

HEINONLINE

Citation:

Christian Barry, Is Global Institutional Reform a False Promise, 39 Cornell Int'l L.J. 523 (2006) `<script>$(document).ready(function(){ }); </script>`

Content downloaded/printed from [HeinOnline](#)

Wed Jul 25 23:44:35 2018

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <https://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.
- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

[Copyright Information](#)



Use QR Code reader to send PDF to your smartphone or tablet device

Is Global Institutional Reform a False Promise?

Christian Barry†

Comment on Richard Miller's *Global Institutional Reform and Global Social Movements: From False Promise to Realistic Hope*

Introduction	523
I. Premises	524
II. Strategies for Addressing Harmful Outcomes	525
III. Prima Facie Reasons to Seek Global Institutional Reform	526
A. Potential Benefit	527
B. Revealed Preferences	530
C. Visibility	533
D. The Unattractive Alternative: Bilateral Bullying	534
Conclusion	534

Introduction

In *Global Institutional Reform and Global Social Movements: From False Promise to Realistic Hope*,¹ Miller tackles the important and difficult question of what kinds of political strategies ought to be adopted by those who find morally unacceptable the extent and depth of shortfalls that persons currently suffer in their health, civic status, or standard of living relative to the ordinary needs and requirements of human beings.² Following Miller, I will call such people the “friends of humanity.”³ Miller concludes that those friends of humanity who currently seek to bring about enduring changes in social conditions to eliminate, or at least substantially lessen, severe harms by developing and implementing large-scale reforms of global institutions will most likely harm those they intend to help:

† Department of Philosophy and Center for Applied Philosophy and Public Ethics, Australian National University, and School of Politics and International Relations, University College Dublin; cbmaximin@gmail.com. I am grateful to Robert Hockett, Matthew Peterson, Sanjay Reddy, and Lydia Tomitova for helpful comments and suggestions.

1. Richard Miller, *Global Institutional Reform and Global Social Movements: From False Promise to Realistic Hope*, 39 CORNELL INT’L L.J. 501 (2006).

2. I shall refer to such shortfalls as “harms” or “severe harms” throughout this comment.

3. Miller, *supra* note 1, at 501.

39 CORNELL INT’L L.J. 523 (2006)

But if the task is improvement of a current sphere of social life already regulated by institutions, and if inequalities of power are a main source of the harms to be mitigated, then it is an open question whether new powers for institutions linking the strong and weak are to be recommended. If the recommendations make any significant difference, the domineering influence of the top participants may make the new institutional powers further tools for domination.⁴

Instead of looking for such an institutional "fix," Miller recommends that the friends of humanity should instead think more productively about the advancement of a "global social movement that could help humanity at our current stage."⁵

In this brief comment, I will argue that Miller's strong skepticism about the prospects for global institutional reform is unwarranted, and that promoting a global social movement that can effectively lead to the reduction of severe harms itself largely depends upon the successful identification of feasible and desirable global institutional reforms.

I. Premises

Miller makes several claims in his article that I think are true, important, and should be borne in mind by those who seek to reform global institutions. First, social institutions ought to be designed in a way that takes adequate note of the interests, motivations, and capabilities of those who enjoy positions of authority within them.⁶ Analogously, public policies should be adopted in a way that is sensitive to the interests, motivations, and capabilities of those implementing them.⁷ For example, in determining the desirability of a more permissive rule for the use of international force to intervene in humanitarian crises, we should not seek to identify its likely effects in a world in which decisions about whether and how to use force, and about which postwar policies ought to be implemented, are made by Michael Ignatieff, international lawyers, or the editors of the *New York Times*. Instead, we should inquire into its likely effects when implemented in a world in which the leaders of the United States, Russia, and China effectively control the world's most powerful military forces. Similar considerations apply to particular decisions to use force. However *defensible* on humanitarian grounds some level of military intervention may be in principle, it will not be adequately *defended* if the military actions undertaken by those involved in this conflict, given their interests, motivations, and capabilities, are likely to undermine rather than to serve humanitarian aims. Second, major powers exercise too much power in global politics.⁸ Third, major powers often exercise their power in a way that is harmful.⁹ Fourth, major powers will exercise too much power

4. *Id.* at 502-503.

