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Individualism & World Order

John O. McGinnis

DISAGREEMENT about world order is a continuation 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.

Classical liberalism—the philosophy of limited and accountable government—provides an appropriate framework for analyzing the foundation of global order because liberalism actually began in discussion of international matters. After all, Adam Smith and David Ricardo initiated the case for classical liberalism two centuries ago when they attacked nation-states' restrictions on international trade.

This same framework of ideas provides coherent and consistent answers to the two most salient questions of international legal order. 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.

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Agreements & Institutions

CLASSICAL liberalism proceeds from two principles. First, individuals should be free to interact with one another as they choose, subject to the proviso that they cannot harm others through force or fraud. Second, government's object is to protect these freedoms and the property they generate. The dilemma for the latter objective is that a government powerful enough to achieve this goal can also threaten freedom and property. Thus, another objective of classical liberalism is to restrain the exercise of official power and assure that it is confined to its proper function of providing public goods—those that the market and family cannot supply.

Thus, the classical liberal international order should advance freedom by breaking down barriers to exchange and other voluntary interactions among people of various nations. And it should welcome ways of restraining governments from acting beyond their legitimate purposes, so long as these restraints do not unduly empower international bureaucracies.

It might be thought that classical liberalism thus simply translates in international matters to a Wilsonian concern with advancing democracy at every turn. But even in a democracy large and diverse enough to inhibit majority tyranny, minority factions in the form of special interests can use their greater leverage to gain government resources at the expense of the public. Mechanisms beyond simple democracy are therefore needed to assure, in the political scientist Mancur Olson's phrase, that a nation is governed by an "encompassing interest" rather than by special interests. Such an encompassing interest—the diffuse majority or supermajority of citizens—has less incentive than special interests to engage in the expropriation of resources through government action. It would then be extracting resources largely from itself. The best international mechanisms thus do not promote simple democracy but instead promote governance by the encompassing interest within various nation-states.

Peaceful competition among sovereign nations furnishes a primary mechanism for empowering the "encompassing interest" of a nation and for reducing the ability of interest groups to take resources from the government. Under what political scientists term "jurisdictional competition", sovereigns compete by providing efficient levels of public goods. If they do not, investment will dissipate and companies will flee the jurisdiction. Such competition thereby restrains leaders from unduly rewarding themselves or their supporters and encourages policies that will make their people prosperous. Competition also permits each nation the opportunity to learn from good policies that others adopt.

Decentralized lawmaking by sovereign nations also has the virtue of allowing different nation-states to satisfy the preferences of diverse peoples in the world. It is not too much to say that jurisdictional competition and the satisfaction of diverse human needs are the defining virtues of modern sovereignty. In sharp contrast, centralized power exercised in the international sphere has the potential over time to become even more vexatious than domestic centralized power, for three reasons.

First, the international arena is opaque to most citizens, and this lack of transparency empowers leaders and the factions that support them. Concrete examples of the difficulty that citizens have in controlling international organizations abound. Brussels-based bureaucrats are more distant than those in the EU's home nations. It is thus not surprising that they engage in all sorts of financial shenanigans, including the recent expense-account abuses, that would never

be tolerated at home. Second, more is at stake in formulating international rules. If a faction or interest group succeeds in obtaining a regulation that disadvantages competitors on a global scale, it can gain a world's worth of monopoly profits. Finally, international regulations can extinguish jurisdictional competition that restrains overreaching behavior by domestic agencies.

From these considerations flow three general criteria to determine whether international agreements and organizations concerning trade, human rights, regulation and an international criminal court are justified.

Mutuality of Gains: Internationalizing structures of regulatory authority are generally appropriate only when the gains could not be realized by the nations acting on their own. This flows from a basic principle of subsidiarity. Localized institutions are generally easier to control and are more likely to reflect diverse preferences.

Facilitating the Encompassing Interest: International agreements and institutions should facilitate the governance of participating nations by an encompassing interest. Thus, agreements that intensify international jurisdictional competition are always welcome. In contrast, in areas where jurisdictional competition is not possible, establishing international rules can sometimes be more desirable.

