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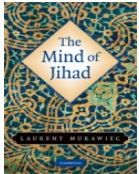
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The Enablers of Transnational Progressivism

Is the Nation-State Threatened?

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During the last several years I have developed a theory of "transnational progressivism." I have argued that as an ideology, social movement, and alternative counter-regime, "transnational progressivism," represents a long-term existential threat to the liberal democratic nation-state.

Let me first provide a very brief and simple overview of transnational progressivism and then proceed with an expanded taxonomy of the entire global governance project. After that, I will explore the (rather inadequate) response from the democratic center-right to the global governance movement and suggest what an effective counter-movement might look like.

Political Philosopher, James Ceaser describes liberal democracy as a "compound" regime with two distinct constituent parts that developed during different historical periods: liberalism and democracy. Traditional liberalism means support for limited government, individual rights, private property, freedom of speech and association. Democracy denotes government by "consent of the governed" or some form of majority rule. A modern liberal democratic nation-state combines these two elements: a distinct "people" govern themselves, but popular government is limited by individual rights.

I have argued that transnational progressivism challenges both liberalism and democracy and offers an alternative world-view.

Post-Liberal. Instead of individual rights and equality, transnational progressives advocate ethnic, racial, and gender group rights. In place of equality for individuals, proportional equality for ascribed groups (or "diversity") is favored. Free speech is to be circumscribed if it "offends" designated victim groups. This perspective could be called "post-liberal."

Post-Democratic. Transnational progressives argue that the nation-state and national sovereignty are ill suited to deal with the global problems of the 21st century. New political forms are required beyond the control of national governments. Global governance would consist of networks of overlapping transnational institutions, courts, agreements, treaties, laws, regulations, and norms. Evolving definitions of international law and human rights would provide the philosophical basis for such a regime. Because it is not clear how this new global system would deal with the core democratic principles of consent of the governed, accountability, representation, popular majorities, and the like, this perspective could be called "post-democratic."

Expanded Taxonomy

In my expanded taxonomy transnational progressivism is one part of an overall global governance project that consists of four forces. Besides the transnational progressives, there are transnational pragmatists, regime supersessionists, and extreme libertarians (who sometimes unwittingly advance political transnationalism).

Transnational Pragmatists (The Enablers of Global Governance)

In addition to the ideological adherents of transnational progressivism, there is an influential transnational social base at the core of the global governance movement consisting of corporative executives, international lawyers, judges, academics, officials of international organizations and the like. Many are not necessarily on the political left, or in agreement with the ideology of transnational progressivism; nevertheless, they either genuinely favor, or see themselves as benefiting, from stronger supra-national and weaker national authorities. In this sense, efficiency (or immediate practical gain) trumps democratic principles.

This transnational social class is well described by Samuel Huntington. In *Who Are We*, he decries the "de-nationalization of elites" (of the right, left, and center, pragmatists as well as progressives) who "increasingly define themselves, their interests, and their identities in terms of transnational and global institutions, networks, and causes." Today, elites that compose the leadership in many global corporations are at the center of transnational pragmatism. Even a cursory examination of the politics of leading corporations reveals a willingness at times to restrict both of the elements of liberal democracy discussed above (traditional liberalism and consent-based democracy).

Since the late 1960s, a long-term goal of the progressive left in the United States has been the replacement of the jurisprudence of individual rights and individual merit with a new paradigm of ethnic, racial, and gender group rights and group representation. In the Supreme Court case *Grutter v. Michigan* (2003) the progressive left achieved a major breakthrough. This left-wing victory was won, in large part, because American business accepted the ethnic group-based "diversity" rationale for employment and rejected the traditional core arguments for equality of opportunity and individual merit that had informed the landmark Civil Rights bill of 1964.

Sixty-Five leading American corporations (including Coca-Cola, Boeing, Chevron, Dow Chemical, Intel, Microsoft, Nike, GE, Pricewaterhouse, Procter and Gamble, Xerox, etc.) filed a friend of the court (amicus) brief supporting the University of Michigan's race-based admissions policies. At the heart of the brief was the "post-liberal" and quasi-corporatist argument that the admission to the institutions of higher education of a "critical mass" of people from specific racial, ethnic, and gender groups trumped individual merit and opportunity.

