Pathways to Fulfillment of Commitments in US Foreign Policy

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In international politics, no world government exists to enunciate binding rules, adjudicate their application, or enforce them on recalcitrant states. State sovereignty means that states can make legally binding commitments, but it also implies that they can renege on these commitments, since no more inclusive government exercises enforcement powers over sovereign states. Despite the absence of assured enforcement, however, states frequently make legally binding agreements with one another, and have entered into hundreds of multilateral agreements.

It is not surprising that states are willing, in return for benefits received from others, formally to commit themselves to take future actions that may be costly, or to refrain from behavior that could be profitable. Commitments, after all, are a major currency of influence in foreign policy. Promises of future action by one state may lead others to cooperate with it.

It may seem more puzzling that states' commitments are frequently accepted by the states to which they are directed. Unlike domestic legal contracts, international commitments cannot be enforced by recourse to a hierarchical legal system able to call upon effective means of authority. In the absence of credible centralized enforcement, reneging on commitments remains possible; governments contemplating entering into agreements will have to reflect on the probability of reneging by their partners, and its costs to them. Hence questions of ex post fulfillment of commitments, and issues of their ex ante credibility, are closely connected to one another, and together constitute what I call the "commitment problem."

I. Approaches to Studying Commitments

One way to address the commitment problem would be to use game-theoretic models. Under what conditions would rational players make, accept, and fulfill commitments? Since players in these models are forward-looking, issues of credibility would be central. A central insight to build on would be that commitments, to be credible, need to be costly. Hence one

possible approach would be to devise conditions for separating equilibria, which would distinguish commitment-makers who would fulfill even costly commitments from opportunists who would not. Such an analysis could be theoretically fruitful in identifying key conditions for making, and complying with, commitments. Such thinking has already helped identify methodological issues, such as those of selection bias. A game-theoretic analysis along these lines might very well be worthwhile, when done by someone with the right combination of technical skill and sensitivity to these issues. However, care would have to be taken so that the assumption of unitary rationality was not made in such a way as to truncate the issues, missing some of the most significant points. Since commitments may affect interests, it would be important to avoid assuming that interests are exogenous. Domestic political institutions would have to be taken into account.

A second approach would be inductive and behavioral, seeking through systematic empirical analysis of a particular domain to answer the question, "under what conditions are agreements kept?" For instance, once could seek to discover the conditions under which the United States has kept, or reneged, on its commitments during the course of its history. Plausible but essentially ad hoc hypotheses could be put forward, and their observable implications examined. The investigator would search for evidence of tendencies that would support probabilistic generalizations, rather than deterministic laws.

The key obstacle to successful execution of this approach is selection bias. The issues on which political actors have considered reneging on their commitments are inherently the most interesting, and they tell us the most, descriptively, about the processes involved in commitment-keeping or commitment-breaking: what I call the "pathways" to recommitment or reneging. But to choose only contested commitments is to select a set of cases that is biased against fulfillment of commitments, since situations in which commitments were publicly unquestioned would be omitted

from the set.[1] It is imaginable that one could examine all commitments in a large set, even though most were not contested. But such a set would be biased **in favor of fulfillment**, since situations where fulfillment was perceived as unlikely ex ante would not have led to commitments in the first place, and would therefore be excluded. To solve the problem of selection bias, one would have to examine all **potential** commitments in a given domain, which would require strictly narrowing the set of cases to be examined. Hence, adopting this approach would involve a tradeoff of breadth and relevance for methodological rigor.

Both of these approaches are potentially valuable: indeed, a theoretically and empirically rigorous study of commitments would have to combine them. Yet successful implementation of such a research strategy would benefit from a prior analysis that described states' responses to a wide range of foreign policy commitments, and that explored some of the patterns that appear in such an analysis. I have sought to carry out such a study. Specifically, I have examined the most prominent cases of contested commitments in United States foreign policy, between 1778 and 1989. Based on the knowledge thereby gained, what I seek to do is to **identify the causal mechanisms by which commitments may be enforced, or rendered self-enforcing**. What are the processes by which commitments, even when contested, are nevertheless kept; or by which commitments are prevented from being contested in the first place? Only if we understand the range of causal mechanisms involved, can we go further to formulate hypotheses about the conditions under which one or another mechanism applies, and to test those hypotheses in an appropriate domain.

Jan Elster has expressed a justification for this emphasis on mechanisms rather than laws: "The social sciences can isolate tendencies, propensities and mechanisms and show that they have implications for behavior that are often surprising and counterintuitive. What they are more rarely able to do is to state necessary and sufficient conditions under which the various mechanisms are

switched on."[2] My task is to understand **how** fulfillment takes place. What is the "repertoire" of practices that lead to fulfillment of commitments? In this analysis I leave aside the issue of the conditions under which each causal mechanism is employed, hoping that the preliminary analytical framework in this article will lead others to explore that question with more systematic research designs.

II. Pathways to Fulfillment: Exogenous Interests

The problem of fulfillment of commitments can be seen as reflecting the relationship between the commitments of a state and its interests. In this "first cut" at the analysis of commitment problems, the state is viewed as a single set of institutions responding both to domestic politics and international strategic considerations, and interests are exogenous to commitments.[3] When agreements are made, the commitments entailed in them are justified by the benefits to be received, principally as a result of one's partners fulfilling commitments that they have made. Hence interests explain commitments. Viewed in this way, the commitment problem can be analyzed by ascertaining how commitments become "inconvenient," and then addressing the pathways through which such inconvenient commitments might still be fulfilled.

A. How Commitments Become Inconvenient

Such commitments have become "inconvenient" to the United States, hence contested, for four principal reasons, all of which are illustrated by situations occurring during the first century of United States independence.

First, there may be an adverse change in the situation, so that keeping the commitment no longer seems in one's own interest. For instance, the initiation of war between Britain and France in the winter of 1793 suddenly increased the costs to the United States of its promises to France in 1778 to defend French territories in North America and to give France certain privileges in U.S.

ports. Indeed, Alexander Hamilton argued that the revolution in France permitted the United States to renounce the treaties if their continuance was "contrary to the interests of the United States," and that in fact, U.S. interests required that the treaties be suspended.[4]

A second way in which commitments may become inconvenient is that a new government may come into power. In 1818 and 1827 the United States had made conventions with Great Britain governing the Oregon Territory. However, in 1844 James K. Polk successfully won the Presidency on the slogan, "Fifty-four forty or fight," which was later characterized by the British historian, A. F. Pollard, as "possibly the crudest as well as the crispest expression of international relations to which democracy ever gave utterance."[5] The Democrats thus demanded all of the Oregon Territory, to the border with Russian Alaska, for the United States.[6] The ensuing crisis was ultimately settled in May of 1846 by mutual acceptance of the 49th parallel as the basic dividing line but with a provision giving all of Vancouver Island to Britain.

A third process leading to a contested commitment involves increases in U.S. power, making earlier bargains seem less desirable. Such was repeatedly the story of U.S. commitments to Native Americans to let them occupy particular plots land "as long as the grass grows." As an old Sioux is reported to have said in 1891 of U.S. government representatives, "They made us many promises, more than I can remember, but they never kept but one; they promised to take our land and they took it."[7] Similar practices were engaged in by the United States toward Spain and Mexico. In 1810, for instance, the increasingly powerful United States no longer looked with favor on its agreement of 1795 with Spain, which left ports of the Gulf Coast, such as Mobile, in Spanish hands. Spain, weakened by the Napoleonic Wars, was in no position to resist U.S. occupation of that area. Or as Sam Houston expressed his view toward Mexico in 1848: "From the first moment [your ancestors] landed they went on trading with the Indians and cheating them out of their lands.

