LEADER OF RIGHTS?

The United States' Uneven Engagement with the American Convention on Human Rights

A THESIS

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Dedication

To Sophia, a Dancing Queen in her own right who inspires me every day to be kind.

PREFACE

Like many freshmen, I came to Michigan with a plan. I would study Linguistics, intern at law firms throughout undergrad, and position myself for a life in the legal field. It was in this frame of mind that I signed up to take Intro to World Politics with Professor Koremenos. Immediately, the subject of international politics and law piqued my interest, especially in how it necessitated a historical understanding (what happened?) as well as a methodical one (*why* did it happen and how can we recreate or prevent something similar?). However, it was especially the lectures on human rights that held my attention.

I came to better understand how the very idea of human rights has made an immense impact on our world. Despite its frequent framing as a naive concept, the language of human rights has shaped contemporary international law and motivated revolutions as well as transnational compassion and advocacy. My fascination with the considerable *power* of human rights has continued to shape my undergraduate career. In addition to motivating my decision to declare a major in Political Science, it has also led to my desire to minor in Moral and Political Philosophy as well as to be more aware of human rights abuses when and where they occur. And, of course, it has also led me here, to a thesis dedicated not only to my research question but to highlighting the power of human rights as illustrated through the Inter-American Human Rights System.

Though the great majority of my thesis, through the many twists and turns of the research process, focuses on U.S. foreign policy, it was the Inter-American System itself that I fell in love with. Both because it goes beyond declaring mere ideas of basic human rights by attempting to enforce them but also because, when it fails in this endeavor, it does at least succeed in calling attention to abuses themselves; and, in doing so, it works to recognize and validate the experiences of victims of human rights abuses.

This is a powerful thing.

INTRODUCTION

The United States has considered itself a leader in human rights.[1] There is certainly some truth to this; its founding as a nation is remembered by the oft-quoted words, "We hold these truths to be self-evident, that all men are created equal." It has also participated actively in the development of the international human rights regime, negotiating agreements such as the Convention on the Rights of the Child, the Convention on the Elimination of Discrimination Against Women, and many others.[2] Yet, its participation in the negotiation of such agreements fails to translate to a record of ratifying human rights instruments. When agreements have been ratified, as is the case with the International Covenant on Civil and Political Rights (ICCPR) and Genocide Convention, the road is a long one between the agreements' conclusion and the United States' ratification.[3]

The question that naturally follows from this observation is why the United States has failed to ratify multiple human rights agreements. Indeed, both nongovernmental organizations (NGOs) and scholars have considered this puzzling question. NGOs point out the impact of the United States' cold feet with regards to human rights: mainly, that, by not ratifying agreements, the United States' credibility as a leader of human rights is called into question.[4] In Amnesty International's 2019 report on the human rights situation in the United States, they point out that,

[1] In the recent words of current Secretary of State Michael Pompeo, "Since America's founding, the concept of individual rights has been woven into the national fabric… every year since 1977, the State Department has, through this report, put the world on notice that we'll expose violation of human rights wherever they occur. We have told those who disgrace the concept of human dignity they will pay a price, that their abuses will be meticulously documented and then publicized." *See* Pompeo 2019.
[2] Cohen 2006.
[3] In the case of the ICCPR, twenty six years separate the covenant's conclusion and the United States ratification. The Genocide Convention is even more surprising, with forty years having elapsed between the agreement's conclusion in 1948 and the United States' ratification in 1988.
[4] *See* Wilken 2017 (writing for human rights NGO, Global Justice Center) and the Human Rights Watch 2009 Report titled, "United States Ratification of International Human Rights Treaties."

by not fully participating in international human rights, the U.S. effectively "[declines] to cooperate with [the] examination of the human rights situation within the USA."[5]

While NGOs consider the impact, scholars contemplate the cause of the United States' failure to ratify human rights agreements. Most scholarly work emphasizes the role of sovereignty and federalism concerns, tracing these concerns to the proposal of the Bricker Amendment in the 1950s.[6] The Bricker Amendment was a proposed amendment to the Constitution, put forward by Republican Senator from Ohio, John Bricker from 1951-1954. The amendment would have rendered all international human rights agreements non-self-executing, meaning that agreements would not be domestically enforceable without additional legislation which, in turn, would limit the impact of agreement ratification. Although the amendment failed by one vote in the Senate, scholars argue that the effects of its consideration have been long-lasting, causing a persistence of concern over how human rights agreements might override U.S. sovereignty. It is therefore the Bricker Amendment, they argue, that has led to the United States' failure to ratify human rights agreements.

In the particular case of the American Convention on Human Rights, scholars have also proposed that the Convention carries substantive barriers for the United States.[7] Scholars advancing this argument identify that the United States may have failed to ratify the American Convention because the Convention was not sufficiently consistent with U.S. domestic law, especially in terms of its right to life language which can be read as prohibiting abortion. Because abortion is permitted in the United States and because the Convention additionally prohibits the

[5] *See* Amnesty International 2019 Report.
[6] Bitker 1981, Hevener Kaufman and Whiteman 1988, Henkin 1995, Diab 1992, and Rivera Jurasti 2013.
[7] *See* Chapter Three for more details on inconsistencies between the right to life as it is understood in the United States as compared to the American Convention. In short, the American Convention can be read as prohibiting abortion, which is permitted in the United States, and restricts the application of the death penalty in ways that do not align with U.S. domestic laws.

death penalty in cases where the United States allows it, the U.S. is argued to have avoided the inconsistency by not ratifying. In Chapter Three of this thesis, I discuss the limitations of both the Bricker Amendment Argument and Substantive Limitations Argument in detail.

However, one limitation facing both of the arguments is that, in asking only why the United States fails to ratify, scholars miss the most interesting characteristic of the United States' engagement with international human rights law: that it is *uneven*. While the United States exerts time, energy, and resources into negotiating many human rights agreements, it often falls short of ratifying them. The current explanations in the literature often acknowledge this phenomenon, but scholarship has not attempted to explain it or study it empirically. By failing to address this aspect of the United States' relationship to human rights, their explanation for the United States' failure to ratify is incomplete.

This thesis seeks to remedy this gap by investigating the United States' uneven engagement with the American Convention on Human Rights. I propose that uneven engagement is a result of the tension between two approaches to norm exportation. These approaches — the Restraint Approach and Imposition Approach — fundamentally disagree about how the United States should promote human rights abroad. The Restraint Approach endorses U.S. participation in international institutions, restraining some power in order to influence the institutions themselves. Conversely, the Imposition Approach avoids participation in such institutions to preserve U.S. sovereignty, opting instead for unilateral condemnations or interventions when necessary. The presence of both these perspectives, I argue, gives rise to what attorney Bruno Bitker calls the "split personality" of the United States' human rights involvement.[8]

[8] Bitker 1981, 90.

To test the presence of these approaches and understand their tension's role in preventing human rights ratification by the United States, I use process tracing to evaluate several documents, including the Convention's preparatory documents, primary and secondary sources detailing the League of Nations membership debate,[9] and the Senate Foreign Relations Committee's hearing considering the ratification of the American Convention.[10] These sources lend insight on the predicted implications of each hypothesis developed throughout Chapters Three and Four of this thesis.

The thesis will proceed as follows: Chapter One will briefly describe the structure of the Inter-American Human Rights System, including an overview of the agreements and monitoring and punishment system that comprise it. Chapter Two will detail the theoretical sources of the Restraint and Imposition Approaches before I argue for the utility of their application in considering the United States' uneven engagement in the American Convention. I then, in Chapter Three, review the two main alternative explanations in the literature — the Substantive Limitations Argument and the Bricker Amendment Argument — for why the United States has failed to ratify the American Convention. In doing so, I articulate hypotheses for both explanations as well as testable implications for them.

Chapter Four summarizes my methodology, describing the fundamentals of process tracing, the qualitative tests the method uses to evaluate evidence, and how I apply those tests in light of my hypotheses. Lastly, Chapter Five reports the results of my analysis of several primary and secondary source documents, highlighting the qualitative data collected and discussing it. I ultimately conclude that neither the Substantive Limitations or Bricker Amendment Arguments

[9] These documents are used to test the validity of the Bricker Amendment Argument. *See* Chapter Three.
[10] I use process tracing methods as developed by Collier and Beach and Pederson. *See* Collier 2011 and Beach and Pederson 2013.

are substantiated. Additionally, I find some support for my argument that uneven engagement results from a tension between Restraint and Imposition Approaches to human rights and suggest that further study may help understand the possible general applicability of this proposition.

Chapter One

BACKGROUND AND STRUCTURE OF THE INTER-AMERICAN SYSTEM

Before engaging with my positive argument or the existing literature on the United States' participation in the Inter-American Human Rights System (IAHRS), it is necessary to first establish an understanding of the System itself: its structure and workings as well as its relevant actors. This chapter seeks to answer the question, what does it imply for states to ratify the American Convention on Human Rights? More broadly, what does membership in the Organization of American States imply for states? I answer these questions by highlighting the major agreements and bodies of the System, their functions, their interconnectedness, and who can access them.

Major Agreements of the IAHRS

The Organization of American States (OAS) was established in April 1948 with the signing of the OAS Charter[11] by 21 Western hemispheric countries, including the United States. Reaffirming the important mission of the United Nations, the Charter also recognized the desire and need for "American solidarity and good neighborliness" and "intensive continental cooperation" for the purpose of individual and hemispheric welfare.[12] During the same conference, states also signed the American Declaration on the Rights and Duties of Man,[13] providing the broad

[11] Entered into force in December 1951.
[12] *Charter of the Organization of American States* 1948, Preamble.
[13] Many scholars have noted the importance of the Universal Declaration of Human Rights (UDHR), adopted in December 1948, even highlighting its role in propelling the landscape of human rights forward (Nickel 1987 and Donnelly and Whelan 2018). Interestingly, however, the lesser-known American

strokes of the human rights mission of the OAS, establishing the beginnings of the Inter-American Human Rights System, and framing the later drafting of the American Convention on Human Rights.[14]

The American Convention, drafted and negotiated between 1959 and 1969, was finally signed in November 1969 and entered into force in 1978. Establishing the Convention gave more shape and substance to the early Inter-American System, grounding the ideals of the American Declaration in a legally binding document. In addition to its substantive provisions, the American Convention also further defined the role of the existing Inter-American Commission on Human Rights as well as established the new Inter-American Court of Human Rights. Both these bodies, working together, are tasked with monitoring the human rights situation in the Americas and punishing human rights abuses occurring in the Western hemisphere.

The Inter-American Commission on Human Rights

The Inter-American Commission on Human Rights ("the Commission") was established in 1959, before the American Convention was signed or entered into force. As of 1961, the Commission had conducted country visits to OAS member states, assessing their human rights practices and monitoring areas where there were concerns.[15] Since then, the responsibilities and mandate of the Commission have expanded. Seven Commissioners, each from an OAS member state, are tasked with carrying out the three pillars of the Commission's work: hearing petitions

Declaration predates the UDHR by eight months and is widely considered the first international human rights agreement (Farer 1997 and Sikkink 2014).

[14] *American Convention on Human Rights* 1979, Preamble.

[15] The Commission's earliest work included country visits to Cuba, investigating the treatment of political prisoners, and the Dominican Republic, investigating forced disappearances and killings of political prisoners and protestors. *See* Reports of the Inter-American Commission, available at http://www.cidh.oas.org/pais.eng.htm.

that allege human rights violations, broadly monitoring the human rights practices of member states, and assessing the status of certain "thematic areas" of human rights such as racial justice or indigenous rights.[16] In particular, the first pillar, the Commission's work of hearing petitions, may have different consequences depending on which OAS human rights agreement(s) a state is party to.

Under the Rules of Procedure for the Inter-American Commission on Human Rights, the Commission may hear petitions from both citizens and nongovernmental organizations (NGOs), so long as they are legally recognized in at least one of the OAS member states. These petitions are allegations of human rights abuses against an OAS member state and provide a rare access point for non-state actors to remedy abuses made against them or against who they represent. However, the nature of these allegations changes depending on whether the respondent state is a member of the American Convention. For states not party to the Convention, the allegations may only be made on the basis of rights protected by the American Declaration. The Commission may then, if it finds a violation, issue recommendations to the state and require a report from the state regarding its adherence to the recommended measures.[17] For individuals whose rights are violated by a country not party to the American Convention, this is the extent of the measures available to them through the Inter-American Human Rights System. However, for those whose state is a member of the American Convention, there may be additional remedies possible through the Inter-American Court of Human Rights.[18]

[16] Inter-American Commission on Human Rights, "What is the IACHR?" Available at https://www.oas.org/en/iachr/mandate/what.asp
[17] *Rules and Procedures of the Inter-American Commission on Human Rights*, Article 44.
[18] States must indicate they accept the contentious jurisdiction of the Court, although the majority of states who ratify do so. Of the twenty-five states party to the Convention, only six do not: Dominica, Grenada, Jamaica, Trinidad and Tobago, and Venezuela.

The Inter-American Court of Human Rights

The Inter-American Court of Human Rights ("the Court") was created by the American Convention[19] in 1969 and formally established in 1979. Seven judges sit on the Court and are nominated and elected by member states of the Convention, though the judges may be from any OAS member state.[20] Those who submit petitions to the Commission against states party to the American Convention may have their petitions transmitted to the Court, providing the possibility for additional legal processes and remedies for abuses. These include the possibility for binding decisions to be made by the Court upon American Convention member states with regard to human rights abuses. The decisions can include both pecuniary and nonpecuniary punishments or reparations, which range from larger settlements for families or victims to public apologies or monuments.

The ability of the Commission to transmit petitions to the Court implies something unique about the Inter-American System: that individuals and NGOs may take their own countries to an international court for human rights abuses committed against them. In addition to this feature, allegations against states party to the American Convention may include provisions of the Convention itself, which outline more precise rights than the American Declaration and hold member states to a more rigorous standard.[21] For example, while the American Declaration loosely

[19] *American Convention on Human Rights*, Chapter 8.
[20] *American Convention on Human Rights*, Articles 52-53.
[21] Likewise, though less relevant to this thesis, allegations may include rights enumerated in other OAS human rights agreements, so long as the respondent state has ratified the agreement. This has been especially meaningful in femicide cases or, broadly, cases of violence against women, which can draw on the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (also known as the Convention of Belém do Pará).

protects the "right to establish a family," the American Convention is more specific, enumerating the right to marriage as a component of one's right to family.[22]

Notably, since the Court first began hearing cases in 1987, it has only had cases from individual citizens or NGOs submitted to it, even though a member state may itself submit a case against another state to the Court.[23] Likely the incentives to individuals and NGOs to bring cases to the Commission — and, if needed, the Court — are vastly different than the incentives of other countries to do the same. States themselves must continuously consider how their actions in some areas might affect their relationships with states in other areas.

For example, consider the case where State A notices a human rights violation committed by State B. State A may feel very strongly that the actions committed by State B were wrong; if both states are members of the American Convention, State A may submit a case to the Inter-American Court against State B. However, State A's considerations do not extend simply to the context of the case it would like to bring to the Court. State A must consider all areas it cooperates or interacts with State B and weigh the benefits of bringing a case to the Court against the possible consequences in these other realms of cooperation. State A may win the case, proving a human rights violation by State B, but it may suffer, for example, consequences in its trade relations with B due to B's retaliation.

For individuals and NGOs, however, the incentives are much more in their favor in bringing petitions to the Commission that may make their way to the Court. They do not have the same concerns over staying in the "good graces" of the countries they bring petitions against, and they may see reparations for — or at the very least, recognition of — the wrongs made against

[22] *See* Article 6 of the *American Declaration* and Article 17 of the *American Convention*.
[23] Inter-American Court of Human Rights, "Decisions and Judgements," available at http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_casos_contenciosos.cfm?lang=en

them. Therefore, by formalizing a place for individual and NGO involvement in the monitoring and punishment of human rights, the Inter-American System overcomes one difficult question raised by international human rights law: who punishes? By overcoming the inhibitions of states to enforce human rights, the Inter-American System opens the doors for its human rights agreements to be more instrumental and tangible than they otherwise would be.

Chapter Three

THE RESTRAINT APPROACH AND THE IMPOSITION APPROACH

In this chapter, I argue that the United States' uneven engagement with the American Convention on Human Rights is best understood as a tension between two norm exportation approaches: the Restraint Approach and Imposition Approach. In order to do so, I first define each approach by drawing on the work of theorist Georg Sørensen, whose articulation of a "liberalism of restraint" and "liberalism of imposition" largely inform this research.[24] I then further give meaning to these approaches by applying them to the context of human rights and, in doing so, make predictions about what I will observe in Senate considerations of the American Convention if my argument were to hold true.

A Liberal Disagreement

Before defining the Restraint and Imposition Approaches as I apply them in this thesis, an understanding of their theoretical source is necessary. Liberal theory has long grappled with the tension between negative liberty and positive liberty in how states should be permitted to regulate or interfere with their citizens.[25] One is said to be free in a negative sense when she is not subject to intervention by another person or entity. Although liberal theorists disagree over what constitutes justified intervention, there is general agreement over the principle that individuals

[24] Georg Sørensen, 2006, "Liberalism of Restraint and Liberalism of Imposition: Liberal Values and World Order in the New Millennium," *International Relations* 20(3): 251-272.
[25] Berlin 1969.

should retain some minimum standard of freedom to do, say, and think as they please.[26] However, many theorists also endorse the idea of positive liberty: the freedom to be one's "own master," free from "external forces of whatever kind" that limit one's decisions.[27] This is distinct from negative liberty because the protection of positive liberty often involves positive action by the state. Examples of positive liberty exerted domestically may include affirmative action policies or welfare benefits. Because securing positive liberty often requires infringements on negative liberty, the two are in tension with one another, and disagreements over the correct balancing of the two abound in domestic politics.[28]

Sørensen applies these theoretically established types of freedom to the international realm, arguing that the same tension exists for liberal states as they consider how to pursue a liberal world order.[29] He proposes "liberalism of restraint" and "liberalism of imposition" as two competing methods for pursuing a more free global society. The liberalism of restraint is based in the negative liberty concept; that is, that people — and states — should be free from interference save in

[26]For example, Millian theorists argue that intervention is justified only to prevent individuals from harming others. Others, like Peter de Marneffe, offer that paternalism — intervention to prevent individuals from harming themselves — is justified.

[27] Berlin 1969, 22.

[28] Positive liberty and negative liberty also largely inform the idea of first-generation and second-generation human rights. First-generation rights include political and civil rights, such as the right to vote and freedom of speech. Second-generation rights, on the other hand, are social, cultural, and economic rights, such as the right to health care or the right to housing. In the coming paragraphs, it is important to avoid conflating these with the two forms of liberalism Sørensen proposes, despite their common theoretical origins. Although a state actor may identify herself with liberalism of imposition (based is positive liberty) in terms of state norm exportation, preferring intervention over institutional cooperation, she may also be apprehensive towards second-generation human rights (also based in positive liberty). The two need not go hand-in-hand, despite common origins.

[29] Although not of central importance to this thesis, it is interesting to consider that, despite its frequent usage as a term in international political theory literature, a common understanding of a 'world order' is rather elusive. For example, while some scholars characterize a "world order" as an entirely nation-state based system, others distinguish between a "world order" and an "international order," where the world order is inclusive of non-state actors. See Dingwerth and Pattberg 2006 for the state-based perspective and Kacowicz 2012 for the inclusive perspective.

exceptional cases.[30] Conversely, liberalism of imposition draws on positive liberty, taking the view that intervention is justified "to secure the proper conditions for real freedom."[31] The implication, however, is that those states in a position to intervene and ensure such conditions have already secured the conditions for themselves and, thus, are not justified in being intervened upon. I aim to test, empirically, the tension that Sørensen identifies at the international law level, identifying whether the debate between restraint and imposition is at work in considering human rights agreements.

The theoretical clarity of Sørensen's articulation of restraint and imposition motivates my use of his nomenclature; however, other scholars have also noted the divide Sørensen identifies. Political scientist Henry Nau differentiates between traditions of U.S. foreign policy, including Liberal Internationalists and Conservative Internationalists.[32] Reminiscent of Sørensen's liberalism of restraint, Nau describes Liberal Internationalists as those who see participation in international institutions, by all nations, as the best method of encouraging the "liberal or

[30] Sørensen 2006, 258. *See* Berlin 1969 for the theoretical foundations Sørensen draws on for his distinction between negative and positive liberty.
[31] Sørensen 2006, 259.
[32] Henry Nau, 2017, "America's Foreign Policy Traditions," in *The Oxford Handbook of U.S. National Security*. Nau identifies, in addition to Liberal and Conservative Internationalism, two other perspectives: Isolationism/Nationalism and Realism. Isolationists/Nationalists are characterized by their focus inward, avoiding international interaction. Realists are characterized by a desire to maintain U.S. power relative to other states. I do not examine these two traditions deeply in this thesis for two reasons. First, as Nau asserts, the two traditions are much more security-focused while the forms of Internationalism consider how we should spread liberal and democratic values. Second, while Nau defines them separately, it is unconvincing that the characteristics of the security-focused traditions and foreign policy-focused traditions necessarily be mutually exclusive. Take, for example, President Teddy Roosevelt, who Nau classifies as a Realist. On one hand, Roosevelt used intervention to "establish America's credentials" relative to the rest of the world (a Realist characteristic). But, he also established the Roosevelt Corollary to the Monroe Doctrine, asserting the 'right' of the United States to be an "international police power" and intervene in Latin America in cases of "chronic wrongdoing, or an impotence which results in a general loosening of the ties of civilized society." This assertion appears to more closely reflect Conservative Internationalism. Because of these blurred boundaries, I choose to proceed with the two forms of Internationalism as they are supported elsewhere in the literature.

republican experiment" across the world.[33] Liberal Internationalists additionally only endorse the use of force — positive intervention — as a final resort in extreme cases, such as invasion. Reflecting liberalism of imposition logic are the Conservative Internationalists. They rely on unilateral militarism to "spread norms of compromise, pluralism, democracy, human rights, and the rule of law," privileging the preservation of U.S. national sovereignty and avoiding "[surrender] to international institutions."[34]

Historian Thomas Knock also identifies two foreign policy camps within the particular context of the League of Nations[35] proposal, referring to them as Progressive Internationalists and Conservative Internationalists.[36] His characterization of the two ideologies runs parallel to Nau's and Sørensen's, with Progressive Internationalists, including President Woodrow Wilson, advocating for participation in international institutions and the self-determination of nations. Conservative Internationalists of the time saw the agenda of Progressive Internationalists as a "diminution of national sovereignty," preferring to maintain the "right to undertake independent coercive action."[37] Sørensen's, Nau's, and Knock's articulations of two foreign policy orientations are summarized below:

[33] Nau 2017, 9.
[34] Nau 2017, 10.
[35] I later use the case of the League of Nations as evidence against the Bricker Amendment Argument articulated in Chapter Three. *See* Chapter Five.
[36] Thomas Knock, 2008, "Playing for a Hundred Years Hence," in *The Crisis of American Foriegn Policy: Wilsonianism in the Twenty-First Century*, Princeton University Press.
[37] Knock 2008, 31.

