

# Liberal hierarchy and the licence to use force

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## Introduction

Determining when states can use force legitimately is the central normative problematic in world politics. Domestically, constraining the state's use of force with social and legal norms that confine state-sanctioned violence to a limited and clearly defined set of purposes and circumstances is essential to the maintenance of civil society and the protection of basic human rights. Internationally, circumscribing the conditions under which states may use force legitimately is critical to the maintenance of peace and stability in international society. And the degree to which legitimate force may be used internationally to constrain illegitimate force domestically lies at the heart of the problematic relationship between order and justice in world politics.

Ever so gradually, through the trials of war and colonialism, a set of principles have evolved internationally to govern when states may use force legitimately. First, recognised sovereign states are held to be legal equals, even if differences in capabilities are profound and certain institutional accommodations have been made to placate great powers. Second, sovereign equality gives all states a basket of governance rights internationally – enshrined in the general principle (if not in practice) of 'one state, one vote' – and rights of autonomy domestically, most notably the paired rights of self-determination and non-intervention. Third, to uphold these sovereign rights, the international use of force has been severely circumscribed. States may only use force in their relations with one another if (1) they are acting in self-defence, or (2) they are acting collectively to uphold international peace and security. Finally, in situations other than self-defence, decisions to use force must be made multilaterally through the Security Council of the United Nations.

Together, these principles constitute what I shall call the 'equalitarian regime', a regime codified in international law and practice in the period between the signing of the United Nations' Charter and the near complete dissolution of the European empires by the early 1970s. It is a regime riddled with contradictions. Legal equality sits uncomfortably with material inequality. The great powers have special rights in international institutions, most notably the veto power of the Permanent Five in the Security Council and weighted voting rights in international financial institutions. The rights of self-determination and non-intervention have been regularly compromised by great powers and corporate actors, while at the same time protecting autocrats from external interference. The concept of 'international peace and security' is one of protean flexibility, and the Security Council is at best a qualified multilateral forum.

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Notwithstanding these contradictions, the equalitarian regime's contribution to reducing interstate warfare represents one of the most significant (if qualified) achievements of the amorphous 'international community'. Since 1945 the number of recognised sovereign states has quadrupled, and with this the number of potential disputes over territory, identity, and resources. Yet as international society has expanded the number of traditional interstate wars has declined.

Despite this contribution, the equalitarian regime is now under challenge, and some of its most articulate challengers are prominent liberal scholars of political philosophy and international relations.<sup>1</sup> Informed by a mixture of Kantian liberalism and democratic peace theory, cosmopolitan sensibilities and activism, neoliberal institutionalism and new liberal legal theory, and post-September 11th security anxieties, these scholars question the equalitarian regime's version of international liberalism, advancing a markedly different formulation. They advocate the formal rehierarchisation of international society, whereby democratic states would gain special governance rights – particularly with regard to the legitimate use of force – and other states would have their categorical rights to self-determination and non-intervention qualified. With this move, an increasingly prominent strand of international liberalism risks converging, in unintended yet disturbing ways, with strands of neo-conservative thought and with the central policy prescriptions of the Bush Doctrine.

This article explores and critiques this liberal argument for the rehierarchisation of international society and its attendant prescriptions for the legitimate use of force.<sup>2</sup> After explaining the philosophical foundations of the equalitarian regime and its tortuous construction over the past century, I detail a range of factors that have, over the past decade, gnawed away at the regime's foundations. The article then turns to the exposition and critique of the new liberal argument. My critique has three nested layers. I begin by outlining a series of practical concerns about operationalising the new liberal argument. These practical concerns are reinforced by a series of prudential objections, objections that stress the harmful consequences for international order of replacing the equalitarian regime with a new hierarchy. Granting democracies special rights, especially in decisions to use force, can only exacerbate already widespread feelings about the inequities of the present international order, reduce the sense of investment of many states in the institutional architecture and rules of international society, and, as a consequence, heighten rather than diminish conflict and discord. The final layer of my critique turns liberalism itself against the case for renewed hierarchy. Above all else, liberalism, in both its domestic and international manifestations, has sought to separate political rights from the distribution of material power. Absolutism conjoined political right and material power in the figure of the sovereign, and the nineteenth century standard of civilisation conjoined such rights and power in the European states that placed themselves at the pinnacle of the civilisational hierarchy. Wittingly or not,

<sup>1</sup> See, for instance, Francis Fukuyama, *The End of History and the Last Man* (New York: The Free Press, 1992); John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999); David Held, *Democracy and the Global Order* (Stanford, CA: Stanford University Press, 1995), pp. 273–4; and Allen Buchanan and Robert O. Keohane, 'The Preventive Use of Force: A Cosmopolitan Institutional Proposal', *Ethics and International Affairs*, 18:1 (2004), pp. 1–22.

<sup>2</sup> For a different but complementary analysis of hierarchy in contemporary international society, see Tim Dunne, 'Society and Hierarchy in International Relations', *International Relations*, 17:3 (2003), pp. 303–20.

proponents of liberal hierarchy contradict the foundational tenets of liberalism by promoting a reconjoining of right and might.

### The equalitarian regime

The equalitarian regime is a relatively new innovation in international relations. Before the Napoleonic Wars, the idea that all sovereigns were legally or socially equal was a radical proposition, one explicitly rejected at great moments of system building, such as the Peace of Westphalia.<sup>3</sup> Even when it took root among European states in the nineteenth century, it was drastically compromised by political and legal hierarchy that was integral to Europe's colonial rule of much of Asia, Africa, and the Americas.<sup>4</sup> The principle was only firmly enshrined with the signing of the United Nations Charter, Article 2 of which specifies that the 'Organization is based on the principle of the sovereign equality of all of its members'.<sup>5</sup> And even then it only became a general organising principle for the international system as a whole when decolonisation replaced the formal hierarchies of empire with the first global system of sovereign states.<sup>6</sup>

With the codification of sovereign equality, recognised states gained a basket of rights and entitlements. Some of these were governance rights, or rights of legal standing and participation in international society, including everything from the right to exchange ambassadors, membership of the United Nations, and an equal vote in international fora (notwithstanding several significant exceptions). Others were rights of domestic autonomy, principally the rights of self-determination and non-intervention. The UN Charter is categorical in asserting the 'territorial integrity' and 'political independence' of all states, and pledges that nothing 'shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State . . .'.<sup>7</sup> The right to self-determination was also acknowledged in the Charter, but it was not until after the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples that its legal status was secured. The legal centrality of both the right to self-determination and the right to non-intervention was confirmed and reiterated in 1970 by the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations. 'The equal rights and self-determination of peoples' were upheld as 'a significant contribution to contemporary international law', and states were said to have 'The duty not to intervene in matters within the domestic jurisdiction of any State . . .'.<sup>8</sup>

<sup>3</sup> On the general question of when sovereign equality took root, see Martin Wight, *Systems of States* (Leicester: Leicester University Press, 1977), p. 136, and on sovereign equality at Westphalia see Francois de Callieres, *The Art of Diplomacy* (New York: Holmes and Meier, 1983), pp. 125–6.

<sup>4</sup> On the formal hierarchy of European imperialism, see Gerrit Gong, *The 'Standard of Civilization' in International Society* (Oxford: Clarendon Press, 1984).

<sup>5</sup> Charter of the United Nations, Article 2.1.

<sup>6</sup> The account presented here is broadly consistent with that presented by Gerry Simpson in his excellent study *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (Cambridge: Cambridge University Press, 2004).

<sup>7</sup> Charter of the United Nations, Article 2.4, 2.7.

