

A Global Federalist Paper: Consolidation Arguments and Transnational Government

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1. Introduction: Two Senses of Globalism

Over seventeen years ago, President George H.W. Bush spoke hopefully of a “new world order” that would develop after the fall of the Berlin Wall: “A world where the United Nations, freed from cold war stalemate, is poised to fulfill the historic vision of its founders. A world in which freedom and respect for human rights find a home among all nations.”¹ Tragically this hope has not been fulfilled. Instead, for many people today, the term “globalism” has come to mean a threat to domestic jobs by cheaper foreign competition, or the expansion of capital markets and the formation of ever-larger multinational corporations with growing power over the lives of people everywhere. For example, John Saul uses “globalism” to stand for the ideology that “global economic forces, if left unfettered by willful man,” will lead to a better life for all, with its corollary that the public good should be treated as a secondary outcome of trade and competition and self-interest.² Saul recognizes this as the libertarian ideology found in neo-classical economics and discredited by monopolies and the Great Depression, now restated at the global level: it is simply a new way of presenting the fallacy that markets will spontaneously produce public goods that in fact can only be realized by government coordination.³ In some cases, this is because market imperfections lead to aggregate outcomes that are suboptimal relative to the satisfaction of subjective or consumer-revealed preferences.⁴ In others, the outcome requiring coordination through law is justified as important by way of collective ethical deliberation about values that are not fully registered in brute consumer preferences that are unresponsive to practical reasoning.⁵

It is this free market form of globalization that progressive groups protest at meetings of the World Trade Organization, the G-8 Nations,

the International Monetary Fund, and other treaty organizations that are commonly seen as imposing austerity on third world states and promoting the dogma that free trade and economic growth rank above any social or cultural values that conflict with likely market outcomes. To the protesters, "globalism" is a dirty word, standing for the rule of technocrats who are not directly accountable to the people whose lives they affect, and whose primary charge is to reduce regulatory limits on markets in commodities, capital, and labor, rather than to set legal bounds on acceptable market outcomes in the name of basic human rights, environmental preservation, some measure of local autonomy, minimum standards of living, and other social goods necessary for flourishing human communities.

Yet this libertarian sense of "globalization" as an economic ideology should not be conflated with the diametrically opposed concept of democratic political globalization, which is the vesting of primary sovereign powers in a new level of government above traditional nation-states yet directly answerable to their peoples, in order to secure public goods that cannot be realized without collective action on the global level. These opposed ideals are also distinct from the empirical reality of global market forces and a more global flow of information today. It is because commodity and labor markets now span the globe that the category of public goods relevant for political justice now includes the prevention of evils arising spontaneously in unregulated markets at the global level, such as expanding trade in dangerous weapons, monopolies in multinational industries, dilution of safety and environmental standards, violent global market swings, and small nations specializing in tax-haven services.⁶ Democratic political globalization is the only possible cure for many of the ills arising from ongoing economic globalization. For national governments acting alone, or through weak and unstable treaty organizations, can no longer sufficiently control these market forces in the ways necessary to avoid serious harms that can arise in global market interactions.⁷

Ironically, indiscriminate protests against all globalization thus prevents people from understanding the source of problems motivating the protests; it stymies efforts to develop the stronger transnational institutions necessary to solve them. As Jacques Maritain wrote in 1950: "an essentially economic interdependence, without any corresponding fundamental recasting of the moral and political structures of human existence, can but impose by material necessity a partial and fragmentary ... political interdependence which is reluctantly and hatefully accepted ... as long as nations live on the assumption of their full political autonomy."⁸ Maritain saw clearly that despite the formation of the United Nations to replace the

failed League of Nations, modern states still demanded a "right of absolute sovereignty."⁹ As a result, even democratic states internally subject to their citizens would operate in relation to other states as self-interested agents unchecked by any "organized international public opinion."¹⁰

2. Early American Coordination Problems

There are several lessons to be learned from American history that shed light on current problems of global coordination. Imagine that there was no central government in the United States today, and so fifty state governments separately had to regulate a continent-wide economy that had developed across state boundaries. They would make fifty different law codes to regulate commerce and industry, set fifty different tax and spending priorities, and make ever-shifting treaties for mutual defense. Despite their efforts to form uniform policy, given the lack of any supra-state authority to make their agreements binding, they would always have economic incentives to undercut and free ride on other states, even in crises threatening the interests of several states. Knowing that every state would have the same incentive, efforts to collude in setting common policies would be unstable without a credible enforcement mechanism.

This was roughly the situation during and immediately after the American Revolutionary War. The First Continental Congress was simply a group of delegates from twelve states convened in September 1774 to pass a common trade embargo against Great Britain called "The Articles of Association." Likewise, when the Second Continental Congress gathered in May 1775 to address new grievances, it remained "little more than a conference of ambassadors from the thirteen states.... In all respects, the states were sovereign."¹¹ As a result, during the ensuing war with Britain, Congress found it very difficult to coordinate the states to support the Continental army. Following the compromise on western lands in 1781, the Articles of Confederation finally came into effect to provide for a single currency, a unified foreign policy, and a common defense. But, though the Articles made federal law supreme, they required approval from two-thirds of the states to enact legislation on most significant matters.¹² Since the Congress of Confederation acting under the Articles had no real executive powers of its own, it depended entirely on state officials to enforce its laws: thus in practice it required near unanimity to get anything important done. The Congress could not even effectively collect its tax levies from the states.¹³ As a result, it had serious problems honoring the obligations made to continental soldiers, such as back pay, pensions to disabled veterans, and officer pensions.¹⁴ Such

problems sapped loyalty to the central government on which common security clearly depended. Likewise, since Congress could not make a common tariff policy, states competed with each other by lowering tariffs for more advantageous trade positions.¹⁵

In sum, the weak confederal government found it difficult to get the states to abide by policies that would benefit most or all states collectively, if each would make the necessary sacrifices. The problem was that without the centralized power to assure compliance from all the states, the necessary sacrifices appeared too risky or costly to each state individually; thus adequate coordination among them was impossible. The confederation of southern states during the American civil war had similar problems in acting for their common good. Fortunately, they lacked sufficient unity and centralized power to win the war.

