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TWO IDEAS OF INTERNATIONAL ORGANIZATION†

John H. Barton*

Political theory has long sought a philosophical basis for such ideas as law, authority, and freedom — but usually within the context of the nation-state. Only rarely has political theory placed the nation-state in an international framework; and, when it has tried, it has often done poorly. Sometimes the political theory becomes purely altruistic and utopian; at other times it works to support the irresponsibility of individual governments and the breakup of international order.

Yet, in the real world, the nation-state and the international system emerged together, as central governments increased their domestic power to be better able to wage war and to defend themselves from one another.¹ Those who sought ideas to tame this international anarchy developed two fundamentally opposed theories. One, following Immanuel Kant, is *contractual*. It begins with the nation-state as an essentially complete and justified society and sees that nation-state as creating a carefully limited and controlled international system. The other, following Jean Jacques Rousseau, is *organic*. It begins with the entirety of human society and sees that society as bringing forth governmental institutions at several levels, some national and some international. Sometimes these two theories describe complementary methods of integration. Sometimes, however, their demands are contradictory because of their completely different attitudes toward national governments.

I. THE CONTRACTUAL APPROACH

For the sake of its own security, each nation can and should demand that the others enter into a contract resembling the civil one and guaranteeing the rights of each. This would be a federation of nations, but it must not be a nation consisting of nations. The latter would be contradictory, for in every nation there exists the relation of ruler (legislator) to subject (those who obey, the people); however, many nations in a single nation would constitute only a single nation, which contradicts our assumption²

† It was Eric Stein's texts and writing on international law and on the European Economic Communities that first opened my mind to the possibilities of integration beyond the United Nations level. I am pleased to dedicate this piece to him. I wish also to thank Thomas Grey and Michael Shuman who have read and commented upon drafts of this paper.

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1. See *Finer, State- and Nation-Building in Europe: The Role of the Military*, in *THE FORMATION OF NATIONAL STATES IN WESTERN EUROPE* 84 (C. Tilly ed. 1975).

2. I. KANT, *To Perpetual Peace; A Philosophical Sketch*, in *PERPETUAL PEACE AND OTHER ESSAYS ON POLITICS, HISTORY, AND MORALS* 115 (T. Humphrey trans. 1983) (emphasis in original).

WE THE PEOPLES OF THE UNITED NATIONS . . . HAVE RESOLVED TO COMBINE OUR EFFORTS Accordingly, our respective Governments, through representatives assembled in the city of San Francisco . . . have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.³

There are many reasons why a philosopher of international political relations might begin with the nation-state: a sense of the indivisibility of national sovereignty,⁴ a sense of the State as the positive law giver,⁵ or a contemporary *Realpolitik* — and positivist — realization that the State is the actual locus of effective power and of citizens' psychological identification.⁶ Once the State is given such primacy, international organizations, if possible at all, are possible only as secondary and derivative entities, created and legitimated by national governments. When nation-states are politically able to create such organizations their motivations can be only their own mutual enlightened self-interest. The strength of the organizations will be limited by the depth of the shared self-interest.

The United States Constitution of 1789 is the first and preeminent example of contractual integration. Separate states, each formally sovereign, negotiated an agreement, ratified by all, that transferred a large portion of their sovereignty to a central authority. The central authority later became much more powerful and ultimately replaced the states as the focus of citizens' allegiance. Moreover, the contractual union was possible only because of a profound sense of community based on a shared history and shared conflict. And for many, the union was not simply contractual, but was intended immediately to create a single fully sovereign nation.⁷

But in constitutional theory, the federation was in many respects simply a very powerful organization created by the otherwise independent states. In theory, the federal government held only delegated power, its legal order was separate from that of the states, and the possibility of a state's withdrawal was never resolved legally until the issue became moot with the Civil War. And, on entering the agreement, each state carefully counted its practical gains and losses. Such calculus underlay the "great compromise" of basing Senate representation on sovereign equality and House membership on population.