Now the Mexicans are no better than the Indians, and I see no reason why we should not go on the same course now, and take their land."[8] Alexis de Toqueville presumably had the increasing power of the United States in mind when he commented in 1835 that "the limits of separation between [Mexico and the United States] have been settled by treaty; but although the conditions of that treaty are favorable to the Anglo-Americans, I do not doubt that they will shortly infringe it."[9]

Finally, the passage of time may lead to a situation in which the other side has fulfilled its side of the bargain, but one's own commitment remains. The Clayton-Bulwer Treaty of 1850, which committed the United States (without limit of time) not to build a canal across the Central American isthmus without British consent, is a good case in point. When the treaty was negotiated, Britain exercised a protectorate over the Mosquito Indians on the Pacific Coast of Nicaragua, blocking the canal route that was then projected; but in 1859, Britain gave up that protectorate. By the 1880s, the American commitment had become inconvenient for the United States: it had the interest and the means to build a canal, but the treaty continued to prohibit it from doing so without British consent. In 1881, the House Foreign Affairs Committee declared that European governmental involvement in building a Isthmian canal would be unacceptable and called on the President to take "the steps necessary and proper" to abrogate any "existing treaties," referring of course to Clayton-Bulwer, although the House adjourned without debating this resolution.[10] In 1884 the lame-duck Arthur Administration negotiated the Frelinghuysen-Zavala Treaty with Nicaragua, which conflicted with the Clayton-Bulwer treaty, and eventually, in 1901, the United States and Britain concluded the Hay-Pauncefote Treaty, which authorized the United States to build the Panama Canal.[11]

Once a commitment has been contested, it may be broken, renegotiated, or reaffirmed. After Jefferson ceased being Secretary of State, the United States broke its alliance ties to France,

leading to the Quasi-War between these two countries (1798-1800); as noted, commitments to Indian tribes, Spain and Mexico were also broken in the Nineteenth Century. The United States commitments to Great Britain with respect to Oregon and a canal across Central America were renegotiated, under threat of abrogation by the United States. But, as we shall see, other commitments have been reaffirmed after contestation. In these latter cases, causal pathways existed linking some set of processes to the fulfillment of contested commitments.[12] Absent such a causal pathway for fulfillment, we should expect the United States to renege on commitments that have become inconvenient. Hence, our attention in this article is on how these causal pathways operate.

B. Exogenous Interests and State Action: Three Pathways

Treating interests as exogenous to commitments, and ignoring domestic institutions that could veto attempts to renege, there seem to be three pathways by which commitments may be kept.

Pathway 1. Interests. Governments may fulfill commitments because they perceive an interest in coordinating their actions with others. Such situations could be pure assurance games, in which both partners receive their most preferred outcomes. But they could also be coordination games, which are less harmonious -- as long as they have converged on an equilibrium, or "focal point." Issues that are characterized by coordination games are diverse: they may include specification of territorial boundaries, which language is to be spoken by airline pilots and air traffic controllers, how radio spectra for telecommunications will be allocated, or what procedures will be used for the resolution of commercial disputes. Before agreement is reached, potential coordination situations are highly varied; and there is no implication that observed agreements maximize potential benefits. What coordination games have in common, however, is that they are self-enforcing: once agreement on how to coordinate policy is reached, no party has an incentive unilaterally to renege.[13] Ex ante, states negotiating an agreement may believe that it will constitute an equilibrium of an

assurance or coordination game, from which neither side has an incentive to defect. In such a situation, they may rationally make international commitments that they intend to fulfill, despite the absence of institutions that can enforce the terms of these agreements.

Pathway 2. Reciprocity

States seeking to enforce others' commitments toward them can threaten to retaliate, directly or indirectly, against nonfulfillment. When the target state is weak, the transaction costs of unilateral enforcement may be relatively low and such employment of reciprocity may well be effective. Hence power and reciprocity may provide reasons for fulfillment even of costly commitments, and justifications for states that are strong relative to their partners to enter into commitments.

The Trent Affair, during the first year of the American Civil War, provides a good example. In November, 1861, a Union naval vessel seized James Mason and John Slidell, veteran American diplomats turned confederate agents, from the deck of the British mail steamer Trent. The captain of the warship had acted without the authorization of the United States Government, but was treated as a hero by the Union press and public. When word reached Britain of the episode, Prime Minister Palmerston demanded the liberation of the captured agents, their delivery to the British Minister, and an apology for the insult offered to the British flag. The Lincoln Administration was in an awkward position. Since the action of its warship was in violation of the principle of the neutrality of neutral vessels from search, a principle long upheld by the American Government, the United States was in a weak political and legal position.[14] The British threat was credible because it was based not only on international law but on the principle of "British interests" -- the British flag must be a credible safeguard for all passengers[15] -- and above all, because the United States, weakened by secession, could hardly afford war with the greatest naval power on earth. The United States

acceded to British demands.

The reliance of reciprocity on power is, of course, the flaw in this commitment pathway. Even the best-developed rules of international regimes could not effectively protect the weak against reneging by the strong. For instance, when the United States imposed an embargo on Nicaraguan sugar in the early 1980s, a GATT panel ruled that Nicaragua was authorized to impose sanctions in retaliation against the United States; but since Nicaragua was attempting to maintain its access to US markets, rather than to restrict it, such permission was sorry comfort indeed.[16] Reciprocity per se offers little incentive for powerful states to keep their commitments to weak ones. At the fulfillment stage of the process, therefore, the advantages seem to be overwhelmingly on the side of the powerful: they can use the power-reciprocity pathway to enforce fulfillment of their partners' commitments, but their partners cannot do the same.

However, at the earlier stage of the process -- deciding whether to make commitments in the first place -- its very power can be a liability for a strong state. The power of the strong reinforces the credibility of their weaker partners' promises and undermines the credibility of their own. Ex ante, the weak states benefit from others' ability to enforce their promises: in anticipation of such enforcement, weak states' commitments gain credibility. But a great power's promises are inherently less credible, since its prospective partners recognize that they cannot enforce fulfillment of its commitments. Hence they must devalue its promises to some extent, to take into account the chances that it may opportunistically renege on its pledges. Unless weaker states perceive little choice in the matter, they may be reluctant to enter agreements with great powers, or may at least demand better terms to compensate for the credibility shortfall.

The result is a **commitment paradox**: being very powerful relative to other states can undermine the credibility of a state's own commitments, and therefore the value of these

commitments in negotiations. The commitment paradox has bad consequences both for the weak and for the strong: for the weak, since they cannot rely on the strong to fulfill their promises, and for the strong, since the value of their promises is undermined by their lack of credibility. Resolving the paradox can therefore lead to Pareto-improving results for both sides.

