

THE RISE AND DECLINE OF A LIBERAL INTERNATIONAL ORDER

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# The Rise and Decline of a Liberal International Order\*

Richard H. Steinberg

## I. Introduction

The liberal international order established by Western powers in the postwar era is in decline, due to an international dispersion of power, and political blowback from distributive consequences of the freer movement of goods, services, and people that was a product of that order. The postwar structure has shifted from bipolarity, to a unipolar moment at the end of the Cold War, to multipolarity today. In today's multipolar world, a liberal international order is increasingly difficult to maintain. While it will not be possible to halt the decline of that order, the United States could adopt policies that would decelerate the decline and reconstitute a largely liberal plurilateral order over much of the world.

The postwar “liberal international order” has been primarily rules-based, led by the United States and Europe, organized around the principles of open markets, multilateralism, liberal democracy, and human rights, and defended by a web of military alliances and security guarantees—but it has not been static in form, breadth, or depth.

During Cold War bipolarity, the US-shaped order was Western embedded liberalism: limited to the West; liberalism embedded in the context of a social contract that demanded deviation from pure laissez-faire rules in order to protect national political-economic structures

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and those hurt most by liberalization; and tolerant of engagement with authoritarian states. NATO stood ready to defend the West in the heart of Europe, its forces facing off against the Warsaw Pact in the East, while the U.S. military guaranteed the security of our most important economic partners in East Asia—Japan, South Korea, Taiwan, Australia, and New Zealand—through various agreements and guarantees.

After the Cold War, until roughly 2009 (the Great Recession), through cooperative transatlantic governance, the international order transformed to global hyperliberalism. It became global in that international economic regimes expanded to include most of the former Soviet and COMECON states, China, and just about everyone else. It became hyperliberal in that international rules more deeply adhered to laissez-faire capitalism and were less embedded in an egalitarian social contract; international relations were subject to deeper judicialization (e.g., more courts and tribunals); and the U.S. and many allies embraced regime change to spread democracy and human rights. Our alliances in Asia held fast, while NATO enlarged eastward and its mission crept from a nearly exclusive focus on security against the Soviet threat to protecting human rights in Bosnia and Kosovo, facilitating regime change, participating in the war on terror in Afghanistan, and combatting human trafficking.

Since 2009, that liberal international order has been receding—and at an accelerating rate during the Trump years. In the economic realm, the WTO is incapable of legislating new rules, old rules have been flouted, and its judicial system has been rendered dysfunctional—while bilateral and regional trade arrangements have expanded. Substantial protectionism has reemerged for the first time since the inter-War period. The IMF has continued to diminish in importance as a global lender of last resort: IMF quotas are now a small fraction of global capital flows. Capital controls have reemerged. Lines of fracture have become apparent in the EU, with

Brexit emblematic. Politically, we are in a democratic recession<sup>1</sup>—or depression: nativism and elements of authoritarianism, have emerged as forces in the United States, the United Kingdom, Hungary, Poland, Germany, and Brazil, among others. Russia went from a fledgling democracy to autocracy under Putin, with revisionist ambitions in southwest Asia, the Middle East, and possibly the Baltics. China has become an autocratic surveillance state, more deeply committed to its version of a “socialist market economy,” and it aggressively asserts illegal, revisionist territorial claims. U.S. security alliances have held together, but are subtly changing, with signs of strain and undercapacity in NATO.

Consistent with hegemonic stability theory,<sup>2</sup> a dispersion of power in the international system has driven the recent decline of the liberal international order. In the 2000s, international structure shifted from a moment of perceived unipolarity toward multipolarity. Structural change across the postwar era has taken place slowly. Relative U.S. power has diminished as China and other countries’ military and economic power have grown, and as the United States has suffered waves of blowback against its international activities,<sup>3</sup> and tolerated free-riding on its security guarantees in Asia, the Middle East, and Europe. Those guarantees were established seventy years ago, when the United States was far more powerful; today, the United States is overstretched. While no state could credibly challenge the U.S. military in the immediate post-Cold War period, China’s military has now achieved at least parity with the United States in the

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<sup>1</sup> Larry Diamond, *Facing Up to the Democratic Recession*, 26 J. DEMOCRACY 141 (2015).

<sup>2</sup> ROBERT GILPIN, *WAR AND CHANGE IN WORLD POLITICS* (1981); Stephen D. Krasner, *State Power and the Structure of International Trade*, 28 WORLD POL. 317 (1976); CHARLES P. KINDLEBERGER, *THE WORLD IN DEPRESSION 1929–1939* (1973).

<sup>3</sup> CHALMERS JOHNSON, *BLOWBACK: THE COSTS AND CONSEQUENCES OF AMERICAN EMPIRE* (2004).

Western Pacific,<sup>4</sup> and Russia can now pose a credible military threat to U.S. interests and allies all along the Russian border, especially in the Baltics,<sup>5</sup> and in the Middle East.

Relative U.S. economic power has also declined. To some extent, it was natural that U.S. economic dominance declined as Europe rebuilt after the Second World War, and many poorer countries began to catch up with the advanced industrialized countries.<sup>6</sup> However, consistent with classical<sup>7</sup> and neoclassical<sup>8</sup> liberal trade theory (but not with the “new” economic theory<sup>9</sup>), postwar U.S. trade policy did not demand absolute reciprocity (i.e., that other countries open their markets to the same extent as the United States opened its market), and access to large U.S. and European markets accelerated the BRICs’ growth rates, China’s in particular. Meanwhile, China has pursued domestic economic subsidization on a scale unparalleled in the postwar period,<sup>10</sup> and a policy of export led growth, maintaining a relatively closed market, performance requirements for investors, and for many years an undervalued Yuan, which have buttressed a constant trade surplus with the United States. Thus, since the late 1940s, the relative position of the U.S. economy has fallen precipitously. The U.S. share of GATT/WTO GDP has fallen from

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<sup>4</sup> ERIC HEGINBOTHAM ET AL., RAND CORP., *THE U.S.-CHINA MILITARY SCORECARD: FORCES, GEOGRAPHY, AND THE EVOLVING BALANCE OF POWER, 1996–2017* (2015); Ryan Pickrell, *The US Has Been Getting ‘Its Ass Handed to It’ in War Games Simulating Fights Against Russia and China*, BUS. INSIDER (Mar. 8, 2019), <https://www.businessinsider.com/the-us-apparently-gets-its-ass-handed-to-it-in-war-games-2019-3>. See also COMM’N ON NAT’L DEF. STRATEGY, U.S. INST. PEACE, *PROVIDING FOR THE COMMON DEFENSE: THE ASSESSMENT AND RECOMMENDATIONS OF THE NATIONAL DEFENSE STRATEGY COMMISSION* (2018).

<sup>5</sup> DAVID A. SHLAPAK & MICHAEL W. JOHNSON, RAND CORP., *REINFORCING DETERRENCE ON NATO’S EASTERN FLANK: WARGAMING THE DEFENSE OF THE BALTICS* (2016).

<sup>6</sup> CONVERGENCE OF PRODUCTIVITY: CROSS-NATIONAL STUDIES AND HISTORICAL EVIDENCE (William J. Baumol et al. eds, 1994).

<sup>7</sup> DAVID RICCARDO, *ON THE PRINCIPLES OF POLITICAL ECONOMY AND TAXATION* (1817).

<sup>8</sup> ELI F. HECKSCHER & BERTIL OHLIN, *HECKSCHER-OHLIN TRADE THEORY* (1991).

<sup>9</sup> ELHANAN HELPMAN & PAUL KRUGMAN, *MARKET STRUCTURE AND FOREIGN TRADE: INCREASING RETURNS, IMPERFECT COMPETITION, AND THE INTERNATIONAL ECONOMY* (1987).

