

© 1992 by the President and Fellows of Harvard College and the Harvard International Law Journal. <http://www.law.harvard.edu/studorgs/ilj>.

## Toward an Age of Liberal Nations

---

Anne-Marie Burley\*

"The Age of Nations is past," wrote Teilhard de Chardin, heralding a global Age of Humanity. The editors of this symposium query whether nationalism is indeed giving way to internationalism, or perhaps regionalism, or whether the world is instead in transition to an Age of New Nations, no less aggressive and dangerous in their nationalism than their predecessors. My response is that the geopolitical framework for the millennium is neither internationalism nor nationalism, but *liberal internationalism*.

Both nationalism and internationalism assume that future global politics will be carried on either at or above the level of the state. If nationalism prevails, existing supranational structures will crumble. If internationalism endures, national sovereignty will be increasingly constrained by global institutions. Liberal internationalism asserts that the likelihood of either scenario depends in large part on the domestic political structure of the participating states. It predicts that liberal states will continue to resolve their differences within the framework of international institutions, and are likely, albeit in fits and starts, to work to strengthen and expand those institutions. Nonliberal states, by contrast, are freer now than at any time since 1945 to pursue their ambitions, however defined, and when frustrated, to settle their grievances by force.

In this brief essay I define liberal internationalism and apply it as an analytical framework both to explain current events and to speculate about the future of internationalism, nationalism and regionalism should the present "wave of democracy" continue.<sup>1</sup> Sophisticated liberal internationalists are quite aware, however, that this wave is likely to ebb—at least over the short term. They offer not a utopian vision but an unsentimental analysis of the domestic origins of international behavior.

---

\* Assistant Professor of Law and International Relations, University of Chicago Law School. The author would like to express her appreciation to Abram Chayes for his valuable comments and to the Russell Baker Fund at the University of Chicago Law School for financial support.

1. See SAMUEL L. HUNTINGTON, *THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY* (1991).

## I. LIBERAL INTERNATIONALISM DEFINED

A casual definition of liberal internationalism might mistake it for the all-purpose internationalism typically espoused by the liberal left in U.S. domestic politics: "a general foreign-policy orientation characterized by international cooperation, international law and institutions, economic interdependence, international development, diligence in seeking arms control, and restraint in the use of force."<sup>2</sup> This is a useful starting point for defining liberal internationalism. In historical context, however, liberal internationalism is closer to a distinctively *American* internationalism: the belief "in the necessity of leadership by liberal democracies in the construction of a peaceful world order through multilateral cooperation and effective international organizations."<sup>3</sup> This is the liberal internationalism of American statesmen from Woodrow Wilson through Franklin Roosevelt and Harry Truman, for whom liberalism was the creed of democrats with a small "d." Theirs was the creed that fought not conservatism, but communism, fascism, and imperialism.

This brand of liberal internationalism traces its lineage back to Immanuel Kant. In 1795 Immanuel Kant predicted that liberal states could and someday would establish a "free federation" blessed by perpetual peace.<sup>4</sup> The prerequisites were threefold: a world of liberal republics, defined as states with some form of representative government, equality before the law, private property rights, and a market economy; an agreement between these republics to refrain from the use of force against one another;<sup>5</sup> and extensive international commerce. Kant had no illusions about substituting altruism for self-interest. He expected all nations to pursue their national interest, but argued that under these three conditions they would pursue their individual ends by peaceful means.<sup>6</sup>

2. Tom J. Farer, *International Law: The Critics Are Wrong*, 71 FOREIGN POL'Y 22 (1988). The definition advanced is a paraphrase of a definition of internationalism offered by the President of the Carnegie Endowment for International Peace. Farer himself fully recognizes the distinction between the internationalism of the left and the specific historical and intellectual pedigree of liberal internationalism.

3. Richard N. Gardner, *The Comeback of Liberal Internationalism*, WASH. Q. Summer 1990, at 23.

4. Kant's celebrated work is best known under the title *Perpetual Peace*, although a more correct translation is *Eternal Peace*. All subsequent citations to this essay are from IMMANUEL KANT, *Perpetual Peace*, reprinted in THE PHILOSOPHY OF KANT, at 430-76 (Carl J. Friedrich ed., 1949).