5. *Id.* at 502.

6. *See id.* at 503.

7. *See id.* at 507.

8. *See id.* at 507-508.

9. *See id.* at 505.

and use their power harmfully in both the design of global institutions and in their ongoing operations.¹⁰ Finally, little of value can be achieved with respect to the reduction of severe harm without the sustained efforts of global social movements.¹¹

Miller is surely right that global institutional reforms that fail adequately to take account of these facts risk doing more harm than good.

II. Strategies for Addressing Harmful Outcomes

Miller's argument fundamentally relates not to particular institutional reform proposals but rather to overall *strategies* that might be adopted by the friends of humanity. Three ideal-typical strategies can be distinguished: *global institutional reform*, *strengthening social movements*, and *passivity*. The first two of these strategies are explicitly identified in Miller's article, while the third is implicit (and sometimes appears to be endorsed) in some of his remarks.¹² Proponents of the first strategy seek to eliminate or at least mitigate severe harms through reform of global institutional arrangements, such as capital and labor markets, the structure of property rights, the international trading regimes, rules governing the use of force, the institution of the modern state, and so on. Proponents of the second strategy place their hope in the growth and development of global social movements, which they hope will reduce severe harms through their activities.¹³ Proponents of the third strategy maintain that, under current circumstances, we do best by simply going about our business and waiting for the world's power structure to change such that it transforms into a more egalitarian, or at least less severely harmful, order.¹⁴

These three strategies are ideal-typical because they can be, and indeed often are, combined. One can seek to strengthen social movements oriented towards the alleviation of severe harm while also working to bring about global institutional reforms to achieve this end. Also, one can hope to strengthen social movements by identifying institutional reforms and mobilizing people to advocate for them. Additionally, one can be skeptical about the utility of global institutional reform or global social movement strategies with respect to some causes of severe harm, yet be optimistic about the potential value of each or both with respect to other causes.

Miller's view is a strong one. He claims that adopting the strategy of global institutional reform to address severe harm will likely be counter-productive regardless of its target.¹⁵ Miller also mentions various efforts to

10. See *id.* at 507-508.

11. See *id.* at 511.

12. See *id.* at 507-508.

13. See *id.* at 511. Following Miller, I understand global social movements as loosely tied groups of persons that seek to minimize severe harms throughout the world. However, I also realize that not all social movements are friends to humanity. Some global social movements possess racist aims or intend to impose their religious views or conservative doctrines on others.

14. See *id.* at 505-507.

15. See *id.* at 503.

reform policies regulating environmentally harmful activities and the trading system, as well as the rules governing the use of force internationally.¹⁶ We will do better, he writes, by adopting the strategies of strengthening social movements and of passivity.¹⁷

Before assessing Miller's argument, it is important to distinguish three different ways in which political action might focus global institutional reform. Reformers might seek to *strengthen* or *cut back the effective authority* of global institutions, or they may seek only to *alter their character and internal structure*. For example, with respect to the world trading system, we might seek to: (1) grant it greater authority, such as by allowing it veto power over regional or bilateral trading treaties even when they result in greater market access, or by allowing it to sanction more heavily those who are found to have violated its rules; (2) cut back its authority, such as by removing intellectual property rights altogether from its ambit; or (3) change the character of some of its rules, such as by changing the content of the intellectual property rules so that they allow poorer countries much greater flexibility to produce and import generic versions of patented, life-saving medicines.

