

# Global Constitutionalism and World Order

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## LOOKING BACK

This collaborative volume seeks a retrospect/prospect appraisal of the changing relationship between global constitutionalism and an emerging world order in the post-Cold-War era. Throughout this collective inquiry it seems useful to recall Marx's famous observation about history-making, that we do not—and cannot—make our own history just as we please but only “under circumstances directly encountered, given, and transmitted from the past.”<sup>1</sup>

We begin with reflections on Saul H. Mendlovitz, who, as the founder and director of the World Order Models Project (WOMP) over its entire life history of more than twenty-five years, has done much to shape the course of this world order journey out of the past. Indeed, without his inspiring and prodding leadership there would have been no WOMP in the first place nor would it have survived the turbulence of world politics and the diffuseness of our professional lives. The present volume was conceived and inspired by our desire to pay tribute to his seminal and lasting contributions in the development of world order studies as both a transnational academic enterprise and a critical social movement.

Contrary to many outside critics, the Models Project has never identified itself with the advocacy of world government or world federalism. At least until recently, most WOMP participants and writing have been skeptical, if not openly hostile, to the idea of global consti-

tutionalism. It has concentrated instead on evolving a transnational framework of world order values, thinking, and action through the broadest possible participation of scholars and activists from the major cultures and ideologies of the world.<sup>2</sup>

And yet, more than anyone in his generation, Mendlovitz, through his intensity and perseverance, has kept alive the notion that a global constitutional order as an essential axiom is theoretically necessary and historically inevitable. His call has sometimes seemed a prophetic voice in the wilderness, constantly speaking out for a constitutional approach to world order, imploring us to think about the unattainable, and for some of us, the undesirable. "As I see it," he wrote in 1975 about the prospect of world government, "the questions we should be addressing to ourselves are: How it will come into being—by cataclysm, drift, more or less rational design—and whether it will be totalitarian, benignly elitist, or participatory (the probabilities being in that order)."<sup>3</sup>

Mendlovitz's particular vision of global constitutional government has been a mixture of historical, normative, and functional considerations, mutually complementary and reinforcing, but of descending relative significance. He has long been convinced that the drift of historical tendencies is toward an integrative order that overcomes the neo-Darwinian circumstances of the state system.

The Models Project, or at least Mendlovitz and his early Western collaborators, can be said to be rooted in the cosmopolitan tradition of world order thinking that goes back to the Stoics, emerging in the modern world by stages through Hugo Grotius, Immanuel Kant, and Woodrow Wilson. One discerning critic situates the WOMP approach in the Kantian tradition of optimism about human prospects, but altered to fit contemporary circumstances: (1) the greater sophistication of and emphasis upon macro-level research into alternative world order designs and methodologies; (2) the detailed explication of transition strategies; (3) the focus on the global interrelatedness of the present human problems—the global *problematique*; and (4) the broadening of world order values to be realized—not just the traditional value of peace but other values concerned with the economic, social, ecological, and political dimensions of a better world.<sup>4</sup>

Mendlovitz is not Pollyannish about the human and political consequences of this prospect of a new global constitutional order. On the contrary, his best guess over the years has been that political elites of the present system are working away on their cold-hearted blueprints for centralized governance, while those who insist that justice become an indispensable element of such an integrated global governance are either off collecting moonbeams or tinkering with adjustments that

add up to little more than nothing. The rest of those who ponder the future of world politics are mainly captive of some variant of "realism," which we consider both a concealed and distasteful utopia, unrealistically presupposing and unnecessarily affirming the durability of the system of states. Mendlovitz foresees political integration as the human future, but not in a form that is preprogrammed in its most critical properties. To shape such a common destiny beneficially depends on political engagement of a serious sort, especially the moral imperative to intervene militantly on behalf of the poor, the oppressed, the marginal. One characteristic of his version of global constitutionalism is an unwavering insistence that compassion is coequal and so closely linked with stability as to be integral with it.

A second aspect is normative, assessing world politics according to value, specifically those selected and relied upon by WOMP: peace, economic well-being, social justice and human rights, environmental quality, and participatory politics. The primary reason for scholarly involvement is to increase the possibility that the global drift toward integration will result in a more peaceful, sustainable, and just world. At the same time Mendlovitz has a practical side, believing that the desired shift in world order thinking can only occur if all sectors of international society perceive it to be beneficial in terms of their own security, while simultaneously enhancing common security. A variety of social forces throughout the world need to be mobilized if world order transition politics is to challenge effectively the less beneficent rival visions of an integrated world.