5. This negative pledge was Kant's conception of the "law of nations," a conception very different from the law of nations as his contemporaries—the great publicists Vattel, Pufendorf, Grotius, etc.—and their modern heirs understood it. See, Anne-Marie Burley, *Kant's Law of Nations* (unpublished manuscript).

6. Professor Michael Doyle deserves the credit for resurrecting Immanuel Kant's original theory, discussed below, under the rubric "liberal internationalism." See generally Michael Doyle,

Two hundred years later Kant has proved to have a better track record than any of his "realist" detractors. Liberal states have in fact created a "separate peace."<sup>7</sup> They are not inherently pacific, as witnessed by their record of conflict with nonliberal states. But they do not go to war with one another. Although the causes for this phenomenon are complex, they rest on a positive claim that liberal states differ fundamentally from nonliberal states, and that these differences translate into different behavior patterns in the international realm.<sup>8</sup>

The full import of Kantian liberal internationalism as a framework for political and legal analysis cannot be explained in the language of traditional international law. Its central premise contravenes a cardinal principle of the modern international legal system. The building blocks of this system—the primary subjects of traditional international law—are sovereign states. Not "liberal" states, but sovereign states. Sovereignty, in turn, is defined without reference to internal political ideology or institutions. Its attributes are based on geography and power: a clearly defined territory and population, a single government exercising internal control and capable of conducting foreign relations. The internal political and economic structure of that government is irrelevant to its external behavior. For the purposes of the international legal system, the state is a black box.<sup>9</sup>

Liberal internationalism does not challenge or deny the "sovereignty" of nonliberal states.<sup>10</sup> On the contrary, it recognizes and builds on a striking paradox: that as a factual rather than a legal matter, liberal states are likely to have a *lesser* capacity for autonomous eco-

*Kant, Liberal Legacies and Foreign Affairs*, Parts I & II, 12 PHIL. & PUB. AFF. 205, 325 (1983); Michael Doyle, *Liberalism and World Politics*, 80 AM. POL. SCI. REV., 1151, 1152 (1986). For the distillation of this theory into a theoretical paradigm identifying fundamental assumptions and propositions underlying a wide range of contemporary international relations scholarship, see Andrew Moravcsik, *Liberalism and International Relations Theory*, paper delivered at the University of Chicago Program on Politics, Economics, and Security (PIPES) on January 10, 1992.

7. Doyle, *supra* note 6, Part I at 206. Doyle bases this conclusion on a comprehensive survey of all wars conducted in the past two centuries. Other empirical studies presaging and confirming Doyle's results include Melvin Small & J. Daniel Singer, *The War-Proneness of Democratic Regimes, 1816–1965*, 1 JERUSALEM J. INT'L REL. 50 (1976); Steve Chan, *Mirror, Mirror on the Wall . . . Are the Democratic States More Pacific?* 28 J. CONFLICT RESOL. 617 (1984); Erich Weede, *Democracy and War Involvement*, 28 J. CONFLICT RESOL. 649 (1984). The best statistical study is probably the most recent, Zeev Maoz & Nasrin Abdolali, *Regime Types and International Conflict, 1816–1976*, 33 J. CONFLICT RESOL. 3 (1989).

8. Many political scientists remain dissatisfied with existing attempts to pinpoint a precise causal mechanism, but admit the existence of a liberal peace as an empirical phenomenon. See Stephen M. Walt, *The Renaissance of Security Studies*, 35 INT'L STUD. Q. 211, 224 (1991).

9. The growth of human rights law in the twentieth century represents the first major challenge to this premise, rendering it legitimate for the first time for states to concern themselves with their neighbors' internal affairs. See discussion *infra* at p. 15.

