is not the only international agreement at which the world's lone superpower has balked in recent years. On issue after issue—global warming, land mines, establishing the International Criminal Court, and others—the United States has stubbornly refused to go along. Spiro, a law professor at Hofstra University, finds this deplorable, but Rivkin and Casey, law partners who have practiced before the International Court of Justice, think it's the trend in international law that's the problem.

"International law is enjoying a tremendous renaissance," Spiro exults. "It is now an important and necessary force in the context of globalization, governing the increasingly transnational elements of virtually every area of legal regulation, including such domestic issues as family, criminal, commercial, and bankruptcy law. Respect for human rights has significantly advanced over the last 20 years." Yet the United States has given its full blessings only to free-trade agreements (provided they ignore environmental, labor, and human rights considerations). By otherwise making such a blanket rejection of international agreements, the United States is undermining its position of international leadership, he argues. Particular issues can be debated, but in a globalized world the United States cannot simply "pick and choose" among international conventions and laws, rejecting those it dislikes.

Rivkin and Casey are equally alarmed—but by the efforts of human rights activists, scholars, the UN and other international organizations, and some governments ("including, episodically at least, the Clinton administration") to transform "the traditional law of nations governing the relationship between states into something akin to an international regulatory code." Nongovernmental organizations, such as the International Campaign to Ban Land Mines, have played the leading role in this drive—and they are "not elected, not accountable to any body politic, and . . . not inherently better or worse than other special interests," Rivkin and Casey maintain. For centuries, national sovereignty has been "the organizing principle of the international system," and sovereignty is "the necessary predicate of self-government." If the legality of U.S. actions is to be determined by "supranational, or extranational, institutions," they believe, then the American people will have lost their "ultimate authority."

In the "new international law," they contend, are claims (some inconsistent with others) "that heretofore purely domestic public policy issues—such as the death penalty, abortion, gay rights, environmental protection, and the relationship between parents and children—must be resolved in accordance with 'prevailing' international standards; that, with the possible exception of repelling armed attack, only the United Nations Security Council can authorize the use of military force; that the 'international community' is entitled to intervene under a variety of circumstances in the internal affairs of states; and that the actions of individual civilian and military officials of states fall under the purview of international criminal jurisdiction."

Spiro anticipates that "economic globalization will inevitably bring the United States in line" with the new order. In the meantime, though, economic and other pressure on U.S. corporations and individual American states will be needed to help things along. Rivkin and Casey, in contrast, consider it urgent that the new U.S. president champion the traditional law of nations.

Economics, Labor & Business

The Estate Tax Debate

A Survey of Recent Articles

In 1999 and again last year, Congress voted to abolish the estate tax, but each time, President Bill Clinton vetoed the measure, saying it would benefit only the rich. Although most Americans are not rich, 60 percent favor abolishing the tax, according to a poll last June, and the issue continues to be debated.

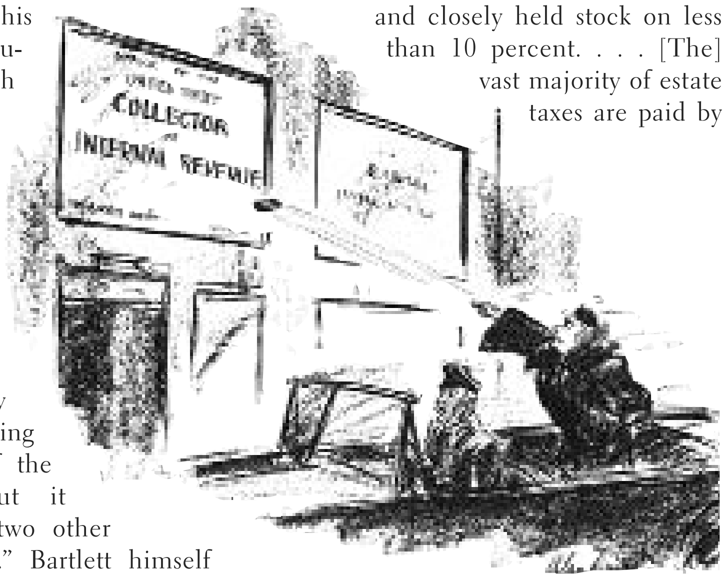
Under current law, only estates of $675,000 or more are taxed, with the tax rate starting at 37 percent and rising to 55 percent on estates of $3 million or more. Less than two percent of Americans who die owe any estate tax at all, but many Americans apparently dream of accumulating enough riches to be threatened by the tax: 41 percent in a 1999 *Newsweek* poll claimed that they are very or somewhat likely to become wealthy.

"The fundamental justification for estate taxation is [the belief] that great private wealth is socially undesirable," writes Bruce Bartlett, a senior fellow at the National Center for Policy Analysis, in the *Public Interest* (Fall 2000). But he argues that, on the contrary, great wealth and the inequality it represents and fosters are vital to the functioning of the U.S. economy.

