

## Liberal Democracy vs. Transnational Progressivism: The Future of the Ideological Civil War Within the West

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by John Fonte

Nearly a year before the September 11 attacks on the World Trade Center and the Pentagon, wire service stories gave us a preview of the transnational politics of the future. It was reported on October 24, 2000, that in preparation for the UN Conference Against Racism, about fifty American nongovernmental organizations (NGOs) sent a formal letter to UN Human Rights Commissioner Mary Robinson calling on the UN “to hold the United States accountable for the intractable and persistent problem of discrimination” that “men and women of color face at the hands of the U.S. criminal justice system.”<sup>1</sup>

The NGOs included the Leadership Conference on Civil Rights, Amnesty International-U.S.A. (AI-U.S.A.), Human Rights Watch (HRW), the Arab-American Institute, National Council of Churches, American Friends Service Committee, the National Association for the Advancement of Colored People, the American Civil Liberties Union, the Mexican-American Legal Defense and Educational Fund, the International Human Rights Law Group, the Lawyers Committee for Civil Rights under Law, and others. Their spokesman, Wade Henderson, of the Leadership Conference on Civil Rights, stated that the NGOs’ demands “had been repeatedly raised with federal and state officials [in the United States] but to little effect. . . . In frustration we now turn to the United Nations.”<sup>2</sup> In other words, the NGOs, unable to enact the policies they favored through the normal processes of American constitutional democracy—the Congress, state governments, state courts, the federal executive branch, or even the federal courts—felt it necessary to appeal to authority outside of American democracy and beyond its Constitution.

In the two weeks before September 11, from August 31 to September 7, 2001, the UN World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance was held in Durban, South Africa. The American NGOs listed above attended the conference with financial support from the Ford, Rockefeller, MacArthur, and Charles Stewart Mott Foundations. At the conference the NGOs worked with delegates from African states that supported “reparations” from Western nations as compensation for the transatlantic slave trade of the seventeenth to nineteenth centuries. American NGOs provided research assistance and helped develop reparations resolutions that condemned only the West, without mentioning the larger traffic in African slaves that were sent to the Islamic lands of the Middle East. In addition, the NGOs endorsed a series of demands, including:

- U.S. acknowledgment of “the breadth and pervasiveness of institutional racism” that “permeates every institution at every level.”
- A declaration that “racial bias corrupts every stage of the [U.S.] criminal justice process, from suspicion to investigation, arrest, prosecution, trial, and sentencing.”
- Support and expansion of federal and state hate crimes legislation.
- Condemnation of opposition to affirmative action measures.
- U.S. recognition of an adequate standard of living as a “right, not privilege.”
- A statement deploring “denial of economic rights” in the United States.

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<sup>1</sup> Anthony Goodman, *United Nations*, Reuters, Oct. 24, 2000.

<sup>2</sup> *Ibid.*

- Promotion of multilingualism instead of “discriminatory” English-language acquisition emphasis in U.S. schools.
- Denunciation of free market capitalism as a fundamentally flawed system.”<sup>3</sup>

Most importantly, the NGOs insisted that the United States ratify all major UN human rights treaties and drop legal reservations to treaties already ratified. For example, in 1994 the United States ratified the UN Convention on the Elimination of Racial Discrimination (CERD), but attached reservations declaring that it did not accept treaty requirements “incompatible with the Constitution.” The official State Department reservations memorandum specifically notes that the CERD’s restrictions on free speech and freedom of assembly are incompatible with the First Amendment. Yet leading NGOs including the HRW and AI-U.S.A. demand that the United States drop all reservations and “comply” with the CERD treaty.<sup>4</sup>

On August 6, 2001, Reuters reported that the United States had presented its first explanation of how it was implementing the CERD treaty to a UN committee. An NGO representative from the Center for Constitutional Rights reportedly said that “Almost every member of the UN committee raised the question of why there are vast racial disparities . . . in every aspect of American life—education, housing, health, welfare, criminal justice.” A representative from HRW declared that the United States offered “no remedies” for these disparities, but “simply restated” its position by supporting equality of opportunity and indicating “no willingness to comply” with CERD.<sup>5</sup> (This would presumably mean the enactment of policies resulting in statistical equality of condition for racial and ethnic minorities in education, housing, health, welfare, criminal justice and the like.)

Indeed, to comply with the NGO interpretation of the CERD treaty, the United States would have to turn its political and economic system, together with their underlying principles, upside down—abandoning the free speech guarantees of the Constitution, bypassing federalism, and ignoring the very concept of majority rule—since practically nothing in the NGO agenda is supported by the American electorate.

The NGOs at the Durban conference exemplify a new challenge to liberal democracy and its traditional home, the liberal democratic nation-state. These have always been self-governing representative systems comprised of individual citizens who enjoy freedom and equality under law and together form a people within a democratic nation-state. Thus, liberal democracy means individual rights, democratic representation (with some form of majority rule) and national citizenship. Yet, as the vignettes of the Durban conference (and myriad other conflicts of the past four decades) demonstrate, all of these principles, along with the very idea of the liberal democratic nation-state, are contested today in the West, suggesting that we have not reached the “end of history” in the ideological sense delineated by Francis Fukuyama in his groundbreaking 1989 essay.<sup>6</sup>

## Post-September 11

Three weeks after the September 11 attacks, Fukuyama stated in an article in the *Wall Street Journal* that his “end of history” thesis remained valid twelve years after he first presented it, shortly before the fall of the Berlin Wall. Fukuyama’s core argument was that after the defeat of communism and National Socialism, no serious ideological competitor to Western-style liberal democracy was likely to emerge in the future. Thus, in terms of political philosophy, liberal

<sup>3</sup> NGO demands listed in “Report of the U.S. Leadership Meetings on the World Conference Against Racism,” convened by Gay McDougall, International Human Rights Group, 2001.