The corporate amicus brief essentially repeated the standard multicultural arguments of the past 30-40 years. The brief even parroted the slogans of the academic left by referring to the United States as "this nation of many peoples," a construct that performs the function of an ideological "black mass," mocking the Preamble of the American Constitution's, "We the People of the United States."

The brief was crucial in *Grutter* because it was cited by Justice Sandra Day O'Connor in her majority argument in favor of Michigan Law School's diversity program. In effect non-leftists, so-called pragmatists, including American business and

Justice O'Connor were the "enablers" of this important victory for the progressive cause enshrining into law the essential concepts of the multicultural-diversity paradigm.

I predict that this scenario will be repeated again and again at the global level as transnational pragmatism comes to serve as the handmaiden of transnational progressivism. Transnational pragmatists particularly global corporate elites (with acquiescence of some national judges) will (for their own non-ideological reasons) become the enablers of supra-national institutions and a global governance project that is mostly transnational progressive in spirit. Indeed this has already occurred with the evolution of the European Court of Justice (ECJ).

Alec Sweet Stone and Thomas L Brunell, two leading authorities on European Union (EU) transnational governance explain how this happened. In 1958 the member-states of the European Community (EC) "founded an international organization, not a transnational rule of law polity." However, over time the nature the regime was transformed. This "process" (i.e., the transformation from international organization to transnational polity) "has been driven almost entirely by the relationship among private litigants, [first corporations, later social activists] national judges, and the ECJ." Despite "the declared opposition of member states," the European Court of Justice asserted a supremacy doctrine according to which EC law was given primacy in any conflict between EC (now EU) law and national law. National judges were empowered by the ECJ to implement the EC rules, which they readily did.

Sweet Stone and Brunell sum up the process thus: "Individuals ask national judges to void national rules or practices in favor of EC legal rules within a particular domain of activity. Transnational dispute resolution [that is] the interaction among litigants, national courts, and the ECJ recasts the law..." They conclude by stating: "Finally, it can not be stressed enough that the EC legal system was constructed without the explicit consent of the member states."

In other words, business leaders and judges acted as post-nationals and post-democrats, preferring to transfer decision-making authority from their own democratically elected parliaments and nationally accountable judicial systems to an unaccountable supranational polity.

Jeremy Rabkin in *The Case for Sovereignty* worries that the future trajectory of the Appellate Body (AB) of the World Trade Organization (WTO) could repeat the history of the European Court of Justice (ECJ). Like the ECJ, the WTO's more "judicialized dispute settlement process" (as opposed to a political process of nation-state trade negotiations) "has given the WTO more direct connection with business constituencies." Again, like the ECJ the interaction of these new constituencies (corporations, social activists, NGOs) with WTO judges could develop a body of case law, a transnational legal space, outside the reach of the democratic nation-state and, thus, beyond the democratic accountability inherent in the concept of "government by consent of the governed."

Regime Supersessionists (Harnessing and Transforming Gulliver)

Applying the controversial supersessionist concept from religion to political systems, global governance replaces (supersedes) the democratic nation-state as a higher form of political regime, a higher stage in the evolution of human politics. Regime supersessionists would say, the nation state (including the American political order, Britain's parliamentary democracy) were progressive during their heyday, but are no longer adequate to address global problems; therefore, a new global political architecture (including new forms of sovereignty) is required.

For the regime supersessionists the nation-state continues to exist and (under the principle of subsidiarity) performs many useful functions, however, it is relegated to a subordinate status in a normative and instrumental hierarchy, inferior to "global governance." In this view, like the superseded religion, the nation-state would continue to exist as something that is incomplete and inferior, just as state or provincial governments continue to exist in federal systems.

