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THE OBAMA OPPORTUNITY FOR CANADA

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CANADA-UNITED STATES LAW INSTITUTE DISTINGUISHED LECTURER AT THE UNIVERSITY OF WESTERN ONTARIO FACULTY OF LAW

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I want to thank all of you for coming out. I know there are a lot of other things competing for your time at the end of the semester, so I am grateful for your attendance. Also, I have to thank all of the organizers, who managed to get me out here from Detroit. I crossed the Blue Water Bridge last night at 1:30 a.m., and I still managed to make it. That is a terrible time to cross, by the way. The guard was bored and had nothing else to do. I have the misfortune, or fortune, of having traveled to places like Pakistan and Iraq, which is all in my passport. I had my passport ready for him, and we spent too long discussing why a Canada expert is traveling to such suspicious places. So, if you are at least willing to suspend your disbelief more than him, you will be a good audience for me—a better one than I had last night.

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I wanted to talk a little bit about Obama as an opportunity for Canada, because the theme was suggested to me by the political coverage in Canada of the President’s visit to Ottawa on February 19, 2009.¹

Prior to the election, Peggy Joseph of Chicago² was so excited that Barack Obama had been nominated, and subsequently elected, that when asked why the moment was so memorable, she replied, “I never thought this day would ever happen. I won’t have to work. I won’t have to worry about putting gas in my car. I won’t have to worry about paying my mortgage. If I help him, he will help me.”³

I think one of the challenges for the President is that expectations are a bit ahead of what he may be able to do. He is trying very hard to damp down those expectations, which you know if you have seen his public remarks.⁴ However, sometimes people hope for him to do so much that they raise expectations a bit beyond what he might be able to deliver.

After the President’s visit to Ottawa, it was striking that the coverage in Canada veered towards the sort of relationship you might imagine between kings and monarchs.⁵ Some of the coverage suggested Canada’s problems were because the President so clearly likes Canadians and enjoyed his visit to Ottawa. If the “czar” only knew; now the “czar” knows that Canadians are wonderful people. So, no there is no need to talk about getting rid of the North American Free Trade Agreement (NAFTA), because all the trade disputes will be magically resolved.


³ Id.

⁴ Much of the excitement and appeal surrounding the campaign and subsequent election of Obama was centered on the notion of change, specifically moving away from what the previous administration had established. The Obama Administration’s promises to repeal tax cuts for the wealthy, withdraw from Iraq, end the use of torture, enact health reform, and check lobbying activities have all failed to materialize quickly given the strength of oppositional forces and the bureaucratic process. See generally Steven Edwards, Obama Sets Date for Iraq Military Withdrawal; Democrats Angry 30,000 Troops to Stay, CALGARY HERALD, Feb. 28, 2009, at A3 (referring to Democrats’ anger over the administration’s decision to maintain troop levels); see also St. Petersburg Times Politifact.com, Tracking Barack Obama’s Campaign Promises, http://www.politifact.com/truth-o-meter/promises/ (last visited Dec. 10, 2010) (listing and describing the current status of Obama campaign promises).

I encourage you to read carefully what the President actually did say, because a careful reading of his remarks reveals something slightly different. He invited Canadians to participate in a dialogue on how to move forward on a range of issues, including border problems, Afghanistan, energy and climate change, how the stimulus plan may contain protectionist elements, and what we might do with the auto sector, which is obviously in trouble. That is not just anything; it is a presidential sanction of Canadian participation in a debate that will be very important in the coming months and weeks. However, it is also not the solution to all of our problems. It is like the person who gets admitted to college and thinks, “Now this is great, I will have a college degree and I will be on easy street.” Admission to the game is only part of the challenge; the next challenge is all the work ahead. So what I would like to focus on is what this opportunity means for Canada, and how you can participate and take advantage of it.

The American political process, as you are probably aware, is based on competition. It is based on division of power; a distribution of power that...
tries to make sure that there is not concentration in any one group, or one individual's hands. It is by nature difficult to get things done in the United States. This is in contrast to your Prime Minister, who in recent years has had a concentration of power. To a large extent the Prime Minister is able to intimidate his Cabinet, control his own party caucus, and even push around Parliament. Now, with a minority government, Canada's third in a row, it may not seem like the Prime Minister is as powerful a figure as when Jean Chrétien was Prime Minister, or even Brian Mulroney. Nevertheless, the

amass the most party support, the most donor contributions, the most fringe appeal, etc. See generally Harvey L. Schantz, The Presidential Selection Process, in AMERICAN PRESIDENTIAL ELECTIONS: PROCESS, POLICY, AND POLITICAL CHANGE 9-51 (1996) (describing the rules and conventions of the presidential election process); see also ELAINE C. KAMARCK, PRIMARY POLITICS: HOW PRESIDENTIAL CANDIDATES HAVE SHAPED THE MODERN NOMINATION SYSTEM (2009) (describing the process and experience of candidates during recent presidential elections).

Since its conception, the objectives of the United States political system have been to maximize both individual liberties and democratic outcomes. Institutional checks and balances have been put in place to ensure the legitimacy of the executive, legislative, and judicial branches at both state and federal levels. See generally GOVERNING AMERICA: HISTORY, CULTURE, INSTITUTIONS, ORGANISATION, POLICY 64 (Nicol Rae & Tim Hames eds., 1996) (describing the constitutional reference to such policies).

The Prime Minister is granted sole authority to determine the composition of his or her Cabinet, and as a result he is able to largely determine its mandate. Ministerial allegiance is acquired by being able to promote, dismiss, or request resignation from individual ministers, an authority that is unrivaled. See generally RAND DYK, CANADIAN POLITICS: CRITICAL APPROACHES 500-508 (Nelson, 4th ed. 2004) (1993) (describing the office of the Prime Minister, its function and history).


Jean Chrétien led the Liberal party to three majority governments during his more-than-ten-year hold over the Prime Minister's office. See generally THE ChrÉTien LEGACY: POLITICS AND PUBLIC POLICY IN CANADA (Lois Harderand & Steve Patten eds., 2006) (giving an overview of the legacy left behind by Chrétien).

Brian Mulroney entered his first term by leading the Progressive Conservative party to its largest majority in the House in party history. He also led the party to another majority in his second term as Prime Minister. See generally TRANSFORMING THE NATION: CANADA AND BRIAN Mulroney (Raymond B. Blake ed. 2007) (giving an overview of the Mulroney years as Prime Minister).
Prime Minister has a great deal of power in the Canadian system, and the President, while powerful, has somewhat less. It is easy to confuse the role of head of government and the head of state. In Canada, the head of government is the Prime Minister, but the head of state is the Queen or the Governor General, which is a ceremonial role. President Barack Obama performs the ceremonial role of President of the United States extremely well: he is charismatic, well-spoken, sharp, smart, and better-looking than me. That is why we put him on the poster for this event, not me. He is able to speak for the United States in a compelling way. That is different than the role of running the government, which you saw the President undertake when he went to Congress to speak to them about the economy and the stimulus plan, in addition to what he wanted for the upcoming budget. That is the hard work of government. Inevitably, the hard work of government is less successful, less dramatic, and, in the United States, it involves convincing Congress to go your way.

For people who are Washington insiders, the challenge of the stimulus was not that we had a big problem. It was who was going to be in charge of fixing it. The Congress had been debating the stimulus since the Bush administration, and the battle lines were drawn between Republicans and Democrats. As a result, Republicans were able to forge a remarkable degree of party unity, especially in the House, rejecting entirely the President’s overtures to try to bring them on board in support of the stimulus.
That is a warning sign for Washington insiders. Going back to the founding of the republic, we have had alternation between periods of executive dominance, which we sometimes think of as the “imperial presidency,” and periods of legislative dominance, where the Congress is assertive and sets the agenda. We may well be in the beginning of a period of congressional dominance. After all, the stimulus bill was written and passed by Congress. The President supported it but did not have a lot of time to take charge of it. Why not? Well, first, because of the urgency of the moment. Second, because the President has to run an administration comprised of some 3,302 individuals who have to be Senate-confirmed. By the time the stimulus plan came forward into the Congress, the President had not yet confirmed his Cabinet, which meant that all political appointees below the Cabinet level were out of place because the Administration was still in the process of getting names through.

