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Global Governance: A New Paradigm for the Rule of Law

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1. The Global Rule of Law: Paradigm Shift

In a recent article, Garry Jacobs and I provided an outline and guidance on the need for a new paradigm of the global Rule of Law. Implicit in our article was an understanding that a new paradigm for the global Rule of Law, which implicates a global constitutional law and a global interest in good governance at every level of society, must present some kind of developmental vision of a realizable and more promising future. In these brief remarks, I plan to explore these issues further.

It may be useful to commence by asking the question “What is meant by the Rule of Law? There is a short answer. The terms Rule of Law symbolize an inspiration about basic values and seek to guide authoritative and controlling decision making (for which we reserve the term law) to secure the most ancient objective of all law: to defend and to promote the common interest of all the people. The common interest today is broadly seen in terms of universal well-being and a celebration of human dignity. That in short is the challenge symbolized by the global Rule of Law idea. It was precisely this challenge that Garry Jacobs and I addressed in our article that a new paradigm of the Rule of Law was urgently needed to give the Rule of Law idea an optimum meaning. The central institutional mechanism, which gives the Rule of Law idea operational relevance, is the constitutional form that it inspires. Constitutions are generally seen as instruments reflecting Rule of Law values.

At the global level, it is quite appropriate to identify a global constitutional process. That process includes the text and practice of international society under the UN Nations Charter. However, it is by no means clear that the UN Charter, which clearly is our global constitution, has universal traction among all stakeholders that it is a constitution with fully enforceable international obligations as law. The weakness of the Charter as a global constitution is that it has to contend with the concentration of effective power among key sovereign state participators. It has sometimes been admitted that a directorate of super sovereign states drives key decisions of the UN. We believe that this retards the full promise of the global constitution and its capacity to respond to the major issues and problems that we confront in the global environment. In short, the practice has gravitated to a high level of sovereign state influence as well as the leverage of control that such entities generate. This suggests that the control factor, a residue of sovereign abolitionism seriously weakens the authority foundations of the global constitution. It will be recalled that unrestrained sovereign claims to absolutism led to the demise of the League of Nations. It was for this reason that the drafters of the Charter confronted the problem of authority behind it. The very first terms, which introduce the UN Charter, locate its authority in a statement, which says, “We the people...determine.”

The Preamble in Chapter 1 identifies peoples and individual rights in terms of the need for security, human rights and dignity, humanitarianism, economic and social justice, and respect for law. Most of the rest of the document deals with the membership of states and the powers allocated to them.

Garry Jacobs and I following a tradition of scholarship established by leading figures in the World Academy of Art and Science, sought to address the question of how to broaden the authority foundations of the global Rule of Law. In our paper, we stress the notion that at any level of society, the problems emerge from the human participators and it is those problems that require law to respond in the form of responsible authoritative and controlling decision making. The first task that we thought would provide some insight into the nature of global authority and global problems was to understand that there is such a thing as a global or planetary community. This planetary community is made up of many and diverse participant stakeholders. Realism requires that we acknowledge their existence, their roles, and potentials for improving or diminishing the human prospect. What we see, as a critical normative salience is that however, humanity is organized institutionally, at the back of every institution are the human agents who claim identity, who assert claims for basic values and who also claim for the recognition of settled expectations. We believe that important elements that recognize the individual as a fundamental unit of legal and political analysis in the global environment is reflected in the text of the UN Charter, especially the human rights references and subsequent developments in the area of human rights, humanitarianism and development.

My colleagues in the World Academy have drawn attention to the failures in global economic development and see as a missing component of a solution to our current economic crisis the importance of human capital as a driving force of social capital. The central insight here is that individual human beings represent capital resources, which if properly developed, generate social capital, at all levels of economic organization. The fundamental idea may also be seen as a cornerstone of human rights. Individuals who claim human rights, and who are the activists for the realization of human rights, are in effect recognizing that human rights is an aspect of political capital and an important component of an improved human prospect.

The critical question for the UN and enlightened decision makers is how to create more space, politically, culturally and economically for the individual subjects of the global community process. I suggest as well that this is a matter of importance because this universe of participators would deeply strengthen the authority aspect of the global constitution and involvement as stakeholders may well change the global expectations of limiting powers to a small group of states.

At present, we live in a world in which we have already seen the emergence of many sectors of global civil society. Recently we saw the emergence of the Earth Summit in Rio, the Cairo World Population Conference and the World Conference on Women in Beijing. The global campaign for climate action (GCCA) is an alliance of 300 non-profit organizations around the world whose objective is to mobilize civil society and galvanize public support for a safe climate future. The GCCA led a campaign against the XL pipeline. They also led the push for European leaders to support a financial transaction tax for the purpose of grappling with poverty and climate change. We should also note that the World Association of Non-Governmental Organizations website lists some 22,885 NGOs in North America alone. In addition, global society is permeated with professional organizations in law and medicine, the sciences, and the arts. Indeed, we are here today representing the World Academy of Art and Science. An organization we think can contribute to the future of global Rule of Law. Our central problem is to modify the UN Charter or creatively interpret it to promote non-state actors access to this important forum of international decision making. This will require complex strategic thinking but at the back of this approach there must be the realization that expanding civil society participation and influence also broadens the authority foundations of the UN itself. A mobilization of the professions, the civil society organizations, the humanitarian and human rights NGOs, could provide a form of leverage where the UN can confront the crunch issues looming on the horizon. It could influence decision making in constructive ways and possibly permit important discussions on a variety of issues such as the impact of technology on working hours. In short, is there a human prospect in which individuals will have more free time to focus on aesthetic rights and possibilities that may improve the happiness factor in a future scenario.

