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# Multilateralism Matters

*The  
Theory  
and Praxis  
of an Institutional  
Form*



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## 4. Regulating the World: Multilateralism, International Law, and the Projection of the New Deal Regulatory State



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THE multilateralism that characterizes postwar international regimes is a fundamental characteristic of a *liberal* world order. In particular, it is characteristic of international institutions designed by the United States—the liberal state most inclined and most able to project its domestic political and economic arrangements onto the world. The distinctive features of multilateralism—the emphasis on general organizing principles, with the corollary characteristics of indivisibility and diffuse reciprocity—are also the organizing principles of the liberal conception of a polity.<sup>1</sup> The United States sought to project these principles onto the world as a macrocosm of the New Deal regulatory state.

To understand the role of legal analogy in postwar planning, I turn first to a distinctive characterization of the postwar international order in the international law literature—the identification of “the international law of cooperation.” The international law of cooperation has been understood to differ fundamentally in substance, scope, and nature from the pre-1945 “law of coexistence.” International lawyers have traced the sources of this shift directly to changes in *domestic* law, specifically the emergence of welfare liberalism. The Great Depression taught American policymakers two enduring lessons: (1) the existence of an inextricable link between economic prosperity and political stability and (2) the affirmative responsibility of governments to assure the minimum welfare of their citizens. After the chaos of the war, coupled with the widespread perception that *laissez-faire* economics and *laissez-faire* politics had had

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equally pernicious effects abroad, these tenets were readily translatable to the international sphere.

With an eye to uncovering the more precise origins of specific postwar institutions, I examine U.S. plans for the postwar order—formulated from 1939 through 1945, largely prior to any actual negotiation with other states but during a period when U.S. leaders increasingly understood that they must take responsibility for shaping the postwar world. The identity of the participants and the results of this planning process confirm that policy planners not only sought to project the scope and substance of domestic law onto the world, but also that they recapitulated the legal and administrative forms of the New Deal regulatory revolution. In virtually every issue area, ranging from the Food and Agricultural Organization to the projected International Trade Organization to the International Civil Aviation Organization, U.S. policymakers sought to establish autonomous, centralized, and relatively depoliticized regulatory organizations. This institutional design had been the domestic solution of choice in the New Deal, when U.S. domestic policymakers found themselves confronted with similar problems. Private problems required institutionalized public intervention, at home and abroad.

I conclude that the form of the postwar order was strongly influenced by the U.S. conceptualization of international problems and their solutions in domestic legal terms. The distinctive features of the international law of cooperation—the regulation of the physical, economic, and social welfare of individual citizens by affirmative governmental measures—reflect the role of law in a domestic liberal polity. The history of the postwar planning process recapitulates this dynamic on a more specific level. The formal characteristics of multilateralism are the byproduct of a distinctively American effort to regulate the world.

The first part of this article sketches the principal themes and postulated origins of the international law of cooperation. The second part examines the similarities between the New Deal regulatory state and the postwar multilateral order as envisioned by the State Department planning teams charged with designing the postwar world. The third part explores the larger connections between the international projection of a liberal legal order and multilateralism as a generic institutional form.

## The International Law of Cooperation

International lawyers have not addressed the phenomenon of multilateralism *per se* other than in the nominal sense of institutions involving

three or more parties.<sup>2</sup> However, an important strand of postwar international legal scholarship long ago identified a sea change in the nature and function of international law beginning in the early part of this century and gathering speed after 1945. In 1964 Wolfgang Friedmann pioneered a distinction between the “international law of co-existence,” the traditional body of customary and conventional rules governing diplomatic interstate relations, and a new phenomenon he dubbed the “international law of cooperation.”<sup>3</sup>

The international law of cooperation differs from traditional public international law in its scope, subjects, and function. First, on the question of scope, it is a body of law seeking to regulate far more widely than the traditional issue areas of interstate relations. It encompasses substantive domains historically thought to be of purely domestic concern, such as human rights, health care, economic conditions, and environmental protection.

Second, the subjects of the international law of cooperation are individuals as well as, and sometimes instead of, states. The purpose of twentieth-century international institutions is not merely to coordinate state action but also “to develop an international organization of *mankind* for purposes of cooperation.”<sup>4</sup> Friedmann drew on the work of Wilfred Jenks, who described the evolution of international law from “rules governing the mutual relations of states” into a “common law of mankind.”<sup>5</sup> The picture is not of an emerging world government but of an emergent world citizenry.

Third, the distinction between the international law of coexistence and the international law of cooperation rests on an evolving conception of the nature and function of law. The international law of the nineteenth century had a primarily negative function: to restrain and coordinate state action to allow each state maximum freedom to pursue its national interests with minimum interference from and imposition on others. According to a leading international law casebook, the U.N. system “marked the transition of international law from the traditional system of formal rules of mutual respect and abstention to an incipient system of organized, cooperative efforts.”<sup>6</sup> The international law of cooperation is thus the instrument of collaborative ends, a system of positive inducements facilitating and structuring cooperative action.<sup>7</sup>

According to a major report issued by the International Law Commission, similar characteristics emerged in the law of multilateral treaties. Traditional multilateral “treaties of settlement” reconciled opposing interests, the subjects of war and hence of peace, that were the exclusive preserve of states in their external relations with one another. Twentieth-

century multilateral "law-making treaties," by contrast, "extended beyond the strictly narrow traditional subjects of international law to regulate certain efforts at international cooperation in the humanitarian and social fields such as the suppression of the slave trade."<sup>8</sup> The "common interests" that gave rise to these treaties are interests historically the province of national governments only in their domestic relations—matters not between state and state, but between state and citizen.<sup>9</sup>

The international law of cooperation is itself distinctively multilateral. The formal organizations and treaty regimes that instantiate this law—in areas ranging from security to environmental protection—all incorporate general organizing principles applicable equally to all their members or specific classes of members. Further, the international law of cooperation assumes that the basis of these regimes and organizations is the identification of common threats and common interests. Finally, the duration of the affirmative duties of cooperation imposed in accordance with the general organizing principles is open-ended, thereby implicitly accepting that the distribution of costs and benefits associated with compliance may be unequal at any given point.

#### SOURCES OF THE INTERNATIONAL LAW OF COOPERATION

The classic scholarly accounts of the creation and growth of concrete international organizations focus primarily on technological advances permitting increases in the frequency and speed of diplomatic relations, as well as technical innovations such as the multilateral treaty.<sup>10</sup> The progenitors of the international law of cooperation, however, point to a very different source. Friedmann attributed the structural change resulting from "the intrusion of social and economic matters into international relations" to a new domestic philosophy of government embodied in the social welfare state.<sup>11</sup> The growing concern of domestic governments with the "supervision, regulation, and active shaping of . . . economic and social conditions" simply carried over into the international realm.<sup>12</sup>

Political scientists of Friedmann's vintage shared this perception. Inis Claude published the first edition of his classic college text on international organization, *Swords into Plowshares*, in 1956. For him the connection was clear. Contrasting the United Nations system with the League of Nations, he argued that both systems were grounded in liberalism. "But," he continued, "if the liberalism which inspired the League was essentially a nineteenth-century phenomenon, the doctrinal foundation of the night-watchman state, the liberalism which underlay the new system

was the twentieth-century version, the theoretical support of the welfare state."<sup>13</sup> This new liberalism

supported the assumption by governments of vastly expanded functional responsibilities and a capacity for regulatory intervention in many areas formerly considered outside the range of their appropriate concerns. Correspondingly, the Charter reflected a newly enlarged conception of the necessary and proper role of international organization in world affairs; it envisaged for the United Nations and Specialized Agencies a functional sphere and an agenda of activity far more ambitious than that mapped out for the League in 1919.<sup>14</sup>

Unlike arguments—Ruggie's "embedded liberalism," for example—about the ways in which international institutions have had to *accommodate* domestic interventionism,<sup>15</sup> the chroniclers of the international law of cooperation offer a domestic explanation for the very existence of those institutions. Their claim is not that states could no longer create international regimes without regard for their domestic impact. It is rather that international regimes grew out of the same transformation in the philosophy of government that spawned new domestic regimes.

I propose to take this logic a step further and seek a more specific domestic referent, one that can explain not only the substantive scope of postwar international regimes but also their generic multilateral form and to some extent their specific organizational design. The origins of welfare liberalism may be traced back to the Industrial Revolution, but the domestic origins of the specific contours of the postwar international order lie in the historical experience of one liberal state: the United States during the New Deal. By 1941, having finally accepted that the United States could not effectively isolate itself from the world, U.S. policymakers determined instead to remake the world in the American image. They did not fully succeed, of course, given that the order that finally emerged necessarily required negotiation and compromise with other nations. But their plans reveal an underlying conception of the world that made unilateralism or bilateralism virtually unthinkable.

