Reflexive Law: The New Legal System Driving Sustainable Development

Every society in history has been hinged on compatible systems of social structure, economics and politics. And, every unique society is regulated by a compatible legal system that settles all disputes between its citizens. In the Western world and especially in America, this is revered as the “Rule of Law”.

On August 26, 2014 the New York Times blasted out the headline, *Obama Pursuing Climate Accord in Lieu of Treaty*. In short, Obama was to use Executive Orders to entangle the U.S. in a global “treaty” on climate change, without consulting the U.S. Senate. However, the Constitution requires the Senate to vote on all treaties and the bar is high: It takes a two-third vote to approve.

To the globalist, the Constitution is out. The Rule of law has collapsed. Reflexive Law has surpassed it all. The balance of this article will show
you how and why.

If you are saying “Huh?”, you had better read every word of this report and figure it out, because this might be the most important shard of evidence ever revealed about the wrenching transformation of American society.

Obama’s principal adviser and “negotiator” on this so-called climate accord was John Podesta, and this whole treaty-by-executive-order debacle can be laid squarely at his feet. Until just recently, Podesta was a member of the Trilateral Commission. He was Bill Clinton’s chief-of-staff in the 1990s and the original instigator of Executive Branch policy of using Executive Orders to bypass Congress on certain issues. Clinton, also a Trilateral member, created many such EO’s to side-step Congress, and Congress unfortunately let him get away with it.

Enough about Podesda. Just remember that he was the prime mover in what I am about to reveal.

The NYT article stated,

To sidestep that requirement [of a 2/3 Senate vote], President Obama’s climate negotiators are devising what they call a “politically binding” deal that would “name and shame” countries into cutting their emissions. The deal is likely to face strong objections from Republicans on Capitol Hill and from poor countries around the world, but negotiators say it may be the only realistic path.

While doing some research for my book, Technocracy Rising: The Trojan Horse of Global Transformation, another book had caught my eye and so I impulsively bought it. The title was Greening NAFTA by Markell and Knox and it was published in 2003 by Stanford University Press. According to the book, there was a supplemental agreement to NAFTA (1992) called the North American Agreement on Environmental Cooperation (NAAEC), which established the North American Commission for Environmental Cooperation (CEC). The CEC was “the first international organization created to address the environmental aspects of economic integration.” (1)
I intended to put the book in my library for some future date, but since I more recently had a five hour plane flight and needed something to do, I hastily threw it into my briefcase on the way out the door. On the first leg of the flight, I skimmed the book, underlining a few things, but otherwise it generally put me to sleep. On the return flight 10 days later, I picked it up again and flipped the pages thinking it would be more of the same, only to fall on a chapter toward the back titled, “Coordinating Land and Water Use in the San Pedro River Basin.” The San Pedro River is in southern Arizona, and it just so happened that I had owned a ranch on that same river when I first got out of college in 1968, and so I knew the area like the back of my hand. Now I was really interested!

The San Pedro River Basin was the first instance of CEC involvement because it was a small and relatively unimportant area, and because the headwaters of the San Pedro River originated in Mexico, just south of the U.S. border. Greening NAFTA explained,

> Under Articles 13 and 14, the Secretariat can accept and review citizen submissions alleging that one of the three countries is not enforcing its existing environmental laws. (2)

In fact, the San Pedro submission (i.e., complaint) came not from a citizen at all, but from the radical left-wing environmental group based out of Tucson, the Southwest Center for Biological Diversity (SCBD). The mere accusation that the area was in violation of their preconceived ideas of normalcy was enough to set off a devastating chain of events that changed the San Pedro River Basin forever. Here is where the plot thickened. The authors explained,

> Article 13 can be characterized as an example of postmodern, “soft” or “reflexive” international law because it seeks to influence public and private behavior without the threat of the enforcement of traditional, sanction-based “hard” law. (3)