The integration mechanism relied heavily on law. The symbol of agreement was a written constitution that cried out for judicial interpretation and application. The most critical issues before the first generation of the Court were issues of system design — of the allocation of power among the various federal institutions and between the federal and the state institutions. Although we may now think of judicial review as primarily a way to protect individual rights, it originated as a way to police federalism. Adherence to

3. U.N. CHARTER preamble.

4. See J. BODIN, *THE SIX BOOKES OF A COMMONWEALE* (R. Knolles trans. 1606) (especially Book 1, ch. 8).

5. See H. KELSEN, *LAW AND PEACE IN INTERNATIONAL RELATIONS* (1948).

6. See H. MORGENTHAU, *POLITICS AMONG NATIONS* 491-503 (5th ed. rev. 1978).

7. For examples of the debate, see G. WOOD, *THE CREATION OF THE AMERICAN REPUBLIC, 1776-1787*, at 469-564 (1969).

strict legal limits was the best protection against tyranny of the international organization over the individual state.

The designs of both the League of Nations and the United Nations lie fully in this tradition of contracts among independent nations. Woodrow Wilson's fourteenth point, for example, called for "[A] general association of nations [to] . . . be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike."⁸ The new League was to be created by a covenant (just like the 1789 Constitution) among independent — and legally equal — states. It was to build in large part on traditional international mechanisms of bringing peace to states, such as balance of power diplomacy and dispute settlement. By meeting and consulting, the nations of the League would be more easily able to coordinate their force levels and alliance structures to maintain peace. Dispute settlement would be achieved through a panoply of international courts, mediation structures, and cooling-off periods, all working state-to-state. This institution failed to develop the judicial review that marked the early history of the United States. Instead, the diplomats of the era sought *international* agreements, such as that prohibit all war, even in those situations in which the Covenant had still permitted it.⁹

The United Nations is even more strongly within the contractual tradition. A British critic compared the two in 1946: "instead of limiting the sovereignty of States we have actually extended the sovereignty of the Great Powers, the only States whose sovereignty is still a formidable reality in the modern world."¹⁰ This was perhaps a result of the immediate context of the organization, which derived in large part from the wartime propaganda of *nation-states*, and also amounted to a continuation of the wartime alliance against Germany and Japan. The United Nations had little chance to develop a sense of community or an organic structure before becoming overwhelmed by tensions between East and West and later North and South.

Its legal structure is equally contractual. The charter fully incarnates the contractual principles of sovereign equality and political independence of *nations*.¹¹ In the General Assembly each nation has one vote, regardless of its population or its actual interest or responsibility in a specific issue, and such representation has become an automatic principle for any United Nations-related activity.¹² This is clearly an instrument of nations and only

8. Address of the President of the United States Delivered at a Joint Session of the Two Houses of Congress (Jan. 8, 1918), *reprinted in* U.S. DEPT. OF STATE, PAPERS RELATING TO THE FOREIGN RELATIONS OF THE UNITED STATES 1918, SUPP. 1, VOL. 1 at 12, 16 (1933).

9. See The Pact of Paris (Kellogg-Briand Pact), Aug. 27, 1928, 46 Stat. 2343, T.S. No. 796, 94 L.N.T.S. 57. For the diplomacy of this period, see E. CARR, THE TWENTY YEARS' CRISIS, 1919-1939 (2d ed. 1946); A. ZIMMERN, THE LEAGUE OF NATIONS AND THE RULE OF LAW, 1918-1935 (1936).

10. J. BRIERLY, THE COVENANT AND THE CHARTER 23 (1947).

11. U.N. CHARTER art. 2.

12. According to one commentator:

In fact, thanks to the 'majority rule' from which they profit, the developing countries have opened a substantial breach in the legal edifice constructed in the past by the industrialized States in order to provide a firm base for their domination, and they are taking

indirectly of the people within nations.

