

A JUST WORLD AT PEACE

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I. INTRODUCTION

The tension between peace and justice is an enduring one in human history. The goal of civilized societies is to achieve a just peace; that is, to create institutions that allow citizens to settle even their deepest differences without violence or the disenfranchisement of dissenting voices.

This Commentary examines the values inherent in liberal democratic theory from the standpoint of that tension between order and justice. My thesis is that the creation of just global institutions, as justice is understood in the classic western liberal political tradition, offers the best chance to assure stability and peace in a world that is not only diverse, but increasingly interrelated and interdependent. In a global economy, where markets and technology encourage communication and interaction among previously insular populations, there are as many opportunities for increased friction as there are for increased understanding. The challenge of the twenty-first century will be to establish institutions that protect civil liberties and human rights while respecting, to the maximum extent possible, the sometimes bewildering array of cultural and normative imperatives that comprise the global village.

To frame an issue is to make a value judgment. By using the American experience with liberal democratic theory as a paradigm for this discussion, I have made the following assumptions, all of which are open to debate:

- 1) Self-determination and a significant degree of autonomy are personal, ethnic and national goods. That is, protecting the ability of individuals, cultures and states to determine and pursue their own ends is desirable.
- 2) Absence of warfare among nations and eradication of violence between peoples is desirable.
- 3) Peace achieved through the exercise of authoritarianism, or through the domination of some by others, is neither desirable nor sustainable. That is, while suppression of violence through the exercise of power may be preferable to war and insurrection, it is both less desirable and less likely to endure than a

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peace that respects the basic human rights of individuals, groups and countries.

- 4) Increased contact among nations and peoples is inescapable, due to technology and a growing world marketplace. Isolation is no longer a viable option.
- 5) Maintenance of diversity is a good. Enforced uniformity and cultural genocide are to be avoided.
- 6) As a result of increased contact, potential for conflict will increase. It will become more difficult to balance respect for autonomy and diversity against economic and political pressure for increased integration of global financial, cultural and social institutions.
- 7) Supra-national forums and authorities will continue to be established, in order to deal with various aspects of global economic and personal relationships, and their effectiveness in mediating conflict will depend upon whether they are perceived as legitimate and just by those over whom they assert jurisdiction.

If these assumptions are correct, the American experience may prove instructive. The United States is one of the most diverse countries in the world; the forging of political community has occurred in the face of vast differences and continuing tensions among multiple religious, ethnic and racial groups. While there is considerable room for improvement, and substantial basis for criticism, the United States may nevertheless provide a template for achievement of a stable and just world order. This is not because the liberal democratic worldview is necessarily morally superior to others (any discussion of morality is beyond the purview of this Commentary), but because it has proved to be a practical and useful mechanism for mediating claims among competing worldviews.

In the remainder of this Commentary, I will define the fundamental elements of liberal democratic theory, discuss its strengths and weaknesses, and consider what its application to global governance might look like.

II. THE LIBERAL PARADIGM

Liberalism has been defined as "a principle of political organization that accords individuals the freedom to navigate a course of their own design, constituted by self-elected plans and purposes."¹ William Galston has suggested that liberal societies are characterized by a strategy that minimizes coercion,² and Ronald Dworkin has defined liberal constitutionalism as "a

1. Ronald Beiner, *What Liberalism Means*, 13 SOC. PHIL. & POL'Y 191 (1996).

2. See WILLIAM GALSTON, *LIBERAL PURPOSES: GOODS, VIRTUES AND DIVERSITY IN THE*

system that establishes legal rights [to self determination] that the dominant legislature does not have the power to override."³

Liberal theory accords to individuals the broadest moral authority over their own lives consistent with the maintenance of public order. So long as individuals do not act in ways that harm the persons or property of others, they are to be free of state coercion.⁴ Liberalism thus rests upon a view of the world that separates—as many cultures do not—the public from the private. Liberal theory distinguishes between the communal and the personal; with respect to communal behaviors, it further distinguishes between public activities that are governmental, and communal actions taken through voluntary associations, which are considered private. Although the historic distinction between public and private is being substantially eroded by the practice of government subcontracting,⁵ the distinction remains a bedrock of liberal democratic theory. Libertarians would limit the role of government to the conduct of activities requiring the use of state coercive powers: controlling crime, waging war, levying taxes, and enforcing private agreements.⁶ They would leave other activities of a communal nature to civil society, which is composed of churches, mosques, synagogues, arts organizations, private charities, and a multiplicity of other voluntary associations and nonprofit corporations.⁷

Having defined spheres of human activity in this way, liberalism (at least initially) fostered a definition of justice based upon a concept of "negative" liberty, a conception that accorded great importance to liberty and individual autonomy, which were in turn defined as the right to be free of governmental constraint. That economic or personal factors might operate to constrain autonomy as dramatically as any government edict was seen as unfortunate, but beside the point. The point was to limit power.

