar treaties, yet the Constitution requires a two-thirds vote—unrealistic without a far larger Democratic majority—as well as strong executive support. Moreover, the legislation was bottled up in the Senate Foreign Relations Committee by the committee's chairman, Senator Jesse Helms, whose power was magnified by the decentralized system of Senate committees with powerful chairs. Helms kept the convention off the Senate agenda—thereby also holding up other human rights treaties, such as CEDAW.

### The Consequences of U.S. Unilateralism

Should we care about the failure of the United States to ratify international human rights treaties? Does the ambivalent unilateralism of U.S. human rights policy make any real difference?<sup>55</sup> Nearly all legal academics, NGOs, and politicians who comment on U.S. human rights policy assert that U.S. unilateralism has had a negative impact on the nation's foreign and human rights policies, as well as on the international enforcement of human rights.<sup>56</sup> Yet the available evidence from the sources most often cited—Senate hearings, legal articles, and the most important books on U.S. human rights policy—casts a skeptical light on such assertions. Activists, officials, scholars, and journalists have so far offered very little hard evidence to support the widespread claim that the failure of the United States to ratify human rights treaties has had a negative effect on U.S. international interests or ideals. If any such effects exist, they are certainly very subtle.<sup>57</sup> Of course the lack of evidence cannot decisively disconfirm a claim, absent a structured and comprehensive inquiry. The most responsible conclusion is, therefore, simply that there is little evidence that U.S. ratification (or nonratification) of multilateral treaties has any effect on the realization of U.S. foreign policy goals or the promotion of global human rights. The argument that domestic rights would be enforced more thoroughly is more plausible. This is not to rule out the possibility that evidence for a stronger international impact of U.S. policy might exist, but until it is made available, any claims about the external implications of U.S. human rights policy must be viewed as at best speculative, if not misleading.

### *Does U.S. Unilateralism Undermine Global Multilateral Human Rights Regimes?*

It is often argued that U.S. nonparticipation undermines international human rights institutions, as well as the global human rights movement. As Patricia Derian asserted before the Senate in 1979: "Ratification by the United States significantly will enhance the legitimacy and acceptance of these standards. It will encourage other countries to join those that have already accepted the treaties. And, in countries where human rights generally are not respected, it will aid citizens in raising human rights issues."<sup>58</sup>

Deputy Secretary of State Warren Christopher went even further, arguing that human rights policy is "a way of taking the ideological initiative, instead of merely reacting." President Carter himself added that it "might possibly reverse the tide that has been going against democracies in the past." Many similar quotations could be cited, since drawing a direct link between U.S. behavior and the effectiveness of international norms has, of course, a powerful rhetorical appeal.

Yet little evidence suggests a close link between U.S. behavior and international norms, let alone domestic democratization. Everywhere in the world, human rights norms have spread without much attention to U.S. domestic policy. Under the European Convention on Human Rights, the Europeans have established the most effective formal system for supranational judicial review of human rights claims, based in Strasbourg, without U.S. participation. In the wake of the "third wave" of democratization in Eastern Europe, East Asia, and Latin America, government after government moved ahead toward more active domestic and international human rights policies without paying much attention to U.S. domestic practice. Indeed, emerging democracies in the Western Hemisphere are following Europe's lead in ratifying and accepting compulsory jurisdiction of a regional human rights court, while ignoring U.S. unwillingness to ratify the American Convention on Human Rights, let alone accept jurisdiction of a supranational court. One might argue with equal plausibility that the pride of Latin American democracies in full adherence to the American Convention on Human Rights is *strengthened* by the unwillingness of the United States, Canada, Mexico, and the stable democracies in the anglophone Caribbean to adhere. Likewise, 191 countries have ratified the CRC in record time without waiting to see what the United States would do. There is little evidence that Rwandan, Serbian, or Iraqi leaders would have been more humane if the United States had submitted to more multilateral human rights commitments. The human rights movement has firmly embedded itself in public opinion and NGO networks, in the United States as well as elsewhere, despite the dubious legal status of international norms in the United States. In sum, the consequences of U.S. nonadherence to global norms, while signaling a weakening in theory, is probably of little import in practice.

