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Consent of the governed

By Richard W. Rahn

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If I told you the world is becoming both more and less democratic at the same time, you might reply, "how can that be?" Follow along and you shall see.

Do you believe "Governments are instituted among Men, deriving their just Powers from the Consent of the Governed?" It is not just the overwhelming majority of Americans who believe in this statement from the Declaration of Independence, but as evidenced by the global rise in democracy, a majority of the world's population now subscribe to this statement.

According to Freedom House, 65 percent of the world's people now live in at least limited democracies, where they are free or partially free, and their laws and rules are established by consent of the governed. Yet, at the same time, international organizations have arisen, which increasingly establish rules and regulations not consented to by the governed.

Just in tax and financial regulation, the organizations include entities such as the United Nations, the International Monetary Fund (IMF), the World Bank, the Organization for Economic Cooperation and Development (OECD), and the Financial Action Task Force (FATF). In addition, national governments, such as the U.S. government, and governmental federations, such as the European Union, increasingly assert they have tax and financial regulatory powers over individuals and institutions that are neither their citizens nor residents.

All these organizations have gone well beyond their original mandates and exercise or try to exercise powers over institutions or individuals who neither directly nor indirectly voted to be so regulated.

For example, the Financial Action Task Force is an organization of international bureaucrats funded by 33 countries, with the goal of fighting financial crime. That sounds all well and good. FATF has no direct power, but it can put countries on its sanctions list, which discourages major banks from correspondent banking relations with the offending countries, which can mean financial death to small countries. If all the FATF requirements were justified on a reasonable cost-benefit basis and did not interfere with basic civil liberties, there would be no basis for complaint.

But many of their requirements, such as the "know your customer rules" (also promulgated by the IMF and U.S. government agencies), do not meet cost-benefit and civil liberties' tests and actually drive many low-income people around the globe out of the banking system. This leads to both a less safe and less economically prosperous world.

The EU has developed a "Savings Directive," demanding non-EU countries either financially report information to, or collect taxes for, EU governments. They have bullied the Swiss and other governments into partial acceptance of this measure, though it is clear Swiss voters would be unlikely to approve such an economically harmful and liberty restricting proposal.

The British government demands its colonies comply, though it would hurt them economically, and they have no vote in the matter. (Sometimes it appears the Brits learned little from the American Revolution.)

The U.N. has proposed an International Tax Organization to limit tax competition among countries and enable the U.N. to tax directly without going through national governments. (Former Clinton Treasury Secretary and Kerry chief economic adviser Bob Rubin signed on to this dreadful proposal as a U.S. representative. Why the Republicans have not gone after John Kerry for having as his economic adviser a man who wants to allow the U.N. to directly tax American citizens is a mystery.)

What the world faces is the danger U.S. Founding Father and President James Madison warned of two centuries ago. Madison opposed French philosopher Jean Jacques Rousseau's proposal for a supranational political council empowered to prevent war. Madison argued such a council would become a despotic superstate, cutting off the last hope of the oppressed.

Given that unalienable rights of man are now being eroded by multinational bureaucratic organizations, often with the quiet support of national governments, what is to be done?

One solution is for citizens in a number of countries to push for legislation giving the citizens (including corporations and associations) the private cause of action to sue such organizations in their own courts when the regulatory demands neither meet a reasonable cost-benefit test and/or violate civil liberties embodied in the law or constitution of their own country. Even if only a few countries passed such legislation, provided one or two big countries were among them, it probably would be sufficient to re-establish the necessary balance of power.

Almost all organizations try to grow and gain power at the expense of others; this is not new. What is new is the rise of multinational organizations unconstrained by adequate checks and balances. National leaders and their bureaucratic agencies are too often in bed with their counterparts in these organizations, so necessary oversight is not provided.

Citizen legal empowerment may be our best hope to preserve both the liberties and economic opportunities of the world's people against the global bureaucratic power elites. We need to re-establish consent of the governed before it is too late.

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