Light Elaboration Mechanisms: The final criterion concerns the substantiality of the mechanism needed to make international agreements work. If complex international mechanisms creating substantial regulatory authority are needed to sustain the agreement, they run a higher risk of capture by special interest groups, because such institutions are distant from the citizens affected by them. Accordingly, even when nations have the possibility of realizing mutual gains from an international framework, these gains may be outweighed by the costs generated by the international framework itself. For instance, nations may lack incentives to control a particular kind of cross-border pollution unless they act together, but the utility of an international pollution control agreement nevertheless depends on comparing all the costs of enforcement, including the costs of special interest capture, with the gains from pollution control.

Specific Global Agreements

HAVING established the general criteria, let us proceed to examine the classical liberal approach to agreements and institutions concerning international trade, human rights, regulation of such matters as health, safety and the environment, and a criminal court.

Global Trade Agreements: Trade agreements, including agreements to permit free trade in goods and services and to preserve open capital markets, are the international agreements easiest to defend. First, they create wealth among all nations that are parties to them. According to the well-established theory of comparative advantage, nations prosper when they specialize in the goods and services they can produce most efficiently. Thus, the mutuality of wealth creation gives all nations a stake in sustaining these agreements.

It is true that unilateral free trade is beneficial, but multilateral free trade creates even greater benefits. The more fundamental reason for trade multilateralism, however, lies in domestic political economy. Protectionist interest groups in modern democracies can get politicians to create obstacles to trade by exchanging their political support for high tariffs. But by offering the possibility of reduced tariff barriers in other countries in exchange for lower tariffs at home, global trade agreements mobilize exporter groups to fight protectionist groups on behalf of free trade. Thus, not only does free trade per-

mit mutual gains, but as a political matter these mutual gains are contingent on the actions of other states. The *political* contingency of tariff reductions in one country on tariff reductions in other countries provides the best rationale for trade policies to be pursued through a world structure, like the World Trade Organization.

The second advantage of trade agreements is that they need relatively simple elaboration mechanisms that are unlikely to be captured by interest groups. Reducing tariffs takes no positive regulation at all. It is true that some nations may seek to replace tariff barriers with discriminatory health and safety regulation. But eliminating such non-tariff barriers to trade does not require a huge administrative apparatus either, because the WTO can police them by requiring that nations not discriminate in their rules against foreign imports. The WTO does not need an elaborate bureaucracy to formulate substantive health and safety regulations itself.

Other elements of global economic integration also empower the encompassing interest within nations by facilitating jurisdictional competition. For instance, multilateral agreements on capital flows increase the mobility of capital. Mobile capital, in turn, increases the pressures of jurisdictional competition among nations, because people tend to invest in nations with sensible regulatory and tax burdens and with respect for the rule of law. While such agreements sometimes require regulatory changes in a nation's legal system, their overall thrust is deregulatory and therefore they do not require substantial international regulatory structures. Thus, open capital markets and investment agreements help make sovereignty work on behalf of the encompassing interest of society even though individuals cannot easily move from one nation to another.

Such multilateral economic agreements might ultimately create a world constitutive mechanism that resembles aspects of the original Constitution of the United States. The Constitution promotes decentralized order by creating a market for governance where open capital markets and free trade force state governments to deliver good and efficient government. As the economist Barry Weingast has noted, this system sustained very substantial growth and limited governmental expenditures through much of the 19th and early 20th centuries. Similarly, the jurisdictional competition afforded by the world trading system in the era of globalization performs these same beneficial functions today.

Human Rights: The term "human rights" covers a variety of very disparate matters from property rights to welfare rights to civil rights. The advisability of international rules on human rights depends upon the substance of the rights protected. Unfortunately, some international agreements, like the Covenant on Economic, Social and Cultural Rights, include welfare rights, and many internationalists wish to expand them. These are the worst kind of rights to frame at the international level.

First, they violate principles of subsidiarity. Even assuming that government should guarantee some kind of welfare rights, it is clear that the particular guarantees must depend upon the budgetary constraints of individual nations. But if welfare rights are to take account of the differing circumstances of various nations and their traditions, substantial discretion must be given to international institutions that would enforce them. This discretion, in turn, empowers international bureaucrats and other elites who will determine the appropriate level of guarantees. Second, international agreements should not lock in specific economic and social policies that are likely to change with the political winds.