*Does Unilateralism Undermine the Legitimacy and Efficacy of U.S. Foreign and International Human Rights Policies?*

One common argument for multilateral commitments is that human rights ideology is required to legitimate U.S. foreign policy, in particular, U.S. international human rights policy. The idea underlying such arguments is that full adherence to multilateral treaties is in "the national interest."<sup>59</sup>

The international promotion of human rights, we often read, expresses core U.S. values; indeed, public opinion demands it.<sup>60</sup> This tendency is independent of partisan attachment. Patrick Anderson, Carter's chief speechwriter during the 1976 campaign, observed that "liberals liked human rights because it involved political freedom and getting liberals out of jail in dictatorships, and conservatives liked it because it involved criticisms of Russia."<sup>61</sup> Hence advocates of a human rights policy, liberal and conservative, tend to agree, in the words of Jeanne Kirkpatrick (a trenchant critic of Jimmy Carter's human rights policy), not only that "human rights [should] play a central role in U.S. foreign policy," but also that "no U.S. foreign policy can possibly succeed that does not accord them a central role."<sup>62</sup> The Reagan administration, which began with outright opposition to any human rights policy, except that aimed at the Soviet Union, ended up adopting many human rights policies and exploiting human rights rhetoric.<sup>63</sup>

Some maintain that support for multilateral human rights enforcement buys presidents political capital with which to promote other foreign policy goals—a tactic employed by Woodrow Wilson and Franklin Roosevelt, respectively, to justify the entry of the United States into the two world wars.<sup>64</sup> Sandy Vogelgesang summarizes the case advanced by the Carter administration in the 1970s:

Failure to deal actively with the causes and effects of the growing global problem of human rights may only compound the problem. . . . For example, past American disregard for racial discrimination in southern Africa accounts for much of the mounting tension and bloodshed there now. Failure to use U.S. influence to turn the tides of either totalitarianism or authoritarianism may mean increasing isolation for the United States in the world community. Failure to dissociate the United States from oppressive regimes may hurt the U.S., politically and economically, when and if foreign leaders more respectful of human rights come to power. Finally, indifference to expressed American values does violence to Americans' view of themselves and saps domestic support for U.S. foreign policy.<sup>65</sup>

Looking back on this period, Elizabeth Drew observed that "one of the (at least privately) acknowledged points of speaking out on human rights in the Soviet Union was to give the President 'running room' on the right in the United States so that he could get approval of a SALT (2) agreement."<sup>66</sup>

More focused criticisms are directed at U.S. human rights policy itself. A genuine commitment to multilateralism is often seen as a necessary

element in an effective human rights policy. A Senate Foreign Relations Committee report in 1979 concluded that "in view of the leading role that the United States plays in the international struggle for human rights, the absence of U.S. ratification of the Covenant is conspicuous and, in the view of many, hypocritical. The Committee believes that ratification will remove doubts about the seriousness of the U.S. commitment to human rights and strengthen the impact of U.S. efforts in the human rights field."<sup>67</sup>

Such arguments recur constantly in debates in the United States.<sup>68</sup> Most such critiques of U.S. policy equate domestic adherence to international norms with commitment to human rights policy.

Yet the United States enjoys many of the benefits of an active human rights policy through its active unilateral policy and support for the formation of new human rights institutions. These go a considerable distance to balance the United States' occasional absence or rhetorical embarrassment.<sup>69</sup> The United States is in the enviable position of having a unilateral policy that is effective, salient, and legitimate. Thus it remains unclear how much domestic enforcement adds to the effectiveness or legitimacy of U.S. policy.

Since the Carter administration, U.S. unilateral human rights policy appears to have had a considerable impact on global perceptions, despite the country's failure to ratify multilateral treaties. Vogelgesang reports that "from the moment Latin Americans, Africans, and Asians started looking at President Carter as a politician interested in human rights, the United States Embassy ceased being seen by thousands of Third World liberals as a headquarters for conservative maneuvers; it became identified with the nation it represents."<sup>70</sup> In the mid-1970s, and again in response to Reagan administration policies in the mid-1980s, a Democratic Congress, led by a Democratic House of Representatives, passed important legislation to link U.S. foreign policy spending to human rights. Recent U.S. human rights enforcement efforts in Haiti, Guatemala, Kosovo, the Philippines, China, and elsewhere—often conducted in collaboration with global or regional bodies—seems unimpaired by the apparent U.S. hypocrisy.