Miller expresses the most hostility to global institutional reform strategies that seek to *strengthen* the authority of global institutions, but the tenor of his remarks suggest that he is, at least, nearly as skeptical about efforts that would seek to cut back or change the character of global institutions.¹⁸ It is easy to see why, given his picture of the self-interested motivations and great capabilities of powerful nations. How, after all, could he plausibly maintain the view that efforts to cut back or alter the character of global institutions would hold more promise than would efforts to strengthen them? It seems unlikely that such powerful actors would allow changes in the international order that would hypothetically *undermine* their power.

III. Prima Facie Reasons to Seek Global Institutional Reform

As it is extremely difficult, if not impossible, accurately to predict the long-term effects of the full range of global institutional reforms that might plausibly be undertaken, Miller's argument and responses to it will be very speculative. Instead of debating the feasibility and desirability of particular proposals for global institutional reform, I will therefore focus on some more general reasons to suspect that the strategy of global institutional reform is much more promising than Miller allows.¹⁹

16. See *id.* at 503-507.

17. See *id.* at 511.

18. See *id.* at 507-508.

19. For some recent reform proposals, see Christian Barry & Sanjay Reddy, *Just Linkage: International Trade and Labor Standards*, 39 CORNELL INT'L L.J. 545 (2006), Allen Buchanan & Robert O. Keohane, *The Preventive Use of Force: A Cosmopolitan Institutional Proposal*, 18 ETHICS & INT'L AFF. 1 (2004), and Thomas Pogge, *Human Rights and Global Health: A Research Program*, 36 METAPHILOSOPHY 182 (2005).

A. Potential Benefit

One strong *prima facie* reason for the friends of humanity to seek global institutional reform concerns its potential benefits. Rules shaping economic interactions substantially influence the incidence and depth of harms, such as severe poverty. This is familiar both in the domestic setting—where changes in tax rates, labor relations, social security and access to health care can significantly impact poverty, violent crime and other harms—and in the international setting—where simple changes in the rules governing trade, lending, and investment can substantially impact severe poverty rates. As global institutional rules substantially influence the incidence of severe harms, one would expect that reforming them would be a high priority of the friends of humanity.

It is worth noting that domestic and international nongovernmental organizations (“NGOs”) have devoted a great deal of energy to promoting reform of global institutional arrangements, particularly trade rules. Oxfam, for example, has vigorously pursued a fair trade campaign, which seeks changes both in the trade policies of developed and developing countries, as well as in the rules of the WTO and its organs that govern their interactions.²⁰ Additionally, NGOs that focus primarily on the provision of immediate humanitarian assistance to those in urgent need, such as Médecins Sans Frontières, have increasingly recognized that failing to reform global institutions may thwart their humanitarian efforts.²¹ Global social movements themselves also appear to make global institutional reform one of their chief aims. The debt cancellation movement, for example, had the effect of mobilizing action for harm reduction through immediate debt relief. However, these campaigners have used this successful effort as a precedent for demanding broader reforms of institutions dealing with international finance.²² Even the World Social Forum, celebrated by some as paradigmatically reactive and non-programmatic,²³ has, in recent years, placed great emphasis on developing institutional reforms both domestically and internationally to address the problems caused by neo-liberal domestic and global policies.²⁴

Another consideration that might be advanced in favor of the global institutional reform strategy is that it is often easier to maintain harm-reducing reforms of institutional rules than it is to sustain harm-reducing changes in individual conduct against a background of fixed institutional rules. The reasons for this are varied. Consider, for example, a country deciding whether to adopt policies that seek to eliminate working condi-

20. See Oxfam, *Make Trade Fair Campaign*, <http://www.oxfam.org/en/programs/campaigns/maketradeair>.

21. See Médecins Sans Frontières, *Campaign for Access to Essential Medicines*, <http://www.accessmed-msf.org>.

22. For a description of and rationale for some of these reforms, see Christian Barry & Lydia Tomitova, *Fairness in Sovereign Debt*, 73 *SOCIAL RESEARCH* 649-694 (2006).