	Restraint Approach	**Imposition Approach**
Sørensen	*Liberalism of restraint*: Respecting inherent freedom of states from intervention and seeking to norm export through cooperative international institutions.	*Liberalism of imposition*: Prioritizing autonomy and avoiding international institutional cooperation. Norm exportation occurs through unilateral condemnations and intervention.
Nau	*Liberal Internationalists*: View international institutions as the best arena for spreading liberal values. Endorse force only in a last-case scenario, such as foreign invasion.	*Conservative Internationalists*: View unilateral intervention as the best method for spreading liberal values. Avoid surrender of sovereignty to international institutions.
Knock	*Progressive Internationalists*: Values the self-determination of nations and therefore seeks cooperation through international institutions.	*Conservative Internationalists*: Value sovereignty and maintaining the right to intervention, if desired.

Table 1. Comparing competing foreign policy approaches.

The tension between these norm exportation approaches is useful in explaining the United States' engagement with the American Convention because it can address the *uneven* nature of U.S. engagement. That is, it can go beyond explaining the United States' mere failure to ratify the American Convention, as the two alternative explanations I identify in the next chapter have attempted. Instead, this framework also considers why the U.S. actively participated in the Convention's creation or considered ratifying it at all. Because it explains both elements of the United States' confusing international human rights record, and not only the end result of a failure to ratify, the Restraint-Imposition tension may also be generalizable to other instances of uneven U.S. engagement in human rights. Given this logic, the following hypothesis arises:

> **H1:** The United States' uneven engagement (participation in negotiation but failure to ratify) with the American Convention on Human Rights is a symptom of the tension between the Restraint Approach and Imposition Approach to norm exportation.

Now, with an understanding of the theoretical underpinnings of the Restraint and Imposition Approaches within traditional liberal theory, I will briefly summarize the main characteristics of each approach and articulate some predictions about how these approaches might manifest in U.S. consideration of the American Convention on Human Rights.

The Restraint Approach

Because the Restraint Approach is based on the concept of negative liberty, actors who hold this approach do not, as a general rule, endorse unilateral interventions for the promotion or protection of human rights. Instead, the Restraint Approach seeks opportunities for building and participating in international institutions with the aim of exporting human rights norms through U.S. influence in the institution.[38] It may appear counterintuitive for this approach to be labeled as one of restraint, given that it actually encourages active participation. However, it is restraining in the sense that participation in international institutions regulates states' future decision-making in accordance with the international legal commitments they make. Those who argue from the Restraint Approach will nevertheless see the value in allowing for some restraint in order to exert influence and leadership in the institution itself.

Therefore, if H1 is true, that the U.S.'s uneven engagement with the American Convention results from a tension between Restraint and Imposition approaches, we would expect *support* of Convention ratification in the Senate to reflect the logic of the Restraint Approach. For example, we would expect supporters of ratification to make statements such as, "Ratifying the American Convention on Human Rights will allow the United States **greater influence** in the activity of the Inter-American System" or "Participating in the American Convention will make our human rights

[38] Sørensen 2006, 260.

recommendations **more credible/authoritative** in Latin America." These statements reflect Restraint Approach logic because they claim that participating in the American Convention will improve the United States' ability to promote human rights norms.

The opposite is also true; negative statements that point out what the United States misses out on by not ratifying, according to Restraint Approach logic, would also provide support for H1. Therefore, we might expect statements such as, "By not ratifying the American Convention, we forfeit the possibility of **recommending American judges** to the Inter-American Court" or "Our commitment to human rights may be **less credible/questioned** if we do not ratify the Convention, **reducing the impact** of our human rights recommendations."

The Imposition Approach

Recalling that the Imposition Approach is based on the promotion of positive liberty, actors who affirm this view would prefer unilateral condemnations or occasional unilateral intervention to ensure human rights over what they might view as the Restraint Approach's "[surrender] to international institutions."[39] In other words, this perspective of norm exportation seeks for the United States to impose its norms in cases where states are not upholding sufficient human rights practices and rejects the limitations to sovereignty that may result from being tied to international human rights.

It may appear hypocritical to justify U.S. intervention but reject scrutiny from other states. However, though the Imposition Approach justifies unilateral U.S. intervention, it does so only insofar as is necessary "to secure the proper conditions for real freedom," explaining why U.S.

[39] Nau 2017, 10.

intervention in human rights practices of other liberal states is rarely observed.[40] This also explains the Imposition Approach's rejection of the scrutiny or intervention of other states; those coming from the Imposition perspective likely view the United States as already having obtained the rights and conditions necessary for freedom. In this sense, the Imposition Approach, though justifying intervention in U.S. foreign policy when necessary, is also characterized by isolationism. The United States' own sovereignty should not be imposed upon because, under the Imposition Approach, there is no reason or justification for such intervention. As we will see in the next chapter, the concerns raised by the Bricker Amendment fit well into the perspective of the Imposition Approach. This is another reason that the Restraint-Imposition tension appears to be a more comprehensive framework for the United States uneven human rights engagement, especially in light of this tension potentially existing prior to the Bricker Amendment.[41]

If H1 were true, we would expect opposition to ratifying the Convention to be voiced in terms of the isolationist logic of the Imposition Approach. The isolationism of the Imposition Approach may be more salient than interventionist language in considering ratification of the American Convention because there is active consideration of binding the United States to an international agreement. In this sense, those holding the Imposition Approach will be on the defensive, explaining why ratification — and thus opening the U.S. to external opinions on its

[40] Sørensen 2006, 259. Of course, what is considered a necessary intervention is of great contention, and not all those who would fall under the ideological category of the Imposition Approach would likely agree as to what constitutes necessary intervention to ensure "real freedom." This indicates that there may be a great deal of diversity within both the Restraint and Imposition Approaches. This thesis aims to empirically test the presence of these approaches in consideration of the American Convention on Human Rights; however, future work may be interested in refining the understanding of these approaches by considering what may be diverse within them.

[41] *See* both Nau 2017 and Knock 2008 for examples of the Restraint Approach and Imposition Approach at work and in competition prior to the 1950s, when the Bricker Amendment was introduced. Also, *see* Tananbaum 1985, which describes how the Bricker Amendment (a possible representation of the Imposition Approach) served as a response to President Franklin Roosevelt's tendency towards international cooperation (a Restraint Approach). This possibility is tested in Chapter 5.

domestic rights practices — is not justified. For example, we would expect statements such as, "The United States should not ratify the American Convention as it may lead to **international intervention** in our domestic policies" or "Ratifying the American Convention would open the United States to **undue criticism**" or "Ratifying the American Convention would negate the status of human rights as a **domestic issue of the United States**."

Additionally, we might expect arguments that refute claims of greater U.S. influence through participating in the Convention, responding to the Restraint Approach position. For example, statements of the following nature: "The United States need not ratify the American Convention as **it already can exert influence** over human rights in Latin America" or "Ratifying the American Convention **affords us no greater ability to enforce** human rights abroad."

Lastly, if H1 is true, I expect to observe statements expressing concern over the Inter-American Court of Human Rights, given the great amount of power afforded it. This expectation is especially relevant in light of the access NGOs and individuals have to the Court, which makes it more likely that the U.S. would have cases against it than if only American Convention member states had access.[42] These statements may look like, "The Inter-American Court is of particular concern as **the United States may need to respond to cases**." These expectations, both for the manifestation of the Restraint Approach and the Imposition Approach, are summarized in Table 2 below.[43]

[42] *See* section titled "The Inter-American Court of Human Rights" in Chapter One of this thesis.
[43] *See* Appendix A for a summary table including the predicted implications for all three hypotheses.

Hypothesis and Predicted Implication	Evidence Type
H1.a.i	Statements claiming that participation in the American Convention will improve the United States' ability to promote human rights norms.
H1.a.ii	Statements claiming the United States will miss out on the opportunity to influence the protection and practice of human rights by not ratifying the American Convention.
H1.b.i	Statements claiming that participating in the American Convention will open the United States to unnecessary or unwanted intervention.
H1.b.ii	Statements claiming that ratifying the Convention will not increase U.S. influence in human rights beyond what it already is.
H1.b.iii	Statements expressing concern over the possibility of the U.S. being taken to the Inter-American Court of Human Rights.

Table 2. Predicted implications given H1 is true.

Chapter Three

ALTERNATIVE EXPLANATIONS

Having established the grounds for investigating the existence and effect of the Restraint-Imposition tension in the United States' uneven engagement in the American Convention, I now turn to reviewing and assessing some available answers to the question. Two have stood out in the literature: the Substantive Limitations Argument and the Bricker Amendment Argument. It is important to keep in mind that scholars who have advanced either argument have been aiming to answer the more narrow question of why the United States has failed to ratify the American Convention. Because this is the case, my testable expectations revolve around the failure to ratify. However, I additionally predict what it might look like for Substantive Limitations or the Bricker Amendment to be the source of unevenness. I do so expecting that there will likely be little evidence of this; however, it would be misguided to assume *a priori* that, because these explanations focus on the failure to ratify, they cannot also explain unevenness.

The Substantive Limitations Argument

The Substantive Limitations Argument postulates that the United States has abstained from ratifying the American Convention given substantive inconsistencies between the Convention and the U.S. domestic legal landscape.[44] Substantive provisions of an international agreement include behavioral prescriptions and proscriptions — the "thou shalts" and "thou shalt nots" — that states then agree to abide by upon ratifying international law. The Substantive Limitations Argument, then, says that the thou shalts and thou shalt nots of the American Convention differ from that of

[44] Diab 1992 and Rivera Juaristi 2013.

U.S. domestic law, which inhibits the United States' ability or desire to ratify. This argument is represented by H2:

> **H2:** The U.S.'s uneven engagement with the American Convention on Human Rights is due to substantive limitations, especially Article 4, that are inconsistent with the U.S.'s domestic law.

Although this argument, as it is presented in existing literature, tends to specify the American Convention's Article 4,[45] I will first discuss the general consistency between the Convention and U.S. domestic law before addressing the specific culprit article. As described in Chapter One of this thesis, the Convention stands out procedurally from other human rights agreements. However, its substantive provisions are not entirely revolutionary relative to U.S. domestic law. Many of the Convention's provisions, which enumerate the Right to Privacy, Freedom of Thought and Expression, Right to Equal Protection, and many others, are foundational to U.S. law.[46] Likewise, many of these rights, though articulated less precisely than in the American Convention, are also included in the American Declaration that the United States had already signed on to as of 1948. As it stands, the American Convention appears well aligned with existing U.S. human rights norms.

However, human rights law rarely represents any one state's *perfect* preferences. Rather, it features a compromise across the relevant actors such that the final agreement is sufficiently compatible with the preferences and interests of states involved. For substantive provisions of

[45] Article 4 of the American Convention details the right to life. In its text, it allows that, "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception." This articulation of the right to life is problematic for the United States because of its domestic permissibility of abortion. This is described in more detail later in this section.
[46] These rights are provided for in Articles 11, 13, & 24 of the American Convention and correspond to rights enumerated in the United States Constitution. In particular, the 4th Amendment, 1st Amendment, and 14th Amendment (section 1), respectively.

human rights agreements, one manifestation of such compromise is flexibility or imprecision of language, which allows states to interpret provisions such that they fit the state's standard regarding a particular norm.[47] For example, if State A and State B generally agree that children have a right to accessible education, they may still disagree over what constitutes a child and, therefore, what the cutoff age should be for access to education. State A may feel 18 is an appropriate age, while State B only provides accessible education until the age of 14. Both states may still cooperate in an agreement that enumerates the right to education by using flexible or vague language, omitting an age cutoff altogether and leaving states themselves to dictate what constitutes a "child."[48]

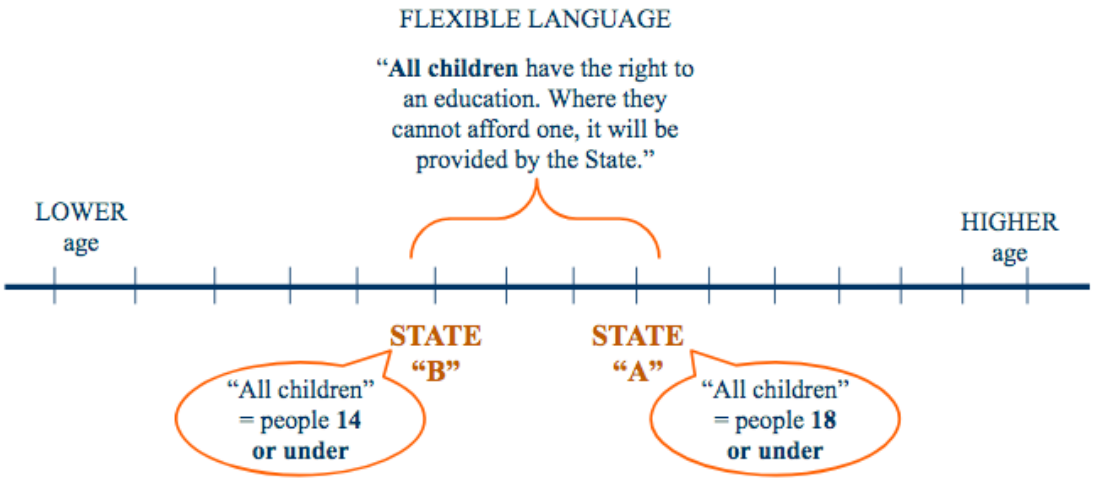

Figure 1. Flexible language to overcome somewhat differing norms/preferences.[49]

In the American Convention, cooperation in light of substantive disagreement is perhaps most clearly illustrated by its fourth article. Article 4, concerning the right to life, was controversial throughout the drafting process given states' differences in terms of the domestic legal

[47] Koremenos 2016, 170-171.
[48] This example is adapted from the logic outlined in Koremenos 2016; see pages 170-171.
[49] This figure is adapted from Koremenos 2016, 172 to include the details of the above example.

permissibility of abortion and the death penalty.[50] At the time, some states allowed legal access to abortion, though oftentimes partial or conditioned access, while others fully banned access to abortion.[51] Yet, all states agreed that some form of the right to life should be included in the Convention. In order to be suitable for states across the spectrum of preference, states included more flexible language in Article 4, stating that the right to life should be legally protected "*in general*, from the moment of conception."[52]

By qualifying, with the words "in general," the assertion that the right to life should be legally protected, the Convention remains flexible enough to include non-abortion permitting states, who would prefer the right to life always be legally protected from conception, as well as abortion permitting states, who may prefer the right to life be legally protected generally but not in certain cases, as when the life of the mother is in danger.[53] Yet, despite this linguistic innovation, there are still those that have argued that the United States' failure to ratify the Convention rests in part on Article 4's incompatibility with the domestic legal landscape.[54] Using the COIL Framework, I argue that this view is misguided and ignores the realities of international law.

The COIL Framework, developed by Barbara Koremenos, identifies the relationship between underlying problems plaguing cooperation and resulting treaty design provisions. One argument COIL advances and finds support for is that the existence of a Distribution Problem — a case in which parties have preferences over which norms or solutions are represented in an

[50] Organización de los Estados Americanos, *Travaux Preparatoire for the American Convention on Human Rights*, 1969.
[51] Forbes 2006 and Koremenos 2016, 171; abortion permitting states included Argentina, Brazil, Costa Rica, Cuba, Ecuador, Mexico, Nicaragua, Paraguay, Peru, Uruguay, Venezuela, and the United States of America.
[52] *American Convention on Human Rights* 1979, Article 4 (emphasis my own).
[53] Forbes 2006 and Koremenos 2016.
[54] See Diab 1992 and Rivera Juaristi 2013.

agreement — predicts language flexibility or imprecision.[55] This prediction comes to life in the American Convention, through the addition of the words "in general" to Article 4. However, COIL also allows that some Distribution Problems may be too extreme to be solved through mere imprecise language.[56] In these cases, the norms of states may be so divergent that another design mechanism is necessary: reservations, understandings, and/or declarations (RUDs).

When RUDs are used, states may agree on a general norm inclusive of what the majority agree with and then allow states to individually reserve articles that they need to in order to maintain consistency with their domestic norms and policies. An example of this in the American Convention is a Guatemalan reservation due to its allowance, at the time of ratification, of the death penalty for common crimes.[57] Although Guatemala demonstrated its commitment to a regional convention on human rights through its participation in its drafting, it may not have ratified the convention given its domestic policies on the death penalty had it not been able to reserve that part of the treaty.[58]

[55] Koremenos 2016, 166 and 170-171. Note that this hypothesis only holds given that there is no underlying Coordination Problem. According to COIL, a Coordination Problem is present when actors are better off cooperating only if they coordinate on an exact solution. Missing this exact solution would result in the agreement being more costly than not entering into the agreement at all. When a Coordination Problem complicates an existing Distribution Problem, COIL would not predict the same flexible/imprecise language in the agreement design, given that precise language is key to achieving the exact outcome necessary. Because human rights, and specifically the American Convention, are *not* characterized by a Coordination Problem, I proceed with my analysis given the design prescription for an agreement with Distribution, but not Coordination. *See* pages 165-167 of Koremenos 2016 for this argumentation.

[56] Koremenos 2016, 173-174.

[57] "American Convention on Human Rights: Signatories and Ratifications," Treaties, http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm

[58] As COIL predicts, Guatemala withdrew its reservation in 1986 as its norms shifted and it rewrote its Constitution, prohibiting the death penalty "on those convicted of… common crimes connected with political [ones]." *See Constitución de Guatemala* (1985), Article 18. Also *see* Koremenos 2016, 186-188.

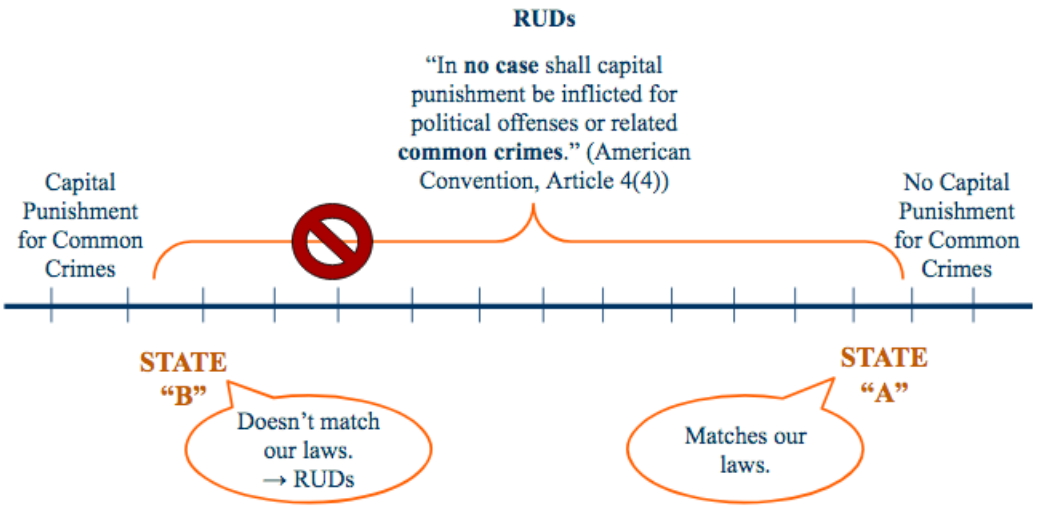

Figure 2. RUDs to overcome greatly differing norms/preferences.[59]

Given the availability of RUDs, the Substantive Limitations Argument seems lacking. After all, it appears as though a reservation to Article 4 would be sufficient in curbing substantive limitations the U.S. might have been concerned about, especially considering the American Convention's general consistency with the United States' domestic law. To test H2, I look for observations we would expect if it were true. One implication we might expect to see is that the United States would appear to intend to ratify the American Convention **up until the language of Article 4 is finalized**. Because the Substantive Limitations Argument implies Article 4 is the culprit for the U.S.'s failure to ratify the Convention despite its participation in the Convention's drafting, we would expect the United States to not make efforts to ratify the Convention after Article 4 is finalized.

Given that the Substantive Limitations Argument points to inconsistencies between the Convention and the U.S. domestic legal landscape, we would expect opposition to ratification to be primarily discussed in terms of those inconsistencies. Therefore, we might also expect that,

[59] This figure is adapted from and inspired by a figure in Koremenos 2016, 173.

during the 1979 Senate hearings considering U.S. ratification of the Convention, we would see language to the effect of "Article 4 **prevents us from** ratifying" or "We would ratify **if it were not for** Article 4." Additionally, we would expect these sentiments to be expressed in terms of prohibition. This is because, if reservations, declarations, and understandings are not sufficient to overcome the inconsistencies, the inconsistencies must be quite extreme.[60] If they are not in terms of prohibition, we might expect arguments that the proposed RUDs to the American Convention **are not sufficient** to overcome the inconsistencies between U.S. domestic law and the Convention's provisions.

Although not as strong of evidence as directly referring to Article 4, in light of H2 being true, we might also expect vaguer statements, such as, "The norms of this agreement **do not align with** U.S. domestic policies." The predicted implications are summarized in Table 3 below. Because of the above discussion about the likelihood of applying RUDs to the American Convention, I predict I will find little support for H2.

[60] Refer again to Figure 2, which shows the argument represented in Koremenos 2016. Although some substantive disagreements may be quite large, RUDs should allow for overcoming them when the agreement is broadly consistent with a states' norms and preferences.