Some stress, more plausibly, that by failing to ratify treaties the United States forgoes its formal right to participate in shaping the evolution of international norms and procedures in the longer term. To the extent that the United States has specific views on the definition of rights, the means of enforcement, and the strength of the regime, this undermines U.S. interests. As Warren Christopher argued in 1979 Senate hearings: "Ratification also would give the United States an additional forum in which to pursue the advancement of human rights."<sup>71</sup> Before ratifying the ICCPR, for example, the United States could neither vote for members of its Human Rights Committee, nor have its citizens either serve on the committee or petition it. In May 2001, the United States failed to be reelected to the fifty-three-member UN Human Rights Commission in Geneva—according to Philip Alston "the single most important United Nations organ in the

human rights field."<sup>72</sup> The United States had held a seat continuously since the commission was established in 1947. Many human rights activists attributed this rebuff to the poor U.S. voting record on human rights issues.<sup>73</sup>

Even where the United States is present, some policymakers maintain, the embarrassment of nonratification undermines U.S. influence. Charles Yost, former U.S. ambassador to the UN, testified in 1979:

There are, in my judgment, few failures or omissions on our part which have done more to undermine American credibility internationally than this one [not ratifying the International Bill of Rights]. Whenever an American delegate at an international conference, or an American Ambassador . . . raises a question of human rights, as we have in these times many occasions to do, the response public or private, is very likely to be this: If you attach so much importance to human rights, why have you not even ratified the United Nations' conventions and covenants on this subject? . . . Here is a case where our credibility is very seriously questioned, but where we can reestablish it quickly by a simple act of ratification.<sup>74</sup>

Arthur Goldberg, a former Supreme Court justice and ambassador to the UN, testified that the failure to ratify treaties undermined U.S. efforts in the Helsinki process.<sup>75</sup> Such claims are widespread.<sup>76</sup>

It is possible U.S. human rights policy might be slightly more influential if it welcomed formal international human rights commitments, but the overall evidence strongly suggests that the difference is not nearly as great as critics assert. There are few, if any, examples of situations in which the failure of the United States to adhere to multilateral treaties appears to have triggered any significant and undesirable institutional or normative evolution against U.S. interests. One reason is that the United States exerts considerable influence in a number of multilateral forums to which it does not formally belong—in part through an active, flexible executive branch policy. The United States was actively involved in promoting a number of treaties—notably the Helsinki process, the American Convention, the CRC, and the ICC—that it subsequently declined to ratify. The United States is represented on the UN Economic and Social Committee and thereby helps supervise the implementation of the Socio-Economic Covenant, which it has not ratified.<sup>77</sup> Even though the United States has not ratified the American Convention, U.S. nationals serve on its commission and the U.S. government has conducted an active and effective diplomacy to promote its enforcement and to employ it in specific cases.<sup>78</sup> Finally, there is little evidence of a long-term evolution in the international human rights system away from the norms that the United States favors. To be sure, other nations have rebuffed some U.S. proposals, most recently in the ICC negotiations. Yet in most other negotiations, notably those over the CRC, as we have seen, the United States has been quite successful at promoting its views.

### *Does U.S. Unilateralism Alter the Bundle of Rights Assured to U.S. Citizens?*

The most plausible case for the impact of U.S. unilateralism rests primarily on the consequences for enforcement of human rights norms with regard to U.S. citizens at home and U.S. servicemen abroad. This is hardly surprising, given that this has been the primary focus of domestic debate.

Surely threats to service personnel abroad, no matter how unlikely they are to be realized, helps explain why the United States has been particularly resistant to two important treaties—namely, the Genocide Convention and the statute of the ICC. Each could potentially influence U.S. military personnel. As a normative matter, one might respond that U.S. soldiers should indeed be subject to more stringent punishment for war crimes or genocide. Peter Malanczuk cites the case of Lieutenant William Calley, whose sentence was swiftly commuted by President Richard Nixon and whose associates were never charged.<sup>79</sup> But as a matter of practical politics, one cannot deny the extreme political risk any U.S. politician would face by increasing, even modestly, the risk that U.S. soldiers would face such jeopardy.<sup>80</sup>

What of treaties concerned with civilian activities? Some argue that human rights treaties, if fully applied in the United States, would have significant domestic implications. Jack Goldsmith has observed that the ICCPR "if proposed as a federal statute . . . would be the most ambitious domestic human rights law ever introduced, touching on topics regulated by the Bill of Rights, the Reconstruction Amendments, dozens of civil and political rights statutes, and numerous state tort laws."<sup>81</sup> Differences in wording between current U.S. protections and ICCPR analogues "would lead to litigation in every circumstance where the terms differed."<sup>82</sup>

Is such a reform of U.S. domestic civil rights law desirable? Members of the organized human rights movement answer affirmatively. They point to the inadequacies of U.S. human rights protections in areas such as immigration, discrimination, police behavior, and the death penalty, not least as applied to juveniles.<sup>83</sup> Even critics concede that consistent domestic application of the norms in a document such as the ICCPR "would bring relief to what some view as human rights abuses."<sup>84</sup> Ultimately, as we have seen, the opinion of Americans on this question will probably depend on their ideological and partisan commitments.

