FRATERNAL OATH AND GLOBAL GOVERNANCE: How a medieval practice has survived into the twenty-first century

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ABSTRACT:

When we think of global governance and global law in the twenty-first century, we generally think in abstract terms of institutions, concepts, and ideals. But this is only one possible way of understanding a transcendent legal order being constructed that will include all persons and all regions of the earth. Another way to understand it is to think of global governance in human terms, in the way all forms of rule were once viewed: the authority of a few men over the thoughts and actions of many men.

In fact, both traditions of Western law on which the global regimen is being constructed—Civilian and Anglophone—began during the medieval period. It is not difficult to trace a direct line of descent from that early time, beginning with the Cluniac Order of the eleventh century, through the rise of the juridic nations and Inns of Court in the thirteenth century, to Westphalia and the Glorious Revolution in the seventeenth century. Each of these steps in the development of modern law and government was based on combinations of men bound together by fraternal oath.

Historically, the two Western legal traditions have worked by different methods: one based on principle and reason, the other on consensus and faith. Yet, the binding oath was essential to both traditions, especially as the fraternal order displaced familial descent and hereditary entitlement as the basis of the modern polity. In the present day, this can be seen most obviously, for example, in the oath of public office and the widespread influence of learned professions. Even as the two Western legal traditions converge to form a single transcendent fellowship of global authority, this historic practice remains integral to the new structure.

This paper will examine the origin of such binding obligations, their role in the Western tradition of governance, as well as some potential challenges they might encounter in a global rule of law.

KEY WORDS: Fraternity, law, governance, Anglophone, Civilian
FRATERNAL OATH AND GLOBAL GOVERNANCE: How a medieval practice has survived into the twenty-first century rule of law

1. FRATERNAL GOVERNANCE

A. There are many ways to understand the project of globalization. It is often portrayed in terms of technology and communication, relations of finance and trade, or as a matter of demographics and disparity. These are, of course, important elements. But, fundamentally, no aspect of this great work is more important than the legal basis upon which a new global order is being constructed. Viewed from that perspective, it also entails the important question of whether, or in what way, the two historic traditions of Western law, Anglophone and Civilian, will provide its authoritative basis.

When considering these two traditions of law, however, there are also questions of whether they might converge to undertake the task, whether they might assimilate to one another, have separate and parallel roles, or whether one tradition might become completely dominant. Proponents of convergence look to end centuries of unfriendly rivalry between them, hoping to combine the pragmatic adaptability of the English with the principled predictability of the Civil law. Others are pessimistic and assert that the two are inherently contradictory in nature and that either one or the other must come to predominate.

B. In such discussions, the question is often raised in an impersonal realm of abstractions and ideals involving institutions and procedures, states, and corporations. The universal Civilian tradition, long based on principle and reason, and tied to the mechanism of the territorial nation-state, is thought to be weakened by technical advances that make old geographic and linguistic barriers irrelevant. By contrast, a transcendent Anglophone tradition based on consensus and faith, pragmatic in its approach and elevated above the state, seems naturally adapted to the mechanism of the supra-territorial corporation and seems to be thriving, its influence expanding around the twenty-first century world. (Pogge 2008)

Despite the importance of these matters, and despite the insight put forth in these discussions, however, there are other ways of thinking about the global project and the legal method by which an all-inclusive order will be constructed. That is, to view this topic, not only as one of technology, institutions, and concepts, but also as a matter of human action and volition. Actually, most people in most parts of the world in most of human history, and much of the human present—including, for example, in the Islamic and Asian traditions—have understood these questions in personal terms. They have viewed the processes of rule as essentially comprising the power and authority of a man or an established small group of men presiding over the affairs of a multitude of men.
C. In fact, for much of the development of Western law, both Anglophone and Civilian, those traditions have been established in groups of men bound together in common purpose. Whether at Bologna in the twelfth century or in London during the same period, the university in one city and the guilds of trade in the other, men were joined together to provide the human basis upon which both laws were founded. Over generations and centuries, both of those traditions, whether engaging the work as part of a Christian order of worldly affairs, or simply as a monopoly of commercial trade in service to the king, the method in both forms of legal rule was based in a fellowship whose members were joined by fraternal oath, and that approached its work as a collective of members with a single unified purpose. (Bellomo 1991)