<sup>8</sup> Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, 1970, Preamble.

To prevent the scourge of war and protect the sovereign rights of all states, the legitimate use of force internationally has been confined to two specific occasions, the first being self-defence, the second collective actions to uphold international peace and security. Prior to the Second World War legal efforts to reduce interstate conflict had focused on banning 'war'. In the Kellogg-Briand Pact of 1928, the parties 'condemned "war" for the "solution of international controversies" and renounced war as an instrument of national policy'.<sup>9</sup> States soon found a way around this ban by becoming pedantic legalists. As both the Japanese and Chinese demonstrated in the Manchurian conflict of 1931, it was possible to remain within the bounds of the law by simply fighting without declaring war. The United Nations Charter adopted the more robust formulation of proscribing the 'threat or use of force against the territorial integrity or political independence of any State' (Article 2), irrespective of whether the protagonists have declared war officially. The exceptions to this proscription are the 'inherent right of individual or collective self-defence' (Article 51), and collective measures 'to maintain or restore international peace and security' (Article 42).

The final component of the equalitarian regime is the principle of multilateralism – the idea that decisions to use force collectively to uphold international peace and security can only be made by the Security Council of the United Nations. Although greatly complicated by the growth of international humanitarian law, and the clear obligations legal instruments such as the 1948 Genocide Convention place on states to act decisively, the baseline principle since the Second World War has been that a Security Council mandate is required to establish the legal legitimacy of collective deployments of force. If the UN Charter sets out the legal rules governing the legitimate use of force, the Security Council is the institutional mechanism designed to ensure that these rules are applied fairly and forcefully. Of course the principle of multilateralism is imperfectly expressed in the Security Council. On the one hand, a majority of Council members are elected by the General Assembly for two-year terms, giving even the smallest and weakest states an opportunity to participate, at least theoretically. On the other hand, the Council is dominated by the Permanent Five, all of whom enjoy the notorious power of veto. Notwithstanding these qualifications, however, the role of the Security Council in ordaining collective deployments of force with legitimacy is clearly evident in the differing public assessments of the first Gulf War and the on-going 'War in Iraq'. The former received unqualified Council endorsement, and is now seen as a classic example of a legally legitimate peace enforcement action; the latter, in contrast, failed to gain Council support, and the war has since been dogged by a persistent aura of illegitimacy, undermining the 'coalition of the willing's' capacity to socialise the substantial human and financial costs of the occupation.<sup>10</sup>

As noted above, the equalitarian regime is riddled with contradictions. Yet its contribution to reducing the incidence of interstate warfare should not be understated. In the life of the regime, the membership of the United Nations has grown from 51 to 191, and in the same period wars between states have declined. Data on the incidence of war is notoriously inconsistent – some scholars count any conflict

<sup>9</sup> Dino Kritsiotis, 'When States Use Armed Force', in Christian Reus-Smit (ed.), *The Politics of International Law* (Cambridge: Cambridge University Press, 2004), pp. 52–3.

<sup>10</sup> Christian Reus-Smit, *American Power and World Order* (Cambridge: Polity Press, 2004), ch. 6.

involving a state, others focus on conflicts between states that caused more than 1,000 deaths, and others include only conflicts that involved a great power.<sup>11</sup> Two things are clear, though: since 1945 the incidence of interstate conflicts has declined in absolute terms, even if marginally; and the ratio of recognised states to conflicts has dropped, dramatically.<sup>12</sup> This achievement has gone singularly unremarked, eclipsed by a decade of euphoria about the 'democratic peace'. It is closely linked, however, with parallel developments in the international system, especially the survival of militarily, economically, and institutionally weak states in the developing world, a phenomenon Robert Jackson links persuasively to the protections afforded by juridical sovereignty.<sup>13</sup>

A critic might respond that the relative decline in interstate war is more appropriately attributed to four decades of bipolarity, nuclear deterrence, the transformation of the great powers into trading states, or the spread of democracy. But the norms underlying the equalitarian regime have been a constant, system-wide factor, at least since the 1960s. These other factors were either distinctive to the Cold War, or relevant only to particular zones of international society. Bipolarity may have constrained war across the system, but it is now sixteen years since the fall of the Berlin Wall, and scholars are divided about whether the present amalgam of unipolarity and multipolarity is conducive or unconducive to international peace and stability. Nuclear deterrence may limit great-power war, but its capacity to impede conflict beyond the core of the system was always dependent upon the tight links that bipolarity forged between the superpowers and their 'Third World' spheres of influence. Some of the great powers may have transmuted into trading states, but the procrustean state is hardly extinct. And even the most ardent exponents of the democratic peace admit that it does not constrain violence between democratic and non-democratic states. None of this is to suggest that factors such as these have been irrelevant to the relative decline in interstate conflict, only that the equalitarian regime has been a necessary, if insufficient, condition for this system-wide phenomenon.

Despite its contribution, several factors have recently gnawed away at the foundations of the equalitarian regime. A critical factor has been the liberal triumphalism that has swept the 'West' since the end of the Cold War, a triumphalism that attributes to 'liberal democracies' an inherent peacefulness in their relations with one another, a greater 'moral reliability' than other states in their international relations, and an unmatched record of achievement in the protection of their citizens' civil and political rights. This ideological revolution has been reinforced by a series of empirical phenomena: principally, the plethora of humanitarian crises that punctuated the 1990s, and the unedifying responses of regional and global institutions; the related rise of the discourse and practice of humanitarian intervention, and associated notions of 'qualified', 'compromised', or 'associated' sovereignty; the attacks of September 11, and the heightened attention given to the

<sup>11</sup> See, for example, the Correlates of War project at (<http://www.correlatesofwar.org/>), Paul Huth and Todd Allee, *The Democratic Peace and Territorial Conflict in the Twentieth Century* (Cambridge: Cambridge University Press, 2003); and Evan Luard, *War in International Society* (I. B. Tauris, 1986).

<sup>12</sup> See John Mueller's article in this Special Issue.

<sup>13</sup> Robert Jackson, *Quasi-States: Sovereignty, International Relations, and the Third World* (Cambridge: Cambridge University Press, 1990).

relationship between terrorism, rogue states, and weapons of mass destruction; the removal of Cold War constraints on what Louis Hartz once called America's 'liberal absolutism', and the quasi-religious manifestation of this in the Bush Doctrine; and, finally, the growing consensus among American policymakers and commentators that the prevailing legal and institutional architecture of international society is ill-suited to the prosecution of a revisionist foreign policy agenda, whether liberal or neo-conservative.

### **Liberals for hierarchy**

The liberal foundations of the equalitarian regime have often been alluded to. The regime transposes onto the international stage core liberal ideas of the legal equality of the individual before the law, the individual's rights to liberty and self-determination, and the inviolability of the individual's physical person. The state becomes the individual 'writ large', bearing the right of sovereignty (qua individual liberty) within a putative international society. Defenders of this 'international' variant of liberalism beyond the state – of whom Michael Walzer is the most renowned – claim that granting states rights akin to individuals is justified not only because it contributes to international order, but because legal sovereignty, and its attendant rights of non-intervention and self-determination, provides peoples with a protective shield that allows them to develop a common life, free from external interference, in which the liberty of individuals can flourish.<sup>14</sup> The liberty of the state is thus essential to the liberty of the individual.

