DEVELOPMENTS

Review Essay - Remarks On Post-Sovereignty And International Legal Neo-Conservatism: Reading Jeremy Rabkin

*By Ignacio De La Rasilla Del Moral**

[Rabkin, Jeremy, A., Law without Nations? Why Constitutional Government Requires Sovereign States, Princeton University Press, 2007, Paperback edition, $19.95. ISBN13: 978-0-691-13055-2

Rabkin, Jeremy A., The Case for Sovereignty: Why the World Should Welcome American Independence, The AEI Press, Publisher for the American Enterprise Institute for Public Policy Research, Washington, D.C., 2004. Hardcover edition, $25.00, ISBN: 0844741833]

El sueño de la razón produce monstrous
Capricho nº 43, Francisco de Goya y Lucientes

A. Introduction as a Disclaimer

It would be far too easy for a jurist educated in Europe to mount a case against these two successive books by Jeremy Rabkin, professor of Government at

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The present essay is a prelude of the paper that the author is currently preparing for the Legal Theory Workshop of the 2nd Research Forum of the European Society of International Law: 'The Power of International Law in Times of European Integration', 28-29 September 2007, Budapest, Hungary. The author wants to express his gratitude to Peer Zumbansen for having so kindly encouraged him to write this "capricho" and for having forced him with his uncompromising editing to go beyond the primitive original structure and scope of this work and to John D. Haskell for his generous disposition to help with intelligence of esprit this non-native writer in his struggle with the modern *lingua franca.* Finally, the "ghosts of the machine" are forgiven for their occasional mischief. *Malus est vocandus, qui sua est causa bonus.*

Cornell University, and dismiss the whole as a crystal-clear exponent of the application of a far-rightist American nationalist ideology to international law. It would suffice to cobble together some of the numerous bold quotations that abound in both works to dispatch the author as just another neo-conservative scholarly pamphleteer sprung from the always suspicious American Enterprise Institute. To gut, however, the beast's bully to quench a scholarly readership's avid thirst for neo-conservative blood or, otherwise, capturing her into a voyeuristic complicity, would not merely require this reviewer to act as an intellectual butcher (sic), but would, furthermore, contribute to propagate, a (false?) sense of certitude on other perspectives of international law.

I will, therefore, present the author's neo-conservative defence of the United States' sovereignty by attempting to soften the impact of the most rhetorically aggressive aspects embedded in his books. Playing along with the author's occasional rhetorical strident spiral risked obscuring far more scholarly substantive considerations dealing with the framing of his work within a specific contemporary doctrinal trend. To categorise Rabkin's work in the untouchable category by stressing the aspects of its partisan political rhetoric could also gratuitously reinforce the accursed fame that neo-conservative legal scholars enjoy within their own academy. Approaching Rabkin's scholarship with lack of animosity does, moreover, offer additional possibilities for analysis than to simply add another chapter to the inflation of "hegemonic international law"[1] rhetoric so in vogue.

B. Dem Kaiser geben, was des Kaisers ist?

Originally published in 2004 and 2005 both works are complementary in scope and incur in a certain degree of overlapping when displaying their argumentative arsenal. If "the main point of The Case for Sovereignty,[2] was "to remind readers," through a fierce defence of an unbound conception of American sovereignty, "that the United States has no reason to be defensive about retaining its independence,"[3] Law Without Nations?[4] presents itself as an

[1] Ignacio de la Rasilla del Moral, *Alicia a través del espejo o apuntes para una teoría neoconservadora del Derecho internacional* REVUE QUEBECOISE DE DROIT INTERNATIONAL, forthcoming (2007).

[2] JEREMY A. RABKIN, THE CASE FOR SOVEREIGNTY: WHY THE WORLD SHOULD WELCOME AMERICAN INDEPENDENCE (2004).

[3] RABKIN (note 2), xiv.