I had only heard (obviously not understanding it) the term “soft law” before, but what was “Reflexive Law?” The author treated them as synonyms. After another round of digging, I found the fountainhead of Reflexive Law in the following article, Towards a Theory of Law and Soci-
Another sociologist of law who have dealt with legal development in stages is Günther Teubner. He has in an article in Law and Society Review 1983 put forward a theory that the law moves from formal to substantive law and onwards to something he calls reflexive law. Teubner agrees with Nonet-Selznick that we have passed a stage of formal law, which is consistent with the concept of autonomous law, and after that have entered a stadium of material law. Teubner does think the transition from formal to material law should be divided into two types. A “genuine” material law which is used to realize specific, concrete values, what Teubner calls for substantive law and another type of material law which Teubner has labeled reflexive law. This latter legal form is characterized by constitutive and procedural rules that put limits on legal developments without specifying concrete material values to be realized. Teubner summarizes the characteristics of reflexive law by putting it in relief to the formal and substantive law as follows:

Reflexive law affects the quality of outcomes without determining that the agreements will be reached. Unlike formal law, it does not take prior distributions as given. Unlike Substantive law it does not hold that certain contractual outcomes are desirable. (4)

So we see that Reflexive Law is just over 30 years old, and yet it has since become the principal means by which to collapse the traditional Rule of Law, based on actual laws, in the United States and in the Western world. Furthermore, Reflexive Law starts without first determining exactly what agreement will be reached, but moves forward anyway to see how far the participants can be pushed.

Hard law, which we are all familiar with, specifies clear outcomes when it is violated. If you speed, you get a ticket. If you commit armed robbery, you go to jail for a specified period. This is the traditional Rule of Law upon which our Republic and Constitution is based. Laws are created by a Legislative Branch, executed by the Executive Branch and adjudicated by the Judicial Branch.
Greening NAFTA then spelled out exactly what Reflexive Law entails:

Reflexive law tries to align systematically legal rules with norms that the relevant actors will internalize. It builds on the realization that the reasons why people actually obey law ultimately lie outside formal adjudication and the power of the state to enforce rules. (5)

Again, Reflexive Law starts out with desired outcomes, created by unelected and unaccountable actors, for which there are no laws. Yes, they could appeal to Congress to create legislation, as would be required by the Constitution. At the end of the reflexive process, described below, the actual outcomes depend on how well the stakeholders “internalize” what is proposed. In other words, there is no actual legal process at all, but rather a jawboning process that cons actors into compliance.

“Information disclosure” is a principal policy instrument of Reflexive Law. That is, the analysis produced is presented with its “recommended outcomes.” Public meetings are then held to build consensus between individual citizens and other “actors”. In the case of the San Pedro River Basin study, the CEC enlisted the University of Arizona’s Udall Center to hold these public meetings. In sum, there was zero consensus among actual citizens of the area, as the book simply notes, “Public comment was emotionally divided on the reduction of irrigated agriculture.” (6) Really? In fact, the farmers and ranchers in the area were beyond livid, but the real purpose of the public meetings had nothing to do with getting their voluntary consensus. Rather, the meetings were designed to publicly abuse them until they submitted.

The Greening NAFTA authors were very blunt about this:

This experience reveals two powerful incentives at work: shame and the desire to be virtuous while saving money or increasing profit margins. In a post-Holocaust world, human rights NGOs have effectively used shame to induce compliance with universal human rights norms. Also, voluntary pollution reduction has been achieved when it is internally profitable for an industry to reduce its discharges or an industry anticipates increased regulatory or public pressure to reduce them from the disclosure, such as through public
Shaming. Shaming works well with pollution, especially toxic pollution, because it draws on deep, perhaps irrational, fears of exposure to the risk of serious illness and an innate abhorrence of bodily injury. (7)

What of the farmers and ranchers who refused to be shamed into consensus during the Udall Center public hearings? After all, they had zero input into the CEC’s study and subsequent “recommendations”, nor were they consulted prior to the Southwest Center for Biological Diversity’s original complaint. Well, they were simply offered other incentives that they were helpless to refuse or refute:

Two concrete incentives that have successfully induced landowner cooperation under the U.S. Endangered Species Act are fear of a worse regulatory outcome and immunity from liability for changed conditions. (8) [Emphasis added]

In the end, the farmers and ranchers succumbed to the Reflexive Law process when the regulatory bullies showed up with threats of what would happen to them if they did not buckle under to the CEC’s demands. These actors included the Bureau of Land Management, manager of the San Pedro Riparian National Conservation Area (SPRNCA) and the U.S. Department of the Army. Accompanying them were several NGO’s, including the Nature Conservancy and the Southwest Center for Biological Diversity. The federal threat was “We will bankrupt you with regulations.” The NGO threat was “We will bankrupt you with lawsuits.”