<sup>4</sup> Reuters, AP, *New York Times* August 6, 2001 by Karen Iley on Yahoo! News.

<sup>5</sup> Ibid

<sup>6</sup> “The End of History?” *National Interest*, Summer 1989.

democracy is the end of the evolutionary process. To be sure, there will be wars and terrorism, but no alternative ideology with a universal appeal will seriously challenge the ideas and values of Western liberal democracy as the “dominant organizing principles” around the world.

Fukuyama correctly points out that non-democratic rival ideologies such as radical Islam and “Asian values” have little appeal outside their own cultural areas, but these areas are themselves vulnerable to penetration by Western democratic ideas. The September 11 attacks notwithstanding, “we remain at the end of history,” Fukuyama insists, “because there is only one system that will continue to dominate world politics, that of the liberal-democratic West.” There is nothing beyond liberal democracy “towards which we could expect to evolve.” Fukuyama concludes by stating that there will be challenges from those who resist progress, “but time and resources are on the side of modernity.”<sup>7</sup>

Indeed, but is “modernity” on the side of liberal democracy? Fukuyama is probably right that the current crisis with the forces of radical Islam will be overcome, and that, at the end of the day, there will be no serious ideological challenge originating outside of Western civilization. However, the activities of the NGOs suggest that there already is an alternative ideology to liberal democracy within the West that for decades has been steadily, and almost imperceptibly, evolving.

Thus, it is entirely possible that modernity—thirty or forty years hence—will witness not the final triumph of liberal democracy, but a new challenge to it in the form of a new transnational hybrid regime that is post-liberal democratic, and in the context of the American republic, post-Constitutional and post-American. I will call this alternative ideology “transnational progressivism.” This ideology constitutes a universal and modern worldview that challenges in theory and practice both the liberal democratic nation-state in general and the American regime in particular. The aftermath of September 11 provides the possibility of a resurgence by the forces of traditional nation-centered liberal democracy. But before addressing this possibility, it is necessary to examine in detail the theory and practice of “transnational progressivism.”

### **Transnational Progressivism**

The key concepts of transnational progressivism could be described as follows:

(1) *The ascribed group over the individual citizen.* The key political unit is not the individual citizen, who forms voluntary associations and works with fellow citizens regardless of race, sex, or national origin, but the ascriptive group (racial, ethnic, or gender) into which one is born. This emphasis on race, ethnicity, and gender leads to group consciousness and a deemphasis of the individual’s capacity for choice and for transcendence of ascriptive categories, joining with others beyond the confines of social class, tribe, and gender to create a cohesive nation.

(2) *A dichotomy of groups: Oppressor vs. victim groups, with immigrant groups designated as victims.* Influenced (however indirectly) by the Hegelian Marxist thinking associated with the Italian writer Antonio Gramsci (1891-1937) and the Central European theorists known as the Frankfurt School, global progressives posit that throughout human history there are essentially two types of groups: the oppressor and the oppressed, the privileged and the marginalized. In the United States, oppressor groups would variously include white males, heterosexuals, and Anglos, whereas victim groups would include blacks, gays, Latinos (including obviously many immigrants), and women.

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<sup>7</sup> Francis Fukuyama, “History Is Still Going Our Way,” *Wall Street Journal*, Oct. 5, 2001.

Multicultural ideologists have incorporated this essentially Hegelian Marxist “privileged vs. marginalized” dichotomy into their theoretical framework. As political philosopher James Ceaser puts it, multiculturalism is not “multi” or concerned with many groups, but “binary,” concerned with two groups, the hegemon (bad) and “the Other” (good) or the oppressor and the oppressed. Thus, in global progressive ideology, “equity” and “social justice” mean strengthening the position of the victim groups and weakening the position of oppressors-hence preferences for certain groups are justified. Accordingly, equality under law is replaced by legal preferences for traditionally victimized groups. In 1999, the U.S. Equal Employment Opportunity Commission extended antidiscrimination protection under Title VII of the 1964 Civil Rights Act to illegal immigrants.

(3) *Group proportionalism as the goal of “fairness.”* Transnational progressivism assumes that “victim” groups should be represented in all professions roughly proportionate to their percentage of the population or, at least, of the local work force. Thus, if women make up 52 percent and Latinos make up 10 percent of the population, then 52 percent of all corporate executives, physicians, and insurance salesmen should be women and 10 percent should be Latinos. If not, there is a problem of “underrepresentation” or imbalance that must be rectified by government and civil society. Thomas Sowell recently wrote-as he has for several decades-that many Western intellectuals perpetually promote some version of “cosmic justice” or form of equality of result.<sup>8</sup> The “group proportionalism” paradigm is pervasive in Western society: even the U.S. Park Service is concerned because 85 percent of all visitors to the nation’s parks are white, although whites make up only 74 percent of the population. Therefore, the Park Service announced in 1998 that it was working on this “problem.”<sup>9</sup>

(4) *The values of all dominant institutions to be changed to reflect the perspectives of the victim groups.* Transnational progressives in the United States (and elsewhere) insist that it is not enough to have proportional representation of minorities (including immigrants, legal and illegal) at all levels in major institutions of society (corporations, places of worship, universities, armed forces) if these institutions continue to reflect a “white Anglo male culture and world view.” Ethnic and linguistic minorities have different ways of viewing the world, they say, and these minorities’ values and cultures must be respected and represented within these institutions. At a 1998 U.S. Department of Education conference promoting bilingual education, SUNY professor Joel Spring declared, “We must use multiculturalism and multilingualism to change the dominant culture of the United States.” He noted, for example, that unlike Anglo culture, Latino culture is “warm” and would not promote harsh disciplinary measures in the schools.<sup>10</sup>

(5) *The Demographic Imperative.* The demographic imperative tells us that major demographic changes are occurring in the United States as millions of new immigrants from non-Western cultures and their children enter American life in record numbers. At the same time, the global interdependence of the world’s peoples and the transnational connections among them will increase. All of these changes render the traditional paradigm of American nationhood obsolete. That traditional paradigm based on individual rights, majority rule, national sovereignty, citizenship, and the assimilation of immigrants into an existing American civic culture is too narrow and must be changed into a system that promotes “diversity,” defined, in the end, as group proportionalism.