II. THE ORGANIC MODEL

The Federation must embrace all the important Powers in its membership; it must have a Legislative Body, with powers to pass laws and ordinances binding upon all its members; it must have a coercive force capable of compelling every State to obey its common resolves¹³

[T]he [European] Coal and Steel Community took the political, administrative, and economic leaders out of their national context and gave them for the first time a responsibility for the problems they shared with their neighbours. Once they had experienced this widening of scope there was no going back on it.¹⁴

In the organic model, authority derives from a source outside the nation-state: God, part of society, or, most commonly in today's thought, man. Both national and international institutions can derive their authority directly from such a source and can thus have independent legitimacy. Design of international organization then looks less to contract and more to the sources and interactions of authority at each of these levels. The underlying theoretical issue is no longer ensuring that the international organization not assume powers beyond those granted to it by national governments; rather, the focus is on drawing lines between two legitimate authorities.

The organic model will vary radically depending on the character of the community and the source of authority. In one version, that source is divine and beyond politics, as exemplified in theories of the Papacy or the Caliphate. In a second version, the autonomy of both the national and the international political orders are denied. It is assumed, as in *dependencia* criticism, that both levels of power are used for parochial purposes, such as the accumulation of capital, and that the entire system is merely the external manifestation of such underlying purposes. A third view is that of authority deriving from democratic interaction among people at a variety of levels, an approach exemplified by the coordination of democratic political action in the United States after the Civil War and in Europe after World War II. This is a Rousseauian or Hegelian view of the evolution of human society in which the focus for each level is likely to rest upon a sense of community and identification. Like the national order, the international order must involve interaction among citizens in order to reflect and build community.

full advantage of this opening to transform the established order, using the momentum of development. But this numerical importance of the Third World countries only represents a balancing factor, still fragile and uncertain, in the face of the real strength of the industrialized countries and the means to apply pressure that they have at their disposal.

Bedjaoui, *A Third World view of international organizations. Action towards a new international economic order*, in THE CONCEPT OF INTERNATIONAL ORGANIZATION 206, 209-10 (G. Abi-Saab ed. 1981).

13. J. ROUSSEAU, A LASTING PEACE THROUGH THE FEDERATION OF EUROPE AND THE STATE OF WAR 59-60 (Vaughan trans. 1917), as cited by K. WALTZ, MAN, THE STATE AND WAR 185 (1959).

14. Monnet, *Economic Integration: New Forms of Partnership*, in CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, PERSPECTIVES ON PEACE, 1910-1960, at 97, 101 (1960).

A. *Religious Integration*

If our program [pan-Islam] were instituted in even a small area, the whole Muslim world would not fail, out of religious discipline, to accept the legitimacy of this new caliph Indeed, every government exercising control over Muslim subjects would find itself compelled to conciliate them to an extent commensurate with their unity and public opinion in permitting them to follow the religious guidance of their caliph, as the Catholics do with the Pope.¹⁵

There are many examples of religious community as the conceptual basis for an international institution that relates directly to people within nations, derives its legitimacy from its religious source, and may help restrain conflict between nations. The quotation above reflects the Islamic sense of the *umma*, the community of believers, which is to be supervised by a revival of the *caliphate*, an early Islamic governing institution. Central allegiance is to the religious community, and, in this particular tradition, that community is much more real than is any civil community. In such a context, the state is deemphasized, and may be held outside the law. Such deemphasis can easily provide psychological support for secular autocracy.

The medieval Papacy sought, like Islam, to build a sense of community that transcended the boundaries of the more secular institutions, and the Papacy frequently claimed that it was the juridical source of the legitimacy of such secular institutions.¹⁶ A more recent example is the Zionist movement, the most successful of the great contemporary religious approaches to the rethinking of the nation-state. Israel is in most ways a modern nation-state, but its political and legal ties with the Jewish community throughout the world reflect a sense that transcends traditional national borders.¹⁷

The religious pattern is likely to gain importance, because second and third generation leaders of the newly independent nations of Africa and Asia may well seek to justify and shape their rule in terms of authentic national culture rather than in terms of Western ideas. The internal difficulties of Western secular society in controlling crime and maintaining a family structure make it easy for such leaders to reject the Western legalistic tradition (and possibly even the Western democratic tradition). Moreover, within the West itself, particularly the Western hemisphere, there are signs of major religious revival. It is quite possible that some of this activity will lead to new institutions transcending the nation-state.¹⁸

15. MUHAMMAD RASHĪD RIḌĀ, *AL-KHILĀFA AU AL-ĪMĀMA 'L-'UZMĀ* ("THE CALIPHATE, OR SUPREME IMAMATE") 103 (1923), *quoted in* M. KERR, *ISLAMIC REFORM* 184 (1966).