Civil rights connected to democracy, like voting, and the panoply of rights con-

nected to the criminal justice system are more plausible for inclusion in international agreements than welfare rights but less plausible than international trading rights. Unlike international trade agreements, civil rights agreements lack the strongly contingent nature that provides the best justification for multilateralism. The international elaboration of civil rights by a multilateral mechanism in one nation does not directly generate civil rights in another.

Nevertheless, the case for global decentralization is weaker for civil rights than for economic matters. The relative immobility of persons in a world with relatively strict immigration laws inhibits jurisdictional competition in civil rights, whereas the relative mobility of companies and capital aids jurisdictional competition in economic regulations. Because of the inefficacy of jurisdictional competition in this area, internationalizing core civil rights, including the right to be free from torture or genocide, is beneficial.

But there are alternative ways of promoting civil rights more generally that carry less risk of international structures that may impose mistaken or ill-fitting conceptions of rights on particular countries. International trade agreements may themselves provide a mechanism. These agreements facilitate the expansion of civil rights not through fiat but through encouraging the wealth creation that will generate pressure for such rights internally. Historically, this theory accords with the evidence that a rising middle class demands civil and political rights to help secure its swelling wealth against the dangers of tyrannical government and political instability.

Moreover, a bottom-up model of diffusing human rights through economic growth will lead to a bundle of rights that better fits the needs of each nation. Rights generated internally are more likely to take account of the particular preferences and traditions of individual countries. They are also likely to be more resistant to political backlashes, because they will be more securely rooted in the soil of these countries.

The potential of international trade agreements to cascade into civil rights has one other important advantage over the direct international pursuit of human rights, since the most glaring defect of human rights agreements is that they often do not help the peoples who are most oppressed. In fact, a recent study by Oona Hathaway of Yale Law School has shown that nations that signed human rights treaties sometimes had worse human rights practices than would otherwise be predicted, because they used their accession to deflect criticism of their actions.

In contrast, despots are more likely to honor trade agreements because expanding trade will make their nations richer and therefore redound to their personal advantage by permitting them to increase their tax revenues, not to mention their personal wealth. By offering attractive bait to hook despotic regimes, trade agreements may actually provide a more effective, if circuitous, route to securing civil and political rights than civil and political rights conventions themselves.

International Regulatory Agreements: The push for new international regulatory regimes often goes by the name of "harmonization." This term conjures up an image of citizens of many nations happily singing in harmony. But nations, like individuals, differ in their circumstances and endowments, and therefore the process of imposing similar regulations is likely to give rise to the opportunity for some nations to take resources from others. Some domestic groups will also systematically benefit from harmonization because they will be in a position to influence them to their advantage. For this reason, regulatory harmonization is always in danger of becoming the song of the oligarchs.

Accordingly, with one important exception, international agreements on regulatory issues are more problematic than trade agreements because they require many more complex institutions of elaboration that give additional leverage to special interests. First, mutual gains are unlikely to arise from international multilateral regulations in such circumstances. Countries differ in their level of development, traditions and preferences of their people and are likely to choose different regulations. While it is true that a multilateral regulatory regime could theoretically permit different nations to forge different regulations, the principle of subsidiarity suggests one jurisdiction should not frame and potentially distort another jurisdiction's regulatory regime.

Second, unlike the case of international agreements on trade, international regulation interferes with the operation of markets. This feature also necessarily makes its enforcement more bureaucratic, because the relevant agreements will need to formulate regulations rather than simply remove barriers. International regulatory regimes also may reduce jurisdictional competition among sovereign nations. Thus, if trade agreements have the virtues of the original Constitution, then regulatory multilateralism has all the dangers of command and control regulation with the added disadvantage of distance from citizens.

The one area in which the welfare gains from coordinating a uniform standard might outweigh the losses concerns cases of externalities or spillovers—where one nation, for instance, pollutes the territory of another. That is the justification given for the Kyoto agreement on climate change. Because of such spillovers, no nation in the absence of an international agreement has the appropriate incentives to control pollution: Since each country does not pay the full cost of its pollution, each country lacks the appropriate incentives to reduce pollution to reflect its real costs and benefits.

