

Human Rights, Constitutionalism and Comparative Foreign Policy: An Analytical Framework for Canada, the United States and China

ANDREW LUI

*Assistant Professor
Department of Political Science
McMaster University*

The continuing divide between constitutionalism and Foreign Policy Analysis (FPA) is serious cause for concern. Professor Emeritus Louis Henkin, former President of the American Society of International Law, once lamented this shortfall in contending that “the neglect of the constitutional law of foreign affairs is unwarranted and unfortunate” because “If the conduct of foreign relations seems beset by politics rather than governed by law, it is the law of the Constitution that gives the politics its form and much of its content.”¹ Yet little has been done to address the problem. More than ever, theoretical accounts of the constitutional basis of foreign policy—especially on a comparative level—remain sorely neglected. While recent years have witnessed growing interest in the constitutive sources of state behaviour, the virtual absence of comparative scholarly research on constitutionalism and foreign policy thus presents a striking disciplinary failure.² And nowhere is this failure more evident, unfortunately, than for principled issue areas such as human rights.

In an effort to address this problem, this paper asks whether or not constitutionalism can explain the degree to which states will sanction or shirk human rights obligations in their international policies. The paper will draw specifically from a comparative analysis of Canada, the United States and China. Unavoidably, the task of case selection raises methodological issues about sample size and choice.³ As David Forsythe highlights, “With some 190 states in the world, it is unclear what a perfect sample would look like for the purpose of examining the place of human rights in contemporary foreign policy.”⁴ Too large a sample size can often overwhelm and

¹ Louis Henkin, *Foreign Affairs and the United States Constitution*, 2nd ed. (New York: Oxford University Press, 1996), 4-5.

² See, for instance, Peter J. Katzenstein, ed., *The Culture of National Security: Norms and Identity in World Politics* (New York; Chichester: Columbia University Press, 1996); Valerie M. Hudson, *Culture & foreign policy* (Boulder, Colo.: L. Rienner Publishers, 1997); Alexander Wendt, *Social Theory of International Politics*, *Cambridge Studies in International Relations*, 67 (Cambridge; New York: Cambridge University Press, 1999); Valerie M. Hudson, *Foreign Policy Analysis: Classic and Contemporary Theory* (Lanham: Rowman & Littlefield, 2007).

³ See Gary King, Robert O. Keohane, and Sidney Verba, *Designing Social Inquiry: Scientific Inference in Qualitative Research* (Princeton, NJ: Princeton University Press, 1994).

⁴ David P. Forsythe, *Human Rights and Comparative Foreign Policy* (Tokyo; New York: United Nations University Press, 2000), 17.

produce skewed or specious results that are neither persuasive nor useful. Likewise, too small a sample size can result in descriptive or atheoretical narratives that are burdened by the multiplicity of factors that inform the unique foreign policy decision-making processes of each state. There are, nonetheless, several reasons why a focus on the Canadian, American and Chinese cases is justified.

Respectively, these states tend to be cited as prototypical middle, super and rising powers. Students of International Relations (IR) under the realist canon have long been taught the explanatory primacy of power and the paucity of legal norms. In Hans Morgenthau's words, "International law is a primitive type of law resembling the kind of law that prevails in certain preliterate societies," which is therefore unable to mediate the constant struggle for power and peace.⁵ For Kenneth Waltz, reductionist variables such as domestic laws and constitutions are disregarded altogether in favour of the systemic properties that explain the balance of power in international relations.⁶ Put simply, the standard assumption that power matters also implies that a state's relative status—its position as a middle, super or rising power—would determine its approach to human rights in foreign policy.

However, this paper focuses on Canada, the US and China not to show the explanatory purchase of relative-power archetypes but, more importantly, to show their explanatory weakness. Crude measures of power do little to clarify the sources of states' international human rights policies. Although power considerations impact policy success or failure, they cannot account for why states affirm one particular stance on international human rights issues over another. Power must instead be filtered through specific social rules. The Canadian case explored first in this paper shows that, rather than being a leading advocate of international human rights because of its middle-power reputation, human rights emerged in its foreign relations in response to an acute crisis of national unity. Entrenching human rights served as the cornerstone of a new model of Canadian federalism as well as the principal means of accomplishing constitutional reform, which then prompted a new era in Canada's international relations.

Contrary to the Canadian example, the American case study illustrates that US leadership in international human rights stems, in fact, from the long-standing unity of the country and the mandate of rights and principles that are embodied in its well-established constitution. Yet the politics of constitutionalism rather than the country's relative power also explains the paradox of American exceptionalism—that is, "the curious tension between the consistent rejection of the application of international norms . . . and the venerable U.S. tradition of support for human rights."⁷ The final case study, in comparison, illustrates that China's approach to human rights in international relations is reflective of the various constitutional experiments that the country has experienced since the Communist Revolution. Explained not as a mere response to international pressure, China's engagement with human rights in international affairs can only be accounted for by considering broader trends in Chinese constitutionalism. Overall, I argue that understanding the politics of constitutional law is a requisite for

⁵ Hans Joachim Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, 6th ed. (New York: Knopf; Random House, 1985).

⁶ Kenneth Neal Waltz, *Theory of International Politics* (London: McGraw-Hill, 1979).

⁷ Andrew Moravcsik, "The Paradox of U.S. Human Rights Policy," in *American Exceptionalism and Human Rights*, ed. Michael Ignatieff (Princeton, NJ: Princeton University Press, 2005), 147.

understanding the origins of human rights in foreign policy, the constitutive rules that frame policymaking as well as the limits of states' support for human rights in international affairs.

CONSTITUTIONALISM AND HUMAN RIGHTS

This paper attempts to confront the longstanding division between international politics and international law. Although increasingly anachronistic, scholars within both fields remain at considerable odds. As Christian Reus-Smit observes:

Politics and law have long been seen as separate domains of international relations, as realms of action with their own distinctive rationalities and consequences. So pervasive is this view that the disciplines of International Relations and International Law have evolved as parallel yet carefully quarantined fields of inquiry, each with its own account of distinctiveness and autonomy.⁸

The damaging effects of this partition are particularly apparent in the study of human rights. With limited cross-collaboration, scholars of international law and international relations continue to peddle vastly inconsistent viewpoints about the salience or paucity of human rights regimes and institutions. Louis Henkin, for instance, argued notably that "almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time."⁹ Others such as Oona Hathaway (2002) are quick to admonish the complacency amongst international law experts about the extent to which international human rights treaties make a difference in state behaviour.¹⁰ Even farther along the spectrum, theorists of International Relations at least since the advent of political realism have ranked amongst the most vociferous sceptics of international law and moral universalism because of the tendency for power to corrupt in the absence of central authority.