10. At least with respect to existing participants in the international system. See discussion at note 31 and accompanying text.

conomic and political action than nonliberal states.<sup>11</sup> A liberal internationalist theory of international law would then seek to link the sources of these limitations on the autonomy of liberal states—democratic accountability, economic interdependence, and well-functioning judicial systems insulated from direct political influence—to the behavior of such states in international institutions and to the prospects for judicial enforcement of public international law norms. Liberal internationalism does not attack traditional notions of sovereign equality and identity so much as sidestep them, in the hope of developing a geopolitical framework of equal power and relevance to international relations theorists and international lawyers.

## II. A LIBERAL INTERNATIONALIST PERSPECTIVE ON INTERNATIONALISM, NATIONALISM, AND REGIONALISM

### A. *Liberal Internationalist Internationalism*

If internationalism is defined as putting faith and energy into institutionalized international cooperation to solve political, economic and social problems facing individual governments and the world as a whole, liberal internationalism offers both hope and skepticism. Kant himself thought that workable international institutions were impossible, even in his hypothesized world of liberal states, because even liberal states would not willingly surrender sovereignty. For him this gloomy prognosis did not matter, however, because his concern was not the rule of international law *per se*, but only the securing of peace.

A contemporary analogue of Kant's approach would be a *libertarian* liberal internationalism, positing that the sole function of the rule of law, internationally as well as domestically, is to keep the peace. Once satisfied that a liberal peace has indeed been established, libertarian

---

11. Capacity for autonomous action comes closer to a layman's or political scientist's definition of sovereignty than a lawyer's. For a definition of sovereignty as autonomy, see KENNETH WALTZ, *THEORY OF INTERNATIONAL POLITICS* 96 (1979); see also Robert O. Keohane, *Sovereignty, Interdependence and International Institutions*, (Center for International Affairs, Harvard University, Working Paper, 1991) (drawing a more precise and useful distinction between sovereignty, autonomy, and effectiveness). Empirical evidence suggests that nonliberal governments are less constrained by the preferences of their citizens operating as economic, political or cultural agents in transnational society. Liberal states, by contrast, are embedded in a dense network of economic, political and social relations with their fellow liberal states and hence although they have all the attributes of formal sovereignty, their actual ability to implement not only foreign, but increasingly domestic policies is dependent on international cooperation structured by international rules. See Moravcsik, *supra* note 6, at 22–23. This apparent paradox is completely consistent with my conclusion that the national courts of liberal states are more willing to review the validity of the laws and acts of other liberal states than those of nonliberal states. See Anne-Marie Burley, *Law Among Liberal States: Liberal Internationalism and the Act of State Doctrine* (unpublished manuscript on file with author).

liberal internationalists would conclude that all other international activity should remain unregulated. International institutions are thus not only unnecessary, but probably counter-productive.

Contemporary liberal internationalists, however, need not be bound either by the empirical evidence available to Kant or the normative strictures of the libertarian vision of law. It is possible to develop a broader version of liberal internationalism that would expect international law to perform at least some of the same functions that "welfare liberals" expect law to perform domestically in a liberal polity.<sup>12</sup> Further, pressing international problems such as the protection of the global environment, the spread of nuclear weapons, and migration demand attention. Efforts toward institutionalized international cooperation will and should remain with us across a wide range of issue areas.

A full-fledged liberal internationalist theory of international institutions would need to address the question of different types of international cooperation depending on the liberal/nonliberal distribution of participating states and the specific contours of different issue agendas. It would investigate questions of institutional design and hypothesize expectations concerning degree and types of compliance based on the distribution of domestic interests concerning a particular issue area.<sup>13</sup> Misrepresentation of domestic interests would generate conflict or at least decrease prospects for cooperation among liberal states as well as between liberal and nonliberal states.