Even though, in the twenty-first century, a pronounced American influence has come to prevail in the modernized version of these two strands of legal authority, it is still useful to understand their simultaneous origins and their parallel development into the global age as examples of medievalism and fraternal rule, based on personal oath and brotherly discipline. Viewed in such a way, it is not surprising that the debate concerning whether the two traditions will converge, or which of the two will predominate, along with continuing debates over the relative importance of the nation-state and the corporation, still takes place almost wholly within the cloisters of various professional fellowships that carry on this tradition as they work to construct a global rule of law. (Slaughter 2004)

2. MEDIEVAL ORIGINS

A. One way to examine these fraternal origins, their early sources, and their survival into the modern age, is to see them in their nascent forms and to contrast them with what they were not. For example, above and below the relatively small number of university doctors and law guild barristers who, by learning and affiliation, comprised the legal tier of medieval life, was the much larger number of persons who arrived at their rank by birth. Above were the nobility, the men who presided by hereditary entitlement and were united by intermarriage and the familial obligations of martial service. Below were the commoners and peasants who comprised the great multitude of persons of inferior status, the laboring subjects who lived in an agrarian world of ancestral family, bound together by localized custom and lore. (Le Goff 2005)

The relevant history of the fraternal orders that were united by professed oath and that came to comprise a distinct middle stratum during the medieval period could be said to have begun with the founding of the great liturgical fellowship at Cluny, France in 910. It was the first brotherhood that achieved transcendent influence in both religious and secular affairs, setting an example for the later Templar, Dominican, Jesuit, and Masonic orders. Very little survives of the once powerful Cluniac brotherhood, but its birth marked a turning point in conditions of the Latin West. The dramatic upheaval attending its rise is most often portrayed in the confrontation when a chastened Emperor Henry IV finally submitted to an emboldened Pope Gregory VII at Canossa, Italy in 1076. (Mullins 2006)

B. From the seismic consequences of that momentous encounter, a Great Reformation of law and religion—both the adjudicative and the educative aspects of rule--took place across all
of Latin Christendom. Among its repercussions, the University at Bologna would be founded in 1088. There, scholars and doctors of the law were united in a fellowship of learned authority, the universitas. At the same time, their students were organized according to region and language, each group boarding in its own natio, or nation. Then, as the young advocates, trained in the jus commune, returned to their homelands they maintained their national unity and adjusted the tenets of the university law to match local dialect and custom. (Radding 1998)

During the same period, following the Norman Conquest of England in 1066, King William I organized three Royal Courts of Justice in London. The three special courts eventually came under the authority of high magistrates trained at Bologna. They, in turn, were assisted in their work by a retinue of scribes, messengers, and wardens who performed the mundane tasks of litigation. In the pattern of the time these lesser men organized themselves into guilds of trade, taking residence at the Inns of Court in London. In 1166, in a dispute over jurisdiction, King Henry II expelled the presiding judges and conferred a monopoly of legal trade on members of the law guilds. At first the work of those courts was narrowly limited to disputes among the recently elevated nobility over questions of land title and possession. Land was important to the Norman Kings because it was the only real form of capital and the main source of revenue for the Royal Treasury. Over centuries the law guildsmen grew in wealth, accruing to themselves a great authority, independent even of the Monarchy itself. (Coquillette 1999)

C. Actually all of Christendom, including England, fell under the auspices of the scholarly law, the jus commune, as that law came to be taught at the various universities—including Oxford and Cambridge—patterned on the model of Bologna. In fact, the jus commune amounted to a kind of constitutional law concerned with the high politics of Church and Empire descending down to bishops and kings. Local affairs among the great multitude of commoners generally took place according to local custom in manorial or village courts, sometimes comprised, for example, of twelve men good and true. By the fourteenth century, presiding over all, the Roman Church had become a fraternal brotherhood par excellence, where both the educative and the adjudicative instruments of rule came together. (Fortana 1995)