The commitment paradox has an analog in domestic law. If governments could not be sued, their promises would be less credible; hence, states operating under a rule of law provide that citizens can take the government to court and, if successful, receive a binding judgment. The "right to be sued" is valuable to the governments, because it makes their promises credible. During the Nineteenth Century, the pathway of reciprocity explains very well the fulfillment and nonfulfillment of major contested United States foreign policy commitments. Contested commitments of the United States with Great Britain, a powerful state throughout the period, were not flagrantly violated, but were renegotiated, often under severe pressure from the United States. In sharp contrast, U.S. contested commitments with Native American tribes, Spain, Mexico, and China were flagrantly breached. U.S. commitments with France were maintained while Jefferson was in office, then progressively broken under the pressure of France's war with Great Britain, which controlled the seas and therefore had much greater economic and military leverage over the United States. U.S. commitments to Japan on immigration were treated more seriously than comparable commitments to China, which was less powerful; but were finally broken unilaterally in 1924.

Pathway 3. Reputation

Classic accounts of bargaining emphasize the importance of the reputations that states develop.[17] In this view, reputation is like a "capital asset" for political leaders, establishing credibility that can be used for a wide variety of purposes. As noted below, this intuitively

emphasis on reputation has come to play a central role in game-theoretic accounts of bargaining.

Since I will emphasize reputation in this article, it is important to acknowledge that behavior that I will interpret as oriented toward reputation-building can be interpreted in a very different way: as norm-following.

States could fulfill commitments due to their leaders' adherence to moral principle. Indeed, leaders often claim that they are acting on the basis of the highest principle. However, the self-serving nature of such claims for virtue, and the inconsistency of state practice, has made observers and practitioners skeptical of them over the millennia. Even in retrospect, it is virtually impossible to disentangle genuine morality from instrumental concern for reputation, since the incentive to feign morality is so pervasive. Furthermore, leaders -- virtuous or not -- have competing moral obligations: in a time of troubles, their obligations to their own constituencies may seem morally as well as politically to outweigh their obligations to keep their international promises. One of the most idealistic of American leaders, Thomas Jefferson, wrote that "compacts between nation & nation are obligatory on them by the same moral law which obliges individuals to observe their compacts," but he also he held obligations -- in particular, the United States promise to defend French territories in North America -- to be suspended in times of imminent danger.[18]

Sophisticated normative arguments, however, do not hold that standards of universal morality govern state behavior, but that norms operate through a "logic of appropriateness." "Actors may ask themselves, 'What kind of situation is this?' and 'What am I supposed to do now?' rather than 'How do I get what I want?'"[19] From an observational standpoint, however, it may be difficult to disentangle these two motivations when acting in conventionally appropriate ways is conducive to getting what one wants. Indeed, valuable reputations are often reputations for behaving in normatively conventionally ways. Hence, whether norms are viewed in moralistic

terms, or in terms of appropriateness, it is difficult to separate moral from instrumental motivations.

Since theories of reputation are better-developed than those relying on norms, I follow the game theorists in focusing on reputation rather than morality or normative appropriateness as my third causal pathway. However, the closeness of reputational analysis to constructivists' emphasis on normative appropriateness should be recognized: seeking to maintain a reputation and behavior appropriately may be so closely connected that they are not even distinct in the minds of practitioners.

In repeated games of incomplete information, which seem particularly relevant to international relations, players must estimate the real preferences (or "types") of their partners, as well as how long the game will continue. In such games, a player's reputation reflects estimates by others that she has a certain set of preferences -- that she is of a given type. Pursuing this insight, a seminal article on reputation discusses the "chain store paradox," involving a monopolist whose reputation for fighting new entrants is at issue.[20] Here, and in much of the literature on deterrence, reputation varies along a dimension from toughness to weakness -- the issues concern both underlying **resolve** and the ability of states credibly to communicate their resolve to others.[21] If a continuing series of similar issues is expected to arise in the future, it may be sensible to expect that others' willingness to make mutually beneficial agreements with oneself will depend in part on one's reputation for keeping such agreements.

One argument for constructing international rules -- as in formal international agreements-- is that doing so may give states stronger reputational incentives to cooperate. It seems reasonable to anticipate that breaking explicit rules is likely to have more serious consequences for a state's reputation for keeping agreements than failing to meet vaguely defined expectations that others may have.

It is important to emphasize, however, that even works that emphasize the importance of reputation do not expect it to be an automatic guarantee of fulfillment. On the contrary, the game-theoretic work on reputation generally supports Philip Heymann's conclusion on this subject:

> "Still, the unhappy fact of the matter is that there is only a rough congruence between the self-interested dictates of reputation and the requirements of mutually beneficial patterns of coordination. The benefits of coordination frequently depend on trust that agreed freedom of action will be honored in spite of conflicting temptations. But the effects on reputation provide some basis for such trust only when a limiting set of conditions is met: any violation must be known, it must be known by a party whose reactions to the violation are important to the violator; and the expected cost to the violator must exceed the benefits of giving in to the conflicting temptation. Plainly, if we had to rely on reputation alone, the benefits of coordination would escape us in a myriad of situations involving either taking advantage of the secrecy of violations....or taking advantage of the relative weakness of the person who knows he has been denied the benefits of an agreed arrangement."[22]

With these arguments in mind, one should not expect states universally to place reliance on the commitment pathway of reputation. Indeed, their confidence in their partners' willingness to fulfill commitments should only be bolstered by consideration of reputation when the following conditions obtain:

1) Nonfulfillment is expected to be known to other states -- that is, to the "audience;"

2) The fulfillment/nonfulfillment situation is regarded by the audience as being similar to anticipated future situations involving that audience;

3) Members of the audience are expected to have both the capability to inflict costs on the nonfulfilling state in the future and incentives to do so.[23]

Unfortunately for those who would put great reliance on reputation, in world politics these conditions are often not met. Acts of reneging may not be widely known, particularly if the victim of the reneging does not have an incentive to reveal the fact or cannot credibly do so. It may be easy for the reneging state to differentiate the situation at hand from potential situations involving members of the audience.

A dramatic instance of such differentiation occurred at the peace conference in 1814 at Ghent between the United States and Great Britain. Britain, which had been allied with various Indian tribes, sought a definite and permanent boundary between the United States and Indian territories, a request that the US negotiators refused on the grounds that the population of the United States must have room to expand. The American negotiators sought to differentiate this aim (which entailed frequent breaking of commitments) from reneging on boundary agreements with European countries. "If this be a spirit of aggrandizement, the undersigned are prepared to admit, in that sense, its existence; but they must deny that it affords the slightest proof of an intention not to respect the boundaries between them and European nations, or of a desire to encroach upon the territories of Great Britain.... They will not support that [Great Britain] will avow, as the basis of their policy towards the United States, the system of arresting their natural growth within their own territories, for the sake of preserving a perpetual desert for savages."[24] In other words, reneging on commitments to "savages" was not to affect the United States reputation for keeping commitments to "civilized" powers.

Another problem for reputational arguments is that strong states are sometimes in the position of monopolists, who can compel others to deal with them regardless of the latter's concerns

about their willingness to comply with agreements. Once the United States became a great power, and particularly after it became hegemonic in areas outside of Soviet and Chinese spheres of control, other countries could not avoid dealing with it. The US was "the only game in town," and even if its reputation suffered from its nonfulfillment of commitments, as in Latin America, other governments had little choice but to continue to make agreements with it.