[4] JEREMY A. RABKIN, LAW WITHOUT NATIONS, WHY CONSTITUTIONAL GOVERNMENT REQUIRES SOVEREIGN STATES (2007).

attempt to "clarify the assumptions about the world that led the American Founders to "construct" constitutional arrangements as they did and to show why their grounding assumptions remain hard to reconcile with new "constructions" in contemporary international politics."[5] Rabkin's argumentative reasoning, broadly inspired by his overarching goal to deny that "the language of global society is" (or should) "be international law"[6] extends itself to every legal current front of the underlying traditional legal transatlantic divide so spectacularly widened by the 2003 Iraq war and a certain number of legal foreign policies of neo-conservative inspiration by the Bush Jr. Administration. In doing so, the author argues to be challenging the post-sovereign governance paradigm underlying the European appeal for international institutions and international law.

It would, indeed, be difficult to deny that Rabkin appears to be especially critical of any common sentiment with Western Europe nowadays, thus "Hungtington's assumptions that Western Europe and the US shared a common "Western civilization" now seems rather optimistic."[7] In this author's view, the European appeal for guiding universal standards of governance under the command of international law does but reflect the periodic revival of a longing (apparently rooted in the historical-DNA of Europe) for unity bargained for freedom under the yoke of the Roman Empire. A feature that would, furthermore, be channelling, in Rabkin's view, a form of global legal imperialism in disguise under Franco-German domination within Europe.[8] In the same vein, Rabkin does also argue that "many Americans balk at the idea of accepting moral instruction on human rights from countries in Europe that, only a few decades ago, were accomplices to genocide"[9] and that the term *Völkerrecht* in German language "may also reflect characteristic German impatience with a world of independent states."[10] This "darkened" European model is confronted by the author to the distinctiveness of an independent and rightfully sovereign American way in terms that seem, however, occasionally desirous to betray

[5] RABKIN (note 4), 17.

[6] Note Kofi Annan's remark "the language of global society is international law", cited in RABKIN (note 3), 114.

[7] RABKIN (note 2), 21.

[8] RABKIN (note 4), 1-17.

[9] RABKIN (note 2), 120.

[10] RABKIN (note 4), 276.

specific religious parallelisms.[11] The latter appear, nonetheless, mixed up with invectives addressed to those who (like Dominique de Villepin) have dared to speak of the influence of the "Zionist lobby"[12] in Washington. In reviewing The Case for Sovereignty back in 2006 Andrew Moravcsik wrote that "Jeremy Rabkin's paranoid anti-European tract has one redeeming feature. It is utterly clear about the US conservative approach to world politics."[13] The same could be applied to *A World Without Nations?* where Rabkin's continues his attempt to widen today's transatlantic divide by all rhetorical means at his disposal. A second remarkable feature of Rabkin's works is, indeed, the underlying tone of provocative intellectual sarcasm that occasionally exudes from their pages. In attacking every legal front that could risk weaken his case; the author seems too desirous to betray a clear desire to "never lose face" in argumentative terms. This dialectical entrenchment weakens the systemic presentation of his arguments by mixing scholarly analysis with clearly biased personal political views. Such is the essence of Rabkin's style.

This peculiar way of proceeding has convinced me of the necessity of adopting a special methodological review approach. In reviewing his books, I will, thus, firstly, offer a general exemplary model of how Rabkin's internal cumulative discursive architecture works in scholarly terms by reordering in an ideal argumentative framework the points that appear scattered through both works to justify the US' disavowal of its signature to the Kyoto Protocol. I will, secondly, frame his scholarly work in the context of the aforementioned transatlantic scholarly divide on which so many and urgent ink has been spilled over the last *lustrum* and place it within the context of the international legal branch of the neo-conservative thought. I will, thirdly, come back to the content of the books themselves in the light of the aforementioned. The purpose of adopting this unusually original review approach instead of the usual formal résumé in which many book reviews are presented is twofold. My first goal is to avoid having to repetitively engage, in the first place, with every international legal controversy argued by Rabkin in order to persuade his readership of the sacrosanct character of his positions. At the end of the day, when approached

[11] "But a number of nations have viewed themselves as, in some way, a new Israel- distinctive, luminous, faithful to some special destiny" RABKIN (note 6), 11. This remark concludes two pages of text in which the author does not spare his readers of interpretations of the Hebrew bible according to which the Babel's resulting "division of mankind was, in some way, necessary or providential" RABKIN (note 4), p.8-10.