23. See Michael Hardt, *Porto Alegre: Today's Bandung?*, 14 *NEW LEFT REV.* 112 (2002).

24. See BOAVENTURA DE SOUSA SANTOS, *THE WORLD SOCIAL FORUM: TOWARD A COUNTER-HEGEMONIC GLOBALIZATION*, available at <http://www.ces.uc.pt/bss/documentos/wsf.pdf>.

tions that expose poorer persons within its territory to a significant risk of injury or ill health. However, if it wishes to adopt such policies and reduce the harms imposed on less-advantaged persons, it may still feel that it cannot take such steps because it will be effectively punished for doing so, since these steps will raise labor costs and divert trade and investment to countries that either do not undertake such policies or enjoy other cost-based advantages.

If particular countries, nevertheless, do adopt such policies and suffer as a consequence, then it will be very difficult for them to maintain the reforms they made.²⁵ They will be scolded for “hurting those that they mean to help” and will be encouraged not only to repeal such reforms but also further to diminish requirements on wages and working conditions, if doing so would attract investment.²⁶ However, if all similarly situated countries simultaneously adopted effective rules demanding improvements in wages and working conditions, or if wealthier countries shared the costs of such reforms, then particular countries might more eagerly and easily initiate, complete, and sustain these reforms. In light of these considerations, it would seem that the friends of humanity would have reason to seek global institutional reforms that demand such measures of all countries, rather than appealing piecemeal to particular countries to undertake them on their own.²⁷

Miller is correct that harm-reducing institutional reforms have historically been quite difficult to establish and maintain. However, these reforms might nevertheless be easier to bring about and maintain than harm-reducing changes in the conduct of individual persons and collective agents, such as companies or states.²⁸ Changes in countries that substantially reduce the incidence of poverty, violence, and other severe harms largely result from fundamental changes in these countries' institutional arrangements. For example, changes that reduce severe poverty and harmful working conditions include the adoption of progressive tax and transfer policies, the establishment of functioning social safety nets, creation of a minimum wage, occupational safety and health requirements, and collective bargaining rights. Thus, friends of humanity have reason to focus on

25. Given the nature of politics, it will often be very difficult to implement or sustain even those policies that would be to their long-term benefit under current global arrangements.

26. Nicholas D. Kristof, *In Praise of the Maligned Sweatshop*, N.Y. TIMES, June 6, 2006, at A21; see Nicholas D. Kristof & Sheryl WuDunn, *Two Cheers for Sweatshops*, N.Y. TIMES MAG., Sep. 24, 2000, at 70.

27. See Christian Barry & Sanjay Reddy, *The False Dilemma of the Sweatshop*, FIN. TIMES, July 24, 2006, available at <http://www.ft.com>.

28. On this point see THOMAS POGGE, *WORLD POVERTY AND HUMAN RIGHTS* (2002), 210-214. That global institutional reforms likely to be adopted as a result of political struggle will be *suboptimal* for severe harm reduction does not mean that the strategy of global institutional reform is inferior to other strategies. A reform may result in institutional arrangements that are harmful, as feasible alternatives exist that would reduce severe harms much more significantly, yet still reduce severe harm more than would be achievable absent any reform. Thus, it does not follow that the strategy of global institutional reform is harmful.

institutional reforms because reforms *can* matter. In the absence of institutional reform, comparable reductions in severe harm do not occur merely because of appeals to individual and collective agents to change their behavior.