Fuelled by the lack of comparative analysis on the subject, such inconsistencies have polarized and stifled human rights research. This study thus hopes to address some of these existing deficits by exploring the underproblematized issue of constitutionalism and foreign affairs. Curiously, little or no attention has been paid to the linkage between the constitutionalism and states' international human rights policies notwithstanding the increasing prominence of constructivism in IR theory. Although the approach is by no means a monolithic one, Emanuel Adler believes that constructivists share the basic assumption "that the manner in which the material world shapes and is shaped by human action and interaction depends on dynamic normative and epistemic interpretations of the material world."¹¹ For John Ruggie, interpretive processes are

⁸ Christian Reus-Smit, *The Politics of International Law, Cambridge Studies in International Relations*, 96 (Cambridge, UK; New York: Cambridge University Press, 2004).

⁹ Louis Henkin, *How Nations Behave: Law and Foreign Policy*, 2d ed. (New York: The Council on Foreign Relations, Columbia University Press, 1979), 47.

¹⁰ Oona A. Hathaway, "Do Human Rights Treaties Make a Difference?" *The Yale Law Journal* 111, no. 8 (2002).

¹¹ Emanuel Adler, "Seizing the Middle Ground: Constructivism in World Politics," *European Journal of International Relations* 3, no. 3 (1997): 322.; emphasis removed.

made possible by constitutive rules. By denoting the terms of social interaction, “Constitutive rules define the set of practices that make up a particular class of consciously organized social activity—that is to say, they specify *what counts* as that activity.”¹² *Constitutions*, therefore, embody *constitutive rules* despite being virtually ignored in FPA, in particular, and IR, in general.

Canada, Human Rights and Constitutional Patriation

In contemporary international relations, to claim that Canada is a leading advocate of human rights is a relatively unproblematic assumption. Human rights have become a taken-for-granted fixture of Canada’s domestic and international policies. Recent statements from the Department of Foreign Affairs and International Trade (DFAIT) contend that “Canada has been a consistently strong voice for the protection of human rights and the advancement of democratic values” such that “Human rights is a central theme of Canadian foreign policy.”¹³ The government claims, furthermore, that Canada is a world leader in promoting and protecting human rights through the United Nations (UN), the Commonwealth, La Francophonie and the Organization of American States (OAS) amongst other multilateral organizations.¹⁴ Canada’s international reputation on human rights is also supported through initiatives ranging from the Ottawa Process on anti-personnel landmines to the establishment of the International Criminal Court (ICC) for prosecuting genocide, war crimes and crimes against humanity. Although there may be occasional cause for criticism over Canada’s issue- or country-specific policies, few countries are as vociferous in their international support for human rights. Few countries have also maintained such concerted attempts to participate globally on human rights issues. As David Forsythe contends, “Canadian foreign policy has been generally progressive on rights abroad. It is well known that Ottawa has long prided itself on its record.”¹⁵ The role of human rights champion is thus one that Canada relishes.

Yet a closer examination of the empirical record reveals that human rights promotion is a relatively recent phenomenon in the domain of Canadian policymaking. The government of Canada initially opposed the concept of universal human rights and was subsequently one of the last countries, at the time, to sanction the Universal Declaration of Human Rights.¹⁶ According to Louise Arbour, UN High Commissioner for Human Rights and former Justice of the Supreme Court of Canada, “This is hardly the

¹² John Gerard Ruggie, “What Makes the World Hang Together? Neo-Utilitarianism and the Social Constructivist Challenge,” *International Organization* 52, no. 4 (1998): 871.; emphasis in original.

¹³ Government of Canada, *Canada’s International Human Rights Policy* (Foreign Affairs Canada, 2005 [cited May 2005]), available from http://www.dfait-maeci.gc.ca/foreign_policy/human-rights/hr1-rights-en.asp.

¹⁴ Government of Canada, *The Canadian Approach* (Foreign Affairs Canada, 2004 [cited August 2005]), available from http://www.dfait-maeci.gc.ca/foreign_policy/human-rights/hr4-approach-en.asp.

¹⁵ David P. Forsythe, “Human Rights and Foreign Policy: In the Next Millennium,” *International Journal* 52, no. 1 (1997): 129.

¹⁶ A. J. Hobbins, “Eleanor Roosevelt, John Humphrey and Canadian Opposition to the Universal Declaration of Human Rights: Looking Back on the 50th Anniversary of UNDHR,” *International Journal* 53, no. 2 (1998): 326; D. Marshall, “The Cold War, Canada, and the United Nations Declaration on the Rights of the Child,” in *Canada and the Early Cold War, 1943-1957 / Canada et la Guerre Froide, 1943-1957*, ed. Greg Donaghy (Ottawa: Department of Foreign Affairs and International Trade, 1998), 191.

story we [Canadians] might imagine given our national self-perception.”¹⁷ Human rights did not in fact emerge as a policy issue in Canadian foreign policy until the mid 1970s. Canada’s approach to human rights tended also to be extremely cautious because of federal-provincial dispute over jurisdiction. Human rights thus remained on the margins of Canadian foreign policy until at least the early 1980s.¹⁸ It was not until the issue was settled with the 1982 Canada Act, which included constitutional patriation and the launch of the Charter of Rights and Freedoms, that Canada began to develop international policies on human rights in earnest. Hence, contrary to popular mythology, Canada did not become an active international proponent of human rights until well into the late 1980s and early 1990s.¹⁹

In itself, the Canada Act was no small feat. Its achievement required a reconstitution of the country’s national identity, which, for Canada, is a source of considerable and persistent apprehension. National identity is, according to John Holmes, something that Canadians agonize about.²⁰ As a multi-regional, multi-lingual, multi-cultural federation shaped by a colonial legacy and by predominant relations with Britain and the US, the promotion of a distinct identity has become a basic objective of Canadian policy. Furthermore, Canada has faced considerable challenges to its integrity as a sovereign, independent state. The problem of national unity and its pronounced effect on Canadian political culture simply cannot be understated. Crucially, human rights became an important part of Canadian foreign policy—serving to sanction specific classes of international norms and express claims to particular identities—in response to the crisis of national unity unleashed by the sovereigntist movement in Québec. Entrenching human rights served as the cornerstone of the new model of Canadian federalism under the Charter as well as the principal means of accomplishing constitutional reform. Put simply, constitutionalism was responsible for a new era in Canadian foreign relations.

These profound domestic changes explain the huge disparity between Canada’s pre- and post-Charter international human rights policies. More specifically, Canada’s pre-Charter human rights policies left much to be desired. In the early postwar years, for instance, the government of Prime Minister Mackenzie King resisted the idea of a universal charter, as did various branches of the executive, bureaucratic and public sectors.²¹ A. J. Hobbins explains that:

when early drafts of the Universal Declaration began to appear in late 1947 and 1948 they included social and economic rights along with civil and political ones. The opposition this provoked from the political right, from the business

¹⁷ Louise Arbour, *Freedom From Want: From Charity to Entitlement* (The LaFontaine-Baldwin Symposium, 2005 [cited June 2005]), available from http://www.lafontaine-baldwin.com/lafontaine-baldwin/e/2005_speech_1.html.