Nevertheless, even in such circumstances multilateral regulatory agreements do not always provide the proper solution. International regulatory regimes create the potential for political externalities, costs that one faction imposes on others through manipulating the regime. For instance, newly emerging industries may see particular kinds of pollution regulations as a way of driving up the costs of their rivals in other nations. Such political externalities are potentially very vexing in the case of international agreements, because the public cannot easily control international bureaucracies.

International agreements on regulations thus should meet four conditions. First, the externalities or spillovers from one nation to another must be clear. Second, the agreements must offer a real prospect of solving the externality problem. Third, other less centralized mechanisms fail to accomplish the job. Fourth, the regulatory regime must devise restraints to prevent multilateral institutions addressing externalities from becoming an engine of interest group power. Even under these conditions, however, global regulatory multilateralism does not reinforce the decentralized order and generate the cascading benefits of global trade agreements.

International Criminal Court: While the United States has not yet acceded to treaties establishing the International Criminal Court (ICC), most nations of the world have agreed to it. While limited in jurisdiction to certain heinous crimes, the ICC suffers from many of the same problems as other international regulatory regimes because criminal law is a species of regulation. The apparatus for enforcing international criminal law, like that for enforcing international regulations, will prove less accountable than criminal law enforcement in nations with democratic and accountable governments.

In particular, the ICC necessarily contemplates, like other systems of criminal justice, lodging substantial discretion in a prosecutor. A domestic prosecutor—himself elected or appointed by an elected leader—faces constraints that make it easier for the public to monitor his conduct. Moreover, his performance naturally interests the public whose happiness is acutely affected by their local crime rate.

In contrast, the lack of effective constraints on an international prosecutor is striking. While governments would appoint him through consensus, he would be accountable to no particular official. Because his docket would consist of cases that, for all their moral importance, would not be likely to affect the crime rates in many jurisdictions, he will come under less popular scrutiny. Nevertheless, ethnic and ideological interest groups will intensely focus on the symbolic value of prosecutions in the areas over which the court has been given jurisdiction.

In this way, the ICC may become a threat to the very rule of law its advocates want to inculcate in the international order. Its multilateral structure is not amenable to the control by the encompassing interest of citizens in the nations that are a party to it. It is surprising that enthusiasm for an international criminal prosecutor continues unabated in many quarters of the United States when we have become disillusioned with our own institution of the independent counsel. The lack of accountability and risk to neutral principles that an international criminal prosecutor poses are very similar to those created by the office of independent counsel, except this time the potential scope of abuse is global.

Concern about empowering a global prosecutor does not mean that the world legal order should not find innovative means to prosecute such crimes as genocide. Particular international tribunals, like the Rwanda tribunals, established for particular crimes in nations that lack democratic and accountable governments, can deter some of the worst crimes without creating an open-ended mechanism more subject to abuse. The touchstone here, as elsewhere, should be the creation of international structures that preserve accountability.

Generating International Law

BEYOND ADDRESSING the substantive shape of international rules, classical liberalism offers guidance on how best to create them. There are, broadly speaking, two ways of generating international rules. One is through express global agreements among the nations of the world. Another is through customary international law. Customary international law consists of rules that courts, international or domestic, or "publicists"—that is, international law professors—create based on their own assessment of what are widespread state practices.

The differences between these ways of generating international law may at first seem technical. But placed in a more general political context, they capture two very different views of the sources of political legitimacy—roughly corresponding to those now prevalent in the United States and "Old Europe." Creating international law through global treaties like the GATT suggests that contracts reached through express bargaining among nation-states will constitute the international order. Under this paradigm, solutions to international problems are particularistic with roots in the political legitimacy of sovereign nations. Government officials give assent to the written terms by which their people will be bound. The United States, with its view that the nation-state is still key to international relations, inclines to this view.

