

Preface

Traditional political theories, such as those of Locke and Montesquieu, were based on the assumption that each nation was sovereign and independent. Individual freedoms could be protected at the national level in those nations that had the institutions to do so. International law and organization limited national independence only slightly, as through regimes for the protection of foreign business or prisoners of war, and rarely affected individual freedom.

This pattern is failing. The need to reach beyond borders to achieve military security, the globalization of economic trade and investment, the rise of planetary-level environmental issues, the extension of human rights ideals, and the increased role of transnational religious groups have all weakened assumptions of national sovereignty and independence, and have, in some cases, undercut national mechanisms for the protection of individual rights. All these trends have also given increased power to international organizations, which only rarely have mechanisms to protect individual freedom.

Consider the following examples:

In response to terrorism, the United States has extended its military power throughout the world, and is applying its own version of criminal law through extraterritorial prisons and interrogations.

The need to be competitive in international trade is creating strong pressures for corporations to weaken pension and health plans and for nations to weaken security nets for labor.

The United Nations has provided the effective government for close to 10 million people in areas such as Kosovo and Sierra Leone.

The decisions of the World Bank and of the International Monetary Fund create the effective economic law in nearly all the world's poorer nations, and shape the organization of the banking system in middle-income nations such as Korea and Thailand.

International financial markets are affected by global investment policies of the sovereign wealth funds held by a number of emerging national governments.

Agreements negotiated in the World Trade Organization profoundly affect national standards for genetically modified foods; those negotiated in the International Conference on Harmonization affect the regulation of pharmaceuticals; those negotiated in the UN Economic Commission for Europe affect the regulation of automobile tires for safety. All of these international regulatory processes transfer significant effective power from legislatures to executives.

These examples reflect strong and probably irresistible economic, technological, and social trends. Unlike many critics, particularly those on the left, I do not oppose these trends—in fact, I think that many aspects of these various forms of globalization will benefit humanity and will help to integrate the poorer nations of the world into a more prosperous and more healthy community.

However, these trends pose many threats to our freedoms and to our traditional methods of protecting those freedoms. In this book, I therefore attempt to develop a new approach to deal with this global system, and to define ways to protect our freedoms in the new global international order that is emerging from an anarchical state of nature of nations. That global order is, in part, imposed by the dominant power, the United States, and, in part, created through the strengthening of international institutions. It requires an extension of political theory to consider the international aspects of rights more fully and to recognize that there will be a division of authority and responsibility among different international organizations and national governments and among different institutions within these organizations and governments.

I, of course, build on traditional political theories, such as those of Locke and Montesquieu, that have sought to explain the rise of the nation-state from a presumed anarchic state of nature of individuals, and to define principles to prevent the misuse of political power. And I have attempted to build on traditional work in the international arena, such as that of Vattel, Grotius, and Kant, as well as more recent work, of which I have found the best to be Allen Buchanan's *Justice, Legitimacy, and Self-determination: Moral Foundations for International Law* (2004), and John Rawls's, *The Law of Peoples* (1999). I have

been particularly impressed by the logical care taken by both authors, and have attempted to model my analysis on theirs, even though I believe that I am dealing with quite different questions. Because I am dealing so much with ideas, I have minimized footnotes, and concentrated rather on attempting to give credit to those authors I have found particularly helpful in particular sections.

The following (first) chapter provides a prolegomenon, and seeks to clarify the definitions of freedoms, to provide insight into the behavior and legitimacy of multilevel government, to indicate how stability and freedom can be maintained in such systems, and to deal with the special role of the United States in the existing world system. The next three chapters define the new and changing need to assert our freedoms and the appropriate international scope of our freedoms. They do so, in turn, in the context of the three central issues that our global system must resolve: the balance between security and freedom, the balance between economic equity and opportunity, and the balance between community and religious freedom. With the new need for freedoms thus defined, the subsequent three chapters explore the institutional ways in which those rights can be protected, using a globalized version of the traditional balance of powers division into the global executive, the global legislature, and the global judiciary. In these chapters, the roles of national institutions in shaping and constraining international institutions are considered, as well as the roles of the international institutions themselves. The final chapter then presents a more detailed and explicit short-term reform package to help us protect our traditional freedoms as we live together in this new world.

Many have helped and encouraged me, but a number deserve especial credit. I've been privileged to consult on a number of issues with a variety of international organizations, including the Food and Agricultural Organization, the World Bank, the World Health Organization, and the World Trade Organization; these experiences provided nonacademic insights into the operations of international organizations. Participation in the Carnegie Foundation's Commission on Preventing Deadly Conflict's project on peacekeeping, and collaboration with Melanie Greenberg, Margaret McGuinness, and all my other colleagues on the resulting book, *Words over War* (2000), helped in my understanding the evolving role of the United Nations in international security. My coauthors of *The Evolution of the Trade Regime: Politics, Law, and Economics of the GATT and WTO* (2006), Judy Goldstein, Tim Josling, and Richard

Steinberg, helped me to understand a variety of issues about the interplay of domestic and international politics.

Further, I want to thank Stanford Law School and my students in the International Institutions course I taught there three times, and the Reform of International Organization seminar—it was during these courses that many of the ideas in this book were developed. I owe a special thank-you to Frank Lovett and Larry Temkin, my colleagues during a year at the National Institutes of Health's Department of Clinical Bioethics; they helped me immensely in finding my way into areas of political theory that were new to me. And I want to thank my clinical bioethics colleagues for their feedback during a seminar on the predecessor of Chapter 3, and many colleagues at Stanford for feedback during seminars in the law school, the philosophy department, and the Freeman-Spogli Institute, as well as friends at RAND for feedback during a similar presentation there. Thanks, too, to all those who came to critique the work at a special seminar funded by the Law School in October 2007. Most of all, I want to thank my wife, Julie, for all her encouragement.

The goal of this book is ambitious. Yet the needs of the time require an ambitious effort. The growth of the international order is far ahead of the debate about how we protect our freedoms in this new and changing world. I hope this book can contribute to that debate, most of all by the questions it raises.

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