Since the end of the Cold War, a growing number of prominent liberal scholars have questioned this form of international liberalism, advancing instead a 'cosmopolitan' variant that contests core elements of the equalitarian regime. Prominent among these have been Francis Fukuyama, John Rawls, David Held, and, most recently, Allen Buchanan and Robert Keohane. The writings of these scholars differ in crucial ways, as do their individual political orientations. Yet each advances, in one form or another, four ideas that go to the heart of the equalitarian regime: (1) that 'liberal democracies' are distinguished by a set of empirical characteristics, principal among which are their passivity toward one another, their constitutional commitment to the protection of civil and political rights, and their 'comparative moral reliability'; (2) that these characteristics make liberal democracies the most advanced historical form of polity; (3) that because of their distinctive qualities and historical standing, liberal democracies ought to have special rights in international society, both in international decision-making and with regard to domestic autonomy; and (4) that granting such rights would necessarily reintroduce a form of legal hierarchy into international society. This section elaborates these ideas through an exposition of Francis Fukuyama's and Buchanan and Keohane's writings. Fukuyama provided the first post-Cold War articulation of the liberal hierarchy thesis, while Buchanan and Keohane advance its most sophisticated and thought-provoking statement.

<sup>14</sup> See Michael Walzer's classic work *Just and Unjust Wars* (Harmondsworth: Penguin, 1977).

## Fukuyama

The principal elements of Francis Fukuyama's 'end of history' thesis are well known, and warrant merely summarising here. Fukuyama argued that history should not be seen simply as 'the occurrence of events', but rather it should be understood, following Hegel then Marx, as 'a single, coherent, evolutionary process', in which humanity moves toward 'a form of society that satisfied its deepest and most fundamental longings'.<sup>15</sup> For Fukuyama, these 'most fundamental longings' were liberty and equality, or as he came to formulate it in *The End of History and the Last Man*, 'the struggle for recognition'. Of the great ideologies of political and social organisation, which Fukuyama defined as hereditary monarchy, fascism, communism, and liberal democracy, only the latter could satisfy this struggle, while at the same time meeting history's simultaneous march toward economic capitalism. 'That is, while earlier forms of government were characterised by grave defects and irrationalities that led to their eventual collapse, liberal democracy was arguably free from such fundamental internal contradictions'.<sup>16</sup> For Fukuyama, the collapse of Soviet communism thus meant more than the decline of yet another great power, or even the failure of a grand social and political experiment. Its collapse marked the last in a series of great victories that liberal democracy had won over autocratic and authoritarian alternatives, and now liberal democracy stood unchallenged. Because liberal democracy does not contradict humanity's 'most fundamental longings', Fukuyama argued that this victory should rightly be seen as the end of history, that moment when 'there would be no further progress in the development of underlying principles and institutions, because all of the really big questions had been settled'.<sup>17</sup>

None of this meant, however, that international relations would be free of conflict or division, at least in the short- to medium-term. The end of the Cold War signalled the ideological victory of liberal democracy, and the number of 'really-existing' democracies multiplied throughout the 1990s. But Fukuyama was at pains to stress that for the foreseeable future international relations would be divided into two worlds: an expanding post-historical world of liberal democracies, and a contracting historical world of autocracies. The post-historical world would still be organised into sovereign states, but aggressive nationalism would decline, traditional interstate warfare would all but disappear, and economic interaction would take centre-stage, ultimately eroding many traditional features of categorical sovereignty. In contrast, the historical world would remain a realm of power politics, one 'riven with a variety of religious, national, and ideological conflicts depending on the stage of development of the particular countries concerned . . .'.<sup>18</sup> While these worlds would, to a large extent, 'maintain parallel but separate existences', Fukuyama identified three likely points of collision: the politics of oil, immigration, the proliferation of weapons of mass destruction. The ideological divide between the post-historical and historical worlds means that their relations will inevitably be characterised 'by mutual distrust and fear, and despite growing economic interdependence, force will continue to be the *ultima ratio* in their mutual relations'.<sup>19</sup>

<sup>15</sup> Francis Fukuyama, *The End of History and the Last Man* (New York: The Free Press, 1992), p. xii.

<sup>16</sup> *Ibid.*, p. xi.

<sup>17</sup> *Ibid.*, p. xii.

<sup>18</sup> *Ibid.*, p. 276.

<sup>19</sup> *Ibid.*, p. 279.

How then is international society to be governed? It is here that Fukuyama takes the crucial step from describing the ethical (and hence historical) superiority of liberal democracy to advocating the rehierarchisation of international society to reflect this superiority. If it is true that liberal democracies seldom if ever fight each other, and if liberal democracy satisfies, like no other political system, the human desire for recognition, then democracies have strong interests in preserving and expanding the international sphere of democracy. Liberals have long embraced these goals, and have invested heavily in international institutions, such as the League of Nations and the United Nations, to deliver the requisite collective security and humanitarian progress. Yet Fukuyama argues that these institutional experiments have been based on a fundamentally flawed form of Kantianism. Advocates of the equalitarian regime have mistakenly thought that liberal institutions could function effectively with mixed membership, with equal participation of liberal democracies and autocracies. But, as Fukuyama points out, Kant's 'Second Definitive Article' in *Perpetual Peace* holds that the law of nations ought to be based on a federation of free states. Only within such a federation would liberal principles of right prevail and war be constrained by the reluctance of self-governing peoples to accept its costs. 'The United Nations', Fukuyama contends, 'did not live up to these conditions from the beginning. The Charter of the United Nations dropped any reference to a league of "free nations", in favour of the weaker principle of the "sovereign equality of all its members" . . . With no pre-existing consensus on just principles of political order or the nature of rights, it is not surprising', he concludes, 'that the United Nations has not been able to accomplish anything of real importance since its founding, in the critical area of collective security'.<sup>20</sup>

For Fukuyama, the only way to correct this institutional failure is to move toward a genuine 'pacific union', 'a league of truly free states brought together by their common commitment to liberal principles'.<sup>21</sup> This would mean abandoning the long-standing goal of a universal conference of states, a goal first articulated at the Hague Conferences of 1899 and 1907, and given its most concrete expression in the contemporary United Nations. Liberal democracies would need to recognise that effective international governance – the sort that can provide genuine collective security and economic well-being for the post-historical world, and effectively promote the democratisation and pacification of the historical world – would have to be bounded, that its membership could not, and should not, extend to non-democracies. 'Such a league', Fukuyama claims, 'should be much more capable of forceful action to protect its collective security from threats arising from the non-democratic part of the world. The states making it up would be able to live according to the rules of international law in their mutual dealings'.<sup>22</sup> Fukuyama's message here is simple: there is a fundamental incompatibility between the international liberalism of the equalitarian regime and the pursuit of real and effective liberal international governance. All states are not equal, and only those with liberal attributes domestically are capable of bearing the rights and obligations of liberal governance internationally.

<sup>20</sup> *Ibid.*, pp. 280–2.

<sup>21</sup> *Ibid.*, p. 283.

<sup>22</sup> *Ibid.*



*Buchanan and Keohane*

In the past five years Robert Keohane's work has taken a distinctive and little-remarked normative turn. In his 2000 Presidential address to the American Political Science Association, he argued that 'Political science as a profession should accept the challenge of discovering how well-structured institutions could enable the *world* to have a "new birth of freedom"'.<sup>23</sup> To meet this challenge, political science – and International Relations in particular – would need to engage in both empirical and normative enquiry, in explorations of the 'real' and the 'ideal'. Since making this appeal, Keohane's work has sought to bring the empirical and the normative into dialogue. For our purposes, the most important product of this work is his 2004 article with the moral philosopher Allen Buchanan, 'The Preventive Use of Force: A Cosmopolitan Institutional Proposal'.<sup>24</sup> This piece fuses elements of Buchanan's quite radical cosmopolitanism<sup>25</sup> with Keohane's long-standing, more pluralist emphasis on the importance of rational institutional design for furthering the human good.