In contrast, modern customary international law depends on inferences about state behavior that jurists and publicists

make. Moreover, because the principles it generates are not embedded in the context of actual agreements, customary international law has a tendency toward generating principles that become independent of context. In short, customary law can become a kind of ersatz natural law. Europe, which has a less happy history of the nation-state, not surprisingly has a preference for a method of international-rule generation less rooted in sovereignty.[1]

The debate about how to generate international law is also a debate about the centralization and the accountability of power—key issues for classical liberalism. Agreement to specific terms by a large number of nations—increasingly nations with representative forms of government—provides some, albeit not conclusive, indication that the treaty is beneficent. In contrast, customary international law provides far less firm evidence of consensus, because professional and judicial elites rather than sovereign states have substantial influence in framing such rules. Because there is as yet no global *demos*—no disciplined political structure for measuring global sentiment—those who want to fashion rules outside of the treaty context will necessarily have to make decisions with relatively little democratic input. They will be making discretionary decisions, more than occasionally relying on themselves as the prophets of international virtue.

IN THE increasingly democratic modern world, multilateral treaties have several advantages in representing the consensus of the peoples of the world and limiting the discretion of unaccountable elites. The first advantage of global international agreements over customary international law is the precision of a written text. This clarity is important. If a large number of nations with representative governments reaches a consensus, the agreement has a certain presumption of beneficence. Of course, a residue of ambiguity infects all written texts, but at least there is something in writing, in contrast to customary international law, which generates no text. Thus, the scope of customary principles is often less clear and more subject to manipulation.

Second, multilateral treaties provide assurance that states have actually agreed upon their requirements as obligatory under international law. In contrast, it is difficult to tell whether states have accepted a rule of customary international law. Customary law principles are traditionally created only when states both widely follow a practice and widely accept it as law. But substantial debate exists over what can constitute evidence of state practice. For instance, some scholars suggest that only acts of states can constitute state practice, while others suggest that statements, like UN resolutions, can also be evidence of state practice.

Furthermore, it has always been understood that the ubiquity of a state practice does not necessarily mean nations are engaging in a practice because they believe it is law. Accordingly, scholars frequently debate whether a practice reflects a sense of national obligation or merely prudence or some other motive. This kind of uncertainty also offers room for elites to shape the rules to their liking. Happily, such uncertainty does not exist with multilateral agreements, because by signing them nations show what provisions they accept as international obligations.

Third, treaties reduce what economists would call the "agency costs" of international lawmaking—the difficulty of making sure that the rules to which rulers agree reflect the interests of their citizens. In the growing number of states that have

[1]For a discussion of the different general viewpoints of Europe and the United States in international relations that parallels the legal differences described here, see Francis Fukuyama, "Has History Restarted After Sept. 11?", John Bonython Lecture (August 8, 2002).

representative forms of government, the representative branch must ratify the treaty, thus providing better assurance that the agreement reflects popular consensus. In contrast, bureaucrats and judges, rather than officials accountable to voters, determine the content of customary international law.

Worse still, those responsible for determining the content of customary international law are in fact radically unrepresentative. Law professors—the modern publicists responsible for the development of customary international law—are predominantly from the developed rather than developing world. Second, even within their own nations, law professors, like intellectuals generally, have distinctly unrepresentative views—very often to the left of the society as a whole. In the United States, for instance, Democratic-leaning law professors outnumber Republican-leaning law professors by about five to one.

The combination of these two biases can be quite powerful. Because academics come from countries that are already wealthy, they profit less from growth than the average global citizen, who may be more willing to take some risks to better his relatively low standard of living. Because academics lean to the left side of the political spectrum they are also less sympathetic to entrepreneurial ideas. 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]

The problem of unrepresentativeness affects other groups with power to create customary international law. International Court of Justice judges are always lawyers and share the characteristic biases of the legal class generally—an interest in "fair" process, rather than economic growth. Moreover, institutionally they possess a vested interest in expanding the power of international law, which is likely to mean a bias in favor of finding evidence of widespread acceptance of a practice among states even when one does not exist.

Some have conceded that treaties should have priority over customary law when the two conflict, but suggest that customary international law still plays a useful role in generating new rules in addition to treaties. But in the modern world, customary law can achieve little new that treaties cannot do better. In the past, when it was difficult for officials of nations to meet because of information and transportation costs, it was sometimes useful for scholars and courts to hypothesize what rules all nations would agree to, if their representatives had the opportunity to meet and deliberate. But with jet planes and the Internet, no such barriers prevent any set of nations from reaching agreement.