Finally, there are reputations and reputations. Governments may value reputations for toughness or even for being willing to bully weaker states, more than they value reputations for compliance with commitments. By intervening in the Caribbean during the 1960s and 1980s the United States maintained a reputation for toughness, whether against pro-communist rulers or detested dictators, while foregoing an opportunity to forge a reputation for fidelity with commitments.

It seems clear that rational leaders would not place their faith in reputation as a secure guarantee that commitments will be fulfilled under all conditions. On the other hand, it makes sense that under some conditions taking into account reputational effects would increase one's confidence, ex ante, in one's partners' fidelity.[25]

III. Domestic Veto Institutions

In pluralist democracies governed by the rule of law, domestic courts are autonomous and authoritative within their jurisdictions. In such democracies, courts typically have the capability to adjudicate issues arising from international agreements. Hence, they serve as "veto institutions," capable of vetoing efforts by other branches of government, often under pressure from groups in society, to renege on international commitments. Legislatures are often the source of pressure to renege on agreements; but they are also veto institutions, and may play crucial roles in pathways to commitment.

Such institutional constraints on constitutional democracies can therefore help to provide credibility for international agreements. They constitute a potential diplomatic advantage that constitutional democracies have over governments not ruled by law.[26]

The evidence on the role of such veto institutions in the United States is inconclusive. During the 19th century, Congress was a principal source of pressure to renege on commitments, and courts did not play a significant veto role. The removal of Eastern Indians from their territorial lands in the 1830s and the exclusion of Chinese immigrants in the 1880s, discussed below, illustrate this point. In recent years, federal courts played a decisive role in maintaining contested commitments with respect to the UN Headquarters Agreement and the Algiers Accord ending the Iran hostage crisis, and the Senate played such a role once, with respect to the ABM treaty. As the subsequent discussion of this episode indicates, the veto institution commitment pathway is not empty. But the record of U.S. veto institutions in sustaining commitments is not yet sufficiently consistent for other governments to be able to rely on it for fulfillment of U.S. commitments, as the nonpayment of U.S. dues to the United Nations for over a decade, and trade acts such as Section 301 and Helms-Burton, suggest. U.S. political institutions do not overcome the commitment paradox by guaranteeing U.S. credibility.

A. The Role of Courts in the 19th Century

In the Nineteenth Century, United States courts did not operate as effective veto institutions on reneging by the Executive, when major political interests were at stake. This point is demonstrated by the two most important cases in which courts played some role: the removal of Eastern Indians in the 1830s, and the exclusion of Chinese immigration after 1882.

Indian Removal

In 1828 and 1829, the State of Georgia declared that after June 1, 1830, Georgia law would

be supreme within the Cherokee territory; the law was soon enforced against two missionaries for continuing to live in Indian territory after December 1830, without a license from the state. Two cases arising from these acts came to the Supreme Court. In the first of these cases, Chief Justice Marshall declared that although the Cherokees had "unquestionable" rights to the land they occupied, the Court did not have jurisdiction over the case because the Indians were "domestic dependent nations" and were therefore not entitled to sue as a foreign nation. In Worcester vs. Georgia (1832), however, Chief Justice Marshall declared Georgia's extension of its law over the Indians unconstitutional. State law must yield because it was in conflict both with federal law, which sought to preserve the national character of the tribes, and with valid treaties between the United States and Georgia.[27]

However, Georgia's intransigence and the weakness of federal law made it impossible in 1832 to enforce the Court's order that the state release the missionaries. The process never reached the point at which President Andrew Jackson would have been called upon to enforce the decision: as he wrote to a friend, "The decision of the supreme court has fell still born, and they find that it cannot coerce Georgia to yield to its mandate."[28] Congress itself had passed the Indian Removal Bill in 1830, which was justified on the basis of the "natural superiority allowed to the claims of civilized communities over those of savage tribes."[29]

The Whigs took up the anti-removal cause in the presidential campaign of 1832, but they dropped the issue after Clay's defeat for the presidency and Jackson's proclamation against nullification in December 1832. Suddenly, Clay's nationalists were allied with the Jacksonians against John C. Calhoun of South Carolina, whose state both groups sought to isolate. At this point, it became important not to antagonize Georgia, and "the Cherokees and the missionaries had become an embarrassment."[30]

Chinese Immigration

After the Civil War, Chinese laborers were brought to the United States in large numbers to build the transcontinental railways; and in 1868 the United States and China negotiated the Burlingame Treaty, which guaranteed free mutual immigration and most favored nation treatment to the nationals of each country residing in the territory of the other. In 1879, a Democratic Congress sought to abrogate Articles V and VI of the Burlingame Treaty guaranteeing free migration and travel and residence privileges, but this measure was vetoed by President Rutherford B. Hayes, who declared that treaty denunciation is constitutionally permitted but "justifiable only upon some reason both of the highest justice and the highest necessity."[31]

At the behest of the United States, the treaty was renegotiated in 1880, providing that "the United States may regulate, limit, or suspend such coming or residence, but may not absolutely prohibit it."[32] Both Congress and the San Francisco Collector of Port continued to seek to tighten entry requirements for Chinese during the 1880s, but encountered some resistance from federal courts, including the Supreme Court, which interpreted Congressional actions in such a way as to render them consistent with the revised (Angell) treaty.[33] However, after an abortive attempt at further treaty renegotiation, the Scott Act, signed by President Cleveland on October 1, 1888, barred all Chinese laborers from re-entry, even those holding valid certificates from the United States who were on the high seas when it was enacted.[34]

The Scott Act, which canceled perhaps 20,000 certificates, was quickly brought to the Supreme Court, which in Chae Chan Ping v. United States (Chinese Exclusion Cases, 1889), ruled it constitutional. Although the Scott Act was a clear violation of the Burlingame Treaty of 1868 and the Angell Treaty of 1880, the Supreme Court ruled that "it is not on that account invalid or to be restricted in its enforcement. The treaties were of no greater legal obligation than the act of

Congress," and "in either case the last expression of the sovereign will must control." Indeed, according to the Court, "the power of exclusion of foreigners being an incident of sovereignty,...the interests of the country require it cannot be granted away or restrained on behalf of any one."[35] Congress had sovereign power over immigration, aliens had no constitutional rights, and later legislation superseded treaties.

B. Courts Upholding Commitments: the PLO and the Algiers Accords

The doctrine enunciated in the Chinese Exclusion cases remains valid: later acts of Congress override treaties as a matter of United States domestic law. Hence the role of U.S. courts in upholding commitments is less significant than it would be if treaties had constitutional status. The Supreme Court has also been reluctant to intervene in situations involving Presidential versus Senatorial prerogative. In 1979, Senator Barry Goldwater sought a judgment that since treaties require the advice and consent of the Senate, termination also requires congressional action, either by the Senate or through joint resolution; but the Supreme Court ruled against him. However, four justices regarded the issue as a "political question" and Justice Powell declared that "if Congress chooses not to confront the President, it is not our task to do so."[36]

Despite this continued deference, in two cases during the 1980s the federal courts played crucial roles in processes leading to the upholding of contested commitments. One of these cases involved the Palestine Liberation Organization (PLO), the other the Algiers Accords, which ended the Iran hostage crisis.