Hypothesis and Predicted Implications	Evidence Type
H2.i	The United States appears to intend to ratify the American Convention until the language of Article 4 is finalized and includes "in general, from the moment of conception."
H2.ii	Statements identifying Article 4 as the reason why the United States cannot ratify.
H2.iii	Statements arguing that the reservations, understandings, and declarations are not sufficient to overcome inconsistencies with U.S. domestic law.
H2.iv	Statements claiming that the United States' domestic law does not align with the American Convention's provisions.

Table 3. Predicted implications if H2 is true.

The Bricker Amendment Argument

A second argument in the literature proposes that the United States' failure to ratify the American Convention on Human Rights is due the legacy of the proposed Bricker Amendment to the Constitution.[61] The Bricker Amendment was proposed by Senator John Bricker in the early 1950s and would have severely constrained the ability of the United States to fully engage in the international legal realm by rendering all treaties non-self-executing. Non-self-executing agreements require, beyond U.S. ratification, additional domestic legislation for the agreement's provisions to be enforceable. The final text of the proposed amendment was as follows:

> Section 1. A provision of a treaty or other international agreement which conflicts with this Constitution shall not be of any force or effect.

[61] Hevener Kaufman and Whiteman 1988; Diab 1992; Rivera Jurasti 2013; Henkin 1995. Bitker 1981 also discusses the importance of the Bricker Amendment proposal to future U.S. engagement with human rights agreements, although he nods towards the "split personality" nature of the United States in terms of human rights. As elaborated in the previous chapter of this thesis, my thesis hopes to empirically test the existence of this "split personality," what I argue is the Restraint-Imposition tension.

> Section 2. An international agreement other than a treaty shall become effective as internal law in the United States only by an act of Congress.[62]
>
> Section 3. On the question of advising and consenting to the ratification of a treaty the vote shall be determined by yeas and nays, and the names of persons voting for or against shall be entered on the Journal of the Senate.
>
> Section 4. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.[63]

Several versions of the amendment circulated through the Senate before the above version of the Bricker Amendment was defeated by a mere one vote. Earlier drafts of the amendment were even more restrictive on international agreements and their domestic impact. For example, one early draft included restrictions on any international body from being authorized to "supervise, control, or adjudicate rights" of Americans.[64] Yet another early draft of the amendment included even stronger language than the final version in terms of agreements being non-self-executing: "A treaty shall become effective as internal law in the United States only through legislation which would be valid in the absence of a treaty."[65]

Scholars who advocate the Bricker Amendment Argument have argued that, though the many versions of the amendment never passed, their proposal itself had the desired effect by awakening sovereignty and federalism concerns in senators as they considered future human rights agreements.[66] According to Bricker Amendment literature, the relevant concerns raised by the

[62] Although agreements already require Senate consent for ratification, this provision of the Bricker Amendment would have additionally required Congress enact treaty provisions legislatively before they were domestically enforceable. In effect, this would mean that a treaty would have gone through the ratification process but still would not be legally enforceable in domestic courts without additional Congressional action.
[63] As quoted in Grant 1985, 576.
[64] S.J. Res. 1, 83rd Congress (1953).
[65] S.J. Res. 43, 83rd Congress (1953).
[66] Hevener Kaufman and Whiteman 1988 and Diab 1992. The proposal failed by a mere one vote in the Senate. This tendency can be observed in even vastly distinct human rights agreements such as the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture (CAT), and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

Bricker Amendment were (1) maintaining the integrity of the U.S. federalist system, (2) avoiding international policing from other states, and (3) preserving the place of human rights as a domestic issue of the United States.[67]

They take as evidence that RUDs proposed in consideration of human rights reflect the concerns the Bricker Amendment sought to address. For example, there is no domestic requirement that international law be implemented legislatively, as the Bricker Amendment would have required. However, international human rights agreements are nearly always ratified with a declaration rendering the agreement's provisions non-self-executing, achieving the same effect. Likewise, ratification of human rights agreements often entails a suite of other reservations, understandings, and declarations that modify the United States' international commitments.[68] Although I ultimately argue that the Bricker Amendment Argument proposed by scholars is flawed and incomplete, their logic, which points out the parallel between the proposed Bricker Amendment and RUDs in future international human rights consideration, leads to the inclusion of the following hypothesis:

> **H3:** The United States' uneven engagement with the American Convention on Human Rights is due to concerns raised by the Bricker Amendment, which constrained the United States' future ability and desire to ratify human rights agreements.

There are two flaws with this argument that I address. First is an issue of *post hoc ergo propter hoc* reasoning: that the case is being made that Bricker caused failures to ratify only because Bricker occurred before U.S. failures to ratify human rights agreements. The central evidence used to support the claim that the Bricker Amendment's effects are enduring is that

[67] Hevener Kaufman and Whiteman 1988, 312-3.
[68] Henkin 1995.

consideration of an international agreement nearly always includes an understanding rendering the agreement non-self-executing, mirroring the purpose of the Bricker Amendment. Certainly, this evidence supports the claim that the Bricker Amendment proposal has led to a pattern of weakening the international legal commitments made by the United States. However, it feels quite strong to further claim that the presence of Bricker-like RUDs can also be evidence for Bricker's legacy on the United States' record of human rights ratification. After all, the non-self-executing declaration proposed for human rights agreements that the United States has failed to ratify — such as the American Convention, CEDAW, and the International Covenant on Economic and Social Rights (ICESCR) — is the same non-self-executing declaration proposed and adopted for agreements the U.S. *has* ratified, such as the ICCPR, ICERD, and the Convention Against Torture (CAT).[69] Therefore, it does not seem apparent that the proposed Bricker Amendment had the impact on ratification that scholars have suggested, beyond weakening ratification when it does occur.

Setting this problem momentarily aside, another problem that arises with the Bricker Amendment Argument is that it characterizes the Bricker Amendment as the defining moment shaping future human rights ratification but does not sufficiently consider the context in which the Bricker Amendment was proposed. Scholars describe the "legacy of the Bricker Amendment" or the "ghost of Senator Bricker" within international human rights law, implying the endurance of the Bricker *moment*.[70] Their framing of Bricker as the genesis for sovereignty and federalism concerns towards international human rights is misguided, especially in light of the work of

[69] For the American Convention, *see* Senate Hearings, 1979. For the CEDAW, *see* Exec. Rept. 107-9, 107th Congress (2002). For the ICESCR, *see* Senate Foreign Relations Committee 1979. For the ICCPR, *see* United Nations Treaty Collection (UNTC), ICCPR, available at treaties.un.org. For ICERD, *see* UNTC, ICERD, available at treaties.un.org. For the CAT, *see* UNTC, CAT, available at treaties.un.org.
[70] Hevener Kaufman and Whiteman 1988 and Henkin 1995

historian Duane Tananbaum, which illustrates that the Bricker Amendment did not exist in a vacuum.[71]

Tananbaum attributes the proposal of the Bricker Amendment to Senator Bricker's and other conservative and isolationist senators' apprehension towards the internationalist nature of President Franklin Delano Roosevelt. In particular, Tananbaum argues that Bricker and his coalition were weary of the United Nations and of human rights agreements influencing the United States and its domestic laws.[72] Tananbaum claims that the arguments between proponents and opponents of the Bricker Amendment can "best be understood as a conflict pitting isolationists and conservatives against liberal internationalists."[73] Tananbaum illustrates this through the words of Frank Holman, former president of the American Bar Association and supporter of the Bricker Amendment, who described those advocating for human rights agreements and the UN Genocide Convention as "ardent internationalists" pursuing the erosion of the "sovereignty and independence of the United States."[74] Conversely, opposition focused on how the Bricker Amendment would "severely limit the powers and flexibility" necessary to be effective in foreign policy.[75] Given Tananbaum's characterization of the debate over Bricker and his evidence indicating that the amendment was a response to U.S. participation in the United Nations, I suggest that the proposal of the Bricker Amendment was not the revolutionary moment it is made out to be; rather, the Bricker Amendment may be a symptom, like the U.S.'s uneven human rights engagement, of the tension between the Restraint Approach and Imposition Approach of foreign policy described in Chapter Two.

[71] Tananbaum 1985.
[72] Id., 77.
[73] Id., 81.
[74] Id., 75.
[75] Id., 85.

If this is the case, we might expect to observe some overlap between our expectations in light of H3 — the Bricker Amendment Argument — and our expectations given the Bricker Amendment is symptomatic of the Restraint-Imposition tension. Because of this, I do expect to find some support for H3. However, I include a prediction about what we would expect of debates about joining international organizations prior to the Bricker Amendment. This will help get a sense of whether the concerns scholars claim exist are sparked by the Bricker Amendment or are present prior to it.

If H3, that the Bricker Amendment has caused uneven engagement with the American Convention, is true, we might expect to see overt statements recalling the proposed amendment when individuals voice their opposition to ratification, e.g, "The Bricker Amendment **set the precedent of** not ratifying human rights agreements, therefore we should not ratify the American Convention." Finding statements such as these would greatly support H3; failure to find statements like this, however, would not greatly weaken evidence for H3 because the effect of H3 would likely be more subtle than such statements.

Therefore, we might also expect statements that less directly tie to the Bricker Amendment, but which reflect the language of its supporters from the 1950s. These would be statements such as, "Joining the American Convention on Human Rights could lead to **violations of our sovereignty**" or "The American Convention will be **dangerous for our federalist system**" or "These are **domestic issues, not international ones**." These statements may also support H1.b.i and H1.b.ii.

Therefore, an important part of this test is the expectation that, given H3 is true, the **concerns raised by Bricker do not appear prior to consideration of the Bricker Amendment**. After all, the Bricker Amendment Argument is that fears raised by the Bricker proposal itself are

the causal force. If the dynamic I contend exists is in fact not present and if the fears raised by the Bricker Amendment are truly the motivating force behind the United States' failure to ratify the American Convention, these concerns must start with the Bricker Amendment. Tananbaum's work has already provided some indication that there will not be support for this expectation; however, I venture to go back further in history to ensure some distance from the Bricker Amendment proposal.

I will look to arguments in favor and against joining the League of Nations. I chose this case for two reasons. First, because consideration of membership to the League of Nations occurred over thirty years prior to consideration of the proposed Bricker Amendment. Second, because considering membership in the League of Nations involves a similar question as the Bricker Amendment did: to what extent should the United States involve itself internationally? If H3 is true, we would not expect statements in opposition to joining the League of Nations to be characterized by concerns that scholars would say were raised by the Bricker Amendment, such as sovereignty or federalism. For example, we would not expect opponents to League of Nations membership to claim that, "Joining the League of Nations **could lead to violations of our sovereignty** by other states" or "We should not subject ourselves to the **will of other nations**." The predictions in light of H3 are summarized in the table below.

Hypothesis and Predicted Implications	Evidence Type
H3.i	Explicitly invoking the Bricker Amendment or the period it was proposed to argue in opposition to ratification of the American Convention.
H3.ii	Statements claiming that ratifying the American Convention would be a threat to the United States' sovereignty, federalist system, or jurisdiction over domestic matters.
H3.iii	The arguments against joining the League of Nations are not expressed in terms of the concerns of the Bricker Amendment (i.e. protecting sovereignty, the U.S. federalist system, or the U.S.'s jurisdiction over its domestic matters).

Table 4. Predicted Implications given H3 is true.

Chapter Four

METHODS

The question remains, why does the United States engage unevenly in international human rights? In this section of the thesis, I describe my use of process tracing methods to investigate and respond to this question. In order to do so, I first briefly define process tracing and how it is useful for the project at hand. This descriptive account gives way to a review of the four tests used within process tracing which I use in this study. Finally, I apply these tests to the predicted implications I defined within Chapter Two and Chapter Three and describe how I went about collecting the evidence to evaluate each implication.

Process Tracing: The case of the cookie culprit

Taught to me from a young age was that the foundation of research is to examine cause and effect. Which X is causing the Y that we observe? However, social and political phenomena are much more complex than this foundational principle, requiring complex regressions and control variables. With this project, I was confronted with how to apply similar rigor within one case — the American Convention — as well as how to analyze what is not a one-dimensional cause, but a dynamic: uneven engagement.

Process tracing is unique in that it "attempts to identify the intervening causal process— the causal chain and causal mechanism— between an independent variable (or variables) and the outcome of the dependent variable."[76] That is, it aims to reveal what lies inside the "black box of causality" between a hypothesized cause (X) and effect (Y) and, in doing so, assess whether the

[76] George and Bennet 2005, 206-207.

chain linking the two holds.[77] Because of this focus on the chain of evidence, process tracing is a rather flexible method, allowing for evidence to be collected from different sources, assessed independently, but still contributing to an updating of our belief in a hypothesis.[78]

How much we can update our belief in a hypothesis relies on the kind of test we apply in light of the type of evidence — the predicted implication — at hand. The tests themselves provide more clarity on this point. Process tracing defines four distinct "tests," each one describing what is required of the type of evidence to pass the test and what passing the test — or failing it — implies for our belief in the hypothesis. These tests are the "Straw-in-the-Wind" test, the "Hoop" test, the "Smoking-Gun" test, and the "Doubly Decisive" test.[79] Which test a type of evidence undergoes depends on the evidence's uniqueness and its certainty, where uniqueness indicates the evidence's potential to confirm the hypothesis and certainty indicates the evidence's potential to disconfirm rival hypotheses.[80] Figure 3 on page 46 summarizes this point and where each test falls along the spectrums of uniqueness and certainty. However, I first explain each test in more detail using the case of the cookie culprit to understand what the tests imply.

The Straw-in-the-Wind test is applied to implications that are neither unique to or certain in light of the hypothesis the implication is attached to. This is the weakest test, as passing the test provides only slight evidence in favor of a hypothesis and failing provides slight evidence against it.[81] To highlight this point, imagine a case where you are trying to determine which one of your family members took the last cookie from the jar in the kitchen, which was meant to be yours. You formulate the hypothesis that it was your sister who took the cookie. One of your predictions in

[77] Beach and Pederson 2013, 11.
[78] Id., 99.
[79] Collier 2011.
[80] Beach and Pederson 2013, 103.
[81] Id., 102 and Collier 2011, 826.

light of this hypothesis is that your sister will have cookie crumbs on her shirt if she ate your cookie. This is a Straw-in-the-Wind implication. The prediction is not unique; even if your sister took the last cookie, other members of your family might have cookie crumbs on their shirts because they ate their own cookie for the day. The prediction is also not certain; your sister may have been extremely careful in eating the cookie and avoided the crumbs altogether or she may have changed shirts to avoid detection. Therefore, if you indeed notice crumbs on her shirt, passing the Straw-in-the-Wind test, you only find slight evidence in favor of your hypothesis; conversely, if you find no crumbs on her shirt, there is only slight evidence against her having taken your cookie.

The Hoop test is applied to implications that have some degree of certainty but a low level of uniqueness. Failing a Hoop test provides somewhat strong evidence against the hypothesis, because of its high disconfirmatory power, but passing a hoop test provides only slight evidence in favor of the hypothesis.[82] Beach and Pederson additionally acknowledge that not all Hoop tests are made the same; the 'hoop' may get smaller to jump through as the uniqueness of the implication increases.[83] Consider again the case of the missing cookie. One predicted implication, in light of the hypothesis that your sister stole the cookie, is that she was in the house sometime between 4pm and 5pm, which is the window of time between when you last saw the cookie and then noticed it was gone. In this case, the prediction is not unique; many or all of your other family members could also have been in the house during that time. However, the prediction is highly certain; that is, if you find that your sister was not in the house during that time, failing the Hoop Test, there is very strong evidence against your hypothesis that she stole the cookie. A narrower Hoop test would involve a more unique implication. For example, you might test the implication that your sister

[82] Beach and Pederson 2013, 102 and Collier 2011, 286-287.
[83] Beach and Pederson 2013, 103.

was in the kitchen, rather than the entire house, between 4-5pm.[84] Yet, this is still a Hoop test because the predicted implication is still not entirely unique.

Implications with a high degree of uniqueness but a low degree of certainty are subject to the Smoking-Gun test. This test, if passed, provides strong evidence in favor of the hypothesis but, if failed, does not strongly weaken our belief in the hypothesis. Still in search of the cookie culprit, you predict that your sister might brag to your brother about stealing the last cookie. To test this, you recruit your brother to say, "I wish our parents would let us have *two* cookies a day," in front of your sister, predicting she will brag about having eaten two cookies — hers and yours. If this were to happen, it would be highly unique; if your sister did not actually steal the last cookie, the probability she would say that she did is very low. However, this scenario is very uncertain; your sister might have stolen the cookie, but she grows suspicious of your brother baiting her to confess and withholds comment. Passing this test would nearly confirm your hypothesis that your sister stole the cookie, but failing it would only marginally weaken the hypothesis.

Lastly, the Doubly Decisive test involves implications with both a high degree of uniqueness and high degree of certainty, rendering it the strongest possible test for evidence. Passing this test greatly substantiates the hypothesis, to the point of almost eliminating rival hypotheses, and failing it only somewhat reduces our confidence in the hypothesis. However, as the process tracing methods scholarship asserts, it is highly unusual to have predicted implications that would rise to the level of a Doubly Decisive test, given the complexity of real-world cases.[85] For the case of the cookie culprit, a Doubly Decisive test might be applied if there is a video surveillance camera in the kitchen that can be reviewed to see who stole the cookie. If, upon

[84] Beach and Pederson use a similar example of a crime suspect. One Hoop test might be whether the suspect was in the state where the crime occurred, but a far narrower Hoop test would ask if he was in the neighborhood the crime took place in at the same time it took place. *See* Beach and Pederson 2013, 103.
[85] Beach and Pederson 2013, 104 and Collier 2011 287.

review, you see your sister take the last cookie, you can confirm that she is, in fact, the cookie culprit. If however, she is not seen taking the cookie on the surveillance camera — perhaps it was your brother who misled you by agreeing to help you catch your sister — she can be entirely absolved of suspicion and your hypothesis is rejected.[86]

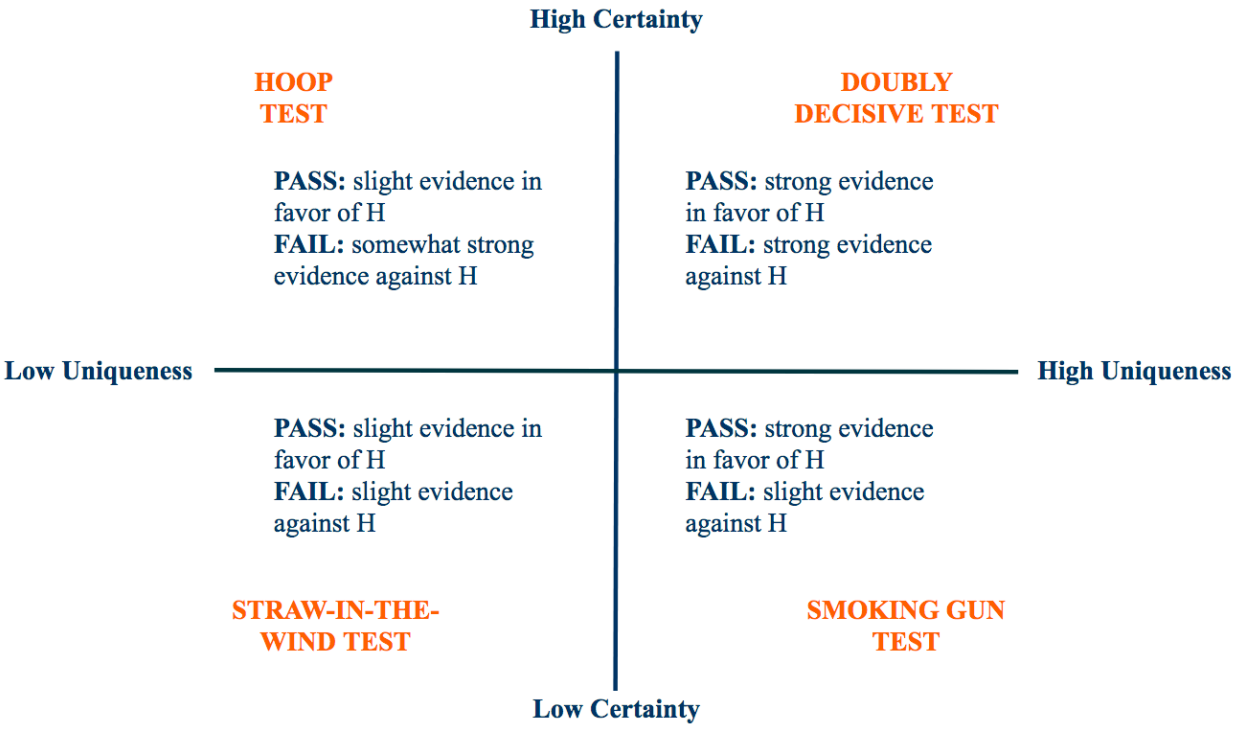

Figure 3. Process Tracing tests[87]

Application

With an understanding of the types of tests available using process tracing and the degree to which each test updates our belief in a given hypothesis, I now turn to the predicted implications described throughout Chapters Two and Three.[88] Starting with H1, I consider the uniqueness and

[86] Beach and Pederson also use the example of video surveillance with respect to the crime suspect. *See* Beach and Pederson 2013, 104.
[87] This figure is adapted from Figure 6.1 in Beach Pederson 2013, which can be found on page 103.
[88] A table including each predicted implication can be found in Appendix A.

certainty of each implication so that it can be assessed using the correct test. Uniqueness will be assessed by whether the probability of finding a piece of evidence (e), if the hypothesis (H) is true, is higher than the probability of finding the same piece of evidence if the hypothesis is not true. That is, that $p(e|H) > p(e|\sim H)$.[89] Predicted implications will be considered more unique the greater the difference between these two probabilities would be. Certainty will be assessed by how necessary e is if H is true, with perfect certainty being represented by $p(e|H) = 1$. In this scenario, $p(H|\sim e) = 0$.[90]

H1 Implications

> **H1:** The United States' uneven engagement (participation in negotiation but failure to ratify) with the American Convention on Human Rights is a symptom of the tension between the Restraint Approach and Imposition Approach to norm exportation.

