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What is international law for? Is the goal to achieve cooperation in providing global public goods, such as managing the environment, providing peace and security, alleviating poverty, controlling the spread of diseases, protecting basic human rights, and supplying best-practices and standards on health and labor? Or is it about managing conflict and competition between states and others by setting expectations and channeling disputes between them into agreed-upon fora for peaceful settlement? These two types of purpose are often treated as complementary, with international institutions like the World Trade Organization (WTO) or United Nations often justified on both counts. But they are actually in serious tension, long-papered over but now threatening to tear the global order apart. The difficulty in answering this foundational question may be at the heart of present anxiety over the state and resilience of the global order.

Competing Visions

The world is currently caught between visions of international law as governance and international law as contract. The former assumes a system designed to work toward shared, collective goals; the latter, one designed to facilitate deal-making between competing actors. The former assumes a global community across states; the latter, a system in which states compete and cooperate to achieve their own, specific

goals. Under the former vision, multilateral institutions should forever be broadened and deepened; under the latter, agreements should constantly be rethought and renegotiated. The former are represented in non-derogable norms and *jus cogens*; the latter, in withdrawal clauses, sunset provisions, veto rights, and exemptions. The global expert class inside and outside of state apparatuses often focus on the former; traditional state actors on the latter.

The current order is built on a decision not to decide between these two visions. The preambles to major international agreements brim with a salad of statements about global values, cooperation, and peaceful dispute settlement. But the coexistence of these two visions was built on specific power relations and distributions. In the periods following the end of World War II and the Cold War, the states that established the order directly benefited from institutions that spread stability, peace, commerce, health, and wealth. Global governance and multilateralism could be sold to developed states as sources of stability and prosperity that were ultimately in their parochial interests. But those institutions eventually began to spread wealth and power more broadly, most notably to China and India. The result is that the benefits to the traditional powers are no longer as clear. One needs a very long time horizon to bring the benefits into focus, a luxury electoral politics in developed democracies may not afford. (Recent elections in the United States and Europe demonstrate that even leaders committed to the logic of governance may need to pivot to the demands of contract to retain electoral support.) While leaders in China and India shift to speaking of the order in governance terms, leaders in the West increasingly seem to fall back on contract.

Interests Diverge

The result of changing power dynamics is that the unresolved tensions between visions



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of governance and contract, always visible to those who looked closely, are now apparent to everyone. The common tropes that the United States should not dismantle an order that serves its interests or that the United Kingdom will harm itself by leaving the European Union highlight the tension between visions of common good and parochial benefit.

Trade policy is perhaps the area where this tension is most apparent. The GATT and WTO were often justified as institutions both of reciprocal concessions (contract) and of rules that could stabilize global commerce (governance). Moreover, while multilateralism at the WTO promises (even if it does not always fulfill) the broadly shared benefits of trade creation, regionalism and preferential trade agreements capture the benefits of trade for particular clubs of states. Much of the rhetoric around the Trans-Pacific Partnership (now, the CPTPP) focused on diverting supply chain flows through its members. The attention to rules-of-origin in the United States-Mexico-Canada Agreement suggest the same concern.

The fight over the WTO Appellate Body (AB) exhibits similar tensions. Its defenders point to the public good of rules-based dispute resolution, but the United States recently seems more focused on resetting AB jurisprudence to preserve the benefits and flexibilities it bargained for. The tension is also visible in Western rhetoric on China's "threat" to the trading system. Complaints that China "cheats" by stealing intellectual property or hiding prohibited subsidies sound of governance. Complaints that China is overwhelming Western manufacturing through cheap labor and growing expertise in high tech sound of contract.

The tension is visible in other issue areas as well, including fights over the relative burden states should bear to combat climate change or the Trump Administration's questioning of

the costs and benefits of NATO membership or military support for Japan and South Korea.

Structural Sources

This tension is not an accident of history or circumstance. It is a structural feature of the international system. The current global order is organized, by necessity, around states. Only states have the legitimacy to make complex social policy tradeoffs or to use coercive force. A normative commitment to democracy reinforces this role. There is not yet a global demos for a legitimate global politics. States remain the key unit for negotiating, making, and implementing agreements. States also, in turn, benefit from much greater social solidarity than international institutions. Visions of governance are thus reliant on sources of nationalism that demand a global politics of contract. So long as states are the basic unit around which international cooperation takes place, the tension between governance and contract will remain. If anything, nationalism and the logic of contract may hold the upper-hand.

Managing the Tensions

What is the way forward for those interested in an order based on governance? How should the tension between governance and contract be managed? If the nation-state must be utilized, then it must also be accommodated. The trick is to find win-sets that provide tangible benefits for states that are also governance-building, such as encouraging local or regional environmental policies that combat climate change even if they favor local providers over others. It might mean shifting the focus of international justice toward bespoke procedures that take local interests into account, but only to the extent to which they forward certain basic norms. States may need room to adopt trade policies that will rebalance trade in their favor, but only through transparent processes that are limited by rules.



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Some compare trade negotiations to riding a bicycle: without continued forward progress on liberalization, the whole system will fall down. Those with a governance vision of the international order see multilateralism in much the same way. But to analogize the structural tension between governance and contract more completely, we must think of a garden. Only by carefully pruning the system to guarantee a balance between the two will the order be sustained.