(6) *The redefinition of democracy and “democratic ideals.”* Since Fukayama’s treatise, transnational progressives have been altering the definition of “democracy,” from that of a system of majority rule among equal citizens to one of power sharing among ethnic groups composed of both citizens and non-citizens. For example, Mexican foreign minister Jorge Castañeda wrote in

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<sup>8</sup> Thomas Sowell, *The Quest for Cosmic Justice* (Free Press, 1999).

<sup>9</sup> John Leo, “Long on Diversity Division,” *Washington Times*, May 21, 1998.

<sup>10</sup> In Jorge Amselle, “Reverse Imperialism,” *National Review*, Oct. 12, 1998.

the *Atlantic Monthly* in July 1995 that it is “undemocratic” for California to exclude noncitizens, specifically illegal aliens, from voting. Former Immigration and Naturalization Service (INS) general counsel Alexander Aleinikoff, declaring that “[we] live in a post-assimilationist age,” asserted that majority preferences simply “reflect the norms and cultures of dominant groups” (as opposed to the norms and cultures of “feminists and people of color”).<sup>11</sup> James Banks, one of American education’s leading textbook writers, noted in 1994 that “to create an authentic democratic Unum with moral authority and perceived legitimacy the pluribus (diverse peoples) must negotiate and share power.”<sup>12</sup> In effect, Banks said, existing American liberal democracy is not quite authentic; real democracy is yet to be created. It will come when the different “peoples” or groups that live within America “share power” as groups.

(7) *Deconstruction of national narratives and national symbols.* Transnational progressives have focused on traditional narratives and national symbols of Western democratic nation-states, questioning union and nationhood itself. In October 2000, the British government-sponsored Commission on the Future of Multi-Ethnic Britain issued a report that denounced the concept of “Britishness” as having “systemic . . . racist connotations.” The Commission, chaired by Labour life peer Lord Parekh, declared that instead of defining itself as a nation, the UK should be considered a “community of communities.” One member of the Commission explained that the members found the concepts of “Britain” and “nation” troubling. The purpose of the Commission’s report, according to the chairman Professor Parekh, was to “shape and restructure the consciousness of our citizens.” The report declared that Britain should be formally “recognized as a multi-cultural society” whose history needed to be “revised, rethought, or jettisoned.”<sup>13</sup>

In the United States in the mid-1990s, the proposed “National History Standards,” reflecting the marked influence of multiculturalism among historians in the nation’s universities, recommended altering the traditional narrative of the United States. Instead of emphasizing the story of European settlers, American civilization would be redefined as a “convergence” of three civilizations—Amerindian, West African, and European—the bases of a hybrid American multicultural. Even though the National History Standards were ultimately rejected, this core multicultural concept that that United States is not primarily the creation of Western civilization, but the result of a “Great Convergence” of “three worlds” has become the dominant paradigm in American public schools.

In Israel, adversary intellectuals have attacked the Zionist narrative. A “post-Zionist” intelligentsia has proposed that Israel consider itself multicultural and deconstruct its identity as a Jewish state. Tom Bethell has pointed out that in the mid-1990s the official appointed to revise Israel’s history curriculum used media interviews to compare the Israeli armed forces to the SS and Orthodox Jewish youth to the Hitler Youth. A new code of ethics for the Israel Defense Forces eliminated all references to the “land of Israel,” the “Jewish state,” and the “Jewish people,” and, instead, referred only to “democracy.” Even Israeli foreign minister Simon Peres sounded the post-Zionist trumpet in his 1993 book, *The New Middle East*, where he wrote that “we do not need to reinforce sovereignty, but rather to strengthen the position of humankind.” He called for an “ultranational identity,” saying that “particularist nationalism is fading and the idea of a ‘citizen of the world’ is taking hold. . . . Our ultimate goal is the creation of a regional community of nations, with a common market and elected centralized bodies,” a type of Middle Eastern EU.<sup>14</sup>

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<sup>11</sup> Alexander Alienikoff, “Citizens, Aliens, Membership and the Constitution,” *Constitutional Commentary* 7, 1990, p. 30.

<sup>12</sup> James Banks, “Transforming the Mainstream Curriculum,” *Educational Leadership*, May 1994, p. 4.

<sup>13</sup> Philip Johnston, “Straw Wants to Rewrite Our History,” *Electronic Telegraph*, Oct. 10, 2000.

<sup>14</sup> Quotes from Tom Bethell, “The Cultural Wars in Israel,” paper prepared for Institute for Advanced Strategic and Political Studies conference on “Israel: The Advanced Case of Western Afflictions,” Washington, D.C., Dec. 15, 1997; David Remnick, “The Dreamer,”

(8) *Promotion of the concept of postnational citizenship.* “Can advocates of postnational citizenship ultimately succeed in decoupling the concept of citizenship from the nation-state in prevailing political thought?” asks Rutgers Law Professor Linda Bosniak.<sup>15</sup> An increasing number of international law professors throughout the West are arguing that citizenship should be denationalized. Invoking concepts such as inclusion, social justice, democratic engagement, and human rights, they argue for transnational citizenship, postnational citizenship, or sometimes global citizenship embedded in international human rights accords and “evolving” forms of transnational arrangements.