When high profile Cabinet nominees blew up, like Bill Richardson or Judd Gregg, the administration was sent into a scramble to make sure eve-


28 The bill was ratified with a vote of 244-188 in the House of Representatives and 61-37 in the Senate, both adhering strictly to party lines. See generally David M. Herszenhorn & Carl Hulse, Deal Reached in Congress on $789 Billion Stimulus Plan, N.Y. TIMES, Feb. 12, 2009, at A1 (describing the passage of the stimulus bill through both houses of Congress).

29 See generally Peter Baker & Jeff Zeleny, Obama, No Day to Bask, He Starts to Build a Team, N.Y. TIMES, Nov. 6, 2008, at A1 (describing the time consuming process of having to build his administration).

30 Obama had already confirmed seven Cabinet positions by the time the stimulus package had been introduced in the House of Representatives; however, key positions such as secretary of treasury and secretary of commerce had not been filled, eventually to be occupied by Timothy Geithner and Gary Locke respectively. See generally Jackie Calmes & David M. Herszenhorn, Obama Convenes Financial Team Minus His Chief Economic Spokesman, N.Y. TIMES, Jan. 22, 2009, at A22 (noting the difficulty of not having a chief spokesman for Obama’s new economic team); see also Liz Sidoti, Obama must find commerce secretary again, ASSOCIATED PRESS, Feb. 13, 2009 (describing the difficulties of filling key positions).


32 New Mexico Governor Bill Richardson, choice for commerce secretary, withdrew his candidacy amidst pressure from an investigation surrounding contracts given to political donors. See generally Michael D. Shear & Carol D. Leonnig, Commerce Pick Richardson With-
ryone who went forward was vetted to the highest degree to ensure that there were not anymore flame-outs, nor a need to put political capital on the table to rescue nominees when others might be available who would pass. This slowed down the process of getting the Government in place. As a result, it gave President Obama a terrible disadvantage in dealing with Congress, especially when Congress was full of veterans who had their staffs in place and ready to go from day one. Congress saw the beginning of the 111th Congress and the 44th Presidency as an opportunity to present items that former President George W. Bush would not sign to Obama, a co-partisan who presumably would sign them. That first battle with getting nominees appointed indicated that the President was unable to take control of the agenda, and when big issues blew up, as we saw with the AIG bailout and just this past week with the embarrassment of bonuses paid to AIG executives, the President and his team were pointing fingers at one another. Did Tim Geithner know about this? Did Congress actually amend the legislation to permit the draws, Citing N.M. Probe, WASH. POST, Jan. 5, 2009, at A01 (explaining Richardson’s withdrawal in the midst of investigations).

33 Senator Judd Gregg withdrew his candidacy for a Cabinet position citing disagreements over the direction of the stimulus package and the census bureau. See generally Peter Baker, A Nominee’s Exit and the Nation’s Nose Count, N.Y. TIMES, Feb. 20, 2009, at A15 (describing Senator Gregg’s disagreements over the stimulus package, especially regarding the census bureau).

34 See generally Sam Stein, Inside Obama’s Vetting Process: What Went Wrong?, HUFFINGTON POST, Feb. 9, 2009, available at http://www.huffingtonpost.com/2009/02/09/inside-obamas-vetting-pro_n_164631.html (highlighting the setbacks the Obama administration has faced in regards to Congressional review and suggesting lack of foresight caused unnecessary setbacks); see also Anne E. Kornblut, For Obama, a trusted voice who knows the terrain; Counsel Craig takes on an array of duties, WASH. POST, Feb. 6, 2009, at A01 (describing the selection of Gregg Craig, who is assuming control of the vetting process to avoid any further setbacks).

35 While Congress had a Democratic majority in both houses nearing the end of Bush’s second term, the threat of veto stifled many Democratic initiatives, including tax reform and stem cell research. See generally Waiting for Reinforcements, ECONOMIST (United States), Nov. 15, 2008, at 36 (describing renewed hope as Democrats in either house no longer have to worry about a veto).

36 AIG suffered from a liquidity crisis when its credit ratings were downgraded, forcing the insurer to rely on billions of dollars in federal bailout money to remain afloat. See generally Janet Whitman, Bailout for AIG rises to US $150b; Washington Top-Up, NAT’L POST’S FIN. POST, Nov. 11, 2008, at FP1 (describing AIG’s bailout terms).

37 Public outrage developed as it became known that taxpayer money received through the bailout was being used by AIG to pay executive bonuses. See generally Michael Kranish & Jenifer McKim, Obama seeks to stop AIG bonuses amid outrage, Geithner tries to recoup cash, BOSTON GLOBE, Mar. 17, 2009, at A1 (covering the development of growing public disapproval of the decision to “bail out the banks”).

38 See generally Christina Bellantoni & Sean Lengell, Obama looks for ways to block AIG’s bonuses; Pledges help for small business, WASH. TIMES, Mar. 17, 2009, at A01 (describing the actions the Obama team are taking to remedy the situation with AIG bonuses).
paying of the bonuses and then later think better of it? Some congressmen have admitted that they did not read most of the seven thousand pages in the stimulus plan, which is not very reassuring to markets and to other people.

Now, as the President fills his administration, we can expect to see him get a second wind and do more to try to take charge of Washington. But we have already had the beginning of what will likely be a series of bruising battles on legislation, and Congress will shirk to no one, including this President, in trying to shape that agenda.

Now, you might say that this is all very nice, but we did not want to have an inside the beltway talk tonight; why do we care? The reason that Canadians care about the battle between the President and Congress is that your best friend is an administration that responds to foreign interests, respects treaties negotiated with past administrations, and has an ability to engage with Canadian officials. The Congress, on the other hand, is by design parochial. It is an institution that represents local interests that vote for its members; and that means no Canadians. This is always difficult for Canadians. For example, if we look back to the cancellation of the 1854 Reciprocity Treaty, there was a congressional initiative to cancel the treaty, hoping to punish Canadians for their support of the South during the Civil War—or at least that is what the United States thought. We can also look at the Smoot-

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39 See generally Kara Rowland, Forecast cloudy for transparency, WASH. TIMES, May 12, 2009, at B01 (describing how congressmen were not afforded sufficient time to review the lengthy and technical bill).

40 Obama now turns to health and climate as his major issues. See generally Donald Lambro, Many Democrats unsold; Moderates rise to oppose costly plan, WASH. TIMES, Jul. 23, 2009, at A21 (describing how many in Congress, even Democrats, are not willing to give the new administration free reign on spending, especially as Obama now turns to the issues of health care and climate change).

41 A member of Congress is ultimately responsible to their constituents alone, not to their party. See generally Ross M. English, The United States Congress 19 (2003) (providing an historical and theoretical overlay of the United States Congress).

42 Because it is not necessary for those in Congress to tow the party line, as it is necessary in the House of Commons, there is little or no penalty for crossing party lines or dissenting with the administration on behalf of promoting constituent interests. Id.

43 Id.

44 The Canadian American Reciprocity Treaty of 1854 was mainly concerned with the reduction of tariffs on goods traded across the border. The treaty was repealed in 1864 because it was believed that the treaty was one sided in favor of Canada and because of anger over the unofficial support of the Confederates by the British during the Civil War. See generally W.T. Easterbrook & H.G.J. Aitken, Canadian Economic History (1988) (providing an overview of the Treaty in historical context); see also Kenneth Norrie, Douglas Owram, & J.C. Herbert Emery, A History of the Canadian Economy (4th ed. 2007) (providing a history of the Canadian economy, with passing review of the Treaty).