This original understanding has been criticized as representing a cramped view of human rights, and so strict a libertarian paradigm no longer describes American political reality. However, the importance of negative liberty and the high priority assigned to limitations on government power continue to inform liberal public policy.⁸ Legislative bodies in the United

LIBERAL STATE (1991).

3. Ronald Dworkin, *Constitutionalism and Democracy*, 3 EUR. J. PHIL. 1 (1995).

4. How "harm to others" is to be defined is, of course, a highly contentious matter. Liberal principles are deceptively simple; their proper application (as evidenced by the thousands of books written on the topic) is anything but simple.

5. See generally Sheila Kennedy, When is Private Public? State Action in an Era of Privatization and Government Contracting, Address Before the Law and Society Association Annual Meeting (May 2000) (on file with author).

6. DAVID BOAZ, *LIBERTARIANISM: A PRIMER* (1997).

7. See generally ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* AND ROBERT PUTNAM, *BOWLING ALONE* (2000).

8. This emphasis creates genuine problems when, for example, the United States is asked to endorse Conventions like the Universal Declaration of Human Rights, G.A. res. 217 A(III), U.N. Doc. A/810 (1948), or the Convention on the Rights of the Child, G.A. res. 44/25, annex,

States have constantly struggled against the limits imposed on government in the American system, and in many cases, so-called "positive rights" which were not included in the original U.S. Constitution have subsequently been extended by statute.⁹

A negative approach to the exercise of public power posits government as a neutral arbiter among citizens who are legal equals. There are many problems with such a "neutral" system, not least the fact that it does not address systemic inequalities, does not recognize the absence of a level playing field. Indeed, there are many justice issues that simply fall outside the paradigm of negative liberty as conceived by the liberal state. An even more fundamental problem is that neutrality is not experienced as neutral by those who hold comprehensive doctrines. For such "seamless garment" believers, no system that fails to recognize the supremacy and impose the mandates of their own belief system can ever be legitimate.

Within the western liberal tradition, communitarians, like the socialists and communists before them, complain that a neutral state that places process above substance and sees individual moral choice as a private rather than public concern, fails to meet the universal and human need for meaning. They contend that liberal theory suffers from an "impoverished vision of citizenship and community."¹⁰ Communitarians and other critics of liberalism take issue with the most fundamental commitment of liberal democracies: that persons should be free to set and pursue their own ends, in accordance with their own values. They argue that freedom, properly understood, is "freedom to do the right thing" and that political community, in order to be experienced and sustained as a true community, must insist upon a shared *telos*, an agreement on moral ends.¹¹ In this view, it is more important that those ends be the correct ones than it is that they be freely chosen.¹²

To those of a less authoritarian bent, a system of government neutrality and negative rights has one overriding virtue: it makes the use of power to enforce conformity largely illegitimate.

Liberal democrats further argue that liberalism *does* endorse ends: liberty, individual autonomy, equality before the law, tolerance. The American Bill of Rights has been referred to as a moral code.¹³ Liberalism begins with respect for the value and uniqueness of each individual and

44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2, 1990, which include *as rights* affirmative entitlements to food, housing and medical care.

9. See e.g., the Civil Rights Act of 1964.

10. MICHAEL SANDEL, *DEMOCRACY'S DISCONTENT* (1996).

11. See *id.*; STEPHEN MULHALL & ADAM SWIFT, *LIBERALS AND COMMUNITARIANS* (2d ed. 1996).

12. The question of who will choose the ends, who will define what the "right thing" is and exercise the power to enforce "right ends" is seldom addressed. Presumably, the majority will do so.

13. See generally SHEILA KENNEDY, *WHAT'S A NICE REPUBLICAN GIRL LIKE ME DOING AT THE ACLU* (1997).

requires behavior consistent with that respect, notably tolerance for those who differ. Liberal political theory values a unity that can accommodate diversity;¹⁴ and affirms the belief that society is strengthened and enriched by a multiplicity of voices and a constant testing of moral and political theories. To allow the state to prescribe a particularistic moral code or to impose political uniformity would violate the conscience and insult the personhood of citizens and would engender resentments ultimately dangerous to continued social stability and civic peace.

