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John Bolton raises two distinct sets of questions about global governance: the first involves the creation of supranational authority structures; the second, the penetration of the American domestic political process, especially by transnational non-governmental organizations ("TNGOs"). Neither of these involves international legal sovereignty, the right of the United States, or any state, to freely enter into agreements with other states. Both do involve issues associated with the nature and autonomy of domestic authority structures, the ability of political actors to determine the kinds of political institutions within which they will function, and the decisions that emerge from these institutions. The rule that one state should not interfere in the internal affairs of another, first articulated by the international jurist Emer de Vattel at the end of the 18th century, has become one of the defining norms of sovereignty. It is, however, a norm that has been frequently violated, sometimes as a result of coercion, for example the Soviet Union's invasion of Czechoslovakia in 1968 and the American occupation of Panama in 1989, and sometimes as a result of voluntary agreements, such as the 1957 Treaty of Rome and subsequent accords that have created the European Union. Moreover, some political structures are inherently more open to official or unofficial external influence either because there are multiple avenues of access, as is the case with the United States, or because they are weakly institutionalized, as is the case in several African countries. Although domestic autonomy is a widely recognized rule it might, or might not, serve the interests of a specific state. John Bolton worries that the permeability of the American political process may be a threat to the United States. I suggest instead that, given the inordinate international power of the United States, the ability of external actors, including TNGOs, to involve themselves in American decision-making may make it easier to accomplish American objectives by reducing the temptation to balance against, rather than cooperate with, the United States.

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Some international agreements, especially those that create supranational authority structures such as the International Criminal Court ("ICC"), are antithetical to American national interests, but others, such as the World Trade Organization ("WTO"), particularly with its mandatory dispute settlement mechanism, are beneficial. To secure mutually beneficial contractual agreements the United States might have to limit its own discretion, including in some instances accepting legalized dispute settlement mechanisms, to reassure others that it will not arbitrarily use its extraordinary power and renege, de facto if not de jure, on treaty arrangements. Where mutual benefits are not contingent on the behavior of other states the United States ought to reject any moves toward global governance. The activities of TNGOs, including their ability to operate within states and at the international level, may be beneficial because they facilitate agreements between the United States and other countries. The United States is so powerful that in many instances foreign actors would be anxious about concluding any treaties with the United States unless they were confident that they would have access to the domestic policy-making process, including both information and the ability to lobby.

While I am sympathetic to many of the concerns raised by John Bolton's paper and some of the other contributions to this project, they present a picture of a weak and vulnerable polity under siege from the international community, a description that might better be applied to the likes of Liechtenstein or perhaps Costa Rica. In the present environment nothing could be further from the truth. The United States strides the globe like a colossus. Its power is unprecedented. Never in the last several hundred years has a state had such dominance over such a wide range of resources—economic, technological, monetary, and ideational. There is no other polity that can compete with smart bombs, McDonald's, MTV, Stanford, MIT, and Chicago. There are many reasons to think that the position of the United States will last for a long while, including especially the synergy between complex fast-moving technologies that depend primarily on human capital and the educational infrastructure (at least at the university level) and the American ability to absorb immigrants. About one-third of the start-ups in Silicon Valley have been launched by individuals of Asian descent, a phenomenon that would be inconceivable in Japan or Germany.

The United States is not under siege. It has more Westphalian/Vattelian sovereignty, more ability to exclude external authority structures, than any other state in the international system. Only the political structures of the United States and Japan are so little affected by the external environment. Even huge and authoritarian China must worry about human rights issues and, at least at times, temper its repressive policies.

The United States is primarily an initiator, not a recipient, of external pressures. The terms of the International Monetary Fund conditionality, for instance, are generally consistent with the preferences of the United States, and with the end of the Cold War stand-by agreements have become more intrusive, increasingly calling for good governance. The Washington consensus on economic policy may be unraveling

but the commitment to markets and increasingly to democracy as well, objectives that reflect US values and interests, has not been challenged. Demands at the international level for human rights are consistent with goals that Americans embrace for their own polity. On the military front, the Gulf War coalition would have been impossible without the leadership of the United States. In dealing with Balkan issues—including the break-up of Yugoslavia, the war in Bosnia, and Kosovo—the major European powers proved themselves incapable or incompetent without the United States. The North Atlantic Treaty Organization ("NATO") with its American leadership, not some European organization like the Council of Europe or the European Union, has been the most effective vehicle.