Among major supersessionist thinkers we should list Anne Marie Slaughter, Dean of the Woodrow Wilson School at Princeton. In an attempt to answer critics who object to global governance by what the UN leadership describes as "global civil society" (or unelected NGOs, officials of international organizations, global corporate elites, private actors, etc.), in her *A New Global Order*, Slaughter proposed a world political system based on trans-governmental networks. She insists that "Global governance is not world government." Slaughter argues the world of "unitary states" as described by James Madison in *Federalist 42* has been replaced by the new world of "disaggregated states". She writes:

"In US Constitutional law, for instance the Supreme Court and the President have often had recourse to James Madison's famous pronouncement in the *Federalist* papers: 'If we are to be one nation in any respect, it clearly ought to be in respect to other nations.'"

Nevertheless, Slaughter declares we should no longer be "handicapped by the conceptual lens of the unitary state," as Madison and most international relations scholarship have traditionally described it. Instead, Slaughter advocates the concept of the "disaggregated" state both horizontally (e.g., American judges, regulators, and legislators coordinating joint policies with their foreign counterparts) and vertically (nations ceding sovereignty to supra-national institutions in cases requiring global solutions to global problems). An example given of the latter is the International Criminal Court (ICC).

Slaughter argues that global government networks "can perform many of the functions of a world government?legislation, administration, and adjudication?without the form." Therefore, a "world order out of horizontal and vertical networks could create a genuine global rule of law, without centralized global institutions, that could encourage, support, and constrain government officials of every type in every nation."

The anticipated supersession of the democratic nation-state by transnationalism that Anne Marie Slaughter conveys indirectly with her verbal somersaults about "disaggregated states" and "horizontal-vertical networks," is put more bluntly by leading international law professor Peter Spiro, who writes as follows: "features of globalization may result in at least a partial subordination of the Constitution to international norms;" further, "federal constitutional law may come in the future to resemble the role of state constitutional law today—of significance, yes, but clearly of secondary importance in the broader norms system."

What to do about Gulliver?

In an article in the *National Interest* in 2004, I wrote that certain prominent Americans (e.g., Strobe Talbott) advocate that America lead the international movement toward new political forms and become the engine of global governance. In effect, the (national) caterpillar paves the way for the (global) butterfly. Upon reflection, however, this metaphor is not quite apt, because the caterpillar morphs into the butterfly, whereas the more sophisticated supersessionists insist the nation-state will (and should) remain, but simply drop a rank in the political hierarchy. This view could be more accurately described as post-American rather than anti-American. Likewise Britain's role in the EU could be characterized politically, in terms of the traditional parliamentary regime, as "post-British."

Among nation-states, of course, America is the giant, Gulliver. As John O'Sullivan pointed out in the *New Criterion* two years ago a major concern of transnationalists of all stripes is: How do we control Gulliver? Of course, like any major political

movement the adherents of global governance are not monolithic. Many transnationalists want to tie Gulliver down. In an interview with Mexican journalists in November 2002, Vicente Fox's foreign minister, Jorge Castaneda declared:

"I like very much the metaphor of Gulliver, of ensnaring the giant." "Tying it down with nails, with thread, with 20,000 nets that bog it down: these nets being norms, principles, resolutions, agreements, bi-lateral, regional, and international covenants."

A different (and more subtle) strand of transnationalist prefers not so much to tie Gulliver down but to use him to serve global ends as they would define them and, to be sure, at the same time transforming Gulliver's character. Thus, Gulliver is put in harness, becomes the horse that pulls the global governance cart. The American nation doesn't disappear it helps establish a new global order in which it voluntarily relinquishes large sections of its sovereignty, its constitutional order, and ultimately its self-government.

For all transnationalists, a fully sovereign, independent, unbridled United States is the major obstacle to global governance. For one thing a vigorous American nation-state by its existence and its example inspire a spirit of independence in other currently unfashionable democratic nation-states such as Israel, Britain, Australia, and Japan; and in other nations as well, including India and the newly independent nations of Central and Eastern Europe. Certainly, if the bridle can be put on the American nation-state other democratic nation-states could be brought to heel and lose a good deal of their independence and self-government.