Recall the implications of H1 discussed in Chapter Two, of which half indicated the presence of the Restraint Approach to norm exportation (H1.a) and the other half represented the presence of the Imposition Approach (H1.b). The Restraint Approach implications are as follows: Statements claiming that participation in the American Convention will **improve the United States' ability to promote human rights norms** (H1.a.i) and, conversely, statements claiming the United States will **miss out on the opportunity to influence the protection and practice** of human rights by not ratifying the American Convention (H1.a.ii). Both statements exhibit a low-to-moderate uniqueness. It is plausible that if ~H1, we could observe statements like these. However, statements like these exhibit a high degree of certainty because the probability of H1

[89] Beach and Pederson 2013, 101.
[90] Id., 101-102.

being true is low if we have no evidence that arguments made in favor of ratification are voiced in terms of spreading U.S. human rights norms. This results in a Hoop test for H1.a.i. and H1.a.ii.

The implications that represent the Imposition Approach to norm exportation are as follows: Statements claiming that participating in the American Convention will open the United States to **unnecessary or unwanted intervention in U.S. domestic affairs** (H1.b.i), statements claiming that ratifying the Convention w**ill not increase U.S. influence** in human rights beyond what it already is (H1.b.ii), and statements expressing concern over the **possibility of the U.S. being taken to the Inter-American Court of Human Rights** (H1.b.iii). The first implication, H1.b.i, will be tested by the Hoop test because its presence is not highly unique to H1. This is especially true in light of the conjecture that the Bricker Amendment may also be a symptom of H1, so some evidence of H3 may be similar or the same as evidence of H1. However, H1.b.i does carry a high degree of certainty because we would expect proponents of the Imposition Approach to reject international examination of the United States' domestic affairs when its human rights practices are purported to already "secure the proper conditions for real freedom."[91]

H1.b.ii has a moderate-to-high degree of uniqueness, especially compared to H2 and H3, because it argues norm exportation is already something the United States can achieve unilaterally. This implication focuses on the outward-looking nature of the Imposition Approach rather than the internal nature of H2 — arguing that the American Convention's substance is in conflict with domestic law — and H3 — arguing that the American Convention is undesirable because of concerns over intervention raised by the Bricker Amendment. However, H1.b.ii has a low degree

[91] Sørensen 2006, 259. *See* Chapter Two discussing the logic of the Imposition Approach.

of certainty because, in considering ratification of an international agreement, the isolationist nature of the Imposition Approach would likely be more salient.[92]

H1.b.iii is characterized by both low-to-moderate uniqueness and low-to-moderate uncertainty and is therefore probed with a Straw-in-the-Wind test. Its low uniqueness is a result of the same logic explaining low uniqueness for H1.b.i: apprehension for oversight of the United States' human rights practices is an implication for both H1 and H3. However, unlike H1.b.i, H1.b.iii is characterized by low uncertainty in light of the fact that the United States need not accept the contentious jurisdiction of the Inter-American Court to ratify the American Convention. Yet, I still anticipate concerns over the Court to be raised, because it is much more powerful of an enforcement mechanism than is present in other international human rights agreements. Therefore, H1.b.iii may be observed as a secondary concern, but it is not a highly certain observation if H1 is true. Table 2 from Chapter One is updated below with the appropriate tests.

[92] Again, *see* Chapter Two, section titled "The Imposition Approach," which articulates the isolationist nature of the Imposition Approach.

Hypothesis and Predicted Implication	Evidence Type	Test
H1.a.i	Statements claiming that participation in the American Convention will improve the United States' ability to promote human rights norms.	Hoop
H1.a.ii	Statements claiming the United States will miss out on the opportunity to influence the protection and practice of human rights by not ratifying the American Convention.	Hoop
H1.b.i	Statements claiming that participating in the American Convention will open the United States to unnecessary or unwanted intervention.	Hoop
H1.b.ii	Statements claiming that ratifying the Convention will not increase U.S. influence in human rights beyond what it already is.	Smoking Gun
H1.b.iii	Statements expressing concern over the possibility of the U.S. being taken to the Inter-American Court of Human Rights.	Straw-in-the-Wind

Table 5. Predicted implications and tests if H1 is true.

H2 Implications

> **H2:** The U.S.'s uneven engagement with the American Convention on Human Rights is due to substantive limitations, especially Article 4, that are inconsistent with the U.S.'s domestic law.

The implications of the Substantive Limitations Argument, presented in Chapter Two, are as follows: The United States appears to intend to ratify the American Convention until the language of Article 4 (Right to Life) is finalized and includes "protected by law and, in general, from the moment of conception" (H2.i), statements **identifying Article 4** as the reason why the United States cannot ratify (H2.ii), statements arguing that the **reservations, understandings, and declarations are not sufficient** to overcome inconsistencies with U.S. domestic law (H2.iii), and

statements claiming that the United States' **domestic law does not align** with the American Convention's provisions (H2.iv).

H2.i will be tested using a Smoking Gun test. It would be highly unique to H2 for the United States to change its tenor towards ratification just as the Right to Life language was finalized. However, it is surely not a certain implication as Article 4 may have been a more or less salient concern between the Convention's negotiation and the Senate's consideration of ratification. Implication H2.ii will also be tested using a Smoking Gun test. Although there is high uniqueness in an actor directly naming Article 4 as the reason the American Convention should not be ratified, our belief in H2 is not greatly reduced if actors are not so direct or if they focus on substantive limitations beyond Article 4.

H2.iii and H2.iv will be tested with a narrower Hoop test. First, these implications are highly certain. Whether actors specifically discuss Article 4 or whether they point out other substantive inconsistencies between the American Convention and U.S. domestic law, H2 requires actors argue for not ratifying in terms of these inconsistencies (H2.iv) and that they view RUDs as insufficient to overcome inconsistencies (H2.iii). Additionally, these implications feature a moderate amount of uniqueness, although not enough to put them into the Doubly Decisive test quadrant. They are unique in the sense that neither H1 or H3 are primarily concerned with substantive inconsistencies in the American Convention; they are concerned with intervention. Therefore, concerns are much more likely to be expressed in terms of avoiding international intervention than in terms of substance. However, H2.iii and H2.iv are not completely unique implications because one could imagine that, if H1 or H3 are true, actors may voice concern about substantive inconsistencies — and RUDs' inability to overcome them — insofar as intervention could result in needing to conform to inconsistent norms expressed in the American Convention.

Hypothesis and Predicted Implications	Evidence Type	Test
H2.i	The United States appears to intend to ratify the American Convention until the language of Article 4 is finalized and includes "in general, from the moment of conception."	Smoking Gun
H2.ii	Statements identifying Article 4 as the reason why the United States cannot ratify.	Smoking Gun
H2.iii	Statements arguing that the reservations, understandings, and declarations are not sufficient to overcome inconsistencies with U.S. domestic law.	Narrow Hoop
H2.iv	Statements claiming that the United States' domestic law does not align with the American Convention's provisions.	Narrow Hoop

Table 6. Predicted implications and tests if H2 is true.

H3 Implications

> **H3:** The United States' uneven engagement with the American Convention on Human Rights is due to concerns raised by the Bricker Amendment, which constrained the United States' future ability and desire to ratify human rights agreements.

The predicted implications of H3 are as follows: explicitly **invoking the Bricker Amendment or the period** during which it was proposed to argue in opposition to ratification of the American Convention (H3.i), statements claiming that ratifying the American Convention would be a **threat to the United States' sovereignty, federalist system, or jurisdiction over domestic matters** (H3.ii), and that the arguments against joining the League of Nations are not expressed in terms of the concerns of the Bricker Amendment (H3.iii).

Implication H3.i, that actors will explicitly invoke the Bricker Amendment, is highly unique to H3 but also carries a low certainty, as the impacts of the Bricker Amendment, if H3 is

true, could be much more subtle. Given high uniqueness and low certainty, H3.i will be tested using a Smoking Gun test. H3.ii will be tested using a Hoop test. This implication carries a low-to-moderate degree of uniqueness given my conjecture that the proposal of the Bricker Amendment may also be a result of H1.[93] However, its certainty is rather high; after all, the Bricker Amendment argument contends that the United States fails to ratify human rights agreements because of the concerns, raised by Bricker and expressed by H3.ii.

Lastly, H3.iii will be tested using a Doubly Decisive test. H3 argues that the proposal of the Bricker Amendment created concerns over the protection of sovereignty and federalism as well as maintaining U.S. jurisdiction over domestic matters. Given that discussions of whether to join the League of Nations occurred about thirty years prior to the Bricker Amendment, if H3 is true, we would not expect consideration of the League of Nations to reflect the language and concerns of the Bricker Amendment. This test has a high degree of uniqueness; it is unlikely for this dramatic shift in how politicians discuss joining international organizations to occur if ~H3. The test also has a high degree of certainty. If the concerns H3 says are raised by the Bricker Amendment are in fact present prior to it, H3 cannot be the case. The table below summarizes each implication of H3 and its test.

[93] *See* section of this Chapter titled, "Implications of H1."

Hypothesis and Predicted Implications	Evidence Type	Test
H3.i	Explicitly invoking the Bricker Amendment or the period it was proposed to argue in opposition to ratification of the American Convention.	Smoking Gun
H3.ii	Statements claiming that ratifying the American Convention would be a threat to the United States' sovereignty, federalist system, or jurisdiction over domestic matters.	Hoop
H3.iii	The arguments against joining the League of Nations are not expressed in terms of the concerns of the Bricker Amendment (i.e. protecting sovereignty, the U.S. federalist system, or the U.S.'s jurisdiction over its domestic matters).	Doubly Decisive

Table 7. Predicted implications and tests if H3 is true.

Collecting Evidence

Evidence was collected from several primary and secondary sources, ranging from the Senate Foreign Relations Committee Hearings held in 1979 to historical accounts of the 1919 *impasse* between the Senate and President Woodrow Wilson over U.S. participation in the League of Nations. Evidence was also collected from Organization of American States documents, including several of the American Convention's preparatory documents from 1959 to 1969. In this section of the chapter, I briefly introduce the most significant sources used and, in doing so, discuss how they target the implications discussed in the previous sections. I then describe the process undertaken with each document in terms of collecting evidence. In Chapter Five I analyze and discuss the results.

1979 Senate Hearings

The document from which I collected the bulk of the evidence for the predicted implications was the 1979 Senate Foreign Relations Committee Hearings, which considered four international human rights agreements for ratification: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic and Social Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the American Convention on Human Rights. The hearings were conducted in November 1979 at the request of President Jimmy Carter, who had taken up the mantle of pursuing increased U.S. involvement in international human rights agreements.[94]

The Foreign Relations Committee heard over 40 witnesses testify in favor of or opposition to ratification of the treaties. Witnesses ranged from international lawyers to conservative activists to academics to human rights NGO members and more. I analyzed this document with the aim of assessing evidence for all of the predicted implications listed in Appendix A except for H2.i and H3.iii, which I address below. Besides those exceptions, the majority of predicted implications regarded how people argued in favor of or against ratification of the American Convention. It seemed appropriate to look primarily to Senate Hearings to collect this type of evidence for several reasons. First, there are a variety of individual witnesses as well as statements for the record submitted by organizations. In cases where implications have low uniqueness, finding evidence for the same implication across distinct actors may serve to increase the uniqueness of the

[94] During his inaugural address, Carter proclaimed, "Because we are free we can never be indifferent to the fate of freedom elsewhere. Our moral sense dictates a clear cut preference for these societies which share with us an abiding respect for individual human rights. We do not seek to intimidate, but it is clear that a world which others can dominate with impunity would be inhospitable to decency and a threat to the well-being of all people." *See* Carter 1977.

evidence, strengthening it.[95] Second, if there is a debate or tension between the Restraint Approach and Imposition Approach, it would be optimal to look for evidence in a source where that tension might play out, rather than turning to isolated statements made by different actors at different times. This allows for observations regarding how actors respond to each other and analyses about the kinds of questions the Committee members ask. With a justification as to the use of the Senate hearings established, I now describe how I collected units of evidence from them.

Some testimony was exclusive to a particular one of the four human rights agreements up for consideration; where this was the case, I collected statements only if they implicated the American Convention. However, there was also often testimony in which the witness applied their reasoning to human rights ratification more generally. In these cases, I collected the quote unless context made it clear that the statement was not intended to apply to the American Convention.[96] Because the Senate hearing document is quite large, totaling 567 pages, I did a preliminary collection of evidence, highlighting all statements that could remotely be taken as evidence of a particular implication. With the initially large document greatly reduced, I revisited the highlighted statements, considering them more stringently against the predicted implications. If a statement reflected a predicted implication, I included the statement in the corresponding table(s) in Appendix B, according to the implication(s) it supports.[97] If a statement was not sufficient in reflecting an implication, or if I noticed a contextual cue that disqualified it from consideration, I did not include it in the table.

[95] *See* Beach and Pederson 2013, 131.
[96] For example, some testimonies would include isolated statements appearing to be broadly applicable, but, within context of the full testimony, were qualified with phrases such as "the UN treaties."
[97] Too many statements were collected to be able to address each one; however, in Chapter Five, I highlight several statements that are either representative of the majority or are of particular interest.

American Convention Preparatory Documents

The preparatory documents — or *travaux preparatoire* — of the American Convention are also lengthy documents. They span a decade and are distinct in character. The earliest document, from 1959, called for the preparation of a draft human rights convention and the final document, from 1969, details the last leg of negotiation and eventual adoption of a final draft, now known as the American Convention on Human Rights. For the purposes of this thesis, I primarily used the preparatory documents to assess implication H2.i, which predicted that the United States would appear to intend to ratify the Convention until the language of Article 4 (the Right to Life) was finalized. Although I discuss this further in the following chapter, these documents also included a rather interesting statement by the United States that provides evidence that substantive concerns were never at the heart of the U.S.'s uneven engagement with the Convention.[98]

Collecting evidence from these documents was less explicitly systematic than the process used with the Senate Hearings for two reasons, the first substantive and the second circumstantial. First, the primary goal of the preparatory documents was not to assess the particular language used to argue in favor or against the agreement, as it was with the Senate Hearings. Rather, the goal was to gain a sense of whether the United States' engagement with the system shifted before and after Article 4 was finalized and voted on. Therefore, unlike the Senate Hearings, my focus could be narrowed on one actor — the United States — rather than analyzing statements made by all involved actors. Second, in my initial review of the 1959 document, I discovered a statement by the United States that clearly and definitively contradicted the implication stated by H2.i.[99]

[98] *See* Chapter Five discussion of the Substantive Limitations Argument.
[99] Although I discuss in greater depth in Chapter Five, the statement observed is as follows: "The United States, as is well known, has since its birth as a nation strongly defended human rights. The promotion of respect for human rights in the inter-American system is therefore supported by the United States. While the United States, because of the structure of its Federal Government, does not find it possible to enter

Because of this unexpected but decisive observation, I chose to redirect my time for an in-depth analysis of the Senate Hearings, where the evidence was likely to be less clear and more time consuming to collect. I discuss the 1959 statement and its implications for each hypothesis in the chapter that follows.

Debating the League of Nations

An analysis of the debate over participation in the League of Nations is called for by implication H3.iii, which predicts that arguments made for and against joining the League of Nations will not be made in terms of Bricker Amendment concerns. To summarize, these included a desire to preserve U.S. sovereignty, protect against federalism infringements, and maintain jurisdiction over domestic matters. First, I must address that this is not a perfect case comparison to the American Convention. It would certainly have been more optimal to assess arguments for or against a human rights agreement similar to the American Convention which was considered prior to the Bricker Amendment proposal.

This is a narrow pool, indeed. The American Declaration on the Rights and Duties of Man, the Universal Declaration of Human Rights, and Genocide Convention were all considered as potential cases. All three satisfied the condition of being adopted prior to the Bricker Amendment proposal.[100] However, the two declarations were *not* binding — at least not at the time of adoption[101] — which distinguishes them greatly from the American Convention. Additionally, all

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into multilateral conventions with respect to human rights or with respect to an Inter-American Court of Human Rights, it, of course, raises no objection to other states' entering into conventions on these subjects should they find it possible to do so. Accordingly, while the United States has voted in favor of Resolution VIII, Human Rights, it reserves its position with respect to its participation in the instruments or organisms that may evolve."

[100] All three were adopted in 1948.

[101] The American Declaration is used when petitions against the United States arise in the Inter-American Commission. *See* Chapter One. Also, The Universal Declaration is now arguably customary international law, and therefore is binding on states.

three agreements were adopted in a vastly different context than the American Convention, with the American Declaration, Universal Declaration, and Genocide Convention[102] largely arising in response to the egregious human rights abuses of the Holocaust and World War II. Lastly, all three, though adopted prior to the Bricker Amendment proposal, were not so distanced from the proposal to guarantee that the observations were entirely independent of Bricker sentiments.

Assessing the consideration of U.S. participation in the League of Nations creates this distance, as League of Nations membership consideration occurred in 1919, over thirty years before the Bricker Amendment proposal. Additionally, though the League of Nations is distinct from the American Convention, its consideration involves many of the same critical questions that are relevant for human rights ratification. Most importantly, should the United States involve itself in an internationally cooperative endeavor, why or why not?

Having established a justification for the use of the League of Nations as a case to assess H3.iii, I now turn to describe the documents used for H3.iii's analysis. For primary sources, I rely on the Senate debate over the League of Nations.[103] However, I supplement the primary source documents with secondary source accounts of the arguments for and against League of Nations participation.[104] This decision is supported by Beach and Pederson, who argue that using historical scholarship, especially when the literature is well developed and a topic is big, can improve accuracy and efficiency of analysis.[105]

[102] The Genocide Convention was eventually ratified by the United States in 1988, forty years after it was adopted by the United Nations. It, therefore, follows the same pattern of uneven engagement by the United States, although it is not a perfect case comparison for the purposes here because initial consideration of the Convention occurred not long before the Bricker Amendment was proposed.
[103] U.S. Cong. Record. 66th Cong., 1st Sess., 1919.
[104] Jeong 2017 and Mervin 1971.
[105] *See* Beach and Pederson 2013, 141.

Using these primary and secondary source accounts, I look for evidence of Bricker Amendment concerns in the consideration of League of Nations membership. The absence of these concerns — maintaining sovereignty, federalism, and jurisdiction over domestic affairs — would indicate evidence in favor of H3.iii. However, I also look for whether these concerns feature prominently in League of Nations opposition or if they are secondary concerns. The concerns must feature prominently to count as evidence against H3.iii.

Chapter Five

RESULTS AND DISCUSSION

In this chapter, I report the results of the source analyses conducted in the study, going in order of the hypotheses and implications. In addition to reporting whether each predicted implication was found in the analysis, I pull representative quotes from the Senate Hearings, American Convention preparatory documents, and League of Nations debates to illustrate the implications within their context. By highlighting statements from these different sources, the similarity of sentiments between them from 1919 to 1979 is revealed. I ultimately conclude that, although the Bricker Amendment is championed as the instigator of sovereignty, federalism, and domestic jurisdiction concerns, these apprehensions were present in considering U.S. international institutional participation long before Senator Bricker raised them. Additionally I find support for the claim that uneven engagement is a result of the tension between Restraint and Imposition Approaches to norm exportation. In particular, I observe that arguments made in favor of the American Convention were largely and almost universally made in the language of the Restraint Approach. The sentiment of the Imposition Approach, though supported, requires further testing in different contexts.

The Restraint-Imposition Approaches

The careful reading of the 1979 Senate Hearing documents and comparison to the predicted implications resulted in the collection of over 250 quotes. Of these, 78 quotes were ultimately determined to not strictly match one of the predicted implications; however, I have included many of these in Appendix D, as they often were the negative statement to one of the implications and

may therefore be of interest.[106] However, only the remaining quotes, which directly matched a predicted implication made in Chapters Two and Three, are included in the analysis. These quotes are included in Appendix B.[107]

Overwhelmingly, individuals voiced their support for ratification of the American Convention in terms of H1.a.i and H1.a.ii: that ratification would position the United States to better promote human rights abroad and that a failure to ratify would undermine the United States' ability to do so. As predicted, these statements often connected back to the United States' ability to influence the institutional framework of the international human rights regime and, in particular, the American Convention on Human Rights. Two justifications for these claims were most common, both for the positive framing (H1.a.i) and the negative framing (H1.a.ii).

First, that U.S. ratification of international human rights agreements would make it a more credible actor, improving its ability to export norms. For example, one witness, international law professor Covey Oliver, argued, "The four conventions before you today… are not needed to conform American law to more just human rights ends… but to aline [*sic*] us with the 'good side' in world affairs and give us the credibility we now lack as we use our influence to promote human rights."[108] In the negative framing, Donald McHenry, U.S. Ambassador to the UN, claimed "it has become increasingly difficult for the United States in good conscience and with credibility to call forth and hold accountable before the international community notorious human rights abusers."[109]

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[106] For example, there were many quotes directly negating H2, stating that the United States' domestic laws were highly compatible with the American Convention. Additionally, there were quotes that took issue with the expansive nature of the reservations, negating H2.iii. *See* Appendix C.
[107] The table in Appendix B includes the quote, who said it, what page of the Senate Hearings it is included in, and the implication it reflects. Appendix C additionally includes all of the witnesses whose quotes were collected as well as a brief description of their occupation or relevance in the hearings.
[108] United States Senate Committee on Foreign Relations, 1979, *International Human Rights Treaties*, 128. Hereafter referred to as "Senate Hearings, 1979."
[109] Senate Hearings, 1979, 407.

The second common justification for claiming that ratification would better position the United States to promote human rights was that it would improve the U.S.'s access to international institutions themselves. Patricia Derian, Assistant Secretary of the State Department in the Bureau of Human Rights and Humanitarian Affairs, points out, "By ratifying the American Human Rights Convention, we will be eligible to nominate and vote for [the Court's] members, which we are not eligible to do now."[110] Morton Skylar, international lawyer and chairman of the Helsinki Watch Committee, offers the negative, H1.a.ii, framing: "...until we become a party to these agreements we can have little or no voice to help shape and improve the international procedures used to monitor and assure compliance."[111]

All totaled, thirty-four different actors — ranging from attorneys to religious leaders and more — expressed one of two, or both, predicted Restraint Approach sentiments. Recalling the tests articulated in the previous chapter, both H1.a.i and H1.a.ii were probed using a Hoop test, meaning that, if H1 is true, it was very certain that statements like these would be found, but the statements are not necessarily unique to H1, especially in one-off observations. Given the great amount of observations of both H1.a.i and H1.a.ii, and that the observations were collected from the testimony of a diverse group of actors, I conclude that both implications pass the Hoop tests, providing evidence in favor of H1.