3. Consolidation Arguments, the Coordination Principle, and the *Federalist Papers*

Such collective action problems, as they are known in game theory, are central to the paradigm form of argument for the establishment of a higher level of government to exercise primary sovereignty or directly to represent the people in handling certain matters. While there may be other ways of arguing for a shift of powers to higher levels of government, this is the best known and historically most influential way of supporting such a conclusion. We can call this paradigm the consolidation argument, since its instances are all directed to justify formation of a federal government at a new level that will unify some of the sovereign powers to decide certain matters and enforce decisions that are presently distributed among independent institutions, each of which currently represents the collective sovereignty of its own members in these and other matters. Such arguments have the following structure, including two principles, the coordination principle and the democratic principle of legitimacy, that will be explained later:

- (1) There are various important public goods that cannot be achieved in a stable or reliable way without coordination through law at a new level of government.
- (2) The coordination principle
- (3) The democratic principle of legitimacy
- (4) There is strong *prima facie* reason to establish government at a new level as a means to the public goods at issue.

- (5) There is strong *prima facie* reason to establish government at a new level and to make it democratically answerable to all the citizens of the pre-existing institutions or authorities out of which its enumerated powers are consolidated.

Here (1) is a factual premise and (2) and (3) are normative premises. (4) follows from (1) and (2), and (5) follows from (3) and (4). The conclusion is that a new federal government ought to exercise primary sovereignty over the matters it has to control to secure or promote the listed public goods; in these matters, it should directly represent the natural authority of a new people formed by a synthesis of the members of the pre-existing institutions. Such a unification is distinct from forming a treaty among the institutions that would derive its authority directly from them and at best indirectly from their members, and whose powers would depend entirely on their continual consent. This was the crucial difference to which James Madison referred in explaining that the new constitution proposed by the 1787 convention in Philadelphia would create "a government established ... by the people at large" as opposed to a confederation continually deriving its governing authority and executive powers from the state legislatures and state officers, as under the Articles.¹⁶

This schematic presentation is meant to describe the form of many possible arguments in which particular public goods, matters that must be governed to achieve the goods, and peoples whose authority is being consolidated to govern such matters are filled in. Many arguments in *The Federalist Papers* are instances of this general form. For example, in *Federalist* No. 2, John Jay argues that not only common security but also individual liberties depend on a strong federal union.¹⁷ Jay adds in *Federalist* No. 3 that individual states are tempted to inconsistencies and injustices to one another that a strong federal government can prevent. Similarly, treaties made by three or four regional American confederacies would be liable to conflict and give foreign governments a pretext for war.¹⁸ By contrast, as he notes in *Federalist* No. 4, a federal government can harmonize the interests of the parts in a common foreign policy and "apply the resources and power of the whole to the defense of any particular part."¹⁹ Distinct confederacies would be played off against one another by rival European powers, and each would have an incentive to contribute less than their necessary share to any collective continental defense.²⁰ Already, Alexander Hamilton argues, the weakness of the Congress of Confederation has led to conflict and decline in credit.²¹ He also foresaw that disputes over new territories west of the thirteen original states might lead to war among the states or multiple confederacies formed among them.²² These points support a new federal government

because of the coordination principle, which comes closest to explicit formulation in *Federalist* No. 15:

The great and radical vice in the construction of the existing Confederation is in the principle of LEGISLATION FOR STATES OR GOVERNMENTS, in their CORPORATE OR COLLECTIVE CAPACITIES, as contradistinguished from the INDIVIDUALS of whom they consist.... [T]he United States have an indefinite discretion to make requisitions for men and money; but they have no authority to raise either by regulations extending to the individual citizens of America. The consequence of this is that [their laws]...are mere recommendations which the States observe or disregard at their option.²³

Under the Articles, all enforcement and execution of federal law depended on the local interests of each state, which could often benefit from free-riding on others: "The greater deficiencies of some States furnished the pretext of example and the temptation of interest to the complying, or to the least delinquent States."²⁴ As Hamilton argues, such collective action problems can only be overcome by consolidation: the "characteristic difference between a league and a government" is direct authority over individual citizens, or primary sovereignty.²⁵ This does not mean that all state powers must be consolidated at the federal level; many can remain at the state level. But not "to confer in each case [or level] a degree of power commensurate to the end" or relevant public goods "would be to violate the most obvious rules of prudence and propriety."²⁶ It is folly to trust our national interests to a government too weak to secure them.²⁷ It is worth noticing how the ideas of coordination and subsidiarity are stated together here. For Hamilton, both follow from the hypothetical imperative that "the means ought to be proportioned to the end" or "every power ought to be commensurate with its object."²⁸ As John Marshall also argued in defending the proposed constitution, it is absurd to make the governing power less than adequate to its ends just because it might be abused. Since any power wielded by human persons can be abused, this objection could only be satisfied by the complete absence of any government.²⁹

4. Public Goods, Consolidation, and Subsidiarity

Let us consider the main elements of the consolidation argument paradigm one by one. The first premise is primarily factual, though its first clause may also involve value-judgments. It claims that there are certain goods that are essentially public in the sense outlined above, which has

the following four features: first, something is a public good only if it is a state of affairs that is desired by many or all of the relevant parties, or that is objectively good for all or most of these parties; second, according to empirical evidence and game theory, the public good is unlikely to be consistently produced through competitive interaction of the parties who, in each decision, select options by a strategic assessment of which best directly serves their private interests or directly maximizes their desire-satisfaction; third, the public good can only be achieved by collective action of all or most relevant parties organized through binding public law or policy made by the unified authority of a government representing all the parties; fourth, the coordination secures the public good for all or most of the relevant parties, where it will be jointly enjoyed by all or most of the parties when it is achieved.