What follows is instead a much more limited "ideal-type" liberal internationalist analysis of one type of international institution—collective security institutions. Liberal internationalism offers both an analytical and a normative framework to encompass the widely recognized link between the democratization of the former Soviet Union

---

12. See WOLFGANG G. FRIEDMANN, *THE CHANGING STRUCTURE OF INTERNATIONAL LAW* 8 (1964), for the proposition that the modern "international law of cooperation" seeks to regulate the same issue areas—health, social and economic welfare—as the domestic welfare state. Michael Doyle's definition of liberal states explicitly encompasses both libertarian and welfare liberalism. Doyle, *Kant, Liberal Legacies, and Foreign Affairs*, *supra* note 6, Part I, at 207. More recently, Stephen Holmes has argued that "classical liberalism" is completely consistent with state guarantees of minimum levels of welfare for its citizens. See Stephen Holmes, *Liberal Guilt: Some Theoretical Origins of the Welfare State*, in *RESPONSIBILITY, RIGHTS, AND WELFARE* 77 (J. Donald Moon, ed., 1988); Stephen Holmes, *The Liberal Idea*, *THE AMERICAN PROSPECT* 81–96, 94–96 (Fall 1991).

13. There are also likely to be some areas where the relative *impermeability* of governments to domestic interest groups facilitates international cooperation, leading to qualifications of the basic liberal model. It is the task of political science to specify when cooperation can actually be expected to occur by identifying and testing the causal mechanisms by which domestic interest formation is translated into specific bargaining outcomes. For an elaboration of this point in the context of the relationship between liberal and realist theory, see chapter one of Andrew Moravcsik, *National Preference Formation and Strategic Interaction in the European Community*, Chap. 1 (unpublished Ph.D. dissertation, Harvard University).

and the newfound capability of the United Nations to address international security problems.

Both Kant and his greatest public disciple, Woodrow Wilson, believed that a genuine collective security system could only be built on a foundation of liberal states. Wilson's conception of the League of Nations was more activist than Kant's vision of a free federation bound only by a general norm of nonintervention. Nevertheless, Wilson pinned his hopes for the League on the continued liberal ideology of its members, insisting that "a steadfast concert for peace can never be maintained except by a partnership of democratic nations. No autocratic government could be trusted to keep faith within it or observe its covenants."<sup>14</sup>

The Framers of the U.N. Charter sought to learn from the failure of the League. Their version of a global collective security organization privileged power over ideology, granting permanent membership on the Security Council to the five great powers of the day regardless of their domestic arrangements. This nod in the direction of power politics notwithstanding,<sup>15</sup> political realists such as Hans Morgenthau, George Kennan, and E.H. Carr dismissed any attempt to "organize" a peace under law as the latest installment in the "legalist-moralist" tradition in American foreign policy.<sup>16</sup> For these scholars and their intellectual heirs, the subsequent stagnation of the new global institution was readily and solely explicable as a superpower stalemate. Democracy or dictatorship, all nations were equally constrained by the structure of the international system to seek power.

On the legalist-moralist side of the divide, international lawyers could only lament the apparent reluctance of all nations to breathe life into the international institutions they had created. Conversely, the determination of many member states to take action outside such institutions could be interpreted only as a "violation" of international law. Notwithstanding the special prerogatives exercised by the Permanent Members of the Security Council, article 2(1) of the U.N. Charter reaffirmed the principle of sovereign equality and thus discouraged any institutional analyses that might have taken account of domestic differences among the member states.

---

14. Woodrow Wilson, *quoted in* Moravcsik, *supra* note 6, at 26. The possibility of a more activist institution is consistent with Kant's theory of state learning, which predicted that the experience of war would ultimately teach the lessons of tolerance and mutual accommodation.

15. For a discussion of the "realist" character of the United Nations, *see* ROBERT DALLEK, FRANKLIN D. ROOSEVELT AND AMERICAN FOREIGN POLICY: 1932 - 45 (1979); John Ruggie, *Multilateralism: The Anatomy of an Institution*, in John Ruggie, ed., MULTILATERALISM (forthcoming from Columbia University Press, 1993).

16. *See* HANS MORGENTHAU, POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE 31-5 (3d ed. 1960); GEORGE F. KENNAN, AMERICAN DIPLOMACY 95-103 (1951); E.H. CARR, THE TWENTY YEARS' CRISIS, 1919-1939 152-54 (2d ed. 1981).