16. There was also a position that the political and the secular authorities were essentially equal, each in its own sphere. See Hrabar, *Esquisse d'une histoire littéraire du Droit International au moyen âge du IV^e au XIII^e siècle*, (pts. 1 & 2), 18 *REV. DR. INT.* 7, 373 (1936) (reprinted by permission 1972).

17. For a description of the historical sense, see Feinberg, *The Recognition of the Jewish People in International Law*, in *JEW. Y.B. OF INTL. L.* 1948, at 1 (1949), and as a more recent example, *Attorney-General of Israel v. Adolf Eichmann*, 36 *I.L.R.* 5 (Sup. Ct. of Israel 1962).

18. There is also a tradition that international order will follow immediately from personal conversions, either to a specific religious belief or to a religious-like recognition of the unity of mankind:

In the world of Great Unity, the whole world becomes a great unity. There is no division into national states and no differences between races. There will be no war.

B. *Dependencia*

[W]e must escape from the limited field of juridical sovereignty and State institutions, and instead base our analysis of power on the study of the techniques and tactics of domination.¹⁹

An alternate explanation of the parallel national and international orders is that they *both* derive from a concealed source of power. In essence, the state is merely a means through which a particular social class operates and exercises its authority. If the class can do so through the state, it can do so as well through an international institution.²⁰

This type of position is relatively easy to support as a criticism of some actual international organizations, especially the various functional organizations. There is little doubt, for example, that the constituency of the General Agreement on Tariffs and Trade is in large part a combination of the relevant ministries and of those economic interests which gain through free trade. Moreover, a business leader seeking a particular tariff arrangement is likely to lobby with equal ease in national and international organizations.

But the argument can also be made with respect to such powerful organizations as the International Monetary Fund, an organization that is quite closely controlled by the developed nations and that does interfere quite deeply in the internal economic affairs of developing nations. Supporters of the Fund can reasonably respond that membership is voluntary and that the painful economic adjustment mechanisms it encourages are unavoidable and actually less painful than the alternative of unilateral adjustment. The critic might counter that the very need for economic adjustment is in part an artifact of the international economic order, an order designed and imposed by business interests in the developed world — and that it is not a historical accident that this institution is powerful and controlled by the North, while the Southern majority in the General Assembly is essentially ignored.²¹

The *dependencia* insights can support action toward serious reform of international and national organization in an effort to obtain greater justice. They argue, however, that both levels of organization are essentially unreal, so that action is often psychologically paralyzed and gives way to a criticism that asks others to act. One turns to the repetitive resolutions of the Gen-

K'ANG YU-WEI, TA-T'UNG SHU (BOOK OF GREAT UNITY) (written 1901-1902, published 1935), quoted in A SOURCE BOOK IN CHINESE PHILOSOPHY 732-33 (Wing-Tsit Chan trans. and comp. 1963). This line of thought, however, does not generally lead to an international organization, and is therefore not emphasized in this paper. For a very thoughtful discussion of philosophies of preventing war (as opposed to philosophies of international organization), see K.N. WALTZ, *supra* note 13.

19. M. FOUCAULT, POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS 1972-1977, at 102 (1980), quoted in Benrey, *Gramsci on Law, Morality, and Power*, 11 INTL. J. SOC. L. 191, 198 (1983).

20. The argument need not be class-based, but can be more epistemological, as in David Kennedy's article, *Theses about International Law Discourse*, 23 G.Y.I.L. 353 (1980). And the current Soviet position on international organization is much more contractual, presumably reflecting Soviet concern about outside interference. See Morozov, *The socialist conception of international organization*, in Abi-Saab, *supra* note 12, at 173.

21. See Bedjaoui, *supra* note 12.

eral Assembly and the predictable consequent United States criticism of the United Nations. Neither the religious approach nor the *dependencia* approach accepts the existence of two levels of actual *political* community.