<sup>10</sup> Mark Wu, *The “China, Inc.” Challenge to Global Trade Governance*, 57 HARV. INT’L L.J. 261 (2016).

around 75% in 1948 to approximately 25% today.<sup>11</sup> The IMF quota share of the United States has fallen from 42% in 1947 to 17% today.<sup>12</sup>

These shifts have transformed governance of these important multilateral economic regimes from hegemonic control by the United States in the early postwar period, to hegemonic duopoly or triopoly (the US, EU, and Japan) in the middle years,<sup>13</sup> to increasingly diffuse multipolarity today. Multipolar governance among countries with often divergent views and interests now makes it far more difficult for these multilateral regimes to function effectively.

Simultaneously, in recent decades, global hyperliberalism, which was a product of U.S. and European Union policies beginning after the collapse of the Soviet Union, sowed the seeds of its own destruction. *Economic* hyperliberalism (freer movement of goods, services, labor, and capital) contributed to economic growth globally, but also worsened inequality within countries. In the Global North, unskilled and semiskilled workers lost jobs; in the South, small scale agriculture, telecommunications, banking, insurance and other sectors were overwhelmed by U.S. and European firms.<sup>14</sup> Free trade and laissez-faire mantras and interpretations narrowed the scope of exceptions to WTO trade liberalizing rules, diminishing the extent to which trade remedy laws (i.e., safeguards measures, countervailing duties, and antidumping duties) could be used to address social dislocations resulting from trade, and tightening the conditions under which WTO Members may use trade measures to protect the environment.<sup>15</sup> And instead of

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<sup>11</sup> GDP 1948 from *International Financial Statistics (IFS)*, IMF, <https://data.imf.org/?sk=4c514d48-b6ba-49ed-8ab9-52b0c1a0179b> (last updated Mar. 29, 2021); GDP 2018 from *World Development Indicators*, WORLD BANK, <https://datacatalog.worldbank.org/dataset/world-development-indicators> (last updated Mar. 19, 2021).

<sup>12</sup> See *infra* Figure 2.

<sup>13</sup> Richard H. Steinberg, *In the Shadow of Law or Power? Consensus-Based Bargaining and Outcomes in the GATT/WTO*, 56 INT'L ORG. 339 (2002).

<sup>14</sup> *Id.*

<sup>15</sup> Richard H. Steinberg, *The Impending Dejudicialization of the WTO Dispute Settlement System?*, 112 ASIL PROC. 316 (2019).

increased trade adjustment assistance and redistributive policies to offset the adverse distributive consequences of liberalization, U.S. federal tax policy became more regressive over the past fifty years.<sup>16</sup>

*Political* hyperliberalism, in the form of exporting democracy through regime change, was disastrous: interventions in Afghanistan, Iraq, and Libya destabilized the Middle East. For the most part, the Arab Spring, which was at least tacitly supported by civil society in the West, failed miserably. Deeply discounting the lessons of political modernization theory,<sup>17</sup> Americans and Europeans widely supported pro-democracy protesters and regime change over strongmen almost everywhere, regardless of whether there were democratically favorable social, economic, and institutional conditions, which led not to democracy but to massive bloodshed and a doubling down on authoritarianism, autocracy, or anarchy. Millions of political and economic refugees have spilled over borders. In the U.S. and Europe, many of those who have suffered economically from hyperliberalism were further threatened by refugees; they now find hope in political and economic nationalism and nativism—and they vote that way.

With diminished U.S. power to drive forward a liberal international order, and domestic political backlash against the global liberal order, the world has begun to shift—away from globalism, liberalism, and associated elements of a rules-based order.

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<sup>16</sup> Thomas Piketty & Emmanuel Saez, *How Progressive Is the U.S. Federal Tax System? A Historical and International Perspective*, 21 J. ECON. PERSP. 3 (2007).

<sup>17</sup> DEMOCRACY IN DEVELOPING COUNTRIES: LATIN AMERICA (Larry Diamond, Juan J. Linz & Martin Lip eds., 1989); SAMUEL P. HUNTINGTON, *POLITICAL ORDER IN CHANGING SOCIETIES* (1968); Seymour Martin Lipset, *Some Social Requisites of Democracy: Economic Development and Political Legitimacy*, 53 AM. POL. SCI. REV. 69 (1959).

## II. Conceptualizing and Operationalizing a “Liberal International Order”:

### Three Dimensions

The concept of a liberal international order has three dimensions, each of which is on a continuum.

First, how *liberal* are international relations? The ideal-type of classical liberalism, rooted in Enlightenment thought, favors liberty, consent of the governed, and equality before the law. Many philosophers, theorists, and economists have tied liberalism to laissez-faire capitalism. Politically, liberalism favors democracy and civil and political rights. Liberal international economic policy favors the free movement of goods, services, labor, and capital.

Second, how *international* are these liberal policies? This is a spatial question: to what extent are these liberal policies established and maintained globally, plurilaterally, regionally, or by only a handful of states?

Third, to what extent are these policies maintained via an international *legal order*? Liberal policies may be adopted and maintained voluntarily by states, driven by Manchesterism or a similar ideology, or other domestic political forces that favor free trade. Liberal economic policies might be imposed and maintained through a direct exercise of coercive power and imperial governance, as within the British empire. Or one can imagine establishing a liberal order, or any order, through a Pareto-improving contract between states. Whether established voluntarily, coercively, or transactionally, elements of a liberal order could be maintained, or at least administered, by way of international law, and administrative, judicial, or quasi-judicial processes.

### III. Power Shifts and the Postwar Orders

The rise and decline of a postwar liberal international order is explained largely by the changing structure of power in international relations. “Power” is defined here as the ability to get states to do what they would not otherwise do. The two most important levers of power are economic and military. Dominant military power enables effective defense or conquest, but military power requires economic power, which is also necessary to hold foreign territory or govern it (directly or indirectly). Hard power, military or economic, is exercised primarily through coercion, coercive diplomacy,<sup>18</sup> deterrence,<sup>19</sup> or contracting. The resulting policies generate outcomes with a distribution of benefits across states that reflect the underlying power structure.<sup>20</sup> Some think that “soft power,” shaping the preferences of others through appeal and attraction, may also influence behavior.<sup>21</sup>

#### A. Change in Economic Power

Bargaining power in trade has typically depended on promises by a country with a large market to open it further—or a threat to close it. Hence, state power to affect rules in the GATT/WTO, the world’s most important trade regime, may be approximated by relative market size. Figure 1 shows leading states’ GDP as a proportion of GATT/WTO GDP from 1948-2019.