Are there differences at the domestic and international levels that would suggest international reform efforts would be much less successful? Great inequalities of power exist between countries. However, elites, eager to protect their privileges and capture institutions that might promote fairer outcomes, dominate and subvert domestic societies for elitist purposes. Elites within domestic societies often have far greater ability to dominate less advantaged persons than powerful countries have to dominate poorer countries. Those controlling the use of coercive force within a country enjoy not only special power and authority within their state, but also the power to alter the claims of others on their citizens and vice versa. However, even though the elites often dominate domestic politics, attempts to introduce institutional reforms that reduce severe harms are not necessarily futile and strengthening social movements within these societies is not necessarily desirable for the friends of humanity. It is unduly pessimistic to argue that any effort to strengthen state institutions, whether in poor or rich countries, would likely do more harm than good because the elites would capture the institutions to promote their aims. Such capture *can* occur and has occurred, but these risks are grounds for caution and care in developing particular institutional reforms rather than reasons to reject the strategy of seeking harm-reduction through institutional reform.²⁹

Further, the strategy of institutional reform is usually viewed in the domestic context not as a *substitute* for, but as a *complement* to, strengthening social movements. The experience of most societies has been that social movements become truly effective in bringing about enduring changes in social conditions when they mobilize behind achievable institutional reforms.³⁰ Additionally, harm-reducing institutional reforms occur in societies with very significant elite capture of key institutions. There are several reasons for this. First, it is easy to overestimate the influence of powerful agents, be they groups within a society or states. The fact that such agents can, at a particular decision point, block reform does not mean that they always can. Second, blocking reform efforts is not always in their long-term interests, particularly when social movements raise the costs of failing to implement such reforms through sustained public criticism, protest, or even civil disobedience.³¹ Finally, the fact that some

29. Cases where self-motivated elites captured institutional reforms include post-Soviet Russia, Ukraine after the Orange Revolution, and South Africa after the end of apartheid. However, it is difficult to maintain that any of these countries would have been better off had *no* institutional reform been enacted.

30. For instance, the U.S. civil rights movement in the 1950s and 1960s powerfully combined a widespread social movement with a focus on specific legislative reforms, such as the abolition of the poll tax, achieved through the Voting Rights Act of 1965. See 42 U.S.C. § 1971 (1965).

31. For example, despite the strong commitment to segregation of the Pieter Willem Botha regime in South Africa, it enacted some reforms to the apartheid regime in

domestic or global institutional reform is in the interests of powerful domestic groups or countries does not demonstrate that it is undesirable to reduce severe harms, as the interests of the powerful and weak often converge. Rich and poor alike stand to benefit from a stable system that guarantees mutual market access, even if some features of any particular system of this type may benefit some more than others.

B. Revealed Preferences

One can derive important information about what actually serves the interests of agents, whether individual, collective, corporate, or state, from what they claim will promote their interests and how they behave in attempting to promote them. Therefore, the stated and revealed preferences of different international agents is a second set of *prima facie* reasons to believe that global institutional reform may be a more promising strategy than Miller would allow.³²

In examining the diplomatic efforts of the United States, what does it most strongly oppose and what does it generally favor? The belief that the U.S., generally speaking, vehemently opposes strengthening international institutions has become commonplace. The U.S. exerts a great deal of diplomatic energy trying to ensure that the independent power of institutions such as the United Nations, the International Criminal Court, and global climate change regimes are undermined rather than strengthened.³³ If reforms that would strengthen global institutions also would, as Miller argues, simply enhance their power by giving them one additional tool of domination,³⁴ then it is hard to see why the U.S. government would go to all this trouble, consuming time and energy and undermining its ability to build coalitions that would be helpful in addressing other national priorities. The revealed preferences of the U.S. suggest that that, far from providing it with yet another tool to promote its interests and dominate weaker countries, strengthening such international institutions would make it more difficult for the U.S. to pursue its interests.

What do weaker and poorer countries want and what do they struggle for? Given the great diversity of such countries, it is difficult to make any strong generalizations. However, it is clear they do not generally oppose global institutional reform, particularly reforms that strengthen such insti-

response to the anti-apartheid movement. The regime did so even while retaining its grip on the powerful state security forces.

32. This does not mean that agents always act in a way that furthers their interests. All agents are imperfectly rational and often lack information that would enable them to promote their interests more effectively. I discuss the possible relevance of these facts to Miller's argument below.