The second part of H1 involves the Imposition Approach predictions. Of the three, H1.b.i and H1.b.ii were at least somewhat supported. H1.b.i predicted actors would state that ratification would lead to unwanted or unnecessary intervention in the United States. Twenty-nine statements made by sixteen different witnesses expressed this idea. For example, Phyllis Schlafly, a conservative author and activist, warned, "We know that treaties pose much more of a hazard to

[110] Id., 43.
[111] Id., 272.

Americans than to any other nation because of the preeminence of treaties in our system of government."[112] Statements were also collected from witnesses who were not in agreement with Schlafly, but who recognized these were concerns held by others; such is the case with California Congressman George Miller, who offered, "I think the Senate always has had a conservative voice which suggests that anything like this is a relinquishing of our sovereignty."[113] Statements like Congressman Miller's were still collected as support for H1.b.i, much like a secondary source account might be. Although not the Congressman's own view, his acknowledgement that others hold this view still serves as evidence that the view is, in fact, held.

H1.b.i was probed with a Hoop test. Therefore, I conclude that there is some evidence for H1 in light of the H1.b.i implication, although perhaps not as decisive as for the H1.a predictions, which had many more individual pieces of evidence reflecting them. This is likely the case because there were far fewer anti-ratification witnesses present throughout the hearings. This may be the result of a selection effect. Even assuming — and this would be quite an assumption — that the Foreign Relations Committee invited an equal number of witnesses in favor and against ratification, it is imaginable that witnesses would be more likely to take the time to testify for a cause they believed in.

With regard to H1.b.ii, statements claiming ratification would not afford the United States greater influence in human rights abroad, there were a small handful of statements that reflected this argument. For example, Schlafly asserts, "I do believe that ratification of these covenants would be an exercise in folly, futility, and frustration. We would gain nothing. We would have better guarantees in this country and have better relations with other lands if we would reject them,

[112] Senate Hearings, 1979, 113. This is also an example of a statement coded both for H1.b.i and H3.ii.
[113] Id., 145.

in toto."[114] Attorney and law professor Philip Anderegg echoes Schlafly's declaration of the futility of human rights agreements for the United States: "it is most unwise, as I repeatedly have heard suggested, that the United States should ratify the treaties as a gesture or an act of encouragement to other countries. I believe it is manifest that the gesture will be futile."[115]

Because H1.b.ii was assigned the Smoking-Gun test,[116] even a small handful of statements is meaningful, given their unique nature in light of H1. However, I am hesitant to claim that H1.b.ii passes the test, especially in light of the potential selection bias described above. Schlafly and Anderegg are both among the few witnesses who argue against ratification, and they both speak in the unique ways of H1.b.ii. However, though this is true, it is unclear how they feature relative to general anti-ratification sentiments as it is possible that the strength of their opposition is selected for given they, like those in favor of ratification, appear to believe in their cause; only, their cause is one against human rights agreements. For this reason, the results of testing H1.b.ii are inconclusive, though there may be some evidence supporting it within the Senate hearings.

Lastly, H1.b.iii, the implication that concern would be raised about the Inter-American Court, was not supported in the Senate Hearing documents. None of those opposed to ratification mentioned the Inter-American Court and, where it was mentioned, witnesses were largely in favor of the Court and disappointed that President Carter had not asked the Senate to consider accepting the Court's jurisdiction. Walter Landry, who served on the delegation to the American Convention's drafting, said, "I think eventually we should accept the jurisdiction of the court. Again, I think we should move toward a viable, enforceable hemispheric human rights system,

[114] Senate Hearings, 1979, 113.
[115] Id., 237.
[116] *See* Chapter Four, section titled "H1 Implications."

such as is present in Western Europe."[117] In response, Senator and Chairman of the Foreign Relations Committee Claiborne Pell responded that he agreed.[118] Because of the absence of H1.b.iii, the implication fails its test; as this was a Straw-in-the-Wind test, the implication's failure is only slight evidence against H1.

In sum, H1 — that the United States' uneven engagement in the American Convention is a symptom of tensions between Restraint and Imposition Approaches to norm exportation — is somewhat supported. Though H1.a passes both of its associated tests with a great amount of evidence, its results are not wholly conclusive, given they rely on the certain, but not unique, Hoop test. H1.b, targeting Imposition sentiments, likewise finds some support through a Hoop test. Additionally, the presence of evidence reflecting a Smoking-Gun implication is promising. However, given the selection effects that may be present in the Senate Hearings themselves, the Smoking-Gun implication does not pass on its own.

Testing Substantive Limitations

Articulated in Chapter Three, the Substantive Limitations Argument postulated that the United States failed to ratify the American Convention on Human Rights because there are inconsistencies between the U.S.'s domestic law and the Convention's provisions. This inconsistency, according to the scholarship, is most attributable to Article 4 of the American Convention, which establishes that the right to life, "shall be protected by law and, in general, from the moment of conception."[119] The United States' domestic policies on abortion and the death

[117] Senate Hearings, 1979, 258. This is an example of a quote appearing in Appendix C, though not strictly used to update belief of the hypothesis.
[118] Id., 259.
[119] American Convention on Human Rights, Article 4.

penalty conflict with the Convention's articulation of the right to life. Slightly modified from the original formulation of the Substantive Limitations Argument for the sake of consistency with other hypotheses, H2 contends that the U.S.'s uneven engagement with the American Convention on Human Rights is due to substantive limitations, especially Article 4, That is, that American Convention provisions are inconsistent with U.S.'s domestic law. Given the analysis of this study, the Substantive Limitations Argument appears to be largely unfounded.

The first predicted implication of H2, H2.i, is that the United States appears to genuinely intend to ratify the Convention prior to the finalization of the Article 4 language. After this moment, it was expected the United States would not be as eager to ratify the Convention. This proved to be false. In 1959, the Organization of American States held its 5th Meeting of the Consultation of Ministers of Foreign Affairs in Santiago, Chile where they passed a resolution for the preparation of a draft human rights convention. Attached to the final act of the meeting, detailing the resulting resolutions, the United States included the following statement:

> The United States, as is well known, has since its birth as a nation strongly defended human rights. The promotion of respect for human rights in the inter-American system is therefore supported by the United States. While the United States, because of the structure of its Federal Government, **does not find it possible to enter into multilateral conventions with respect to human rights or with respect to an Inter-American Court of Human Rights**, it, of course, raises no objection to other states' entering into conventions on these subjects should they find it possible to do so. Accordingly, while the United States has voted in favor of Resolution VIII, Human Rights, it reserves its position with respect to its participation in the instruments or organisms that may evolve.[120]

Given that the United States appears to have rejected the idea of ratifying a future draft Convention — nearly a decade before Article 4, or any other provision, was finalized — H2.i fails its Smoking Gun test. It is not substantive provisions that appear to bear on the United States' uneven engagement. In fact, the United States' 1959 statement appears to lend credibility to H1

[120] 5th Meeting of the Consultation of Ministers of Foreign Affairs, Final Act, 1959, 18-19.

and H3, reflecting similar language as predicted and found in the 1979 Senate Hearings: concerns about protecting federalism and avoiding intervention from the Inter-American Court. It also greatly supports the argument that scholars should consider U.S. engagement with human rights in terms of unevenness and not merely a failure to ratify. In isolation, it appears that all possibilities for U.S. ratification of the American Convention were rejected in 1959. Yet, under the leadership of a Restraint-minded president, participation in the Convention is called for and reconsidered. However, given that H2.i was probed with a Smoking Gun test, the failure of H2.i provides only slight evidence against H2 and more consideration is necessary. The second, third, and fourth predicted implications for H2 are once again tested with the 1979 Senate Hearings.

Implication H2.ii predicted that statements would be made arguing that Article 4 prevented the United States from being able to ratify the American Convention. Of all the witnesses interviewed during the Senate Hearings, not one witness took such a high degree of issue with Article 4. Rather, Article 4 was occasionally mentioned in passing; for example, the American Bar Association's statement briefly mentions it, stating, "Article 4 (Right to Life) is probably the most troublesome article in the Convention and a U.S. reservation with respect to portions of the Article will very likely be necessary because of its restrictions on the death penalty and on abortion."[121] However, no statements were made implying that Article 4 was a sufficient concern for not ratifying the American Convention; it appeared, rather, to be a secondary concern and generally quelled by the State Department's proposed reservation to Article 4.

Interestingly, Article 4 was more often applauded than met with concern. For example, Senator Jesse Helms, who argued against ratification, allowed that "should the Convention be ratified, I believe it would be entirely appropriate for the Supreme Court to reconsider the entire

[121] Senate Hearings 1979, 253.

issue of abortion and how its past interpretations of the Constitution would be affected by such an international recognition of personhood."[122] This is particularly odd in light of statements made earlier in the hearings by Senator Helms. As an example, Senator Helms at one point, in commending Phyllis Schlafly for her testimony, commented, "I take it that you are concerned about the vagueness of some of these provisions which invite interpretations potentially adverse to the sovereignty of this country."[123] After Schlafly replied affirmatively, Helms asserts that he agrees with her. Although Senator Helms is apparently disturbed by the possibility that vague provisions could result in violations of sovereignty, he calls for the vague Article 4 provision to be the basis for a Supreme Court decision overturning *Roe v. Wade*. This position does not seem entirely consistent and, though not central to the discussion at hand, it may lend support to the idea that human rights is "more of a political than a legal question."[124] Ultimately, however, H2.ii fails its Smoking Gun test, lending slight evidence against H2.

H2.iii, that statements will be made claiming that the recommended RUDs to the American Convention are insufficient to overcome substantive inconsistencies, was assigned a narrow Hoop test. Some statements somewhat reflected this sentiment. For example, Phyllis Schlafly, the conservative activist, asserts that, "Even if all those addenda were binding, they would not safeguard the rights of Americans from most of the dangers posed by the treaties."[125] She does not appear concerned about the treaty provisions requiring U.S. observation of higher human rights norms, however; instead, she claims, "the treaties imperil or restrict existing rights of Americans by using treaty law to restrict or reduce U.S. constitutional rights."[126]

[122] Id., 238. This quote is included in Appendix C.
[123] Id., 136.
[124] Senate Hearings 1979, 253.
[125] Id., 113.
[126] Ibid.

Concerns were not common over reservations being sufficient to temper articles in their substance. Much more common was concern over the non-self-executing declaration recommended. For example, Chairman Pell recalls a Supreme Court decision and implies international legal provisions may impact domestic law, stating, "It says that unless the reservation is an integral part of the treaty, which obviously is not because then it would be an amendment, then the judiciary would not be bound under the supremacy clause."[127] This statement, and Phyllis Schlafly's, suggests that the heart of the substance issue is not whether the American Convention is substantively consistent, but whether international interference may be made possible in light of inconsistencies. Interference, not substance, seems to be at the core of concerns. Because statements made about the insufficiency of RUDs were not made in terms of inconsistency but in terms of interference, H2.iii fails its narrow Hoop test, providing somewhat strong evidence against it.

Lastly, H2.iv, which predicted that statements that U.S. law is overall not consistent with the American Convention, is also tested with a narrow Hoop test. There was little evidence that witnesses viewed U.S. domestic law to be inconsistent with the American Convention as a whole. In fact, many statements were made to the contrary, such as Roberts Owen, State Department legal advisor, who claimed that the American Convention "roughly correspond[s], in terms of international law, to the Bill of Rights, which is so firmly entrenched in our Constitution."[128] Others spoke more generally of all the treaties considered during the Senate hearings, with international lawyer Morton Skylar asserting that, "these human rights treaties which you are considering are not other people's laws. They are our own laws."[129]

[127] Id., 91.
[128] Senate Hearings 1979, 34.
[129] Id., 273. This statement is included in Appendix D, along with a number of statements made supporting the sentiment that U.S. law *is* consistent with the American Convention.

On only two occasions did witnesses take direct issue with the American Convention's consistency with U.S. law. Philip Anderegg claimed the Convention contained "issues concerning the qualifications of voters, access to civil service, and corporal punishment."[130] Separately, Norman Redlich, Dean of New York University Law School, contends that the Convention "permits broad exceptions to the rights of assembly and association and permits government censorship and punishment of expression which would be entirely inconsistent with the American Constitution," though he goes on to recommend a reservation be added to remedy these inconsistencies.[131] Because, unlike H2.iii, these statements are discussed purely in terms of substantive inconsistency, and not primarily intervention, H2.iv passes its narrow Hoop test, providing some support for H2

Despite this source of support, I conclude that the Substantive Limitations Argument is largely unsubstantiated. Substance was not at the core of opponents' contention with ratification of the American Convention and, even where substantive inconsistencies were raised, they were not framed as justifications for not ratifying. Rather, they were raised to suggest an additional reservation before ratification. Overwhelmingly, witnesses voiced that the American Convention is entirely consistent with domestic law and "give[s] expression to human rights that coincide with our own laws and practices."[132]

Bricker Amendment: A moment or momentum?

The Bricker Amendment Argument argues that the United States' uneven engagement with the American Convention results from concerns raised by the proposed Bricker Amendment to the

[130] Id., 185.
[131] Senate Hearings 1979, 264.
[132] Id., 43.

U.S. Constitution. These concerns are that international agreements can interfere with U.S. sovereignty, its federalist system, and issues that should be left to domestic jurisdiction. The first predicted implication of this hypothesis, H3.i, was that opponents to ratification would explicitly invoke the Bricker Amendment, or the period it was considered during, to argue against ratifying the American Convention. This implication was assigned a Smoking Gun test. Contrary to my expectation that H3.i would not be observed, the Bricker Amendment was explicitly mentioned a handful of times throughout the Senate Hearings, though not by opponents of ratification. Mention of the Bricker Amendment came from proponents of ratification who often claimed that the concerns the Bricker Amendment sought to address were not consequential. For example, President of the American Association for the International Commission of Jurists, William Butler reflected, "We have come a long way since the days of Senator Bricker when, in 1954, the so-called Bricker amendment failed to pass the Senate by only one vote."[133] Another witness, Covey Oliver, noted that there were still some individuals stuck in the Bricker mindset: "Lingering memories of Bricker have a great deal to do, I think, with fears of the sort we have heard today, that the human rights conventions might require us to do 'something terrible.'"[134] However, like Butler, Oliver ultimately asserted that most have moved beyond this attitude. To the extent that they explicitly acknowledge Bricker as the source of concerns held by contemporary opponents to ratification, these statements reflect the implication H3.i. Therefore, H3.i passes the Smoking Gun test, providing strong support for H3.

Implication H3.ii, probed with a Hoop test, predicts statements reflecting the so-called Bricker concerns themselves, arguing that ratification would threaten U.S. sovereignty, its federalist system, and its jurisdiction over domestic matters. There were several statements made

[133] Senate Hearings 1979, 457.
[134] Id., 129.

to this effect. Roberts Owen, in recounting common arguments against ratification, noted, "it is said that the human rights treaties could serve to change our laws as they are, allowing individuals in courts of law to invoke the treaty terms where inconsistent with domestic law or even with the Constitution."[135] Phyllis Schlafly asserted, "It is obvious… that the treaties are incompatible with the United States Constitution, would override precious American rights, would interfere with our domestic law and matters of private concern, and would upset the distribution of power in our system of federalism."[136] Many statements reflecting the predicted H3.ii implication also counted as evidence for the H1 implication that witnesses would express concern over unnecessary or unwanted intervention (H1.b.i), which was anticipated in light of the argument that the Bricker Amendment is a symptom of the Restraint-Imposition tension. Nevertheless, the statements support H3.ii on its own, and it therefore passes the Hoop test, providing support for H3.

Lastly, H3.iii predicted that Bricker Amendment concerns would not feature as primary concerns in U.S. consideration of League of Nations membership given that the League of Nations was considered thirty years before the Bricker Amendment. This implication is particularly important, as it is both a unique and certain implication of H3, assigning it the standard of the Doubly Decisive test. The first document analyzed for this implication was the set of fourteen reservations proposed by Senator Henry Cabot Lodge to the Treaty of Versailles, which provided for the League.

Four reservations are particularly relevant for this analysis. Lodge's first reservation reserved judgement solely to the United States for "whether all its international obligations and all its obligations under the said Covenant have been fulfilled."[137] The fourth reservation dealt with

[135] Id., 38.
[136] Senate Hearings 1979, 113.
[137] Henry Cabot Lodge, 1919, Reservations with Regard to the Treaty, available at http://www.digitalhistory.uh.edu/.

the matter of domestic jurisdiction, assigning the United States the exclusive "right to decide what matters are within the domestic jurisdiction."[138] The reservation additionally "declares that all domestic and political questions relating wholly or in part to its internal affairs… are solely within the jurisdiction of the United States and are not under this treaty to be submitted to arbitration" or to judgment by the League of Nations.[139] Likewise, Lodge's fifth reservation rejects any questioning of the United States' Monroe Doctrine: "said doctrine is to be interpreted by the United States alone and is hereby declared to be wholly outside the jurisdiction of said League of Nations…"[140] Lastly, Lodge's fourteenth reservation ascertains that, "The United States assumes no obligation to be bound by any election, decision, report, or finding of the [League of Nations] Council or Assembly" or "arising out of any dispute between the United States and any member of the League."[141]

Although approaching the issue with different words, all four reservations — reflecting the reservations proposed to the American Convention and commonly attached to other human rights agreements — aim to halt any possibility for international examination, scrutiny, or interference. Like the Bricker Amendment, the reservations take the teeth out of the agreement in the name of

[138] Id.
[139] Lodge 1919.
[140] Ibid. The Monroe Doctrine is perhaps the most enduring U.S. foreign policy towards the Western hemisphere. Adopted as a response to the threat of European colonization in the Americas, it proclaimed that there should be no further European expansion in the West and that any violation of this principle would be an affront to the United States. Although spoken by President James Monroe in 1823, many argue that it was the imagining of John Adams, who sought to the United States' own "sphere of influence." In its messaging, it was framed as a moralistic policy, protecting fundamental values of freedom and protecting newly sovereign Latin American states so that they would not be re-colonized by European powers. Scholarship widely accepts that the Doctrine was reimagined by President Theodore Roosevelt, establishing the Roosevelt Corollary to the Monroe Doctrine and asserting the right of the United States to be an "international police power." Reflecting the Imposition Approach argued for in this thesis, President Roosevelt asserted that intervention was warranted in "flagrant cases of wrongdoing or impotence" which "ultimately require intervention by some civilized nation." *See* Monroe 1823, Roosevelt 1905, Murphy 2005, Sexton 2011, Gilderhus 2006, and Scarfi 2016.
[141] Lodge 1919.

protecting domestic jurisdiction and, ultimately, sovereignty. The scope of Senator Lodge's fourteen reservations, including and beyond the four named above, were deemed by President Wilson to amount to the "nullification of the treaty," reflecting similar sentiments expressed by proponents of ratification of the American Convention on Human Rights.[142]

As with the Bricker Amendment, protecting federalism was also a concern for the opponents of the League of Nations. In his speech before the Senate, Senator William Borah saw the League as creating "executive functions" that would result in action through the League "without the authority of Congress."[143] Senator Borah went on to affirm that the United States must "be permitted to live her own life" and that "all schemes, all plans, however ambitious and fascinating they seem in their proposal, but which would embarrass or entangle and impede or shackle her sovereign will, which would compromise her freedom of action, I unhesitatingly put behind me."[144]

Senator Lodge's reservations and Senator Borah's speech are not outliers in their opposition to possible international intervention. Scholars have noted this pattern of concern within the League debates as a whole. Historian David Mervin accounts that senators in opposition to the League "refused to entertain the possibility of surrendering one whit of American sovereignty to any international organization."[145] He goes on to depict the opposition as insistent "on the utter inviolability of American sovereignty and the sanctity of the Monroe Doctrine; they extolled nationalism and poured scorn on internationalism."[146] Political Scientist Gyung-Ho Jeong's characterization of the debate agrees with Mervin in this regard. He acknowledges that those

[142] *See* Letter from Wilson, which is also available in Lodge 1919. Sentiments reflecting Wilson's frustration over the treaty being nullified by reservations are available in Appendix D.
[143] Borah 1919, available in Byrd 1994, 570
[144] Id., 573.
[145] Mervin 1971, 209.
[146] Id., 210.

Senate Republicans who would have otherwise accepted the Treaty of Versailles peace terms, "supported a unilateral or nationalist foreign policy stance [and therefore] had issues with the commitment to a multilateral supranational organization."[147]

Given the sentiments in primary sources and the analysis of secondary source accounts of the League of Nations debate, the presence of sovereignty, federalism, and domestic jurisdiction concerns is supported. Due to this evidence, H3.iii fails its Doubly Decisive test, resulting in strong evidence against H3: that the United States' uneven engagement with the American Convention is due to concerns raised by the Bricker Amendment. However, the consequence is a puzzle: how do we reconcile the support found for H3.i — that the Senate Hearings would attach opposition explicitly to the Bricker Amendment — and the evidence found against H3.ii — which weakens the Bricker Amendment Argument greatly? I suggest that, although the Bricker Amendment proposal may have been more salient to those who bore witness in Senate hearings in 1979, the Bricker Amendment is a symptom of a cause and not the cause itself. In this thesis, I have suggested this cause may be the tension between Restraint-Imposition. However, the Bricker Amendment proposal is not entirely insignificant. The assertion may be too strong that it is the defining moment in how the United States considers human rights agreements. But, if not a moment, the Bricker Amendment proposal certainly gave momentum to sovereignty concerns and language with which to express them in the context of human rights.

[147] Jeong 2017, 328.

Chapter Six

LIMITATIONS

The study undertaken by this thesis is limited in a number of ways. First is the question of the selection effect discussed in the previous chapter with regard to the witnesses heard during the 1979 Senate Hearings. Although diverse testimony was heard in support of ratification of the American Convention, the voices in opposition were limited and perhaps not representative of the reasoning generally held against ratification. This possibility is reinforced by another limitation: the amount of sources available on which to draw for analysis of positions in favor or against American Convention ratification. For example, I was unable to find a debate among Senators themselves.