¹⁸ Kathleen E. Mahoney, "Human Rights and Canada's Foreign Policy," *International Journal* 47, no. 3 (1992): 555-56.

¹⁹ Interview with anonymous government official, Foreign Affairs and International Trade, Canada, Ottawa, 6 May 2005.

²⁰ John Wendell Holmes, *Life with Uncle: The Canadian-American Relationship*, *Canadian University Paperbacks*, 275 (Toronto; Buffalo: University of Toronto Press, 1981), 42.

²¹ John English, "A Fine Romance: Canada and the United Nations, 1943-1957," in *Canada and the Early Cold War, 1943-1957 / Canada et la Guerre Froide, 1943-1957*, ed. Greg Donaghy (Ottawa: Department of Foreign Affairs and International Trade, 1998), 83.

community, and, especially, from the legal fraternity was considerable. . . . The adherents of the declaration were in a clear minority and sought ways to convince their fellow Canadians of the importance of the cause.²²

The understanding of human rights in the draft Declaration was broader than the Canadian government could accept. Additional reservations included the vague or imprecise language of the Declaration as well as perceived problems of federal-provincial jurisdiction.²³ In an attempt to dilute the document, Mackenzie King instructed the Canadian delegation to the Economic and Social Council (ECOSOC) of the United Nations (UN) to undertake “the elimination, as far as possible, of articles such as those on social security, which give a detailed definition of governmental responsibilities. . . . [and] have no place in a declaration of human rights.”²⁴ Although Canada voted in favour of the Declaration in the UN General Assembly—after being one of only a handful of states to abstain from the vote in the Third Committee on 7 December 1948—such staunch opposition highlights that human rights were not a natural dimension of Canadian foreign policy.

Furthermore, little changed with the subsequent introduction of the 1960 Bill of Rights. Implemented under the government of John Diefenbaker, the Bill produced “considerable agitation” and was met by immediate objection.²⁵ Criticism was even found amongst proponents of human rights who disparaged the fact that the Bill was not constitutionally entrenched and could be struck down by other laws. As the Bill only had federal jurisdiction, it did not apply to laws enacted by provincial legislatures. Thus, despite the standard-setting precedent of the Bill of Rights as the first such act in Canada, its regulative weakness made human rights issues limited in domestic policy and virtually non-existent in foreign policy. The Bill had a negligible effect, in other words, on Canada’s national identity or the constitutive rules that defined the country’s international relations.

These circumstances would change significantly, however, with the rise of Québec separatism and the unfolding crisis of national unity. By the time that Pierre Trudeau came to power in 1968, the Canadian federation was threatened by the real prospect of national fragmentation. Yet the crisis of national unity extended far beyond the provincial or national sphere. As illustrated by Charles de Gaulle’s inflammatory “vive le Québec libre” statement of 24 July 1967 in Montréal, international relations also became a key battleground between the provincial government of Québec and the federal government of Canada for recognition and authority.²⁶ As stated by the Special Joint Committee of the Senate and the House of Commons on Canada’s International Relations:

²² Hobbins, “Eleanor Roosevelt, John Humphrey and Canadian Opposition to the Universal Declaration of Human Rights: Looking Back on the 50th Anniversary of UNDHR,” 326.

²³ Arbour, *Freedom From Want: From Charity to Entitlement*.

²⁴ Marshall, “The Cold War, Canada, and the United Nations Declaration on the Rights of the Child,” 191.

²⁵ *Ibid*; Government of Canada, *Canadian Bill of Rights* (Department of Justice, 2004 [1960] [cited August 2005]), available from <http://laws.justice.gc.ca/en/C-12.3/28981.html>.

²⁶ For an archived digicast of de Gaulle’s original speech, please see Charles de Gaulle, *Vive le Québec Libre!* (CBC Archives, 2005 [1967] [cited August 2005]), available from http://archives.cbc.ca/IDC-1-73-236-1132-10/politics_economy/vive_quebec_libre/.

National unity has a grip on the souls of Canadians that goes beyond rational calculation. It stands at the head of Canada's objectives as the *sin qua non* for all the other collective goals that Canadians may decide to pursue. Canadians recognize, of course, that whether they can retain the ability and will to pull together is largely up to themselves. Since the world acts as a mirror for Canadians, however, they have recently been directing foreign policy to the achievement of national unity.²⁷

The promises and problems of national unity therefore extended beyond domestic boundaries and rational choice. And with the domestic problem spilling over into the international arena, foreign policy was inevitably enlisted by the federal government in the struggle for a unified Canada. Foreign policy became, in other words, a principal way to assert abroad Canada's identity as a cohesive political entity.

Especially throughout the early years of acute crisis, Trudeau and other political leaders inherited the monumental task of delivering a vision of Canada that could sustain a viable federal structure. Part of Trudeau's solution came in the form of a fundamental change to the Canadian constitution. Enacted in 1982, the Canadian Charter of Rights and Freedoms is one of his lasting legacies. According to Michael Ignatieff, "Pierre Trudeau did not give us the Charter of Rights and Freedoms that we were clamouring for. He gave us the Charter we never thought was possible."²⁸ Forcing the Charter through Parliament was Trudeau's direct attempt to secure Canadian unity on the basis of individual rights. Institutionalizing human rights was meant to diminish group divisions and the appeal of nationalism. These changes forged a new era in Canadian history, which Ignatieff describes as nothing short of a rights revolution.²⁹ In this sense, respect for human rights was not part of the natural or inherent evolution of Canadian political culture. Human rights were instead adopted as part of an aspirational Canadian identity—a broader vision of what Canadian society should look like in order to survive. Rather than being impeded by sovereignty, the Canadian example highlights that human rights can, in fact, serve to strengthen an actor's claim to an identity as a sovereign, federalist political entity.

Overall, the historic weight of the Canada Act cannot be understated as it delivered complete constitutional independence from Britain and, by implication, the full rites of absolute legal and functional sovereignty. As Stephen Clarkson and Christina McCall argue:

what he [Trudeau] was after in trying to patriate the Canadian constitution was a more fully realized democracy where 'the people' as an entity would assume responsibility for the nation's social contract and at the same time achieve greater individual liberty through his proposed Charter of Rights and Freedoms.³⁰

²⁷ Canada. Parliament. Special Joint Committee on Canada's International Relations, *Independence and Internationalism: Report of the Special Joint Committee of the Senate and of the House of Commons on Canada's International Relations* (Ottawa: Queen's Printer for Canada, 1986), 32.

²⁸ Michael Ignatieff, "Balancing Foreign and Domestic," *Toronto Star*, 2 June 2005, A19.

²⁹ Michael Ignatieff, *The Rights Revolution, CBC Massey Lecture Series* (Toronto: House of Anansi Press, 2000).

³⁰ Stephen Clarkson and Christina McCall, *Trudeau and Our Times* (Toronto: McClelland & Stewart, 1990), 357-58.