When the United Nations did spring back to life, beginning with Gorbachev's first tentative initiatives toward expanding the role of the International Court of Justice<sup>17</sup> and flowering with the use of the Security Council as at least a framework for policy decision in the Gulf War, international lawyers and political realists were equally at a loss to explain why or how. Realists were stymied by the evident continuity of Soviet military power; international lawyers concerned themselves less with causal explanation than with celebration of the apparent triumph of enlightened self-interest in creating and maintaining a world order. For liberal internationalists, by contrast, the democratization of a majority of the major powers is an explicit prerequisite for any peace-keeping enterprise.

### *B. Nationalism*

Liberal internationalists are all too aware of the dangers of nationalism, recognizing it as one of the major causes of war. National self-determination is a prerequisite for the establishment of a liberal state; conversely, "disagreements over national self-determination undermine liberal institutions, generate nationalist ideology, and encourage the intervention of foreign troops."<sup>18</sup> These problems are increased tenfold among states trying to define their very statehood, both internally and externally. Liberal theorists have long recognized that liberalism offers no solution to two fundamental problems: the establishment of borders and the initial distribution of property rights. For nascent governments from Azerbaijan to Serbia, struggling simultaneously to determine who gets what among individuals within the polity and among neighboring states without, liberal theorists and policymakers have relatively little to offer.

Established democracies enjoy both stable borders and a prior distribution of property rights. The assaults on those borders by immigrants, however, present liberal governments with a different version of the same basic problem. The border between the United States and Mexico means little if the Mexican population has decamped to the United States. Similarly, liberal polities have no self-evident principles to guide the distribution of limited resources between the have-nots already resident and those newly arrived. Severe tensions often will result, straining the political, economic, and social order in liberal societies.

---

17. See, e.g., *The Gorbachev Visit; Excerpts from Speech to U.N. on Major Soviet Military Cuts*, N.Y. TIMES, Dec. 8, 1988, at A16; Paul Lewis, *Soviets to Accept World Court Role in Human Rights*, N.Y. TIMES, Mar. 9, 1989, at A1.

18. Moravcsik, *supra* note 6 at 16, summarizing the views of leading liberals such as John Stuart Mill, Woodrow Wilson, and Giuseppe Mazzini.



While painfully aware of these deficits of liberal theory, liberal internationalism nevertheless hypothesizes a difference in the *consequences* of nationalism with respect to liberal and nonliberal states. Among nonliberal states, as discussed above, nationalism is highly likely to lead to war and thus to the destruction of whatever international order currently exists. Among liberal states, however, liberal internationalists would argue that nationalism, garbed as xenophobia, will spill over into international conflict only if internal tensions succeed in destabilizing democracy.

To combat these internal tensions, liberal states are likely to try to *strengthen* international order by adopting policies aimed at international coordination and collaboration. Immigration treaties, pressure for international and regional standards for political asylum, even peacekeeping efforts aimed at stemming the tide of refugees: all appear already on the horizon in relations between the European Community and the emerging democracies and recalcitrant tyrannies of Eastern Europe.<sup>19</sup> As Kant foretold, "the effect of each impact of a government upon other governments in our continent, where the states have become so very much linked through commerce, will become so noticeable that the other states, compelled by their own danger, will offer themselves as arbiters . . . ."<sup>20</sup>

### C. Regionalism

Liberal internationalism offers two perspectives on regionalism. First, the dynamics of regional organizations must be analyzed like those of global organizations and thus expect the success of such organizations to depend in part on the liberal composition of their membership. Second, liberal internationalism points to one region in particular as a model for the role of law among liberal states. Traditional international law scholars regard the European Community as an anomaly, a hybrid, a *sui generis* institution. Community law is neither international law nor domestic law. The logic of liberal internationalism transforms the European Community into a paradigm of

---

19. The German government is pushing its fellow European Community members hard to adopt a Community-wide approach to immigration and asylum issues. The Community has also been active in peace-keeping efforts in the Yugoslavian civil war. These efforts are neither always successful nor without internal tension; neither are they divorced from practical self-interest and realities of power. Germany is the most powerful nation in the Community and the most seriously affected by problems of refugee and asylum seekers. However, the means the German government chooses to pursue these ends are international. See, e.g., *The Deal is Done*, *ECONOMIST*, Dec. 14, 1991, at 51; Craig R. Whitney, *Human Tides: The Influx in Europe*, *N.Y. TIMES*, Dec. 29, 1991, at Sec. 1, p. 1. Joint immigration and asylum treaties may also emerge among North American states as well with regard to would-be settlers from Central and South America, particularly if a U.S.-Mexican Free Trade Agreement is successfully concluded.