Mendlovitz's orientation is predominantly historical and normative, but it also remains sensitive to the functional realities of the present. By the latter is meant the usual litany of practical concerns: the global problems of complex interdependence, of the global commons, and of international social and economic life. Such concerns, taken on their own, are likely to produce over time an integrative type of world order, but in the form of a dystopia, that is, lacking a nucleus of world order values to serve as a normative lodestar. The dominant impulse of those pursuing system-maintaining world order is managerial, reactive, technocratic, and above all market-oriented. With only a nominal, ritualistic commitment to participatory democracy, they seek to handle from above, in the most efficient possible manner, the growing menace of political entropy and ecological decay. Their main motivation is to ensure species survival, while interfering as little as they can with overall economic growth and the dynamics of the market.

This interpretation of our situational reality has sustained Mendlovitz's normative commitment to a global constitutional approach to

world order. If the emergent world order is to be integrative and benevolent, then it is essential to stimulate concerned scholars and social activists to form a broad, global united front, that develops plausible and, above all, preferable alternatives to the mindless implementation of a technocratic ethos. In this regard, Mendlovitz, early in his professional development, was attracted by the pioneering work of those who had earlier set forth various plausible scenarios of a new world order in traditional constitutional terms: the Chicago Committee to Frame a World Constitution<sup>5</sup> and, especially the Clark-Sohn collaboration, culminating in the three editions of *World Peace Through World Law*.<sup>6</sup> He continues to be drawn even now to sophisticated advocacy of constitutional thinking, provided it incorporates a democratizing perspective on the politics of persuasion, as well as to the operations of global governance itself.<sup>7</sup>

The tenacity with which these less-than-fashionable constitutional perspectives have been held by Mendlovitz over the years is itself impressive. Most of his WOMP colleagues have been reluctant to accept this view that the world will inevitably be integrated, nor have they found it either intellectually engaging or useful to work out the specifics of a constitutional arrangement on a global scale. On the contrary, many world orderists who have participated in the Models Project have been convinced that these institutional preoccupations misleadingly taint their intellectual and political credentials, stamping them as woolly-headed, starry-eyed utopians, or as globaloney savants whose intelligence is being siphoned off in the service of an ill-conceived project of legal engineering that, if it were ever to succeed, would produce one more "brave new world." The WOMP orientation, in contrast to Mendlovitz's particular world order emphasis, was in practice actually quite antithetical to the traditional idea of a global constitutional order sustained by a central government.<sup>8</sup> Some participants, especially from the Third World, even worried that WOMP was an unwitting partner of US imperial geopolitics, packaging its design for world governance in humanistic wrappers, thereby obscuring its true character—made in and on behalf of the United States.<sup>9</sup> In general, at odds with Mendlovitz's positive reconstructionist conceptions, most world orderists felt more drawn to critical and diagnostic perspectives (what's wrong) and, later on, to a bottom-up world order populism with a special focus on salient and attainable next steps associated with the primary impetus toward justice (e.g., anti-apartheid; Tibetan and Palestinian self-determination, human rights and democracy in Burma and South Korea).

In fact, the Mendlovitz orientation toward these matters has evolved and deepened over the last three decades of involvement in

and dedication to world order thinking. In particular, he has incorporated and come to endorse strongly the democratizing and process-oriented emphases of the WOMP mainstream. He has encouraged diverse strands of thought from all parts of the world, provided only that they generally accept world order values as common ground and starting-point. In this regard, he has exhibited an extraordinary capacity to enlarge upon or even put aside his own preferred scheme for realizing world order values while doing a brilliant job of locating and soliciting the involvement of some of the most gifted and socially engaged scholars throughout the world.

Such scholars were not easy to find and, when found, were engaged in a wide range of pursuits that were often quite removed from any explicit dedication to world order values. Mendlovitz managed to convince them that it was worth joining WOMP and becoming passengers in the same particular planetary lifeboat where common concerns could be reconciled despite sharply varying orientations. Among the most prominent world order stalwarts, charmed and motivated by the leadership of Mendlovitz, were Yoshikazu Sakamoto, Rajni Kothari, Ali Mazrui, and Johan Galtung. Each, a strong individual with his own intellectual and normative agenda, but sharing, in varying styles, a position at the interface between liberalism and democratic socialism, and a temperament resistant to close institutional affiliation and ideological labels. They had developed vivid political identities through the force of their own arguments and by an immersion in political controversy and conflict within their own countries and regions. They never abandoned their distinctiveness, but were persuaded to add a world order dimension to their scholarly and political engagements. And it is out of the ferment generated by their interaction with one another that the development of world order thinking has evolved.

Once within the framework of world order thinking, strong tensions emerged over the character and purpose of the WOMP enterprise. For many recruits, world order thinking was valuable to the extent that it fostered a non-Marxist, non-liberal critique of imperialism, especially U.S. imperialism, as it functioned in the real world. But even in this role, some otherwise congenial scholars were offended, considering the world order framework as too idealistic in its tone and viewing U.S. funding and administration of the project as imposing an unavoidable Western and Northern slant on all the work undertaken. Mendlovitz, without abandoning his own quite different conception of world order (that is, as generating a collaborative, integrated, organizational alternative for world society to current arrangements based on state sovereignty), was able to persuade these divergent world order

“radicals” to remain generally within the confines of the intellectual undertaking.