33. See, e.g., David Skidmore, *Understanding the Unilateralist Turn in U.S. Foreign Policy*, 2 FOREIGN POL'Y ANALYSIS 207 (2005); Serge Schmemmann, *U.S. vs. U.N. Court: Two Worldviews*, N.Y. TIMES, July 2, 2002, at A8; William A. Schabas, *United States Hostility to the International Criminal Court: It's All About the Security Council*, 15 EUR. J. INT'L L. 701 (2004); Christopher Marquis, *U.S. Cuts Off Financing of U.N. Unit For 3rd Year*, N.Y. TIMES, July 17, 2004, at A6; Douglas Jehl, *U.S. Going Empty-Handed to Meeting on Global Warming*, N.Y. TIMES, Mar. 29, 2001, at A22.

34. Miller, *supra* note 1, at 501.

tutions. Indeed, many poorer countries expend a great deal of diplomatic energy seeking reforms that would strengthen *and* restructure global institutions such as the Security Council, the World Trade Organization, and so on.³⁵ Weaker countries oppose more permissive rules for military intervention, even when such intervention purports to protect basic human rights, and they jealously defend the right to sovereignty and self-determination. Therefore, they oppose *particular* reform proposals that would strengthen the capability of the Security Council or some other UN body lawfully to intervene militarily. They do so because, like Miller, they fear that the powerful will easily exploit more permissive rules at their expense. However, weaker and poorer countries do not share Miller's more general skepticism about the *strategy* of global institutional reform.

Weaker and poorer countries seem understandably hostile to strengthening any institution in which a few countries exercise a great deal of influence. They also seem, quite understandably, to favor strengthening those institutions in ways that would afford some influence to a broader range of countries. In many cases, they seek simultaneously to strengthen global institutions and to change their structure, such as calling for a stronger and more broadly representative Security Council.³⁶ With respect to the WTO, for example, they call for changes in the overall structure of negotiations, the dispute resolution body, the interpretation of particular agreements and the kinds of incentives that can be used to make countries comply with WTO rules.³⁷ They want the WTO's power to be cut back in some areas, such as intellectual property, but extended in others, such as regulation of subsidies. They also desire for its rules to be more flexible in some areas but more rigid in others. Very few nations even consider exiting from the WTO itself. They maintain that the WTO, though flawed, is a cooperative system for the governance of international trade that improves upon its predecessors by offering countries more reliable access to one another's markets, and a fairer method of resolving trade disputes. In many cases, the WTO's Dispute Settlement Body finds against developed countries and in

35. The African Union, for instance, holds a nuanced position on the Security Council. It supports increased authority for the Security Council by allowing preventive deployments of peacekeepers to zones of potential humanitarian crises and simultaneously insisting upon a restructuring of the Council to include two permanent seats for African countries. Similarly, the AU supports a strong but independent peacebuilding commission. See AFR. UNION, Executive Council, *The Common African Position on the Proposed Reform of the United Nations: The Ezulwini Consensus*, Ext/EX.CL/2 (VII) (Mar. 7-8, 2005).

36. See, e.g., Nirupam Sen, *Nonstate Threats and the Principled Reform of the UN*, 20 ETHICS & INT'L AFF. 229 (2006); Michael C. Wood, *Security Council Working Methods and Procedure: Recent Developments*, 45 INT'L & COMP. L.Q. 150 (1996).