Buchanan and Keohane's purpose is twofold: to demonstrate that a compelling normative argument can be made in favour of the preventive use of force to combat actions with severe humanitarian consequences, and to outline a set of institutional mechanisms that can minimise unjustified interventions. Their concern is not with the 'pre-emptive' use of force, which involves countering immanent threats, but with the more controversial 'preventive' use, which they define as 'the initiation of military action in anticipation of harmful actions that are neither presently occurring nor immanent'.<sup>26</sup>

Their cosmopolitan normative argument begins with the assumption that 'it can be morally permissible to use force to stop *presently occurring* massive violations of basic human rights',<sup>27</sup> of which the clearest examples are the Cambodian and Rwandan genocides. If this is true, they contend, then there is 'at least a *prima facie* case for the moral permissibility of using force to *prevent* massive violations of basic human rights'.<sup>28</sup> It is important to note here that Buchanan and Keohane extend the category of 'massive violations of basic human rights' beyond extreme acts of tyrannical abuse or neglect, such as enslavement, massacre or starvation, to encompass the use, by state or non-state actors, of weapons of mass destruction. If basic human rights are understood to include the right to physical security and subsistence, as well as the rights against torture, discrimination, slavery and servitude, then the use of nuclear, chemical or biological weapons would constitute just as much a violation of these rights as extreme acts of tyranny. Buchanan and Keohane are at pains to stress that their '*prima facie* justification for the preventive use of force does

<sup>23</sup> Robert O. Keohane, 'Governance in a Partially Globalized World', *American Political Science Review*, 95:1 (March 2001), p. 1.

<sup>24</sup> Allen Buchanan and Robert O. Keohane, 'The Preventive Use of Force: A Cosmopolitan Institutional Proposal', *Ethics and International Affairs*, 18:1 (2004), pp. 1–22. See also J. L. Holzgrefe and Robert O. Keohane (eds), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge: Cambridge University Press, 2003).

<sup>25</sup> See Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2004).

<sup>26</sup> Buchanan and Keohane, 'The Preventive Use of Force', p. 1.

<sup>27</sup> *Ibid.*, p. 4.

<sup>28</sup> *Ibid.*, p. 5.

not apply to all cases where harm may be prevented but only to situations in which there is a significant risk of sudden and very serious harms on a massive scale'.<sup>29</sup> In particular, it does not apply to cases in which violence is increasing incrementally, as they believe '[a]ction to respond to aggression or acts of ethnic violence can feasibly be taken in such contexts with far less uncertainty regarding the need to act after the first human rights violations have already occurred'.<sup>30</sup>

For our purposes, the most important component of Buchanan and Keohane's argument is the institutional mechanisms they propose to prevent abuse of the cosmopolitan justification for the preventive use of force, abuse readily apparent in present justifications for the invasion of Iraq. Since states cannot be trusted to restrain naked self-interest or to consider the interests of others when deciding to use force, institutional processes are needed to hold them accountable. 'Accountability', Buchanan and Keohane argue, 'operates both *ex ante* and *ex post*. Those states that propose to use force preventively must, under cosmopolitan principles, consult with other states and make their intentions known to international society more generally before using force. Having used force, they must provide information, answer questions, and subject themselves to sanctions according to rules that have been established in advance.'<sup>31</sup> A defensible accountability system, they go on to suggest, would need to have three 'components': clear standards of accountability, setting out when and how preventive force may be used; the provision of comprehensive information by those proposing the use of force about the risks of massive human rights violations and the likely consequences of military action; and an effective system of sanctions to punish those who violate the defined standards of accountability and/or manipulate information to justify self-interested interventions.<sup>32</sup>

Buchanan and Keohane conclude by considering three institutional models that might embody these components of an accountability system, and it is here that they advocate giving democracies special rights in decisions to use force. After rejecting as politically impractical an institutional model centred on a reformed Security Council without the veto, they recommend a combination of their second and third models: new accountability mechanisms through the existing Security Council, combined with a special role for a newly constituted 'democratic coalition'. Under this hybrid model, 'the Security Council would have to approve military action by the procedures currently in the Charter. The Council would appoint an impartial body to determine whether the intervener's *ex ante* justification for preventive action is confirmed *ex post*'.<sup>33</sup> The Council would also be charged with formulating and applying 'suitable penalties to be applied in the case of a negative *ex post* evaluation'.<sup>34</sup> These procedures, Buchanan and Keohane contend, would deter powerful states from engaging in morally dubious interventions, as the process of *ex post* evaluation and the threat of sanctions would raise the potential costs of nakedly self-interested preventive wars. They would not, however, prevent Council processes from becoming deadlocked by arbitrary and self-interested uses of the veto.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*, p. 11. It is worth noting here that both the Kosovo intervention and the 'war in Iraq' would fail both the *ex ante* and *ex post* tests of accountability suggested here.

<sup>32</sup> *Ibid.*, pp. 11–12.

<sup>33</sup> *Ibid.*, p. 17.

<sup>34</sup> *Ibid.*

To correct this problem Buchanan and Keohane give a special 'supporting' role to a coalition of democratic states (their third institutional model). They define democratic states as 'those with constitutional, representative governments, competition for elected positions through reasonably fair elections, and entrenched basic civil and political rights'.<sup>35</sup> A coalition of such states would begin, they imagine, with a core group of states with uncontroversial democratic credentials, and these founding members would 'admit additional countries through a transparent process of utilising publicly stated criteria for membership'.<sup>36</sup> Buchanan and Keohane's reason for establishing such a democratic coalition, and for giving it special rights in decisions to use force, is that democratic states meet their 'standard for comparative moral reliability'.<sup>37</sup> They believe that 'when democracies violate cosmopolitan principles, they are more likely to be criticised by their citizens for doing so, and will be more likely to rectify their behavior in response'.<sup>38</sup> Given this 'comparative moral reliability', Buchanan and Keohane recommend that if a state, or group of states, was unable to gain Security Council authorisation for the preventive use of force, it could appeal to the democratic coalition. Applying its own *ex ante* and *ex post* accountability procedures, the coalition would then evaluate the case for preventive war and judge subsequent applications. Buchanan and Keohane stress that the democratic coalition would not replace the Security Council, as it would only come into operation in the case of a Council deadlock. If anything, they conclude, the existence of the coalition would make the Security Council more effective, as Council members would have a strong incentive to act more effectively and responsibly, heading off reference of an issue to the democratic coalition.

### Problems of practice, prudence, and principle

At first glance, there seems much to recommend these arguments for replacing the equalitarian regime with a new hierarchy that grants liberal democracies privileged rights of international governance, particularly with regard to the use of force. To begin with, they resonate with an idea that has gained heightened currency since the early 1990s, the idea that sovereignty can, and should, be compromised, to further certain cosmopolitan/humanitarian ends. If it is legitimate to derogate a state's domestic sovereignty when it fails to meet certain minimum standards of liberal (let alone humane) governance, surely it is legitimate to derogate its international sovereign rights under the equalitarian regime for the same violations? Second, liberal arguments for renewed hierarchy appear plausible, even attractive, because many of the ideas on which they are predicated have now attained the status of truisms, particularly within the United States. And if these ideas are true, then it is but a short logical step to accept the liberal case for hierarchy. If it is indeed the case that democracies are pacific toward one another, that they are institutionally committed to the preservation of their peoples' civil and political rights, and that they are comparatively morally reliable, then surely this entitles them to distinct, more

<sup>35</sup> Ibid., p. 18.