45 Id.
Hawley Tariff,\(^{46}\) which caused no end of trouble for the Canadians and for the Americans as we tried to recover from the Great Depression.\(^{47}\)

Congress will always follow its voters, but voters in the United States have a relatively limited appreciation for just how much their prosperity depends on Canadians, Canadian export markets, and Canadian interactions.\(^{48}\) It is no coincidence that this is the heart of a region that has boomed in Canada-United States trade; the twentieth century marked the beginning of integrated production based on personal relationships between Canadians and Americans.\(^{49}\) These were relationships that were built during World War II. However, even before the United States entered World War II, these relationships were being built in the coproduction of defense equipment for the British in plants owned by Americans during World War I and World War II.\(^{50}\)

Henry Ford of the Ford Motor Company\(^{51}\) and Bill Durrant of General Motors\(^{52}\) came to Canada to find business partners in order to break into the British markets, which they were afraid would create rivals for global domi-
inance in auto manufacturing. Ford and Durrant found that Mexico, Venezuela, and Germany used kit assembly. Kit assembly involves making all the parts in the United States and shipping them to other countries and letting people assemble them according to blueprints. Here in Canada they found licensees and partners they could trust: men and women, like themselves, who were good partners. This has been the heart of Canada-United States trade relations. If you look at the trade statistics prior to the beginning of the twentieth century, you will find that Canada and the United States had a fairly reciprocal trade relationship: Canadians sold raw materials to the United States and the United States sold Canadians manufactured goods in an attempt to edge the British out of their dominance of the Canadian market.

At the beginning of the twentieth century, Canada and the United States began coproducing, and became less trading partners and more coworkers. This allowed us to specialize and make and produce particular things. As a result, we were able to take advantage of the expertise of individual machine shops and individual university research labs, which allowed us to bring the best forward and move further in the specialization of our industry. It gave us a competitive advantage over Europe and Asia, one that lasted almost the entire twentieth century.

53 Ford Motor Company of Canada, Limited was founded in 1904 for the purpose of manufacturing and selling Ford automobiles in Canada and throughout the British Empire; this was done to avoid the tariff rates for non-British Empire countries. Likewise, General Motors Canada was founded in 1918 with the purchase of McLaughlin Motor Car Co. See generally Richard White, Making Cars in Canada: A Brief History of the Canadian Automotive Industry, 1900-1980 (2007).


55 Id.


57 Id.

58 See generally John Bartlet Brebner, North Atlantic Triangle: The Interplay of Canada, the United States, and Great Britain 84-96 (1966) (providing a historical account of the changing relations between Canada and the United States and Britain over the years and the strong influence trade had on those relations).

59 See Partners Nevertheless, supra note 56 (indicating that at this time Canada and the United States need to come together to realize their economic goals).

60 This advantage eventually was diminished by economic crisis and competition from newly emerging industrialized economies. See generally Jeffry A. Frieden, Global Capitalism: Its Fall and Rise in the Twentieth Century 363-85, 413-33 (2007) (discussing the systemic troubles of the late twentieth century and emerging competition from Asia and elsewhere).
In the wake of the September 11 terrorist attacks, the United States began to pull back from this.61 We were dimly aware of our interrelationship—this notion of a coproduction arrangement with Canada—but we responded to the security threat with a nationalistic, America-first security strategy.62 This is understandable in the wake of September 11, but under the Security and Prosperity Partnership (SPP), it has begun to soften a bit.63

Now we begin the Obama administration in a period where there really is no one speaking against a nationalist response to economic turmoil.64 It is amazing that the United States Congress is borrowing trillions of dollars,65 as though there were an infinite amount of capital available around the world. American borrowing will “Hoover” up a lot of available capital, which means less capital for everyone else, and we are not the only government around the world trying to stimulate our economy back into growth.66 We face serious problems, and we are trying to solve them on our own. The auto industry is a particularly painful example, especially for people like me who grew up in Detroit and people like you who grew up in Ontario.

After a century of automotive integration we are acting as though the rescue of the auto industry is something that either of our countries can do

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61 See generally Revival of protectionism puts U.S. economy further at risk, USA TODAY, Aug. 11, 2003, at 10A (describing the possibility of increased protectionism as “Buy American” sentiment and regulations take hold post September 11).

62 See generally The US 9/11 Commission on Border Control, 30 POPULATION AND DEV. REV. 569-574 (2004) (giving a review of what the 9/11 Commission has reported on border security, which suggest that a tightening of international borders is necessary to ensure the safety of the United States).


64 See generally The Return of Economic Nationalism, ECONOMIST (United States), Feb. 7, 2009 at 58.

65 When President Obama took office, the debt was $6.3 trillion. Since then, it has grown by $1 trillion, to $7.3 trillion, and it is expected to continue to grow. Furthermore, the White House expects the cumulative total of deficits over the next ten years to add up to $9 trillion. See generally When America needs a loan, he handles the paperwork; Head of obscure agency sells trillions of dollars in Treasury securities yearly, INT’L HERALD TRIB., Aug. 25, 2009, at 13 (covering Van Zeck, commissioner of the public debt and his role in auctioning off government bonds and securities for borrowed cash).

66 See generally Nelson D. Schwartz, Rising Interest on Nations’ Debt May Sap Growth, N.Y. TIMES, June 4, 2009, at A1 (noting that as the United States and other countries continue to borrow, rates and debt will go up, possibly curtailing growth).
alone. To Canada's credit, the Canadians have always known that they need to work with Americans. But how, after a century of automotive integration, do we have a situation where the Canadian Industry Minister cannot get serious meetings with members of Congress to discuss how we can work together, especially when the Canadian Industry Minister comes, after twelve consecutive surplus budgets in Ottawa, ready to help the auto industry? It is not like you came and asked for something that we did not want to do as well. Canada had a checkbook, and we just borrowed money. Everything is done on credit now in the United States. It is a frightening reminder of just how shallow-rooted some of the things have become that we rely on in the Canada-United States relationship.

However, we have been in difficult periods before. The best analogy I can offer you for what this Obama opportunity represents is a previous transition that we went through, one in which we began with a great deal of relationship capital and social capital between Canadians and Americans. The problems that we were faced with in that instance were serious, and our beginnings started us out on a wrong track, but eventually we changed our mind.

I want to take you back a little bit to the period after World War II. When the war was over, Franklin Roosevelt saw the challenge of establishing a world order that would last in the post-war era, and he did so very much through the lens of the war that had just been fought. He anchored his vision on a couple of key decisions and key institutions that he thought would

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67 While an automotive bailout has been raised on both sides of the border, it cannot be said that there has been any coordination between Canada and the United States. Instead, the Obama administration seems to want to take the reins alone. See generally Obama leads way on auto bailout, TORONTO STAR, Mar. 31, 2009, at A14 (discussing Obama's control of the situation and noting that the fate of the North American automotive companies rests in his hands).

68 See OFFICE OF TECHNOLOGY, supra note 50 (focusing on this relationship in general); RUBINSTEIN, supra note 54 (focusing on this relationship in light of car manufacturing).

69 See generally Jonathan Jenkins, A bridge loan to Obama; Ontario minister says Canada can play hero if U.S. falters on auto bailout, TORONTO SUN, Nov. 19, 2008, at 5 (describing Economic Development Minister Michael Bryant's offer of a "bridge loan" to the Obama administration should Congress be unable to resolve the issue).

70 See generally ROBERT GUTTMANN, HOW CREDIT-MONEY SHAPES THE ECONOMY: THE UNITED STATES IN A GLOBAL SYSTEM (M.E. Sharpe ed., 1994) (giving an analysis of credit and an historical account of how it has shaped the United States and the global economy).

71 Roosevelt's package of economic reforms during the Great Depression became famously known as the New Deal. The aims of the New Deal were to provide relief for the unemployed, reform labor and industry practices, undertake government-funded public work projects to improve infrastructure, and generally to help the economy recover from the Great Depression. See generally WILLIAM E. LEUCHTENBURG, FRANKLIN D. ROOSEVELT AND THE NEW DEAL, 1932-1940 (1963) (providing an account of New Deal strategies and how they influenced the nation).
help ensure not only American dominance, but also restore peace and end the economic turmoil that had preceded the war.