Entrenching the constitution in human rights had in fact been Trudeau's vision for a democratic and federal Canada since at least the 1960s.³¹ According to a speech he delivered to the 49th Annual Meeting of the Canadian Bar Association in 1967, constitutionally guaranteed rights "would specifically put the English and French languages on an equal basis before the law" and help to mollify a common grievance amongst French Canadians.³²

Trudeau consequently believed that institutionalizing human rights would help to dispel what he perceived to be the myth and parochial glorification of the "national fact" in Québec.³³ He warned that any society defining itself in essentialist ethnic terms would necessarily become chauvinistic and intolerant. Rather, Trudeau insisted that the purpose of the state rests fundamentally in the pursuit of the general welfare of its entire population "regardless of sex, colour, race, religious beliefs, or ethnic origin."³⁴ Legislating human rights into the constitution with the Charter of Rights and Freedoms therefore underscored the state's universal interest in the general welfare of all of its citizens and signalled, by complying with and advancing international human rights norms, the legitimate authority of the federal government of Canada over its citizens and territory. Ultimately, Trudeau not only had the vision but also the political longevity to see his vision for a new constitution come to fruition—a task which was fulfilled only in 1982 on his 4807th day as Prime Minister of Canada.

The United States Constitution and American Exceptionalism

As in other areas of international politics, a considerable amount of research exists on the subject of US human rights policies. Such attention is to be expected not merely because of the proficiency of American political scientists but because of the lead role that the United States has assumed on a variety of human rights issues. Spearheaded in large part by Eleanor Roosevelt, for instance, the US was central to the creation of the Universal Declaration of Human Rights in 1948. The United States was also responsible for normalizing human rights in foreign policy and bilateral relations in the 1970s. Subsequently, the US led the way in tying foreign aid to human rights by publishing annual assessments of the human rights records of foreign governments through their State Department. On the whole, "U.S. efforts to enforce global human rights standards through rhetorical disapproval, foreign aid, sanctions, military intervention, and even multilateral negotiations are arguably more vigorous than those of any other country."³⁵

But having a track record of persistently supporting rights-abusing governments offers a first hint at the US paradox. The US has refused, moreover, to ratify treaties such as the *Ottawa Convention* on antipersonnel landmines as well as major international human rights conventions including, most notably, the *International Covenant on Economic and Social Rights* (1966), the *Convention on the Elimination of All Forms of Discrimination Against Women* (1979) and the *Convention on the Rights of*

³¹ Pierre Elliott Trudeau, *Federalism and the French Canadians* (Toronto: Macmillan of Canada, 1968), 52-60.

³² *Ibid.*, 44-45.

³³ *Ibid.*, 4.

³⁴ *Ibid.*

³⁵ Moravcsik, "The Paradox of U.S. Human Rights Policy," 147.

the Child (1989). Recently, the US was also exempted from the International Criminal Court (ICC) after a failed attempt to scuttle the institution that is generally regarded as the hallmark of the global human rights regime. As Ignatieff (2005) makes clear:

Since 1945 America has displayed exceptional leadership in promoting international human rights. At the same time, however, it has also resisted complying with human rights standards at home or aligning its foreign policy with these standards abroad. . . . This combination of leadership and resistance is what defines American human rights behavior as exceptional . . . What needs explaining is the paradox of being simultaneously a leader and an outlier.³⁶

Amongst other patent examples, American exceptionalism in human rights presents a crucial case for comparative analysis.

In particular, from a comparative constitutional perspective, the US case is unavoidable given that the country enjoys “the oldest continuous constitutional tradition of judicial enforcement of a written bill of rights in the world today.”³⁷ Andrew Moravcsik argues further that constitutionalism is an explanatory cornerstone for US exceptionalism because Americans, and above all their decision-making elites, are “unusually attached to their [longstanding] Constitution.”³⁸ American national identity and political culture has hence become synonymous with the constitutive principles that their Constitution embodies. The continuity and entrenched political stability afforded by these principles is endemic of what Louis Henkin and other observers call the “age of constitutionalism” in American history.³⁹

As a direct result of this longstanding trend, however, the very importance of constitutionalism in US foreign policy is often overlooked. According to Moravcsik, the country’s remarkable stability in democratic governance cannot be ignored in explanations of American exceptionalism.⁴⁰ Henkin points out in a similar way that “Federalism—once a staple of constitutional litigation—rarely raises its head in foreign relations, since . . . the United States is virtually a unitary state.”⁴¹ Put simply, the “constitutional moment” of the United States has thus long ago passed. The sheer absence of contestation within the US federation has thus removed the necessity of heated bargaining over the constitutive rules that shape the country’s international human rights policies amongst other issues in its foreign affairs. Should any renegotiation of these rules occur in the future, the entrenched constitutional system of the United States would mean that bargaining must occur within the domestic setting rather than being drawn into the international arena like the Canadian case.

Unlike post-authoritarian, transitional democracies, constitutionally entrenched countries like the United States have little reason to delegate authority to external institutions or to “lock in” nascent democratic institutions in the domestic sphere against

³⁶ Michael Ignatieff, “Introduction: American Exceptionalism and Human Rights,” in *American Exceptionalism and Human Rights*, ed. Michael Ignatieff (Princeton, NJ: Princeton University Press, 2005), 1.

³⁷ Moravcsik, “The Paradox of U.S. Human Rights Policy,” 147.

³⁸ *Ibid.*, 155.

³⁹ Henkin, *Foreign Affairs and the United States Constitution*, 313.

⁴⁰ Moravcsik, “The Paradox of U.S. Human Rights Policy,” 171.; emphasis removed.

⁴¹ Henkin, *Foreign Affairs and the United States Constitution*, 3.

immediate threats or pressures.⁴² And unlike many other institutions, the US Constitution is, according to Cass Sunstein, deliberately self-enforcing. He argues:

that many authors of international documents and constitutions do not think much about the question of enforcement and attempt instead to set out goals or aspirations. American constitutionalism has generally avoided this strategy. Constitutional design, emphatically including constitutional interpretation, has been undertaken with close reference to the possibility of judicial enforcement.⁴³

From an institutional standpoint, the lack of clear incentives for delegating authority to international human rights treaties combined with the self-enforcing design of the US Constitution point to a compelling explanation for American exceptionalism—or even exemptionism—in human rights.

These contemporary political realities differ notably from those at the time of America's infancy. In the early years of the new Republic, foreign relations were especially important to solidify the legitimate authority of the United States. Foreign relations also “depended heavily on treaties to be concluded (or not concluded) with other countries; therefore, who should have the power to make treaties, and the status of treaties when made, were questions of special concern” to the Constitutional Fathers.⁴⁴ Clearly, federalism and constitutional politics then had greater significance. The entrenchment of the “age of constitutionalism,” however, coupled with factors such as growing relative power and continuing pressure from conservative minorities, has meant that the United States can have considerable recourse to unilateral tendencies.⁴⁵ Ultimately, these trends point to the fact, Moravcsik argues, that American exceptionalism in human rights “is not a short-term and contingent aspect of specific American policies. It is instead woven into the deep structural reality of American life.”⁴⁶ The constitutive rules of US policy-making that reflect American identity rest immensely, it seems, on domestic authority structures that enjoy relative immunity from exogenous influences.