Public goods in this sense can have several different kinds of value. Some, like reliable currency and public utilities, are instrumentally essential to optimizing the satisfaction of common human preferences: they are among those states of affairs that cannot be spontaneously produced by market interactions but are instead necessary background conditions for free markets to operate efficiently and reliably in producing market goods. Other goods, such as protections from discrimination and equal opportunity to apply for jobs, are parts of basic justice. Many others, from parks to art, may be valuable in broadly ethical senses without being requirements of justice. The definition sketched above is sufficient to specify different types of public good according to the level of coordination they require. For example, a global public good is a good that can only be achieved by some coordination through law, policy, or sovereign power of nations or peoples in most or all regions of the world, which in turn provides the public good to all of them. More generally, a consolidation argument for centralizing primary sovereign powers in a new level of government begins with the claim that there are important public goods that require coordination through legal institutions able to secure collective action at this level.

In this most general sense, even Hobbes's argument for moving from a state of nature or anarchy to establish a government with a monopoly on powers necessary to secure life and property rights can be recognized as a consolidation argument for government at some level. Since Hobbes constructs his argument from an imaginary situation in which all sovereign right to rule or decide is retained at the level of each individual, it appears that he is only arguing for a transfer from individuals to a natural first level of government. But actually he presupposes families and small fiefs coordinated by charismatic clan-leaders. In historical context, he is really trying to justify a strong national government in opposition to the

fiefs ruled by largely independent and feuding nobles loosely confederated within a weak kingdom, such as England under the Plantagenet kings. The collective action problems with this feudal system were different from the problems that American federalists recognized in their Continental Congress, but both arguments share the same general structure.

Using the above definitions, we can also start to fill out the first normative premise of consolidation arguments, which is the instrumental principle that guides level-transfers in sovereign power. The coordination principle can be put this way: if there are important public goods that can only be achieved by coordination through law, policy, or collective action with the force of law organized at a certain level of government, then this is a strong *prima facie* reason to give to governing institutions at that level primary sovereignty and enforcement powers over matters that have to be governed to achieve these public goods. The principle does not imply that this fact about the public goods is a sufficient reason for unifying within government at that level the powers relevant to the public goods that are presently distributed to individuals or to lower levels of government; for the costs of establishing such a new government at that level would also have to be considered in each case; there could also be other moral reasons against such a new government, despite its necessity for achieving the stated public goods. Non-consequentialist moral theorists can reject any simple utility measure for comparing the relevant public goods against the costs of government necessary to secure the goods, or they may aim at certain thresholds in public goods rather than maximizing costs over benefits, or regard some public goods as objects of strict obligation that cannot be outweighed by collective utility, at least within certain limits. Thus the coordination principle is compatible with a variety of strategic and moral considerations against the *prima facie* reasons it allows for new levels of government, and thus with a variety of ethical perspectives on what else should count beyond the public goods at stake. However, this level-transfer principle does imply that if objections are absent or weak, government at the new level should be established. Thus a consolidation argument is complete only with further steps to show that *prima facie* reasons against government at a new level are outweighed in comparisons that may be holistic rather than just utility-summing.

Federalist proponents of the coordination principle also generally assume that there are few if any other relevant *prima facie* reasons for government: unification of powers in higher levels of government is not valuable for its own sake, for symbolic glory, or for private gain. Instead, the main reasons for establishing any government are the public goods that cannot be realized without it. This is roughly the converse of the coordination principle: if there are no significant public goods that

require coordination at a certain level, there are few if any *prima facie* reasons for establishing government at that level. Let us call this the public rationale principle. It might look like an inherently liberal norm requiring minimal government, but in fact it is compatible with communitarian conceptions that allow for thick ethical values achievable only by strong communal ties or group identities as key public goods. Liberal conceptions emerge only if we combine the public rationale principle with a non-communitarian conception of public goods.

Conjoining the coordination principle with its converse implies the more familiar principle of enumeration: the powers granted to any new level of government, or the matters over which it exercises primary sovereignty, should include all and only those powers that are necessary to achieve public goods that require universally enforceable rules or collective action of the relevant parties at this level. Powers not explicitly enumerated for government at the new level are not consolidated and thus by implication are retained at lower levels of government, or left to individual decision-making. In American history, this idea is expressed in the Tenth Amendment to the 1789 Constitution. Successive application of this enumeration principle to each level, from the autonomy of every individual to the highest order of government, implies that each matter or issue should be left to decisions at the lowest level possible consistent with the coordination necessary for vital public goods. This is the principle of subsidiarity. Hence, the principles of coordination and public rationale underlie and explain this familiar idea in natural law: subsidiary and consolidation are two sides of the same model of sovereignty.

Where government at one level leaves direct sovereign authority over significant areas of public life and responsibility for various public goods to lower levels of government, we speak of government at the first level as "federal." This term implies that the lower levels of government do not simply derive their authority from a higher level of government, as an administrative bureau does; they retain primary sovereignty over all matters not consolidated in government at the federal level or left to lower levels. Thus arguments for robust local government based on the principle of subsidiarity and consolidation arguments for new federal levels of government are expressions of the same underlying principles, though this is ignored by extremists on both sides.

5. Democratic Legitimacy, Basic Rights, and Contemporary Applications

The rule of law and coordination through legal institutions are distinct from the democratic idea that legitimate legal orders must derive their

sovereignty from the consent of the governed. But in familiar instances, consolidation arguments usually add this as a second premise, which we may call the democratic principle of legitimacy. It may in turn be derived from the more fundamental claim that all sovereignty at higher levels must be rooted in the personal autonomy or the natural sovereignty that each person has to make his or her own choices and commitments. Here is a strong version of the democratic principle derived from recent work advocating a deliberative conception of collective government by the people: Government at any level is legitimate only if first, it can generally secure, to a sufficient extent, the most central public goods for the sake of which it exists; second, it enjoys the direct consent of individual persons represented in this government, as informed by educated practical reasoning and participation in ongoing and free debate in a public sphere including sufficient access to objective sources of information; third its actions, policies, and laws are generally in accord with the moral pre-suppositions of democratic popular sovereignty such as according all citizens equal basic liberties.