In order to prevent major war among the great powers, Roosevelt picked up the League of Nations model,72 revamped it, and brought us to the United Nations.73 The hope was that the United Nations would provide for collective security—that the great powers sitting on the Security Council would make sure that wars were not launched cavalierly.74 He also felt that it would be possible to agree on a sphere of influence, or a stable equilibrium between the United States and the Soviet Union in Europe and elsewhere.75 That was the Yalta Agreement,76 which provided clear spheres of influence so that both sides could coexist and agree to share in the governance of a defeated Germany.77 Roosevelt also saw the possibility of establishing a different economic order through the Bretton Woods system,78 the International Monetary Fund,79 the World Bank,80 and the International Trade Organization (ITO).81 The founding conference for the ITO was held in Havana in 1947.82

72 The League of Nations was an intergovernmental organization founded in the aftermath of World War I as a result of the Treaty of Versailles in 1919–1920. The main aim of the League was to avoid major conflicts, such as the one the world had just experienced in World War I. Many countries did not join, most notably the United States, and many were reluctant to stay, which compromised its effectiveness. Because unanimity was required on all votes, the League resulted in much indecision. When the League did enact sanctions through its governing body, member states were often reluctant to comply with them. The ineffectiveness of the League was apparent as it could not prevent the coming of World War II. The League dissolved in 1946, although it was already agreed in 1943 that its powers should be divested to form a more effective body, which became the United Nations. See generally F.S. Northedge, The League of Nations: Its Life and Times, 1920-1946 (1986) (providing an historical account of the League's history and policy).

73 A major difference which contributed to the United Nation's success was that it included the United States and formed a permanent Security Council. Another useful feature was the requirement of member countries to provide armed forces to establish a peace-keeping force. See generally Stanley Mesler, United Nations: The First Fifty Years (1997) (describing the transition from the League of Nations to the United Nations).


76 See Crimea Conference, supra note 75.

77 See id.


79 See id.; see also International Monetary Fund, http://www.imf.org (last visited Dec. 10, 2010).


The founders of the ITO attempted to create an organization that would police trade disputes among trading partners and prevent us from breaking down and participating in tariff wars and the protectionism that we saw in the pre-war periods.\footnote{See id.}

Then Roosevelt died, and Truman inherited his legacy.\footnote{See Arthur Krock, President Roosevelt is Dead; Truman to Continue Policies, N.Y. TIMES, Apr. 12, 1945, at A1, available at http://www.nytimes.com/learning/general/onthisday/big/0412.html.} However, Truman quickly discovered that these post-war institutions were not the institutions which could carry us through the emerging new conflict—the Cold War.\footnote{See generally ROBERT H. FERRELL, HARRY S. TRUMAN AND THE COLD WAR REVOLUTIONISTS (2006) (discussing Truman’s role in initiating the Cold War).} The United Nations, as we discovered in the Korean conflict, was not able to broker an end to the conflict.\footnote{See Sanderson Beck, United Nations Peacekeeping, in WORLD PEACE EFFORTS SINCE GANDHI, HISTORY OF PEACE SERIES (2006) (“By 1947 the failure of the Security Council to organize the forces necessary for the collective security framework in which disarmament could have been established allowed the Cold War arms race to dominate the international scene. Meanwhile the permanent members of the Security Council were getting around their partial ban of the veto if they were a party to a dispute simply by not calling it a ‘dispute’ . . . . After the Korean War fiasco, the Cold War prevented the use of the large powers’ forces as United Nations police, which was the original intention.”).} In fact, it could not even exercise a successful peace action in the Korean peninsula.\footnote{See generally id.} The only way they were able to send troops was because the Russians were not present during the time of the vote.\footnote{See id. (“Since Soviet delegates were boycotting the Council because of China, it was able to vote nine to zero.”).} It was clear that the great powers could not reach a consensus regarding how they wanted to ensure collective security.\footnote{See Encyclopedia of the New American Nation, Collective Security: The United Nations and the Cold War, http://www.americanforeignrelations.com/A-D/Collective-Security-The-united-nations-and-the-cold-war.html (last visited Dec. 10, 2010) (“The spreading post-1945 Cold War between the Soviet (and soon Chinese) and United States–European blocs ensured the failure of collective security and rendered the United Nations increasingly irrelevant, except as one more arena for the power struggle between the blocs.”).}

Thus, United States administrations replaced the United Nations-based model for providing security during the Cold War with the North Atlantic Treaty Organization (NATO),\footnote{See North Atlantic Treaty, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243.} which is a much tougher organization comprised of like-minded countries. It was designed to carry us through the Cold War, and it did so successfully in the end.\footnote{See NATO’s Cold War Roots, BBC ONLINE NETWORK, Aug. 3, 1999, available at http://news.bbc.co.uk/2/hi/325388.stm.} Yalta turned out to be a poor basis for a compromise or a stable peace, as the Soviets began looking for
new converts to communism and to expand their borders, which created a larger collection of satellites and a bigger buffer zone.\textsuperscript{92} Truman responded to the Soviet’s action through the Truman Doctrine,\textsuperscript{93} which drew a line between the Soviets in Turkey and Greece, and presented a clear and assertive American posture, that Eisenhower carried on.\textsuperscript{94} It also established the containment policy,\textsuperscript{95} a new strategy for the Soviet Union that carried us through most of the Cold War.\textsuperscript{96}

The ITO, which was never set up, was replaced by the General Agreement on Tariffs and Trade (GATT),\textsuperscript{97} an organization that did a fairly good job for a time brokering the United States, Europe, and Japan.\textsuperscript{98} However, it gradually lost steam.\textsuperscript{99} The United States then came in to replace that with a series of bilateral agreements, most notably the Canada-United States Free Trade Agreement,\textsuperscript{100} NAFTA,\textsuperscript{101} and other agreements that tried to provide an underpinning for the international trading system until the development at the Uruguay Round of a World Trade Organization,\textsuperscript{102} which, in principle and design, looks remarkably like what the members of the Havana Conference thought the ITO would look like.\textsuperscript{103}

Now, why tell that story? Because after the Cold War, we thought we would enter a new era of peace.\textsuperscript{104} You may remember George H.W. Bush talking about a “new world order.”\textsuperscript{105} Then we went through the Bill Clinton

\textsuperscript{92} See id; see also Hugh Faringdon, The Warsaw Pact, in CONFRONTATION: THE STRATEGIC GEOGRAPHY OF NATO AND THE WARSAW PACT (1986).
\textsuperscript{96} See id.
\textsuperscript{98} See id.
\textsuperscript{99} See id.
\textsuperscript{102} See WTO: The GATT Years, supra note 97.
\textsuperscript{103} See id.
\textsuperscript{104} See ALASDAIR BLAIR & DAVID HITCHCOCK, ENVIRONMENT AND BUSINESS 269 (2000)
(“When the Cold War ended in 1990, there was much optimism about the new era of peace; a peace dividend would allow former weapons expenditure to be used for ending hunger, curing cancer, remedying environmental problems, etc. This mood of optimism lasted about six months, until the Iraqi invasion of Kuwait in 1990. War and conflict had not ended with the Cold War ...”).
\textsuperscript{105} See generally MEENA BOSE & ROSANNA PEROTTI, FROM COLD WAR TO NEW WORLD ORDER: THE FOREIGN POLICY OF GEORGE H.W. BUSH (2002).
years with the sense that maybe we were on a holiday from history, that we had an expanded potential for peace and prosperity in front of us. However, 2001 reminded us that maybe things were not going to be that great. The George W. Bush administration responded by setting up architecture for a long conflict with terrorist organizations. It included things like the USA PATRIOT Act, the establishment of the Guantanamo prison, and the military commissions that would try individuals. We went down the road of using NATO in a new way, one which was out of its original area. Technically we used it in the former Yugoslavia and the Balkans, but now we are taking it into areas in Afghanistan.

The United States moved away from traditional alliances to coalitions of the willing in order to put together groups that could fight wars in places like Iraq on an ad hoc basis. In addition, we created new, but relatively fledgling institutions, like the Proliferation Security Initiative, to deal with the

106 See The White House, William J. Clinton, http://www.whitehouse.gov/about/presidents/williamjclinton/ (last visited Dec. 10, 2010) ("During the administration of William Jefferson Clinton, the U.S. enjoyed more peace and economic well being than at any time in its history.").