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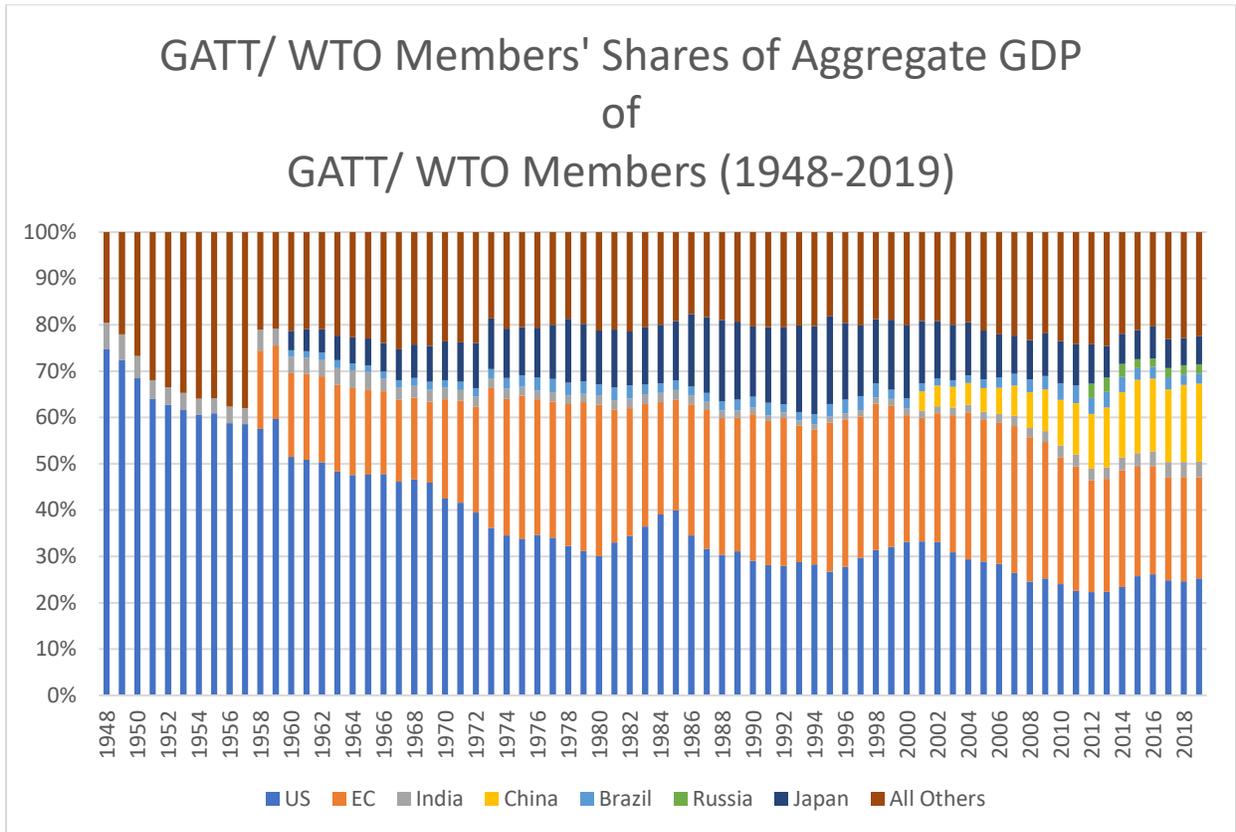
<sup>18</sup> ALEXANDER L. GEORGE, *FORCEFUL PERSUASION: COERCIVE DIPLOMACY AS AN ALTERNATIVE TO WAR* (1992); KENNETH A. SCHULTZ, *DEMOCRACY AND COERCIVE DIPLOMACY* (2009).

<sup>19</sup> ALEXANDER L. GEORGE & RICHARD SMOKE, *DETERRENCE IN AMERICAN FOREIGN POLICY: THEORY AND PRACTICE* (1974).

<sup>20</sup> STEPHEN D. KRASNER, *SOVEREIGNTY: ORGANIZED HYPOCRISY* (1999).

<sup>21</sup> JOSEPH NYE, *SOFT POWER: THE MEANS TO SUCCESS IN WORLD POLITICS* (2004).

Figure 1:



\* GDP from 1948–1959: *International Financial Statistics*, IMF (last accessed June 2021), <https://data.imf.org/?sk=4c514d48-b6ba-49ed-8ab9-52b0c1a0179b>.

\* GDP from 1960–2019: *World Development Indicators*, World Bank (last accessed June 2021), <https://datacatalog.worldbank.org/dataset/world-development-indicators>

\* Subtle changes in the form of available exchange-rate data beginning in 1960 result in a discontinuity of GDP shares between 1959 and 1960. GDP or exchange rate data are unavailable for some small economies in certain years, but the aggregate missing data is estimated to be less than one percent of the combined GDP of GATT/WTO Members and so does not meaningfully affect the trends represented in the chart.

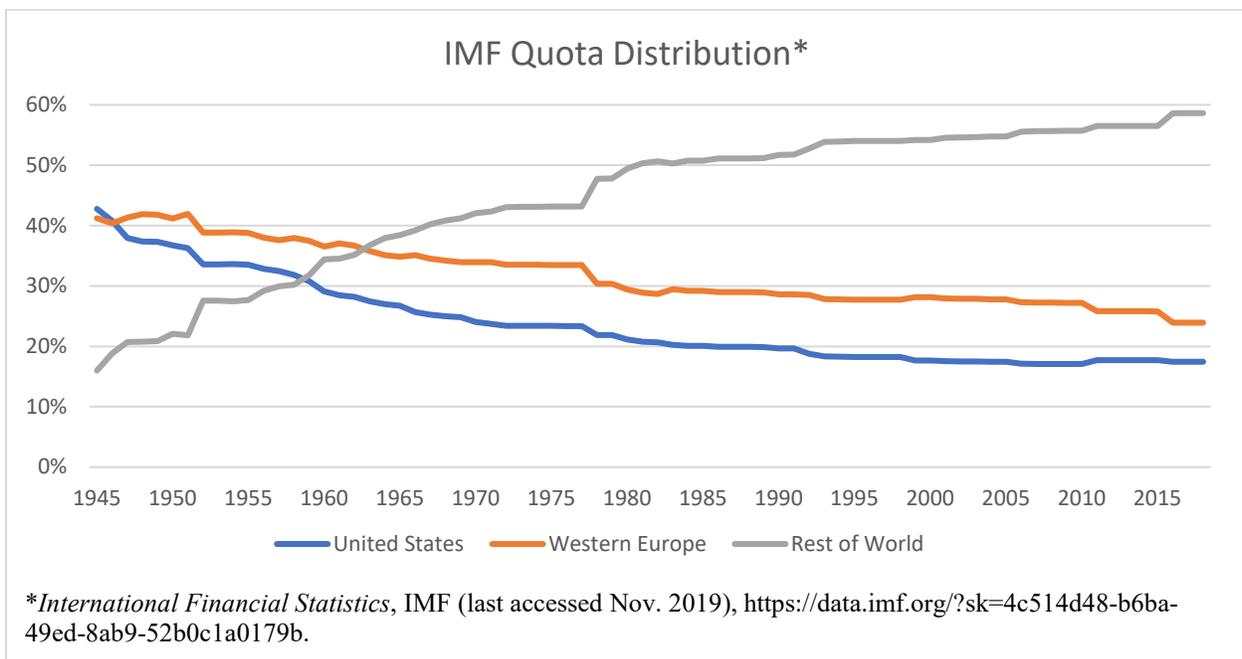
Over that time period, the U.S. share of GATT/WTO GDP declined steadily from approximately 75% to around 25%. In the years immediately after the Second World War, the U.S. was the West's dominant economic power and it established most substantive GATT undertakings.<sup>22</sup> In the middle postwar years, roughly 1970-95, the United States shared GATT governance with the

<sup>22</sup> Steinberg, *supra* note 13.

European Union;<sup>23</sup> the two territories combined accounted for around 60% of GATT GDP. Since 1995, however, the transatlantic share has fallen, while the shares of Brazil, Russia, India, and especially China (the BRICs) have risen, suggesting an increasingly multipolar distribution of power.