The second and third clauses of this principle are more controversial than the first, since they are open to several possible interpretations and there are weaker rival conceptions of legitimacy. This formulation reflects Jürgen Habermas's systematic argument that the basic liberties of citizens which limit legitimate outcomes of legislative processes and the ideal of democracy as unconstrained public deliberation about the common good mutually require each other.³⁰ The right to popular sovereignty and the equal basic liberties required by the idea of citizenship as a legal institution both follow if and only if we accept the rule of law as the primary basis of social coordination and the modern ideal of public justification for normative claims that is implicit in truth-seeking communicative practices — the discourse principle of Habermas.³¹ Thus, Habermas's account allows us to explain why neither the second nor the third clause of the democratic principle of legitimacy can be grounded in moral theory without also justifying the other.

Yet the insight that legitimate popular sovereignty and basic civil liberties are logically connected in their grounds is not Habermas's innovation alone; it is found in embryonic form in Abraham Lincoln's arguments against the Kansas-Nebraska Act and against Senator Stephen Douglas's claim that a majority vote for slavery is a legitimate exercise of popular sovereignty.³² Harry Jaffa explains the heart of Lincoln's response: "If self-government is a *right*, and not a mere fact" in some nations, "then it must be derived from some primary source of obligation," which can only be the inherent dignity of each individual. Thus, if the people try to make a law that violates this value "inhering in each

man," the content of their attempted law violates the necessary conditions of their right to make it.³³ Such an attempted law is therefore void: it could only be legitimate if the presuppositions of democratic government were false; but in that case, issuing from the popular will can give it no authority. Hence, Douglas's conception of democracy as pure majority rule leads to contradictions and must be rejected.

Closely related ideas can be traced back through the Whig and Federalist traditions in American political philosophy.³⁴ For example, Madison argues in *Federalist* No. 46 that once a new central government is created, legitimacy requires that it be answerable to its citizens as a unified people: "the ultimate authority" of both state and federal governments "resides in the people alone," who will also retain allegiance to their states.³⁵ A republic is a government that "derives all its powers directly or indirectly from the great body of the people," not from some small subset of them.³⁶ As a later Whig, Daniel Webster, argued in a famous speech, because the authority of the whole people is directly embodied in the federal constitution as the supreme law, the federal government is not a mere "agent" of the state governments.³⁷ Nullification of federal law by states usurps the people's control through elections and the procedures for constitutional amendments. The consolidation of federal authority cannot be undone without the consent of the whole people. Lincoln follows Webster's argument in holding that, absent tyranny justifying revolution, legitimate secession of any state would require a constitutional amendment democratically approved by the entire people of the United States.³⁸

America solved its problems first by transferring to the new federal government primary sovereignty over matters necessary for national security and economic progress in the 1789 Constitution and later, in the Civil War amendments, by transferring to the federal government direct authority to hold every state to the most basic rights. Recently, the European Union has gone through a similar series of reforms, moving from a treaty organization to coordinate trade policies to a weak confederation with very limited central powers, toward a more robust and democratic federation. Although the "Constitution for Europe" treaty proposed in 2004 failed to gain ratification, the Lisbon Treaty was signed by all twenty-seven heads of state in December 2007. The rejection of the Lisbon Treaty by the Irish in June 2008 leaves the future of a more legitimate European Union according to the first and second clauses of the democratic principle of legitimacy in some doubt.

The consolidation argument sketched above fills an important gap in recent political philosophy: it maps out the primary way of arguing for higher levels of government. We cannot simply take existing constitutional

orders as given and then ask whether they meet conditions of justice for governing institutions of that kind; we must also ask whether requirements of justice together with other needed goods obligate us to create and maintain higher governing powers. Recent theories of political justice have not linked norms for judging the legitimacy of existing governing powers to principles for distributing authority over distinct levels of government — including levels that might not yet exist. Although the consolidation argument is merely a rigorous reconstruction of familiar federalist ideas, it provides a missing dialectical link needed to show that contemporary conceptions of justice and other public goods already imply a transfer of significant sovereign authority and powers to stronger transnational institutions.

Specifically, an argument for consolidating some of the powers of existing nation-states into a transnational federation has three main parts. First, we defend of the democratic principle of legitimacy against objections that it is not applicable as the global level. Second, we argue that there are important public goods involving both moral values and the mutual interests of many or all nations that cannot be achieved either by the spontaneous interaction of states pursuing their national interests, by our current international organizations, or by proliferating non-governmental organizations. Third, we show that the steps necessary to establish a federation capable of securing the relevant goods are feasible and worth the costs. Then, given the coordination principle as uncontroversial, it follows that the envisioned federation should be formed. In the subsequent sections, the focus will be on the second of these three steps.

6. Nine Categories of Global Public Goods

There are a number of goals that are widely recognized as public goods which probably cannot be achieved without global or at least broad transnational coordination. For example, the current world order faces prisoner's dilemma-like collective action problems among nation-states as independent strategic actors in nine categories: (1) security from foreign invasion or wars aimed at territorial acquisition, which includes addressing territorial grievances and border disputes; (2) protection of lives and property from rogue regimes, from terrorist groups inspired by religious ideologies, and from other non-state criminal organizations; (3) recognition and establishment of fundamental human rights, including equal rights to life and bodily privacy, equal basic liberties of conscience, religion, speech, association, movement and employment; and freedom from war crimes, genocide, ethnic cleaning, torture, and other crimes

against humanity; (4) the development and stability of the world's economy and financial systems, including creation of a global currency and a regulatory regime capable of setting world interest rates and preventing global credit crises and other cascading economic failures; (5) the establishment of fair trade agreements that promote economic expansion and opportunity for developing nations without compromising environmental standards, worker safety, and labor rights; (6) alleviation of dire poverty in third-world nations in ways consistent with social justice, such as through infrastructure growth, universal education, debt forgiveness, and stability in global commodities markets; coordinated assistance in natural disasters; (7) setting and enforcing fair immigration laws to regulate the movement of people between states and protect rights of asylum without overburdening particular nations; better systems for placement of new immigrants to avoid high concentrations leading to poverty; (8) the ability of national governments to levy fair and effective individual and corporate income taxes, which is threatened by small nations that specialize as tax-havens; (9) setting sustainable usage limits on the world's environmental resources, such as arable land, topsoil, non-renewable energy sources, minerals, and clean air; sharing the costs of rainforests and their associated biodiversity; stabilizing global temperatures and sea levels to prevent or reduce massive climate change.

