
The Case for Global Law

*World federalism is an idea that will not die.
More and more people are coming to realize that peace
must be more than an interlude if we are to survive;
that peace is a product of law and order; that law is
essential if the force of arms is not to rule the world.*

—William O. Douglas
Former US Supreme Court Justice

Today's enlightened progressives have an unprecedented opportunity. As advocates of democracy—as the global democrats of the future—we are in the best position to represent the great truth that *the world's people*, and not the world's nation-states, are the true sovereigns of this planet.

But we must also be magnanimous and include another radical perspective. Imagine that we have colleagues who are global libertarians, and they have formed their own global political party that one day will sit just across the aisle from us in the world legislature. They will insist that, alongside the people's sovereignty, we must observe the equally important principle of *individual accountability* before global law. This principle, they will say, is based on the notion of the irreducible free-will sovereignty of the individual. Its corollary idea, they will probably maintain, is the central importance of creating a global constitution with a universal bill of rights that will protect the rights of individuals—including voting rights—in

relation to the global sovereignty of all humankind for which we, the global democrats, are the primary advocates.

We've seen how progressives can be empowered in this futuristic work by tracing our lineage back to the "one world" generation of the 1940s. We believe it is incumbent upon today's progressives to pick up this torch once again.

Leadership entails making the essentials clear. This chapter breaks out a key feature of the discussion of chapter one by asking how enlightened progressives can take the lead in offering the world's people a choice:

The force of law versus the law of force.

Today's progressives already fight the excesses of the American empire, but now we must perform double duty: We argue here that progressives must also cut through the illusions of "collective security" via multinational treaties or the actions of the Security Council within the United Nations. We must tell all who will listen that it is time to choose between enforceable global law based on democratic deliberation, or the law of force in a world of anarchy. And in doing so, enlightened progressives must carry out yet another feat: To win on a global platform, they will also need to hold the space for both sides of the concept of sovereignty: the hard-won notion of the collective sovereignty of the world's people, and the equally essential truth of the rights and duties of the individual world citizen before global law.

A simple truth: Peace requires the rule of law

It is a truism that, through slow and painful evolution, the *rule of law* has progressed steadily over the centuries. The benefits of this process can be seen everywhere today, but of course only *inside* national borders. Especially noteworthy is

the peace and social harmony that results when the rule of law is extended to large national federations such as those in Canada, India, the European Union, and the United States, where citizens do not worry about their states or provinces going to war against each other. Throughout the world, most countries are relatively civilized within their own borders by virtue of the rule of their own native laws, backed up by their own homeland police and defense forces as well as some system of justice through civil and criminal courts.

As a thought experiment, consider for a moment what the US would be like if the federal government and federal law were somehow removed, and each of its fifty states were rendered an independent country with its own president, currency, and national laws. A traveler who was a New York state citizen would need a passport, for example, to go from New York to New Jersey. Businesspeople selling products across the former US territory would have to deal with fifty different currencies and fifty different versions of contract law. Each nation-state would need to have its own standing army, and some nations would surely produce and stockpile WMDs in addition to their conventional arms. Some “countries” would be more socialistic (let’s say Vermont, California, Massachusetts) while others might be ultra-capitalist (perhaps Texas, Oklahoma, and Utah) and even aggressive toward other nations. One can imagine how likely it would be that small wars would break out from time to time—or even large wars, as these nation-states band together in treaty alliances for “collective security.” Imagine, for example, that Colorado and Arizona were facing a serious drought and began to dispute with one another over water rights involving the use of the Colorado River for irrigation. Given the absence of federal law and courts, they would be forced to go to war to settle their

dispute if negotiations did not work out. Neighboring states or “treaty allies” might find themselves joining one side or the other, jostling for advantage in the conflict. Before long the situation might degenerate into a conflagration, ending with a nuclear confrontation.

This may sound a bit absurd, but this scenario is not far from depicting the state of international relations today. Whenever and wherever the rule of force (and not the rule of law) applies, war becomes a legitimate option for settling disputes—and the preparation for wars of defense becomes a necessity.