Figure 2 shows the U.S. share of the IMF quota from inception through 2015. An individual member's quota, denominated in Special Drawing Rights, which is the IMF's unit of account, broadly reflects that member's relative position in the world economy. Here too it is clear that the U.S. was once the world's dominant financial power, but that position has been

Figure 2:

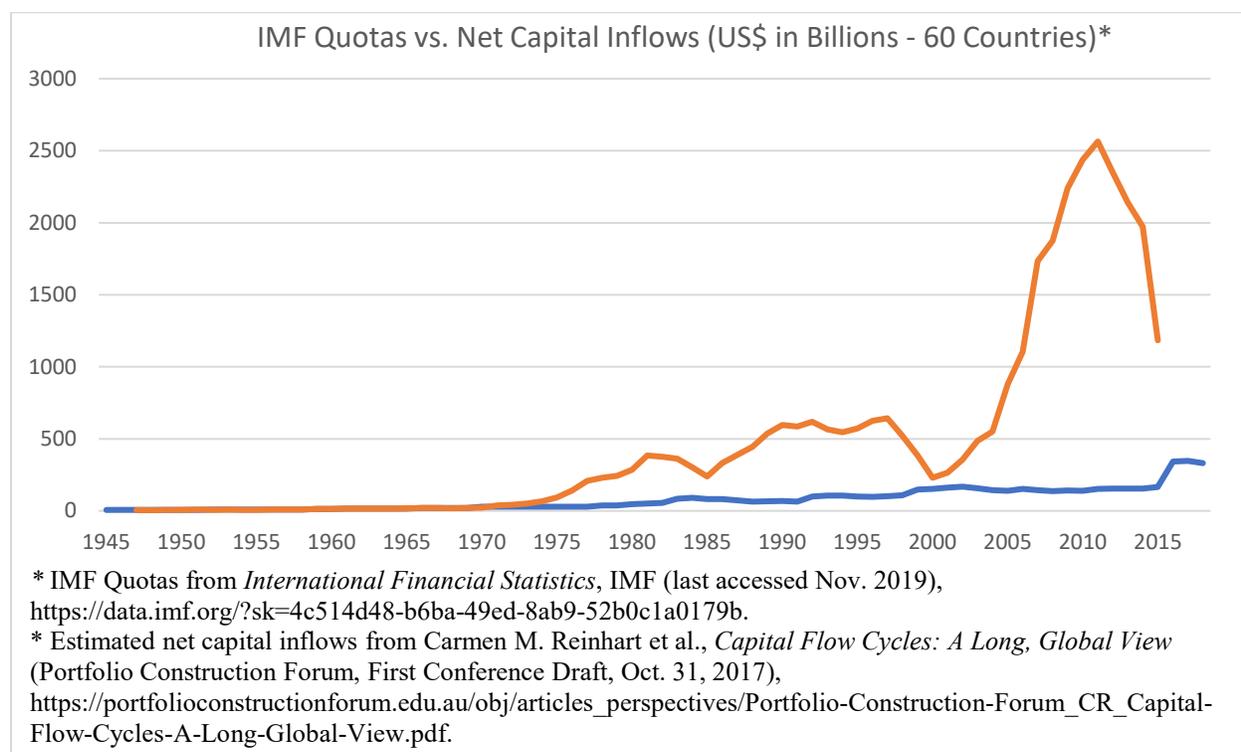


in decline for decades. While the U.S. dollar retains its position as the world's reserve currency and the United States remains one of the world's biggest financial powers, it is not as powerful

<sup>23</sup> *Id.*

as it once was. Moreover, as shown by Figure 3, the IMF's financial market power is dwarfed

Figure 3:



by the size of global capital flows, and so it is far less capable than it once was of serving as the world's lender of last resort with capacity to avert sovereign debt crises or a systemic crisis.

### B. Change in Military Power

Relative military power may be assessed in a few ways. Quantitatively, military power may be roughly approximated by such factors as military spending; counting hardware, taking into account the quality and technological sophistication of that hardware; and number of personnel, taking into account training and quality. Military power may also be assessed by considering conflict scenarios. Retrospectively, which country or countries prevailed in conflicts in different theatres? Prospectively, through simulations or other analysis, which country would likely prevail in a posited contemporary or future conflict? A fine-grained metric could consider the extent of prevalence in a particular region or context. By some definitions, an imperial

power is able to prevail and effectively hold and govern territory within a defined geographic region, often subsuming conquered territory into its own borders, whereas a hegemonic power prevails or can be expected to prevail in a particular geographic region, and sets the rules of the system within the territory it dominates, but is unable or unwilling to hold and directly govern conquered territory.<sup>24</sup>

During the Cold War, the United States and Soviet Union were the two great military powers, each with military capacity far greater than any other state, and roughly at parity with each other. At no time in the 1945-1990 period did either of these two states risk conquest of its own territory. Each had a navy, air force, and nuclear arsenal far larger than any third country, and each enjoyed geographic spheres of influence or dominance, some of which demanded projecting power to far reaches of the globe. The nuclear arsenals and delivery systems of the United States and the Soviet Union enabled them to offer security guarantees to, and deter aggression against, third countries located anywhere on the planet. Of course, each faced asymmetric challenges and was unwilling to use its entire arsenal in particular conflicts—in Vietnam for the United States and in Afghanistan for the Soviet Union, for example. The Soviet Union was imperial in that Moscow held and governed territory directly throughout the USSR, and in much of Eastern Europe. The United States maintained a substantial empire in the early postwar period, occupying and governing Japan, part of Germany, and a handful of other territories. Thereafter, the United States continued (and still continues) to govern or administer some islands and archipelagos in the Pacific and Caribbean, but governance of other territories beyond its borders has been at best indirect, by means of international law and economic and diplomatic pressure. Despite their great power rivalry, during the Cold War years, the United

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<sup>24</sup> MICHAEL W. DOYLE, *EMPIRES* (1986).

States and Soviet Union were able to conclude several agreements with each other that made each better off: arms control agreements, in particular, as well as solutions to territorial disputes among proxies in the Middle East, Asia, and elsewhere.

In the immediate aftermath of the Cold War, the United States military was uncontested as the most powerful in the world, attributable largely to its nuclear arsenal, broad web of foreign military bases, a large and seemingly invulnerable navy built around aircraft carrier task forces, its relative technological sophistication—and the sudden and unexpected collapse from within of the Soviet Union. From 1990 until roughly 2010, it seemed that the United States was invincible on the battlefield anywhere in the world, except in and along the borders of China and Russia: the first Gulf War was a rout, as were the initial U.S. military conquests in Afghanistan and Iraq. While these were coalition wars, U.S. technology, hardware, and strategy drove the outcomes.

Since the late 2000s, however, China and Russia have both increased their military strength, increasingly able to project force over longer distances, with Russia reestablishing itself as a regional hegemon and China bent on emerging as one, as well. Under Putin, Russia began enacting major military reforms in 2008, starting with flattening its command and control structure, initiating and regularizing inter-service exercises across military districts, integrating its combat branches, and enhancing its non-nuclear strategic deterrence. Russia has since added space and missile defense forces, and a substantial cruise missile capability. It now possesses formidable cyber, information, and electronic warfare capabilities. It is also upgrading its fighter jets, modernizing its strategic weapons arsenal, and developing a hypersonic glide vehicle, which would threaten U.S. missile defenses if deployed successfully. While Russia's navy lacks the broad capabilities that would warrant its status as an "ocean-going" navy, limiting its capacity to project force across the high seas, its heavily mechanized ground forces include approximately

400,000 persons with 2,100 battle tanks, backed by a tactical nuclear weapons capability that is likely superior to that of the United States and its allies.<sup>25</sup> Meanwhile, since the end of the Cold War, NATO's ground forces have substantially declined in readiness, and NATO has shifted focus away from high-intensity conventional combat.<sup>26</sup>

With renewed will and enhanced capacity, by the early 2000s, Russia had reasserted itself over many of its former Soviet "republics" in southwest Asia. In the 2010s, as the U.S. military began withdrawing from the Middle East, Russia filled the vacuum, reemerging as a rival to the United States there. It is now the dominant external actor in Iran, Syria, and Lebanon. And its current force posture poses a growing threat to NATO's eastern flank, particularly the Baltics.