#### Projecting the U.S. Regulatory State

The Great Depression was midwife to the U.S. regulatory state, which had been developing in embryo over the previous two decades. It taught U.S. policymakers two unforgettable lessons: the inseparable link be-

tween economic prosperity and political security and the responsibility of government to exercise its power affirmatively to promote the welfare of its citizens.<sup>16</sup> Historian Carl Degler formulates these teachings in terms of a newfound domestic perception of indivisibility—the Depression as “a threat to all”—and the necessity of “a collective defense.”<sup>17</sup>

The original blueprint for the postwar international order was drawn up by American policymakers who projected the philosophy, substance, and form of the New Deal regulatory state onto the world. Many of the same people who had taken responsibility for reshaping American domestic government now took responsibility for the world. They adopted the same generic solution for the world's problems as for the nation's: government intervention through specialized administrative organizations. The specific types of organization proposed to solve different specific regulatory problems varied over the same range, both domestically and internationally. Finally, the plan for linking these specific organizations together in a larger centralized scheme matched a widely discussed plan for a reform of the domestic New Deal government.

#### PLANNING THE WORLD

The most comprehensive designs for the postwar order were drawn up in Washington. The best general guide to this planning process is the State Department account of postwar foreign policy preparation. Other U.S. government departments engaged in their own planning for how to order international regulation of their substantive issue areas, and, as in the case of Harry Dexter White's Treasury Plan for an international monetary organization, the State Department planners did not always win.<sup>18</sup> But it was the State Department that was charged with preparing a coherent foreign policy blueprint “in regard to every aspect of international relations, in all areas of the world, under the circumstances probable or possible at the end of the war.” As the Department's subsequent account of this process, begun in 1939 and completed only with the convening of the United Nations in 1945, explains:

This work as a whole required consideration of the political, territorial, military, economic, and social conditions essential to enduring peace and to human progress in an era when the philosophies and desires of peoples, the relationships and power positions of states, and the scope of United States concern in international cooperation had all become subject to profound change.<sup>19</sup>

The first phase of postwar planning was carried out by the Advisory Committee on Problems of Foreign Relations from 1939 to 1941. This

Committee, composed primarily of State Department officials, was charged with determining U.S. interests in the establishment of a postwar “world order” and designing policies to promote those interests “both as a basis of our own action and of our attempts to influence other nations.”<sup>20</sup> By 1941, as the war spread and the outlook for the anti-Hitler forces dimmed, both the President and Congress began to perceive that “the fields that would present postwar problems continued to expand.”<sup>21</sup> Two weeks after Pearl Harbor the President authorized the creation of a new committee to conduct “preparatory work on all phases of postwar foreign policy.”

The new committee, first convened in February 1942 and dubbed the Advisory Committee on Post-War Foreign Policy, was chaired by the Secretary of State and composed of a much broader membership of senior officials from the State Department and other government departments and agencies, members of Congress, and a few prominent individuals from private life.<sup>22</sup> Its charter, as envisioned in Hull's recommendation to the President, was to “continue and expand [the Department of State's] work of preparation for this country's effective participation in the solution of the vast and complicated problems of international relations which will confront us and the world after the final defeat of the forces of aggression.”<sup>23</sup> In practice, the Committee immediately divided into six subcommittees,<sup>24</sup> many of which subdivided further. These various entities set about identifying policy problems, analyzing U.S. interests, and developing the broad outlines of possible solutions.

The period from July 1943 to November 1944, when formal preparations for the United Nations Conference began, was a phase of “extraordinary” preparation.<sup>25</sup> The planning focus was no longer exploration and analysis of policy problems but rather the generation of major policy alternatives and preparation of negotiating positions for a host of international conferences in the fall of 1943 and the spring of 1944.<sup>26</sup> By July 1944 the Post-War Programs Committee had formulated tentative policy options in twenty-six fields in preparation for the Dumbarton Oaks Conversations on general international organization. By November 1944 the State Department's “planning” was virtually completed, as matters in virtually all areas had moved into the “operational” phase.<sup>27</sup>

#### TAKING RESPONSIBILITY FOR THE WORLD

Just as the New Deal government increasingly took active responsibility for the welfare of the nation, U.S. foreign policy planners took increasing responsibility for the welfare of the world. It was widely believed that

they had little choice. The United States was going to be a world power by default. It could not insulate itself from the world's problems. As at home, moreover, it could not neatly pick and choose among those problems, distinguishing politics from economics, security from prosperity, defense from welfare. In the lexicon of the New Deal, taking responsibility meant government intervention on a grand scale.<sup>28</sup>

In the early days of the war, the public posture and private planning of U.S. officials had a detached, almost abstract quality. In 1940 President Roosevelt urged U.S. citizens to "work out for themselves the several alternatives which lie before world civilization."<sup>29</sup> Cordell Hull spoke only of "throwing the weight of our country's moral and material influence in the direction of creating a stable and enduring world order under law."<sup>30</sup> From the perspective of the planners themselves, the original Advisory Committee constituted in 1939 understood its mandate largely in terms of addressing concrete "problems of peace and reconstruction," particularly economic problems such as the impact on the United States of the warring powers' necessary readjustment to peacetime production."<sup>31</sup>

Pearl Harbor, naturally enough, was the catalyst for a more activist approach. When the Advisory Committee on Post-War Foreign Policy first met in February 1942, "[T]he chief certainties were merely the anticipated fact of victory and the consequent fact that this country—emerging from the victory with tremendous power—would have profound new responsibilities in connection with practically all vital problems of world affairs and would have to state a policy or at least express an attitude on such problems."<sup>32</sup>

By April 1944 Secretary of State Hull gave a foreign policy address in which he described U.S. foreign policy as "the task of focusing and giving effect in the world outside our borders to the will of 135 million people through the constitutional processes which govern our democracy."<sup>33</sup> And in March 1945 Roosevelt exhorted the U.S. Senate to prepare themselves for the ratification of whatever document would be drafted at San Francisco in the following terms:

There can be no middle ground here. We shall have to take the responsibility for world collaboration, or we shall have to bear the responsibility for another world conflict.<sup>34</sup>

Here the responsibilities for domestic welfare and for international welfare had become one and the same. The ratifiers of Roosevelt's plans for reshaping domestic government were being asked to take on the world.

## ORGANIZING THE WORLD

*In practice*, taking responsibility for the world meant organizing it according to the same general institutional design as the U.S. government. Once again, while not all the postwar organizations were finally implemented according to U.S. design, to the extent they were, their inspiration was the U.S. domestic regulatory system. The evidence for this proposition falls into three categories. First, a large number of the same people who had been involved in domestic policymaking in the New Deal moved into the foreign policy sphere. This was true even of the State Department planning teams, even more so the separate planning staffs run by other U.S. bureaucracies such as the Treasury. Second, the wide range of international organizations proposed by these planners corresponded to the range of domestic regulatory agencies established during the New Deal. Third, the larger U.S. organizational scheme mirrored a plan favored by Franklin Roosevelt for reform of the U.S. regulatory system but never implemented domestically.

### *The Organizers*

Many of the individuals involved in the postwar planning process were the actual planners and beneficiaries of these domestic solutions. As the planning tasks expanded, the ranks of the planners themselves swelled far beyond the State Department. Every division of a committee into a clutch of subcommittees meant the inclusion of members of Congress, officials from other government departments, a few private citizens, and heads and subheads of the newly established administrative agencies.

The membership of the Twelve Special Economic Committees of the Committee on Post-War Foreign Economic Policy is telling. The Special Committee on International Aviation included the chairman of the Civil Aeronautics Board. The Special Committee on Labor Standards and Social Security was chaired by the Secretary of Labor and included the presidents of all the major U.S. labor unions and the chairman of the Social Security Board. The Special Committees on Private Monopolies and Cartels, Relaxation of Trade Barriers, and Commodity Agreements and Methods of Trade were liberally sprinkled with members from the domestic Tariff Commission, together with assorted members from the Securities and Exchange Commission, the Office of Price Administration, and domestic divisions of the Departments of Commerce and Agriculture. Similarly, of the twenty members of the Special Committee on Communications, the

chairman of the Subcommittee on Global Communications was the member from the recently created Federal Communications Commission.<sup>35</sup> Finally, Adolf Berle, a key member of Roosevelt's original brain trust, was head of no fewer than three of the Special Committees—communications, aviation, and shipping—and a member of a fourth.