20. Kant in Friedrich, *supra* note 4, at 129.

how international law can be transformed from pious precept to binding rule within a community of liberal states.

### 1. Regional Organizations

The global outbreak of democracy has made its impact felt on regional collective security organizations as well. The Organization of American States (OAS) has been revitalized by the resurgence of democracy in Latin America. It has played a major role in coordinating reactions to the overthrow of a democratically elected government in Haiti and in conducting negotiations for the return of President Aristide. On the other side of the Atlantic, more than fourteen countries in Africa have moved towards pluralistic political systems in the past three years.<sup>21</sup> The results have been felt in the Organization of African Unity which decided in June 1991 to restyle itself as an African version of the European Economic Community. And in West Africa, the Economic Community of West African States (ECOWAS), committed to free trade within the Community and the harmonization of economic polities among liberal lines, intervened successfully to stop the carnage in Liberia.<sup>22</sup>

Once again, even where it can be said to exist in more than name, liberal democracy is not a magic talisman. As of this writing, President Aristide remains in exile. And even if OAS action should prove effective regarding Haiti, a small Caribbean island, a similar coup in Brazil, one of the largest and most powerful countries in the hemisphere, would almost certainly elicit a more passive response. Military capacity and cultural tradition are bound to condition the reaction of regional organizations to particular crises. On the other hand, it is interesting to note that the intervenors in West Africa were not members of a collective security organization at all, but of an *economic* organization organized around free market principles and directly threatened by a flood of refugees.<sup>23</sup> The European Community has similar motives not only for peacekeeping in Yugoslavia, but indeed for aiding the transition to democracy throughout Eastern European and the former Soviet Union. Economic disruption of liberal states by refugees from nonliberal states may thus provide a powerful incentive for organized international intervention.

---

21. Kenneth Noble, *Voter Turnout High in Benin for Free Presidential Election*, N.Y. TIMES, Mar. 11, 1991, at A4.

22. For an excellent history and analysis of this intervention, see David Wippmann, *Enforcing the Peace: The Role of Organizations and the Lessons of Liberia* (unpublished manuscript, on file with the *Harvard International Law Journal*).

23. *Id.* at 2.

## 2. The European Community

The Treaty of Rome was concluded in 1957 as an *international* treaty. The fathers of the European Community never intended for its provisions to be directly effective in the courts of the Member States.<sup>24</sup> Nor, for that matter, did they intend for the European Court of Justice to play a particularly prominent role in the shaping and administration of the Community.<sup>25</sup> Yet the "constitutionalization" of the Treaty has been the Court's achievement, and the Court's alone.<sup>26</sup> As the Community takes another leap forward with the adoption of a new set of plans for economic and political union, the power and strength of Community law is such that Great Britain announced publicly that it sought separate treaties for European Monetary and Political Union to avoid the jurisdiction of the European Court of Justice.<sup>27</sup>

Surely, it will be argued, the European Court was able to give the international law of the Treaty equivalent status to domestic law by relying on the initial political commitment of the Member States to *unité*, to become some kind of a polity under law. As witnessed by the relaunching of the single market in 1985, however, and the still tentative steps toward political union over thirty years after the initial compact, the initial commitments were vague indeed. Beneath the clouds of rhetoric, the Treaty of Rome could have been interpreted much like any other economic treaty. The Court's famed "teleological" method of interpretation relies on "giving effect" to the original intentions of the parties as construed by the Court, even where those same parties had apparently failed to supply what the Court considers to be the necessary means to achieve those ends. On that basis the International Court of Justice should have been able to establish world peace by now.