This is “Reflexive Law” and it is 100 percent antithetical to the American Republic, the Rule of Law, the U.S. Constitution and the entirety of Western civilization. Because compliance has always been posited as voluntary, nobody has been alarmed enough to look any further at it. However, I will point out that almost every global imposition has been based on the voluntary aspect of Reflexive Law. Agenda 21 depended upon voluntary compliance, which is often referred to as “soft law” among its critics, who have not perceived the deeper meaning of Reflexive Law. Sustainable Development in general is always proposed to be a voluntary program. All of these are based on Reflexive Law. But, once it gets its tentacles into your personal property and local community, you will be
involuntarily squeezed until you “voluntarily” comply. There is no legal process available to defend yourself, your property, or your rights.

Now let’s examine the NYT article mentioned at the start of this article.

To sidestep that requirement [two-third vote of the Senate], President Obama’s climate negotiators are devising what they call a “politically binding” deal that would “name and shame” countries into cutting their emissions. The deal is likely to face strong objections from Republicans on Capitol Hill and from poor countries around the world, but negotiators say it may be the only realistic path. (9) [Emphasis added]

Did your alarm bells ring? Obama delivered us into an international Reflexive Law arrangement that has no actual legal basis in fact, and that is why they think they are justified in ignoring the Senate. After all, the Senate deals with “hard law” while Podesta and gang deals with “Reflexive Law.” Furthermore, they will use the principal “name and shame” policy tool of Reflexive Law to smoke out the resistance for public shaming. Subsequently, from what you now know about how Reflexive Law is enforced in the end, those holdouts will be offered a “deal that they cannot refuse”, namely, much worse regulatory outcomes, international lawsuits and entanglement, trade sanctions, etc.

The NYT elaborated further:

American negotiators are instead homing in on a hybrid agreement—a proposal to blend legally binding conditions from an existing 1992 treaty with new voluntary pledges. The mix would create a deal that would update the treaty, and thus, negotiators say, not require a new vote of ratification.

Countries would be legally required to enact domestic climate change policies—but would voluntarily pledge to specific levels of emissions cuts and to channel money to poor countries to help them adapt to climate change. Countries might then be legally obligated to report their progress toward meeting those pledges at meetings held to identify those nations that did not meet their cuts. (10) [Emphasis added]
There is not a single shred of doubt that anything other than Reflexive Law is pictured here. It spits in the face of traditional Rule of Law that our country was founded upon and operated under until 1983 when this treasonous legal system was conceived — by a German, no less. For all intents and purposes, Reflexive Law has caused the utter collapse of Rule of Law as we know it.

Don’t even begin to think this is anything less than blatant, for the article concluded with the frank braggadocio:

“There’s some legal and political magic to this,” said Jake Schmidt, an expert in global climate negotiations with the Natural Resources Defense Council, an advocacy group. “They’re trying to move this as far as possible without having to reach the 67-vote threshold” in the Senate. (11) [Emphasis added]

Magic, indeed: Merriam-Webster defines magic as “the art of producing illusions by sleight of hand.”

To copycat Paul Harvey’s famous radio program sign-off, “Now you know... the rest of the story.”

Footnotes:

2. Ibid. p. 217
3. Ibid. p. 218
4. Håkan Hydén, Samuel Pufendorf Professor in Sociology of Law, Lund University, Sweden, November 2011
5. Ibid. p. 231
6. Ibid. p. 228
7. Ibid. p. 231
8. Ibid. p. 232
10. Ibid.
11. Ibid.