Of course, in this growth, the undertaking never possessed a single vision or focus. It was sometimes perceived in the West as a type of neo-Wilsonian revival of idealistic thinking that was marginalized during the Cold War by the ascendancy of several strains of “realist” and “neo-realist” international relations theory. These strains conceived of international society as a kind of anarchy and regarded “balance of power” and/or “regime” approaches to world order as the only valuable and viable ones. WOMP work has also been criticized by more conservative free-market advocates as a disguised variant of socialism notable for its hostility to the activities of a new breed of global nonstate actors (multinational corporations and international banks), and allegedly jeopardized its proclaimed long-range goals by taking divisive positions on controversial issues of the day. Sometimes this criticism was directed at what was alleged to be its Third World orientation, a perception associated with claims that WOMP launched unfair and strident attacks upon Western reliance on technology, with its related theory of “progress.”

Those of us associated with Saul Mendlovitz—and they include every participant in the present volume—and with the unfolding character of world order thinking, were ourselves caught up with these tensions and diversities. The process has been, overall, a creative one, allowing mutual learning and over time enabling a more coherent understanding of world order thinking to emerge. Mendlovitz has presided over this process, generating through his efforts most of the resources needed for the work to go forward and arranging for its results to be disseminated by a stream of publications.<sup>10</sup>

## LOOKING FORWARD

The development of the Models Project under the leadership of Saul Mendlovitz and the rapidly changing global situation make it timely to reconsider the relevance of global constitutionalism to the basic world order project of enhancing the prospects for a better world. Just as the world order thinking of the 1950s and 1960s committed the fallacy of premature optimism in relation to global constitutionalism, the world order thinking of the 1970s and 1980s can also be said to have committed the opposite fallacy of premature pessimism about the normative potential of a global constitutional order. At no time since the end of World War II has the notion of a new global constitutional order seemed more urgent, promising, and open-ended than in the aftermath of the Cold War, undoubtedly a period of fluidity and



transition when it comes to world order arrangements. The generally triumphant record of popular calls for democratization within and across state boundaries in the past several years—in South Korea, the Philippines, China (suppressed), Taiwan, Thailand, Eastern Europe, the Soviet Union, Nepal, Burma (suppressed), Haiti (deposed), Mongolia, Chile, Zambia, South Africa and elsewhere—is indeed one of the most positive and encouraging social forces of our time, creating the foundations at a societal level of democratic global constitutionalism. At the very least, this new global setting is the point of departure for our collective inquiry into the relevance of global constitutionalism to the wider undertaking of achieving a just and peaceful world.

By “global constitutionalism” we mean something broader and wider than the nineteenth-century tendency to advocate a war/peace system as a political blueprint, and something less legalistic than a positivist or Austinian (only rules backed by effective sanctions qualify as “law”) extension of effective law enforcement to a global scale. Global constitutionalism is here defined broadly and synergistically as a set of transnational norms, rules, procedures, and institutions designed to guide a transformative politics dedicated to the realization of world order values both within and between three systems of intersecting politics in an interdependent world. The first system, the states system, is comprised of territorial state actors and their supporting, and increasingly transnationalized, infrastructure of corporations, banks, military, and media. The second system consists of international governmental institutions, including the UN system. The third system is represented by nonstate groups and individuals acting through nongovernmental organizations (NGOs), citizen associations of various sorts, and critical social movements. Global constitutionalism is also envisioned as a process dedicated to deepening and widening democracy both within and across state boundaries, as well as insinuating democratic practices into all levels of political activity, including that associated with international institutions. The successful realization of democratic global constitutionalism, in contradistinction to traditional world federalism, does not necessarily entail any further centralization of world authority, and may indeed work in the opposite direction by affirming tendencies toward the emergence of a global civil society from below.

## **BRIDGING THE PATHWAYS TO A NEW WORLD ORDER**

Of course, George Bush, during the crisis that preceded the Gulf War in early 1991, briefly inserted the imagery of a “new world order” into

the political dialogue of this period. It seems evident that Bush meant by the phrase to imply merely a more cooperative approach to global geopolitics in the aftermath of the Cold War, not any more comprehensive restructuring of international relations in a system-transforming approach to a truly new world order. Leaving aside the question as to whether this use of "new world order" was mainly a tactical device to rally support for an anti-Iraq coalition under UN auspices, our sense of the phrase is quite different, directed primarily to the possibilities of comprehensive restructuring in accord with preferred world order values that are incorporated, by now, in the evolving international law of human and environmental rights, as well as espoused by the Models Project. This latter sense informs our encouragement of perspectives based on global constitutionalism.