A liberal internationalist would argue that the difference lies in the receptivity of the national courts of the Community Member States to accept the possibility of supranational law as *law*, as a body of rules

---

24. See HJALTE RASMUSSEN, ON LAW AND POLICY IN THE EUROPEAN COURT OF JUSTICE 249-50 (1986).

25. Rasmussen argues that the drafters of the Treaty of Rome intended the new European Court of Justice to have even less power than the Court of the European Coal and Steel Community exercised. *Id.* at 220-22.

26. Eric Stein, *Lawyers, Judges, and the Making of a Transnational Constitution*, 75 AM. J. INT'L L. 1 (1981). As Stein and others have pointed out, the Court has often taken its cues from the Commission as to the political climate in the Member States to determine just how far it should go. Numerous political scientists have concluded that the Court was careful not to transgress the bounds of the political consensus of the Community. Nevertheless, its incremental style and successful wooing of the national courts both to expand its jurisdiction and to secure the enforcement of its judgments gradually pushed the bounds of Community law steadily forward.

27. David Buchan, *Countdown to Maastricht; Odd One Out Wrestles with Alien Concept*, FIN. TIMES, Nov. 18, 1991, at Sec. I, 8.

interpreted and applied by a non-political entity. It is not simply that the Community member states are relatively homogeneous. It is that the substance of that homogeneity is a particular set of political and economic beliefs and institutions that are uniquely congenial to the independent operation of the rule of law. More concretely, the liberal institution of an independent judiciary charged with administering the rule of law permits the maintenance of a meaningful distinction between law and politics, even in tandem with widespread recognition of how political beliefs and values can influence legal choices. In this setting, international tribunals can enjoy a measure of the same legitimacy as domestic courts, and carry on a dialogue with domestic courts independent of the political authorities.<sup>28</sup>

The nations of Europe will retain their identity and "sovereignty," for what it is worth, as separate nations. At the same time, however, European governments will increasingly set national policy at a supranational level. They will implement these policies as Community law. From a liberal internationalist perspective, this law will not be a hybrid law suspended between the traditional poles of domestic and international law. It will be, and is now, a rich and fascinating paradigm for international law, finally made flesh within a deliberately and self-consciously defined community of liberal states.<sup>29</sup> Joseph Weiler has recently suggested that his theory of the "bidirectional" relationship between legal and political processes in the transformation of Community law from "soft" (international) to "hard" (domestic) law "could even be part of a general theory of international lawmaking."<sup>30</sup> It could indeed, as could be the work of many other Community scholars—when combined with a general theory of lawmaking in liberal states.

### III. FROM PREDICTION TO PRESCRIPTION

Our hopes for international order should be pinned on our hopes for democracy. This argument may seem to echo the attacks of the conservative right, renewed most recently by Robert Bork, on international legal constraints on the ability of democratic states to oust

---

28. This is a highly stylized account of the European Court of Justice, without reference to the extensive lobbying effort undertaken by the the Court for support from the national courts, or its own political balancing act in gradually advancing its agenda. Nevertheless, I would argue that the existence of a common liberal culture and institutions provided the context in which such efforts and concerns were even possible.

29. The Preamble of the Treaty of Rome commits members of the European Community to "pool[ ] their resources to preserve and strengthen peace and liberty," and "call[s] upon the other peoples of Europe who share their ideal to join in their efforts."

30. Joseph H. Weiler, *The Transformation of Europe*, 100 YALE L.J. 2403, 2426 (1991).

non-democratic governments by force.<sup>31</sup> The conservative claim is that the very *idea* of international law handicaps scrupulous liberal states against unscrupulous nonliberal states, and thus that the concept of sovereignty as a protection against forcible and nonforcible intervention should be abandoned altogether. The theory of liberal internationalism advanced here, however, reaches a very different conclusion. It does not seek to define "us" against "them," but to launch a new inquiry into why and how law actually works in the international realm.