The PLO and the Headquarters Agreement

Section 11 of the 1947 Headquarters Agreement between the United States and the UN obliges the US to impose no "impediments to transit to or from the headquarters district of...persons invited to the headquarters district by the United Nations."[37] Notwithstanding this solemn

commitment, the Anti-Terrorism Act of 1987 (the ATA) prohibited the Palestine Liberation Organization from maintaining "an office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States."[38] Although the State Department had warned that this provision would violate the Headquarters Agreement, President Reagan signed it into law because it was attached to a spending bill that he did not wish to veto. The effect of this act was to close the PLO's Washington office; but the language of the ATA appeared on its face to include also the observer mission to the United Nations maintained by the PLO in New York, which was clearly covered by the Headquarters Agreement.

During its 42nd session United Nations General Assembly Secretary-General Perez de Cuellar protested the U.S. action, and in April 1988 the World Court unanimously ruled that the United States had to submit its attempt to close the PLO to international arbitration. Despite the World Court's claim that "international law prevails over domestic law,"[39] the Executive branch did not conform to the advisory opinion, and United States courts were not prepared to require that the Executive Branch follow the World Court's request.

However, a Federal District Court did rule in June 1988 that the ATA was inapplicable to the PLO's observer mission on the grounds that despite the language quoted above, the Congress had not mentioned the PLO's Permanent Observer Mission by name, had not referred to the Headquarters Agreement, and had only declared that the ATA would take effect "notwithstanding any provision of law to the contrary," omitting to mention treaties. On the basis of Congressional reluctance to state flatly that it intended to violate a treaty commitment, the Court ruled that "Congress failed to provide unequivocal interpretive guidance in the text of the ATA, leaving open the possibility that the ATA could be viewed as a law of general application and enforced as such, without encroaching on the position of the Mission at the United Nations."[40]

The argument made by the District Court was contorted, since the ATA's language had been so sweeping. Hence it is reasonable to believe that an appeal might have prevailed. But the Reagan Administration had been opposed to the Congressional edict in any case, and in the wake of the court decision the State Department argued against an appeal. No appeal was filed, Congress (having made its symbolic statement) did not return to the issue, and the PLO observer mission remained.[41] Hence, in this situation the district court ruling provided a crucial link in the chain of events that led to the PLO remaining in its New York office.

The Algiers Accords

The Algiers Accords of January 19, 1981, provided for the release of the 52 American hostages in return for an agreed disposition of almost $10 billion of Iranian funds held by the United States. Much of this money went directly to Iran, to pay claims of loan syndicates owed money by Iran or to the Bank of England to be held in escrow pending settlement of United States bank claims; but about $1 billion went to Dollar Account No. 3, the so-called Security Account, for the payment of claims by United States nationals, especially United States corporations.[42]

The agreement provided that proceedings against Iran in United States courts and at the International Court of Justice would be terminated, and that an international tribunal at The Hague -- with three judges each from the United States and Iran, and three neutral judges -- would arbitrate claims of United States nationals against Iran, except for those involving agreements explicitly establishing Iranian courts as the forum.

Bargaining in the arbitration tribunal and outside of it was highly political. As one astute observer commented, "the need to elicit consent subsists and should be expected to exert a powerful influence on the Tribunal's behavior." Since Iran and the United States disagreed on almost every principle, "many opinions of the Tribunal seem to occupy a sort of legal ether."[43] Indeed, on

September 3, 1984, disagreement on the Claims Tribunal became physical when two Iranian judges on the Claims Tribunal assaulted one of their Swedish colleagues.[44]

On August 20, 1986, the Tribunal ruled, over the dissents of the three United States-appointed justices, that the United States must transfer to Iran almost $500 million in the account it controlled.[45] When no agreement on precise arrangements was made between the United States and Iran by May 4, 1987, the Tribunal ordered the Federal Reserve Bank of NY to transfer $454 million to Iran and this sum was transferred on May 13; on April 15, 1988, the remaining $37.9 million, not needed to cover claims, was returned. President Reagan approved these actions.[46]

There may have been political reasons for the United States decision, since at this time active covert negotiations with Iran, designed to free American hostages, were being undertaken by the Reagan White House. However, in the public justification for the American government's decision to repay these funds, offered by the State Department Legal Adviser, the **role of domestic courts** was critical:

> We resisted that suit in the Tribunal and we lost. The Tribunal ordered us, after several months of litigation, to transfer those funds--and those funds were within our control in the New York Fed -- to Iran. We had to do it because non-compliance with the Tribunal order could lead to a suit in Federal court in the United States under the Algiers Accords; where Iran could sue the government of the United States and get us ordered by our own courts to comply with our treaty obligations.[47]

C. The Senate as a Veto Institution: the ABM Treaty

Article V of the anti-ballistic missile treaty of 1972 between the United States and the Soviet Union provided that each party would not "develop, test, or deploy ABM systems or components which are sea-based, space-based, or mobile land-based.".[48] Until the fall of 1985, the conventional understanding of this Article was that space-based testing of a strategic defense system would be illegal under the treaty. Indeed, the Senate had been presented with this interpretation at the

hearings before ratification of the treaty. However, as the Reagan Administration began to develop plans for a Strategic Defense Initiative (SDI), a new, "broad" interpretation found official expression in a statement by State Department Legal Advisor Abraham Sofaer.[49] Sofaer argued that space-based testing was not prohibited by the treaty and that the explanations to the contrary provided to the Senate in 1972 were not controlling: "When [the Senate] gives its advice and consent to a treaty, it is to the treaty that was made, irrespective of the explanations it is provided."[50]

Sofaer's novel analysis of the treaty text and his somewhat peculiar inferences from its negotiating history were subjected to devastating critiques, including a four-part speech on the floor of the Senate by Sam Nunn.[51] Senator Nunn's focus was on the constitutionality of Judge Sofaer's interpretation, not on the desirability of SDI (he later supported a limited ABM system for the United States).[52] His most telling point was that an interpretation of a treaty presented to Congress at the time of ratification must be the binding interpretation on the executive. Otherwise, "we would have to have so many understandings and conditions that the treaty would have to be negotiated all over again between the parties. Treaties so laden would eventually sink under their own weight. It would be extremely difficult to achieve bilateral agreements, and virtually impossible for the United States to participate in multilateral treaties."[53]

The Senate accepted Nunn's argument about the reinterpretation of treaties, enacting in 1988 the Byrd-Biden Condition to the Intermediate Nuclear Forces Treaty (the INF Treaty), providing that the United States should interpret that treaty according to the "common understanding" shared by the President and the Senate at the time that the Senate gave its advice and consent to ratification; and that formal Senate approval was necessary for any other interpretation to be adopted.[54] As a result of this and other Senate action, the Reagan Administration did not renege on the ABM treaty, as traditionally interpreted. Serving as a veto institution, the Senate effectively barred the United

States Government from breaking its treaty commitment.

IV. Investing in Commitments

Our third "cut" makes interests endogenous to commitments. That is, the interests that the United States seeks to foster are in part determined by its previous decisions to make international agreements. These decisions can be seen as **investments**, political, economic or institutional, whose benefits are contingent on fulfillment of the commitments.