Another limitation regards the selection of a case for H3.iii. Had a human rights agreement been considered prior to the Bricker Amendment and more distanced than the Genocide Convention, that would have been a preferable case comparison. However, this was a challenge in light of the development of international human rights law being largely a post-World War II phenomenon. Additionally, because the study is a case, it cannot provide any broadly conclusive results as to the theory developed in Chapter Two, though limited results do indicate promise for future study.

CONCLUSION

This thesis has considered why the United States has been systematically uneven in its engagement with international human rights agreements. The response developed in this work uses traditional notions of liberal theory to articulate two competing approaches to the promotion of human rights. The Restraint Approach is argued to pull the United States in the direction of international cooperation through institutions, such as the American Convention on Human Rights. However, while the Restraint Approach may move the needle in this direction, the Imposition Approach is argued to reject such international cooperation on the grounds that the United States is fine as is and should retain its power to impose itself in exceptional cases of rights abuses if it sees fit. The result of this theorized tension is an impasse which is observed as uneven engagement.

However, instances of domestic impasse in foreign policy are not observed strictly within the realm of human rights. The League of Nations is another case where individuals seeking international institutional cooperation were met with those who preferred to preserve the United States' autonomy to decide where and when intervention would be of interest. The resulting standoff between President Woodrow Wilson and Henry Cabot Lodge's coalition of senators led to yet another impasse as Wilson encouraged Senate Democrats to vote against a Treaty of Versailles nullified by Lodge's reservations. This dynamic, in addition to the rejection of the idea that sovereignty concerns in treaty ratification arose from the Bricker Amendment, results in a promising possibility for future study. Future work might assess other instances of United States foreign policy consideration to provide more insight into the possibility of the Restraint-Imposition tension hypothesis. In particular, further study is necessary to assess the linkage between the isolationist and interventionist undercurrents of the Imposition mindset.

Reflection

Throughout reading the testimony of Senate hearing witnesses, one word reappeared with frequency, much to my surprise: leader. Despite frequent voicing of disappointment over the United States' apparent apprehension towards human rights, its weakening of potential human rights commitments through reservations, and, most shockingly, its delay in ratifying the 1948 Genocide Convention, time-and-time again, witnesses asserted that the U.S. was nevertheless a leader, even a "champion," of human rights.[148] Why, in the midst of uneven engagement, is this view held?

The analysis of this work bears on this question. One impression apparent from the Senate hearings is that, though the United States may not consistently sign on the dotted line of human rights agreements, there are those within the United States who nonetheless remain deeply committed to the cause of human rights. Indeed, there are those who suggested in their testimony that the promotion of human rights should be understood as part of the national identity of the United States. These, and perhaps not the United States as a monolith, are the leaders of human rights. While this commitment and belief in human rights remains among the people, the possibility, if not always the actualization, of U.S. human rights leadership remains very much alive. The question mark in the title of this thesis remains for this reason.

[148] Senate Hearings 1979, 351 and 407.

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APPENDIX

A. Hypotheses and Predicted Implications

Hypothesis and Implication	Evidence Type
H1.a.i	Statements claiming that participation in the American Convention will **improve the United States' ability to promote human rights norms**.
H1.a.ii	Statements claiming the United States will **miss out on the opportunity to influence the protection and practice** of human rights by not ratifying the American Convention. *something about credibility*???
H1.b.i	Statements claiming that participating in the American Convention will open the United States to **unnecessary or unwanted intervention in U.S. domestic affairs**.
H1.b.ii	Statements claiming that ratifying the Convention w**ill not increase U.S. influence** in human rights beyond what it already is.
H1.b.iii	Statements expressing concern over the **possibility of the U.S. being taken to the Inter-American Court of Human Rights**.
H2.i	The United States appears to intend to ratify the American Convention until the language of Article 4 is finalized and includes "in general, from the moment of conception."
H2.ii	Statements **identifying Article 4** as the reason why the United States cannot ratify.
H2.iii	Statements arguing that the **reservations, understandings, and declarations are not sufficient** to overcome inconsistencies with U.S. domestic law.
H2.iv	Statements claiming that the United States' **domestic law does not align** with the American Convention's provisions.
H3.i	Explicitly **invoking the Bricker Amendment or the period** it was proposed to argue in opposition to ratification of the American Convention.
H3.ii	Statements claiming that ratifying the American Convention would be a **threat to the United States' sovereignty, federalist system, or jurisdiction over domestic matters**.
H3.iii	The arguments against joining the League of Nations are not expressed in terms of the concerns of the Bricker Amendment (i.e. protecting sovereignty, the U.S. federalist system, or the U.S.'s jurisdiction over its domestic matters).

B. Collected Statements from 1979 Senate Hearings

H1.a.i:

Quote No.	Statement	Actor	Page #
1	"Concern for human rights is one of the foundations of the greatness of our Nation. Our observance of human rights contributes profoundly to our leadership in the international community as a whole. To preserve and enhance that leadership role, we must demonstrate our willingness to make human rights a matter of international commitment and policy and not solely a matter of domestic law."	Warren Christopher	28
2	"On the contrary, ratification would encourage the extension of rights already enjoyed by our citizens to the citizens of other nations and, very significantly, it would allow the United States to participate in this process."	Warren Christopher	28
3	"Ratification also would give the United States an additional international forum in which to pursue the advancement of human rights. It would enable us to challenge other nations to meet the high standards set by the United States. We should not deny ourselves the opportunity to help shape the developing international standards for human rights and to encourage the extension to others of the rights we long have enjoyed."	Warren Christopher	29
4	"Human rights are not peripheral to the foreign policy of the United States... Our pursuit of human rights is part of a broad effort to use our great power and our tremendous influence in the service of creating a better world â€" a world in which human beings can live in peace, in freedom, and with their basic needs adequately met."	Jimmy Carter (quoted by WC)	31
5	"...one principle goal of these treaties is to bring about a modification in the behavior of other governments in ways that directly affect our own national interest."	Roberts Owen	34
6	"I am here today to support ratification of these treaties as a means for the United States to participate in the furtherance of similar rights in the international sphere."	Roberts Owen	36
7	"...the United States would do well to participate and thus have a role in the development of an international jurisprudence of human rights."	Roberts Owen	41
8	"[Ratification] will encourage other countries to join those which have already accepted the treaties. And, in countries where human rights generally are not respected, it will aid citizens in raising human rights issues."	Patricia Derian	42
9	"In the Western Hemisphere, the Inter-American Human Rights Court has been established to hear disputes and an Inter-American Human Rights Commission has been established to conduct investigations of abuses. By ratifying the American Human Rights Convention, we will be eligible to nominate and vote for their members, which we are not eligible to do now."	Patricia Derian	43
10	"Becoming a party to the treaties will enable the United States to participate more fully in the human rights dialog at the UN and the OAS. We will have standing to discuss the records of other nations where it is appropriate to do so."	Jack Goldklang	47
11	"Mr. Chairman, ratification of these treaties will be fully consistent with an important goal of the United States in promoting human rights in the world, and failure to ratify these treaties will be inconsistent with that important foreign policy goal."	John Norton Moore	76
12	"...the ratification of these four treaties would encourage the progressive development of a variety of institutional mechanisms which would seek to protect human rights around the world."	John Norton Moore	76

Quote No.	Statement	Actor	Page #
13	"As a member of the American Convention on Human Rights, we would be able to participate in the nomination and election of judges and in the system for the new Inter-American Court on Human Rights. In the absence of that, Mr. Chairman, it has been rather interesting that an American citizen appointed to that court was nominated and appointed by a foreign nation. It certainly would seem appropriate for the United States to be a direct participant in the nomination and election of judges to the Inter-American Court on Human Rights."	John Norton Moore	76
14	"The provisions of the treaties are consonant with, and a projection of our democratic values. There ought not be any ambiguity about that in the mind of anybody in the world. The more firmly those values can be imbedded in international law and international values, the better off we will be as a democracy."	Tom Kahn	93
15	"But in others, you will, I hope, consider deferring to a judgment, broadly shared by our Hemispheric neighbors, that some refinement of United States practice will contribute to the defense of human rights. True allegiance to the cause of human rights requires a measure of humility. If a society such as we are, committed by its traditions and way of life to the defense of human rights, cannot in the smallest measure defer to the general opinion of mankind where that opinion recognizes a higher standard than we have yet achieved, what can we expect of states where human rights is an aspiration not of governments but of the peoples over whom they reign?"	Thomas Farer	108
16	"So, it seems to me that our acceptance of the idea of external assessment, which is what accepting these conventions amounts to, can have a constructive long-term impact on this antique attitude about the propriety or impropriety of countries and individuals looking into the human lights behavior, of other states."	Thomas Farer	111
17	"The four conventions before you today and the Genocide Convention are not needed to conform American law to more just human rights ends and I stress the word "ends" but to align us with the "good side" in world affairs and give us the credibility we now lack as we use our influence to promote human rights."	Covey Oliver	128
18	"I would hope that the United States can become a party to these covenants so that we, too, can participate in bringing a discussion of human rights to the forefront in every part of the world."	George Miller	141
19	"I think the act of ratification by a country such as the United States is a very clear and long-lasting statement to the world about the importance that we do place on this."	George Miller	146
20	"I think our participation in the working committees and the ongoing discussion, in the reviews and the audits of countries' positions in regard to human rights, would take on much greater meaning. Perhaps we would be in a much better position to shape that policy and the determinations as to violations."	George Miller	146
21	"…it will bring to the forefront the discussion and it will lend credence to those countries which already have ratified these in the interest of pursuing human dignity and human rights."	George Miller	146
22	"But if our ratification is in the interest of pursuing these goals, then our voice can be heard in that organization and in the working groups in the shaping of that policy."	George Miller	146
23	"We will be respected for our honesty and we will have a legally enforceable Convention with teeth in it, one that can help to protect the human rights of individual Americans living and traveling in other countries of this hemisphere."	Walter Landry	251
24	"…it is in the national interest of the United States to encourage and promote universal respect for and observance of human rights."	ABA statement	251

Quote No.	Statement	Actor	Page #
25	"By virtue of its size, population, and wealth, the United States is frequently regarded as the leader of the Inter-American System. It should certainly assert that leadership by signing and ratifying the American Convention on Human Rights which has been urged by the Latin American countries and which represents essentially, the affirmation of fundamental U.S. political ideas on a hemispheric basis."	ABA statement	254
26	"There is pressing need for expanding respect for law and the individual beyond our borders."	ABA statement	254
27	"As a leader of the hemisphere, prompt action by the United States could advance the entry into force of the American Convention by several years. Latin American States are notoriously slow in ratifying Inter-American treaties and they often await the lead of the United States."	ABA statement	254
28	"I think we should welcome the opportunity to state the American case, and the American record for freedom, in any international tribunal anywhere in the world. One of the chief reasons why we urge consent to ratification is to give us entree into those channels."	Norman Redlich	260
29	"It provides us the opportunity through the enforcement process to hold other governments to that standard. It will be an important addition to our foreign policy in this area."	Norman Redlich	261
30	"The United States has had some success in raising the level of moral discourse in world affairs... Ratification of the covenants on human rights is a logical further step in providing additional implements for advancing individuals rights."	Norman Redlich	263
31	"These covenants can then become an important adjunct to those programs and policies already operated unilaterally by the United States in seeking to raise the universal standard of human rights."	Norman Redlich	263
32	"Obtaining human rights observance abroad is not just part of our moral values. It is vitally connected to our national self-interest in securing a higher level of commitment and practice from other nations in support of the basic principles that underlie the human rights treaties : Rights of free speech, equal protection under laws, right of assembly, fair trial, economic and job security are all the rights that are the basic cornerstones of our own democratic system."	Morton Skylar	272
32	“The ability of our own values to survive is damaged when these values are not observed by other governments. But we are in a very poor position to press for these values abroad, to alert countries of their violations and to suggest improvements so long as we ourselves are seen to be in basic noncompliance.	Morton Skyler	272
33	"Isn't it time that we shed this reluctance to acknowledge our strengths, our capabilities for achieving reform? Isn't it time we stand up in the world community for the values that are most important to our own people, both in their exercise of them here and in our ability to maintain the viability of our values and our system in a world community that too often deviates from these values in the treatment of its own citizens?"	Morton Skylar	273
34	"How much more appropriate, more rational, and more in support of our worldwide and national interests would it be to say instead that we readily acknowledge, through ratification, what is fundamental to the American system and to our commitment to law and justice. Ratification is the first step necessary for us to begin to work with all nations in giving greater meaning to these principles both here and abroad."	Morton Skylar	273
35	"…ratification supports our government's efforts to secure human rights observance in other nations."	Washington Helsinki Watch Committee	274

Quote No.	Statement	Actor	Page #
36	"One of the great weaknesses of our efforts to promote international human rights in the past has been that it has been done unilaterally, through the use of foreign aid cut-offs and military sales embargoes. How much more effective and less potentially damaging to our foreign policy interests to make the vehicle for observance and enforcement international rather than unilateral."	Washington Helsinki Watch Committee	275
37	"Ratification lessens the opportunity for other nations to criticize the status of our own country's compliance problems."	Washington Helsinki Watch Committee	275
38	"In the interests of further advancement of human rights conditions in our own country, as well as an improved ability to promote human rights observance abroad, we urge your Committee to report to the Senate in favor of prompt ratification, with a minimum of restrictive reservations."	Washington Helsinki Watch Committee	276
39	"We can assure the United States that full participation in the international human rights legal system could only benefit this country and its citizens and certainly would influence further development and implementation of human rights laws and procedures to the benefit of others."	Harry Inman	278
40	"Accession to the four human rights treaties is certainly called for at this time as a signal to the international community that the United States' historic commitment to human dignity and freedom continues to forge our domestic and foreign policy."	Harry Inman	278
41	"Ratification of the human rights treaties certainly will strengthen the confidence and stature of our nation."	Harry Inman	278
42	"Because of the high emotional appeal of human rights language and its operational function in international law, we cannot afford to abandon these concepts to the enemies of freedom. But this long-term semantic struggle will be waged in the implementation organs set up by these treaties, which argues for a responsible American voice in these fora."	Oscar Garibaldi	334
43	"…it is up to the United States to get in and participate in the development not only of the remedies but of the substantive law under all of the conventions that are being considered."	Richard Lillich	336
44	"But it cannot be doubted that American human rights policies would be viewed with less suspicion in the hemisphere and would be less open to the charge of hypocrisy if the United States headed the list of nations that had ratified the convention."	Thomas Buergenthal	339
45	"…because of its special ties to and interest in the Western Hemisphere, it would be of particular importance for the United States to become part of the inter-American system for the protection of human rights and to do everything in its power to ensure that this system succeeds."	Thomas Buergenthal	339
46	"Because of the institutions the convention establishes, this treaty has a strong potential of providing a foundation for the gradual democratization of Latin America. That is a goal to which the United States is committed and which certainly is in the long-term interests of the United States."	Thomas Buergenthal	339
47	"It would also help to ensure continued U.S. influence in a part of the world on which the U.S. will increasingly have to rely as its traditional political and economic ties with countries in other regions become more tenuous."	Thomas Buergenthal	342

Quote No.	Statement	Actor	Page #
48	"…if a system of standards, such as those embodied in these treaties, does have a reasonable chance to survive and flourish and to gather strength in the long term, that chance very probably depends directly on our own vigorous participation in the effort."	John Lawrence Hargrove	345
49	"I hope it will not be regarded as chauvinistic to impute a critical role to the United States in the future evolution of international human rights."	John Lawrence Hargrove	346
50	"…we as a people should have enough confidence in our own competence, our political acumen, our staying power, and, above all, in the inherent attractive force of our own basic values, to commit ourselves fully to the task of the sound development of these four regimes."	John Lawrence Hargrove	346
51	"Yet unless these mechanisms are grounded on a foundation of solid commitment by sympathetically disposed governments to the integrity of the treaty regimes, their practical significance will be permanently truncated and circumscribed."	John Lawrence Hargrove	349
52	"The United States own national interests very much are tied up in the human rights movement, as are the United States interests in a system of world order and peace, of which human rights invariably must be a condition."	Jerome Shestack	351
53	"We... strongly urge the Senate of the United States to ratify these treaties to maintain a position of credibility and to enable the United States better to perform the critical role of champion and advocate of human rights which so well suits this country and is so important to human dignity and the well-being of the world."	Jerome Shestack	351
54	"Because the League views the United States role as an advocate of human rights to be of critical importance in advancing the cause of human rights, we view United States ratification of these treaties as an action of utmost priority."	Jerome Shestack	351
55	"It establishes a reconstituted Hemispheric Commission on Human Rights and creates a new Inter-American Court on Human Rights. These bodies permit the United States to contribute to the development of a multilateral institution on a regional level and to take on a position of leadership in the hemisphere."	Jerome Shestack	352
56	"Expansion of United States international obligations in the area of human rights will surely serve to confirm the leadership role of this nation in human rights."	Jerome Shestack	254
57	"We join with all peoples in the quest for justice, in the fashioning of institutions that secure the creation of those basic conditions that will assure the universal observance of human rights."	William Wipfler	364
58	"We believe that U.S. ratification of these covenants and conventions... will enhance the observance of human rights throughout the world and within our own country. Furthermore, it will give an increased dimension of credibility to U.S. efforts for the improvement of human rights."	William Wipfler	365
59	"As President Carter stated in his transmittal message, Senate advice and consent will confirm our country's traditional commitment to the promotion and protection of human rights at home and abroad."	Donald McHenry	407
60	"…ratification will enable our Government more effectively to protest serious human rights violations in other countries. Such protest would be especially appropriate with respect to those governments which have ratified the treaties but pay no heed to their provisions."	Sidney Liskofsky	411
61	"…it is our belief that U.S. ratification of these covenants will strengthen the stature of the covenants and will enhance their international authority so that their provisions will become more likely to be observed by all governments."	John Houck	419

Quote No.	Statement	Actor	Page #
62	"I think it would add an incremental force to the effort to secure change over time. The U.S. participation in the international processes through the committees and the reporting procedures existing under these treaties would be a positive factor."	Sidney Liskofsky	428
63	"I would anticipate that U.S. ratification would be conducive over the long term to, hopefully, changing those practices."	Sidney Liskofsky	428
64	"I can only assure you that the U.S. section of Amnesty International and those working here in the United States would be extremely grateful and believe their hands would be strengthened enormously by U.S. ratification."	David Hinkley	430
65	"Every ratification, and certainly the ratification of a country with the enormous moral suasion and political and economic power of the United States only can enhance the international fabric of human rights protections."	David Hinkley	431
66	"…it substantially would increase the international consensus among states, thereby strengthening the international law of human rights which, in turn, would influence other states to take like decisions."	William Butler	458
67	"…it substantially would strengthen the international machinery for the protection of human rights by providing for a system of reporting and review wherein the United States could make a substantial contribution."	William Butler	458
68	"…it would confirm to the world that the United States firmly is committed to the universal protection of human rights, not only for the rest of the world, but for its own citizens, as well."	William Butler	458
69	"the United States would be committing its power and prestige to the goals of realizing for all peoples of the world a decent government, a fruitful life for all individuals, goals for which our own country was created to secure for its own citizens."	William Butler	458
70	"Law will give us the opportunity to influence other nations. It will give us fora, as does the Helsinki accords, in which we can confront our opponents and hopefully prevail with the intentions that have made the United States a leader in the world in the field of human rights."	Roger Baldwin	459
71	"Ratification of these treaties will sustain that momentum by opening up new forums for United States human rights efforts."	Jimmy Carter	464
72	"It will also remove a troubling complication from our diplomacy. Regimes with whom we raise human rights concerns will no longer be able to blunt the force of our approaches or question the seriousness of our commitment by pointing to our failure to ratify."	Jimmy Carter	464
73	"More importantly, this nation, with its rich heritage of struggle to realize human rights more fully for all its people and with an unmatched record of accomplishments, has a great deal to contribute to that process of interpretation and application."	Jimmy Carter	464
74	"Ratification of the treaties under consideration, and of other documents implementing human rights standards, would ensure United States participation in the review procedures they establish: some of the most important forums for human rights issues."	Edward Snyder	465
75	"It would also place representatives of this country in a better position to challenge states with questionable records."	Edward Snyder	465
76	"If the United States intends to maintain and strengthen its credibility in raising its voice about the observance of human rights law and practices within the international community and if the United States is to continue to provide world leadership in this area, then ratification of the treaties under consideration is essential."	Laszlo Iranyi	468
77	"United States adherence to the Human Rights Treaties will establish creditability for its foreign policy vis-a-vis the guarantee of personal liberty and security for all individuals."	AAUW	474

Quote No.	Statement	Actor	Page #
78	"In addition to invalidating charges against the United States of inconsistent and/or hypocritical foreign policy tentative, the United States can legitimately support the people of the world in their efforts to establish basic human rights."	AAUW	474
79	"The United States could do so [promote human rights] without exposing itself to charges of violation the sovereignty of sister-states through intervention in their domestic affairs."	AAUW	474
80	"The United States has a major role to play in world affairs in setting a legal and moral tone in human rights. A look at the list of our Western allies which have ratified and at the states of the Communist bloc which have also ratified the treaties leads logically to the embarrassing question of why we are not included among the Party States."	James E. Wood, Jr	482
81	"Ratification is essential to our credibility as a nation."	James E. Wood, Jr	482
82	"U.S. ratification would encourage other countries to ratify and thereby augment the effectiveness of the international human rights systems."	Edna McCallion	491

H1.a.ii:

Quote No.	Statement	Actor	Page #
1	"Unless the United States is a party to these treaties, we will be unable to contribute fully to this evolving international law of human rights."	Warren Christopher	28
2	"...because it has not ratified these treaties, the United States cannot participate in the work of these implementing bodies. The United States does not review the reports submitted by states parties on their compliance with the treaties and it does not have a voice in their interpretation, interpretations which affect the course of the law of human rights for decades to come."	Patricia Derian	42
3	"But why must we rigidly evade the views of other Hemispheric governments where we can invoke as a justification nothing more impressive than neglect?"	Thomas Farer	108
4	"Someone will ask, 'Why are you criticizing our sensitivity about external evaluation of our behavior when you reflect the same kinds of sensitivity?'"	Thomas Farer	110
5	"From a foreign policy standpoint, if we, as a national policy, are urging the protection of human rights throughout the world, it simply is hypocritical for us to urge those standards for others, and for ourselves not to agree to the international documents or participate in the international enforcement mechanism which endeavor to promote those standards."	Norman Redlich	259
6	"We believe that it inhibits our own strength in the world, that it inhibits the sincerity of our arguments if we refuse to participate and refuse to ratify these treaties."	Norman Redlich	260
7	"By not being part of the process, we are precluded from calling other countries to task for violations of standards to which we long have adhered."	Norman Redlich	260
8	"U.S. law restricts foreign aid to governments exhibiting a consistent pattern of violations of "internationally recognized human rights." Can we justify these restrictions when the United States itself refuses to be bound by the agreements which give the term "human rights" its most authoritative legal meaning?"	John Carey	268