Peoples of that era assumed the two elements, secular and religious, were inseparably connected, just as they assumed that place of rank would be determined by birth. The fraternal orders represented, for example, by the Cluniacs, the College of Cardinals, the Knights Templar, and various monastic orders could claim to be divinely mandated exceptions to the ordre naturel of familial descent. Even so, they were balanced against the landed stability, martial force, and inherited rank of both the warrior nobility and the laboring peasants. It was the role of the nobility to protect from invasion and maintain order between the various kingdoms and peoples of Christendom. At the same time it was the work of farmers and craftsmen to provide the necessities of life. The professed fellowships of the medieval age could not have fulfilled their united purposes without the material support of those above and below, who were bound by the indissoluble ties of blood relationship. (Le Goff 1994)

3. TURNING POINT
A. However, along with the nobility, the ecclesia, and the peasantry, another faction in Latin Christendom had also begun to flourish in the eleventh and twelfth centuries. That was a network of urban settlements--towns, burgs, or communes--established as centers of long distance finance and trade. Differing from the local village or the ecclesiastical city, the town had come into being primarily as an appendage to the Italian centers of opulence and wealth, most notably, the city of Venice. Compared to the eastern Mediterranean Latin Europe was looked upon as a rustic backwater of poverty and ignorance, sustained by a rudimentary agriculture. Venice, a commercial outpost of the imperial metropolis, Constantinople, was the exception. (Lesaffer 2010)

From the emerging centers of Italian wealth, first Venice, then Florence and Genoa, a network of towns grew independently of both Church and Empire. As lines of trade extended northward, invitations from local lords or princes would offer the inducement of permanent settlement and monopolies of trade. The presence of a town meant a flow of wealth and taxable income to the local realm. Over time, the financial power of the merchants and bankers grew. They came to be granted special charters, constituting them as highly autonomous estates with a rank of privilege just below the nobility. From time to time members of such an estate would meet to consult, or parley, with the king, the high ecclesia, and the nobility—the beginning of all parliaments. (Falco 1963)

B. The operation of the town rested on a unity of interests, a mingling of wealth, and commercial ties among the town fathers: the elders, aldermen, or burgers. Municipal affairs were presided over by the major, mayor, or meister who acted on behalf of the town council. But the accumulated wealth of the townsmen was dependent directly on their close connection with trading partners across the Continent; this made them inherently cosmopolitan in their outlook. In effect, such a town operated as a guild of trade, a legally independent island, governing its own population in an otherwise broad ecclesiastical, manorial, and agricultural landscape. Its business practices were often in conflict with the nobility and at odds with the teachings of the church, especially on matters of usury and price.

Alongside this growing commercial power was a parallel increase in the influence of advocates and jurists who had come to be essential to the operation of Church and Empire, kingdom and diocese. In the fifteenth century the interests of the legal nations and the town burgers, or bourgeoisie, converged. That discovery of mutual interest coincided with the onset of technical and scientific advance occurring across Christendom. The result was a dramatic change beginning around 1500—it brought the first great technological turning point in two thousand years. But also, it eventually made possible the establishment of a new way of life based upon an advancing technical foundation.

C. What came to be called the Three Great Inventions would transform Christendom: The maritime compass brought world exploration with an influx of wealth to commercial centers. Gunpowder weapons brought a new kind of total war as well a decline of the old knightly class. Finally, the printing press and the ability to publish books brought widespread literacy and divergences of belief. The advent of moveable type also brought law codes, Bibles, and
publications in the many national vernaculars. Most of all, the new innovations provided the means for dramatic change and a joining of interests between the townsmen and the legal caste. The overthrow of the old order of Ecclesia and Empire seemed almost inevitable; a century of civil and religious conflict ensued. (Misa 2011)

The once unified Latin domain was divided into independent and sovereign kingdoms, republics, and commonwealths. Ultimately, these came to be presided over by the newly ascendant combination of wealth, law, and religion until the tumult and carnage finally ended on the Continent with the Peace of Westphalia in 1648. A once united empire and church was divided into territorial polities, the turning point of Civil law development, and birth of the nation-state. In England, the upheaval resolved itself somewhat differently during the Glorious Revolution of 1688. The Dutch stadtholder, William III, followed by an armada of merchants and bankers, arrived in London, where he ascended the throne. The result was a famously unwritten constitution presided over by newly enriched hereditary and gentry classes. In fact, on both sides of the English Channel there was a new order of existence in which the oath of office and the pledge of loyalty, not hereditary descent, provided the basic fulcrum of rule. (Yates 1985) (Cannadine 2000)