Similarly, China, once a minor power, except along its immediate border, has radically improved its military capacity, establishing itself as a regional power. Moreover, China is on a trajectory to be able to project force effectively beyond the region. The 1996 Taiwan Strait Crisis, which triggered the biggest U.S. display of military force in Asia since the Vietnam War, and demonstrated China's inability to stop U.S. forces from coming to Taiwan's assistance, catalyzed modernization of the People's Liberation Army (PLA), with its military budget growing at an average of 11 percent per year between 1996 and 2015, focused on improving and expanding its air, naval, and ballistic missile capabilities, and building counter-space and cyber capacity.<sup>27</sup> China's 2015 defense white paper marked a change in the PLA's targeted geographic scope, announcing that "the armed forces will actively participate in both regional and international security cooperation and effectively secure China's overseas interests,"<sup>28</sup> a strategic

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<sup>25</sup> OFF. SEC'Y DEF., NUCLEAR POSTURE REVIEW 9 (2018).

<sup>26</sup> SCOTT BOSTON ET AL., RAND CORP., ASSESSING THE CONVENTIONAL FORCE IMBALANCE IN EUROPE: IMPLICATIONS FOR COUNTERING RUSSIAN LOCAL SUPERIORITY (2018).

<sup>27</sup> HEGINBOTHAM, *supra* note 4.

<sup>28</sup> STATE COUNCIL INFO. OFF. PEOPLE'S REPUBLIC CHINA, CHINA'S MILITARY STRATEGY (2015).

shift echoed in subsequent official Chinese documents. The Chinese military has now asserted its interests, at least on paper, not only in Tibet and Turkestan, but also the East China Sea and South China Sea, as well as the “first island chain” of Japan, Taiwan, the Philippines, and Indonesia.<sup>29</sup> Moreover, official Chinese documents establish a goal of strike capability into the “second island chain,” demarcated by the Aleutian Islands, Mariana Islands, Guam, Palau, and Northern Papua New Guinea.<sup>30</sup>

With China’s persistent large investments in the PLA since the late 1990s, military analyses uniformly conclude that U.S. military power is no longer unchallenged and unrivaled in the Western Pacific.<sup>31</sup> In case of conflict with the United States, China’s network of anti-access area denial will push any U.S. fleet, including aircraft carrier task forces, to operate further from the immediate area of conflict,<sup>32</sup> and the PLA now has the capability to disrupt the operation of U.S. air bases throughout much of the Western Pacific, including Japan and Guam.<sup>33</sup> China’s military capabilities have shifted from a being at a “major disadvantage” in cases of conflict with the United States over Taiwan or the Spratly Islands, to at least parity.<sup>34</sup>

### C. Change in Soft Power

Many scholars and political leaders have come to embrace “soft power” as a means of getting others to do what they would not otherwise do. The extent to which and contexts in

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<sup>29</sup> Anthony Cordesman, *China’s New 2019 Defense White Paper: An Open Strategic Challenge to the United States, but One Which Does Not Have to Lead to Conflict 1* (Ctr. For Strategic & Int’l Stud., Working Draft, 2019), [https://csis-prod.s3.amazonaws.com/s3fs-public/publication/190724\\_China\\_2019\\_Defense.pdf](https://csis-prod.s3.amazonaws.com/s3fs-public/publication/190724_China_2019_Defense.pdf).

<sup>30</sup> *Hearing on U.S. Indo-Pacific Command Posture Before the S. Armed Servs. Comm.*, 116th Cong. 5 (2019) (statement of Philip S. Davidson, Commander, U.S. Indo-Pacific Command).

<sup>31</sup> *Id.* See also RAND CORP. PROJECT AIR FORCE, FORECASTING CHINA’S MILITARY SPENDING THROUGH 2025 (2005).

<sup>32</sup> Robert Clifford, *The U.S. Navy and China’s Anti-Access Bubble*, REAL CLEAR DEF. (Dec. 19, 2019), [https://www.realcleardefense.com/articles/2019/12/19/the\\_us\\_navy\\_and\\_chinas\\_anti-access\\_bubble\\_114938.html](https://www.realcleardefense.com/articles/2019/12/19/the_us_navy_and_chinas_anti-access_bubble_114938.html). See *China’s Anti-Access Area Denial*, MISSILE DEF. ADVOC. ALLIANCE (Aug. 24, 2018), <https://missiledefenseadvocacy.org/missile-threat-and-proliferation/todays-missile-threat/china/china-anti-access-area-denial/>.

<sup>33</sup> HEGINBOTHAM, *supra* note 4, at 337.

<sup>34</sup> *Id.* at 282.

which culture, political values, and diplomacy might affect international outcomes are contested. Culture, diplomacy, and political values could be independent sources of power to the extent that the *vision* they constitute legitimates foreign policy; appeals to other societies; is applied consistently and without contradiction; delivers what is promised; and competing visions fail. Conversely, culture, political values, or diplomacy could undermine the effectiveness of economic or military power when they fail to deliver what is promised by the vision; they are applied inconsistently, with internal or external contradictions; when soft power policies require spending too much hard power currency; or a competing power with different political-economic values and structure is more successful. Perhaps only very powerful states—the greatest powers—can afford to spend blood and treasure trying to advance a particular social structure in the world.

American culture has been a constant source of U.S. soft power throughout the postwar period, but the influence of American political values has varied. For most of the postwar era, U.S. economic and military power have been complemented by a claim of moral force through liberalism. The United States at least purported to lead by example and by maintaining a foreign policy that has championed democracy, civil and political rights, economic development through capitalism, freer trade and capital movements, and rule of law. The credibility of that moral claim, however, has varied.

To a large extent, the global structure of soft power mirrors the structure of hard power. In a bipolar system, two great powers are likely to offer competing visions of social structure. In a unipolar system, there can be only one vision. In a multipolar system, there will likely be two or more visions, though very few countries can afford to use their economic or military power to coerce or pay other states to follow their vision of the best social structure.

During the Cold War, the United States embraced and supported liberalism, including civil and political rights where it could, while the Soviet Union offered its communist vision, and claimed to favor economic, social, and cultural rights. The United States claimed to be supporting democracy in some conflicts, such as the Vietnam War and Central American civil conflicts, while the Soviets spoke of liberation from capitalism in its engagements. Neither great power, however, was free to champion its vision credibly in all conflicts: for example, Thiệu's Vietnam was hardly a democracy, and communism was not a driving force behind Soviet intervention in Afghanistan. Nor could the United States afford to offer military and diplomatic support to democracies alone— so it supported autocrats in places like Argentina, Chile, Taiwan, and South Korea. Engaged in great power competition with the USSR, the United States needed to focus on the balance of power and protecting allies, whether or not they were democracies, while voicing support for democracy and making the world safe for democracy.<sup>35</sup>

In the period following the collapse of the Soviet Union, U.S. soft power in the form of credible advocacy of liberalism reached its apex. Without a hard power competitor, and with liberalism's apparent triumph over communism, then depicted as a failed ideology, the world could look to the United States as *the* model for appropriate and effective policy. The "Washington Consensus," a normative claim and policy prescription that the various dimensions of a liberal order are good and all go together, and support for regime change to democratize the world, drove U.S. foreign policy. Democratization and human rights were a rallying cry for interventions in the Middle East, North Africa, and the Balkans. A surge forward in freer trade and the elimination of capital controls were touted as the best way forward to replace socialism, import substitution industrialization policies, and other non-market-oriented development paths.