Academic critics advance two arguments against such domestic application or incorporation. First, restatement and reinterpretation of fundamental rights would create massive disruption. Goldsmith argues that

a domesticated ICCPR would generate enormous litigation and uncertainty, potentially changing domestic civil rights law in manifold ways. Human rights protections in the United States are not remotely so deficient as to

warrant these costs. Although there is much debate around the edges of domestic civil and political rights law, there is broad consensus about the appropriate content and scope of this law . . . built up slowly over the past century. It is the product of years of judicial interpretation of domestic statutory and constitutional law, various democratic practices, lengthy and varied experimentation, and a great deal of practical local experience. Domestic incorporation of the ICCPR would threaten to upset this balance. It would constitute a massive, largely standardless delegation to federal courts to rethink the content and scope of nearly every aspect of domestic human rights law.<sup>85</sup>

Second, adherence to international norms is unlikely to increase the domestic legitimacy of human rights protection. Goldsmith continues:

It is wrong to conclude, as many do, that [a practice like the death penalty for juveniles] is morally indefensible simply because it is prohibited by most other nations. The United States has a well-established and hugely successful system for sorting out the moral conundrum [involving] a complicated dialogue between democratic processes and courts. . . . This process produces results that are viewed, on the whole, as legitimate within the United States. This is no small achievement in a pluralistic democracy. There is certainly no reason whatsoever to think that a more legitimate consensus would be reached through domestication of the ICCPR. . . . In a flourishing constitutional democracy with a powerful tradition of domestic human rights protection, such issues should not be decided by international norms and institutions.<sup>86</sup>

Whether one agrees with Goldsmith, his analysis surely establishes that the potential impact of human rights treaties on U.S. domestic policy is both significant and politically controversial. It seems reasonable to assume that if the United States had been willing to apply international norms, the civil rights movement in the United States would have advanced further. On issues like the death penalty and socioeconomic rights, full acceptance of international human rights instruments—particularly if they were made self-executing and therefore could be litigated in U.S. courts—could strengthen domestic protection for a range of legal rights over the long term, just as liberals hope and conservatives fear. This appears to be the least speculative and most significant consequence of the idiosyncratic U.S. attitude toward multilateral human rights norms.

### Conclusion

It is appropriate to conclude on this point. We have seen that U.S. reticence to implement international human rights treaties is not merely a function of "cultural relativism" in the United States. To the contrary, such reticence is linked to deeply embedded characteristics of the U.S. polity—the stability

and decentralization of its political institutions, the conservatism of its political spectrum, and its superpower status. This analysis of human rights policy here could usefully be generalized. The underlying predictions are as follows:

1. The more unilateral power and influence a country wields in a given area of human rights, the less likely it will be to support full compliance with multilateral norms.
2. The more salient the concerns about overall domestic political stability, the more likely a country will act multilaterally to "lock in" those rights.
3. The further the substantive human rights practices of a country are from the international consensus position, the more likely it will act unilaterally.
4. The greater the number of domestic veto points in the process of ratifying international legal commitments (as compared with unilateral action), the more likely a country will act unilaterally rather than multilaterally.

These four claims deserve more rigorous testing across specific human rights issues and across nations. More subtly, this analysis suggests that international consequences—a more peaceful and humanitarian world—tend to be secondary, even in an international policy area such as human rights. U.S. citizens in their own democracy, not beleaguered peoples suffering under dictatorships, are the true beneficiaries or victims, which depends on one's own political perspective, of U.S. unilateralism.

### Notes

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1. For useful overviews, see Forsythe, "The United States, the United Nations, and Human Rights"; and Evans, *U.S. Hegemony and the Project of Universal Human Rights*.

2. Henkin, "US Ratification of Human Rights Conventions: The Ghost of Senator Bricker."

3. *Human Rights Violations in the United States*, p. 2.

4. Letter from the Lawyer's Committee on Human Rights to Senator Claiborne Pell, March 2, 1992, published in *Human Rights Law Journal* 14:3-4, p. 129; Evans, *U.S. Hegemony and the Project of Universal Human Rights*, p. 189.