The basic challenge for the United States is to manage this unprecedented power to maximize American interests. This cannot be done simply through coercion. Despite its extraordinary resources, the United States cannot force other states to accept its own preferences. For most issues that Americans care about military power is irrelevant. Economic coercion can work, but only in those rare situations where the United States can make a credible threat to, for instance, impose sanctions or withdraw from negotiations. Broader American values—democracy, private enterprise, human rights—can only be realized if others are persuaded that these values offer the best hopes for a decent and secure life. Maximizing American interests will often mean contracting or persuading rather than coercing.

Ironically, the very power of the United States can be an impediment to promoting American interests through contracting. Other states might fear entering into agreements because if the United States reneged, something that its exceptional power might allow it to do, other signatories would be worse off than they would have been had they not signed the agreement in the first place. In the international system there is no court to enforce contracts. Americans might see their country as the Jolly Green Giant, bountiful, beneficent, and fair, but others might fear that they are dealing with John Gotti, flamboyant, conniving, and coercive.

To maximize its interests the United States must enter into international arrangements that create self-enforcing equilibria—outcomes from which none of the signatories have an incentive to defect. Some of these arrangements will require the United States to limit its own freedom of action. Call this global governance if you will; in some situations American interests are better served by entering into such arrangements than by eschewing them.

Obviously some international agreements would be antithetical to American objectives. One basic way to differentiate attractive from unattractive accords is to distinguish between contracts and conventions, a distinction that mirrors arguments

made in the papers in this issue by John McGinnis and Jack Goldsmith as well.[1] Contracts are mutual agreements in which outcomes depend on the contingent behavior of both parties; trade is one example. Conventions are agreements in which outcomes in one country do not depend on the behavior of others; human rights conventions offer an example.

Contractual relationships that are honored make all parties better off—otherwise they would not have signed in the first place. If one party fails to honor an agreement, the other signatories would be disadvantaged, and would be entitled to withdraw their initial concessions. In trade agreements, one party promises to lower its tariffs if other countries do the same. If one party reneges, others can retaliate by withdrawing their concessions. All parties know that reneging would lead to retaliation, which would leave them worse off and, therefore, they honor the agreement. Appropriately designed trade agreements are self-enforcing. Trade is an arena in which agreements that constrain freedom of action are in the interests of the United States. The mandatory dispute settlement mechanism in the WTO provides an illuminating example. Why did the United States, the most powerful country in the world, enter into an arrangement that involves a decision-making process with international panels whose jurisdiction cannot be denied? Why not stay with the General Agreement on Tariffs and Trade process in which submission to the dispute settlement mechanism was voluntary and in which the US had more leeway to pursue regional and especially unilateral strategies through Section 301 actions against individual countries? Why wouldn't the US just reserve the right to beat people up? One answer is that the Clinton administration is infatuated with global governance and mandatory law like international arrangements. But an alternative and perhaps more persuasive explanation is that the United States would not have secured the agreement of other countries on a wide range of issues, including not only trade but also investment, trade in services, and intellectual property rights, if it had not tied its own hands and constrained its own freedom of action. The dispute settlement mechanism provides a way of clearly identifying what constitutes reneging. Any state might choose to ignore the findings of a panel but its trading partners would then be entitled to retaliate by withdrawing concessions. Other countries might have been very, very leery about entering into arrangements in which they would have remained vulnerable to unilateral action by the US that could not clearly be marked as violating the agreement. In the area of trade broadly conceived more law like international arrangements—global governance if you will—is in the interest of the United States.

Not all contracts, of course, would be to the advantage of the United States. During the late 1970s and early 1980s third-world states proposed a New

1. See John O. McGinnis, *The Political Economy of Global Multilateralism*, 1 Chi J Intl Law 381 (2000); Jack Goldsmith, *Should International Human Rights Law Trump US Domestic Law?*, 1 Chi J Intl Law 327 (2000). See also Jeremy Rabkin, *Why Sovereignty Matters* 72 (AEI Press 1998).