37. See, e.g., UCHE EWELUKWA, AFRICAN STATES, AGGRESSIVE MULTILATERALISM AND THE WTO DISPUTE SETTLEMENT SYSTEM: POLITICS, PROCESS, OUTCOMES AND PROSPECT (2005), available at http://www.cceia.org/resources/reports_papers/5213.html; ROBERT Z. LAWRENCE, CRIMES AND PUNISHMENTS? RETALIATION UNDER THE WTO (2003); Bernard Hoekman et al., *Special and Differential Treatment of Developing Countries in the WTO: Moving Forward after Cancun*, 27 WORLD ECON. 481 (2004); Andrew H. Charlton & Joseph E. Stiglitz, *A Development-friendly Prioritisation of Doha Round Proposals*, 28 WORLD ECON. 293 (2005).

favor of developing countries, leading to policy changes that arguably benefit developing countries.³⁸

Arguments related to revealed preferences are vulnerable to two kinds of objections. First, *governments* of poorer countries do not necessarily hold the same views on specific policies as the majority of their citizens. Governments of poorer countries are, like governments of rich ones, often dominated, or at least unduly influenced, by elite groups within the country. However, there is widespread support among the populations of poorer countries for the reforms mentioned above. This is because such reform efforts concern matters on which the interests of elites and others within poorer societies seem to converge. For example, few Argentineans or Brazilians, whether rich or poor, benefit from current WTO penalties, which are insufficient to dissuade rich countries from using subsidies or protective tariffs to benefit domestic agricultural producers. Additionally, few Indians or Chinese would benefit were they to withdraw from the WTO, thereby losing the significant benefits they currently enjoy due to liberalization in services and textiles. Second, it might be argued that powerful countries, such as the U.S., which typically seek to weaken global institutions even as poorer countries seek to strengthen them, are acting irrationally or on deeply flawed information. Thus, the revealed preferences of powerful countries give us little guidance in determining what strategies would *actually* serve their interests. However, the burden of proving this assertion should certainly fall on its proponents, and the standard for establishing their case ought to be quite stringent. The evidence presented in Miller's article would not meet such a standard.

Since Miller supports the strategy of strengthening global social movements, it is also worth considering the revealed preferences of those who participate in such movements. Here again the diversity of participants in global social movements makes generalization difficult. They campaign variously for debt relief, changes in the policies of international institutions, such as the World Bank and the International Monetary Fund, reform of global trade rules, and against the Gulf War. However, a great many are focused on, and committed to the cause of, global institutional reform. As noted above, a major theme in the World Social Forum movement has been the necessity of linking institutional arrangements and critical responses to existing policies with reforms that are feasible to bring about and sustain. It is quite difficult to see how such movements can be sustained, unless they move beyond reacting negatively to disfavored policies and towards articulating institutional arrangements they believe would prevent severe and widespread harm.

38. See, e.g., Understanding between Malaysia and the United States Regarding Possible Proceedings under Articles 21 and 22 of the DSU, *United States—Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS581/16 (Jan. 12, 2000); Appellate Body Report, *EC—Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27/AB/R (Sep. 25, 1997); Appellate Body Report, *United States—Subsidies on Upland Cotton*, WT/DS267/R (Sep. 27, 2002).

C. Visibility

There are other, less straightforward advantages of seeking to establish robust global institutions. One is that global institutions tend to be highly visible, and their most unjust features, consequently, tend to be conspicuous. There is far greater awareness today than there was ten years ago about the nature of international trade rules. Unlike the preceding General Agreement on Tariffs and Trade, a set of rules with an odd name about which few non-specialists knew, the establishment of the WTO made rules governing international trade more visible. Were it not for the fact that this highly visible institution came into being, it is difficult to imagine that the growth of a vigorous global social movement focused on international economic justice would have taken place so quickly, or that it would have been capable of exercising such influence over public discussion and policy on trade issues. Due to the visibility of the WTO rule, even unjust features of global institutions that have been implemented as a result of undue influence by major powers can lead to the mobilization of social movements and countries seeking to protect their more vulnerable members. This itself can spawn meaningful reform.