Each item on this list requires articulation and defense, but they overlap substantially with goods suggested by others. For example, World Bank scholar J. F. Rischard has offered a list of twenty "inherently global" issues that are "insoluble outside a framework of collective global action involving all nations of the world."³⁹ He recognizes that these goods will not be spontaneously produced by the invisible hand of free markets and lie outside the bureaucratic control of single nations.⁴⁰ Rischard's list includes more details on environmental goods, adds prevention of global infectious diseases and the need for worldwide bio-technology rules, yet he conspicuously leaves out enforcement of basic human rights.⁴¹ Perhaps this is because he assumes that "we cannot have global government" and does not consider a federation of democracies as a viable alternative.⁴²

To make an initial case for such a federation, we can focus on the first three categories of public goods on the list here, since these are the most fundamental to any decent life in the twenty-first century: While the first and second are instrumental goods for almost everyone from a prudential perspective, the third is the arguably the central component of political justice and it includes rights to the protections mentioned in the first and second categories. Human rights standards differ to some extent according to the moral theory on which they are based, but at least a

minimal set of universal rights is arguably implicit in international law and also in widely accepted just war principles that are partially reflected in existing international conventions.⁴³

Presumably, political justice also includes goods concerning economic inequalities, but such goods are more controversial, since we cannot assess inequities arising from the invisible hand of global markets without first defending substantive norms of distributive justice. Yet the inequities often pale in comparison to injustices directly imposed by tyrannies, feuding warlords, and corrupt bureaucracies on segments of their own population. As we have seen in Burma, Somalia, Liberia, the Congo, Zimbabwe, and North Korea, tyranny, kleptocracy, and civil war among tribal militias are leading causes of third world poverty.⁴⁴ For these reasons, the case for a new federation should be made on the basis of categories (1), (2), and (3) before expanding the argument to include the need for global coordination to promote elements of global economic justice or environmental goods, though both are vital to our collective future. Yet a brief examination will show why our current institutions are insufficient even to secure goods in the first and second categories.

7. The Security of Borders

Our current world order, which is often called the "Westphalian model," grossly fails to achieve most of the public goods listed above.⁴⁵ The "inter-state" system, as Fred Dallmayr dubs it, does not secure us from terrorist threats or deter and prevent crimes against humanity because it was only designed to secure borders from territorial aggression by other states.⁴⁶ Dating from the rise of the modern-nation state codified in the 1648 Treaty of Westphalia and reorganized following World War II under the umbrella of the United Nations, our world system is a loose *modus vivendi* relationship between independent nations, each claiming absolute sovereignty over its own lands, constrained primarily by bilateral and multilateral treaties with rare influence by Security Council resolutions.⁴⁷ The founding documents of the United Nations include the Declaration of Universal Human Rights; but as Burleigh Wilkins points out, in the United Nations Charter, "the responsibility for protection of human rights seems to rest on the governments of the states where the violation of these rights occurs."⁴⁸ That means that the Declaration amounts to noble rhetoric without the force of law, especially since there is not even a United Nations court that could review General Assembly or Security Council resolutions for consistency with the Declaration of Universal Human Rights.

In real political terms, the key precepts of the United Nations system since its founding have been the following: First, in order to secure peaceful coexistence, to avoid a devastating third world war, and to promote global trade and commerce, every national government will accept the unlimited right of every other to control its own internal affairs as long as it does not act aggressively against other sovereign states. Second, each *de facto* state retains all primary sovereignty over the life, liberty, and welfare of its own residents and the disposition of its natural resources, as long as it refrains from attacks on other states or expansionist policies, whether or not its government is democratic, or grants equal basic liberties, or demonstrates even minimal concern for the common good of its citizens, or destroys its natural environment. Third, the United Nations and its governing Security Council have no primary sovereignty derived directly from the citizens of member nations; they act solely as proxies for *de facto* sovereign national governments, not as guardians of the interests of their citizens or judges of claims by individuals or sub-national groups. Fourth, the central purpose and *raison d'être* of the United Nations and its Security Council is to stabilize peace among nations of many different cultures, to secure their existing borders by deterring aggression, and when feasible, to restore their *status quo ante* borders in response to invasion by regimes breaking the peace. Fifth, any national government, however tyrannous or unjust it may be to its own people, can be accepted as a member of the United Nations, if it pledges to refrain from foreign aggression. Even governments that systematically violate the most basic human rights of their residents can be members of the Security Council, and can have vetoes if their actual military and political powers are so significant that they must be party to international agreements to prevent wars.

In sum, this framework was designed to promote only the first global public good, which is peace in the thin sense of security from wars of conquest waged by bellicose nations. This was not because ideal conceptions of global justice went no further in 1945: the importance of the basic human rights was already recognized in the Nuremberg trials and prior international conventions against war crimes, and in principle in the Declaration. The United Nations was so limited in its main goal for reasons of pure *realpolitik*: during the Cold War, there was ample reason to settle for the mere *modus vivendi* relationship among nation-states to be stabilized by the United Nations. After all, the stability of national borders and freedom from threat of total war are significant parts of the Enlightenment ideal, figuring prominently in the work of modern philosophers like Erasmus, Grotius, and Kant. If this good could be

secured by allowing bad regimes to act with impunity in their internal affairs, it was worth it to avoid a third world war.