Extreme Libertarians

Libertarians, of course, oppose the essentially statist-social democratic ideology of transnational progressivism. Nevertheless, some libertarians have contributed to the weakening of the moral argument for sovereign self-government through their constant denigration of the nation-state and thus of democratic politics. The late Citicorp CEO, Walter Wriston's *Twilight of Sovereignty* was a radical libertarian manifesto that delighted in the rise of transnational action beyond the reach of democratic self-government. The late Robert Bartley, long time editor of the *Wall Street Journal*, is reputed to have told journalist Peter Brimelow, "the nation-state is finished." And even at meetings of the venerable Mt. Pelerin Society strong arguments were made at one meeting supporting a "world constitution" from a libertarian perspective.

Hostility to the "state" in general (even the limited democratic state) has blurred an understanding of the core principles of liberal democracy. For example, in April 2002 the Cato Institute's Dan Griswold writing in *National Review Online* objected to new U.S. Border Patrol initiatives against illegal immigration smuggling. He described the border security measures as follows: "It's just another example of government trying to stop people from doing something that is natural to better their conditions."

Mr. Griswold's remarks display confusion about the meaning of self-government. The "people" he refers to are non-American illegal immigrants (in this case many from the Muslim nations of the Middle East) who hire smugglers to enter the United States against the wishes of the overwhelming majority of the American people. The "government" consists of border patrol agents (many of them Americans of Mexican descent) who are clearly carrying out what conservative political thinker Willmoore Kendall in the early days of *National Review* would have called the "deliberative sense of the American people."

In a similar vein, a *Wall Street Journal* editorial on July 10, 2006 trumpets the so-called "rights" of illegal immigrants to "contract" with American employers in violation of American law:

"Our own view is that a philosophy of 'free markets and free people' includes flexible labor markets. At a fundamental level, this is a matter of freedom and human dignity. These migrants are freely contracting their labor, which is a basic human right."

This is a rather clear case of a core conflict that should be clarified within the democratic center-right—a conflict that pits the democratic nation-state (the right of a self-governing people to make their own laws concerning immigration, border security, and labor relations) against an alleged international human right to voluntarily enter into employment contracts. Ironically, the arguments of the *Wall Street Journal* editorial parallel those articulated by many on the left who drafted a recent UNESCO proposal on international migration, which essentially endorses a "human right" of immigration with or without the consent of the people in the host nation.

Response from the Democratic Center-Right

There is a group of thinkers on the center-right (many of whom are participating in this conference) who recognize this challenge for what it is—a threat to liberal democracy—and who are conceptualizing the problem; which is, after all, step one. In addition, some outside of the Anglosphere including Adam Mischnik, Vaclav Klaus, and, recently, Pierre Manent, should be noted. There are also political leaders in the US and Europe who are concerned about these threats to national democratic sovereignty. In America they would include Senators Jon Kyl (AZ) and Jeff Sessions (AL), Congressmen Tom Finney (FL), Robert Goodlatte (VA), and former Speaker Newt Gingrich among others.

For the most part, however, the post-democratic nature of the global governance project has been mischaracterized, minimized, ignored, or not taken seriously. The overwhelming focus on democracy promotion in non-democratic parts of the world has led some in the Bush Administration's foreign policy apparatus and many serious democracy advocates to wear blinders and ignore the tension between national democratic accountability and transnational institutions. Thus, the Administration's funding for democracy promotion throughout the world often goes to the same NGOs who both promote transnationalism over nation-state democracy, and do not fully support the core premises of the war on terror.

On the other hand, typical of the viewpoint of serious democracy advocates, who do support the war on terror is a 2004 *National Interest* article by Adrian Karatnycky of Freedom House. In the article Karatnycky boldly declared, "the inexorable force of democratic hegemony is reshaping the world." Like the early Fukuyama (circa 1989), Karatnycky insists, "no array of closed societies or illiberal ideologies can seriously challenge the predominance of democratic states and liberal ideas." He sees a "genuinely new system of power rooted in liberal principles" emerging globally.