C. *Democratic International Organization*

The tasks allotted to the European Parliament in the constitutional structure of the European Communities and the part it is intended to play on the path to 'an ever closer union among the peoples of Europe' require a body which is capable of acting.²²

President Lincoln recognized the depth of organic union underlying the United States contractual union when he assumed power to wage war against the states on behalf of the federation. He spoke the language of contract: "[I]f the United States be not a government proper, but an association of States in the nature of contract merely, can it, as a contract, be peaceably unmade, by less than all the parties who made it?"²³ But the content was far beyond contract. The illegitimacy of secession was carefully *not* defined in the Constitution, and Lincoln's action undercut the sovereignty of the several states. He leapt beyond legality and contract, a leap that risked tyranny and *hubris* and was justifiable, if at all, only through an agonized judgment that the federation was truly one community and that the whole community — both North and South — would ultimately benefit from unity.

Certainly, there had long been a sense of United States community that, along with economic interests, had led the former colonies to seek unity and to try again after the failure of the Articles of Confederation. Moreover, it supported the Supreme Court's extension of federal power over state law in cases such as *Martin v. Hunter's Lessee*²⁴ and *McCulloch v. Maryland*.²⁵ But what shows the difference between a contractual and an organic community is that Lincoln was motivated by an extra-constitutional sense that the Union had to be held together, a sense beyond constitutional or legal duty.

The Civil War accelerated the historical trend of citizens transferring their allegiance from the states to the federal government. The fourteenth amendment legitimized and encouraged federal interference in state actions to achieve new nationally held goals of justice. Judicial review became a tool centered far more on enforcing human rights than on enforcing federalism. Based on this deeper sense of community, later and less dramatic evolutions transferred a whole range of power from the state governments to the federal government. The Progressive movement took the power to choose federal senators from state legislatures and gave it to the people. The income tax was authorized and gave the federal government the power deriving from possession of the most equitable taxing system in the nation.

22. Judgment of May 22, 1979, BVerfG, W. Ger., 51 BVerfG 222, 246 (English version reprinted in 27 Common Mkt. L. Reps. 497, 515 (1980)).

23. ABRAHAM LINCOLN, *First Inaugural Address—Final Text*, in 4 THE COLLECTED WORKS OF ABRAHAM LINCOLN 262, 265 (1953), quoted in J. FRANK, *LINCOLN AS A LAWYER* 142 (1961).

24. 14 U.S. (1 Wheat.) 304 (1816).

25. 17 U.S. (4 Wheat.) 316 (1819).

The states that had carefully weighed their voting rights in 1789 almost forgot to evaluate whether they received a net benefit or loss from federal taxation and expenditures.

Some of these ideas, and some of these hopes, have been carried over into international organization, more so into the League of Nations than into the United Nations. Thus, in addition to the balance of power and dispute settlement ideas already discussed, there was, at the core of the League, an effort to bring people and public opinion into the peace-making process. Consider Woodrow Wilson's call for "[O]pen covenants of peace, openly arrived at, after which there shall be no private international understandings of any kind but diplomacy shall proceed always frankly and in the public view"²⁶ The House of Lords emphasized the same point in its famous 1918 debate on the "hue and cry," which was later described as "the embodiment of a sense of solidarity."²⁷ But there was more. It was this period that saw the creation of an international civil service and of the idea that there could be impartial international personnel — a concept logically dependent on the existence of a sense of community to attract the personnel's loyalty. The leading special purpose international institution created in the era was the International Labour Organization, the only official international organization that has provided representation to sub-national institutions (labor and management) as well as to governments. Such an organization cannot be controlled by governments, as the Eastern bloc discovered when the organization investigated Poland in the late 1970's.²⁸ At a more symbolic level, Wilson's emphasis on national self-determination was a Rousseauian, organic concept, not a Kantian, contractual one.