It has been my contention that a realistic understanding of the Rule of Law and its potentials for improving the human prospect must be rooted in the social reality of a global social process. It will be apparent that what emerges from the global social process are demands and problems that are crucial to human well being. These demands are also changing and greatly implicate the idea of global governance. Sovereignty holds a crucial position in the context of global, social, political, and juridical context. It should be noted that there have always been pressures in the evolution of sovereignty to modify or change it. In the current global social process, we witness a very wide range of non-state, non-sovereign actors. The emergence and salience of these actors has served to limit in some degree the centrality of sovereignty in the global stream of governance. The emergence of these other stakeholders has been greatly facilitated by the global communications revolution. This revolution has permitted the emergence of newer forums outside of the boundaries of sovereignty and which for want of a better term are conceptualized as global civil society.

A new paradigm of the Rule of Law has witnessed an evolutionary trend in the development of sovereignty and its placement within the context of the fluid notion of globalization. This development presses us to explore more critically the conceptual and normative bases of sovereignty in our time and to appraise it in terms of the notion of authority in the idea of governance itself. In general, authority is rooted in the people's expectations and therefore the idea of authority itself resists the notion that it should be collapsed into a form of sovereignty, which implies the monopolization of power and at the same time diminishes the popular expectation of authority rooted in the people. Contemporary international relations have its legal foundation in the Charter of the United Nations.

The Charter limits membership to sovereign nation states. However, the Charter proclaims that it communicates with the authority of the people of the earth/space community. Indeed, the normative foundations of the Charter are rooted in the people's expectations of peace, security, human rights, and social progress. This represents an important challenge to the Rule of Law, that this idea finds its authority in the people of the world community. The recognition of the importance of the people as a source of authority for a new paradigm of the Rule of Law is a critical shift of focus. It might challenge the idea that the values relating to the very existence of humanity are to be monopolized by a small directorate of powerful states whose foundations in the authority of people's expectations is vastly limited. This challenge requires the powerful to restrain themselves in the temptations of the exercise of power and to seek and act with the authority, as well as the objectives of universal well being and dignity.

2. A New Paradigm for the Rule of Law: A Glimpse of Future Developmental Constructs

Apart from the subject on our agenda today, there are theorists such as James Martin who stress some other dimensions of problems of global importance. Reference is made to the crisis of climate change, demographics and over population, the shift of global economic power to the corporate form of economic organization; the possibility of future pandemics of global destructive capacity. With these thoughts and their connection to the Rule of Law it is worth a reminder that a Rule of Law that gives full recognition to the individual in the global environment may have a positive influence on how future challenges are confronted. An unadulterated recognition of the individual is recognition of the human capital inhering all human beings. This would seem to tie in the idea of human capital and its importance for a global development construct. One aspect of this should be whether human capital and global development may be used as indicators of human happiness. Indeed, if we consider the inevitability of technological innovation and its impact on economic productivity, we may well have to confront the challenge that a newer paradigm of development may require a sharing of the benefits of technological innovation. Sharing may implicate the prospect of more leisure time for humanity. This in turn may suggest an important challenge for a developmental construct. This may be a point when conditions favor an opportunity for a renaissance in human affairs in which human capital is highly valued for its imaginative, co-creative capacity.

This human potential may be facilitated in an unleashing of innovation and creativity as a form of aesthetic development. It is worthy of consideration within the new Rule of Law paradigm that aesthetics may constitute one of the most fundamental of human rights. There is no aesthetic experience without the subjectivity of the individual and the protection of the individual needs as well, the protection and promotion of individual creativity, which encompasses aesthetic values. As a component of human rights values, it would seem to be important at every level of society that individual freedom be secured and encouraged. In short, a very reasonable developmental construct for a new Rule of Law paradigm provides the normative guidance at an inclusive global level that functions as a liberating force for human creative possibility. This could be directed at individual creative capacity, hopefully as a humane and socially liberating force that gives voice and is rooted in the expression in global civil society in which individuals are both the controllers and the controlled.

This perspective, idealistic as it sounds, is rooted in important contemporary social fact. It has a fit for the common understanding of the Rule of Law, as we now understand it. A central value objective of the UN Charter focuses on the well being and dignity of the individual. Inherent in the constitutional foundations of the Charter is an appreciation of the close link with its fundamental base of authority: we the people. This base of authority is global in its potential reach. Current practices encourage engagement in civil society. The constitutional system needs to find the means and the methods to dramatically open up its processes to civil society.

Global communications processes are a critical technique for the engagement for civil society. A closer alliance with communications networks, associations of journalists and academies of the sciences and the arts, could facilitate the creation of a newer paradigm of global expectation. Additionally, there are efforts to facilitate people-to-people diplomacy, such as sister city alliances; cultural diplomacy could also be a vehicle pointing the way to a new order of the global renaissance.

It seems clear to me that the domination of global governance by territorially organized sovereign states cannot solve the great global problems of our time, which threaten the survival of all. New initiatives based on new thinking are urgently needed and organizations like the World Academy of Art and Science, the Club of Rome, the Pugwash Society and such academic innovations as the Oxford Martin School, are an indicator that there is an incipient move to develop a new Rule of Law for a new age.