International Economic Order that would have involved much state intervention in international markets. The United States and other advanced industrialized countries rejected these initiatives. The Comprehensive Test Ban Treaty ("CTBT") is also a contract. If it were honored by all parties, such an arrangement could be attractive for the United States, which possesses a large arsenal of sophisticated nuclear weapons. But it is not apparent that the CTBT could be effectively monitored. If the United States honored the agreement but others cheated, a situation that has occurred for a number of other arms control agreements, the United States would be worse off than would have been the case if it did not sign the agreement at all. The problem in the area of arms control is not global governance and constraints on America's freedom of action but the difficulty in monitoring such arrangements.

There are, however, many international agreements in which outcomes in one country are not contingent on the behavior of other signatories. Such arrangements can be termed conventions rather than contracts. These are accords in which efforts at global governance are most striking. Here the United States ought to closely scrutinize any such pact. Human rights treaties are the classic example of conventions. Human rights in the United States will not be contingent on what, say, Iraq and Cambodia do even if all three countries have signed the same pact. It might be attractive for the United States to enter into such arrangements to legitimate particular norms and values, but only if they do not involve any kind of legalized enforcement mechanism. There is no reason to think that a supranational agency with investigative or judicial authority would protect the rights of Americans better than existing domestic institutions; in fact there are many reasons to think that any international agency would do worse. What has become the standard American practice of attaching reservations to human rights conventions to which it accedes is exactly the right policy.

Endorsing an ICC, even one with the best intentions and excellent jurists, would adversely affect the interests of the United States, and one might add almost certainly the rest of the world as well. It would be especially problematic to constrain American military operations ex ante because of the existence of such a court, or to subject decisions to review ex post. Peace and stability in the contemporary international system depend more on American military power than on any other single factor. In both Europe and Asia the United States is an effective external balancer. While American policy has been wise, the domestic support for extensive foreign commitments is shallow. External review of American action by an agency like the ICC could only complicate the problems facing any American president. Reactions to the Kosovo bombing campaign suggest that human rights groups will criticize any military operation, regardless of how carefully it is conceived or how cautiously it is executed. The baseline seems to be that wars can be conducted without killing anyone or at least without killing any non-combatants, a bizarre aspiration if only because some political leaders would surely use civilians to protect military activities knowing that an attack by any American led coalition could be scrutinized by an international

court. Hence, in the area of conventions the United States ought to continue to reject efforts at global governance that would establish any supranational authority structures or constrain its ability to act unilaterally.

Aside from issues of global governance, John Bolton has also raised questions about the role of non-governmental and transnational non-governmental organizations. Such groups were active in the 19th century but the number of TNGOs has risen dramatically from perhaps two hundred in 1900 to several thousand in the contemporary world. These groups can get what Bolton has termed a "second bite at the apple"—trying to secure at the international level what they have failed to get domestically. TNGOs may also elide the distinction between foreign and domestic actors. Bolton worries that such groups can undermine "national decision-making systems based on constitutionalism and popular sovereignty, such as exists in the United States."

It is not clear that there is any practical way to limit the activities of TNGOs, to distinguish them, for instance, from the lobbying efforts of multinational corporations including foreign corporations with subsidiaries in the United States. But there is another reason why the openness of the US political system, including its openness to actors who are arguably not based in the United States itself, has advantages for America's international projects. The openness of decision-making in the United States may, like self-enforcing international agreements, give foreign actors more confidence in dealing with the United States. Potential partners cannot ignore the power of the United States. They may, however, find this power more palatable if they have some ability to influence its use, even if this ability comes in the form of taking a second bite of the apple in international forums or lobbying in the United States itself. Recognizing, even welcoming, such activities is antithetical to a view of US politics that exalts a notion of popular sovereignty that is only participated in by Americans, but the engagement of TNGOs and other foreign actors, including states, may produce international outcomes that promote the national interest of the United States more effectively than would be the case if US decision-making were more closed to external influence.

The United States is in a unique position. Its power is exceptional. Its national interest is in many ways complementary with the interests of other actors around the world. Most of what America wants, however, cannot be achieved through coercion. It must be realized through voluntary contractual agreements. Inevitably other states will be reluctant to dance with a gorilla—actually a gorilla closer to King Kong—without some assurances that their toes or other parts of their anatomy will not be crushed. The United States can offer such assurances that it will not arbitrarily or unilaterally use its power, but only by tying its own hands and by maintaining the openness of its domestic decision-making processes. This is not a road to global governance but it does involve legalized commitments in some areas and maintaining the porousness of the American political system.