Of course, individuals in a civilized society do not have the option of resorting to violence to settle their disputes; a monopoly on violence is reserved for the state in connection with law enforcement or due process of law. Vigilante justice, revenge killings, intrusive surveillance, undercover espionage, and in general taking the law into one’s own hands are illegal for individuals, but all this and much worse is accepted as normal between nation-states—especially the strongest ones. Individuals must follow laws and limit their behavior accordingly, but nations, lacking a sovereign authority above them, may act without restraint if they can get away with it.

One can see how the option of law versus force offers such a stark choice. Lasting peace comes only from order that is based on law backed by the enforcement power of democratic government. That’s why enforceable law is the antidote to anarchy. The *rule of law* at the global level is the only means by which the human race will be able to establish peace. Such an enduring peace is qualitatively different from a “truce.” A truce is based on an uneasy balance of power that usually marks the interim between wars; whereas genuine peace is the

presence of order and justice, produced by law, which is the product of representative government.

Hopefully, a stable peace based on global law will one day grace this world. The greatest planetary achievements in science, industry, human relations, and the arts must await those great times. The essential point is that these more advanced things are enabled by one very basic thing: peace and justice through the *rule of law*.

“Law,” the poet Mark Van Doren once explained, “is merely the thing that lets us live in peace with our neighbors without having to love them.” Enforceable law is not nearly as good a thing as spiritual consciousness or moral maturity, and it is certainly no substitute for personal spiritual growth. But without basic guarantees of security, humans can regress to the animal aggression that is in the biological heritage of our species. In a state of anarchy and war, we tend to forget about love and tolerance.

History provides proof that the rule of law is indispensable for avoiding the spiral of violence and mistrust that anarchy always creates. Law is in fact the prerequisite for generating sufficient amounts of good will in daily life so that a society based on love, tolerance, and compassion may have a chance to evolve—as these things cannot be directly legislated. Love and law always seem to arise together in this symbiotic fashion.

Thus it cannot be said enough: The only way to abolish war entirely is to establish the just rule of enforceable world law. If we can find the political will to achieve this great victory, the resulting reign of peace will in time produce the mutual trust and security between peoples and nations that could create a worldwide cultural and spiritual renaissance. This in turn would lay the basis for almost unimaginable

levels of material and spiritual prosperity on a worldwide scale.

Legislators can quickly adapt global laws to global needs

The rule of law provides peace and stability, but it is also *dynamic*. The great advantage of representative government is that it permits orderly change and adaptation through deliberative assemblies of legislators, whereas a confederation of nations like the United Nations tends to be a *guardian of the status quo*. Without legislation and the ongoing interpretation of new laws by courts, law cannot and will not evolve. Without ever-improving applications of law as determined by democratic forums in touch with everyday needs of all sectors of society, social relations soon stagnate.

Meanwhile, social conditions continue along their own trajectory. Largely oblivious to the operations of government, *life conditions* continue to undergo epochal changes because of technological change or shifts in population. The result is in an ever-increasing lag between the functions of government and the realities on the ground.

This may explain why today's international relations are in an advanced level of stagnation bordering on decadence. The UN reflected the needs of the world just after WWII, but it has not changed substantively since. The sad fact about the UN, according to Tad Daley, who led the Campaign for a New UN Charter, is that the UN was maladapted even for the post-WWII era:

Most of the architecture of the United Nations system was created at the end of World War II in a dramatically different international environment [from today]. Much of their design was directed at addressing the political and economic dislocations of the immediate postwar world. Indeed, the

collective security mechanism at the heart of the UN Charter was arguably directed not even at the world of 1945, but the world of the 1930s. By far the central issue on the minds of the framers who met in San Francisco in April, May, and June of 1945 was “How do we prevent another Adolf Hitler?” But long-term issues like global environmental degradation are infinitely different from a Panzer blitzkrieg across the Polish border. We want to consider what kinds of global governance structures might be appropriate not for the world of the 1930s, but for the world of the twenty-first century.¹

It is tragic indeed that today’s politicians have not responded to the imperative of adapting our international institutions to evolving global realities; but we believe a new generation of progressives can and will do what needs to be done.