Liberals also challenge the notion that human community must be defined politically. They assert that political communities, in common with religious communities, ethnic groups, professional or fraternal organizations, and any number of other associations that are meaningful to their members, are partial communities, and that their utility in promoting justice rests upon the fact that they provide room for competing allegiances.

Freedom-promoting social orders are, it appears, *pluralistic*: societies of partial allegiances in which groups endlessly compete with each other and with the state for the allegiances of individuals, and in which individuals loyalties are divided among a variety of crosscutting (or only partially overlapping) memberships and affiliations. Liberalism needs community life, therefore, and it needs community life to be constituted in a certain way. . . . Liberal statecraft should aim for a complex, cross-cutting structure of community life in which particular group-based allegiances are tempered by other, competing group allegiances and by a state representing a common, overarching, but partial, point of view that gives everyone something in common.¹⁵

Societies and governments are not the same things. Governments are one mechanism among many for the expression of social values and communal aspirations, and liberals warn that there is substantial danger in reposing all moral authority in a coercive state. If the goal of political community is unity without uniformity and diversity without culture war, tolerance for the divergent lifestyles and diverse values of multiple communities is both a tool and an end.

Liberal democrats also make another, more practical argument: there is no reasonable alternative to state neutrality, unless one wishes to use the state's coercive power to impose ends endorsed by the majority upon unwilling minorities. John Rawls defends the liberal enterprise by positing an

14. See generally Will Kymlicka, *Social Unity in a Liberal State*, 13 SOC. PHIL. & POL'Y 105 (1996).

15. Stephen Macedo, *Community, Diversity, and Civic Education: Toward a Liberal Political Science of Group Life*, 13 SOC. PHIL. & POL'Y 105, 255 (1996).

"overlapping consensus" of shared limited goals.¹⁶ The complex framework he establishes rests in part upon a central insight: every time you add a goal that government is to enforce, you introduce a new source of conflict. In the United States today, we have deep divisions over numerous such issues. The right to enjoy the proceeds of one's own labor conflicts with taxation that redistributes money for social ends; the right of a woman to control her own body conflicts with the religious belief of many that abortion is murder; the right of government to wage war encounters the resistance of those who believe all wars to be immoral. There are numerous other examples. No society or government can avoid such conflicts, no matter how respectful of individual autonomy, but liberal democracies are obliged to minimize them by restraining the state from intruding too much into the realms that have been defined as private. The classic formulation of this principle is that with which this section began: government intervention is warranted only when one citizen threatens harm to the person or property of another.¹⁷ While the United States and the world's other liberal democracies have long since moderated that simple libertarian principle, often for reasons that are sound and even more often for reasons that are specious and worrisome, I would argue that it is a formula to recommend as an approach to global peace. Marc Stier has recently described the liberal strategy for avoiding conflict:

Neutrality about the good is, for liberals, also central to their strategy for preserving internal peace. Liberals hold that we can reduce political and social conflict if we place certain matters beyond the bounds of political decisionmaking. Extreme and dangerous political conflict, the kind that leads to civil wars, results when governments prevent some citizens from pursuing ends of fundamental importance to them. When governments respect our rights, though, people are free to make decisions for themselves about these matters. Thus conflict about divisive issues is prevented. This strategy of avoidance is one of the prime ways in which liberals hope to keep the peace. Of course, some people may be frustrated because they cannot attain their own ends by using the power of the state to restrict what other people say and do. The liberal expectation, however, is that people would rather have their own freedom protected than interfere with the freedom of others, if only because they recognize that an illiberal regime might at some point turn against them.¹⁸

16. JOHN RAWLS, *POLITICAL LIBERALISM* 133 (1993).

17. ROBERT NOZICK, *ANARCHY, STATE AND UTOPIA* (1974).

18. Marc Stier, *Principles and Prudence: Reconciling Liberalism and Communitarianism*, at 3 (2000) (unpublished manuscript, on file with author).