Yet sixty years later, we must recognize that this costly compromise has for the most part failed. The resulting weakness of the Security Council has greatly limited its ability to promote even the one public good at which its framers aimed. Europe avoided the mistakes made after World War I through the Marshall Plan, which was largely a unilateral American effort. War between NATO and the Soviet Union was prevented by bilateral deterrence. At the same time, the vetoes of permanent members have often prevented the Security Council from acting to turn back invasion across borders, for example during the invasion of Hungary by the Soviet Union in 1956. The United Nations was able to authorize force to defend South Korea in 1950 only because the Soviet Union was absent from the Security Council in protest over recognition of the Chinese government in Taiwan. Russian opposition, along with other factors, again prevented the Security Council from acting to stop Serbian aggression against Bosnia and Kosovo in the 1990s, though it was able to authorize the coalition led by the United States to liberate Kuwait from Iraqi invasion. Having Korea and the conflict between India and Pakistan to attend to, the Security Council did nothing when the People's Republic of China invaded Tibet in 1950, and it cannot act to help Tibet today given the Chinese veto. It has done no more than issue paper condemnations in response to several other conflicts in Asia and Africa in the last half-century. Finally, the Council did little when the 1948 Arab-Israeli war prevented the establishment of the two states mandated by the General Assembly.

This record shows how coordinating power is lost if a legislative body is subject to vetoes by single parties with interests contrary to the collective welfare of all parties, or if it lacks any serious enforcement power of its own in the few cases when it can get agreement to act as needed to secure public goods. The result was that the Security Council gradually became less and less relevant. In the twenty-first century, most national governments have lost faith in the ability of the United Nations even to protect the integrity of borders. Yet so far, only one major alternative has been tried: the architects of recent American foreign policy imagined that the United States could act by default as the world's primary policeman. As Thomas Magnell warned in 2002, the new doctrine that the United States may intervene unilaterally in any nation when the American government judges this necessary for our national security "abrogates accepted notions of sovereignty" and violates the global order in which the Security Council is meant to have authority over all major actions to protect each member from armed attack.⁴⁹ If universalized, this

unilateralist policy would unravel what little coordinating power remains within the United Nations framework today. Moreover, American unilateral initiatives also manifestly lack the coordinative power to secure the main global public goods, and lukewarm support from other NATO nations is not enough to fill the vacuum.

8. Prevention of Terrorism and Proliferation of Weapons of Mass Destruction

Armed invasion by belligerent governments seeking territorial gain was the primary bane of European history from the Roman Empire to World War II, but since the end of the Cold War, democratic nations are far more threatened by non-state actors such as terrorist groups who wish to establish fundamentalist theocracies. The declining costs and increasing accessibility of more powerful weapons also emboldens smaller rogue regimes as well. John Lango points out that over a hundred nations are already capable of manufacturing biological weapons, and as more do, the probability that a plague will result from accidental release or intentional attack magnifies.⁵⁰ Given "terrible and unavoidable uncertainties about WMD possession by non-governmental agents, such as revolutionaries, mercenaries, arms dealers, and of course, terrorists," the mere possession of weapons of mass destruction, especially by weak states, is a threat to the security of all peoples.⁵¹

Similarly, Magnell argues that "No longer do large armies have to be amassed to threaten national security. Weapons of mass destruction become cheap enough for small nations, poor nations, like-minded bands of individuals, even prosaic criminal organizations to seriously menace large, wealthy, militarily strong nations."⁵² In this situation, nations of all types and large terrorist groups become near-equals, like the individuals in what Hobbes called a state of nature, whose pursuit of their interests without coordination is mutually self-defeating for all: this "predicament of nation states calls for a global authority with sufficient power to redress or prevent attacks on themselves. This requires a transfer of power and a relinquishment of significant elements of sovereignty" to consolidate sufficient authority in the global institution to counter these threats.⁵³

This is a consolidation argument based on the second global public good listed earlier. As Magnell adds in a second article, life and liberty are "preeminent among prudential values and, together with justice, preeminent among moral values," but today they cannot adequately be secured for anyone without a stronger global authority.⁵⁴ Like international money laundering and traffic in human beings, the fabrication and spread

of powerful weaponry is beyond the power of national governments acting unilaterally or through treaty organizations to contain. Since each nation has a short-term economic interest in selling sophisticated weapons, few individual nations will accept a ban on exporting such weapons without a system for assuring that others will do likewise. Thus there is little rein on the global free market in guns, bombs, missiles, land mines, military aircraft, and the materials and knowledge necessary to make chemical and biological weapons. Only nuclear weapons remain hard for terrorist groups and their state sponsors to get; but the current world order has been unable to halt to spread of this technology to regimes in Pakistan, North Korea, and possibly Iran. Nor, without authoritative global coordination, can sufficient control be achieved over stockpiles of nuclear materials left over from the Cold War to prevent all such materials from falling into the hands of ideological fanatics. As Magnell says, a world in which such weapons of mass destruction could end up in the hands of tinpot dictators and zealots across all continents "should be unthinkable," but that is the highly suboptimal result to which the invisible hand of the global weapons market leads.⁵⁵

There can be little doubt that the public good of safety from rogue regimes and terrorists who would use weapons of mass destruction now requires global laws enforced on all nations against the production and spread of such weapons. Yet history shows how hard that is to do by multilateral treaty; a consolidated federation of democracies would be much more likely to succeed. It would still be difficult for a strong global federation to secure us from attacks by international terrorist groups using weapons of moderate destruction, since these are harder to embargo.⁵⁶ Such groups would not be party to any new institution devoted to global security, and since they value destruction of purported infidels above their own life and liberty and that of their children, no morally acceptable deterrents are likely to sway them.

To respond effectively, it seems that a new global government would have to dismantle the cultural networks and fundamentalist madrasas that are providing such terrorist groups with most of their membership and set up a new educational system, which would require not just regime changes but cultural revamping on the scale that took place in Germany and Japan after the end of World War II. In both nations, the allied forces not only changed the political system, but aimed to educate the public about the true magnitude of atrocities committed by the fascists, to restructure the schools and curriculum, and to rebuild the economy, thus bringing about a transformation in culture. Yet to be perceived as legitimate around the world, any such deep intervention would have to be recognized on all sides as justified by the basic rights of children and as

undertaken by a coalition transcending factional interest by representing most of the free peoples on Earth.