Liberal internationalism focuses on the economic, political and social reality behind the sovereign facade. It thus celebrates twentieth century efforts to recognize individuals as subjects of international law, a trend most evident in the growth of human rights law. It further applauds current efforts, led in the scholarly literature by Thomas Franck, to establish the right to vote in free and fair elections as a fundamental human right.<sup>32</sup> "Cosmopolitan" liberal internationalists, a tradition most recently revived in Fernando Teson's explication of Kant,<sup>33</sup> carry this emphasis on individuals to its logical conclusion by legitimizing intervention in the affairs of a foreign sovereign when necessary to vindicate the rights of its people.

The version of liberal internationalism advanced here, by contrast, maintains a healthy respect for state power. The sovereign state has hardly withered away. Liberal governments spend a greater percentage of their citizen's resources now than at any time in history. Nonliberal governments have the military and technological means to control virtually every dimension of their societies. Under these conditions, as Kant himself recognized for his own era, an idealist crusade is a prescription for war and the sacrifice of millions of lives. Prudence and pragmatism is a far better guarantee of peace.<sup>34</sup>

But what of justice? Here too, Kant tempered his explication of the possibility of good with the expectation of evil. He counseled

---

31. See, e.g., Robert Bork, *The Limits of 'International Law,'* NAT'L INTEREST, Winter 1989/90 at 3.

32. See Thomas Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L L. 46 (1992); Theodor Meron, *Democracy and the Rule of Law*, 153 WORLD AFFAIRS, Summer 1990 at 23, 24; Henry J. Steiner, *Political Participation as a Human Right*, 1 HARV. HUM. RTS. Y.B. 77 (1988). Such efforts are remarkably in tune with the apparent willingness of liberal nations to condition recognition of new states on adequate guarantees of minority rights. Formal insistence on such guarantees has dominated discussions of U.S. and EC recognition of emerging states in what was formerly Yugoslavia and the Soviet Union. See *Yugoslavia: Wreckognition and The Killing Mountains*, ECONOMIST, Jan. 18, 1992, at 48-49, 52 regarding the European Community's decision to recognize Croatia and the United States' refusal to recognize Azerbaijan.

33. Fernando R. Teson, *The Kantian Theory of International Law*, 92 COLUM. L. REV. 53 (1992).

34. This was precisely the argument of political realists such as Morgenthau and Kennan against the "legalist-moralist" tradition in 1945.

patience, recognizing that liberal values are transmitted slowly and haltingly, and that learning is often achieved only as the result of failure. Despite our best efforts, war is often a more effective teacher of the necessity of guaranteeing minority rights than foreign diplomats or constitutional consultants. The "crooked timber of humanity" is not so easily planned.<sup>35</sup>

A more sophisticated liberal internationalism thus cautions against the alluring simplicity of formulas designed simply to privilege the individual against the state. The better approach would begin with the paradox of liberal states discussed above—the contradiction between formal sovereignty and practical constraints on autonomy. This phenomenon focuses attention on the sources of these constraints in domestic and transnational society. The lawyer and the political scientist alike who would focus on the role of law in shaping state behavior should look not to public international law, but to domestic commercial and constitutional law and private transnational law.

A comprehensive liberal internationalist map of the relationships between state and society in the international system, particularly with respect to the function of various types of law, has yet to be drawn. Specific policy prescriptions here must wait on social science. For present purposes, however, it is sufficient to note that none of these questions can even be encompassed within the geopolitical frameworks emphasized in this Symposium. Internationalism, nationalism and regionalism must give way to liberal internationalism, transnationalism and a focus on ideological rather than geographical ties. The result promises neither utopia nor the end of history, but holds out hope of at least a small measure of progress toward individual rights and the global rule of law.

---

35. As translated by Isaiah Berlin, Kant's celebrated aphorism is "Out of the crooked timber of humanity no straight thing was ever made." ISALAH BERLIN, *CROOKED TIMBER OF HUMANITY* vii (1991). The more literal translation in the edition of Kant referred to throughout this essay is; "One cannot fashion something absolutely straight from wood which is as crooked as that of which man is made." See Kant, *in* Friedrich, *supra* note 4, at 123.