Quote No.	Statement	Actor	Page #
9	"The second point has been talked about before and is pretty self-evident, that is that we will be subject to a considerable amount of criticism in the international community and at Helsinki follow-up conferences because of the failure to ratify."	Morton Skylar	272
10	"The ability of our own values to survive is damaged when these values are not observed by other governments. But we are in a very poor position to press for these values abroad, to alert countries of their violations and to suggest improvements so long as we ourselves are seen to be in basic noncompliance."	Morton Skylar	272
11	"Every American loses when a citizen of another country faces repression and a loss of human rights. We lose because we see human dignity trampled in the dust, and a part of us is buried in the process. We lose because our ability to maintain the values for ourselves ultimately is dependent on the willingness of other nations to support these principles in their own right."	Morton Skylar	272
12	"We cannot preserve freedom and human dignity alone. We must be part of a worldwide effort and a joint commitment of all nations to be kept to that high mark. We are not fully participating in that effort without ratification."	Morton Skylar	272
13	"As a nation, we cannot urge others to support and observe democratic principles when we ourselves have failed to take the most symbolic and direct commitment toward observance —formal adoption of the basic rights instruments."	Washington Helsinki Watch Committee	274
14	"We do a severe injustice to our commitments to the ideals of human rights, and to our belief in the value and effectiveness of our system of laws, by shying away from participation in international processes aimed at bringing the benefits of a higher level of human rights observance to our own people, as well as to citizens of other countries."	Washington Helsinki Watch Committee	275
15	"…we undermine our credibility, and offer a legitimate basis for criticism, when we refuse to take even the first step of submitting the necessary assurance of our willingness to adhere to minimum standards of human rights."	Washington Helsinki Watch Committee	276
16	"The United States in recent years has asserted a position of leadership for human rights in the global community. Our unwillingness thus far to ratify the major international human lights agreements, however, impairs our ability effectively to exercise this role."	Harry Inman	278
17	"The Inter-American Court, established pursuant to the American Convention on Human Rights, recently was established in Costa Rica. Again, the United States was unable to participate in the nomination or election of judges because we have not yet ratified that Convention."	Harry Inman	278
18	"…the United States is depriving itself of the opportunity to shape the international human rights law of the future, and may be relinquishing that role to nations whose commitment to human rights is not always borne out by practice."	Harry Inman	278
19	"Taking a stand against human rights violations in other countries as the United States has done also demonstrates a sense of national responsibility and moral courage. The United States cannot fully pride itself on these acts, however, as our failure to commit ourselves to human rights in the international arena undermines our protests and interferes with our credibility."	Harry Inman	278
20	"This is a particular mistake in the context of the OAS. The unwillingness of the United States to submit itself to the court's jurisdiction will be viewed by many nations as further proof that the United States sees human rights as an instrument for political intervention	Thomas Buergenthal	340

Quote No.	Statement	Actor	Page #
	and that it is unwilling to submit its own domestic institutions to impartial international judicial scrutiny."		
21	"American courts and judges have more experience than those of any other country in the Americas in dealing with human rights cases. They have a great and important contribution to make to the development of hemispheric human rights law, a law which U.S. courts, more than any others, would be able to infuse with the libertarian tradition of Anglo-American law."	Thomas Buergenthal	340
22	"As a judge on the Inter-American court, I and, I am sure, my colleagues as well will feel a genuine loss at not being able to see how American courts interpreted this or that provision of the convention before we have to apply it."	Thomas Buergenthal	340
23	"…the Court will not be the only loser; but will also be a great loss for the United States, for it will deprive the United States of the opportunity to play an important role in the hemispheric lawmaking process in which U.S. conceptions of justice and fairness should, and need to be taken into account."	Thomas Buergenthal	340
24	"…by remaining outside the growing group of states adhering to the American Convention, the U.S. increasingly risks being viewed as a nation that either never shared or no longer shares a commitment to Hemispheric democratization and solidarity."	Thomas Buergenthal	342
25	"As the leading democratic power in the OAS, the U.S. simply cannot afford to isolate itself from the Organization's only institutional effort giving credence to the lofty principles which the U.S. has for some years now sought to get the OAS and its Member States to put into practice."	Thomas Buergenthal	342
26	"When the United States participates in the various meetings of human rights bodies, agencies and organizations of the United Nations and nongovernmental organizations, the question invariably is asked, why does the United States not ratify these treaties. Unfortunately, there really is no satisfactory answer."	Jerome Shestack	351
27	"It also is important, as I think Professor Lillich and others have mentioned here, that the United States play a role in the development of the procedures under the Human Rights Committee and the interpretation of the various covenants in working out implementing procedures and interpretations. The United States is hampered, indeed restrained, from that role by nonratification."	Jerome Shestack	351
28	"It [the absence of American ratification] affects it [our relationships with the nations of the Organization of American States] very seriously, Mr. Chairman, and in a variety of ways... I found the United States in large measure paralyzed and not being able to promote its own human rights policy because of its nonratification."	Thomas Buergenthal	361
29	"Our failure to ratify is seen as evidence of the fact that we have something to be afraid of, that we tell others to do things that we ourselves are unwilling to do."	Thomas Buergenthal	361
30	"I am convinced that Americans on any human rights committee or tribunal would be much more effective in these bodies if they did not have to continuously explain why the United States has not ratified these treaties."	Thomas Buergenthal	361
31	"Aside from being recognized as a powerful leader among nations, the United States has been identified as the champion of human rights. With greater frequency, however, we are finding ourselves being criticized for our position with regard to these treaties."	Donald McHenry	407

Quote No.	Statement	Actor	Page #
32	"…branded as hypocrites not only by the Soviet Union and its followers, but also by otherwise moderate nations which cannot comprehend our failure or refusal to ratify the important basic international instruments aimed at protecting human rights."	Donald McHenry	407
33	"I believe our continued nonratification is detrimental to vital U.S. national interests."	Donald McHenry	407
34	"Failure to ratify the treaties is inconsistent with and impedes our efforts in the United Nations and bilaterally to promote human rights throughout the world. Our representatives to the United Nations and other international fora frequently are criticized, as is the case in the current United Nations General Assembly, for espousing human rights for others while the United States refuses to undertake binding international commitments with respect to the human rights of its own citizens."	Donald McHenry	407
35	"…it has become increasingly difficult for the United States in good conscience and with credibility to call forth and hold accountable before the international community notorious human rights abusers."	Donald McHenry	407
36	"…to halt the serious erosion of U.S. credibility and influence in this area, the ratification of these treaties must be done at the earliest opportunity. The act of ratification is important to our credibility as a country devoted to the promotion of human rights."	Donald McHenry	407
37	"Criticism or public denunciation of noncompliance and of flagrant violations inevitably lack credibility if the United States itself has failed to ratify these basic human rights treaties."	Sidney Liskofsky	411
38	"…the people who are working to protect human rights around the world regard U.S. nonratification as 'incredible, incomprehensible, and shameful.'"	David Hinkley	430
39	"When we intervene in any particular human rights situation where there has been a pattern of violations of human rights... —no matter what form our intervention takes, we always are confronted in the first instance with the question of whether or not we are unlawfully and illegally interfering with the internal affairs of a given country or state."	William Butler	456
40	"…you can imagine how embarrassing it might be for an American to continue to be effective when his country has failed to join other great nations, such as Canada, England, and the Soviet Union, in ratifying these international instruments, which have been accepted by the great majority of the world as the norm and standard in the international human rights held."	William Butler	456
41	"I am convinced that unless we ratify these treaties, it will be impossible for the United States to pursue a credible, persuasive, and constructive human rights policy. We cannot continue to denounce other nations for their own noncompliance with international standards which the United States itself has not accepted."	William Butler	456
42	"…in the public debate, time and time again the United States is charged with hypocrisy, with talking out of both sides of its mouth, with being concerned with the rights of others only when it suits the purposes of the United States."	William Butler	456
43	"The comment is, well, you have not even ratified these instruments, you have not even subscribed to their principles, so how can you come in here and take these positions on behalf of the American position."	William Butler	457
44	"The United States, until it becomes a party, is unable to participate in this process. Our absence increases the likelihood of interpretations with which we might disagree."	Jimmy Carter	464
45	"The United States cannot expect to be taken as seriously as all of us would wish in its efforts on behalf of human rights around the world until it becomes an active participant in	Edward Snyder	465

Quote No.	Statement	Actor	Page #
	the various human rights treaties. Our role as a world leader in this field is too open to misunderstanding and to the charge of hypocrisy while these documents remain unratified by the Senate."		
46	"In addition to invalidating charges against the United States of inconsistent and/or hypocritical foreign policy tentative, the United States can legitimately support the people of the world in their efforts to establish basic human rights."	AAUW	474
47	"Without ratification the United States is without legitimate access to that machinery. The absence of the United States from the... Inter-American Commission on Human Rights restrain us from exercising meaningful world leadership in human rights."	AAUW	474
48	"It is imperative that the United States take a strong role in human rights questions throughout the world. Until it ratifies these treaties, its statements and actions are impaired and can be questioned for sincerity."	AAUW	475
49	"Until it ratifies these treaties, the United States can have no authentic or genuine leadership. It is damaging and counterproductive to withhold ratification any longer."	AAUW	475

H1.b.i:

Quote No.	Statement	Actor	Page #
1	"...it is said that the treaties are objectionable because, to the extent that they would call upon the United States to observe higher human rights standards than are provided by our domestic law, they improperly intrude into an area which should be left to domestic legislation."	Roberts Owen	35
2	"...in some instances, the treaties might be read as requiring changes in the laws of our several States and, thus, tend to upset the Federal-State balance."	Roberts Owen	35
3	"...it is said that the human rights treaties could serve to change our laws as they are, allowing individuals in courts of law to invoke the treaty terms where inconsistent with domestic law or even with the Constitution."	Roberts Owen	38
4	"...treaties could be used to alter the jurisdictional balance between our federal and state institutions."	Roberts Owen	38
5	"...the relationship between a government and its citizens is not a proper subject for the treaty-making powers at all, but ought to be left entirely to domestic legislative processes."	Roberts Owen	38
6	"Isolationists and opponents of the United Nations viewed the Covenants and other international treaties as attempts to interfere in the domestic legislative process."	Claiborne Pell	72
7	"It says that unless the reservation is an integral part of the treaty, which obviously is not because then it would be an amendment, then the judiciary would not be bound under the supremacy clause."	Claiborne Pell	91
8	"I am confident that if they had not felt constrained by a long tradition of senatorial obstructionism, they would not have proposed this almost illusory form of ratification. To avoid endless debate over every provision that may require some change in U.S. law or practice, they have ground the convention into a perfect facsimile of our status quo."	Thomas Farer	105

Quote No.	Statement	Actor	Page #
9	"But if the reluctance to act, reflected in the Senate's deliberate pace, rests on some hidden sense of guilt or some primitive nationalist reluctance to concede the propriety of international concern, it rests on illusory grounds. The simple reality is that ratification of this Convention will not add substantially to the international obligations already assumed by the United States."	Thomas Farer	107
10	"…we tend to react instinctively with some belligerence to the idea that other countries and peoples can assess for themselves what we are doing…"	Thomas Farer	111
11	"…it is simply part of the general feeling that the United States knows better about various things and therefore should not be subject to other peoples' judgments."	Louis Sohn	111
12	"I think on the one hand we always say to everybody else that our standards are higher than those of anyone else; but we will discover, if we are subject to international supervision, that there are some skeletons in our closet and they will be paraded in public, and we do not like that idea."	Louis Sohn	112
13	"Second, the treaties imperil or restrict existing rights of Americans by using treaty law to restrict or reduce U.S. constitutional rights, to change U.S. domestic Federal or State laws, and to upset the balance of power within our unique system of federalism."	Phyllis Schlafly	113
14	"Even if all those addenda were binding, they would not safeguard the rights of Americans from most of the dangers posed by the treaties."	Phyllis Schlafly	113
15	"We know that treaties pose much more of a hazard to Americans than to any other nation because of the preeminence of treaties in our system of government."	Phyllis Schlafly	113
16	"It is obvious from the texts of the international treaties on human rights, as well as from the State Department's recommendations of reservations, statements of understanding, and declarations, that the treaties are incompatible with the United States Constitution, would override precious American rights, would interfere with our domestic law and matters of private concern, and would upset the distribution of power in our system of federalism."	Phyllis Schlafly	113
17	"Now the question is whether the treaty would be self-executing on domestic law. I think it is very clear from the whole tenor of the many witnesses this morning that they do want the treaties to change American law, and that they do believe the treaties will change American law, and that they do support the pre-eminence of treaties in our constitutional system."	Phyllis Schlafly	131
18	"Mrs. Schlafly, I have read your statement with interest and admiration. I take it that you are concerned about the vagueness of some of these provisions which invite interpretations potentially adverse to the sovereignty of this country."	Senator Helms	136
19	"I think, traditionally, that people have viewed the signing of any treaty as a relinquishment of sovereignty over our own actions, because we would agree to abide by certain rules and regulations, by certain standards in treaties."	George Miller	145
20	"I think the Senate always has had a conservative voice which suggests that anything like this is a relinquishing of our sovereignty."	George Miller	145
21	"I believe similarly that the U.N. Covenant on Civil and Political Rights and the American Convention are open to constitutional objections, but on different grounds —on the ground that they invade the right of the States, under article I section 2 and the 17th amendment of the U.S. Constitution, to determine the qualifications of voters for Senators and Representatives."	Philip Anderegg	176
22	"The fact that racial discrimination, poverty, ill health, and crime exist everywhere in the world and that the American people quite properly are interested in those afflictions upon the human	Philip Anderegg	177

Quote No.	Statement	Actor	Page #
	condition abroad as well as at home does not put the making of U.S. law on them within the treaty power."		
23	"I think is likely to be used, to destroy the legislative power of Congress and the power of the States."	Philip Anderegg	178
24	"Those who cannot obtain what they want from the legislatures have turned to the courts and they are turning to the United Nations and the Organization of American States where these treaties come from, bodies which I submit to be hostile to the United States, hostile to the notion of federalism, and hostile to the concept of a government of limited powers."	Philip Anderegg	179
25	"Treaty text itself contains equivalent of pernicious federal-state clause above referred to. Unpredictable scope if treaty should be held to be self-executing."	Philip Anderegg	180
26	"…there are some who are worried that by ratifying these treaties we would submit ourselves to improper international scrutiny"	Claiborne Pell	255
27	"We seem afraid to be criticized for the remaining deficiencies that we do have, and so we shy away from participation."	Morton Skylar	272
28	"…there are some fears expressed by people in the United States that by ratifying these treaties we would submit to improper and unnecessary international scrutiny."	Zorinsky	361
29	"I think one of the barriers to the ratification of human rights treaties has been that we are afraid to have those myths attacked not only internally but also in an international scene. In the past, arguments have been offered that we would have to submit ourselves to the judgment of others who are our enemies."	William Wipfler	427

H1.b.ii:

Quote No.	Statement	Actor	Page #
1	"…our contribution to the international cause of human rights will be to set a shining example of our own great respect for human rights."	Phyllis Schlafly	113
2	"Our first responsibility is to maintain our high standard of leadership in human rights, and I believe it would be a default of this responsibility to pass the buck to committees of nations which are clearly our inferiors in respect for human rights. Example, not words, is the best teacher."	Phyllis Schlafly	113
3	"I do believe that ratification of these covenants would be an exercise in folly, futility, and frustration. We would gain nothing. We would have better guarantees in this country and have better relations with other lands if we would reject them, in toto."	Phyllis Schlafly	113
4	"…it is most unwise, as I repeatedly have heard suggested, that the United States should ratify the treaties as a gesture or an act of encouragement to other countries. I believe it is manifest that the gesture will be futile."	Philip Anderegg	237

H2.ii:

Quote No.	Statement	Actor	Page #
1	"Article 4 (Right to Life) is probably the most troublesome article in the Convention and a U.S. reservation with respect to portions of the Article will very likely be necessary because of its restrictions on the death penalty and on abortion"	ABA statement	253

H2.iii:

Quote No.	Statement	Actor	Page #
1	"But in this particular case, I am informed from the notes of my staff, it was maintained that a reservation to a treaty must constitute an integral part of that treaty in order for the judiciary to be bound. In other words, a purely domestic statement, which is what all of these reservations are, attached to the treaty, is not part of the treaty contract and therefore has no international effect. So therefore, the declaration that a treaty is non-self-executing may be invalid. What is wrong with that line of reasoning if the basic premise is correct, and presumably it is?"	Claiborne Pell	88
2	"It says that unless the reservation is an integral part of the treaty, which obviously is not because then it would be an amendment, then the judiciary would not be bound under the supremacy clause."	Claiborne Pell	91
3	"Even if all those addenda were binding, they would not safeguard the rights of Americans from most of the dangers posed by the treaties."	Phyllis Schlafly	113
4	"The statements of understanding and declarations have no international standing or validity of any kind. Those are mere words, placebos designed to deceive the Senate and the American people into thinking our rights have not been interfered with, when in fact they have been severely prejudiced or overridden."	Phyllis Schlafly	122

H2.iv:

Quote No.	Statement	Actor	Page #
1	"Articles 1.1 and 23.1.b; 1.1 and 23.1.c; and 5.2 of the American Convention raise respectively essentially the same issues concerning the qualifications of voters, access to civil service, and corporal punishment as have been just discussed in connection with the CP covenant."	Philip Anderegg	185
2	"The American Convention (Art. 13, 14, 15 and 16) permits broad exceptions to the rights of assembly and association and permits government censorship and punishment of expression which would be entirely inconsistent with the American Constitution."	Norman Redlich	264
3	"The American Convention (Art. 13, 14, 15 and 16) permits broad exceptions to the rights of assembly and association and permits government censorship and punishment of expression which would be entirely inconsistent with the American Constitution."	Norman Redlich	264

H3.i:

Quote No.	Statement	Actor	Page #
1	"In the 1950's, some claimed that multilateral human rights treaties would infringe upon the powers and rights of the states in the federal system."	Claiborne Pell	72
2	"In 1954, a Constitutional amendment proposed by former Ohio Senator John V. Bricker which would have prevented the U.S. Government from entering in to any international agreement that might infringe on the powers of the. states or be self-executing (i.e. enforceable by the courts without implementing legislation) was defeated in the Senate by one vote. In order to ensure the amendment's defeat, Secretary of State John Foster Dulles was forced to pledge that the United States did "not intend to become a party to any such covenant or present it as a treaty for consideration by the Senate." The Dulles Doctrine, as it became known, remained in effect throughout the next two decades.""	Claiborne Pell	72
3	"I think the concern started back in the early 1950's with the notion that Americans would be somehow tried before foreign tribunals."	Schachter	111
4	"Second, we should remember the concern in that period over States' rights, relating especially to race relations. However, Federal civil rights legislation has now rendered this issue obsolete."	Schacter	111
5	"Lingering memories of Bricker have a great deal to do, I think, with fears of the sort we have heard today, that the human rights conventions might require us to do "something terrible."	Covey Oliver	129
6	"We have come a long way since the days of Senator Bricker when, in 1954, the so-called Bricker amendment failed to pass the Senate by only one vote. This amendment would have forbidden the United States from entering into any international agreements which might infringe on the powers of States, which might be applied by Federal courts without implementing legislation"	William Butler	457
7	"The outcome of the Bricker argument made perfectly clear that there would be no conflict between the Constitution and these treaties and that any reservations necessary would take care of any conflict between our law and the law of the treaties."	Roger Baldwin	459

H3.ii:

Quote No.	Statement	Actor	Page #
1	"...it is said that the treaties are objectionable because, to the extent that they would call upon the United States to observe higher human rights standards than are provided by our domestic law, they improperly intrude into an area which should be left to domestic legislation."	Roberts Owen	35
2	"...in some instances, the treaties might be read as requiring changes in the laws of our several States and, thus, tend to upset the Federal-State balance."	Roberts Owen	35
3	"...it is said that the human rights treaties could serve to change our laws as they are, allowing individuals in courts of law to invoke the treaty terms where inconsistent with domestic law or even with the Constitution."	Roberts Owen	38
4	"...treaties could be used to alter the jurisdictional balance between our federal and state institutions."	Roberts Owen	38