III. GLOBAL APPLICATION

As a rapidly shrinking world enters the Twenty-First century, these questions are no longer theoretical. Sophisticated communications are fast creating the "global village" foreseen by Marshall McLuhan. Global markets are emerging, creating new geopolitical realities. Thomas Friedman noted "[u]nlike the cold-war system, which was largely static, globalization involves the integration of free markets, nation-states and information technologies to a degree never before witnessed, in a way that is enabling individuals, corporations and countries to reach around the world farther, faster, deeper, and cheaper than ever."¹⁹ Alfred Aman has described the implications of so unprecedented a phenomenon:

The end result of these new networks of investment, finance and production is that they help to create relatively integrated markets for their products and they produce new, multiple sets of relationships or economic networks that transcend the geography of states.... As a result, new bodies of global and international law are developing to address issues that are neither wholly domestic nor wholly international.²⁰

This global integration has both positive and negative implications. In terms of diminishing armed conflicts of the sort that the world has previously known, I would argue that global markets are emphatically good. Countries don't bomb places where their citizens own real estate; they don't wage war on those who purchase their goods and services. It has been said, and not entirely in jest, that no wars occur between countries that both have McDonald's.²¹

But even if it is true that global communication and a global economy are making conventional war less likely, the absence of armed conflict between nation-states is not the same as peace, and certainly not the same as a just peace. In such a world, it is still possible (and perhaps even likely) that the strong will dominate the weak, that the gap between haves and have-nots will widen, and that the new dialectic will be tribalism against globalism.²² By tribalism, Barber means the resistance of insular religious or ethnic comprehensive cultures to the seemingly inexorable march of global

19. See Thomas L. Friedman, *THE NEW YORK TIMES MAGAZINE*, Mar. 28, 1999.

20. Alfred J. Aman, *The Globalizing State: A Future-Oriented Perspective on the Public/Private Distinction, Federalism and Democracy*, 31 *VAND. J. TRANSNAT'L L.* 4, 781-82 (1998).

21. See BENJAMIN BARBER, *JIHAD VS. MCWORLD* (1995).

22. See *id.*

capitalism.²³ Such resistance proceeds largely from a fear of cultural imperialism, fear of having one's ethnic group or tribe or even one's nation swallowed up and replaced by a pallid, all-encompassing western materialism.²⁴ We are already seeing the emergence of terrorism and local insurrection as the new warfare, fought by those who believe that they are thereby protecting their cultural or national or ethnic autonomy against an emerging, westernizing world culture.

It is in the context of this reality that existing supranational institutions are being strengthened and new ones are being created. But it is not only marginalized societies that fear the development of a "new world order," conceived as a transnational or supranational authority or world government. In the United States, as in other western industrialized countries, there are powerful voices advocating isolationist measures. Even quite moderate politicians express concern over potential loss of sovereignty to international agencies. Nationalism and national identity are powerful forces even in countries with a large economic stake in further global commerce. The political difficulties that have attended the emergence of the European Community are illustrative of the barriers to full co-operation, even among countries with many similarities and strong incentives for added institutional integration.

On a more theoretical level, political scientists who believe global institutions are necessary and desirable nevertheless worry that citizen apathy and political disaffection will increase if power is exercised by institutions that are ever more remote.²⁵ If power shifts to supra-national institutions, the distance between the exercise of authority and the kinds of civic participation that are necessary to legitimate such exercise becomes too great. If global citizens are to retain—or regain—control over the governments that rule them, power must devolve as well as evolve, with local, national and international bodies each exercising jurisdiction only over those functions that require action at that geographic level.

Politicians are aware of the dual nature of globalization's pressure. In a discussion of Tony Blair's celebrated "third way" of governing, which rejects the prior European political categories of Left and Right, the Economist Magazine reported on a seminar devoted to an exploration of the new approach as follows:

The old left sought to maximise the role of the state, the old right to minimise it. The third way should seek instead to

23. *See id.*

24. *See id.*

25. In the United States, increased concentration of power in Washington has been accompanied by a perception of powerlessness among citizens, and a corresponding lack of interest in voting and elections. Participation in national politics is increasingly viewed as an exercise in futility, unless one is very rich or famous or well-connected.

restructure government, at all levels. It should promote subsidiarity and address the "democratic deficit." Measures included constitutional reform, greater transparency, and more local democracy...The third way recognises that we no longer live in a bipolar world and realises that states no longer face enemies, only dangers.²⁶

Some governing functions must be handled globally. Others are best addressed locally. A number of commentators and political scientists have remarked that, under the press of globalization, political authority is draining away from states, simultaneously moving upward to supranational organizations, downward to sub-national units, and "sideways or *laterally* to private actors assuming previously 'public' responsibilities."²⁷

The challenge to governance in this brave new world will thus be to identify not only what functions are appropriately governmental and nongovernmental, but also, for those that are deemed governmental, to identify the proper unit or level of government that should have jurisdiction of the matter.