5. Statement of Patricia Derian, assistant secretary, Bureau of Human Rights and Humanitarian Affairs, Department of State, in U.S. Senate Committee on Foreign Relations, *International Human Rights Treaties: Hearings Before the Committee on*

*Foreign Relations*, p. 33. In the same Senate hearings, Morton H. Sklar, chairman of the U.S. Helsinki Watch Committee, asserted that, absent ratification of formal treaties, "our efforts abroad to achieve human rights and a greater commitment to the principles of freedom and democracy and human dignity will be very severely damaged." This view is echoed by many major legal scholars. Statement of Morton H. Sklar, Chairman, Washington, D.C. Office of the Helsinki Watch Committee for the United States, in U.S. Senate Committee on Foreign Relations, *International Human Rights Treaties*, p. 261. See, for example, van der Vyver, "Universality and Relativity of Human Rights: American Relativism"; Henkin, "US Ratification"; Malanczuk, "The International Criminal Court and Landmines"; Hannum and Fischer, *Ratification of the International Covenants on Human Rights*, pp. 285-289.

6. Van der Vyver, "Universality and Relativity," p. 65.

7. Forsythe, "The United States," pp. 269, 282.

8. Kaufman, *Human Rights*, p. 45. Natalie Kaufman argues that Southern racism and Cold War McCarthyism merged in the early 1950s and set the rhetorical mold for subsequent debates.

9. This critique also assumes, without proof, that commitment to multilateralism is the most efficient means to promote global human rights.

10. For realist views, see Smith, "The Politics of Dispute Resolution Design"; Gilpin, *War and Change in World Politics*; Waltz, *Theory of International Politics*, p. 200.

11. We therefore expect great powers to demand advantageous provisions and special exceptions. See Smith, "Politics of Dispute Resolution."

12. See Humphrey, *Human Rights and the United Nations: A Great Adventure*, p. 12. More generally, see Evans, *U.S. Hegemony and the Project of Universal Human Rights*. For a contrary view, see Moravcsik, "The Origins of International Human Rights Regimes."

13. Reservations are unilateral means to clarify or restrict the scope of a treaty; they have legal standing if they do not contravene the explicit scope and purpose of the treaty—a quality itself open to dispute and adjudication.

14. Regional powers, notably Brazil and Mexico in the Western Hemisphere, have made particularly extensive use of reservations to defend their discretion in the face of multilateral commitments.

15. The most powerful postwar movement in opposition to human rights treaties, the effort in the early 1950s to pass a Constitutional amendment (the Bricker Amendment) limiting the domestic enforceability of human rights treaties, came within one senatorial vote of passage. See Kaufman, *Human Rights*, p. 34. The Bricker Amendment was a response to a real, if modest, trend in U.S. jurisprudence during the 1940s and 1950s toward the enforcement of international standards.

16. Keck and Sikkink, *Activists Beyond Borders*; Risse, Sikkink, and Ropp, *The Power of Human Rights*; Klotz, *Norms in International Relations*.

17. Smith, *America's Mission*; Doyle, "Kant, Liberal Legacies, and Foreign Affairs."

18. On liberal theory generally, see Moravcsik, "Taking Preferences Seriously." On its application to human rights, see Moravcsik, "Origins of International Human Rights Regimes."

19. In international affairs, the goal of an international commitment is to lock in a certain policy outcome, either in *other* countries (the classic prisoner's dilemma) or at home. Since human rights regimes restructure the relationship between a state and its citizens more than the relationship between states, we would expect the motivation to "self-bind" to be stronger than the motive to bind others. On self-binding, see Goldstein, "International Law and Domestic Institutions"; Putnam, "Diplomacy and Domestic Politics"; Moravcsik, *Why the European Community Strengthens the State*.

20. Recent research has uncovered similar patterns in the inter-American and UN human rights systems, as well as many other international organizations, where transitional democracies, notably in Latin America, have consistently taken the lead. Moravcsik, "Origins of International Human Rights Regimes." The result is that established democracies tend to ally with nondemocracies in opposition to effective multilateral enforcement.

21. Such arguments might be termed "ideational liberal" or "liberal constructivist." Moravcsik, "Taking Preferences Seriously."

22. Goldsmith, "Should International Human Rights Law Trump US Domestic Law?"; Jeremy Rabkin, "Is EU Policy Eroding the Sovereignty of Non-Member States?" For a response, see Moravcsik, "Conservative Idealism and International Institutions."