As examples of this expansion of liberal democratic power and ideas, Karatnycky notes that the EU "successfully pressed" East European states to "eliminate the death penalty" as a "precondition of entry" and "imposed diplomatic sanctions on Austria" to exclude Jorg Haider "from a government leadership position." Moreover, he insists, "Europe's championing of the imperfect International Criminal Court" is "yet another instrument likely to spur the projection of democratic hegemony."

But one could better argue that these examples of EU bullying reveals a post-democratic rather than democratic impulse. A large majority of Poles and Hungarians preferred to retain the death penalty sanction upon joining the EU and would prefer to restore it today. Whether the ultimate penalty in a national criminal justice system is a death penalty or a some fixed prison term is a policy decision that in a fully functioning liberal democracy, self-governing people make for themselves. In effect, the EU has not expanded democracy as Karatnycky suggests, but rather restricted it.

Likewise, with the unsavory Herr Haider. Again the EU restricted the democratic process by attempting to dictate Austrian cabinet choices. Although Haider was a nasty demagogue, he was not a Nazi on verge of seizing power and establishing a totalitarian dictatorship in the year 2000. To permit Austrian democracy to work out its own kinks in the early 21st century, is not analogous to playing the role of German President Hindenberg in 1933. Moreover, the EU's interference over Haider (and to lesser extent over Fini in Italy) reveals a blatant left-wing bias, since the Eurocrats have shown no interest in preventing communist politicians (former, neo, quasi, or crypto) from serving in leadership positions in democratic European governments.

Karatnycky tells us, that the "ideological hegemony of democracy" in the Antonio Gramsci sense of that term, "is disseminated by a globally linked intelligentsia, by a global media," by NGOs, and others. But it is precisely the ideological hegemony of traditional nation-state democracy that is "contested" by a good chunk of a "globally linked intelligentsia," either Western in origin, or Western-trained.

These arguments within the West are not simply about the Iraq war, the war on terror, or between American Martians and European Venusians as Robert Kagan would have us believe. Nor are these arguments only over the "source of democratic legitimacy" (nation-state or international community) as Francis Fukuyama insists, because Fukuyama tells us, "the disagreement is not over the principles of liberal democracy." On the contrary, the argument is precisely over the "principles of liberal democracy." Moreover, it is an argument, not between the US and Europe but within the US and within the other nations of the West.

What Should the Center-Right do?

A center-right counter-movement to the forces promoting transnational governance must begin by recognizing the serious world historical nature of the threat and the full extent of the conflict. The conflict is above all about the "regime," in the Aristotelian sense of that term: Will the liberal democratic nation-state survive: or will it be superseded by a different type of polity?

The global battleground between nation-state democrats and transnational post-democrats is a classic Gramscian struggle for ideological hegemony. It connects a series of seeming unrelated issues. In *Who Are We*, Samuel Huntington writes that the ideological conflict over transnationalism, "racial preferences, bilingualism, multiculturalism, immigration, assimilation, national history standards, English as the official language, Eurocentrism," and the like, are "all battles in a single war over the nature of American national identity."

In *Liberal Democracy and Political Science*, James Ceaser makes the crucial distinction between "policy questions" (to increase or decrease funding spent on student loans) and "regime questions" (actions that could alter the nature of a political regime.) Huntington is suggesting that these separate policy issues of transnationalism, civic education, ethnic preferences, immigration, assimilation, language, and the like, when combined, constitute a "regime question." Indeed, most Western countries (including Israel) have been experiencing similar culture wars over the saliency of national identity and the nation-state that are, at the deepest level, "regime," rather than simply separate policy questions.

Of course, the Western ideological civil war that I have been describing is complicated by the fact that it is being waged by elements of the Western Progressive Left against the democratic nation-state at a time that the Western Center-Right is focused almost exclusively on the War on Radical Islamic Terror. If the latter conflict represents a "hard," direct, and immediate threat, the former represents a long-term threat that while "soft," (non-violent, if coercive) is, nevertheless, "existential" in the sense that it is a serious threat to the existence and perpetuation of liberal democracy. (In the same vein, Tocqueville's "soft despotism" remains a serious threat to liberty). Finally, it is clear that the two conflicts (one "hard" against anti-democratic Islamists, the other "soft" against transnational post-democrats) intersect on crucial questions concerning interpretations of international law and human rights.