Communism and Constitutionalism in the People's Republic of China (PRC)

Human rights in Chinese foreign policy is generally notable not for its proactive engagement but for its defence against external criticism or interference. According to Andrew Nathan, “From its earliest days the PRC used human rights arguments to help justify its foreign policy, emphasizing the rights of sovereignty and self-determination.”⁴⁷ This emphasis would develop into a charge against the United States and other Western powers for violating the sovereignty or independence of developing countries. Indeed, China's first official recognition of “human rights” in the publication of its 1991

⁴² Moravcsik, “The Paradox of U.S. Human Rights Policy,” 173. Also see Andrew Moravcsik, “The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe,” *International Organization* 54, no. 2 (2000).

⁴³ Cass R. Sunstein, “Why Does the American Constitution Lack Social and Economic Guarantees?” in *American Exceptionalism and Human Rights*, ed. Michael Ignatieff (Princeton, NJ: Princeton University Press, 2005), 110.

⁴⁴ Henkin, *Foreign Affairs and the United States Constitution*, 175.

⁴⁵ Moravcsik, “The Paradox of U.S. Human Rights Policy,” 150.

⁴⁶ *Ibid.*, 197.

⁴⁷ Andrew J. Nathan, “Human Rights in Chinese Foreign Policy,” *The China Quarterly* 139 (1994): 624.

White Paper followed only in the aftermath of international condemnation against the Tiananmen Square crackdown on pro-democracy demonstrators in 1989.⁴⁸ Yet, important as foreign pressure may be, an exclusive focus on the notion that China was merely the target of international human rights norms ignores significant changes in the constitutive rules that allowed for a foreign policy dialogue on human rights to begin in earnest. These changes can largely be traced through the historical evolution of the Chinese Constitution.

Since the inception of the Communist regime, the Constitution of the People's Republic of China has witnessed five major revisions. Each of these revisions, according to Dingding Chen, can be interpreted as serving an explicit political programme.⁴⁹ The first constitution established in 1954, for instance, sought to instantiate economic recovery after years of civil war and to lay the foundations for Mao's socialist utopia.⁵⁰ Constitutional enforcement of the rule of law was not an overt priority as bureaucratic branches of the central government were granted sweeping powers to implement these projects.⁵¹ The few citizens' rights that were accorded in the 1954 Constitution were placed near the end of the text as the state's institutional structure assumed pre-eminent importance.⁵² This constitution nonetheless made explicit assurances on: the rights of free speech, publication, assembly and association; the freedom of procession; the right to appeal against state officials; the right to compensation for loss; secrecy of correspondence; equality before the law; and, the right to vote and run for office. Among those rights limited or excluded were minority rights and the right of the people to supervise the affairs of the government. Furthermore, all rights were prohibited from being used for "counter-revolutionary" activity. The Chinese government thus had the power to define and restrict the rights of individuals or social classes according to their political imperatives.⁵³ Hence, in reality, many of the stipulated rights never materialized.⁵⁴

The second constitution followed in 1975 as a direct product of the Cultural Revolution.⁵⁵ Its emphasis was on the glorification of the Communist Revolution, the dictatorship of the proletariat, and the primacy of the CCP under Marxism-Leninism-Mao Zedong Thought.⁵⁶ Article 1, for instance, states that "The People's Republic of China is

⁴⁸ People's Republic of China, "Human Rights in China," *Beijing Review* 34, no. 4 (1991).

⁴⁹ Dingding Chen, "Explaining China's Changing Discourse on Human Rights, 1978-2004," *Asian Perspective* 29, no. 3 (2005).

⁵⁰ Andrew J. Nathan, "Political Rights in Chinese Constitutions," in *Human Rights in Contemporary China*, ed. R. Randall Edwards, Louis Henkin, and Andrew J. Nathan (New York: Columbia University Press, 1986), 102.

⁵¹ John Franklin Copper, Franz H. Michael, and Yuan-li Wu, *Human Rights in Post-Mao China* (Boulder: Westview Press, 1985), 43.

⁵² Nathan, "Political Rights in Chinese Constitutions," 102-03.

⁵³ *Ibid.*, 105.

⁵⁴ Ann Kent, "Waiting for Rights: China's Human Rights and China's Constitutions, 1949-1989," *Human Rights Quarterly* 13, no. 2 (1991): 183-84.

⁵⁵ R. Gong, "International Human Rights, Comparative Constitutionalism and Features of China's Constitution," in *Human Rights: Chinese and Canadian Perspectives*, ed. Anne-Marie Traeholt and Errol Mendes (Ottawa: Human Rights Research and Education Centre, University of Ottawa, 1997), 90.

⁵⁶ People's Republic of China, "The Constitution of the People's Republic of China," in *Constitutions of the Countries of the World: A Series of Updated Texts, Constitutional Chronologies and Annotated Bibliographies*, ed. Albert P. Blaustein and Gisbert H. Flanz (Dobbs Ferry, NY: Oceana Publications, 1975), 7-8.

a socialist state of the dictatorship of the proletariat led by the working class and based on the alliance of workers and peasants."⁵⁷ The 1975 Constitution added such rights as the right to strike, and enshrined Mao's "four great freedoms," defined as "Speaking out freely, airing views fully, holding great debates, and writing big-character posters."⁵⁸ These freedoms were only to be exercised such that they helped to consolidate the leadership of the CCP over the state.⁵⁹ In many respects, the 1975 Constitution can be regarded as a regression in the area of citizens' rights which acted to further entrench the power of the Communist Party.⁶⁰ Furthermore, this constitution reduced the original fourteen articles on citizens' rights to merely three. Citizen's rights—Articles 26 to 29 of Chapter Three of the Constitution—were only listed after those sections describing the purpose and functions of the various state organs as well as the manner in which citizens' were required to support the socialist system.⁶¹ In fact, the section on citizens' rights begins with an article that describes rights and duties as though they were synonymous terms. This article (Article 26) declares that "The fundamental rights and duties of citizens are to support the leadership of the Communist Party of China, support the socialist system and abide by the Constitution and the laws of the People's Republic of China."⁶² Significantly, the provision stipulating that everyone is equal before the law was also abolished.⁶³

The third constitution in 1978 was adopted after Mao's death and after the Cultural Revolution had ended. This "constitutional moment" is significant because it traces the actual emergence of human rights discourse in Chinese politics. Primarily, the 1978 constitution attempted to restore normalcy to the country and to embark on economic construction through "reform and opening up." The most significant changes to this constitution were therefore the addition of several articles that would allow for Deng Xiaoping's economic and technological reforms. Article 9, for instance, declared that "The state protects the rights of citizens to own lawfully earned income, savings, homes, and other means of livelihood."⁶⁴ In addition, Articles 12 and 13 were explicitly devoted to the right of scientific research, technological innovation and education.⁶⁵ Articles were also added to espouse a commitment to the expansion of social welfare measures, healthcare and education (Articles 50-51).⁶⁶ Freedom of religion was also stipulated in Article 46.⁶⁷

⁵⁷ Ibid., 13.