We must distinguish between the causes and effects of anarchy

The tried and true solution to anarchy is just one thing: law and government. In all places and throughout history, government’s chief task in civil society is to first establish enforceable rules for resolving conflicts between individuals and groups without violence.

Why do cities or states within a nation no longer engage in warfare with each other? The answer has to do with *relinquishing sovereignty*.

As we have seen, war between groups of people organized into social units—tribes, cities, or nations—takes place when these groups exercise unrestricted sovereign power. When there is no higher authority to resolve conflicts on the basis of law and judicial processes, then chaos and war are the only options. War ceases the moment sovereign power is transferred to a larger or higher unit. War takes place when separate

groups of equal sovereignty come into conflict. When sovereignty was transferred to the nation, wars between cities and tribes ceased.

Peace is possible only when a new sovereign source of law is set up over and above the old clashing groups, creating an integrated whole and a higher source of law. Pollution across national boundaries will cease when enforceable global laws are passed to prevent it.

Armed with this understanding, we can stop confusing *causes* and effects and start treating the cause of war and in justice—not just the symptoms. The chief cause of war and terrorism is unlimited national sovereignty and the absence of global law—not the weapons these perpetrators might happen to use.

It is a positive step when citizens protest a particular war or rally for nuclear disarmament. But this type of action addresses only the symptoms of a war system based on unlimited national sovereignty. Today we must do away with the entire war system, not just with the weapons of war or any particular war.

In the final analysis, people resort to violence not because their race or nationality are prone to violence, not because they intrinsically lack love and decency in their hearts, not because they possess particular weapons, but *because they are hopelessly frustrated* by the fact that they have no legislative or judicial forum in which their grievances can be heard and adjudicated.

The cause of global warming is not simply carbon emissions and thoughtless, wanton drivers of sport utility vehicles; it is the lack of an enforceable global agreement to actually reduce these emissions. Rapacious corporations are not the cause of child labor in Indonesia; these corporations are able to run amuck in the developing world because of the lack of

enforceable global laws that would outlaw child labor. The cause of sweatshop labor in Mexico is not simply the greed of some corporate CEO—we will always have greed in commerce—but the lack of a global legislature that represents the interests of all people, including working people.

Legally speaking, the perpetrators of violent international conflict are the *individuals* issuing orders to attack and kill, not entire nations. Perpetrators of global pollution or labor exploitation are specific, identifiable individuals. We need to transform the peace and environmental movements into a powerful force for the creation of a cure for the true causes of war, pollution, and poverty—a global democratic government based on world law that applies to real individuals. Law creates individual accountability—the very basis of a just society. The lack of individual accountability under enforceable law is the true cause of the global problems we face.

“International law” is a misnomer

Currently, nations have little binding power to control irresponsible behavior by other states—i.e., those individual heads of states who may engage in evils such as aggression, pollution, or nuclear proliferation. Today’s so-called system of international law, the foundation of our current system of treaties, is a sad and appalling misnomer.

Too long has our world witnessed the tragic results of the current system of treaties based on international law. No matter how significant a given treaty may seem, all such international agreements are flawed in that they permit all the prerogatives of sovereignty to remain with the agreeing parties.

It cannot be said enough: International “law” is a myth.

Under its supposed reign, parties are free to ignore with impunity the treaty obligations that are the basis of international law. They can do this because there is no global government with the power to hold these states accountable. But law is not truly law unless it is enforceable. Law proclaims that there is something that one must or must not do, with the understanding that failure to comply will result in specific consequences to the lawbreaker that are meted out by a legitimate government. Law requires the existence of government to enforce it; law will never exist without government until those far-distant utopian times when men and women are entirely self-governing.