Quote No.	Statement	Actor	Page #
5	"...the relationship between a government and its citizens is not a proper subject for the treaty-making powers at all, but ought to be left entirely to domestic legislative processes."	Roberts Owen	38
6	"It is our judgment that the prospects for securing that ratification would be significantly and perhaps decisively advanced if it were to be clear that, by adopting these treaties, the United States would not automatically be bringing about changes in its internal law without the legislative concurrence of the federal or state government."	Roberts Owen	40
7	"We are sensitive to the possibility that we might be further "federalizing" areas of domestic law by making them the subject of an international agreement."	Jack Goldklang	49
8	"Isolationists and opponents of the United Nations viewed the Covenants and other international treaties as attempts to interfere in the domestic legislative process."	Claiborne Pell	72
9	"But in this particular case, I am informed from the notes of my staff, it was maintained that a reservation to a treaty must constitute an integral part of that treaty in order for the judiciary to be bound. In other words, a purely domestic statement, which is what all of these reservations are, attached to the treaty, is not part of the treaty contract and therefore has no international effect. So therefore, the declaration that a treaty is non-self-executing may be invalid. What is wrong with that line of reasoning if the basic premise is correct, and presumably it is?"	Claiborne Pell	88
10	"It says that unless the reservation is an integral part of the treaty, which obviously is not because then it would be an amendment, then the judiciary would not be bound under the supremacy clause."	Claiborne Pell	91
11	"…we tend to react instinctively with some belligerence to the idea that other countries and peoples can assess for themselves what we are doing."	Thomas Farer	111
12	"Second, the treaties imperil or restrict existing rights of Americans by using treaty law to restrict or reduce U.S. constitutional rights, to change U.S. domestic Federal or State laws, and to upset the balance of power within our unique system of federalism."	Phyllis Schlafly	113
13	"Even if all those addenda were binding, they would not safeguard the rights of Americans from most of the dangers posed by the treaties."	Phyllis Schlafly	113
14	"Fifth, the effect of nonratification of the treaties would be to pro claim to the world that we will not imperil the sacred rights of American citizens for the sake of negotiations with any foreign country, and that our contribution to the international cause of human rights will be to set a shining example of our own great respect for human rights."	Phyllis Schlafly	113
15	"We know that treaties pose much more of a hazard to Americans than to any other nation because of the preeminence of treaties in our system of government."	Phyllis Schlafly	113
16	"It is obvious from the texts of the international treaties on human rights, as well as from the State Department's recommendations of reservations, statements of understanding, and declarations, that the treaties are incompatible with the United States Constitution, would override precious American rights, would interfere with our domestic law and matters of private concern, and would upset the distribution of power in our system of federalism."	Phyllis Schlafly	113
17	"Now the question is whether the treaty would be self-executing on domestic law. I think it is very clear from the whole tenor of the many witnesses this morning that they do want the treaties to change American law, and that they do believe the treaties will change American law, and that they do support the pre-eminence of treaties in our constitutional system."	Phyllis Schlafly	131

Quote No.	Statement	Actor	Page #
18	"I think, traditionally, that people have viewed the signing of any treaty as a relinquishment of sovereignty over our own actions, because we would agree to abide by certain rules and regulations, by certain standards in treaties."	George Miller	145
19	"I think the Senate always has had a conservative voice which suggests that anything like this is a relinquishing of our sovereignty."	George Miller	145
20	"I believe similarly that the U.N. Covenant on Civil and Political Rights and the American Convention are open to constitutional objections, but on different grounds —on the ground that they invade the right of the States, under article I section 2 and the 17th amendment of the U.S. Constitution, to determine the qualifications of voters for Senators and Representatives."	Philip Anderegg	176
21	"I think is likely to be used, to destroy the legislative power of Congress and the power of the States."	Philip Anderegg	178
22	"Those who cannot obtain what they want from the legislatures have turned to the courts and they are turning to the United Nations and the Organization of American States where these treaties come from, bodies which I submit to be hostile to the United States, hostile to the notion of federalism, and hostile to the concept of a government of limited powers."	Philip Anderegg	179
23	"Treaty text itself contains equivalent of pernicious federal-state clause above referred to. Unpredictable scope if treaty should be held to be self-executing."	Philip Anderegg	180

C. Witnesses and Biographies

AAUW: American Association of University Women
ABA: American Bar Association
Charles Yost: Former U.S. Ambassador to the United Nations
Claiborne Pell: Rhode Island Senator and Chairman of the Hearings
Covey Oliver: Diplomat and Professor of International Law at Rich University
David Hinkley: Chairman of the Board of Directors of Amnesty International
Donald McHenry: U.S. Ambassador to the United Nations
David Weissbrodt: Professor of University of Minnesota School of Law
Edna McCallion: Director of United Nations Affairs for Church Women United
Edward Zorinsky: Nebraska Senator and member of the Foreign Relations Committee
Frank Newman: Associate Justice, Supreme Court of California
George Miller: California House Representative
Harry Inman: Member of the Advisory Board of the International Human Rights Law Group
Jack Goldklang: Representative from the Office of Legal Council in the Department of Justice
James E. Wood, Jr.: Executive Director of the Baptist Joint Committee of Public Affairs
Jerome Shestack: President of the International League for Human Rights
Jesse Helms: North Carolina Senator and member of the Foreign Relations Committee
Jimmy Carter: President of the United States (1977-1981)
John Carey: Representative of the Helsinki Watch Committee
John Houck: General Secretary of the United States Lutheran Council
John Lawrence Hargrove: Director Studies of the American Society of International Law and Lecturer at the Johns Hopkins School of Advanced International Studies
John Norton Moore: University of Virginia Law School professor and Vice Chairman of the international law section, American Bar Association
Laszlo Iranyi: Chairman of the Executive Board of the American-Hungarian Federation
Louis Sohn: Professor of international law, Harvard University Law
Morton Skylar: Chairman of the Helsinki Watch Committee for the United States
Norman Redlich: Dean of New York University Law School
Oscar Garibaldi: Professor and University of Virginia Law School
Oscar Schachter: Professor at Columbia Law School
Patricia Derian: Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs, Department of State
Philip Anderegg: Former lecturer and adjunct professor of law, Columbia University
Phyllis Schlafly: Conservative activist, journalist, and attorney
Richard Lillich: Professor of Law, University of Virginia Law School
Roberts Owen: Legal Advisor, Department of State
Roger Baldwin: Founder and first Director of the American Civil Liberties Union
Sidney Liskofsky: Director of the Division of International Organizations for the American Jewish Committee

Thomas Buergenthal: Professor at University of Texas Law School and judge on the Inter-American Court on Human Rights
Thomas Farer: Professor at Rutgers Law and Inter-American Commission member
Tom Kahn: Assistant to the President, American Federation of Labor and Congress of Industrial Organizations
Walter Landry: Attorney and delegate to the drafting of the American Convention
Warren Christopher: Depute Secretary of State
Washington Helsinki Watch Committee: Coalition of human rights NGOs
William Butler: President of the American Association for the International Commission of Jurists
William Wipfler: Director, Human rights Office of the National Council of Churches

D. Supplementary Statements

Statements claiming the American Conventions (or treaties at large) are consistent with U.S. domestic law

Quote No.	Statement	Actor	Page #
1	"We have before us now two covenants and two conventions which, for the first time, give broad international sanction and support to these traditional American policies."	Charles Yost	13
2	"Finally, there are reservations, understandings, and declarations which the President proposes be included in our ratification and which would relieve us from any obligation which could conceivably be considered inconsistent with our Constitutions or domestic legislation."	Charles Yost	14
3	"These four treaties, in essence, embody what our Government long has done."	Arthur Goldberg	20
4	"More importantly, the substance of the provisions of these four treaties are entirely consistent with the letter and spirit of the United States Constitution and laws."	Arthur Goldberg	22
5	"In essence, the treaties create an international commitment to the same basic human rights that already are guaranteed to citizens of the United States by our laws and Constitution."	Warren Christopher	28
6	"U.S. ratification would not endanger any rights that we currently enjoy."	Warren Christopher	28
7	"Let me begin by emphasizing that the substantive provisions of these four treaties do not conflict in any way with basic U.S. law or policy."	Roberts Owen	33
8	"...the American Convention on Human Rights, roughly correspond[s], in terms of international law, to the Bill of Rights, which is so firmly entrenched in our Constitution. The treaty rights include the right to vote, the right to free expression, the right to freedom of religion and association, the right to freedom of movement, and a whole series of procedural rights relating to fair trial, representation by counsel, and other fundamental rights so familiar to Americans."	Roberts Owen	34
9	"The treaties before the Senate express values in which the people of the United States have believed for a long time. They give expression to human rights that coincide with our own laws and practices."	Patricia Derian	43
10	"To a large extent they embody ideals that we like to think of as typically American."	Jack Goldklang	47
11	"Generally speaking, we have, in our domestic law the substance of the rights in these treaties."	Jack Goldklang	49
12	"In short, then, the Senate has before it a convention drafted with major U.S. participation, shaped with an eye to U.S. constitutional sensitivities, brought into force coincident with the U.S.-led campaign for widespread ratification, a convention that supposedly codifies the moral basis of the anti-Soviet alliance, and a convention which does not in significant measure enlarge the international obligations of the United States."	Thomas Farer	104
13	"But, the Administration can say, in the case of the United States, the disparity between domestic law and the terms of the Convention is very modest."	Thomas Farer	104
14	"I do not think any of these problems exist with respect to the American Convention. I think this is more in the Western tradition, along the lines of the European Convention."	Walter Landry	248

Quote No.	Statement	Actor	Page #
15	"…think the American Convention is more in the Western tradition, and if the Senate is to give priority in ratifying any of these treaties, I would urge it to give that priority to giving its advice and consent to ratifying the American Convention."	Walter Landry	249
16	"There are few instances, very few, in which the treaties do set a higher standard than we have under American law."	Norman Redlich	260
17	"…these human rights treaties which you are considering are not other people's laws. They are our own laws. We played the largest part in shaping them and we stand the most to gain by their observance."	Morton Skylar	273
18	"I see nothing in these treaties, perhaps with a few exceptions, that is any different from what we have in our Declaration of Independence, Constitution, Bill of Rights and most Federal and State laws."	Harry Inman	277
19	"…the catalog of rights the Convention proclaims mirrors, for the most part, traditional Western democratic conceptions of civil and political liberties found in our own Bill of Rights and the laws giving effect to it."	Thomas Buergenthal	341
20	"…these covenants represent the deepest commitments of the United States to the safeguards of civil rights and civil liberties found in our Constitution and particularly in our Bill of Rights. Therefore, it would seem only natural to have the United States ratify them."	Jerome Shestack	350
21	"In support of ratification, we are testifying to affirm the rights guaranteed by these international covenants, recognizing that the guarantees of the U.S. Constitution secure, and in some cases exceed, some of the rights contained in these human rights covenants."	John Houck	418
22	"…the old chestnuts which have been used as arguments against these treaties have been removed. I will not go into that because I think you have had ample testimony to show that there is no interference with States rights, nor is there any inconsistency with domestic law."	William Butler	457
23	"…the Convention on Racism and the American Convention on Human Rights echo our own constitutional guarantees of equality and fair treatment."	Douglas Fraser	471
24	"Some also claim the treaties would undermine U.S. sovereignty. But what the treaties have in fact done is universalize principles in our own Constitution and Declaration of Independence, and demand their recognition by all nations of the world."	Douglas Fraser	471

Statements claiming that the reservations, declarations, and understandings recommended by the State Department are too excessive

Quote No.	Statement	Actor	Page #
1	"Frankly, I think that some of them may go farther than is really necessary, but if it is helpful in procuring ratification, I would certainly think it was worth accepting them."	Charles Yost	15
2	"I think it really is a shame that the State Department and the Department of Justice felt it necessary to approach the problem of reservations as they did, instead of as Professor Henkin suggests."	Frank Newman	243
3	"I am concerned about some of the reservations that have been suggested by the Department of State with respect to the American Convention. The Department wants to reserve to the principle of prior censorship, so we would make a reservation that we could have prior censorship in the United States. In effect, we would be encouraging other countries in the hemisphere to exercise prior censorship. I think this is unwise."	Walter Landry	248
4	"So, it is only advocacy or propaganda that constitutes an incitement to violence that is prohibited by the American Convention. This is clearly the law of the United States under Brandenburg v. Ohio, a Supreme Court decision involving the Chicago riot."	Walter Landry	248
5	"On the question of it being non-self-executing, this is clearly the statement in domestic legal effect of article 2, of the American Convention. I see no necessity for having this reservation when it is incorporated in the treaty."	Walter Landry	248
6	"We should not weaken its thrust by putting in reservations that say this is just a goal. If we cannot adhere to it, have a specific statement of nonadherence. I think this is more honest and it gives greater strength to the treaty than to try to reinterpret it as a goal rather than a legally enforceable obligation."	Walter Landry	249
7	"With regard to enforcement and codification of the treaty, if the treaty is non-self-executing, and it clearly states that it is, there is no necessity to have a separate code, to codify the treaty separately in our law."	Walter Landry	249
8	"No such reservations, understandings or declarations are necessary with respect to the American Convention on Human Rights."	Walter Landry	250
9	"I also object to a special declaration suggested by the Department of State to the effect that the American Convention is non-self -executing when this is already clearly stated in Article 2. Domestic Legal Effects of the American Convention."	Walter Landry	250
10	"In short, it is neither necessary nor desirable to codify the American Convention into federal law as such."	Walter Landry	251
11	"As a result of Article 28 Federal Clause of the Convention, the United States Government is not obligated to exercise jurisdiction over subject matter over which it would not exercise authority in the absence of the Convention."	Walter Landry	251
12	"Other reservations regarding federal/state relations are merely unnecessary. Fears of infringing upon states' rights are absolutely unfounded as a treaty can have no effect on the constitutionally protected balance of power between state and federal governments. Furthermore, the federal government's ability to legislate in the areas covered by these treaties has long been in evidence in civil rights legislation passed over the last twenty years."	Harry Inman	278
13	"I want to stress the fact that these conventions, with the declarations the President has suggested to all four of them, will have no impact or relatively little impact on U.S. domestic law."	Richard Lillich	337
14	"Respect for federalism is intrinsic to the Inter-American Convention. No generic reservations are necessary."	AAUW	475

Statements claiming that the reservations, understandings, and declarations are sufficient to address any concerns over ratification

Quote No.	Statement	Actor	Page #
1	"These human rights treaties are the type of treaties where the Senate, in its wisdom, and this committee, in recommending them to the Senate, can, by an appropriate understanding or reservation, state that the treaties must be interpreted to conform to our Constitution and both domestic and international law."	Arthur Goldberg	20
2	"In the few instances where it was felt that a provision of the treaties could possibly be interpreted to diverge from the requirements of our constitution or from federal or state law presently in force, the Administration has suggested that a reservation or understanding be made to that provision. In our view, these reservations do not detract from the object and purpose of the treaties — that is, to see to it that minimum standards of human rights are observed throughout the world — and they permit us to accept the treaties in a form consonant with our domestic legal requirements."	Roberts Owen	39
3	"...subject to the proposals that we have made, there are not legal obstacles to our becoming a party to these treaties."	Jack Goldklang	44
4	"It was suggested that because the treaties are not self-executing, we will have a need for new legislation. However, we have proposed reservations which, in effect, permit us to rely on our existing Constitution and laws. Therefore, if the package that we have recommended is accepted, we would not need any new legislation."	Jack Goldklang	47
5	"From time to time arguments have been raised that perhaps we ought not adhere to these treaties because of some legalism or some supposed inconsistency with the U.S. Constitution, and, provided that there is a clear understanding and reservation in those areas where there may be inconsistency, we feel that certainly there is no valid reason whatsoever not to sign the treaties on that basis."	John Norton Moore	77
6	"The Constitution, the State Federal system, and American law will not be altered or require any kind of immediate change as a result of the passage of these conventions. It is clear that with the understandings, reservations, and declarations that have been recommended, they are completely consistent with the U.S. Constitution."	John Norton Moore	91
7	"My response is that the reservations now proposed by the Administration, unlike the reservations in the Power Authority case, would, if attached by the Senate, constitute an integral part of the treaty obligations of the U.S. as these reservations do vary, limit and qualify the obligations of the U.S. to comply with the respective provisions of the treaties. According to the holding in Power Authority, that would render the reservations here proposed legally binding between the United States and other parties to the treaties as a matter of general international law."	John Norton Moore	92
8	"…the questions that have been discussed in three days of hearings thus far relating to the impact of these treaties in the United States are resolvable, and that the United States can, if it wishes, ratify these treaties without cost to its domestic legal order and with significant, if perhaps modest, benefits."	John Lawrence Hargrove	345
9	"…it appears that with the proposed reservations, the provisions of the treaties would be consistent with American law."	Roger Baldwin	460

Statements in some way negating treaties would intervene in domestic affairs

Quote No.	Statement	Actor	Page #
1	"It is the Administration's view that the treaties are, on their face, and according to their terms, not self-executing and thus are not enforceable directly by the courts. A Senate declaration would simply clarify the intention of the United States in this regard."	Roberts Owen	38
2	"The content of this reservation is already built into Article 28 of the American Convention. There need be no apprehension that the ratification of the human rights treaties will invade the field of those matters which are properly left to states jurisdiction."	Roberts Owen	39
3	"If we did not have reservations for these problems, the Constitution still would prevail as the law of the United States —this is a very important point to remember —but we would be in default as far as our international obligations are concerned."	Jack Goldklang	44
4	"Another matter about which you indicated concern in your letter of invitation, is the Federal-State relationship. There are some treaties, such as the American Convention on Human Rights, which is before you, and the Refugee Protocol, 19 U.S.T. 6223, which have built into them a Federal-State clause, so reservations for that kind of treaty are not necessary..."	Jack Goldklang	46
5	"The Constitution, the State Federal system, and American law will not be altered or require any kind of immediate change as a result of the passage of these conventions. It is clear that with the understandings, reservations, and declarations that have been recommended, they are completely consistent with the U.S. Constitution."	John Norton Moore	91
6	"In short, then, the Senate has before it a convention drafted with major U.S. participation, shaped with an eye to U.S. constitutional sensitivities, brought into force coincident with the U.S.-led campaign for widespread ratification, a convention that supposedly codifies the moral basis of the anti-Soviet alliance, and a convention which does not in significant measure enlarge the international obligations of the United States."	Thomas Farer	104
7	"The Constitution prevails over a treaty, according to the best we have from the Supreme Court as to governmental action that the Constitution prohibits."	Covey Oliver	132
8	"The determination of what measures are suitable is a matter for internal decision. The Convention does not require enactment of legislation bringing new subject matter within the federal ambit."	Walter Landry	251
9	"As I see it, there would be no remedy through the American Convention where only state jurisdiction is involved and there is no federal question raised."	Walter Landry	251
10	"…the American Convention on Human Rights is not inconsistent with U.S. federalism and decentralized government and would provide for a limited regional system for the protection of human rights in the Western Hemisphere."	ABA statement	251
11	"…the American Convention does not obligate the U.S. Government to exercise jurisdiction over subject matter over which it would not exercise authority in the absence of the Convention."	ABA statement	251
12	"There are no fundamental constitutional questions involved in U.S. ratification; a new body of law will not lie imposed on our courts: nor will traditional federal-state relations be adversely affected to the detriment of the states."	ABA statement	254
13	"Ratification of the human rights treaties certainly will strengthen the confidence and stature of our nation."	Harry Inman	278

14	"I want to stress the fact that these conventions, with the declarations the President has suggested to all four of them, will have no impact or relatively little impact on U.S. domestic law."	Richard Lillich	337
15	"Whether or not one agrees with those who insist on the need for a federal-state clause, its presence in the American Convention resolves whatever real or imagined constitutional obstacles its absence would otherwise pose and thus facilitates U.S. adherence to the American Convention."	Thomas Buergenthal	342
16	"I did a study on this subject a number of years ago and found that the great fears which some people here have about the consequences of making a human rights treaty non-self-executing are not well-founded."	Thomas Buergenthal	360
17	"…the old chestnuts which have been used as arguments against these treaties have been removed. I will not go into that because I think you have had ample testimony to show that there is no interference with States rights, nor is there any inconsistency with domestic law."	William Butler	457
18	"Some also claim the treaties would undermine U.S. sovereignty. But what the treaties have in fact done is universalize principles in our own Constitution and Declaration of Independence, and demand their recognition by all nations of the world."	Douglas Fraser	471

Statements claiming desire for the U.S. to submit itself to what might be considered "intervention" from the international community

Quote No.	Statement	Actor	Page #
1	"There is no perceived constitutional objection to U.S. acceptance ipso facto of the jurisdiction of the Inter-American Court of Human Rights. The non-self-executing nature of the treaty and the federal clause designed to protect the integrity of the U.S. federal system offer adequate safeguards to U.S. acceptance of the jurisdiction of the court. The question of U.S. acceptance of such jurisdiction is really more of a political than a legal question."	ABA statement	253
2	"I think eventually we should accept the jurisdiction of the court. Again, I think we should move toward a viable, enforceable hemispheric human rights system, such as is present in Western Europe."	Walter Landry	258
3	"I would agree."	Claiborne Pell	259
4	"…we hope the Senate will seriously consider approving the voluntary declaration referred to in article 62 of the American Convention, by which it would accept the jurisdiction of the Inter-American Court of Human Rights."	Sidney Liskofsky	412
5	"The American Convention on Human Rights provides for the first time not only a Commission on Human Rights with power, but it provides for a court, which is not yet before the Senate, but a court which, like the European Court of Human Rights and other courts in other regions of the world, will for the first time give people the right to appeal directly to an international authority for a redress of grievances."	Roger Baldwin	459
6	"We believe the United States should go further and, pursuant to Article 62, accept unconditionally the jurisdiction of the Inter-American Court of Human Rights."	Edward Snyder	466

Statements made about the American Convention's Article 4 (Right to Life)

Quote No.	Statement	Actor	Page #
1	"Mr. Chairman, this simply would track the reservation already proposed by the administration to article 4 of the American Convention and simply would make abundantly clear, perhaps taking a cautious approach here, something which certainly is the intent of the administration. It would be perfectly consistent with what we are doing in the American Human Rights Convention."	John Norton Moore	77
2	"The American Convention contains some language, both with respect to right to life and with respect to capital punishment, to which the Department has felt that a reservation indicating that, adherence to those provisions is subject to the Constitution and other laws of the United States would be desirable. For example, as you know, Roe v. Wade, decided in 1973, as a matter of constitutional law, among other precedents, deals with this question."	John Norton Moore	87
3	"This American tradition of human rights is reflected throughout many parts of the American Convention on Human Rights, but most especially in regard to Article 4. It states, in part: 'Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.'"	Jesse Helms	238
4	"However, the American Convention on Human Rights addresses this issue left unresolved by the Supreme Court. Article 4 clearly provides for legal personhood to extend from the moment of conception. Therefore, should the Convention be ratified, I believe it would be entirely appropriate for the Supreme Court to reconsider the entire issue of abortion and how its past interpretations of the Constitution would be affected by such an international recognition of personhood."	Jesse Helms	238
5	"I would seriously question whether it would be possible to ratify the American Convention on Human Rights were a reservation adopted affecting the right to life outlined by Article 4."	Jesse Helms	239
6	"Nor should we attempt to interpose U.S. law to nullify Article 4. Right to Life."	Walter Landry	250
7	"…we particularly would like to mention article 4 of the American Convention on human life which expresses in the original text the position of the Catholic Conference and the Catholic Church of the United States."	Monsignor Lally	382