This argument is drawn from work in the new economics of organization, especially by Oliver Williamson. The premise of this work is that strategic relationships are characterized by "opportunism," defined by Oliver Williamson as "self-interest seeking with guile."[55] In international relations, opportunism means that in their attempts to gain benefits from cooperation, governments must take precautions to avoid being exploited. Yet to achieve gains from cooperation, these same governments must often take costly actions that will only be rewarding if their partners fulfill their commitments. In the economic language of this literature on contracting, governments must invest in assets that are specific to the transaction. Such investment in "specific assets" exposes the investor to potential exploitation by a partner who opportunistically reneges on a commitment or threatens to do so unless compensated. From this perspective, "the more relationally specific the asset, the greater are the opportunity costs incurred by the state."[56] This specific assets argument is a more precise version of the notion that "sunk costs" matter if they make traditional modes of behavior cheaper or more effective than alternatives. In this argument also, international rules are "sticky," although not irreversible, because of the investments that depend on them.[57]

For one party rationally to invest in specific assets that depend on maintenance of an agreement, its partner's commitments must be credible. Conversely, a state's own investment in such assets may increase the credibility of its commitments by giving it further incentives to keep

them. One implication of this argument for United States commitment policy is that the more significant are United States investments that depend on maintenance of commitments, the more costly it will be to renege on its commitments, or abrogate them, even if its partners are too weak to retaliate except by ceasing to fulfill their part of the commitment.

According to this argument, an important pathway for keeping commitments will depend on actions by the United States itself after making the commitments. Commitments in which the United States has substantially invested will be more robust to change, and to pressure from specific interests; commitments in which the United States has not substantially invested will be less robust. This is not to say, however, that heavily invested commitments will never be broken: the United States reneged in 1971 on its commitment to maintain a pegged rate for dollars in terms of gold, in spite of the fact that this action devalued the earlier investments made by the United States governments in its reputation for defending the dollar, as well as disadvantageously revaluing (in dollar terms) the non-dollar bonds the United States had issued as part of its campaign for dollar defense.

United States membership in the North Atlantic Treaty Organization can be seen as an investment that has fundamentally altered U.S. interests. Article 5 of the North Atlantic Treaty (1949) commits the parties, in the event of an armed attack on any of the parties in Europe or North America, to "assist the Party or Parties so attacked by taking forthwith, individually and in concert with other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic Area."[58] But the crucial United States commitments to NATO are not the carefully qualified words in Article 5 of the Treaty but the multiple specific acts, engaged in over the years by the United States, taken pursuant to the fulfillment of the purposes expressed in the Treaty.

After the French defeat of the European Defence Community (EDC) in 1954, U.S. investments increased as the result of a meeting (September 28-October 3) involving the six signatories of EDC (France, Germany, Italy, the Netherlands, Belgium and Luxembourg), the United States, Britain and Canada. The signatories invited Germany and Italy to join NATO and amended the Brussels Treaty to form the Western European Union (WEU).[59] Germany was to rearm but solemnly promised not to manufacture nuclear, biological, or chemical weapons and to refrain from attempting reunification by force, and its forces were assigned to NATO's integrated command. The United States committed itself to maintain troops in Europe as well as its nuclear guarantee. And the United States, Britain and France reinforced the German pledge with one of their own, clearly designed to reassure Germany's new allies against a revival of German militarism.

An American scholar commented that "seldom, if ever, has an equivalently complicated strategic accord been attempted, much less brought to fruition," and a German observer claimed that the "virtually permanent intrusion of the United States" had "swept aside the rules of the self-help game" and enabled "collective gain [to] overwhelm the zero-sum logic of rivalry and relative gain."[60]

The United States invested in NATO by making its solemn formal commitments of 1949 and 1954, and it has extended its investments by maintaining a military presence in Europe, through NATO, for over 45 years. When the Cold War came to an end, NATO was securely ensconced as America's primary organization for pursuing its security interests -- a status that has not been diminished in subsequent years. U.S. purposes and NATO purposes had become so intertwined, that by 1997 American interests were defined in terms of NATO's strengthening and indeed, expansion. Secretary of State Madeleine Albright declared that "NATO does not need an enemy. It has enduring purposes."[61] The commitment to NATO had become part of the fabric of American

foreign policy, part of the foreign policy elite's definition of national interests.

V. Conclusion

Understanding how international commitments affect state policy poses difficult analytical issues, since issues of causal inference, involving numerous potential explanatory factors, are involved. One way to lay a foundation for such an analysis is systematically to describe the potential causal pathways that could link commitments to action, and to see whether those pathways are operative across a wide range of historical experience. This article has sought to sketch such causal pathways for the domain of United States foreign policy between 1783 and the present day. No attempt is made here to quantify the relative significance of these pathways across an unbiased set of cases, or to account theoretically for variation in the operation of the pathways under different conditions.

In some situations, actions by the United States government may be explicable on the assumption that it is a unitary actor, responding to incentives and opportunities. On some issues, its interests can also be seen as existing independently of the commitments that it has adopted. Under these conditions, three pathways for fulfillment have been identified.

Interests may explain the formation of a set of commitments, and the retention of interests consistent with those commitments may provide the first pathway for their fulfillment. But interests may change, rendering commitments inconvenient. When commitments become inconvenient in this way, they may nevertheless be fulfilled, through the pathway either of reciprocity or reputation. Reciprocity and reputation are quite different: reciprocity involves threats and promises from other states, whereas an actor's reputation depends on the views of it held by an audience, whose members may neither have been affected by its earlier actions nor feel disposed to respond directly to them. Reputation operates by affecting the future bargaining behavior of actors toward the reputation-

laden party. Reciprocity acts asymmetrically, favoring the powerful ex post, but leading to a commitment paradox ex ante. The impact of reputation, although probably significant in many cases, should not be exaggerated: states can and do pursue strategies designed to evade reputational constraints.

No state is actually a unitary rational actor -- certainly not the United States. Even when the central organs of the state -- the Executive and Legislature -- adopt binding law or regulations, these measures can sometimes be vetoed by the participation of others. Courts play a potentially significant role in this process, and can ensure the fulfillment of agreements that would otherwise have been broken, although the examples of such effects, on important issues, are few. Divisions between the Executive and the Legislature on jurisdictional issues can also be significant, as the ABM case shows. Hence the pathway of domestic veto institutions needs to be added to our list.

The final pathway discussed in this paper relies on the effects of investing in commitments on state interests themselves. When such investments -- in time and prestige as well as in material resources -- are substantial, they may affect how leaders of states interpret their interests. In this pathway, as illustrated by NATO, commitments generate interests, which maintain the commitments even when other conditions have changed.

Fulfillment of commitments is a complex process, but not a fundamentally mysterious one. It occurs as a result of choices made under constraints, which both reflect the realities of power competition in world politics and the nature of international and domestic institutions. Analyzing the causal pathways by which fulfillment can occur, takes us a step toward understanding variation in how commitments, once contested, are treated by states: whether they are broken, renegotiated, or reaffirmed.

1. This problem has been most extensively analyzed in the case of deterrence. See Christopher H. Achen and Duncan Snidal, "Rational Deterrence Theory and Comparative Case Studies," World Politics 41-2 (January 1989), pp. 143-169. See also George W. Downs, David M. Rocke, and Peter N. Barsoom, "Is the Good News About Compliance Good News About Cooperation?" International Organization, 50-3 (Summer 1996), pp. 379-406.