Treaties have, in a sense, been helpful in laying the foundation for world law, but as any Native American knows, treaties do not protect the weaker party from the likelihood that the stronger side will not honor its end of the bargain when it sees an advantage. Since there is no third party to enforce the treaty, any party to a treaty can fail to live up to its promise with impunity. The Bush administration's decision to pull out of the Anti-Ballistic Missile (ABM) Treaty in order to proceed with its National Missile Defense System, and North Korea's withdrawal from the Nuclear Non-Proliferation Treaty, exemplify this problem. International law has evolved over the last century and in many ways has become more effective, but until the world forms a third-party enforcement mechanism, and until global government replaces the current system of treaties, international law will continue to be unenforceable and ultimately ineffective.

A global system based on treaties is also weakened by the fact that only those nations who have ratified a treaty are obliged to abide by it. When a nation chooses not to sign a given treaty, or to unilaterally withdraw from a treaty, as many

do, it obviously has no obligation to follow that particular agreement. When a system of world law replaces international law, a world legislature will pass laws that apply uniformly to the whole world—or at least to those countries that are members of the federation.

It is futile to try to establish world peace via the threat of nuclear terror, or by treaties, alliances, or an unstable balance of power between the largest states. If we are to create something that has never existed—enduring world peace and justice—we must be willing to build something that has never existed: democratic global government.

Global law is meaningful only if it is enforceable

We are living today under a flawed international system with nearly two hundred nations that are each virtually a law unto themselves. However, business and commerce must be conducted. The channels of trade and travel must be safeguarded—somehow. Something must fill the vacuum that is created by the absence of a world government to enforce global law to keep the peace. And given the failure of the United Nations, that role will, by default, fall to the world's largest military and economic powers and to an unenforceable, unreliable body of international treaties.

As progressives well know, in the last decade the US has rushed into the power vacuum caused by the end of the Cold War and the abiding weaknesses of the UN system. We are now faced with the prospect of unchecked military domination of our planet by its sole remaining superpower. And this self-assumed American hegemonic role has great importance in the evolution of global law. It is perversely teaching us about one feature of the coming world government to which we have

already alluded: In the absence of world law, firm enforcement of some other sort of international order is still needed in a dangerous world in which lanes of commerce must be kept open. In the absence of a democratic world government, a “new world order” will be provided by default by the world’s largest superpower.

In recent times, all US administrations, both Democratic and Republican, have dressed up their overseas interventions with a rhetoric that attributes their motives to the enforcement of the broader interests of the civilized world. One can clearly see the accent on “enforcement.” For example, in his ultimatum speech to Saddam Hussein just before the US invasion of Iraq in March 2003, George W. Bush’s speechwriters dubbed our intervention as “enforcement of the just demands of the world.” Sadly, the Bush administration co-opted the language of global justice even as it perpetrated a unilateral, preemptive intervention on a sovereign nation. Rather than seize the dictator himself and apply some feature of existing international law against this one individual in a world court, the Americans were forced for the second time in slightly more than a decade to lead a war against an entire people. And this came after many years of US-led UN sanctions against Iraq that decimated their economy while leaving a brutal dictator in power—precisely the opposite result of what could have been achieved by applying the principle of individual accountability!

Truly, our options remain stark: To restate, the essential choice is between the force of global law applied against individuals in a governed world, or the law of force applied against whole countries in a world dominated by nation-states and a military superpower. America must decide whether it will be an obstacle to world law or a leader in the development of global democratic institutions. It is as simple as that.

A complicated world like ours needs decisive enforcement of legitimate global law against individual lawbreakers, such as terrorists, drug traffickers, and dictators. But without it, high-minded phrases such as “the just demands of the world” and “international law” will become linguistic fodder for the reigning superpower. Propagandists in the US State Department (or leaders of any other superpower) will use such language to justify their own nationalistic and self-serving enforcement of illegitimate “laws” against entire countries. In the absence of a global institution representing the world’s people, which is empowered to enforce just laws of our own making, the US—or institutions it dominates such as the WTO, IMF, and World Bank—will always be happy to step in with its own interpretation of what is needed to keep the peace. In the new model that we propose in this book, law enforcement will instead be embedded in the context of a genuine global democracy—a global governing structure that represents the will and reflects the sovereignty of the world’s people.