<sup>36</sup> Ibid., p. 19.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

powerful, rights in an evolving liberal international order? Finally, the arguments proffered by Fukuyama and Buchanan and Keohane are rhetorically powerful, especially when stated in the negative, as their less scholarly proponents frequently present them. Why should states that disrespect their peoples' civil and political rights enjoy the same international rights, especially when it comes to decisions concerning the protection of those rights? Why should Sudan have the same right to membership of the Security Council as Australia; why should Burma have the same right to join the Human Rights Commission as Canada?

These reasons go a long way to explaining why liberal arguments for renewed hierarchy are gaining widespread credence. They obscure, however, the very substantial problems with these arguments and the practices they might engender. These problems fall into three broad categories: problems of practice, prudence, and principle.

### *Practice*

Any attempt to give democracies special governance rights in international society faces three practical questions: What constitutes a democratic state, with qualities deserving special international rights? What constitutes a 'democratic coalition of states' or a 'pacific union', with the collective right to make privileged decisions on the use of force? And could a democratic coalition of states be established that commanded legitimacy within international society?

Before one can grant special rights to democracies, one has to specify clearly what constitutes a democratic state. Advocates of liberal hierarchy write as though this is unproblematic. Their strategy is usually to propose a set of institutional criteria, with a democratic state being one that meets these formal characteristics. Fukuyama writes that a 'country is democratic if it grants its people the right to choose their own government through periodic, secret ballot, multi-party elections, on the basis of universal and equal adult suffrage'.<sup>39</sup> Buchanan and Keohane define democratic states as 'those with constitutional, representative governments, competition for elected positions through reasonably fair elections, and entrenched civil and political rights'.<sup>40</sup> While this appears straightforward, in adopting this institutional strategy, Fukuyama and Buchanan and Keohane make a common mistake, 'that of identifying democracy with a particular institution or set of institutional arrangements, rather than with the principles they embody or are designed to realize'.<sup>41</sup> The assumption is that the preferred institutions necessarily instantiate these principles, with the two standing in a symbiotic relationship. The problem is, of course, that states commonly exhibit these institutional arrangements but violate the underlying principles. David Beetham identifies two of these principles as especially important: that a society's system for making collectively binding decisions be subject to control by all of society's members; and that all who are subject to the authority of that system of collective decision-making are considered equals.<sup>42</sup> Most 'really-existing'

<sup>39</sup> Fukuyama, *The End of History*, p. 43.

<sup>40</sup> Buchanan and Keohane, 'The Preventive Use of Force', p. 18.

<sup>41</sup> David Beetham, *Democracy and Human Rights* (Cambridge: Polity Press, 1999), p. 3.

<sup>42</sup> *Ibid.*, p. 5.

democracies uphold these principles rhetorically, but fail to meet them empirically. Gerrymanders, democratic seizure by powerful lobby groups, politicised media, lack of control of the executive by the legislature, discrimination of minorities by majorities, first-past-the-post voting systems, and more, have hollowed out many states' formal democratic institutions, creating widespread political alienation and disaffection.

Advocates of liberal hierarchy may well acknowledge this gap between institutions and principles, but reply that what ultimately matters is that states have the institutional characteristics, however flawed. This is unpersuasive, though. Key constitutive ideas of the liberal hierarchy thesis collapse if the institutional arrangements of democratic states fail to realise Beetham's two principles. The idea of the democratic peace, and the notion that democratic states are comparatively morally reliable, both depend upon a society's system for making collectively binding decisions being subject to control by all of society's members. If this system is not subject to such control, then Kant's principal reason for believing that republics are more peaceful than monarchies drops out.<sup>43</sup> And it was Buchanan and Keohane who argued that democracies were comparatively morally reliable because when they 'violate cosmopolitan principles, they are more likely to be criticised by their citizens for doing so, and will be more likely to rectify their behaviour in response'.<sup>44</sup> Liberal hierarchy arguments thus depend, in a deep and fundamental sense, on democratic institutions expressing democratic principles, something rarely seen in practice. One could try to salvage the argument by holding that only democratic states whose institutions actually instantiate democratic principles should be entitled to special rights. This is close to the position advanced by Rawls, who parts company with Fukuyama and Buchanan and Keohane to argue that only 'well-ordered constitutional democracies' should be part of a 'society of liberal peoples'. Such democracies have more than a set of standard institutional characteristics – they are 'deliberative' in the true sense of the word, with 'the knowledge and desire on the part of the citizens generally to follow public reason and to realise its ideas in their political conduct'.<sup>45</sup> The problem is, though, that the task of identifying democratic states deserving of special rights would be practically impossible, and the club of appropriately qualified states would be small indeed.

The practical problem of defining what constitutes a democratic state is so substantial that it makes the question of what would constitute a 'democratic coalition of states' or a 'pacific union' almost moot. If this initial problem of definition could be overcome, however, the issue of a coalition or union would throw up problems of its own. Would such a coalition comprise all democratic states or just a fraction? Would it be constituted through authoritative international institutional processes, or would it be created by democratic states themselves, or a sub-group thereof? Fukuyama and Buchanan and Keohane clearly favour the latter. For Fukuyama, this is matter of post-historical liberal democracies recognising that the rules and methods that ought to govern their mutual relations are not those best

<sup>43</sup> Kant wrote in his First Definitive Article that if 'the consent of the citizenry is required in order to determine whether or not there will be war, it is natural that they consider all its calamities before committing themselves to so risky a game'. Immanuel Kant, *Perpetual Peace and Other Essays* (Indianapolis, IN: Hackett Publishing Company, 1983), p. 113.

<sup>44</sup> Buchanan and Keohane, 'The Preventive Use of Force', p. 19.

<sup>45</sup> John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), pp. 138–9.

sued to navigating their interactions with the post-historical world. A pacific union would form, therefore, as 'truly free states' recognise their 'common commitment to liberal principles', as they formulate 'binding legal agreements' to manage their interrelations, and as they recognise that 'the post-historical half [of the world] must make use of realist methods when dealing with the part still in history'.<sup>46</sup> For Buchanan and Keohane, a 'democratic coalition of states' would form around an 'initial core' of 'self-designated states whose credentials as stable democracies are unassailable. They would then develop membership criteria that would determine which other states would be eligible'. They imagine that the 'democratic coalition would be based on agreements among its members – not necessarily through a formal treaty. Over time', they suggest, 'its practices could become part of customary international law'.<sup>47</sup> Under this model, the instigation of the coalition is voluntarist, and the only authoritative institutional processes are internal to the coalition itself, formulated and employed by the founding membership to admit newcomers.

By favouring a voluntarist means of constituting a democratic coalition or pacific union, Fukuyama and Buchanan and Keohane dodge one set of potentially insurmountable problems, those associated with establishing a coalition or union through authoritative international institutional processes, such as those of the present United Nations. They immediately encounter, however, another set of equally challenging problems. Foremost among these is the question of when a democratic coalition or pacific union can be said to exist, ready to make decisions about the use of force. What if the United States, Britain and Australia declared themselves the initial core of a democratic coalition, and proceeded to formulate transparent rules for the admission of other democracies? Would they constitute, at this moment of inception, a coalition for the purposes of decision-making? If not, then at what point, as the coalition's membership expanded, would it constitute a legitimate decision-making forum? Is 20 per cent, 50 per cent, 80 per cent, or 100 per cent of the world's qualifying democracies required? From a liberal perspective, only one answer seems compelling. A coalition could only reach decision-making maturity when all of the world's qualifying democracies are granted the right to participate in decisions to licence the use of force, whether or not they choose to exercise that right. It is an axiomatic liberal principle that all citizens capable of fully developed moral agency should have a right to vote. Advocates of liberal hierarchy have drawn a line between democracies and non-democracies, with only the former possessing the requisite moral agency. But it is decidedly unclear how, given the logic of their arguments, they could justify enfranchising some democracies and not others. And if this is the case, then the fate of our nascent democratic coalition would hinge on the United States, Britain, and Australia convincing a broad spectrum of democracies to join, democracies with markedly different (even incompatible) conceptions of international responsibility. One would have to rate this prospect remote indeed.