107 See The White House, George W. Bush, http://www.whitehouse.gov/about/presidents/georgewbush (last visited Dec. 10, 2010) ("The most significant event of President Bush’s tenure came on September 11, 2001, when terrorists killed nearly 3,000 people on American soil. President Bush responded with a comprehensive strategy to protect the American people. He led the most dramatic reorganization of the federal government since the beginning of the Cold War, reforming the intelligence community and establishing new institutions like the Department of Homeland Security. He built global coalitions to remove violent regimes in Afghanistan and Iraq that threatened America, liberating more than 50 million people from tyranny.").


proliferation of weapons of mass destruction and the materials used to make them.\textsuperscript{116}

There was an element of "ad hocery" in the Bush period, but he stuck as carefully as he could to international trade rules and supported the World Trade Organization (WTO).\textsuperscript{117} I know people raise the steel objection, as well as problems with softwood lumber, but he still remained an advocate of free trade.\textsuperscript{118}

We now enter the Obama era with great problems, and I will not belabor that point. However, we also have an opportunity for a "second stab" at these institutions; the institutions that will see us through what is likely to be a long period of conflict and instability. This is replacing the unipolarity of the post-Cold War moment with a sort of uneasy United States dominance with new challenges—whether it is China,\textsuperscript{119} a resurgent European Union,\textsuperscript{120} or new threats coming not only from Islamic, fundamentalist-based terrorist organizations, but also from the instability of a developing world that wants access to globalization on their terms.\textsuperscript{121}

Many of you know of the Doha Round,\textsuperscript{122} which was rechristened the Doha Development Round at the dawn of the Bush administration as a way of bringing developing countries in. The Doha Development Round allows developing countries to participate in export-led growth in the way that China and other countries have. This creates a more open system in which de-

\textsuperscript{116} See id.
\textsuperscript{121} See generally Dismay at Collapse of Trade Talks, BBC NEWS SERVICES, Jul. 30, 2008, http://news.bbc.co.uk/2/hi/7532302.stm ("Over the years, the talks have repeatedly collapsed as developed countries failed to agree with developing nations on terms of access to each nation's markets.").
developed countries are allowed access to developing country exports, mainly agricultural resource products.\footnote{See id.}

The Doha Round stalled, and we are unable to move forward.\footnote{See Alan Beattie & Frances William, Doha trade talks collapse, FIN. TIMES, Jul. 29, 2008, available at http://www.ft.com/cms/s/0/0638a320-5d8a-11dd-8129-000077b07658.html?nclick_check=1.} You may remember the Free Trade Area of the Americas,\footnote{See Free Trade Area of the Americas, http://www.ftaa-alca.org/alca_e.asp (last visited Nov. 9, 2009).} which was discussed during the Clinton administration and carried on by the Bush administration. The idea was that we would create a hemispheric extension of NAFTA, an entente between the NAFTA world and the MERCOSUR world in South America.\footnote{See Christopher M. Bruner, Hemispheric Integration and the Politics of Regionalism: The Free Trade Area of the Americas (FTAA), 33 U. MIAMI INTER-AM. L. REV. 1, 5 (2002) ("The Free Trade Area of the Americas was initially proposed as the ‘trade liberalizing cornerstone’ of President George Bush’s Enterprise for the Americas Initiative, a broad-scale plan to ‘unify the Western Hemisphere’ enacted in 1990.").} But it also collapsed.\footnote{See Summit Of The Americas Fails To Resurrect FTAA, 9 BRIDGES WEEKLY TRADE NEWS Dig. 38 (2005), available at http://ictsd.org/i/news/bridgesweekly/6225/.

The Bush administration experimented in new economic relationships with our Asian partners: China, India, and Japan.\footnote{See generally Joseph S. Nye, Balancing Asia’s Rivals, ATLANTIC-COMMUNITY.ORG, Aug. 6, 2008, available at http://www.atlantic-community.org/index/Open_Think_Tank_Article/Balancing_Asia's_Rivals (discussing the Bush Administration’s relations with India, Japan, and China).} The purpose was to try and keep these jealous rivals in some sort of peaceful coexistence.\footnote{See generally id.; see also generally Goh Chok Tong, Sr. Min. Rep. Sing., Address at the Asia Society Conference, Bangkok: Constructing East Asia (June, 9, 2005), available at http://sites.asiasociety.org/conference05/goh.html ("The United States fought several wars to keep the region open and free. It was the stability generated by American power that provided the foundation for East Asia’s prosperity and development. The United States will remain a key, indeed the dominant, player well into the 21st Century.").} No formal treaty or organization was created. We simply brought these countries into the WTO framework in the hope that that would suffice; in addition, we hoped that Doha would give us the structure to go deeper.\footnote{See generally Kirsty Alfredson, Bush Backs China’s WTO Entry Despite Standoff, CNN.COM, Apr. 6, 2001, available at http://archives.cnn.com/2001/WORLD/asiapcf/east/04/05/china.WTO/ (regarding President George W. Bush’s support for China’s accession to the WTO amidst diplomatic conflicts); see also generally CHARLES E. HANRAHAN & RANDY SCHNEPF, CONGRESSIONAL RESEARCH SERV., WTO DOHA ROUND: THE AGRICULTURAL NEGOTIATIONS (2007), available at http://www.nationalaglawcenter.org/assets/crs/RL33144.pdf (discussing the structure and dynamics of the Doha negotiations).}


tions, but left many of the developing countries out. The United States Senate, more than George W. Bush, had already indicated they could not sign that treaty. But rather than undertaking new diplomacy to get us back on track, the Senate left that agenda stalled, and the Bush administration walked away from the treaty. The administration made some interesting moves on climate change, particularly a Pacific Rim deal that brought India, China, Indonesia, Australia, and Japan to some reductions. The administration, however, did not get credit for brokering this deal; but that is not the important thing. The important thing is that it was a regional solution. It was a stopgap, and it did not lead to a broader international agreement. However, those of you that follow these issues know that in Bali, the United States was coming in line with a growing consensus among developed and developing countries, namely that later this year in Copenhagen we will develop a plan to bring about real action on climate change—a plan in which both developing and developed countries will participate. The Obama administration has indicated a willingness to act on that stage.

The Bush administration also looked to try to develop new strategic alliances to deal with the rise of China, which included new partnerships with India, Indonesia, Australia, and Japan. This also included new allies in the Middle East, such as Iraq, and new allies in Europe (the so-called “New


14 See JOTZO, supra note 132.


19 See generally Shehzad H. Qazi, United States’ Attempt To Balance The Rise Of China In Asia, 2 IPRI JOURNAL IX, 32-48 (2009).


European Countries," a Rumsfeldian term) who were more than willing to revive NATO by putting real troops on the line in exchange for a greater say in how the alliance would be run.

All of which taken together, does not seem very reassuring now, especially not in the wake of the great drop in American prestige that coincided with the Bush administration. However, as the Obama administration enters, we see the opportunity for a charismatic American leadership but also realize the work that is yet ahead. President Obama has ahead of him the challenge of forging more stable relationships and institutions that can carry us through a period that may be defined by the war on terror, by the economic crisis that we are in, or by something we have not yet seen. Globalization requires some structuring and response from government, which the Obama administration has a unique position to lead internationally.

For some there is a fear that this administration will find itself with a challenge similar to the one that President Jimmy Carter faced, because the

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142 See Tom Lansford & Blagovest Tashev, Old Europe, New Europe and the US: Renegotiating Transatlantic Security in the Post 9/11 Era 57 (2004). ("Donald Rumsfeld termed the Atlanticist states – those nations that were part of the Western European system after the Second World War – ‘Old’ Europe. They tended to disagree with United States policy towards Iraq. In contrast, the Eastern and central European states – those that were once part of the Communist bloc – were defined as the ‘New’ Europe and tended to support United States policy."); see also Outrage at ‘Old Europe’ Remarks, BBC News Services, Jan. 23, 2003, http://news.bbc.co.uk/2/hi/europe/2687403.stm.