⁵⁸ Nathan, "Political Rights in Chinese Constitutions," 110.

⁵⁹ Ibid.

⁶⁰ Copper, Michael, and Wu, *Human Rights in Post-Mao China*, 43.

⁶¹ China, "The Constitution of the People's Republic of China," 25-33; Gong, "International Human Rights, Comparative Constitutionalism and Features of China's Constitution," 90.

⁶² China, "The Constitution of the People's Republic of China," 37.

⁶³ Gong, "International Human Rights, Comparative Constitutionalism and Features of China's Constitution," 90.

⁶⁴ People's Republic of China, "The Constitution of the People's Republic of China," in *Constitutions of the Countries of the World: A Series of Updated Texts, Constitutional Chronologies and Annotated Bibliographies*, ed. Albert P. Blaustein and Gisbert H. Flanz (Dobbs Ferry, NY: Oceana Publications, 1978), 138.

⁶⁵ Ibid., 140-41.

⁶⁶ Ibid., 168.

⁶⁷ Ibid., 170.

These changes were substantial, according to Chen, because “The shift of China’s central task to economic construction had a profound impact not only on China’s politics, society, and economy, but also on its human-rights discourse.”⁶⁸ The emphasis on economic construction had the effect of eliminating class struggle and allowing a greater role for individualism. As per an anonymous scholar from the Chinese Academy of Social Sciences:

I think the main reason why China’s human rights situation has changed since 1978 was the Party’s decision to focus on economic construction and the “reform and opening” policy. Class struggle was no longer the main focus; and naturally it could be possible to talk about humanism and human rights.⁶⁹

The changes that were embodied in the 1978 Constitution subsequently led to a dismissal of the assumption that human rights are nothing more than the rights of the bourgeoisie, which are aimed at depriving the proletariat class of the means of production.

The fourth and successive constitution produced in 1982 continued in this direction, allowing for notable expansion in China’s human rights discourse. It contained a total of eighteen articles on citizens’ rights by reinstating some of the rights that were previously repealed and by introducing additional rights. Most notably, it restored equality before the law (Article 33) and abolished the practice of automatically depriving equal rights to all persons with poor class backgrounds.⁷⁰ Other rights included freedom of speech and the prohibition of unlawful detention. For the first time ever, the section of citizens’ rights was placed at the front of the Constitution.⁷¹ The 1982 Constitution was undeniably more progressive than its predecessors on the issue of human rights. The 1982 Constitution still failed, however, to differentiate between citizens’ rights and duties as both are listed together under Chapter Two of the Constitution.⁷² For instance, Article 37 states that “The freedom of person of citizens of the People’s Republic of China is inviolable.”⁷³ This provision stands in blatant contradiction to Article 51, which states that “The exercise by citizens of the People’s Republic of China of their freedoms and rights may not infringe upon the interests of the state, of society and of the collective.”⁷⁴

The tension between these articles—the inviolable freedom of the individual versus the supremacy of collective interests—was graphically illustrated in the Tiananmen crackdown of 1989. Rather than attempting to clamp down on individual rights, however, the Chinese state chose instead to confront the issue in its foreign relations. For Andrew Nathan:

Influence in world affairs is not limited to military and economic power. A government can use ideas and values to build support at home and to recruit

⁶⁸ Chen, “Explaining China’s Changing Discourse on Human Rights, 1978-2004,” 164.

⁶⁹ Cited in *Ibid.*: 165.

⁷⁰ People’s Republic of China, “The Constitution of the People’s Republic of China,” in *Constitutions of the Countries of the World: A Series of Updated Texts, Constitutional Chronologies and Annotated Bibliographies*, ed. Albert P. Blaustein and Gisbert H. Flanz (Dobbs Ferry, NY: Oceana Publications, 1982), 43.

⁷¹ *Ibid.*, 37-46.

⁷² *Ibid.*, 43-46.

⁷³ *Ibid.*, 44.

⁷⁴ *Ibid.*, 125.

sympathizers among public and policy-makers abroad. The struggle over beliefs and values may be as complex as the struggle over other forms of power. The history of the human rights issue in Chinese foreign policy exemplifies such a process.⁷⁵

The subsequent publication of the 1991 White Paper changed the existing discourse of human rights in Chinese foreign policy from a position of flat denial to one that accepted the universal basis of human rights—albeit “in line with the country’s reality.”⁷⁶ Certainly, China’s evolving stance on international human rights norms bore some instrumental or strategic value. China, in this sense, was successful in deflecting criticism and “in achieving a gradual return to mainstream diplomacy.”⁷⁷

It would be a mistake, however, to conflate human rights in Chinese foreign policy as little more than a reaction to international pressure. Put simply, international pressure played an important but not sufficient role in explaining the consolidation and internalization of human rights discourse in China. As Chen points out, despite decreased pressure following the end of the most-favoured-nation debate under the Clinton administration, China’s interest in human rights actually grew over the same period. In contrast with the standard instrumental argument, he contends that:

The deeper reasons for China’s changing human-rights discourse . . . have much to do with the way the CCP interpreted its past policies, national conditions, and identity . . . Suffice it to say that China’s discourse on human rights would not have changed without the thorough self-reflection and self-criticism launched by the CCP in the late 1970s.⁷⁸

To ignore these developments would make it virtually impossible to explain the latest constitutional changes in terms of human rights. Specifically, the fifth and current version of the Chinese Constitution adopted in 2004 specifies, for the first time in the history of the PRC, that “the state respects and safeguards human rights.”⁷⁹ These developments have occurred notwithstanding the relative waning of international criticism and the relative strength of the country’s power.

The 2004 Constitution does stipulate, however, that citizens “at the same time must perform the duties prescribed by the Constitution and the law.”⁸⁰ Still, China’s human rights progress—however incremental—should not be discounted. The genealogy of constitutionalism in China illustrates that the gradual acceptance of international human rights norms began long before international condemnation peaked after Tiananmen. Rather than being regarded as a response to foreign demands, human rights in China’s foreign affairs has generally served to hasten or sharpen the country’s ongoing discourse on individual rights and freedoms. International politics, then, can be viewed as a key arena whereby China’s identity—vis-à-vis the constitutive

⁷⁵ Nathan, "Human Rights in Chinese Foreign Policy," 622.

⁷⁶ People’s Republic of China cited in Chen, "Explaining China's Changing Discourse on Human Rights, 1978-2004," 173.

⁷⁷ Nathan, "Human Rights in Chinese Foreign Policy," 642.