The final practical problem facing liberal hierarchy arguments is how to establish within international society a *legitimate* democratic coalition or pacific union, as opposed to an illegitimate one. Legitimacy is a vital ingredient of effective social power. The more legitimacy an actor commands, and the more legitimate its actions

<sup>46</sup> Fukuyama, *The End of History*, p. 279.

<sup>47</sup> Buchanan and Keohane, 'The Preventive Use of Force', p. 19.

are deemed, the more it can conscript voluntary compliance and assistance, and the more it can minimise opposition. For a democratic coalition to function effectively, it would need to command broad-based international legitimacy, otherwise its decisions would attract widespread opposition and resistance from the still sizeable population of non-democratic states, states who are themselves unlikely to provoke attack, but with whom a democratic coalition would need quiet, if not happy, non-involvement or compliance. Curiously, this need for international legitimacy has been all but ignored by advocates of liberal hierarchy. They strongly imply, of course, that a democratic coalition or pacific union would be legitimate, but they attribute this legitimacy to the superior political and moral qualities of the member democracies, and to the hypothesised goods that such a grouping could provide to international society. This is not, however, a coherent account of legitimacy. By definition, legitimacy is a social phenomenon, it depends on the judgment of others. An individual or collective actor is only legitimate if other actors in its social domain define it as such. Theorists, such as Fukuyama and Buchanan and Keohane, might decide that a democratic coalition is legitimate *a priori*, but if international society determines otherwise, then their judgment is moot. Similarly, a putative coalition might define itself as legitimate, but this would be a vain hope if no one else agreed.

The challenge then is for a democratic coalition or pacific union to establish its legitimacy in the eyes of international society generally. Here we confront one of the central contradictions in liberal hierarchy arguments. As noted above, in proposing a voluntarist approach to the constitution of a coalition or union, Fukuyama and Buchanan and Keohane avoid the complications associated with authoritative international institutional processes. In doing so, however, they risk creating substantial problems of international legitimation. If a select group of democratic states can themselves found a coalition or union, and then define the rules dictating which states may subsequently join, they will, in the process, create two categories of 'others': non-member democracies, and non-democracies. Both of these groups would lose rights they currently enjoy under the equalitarian regime: the first until they joined the club, the second until they underwent democratic transitions. And both would lose these rights through a process in which they had no say. Why these groups should ordain the new democratic coalition or pacific union with legitimacy is decidedly unclear, and if they see it as illegitimate, the likelihood of non-compliance and resistance would be high. Advocates of liberal hierarchy seem to think that a democratic coalition would be sufficiently magnetic that opposition would be quickly displaced by a rush to join. In Buchanan and Keohane's words, 'members would receive valuable recognition as democratic states that are regarded as sufficiently trustworthy to participate in important decisions regarding the use of force. More importantly, they would gain decision-making authority, both with respect to legitimising the preventive use of force and for determining which other states should be allowed to join.'<sup>48</sup> But even if some democracies were susceptible to such magnetism, others would not be, and this would leave the coalition with less than universal democratic membership, which, as we have seen, would undermine its claim to special decision-making authority. And even if some autocracies were prepared to embark on democratic transitions to gain entry, many would not, including some of the most

<sup>48</sup> *Ibid.*, p. 20.

powerful, such as China. It is hard to imagine, therefore, how a democratic coalition could be established without an attendant legitimation crisis.

### *Prudence*

Let us assume, for the sake of argument, that these practical problems did not exist or could be satisfactorily resolved. Would the case for liberal hierarchy then be more compelling? A principal reason for replacing the present equalitarian regime with a more hierarchical social order is that this would enhance international order. For advocates of liberal hierarchy, international order means two things: it means a level of peace and stability such that economic interaction becomes the core of international relations, and it means the realisation of certain cosmopolitan ends, particularly the maximum protection of individuals' civil and political rights. For Fukuyama, this is a matter of securing a pacific union from the deleterious impacts of the historical world, while at the same time expanding that union through the spread of democracy globally. For Buchanan and Keohane, it is a matter of establishing a revised framework of global governance that can better deliver peace and civility to the international system as a whole. In part, therefore, the veracity of liberal hierarchy arguments hinges on the likelihood that granting democratic states special decision-making rights would deliver net improvements in international order, especially in the critical areas of peace and the protection of basic rights. There are good reasons to believe, however, that attempts to institute a new hierarchy would be deleterious to international order instead of beneficial.

The crux of the problem lies in the resolution advocates of liberal hierarchy imply to the classic problem of the relationship between order and justice in international relations. Nothing here suggests that they consider such a resolution easy, only that they present a new hierarchy as a missing link, a move that can reconcile seemingly incompatible ends. Their chain of reasoning is most clearly articulated by Buchanan and Keohane. If democratic states were granted special rights to use force – rights exercised within an appropriate framework of accountability – a number of consequences would follow: the zone of peace between democracies would be reinforced by enmeshing such states in a denser web of rights and obligations; the comparatively morally reliable members of international society would be empowered to respond preventively to major threats to international human rights, either in the form of the use of weapons of mass destruction or massacre, enslavement and starvation; and the existence of a specially enfranchised democratic coalition would have a powerful socialising impact on the remainder of international society, encouraging movement toward a global democratic order. Instituting a new hierarchy would thus enable the realisation of both dimensions of its advocates' conception of international order: the simultaneous pursuit of peace and the protection of basic human rights, a classic liberal vision.

While this resolution of the relationship between order and justice will be attractive to all those who favour democracy over autocracy, and who rightly lament the agonising trade-offs between peace and civility, it nevertheless confronts a number of substantial problems. So serious are these problems, that prudence would counsel against any move to a hierarchy privileging democratic states.



The first problem is that two ideas that liberal hierarchy advocates take as axiomatic are in fact questionable, at best. The first is the democratic peace, the idea that liberal democracies do not fight each other. Some have suggested that this is as close to a law of international politics as one gets, but in reality the jury is still out. Democratic peace theory has been challenged on multiple grounds, from the inconsistency of its key definitions, such as democracy and war, to the statistical insignificance of its empirical findings. Democratic peace theorists have responded vigorously to each of these challenges, but the best one can say is that the debate is stalemated: there appears to be something unique and interesting about relations between democracies, but precisely what this is, and why it is, remains uncertain and unproven.<sup>49</sup> The second idea is Buchanan and Keohane's proposition that democracies are comparatively morally reliable. How one would demonstrate this is less than clear. If the measure is how states have responded to major humanitarian crises, such the massacre, enslavement, or starvation of a people, the record of the world's leading democracies is not especially edifying. Their failure of will in Somalia, prevarication over Bosnia, inaction in Rwanda, belated burst of humanitarian commitment over Kosovo, and characteristic words without action in the Sudan, all suggest moral unreliability, not reliability. Even when compared with the record of autocracies the situation is far from clear. It was Tanzania that deposed Idi Amin in Uganda and Vietnam that halted Pol Pot's genocide in Cambodia. Self-interest was a crucial motivation in both of these cases, but it was also a decisive motivation behind the world's leading democracies sitting on their hands.<sup>50</sup>