143 See Lansford & Tashev, supra note 142.

144 See Geir Lundestad, Just Another Major Crisis?: The United States and Europe Since 2000 at 177, 256 (2008) ("The aggressive unilateralism of U.S. policy, the rejection of international rules and multilateral institutions that has characterized the response to 9/11, and the anti-European undertones of American officials and commentators have weakened American prestige and legitimacy. . . . The second major move in the Bush administration’s post-9/11 policy was to invade Iraq and remove Saddam Hussein from power. The decision’s one clear outcome, beyond removing Hussein from power, was a precipitous drop in U.S. prestige and respect for U.S. leadership around the world.").

145 President Barack Obama’s international efforts were recognized by the Norwegian Nobel Committee as they awarded him the Nobel Peace Prize 2009. See Press Release, Nobelprize.org, The Nobel Peace Prize for 2009 (Oct. 9, 2009), available at http://nobelprize.org/nobel_prizes/peace/laureates/2009/press.html. ("Obama has as President created a new climate in international politics. Multilateral diplomacy has regained a central position, with emphasis on the role that the United Nations and other international institutions can play. Dialogue and negotiations are preferred as instruments for resolving even the most difficult international conflicts. The vision of a world free from nuclear arms has powerfully stimulated disarmament and arms control negotiations. Thanks to Obama’s initiative, the USA is now playing a more constructive role in meeting the great climatic challenges the world is confronting. Democracy and human rights are to be strengthened. Only very rarely has a person to the same extent as Obama captured the world’s attention and given its people hope for a better future.").

administration has a heavy investment of political capital in the economy and a lack of domination over the Congress. President Carter never got the upper hand on Congress, which felt it had been elected with a moral authority equal to his own in the wake of Watergate. So the Carter administration moved into foreign policy issues, leaving domestic issues to fester, and things got worse, not better. We only worry about this because in this economy, we do not want things to get worse; we want them to get better.

What worries me more than that is where Canada fits into all of this. If we go back to Franklin Delano Roosevelt’s days, Truman’s days, and Eisenhower’s days, Canada was in a far better position. It had come out of the colonial period as one of the strongest former British colonies. With fewer hang-ups, more resources, and an outside contribution in World War I and World War II, Canada seemed ready to play a large role on the international stage.

Some of you doubtlessly can recall from history books that during the administration of William Howard Taft, United States policy shifted in an important way with regard to Canada. President William McKinley famously refounded the Republican Party, giving it a new lease on life. The new Republican Party was less about old, retiring Civil War generals and more about an alliance between farmers and small business people.

149 See James Carter, supra note 146.
150 See generally V. Peter Harder, DM of Foreign Affairs, Luncheon Address to Retired Heads of Missions Association: “While Cohen Slept,” Canadian Diplomacy in the 21st Century (March 17, 2004) (transcript available at http://www.dfait-maeci.gc.ca/department/dm_speeches/deputy-minister-speeches-2004-03-17-en.asp) (“Seen historically, as I mentioned earlier, there can be no doubt we have declined. After WWII we had, I believe, the third largest merchant fleet in the world . . . . But things changed with the rebuilding of Europe, with decolonization, with the rise of Asia, and with all the other developments that shifted relative political and economic weights over the last fifty years. We have declined, at least measured in terms of our ability to influence international events.”).
151 See The White House, William Howard Taft, http://www.whitehouse.gov/about/presidents/williamhowardtaft (last visited Dec. 10, 2010) (“A trade agreement with Canada, which Taft pushed through Congress, would have pleased eastern advocates of a low tariff, but the Canadians rejected it.”).
McKinley created a political coalition that carried Republicans into the new century with a great deal of strength.\footnote{154}{Id.}

Following McKinley's assassination, his two successors were Teddy Roosevelt and William Howard Taft.\footnote{155}{See The White House, Presidents, http://www.whitehouse.gov/about/presidents (last visited Dec. 10, 2010).} Teddy Roosevelt felt that he could lead the United States into a role as a traditional great power, which meant establishing a strong navy and playing a role as a broker, not dissimilar to the role European countries played before.\footnote{156}{See generally The White House, Theodore Roosevelt, http://www.whitehouse.gov/about/presidents/theodoreroosevelt (last visited Dec. 10, 2010).} William Howard Taft was a lawyer and jurist,\footnote{157}{See William Howard Taft, supra note 151.} a man of Ohio,\footnote{158}{See generally Kenneth R. Walker, Ohio’s Three Chief Justices: Puritans on the Bench, 38 NORTHWEST OHIO Q. 2, 66-73 (1966).} and one of the most interesting men to ever serve as President of the United States. I know I sound like I am related to the guy; I just want to say some good things about William Howard Taft.

I have to tell you that most Americans who remember him at all remember him as being the fattest president ever, who once got stuck in a bathtub in the White House.\footnote{159}{Id.} He does not deserve that. He needs to be remembered for something else, so I will give him a plug. He was a member of the Ohio State Legislature\footnote{160}{See William Howard Taft, supra note 151.} and later became governor of Ohio.\footnote{161}{Id.} He served, interestingly, as governor of the Philippines after the Spanish-American War, one of our few colonial governors.\footnote{162}{Id.} He became President of the United States\footnote{163}{Id.} and, after his presidency, became Chief Justice of the United States Supreme Court.\footnote{164}{Id.}

So, not a bad resume for a guy who is only remembered for being fat. He was also a very thoughtful man, and his view on Canada was that that United States needed to promote Canadian independence.\footnote{165}{See generally James Tagg, The Presidency of William Howard Taft, 11 CANADIAN REV. OF AM. STUD. 211-222 (1981).} He knew that Canadian independence from Britain would benefit the United States. Britain was the United States' greatest commercial rival at the beginning of the twentieth century, and the country which we hoped to outperform in international negotiations. Taft disregarded a lot of the traditional rules of international diplomacy and said that Canada, whether it is an independent country or not,
needed to be cultivated in the United States' sphere of influence. One of the first outgrowths of Taft's views was a treaty that is one hundred years old, or is coming up on its hundredth anniversary this year: the Boundary Waters Treaty, which also gave us the International Joint Commission.

When you look back on the history of this agreement, it is strange that it was an agreement between Canada, a colony of Britain with no independent foreign policy authority, and the United States. The two countries did not exchange embassies, so they did not recognize one another in that sense. All foreign policy was supposed to be handled by Britain, but the British government was willing to consider this as a local, minor issue and therefore allowed Canada to sign the treaty in their own right. Pierre Berton and others point to the Versailles Treaty, where Canada signed in its own name as an important step towards Canadian independence, but this was a much more important step towards what Taft wanted to achieve.

Taft's foreign policy was known as the "foreign policy for Americans" and involved three pillars. The first pillar was an open door in China, and an attitude about rising and developing markets where no foreign power would have preference, an attitude which attacked the old privileged system of the colonial world. The second pillar was dollar diplomacy in Latin America, which did not work out well. Taft's hope in Latin America was for American companies to relocate to Latin America thereby promoting the development of a comprador middle class. That middle class would then

166 See id.
170 Id.
171 See id.
172 Treaty of Peace between the Allied and Associated Powers and Germany, Jun. 28, 1919, B.S.P 112/1.
175 See id.
177 See id.
support democracy, and democratic neighbors would become, over time, more prosperous and more stable. As I said, it did not work, but it was an interesting idea. The final pillar was his plan for Canada, which was reciprocity.

The United States followed a policy promoting gradual Canadian independence, even after Canada’s rejection of the Reciprocity Agreement in 1911. The United States supported independence from Britain all the way through the twentieth century until after the Statute of Westminster in 1931, when Canada gained its own foreign policy powers. Canada and the United States established embassies with one another in 1926, and before that had even occurred, we promoted greater Canada-United States bilateral engagement. By the time World War II had ended, the United States was among the biggest supporters of Canada in international arenas. The United States encouraged Canada, gave Canada a seat in the United Nations, and lobbied for Canada to join the emerging NATO. Under Gerald Ford, it was the United States that lobbied for Canada’s role in the G5, which counterbalanced the addition of the Italians, yet another European country.