2. Jan Elster, Nuts and Bolts for the Social Sciences (Cambridge and New York: Cambridge University Press, 1989), p. 9.

3. The classic work in political science viewing a problem in three successive "cuts" is, of course, Graham Allison, Essence of Decision: Explaining the Cuban Missile Crisis (Boston: Little, Brown, 1971).

4. Hamilton to Washington (Cabinet paper), April 18, 1793, reprinted in Henry Cabot Lodge (ed.), The Works of Alexander Hamilton, vol. IV (New York: G. P. Putnam's Sons, n.d.), p. 385. Washington did not accept Hamilton's advice, but adopted Jefferson's position that "obligation is not suspended, till the danger is become real, & the moment of it so imminent, that we can no longer avoid decision without forever losing the opportunity to do it." Ford Leicester Ford, ed., The Writings of Thomas Jefferson (New York: G.P. Putnam's Sons, 1895), vol. VI, pp. 221-22. Dumas Malone characterizes this memo by Jefferson, which included erudite discussion of the international lawyers Grotius, Puffendorf, Vattel, and Wolf, as "probably the most devastating opinion that Jefferson ever directed against the arguments of his colleague." Dumas Malone, Jefferson and the Ordeal of Liberty (Boston: Little, Brown, 1962), p. 78.

5. A. F. Pollard, Factors in American History, cited in Norman A. Graebner, Empire on the Pacific: A Study in American Continental Expansion (New York: Ronald Press, 1955), p. 36.

6. Quoted in Charles Sellers, James K. Polk: Continentalist (Princeton: Princeton U.P., 1966), p. 99.

7. Robert M. Utley, The Indian Frontier of the American West, 1846-1890 (Albuquerque: University of New Mexico Press, 1984), p. 251.

8. Writings of Sam Houston, 1813-1863, ed. Amelia Williams and Eugene Barker (Austin, 1938-43): vol. 5, pp. 34-35. Thomas J. Hietala, Manifest Design: Anxious Aggrandizement in Late Jacksonian America (Ithaca: Cornell University Press, 1985), dates the speech as February 22, 1848.

9. Alexis de Toqueville, Democracy in America, Henry Reeve text as revised by Francis Bowen, edited by Phillips Bradley (New York: Vintage Books, 1957), volume 1, p. 448. Original publication date: 1835.

10. Dexter Perkins, The Monroe Doctrine, 1867-1907 (Baltimore, Johns Hopkins Press, 1937), p. 85.

11. Charles S. Campbell, Anglo-American Understanding, 1898-1903 (Baltimore: Johns Hopkins University Press, 1957); David M. Pletcher, The Awkward Years: American Foreign Policy Under Garfield and Arthur (Columbia: University of Missouri Press, 1962). For the calculations of the British Government, see J. A. S. Grenville, Lord Salisbury and Foreign Policy: The Close of the Nineteenth Century (London: the Athlone Press, 1964), p. 384.

12. Omitted from this analysis for reasons of space are episodes, mostly dating from the early years of the Republic, in which the United States lacked the capacity to fulfill its commitments -- most notably, the pre-1787 inability of the American Confederation to ensure that the states fulfilled the terms of the peace treaty with Great Britain.

13. See also Arthur Stein, "Coordination and Collaboration: Regimes in an Anarchic World," International Organization vol. 36, no. 2 (spring 1982): 299-324.

14. The legal position of the United States was weakened by the fact that it had refused to adhere to the Declaration of Paris (1856), in which the major European powers had outlawed privateering. The Lincoln Administration had earlier in the year sought without success unconditionally to adhere to this Declaration as a means of reinforcing the legal justification for its blockade. Samuel Flagg Bemis, A Diplomatic History of the United States, Fifth Edition (New York: Holt, Rinehart and Winston, 1965), p. 369.

15. Norman B. Ferris, The Trent Affair (Knoxville, Tn: 1977), p. 52.

16. The Official GATT publication summarizing the dispute states: "The US recognized that Nicaragua had certain rights under Article XXIII of the GATT [providing for reciprocal suspension of concessions in the event of "nullification and impairment of benefits under the Agreement] which it could exercise. Nicaragua considered that retaliatory measures would be contrary to the spirit of the General Agreement **and to its own interests.**" (Italics added.) GATT Activities 1984, p. 39. One is reminded of the remark of Anatole France that "the law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread." From Le Lys Rouge (1894); Bartlett's Familiar Quotations, Fourteenth Edition (Boston: Little Brown 1968),

p. 802.

17. Thomas Schelling, The Strategy of Conflict (New York: Oxford University Press, 1960) and Schelling, Arms and Influence (New Haven: Yale University Press, 1966).

18. The Writings of Thomas Jefferson (ed. Paul Leicester Ford, New York: G.P. Putnam's Sons, 1895), vol. VI, pp. 220-222.

19. Martha Finnemore, National Interests in International Society (Ithaca: Cornell University Press, 1996), p. 29. See also Ronald L. Jepperson, Alexander Wendt, and Peter J. Katzenstein, "Norms, Identity and Culture in National Security," in Peter J. Katzenstein, ed., The Culture of National Security (New York: Columbia University Press, 1996), pp. 33-75.

20. David M. Kreps and Robert Wilson, "Reputation and Imperfect Information," Journal of Economic Theory, vol. 27 (1982), pp. 253-279. See also Reinhart Selten, "The Chain-Store Paradox," Theory and Decision, vol. 9 (1978), pp. 127-159. James Morrow has a good account of the chain store paradox in his Game Theory for Political Scientists (Princeton: Princeton University Press 1994), pp. 279-291.

21. See Robert Powell, Nuclear Deterrence Theory: The Search for Credibility (Cambridge: Cambridge University Press, 1990). A literature on "dynamic contracting" has extended these arguments to situations in which the significant reputations are those for keeping contracts, or promises. See Vincent P. Crawford, "International Lending, Long-Term Credit Relationships, and Dynamic Contracting Theory," Princeton Studies in International Finance No. 59 (March 1987).

22. Philip B. Heymann, "The Problem of Coordination: Bargaining and Rules," Harvard Law

Review, vol. 86, no. 5 (March 1973), pp. 822-23.

23. James D. Fearon, "Domestic Political Audiences and the Escalation of International Disputes," American Political Science Review, vol. 88, no. 3 (September 1994), pp. 577-592; Lisa L. Martin, "Credibility, Costs and Institutions: Cooperation on Economic Sanctions," World Politics, vol. 45, no. 3 (April 1993), pp. 406-432.

24. American State Papers III, 1814, p. 719.

25. It should be noted that my skepticism about the role of reputation is very different from Jonathan Mercer's, since I remain within a framework of rational calculation, and do not rely on socio-psychological arguments to cast doubt on the ability of states to create reputations, or their credibility. Mercer, Reputation and International Politics (Ithaca: Cornell University Press, 1996).

26. On courts, see Anne-Marie Burley, "Law Among Liberal States: Liberal Internationalism and the Act of State Doctrine," Columbia Law Review, vol. 92, no. 8 (December 1992): 1907-1996. On legislatures, see Lisa Martin, "The Influence of National Parliaments on European Integration," in Barry Eichengreen and Jeffry Frieden, eds., Politics and Institutions in an Integrated Europe (New York: Springer-Verlag, 1996).