4. ENLIGHTENED WORLD

A. The eighteenth century Age of Reason marked a culmination and consolidation of the changes taking place. The Holy Roman Empire still existed, but only as a weakened immanence, bereft of power—a relic of ceremony and protocol. The old imperial edifice, with its hereditary ranks trained in the art of war—the nobility of the sword—was being displaced by a nobility of the judicial robe and of amassed monetary wealth. Long coveted emoluments, the trappings of noble entitlement, had now become the rewards of a high bourgeois. The formerly unchallenged jus commune had lost its judicial predominance to innumerable magistracies and jurisdictions. Although the Roman Church still loomed powerfully, it now operated only in regions where it was tolerated. The once Universal Church had forever lost its exclusive educative authority in the same way the university scholastics had lost their influence. A virtual cacophony of non-institutional, non-authorized learning had been made possible by the power of print. (Colley 2012)

Into the hierarchical void of the eighteenth century came a rising Gentry class with its fraternal connections. A Republic of Letters came into being: coffee houses, literary solons, and academies—what Habermas later called the public sphere. Their learning and discussion generally divided itself into two categories, represented by the Continental Rationalism of Descartes and the British Empiricism of Bacon—two modes of thought reflecting two legal traditions. The law of the Continent purported to be principled in nature and grounded in reason, while its Anglophone counterpart came to be based in consensus backed by faith. In a democratized atmosphere of learning, there also arose highly unconventional voices such as Rousseau and Thomas Paine. But ultimately, advantage fell to privileged classes that combined a Humanist confidence with a Calvinist sense of entitlement that men, guided by a
high sense of civic purpose, could bring equity and order to the affairs of a disorderly multitude. (Jacob 1991)(Habermas 2001)

B. It is important to remember that this was a time when neither the modern idea of the state, the corporation, nor the mechanics of a modern international order was well defined. For most men of this era, their practical experience in structures of government had been limited to royal service, office in town or burg, upholding the Protestant Covenant, Parliamentary debate, or perhaps affairs in a medieval-style honorary guild. Changes and advances in understanding took place by trial and error over time. In later and more fully delineated understandings, for example, state and corporation would be entities very different from one another. In the eighteenth century, however, their rudimentary differences were not so clear. Instead, underlying these nascent structures were groups of men joined together by common understanding and common aspiration. Taking the place of a dissolving old order was a stratum of interlocking fellowships, joined, as was said, by merit rather than birth. Eventually, these interlocking fellowships formed an international stratum that transcended the newly constituted republics, kingdoms, and commonwealths. (Lesaffer 2010)

But the changes occurred differently on the Continent when compared to England. On the Continent, for example, there was a general rejection of religion as the educative element of governance. Most of all, to avoid the divisiveness of sectarian dispute and a revival of Roman influence, the old *jus commune* was being replaced by an avowedly secularized law embedded in the explicitly framed state—which was becoming the favored structure of governance. By contrast, in England, the outward medieval forms of a highly centralized Norman Kinship were preserved, and the Common law was assimilated to a famously unwritten constitution, an inexplicit structure of governance, sustained by an amorphous religiosity. With that, after 1700, also came a shift in the center of world finance and trade from Amsterdam to London. In an era when the line between public and private was quite unsettled and malleable, *ad hoc* fellowships provided stability in support of the new governing and commercial forms. To give substance to their intentions these groups began to join themselves together—like guildsmen and professions of the medieval era—by ritual and oath. One result was the eventual rise of two great Masonic centers, the Grand Lodge of London and the Grand Orient Lodge of Paris. (Jacob 2006)