These theorists insist that national citizenship should not be “privileged” at the expense of postnational, multiple, and pluralized forms of citizenship identities. For example, the Carnegie Endowment for International Peace, under the leadership of its president, Jessica Tuchman Mathews, has published a series of books in the past few years “challenging traditional understandings of belonging and membership” in nation-states and “rethinking the meaning of citizenship.”<sup>16</sup> Although couched in the ostensibly neutral language of social science, these essays from scholars from Germany, Britain, Canada, and France, as well as the United States, argue for new, transnational forms of citizenship as a normative good.

(9) *The idea of transnationalism as a major conceptual tool.* The theory of transnationalism promises to be for the first decade of the twenty-first century what multiculturalism was for the last decade of the twentieth century. In a certain sense, transnationalism is the next stage of multicultural ideology—it is multiculturalism with a global face. Like multiculturalism, transnationalism is a concept that provides elites with both an empirical tool (a plausible analysis of what is) and an ideological framework (a vision of what should be). Transnational advocates argue that globalization requires some form of transnational “global governance” because they believe that the nation-state and the idea of national citizenship are ill suited to deal with the global problems of the future. Academic and public policy conferences today are filled with discussions of “transnational organizations,” “transnational actors,” “transnational migrants,” “transnational jurisprudence,” and “transnational citizenship,” just as in the 1990s they were replete with references to multiculturalism in education, citizenship, literature, and law.

Many of the same scholars who touted multiculturalism now herald the coming transnational age. Thus, at its August 1999 annual conference, “Transitions in World Societies,” the same American Sociological Association (ASA) that promoted multiculturalism from the late 1980s to the mid-1990s featured transnationalism. Indeed, the ASA’s then-president, Professor Alejandro Portes of Princeton University, argued that transnationalism is the wave of the future. He insisted that transnationalism, combined with large-scale immigration, would redefine the meaning of American citizenship. University of Chicago anthropologist Arjun Appadurai has suggested that the United States is in transition from being a “land of immigrants” to “one node in a postnational network of diasporas.”<sup>17</sup>

It is clear that arguments over globalization will dominate much of early twenty-first century public debate. The promotion of transnationalism as both an empirical and normative concept is an attempt to shape this crucial intellectual struggle over globalization. The adherents of transnationalism create a dichotomy. They imply that one is either in step with globalization, and thus with transnationalism and forward-looking thinking, or one is a backward antiglobalist.

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*New Yorker* Jan. 7, 2002; and Yoram Hazony, “The End of Zionism?” *Azure* Summer 1996. On post-Zionism in general see Yoram Hazony, *The Jewish State: The Struggle for Israel’s Soul* (Washington, D.C. and New York: New Republic/Basic Books, 2000)

<sup>15</sup> Linda Bosniak, “Citizenship Denationalized,” *Indiana Journal of Global Legal Studies*, Spring 2000, p. 508.

<sup>16</sup> See T. Alexander Aleinikoff and Douglass Klusmeyer, ed, *From Migrants to Citizens: Membership in a Changing World* (Washington, D.C.: Carnegie Endowment for International Peace, 2001); and T. Alexander Aleinikoff and Douglas Klusmeyer, ed., *Citizenship Today: Global Perspectives and Practices* (Washington, D.C.: Carnegie Endowment for International Peace, 2001).

<sup>17</sup> In Linda K. Kerber, “The Meaning of Citizenship,” *Dissent*, Fall 1997, p.36.

Liberal democrats (who are internationalists and support free trade and market economics) must reply that this is a false dichotomy—that the critical argument is not between globalists and antiglobalists, but instead over the form Western global engagement should take in the coming decades: will it be transnationalist or internationalist?

### **Transnational Progressivism’s Social Base: A Post-National Intelligentsia**

The social base of transnational progressivism could be labeled a rising postnational intelligentsia, the leaders of which include many international law professors at prestigious Western universities, NGO activists, foundation officers, UN bureaucrats, EU administrators, corporation executives, and practicing politicians throughout the West. The postnational intelligentsia is an eclectic group but it would include an identifiable group of thinkers and actors.

- British “third way” theorist Anthony Giddens, who declared that he is “in favor of pioneering some quasi-utopian transnational forms of democracy” and “is strongly opposed to the idea that social justice is just equality of opportunity.”<sup>18</sup> Giddens writes that “the shortcomings of liberal democracy suggest the need to further more radical forms of democratization.” Instead of liberal democracy, Giddens, using the language of Juergen Habermas, posits a “dialogic democracy” with an emphasis on “life politics,” especially “new social movements, such as those concerned with feminism, ecology, peace, or human rights.”<sup>19</sup>
- Italian Marxist theorist Toni Negri (who clearly knows his Gramsci) and Duke University Literature Professor Michael Hardt, the authors of the best-selling book *Empire*, lauded by the *New York Times* as the “next big idea.” In *Empire*, Negri (a jailed former associate of the terrorist Italian Red Brigades) and Hardt (his former student) using Marxist concepts such as the “multitudes” i.e., “the masses” vs. the Empire attack the power of global corporations and, without being overly specific, call for a new form of “global” or transnational democracy.
- University of Chicago philosophy professor Martha Nussbaum, who called for reinvigorating the concept of “global citizenship” and denounced patriotism as “indistinguishable from jingoism” in a debate several years back that set off a wide ranging discussion among American academics on the meaning of patriotism, citizenship, and the nation-state.<sup>20</sup>
- Strobe Talbot, former undersecretary of state, who wrote when he was an editor of *Time* magazine in the early 1990’s that he was optimistic that by the end of the twenty-first century “nationhood as we know it will be obsolete: all states will recognize a single global authority. . . . All countries are basically social arrangements, accommodations to changing circumstances. No matter how permanent and even sacred they may seem at any one time, in fact they are all artificial and temporary.” He characterizes the devolution of national sovereignty “upward toward supranational bodies” and “downward toward” autonomous units is a “basically positive phenomenon.”<sup>21</sup>