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<sup>35</sup> STEPHEN D. KRASNER, *DEFENDING THE NATIONAL INTEREST* (1978).

Rule of law, even at the international level, was favored by the United States in many areas. With the apparent triumph of the U.S. order and with no great power or alternative ideology to challenge it, it appeared to some as the end of history.<sup>36</sup>

The end of history was short-lived. The U.S. response to 9/11 included policies such as waterboarding and other forms of torture that undercut U.S. moral authority. The abject failure of U.S. efforts at regime change demonstrated that not all countries could democratize and that military efforts to free them from autocracy could lead to anarchy instead. The 2008-09 Great Recession and its aftermath dealt a fatal blow to important elements of the Washington Consensus, revealing that the U.S. brand of hyperliberalism had deep vulnerabilities. In contrast, the Chinese “socialist market economy with Chinese characteristics,” and even the German social democratic system with its macro-economic stabilizers, experienced only an economic slowdown, not a recession. China enjoyed double-digit annual growth rates through most of the 2000s; after the Great Recession the Chinese system seemed to gain credibility as a model for development and governance. Chinese foreign policy increasingly embraced that role, engaging in diplomatic, cultural, and economic outreach throughout Asia and Africa, in particular, complementing its Belt and Road initiative, billed as an effort to stimulate development. By 2016, many viewed U.S. foreign policy as contradicted by its failures and inconsistent application across countries and peoples. Meanwhile, China’s vision, and a European vision that focused on social democracy with greater equality and exceptions to laissez-faire capitalism to foster social welfare, were garnering attraction. U.S. soft power was diminishing.

Then arrived Donald Trump. Trump’s “America First” approach deprived U.S. foreign policy of moral force: a nation that staked its foreign policy solely on pursuit of its own interests

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<sup>36</sup> FRANCIS FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* (1992).

cared not about the interests of any other country. And during those same years, Trump, supported by roughly half the U.S. electorate, behaved autocratically, inviting foreign adversaries to interfere in U.S. elections, demanding imprisonment of his political competitors, deeming the free press the enemy of the people, and—at the end of his term—falsely claiming that American elections are rigged and that votes in states he lost should be disregarded. Internationally, Donald Trump embraced dictators and autocrats in China, Brazil, Saudi Arabia, and North Korea as friends—the Egyptian President was his “favorite dictator”—while launching personal attacks on many democratic leaders, including Trudeau, Macron, and Merkel. It is hard to see how a country led by such a President could stand for liberal political values that would inspire the world. As U.S. soft power diminished under Trump, France and Germany stepped up their roles as beacons of liberal democracy.

Although a Biden Administration promises a return to the status quo ante in American foreign policy and political culture, the extent to which a declining power can afford the luxury of using military and economic resources to advance or sustain liberalism in other countries is uncertain,<sup>37</sup> as is the extent to which the deeply divided American electorate can return to the shared norms and practices of a functional, stable democracy.

#### IV. Periodization

Periodization of complex social change must be understood as an exercise in approximation, and can be wrongly interpreted as suggesting sudden historical breaks (rather than social evolution) or implying that the multiple dimensions being analyzed change at the same rate.

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<sup>37</sup> STEPHEN D. KRASNER, *HOW TO MAKE LOVE TO A DESPOT: AN ALTERNATIVE FOREIGN POLICY FOR THE TWENTY-FIRST CENTURY* (2020).

Nonetheless, properly employed and understood, periodization is a heuristically powerful tool that offers clarity and parsimony.

The analysis in the previous section of economic and military factors, as well as soft power considerations, suggests three periods of the postwar international power structure: bipolarity (1945-90); a unipolar moment (1991-2008); and multipolarity (2009-present).

Figure 4 summarizes the periodization.

Figure 4:

	<b>LIBERAL</b>	<b>INTERNATIONAL</b>	<b>ORDER</b>
~1945-1990 <b>BIPOLAR</b>	<b>Economic:</b> Embedded Liberalism  <b>Political:</b> Democracy & Authoritarianism	Western	International Organizations  Legalization Begins
~1991-2008 <b>UNIPOLAR</b>	<b>Economic:</b> Hyperliberalism  <b>Political:</b> The Third Wave	Global	International Organizations  Legalization Broadens & Judicialization Broadens and Deepens
~2009-Present <b>MULTIPOLAR</b>	<b>Economic:</b> Liberalism Curtailed  <b>Political:</b> Democratic Recession	Fractured & Overlapping	International Organizations  Delegalization/Dejudicialization

#### A. 1945-90: Bipolarity and the Rise of the Western Order

From roughly 1945 to 1990, the interstate order was not purely liberal, not truly international, and not deeply legalized.

Most important regimes were structured on a *bipolar* basis, not globally: the West defended itself through NATO, and organized its economic relations through the GATT, IMF, and World Bank, while the East defended itself through the Warsaw Pact, and organized its economic relations through COMECON. Western regimes were driven by the United States. Most of the text of the GATT 1947 was drafted in Washington, with changes to accommodate the request of Great Britain (the world's second largest economy at the time) to grant preferences for its former colonies, and was effectively presented as a *fait accompli* to other countries if they wanted access to the world's largest market.<sup>38</sup> Similarly, the IMF and IBRD Articles of Agreement were each derived from plans initially drafted by a U.S. Treasury official, with changes suggested by British officials, and were concluded in Bretton Woods, New Hampshire.<sup>39</sup> And the North Atlantic Treaty that established NATO was also drafted by U.S. diplomats and finalized in Washington, D.C., with relatively few changes<sup>40</sup>-- and, of course, NATO routinely designates an American to be Supreme Allied Commander.<sup>41</sup>

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<sup>38</sup> Steinberg, *supra* note 13.

<sup>39</sup> THE BRETTON WOODS TRANSCRIPTS (Kurt Schuler & Andrew Rosenberg eds., 2013).

<sup>40</sup> Richard D. McKinzie, *Oral History Interview with Theodore Achilles*, HARRY S. TRUMAN LIBRARY, <https://www.trumanlibrary.gov/library/oral-histories/achilles> (last visited Apr. 4, 2021).

<sup>41</sup> North Atlantic Treaty, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243; *1949-1952: Creating A Command Structure for NATO*, SUPREME HEADQUARTERS ALLIED POWERS EUR., <https://shape.nato.int/page14612223.aspx> (last visited Apr. 4, 2021).

Moreover, the West was not purely liberal economically: its economic regimes were characterized by embedded liberalism<sup>42</sup>—a version of liberalism tempered by social safety nets, and with exceptions such as capital controls; broad trade remedy laws; express protection of agriculture and textiles; and regulations to protect the environment, health, intellectual property, and public morals. Nor was the West purely liberal politically: while the West championed democracy, and civil and political rights, it tolerated or backed authoritarian allies in Latin America, Asia, and Africa.

The Western order was maintained partly through nascent legalization: the codification of customary law, and a plethora of treaties establishing the UN, GATT, IMF, World Bank, and other organizations, each of which developed operational procedures and norms. But rules and procedures for adjudication and legislation, which H.L.A. Hart refers to as “secondary” rules,<sup>43</sup> were largely absent from those organizations. The international and Western legal systems were “primitive” in both Hart’s and Brierly’s schemas.<sup>44</sup>

#### B. 1991-2008: The Unipolar Moment and the End of History

The end of the Cold War ushered in a new era, in which the United States acted as a global hegemon and interstate relations came closest to approaching a liberal international order. With the dissolution of bipolarity, Western regimes expanded spatially. In economic affairs, the GATT internationalized, expanding from a club of 100 members in 1990, to 160 GATT/WTO members by 2008, adding the world’s two largest non-Western powers, China and Russia.