9. Human Rights: from the United Nations to a Federation of Democracies

These reflections suggest that security and human rights are not practically separable as global public goods. But if the United Nations has been ineffective at security, it is even more apparent that it lacks the centralized authority to enforce human rights standards. A philosophical defense of basic rights as global public goods requires a further argument that such rights are requirements of justice.⁵⁷ However, if we accept even minimal individual rights as global public goods, the Security Council is obviously unable to assure freedom from genocide, ethnic cleansing, and similar atrocities not only because it lacks any independent enforcement power, but also because its basic structure gives votes and even veto power to dictatorships that tolerate, systematically commit, and depend on such crimes against humanity. The security concerns involved in the first and second global goods might simply suggest strengthening the United Nations framework, but even giving the United Nations an independent army would be insufficient to secure basic human rights if its intervention could only be authorized by anything like the current Security Council. As we have seen, the problem is rooted in the basic compromise on which the United Nations was founded, the guarantee of unlimited sovereignty over internal affairs: any amendments allowing genuine enforcement of universal rights would thus be running against the basic spirit of the institution.

What is needed is a revolutionary change at the fundamental level: the institution at the heart of our global order must limit full membership to nations that grant equal democratic rights and civil liberties to all their citizens, and limit associate membership to nations that at least respect the most basic individual rights; national sovereignty over internal affairs must also be limited by such standards. The highest-level government must also be able to act with a simple majority for most purposes and have its own resources to enforce its laws and its settlements of international conflicts. We have already seen why security from aggressor states and transnational terrorism requires consolidated authority to make binding law in these areas and sufficient police powers to enforce them; such an authority must also have the power to act swiftly to stop humanitarian crises. But it could reliably use that power only if it enjoyed broad consensus on a set of basic rights as non-negotiable limits on state

sovereignty. That consensus is now possible among almost all the powerful nations in the world, and potentially most of the less powerful ones as well. Thus, the prudential reasons that in 1945 forced us to settle for such a non-ideal global framework are fast disappearing.

Any plausible version of the democratic principle of legitimacy suggests the same membership criteria: a federation of nations could not secure borders, halt growing terrorist threats, and enforce basic rights without significant consolidated powers, and such powers could not in turn be legitimate unless they were directly derived from the ongoing rational support of citizens in all the member nations. But this is possible only through the mediation of *democratic* member nations: a decent non-democratic regime that avoids humanitarian atrocities still could not allow its citizens free debate about issues to be decided by the transnational federation and free voting among multi-party candidates to represent them in the federation, while denying such political liberties with regard to its national government. Thus, the federation would have to limit full membership to democratic nations that respect rights to popular sovereignty along with other basic rights. Non-democratic nations could be considered for associate membership depending on their respect for liberties more basic than democratic rights, giving them a voice in the federation without full voting rights concerning humanitarian interventions or enforced settlements of armed conflict.

Clearly, to alter the current Security Council this radically would be far beyond anything politically feasible in the amendment process of the United Nations Charter. Amendments require a two-thirds majority in the General Assembly and ratification by two-thirds of the member nations, including all permanent members of the Security Council.⁵⁸ There is no foreseeable scenario in which two-thirds of nations, including China, would disband the current Security Council in favor of a federation limited to democracies with consolidated powers; the very problems that dog the United Nations system will also prevent any sufficient restructuring from within its legal system.

In any case, the changes implied by the consolidation argument are too fundamental a departure from the existing framework to be offered as a mere amendment. Like the 1787 convention that met in Philadelphia, a world convention called to make radical revisions to the United Nations today could only meet the world's needs if it proposed much more than amendments, abandoning the Charter for a global federation of democracies that could really enforce fundamental human rights, deter atrocities, and prevent humanitarian catastrophes, while also exercising such powers with democratic legitimacy. Rather than try to move through a legal amendment process, it would be more honest and effective to act in

revolutionary fashion and scrap the Security Council to form a federation from an initial set of member states that would include free peoples from all inhabited continents, which could build the federation by setting standards for admitting new states.

A full development of this proposal would have to meet several objections concerning the feasibility of such democratic federation, its likely costs, and the different statuses that could be assigned to states that refused to join it. It would also have to critique in more detail alternative proposals to meet our global needs, including the comfortable illusion so common in Europe that the United Nations framework can still make viable with a little touching up. However, it is clear that the proposed federation differs starkly from both American unilateralism and the United Nations process, which are so often dichotomously posed as if they were the only accessible options. This insufficiently considered alternative demonstrates the relevance of the consolidation argument as a principled way of approaching questions of global governance: when coupled with sufficiently robust conceptions of global public goods and a realistic assessment of evident coordination problems, it points us toward better alternatives that have yet to receive any significant discussion in wider popular fora and political debate.

Notes

1. George Herbert Walker Bush, Speech to a Special Joint Session of Congress, 6 March 1991.
2. John R. Saul, "The Collapse of Globalism," *Harper's Magazine* (March 2004), pp. 34–35.
3. *Ibid.*, p. 37.
4. See David Gauthier, *Morals by Agreement* (Oxford: Oxford University Press, 1987), ch. 3 & ch. 4.
5. See Mark Sagoff, *The Economy of the Earth* (Cambridge, England: Cambridge University Press, 1990), ch. 2, esp. pp. 37–39; also see Cass Sunstein, *The Partial Constitution* (Cambridge, Mass.: Harvard University Press, 1993), ch. 1.
6. For a similar list with further environmental and public health issues, see J. S. Rischard, *High Noon: 20 Global Problems and 20 Years to Solve Them* (New York: Basic Books, 2002), p. 66.
7. See Peter Singer, *One World: The Ethics of Globalization*, 2nd ed. (New Haven, Conn.: Yale University Press, 2004), ch. 3, and Jürgen Habermas, "The Postnational Constellation and the Future of Democracy," in *The Postnational Constellation: Political Essays*, trans. and ed. Max Pensky (Cambridge, Mass.: MIT Press, 2001), ch. 4.
8. Jacques Maritain, *Man and the State* (Chicago: University of Chicago Press, 1951), p. 190.