Complementary to this general (and diffuse) sentiment for new transnational forms of governance is the concrete day-to-day practical work of the NGOs that seek to bring the transnational vision to fruition. When social movements such as the ideologies of “transnationalism” and “global

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<sup>18</sup> Kevin Davey, “Left Renewal,” *New Times* (UK), June 1999.

<sup>19</sup> Anthony Giddens, *Beyond Left and Right: The Future of Radical Politics* (Stanford, Calif.: Stanford University Press, 1994), pp. 2, 14-19, 90-91.

<sup>20</sup> see Martha Nussbaum, “Patriotism and Cosmopolitanism,” *Boston Review*, Oct.-Nov. 1994.

<sup>21</sup> Strobe Talbot, “The Birth of the Global Nation,” *Time*, July 20, 1992, pp. 70-71.

governance” are depicted as the result of “social forces” or the “movement of history,” a certain impersonal inevitability is implied. However, in the twentieth century the Bolshevik Revolution, the National Socialist Revolution, the New Deal, the Reagan Revolution, the Gaullist national reconstruction in France, and the creation of the EU and its predecessor organizations were not inevitable, but were the result of the exercise of political will by elites who mobilized their strength and defeated opponents.

Similarly, “transnationalism,” “multiculturalism,” and “global governance,” like “diversity,” are ideological tools championed by activist elites, not “forces of history.” The success or failure of these values-loaded concepts will ultimately depend upon the political will and effectiveness of these elites.

Facing popular resistance on issue after issue, a wide range of American NGOs seek to bypass the normal democratic process to achieve their political ends by extra- or post-constitutional means, demanding that the United States:

- join the International Criminal Court;
- ratify the UN Convention on Women’s Rights;
- drop reservations to the UN treaty against racial discrimination;
- reduce border policing;
- implement affirmative action legislation;
- follow international norms on capital punishment;
- accept the Kyoto Treaty on global warming;
- expand the legal rights of non-citizens in constitutional regimes.

### **Human Rights Activists**

A good part of the energy for transnational progressivism is provided by human rights activists, who consistently evoke “evolving norms of international law” in pursuing their goals. The main legal conflict between traditional American liberal democrats and transnational progressives is ultimately the question of whether the U.S. Constitution trumps international law or vice versa. “International law” here refers to what experts including John Bolton, Jeremy Rabkin, Jack Goldsmith, Lee Casey, and David Rivkin have called the “new international law,” which differs from traditional concepts of the “Law of Nations.”<sup>22</sup>

Before the mid-twentieth century, traditional international law usually referred to relations among nation-states: it was “international” in the real sense of the term. Since that time the “new international law” has increasingly penetrated the sovereignty of democratic nation-states. It is, therefore, in reality, “transnational law.” Human rights activists work to establish norms for this “new international (i.e. transnational) law,” and then attempt to bring the United States into conformity with a legal regime whose reach often extends beyond democratic politics and the guarantees of the U.S. Constitution.

Transnational progressives (including American and non-American NGOs and UN officials) excoriate American political, legal, and administrative practices in virulent language, as if the American liberal democratic nation-state was an illegitimate authoritarian regime. Thus, AI-U.S.A. charged the United States in a 1998 report with “a persistent and widespread pattern of human rights violations,” stating that “racism and discrimination contribute to the denial of the fundamental rights of countless men, women, and children” in the United States. Moreover, police brutality is “entrenched and nation-wide”; the United States is the “world leader in high tech repression”; and it is time for the United States to face up to its “hypocrisy.” The report

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<sup>22</sup> See *Chicago Journal of International Law*, Fall 2000 issue devoted to “AEI Conference: Trends in Global Governance: Do They Threaten American Sovereignty?”

discussed “a national background of economic and racial injustice, a rising tide of anti-immigrant sentiments” and stated that “human rights violations in the U.S. occur in rural communities and urban communities from coast to coast.” The United States had long “abdicated its duty” to lead the world in promoting human rights.<sup>23</sup> Therefore, avowed William Schultz, the executive director of AI-U.S.A., “it was no wonder the United States was ousted from the [UN] Human Rights Commission.”<sup>24</sup>

While AI-U.S.A. called on the UN to condemn “institutionalized cruelty” in the United States, HRW issued a 450-page report excoriating all types of “human rights violations.” For example, HRW declared that “criminal justice polices” display a “disproportionate impact on African-Americans. . . . Although they comprised about 12 percent of the national adult population, they comprised 49.9 percent of the prison population.” Overall, HRW affirmed that the United States was guilty of “serious human rights violations” including “rampant” police brutality and “harassment of gay adults in the military paralleled by the harassment of students perceived to be gay, lesbian, bisexual, and transgendered” in public schools. These students “experienced” school “as a place that accepted intolerance, hatred, ostracization, and violence against youth who were perceived as different.” HRW also attacked the “curtailment of internationally-recognized rights” for (illegal) immigrants and complained that “the U.S. Border Patrol continued to grow at an alarming pace, doubling since 1993, when there were roughly 4,000 agents, to. . . approximately 8,000 agents.”<sup>25</sup>