27. Joseph Burke, "The Cherokee Cases: A Study in Law, Politics and Morality," Stanford Law Review 21 (Feb. 1969): 500-531, especially pp. 513-515.

28. Robert V. Rimini, Andrew Jackson and the Course of American Freedom, 1822-1832 (New York: Harper and Row, 1981).

29. Francis Paul Prucha, *American Indian Policy in the Formative Years* (Cambridge: Harvard University Press, 1962), p. 242.

30. Burke, cited, p. 530.

31. *Congressional Record,* House, March 1, 1879, p. 2276.

32. James B. Angell, "The Diplomatic Relations Between the United States and China," *Journal of Social Science* no. 17 (May 1883): 24-36; Mary Roberts Coolidge, *Chinese Immigration* (New York: Henry Holt & Co., 1909): 152-61.

33. Christian G. Fritz, "Due Process, Treaty Rights, and Chinese Exclusion, 1882-1891," in Sucheng Chan, ed., *Entry Denied: Exclusion and the Chinese Community in America, 1882-1943* (Philadelphia: Temple University Press, 1991), citing an opinion by District Judge Ogden Hoffman, 18 Federal Reporter 506 (D.Cal, 1883); F 43.

34. Fritz, cited, p. 48; Coolidge, cited, 194-200.

35. *The Chinese Exclusion Case*, 130 US 581; quotations at 600, 609.

36. *Barry Goldwater et. al. v. James Earl Carter, President of the United States, et. al.,* 44U.S. 996, 62 Led.2nd 428. No. 79-856. *100 Supreme Court Reporter*: 532-539, December 13, 1979, p. 534.

37. *United Nations Treaty Series*, 1947, pp. 19-20.

38. *United States v. Palestine Liberation Organization*, United States District Court, Southern District of New York, June 29, 1988. 695 Federal Supplement 1445 (S.D.N.Y. 1988), p. 1460. For the State Department letter see *ibid*., p. 1466.

39. International Court of Justice, 26 April 1988. Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947, p. 34.

40. United States v. Palestine Liberation Organization, 695 Federal Supplement 1445 (S.D.N.Y. 1988), p. 1469.

41. New York Times, August 30, 1988, p. 1; Brigitte Stern, "L'Affair du Bureau de L'O.L.P. Devanat les Juridictions Interne et Internationale," Annuaire Francais de Droit International XXXIV (1988). Paris: Editions du CNRS.

42. Oscar Schachter, "International Law in the Hostage Crisis," in Warren Christopher, et. al., American Hostages in Iran: The Conduct of a Crisis (New Haven: Yale U.P. for the Council on Foreign Relations, 1985), pp. 325-373. See also The Iran Agreements, Hearings before the Ctte. on Foreign Relations, US Senate, 97th Congress, 1st session, Feb. 17-18 and March 4, 1981, p. 39.

43. The first quotation is from Ted L. Stein, "Jurisprudence and Jurists' Prudence: The Iranian-Forum Clause Decisions of the Iran-U.S. Claims Tribunal," AJIL, vol. 78 (1984), p.37; the second is from Stein's comments in American Society of International Law, Proceedings of the 78th Annual Meeting (Washington, D.C.: April 12-14, 1984), p. 228.

44. Mark B. Feldman, "Ted L. Stein on the Iran-U.S. Claims Tribunal -- Scholarship Par Excellence," Washington Law Review vol. 61, #3, July, 1986, p. 1004.

45. Decision of the Iran-United States Claims Tribunal, August 20, 1986. American Journal of International Law, vol. 81 (1987), pp. 428-31.

46. Continuing National Emergency with Respect to Iran, Message from the President of the United States, June 8, 1988. Committee on Foreign Affairs, US House, 100th Congress, 2nd Session, House Document 100-203, pp. 3-4.

47. Statement by State Department Legal Adviser Abrahamm Sofaer, United States-Iranian Relations, cited, p. 27.

48. Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems. This treaty has often been reprinted; see, for instance, Antonia H. Chayes and Paul Doty, eds., Defending Deterrence: Managing the ABM Treaty Regime into the 21st Century (Washington: Pergamon-Brassey's, 1989), Appendix A, pp. 239-248. The 1974 protocol appears in Appendix B, pp. 249-250.

49. For Mr. Sofaer's statement, see "The ABM Treaty, Part III: Subsequent Practice," Office of the Legal Adviser, Department of State (September 9, 1987), quoted in "The Anti-Ballistic Missile Treaty Interpretation Dispute," report by the Committee on International Arms Control and Security Affairs, The Association of the Bar of the City of New York, 1988, p. 46. Generally, see Michael J. Glennon, Constitutional Diplomacy (Princeton: Princeton University Press, 1990), pp. 134-145.

50. John B. Rhinelander and Sherri Wasserman Goodman, "The Legal Environment," in Antonia H. Chayes and Paul Doty, eds., Defending Deterrence: Managing the ABM Treaty Regime into the 21st Century (New York: Pergamon-Brassey's, 1989), pp. 43-69; quotation on p. 54. Rhinelander and Goodman cite Sofaer's testimony before a joint hearing of the Senate Foreign Relations and Judiciary committees, on The ABM Treaty and the Constitution, March 26, 1987. 100th Congress, 1st session, p. 375.

51. See "The Interpretation of the ABM Treaty," speeches by Senator Sam Nunn, March 11-13 and May 19, 1987. Congressional Record, S2967-2986; S3090-S3145; S3171-S3173; S6808-S6831. See also Abram Chayes and Antonia Handler Chayes, "Testing and Development of 'Exotic' Systems under the ABM Treaty: the Great Reinterpretation Caper," Harvard Law Review, vol. 99, no. 8 (June, 1986), pp. 1956-1971.

52. New York Times, July 30, 1991, p. C 1.

53. Congressional Record, Senate, 1987, p. 2972.

54. Rhinelander and Goodman, cited, p. 62.

55. Oliver E. Williamson, The Economic Institutions of Capitalism (New York: Free Press, 1985), p. 30.

56. David A. Lake, "Anarchy, Hierarchy, and the Variety of International Relations," International Organization, vol. 50, no. 1 (winter 1986), p. 14.

57. Robert O. Keohane, After Hegemony: Cooperation and Discord in the World Political Economy (Princeton: Princeton University Press, p. 102.

58. An earlier draft phrase, "such military or other action as may be necessary," was altered on the grounds that it might imply automatic military action. The Brussels Pact and the North Atlantic Treaty are conveniently reprinted as appendices A and B of Lawrence Kaplan, NATO and the United States: The Enduring Alliance (New York: Twayne Publishers, 1994), pp. 185-193.

59. See Committee on Foreign Relations, United States Senate, Documents on Germany, 1944-

1961 (New York: Greenwood Press, 1968), pp. 155-175.

60. Richard L. Kugler, Commitment to Purpose: How Alliance Partnership Won the Cold War (Santa Monica: RAND, 1993), p. 97; Joseph Joffe, The Limited Partnership: Europe, the United States, and the Burdens of Alliance (Cambridge, MA: Ballinger Publishing, 1987), pp. 183-84.

61. The Economist, February 15, 1997, p. 22.