Global law requires global courts of justice

Among the first planks of any global constitution will be the abolition of war between nations and the binding adjudication of international disputes and criminal acts by legitimate world courts. The first imperative of world civilization is to outlaw murder of all kinds across national boundaries, and to use legitimate force to hold individual lawbreakers—and not entire nations like Iraq or Afghanistan—accountable before legitimate standards of world justice. And as the world government applies global law against individuals, world courts will develop case law that interprets the global constitution

and enhances our understanding of the human rights that will no doubt be enshrined in a global bill of rights. We as individuals must follow laws and limit our behavior accordingly. In a civilized and governed world, nations too must follow laws that limit and control their behavior.

Oddly enough, back in early 2003, just as the Bush administration was descending into its role as arbiter and sole enforcer of a spurious “global law” of its own making, the true alternative to this scenario was quietly emerging and was briefly noted on the back pages of newspapers. The attack on Iraq was perhaps one of the worst events in international relations; but what was arguably the best moment in global diplomatic history occurred in the very same month—the seating of the eighteen justices at the International Criminal Court (ICC) in The Hague. This positive development was the mirror opposite of what Bush was foisting on the world.

The timing was remarkable. Although opposed at all points by the Bush administration, the ICC, as of March 11, 2003 was officially inaugurated in The Hague, where eleven men and seven women—selected from a list of the world’s finest jurists—were honored at a gala presided over by Queen Beatrix of the Netherlands. The inaugural ceremony was attended by foreign ministers and international diplomats from one hundred countries—and of course was totally absent of representatives from the United States.

We cite this example because the ICC is the progenitor of the coming system of genuine world courts. However, the coming world legislature, based on individual suffrage, has no precedent at the global level and will have to be created from scratch. Progressives who have achieved a global level of political consciousness should be in the forefront of this historic undertaking, which we discuss in more detail in the coming chapters.

Enforceable world law is an idea whose time has come

Enforceable global law will not be achieved by revolution; it will be an evolutionary accomplishment of humankind.

We envision a gradual process that will be punctuated by a few sudden breakthroughs. For example, the breakthrough to the creation of the ICC—however flawed—put in place one more building block of progress. When the Security Council stood up for the UN Charter by confronting the US over its plan to invade Iraq, this too was a positive step in the direction of enforceable global law. Perhaps a provisional world legislature will evolve that could pass advisory laws that would approximate an expression of the sovereignty of the world's people. The accumulation of many small victories of this sort will eventually lead to a transformation in global governance.

At the moment, however, the momentum of forward progress is too slow. Global civilization is in an accelerating state of change, but the evolution of international law is stagnant—frozen like a deer in the headlights of progress. Nuclear weapons and WMDs have spread everywhere, the environment is collapsing, and economic globalization is rapidly overtaking the planet, but our political institutions and especially the United Nations are far behind in their adaptation.

Conditions are ripe for change. The great goal of the abolition of war stands just before us, representing the pinnacle of the advancement of civilization through the force of law. Outlawing war will allow a vast shift of resources from the war system to the betterment of the human condition. This precedent will lead to global environmental protection and other just laws. The *Pax Romana* of the Roman empire and the peace now enjoyed within the United States illustrate advantages of

coming together to form a union. When war is replaced by law, greatness becomes possible.

We are a link in the human chain of evolution. We owe a debt to those who came before us, some of whom gave their lives for the blessings we now enjoy. We need to be a strong link in the chain between this legacy and the immediate future. It is our opportunity to be either a generation of glory or a generation of shame. Let it not be said that we were the link that broke. Let it instead be celebrated that we were the generation that found the courage to face this truth: Enforceable global law is the answer to global problems. As Harris Wofford, the founder in the 1940s of the Student Federalists, once said, we are engaged in “the revolution to establish politically the brotherhood of man.”

Our ideal is a world community of states which are based on the rule of law and which subordinate their foreign policy activities to law.

—Mikhail Gorbachev