C. The exact origins of the Masonic movement will probably never be known with certainty. A fellowship bound by a strict oath of secrecy, it became a transcendent influence in national and international affairs of the eighteenth century. Historians mark its formal establishment at London in 1717. But even that event had grown out of developments in Scotland which, in turn, had been influenced by long-established legal, commercial, and fraternal ties to the Netherlands and France. Perhaps attracted by the opulence of the stone mason guildhalls now virtually emptied of their declining membership, the new brotherhood acquired its buildings and adopted elements of its craft ceremony. Yet, the built structures were an ideal setting for even more exotic and profound symbolisms. As Masonry developed, it incorporated survivals not only of the stone mason ritual, but also a Renaissance fascination with Ancient Egypt,
Hermeticism, and the *prisca theologia*—all of which gave the movement an aura of mysterious archaism. (Hadot 2006)(Bolgar 1976)

Although Masonry employed a rhetoric of equality and fraternity, it very soon came under the influence of the Nobility and Gentry, reflecting in its inner workings a hierarchy inherited from the medieval age. It purported to be a school of civility and probity, producing men of substance and reflection, who could preside over the affairs of a profane multitude. Although the topics of religion and politics were strictly banned within its cloisters, the Masons were, from the beginning, deeply concerned with sustaining the operation of government and legal institutions that provided the foundation of order. In England, this included supporting the influence of religion in public affairs. In the modern approach to legal rule, order would no longer be grounded in localized custom and belief. Nor would it be anchored in the ancestral family ties among the populace. Instead, order among persons would be legitimately founded in an overarching structure of governance, or rule. The men who comprised that structure held in their hands the power to take life, to impose order on persons and things, and to wage war. Each edifice of rule was held together by the strength of the oath, and guided by the two great lodges of London and Paris. At a time when the precise dimensions and functions of government were not clearly defined, the Nobility and Gentry of the Masonic brotherhood bridged the realms of public and private. It became a shadow influence that sustained order and continuity. (Bullock 1996)(Lambropoulos 1993)(Assman 1997)

5. GEOPOLITICS AND WAR

A. The beginning of the nineteenth century saw another wave of technological advance involving steam power and a new Iron Age. These marvels of invention, as well as other mechanical and chemical innovations, revolutionized all aspects of life. But the mechanizing of labor, destruction of rural life, and growing concentration of transient urban workers also gave rise to destabilizing movements domestically: labor brotherhoods, Chartists, Mormons, The League of Just Men, Jacobins, Sicilian Mafia, anarchists, working men associations, and various groups which patterned themselves on Masonry. These lesser fraternities—some extra-legal or even conspiratorial in nature—were often viewed as a threat to the newly constituted authority of the modern state. This proliferation of novel Masonic and other similar groups in the nineteenth century led to a loss of status, with public outcry and legal action taken against them. However, in many ways these movements were merely a symptom of a lack of adequate educational development in the legal culture of the recently established nations. (Moore 2011)

This deficit afflicting Western governments was greatly solved with the advent of the university and public education, patterned on the newly founded University of Berlin and the Prussian state system of schools. The adjudicative function of government, the authority to compel and punish, came to be augmented by an educative branch, the power of persuasion and inculcation. Not only did both the judicial and educational functions become correlates in the modern state, they also came to be professionalized. Especially, the late nineteenth century saw the beginning of formally separated academic disciplines, each with its own standard of entry and enforced ethos. They were more than mere guilds of trade, they were also arbiters of
authoritative learning. At the apex of these newly pledged fellowships were the learned professions of medicine and jurisprudence in each nation. In the Anglophone realm, this new form of academic professionalism began to take shape at the Benthamite University of London. (Willson 2002)

B. Equally important, the new inventions of steamship, railroad, and telegraph brought not only the power of conquest but also a capacity for direct rule over distant continents and peoples. The rise of the modern empire brought the advent of geopolitics, of rivalry and hostility between imperial powers extending around the world. This atmosphere of expanded competition among the Western powers also brought the possibility of war on a worldwide scale. In the absence of a Universal Church or Universal Empire, there was no recognized structure of arbitration presiding over the competing realms. As a check against international anarchy, little remained beyond the commercial ties of contract and treaty or the remnants of a Nobility with its old diplomatic and familial ties. Even a once highly visible Freemasonry had receded from the public role it played in the eighteenth century. (Bell 2007)(Fox 1997)