### *The Institutional Solution*

*The Domestic Institutional Solution.* For political philosophers, and students of American government more generally, the New Deal is about a redefinition of the responsibilities of power—the abandonment of limited government. For political economists, it is about a new understanding of the American economy—coordinated monopoly versus regulated competition.<sup>36</sup> But for lawyers it is above all about a proliferation of institutions—administrative agencies combining traditionally separated legislative and executive functions to create new forms of government to regulate vast areas of American life.<sup>37</sup>

The New Deal was an *institutional* revolution. Eighteen administrative agencies were created from 1900 from 1929; seventeen more were created from 1930 to 1940 alone.<sup>38</sup> These included such fixtures of modern American life as the Social Security Administration, the Federal Communications Commission, the Securities and Exchange Commission, the Federal Deposit Insurance Corporation, the Federal Housing Administration, and the National Labor Relations Board. Other agencies such as the Food and Drug Administration and the Federal Trade Commission were significantly expanded. And yet others, such as the Civil Works Administration, the Works Progress Administration, and the Civilian Conservation Corps made a major mark on the regulatory landscape of the time.

These diverse agencies were the product of similarly diverse regulatory strategies, from the corporatism of the "First New Deal," from 1933 to 1935,<sup>39</sup> to the spending and social welfare programs of the "Second New Deal," from 1935 to 1937,<sup>40</sup> to the creation of more traditional technical regulatory agencies and monitoring institutions throughout.<sup>41</sup> This profusion of regulatory forms and functions suggests that the New Deal was "moving in many directions simultaneously"<sup>42</sup>—a dynamism and goal orientation entirely in keeping with the pragmatism of the President.

There was, however, a lowest common denominator. Regardless of the specific substantive approach selected to solve a particular policy problem, it was implemented—"administered"—via a specialized institution. Some of the resulting "administrative agencies" emphasized independent

expertise; others were quasi-judicial; others provided a negotiating forum for normally conflicting parties. All assumed that long-term political, economic, and social problems required long-term, institutionalized regulation by some form of central authority.

*The International Institutional Solution.* U.S. policymakers involved in the international planning process did not set about building a multilateral world order out of idealism. The task facing the planners had less to do with ends than means. The researchers for the Advisory Committee on Postwar Foreign Policy approached every issue with the following questions: "What does the United States want? What do other states want? How do we obtain what we want?"<sup>43</sup> As in the domestic context, the emphasis was on pragmatic solutions to concrete problems rather than on implementing any grand theoretical design.

The official members of the innumerable planning committees and subcommittees generated a wide variety of answers as to the substance of U.S. desires in different issue areas. But their invariable answer to the question of "how do we obtain what we want?" was to create a specialized regulatory institution. When the planning process, in all its complexity and detail, was finally complete, the result was "negotiations among the major powers, and exchanges of view with other United Nations members looking toward the establishment of international agencies of both a transitional and permanent character in various specialized fields."<sup>44</sup>

The faster substantive consensus could be achieved in a given issue area, the faster the process of negotiating the creation of an international agency could begin. Food and agriculture was the perhaps easiest area in which to secure such agreement. Roosevelt deliberately chose it as a "relatively noncontroversial subject on which to proceed for the first full United Nations conference"—a conference intended to establish "international machinery dealing with standards of nutrition and more rational development of food resources."<sup>45</sup> Substantive agreement on economic foreign policy was fairly advanced even at the beginning of the war, moving to the organizational stage in several key areas with the Bretton Woods Conference in 1944.<sup>46</sup> Similarly in the area of postwar cultural relations: the Special Subcommittee on International Organization had recognized the potential need for "an international agency in this field" as early as 1942. By June 1943 the General Advisory Committee on Cultural Relations recommended that the Department of State "actively" explore creation of such an agency as soon as possible.<sup>47</sup>

In the political arena, by contrast, the substantive agenda was less



clear. The Political Subcommittee had to begin its work by "clarify[ing] for its own guidance the fundamental concepts of American policy that should underlie its approach to the problems and uncertainties of the future,"<sup>48</sup> a process subject to "shifts and alternations of . . . major proportions."<sup>49</sup> Nevertheless, by late 1944 the State Department account took satisfaction in noting movement toward the creation of international organizations on all fronts:

It was equally apparent, from the progress of the Post-War Programs Committee . . . from the outcome of the Dumbarton Oaks Conversations, and from the advances toward the establishment of specialized international economic and social organizations, that the bulk of essential preparatory work was done and the remainder, with only certain exceptions, was becoming an adjunct to operations.<sup>50</sup>

These "exceptions" constituted the "unfinished business"<sup>51</sup> remaining for State Department planners between winter 1944 and spring 1945. Here too, the proliferation of institutions continued. Most of the remaining work fell under the mandate of the Executive Committee on Economic Foreign Policy, which promptly established a new Subcommittee on Specialized International Economic Organizations in November 1944. The charter of the new Subcommittee was explicitly to formulate recommendations concerning "the organizations of such agency or agencies as may be required to carry out the economic programs, as approved by the Executive Committee, of the Committees on Private Monopolies and Cartels, Commodity Agreements, and Trade Barriers."<sup>52</sup> And indeed, the upshot was recommendations for an international trade organization, and international commodity organization, and an International Office of Business Practices, all with accompanying multilateral conventions for implementation.<sup>53</sup> Other remaining business concerns "specialized international organizations for economic and social cooperation."<sup>54</sup>

Yet other specialized agencies planned for during this period included the International Civil Aviation Organization, an international shipping organization, the reorganization and strengthening of the International Telecommunications Union or else the establishment of a new international telecommunications organization, a European inland transport organization, a world health organization, and an international refugee organization.

Further parallels can be identified at a more specific level as well—in terms of the design and modes of governance of individual institutions. Additional research is necessary to explore the details of how U.S. plan-

ners actually envisioned each of these specific organizations and to establish the extent to which they explicitly relied on domestic models.<sup>55</sup> Even a general overview, however, reveals the following similarities.

- The purpose of an "intergovernmental commodity organization," for instance, was to "facilitate cooperation in the solution of world commodity problems," to "participate in and supervise international commodity arrangements," and to "review the operations of such arrangements in the light of the general code of principles."<sup>56</sup> These functions correspond to early New Deal efforts to institutionalize corporatist strategies designed to regulate excess supply and demand.
  - The planned "international commercial policy organization" was to fulfill the following purposes: "(1) provide information to member countries; (2) afford a source of consistent interpretation of the convention; (3) carry out investigative and fact-finding functions; (4) adjust differences among members, and (5) recommend amendments to the convention."<sup>57</sup> This much more "judicial" model, with an emphasis on policing and enforcement, was analogous to the domestic Securities and Exchange Commission.
  - The "International Office for Business Practices" was to "facilitate the development and administration" of "a coordinated program by which each nation undertakes to prohibit the most restrictive cartel practices which burden international trade."<sup>58</sup> Similarly, the grand International Trade Organization was to supply "permanent machinery for international collaboration in matters affecting international commerce, with a view to continuous consultation, the provision of expert advice, the formulation of agreed policies, procedures and plans, and to the development of agreed rules of conduct in regard to matters affecting international trade."<sup>59</sup> These were institutions analogous to the domestic risk-spreading institutions that forged a "partnership" with business and management to reduce economic disruptions.
  - The more technical international institutions in areas ranging from telecommunications to air traffic had domestic counterparts in essentially the same fields. Here the emphasis was on independence and specialized expertise.
- Thus far we have established a striking institutional correlation between the domestic and the international policy solutions adopted by U.S. policymakers to address a wide range of problems. The generic

answer was centralized intervention by a government or governmental facsimile, administered and implemented through concrete organizations charged with specific regulatory tasks. The specific institutional designs of these organizations corresponded to the various domestic models developed during the New Deal to implement a specific regulatory mandate.

### *Centralizing Global Authority*

An additional category of evidence for the projection of the New Deal regulatory state onto the international system comprises the plans made for linking the proposed international regulatory organizations to one another. The argument here is that the President's advisers gradually adopted a scheme on the international level that had been proposed and approved by the White House as part of a comprehensive domestic reform program but never implemented.