Conclusion

At the end of the day, much of the struggle between nation-state democracy and political transnationalism will be fought out at the margins where pragmatic considerations will be crucial. Therefore, I will end this paper with a discussion of the concrete example of the US decision to accept the role of the International Criminal Court (ICC) in any future war crimes trials in Darfur.

Before the decision was made, Jack Goldsmith (a former Bush Administration official and a leading intellectual critic of global governance) wrote an influential article in the *Washington Post* urging the United States to reverse course and support a UN Security Council resolution to refer potential Darfur war crimes trials to the ICC. Goldsmith argued on narrow, interest-based, pragmatic grounds. He said a US reversal would: give the US "leverage" in developing a "compromise" with European nations on the court; "signal" US support "for the UN and international human rights when Washington is perceived by some as opposing both;" and outflank French delaying tactics for action in the Sudan. Moreover, he said it was too late to worry about "legitimizing the ICC" because the court was already up and running. Goldsmith had it exactly backwards. The United States should not have supported the ICC in Darfur on the pragmatic grounds of Realpolitik, but opposed it on the principled grounds of "democratic sovereignty. That is to say, on the basis of a "Moralpolitik" consistent with the Administration's position of strengthening democracy throughout the world. An argument along the following lines should have been made:

The operating principles of the International Criminal Court are in direct contradiction to the values of democratic self-government, because under ICC rules the soldiers of a democracy whose nation did not ratify the ICC treaty could nevertheless be tried by ICC judges against the will of that democratic state. For example, India and the Czech Republic are democracies that have not ratified the ICC. If Indian or Czech troops serving in peace-keeping missions in the Congo (which did ratify the ICC) are accused of human rights violations they could be tried before this court. Since the Congo is a party to the treaty it would not be necessary to have Security Council approval.

Supporters of the ICC claim there is a "safeguard" that the democracy in question (or any nation) has the first option of investigating the alleged crimes of their own soldiers before the ICC would act. But whether their judicial procedures are deemed valid are determined not by the democratic nation-states but by the ICC (whose membership includes eight undemocratic authoritarian regimes.)

To date, the US has argued against the ICC primarily on the grounds that it would subject American soldiers to prosecution outside our constitutional system. This is true and the US should continue to make this point. However, the Administration should also argue that the entire ICC process itself is an affront to democratic self-government everywhere. Besides India and Czech Republic, other democracies have refused to ratify the ICC including Israel, Japan, Taiwan, and Chile. These democracies do not have veto power in the Security Council and might not be able to protect their troops in particular circumstances.

The US should forthrightly oppose a role for the ICC in Darfur (or anywhere) on the universal democratic grounds that the

institution is inherently undemocratic in principle. Other options are available in Darfur. As David Rivkin and Lee Casey have suggested, the perpetrators of genocide if they are caught could be tried by an African-based court, the International Criminal Tribunal for Rwanda (ICTR) that is already in existence.

The types of argument listed above did not prevail within Bush Administration circles, although there were clearly internal debates about whether to accept the ICC in Darfur. Unfortunately those who counseled expediency won the day.

The US acquiescence to the ICC in Darfur is a prime example of how the global governance project advances at the margins of world politics. Not surprisingly, transnational pragmatism works hand in glove with transnational progressivism. The International Criminal Court, which is, at its core, an ideological project of the Amnesty International-Human Rights Watch Western Legal Left (whose, ultimate, if unstated goal, is the supersession of the American Constitution) is legitimized for expedient, "pragmatic" reasons by a center-right American administration. As always when core principle is surrendered for expediency, there will be even greater future costs to pay in terms of both American interests and the status of liberal democracy throughout the world.

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