Moreover, out of these conditions arose the newly perfected vehicle of finance and trade, the supra-national corporation. In the Anglophone legal culture, these novel entities shared many properties with the state, but they also had certain specific advantages for trans-oceanic administration. First of all, they were not limited by territorial borders. They were also free from public oversight and the caprice of political event; existing as artificially created legal personalities, they could also exist in perpetuity. Most of all, unlike the conventional state, they were not concerned with the details of subsistence and order among the population. Instead, they were singularly focused on the purpose of amassing wealth. However, the catastrophic clash of the Great War in the early twentieth century disrupted even these economistic structures. It also brought the near demise of the old European Nobility, a fatal blow from which there was no recovery; only in Britain did it the Noble ranks survive as a major public force. Yet, in the decades following the Great War, Masonry reached a new height of influence and respectability, a wave of public esteem that would continue into the late twentieth century. (Stern 2013)(Fox 1992)

C. But, in the same way technical and engineering advance had made the modern empire possible, it also came to strengthen and centralize the power of the each state. The new maritime trade, uninhibited by wind and current, brought greater national wealth. At the same time, rail systems and electronic communication could unite the disparate regions of a country. Improved weaponry began to make the territorial frontier an impenetrable barrier against intrusion and invasion. The combined force of the empowered state was centered in its professionalized law, its institutionalized academic establishment, and its large-scale industrial production. These were augmented by military power and the extra-territorial reach of its incorporated cycle of foreign import and export. Such concentrations of national power bought potential for conflict of greater violence between states, and on an unprecedented scale. During the nineteen twenties, each country had a tendency to develop as an independent enclave, separated from its neighbors by differences in language, culture, and race.
By the nineteen thirties the advent of radio, cinema, and mass publication produced the ability to mobilize entire national populations for production and warfare; the result was catastrophic. With the weapons of modern warfare, the threat posed by neighboring countries, and capacity for indoctrination, entire populations now became unified, often under a single forceful militarist leader. A personal oath to the Emperor, Furhrer, Generalissimo, a pledge of loyalty to King and Country, a declaration of belief in an ideology, or sworn loyalty to the state became a conventional part of citizenship. This wave of patriotism and nationalism rose in many cases to blind loyalty and even fanaticism in which all the common public was united. Like heresy in the medieval world, treason was the ultimate crime in the new age of nationalism. The result was the most destructive and deadly conflict in human history. It was also perhaps unique in the extent to which the mass population of each belligerent country had been convinced it was fighting for the right. (Misa 2011)

6. A POSTMODERN AGE

A. Following the Second World War, the triumphant Anglophone nations—especially Britain and America—came to dominate the new system of international finance and trade. As their influence grew, it was almost inevitable that the English language would become accepted as the language of world commerce. Yet, because the Civil law was principle based, logical in its workings, and could be translated into any language, it continued to provide the pattern for a regimen of international law, ordering formal relations between nation-states. However, by the late twentieth century, with the rise of television, computer technology, and an immersive electronic media reaching every locality and people in the world, English suddenly became, almost by default, the common language of an entire global population. Most importantly, the widespread use of that language, for the first time, made possible the application of untranslatable Anglophone legal methods on a global scale. (Micklethwait 2003)

An English-speaking judicial hierarchy began to develop across all continents. Civil law techniques and concepts were subsumed beneath a conversant legal fellowship that included jurists and practitioners from every nation. To an extent, the former world pattern of separate nation-state governments was being supplanted in its primacy by a transcending overlay of juridic authority, comprised not only of formal courts and jurisdictions, but also committees, initiatives, panels, and societies. Taken in its organic totality, it comprised a realm of governance working far above the level of public awareness. The entire edifice was founded on the highly adaptable methods of Anglophone law, with much of that basis being constructed under the inventive influence of American legal scholars. (Kennedy 2016)