Although the precise definition of an "administrative agency" varies considerably, many of the most important qualify as "independent" regulatory commissions. Their activities are authorized and loosely "supervised" by Congress; their members are appointed by the executive, but they are directly controlled by neither. The proliferation and expanded authority of such entities during the New Deal, often with overlapping jurisdiction and responsibilities, did not make for efficient administration. In 1936 Roosevelt appointed an independent commission, chaired by administrative theorist Louis Brownlow, to recommend reforms in the process of administrative management.

In a radical and wide-ranging report, the Commission recommended subsuming the independent regulatory commissions under the jurisdiction of existing cabinet departments and establishing a permanent planning board in the White House that would control regional planning boards and executive offices throughout the country.<sup>60</sup> Although Roosevelt strongly supported these recommendations, all the major proposals were defeated in Congress. Historian Barry Karl ties Roosevelt's personal support for this reorganization plan, together with his contemporaneous assault on the Supreme Court, to "the degree to which planning had begun to govern his approach to his second term in office," and his concomitant attempt to secure "the managerial authority he needed."<sup>61</sup>

Roosevelt's charge to the Brownlow Commission to formulate a reorganization plan arose from his recognition that his substantive domestic policy goals were "being jeopardized by a lack of coordination among the new agencies he created."<sup>62</sup> The "new administrative strategy" developed

by the Commission was designed to centralize control over the fast-growing regulatory bureaucracy.<sup>63</sup> Although Roosevelt ultimately failed in this endeavor at home, his planners eventually adopted a very similar scheme abroad.

In 1943, Roosevelt envisioned conferences such as the Food and Agriculture Conference as prototypes for a series of permanent international agencies in social and economic fields. According to Russell and Muther, "The President's thought at this time was to have these separate organizations established on a decentralized basis, without references to any kind of over-all coordinating body."<sup>64</sup> A year later his thinking had decidedly changed. The "Possible Plan for the Establishment of an International Organization for the Maintenance of International Peace and Security," drawn up by the Informal Political Agenda Group from December 1943 to July 1944 in preparation for the Dumbarton Oaks Conversations, envisaged that the international organizations for specialized economic or other functions, known as the "functional organizations," "should be related to the general international organization in the sense that the latter would be an over-all organization with power to coordinate international activities in these functional fields."<sup>65</sup>

By January 6, 1945, Roosevelt was referring to a "democratic and fully integrated world-security system."<sup>66</sup> And by 1945 the State Department had developed a detailed chart of what looked very much like a formal world government. It is noteworthy, however, that even this plan did not resemble a world government as might have been conceived by U.S. planners prior to the New Deal, designed from the top down with most regulatory functions encompassed within the international analogue to the executive branch. Here, by contrast, all the different specialized agencies and organizations being folded into the U.N. system had independent identities and decision-making procedures to carry out a variety of functions.

### THE PROBLEM OF MOTIVES

Such a striking correlation of form should also be accompanied by a correlation of motive. Why did the architects of the New Deal believe that discrete administrative agencies were so well suited to achieve specific regulatory tasks? And did they employ the same strategy for the same purposes on the international level?

Several connections stand out. First, the creation of independent administrative agencies domestically and discrete organizations internation-

ally can be understood as part of an effort to depoliticize normally charged political issues and render them amenable to rational resolution. Charles Maier has argued, for instance, that the U.S. vision of the postwar international economic order was fundamentally shaped by the New Deal strategy of recasting political conflicts as “neutral” problems of efficiency and productivity.<sup>67</sup> Taken as a whole, the New Deal administrative agencies represented a new, “depoliticized” arm of the federal government, centralizing power and delegating it to “technically sophisticated officials promoting the public interest.”<sup>68</sup>

David Mitrany elevated this focus on pragmatic problem solving to an entire theory of international government. Mitrany cited his observation of the workings of the Tennessee Valley Authority as the “clearest evidence” of his theory of functionalism, according to which a durable international peace order could be built piecemeal by creating functional organizations dedicated to the performance of specific and necessary tasks.<sup>69</sup> He understood the “lesson of the New Deal” as the achievement of a “constitutional revolution through pragmatic action.”<sup>70</sup> Roosevelt tackled each problem solely “as a practical issue in itself,” without any effort “to relate it to a general theory or system of government,” yet at the end of the day “the new functions and the new organs, taken together, have revolutionized the American political system.”<sup>71</sup>

Mitrany explicitly held up the New Deal as a model for the postwar world.

In many of its essential aspects—the urgency of the material needs, the inadequacy of the old arrangements, the bewilderment in outlook—the situation at the end of this war will resemble that in America in 1933, though on a wider and deeper scale. And for the same reasons the path pursued by Mr Roosevelt in 1933 offers the best, perhaps the only, chance for getting a new international life going.<sup>72</sup>

In some aspects, at least, the postwar planners did seem to rely on something akin to Mitrany’s functionalist logic. As noted above, for instance, Roosevelt deliberately chose a “noncontroversial” subject like food and agriculture to launch his first organizational initiative.<sup>73</sup>

Other evidence exists, however, that international organizations were also seen as a means of harnessing a particular set of political attitudes—a strategy more akin to the corporatist approach of the early New Deal. Mitrany wrote his impassioned appeal for a functionalist world government in 1943. By 1946, however, with the issuance of the fourth edition of his celebrated pamphlet, he noted the opposition to his theory from

various quarters and commented sadly, referring to the “grandeur” of the U.N. system: “Since then [1943] we have moved fast but not well.”<sup>74</sup> His disappointment arose from the effort to organize directly in the political sphere, the antithesis of the functional emphasis on building cooperation via nonpolitical “functional” channels. Scholars of the postwar order have largely confirmed his verdict, crediting his theory, and its New Deal origins, as the inspiration for the U.N. “specialized agencies” but regarding the U.N. system as a whole largely as a defeat for his ideas.<sup>75</sup>

Roosevelt himself argued for international organization to capture and fix the wartime spirit of cooperation. In a letter to the opening session of the Food and Agriculture Conference, he explained:

In this and other United Nations conferences we shall be extending our collaboration from war problems into important new fields. Only by working together can we learn to work together, and work together we must and will.<sup>76</sup>

Conversely, the State Department regarded evidence of increasing fissures in the United Nations coalition in 1943 as a reason to move as quickly as possible to “negotiations to convert the wartime United Nations coalition into an international organization for cooperation to preserve peace after the war.”<sup>77</sup>

Although statements such as these do not specify precisely *how* international organization was going to bring about multilateral cooperation, U.S. planners clearly saw a general connection between the two. Here the State Department account of the planning process is quite straightforward. As the discussion of the “unfinished business” of 1944–1945 explains:

The preparation in the economic and social fields had resulted not so much in development of wholly new policy as it had in elaboration and modification of existing policies and in extension of their scope to meet anticipated postwar conditions. Special effort had been made toward the development of worldwide specialized international organizations, in order to obtain multilateral cooperation in the major fields of economic and social advancement.<sup>78</sup>

## Liberalism and Multilateralism

Consider the evidence. The postwar international order is a generally multilateral order, in the sense of being architecturally “open” and

collective.<sup>79</sup> It is composed of various types of multilateral regimes and formal multilateral organizations. Although the final structure and details of all these entities required extensive multilateral negotiation, with results that often departed significantly from the proposals developed by U.S. planners, the U.S. plans remained the basic blueprint for a system of global economic, political, social, and cultural regulation.

The U.S. blueprint can be plausibly understood as the projection of a domestic regulatory revolution onto the rest of the world. The New Deal represented a revolution not only in the substance and scope of government regulation but also in its form. The same people who designed a wide range of domestic agencies to administer this regulatory revolution adapted the same generic institutional solution to tackle the world's problems. Their larger organizational scheme for relating these organizations to one another bore a strong resemblance to a domestic plan for organizational reform.

Yet even if the hypotheses above could be definitively proven, even if all the memoirs of individual policymakers and minutes of specific meetings devoted to the design of particular international institutions confirmed that U.S. planners self-consciously sought to regulate the world along U.S. lines, we would still have to confront the larger question posed in this volume. If the postwar international order reflects the American domestic order, at least in principle, and the distinctive characteristic of the postwar order is that it is multilateral, *what is it about the projection of the U.S. legal and political system onto the world that would produce multilateral institutions, in the Ruggie sense, rather than the unilateral hierarchy of Leninism or the bilateral preference system of National Socialism?*

A realist answer would assume that U.S. policymakers, who did, after all, seek to calculate U.S. interests in the international realm and how best to achieve them,<sup>80</sup> believed that the United States would be able to dominate whatever international organizations it created and thus that they would foster, not cooperation per se, but rather cooperation as a means to specifically U.S. ends. They sought to establish regimes on the basis of general organizing principles, in other words, but only as long as the United States could dictate the content of those principles.