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<sup>42</sup> John Gerard Ruggie, *International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order*, 36 INT’L ORG. 379 (1982).

<sup>43</sup> H. L. A. HART, *THE CONCEPT OF LAW* (1961).

<sup>44</sup> J. L. BRIERLY, *THE LAW OF NATIONS: AN INTRODUCTION TO THE INTERNATIONAL LAW OF PEACE* (1928).

Liberalism deepened, broadened, and morphed into hyperliberalism, partly unembedding from the postwar social contract. During this period: the IMF conditioned bailouts on ending capital controls;<sup>45</sup> the United States concluded fifteen free trade agreements and more than three dozen bilateral investment treaties; the EU enlarged from 15 to 27 Member States, deepened, and concluded free trade agreements (or variants) with nearly 100 countries; the GATS liberalized trade in services; the WTO Agreement on Agriculture reduced subsidies and other protection; the Technical Barriers to Trade and Sanitary and Phytosanitary agreements constrained regulation; and WTO Appellate Body decisions substantially reduced the effective scope of trade remedy laws.

At the same time, immigration (and internal migration) increased sharply in Europe, as did legal immigration into the United States. Annual legal immigration into the United States averaged 1.1 million in the 1990s and rose to an annual average of 1.4 million in the 2000s. In the 2000-2010 decade, the United States experienced the largest number of immigrants in its history, triple the number of the 1980s and quadruple that of the 1970s. By 2010, immigrants who had arrived legally made up 12.9% of the U.S. population, up from 4.7% in 1970.<sup>46</sup> This freer movement of goods, services, and people put downward pressure on wages and employment of unskilled and semi-skilled workers in the United States, wealthier European states, and many other advanced industrialized countries. In the United States, these distributive consequences were not accompanied by substantial trade adjustment assistance, and the structure of the federal income taxation system became more regressive, exacerbating wealth inequality.

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<sup>45</sup> Stanley Fischer, *The IMF and the Asian Crisis—Address by Stanley Fischer*, IMF (Mar. 20, 1998), <https://www.imf.org/en/News/Articles/2015/09/28/04/53/sp032098>.

<sup>46</sup> *Number of Immigrants and Their Share of the Total U.S. Population, 1850–2019*, MIGRATION POL'Y INST., <https://www.migrationpolicy.org/programs/data-hub/charts/immigrant-population-over-time> (last visited Dec. 7, 2020).

The Washington Consensus dominated policy globally: capitalism, democracy, development, and rule of law—“all good things go together.” Central planning in the former COMECON countries disappeared, and in China the proportion of GDP produced by state owned enterprises fell from 65% to 35%. Meanwhile, the Third Wave of democratization,<sup>47</sup> which enveloped Latin America in the 1980s, now spread through most of Central and Eastern Europe—even Russia, so it seemed. International legalization deepened.<sup>48</sup> Not only did the UN and Western international organizations persist, but international criminal law legalized; human rights law became more expansive in Europe and Latin America; EU legal competence expanded substantially; and some areas of law judicialized through establishment of new tribunals such as the ICTY, ICTR, ICC and WTO Appellate Body.<sup>49</sup>

Finally, U.S. military cooperation with other countries also expanded through a broad range of international agreements to strengthen the U.S.-centered liberal international order—and in some cases to expand it geographically. In Europe, NATO enlarged, effectively adding East Germany through reunification, then adding Poland, Hungary, and the Czech Republic in 1999, seven more Central and Eastern European countries in 2004, and Albania and Croatia in early 2009. In the Western Pacific, the United States demonstrated its commitment to defend Taiwan by sending two aircraft carrier task forces to international waters off Taiwan in the 1996 Taiwan Strait Crisis, and then concluded agreements to increase arms sales to the island. U.S. military cooperation with Japan also expanded: in the early 2000s, Japan began moving away from its purely defensive postwar policy, agreeing to provide logistical support to U.S. military operations in Afghanistan, and aiding reconstruction efforts in Iraq. In 2001, the United States

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<sup>47</sup> SAMUEL P. HUNTINGTON, *THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY* (1991).

<sup>48</sup> Kenneth W. Abbott et al., *The Concept of Legalization*, 54 INT’L ORG. 401 (2000).

<sup>49</sup> Karen J. Alter et al., *Theorizing the Judicialization of International Relations*, 63 INT’L STUD. Q. 449 (2019).

greatly expanded the scale of its military exercises with South Korea, reaching agreement to inaugurate the annual Foal Eagle exercises. In the Middle East, the United States established a coalition of 60 countries to participate in Operation Enduring Freedom in Afghanistan after the Al Qaeda attack of September 11, 2001; and a coalition of 40 countries in 2003 to participate in Multi-National Force Iraq.

C. 2009-Present: Multipolarity and the Decline of the Western International Liberal Order

Domestic and international blowback from the hyperliberalism that preceded the Great Recession, and a dispersion of global power that makes governance of multilateral regimes increasingly difficult, have combined to weaken the liberal international order and political support for it. The 2008-09 global financial crisis, attributed by many to the under-regulation of banking, and China's deft and important role in addressing the crisis, contributed to diminished confidence in the American Way.

Spatially, important multilateral regimes have fractured or stagnated. Multilateral trade liberalization stopped—and then reversed during the Trump years-- and the focus of regime development has become regional or sub-regional. The European Union is fracturing, working through Brexit and other powerful centripetal forces. The WTO has been deadlocked between North and South, and China versus the West, on the negotiation of any important new rules. Meanwhile, bilateral or plurilateral trade agreements and economic regimes have become focal points for further liberalization, many of them on a regional basis with a powerful state at the center. These include: China's Belt and Road Initiative, and its Regional Comprehensive Economic Partnership; the U.S. hub-and-spokes structure of free trade agreements with almost

twenty countries; Russia's Commonwealth of Independent States and free trade zone; MERCOSUR and other South-South arrangements.

Hyperliberalism is retreating. In the United States and Europe, those hurt economically by the hyperliberalism of the 1990s and 2000s have rebelled. In the last several years many have supported right wing, anti-globalization, populist politicians, many of whom challenge the foundations of liberal democracy and a liberal global economy. Democracy is in a recession or worse.<sup>50</sup> Since 2009, civil and political rights have been on the decline across the globe, a shift analyzed in depth by Wayne Sandholtz in this volume.<sup>51</sup> Elements of authoritarianism emerged in Brazil, Hungary, Poland, India, the United States and elsewhere. Putin hardened his control in Russia. China, which some thought would be in the midst of a democratic transition by now, has moved in the opposite direction, becoming a totalitarian surveillance state.

Economic liberalism is also in decline. In trade, after 70 years of continuous annual tariff reductions, the trans-Atlantic and trans-Pacific trade wars that began in 2017 have increased U.S. tariffs from 2.6% to more than 16% on about 13% of imports, covering about 10,000 products, including steel, aluminum, and technology.<sup>52</sup> U.S. trade partners have retaliated by raising their tariffs from around 7% to more than 20% on just over 8% of U.S. exports.<sup>53</sup> The United States withdrew from the Trans Pacific Partnership and effectively abandoned a comprehensive TTIP, in favor of a shift from NAFTA to USMCA (that is likely to yield only slight welfare improvements for the United States, at best), and—as of 2021—small, partial deals with India,

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<sup>50</sup> Diamond, *supra* note 1.