23. Bloomfield, "From Ideology to Program to Policy," p. 11.

24. One might also mention religion. To a greater degree than is found in other advanced industrial democracies, U.S. conservatives are closely allied to a highly organized and influential Protestant religious right. Such groups play an important role in U.S. politics. The views of this group—suspicion of a secular state, skepticism of public (or any organized) education, support for the death penalty, powerful anticommunism, and earlier support for racial segregation—find little parallel in other countries. In many postwar industrial countries, to be sure, right-wing parties have maintained close links to the Catholic Church, but these have also tended to be "catch-all" parties with a broad appeal.

25. Kaufman, *Human Rights*, p. 37.

26. Harry Berger, who represented the National Economic Council, complained that, under the convention, "the slightest reference to a member of a minority race or religion—such as a newspaper article identifying a man under arrest as a Negro—might be deemed a punishable act." Kaufman, *Human Rights*, pp. 43-44.

27. One member of the ABA committee stated: "I leave to your imagination as to what would happen in . . . municipal law if subversive elements should teach minorities that the field of civil rights and laws had been removed to the field of international law." Kaufman, *Human Rights*, p. 46.

28. Kaufman, *Human Rights*, p. 56.

29. *Human Rights Violations in the United States*, pp. 5-8.

30. Commentators have long recognized that the United States is the only advanced industrial country without a significant socialist movement or labor party. For an analytical overview of this phenomenon, see Lipset, "American Exceptionalism Reaffirmed."

31. Although some have linked this tendency in the 1950s to McCarthyism, opposition to socioeconomic rights has long outlived this era. Cf. Kaufman, *Human Rights*, pp. 12-14.

32. Frank Holman, cited in Kaufman, *Human Rights*, p. 17. On the debate within the ABA, see also pp. 25-28.

33. An article in the *ABA Journal* called the Covenants a program for "extreme egalitarianism." Eleanor Roosevelt herself, a key influence on the drafting of the Universal Declaration and a tireless advocate of U.S. ratification of the UN Covenant on Civil and Political Rights, believed that the Covenant on Economic, Social and Cultural Rights had "not the slightest chance" of ratification. Kaufman, *Human Rights*, pp. 69-70, 72, 19, 64ff. Economic libertarianism has remained an important, if declining, element of the rhetoric among conservative opponents to multilateral treaties.

34. In contrast to the way this issue is often presented, this central cleavage does not primarily divide isolationists and internationalists. Major opponents of international enforcement of human rights—from Henry Cabot Lodge, John Bricker, and Henry Kissinger to Jesse Helms—have not been isolationist.

35. *Human Rights Violations in the United States*, pp. 5–8. The last of these, religious rights, might appear to be a concern of Republicans, but in fact the report calls exclusively for aggressive judicial enforcement of the Religious Freedom Restoration Act, a piece of legislation passed by a Democratic Congress and signed by President Clinton in late 1993. See p. 165ff.

36. This record does not appear to be a spurious correlation driven by background conditions. Democrats commanded a majority of at least 55 votes only 50 percent of the time (14 sessions out of 28). So the fact that all human rights treaties passed during those sessions is striking. More broadly, the Senate contained a Democratic majority for 19 sessions and a Republican majority for 9 sessions. Each of the two parties commanded the presidency for roughly equal periods since 1947.

37. Note that the pattern of submission and ratification does not follow from the (somewhat exogenous) timing of negotiation and signature, since those presidents who submitted the treaties were not typically the same presidents who signed the respective agreements.

38. Kaufman, *Human Rights*, passim. See also, for example, U.S. Senate Committee on Foreign Relations, *International Human Rights Treaties*; U.S. Senate Committee on Foreign Relations, *International Covenant on Civil and Political Rights*.

39. Magge, "Vocal Opposition and Fragmented Support: The U.S. Failure to Ratify the UN Convention on the Rights of the Child," n.p.

40. In three cases Republican presidents—Eisenhower with the Supplementary Slavery Convention and the Convention on the Political Rights of Women, and Bush with the Rights of the Child—were unable or unwilling to block the negotiation of international human rights treaties, even though they made no subsequent effort to secure ratification of them. Indeed, until the recent treaty establishing the ICC, no U.S. government appears to have voted in an international forum against a human rights treaty that passed—although U.S. negotiators have attempted to water down a number of provisions. This suggests that centrist presidents (and even a conservative like Ronald Reagan) and advocates of human rights treaties alike labor under tight political constraints imposed by decentralized U.S. political institutions.

41. In addition, opposition to application of human rights treaties has remained surprisingly strong even as the issues that initially gave rise to it—the role of a liberal federal judiciary, support for segregation, and socioeconomic rights—have become less controversial.