Mediation of treaties, trade disputes, environmental threats and international peacekeeping are inescapably global issues. Justice systems, transportation and labor policies, central banking decisions and the like are generally issues of national concern. Burglary and assault, traffic engineering, garbage collection, and similar matters are just as clearly local. A workable international federation must reflect this reality, or it will not have the support of the nations it purports to represent nor the legitimacy to exercise the limited powers it must have.

An international body based upon liberal democratic principles will not suppress indigenous cultures or supplant existing national governments. Like national governments in the libertarian political tradition, its power will be limited. The liberal democratic distinction between public and private will inform the conduct of such an international institution, and will prohibit its interference with the internal affairs of its "citizens"—in this instance, member nations—much as the Bill of Rights in the United States places limits on government interference with its human citizens. Ideally, the United Nations will evolve into such an institution, melding moral authority and legitimacy to the power to enforce a limited but common set of standards for nations' behavior.

While such an approach holds great promise, knotty and enduring problems remain. There will always be those who resist membership in a world community so conceived, those whose religious views or cultural

26. *Ideology*, *ECONOMIST*, May 2, 1998, at 52.

27. Miles Kahler and David A. Lake, *Globalization and Governance*, at 2 (2000) (unpublished manuscript, on file with author).

ambitions impel them to attack democratic institutions, subvert popularly elected governments, and otherwise engage in activities intended to shift the balance of power in favor of their own comprehensive worldviews. An international body committed to respecting the internal affairs of member nations will find it extremely difficult to justify measures taken against such efforts, which are likely to take the form of intrastate conflicts.

Even more difficult will be conflicts between fundamental human rights and national sovereignty. In the United States, that conflict was most stark during the civil rights movement, when respect for the sovereign rights of states came into conflict with the fundamental constitutional rights of African-American citizens of those states. At what point will a world government committed to human rights feel impelled to prevent a nation state from denying fundamental rights to its own citizens? What if the deprivation is rooted in the culture and history of that nation-state? How, to pose but one example, will a liberal world government address the genital mutilation of young women in certain parts of the world?²⁸ Will such assaults be tolerated as an expression of a state's right to cultural autonomy and self-determination? Or, will the violation of a woman's body without her meaningful consent be considered a criminal act that a global authority has the right to prohibit? Who are the more important constituents of global government—the nation-states or the people?

If intervention into the internal affairs of nations can be justified on the basis that it is necessary to put down subversion, or to protect the bodily integrity of women, can it also be justified in order to redress economic deprivations? It can be argued that a neutrality that ignores systemic inequalities is hardly neutral; that it is only when all people enjoy at least a minimal standard of living that the concept of autonomy has any real content or meaning. Indeed, the Universal Declaration of Human Rights incorporates that insight. Will we ultimately empower a global authority to enforce the Universal Declaration, much as the United States government enforces the Bill of Rights within the various states? And what of the growing "lateral" concentrations of power in international corporations that owe allegiance to no state, or to many? Global capitalism has encouraged mergers and acquisitions across national borders; technology has enabled the creation of comparatively rootless international corporations. Some of these companies have gross national products that exceed those of many countries. Such concentrations of economic power, arguably unconstrained by the law of any particular nation, present yet another challenge to global authority.

IV. CONCLUSION

However daunting these and other problems may seem, there is no turning back. Global institutions will be vested with authority for the same

28. See generally MARTHA NUSSBAUM, *WOMEN AND HUMAN DEVELOPMENT* (2000).

reason that governments have always been formed: to enforce civil peace and to mediate disputes. The issue is not whether to create such institutions, but what form to give them.

The alternatives to a liberal democratic order are authoritarianism, on the one hand, and disorder, or chaos, on the other. With all its deficiencies, I submit that democratic liberalism based upon the rule of law²⁹ offers the best avenue to global peace and justice. A liberal federation governed by a global authority required to respect individual, ethnic and national autonomy, encourage diversity within unity, and enforce the fundamental human rights set out in the Universal Declaration of Human Rights is most likely to engage the allegiance of the human family, and most likely to achieve and maintain a just world peace.

29. William Whitford has offered an excellent definition of the term "rule of law" in an article by the same name in the *Wisconsin Law Review*. According to Whitford, the original meaning of the term "rule of law" was that no individual should be "above" the law; that government actions should be accountable to some set of pre-determined standards, to be applied by an independent body (probably a court) and contained in constitutions, statutes, administrative regulations and common law precedents. See William Whitford, *The Rule of Law*, 2000 WIS. L. REV. 723.