Through this long period of United States’ sponsorship in the early post-war period, Canada had a unique role in shaping the world order, a world order which Truman and Eisenhower remade on the ashes of Roosevelt’s

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178 See id.
179 Abrams, supra note 174.
180 Robert E. Hannigan, Reciprocity, 1911: Continentalism and American Weltpolitik, 4 DIPL. HIST. 1, 1-18 (1980) (discussing the abortive Canadian-American reciprocity agreement of 1911 and the intention of American policymakers hoping to divorce Canada’s economy from the British Commonwealth and wed it to the American economy).
182 See id. § Section 2 (2).
184 See generally Michael K. Hawes, Managing Canada-U.S. Relations in Difficult Times, 34 AM. REV. OF CAN. STDS. 593, 593-602 (2004) (discussing how Canada simultaneously pursued an independent foreign policy and positive relations with the United States and how American influence also shaped Canadian foreign policy, particularly its commitment to multilateralism).
185 See id.
186 See generally F. H. Soward, On Becoming a Middle Power: The Canadian Experience, 32 PAC. HIST. REV. 111, 111-136 (1963) (discussing Canada’s role in the Commonwealth, the formation of the United Nations, NATO, and NORAD).
187 See generally G8 Information Centre, http://www.g8.utoronto.ca/what_is_g8.html (last visited Dec. 10, 2010) (discussing the history and formation of the G8, including Canada’s reception into the group in 1976).
design. Canada brought a lot to the debate: a good understanding of the Americans, which few countries did have at the time; real resources and energy; a generation of diplomats, still well regarded around the world for their contributions, and close personal relationships with Americans, not just in Washington, but across American society.

Today, as the Obama administration invites Canada to participate in the great debates of our time such as climate change, energy, and the future of North America, Canada still has close personal relationships; however, its relative power in the international system is less than it once was. Part of that is due to the rise of the United States; we have become large, overbearing, and hegemonic. However, it is also due to the fact that Canada is comfortable with Canada-United States trade and does not need to play the international economic role that it once did. Canada’s military, though doing a tremendous job in Afghanistan, is smaller and less capable than it was just fifty years ago. Further, the weight Canada once had with members of Congress—based on family connections and relationships that came with having a very small American elite—has waned in recent years with the breakdown of the American establishment and the rise of new political leaders.

It is a turbulent and unstable time in the United States. The opportunity for Canada to participate, therefore, comes at a high price. Canada has to play it smart by engaging new ideas with policy making in Washington and using personal relationships developed in making cars at universities, and in our new internet society. These are the kind of relationships that we have developed through our professional associations and close friendships that cross the border. There is still a strong amount of social capital in our bilateral relationship, but I suggest that it is increasingly between states, provinces, and proximate localities, not between Washington and Ottawa. So one of the challenges that we will face is a relationship that encourages Canadian participation, but in a way that is decentralized. Canadians will be given the chance to participate, not in a national debate, but rather in a regional and local debate. Canada’s clout is higher at these levels, but there is also the challenge of getting a coherent policy from the United States. Especially

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with Congress taking the lead, the difficulty of getting Canada’s voice heard in Washington will be greater than ever.

This is not a challenge that Canada cannot meet, and I am fully confident that Canada can do it. It will be difficult. But if Canada plays this role well, I think that Canada can look towards a new long relationship with the Americans that it can be very proud of. However, there are some issues. Not only is Canada in a weaker position, but Canada is also once again facing a powerful Washington with a minority government, which will make it difficult for Ottawa to take the lead. There are provincial governments that are too complacent with the United States and act as though this is something for Ottawa to deal with, not something that they need to deal with. It is too easy to be complacent about the United States in Canada; this is particularly true for provincial governments who have always been able to delegate foreign policy to Ottawa, letting Ottawa take care of things rather than taking charge of things themselves. Look to British Columbia, Alberta, and even Quebec, all of whom have been proactive in developing relationships with the United States. This is a direction that Ontario will need to go in order to pursue its own self interests, and all provinces will find that they are more than welcome in American policy-making circles.

That is the challenge ahead of us. I think that is the real meaning of the Obama opportunity that Canada now faces. I want to stop there, take your questions, and maybe see where you think you would like to see this relationship go, and I can give you my best sense of whether you will get there. Thank you.

PROFESSOR CARMODY: Thank you, Chris. Those were very illuminating, insightful and stimulating comments. We now have an opportunity for some questions and answers, or maybe some observations from the floor.

CHRISTOPHER SANDS: Sir?

PROFESSOR CARMODY: You highlighted the history of the Canada-United States relationship and a perception that Canada had a more developed, sophisticated foreign affairs department; and if we go back to the early 1990s, the sense was foreign affairs was specifically about trade. So my question is, from your vantage point, does Canada currently have the capacity to rise to the sophisticated challenge that trade presents? To go even be-

beyond that, will Obama reengage the United States in more multilateral type activities?

CHRISTOPHER SANDS: I think that the answer is a complex one. On the one hand, there is a path that I think some in the Harper government have considered. This path is to play the role of the “helpful fixer,” which Canada has played over the years. Especially, with the knowledge that the Obama administration has had trouble getting its people in place and knowing that there are still pitfalls for international leadership for the United States. Canada could be a bridge.

I heard this discussed in regards to Afghanistan. It is unlikely that the United States will encourage Canada to stay in Afghanistan beyond its current mandate, in part because of the Canadian polls. We know that Canada has not only done an outsize job, but also that the Canadian public feels they have done their part, which is perfectly reasonable, given what our other NATO allies have been doing.

It is more likely, however, that the United States will use Canada’s contribution as its moral authority in order to browbeat some of our NATO allies into stepping up. Our allies in NATO usually ignore the Americans, which is probably due to our constant reiteration of burden sharing. Basically, we can tell the Germans and the French that they are rich and they should do better, but that does not mean they will send real troops. However, Canada can say, “We did this, so you can do this too. This is something that you should do, because we have done our part, and now it is your turn.” So there are areas like that where Canada can be very useful.

It was interesting to see at the Ottawa meeting on February 19, 2009 how the Harper government entered the meeting after revealing through the press that they were hoping to engage in a bilateral discussion of climate change with the new administration. Now, this makes perfect sense from a reading of Canadian politics and the issue of climate change. In the absence of federal leadership in both our countries, states and provinces have acted independently. In fact, sometimes big cities like Los Angeles and San Fran-

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200 Id.
Cisco take the lead. Well, that is fine, but it is tough for Canada, because Canada wants to sell its energy in the United States market, which has multiple standards such as cap-and-trade systems with different ways of measuring carbon, creating non-convertible carbon credits and carbon tax plans that only work in certain jurisdictions. Multiple standards make it more difficult to get one common market in North America, which is over five hundred million people, that Canada could utilize. So, the Harper government has to hope that there is some disciplinary action taken in the United States. Which, with the United States Constitution’s interstate commerce clause, the President, if he wants to, can trump state-local plans, and bring discipline to the system by displacing local ideas with a national cap-and-trade program, and this has been discussed.

I think this is what Harper is looking for, because the only option he really has in Canada to control carbon taxes in British Columbia, Carbon Capture and Storage Sequestration in Alberta, and cap-and-trade proposals in other places is disallowance, which is not a politically viable strategy. It will be difficult for a majority government to pull this off, even more so for a minority government to do so. So, in the dynamics of our relationship, I think Harper thinks that if the Americans adopt a fifty-state standard, it will be easier for provinces to genuflect to the Americans than to Ottawa. I do not know why, but that is the politics of it.

For Obama, it is too parochial. His problem is not inter-North American standards. His problem is global, and the difficulty of expensive cap-and-trade proposals at a time when the economy is soft, is a serious one. For him Copenhagen is more appealing, as an international and inclusive multilateral forum. Yet, I think his response to Canada’s offer was very thoughtful, which is to essentially let us work towards a common front in Copenhagen that also includes some of our European allies who are in the same boat.