The second problem is that lessons learned from past instances of self-ordained privilege in international society are not encouraging. The closest analogue is the successful move by European states during the nineteenth century to codify a 'standard of civilization' in international law, a standard that gave these states privileged rights in international society, rights to grant or decline sovereign recognition to other polities, and rights to intervene in those judged unworthy of such recognition.<sup>51</sup> Informing this standard were deep-seated assumptions of racial superiority, assumptions absent from present liberal hierarchy arguments. Nevertheless, the parallels (and the lessons) are clear. The 'standard', and the practices it licensed, fuelled grievances that fractured the international system for the best part of a century, and the effects can still be felt today. No account of the rise of Japanese imperialism in the first half of the twentieth century, or of China's nationalist and

<sup>49</sup> For these debates on the democratic peace, see Michael Brown, Sean M. Lynn-Jones, and Steven E. Miller (eds.), *Debating the Democratic Peace* (Cambridge, MA: MIT Press, 1996); Zeev Maoz, 'The Controversy over the Democratic Peace: Rearguard Action or Cracks in the Wall?', *International Security*, 22:1 (1997), pp. 162–98; and, more recently, Andreas Hasenclever and Wolfgang Wagner (eds.), 'The Dynamics of the Democratic Peace', *International Politics*, Special Issue, 41:4 (December 2004).

<sup>50</sup> Other measures also point to the moral unreliability of the world's democracies. For example, Alexander Downes has shown that democracies are no less likely to brutalise non-combatants in war than autocracies. See Alexander Downes, *Targetting Civilians in War* (Ph.D thesis, University of Chicago, 2004), and 'Civilian Victimization and International Wars Since 1945: Are Democracies Different Now?' (Unpublished Paper, 2005). For related arguments, see Theo Farrell, 'Strategic Culture and American Empire', *SAIS Review of International Affairs*, 25:2 (2005), and Jose Alvarez, 'Do Liberal States Behave Better? A Critique of Slaughter's Liberal Theory', *European Journal of International Law*, 12:2 (2001), pp. 183–246.

<sup>51</sup> Gong, *The 'Standard of Civilization' in International Society*; and Michael Adas, *Machines as the Measure of Men: Science, Technology, and Ideologies of Western Domination* (Ithaca, NY: Cornell University Press, 1989).

communist revolutions, would be complete without reference to the humiliation generated by the hierarchical practices propagated by the European powers, not the least being the unequal treaties and military interventions. The likelihood of a new liberal hierarchy generating similarly destabilising grievances is far from insignificant, in part because of the path-dependency that would connect the two exercises. With the memory of nineteenth century hierarchy still fresh, the prospect is slim of leading non-democracies such as China passively accepting a democratic coalition of the kind envisaged, especially when they are faced with the same kind of sheathed ultimatum – ‘transform your domestic political system and gain a new slate of international rights, or refuse change and lose some of your core sovereign rights’.

If the lessons of history are unedifying, so too is the contemporary experience of institutionalised hierarchy. While the equalitarian regime constitutes the institutional bedrock of present international society, peaks of institutional hierarchy punctuate the horizon, and each of these peaks has become a focal point for disenchantment and contestation. The Permanent Five and their veto power in the Security Council is one such peak, an understandable gesture to the realities of post-1945 power, and for most of its history a near guarantee of institutional politicisation and paralysis. Weighted voting rights in the major international financial institutions are another peak, one that has persistently marred their reputations as institutions for the common good. And a peak looming high over the present international order is the regime of differential rights and obligations that nuclear and non-nuclear states enjoy under the Nuclear Non-Proliferation Treaty. In a bargain frayed to the point of breaking, nuclear states are constrained by little more than the now cynical promise to disarm, while non-nuclear states must succumb to an intrusive, though largely successful, regulatory regime. None of these peaks of institutional hierarchy have achieved anything like a governance equilibrium; in fact, if one were to identify the principal points of institutional contestation in the present international system, each would loom large.

If the propositions that democracies don’t fight each other and that they are comparatively morally reliable are contentious ideas not truths, and if the historical record suggests that institutionalised hierarchy generates deep-seated grievances, with destabilising consequences for international order, one would have to approach the institution of a hierarchy privileging democratic states with great caution. Pluralist international society theorists have long argued that international society is a practical association, one in which states with different identities and interests participate nonetheless in the maintenance of rules and institutions that facilitate coexistence and cooperation. As noted earlier, over the past six decades this association has proven remarkably successful, with the number of recognised sovereign states quadrupling while the incidence of interstate warfare has declined. We should not forget, however, that society among sovereign states is as vulnerable as it is impressive. It rests ultimately upon a series of social understandings that have become enshrined as cardinal international norms. Principal among these are mutual recognition and the legal fiction of sovereign equality, the keystone of the equalitarian regime. Informed by a set of contentious ideas about the qualities of democracies, liberal hierarchy arguments propose overlaying the historical legacy of nineteenth and early twentieth century hierarchy, and contemporary instances of institutionalised privilege, with a systemic division between democracies and non-democracies. Furthermore, they recommend that this be instituted by democracies

themselves, and not through any authoritative international institutional processes. This project cuts right to the heart of the social compact that presently undergirds international order, and whatever gains it might bring for international order, the potential costs are substantial. As we have seen, Buchanan and Keohane go to great lengths to specify the accountability procedures that would govern the work of a democratic coalition, but to other, excluded states, this would undoubtedly look like a self-ordained group of privileged states policing themselves.

### *Principle*

To this point our discussion has focused on a series of practical and prudential problems with liberal hierarchy arguments. Granting democratic states special rights in decisions to use force would be near impossible to operationalise, at least in a manner deemed legitimate by wider international society, and instituting a privileged democratic coalition or pacific union would risk replicating past experiences of institutionalised hierarchy, with profoundly destabilising consequences for international order. A further criticism remains, however: a criticism from within liberalism itself.

The conventional path here would be to follow Michael Walzer who, as noted above, provides one of the most systematic liberal defences of the equalitarian regime. Walzer is a staunch defender of the equal, inviolable sovereignty of all states, but he justifies this through reference to the rights and liberties of individuals. 'The rights of the member states must be vindicated', he argues, 'for it is only by virtue of those rights that there is a society at all. If they cannot be upheld (at least sometimes), international society collapses into a state of war or it is transformed into a universal tyranny.'<sup>52</sup> The rights to which he refers are territorial integrity and political sovereignty, and 'they derive ultimately from the rights of individuals, and from them they take their force'.<sup>53</sup> For Walzer, individuals have inalienable rights to life and liberty, rights which are 'somehow entailed by our sense of what it means to be a human being'.<sup>54</sup> It is the state, protected and empowered by its international rights, that provides the necessary protection of its members rights and of the collective life they have created. This leads Walzer to defend strongly the paired rights of self-determination and non-intervention. Because individuals have inviolable rights to liberty (as well as life), they have a collective right to determine their own affairs. Following John Stuart Mill, Walzer argues that this right to self-determination must be respected even if a people does not enjoy free institutions, for '[T]he (internal) freedom of a political community can be won only by the members of that community'.<sup>55</sup> The principle of non-intervention is designed to protect this right to self-determination. It is 'the principle guaranteeing that their success will not be impeded or their failure prevented by the intrusions of an alien power'.<sup>56</sup>

<sup>52</sup> Walzer, *Just and Unjust Wars*, p. 59.