⁷⁸ Chen, "Explaining China's Changing Discourse on Human Rights, 1978-2004," 174-76.

⁷⁹ People's Republic of China, *The Constitution of the People's Republic of China* (2004 [cited March 2008]), available from http://english.gov.cn/2005-08/05/content_20813.htm.

⁸⁰ Ibid.

rules embodied in the country's various constitutional experiments—is shaped and reshaped through social interaction. Mirrored by developments in constitutionalism, human rights in Chinese foreign policy play out in a much more open way than ever before. Though some human rights proponents may lament the limitations of international advocacy, a crucial point to emphasize is that recent trends in Chinese constitutionalism and improvements in the rule of law may yet encourage a Chinese identity increasingly consonant with the notion of universal human rights.

CONCLUSION

This paper stresses the need for exploring the gaps between International Relations and International Law, in general, and between Foreign Policy Analysis and constitutionalism, in particular. Disciplinary divisions between these fields of study are regrettable. As Valerie Hudson argues:

The research agenda of the Field of Foreign Policy Analysis should be well suited to address questions of culture and identity in foreign policy, striving as it does for actor-specific theory, which combines the strengths of general theory with those of country expertise. Nevertheless, one of the least developed angles of analysis in the subfield, in my opinion, is the study of how societal culture and issues of identity affect foreign policy choice.⁸¹

In an attempt to respond to this challenge, the paper offers an analysis of human rights in Canadian, American and Chinese foreign policy through the lens of constitutional politics and identity. It was argued that constitutionalism is imperative for explaining the origins of human rights in foreign policy, the constitutive rules that frame policymaking as well as the limits of states' support for human rights in international affairs.

As a starting point for comparison, both Canada and the US have exhibited leadership in international human rights at some point in their histories. Finding more vociferous and active examples would be difficult. The similarities and distinctions between their federal structures also provided a strong basis for analysis. While Canadian leadership on international human rights was part of a larger and very recent project to repatriate the constitution and entrench human rights domestically for the purpose of national unity, American leadership on the issue stems from the long-standing unity of the country and the mandate of rights and principles that are embodied in its founding constitution. Yet the entrenched, self-enforcing nature of the US Constitution also provides clues to American exceptionalism in human rights and the limitations and inconsistencies of the country's domestic and international policies. Equally, the impetus behind human rights in Canadian foreign policy grew from domestic interests and notions of identity rather than from some form of middlepowermanship or "enlightened internationalism."⁸²

For China, therefore, human rights in foreign relations have less to do with international pressure than with broader trends in Chinese constitutionalism. Put simply,

⁸¹ Hudson, *Foreign Policy Analysis: Classic and Contemporary Theory*, 104.

⁸² "Enlightened internationalism" in Canadian foreign policy is espoused, for instance, in Michael Tucker, *Canadian Foreign Policy: Contemporary Issues and Themes* (Toronto: McGraw-Hill Ryerson, 1980).

human rights in China's international relations cannot be explained simply as a battleground between states of disparate power capabilities. The more compelling evidence points instead to processes of identity production in relation to constitutional politics and the country's evolving human rights discourse. This finding also instantiates the claim that constitutions embody "guiding principles" or constitutive rules which "communicate to different audiences the government's desired relationship to society."⁸³ Constitutions, in this sense, are not just "window dressing." Increases in respect for universal human rights may occur as national identities consolidate around shared domestic and international norms. Although the frequency by which China has experienced constitutional reform illustrates the arduous path to consolidation, the fact that trends in Chinese constitutionalism indicate a general shift towards universal human rights norms should not be forgotten.

The necessity of consolidation and the internationalization of human rights norms may thus limit the effects of international human rights advocacy. Nonetheless, the insights of this paper into the origins of human rights policies also demonstrate the significant role of domestic agency in shaping state identity. Further research into this area could yield deeper understandings of the potential "value added" of human rights in federal systems. Hardly a coincidence, the emergence of human rights in Canadian foreign policy—in the years following the FLQ crisis and the threat of national fragmentation—and in American foreign policy—following the pinnacle of the civil rights movement and the country's confrontation with its legacy of slavery—underscores an important theme. Both cases suggest that human rights foster national unity and mitigate the likelihood of violence over issues of equality and justice. Social diversity, contestation and accommodation are, in varying degrees, present in every political community. Although China still defends its claim to non-interference in domestic affairs, Beijing will likely be forced to pay closer scrutiny to internal human rights issues as major social change continues to grip Chinese society and as the country is forced to find innovative ways to govern the so-called autonomous and special administrative regions. Comparing the achievements and shortfalls of the Canadian, American and Chinese examples therefore generates wider implications for how coordinated human rights laws and policies can engender the necessary institutions for moderating these problems internationally in an era of globalization.

⁸³ Christian A. Davenport, "'Constitutional Promises' and Repressive Reality: A Cross-National Time-Series Investigation of Why Political and Civil Liberties are Suppressed," *The Journal of Politics* 58, no. 3 (1996): 630.

References

- Adler, Emanuel. "Seizing the Middle Ground: Constructivism in World Politics." *European Journal of International Relations* 3, no. 3 (1997): 319-63.
- Arbour, Louise. *Freedom From Want: From Charity to Entitlement*. The LaFontaine-Baldwin Symposium, 2005 [cited June 2005]. Available from http://www.lafontaine-baldwin.com/lafontaine-baldwin/e/2005_speech_1.html.
- Canada, Government of. *The Canadian Approach*. Foreign Affairs Canada, 2004 [cited August 2005]. Available from http://www.dfait-maeci.gc.ca/foreign_policy/human-rights/hr4-approach-en.asp.
- Canada, Government of. *Canadian Bill of Rights*. Department of Justice, 2004 [1960] [cited August 2005]. Available from <http://laws.justice.gc.ca/en/C-12.3/28981.html>.
- Canada, Government of. *Canada's International Human Rights Policy*. Foreign Affairs Canada, 2005 [cited May 2005]. Available from http://www.dfait-maeci.gc.ca/foreign_policy/human-rights/hr1-rights-en.asp.
- Canada. Parliament. Special Joint Committee on Canada's International Relations. *Independence and Internationalism: Report of the Special Joint Committee of the Senate and of the House of Commons on Canada's International Relations*. Ottawa: Queen's Printer for Canada, 1986.
- Chen, Dingding. "Explaining China's Changing Discourse on Human Rights, 1978-2004." *Asian Perspective* 29, no. 3 (2005): 155-82.
- China, People's Republic of. "The Constitution of the People's Republic of China." In *Constitutions of the Countries of the World: A Series of Updated Texts, Constitutional Chronologies and Annotated Bibliographies*, edited by Albert P. Blaustein and Gisbert H. Flanz. Dobbs Ferry, NY: Oceana Publications, 1975.
- China, People's Republic of. "The Constitution of the People's Republic of China." In *Constitutions of the Countries of the World: A Series of Updated Texts, Constitutional Chronologies and Annotated Bibliographies*, edited by Albert P. Blaustein and Gisbert H. Flanz. Dobbs Ferry, NY: Oceana Publications, 1978.
- China, People's Republic of. "The Constitution of the People's Republic of China." In *Constitutions of the Countries of the World: A Series of Updated Texts, Constitutional Chronologies and Annotated Bibliographies*, edited by Albert P. Blaustein and Gisbert H. Flanz. Dobbs Ferry, NY: Oceana Publications, 1982.
- China, People's Republic of. "Human Rights in China." *Beijing Review* 34, no. 4 (1991): 8-45.