Although WOMP participants have not been oblivious to the normative potential of global constitutionalism, they have rarely addressed it explicitly. In spite of diverse disciplinary backgrounds and varying methodological and conceptual inclinations, the contributors to this volume are persuaded that global constitutionalism is an idea whose time has come. It is also an idea that is starting to capture the breadth of the historical, cultural, and normative perspective now required to respond effectively and humanely to the challenge of system transition from the Cold War to a post-Cold-War era. Beyond that, global constitutionalism is proposed as a concept that links the possibilities of a transformative politics embedded within and across the three intersecting systems of political action.

Without being too rigidly bound by the requirements of any particular perspective and methodology, the authors of this volume address the following questions: What is the meaning of global constitutionalism in a world mired in countervailing trends of global integration and ethnonationalist fragmentation? Given this contest between centralizing and decentralizing pressures, what kinds of alternative global structures of power and authority are desirable and feasible? What is the relationship between state sovereignty and global constitutionalism under conditions of profound global, regional, transnational, and substate transformations? To what extent and in what specific ways can the antinomy between "being" and "becoming"<sup>11</sup>—between having and enjoying—be resolved in a new global constitutional order? As the history of civil rights in the United States has shown, it is one thing to have civil rights in the Constitution and quite another actually to enjoy them in everyday social and political life; constitutionalism at the societal level includes practices as well as texts. What role, then, can global constitutionalism play in the shaping and sharing of a more peaceful, just, and sustainable world?



What are the prospects of global constitutional processes for generating the texts and practices to realize desirable forms of global polity and governance?

In the essays that comprise this volume, contributors address these and related questions from various disciplinary perspectives, as well as from the vantage points of persisting governance by the states system, by augmenting international modes of governance, and by the cumulative effects of initiatives from below associated with citizens associations and transnational social forces.

## NOTES

1. Karl Marx, *The 18th Brumaire of Louis Napoleon*, in Lewis Feuer, ed., *Basic Writings on Politics and Philosophy: Karl Marx and Friedrich Engels* (New York: Doubleday, 1959), p. 320.

2. See Richard A. Falk and Samuel S. Kim, *An Approach to World Order Studies and the World System* (New York: Institute for World Order, 1982).

3. Saul H. Mendlovitz, "Introduction," in Saul H. Mendlovitz, ed., *On the Creation of a Just World Order* (New York: Free Press, 1975), p. xvi.

4. See Ian Clark, *Reform and Resistance in the International Order* (New York: Cambridge University Press, 1980), pp. 35–39. For another line of macrohistorical inquiry into world order reform and how WOMP fits into various categories of world order thinking, see Louis René Beres, *People, States, and World Order* (Itasca, IL: Peacock, 1981).

5. Saul H. Mendlovitz, ed., *Legal and Political Problems of World Order* (New York: Fund for Education Concerning World Peace Through World Law, 1962), pp. 62–73.

6. Grenville Clark and Louis Sohn, *World Peace Through World Law* (Cambridge, MA: Harvard University Press, 1958; 2nd rev. ed., 1960; 3rd enlarged ed., 1966).

7. The ideas of Georgi Shakhnazarov and Silviu Brucan on "world governability" and "world authority," respectively, are attractive to Mendlovitz, but only if read in a setting informed by the embrace of democratizing approaches to change at the global level. For examples of Shakhnazarov and Brucan's thought, see Richard A. Falk, Samuel S. Kim, and Saul H. Mendlovitz, eds., *The United Nations and a Just World Order* (Boulder, CO: Westview Press, 1991), pp. 166–177, 546–549.

8. See, Mendlovitz's introductions to all individual volumes of the *Preferred Worlds for the 1990s* series. For a fuller bibliography on the corpus of world order publications as of the early 1980s, see Falk and Kim. For more recent works, see Saul H. Mendlovitz and R. B. J. Walker, eds., *Towards a Just World Peace: Perspectives from Social Movements* (London: Butterworths, 1987) and R. B. J. Walker and Saul H. Mendlovitz, eds., *Contending Sovereignties: Redefining Political Community* (Boulder, CO: Lynne Rienner Publishers, 1990).

9. This line of criticism is especially present in the work of Rajni Kothari, e.g., in his *Towards a Just World* (New York: Institute for World Order, 1980).

10. See note 8.

11. On the philosophical and practical significance of the difference between "being" and "becoming," see Chandler Morse, "Being Versus Becoming Modern: An Essay on Institutional Change and Economic Development," in Chandler Morse, et al., *Modernization by Design* (Ithaca, NY: Cornell University Press, 1969), pp. 238–382.