After World War II, the United Nations took a more contractual approach than the League, but Europe pursued the organic approach. The new European system was legally phrased in contractual terms, but, as suggested by Jean Monnet's statement above,²⁹ the planners deliberately chose those contractual steps that would enhance the idea of community and make the progress toward integration irreversible. Formal unity would lead to human unity.³⁰

The mechanisms that Europe chose were those of democracy. One of the most important approaches — built on the post-Civil War United States model — was to use human rights as a step toward integration. The first major European institution — negotiated before the North Atlantic Treaty Organization or the European Economic Community — was the European Convention on Human Rights,³¹ a transnational legal structure to help

26. U.S. DEPT. OF STATE, *supra* note 8, at 15.

27. A. ZIMMERN, *supra* note 9, at 174-78.

28. Valticos, *Une nouvelle forme d'action internationale: Les 'Contacts Directs' de l'O.I.T. en matière d'application de Conventions et de liberté syndicale*, 1981 ANN. FR. DR. INT. 477, 486 (Centre National de la Recherche Scientifique).

29. See text at note 14 *supra*.

30. It is Eric Stein who has coauthored the leading text on the integration of Europe. See E. STEIN, P. HAY & M. WAELBROECK, *EUROPEAN COMMUNITY LAW AND INSTITUTIONS IN PERSPECTIVE* (1976).

31. The European Convention on Human Rights, Nov. 4, 1950, Europ. T.S. No. 5. The following quotation suggests the intention of the framers:

guarantee human rights *within* each state. Such international enforcement would be in everyone's interest, for it might help prevent the rise of another Hitler. The various protocols and optional clauses of this Convention have gained increasing adherence, and the associated Commission (more so than the Court) has become an important administrative mechanism of law reform within Europe.

Another major emphasis was functionalism — the idea that economic union (or plausibly other forms of technical cooperation) would ultimately lead to more complete political integration.³² This approach, though pursued in the strongest and most powerful of the European political organizations — the European Economic Community — has proved somewhat disappointing as a mechanism of full integration. Europe has gone very far toward economic union but has had difficulty in expanding that union into political cooperation. Even so, in only twenty-six years, the Community has already helped transcend the enmity between France and Germany that had brought the continent to war three times in a century.

In its legal evolution, the Community has followed the American pattern, but with more complexity.³³ Detailed legal balances are spelled out in the treaties and are generally followed, although one extremely important weighted voting provision did fail to survive a 1965 attack by Charles de Gaulle.³⁴ The Community's constitutional jurisprudence already includes analogues of *Martin v. Hunter's Lessee*³⁵ and of *Missouri v. Holland*,³⁶ and it reflects the organic evolution of the Community in new and original ways. For example, in 1974 the German Constitutional Court concluded that Community actions would have to be tested against German human rights provisions until the Community gained its own mechanisms to protect those rights.³⁷ The decision was highly criticized as infringing the supremacy of Community law, but it evoked a response from the European Community's Court incorporating human rights norms into Community

Mr. President, while I was in the Gestapo prisons . . . my father, who was also a member of our French Parliament, was interned at Buchenwald. He told me that on the monumental gate of the camp was this outrageous inscription: "Just or unjust, the Fatherland."

I think that from our first Session we can unanimously proclaim that in Europe there will henceforth only be *just* fatherlands.

I think we can now unanimously confront "reasons of State" with the only sovereignty worth dying for, worthy in all circumstances of being defended, respected and safeguarded — the sovereignty of justice and of law.

Speech by Pierre Henri Teitgen to the First Session of the Consultative Assembly of the Council of Europe at Strasbourg (Aug. 19, 1949), reprinted in 1 COLLECTED EDITION OF THE "TRAVAUX PRÉPARATOIRES 30 (1961).

32. See Mitrany, *The Prospect of Integration: Federal or Functional*, 4 J. COMMON MKT. STUD. 119 (1965).

33. See Stein, *Lawyers, Judges, and the Making of a Transnational Constitution*, 75 AM. J. INTL. L. 1 (1981).

34. See J. NEWHOUSE, *COLLISION IN BRUSSELS* (1967); Lambert, *The Constitutional Crisis 1965-66*, 4 J. COMMON MKT. STUD. 195 (1966).

35. 14 U.S. (1 Wheat.) 304 (1816). See *Costa v. Ente Nazionale Energia Elettrica (ENEL)* (Case No. 6/64), 1964 E. Comm. Ct. J. Rep. 585 (Preliminary Ruling).