UN special investigators examined U.S. “human rights violations” in 1990s. The first thing these investigators did was meet with an array of American NGOs. In their reports, the UN officials quoted freely from American NGO documents. UN investigator Maurice Glélé of Benin wrote that, “racism existed in the U.S. with sociological inertia, structural obstacles, and individual resistance.” Glélé visited the U.S. State Department and found that discrimination complaints by African American State Department employees “had dragged on since 1986.” Meanwhile, the report stated, the “State Department remains a very white institution.” The UN investigator further wrote that “the fate of the majority of Blacks is one of poverty, sickness, illiteracy, drugs, and crime in response to the social cul-de-sac in which they find themselves.” Raghika Coomaraswamy of Sri Lanka, the UN Special Rapporteur on Violence Against Women found that the United States is “criminalizing” a large segment of its population, a group that is “composed of poor persons of color and increasingly female.”<sup>26</sup>

Bacre Waly Ndiaye, UN Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, like other UN investigators, consulted representatives of American NGOs including the ACLU, American Friends Service Committee, AI-U.S.A., the NAACP Legal Defense Fund, HRW, and the International Human Rights Law Group. Ndiaye’s report found “a significant degree of unfairness and arbitrariness” in the application of the death penalty,<sup>27</sup> based on racial data showing that 41 percent of death penalty inmates are African-American, 47 percent white, 7 percent Hispanic, and 1.5 percent American Indian.

### **Anti-Assimilation on the Home Front**

As noted earlier, the 2001 UN Conference Against Racism and Xenophobia held in Durban represents a classic case study of how American NGOs promote transnational progressivism. It is revealing that the language of almost all the UN treaties that ignore the guarantees of the U.S. Constitution (including the International Criminal Court (ICC), the

<sup>23</sup> “Rights For All: Human Rights Concerns in the U.S.A.” (Amnesty International, Oct. 1998).

<sup>24</sup> “Amnesty Criticizes U.S. Record on Rights,” *Washington Post*, May 31, 2001.

<sup>25</sup> “World Report: United States 1999” (Human Rights Watch).

<sup>26</sup> Rita Maran, “International Human Rights in the U.S.: A Critique,” *Social Justice*, Spring 1999, pp. 61–63.

<sup>27</sup> *Ibid.* p. 60.

Convention on Women's Rights, the Convention on Children's Rights) were written by American and other Western NGOs. In other words, the documents were written by a Western postnational intelligentsia aided by a "Westernistic" or "Westernized" coterie of Third World intellectuals (e.g., Nobel laureate Kofi Annan.)

It is significant, but little noticed, that many of same NGOs (HRW, AI-U.S.A.) and international law professors who have advocated transnational legal concepts at UN meetings and in international forums are active in U.S. immigration and naturalization law. On this front the transnational progressives have pursued two objectives: (1) eliminating all distinctions between citizens and non-citizens and (2) vigorously opposing attempts to assimilate immigrants into the "dominant" Anglo culture.

Thus, when discussing immigration/assimilation issues, Louis Henkin, one of the most prominent scholars of international law, attacks "archaic notions of sovereignty" and calls for largely eliminating "the difference between a citizen and a non-citizen permanent resident" in all federal laws.<sup>28</sup> Washington University international law professor Stephen Legomsky argues that dual nationals (who are American citizens) should not be required to give "greater weight to U.S. interests, in the event of a conflict" between the United States and the other country in which the American citizen is also a national.<sup>29</sup>

Two leading law professors (Peter Spiro from Hofstra, who has written extensively in support of NGOs, and Peter Schuck from Yale) question the requirement that immigrants seeking American citizenship "renounce 'all allegiance and fidelity' to their old nations." In an op-ed in the *Wall Street Journal*, they suggested dropping this "renunciation clause" from the Oath of Renunciation and Allegiance. They also question the concept of the hyphenated American, offering the model of "ampersand" American.<sup>30</sup> Thus, instead of thinking of traditional Mexican-Americans who are loyal citizens but proud of his ethnic roots, they do not object to immigrants (or migrants) who are both "Mexican and American," who retain "loyalties" to their "original homeland" and vote in both countries.

University Professor Robert Bach authored a major Ford Foundation report on new and "established residents" (the word "citizen" was assiduously avoided) that advocated the "maintenance" of ethnic immigrant identities, supported "non-citizen voting," and attacked assimilation (suggesting that homogeneity, not diversity, "may" be the "problem in America").<sup>31</sup> Bach later left the Ford Foundation and became deputy director for policy at the INS in the Clinton administration, where he joined forces with then INS general counsel Alexander Alienikoff to promote a pro-multicultural, anti-assimilation federal policy. Alienikoff, a former (and current) immigration law professor, has openly and vigorously advocated a "politics" that "moves us beyond assimilation."<sup>32</sup>

It is well established (through Congressional investigations and investigative reporting) that the financial backing for this anti-assimilationist campaign has come primarily from the Ford Foundation, which in the 1970s made a conscious decision to fund a Latino rights movement based on advocacy-litigation and group rights.<sup>33</sup> On this front, the global progressives have been aided- if not always consciously, certainly in objective terms-by a "transnational right." It was a determined group of transnational and libertarian-leaning conservative senators and congressmen

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<sup>28</sup> Louis Henkin, "Immigration and the Constitution: A Clean Slate," *Virginia Journal of International Law*, Fall 1994, p. 337.

<sup>29</sup> Peter H. Schuck, "Plural Citizenships," in *Immigration and Citizenship in the 21<sup>st</sup> Century*, edited Noah M. Pickus (Lanham, MD: Rowman and Littlefield, 1998), p. 179.