In this view, domestic political and legal ideology explains the policy goals, while realism explains the means used to attain them. The generality of the solutions proposed by the United States, the USSR, and Germany, as opposed to the flexible bilateral arrangements supported by various Western European nations, reflected their relative power to im-

pose rules on the world.<sup>81</sup> Yet this account overlooks a number of points. First, it seems odd that U.S. policymakers could not have foreseen the situation that in fact emerged in many of these organizations decades later—that general principles coupled with common decision-making procedures could produce a situation in which other members of these multilateral organizations would seek to make the rules for the United States. Second, without gainsaying the element of U.S. self-interest in the postwar proposals, the distinction between the juridically general American proposals and the asymmetrical proposals of Hitler and Stalin remains.

I propose instead a liberal explanation.<sup>82</sup> The concept of “projecting the U.S. domestic regulatory system onto the world” logically redefines the world as a liberal polity. To students of international relations—scholars, policymakers, and diplomats alike—such a notion may seem hopelessly naive. But many of the U.S. architects of the postwar order were *not* students of the international realm. They were domestic policymakers who had reshaped the American domestic political, economic, and social system and were now setting out to reorganize the world. Further, even the diplomats and foreign policy experts among them appeared to treat the world as an extension of the U.S. polity, economy, and society. In interpreting its mandate from the President, the Advisory Committee on Post-War Foreign Policy “agreed that its work should be approached from the general standpoint of the kind of world that the United States desired after the war.”<sup>83</sup> And, as noted above, U.S. policymakers were increasingly willing to take responsibility for shaping that world.

Substantively, the U.S. President wanted the same world he wanted at home. Addressing Congress on the State of the Union on January 6, 1941, as Hitler's shadow loomed considerably larger, Franklin Roosevelt called for a world “founded upon four essential human freedoms.” These included freedom of speech, freedom of religion, “freedom from want,” and “freedom from fear.” The first two are traditional U.S. constitutional rights. The third and fourth he “translated into world terms” as: “economic understandings which will secure to every nation a healthy peacetime life for its inhabitants,” and “a world-wide reduction of armaments” such that “no nation will be in a position to commit an act of physical aggression against any neighbor.”<sup>84</sup> Two years later he was to incorporate these freedoms, along with the other social and economic commitments of the New Deal, into a second American Bill of Rights.<sup>85</sup> However

distant that charter may seem from the perspective of contemporary American politics, it played a role at least as part of America's historical vision at a crucial time in its global history.

At the most fundamental level, an image of the world as a projection of the United States means that international order, like domestic order, requires the rule of law. From this perspective, multilateralism is nothing more than the internationalization of the liberal conception of the rule of law. Look again at the definition of multilateralism distilled here: "an institutional form which coordinates relations among three or more states on the basis of generalized principles of conduct: that is to say, principles that specify appropriate conduct for a class of actions, without regard to the particularistic interests of the parties or the strategic exigencies that may exist in any specific occurrence." To an American lawyer, this looks like a definition of *law*. Law operates on the premise that general rules can be applied equally to all. Differences are recognized, of course, but only for the purpose of classifying a particular legal subject or a given set of facts within the domain of another generalizable rule.<sup>86</sup> Ad hoc individual arrangements with specific individuals tailored to specific circumstances is a world governed, not by law, but by the fortuitous distribution of power. Room can be created for such arrangements within a legal system—witness the domestic enforcement of individual contracts and the bargaining mechanism of the GATT—but only subject to more general rules of interpretation and parameters specifying legitimate scope.

Without embarking on a long jurisprudential journey, we can accept the consensus of liberal philosophers since Kant that the liberal rule of law rests on the faith that rules *can* be developed and applied "without regard to the particularistic interests of the parties or . . . strategic exigencies . . . in any specific occurrence." Stephen Holmes has recently identified the "self-exemption taboo" as the first core norm of liberal thought: "the injunction to play by rules which apply equally to all."<sup>87</sup> From this perspective, communist hierarchy or fascist bilateralism equally reflect violations of that taboo. In the final analysis, the meaningful alternatives to multilateralism in the twentieth century can all be reduced to efforts to establish an asymmetrical set of rules favoring the dominant power. These efforts were equally reflective of the domestic ideology of their sponsor states; the ideology in question simply demanded the arrogation of ever more power or the consolidation of hierarchy for revolutionary purpose.

The distinction between the multilateralism of the United States and the bilateralism of other—equally liberal—Western European nations

poses a harder question.<sup>88</sup> Here again, however, the difference in policy approaches can be explained by the distinctive national experiences of the countries involved. The United States, geopolitically isolated and relatively inexperienced in foreign affairs, was more inclined to argue from a domestic analogy. The planners at Roosevelt's disposal, like the planners in Berlin and Moscow, drew directly on their experience of shaping a new domestic order.<sup>89</sup> In states like France and Britain, by contrast, centuries of diplomatic interaction impelled leaders to view the international world as distinct and separate from the domestic one. Thus although they shared the liberal understanding of law as a set of general principles, they remained skeptical of the possibilities of establishing such principles beyond national borders. Clemenceau and Lloyd George struggled with Woodrow Wilson at Versailles on precisely this theme.

In the end, of course, U.S. leaders had their own Wilsonian ghosts to contend with and were quite prepared to recognize some very real differences between Washington and the wider world. They did also ultimately have to reach agreement with their allies. Thus as the documents from San Francisco amply attest, all nations were *not* to be treated equally. One set of rules would be recognized for great powers and another for lesser states. Similarly, the new guardians of the world economy, the IMF and the World Bank, had weighted voting systems for the largest contributors. The domestic analogy could only run so far but, nevertheless, far enough to stamp the American postwar order as distinctively multilateral.

Multilateralism is thus the form to be expected from a set of international regimes established by a liberal state with a strong tradition of seeing the world in its own image and a missionary drive to make it so. Liberal domestic politics can have a profoundly realist understanding of international relations; 1945 was the heyday of American realists. Nevertheless, taking responsibility for the world meant regulating abroad as at home, in form as well as substance; more importantly, however, a mindset that could transfer the American administrative revolution to the world by formulating every problem in terms of a need for centralized intervention and every solution in terms of a regulatory institution was a mindset that itself was shaped by a liberal conception of the rule of law.

Earlier multilateral regimes can also be distinguished in terms of the relative strength of the domestic analogy. Not surprisingly, they originally flourished in the regulation of the global commons—an area in which international property rights could be analogized to domestic property rights. Similarly, Holsti's description of the Concert of Europe

emphasizes that the participants understood that “force could be used individually or collectively for enforcing certain decisions and for coercing those who threatened the foundations of the order or the system of governance.”<sup>90</sup> This is the common understanding of the legitimate use of force under domestic law. The prevalence of multilateralism after 1945 does indeed reflect an *American* hegemony, rather than an American *hegemony*—the hegemony of a liberal state that had relatively little experience or tradition of differentiating between the international and the domestic spheres.

## Conclusion

The domestic analogy waxes and wanes among policymakers and scholars alike.<sup>91</sup> I have argued that a widespread realization of the need for steadily increasing domestic regulation among the major industrialized powers fed a desire to regulate the world. The broad phenomenon identified by international legal scholars as the international law of cooperation highlights this causal sequence. The principal characteristics of this body of law—its affirmative nature and the breadth of its substantive scope—correspond closely to the evolution of domestic law in the United States, Canada, and Europe in the 1930s. *Laissez-faire* was left behind, supplanted by a growing belief in the value, and indeed the necessity of, government regulation.

The similarity in substance and scope between the domestic law of the liberal welfare state and the international law of cooperation in the postwar world has long been recognized. By taking a closer look and examining the ways in which the American plans for the postwar order also reflected the specific institutional *forms* of the New Deal, projected onto the world by many of the domestic architects of the New Deal, I have suggested that the roots of contemporary multilateralism lie in one particular liberal state’s vision of the world as a domestic polity, economy, or society writ large. It is thus no accident that the distinctive features of the international law of cooperation correspond to domestic law: “domestic” concerns like health and welfare, citizens rather than states as subjects, the imposition of affirmative rather than negative duties. They are the hallmark of a new and distinctively liberal conception of a world under law. A fundamental premise of that conception is that although law can regulate different groups or classes of subjects

differently, its principles must be generalizable within each class or group. The form of multilateralism is thus ultimately a byproduct of the substance of liberalism.