36. 252 U.S. 416 (1920). See Advisory Opinion 1/78, 1979 E. Comm. Ct. J. Rep. 2871.

37. Judgment of May 29, 1974, BVerfG, W. Ger., 37 BVerfG 271 (English version reprinted in 14 Common Mkt. L. Reps. 540 (1974)).

law³⁸ and a joint statement by the major Community political institutions that they would respect human rights in their future actions — a sort of Magna Carta.³⁹ It *is* a constitution that is being interpreted.

The Community's most recent constitutional innovation is to choose its Parliament by direct election. Although the Parliament has almost no formal power, it is likely to help indirectly in transferring authority to the Community level. The elections, for example, may help educate the European citizen and interest him or her in bringing grievances to Community institutions. Parliamentary consultation and a question time in the House of Commons tradition — roles retained from the period when the Parliament was chosen indirectly by national legislatures — should give increased legitimacy to Community action and ensure that views are put forward without censorship by governments. Moreover, as a directly elected body, the Parliament may gain the moral and political authority needed to ensure serious consideration of its proposals for deeper Community integration.⁴⁰

III. THE TWO CONCEPTS IN TENSION

[W]hensoever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness.⁴¹

[I]s it possible for the Secretary-General to resolve controversial questions on a truly international basis without obtaining the formal decision of the organs? In my opinion and on the basis of my experience, the answer is in the affirmative . . .⁴²

A. *Building Community*

For Americans, perhaps in contrast to Europeans, the contractual approach to international organization is the one that automatically comes to mind. The idea of a written agreement among nations reflects both our predilection to legalism and the way our own federation was formed.

Moreover, under this view, the task of creating international organization becomes a relatively straightforward one of lobbying national governments. The politics rests on a direct idealistic appeal to governments that international organization would actually serve their long-term interests and that the short-term costs are likely to be outweighed by the long-term benefits to all societies. This is reflected in the common contemporary theme that an apocalyptic near-miss of nuclear war might shock national leaders into a new and critical disarmament negotiation. And the same

38. See *Roland Rutili v. Minister for the Interior* (Case No. 36/75), 1975 E. Comm. Ct. J. Rep. 1219 (Preliminary Ruling).

39. Joint Declaration by the European Parliament, the Council and the Commission, 20 O.J. EUR. COMM. (No. C 103) 1 (Apr. 27, 1977).

40. M. PALMER, *THE EUROPEAN PARLIAMENT* (1981).

41. The Declaration of Independence para. 2 (U.S. 1776).

42. Dag Hammarskjöld, Lecture to Congregation at Oxford University (May 30, 1961), reprinted in *SERVANT OF PEACE* 329, 346 (W. Foote ed. 1962).

logic of perceived mutual benefit to nation-states underlies most proposals for solution of the variety of apparently technical international problems such as pollution, the law of the sea, the exploitation of outer space, or the control of multinational corporations.

The reality of both the American and European integration efforts, however, is that community is more important than contract. Without a sense of community — based on cultural and economic and political interaction — nations will not seriously consider international organization, even for security purposes. Nor will the courts or executives or politicians work to strengthen integration rather than disintegration. Without community, international organization will collapse as did the Articles of Confederation and the League of Nations. Efforts to build community must therefore parallel those to build contractual integration.

B. *The Translegal Act*

The construction of organic unity, however, often contradicts the demands of contractual unity. National governments, inherently unwilling to give up power, carefully restrict contractual integration. Hence, nearly every actual example of integration has involved acts of questionable formal legality. This is obvious when international organization is constructed by conquest. But it is true elsewhere as well. Consider how the framers of the United States Constitution exceeded their instructions and produced an entirely new structure. Later, Lincoln's maintenance of the Union and his Emancipation Proclamation rested on questionable constitutional grounds, but they reflected the community's demands of unity and justice.

