

Individualism & World Order

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D of disagreement about domestic order. At its heart are the same questions.

How much power should be given to centralized decision-making as opposed to decentralized decision-making and markets? Should regulatory authority be exercised through democratically accountable mechanisms or elite and bureaucratic ones? What is really at stake thus becomes much clearer when more traditional political concepts are used to elucidate such relatively opaque terms as sovereignty, multilateralism, global governance and **customary international law**.

...First, what kinds of international organizations and agreements are justified? Classical liberalism provides a principled framework that approves of trade agreements that keep capital markets open, because these agreements create a market for governance for competing sovereigns. It is more skeptical of other global multilateral agreements, be they environmental accords, human rights conventions or an agreement on an international criminal court, because the bureaucracies needed to run them may create new centers of unaccountable powers.

Second, by what process should agreements be reached and interpreted? What role should non-governmental organizations (NGOs) play in generating international law? Before the rise of classical liberalism, specific factions, like the aristocracy, or self-appointed interpreters of natural and divine law, such as augurs or kings, generated law. The classical liberal project has advanced through replacing this structure with representative government and careful checks and balances. Treaties have the potential to make full use of these processes, and a world of increasingly democratic nations is beginning to realize that potential. **In contrast, reliance on a customary international law shaped by NGOs and law professors is anachronistic—a return to generating norms by narrow factions and a secular priestly caste.** (Page 41)

...Thus, modern customary international law rules are likely to have built-in biases against free markets and other classical liberal ideas. For instance, many scholars have tried to argue that customary international law contains something called the precautionary principle—a rule that prohibits the introduction of new technology unless all risks from the technology can be ruled out. This principle obviously would have more appeal to those who are already well off than to those for whom new technology may be life saving. It also represents a departure from the cost-benefit analysis that the United States for the most part applies to its own domestic regulations, further suggesting that principle does not reflect the practice of the democratic nations.²

2 or more on the precautionary principle, see Lawrence A. Kogan, “Exporting Europe’s Protectionism”, *The National Interest* (Fall 2004); and Roger Scruton, “The Cult of Precaution”, *The National Interest* (Summer 2004).