What does this approach say about the future of multilateralism? Several distinctive predictions emerge. First, the shape, strength, and task of particular multilateral organizations can be expected to wax and wane roughly in line with the swings of domestic attitudes toward governmental regulation in the most powerful member states. The domestic regulatory state has grown apace since 1940. To sketch the U.S. experience, thirty-four additional administrative agencies were created since 1960.<sup>92</sup> According to Thomas McCraw, however, the 1960s witnessed the beginnings of “a curious two-pronged reform movement: pointing, on the one hand, toward deregulation and, on the other, toward a new wave of large-scale social and environmental regulation.”<sup>93</sup> The pressures for domestic deregulation in countries like Britain and the United States in the late 1970s and 1980s offer an interesting correlation with increasing doubt about the wisdom or effectiveness of various international institutions. On the other hand, the domestic phenomenon that Cass Sunstein has labeled a “rights revolution”—a profusion of regulatory statutes and agencies focused on antidiscrimination, general management of social risks, and emerging environmental rights—would be expected to generate an international analogue in the social and environmental areas.

The larger lesson of my analysis, however, is that the rise and fall of specific multilateral organizations has relatively little bearing on the strength and endurance of multilateralism in the generic sense. That phenomenon depends much more fundamentally on the ability of national governments to conceive of law operating in the international realm. The decline of the domestic analogy and the corresponding vision of the international sphere as essentially lawless lead to unilateralism—making up specific rules to suit specific interests in specific circumstances. Ronald Reagan saw the world as a place radically unlike home, a place where the effort to apply general rules could only handicap some nations—the good nations—at the expense of others.<sup>94</sup> This was a challenge to the very core of multilateralism. Conversely, however, the current proliferation of at least would-be liberal democracies should resurrect and recreate a host of multilateral institutions.

In sum, the meaning of multilateralism has much to do with the meaning of law. John Maynard Keynes once had occasion to praise the

role of lawyers in building an important part of the postwar multilateral order. In moving the final act of the Bretton Woods conference, he offered the following toast:

And for my own part, I should like to pay a particular tribute to our lawyers. All the more so because I have to confess that, generally speaking, I do not like lawyers. I have been known to complain that, to judge from results in this lawyer-ridden land, the *Mayflower*, when she sailed from Plymouth, must have been entirely filled with lawyers. . . . Too often lawyers busy themselves to make common sense illegal. Too often lawyers are men who turn poetry into prose and prose into jargon. Not so our lawyers here in Bretton Woods. On the contrary they have turned our jargon into prose and our prose into poetry. And only too often they have had to do our thinking for us. We owe a great debt to Dean Acheson, Oscar Cox, Luxfor, Brenner, Collado, Arnold, Chang, Broches, and our own Beckett of the British Delegation. I have only one complaint against them which I ventured to voice yesterday in Commission II. I wish that they had not covered so large a part of our birth certificate with such very detailed provisions for our burial service, hymns, and lessons, and all.<sup>95</sup>

May lawyers prove equally adept at recovering the deeper meaning of the institution of law.

## NOTES

1. All references to multilateralism in this article refer to the generic institutional form defined by Ruggie in the introduction to this volume: "an institutional form which coordinates relations among three or more states on the basis of generalized principles of conduct: that is to say, principles that specify appropriate conduct for a class of actions, without regard to the particularistic interests of the parties or the strategic exigencies that may exist in any specific occurrence."
2. The best overview of important legal scholarship on international organization in the 1950s and early 1960s is contained in an International Law Commission report commissioned by the General Assembly on the relations between states and intergovernmental organizations. The report was commissioned in 1958, issued in 1963, and revised in 1967. Abdullah El-Erian, a leading international legal scholar, was the special rapporteur. El-Erian, "Relations Between States and Inter-Governmental Organizations," *Yearbook of the International Law Commission* (1963), 2:159 (hereafter referred to as ILC Report). For a comprehensive multilingual bibliography of international law "treatises, textbooks, and primers" on this subject prior to 1950, see L. Sohn, *Cases and Other Materials on World Law* (Brooklyn: Foundation Press, 1950), p. 1. More

recent bibliographies can be found in J. P. Baratta, *Strengthening the United Nations: A Bibliography on U.N. Reform and World Federalism* (New York: Greenwood Press, 1987) and Michael Haas, *International Organization: An Interdisciplinary Bibliography* (Stanford, Calif.: Hoover Institution Press, 1971).

Legal analyses of the form of multilateral institutions have generally produced typologies distinguishing between types of institutions on the basis of type of membership (universal versus closed), specific function (judicial, governmental, administrative, and legislative), and so forth, depending largely on the classificatory imagination of the author. See, e.g., Georg Schwarzenberger, *A Manual of International Law*, 5th ed. (New York: Praeger, 1967).

3. Wolfgang Friedmann, *The Changing Structure of International Law* (New York: Columbia University Press, 1964).
4. *Ibid.*, p. xli (emphasis added). Recognition of the link between the growth of international organizations and the emergence of individuals as subjects of international law in their own right is widespread. See, e.g., Higgins, "Conceptual Thinking about the Individual in International Law," *New York Law School Law Review* (1978), vol. 24; Janis, "Individuals as Subjects of International Law," *Cornell International Law Journal* (1984), vol. 17; L. Sohn, "The New International Law: Protection of the Rights of Individuals Rather Than States," *American University Law Review* (1982), vol. 32; L. Henkin, "International Human Rights as 'Rights,'" *Cardozo Law Review* (1979), vol. 1.
5. W. Jenks, *The Common Law of Mankind* (New York: Praeger, 1958), pp. 8, 17.
6. L. Henkin et al., *International Law, Cases and Materials*, 2d ed. (St. Paul, Minn.: West Publishing Co., 1987), p. xli.
7. See Friedmann, *The Changing Structure of International Law*, p. 60.
8. *ILC Report*, p. 163.
9. See Lord McNair, "The Functions and Differing Legal Character of Treaties," *British Year Book of International Law* 11 (1930), reprinted in McNair, *The Law of Treaties* (Oxford, England: The Clarendon Press, 1961), p. 740; Manfred Lachs, "Le Developpement et les Fonctions des Traités Multilatéraux," *Revue De Cours* 92 (1957).
10. Derek Bowett, for instance, attributes the development of international organization prior to World War II to increasing international intercourse, a development that he in turn describes as "a constant feature of maturing civilizations," a combination of "advances in the mechanics of communications . . . [and] the desire for trade," producing "a degree of intercourse which ultimately called for regulation by institutional means." *The Law of International Institutions* (London: Praeger, 1963), p. 1. A more recent account by a leading Dutch scholar concurs, relating the devolution of power to the international level to technological change. Henry G. Schermers, *International Institutional Law*, 2d ed., (Amsterdam: Sijthoff & Noordhoff, 1981), p. 8. Other factors include three important technical innovations that are said to have supported a new institu-

tional superstructure: multilateral treaties, the regularization of international intercourse through the institutionalization of periodic international meetings, and the creation of permanent secretariats. On the emergence of the multilateral treaty as an instrument of diplomacy in the Congress of Vienna, see Lord McNair, "The Developpement et les Fonctions des Traites Multilateraux," p. 238 Lachs, "Le Developpement et les Fonctions des Traites Multilateraux," p. 238 n. 5; Harold Nicolson, *The Congress of Vienna: A Study in Allied Unity: 1812-1822* (New York: The Viking Press, 1961), pp. 240-243; and Sir Charles Webster, *The Congress of Vienna: 1814-1815* (New York: Barnes & Noble, Inc., 1969), pp. 98-102.

11. Friedmann, *The Changing Structure of International Law*, p. 8.

12. *Ibid.*

13. I. Claude, *Swords Into Plowshares* (New York: Random House, 1956), pp. 87-88.

14. *Ibid.*, p. 88. Later legal scholars have often reversed this causal sequence, assuming that the transformation of international law was a secular trend, which then affected domestic politics. For instance, Professor Louis Henkin and his co-authors describe the postwar multilateral order as responsive to the "needs of an international society." Global communication and interdependence combined with the rise of global security, population, and environmental problems "no longer permit an international attitude of laissez-faire." Henkin et al., *International Law*, p. xlii. This society apparently evolves according to its own logic and momentum, focusing less on "interstate diplomatic norms" and instead "deeply penetrat[ing] the economic and social fabrics of national life." *Ibid.*, p. xliii. See also Lachs, "Le Developpement et les Fonctions des Traites Multilateraux," p. 240; Schermers, *International Institutional Law*, p. 4; J. G. Starke, *An Introduction to International Law*, 8th ed. (London: Butterworths, 1977), pp. 10-15. These scholars have apparently lost access to the original story told by Friedmann and others and thus treat the international law of cooperation as self-generating.