B. Against this backdrop of dissolution and displacement were two constructs especially suited for bringing order to persons and things in a borderless world. The first, of course, was the supra-territorial corporation that could act unbounded by political boundary, topographic barrier, or geographic distance. Moreover, elevated above the reach of conventional jurisdictions, it could operate in ways barely accountable to any particular national law. Its methods of management, accounting, and distribution were greatly enhanced by electronic systems. It fit well within the global legal culture because its capacities were a product of that
very legal nomenclature. The other important construct was a ubiquitous media that could now penetrate every domicile on every continent to create a virtual alternative electronic reality. In important ways, this immersive atmosphere, with its unending flow of timely information and entertainment—especially of the American popular variety—made the old national approach of cultivation and learning in a brick and mortar school much less relevant. (Luhmann 2000)

There now existed a new and expansive ability to orchestrate events of finance and trade, mediate disagreement and conflict, and especially to shape public understanding on a global scale. The ability to provide a single immersive cognitive reality, along with a single unified legal regimen, was finally making the framework of globalization possible. Compliance among the global population was no longer based on the tenets of ideology or theology, but rather on a continuous flow of electronically transmitted sound and image. For purposes of governance, there was no longer a need to educate with instilled knowledge, only to inform with journalistic ephemera. Equally important, along with the corporatizing of human productivity, the mediating of human relations was made possible by the linguistic Anglicizing of human communication. This entire project of globalization was guided by a professional stratum, unified on the basis of training, purpose, and interest, and in conformity with agreed-upon ethical standards.

C. In the new millennium, both fraternalism and its necessary correlate, heredity, still held fast in Britain, the source of a historic legal culture. But, with the arrival of the twenty-first century, the most widespread form of Anglophone legality was based in a gender-neutral, non-hereditary type of American professionalism. The Continental tradition of legal rule had also evolved into this derivative non-homogenic form of collegiality. Nonetheless, because of the new technical advances, those converging methods had very soon been felt equally in all parts of the world. The new abilities to concentrate capital, marshal labor, and organize resources transformed finance and trade. The territorial safeguard of the national border was eroding and the central importance of the nation-state as the mechanism for ordering persons and things was openly questioned. Global order rested directly on the disciplined unity of those who comprised this new presiding stratum and who were sworn to sustain its legal rule. (Slaughter 2004)

By contrast, the various national legal and academic professions were becoming much less relevant for purposes of global rule and for creating a global consciousness. As the old system of international order, premised on the sovereign state, was becoming inadequate, Anglophone methods continued to fill the vacuum. Its enveloping and all-inclusive regimen of governance could harness the new technologies for purposes of imposing order. Yet, on many levels, the process of globalization amounted, most obviously, to a process of Americanization—a proven and pragmatic form of adjudication, especially useful for the purpose of aggregating wealth. Beyond that, however, the American legal fellowship on which it was patterned was notorious for its proud insularity, the instilled unreflectiveness of its practitioners, and the contentiousness it brought to any question it acted upon. Hence, despite its obvious advantages, the unchallenged primacy of the Americanized method posed a series of specific uncertainties. (Coquillette 1999)
7. QUESTIONS AND CHALLENGES

A. It is important to remember that the global way of life being constructed did not arise from nature, the *ordre naturel*. Instead, as an artificially constructed way of life based on the oath and discipline of a presiding few, such a legal order must be sustained by constant resistance to the gravitational pull toward dissolution and anarchy. This regime, unlike the pre-modern order it replaced, for example, was not founded on familial ties of a vast population united by a common custom and an order of existence biologically rooted, as it were, in blood and earth. In fact, there was no greater, more reliable foundation of order among humans than the tie of common descent, the most powerful human bond existing in nature. In the Americanized version of global order, neither unity among professionals nor order among the vast multitude of individuated subjects was fundamentally joined by this natural tie. Instead, the legal order being created needed continuously to be maintained by the vigilance and unity of those who held its authority and who determined its workings. (Slobodian 2018)