The point is not unique to international organization. The extra-legal act has always played a role in the creation of a national government. Most governments owe their creation to a formally illegal act: revolution, secession, or constitutional change outside the rules of an established order. It is through such acts that a community transcends the limitations of prior contractual legality. The possibility that international institutions could evolve similarly is one that has only rarely been raised, for it is hard to envision the revolution that produces international unity. Action for unity tends to take a less dramatic form such as the carefully thought out extension of a legitimate authority.

Evaluation of such extra-legal approaches requires immense caution, for legal restrictions are often designed precisely to guarantee justice. In upholding the union, Lincoln must have been torn between scrupulous adherence to the institutions of freedom, representing carefully negotiated balances between state and federal power, and fear that those institutions would not survive if he did not stretch his authority. The Emancipation Proclamation poses similar problems⁴³ as does any form of international intervention on behalf of human rights. Such intervention is appealing, and sometimes justified. But the nonintervention doctrine evolved in the nineteenth century precisely as a way to protect democratic nations against those who regarded democracy as subversive.⁴⁴

43. See J. FRANK, *supra* note 23, at 144-47.

44. See R. VINCENT, *NONINTERVENTION AND INTERNATIONAL ORDER* 64-141 (1974).

C. *The Role of Democracy*

The definition of ethical criteria to judge extra-legal action is enormously difficult and controversial. Most efforts have focused on such issues as civil disobedience, revolution, or war, and are rarely helpful in making the choices needed for the construction of an international order.

Yet, the notion of democracy can itself provide an important criterion. If one is to build international community — the only basis on which trans-legality can ever be justified — then the demands of the community itself provide a test. Interventions or extra-constitutional acts cannot be justified if they do not contribute to the democracy and freedom of that community. It is significant that there *were* ultimate legal checks upon President Lincoln and that the founders *did* submit their system to the states for approval.

Democracy provides more than an ethical test for organic integration; it also provides the central mechanism. Today's leading example of actual organic integration, that of Europe, is taking place in a democratic region and is relying upon democratic institutions and transnational political parties to achieve its unity. Without courts sometimes reaching to protect human rights or transnational political parties forced into accommodation, the European movement would have had no chance. It is only among democracies that people can hope to succeed with political movements to take power peacefully from current governments and give it to new entities. And it is among democracies that ideas, people, and political movements can most readily flow to create a new, broader sense of community.⁴⁵

CONCLUSION

In summary, if we take political theory and the lessons of history seriously, the task of building international organization is far less one of achieving agreements among governments than one of building the sense of international community that makes organic evolution possible and wise. This community must be ultimately a community of democracies; we would not want it otherwise, nor can it be otherwise.

We cannot for a long time expect to bring the Soviet Union into a real international system, nor to convert the United Nations to a more effective role. But we can work now to make these actions possible in the future. Wherever we can, with both democratic and authoritarian nations, we should work for the flow of ideas and people that makes future community possible. And with the democracies of the world, including those in Asia, Africa, and Latin America as well as those in Europe and the North Atlantic, we should work for mechanisms of political cooperation, such as directly elected assemblies and regular working contacts among political parties, in addition to the human rights and economic institutions needed to deepen our legal and organic community. Such a community can grow and

45. Note that this is not an argument that democracies are more peaceful than other governments, an argument that may or may not be factually accurate. See K. WALTZ, *supra* note 13, at 80-123. My argument is rather that democracy is a prerequisite to international organization, which, I have argued elsewhere, is, in the nuclear era, a prerequisite to peace. See Barton, *The Proscription of Nuclear Weapons: A Third Nuclear Regime*, in NUCLEAR WEAPONS AND WORLD POLITICS 149 (1977).

reform itself into one that provides security, that attracts the Soviet Union, and that ultimately incorporates the United Nations.

[L]aws and institutions must go hand in hand with the progress of the human mind. . . . We might as well require a man to wear still the coat which fitted him when a boy, as civilized society to remain ever under the regimen of their [sic] barbarous ancestors. It is this preposterous idea which has lately deluged Europe in blood.⁴⁶

46. Letter from Thomas Jefferson to Samuel Kercheval (July 12, 1816), *reprinted in* 10 THE WRITINGS OF THOMAS JEFFERSON 42-43 (P. Ford ed. 1899).