15. John Gerard Ruggie, "International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order," *International Organization* (Spring 1982), 36:379, 388. Albert Hirschman has similarly documented the "export" of the Keynesian Revolution from the United States around the world. Hirschman, "How the Keynesian Revolution Was Exported from the United States, and Other Comments," in Hall, ed., *The Political Power of Economic Ideas: Keynesianism Across Nations* (Princeton: Princeton University Press, 1989), pp. 347-359. Hirschman, however, is chronicling the export of a substantive U.S. policy to other nations for adoption as domestic policy.

16. See Asa Briggs, "The World Economy: Interdependence and Planning," in C. L. Mowat, ed., *The New Cambridge Modern History*, vol. 12 (Cambridge, England: Cambridge University Press, 1968); William E. Leuchtenburg, *Franklin D. Roosevelt and the New Deal: 1932-1940* (New York: Harper Torchbooks,

1963), pp. 326-348; Richard Hofstadter, "The New Deal and the New Opportunism," in Alonzo L. Hambly, ed., *The New Deal, Analysis and Interpretation* (New York: Weybright and Talley, 1969), pp. 185-209, especially p. 191.

17. "The Third American Revolution," reprinted in Hambly, *The New Deal, Analysis and Interpretation*, p. 179.

18. Richard Gardner, *Sterling-Dollar Diplomacy in Current Perspective: The Origins and Prospects of International Economic Order*, rev. ed. (New York: Columbia University Press, 1980), pp. 71-77.

19. *Postwar Foreign Policy Preparation, 1939-1945*, Department of State Publication 1 (Washington, D.C.: 1949). This is virtually a step-by-step account of every initiative, committee meeting, report, or speech by U.S. government officials relating to all questions concerning the postwar international order.

20. *Ibid.*, p. 20.

21. *Ibid.*, p. 58. On May 5, 1941, Senator Elmer Thomas of Utah introduced a Senate resolution to authorize the Committee on Foreign Relations to make a fully study of all matters pertaining to the establishment of a lasting peace throughout the world. S. Res. 110, 77th Cong., 1st sess., *Congressional Record*, (May 5, 1941), 87:3551. This initiative occasioned correspondence between the Foreign Relations Committee and the State Department concerning the postwar planning process. See *Postwar Foreign Policy Preparation*, pp. 46-47.

22. The full Committee eventually included eleven members from the Department of State, three members from the War and Navy Departments and the Joint Chiefs of Staff, four members from other government Departments, three members from the White House staff, one from the Library of Congress, four from the wartime agencies, one from the continuing agencies of the Government, five Senators and three Representatives, and ten members from private life. *Ibid.*, p. 72.

23. *Ibid.*, p. 63.

24. These were the Subcommittee on Economic Reconstruction, the Subcommittee on Economic Policy, the Subcommittee on Political Problems, the Subcommittee on Territorial Problems, the Subcommittee on Security Problems, and the Subcommittee on Coordination.

25. The Advisory Committee never resumed operation as originally constituted but splintered into a variety of subsidiary structures in response to the emergence of specific and immediate problems. The two economic subcommittees had already been reconstituted as the Committee on Post-War Foreign Economic Policy, which had been in turn subdivided into twelve subcommittees on a wide range of economic issues. For a detailed list, including committee and subcommittee membership, see *Postwar Foreign Policy Preparation*, appendix 25. On the political side, a group known as the Informal Agenda Group took over policy coordination directly under the aegis of the Secretary.

26. To facilitate more detailed preparations along these lines, the State Department reshuffled again in January 1944 and created two superior commit-



tees directly under the Secretary: the Policy Committee to consider immediate policy questions and the Post-War Programs Committee to aid the Secretary "in formulating post-war policies and making the appropriate international arrangements for their execution." *Ibid.*, p. 208.

27. See *Ibid.*, p. 167.

28. According to Robert Rabin, New Deal regulatory efforts were premised on the belief that "comprehensive government intervention was not only a useful corrective but an essential ingredient for maintaining a general state of equilibrium in the economy." Rabin, *Federal Regulation in Historical Perspective*, Stanford Law Review (1986), 38:1248. The translation of this precept into actual programs soon began to condition public expectations of and reliance on the government as a "guarantor" of a certain minimum standard of living. *Ibid.*, p. 1253.

29. Address to Congress, January 3, 1940, H. Doc. 528, 76th Cong., 3d sess., serial vol. 10501.

30. Statement, January 1, 1940, *Department of State Bulletin*, II, 11.

31. *Postwar Foreign Policy Preparation*, pp. 20-21.

32. *Ibid.*, p. 151.

33. *Department of State Bulletin*, X, 335-342.

34. *Ibid.*, XII, 321-326 and 361.

35. For a complete listing of all the members of these committees and subcommittees, see *Postwar Foreign Policy Preparation*, appendix 25.

36. See A. Schlesinger, *The Age of Roosevelt* (Boston, 1960). R. Moley, *After Seven Years* (New York: Harper & Brothers, 1939), pp. 365-376 (detailing the incoherence of New Deal economic policies due to the contradiction between the philosophy of "Concentration and Control" versus that premised on the "curse of bigness.")

37. Much of the legal debate about these institutions then and now turns on the constitutionality of combining constitutionally separated powers in an independent regulatory agency and of both usurping and shirking the powers granted the coordinate branches of government in the process. See, e.g., Cass Sunstein, "Constitutionalism After the New Deal," *Harvard Law Review* (1987), 101:491-500; Aranson, Gellhorn, and Robinson, "A Theory of Legislative Delegation," *Cornell Law Review* (1982), 68:63-67; Schoenbrod, "The Delegation Doctrine: Could the Court Give It Substance?" *Michigan Law Review* (1985), 83:1249-1274; Miller, "Independent Agencies," *Supreme Court Review* (1986), pp. 96-97.

38. For a complete list, see "Administrative Procedure in Government Agencies," Report of the Committee on Administrative Procedure, Senate, 77th Cong., Doc. No. 8, (Washington, D.C.: U.S. Government Printing Office, 1941), p. 10. See also Sunstein, "Constitutionalism After the New Deal," 424 n. 9; *ibid.*, *After the Rights Revolution: Reconciling the Regulatory State* (Cambridge, Mass.: Harvard University Press 1990), pp. 23-25; appendix C.

39. The National Recovery Act is the premier example of the corporatist approach during this period—an "ambitious attempt to fashion a social peace treaty between business and labor." D. Brand, *Corporatism and the Rule of Law* (Ithaca, N.Y.: Cornell University Press, 1988), p. 21. Competition had to be replaced by cooperation; the national economy was to be governed, not by the dictates of the market, but by "affirmative national planning" by business, labor, and government. Schlesinger, *The Age of Roosevelt*, p. 389. See also Ellis W. Hawley, *The New Deal and the Problem of Monopoly* (Princeton: Princeton University Press, 1966), p. 13; Barry D. Karl, "Constitution and Central Planning: The Third New Deal Revisited," *Supreme Court Review* (1988), p. 163. For a discussion of the peculiar failure of American-style corporatism, see Margaret Weir, Ann Shola Orloff, and Theda Skocpol, eds., *The Politics of Social Policy in the United States* (Princeton: Princeton University Press, 1988).

40. The hallmarks of this period are programs like the Works Progress Administration (WPA) and social security. From an economic perspective the emphasis shifted from control of supply to stimulation of demand. From a social-political perspective, the government became relatively less concerned with restoring business confidence and more with guaranteeing minimum individual protections. At the same time, on the business side, the Second New Deal also heralded what Schlesinger describes as a transition from a "managed to a mixed economy: the one tried to convert business through new institutions, the other tried to discipline it through new laws." Schlesinger, *The Age of Roosevelt*, p. 392.

41. The SEC, established in 1934, or the Public Utility Holding Company Act of 1935 fall into this category. More technical regulatory agencies such as the Marine Administration, the Civil Aeronautics Authority, and the Federal Communications Commission also flourished.