Moreover, this approach to legal rule, like the tradition of Anglophone law generally, was a transcendent one, not a universal one. In other words, it operated on a division of knowledge between the realm of the jurist and the realm of the public. Unlike the Civilian tradition that purported to be based on universal principles in which all citizens were instructed, Anglophone law operated by its own enclosed vocabulary and logic. It supplemented this arcana with a Judeo-Christian religiosity administered to the public multitude. Put another way, the Civil law worked on the basis of principle and reason, while the English tradition worked on the basis of professional consensus above and public faith below. More importantly, however, in the Americanized version, this historic pattern was incomplete. It lacked an appeal to the ultimate values of a settled religiosity--in any case, a difficult thing to construct across the varied peoples and cultures of the earth. Instead, it relied on instilling materialist values in an atmosphere of broadcast of sound and image. (Sutton 2014)(Whalen 1987)

B. With such an approach, there were obvious hazards, especially, for example, in confronting the two great historical alternative methods for ordering relations of persons and things that had developed over long centuries completely outside, and even in opposition to, the Western traditions of law. One of the most obvious of these was the vast realm of Islamic law and the devotion with which a large segment of the population of the earth continued to embrace it as central to their way of life. Like the Civil law tradition, it was based on universal teachings common to all persons. It purported to be a method of justice and mercy operating by principles that seemed logical and appropriate to members of the population generally. But, unlike both Western legal traditions, it was fundamentally a method of order grounded in a population, educated in its tenets by mnemonic method. Unlike the Western approaches, it operated, as it were, from the ground up, rooted in the local, familial, and tribal customs that marked a way of life for millions of persons. (Hallaq 2009)

The other great organic method of relations among persons and things, and often described as being non-legal in its approach, is the East Asian tradition of the Three Great Teachings, Buddhism, Daoism, and Confucianism. This approach to harmony, rather than
order, was based in the connections of nature, especially the tie of hereditary descent. But, like Islam, it also was based on the mnemonic inculcation of its tenets among the widest possible part of the population. Because of its deep integration into the culture and its assimilation to the prevailing values and logic of the population generally, it was inseparable from a deeply imbued way of life. As its claim to be rooted in the natural order of the family, its harmony arose through each person, into every community, and throughout the kingdom. Although an overlay of Western methods of governance and law have come to prevail in East Asian countries—just as in Islamic countries—still the underlying culture and psychology is greatly shaped by these traditional influences. (Pogge 2008)

C. However, aside from the external challenges of Islamic and East Asian cultures, perhaps the two most significant challenges to an Americanized legal culture on a global scale are internal, lying within the method of that professional hierarchy itself. The first difficulty is in regard to its educative aspect. Historically, Anglophone law generally relied heavily on its religious dimension to envelop its magisterial hierarchy with an unquestioned sanctity. It not only placed a divine imprimatur on the institutions of rule, it also provided an atmosphere of deeper meanings that reconciled the population to the opacity of its legal rule. In the global age, however, an Americanized law has necessarily resorted to journalistic ephemera, commercial entertainments, and material values as a basis of a united global mode of thought and values. Perhaps the recent rise of populist and anti-globalist sentiment around the world is an indicator that, in strictly human terms, the atmosphere of understanding provided is not a sufficient basis for a stable global order. (Sutton 2014)

The second internal challenge faced by the Americanized global rule becomes apparent when examining its traditional roots in the medieval past. It is that, in the West, from the Cluniacs of the tenth century, to the Knights Templar of the fourteenth century, to the great oath taken at the rise of British Parliament in the seventeenth century, and Masonic Order in the eighteenth century, each incarnation of Anglophone legal development had one thing in common. It was that the fraternal brotherhood held together by oath and discipline was always balanced against and aligned with a countervailing order deeply anchored in hereditary descent. There is no better example of this than the English tradition of law which began initially within the Royal Courts of Norman Kingship. After the failed Commonwealth of the seventeenth century, a settlement arose out of the Glorious Revolution in 1688. The organic and inexplicit form of rule arising out of it balanced Lords with Commons, Noble and Gentle, the High Court of Parliament, and its combined authority in relation to the King. This combination, often ridiculed as a relic of the medieval past, nonetheless provided a stabilizing ballast to the affairs of Great Britain, and extended to any jurisdiction where Anglophone law prevailed. In the global age, with an Americanized law, will the medieval bonds of a single island kingdom provide this anchor of stability for a legal regimen that circles the earth? If not, what will be its source? (Cannadine 2000)
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