9. *Ibid.*, p. 191.
10. *Ibid.*, p. 193.
11. Thomas A. Bailey and David M. Kennedy, *The American Pageant*, 7th ed. (Boston: D.C. Heath and Co., 1983), p. 123.
12. See *The Articles of Confederation and Perpetual Union* (Carlisle, Mass.: Applewood Books, 2006), Article XIII and Article IX, ¶6 respectively.
13. Bailey and Kennedy, *op. cit.*, p. 125.
14. See Emily J. Teipe, *America's First Veterans and the Revolutionary War Pensions* (Lewiston, N.Y.: Edwin Mellen Press, 2002).
15. Bailey and Kennedy, *op. cit.*, p. 127.
16. James Madison, "Address to the Ratification Convention of Virginia," in Lewis Copeland and Lawrence W. Lamb, eds., *World's Great Speeches*, 3rd ed. (New York: Dover Publications, 1973), p. 238.
17. See Alexander Hamilton, James Madison, John Jay, *The Federalist Papers*, ed. Clinton Rossiter (New York: Penguin Books, 1961), No. 2, Jay, p. 39.
18. *Ibid.*, No. 3, pp. 42-44.
19. *Ibid.*, No. 4, p. 48.
20. *Ibid.*, p. 49.
21. *Ibid.*, No. 6, Hamilton, p. 59.
22. *Ibid.*, No. 7, pp. 60-61.
23. *Ibid.*, No. 15, p. 108. Cf. No. 23, p. 154.
24. *Ibid.*, pp. 111-12. Cf. No. 46, Madison, p. 298.
25. *Ibid.*, Hamilton, p. 109.
26. *Ibid.*, No. 23, p. 155.
27. *Ibid.*, pp. 156-57.
28. *Ibid.*, No. 31, p. 193.
29. John Marshall, "Address to the Virginia Ratification Convention," in Copeland and Lamb, *op. cit.*, p. 242. This response applies in particular to some of Patrick Henry's objections to the Constitution. But it allows further provisions to prevent abuse, such as the amendments in the Bill of Rights, which Henry's arguments helped bring to fruition.
30. See Jürgen Habermas, *Between Facts and Norms*, trans. William Rehg (Cambridge, Mass.: MIT Press, 1996), ch. 3.1.
31. Jürgen Habermas, "Discourse Ethics," in *Moral Consciousness and Communicative Action*, trans. Christian Lenhardt and Shierry Weber Nicholson (Cambridge, Mass.: MIT Press, 1990, 1993), p. 66.
32. See Abraham Lincoln, "Our Republican Robe is Soiled," Speech on the Kansas-Nebraska Act (Peoria, IL: Oct. 16, 1854), in Harold Holzer and Mario Cuomo, eds., *Lincoln on Democracy* (New York: HarperCollins, 1990), p. 71.
33. Harry Jaffa, *Crisis of the House Divided* (Doubleday & Co., 1959), ch. XVI, "Popular Sovereignty: True and False," p. 348.
34. See Garry Wills, *Lincoln at Gettysburg* (New York: Simon and Schuster, 1992), pp. 129-132.
35. Hamilton, Madison, and Jay, *op. cit.*, No. 46, Madison, p. 294.
36. *Ibid.*, No. 39, p. 241.
37. Daniel Webster, "Reply to Hayne," in Copeland and Lamb, *op. cit.*, 270-278.
38. Abraham Lincoln, "First Inaugural Address," in Holzer and Cuomo, *op. cit.*, p. 204, 206 & 208, and "Message to the Special Session of Congress," pp. 219-220.

39. J. F. Rischard, *High Noon: 20 Global Issues and 20 Years to Solve Them* (New York: Basic Books, 2002), p. 65.
40. *Ibid.*, p. 12, 34 & 46.
41. *Ibid.*, p. 66.
42. *Ibid.*, pp. xi & 166.
43. A detailed defense of this claim will be offered in a sequel to this article titled "Just War Theory and Humanitarian Intervention"
44. Amartya Sen, *Development as Freedom* (Oxford: Oxford University Press, 2002).
45. James T. Johnson, "Just War, As It Was and Is," *First Things* 149 (January 2005).
46. See Fred Dallmayr, *Peace Talks — Who Will Listen?* (Notre Dame, Ind.: University of Notre Dame Press, 2004).
47. On the background to Westphalia, see Rischards, *High Noon*, p. 45.
48. Burtleigh Wilkins, "Introduction," in *Humanitarian Intervention*, ed. Aleksandar Jokic (Peterborough, Ontario: Broadview Press, 2003), p. 9.
49. Thomas Magnell, "Vulnerability, Global Authority, and Moving Away from a Local Maximum of Value," *Journal of Value Inquiry* Vol. 36, No. 1, (2002), p. 2.
50. See John Lango, "Preventative Wars, Just Wars, and the United Nations," *The Journal of Ethics* 9 (2005), p. 255.
51. *Ibid.*, p. 256.
52. Magnell, *op. cit.*, p. 4.
53. *Ibid.*, p. 5.
54. Thomas Magnell, "Life and Liberty on a Global Scale," *Journal of Value Inquiry* Vol. 37, No. 1, (2003), p. 1.
55. *Ibid.*, p. 8.
56. Magnell, "Vulnerability, Global Authority, and Moving Away from a Local Maximum of Value," p. 7.
57. As will be seen in a sequel to this article, such standards are not only implicit in existing war crimes treaties, but also in the traditions of just war theory, which together implies a wide consensus on minimal universal rights.
58. *Charter of the United Nations* (New York: United Nations Publications, 1985), Article 108.