42. Rabin, *Federal Regulation in Historical Perspective*, p. 1252. For a general discussion of how all these strategies overlapped, see *ibid.*, pp. 1243-1253.

43. *Postwar Foreign Policy Preparation*, p. 151.

44. *Ibid.*, p. 208.

45. *Ibid.*, pp. 143, 208.

46. *Ibid.*, p. 133.

47. *Ibid.*, pp. 235-236.

48. *Ibid.*, p. 101.

49. *Ibid.*, p. 133.

50. *Ibid.*, p. 342.

51. *Ibid.*, p. 339.

52. *Ibid.*, p. 354.

53. *Ibid.*, p. 358. For an expanded discussion of the purposes such organizations were intended to serve, see the memorandum titled "Bases of Our Program for International Economic Cooperation," submitted by Secretary Hull at the Moscow Conference on October 20, 1943. *Postwar Foreign Policy Pre-*

- paration, appendix 30; see also "Statement of the Problem and Summary of the Issues and Recommendations on International Commodity Preparation" (April 4, 1944), *ibid.*, appendix 44; "Summary of the Interim Report of the Special Committee on Relaxation of Trade Barriers" (December 8, 1943), *ibid.*, appendix 45; "Summary: Tentative Program for Dealing with International Carrels" (May 29, 1944), *ibid.*, appendix 46; "Proposals for Consideration by an International Conference on Trade and Employment" (November 1945), *ibid.*, appendix 47.
54. *Ibid.*, p. 354–355.
55. The full record of the substance of all the discussions merely described in *Postwar Foreign Policy Preparation* is newly available from the National Archives. These documents have recently been made available as a collection of more than 5,000 microfiche under the title *Post World War II Foreign Policy Planning*. The collection reproduces Record Group 59 at the National Archives and is available from University Press of America.
56. *Postwar Foreign Policy Preparation*, appendix 44, p. 621.
57. *Ibid.*, appendix 45, p. 624.
58. *Ibid.*, appendix 46, p. 625.
59. *Ibid.*, appendix 47, p. 627.
60. See Barry Karl, *The Uneasy State* (Chicago: Chicago University Press, 1983), pp. 155–164.
61. *Ibid.*, p. 163.
62. Brand, *Corporatism and the Rule of Law*, 313.
63. *Ibid.* See also Barry Karl, *Executive Reorganization and Reform in the New Deal* (Chicago: Chicago University Press, 1963).
64. Ruth B. Russell and Jeannette E. Muther, *A History of the United Nations Charter: The Role of the United States 1940–1945* (Washington, D.C.: The Brookings Institution, 1958), p. 66. See also *Postwar Foreign Policy Cooperation*, p. 143 (In 1943 Roosevelt "favored . . . the establishment of entirely separate functional agencies in the economic field.").
65. *Ibid.*, p. 271.
66. State of the Union Address, January 6, 1945, *Department of State Bulletin*, XII: 27.
67. Charles S. Maier, "The Politics of Productivity: Foundations of American International Economic Policy after World War II," *International Organization* (1977), 31:607.
68. Sunstein sees the New Deal "reformation" as having a substantive as well as an institutional component, involving an assault on the common law as a reflection of the *laissez-faire* status quo. Sunstein, "Constitutionalism after the New Deal," pp. 508–509.
69. Mitrany, "The Prospect of Integration: Federal or Function," in Paul Taylor and A. J. R. Groom, eds., *Functionalism: Theory and Practice in International Relations* (New York: Crane, Russak & Co., 1975), p. 67.
70. David Mitrany, *A Working Peace System*, 4th ed. (London: National Peace Council, 1946), p. 3.
71. *Ibid.*, pp. 29–30.
72. *Ibid.*, p. 30.
73. It is also possible that U.S. policymakers envisioned that international organizations could be used to circumvent the problems of sovereignty just as domestic administrative organizations had succeeded in circumventing the checks on effective action imposed by the constitutionally mandated separation of powers. Within the American constitutional framework, the new regulatory institutions were all designed to liberate the policymaking process from many of the checks and balances so carefully inserted by the Framers. The premise for such a departure was that the problems facing the nation could be solved only within a "system of centralized and unified powers," elevating the national government over the states and the Presidency over the courts and Congress. Sunstein, *After the Rights Revolution*, p. 23.
- A similar conclusion could have been drawn in the face of the checks and balances of the sovereign state system. It is arguably a sign of the thinking of the time that the celebrated realist Hans Morgenthau drew precisely this analogy, comparing the checks and balances written into the U.S. Constitution and with those automatically operating by virtue of the balance of power among independent sovereigns in the international system. Hans J. Morgenthau, *Politics Among Nations* (New York: Knopf, 1948), pp. 126–129. Morgenthau, of course, saw great merit in these constraints in both contexts, as a safeguard both of the stability of the systems and the "autonomy of their constituent elements." New Deal policymakers and postwar planners would have been less conscious of these virtues.
74. Mitrany, *A Working Peace System*, p. 5.
75. Mark F. Imber, *The USA, ILO, UNESCO and IAEA* (New York: St. Martin's Press, 1989), pp. 15–16; Douglas Williams, *The Specialized Agencies and the United Nations* (New York: St. Martin's Press, 1987), p. 2; Hidemi Suganami, *The Domestic Analogy and World Order Proposals* (Cambridge, England: Cambridge University Press, 1989), p. 120.
76. *Department of State Bulletin*, (May 22, 1943), 8:455–456.
77. *Postwar Foreign Policy Preparation*, p. 163.
78. *Ibid.*, p. 356.
79. John Gerard Ruggie, "Multilateralism: The Anatomy of an Institution," in this volume.
80. See the account of the questions posed by U.S. planners discussed above.
81. See Ruggie, "International Regimes, Transactions, and Change," p. 382, on the ability of power to dictate "the form of the international order, but not its content." In this view, content instead flows from fusion of power with social purpose.
82. For a systematic elaboration of the "liberal paradigm" in international

relations theory, isolating and explaining the differences in substantive assumptions and methodological approaches between realists and liberals, see Andrew Moravcsik, "Liberal Internationalism and International Relations Theory" (working paper presented at the University of Chicago Program on International Politics, Economics, and Security, January 1992).

83. *Postwar Foreign Policy Preparation*, p. 79.

84. State of the Union Address, January 6, 1941, H. Doc. 1, 77th Cong., 1st sess., serial vol. 10598. The Atlantic Charter, signed in August 1941, proclaimed these principles to the world, explicitly incorporating "freedom from fear" and "freedom from want," and according to Roosevelt, implicitly including freedom of speech and of religion. See *Postwar Foreign Policy Preparation*, pp. 50–51.

85. F. D. Roosevelt, "Economic Bill of Rights" (1944), reprinted in Walter Laqueur and Barry Rubin, eds., *The Human Rights Reader* (New York: New American Library, 1979), p. 269.

86. For the classic explication of this process, see Edward Levi, *An Introduction to Legal Reasoning* (Chicago: University of Chicago Press, 1949), particularly pp. 1–8.

87. Holmes, "The Liberal Idea," *The American Prospect* (Fall 1992), p. 89.

88. For a description of early Western European proposals for a series of bilateral trade and defense agreements, see the accounts by Ruggie, "Multilateralism: The Anatomy of an Institution" and Steve Weber, in this volume.

89. Steve Walt has shown that revolutionary regimes are far more likely to see the world through the lens of their domestic experience. Walt, "Revolution and War," *World Politics* (April 1992), vol. 44, no. 2.

90. Holsti, "Governance without Government," cited in Ruggie, this volume, note 55.

91. For an excellent recent study of the role of the domestic analogy in major international reform efforts from Napoleon to the present, see Hidemi Suganami, *The Domestic Analogy and World Order Proposals*. Suganami advances very similar arguments about the importance of the post-New Deal domestic analogy. See pp. 118–120.

92. Charles Schulze, *The Public Use of Private Interest* (Washington, D.C.: Brookings Institution, 1977), pp. 7–12; see also Sunstein, *After the Rights Revolution*, pp. 24–30.

93. Thomas K. McCraw, *Prophets of Regulation* (Cambridge, Mass.: Harvard University Press, 1984), p. 303.

94. For the most concise and pungent exposition of this view, see Robert Bork, "The Limits of 'International Law,'" *The National Interest*, (Winter 1989/90), no. 18, p. 3.

95. I *Proceedings and Documents of the United Nations Monetary and Financial Conference*, Bretton Woods, N.J., July 1–22, 1944, 1109 (1944).