- China, People's Republic of. *The Constitution of the People's Republic of China*. 2004 [cited March 2008]. Available from http://english.gov.cn/2005-08/05/content_20813.htm.
- Clarkson, Stephen, and Christina McCall. *Trudeau and Our Times*. Toronto: McClelland & Stewart, 1990.
- Copper, John Franklin, Franz H. Michael, and Yuan-li Wu. *Human Rights in Post-Mao China*. Boulder: Westview Press, 1985.
- Davenport, Christian A. "Constitutional Promises' and Repressive Reality: A Cross-National Time-Series Investigation of Why Political and Civil Liberties are Suppressed." *The Journal of Politics* 58, no. 3 (1996): 627-54.
- English, John. "A Fine Romance: Canada and the United Nations, 1943-1957." In *Canada and the Early Cold War, 1943-1957 / Canada et la Guerre Froide, 1943-1957*, edited by Greg Donaghy, 255. Ottawa: Department of Foreign Affairs and International Trade, 1998.
- Forsythe, David P. "Human Rights and Foreign Policy: In the Next Millennium." *International Journal* 52, no. 1 (1997): 113-32.
- Forsythe, David P. *Human Rights and Comparative Foreign Policy*. Tokyo; New York: United Nations University Press, 2000.
- Gaulle, Charles de. *Vive le Québec Libre!* CBC Archives, 2005 [1967] [cited August 2005]. Available from http://archives.cbc.ca/IDC-1-73-236-1132-10/politics_economy/vive_quebec_libre/.
- Gong, R. "International Human Rights, Comparative Constitutionalism and Features of China's Constitution." In *Human Rights: Chinese and Canadian Perspectives*, edited by Anne-Marie Traeholt and Errol Mendes, 595 p. Ottawa: Human Rights Research and Education Centre, University of Ottawa, 1997.
- Hathaway, Oona A. "Do Human Rights Treaties Make a Difference?" *The Yale Law Journal* 111, no. 8 (2002): 1935-2042.
- Henkin, Louis. *How Nations Behave: Law and Foreign Policy*. 2d ed. New York: The Council on Foreign Relations, Columbia University Press, 1979.
- Henkin, Louis. *Foreign Affairs and the United States Constitution*. 2nd ed: New York: Oxford University Press, 1996.
- Hobbins, A. J. "Eleanor Roosevelt, John Humphrey and Canadian Opposition to the Universal Declaration of Human Rights: Looking Back on the 50th Anniversary of UNDHR." *International Journal* 53, no. 2 (1998): 325-42.

- Holmes, John Wendell. *Life with Uncle: The Canadian-American Relationship*, Canadian University Paperbacks, 275. Toronto; Buffalo: University of Toronto Press, 1981.
- Hudson, Valerie M. *Culture & foreign policy*. Boulder, Colo.: L. Rienner Publishers, 1997.
- Hudson, Valerie M. *Foreign Policy Analysis: Classic and Contemporary Theory*. Lanham: Rowman & Littlefield, 2007.
- Ignatieff, Michael. *The Rights Revolution, CBC Massey Lecture Series*. Toronto: House of Anansi Press, 2000.
- Ignatieff, Michael. "Balancing Foreign and Domestic." *Toronto Star*, 2 June 2005, A19.
- Ignatieff, Michael. "Introduction: American Exceptionalism and Human Rights." In *American Exceptionalism and Human Rights*, edited by Michael Ignatieff. Princeton, NJ: Princeton University Press, 2005.
- Katzenstein, Peter J., ed. *The Culture of National Security: Norms and Identity in World Politics*. New York; Chichester: Columbia University Press, 1996.
- Kent, Ann. "Waiting for Rights: China's Human Rights and China's Constitutions, 1949-1989." *Human Rights Quarterly* 13, no. 2 (1991): 170-201.
- King, Gary, Robert O. Keohane, and Sidney Verba. *Designing Social Inquiry: Scientific Inference in Qualitative Research*. Princeton, NJ: Princeton University Press, 1994.
- Mahoney, Kathleen E. "Human Rights and Canada's Foreign Policy." *International Journal* 47, no. 3 (1992): 555-94.
- Marshall, D. "The Cold War, Canada, and the United Nations Declaration on the Rights of the Child." In *Canada and the Early Cold War, 1943-1957 / Canada et la Guerre Froide, 1943-1957*, edited by Greg Donaghy. Ottawa: Department of Foreign Affairs and International Trade, 1998.
- Moravcsik, Andrew. "The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe." *International Organization* 54, no. 2 (2000): 217-52.
- Moravcsik, Andrew. "The Paradox of U.S. Human Rights Policy." In *American Exceptionalism and Human Rights*, edited by Michael Ignatieff. Princeton, NJ: Princeton University Press, 2005.
- Morgenthau, Hans Joachim. *Politics Among Nations: The Struggle for Power and Peace*. 6th ed. New York: Knopf; Random House, 1985.

Nathan, Andrew J. "Political Rights in Chinese Constitutions." In *Human Rights in Contemporary China*, edited by R. Randall Edwards, Louis Henkin and Andrew J. Nathan. New York: Columbia University Press, 1986.

Nathan, Andrew J. "Human Rights in Chinese Foreign Policy." *The China Quarterly* 139 (1994): 622-43.

Reus-Smit, Christian. *The Politics of International Law, Cambridge Studies in International Relations*, 96. Cambridge, UK; New York: Cambridge University Press, 2004.

Ruggie, John Gerard. "What Makes the World Hang Together? Neo-Utilitarianism and the Social Constructivist Challenge." *International Organization* 52, no. 4 (1998): 855-85.

Sunstein, Cass R. "Why Does the American Constitution Lack Social and Economic Guarantees?" In *American Exceptionalism and Human Rights*, edited by Michael Ignatieff. Princeton, NJ: Princeton University Press, 2005.

Trudeau, Pierre Elliott. *Federalism and the French Canadians*. Toronto: Macmillan of Canada, 1968.

Tucker, Michael. *Canadian Foreign Policy: Contemporary Issues and Themes*. Toronto: McGraw-Hill Ryerson, 1980.

Waltz, Kenneth Neal. *Theory of International Politics*. London: McGraw-Hill, 1979.

Wendt, Alexander. *Social Theory of International Politics, Cambridge Studies in International Relations*, 67. Cambridge; New York: Cambridge University Press, 1999.