"A secondary rationale" for estate taxation, Bartlett asserts, "is that inherited wealth is undeserved and perhaps even harmful for the recipient." But study after study, he says, shows that most great wealth in America does not come chiefly from inheritances. A recent survey of the wealthiest one percent of Americans found that inheritances were not a significant source of wealth for 90 percent of them. But "the desire to leave an estate drives people to work and save," Bartlett argues. "To the extent that the estate tax reduces a parent's ability to leave an estate to his children, it will have a negative effect on his willingness to accumulate wealth through work, saving, and investing."

"The threat of a tax strike by the rich is terrifying," sardonically comments James K. Galbraith, a professor of public affairs and government at the University of Texas at Austin, writing in the same issue of the *Public Interest*, "but it squares poorly with two other points Bartlett makes." Bartlett himself notes that the very wealthy engage in careful and costly estate planning to avoid the tax, while "a disproportionate burden . . . often falls on those with recently acquired, modest wealth: farmers, small businessmen, and the like. In many cases, their incomes may not have been very high, and they died not even realizing they were 'rich.'" But, Galbraith asks, if the very wealthy can readily evade the tax, and many of the less wealthy are not even fully aware of the extent of their fortune, then how can the estate tax be such a disincentive to work, save, and invest?

Edwin S. Rubenstein, director of research at the Hudson Institute, writing in its journal *American Outlook* (Nov.–Dec. 2000), zeroes in on the disproportionate effect of the tax, arguing that the impact on farmers and small business owners can be "devastating." A 1995 survey found that slightly more than half of family businesses would find it hard, thanks to the estate tax, to survive the principal owner's death. But economists William G. Gale of the Brookings Institution and Joel Slemrod of the University of Michigan, in Brookings *Policy Brief* No. 62 (June 2000), warn against letting the tail wag the dog: "Farms and other small businesses represent a small fraction of estate taxes. In 1997, farm assets were reported on less than six percent of all taxable estates, and closely held stock on less than 10 percent. . . . [The] vast majority of estate taxes are paid by



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people who own neither farms nor small businesses."

If the estate tax has little effect on the concentration of wealth in America, as some opponents of the tax contend, then that, observe Gale and Slemrod, "could be construed as an argument for increasing, rather than decreasing, the tax." Abolition of "the most progressive tax instrument in the federal tax arsenal," they say, would hurt nonprofit organizations (to which the wealthy are induced by the tax to give), reduce federal revenues (by the amount the tax produces, which was $28 billion in 1999, or about 1.5 percent of all federal revenue), and "create a gaping loophole for capital gains in the income tax." (The estate tax gets at capital gains that were never realized and so escaped the income tax.) "Many arguments commonly made against the tax are demonstrably specious," Gale and Slemrod conclude. "To the extent that any of them are valid, they suggest reform rather than abolition."

Leon Friedman, a professor at Hofstra University's School of Law, writing in the *American Prospect* (Nov. 6, 2000), has a different idea: Abolish the estate tax, but impose a one percent tax on the net worth of the richest one percent of Americans "on a regular basis during their lifetime." This, he says, would generate more than $100 billion a year in federal revenues, "reduce the national debt, shore up Social Security and Medicare, allow for significant tax decreases for the middle class, and eliminate the need for an estate tax."

The Downside of Debt Reduction

"Life without Treasury Securities" by Albert M. Wojnilower, in *Business Economics* (Oct. 2000), National Assn. for Business Economics, 1233 20th St., N.W., #505, Washington, D.C. 20036.

Should the huge federal budget surpluses expected in coming years, assuming they actually materialize, be used to wipe out the $3.4 trillion national debt? Americans ought to think twice, warns Wojnilower, a former official of the Federal Reserve Bank of New York who now advises two private investment firms. Eliminating Treasury notes and bonds would have "radical implications for the financial system." One possibility: Japanese government securities could eventually emerge as the new international benchmark .

Because Treasury securities are backed by the U.S. government and are thus virtually risk-free, they are the anchor of the financial system. They have taken the place of gold, serving as a benchmark for calculating the riskiness of other assets, a hedge against those risks, and a safe haven in times of uncertainty. The trade in Treasury securities alone, $190 billion a day, generates steady earnings that encourage dealers to "make markets" in less secure bonds issued by corporations, government agencies, and other borrowers—thus expanding the supply of credit. More important, Treasuries are used in hedging: Investment firms that hold other kinds of bonds sell Treasuries "short," reducing potential losses if the other bonds lose value—which also expands the supply of credit.

But it's in a credit panic such as the one surrounding the 1998 collapse of Long Term Capital Management that Treasuries have their greatest value, says Wojnilower. Such crises trigger a "flight to quality," as people and institutions park their money someplace where its safety and liquidity are guaranteed. That "someplace" has long been Treasuries. Without them, Wojnilower says, investors would look to the few other big lenders in the world, with potentially unhappy results.

One alternative would be to seek the safety of the handful of banks deemed "too big to fail" by national governments. That, Wojnilower fears, would make these banks "inordinately huge and powerful," and would tempt governments to use them "as instruments of domestic and foreign policy." But markets could also seek safety elsewhere—in Japanese securities (if Tokyo finally sets its house in order), or in securities issued by U.S. government-sponsored corporations,