42. Putnam, "Diplomacy and Domestic Politics." See also Martin, *Democratic Commitments*.

43. Kaufman, *Human Rights*, p. 37–38.

44. Cited in Magge, "Vocal Opposition and Fragmented Support: The US Failure to Ratify the U.N. Convention on the Rights of the Child."

45. Forsythe, "The United States," pp. 271–272; Vogelgesang, *American Dream*.

46. Kaufman, *Human Rights*, p. 45.

47. *Ibid.*, pp. 10–12.

48. George Finch, cited in Kaufman, *Human Rights*, p. 54.

49. Kaufman, *Human Rights*, pp. 52–53.

50. For primary research and analysis of the CRC, I would like to acknowledge Magge, "Vocal Opposition."

51. Cited in Magge, "Vocal Opposition."

52. Some opposition appears to reflect traditional conservative hostility toward human rights treaties in general, as well as a belief that other countries may aim to exploit loopholes, whereas the United States tends to examine all existing federal and state laws closely to assure compliance.

53. The Family Research Council sets forth more concrete criticisms of the explicit rights promulgated in articles 12–16 of the CRC. Article 12 (freedom of opinion), they argue, might allow children to air their grievances against their parents in a legal forum. Article 13 (freedom of expression) might permit children to view "objectionable or immoral materials, often disseminated in schools" despite the disapproval of parents. Article 14 (freedom of religion) might forbid parents from sending their children to church if the latter did not want to attend. Article 15 (freedom of association) might prohibit parents from preventing their children from associating with harmful company. Article 16 (protection of privacy) might legalize abortion without parental consent and homosexual conduct in the home.

54. Magge adds: "Another initial obstacle was Article 38, which stated that governments should assure that children under the age of 15 are not involved in hostilities. Many NGOs and governments urged an optional protocol raising the age limit to 18. The Department of Defense opposed this provision, because the US military accepts 17-year-old volunteers with parental permission. . . . In January 2000, the US agreed to sign the optional protocol and change the domestic age limit to 18, though with a clause specifically excluding voluntary recruitment. Though this had little policy impact, it was the first time the US agreed to change a domestic practice specifically in order to meet an international human rights standard."

55. On the charge of hypocrisy, see notes 5–7 above.

56. A smaller number of conservatives argue that overzealous human rights enforcement may undermine global human rights policy, U.S. foreign policy, and U.S. domestic policy. See, for example, Goldsmith, "Should International Human Rights Law Trump?"

57. There is similarly little evidence for the counterclaim that U.S. adherence to human rights treaties would significantly undermine either global human rights promotion or other U.S. foreign policy goals.

58. Patricia Derian, cited in U.S. Senate, *International Human Rights Treaties*, p. 33.

59. Hannum and Fischer, eds. *United States Ratification*, pp. 285–289.

60. Muravchik, *The Uncertain Crusade*, 1986, p. 3. Forsythe, *United States and Human Rights*, p. 22. Much of this literature is overtly hortatory. "[P]romoting respect for human rights abroad helps dissociate the United States from oppressive governments. Americans feel better and hold their heads higher in the international community when the United States avoids direct or indirect responsibility for the odious practices of other governments." Vogelgesang, *American Dream, Global Nightmare*, p. 84.

61. Vogelgesang, *American Dream*, p. 79.

62. Joshua Muravchik, another neoconservative critic of Carter, adds that "in order for the United States to act in the world with a degree of national unity and with a sense of conviction, our policy must be felt to be grounded in those principles." Muravchik, *Uncertain Crusade*, p. 221.

63. Jacoby, "The Reagan Turnaround on Human Rights."

64. Evans, *U.S. Hegemony*, p. 51.

65. Vogelgesang, *American Dream*, p. 253.

66. SALT refers to the Strategic Arms Limitation Talks. Muravchik, *Uncertain Crusade*, p. 18.

67. Senate Foreign Relations Committee report, cited in Cerna, "The United States and the American Convention on Human Rights," p. 100.

68. See notes 6–8 above.

69. Jacoby, "The Reagan Turnaround on Human Rights," p. 1066.

70. Vogelgesang, *American Dream*, p. 81.

71. Warren Christopher, cited in U.S. Congress, *International Human Rights Treaties*, p. 20. Senate Foreign Relations Committee report, cited in Cerna, "The United States and the American Convention on Human Rights," p. 100.