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206 See U.S. CONST. art. I, § 8, cl. 3.
209 See generally Pres. Barack Obama, Remarks at United Nations Secretary General Ban
Now, is that a made-in-Canada solution? No. But he is inviting Canada to help the United States get the consensus that will push us forward. It is not a bad opportunity. Do a few favors for a guy like Obama, and he will do some favors for you. It does not require a new generation of diplomats, just a slightly different way of thinking. I think there are a number of issues which Canada could lead, and these are just two of them. Regardless, it will require a willingness to play the “helpful fixer” role, which some Canadians feel is not glorious enough; they want to lead in their own right.

I always associate this with good old Lloyd Axworthy. Lloyd Axworthy wanted to lead even at the expense of success, and the classic example is the Ottawa Landmines Convention. There is nothing wrong with the Landmines Convention, except that it does not include as a signatory a single major manufacturer or distributor of land mines: the Russians, Chinese, and Americans have not signed. The Clinton administration wanted to sign. They liked the idea. They were the ones who volunteered to support Ottawa when there was a Geneva process for eliminating landmines, which the Americans had formerly backed. However, when the treaty came through, the Clinton administration was unable to overcome objections from the Pentagon. On the Korean peninsula we still needed landmines; these were not the worst of the worst because we knew exactly where they all were. They are in a fenced-off, controlled area. So we thought we had a good case for an

Ki-Moon’s Climate Change Summit (Sept. 22, 2009) (transcript available at The White House, http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-UN-Secretary-General-Ban-Ki-moons-Climate-Change-Summit/) (discussing the importance for all of the developed nations to tackle the issue of climate change together).

210 Lloyd Axworthy was President and Vice Chancellor at the University of Manitoba. See University of Manitoba, Lloyd Axworthy: Biographical Note, http://www.uwinnipeg.ca/index/axworthy-biography (last visited Nov. 10, 2009) (“In the Foreign Affairs portfolio, Dr. Axworthy became internationally known for his advancement of the human security concept, in particular, the Ottawa Treaty, a landmark global treaty banning anti-personnel landmines. For his leadership on landmines, he was nominated for the Nobel Peace Prize. For his efforts in establishing the International Criminal Court and the Protocol on child soldiers, he received the North-South Prize of the Council of Europe.”).


213 See id.

214 See generally ROBIN COLLINS, IS AN ANTI-PERSONNEL LANDMINE TREATY IMMINENT?, IMPRESSIONS FROM THE THREE DAY INTERNATIONAL STRATEGY CONFERENCE TOWARDS A GLOBAL BAN ON ANTI-PERSONNEL LANDMINES IN OTTAWA FROM OCTOBER 3RD TO 5TH, 1996, NATIONAL CAPITAL REGION BRANCH – UNITED NATIONS ASSOCIATION IN CANADA (1996), available at http://www.ncrb.unac.org/landmines/UNACinfo/imminent.html (“Mines that are self-destructing, marked or fenced off may not cause a great hazard to civilians in the Korea DMZ, but anti-mine activists worry about leaving holes in the legislation that allow for continued production and deployment.”).
exemption, and Ottawa said no. Axworthy wanted to be able to say it was our treaty, and he was so disappointed when he did not get the Nobel Peace Prize for it. This is an example of almost spiteful leadership, and the price is still being paid for that.

There is also another option. One of the things about early Canadian diplomacy with the United States is that early diplomats treated the United States like they treated London. They were trained to deal with a large, difficult power that had some leverage over them, and that they had to romance but also defend against. For example, when London wanted to let Canada go and get rid of the Corn Laws, Canada rushed to Commonwealth conferences and indicated that it needed to have a new kind of Commonwealth governance where all the senior dominions would act as legislators and co-partners in the management of the empire. On the other hand, when Britain wanted dreadnoughts for the navy, Laurier said, “Well, six is an awful lot, maybe we could give you one or two. But, you know, it’s expensive, and we’ve got other things to do.”

Basically, Canada is sometimes passive-aggressive. If the United States wants something from you, you are getting a little circumspect. On the other hand, if we ignore you, you have great plans for bilateral deals and partnerships with us. I think this is also one of the psychologies we have to overcome with regard to Obama. To the extent that Obama seems like a global rock star and has a sort of sense that he does not really pay attention to Canadians, want to show him that they love him, bring him in, and make a

215 See Burkhalter, supra note 212.
216 See generally Lloyd Axworthy, supra note 210.
217 See generally The Canadian Encyclopedia, Corn Laws, http://www.thecanadianencyclopedia.com/index.cfm?PgNm=TCE&Params=A1ARTA0001927 (last visited Nov. 11, 2009) (“Corn laws, 1794-1846, set duties on grain imports into Britain to protect British agriculture from outside competition . . . . Then in 1846 Britain repealed the Corn laws as part of a movement towards free trade. The consequent loss of preferential duties seemed a hard blow to the Canadian grain trade; but it recovered in the prosperous 1850s. Moreover, the lifting of imperial economic controls also brought relief from political controls and thus imperial recognition of responsible government in British North America.”).
218 Id.
219 During this time, Britain’s navy was being challenged by the German Empire, which came to be known as the “Dreadnought Crisis.” Britain thus requested support from the colonies in this matter. See generally FRANCIS, R. DOUGLAS, RICHARD JONES, & DONALD B. SMITH, DESTINIES, CANADIAN HISTORY SINCE CONFEDERATION 122 (2004) (giving an account of Laurier’s response in light of the British request).
220 Laurier’s compromise took form as the Naval Service Bill of 1910. While it did not include direct funding of British dreadnoughts, it did establish a Canadian Navy which could be used by Britain in times of need. See generally DAVID J. BERCUSION & J.L GRANASTEIN, DICTIONARY OF CANADIAN MILITARY HISTORY 142-143 (1992) (discussing Laurier’s motivations which led to the Naval Service Bill and its consequences in establishing Canadian naval defense).
friend out of him. On the other hand, to the extent that he starts getting too
creative with Canada, you will see a pull back. He might drag us further into
Afghanistan, or he might have other things in mind for us. Can we really
lead under his leadership, or is he just going to steamroll over us with protec-
tionism and sweet words?

I think we have to break that cycle. Canada has to embrace, for its own
sake, the Obama administration and not worry so much about the optics. But
that will require a new maturity on the part of a lot of ordinary citizens,
which is always exemplified in my mind by Jean Chrétien, who came
down to Washington for his first visit with President Bill Clinton in 1997.
He had met him at summits and so on but never came to Washington to visit
with him until 1997, five years after he was elected in 1992. Why? Be-
cause he was afraid of being too close. He did not want to be Mulroney II.
He wanted to be close, but not too close. Or, as he famously said, “I want to
be cozy, but not too cozy.” He managed to navigate that, even though he
liked Clinton as a person, and he kept a lot of his interaction with Clinton
private. It is nice to have a friend who actually admits that they are your
friend, but this is the psychology we have to break.

Now, I have one last comment about this. I have said it before, and it
never makes me very popular. In relative terms, I think Canada is increas-
ingly viewed by Washington policy-makers as a country and an ally along
the lines of Denmark or the Netherlands. They think of Canada as west-
ern, prosperous, friendly, but not very likely to be much help. Not a country that brings deals together, not a great power. In this environment, remember that both the Netherlands and Denmark sent troops to Afghanistan and to Iraq, both have been strong members of NATO, both have been working with the United States on a range of things, but they are virtually invisible in Washington. They are seen as friendly, low-key, off-the-radar allies. That is a future that Canada could embrace, but it is a dangerous future because, unlike Denmark and the Netherlands who are part of the European Union and can afford to be low-key with the Americans, Canada does not have that counterweight. You are codependent on us, deliberately being the mouse who has to sleep with the elephant when you could be something more than a mouse. I think it is an option, and we should embrace a greater role, but it will require an inside game.

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231 Id. (showing that Canada is not a member).