Others have argued that modern customary law is more likely today to represent a popular consensus—because NGOs are taking a greater role in framing and interpreting it. But permitting NGOs, rather than increasingly democratic

[2]For 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).

nation-states, to shape international law in fact makes it more likely that international law will represent the views of a particular set of factions rather than the consensus of citizens of nation-states. NGOs are interest groups often extremely unrepresentative of the average citizen. Greenpeace, for instance, no doubt cares passionately about the environment and would like to press for the precautionary principle, but Greenpeace is a predominantly Western organization whose views are unrepresentative even of many citizens in the West.

To be sure, unrepresentative factions also often have disproportionate power in domestic polities as well. But the problems are worse at the international level. First, the cost of organizing an international faction is higher, and this higher expense screens out many groups who can counterbalance narrow interests. Even more fundamentally, domestic mechanisms, like the separation of powers and bicameralism, make it harder for unrepresentative factions to control policy. Finally, because of elections, democratic states take into account the preferences of citizens even when not tied to any faction. For all these reasons, NGOs' influence on the content of international law often undermines rather than enhances the likelihood that it will represent popular consensus.

Enforcement of World Order

THE ENFORCEMENT of international agreements also should respect the sovereignty of nation-states both to preserve government accountability and to limit the power of international elites. First, the agreements must be enforced in accordance with their terms. It might be thought this would go without saying, but many scholars now espouse using the mechanisms designed to enforce a specific agreement, like the WTO, as a vehicle for enforcing more general international law principles, including customary international law. But new rules of customary international law are not likely to be as beneficent as treaty provisions and thus certainly have a weaker claim to enforcement. Moreover, even if nations have tacitly consented to some principle of customary international law, they have not consented to its enforcement by a mechanism established for enforcing a completely different set of obligations. Thus, to maintain accountability, an international enforcement regime should enforce obligations only under its own regime.

Second, decisions of international judicial bodies interpreting international law should not generally be given "direct effect." Direct effect is a term of art in international law that means that the decision of the international tribunal is binding as a matter of a nation's domestic law and is thus implemented directly without any intervening action of a domestic legal authority. The problem with direct effect is that it weakens the accountability of government for its decisions and thus over time will make those decisions less likely to be good ones. Judges on domestic tribunals like the United States Supreme Court are generally appointed or elected. Thus, representatives of the people or the people themselves are at least indirectly accountable for their decisions. In contrast, the representatives and people of a nation affected by an international law decision will not be accountable for the majority, if any, of the judges on international tribunals.

Moreover, citizens in nation-states cannot easily control international bureaucracies and thus international tribunals may exceed their authority. One way of keeping such a tribunals on a short leash is to prevent their decisions from taking automatic effect and requiring that they be implemented by affected nation-states. The tribunals will then be more cautious in their interpretation, holding

nations to account only when they are in manifest violation of their international agreements.

Indirect enforcement can nevertheless be effective. For instance, if a nation does not comply with a WTO tribunal ruling, the WTO now authorizes the offended nations to withdraw trade concessions from the offending nation. As Mark Movsesian of Hofstra University has shown, the withdrawal of concessions in turn can mobilize the exporters who are harmed by the withdrawal to lobby their government to comply. For example, when the WTO tribunal held that President Bush's imposition of additional tariffs on steel was illegal, Europeans were authorized to withdraw concessions that would have harmed exporters in states key to the President's re-election chances. President Bush complied with the decision and rescinded the tariffs.

This indirect enforcement makes use of the decentralized economic order of a nation rather than centralized power to promote compliance with international law. It has the additional virtue of providing a check on the potential overreaching of those charged with interpreting international law. Thus, like the substantive structures of international trade and the procedural processes of treaty ratification, this kind of international enforcement helps assure accountability under international law.

New technologies have so radically lowered the costs of information and transportation that globalization of some form is inevitable. But the issues of political structure that globalization raises are not novel, because new technology has not changed human nature. Thus, there is no need for a radically new philosophy of international governance—just the adaptation to the international order of principles that previously succeeded domestically.

Globalization can create both economic prosperity and better governance by sovereign states. But we can succeed in that goal only by creating international structures and organizations with the accountability, checks and balances, and decentralized rule-making that have marked the progress of liberty and prosperity in the domestic sphere. Otherwise globalization may usher in an era where global governance is a mask for uncontrolled power that will inevitably contract the scope of human freedom. □

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