<sup>53</sup> *Ibid.*, p. 53.

<sup>54</sup> *Ibid.*, p. 54.

<sup>55</sup> *Ibid.*, p. 88.

<sup>56</sup> *Ibid.*

The strengths of this argument have long been acknowledged, as have its weaknesses. There is, however, a second possible line of liberal critique. It is a fundamental principle of all liberal thought that political right must be separated from other forms of morally arbitrary social power. That is, rights of political decision, participation or representation ought to be held by all members of a political community equally, irrespective of their beliefs, social status, or material power. Absolutist sovereignty conjoined political right and social power in the figure of the sovereign, and liberalism's radicalism lay in its critique of this conjunction. One dimension of liberalism's contradictory political history has been the way in which disenfranchised groups – from the unpropertied classes and religious minorities, to women and indigenous peoples – have deployed this fundamental principle to leverage political rights within liberalising polities. And the separation of powers that defines the institutional architecture of the vast majority of these polities is an attempt, however flawed, to prevent political right being captured by particularistic interests. It is this fundamental principle of liberal thought that proponents of liberal hierarchy betray when they propose giving democratic states special rights in decisions to use force. The states that would form the core of a democratic coalition or pacific union are also the states that currently possess – and will continue to possess for the foreseeable future – the bulk of the world's wealth, technological capacity, and military might. It is also these states that occupy the existing peaks of institutionalised hierarchy in international society. Giving democratic states special rights, therefore, would be giving privileges to the powerful. One might respond that their social power already enables them to shape international order to their will. There is a fundamental difference, however, between the capacity to influence outcomes and the right to legislate them. The former leaves space for legally grounded political resistance, the latter forecloses such options, seriously disempowering materially weak actors.

This assignment of political right to already powerful social actors also betrays a cognate liberal principle: that the distribution of political rights must be contractually based. Within liberal thought there are three contending models of social contract. The Hobbesian model, which is proto-liberal at best, sees individuals fleeing the state of nature give up their natural rights to a sovereign, who then assumes absolute political right in return for order and security.<sup>57</sup> The Lockean model has individuals contract with one another to create a single, collective body politic, transferring their natural rights to a 'commonwealth' in return for 'the mutual preservation of their lives, liberties, and estates . . .'.<sup>58</sup> The Rousseauian model imagines individuals contracting with each other to exchange their natural rights for political rights: 'Each person, in giving himself up to all, gives himself to no one, and as there are no associates over whom he does not acquire the same right as he concedes to them over himself, he gains the equivalent of all he loses and more to preserve what he has'.<sup>59</sup> None of these contractual models for allocating political right are evident in liberal hierarchy arguments, even the Hobbesian model in which individuals alienate their rights to an all powerful sovereign. One could argue that democratic states are contracting when they form a democratic coalition or pacific union, and this is

<sup>57</sup> Thomas Hobbes, *Leviathan* (London: William Collins, 1962), p. 176.

<sup>58</sup> John Locke, *Two Treatises of Government* (Cambridge: Cambridge University Press, 1988), p. 350.

<sup>59</sup> Jean Jacques Rousseau, 'On Social Contract or the Principles of Political Right', in Alan Ritter and Julia Conway Bonadella (eds.), *Rousseau's Political Writings* (New York: Norton, 1988), p. 89.

certainly what Rawls imagines in his version of the liberal hierarchy thesis.<sup>60</sup> But this would be a contract that not only granted democracies special political rights, it would be one that deprived other states of their existing rights.

Advocates of liberal hierarchy might reply that this criticism assumes that all existing states are qualified moral (and hence political) agents, which they would claim is manifestly false. Democracies represent the will of their peoples, autocracies do not. Why should latter enjoy the same political rights as the former, and why is it wrong for the former to aggregate special rights to themselves, with or without the latter's approval? This kind of argument is heard frequently, but it is based on two dubious assumptions. First, that because autocracies do not represent their peoples' will, the governments of democracies have a right to interpret that will and to act accordingly. And, second, that it would be the will of such peoples to see democratic states gain special international rights while the rights of their own states were compromised. Neither of these assumptions is sustainable. If an autocratic state were about to engage in genocide, it would be reasonable for democratic states (or any states, for that matter) to judge that the will of the threatened people favoured humanitarian intervention. But this is very different from democracies making judgments about how subject peoples would view the general allocation of political rights within international society. As for the second assumption, even if we assume that most subject peoples abhor the unrepresentative nature of their autocratic governments and would willingly take the road to democracy, it would be naïve to think that a systematic attempt to erode the international rights of those governments would be met with anything less than popular hostility. Rightly or wrongly, in all but the most severe forms of tyranny, the qualifying of an autocratic state's international status is likely to be seen by its people as a qualifying of their international status.

## Conclusion

The preceding discussion has explored and critiqued recent calls by prominent liberal scholars for the rehierarchisation of international society, for the granting of democratic states differential rights in decisions to deploy force internationally. The zone of peace existing between such states, their comparative moral reliability, and their entrenched commitment of their peoples' civil and political rights, are said to justify enfranchising a democratic coalition or pacific union with special governance rights, and simultaneously qualifying the existing sovereign rights of non-democracies. The import of these ideas is that they are no longer intellectual marginalia. Variants inform the numerous proposals currently circulating for reform of the international system, from the notion that universal membership of the United Nations should not be considered sacrosanct, to the proposition that 'rogue states' should forfeit their membership rights altogether. Furthermore, these ideas now resonate well beyond the liberal circles from which they emanate. In his outline of a conservative grand strategy, Henry Nau asks: 'By what right do nations that are not free decide on legitimacy in international affairs when they deny their own citizens that same right in domestic affairs'. 'Purposes', he goes on to argue, 'matter more

<sup>60</sup> Rawls, *The Law of Peoples*, pp. 32–5.

than participation, and liberty struggles in international organisations against despotic purposes. . . . Sometimes institutions simply empower non-democratic states to make law internationally when they break domestic law with impunity.<sup>61</sup> For liberals like Buchanan and Keohane, the answer is to reconstitute the institutional architecture of international society, creating a specially empowered forum for democracies. For conservatives, the answer is Bush-style ‘coalitions of the willing’.

For reasons outlined in previous sections, liberal hierarchy arguments ought to be treated with considerable scepticism. There are compelling reasons to believe that attempts to operationalise them would be fraught with difficulties, that they may do more harm to international order than good, and that they would violate long-standing liberal principles of governance. At the very minimum, advocates of liberal hierarchy need to answer the following critical questions: How could one ensure that a democratic coalition included only those states in which democratic institutions genuinely expressed democratic principles? How many of these states would need to be members before a democratic coalition constituted a mature decision-making body – 20 per cent, 60 per cent, 100 per cent? How could a democratic coalition be constructed without generating an attendant legitimation crisis? If the democratic peace and the comparative moral reliability of democracies are questionable ideas, why should we believe that a democratic coalition would be a more ethically or practically effective decision-making forum on humanitarian issues than existing fora? And if there is little reason to believe this, why should we take the decisively illiberal step of handing those with preponderant material might disproportionate political right? Unless these questions can be answered satisfactorily, replacing the equalitarian regime with a renewed form of hierarchy would be a gamble only for the foolhardy and brave-hearted.

<sup>61</sup> Henry Nau, ‘A Conservative Grand Strategy for America’, in Henry R. Nau and David Shambaugh (eds.), *Divided Diplomacy and the Next Administration: Conservative and Liberal Alternatives* (Washington, DC: The Elliott School of International Affairs, The George Washington University, 2004).