<sup>30</sup> Peter H. Schuck and Peter J. Spiro, "Dual Citizens, Good Americans," *Wall Street Journal*, Mar. 18, 1998. See also, Peter H. Schuck, "Plural Citizenships," in *Immigration and Citizenship in the 21<sup>st</sup> Century*, edited Noah M. Pickus (Lanham, MD: Rowman and Littlefield, 1998), pp. 149-191.

<sup>31</sup> see "Changing Relations, Newcomers and Established Residents in U.S. Communities: A Report to the Ford Foundation by the National Board of the Changing Relations Project," principal author Robert Bach, published by the Ford Foundation, New York, April 1993.

<sup>32</sup> T. Alexander Alienikoff, "A Multicultural Nationalism?" *American Prospect*, Jan.-Feb. 1998, p. 84.

<sup>33</sup> Georgie Anne Geyer, *Americans No More: The Death of Citizenship* (New York: The Atlantic Monthly Press, 1996), pp. 190-230.

that prevented the Immigration Reform legislation of 1996 from limiting unskilled immigration. The same group worked with progressives in the late 1990s to successfully block the implementation of a computerized plan to track the movement of foreign nationals in and out of the United States; thereby, in George Will's apt phrase putting "commerce over country." Whatever their ideological, commercial, or political motives, the constant demand for "open borders" and "free movement of people" (not simply free trade, which is a different matter all together) by certain editorialists, commentators, lobbyists, and activists on the libertarian and transnational right has strengthened the anti-assimilationist agenda of the global progressives.

### **The EU as a Stronghold of Transnational Progressivism**

Whereas ideologically driven NGOs represent a subnational challenge to the values and policies of the liberal-democratic nation-state, the EU is a large supranational macro-organization that to a considerable extent embodies transnational progressivism, both in governmental form and in substantive policies. The governmental structure of the EU is post-democratic. Technically power in the EU resides in three bodies: the Council of the EU composed of one cabinet-level representative from each of the member-states; the European Parliament elected by citizens in the member-states; and the European Commission (EC), the EU's executive body.

As Washington lawyers, Lee Casey and David Rivkin have noted, "In theory, the European Commission is accountable to both the council and European Parliament. However, neither the council nor the European Parliament initiate policymaking. Their power is mostly a negative one, the ability to withhold approval of policies formulated and adopted by the European Commission, and even this checking function is exercised infrequently." Thus, Casey and Rivkin state, "Without doubt, the European Commission is the most powerful EU institution" and "the true source of its policy and legislative initiatives." Besides initiating legislation, the EC implements common policy and controls a large bureaucracy. It is composed of a rotating presidency and nineteen commissioners chosen by the member-states and approved by the European Parliament. It is unelected and, for the most part, unaccountable.

A white paper issued by the EC suggests that this unaccountability is one reason for its success: "The original and essential source of the success of European integration is that the EU's executive body, the Commission, is supranational and independent from national, sectoral, or other influences." This recognizable "democracy deficit" represents a moral challenge to EU legitimacy.<sup>34</sup>

The substantive policies advanced by EU leaders both in the Commission and the ECJ are based on the global progressive ideology of group rights discussed earlier that promotes victim groups over "privileged" groups and eschews the liberal principle of treating citizens equally as individuals. Thus, statutes on "hate speech," "hate crimes," "comparable worth" for women's pay, and group preferences are considerably more "progressive" in the EU than in the United States. At the same time, European courts have overruled national parliaments and public opinion in nation-states by compelling the British to incorporate gays and the Germans to incorporate women in combat units in their respective military services.

A group of what Undersecretary of State John Bolton has referred to as "Americanist" (as opposed to "Globalist") thinkers has emphasized the divergence of America's liberal philosophy from the EU's. In the June/July 2001 *Policy Review*, Lee Casey and David Rivkin, argued this position forcefully:

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<sup>34</sup> See "European Governance," white paper, Commission of the European Communities, Brussels, July 25, 2001, an earlier version of which is described by Lee A. Casey and David B. Rivkin, Jr. in "Europe in the Balance: The Alarming Undemocratic Drift of the European Union," *Policy Review*, June/July 2001, pp. 41-53.

From the perspective of U.S. philosophical and constitutional traditions, the key question in determining whether any particular model of government is a democracy is whether the governed choose their governors. . . . Unfortunately, the reemergence [in Europe] of a pre-Enlightenment pan-European ideology that denies the ultimate authority of the nation-state, as well as the transfer of policymaking authority from the governed and their elected representatives to a professional bureaucracy, as is evident in the EU's leading institutions, suggests a dramatic divergence from the basic principle of popular sovereignty once shared both by Europe's democracies and the United States.

In the world of practical international politics, in the period immediately prior to the events of September 11, the EU clearly stood in opposition to the United States on some of the most important strategic global issues, including the ICC, the Comprehensive Test Ban Treaty, the Land Mine Treaty, the Kyoto Global Warming Treaty, and policy towards missile defense, Iran, Iraq, Israel, China, Cuba, North Korea, and the death penalty. On most of these issues, transnational progressives in the United States—including many practicing politicians—supported the EU position and attempted to leverage this transnational influence in the domestic debate. At the same, the position of the Bush administration on many of these issues has support from elements in Europe, certainly from members of the British political class and public, and undoubtedly from some segments of the Continental European populace as well (on the death penalty, for example).