72. Alston, "The Commission on Human Rights," p. 126.

73. According to BBC News Online, "Joanna Weschler, the UN representative of Human Rights Watch, told Reuters news agency that many countries on the Economic and Social Council, whose members elect the commission, resented the poor US voting record on issues like land mines and the availability of AIDS drugs." BBC News Online, "US Thrown off UN Human Rights Body," Thursday, 3 May, 2001. Kenneth Roth, Executive Director of Human Rights Watch, noted that the U.S. delegate on the commission had cast one of the only votes against a declaration of the right to food (Speech at Harvard Law School, May 4, 2001).

74. Yost also notes: "Our refusal to join in the international implementation of the principles we so loudly and frequently proclaim cannot help but give the impression that we do not practice what we preach, that we have something to hide, that we are afraid to allow outsiders even to inquire whether we practice racial discrimination or violate other basic human rights." Statement of the Hon. Charles Yost, former U.S. ambassador to the United Nations, in U.S. Senate, *International Human Rights Treaties*, pp. 4-5.

75. "[It] has been a great problem for the United States and a great embarrassment. . . . [We] insist upon implementation by the Soviet Union and the countries of the East of the human rights provisions of the Helsinki Accords. Our capability, our ability, and our credibility to do so was greatly impaired at Belgrade and will be greatly impaired at Madrid in 1980 by the failure of our country to ratify the human rights treaties which are now before you." Arthur Goldberg, cited in U.S. Senate, *International Human Rights Treaties*, pp. 10-11.

76. In the same hearings, John Carey from the Helsinki Watch Committee echoed this view with regard to the Soviet Union as did Prof. Thomas Buergethal, University of Texas Law School, in regard to the OAS. U.S. Senate, *International Human Rights Treaties*, pp. 258, 329.

77. Forsythe, "The United States," p. 265. In the 1980s, the ECOSOC's supervisory role was assumed by a group of nonnational experts.

78. Interview with Juan Mendez, University of Notre Dame, November, 2000.

79. Malanczuk, "International Criminal Court," p. 82.

80. The United States has also often been concerned with the definition of "aggression" in such documents, which might lead to a international embarrassment. Malanczuk, "International Criminal Court," p. 83.

81. Goldsmith, "Should International Human Rights Law Trump?," p. 332.

82. Ibid. For example, Goldsmith asks, "Would its guarantee of 'effective' in addition to 'equal' protection change domestic anti-discrimination law? Would its 'protection against discrimination on any ground,' including 'status' extend to discrimination on the basis of homosexuality? Age? Weight? Beauty? Intelligence?"

83. Amnesty International, *United States of America*, p. 334.

84. Goldsmith, "Should International Human Rights Law Trump?," p. 335.

85. Ibid., p. 332.

86. Ibid., p. 335.

## Ambivalent Multilateralism and the Emerging Backlash: The IMF and WTO

Kimberly Ann Elliott and Gary Clyde Hufbauer

[T]he big question is whether the historian who looks at this history [of economic institution-building] twenty-five years from now—which will be close to the year 2000—will see the twenty-five years since Bretton Woods as part of a historic march toward trade and economic integration or as but a brief interlude between eras of trade restriction and economic nationalism.  
—Ambassador Richard Gardner (1969, xciv)

Looking back today, the verdict on the question above would have to be a positive one. Neither trade disputes nor financial crises have been relegated to the dustbin of history. But they have been contained and their worst effects mitigated. Above all, the world economy has avoided the beggar-thy-neighbor policies that deepened the Great Depression and contributed to World War II. And economic integration has not just continued but accelerated. Between 1980 and 1998, merchandise imports grew from \$2.0 trillion to \$5.5 trillion per year (a growth factor of 2.7). Over the same period, international bank lending expanded from \$0.8 trillion to \$5.5 trillion annually (a factor of 6.9). Daily foreign exchange transactions grew from \$60 billion (1983) to \$1.5 trillion (a factor of 25).

Efforts by the United States and Britain to create multilateral economic institutions began during World War II. The IMF and International Bank for Reconstruction and Development (the centerpiece of what became the World Bank Group) were successfully launched soon after the end of the war. Although the treaty establishing the third leg, the International Trade Organization (ITO), failed to gain approval in the U.S. Senate, its conceptual core, GATT, was implemented by the United States as an executive agreement. In broad terms, GATT was born to liberalize, the IMF was born to stabilize, and the World Bank was born to develop. And, if flourishing trade and capital flows are the measure of achievement, both GATT and the IMF have succeeded on a tremendous scale.

In stark contrast to the successes of these economic institutions, the UN was often hamstrung for its first forty-five years by the divisions of the