<sup>51</sup> Wayne Sandholtz, *Authoritarianism, International Human Rights, and Legal Change* (chapter 12 in this volume). *See also*, the last decade of Freedom House annual reports, *Publication Archives*, FREEDOM HOUSE, <https://freedomhouse.org/reports/publication-archives> (last visited Apr. 5, 2021) (showing that the number of free countries has dropped from 90 in 2013 to 82 in 2021); FREEDOM HOUSE, *FREEDOM IN THE WORLD 2020: A LEADERLESS STRUGGLE FOR DEMOCRACY* (2020).

<sup>52</sup> Pablo D. Fajgelbaum et al., *The Return to Protectionism*, 135 Q.J. ECON. 1 (2020).

<sup>53</sup> *Id.*

Japan, and Kenya. Privatization in China has stalled. Government subsidies are provided to more than 20% of its economy, including steel, aluminum, energy, chemicals, solar panels, batteries and electric vehicles, and other sectors, leading to overcapacity and subsidized exports in many of those industries, putting additional pressure on unskilled and semi-skilled U.S. workers. Many countries have reinstated capital controls.

Meanwhile, there are few examples since 2009 of continuing international legalization, and there are significant signs of decline. The WTO dispute settlement system has dejudicialized and is barely functional.<sup>54</sup> The ICC has lost two members, the Philippines and Burundi, with other countries threatening withdrawal, and a majority of African Union states<sup>55</sup> and the United States<sup>56</sup> declaring open diplomatic war on it. China is ignoring the UNCLOS tribunal decision<sup>57</sup> on the South China Sea.

Finally, security alliances are shifting in response to the rise of China and the resurgence of Russia, both of which have expanded cooperation with foreign governments. Since 2009, China has acquired foreign military installations in Cambodia, Sri Lanka, Pakistan, Burma, the Maldives, and Djibouti. Beginning in 2015, Russia deployed forces into Syria and has since concluded several military cooperation agreements with the Assad government and Iran, as well as understandings with Hezbollah in Lebanon. Some U.S. alliance relationships have frayed, while U.S. cooperation with some other countries—most notably the other Quad countries of Japan, India, and Australia-- has increased to counter the new security threats from Russia and China. Turkey's commitment to NATO seems diminished, with its purchase of S-400 anti-aircraft missile systems from Russia, renewed disputes with Greece in the Aegean, and repeated

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<sup>54</sup> Steinberg, *supra* note 15.

<sup>55</sup> African Union, Assembly Dec. 621, Assembly/AU/Dec.621(XXVIII) (Jan. 31, 2017).

<sup>56</sup> Exec. Order No. 13,928, 85 Fed. Reg. 36139 (June 11, 2020).

<sup>57</sup> The South China Sea Arbitration (Phil. v. China), 33 R.I.A.A. 153 (Perm. Ct. Arb. 2016).

threats to expel U.S. forces from Incirlik Air Base. President Trump repeatedly equivocated on the U.S. commitment to NATO and in June 2020 ordered the withdrawal of 10,000 U.S. troops from Germany. While President Biden has recommitted the United States to NATO, some key European leaders have voiced deep concern about whether the United States will be consistently reliable in the defense space given U.S. internal divisions. Accordingly, some European leaders have announced policies that would reduce that reliance. On the other hand, since 2015, in response to a perceived Russian threat in the Baltics, Estonia, Lithuania, and Latvia have all signed bilateral defense cooperation agreements with the United States, and Poland has been encouraging increased U.S. troop presence in that country. And in reaction to Russia's incursions, the United States has expanded the scale and scope of weapons sales to Ukraine.

In Asia, there has been a similar mix of fluctuating or inconsistent U.S. cooperation with allies, though there are now clear, fledgling efforts to build relationships to deter China. In 2017, the United States and South Korea scaled back their annual Foal Eagle exercises, which were then discontinued indefinitely in 2019. Since 2017, Philippines President Rodrigo Duterte has repeatedly declared his willingness to downgrade military ties with the United States in exchange for increased Chinese investment. At the same time, partly in reaction to China's military build-up and illegal maritime claims, U.S. military and diplomatic cooperation has improved, to varying degrees, with Australia, India, Indonesia, Japan, Singapore, Taiwan, Thailand, and Vietnam.

While China is clearly a rising, revisionist power, leading some to suggest a new era of bipolarity featuring the United States and China, for the moment power seems more dispersed than would be suggested by bipolarity. China wields growing economic power, currently second only to the United States, and its long-term geopolitical ambitions are global, but its current

capacity to project military power is confined to East Asia and the Western Pacific. Russia flexes its muscles along its borders and into the Middle East, but it too is unable to project power much further than those surrounding territories. Japan, and the European Union's larger constituent states, both have substantial economic power and strong defense capabilities, but are unable to project force effectively beyond their borders. For the Europeans, China is far away, so engaging deeply in Sino-American competition seems unlikely. We are in a multipolar world.

## V. Conclusion

The hyperliberal, global, judicialized legal order will not be fully reconstituted, even in the post-Trump era. With increasingly dispersed global economic and military power, no one state has the power to supply a set of regimes to constitute a particular rules-based political-economic order on a global scale. While a liberal, democratic revival, along the lines suggested by Tom Ginsburg in this volume is possible,<sup>58</sup> it will not be on a global scale.

New economic regimes, which have been taking shape for the last two decades, have been bilateral, regional, and overlapping, with spheres of influence mirroring the multipolar structure. While no prominent U.S. politician currently supports mega-deals or substantially deeper liberalization, political support for mega-deals or further liberalization *among like-minded countries* can be imagined, if complemented by a heavy investment in trade adjustment assistance, broader trade remedy laws, redistributive policies, or other means of protecting socio-economic structure. China's socialist market economy, with its massive subsidization, state enterprises, and other illiberal elements, would likely be excluded from any mega-deal that includes the United States.

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<sup>58</sup> Tom Ginsburg, *The Future of Liberal Democracy in the International Legal Order* (chapter 3 in this volume).

At the global level, the multilateral economic order will become shallower and narrower. The WTO will continue to erode due to its inability to create new rules to address new problems, and the collapse of its dispute settlement system, which, if revived, would be less judicialized than the 1995-2019 system. IMF reserves will become even smaller relative to capital flows, and while IMF action may be supplemented by central bank coordination, that coordination will be increasingly difficult as the number of countries required to effectuate successful bailouts increases, and their national interests diverge. While regional regimes might be rules based, global delegalization seems more likely than deepening global legalization.

There are, however, many shared interests among competing great powers that could form the bases of new arrangements among them. Even as international relations become increasingly regional, less classically liberal, and less legalized globally, the fundamentals of public international law will remain intact. Most obviously, treaty-making and the principle of *pacta sunt servanda* will survive, as it remains in everyone's interest to maintain the global rules that allow Pareto-improving contracts between states. While the contemporary international power structure is too diffuse for any state to supply a truly liberal, global, rules-based order, there will remain, as always, a demand for agreements that make all states better off. A new generation of arms control agreements among the great powers is possible, as is an evolving set of global commitments to address climate change.

Some go much further and imagine a *modus vivendi* between the United States and China,<sup>59</sup> or more broadly still, a concert of powerful states-- including China, the European Union, India, Japan, Russia, and the United States-- that would manage conflict and facilitate limited cooperation.<sup>60</sup> But neither a *modus vivendi* nor an inclusive concert of great powers

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<sup>59</sup> *Id.*

<sup>60</sup> Richard N. Haas and Charles A. Kupchan, *The New Concert of Powers*, FOREIGN AFF. (March 23, 2021).

seems likely as long as China continues to display or threaten use of force to assert revisionist territorial claims and engages in other fundamental challenges to the contemporary rules-based international order.