Even since the September 11 attacks, many Europeans have continued to snipe at American policies and place themselves in opposition to American interests in the war on terrorism. Within a month of September 11, Spanish judge Baltasar Garzon called the planned military tribunals “simply illegal.”<sup>35</sup> In December 2001 the European Parliament condemned the U.S. Patriot Act (the bipartisan antiterrorist legislation that passed the U.S. Congress overwhelmingly) as “contrary to the principles” of human rights because the legislation “discriminates” against noncitizens.<sup>36</sup> Time and again, leading European politicians have made a point of insisting that they oppose extraditing terrorist suspects to the United States if those terrorists would be subjected to the death penalty.

Interestingly, both conservative realists and neoconservative pro-democracy advocates have argued that some EU, UN, and NGO thinking threatens to limit both American democracy at home and American power overseas. As Jeanne Kirkpatrick puts it, “foreign governments and their leaders, and more than a few activists here at home, seek to constrain and control American power by means of elaborate multilateral processes, global arrangements, and UN treaties that limit both our capacity to govern ourselves and act abroad.”<sup>37</sup>

## Conclusion

Scholars, publicists, and many others in the Western world—and especially in the United States, original home of constitutional democracy—have for the past several decades been arguing furiously over the most fundamental political ideas. Talk of a “culture war,” however, is somewhat misleading, because the arguments over transnational vs. national citizenship, multiculturalism vs. assimilation, and global governance vs. national sovereignty are not simply cultural, but ideological and philosophical, in that they pose such Aristotelian questions as “What kind of government is best?” and “What is citizenship?”

In America, there is an elemental argument about whether to preserve, improve, and transmit the American regime to future generations or to transform it into a new and different

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<sup>35</sup> James Taranto, “No Justice, No Peace: Why It’s Fatuous to regard Sept. 11 as a ‘crime,’” *OpinionJournal*, Oct. 8, 2001.

<sup>36</sup> “Welcome to Europe, Mr. Ashcroft,” *OpinionJournal*, Dec. 14, 2001.

<sup>37</sup> In “American Power—for what? A symposium,” *Commentary*, Jan. 2000.

type of polity. In the terms of contemporary political science we are arguing about “regime maintenance” vs. “regime transformation.”

In the final analysis, the challenge from transnational progressivism to traditional American concepts of citizenship, patriotism, assimilation, and at the most basic level, to the meaning of democracy itself, is fundamental. It is a challenge to American liberal democracy. If our system is based not on individual rights, but on group consciousness; not on equality of citizenship, but on group preferences for non-citizens (including illegal immigrants) and for certain categories of citizens; not on majority rule within constitutional limits, but on power-sharing by different ethnic, racial, gender, and linguistic groups; not on constitutional law, but on transnational law; not on immigrants becoming Americans, but on migrants linked between transnational communities; then the regime will cease to be “constitutional,” “liberal,” “democratic,” and “American,” in the understood sense of those terms, but will become in reality a new hybrid system that is “post-constitutional,” “post-liberal,” “post-democratic,” and “post-American.”

This intracivilizational Western conflict between liberal democracy and transnational progressivism began in the mid to late twentieth century; it accelerated after the Cold War and should continue well into the twenty-first century. Indeed, from the fall of the Berlin Wall in November 1989 until the attacks on the heart of the American republic on September 11, 2001, the transnational progressives were on the offensive.

Since September 11, however, the forces supporting the liberal-democratic nation state have rallied. Clearly, in the post-Sept. 11 milieu there is a window of opportunity for those who favor a reaffirmation of the traditional norms of liberal-democratic patriotism. The political will to seize this opportunity is unclear. Key areas to watch include official government policy statements for the use of force and the conduct of war; the use and non-use of international law; assimilation-immigration policy; border control; civic education in the public schools; and the state of the patriotic narrative in popular culture.

#### Fourth Dimension?

I suggest that we add a fourth dimension to a conceptual framework of international politics. Three dimensions are currently recognizable. First, there is traditional *realpolitik*, the competition and conflict among nation-states (and supranational states such as the EU). Second is the competition of civilizations conceptualized by Samuel Huntington.<sup>38</sup> Third, there is the conflict between the democratic world and the undemocratic world. I am suggesting a fourth dimension, the conflict within the democratic zone (and particularly within the West) between the forces of liberal democracy and the forces of transnational progressivism, between democrats and post-democrats.

At one level, the fourth dimension amounts to a struggle between the American/Anglo-American and the continental European models of governance-of what Western civilization ought to be. The latter travels the road to a form of bureaucratic collectivism, the former emphasizes the sometimes conflicting values of civic republicanism and the liberal values of openness and individuality within a market-driven milieu. As John O’Sullivan and others have pointed out, there are Europeans who support an entrepreneurial, liberal, Anglo-American style regime, and there are many Americans (particularly among elites) who favor a more collectivist continental European approach.<sup>39</sup>

The conflicts and tensions within each of these four dimensions of international politics are unfolding simultaneously and affected by each other, and so they all belong in a

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<sup>38</sup> Samuel Huntington, *The Clash of Civilization and the Remaking of World Order* (Touchstone 1998).

<sup>39</sup> *Chicago Journal of International Law*, Fall 2000 issue on “AEI Conference: Trends in Global Governance.”

comprehensive understanding of the world of the twenty-first century. In hindsight, Fukuyama may have been wrong to suggest that liberal democracy is inevitably the final form of political governance, the evolutionary endpoint of political philosophy, because it has become unclear that liberal democracy can withstand its present internal challenges. Despite military and ideological triumphs over national socialism and communism, powerful antidemocratic forces that were in a sense Western ideological heresies, Western liberal democracy will continue to face an ideological-metaphysical challenge from powerful post-liberal democratic forces, whose origins are Western, but, which could, in James Kurth's word, be described as "post-Western."