Miller follows developing country governments and the friends of humanity more generally in identifying the Trade Related Intellectual Property Rights agreement as a deeply problematic result of the Uruguay Round accords.³⁹ Miller is right to single out the TRIPS agreement as a paradigmatic example of the kind of harms that stronger international rules can generate. However, it is important to recognize what has happened in the ten years since this agreement was established. Developing country governments and civil society organizations in developed and developing countries mobilized to change the way in which the intellectual property system was understood within the WTO. These efforts particularly focused on ensuring that developing countries would be free to grant compulsory licenses during public health crises, and on allowing developing countries to engage in practices, such as production and importation of generic versions of life-saving medicines currently under patent, that the TRIPS agreement initially appeared to rule out or narrowly circumscribe.⁴⁰ Would such awareness of intellectual property issues and mobilization to ensure fairer rules have occurred had they not been under the auspices of the WTO? It seems very unlikely that they would have been. Additionally, it seems equally unlikely that the developed countries interested in certain kinds of intellectual property protection would have been unable to promote their interests outside of the WTO. Such countries are far more successful enforcing stricter intellectual property protections through bilateral trade agreements or by threatening unilateral punishment for perceived

39. See Miller, *supra* note 1, at 507.

40. See Carlos M. Correa, *O Acordo TRIPS e o acesso a medicamentos nos países em desenvolvimento*, 3 SUR—REVISTA INTERNACIONAL DE DIREITOS HUMANOS 27 (2005).

infringements.⁴¹

D. The Unattractive Alternative: Bilateral Bullying

Trade allows us to note another advantage of the strategy of global institutional reforms, particularly those that strengthen global institutions: the threat of bilateral bullying. Given Miller's view of powerful international actors' aims and the means that they are willing to employ to achieve them, a world without global institutions or with only weakened institutions is not an attractive prospect. Powerful countries will do their very best to "divide and rule" weaker and poorer countries, bullying them in ways that would be difficult to resist, unless these countries acted collectively.⁴²

It is for these reasons that the WTO no longer serves as an effective vehicle for developed countries to secure stronger intellectual property protections in poorer countries. The U.S. has intensified efforts to establish bilateral agreements with poorer countries in which they are afforded much stronger intellectual property protections than they enjoy under the TRIPS agreement.⁴³ As a result, countries such as Brazil and many other developing countries are demanding that negotiations over intellectual property return to the WTO, so that collective bargaining among groups of countries can occur.⁴⁴ This example provides a general caution against moving away from a model of trying to reform and strengthen international institutions.

There are significant advantages to strengthening global institutions, which allow poorer or weaker countries to build coalitions to promote and protect their joint interests in ways that they could not do in isolation. In the absence of such institutions, a decentralized system of bullying and exploitation of the vulnerable by the strong would likely remain in place.

Conclusion

The friends of humanity must have a more nuanced, differentiated approach towards global institutional reform. They should heed Miller's wise cautions about the ways that institutional arrangements, whether domestic, regional, or global, can be subverted to serve the interests of the

41. See Jagdish Bhagwati & Arvind Panagariya, *Bilateral Trade Treaties Are a Sham*, FIN. TIMES, July 14, 2003, at 17; see also MICHAEL P. RYAN, KNOWLEDGE DIPLOMACY: GLOBAL COMPETITION AND THE POLITICS OF INTELLECTUAL PROPERTY (1998).

42. Bhagwati & Panagariya, *supra* note 41.

43. See Frederick M. Abbott, *Intellectual Property Provisions of Bilateral and Regional Trade Agreements in Light of US Federal Law* (U.N. Int'l Center for Trade & Sustainable Dev.) Issue Paper No. 12, (2006), available at http://www.unctad.org/en/docs/iteipc20064_en.pdf.

44. See Communication from Brazil, India, Pakistan, Peru, Thailand and Tanzania, *Doha Work Programme—The Outstanding Implementation Issue on the Relationship Between the TRIPS Agreement and the Convention on Biological Diversity*, WT/GC/W/564 (May 31, 2006).

powerful. However, friends of humanity should not lose sight of the great potential that institutional reform holds for improving the living conditions of people throughout the world.