[12] RABKIN (note 4), 12.

[13] Andrew Moravcsik *The Threat from Europe: Review of Jeremy A. Rabkin's The Case for Sovereignty,* PROSPECT 69, 69 (April, 2006).

from an international lawyer's perspective Rabkin's multifaceted opinionated arsenal is crowned by a constitutional theory argument inspired by the "original intent" school and its inherently related call for the revival of sovereignty. If the former is the main idea behind The Case for Sovereignty, the latter appears refined as the object of analysis of the A Law without Nations? Despite all the fireworks-like rhetoric in which both complementary arguments are wrapped, this twofold axis projects itself as the background legal test applicable to all controversial matters dealt by the author under the rubric of the relationship between the US' sovereign independence and international law. Otherwise, his are not books of naïve exploratory scholarly nature, but partisan products designed to present a clearly defined political perspective on the place that international law should occupy in the agenda of the United States. Second, as already mentioned in the introduction, playing along with the author's rhetorical strident spiral[14] from the onset risked obscuring more scholarly substantive considerations that deal with the framing of his work within a specific contemporary doctrinal trend.

When ideally reordered, then, one of the possible varieties that Rabkin's dispersed case against Kyoto - if cobbled together with substantive quotations taken from both books and, as such, scholarly and scrupulously respectful of the author's view – could look like this: First, Rabkin begins by highlighting that the threat of global climate change is both part of the same "talk about global governance (that) provides a vehicle for Europe to act in the world"[15] and a channelling device for contemporary "European resentment"[16] against the US. The former is clearly evidenced, Rabkin writes, because "much of the funding of "independent" advocacy on behalf of Kyoto, by ostensibly non governmental organisations, was funded by European governments".[17] Moreover, the cause of environmentalism that "helped to attach a whole constituency to Europe in the 1980's" has been artfully instrumentalised as part of a domestic self-benefiting project of euro-governance[18] that the Kyoto Protocol, "by far the most ambitious

[14] Both successive books evidenced to be addressed to appeal an American audience already sympathetic with its underlying postulates. Unadvised foreigners, but specially Europeans, are likely to soon find themselves forcing to adopt a sociological external perspective in view of its ultra-nationalistic tone.

[15] RABKIN (note 4), 148.

[16] *Id.*, 4.

[17] *Id.*, 148.

[18] *Id.*, 144-148.

environmental venture backed by the EU,"[19] wants to export at the global level on, what for the author, are the debatable scientific merits of climate change. [20] This "example of the 90ies' proliferation and elaboration of international standards"[21] which "full implementation would have cost the US $2.2 trillion,"[22] "otherwise made sense only as a means of crippling the US economy."[23] Rabkin's argument subsequently unfolds by pointing out that "critics failed to notice that the US was hardly alone in its recalcitrance"[24] [25]as after all "nuclear war is a far more terrible prospect than global warming (…) and that did not mean all states acknowledge how to control these weapons."[26] The author also stresses that to follow Kyoto would "require limiting consumption of fossil fuels (oil, coal, natural gas)- the lifeblood of economic development"[27] for poor countries that "would be better off having developed as rapidly as possible in the meanwhile- without regard to the greenhouse gas emissions."[28] "Could such vast changes really be accomplished without coercion?"[29] The linkage of environmental worries with trade penalties "repeatedly urged, since the early 1990s, by the European Parliament"[30] would finally seemingly prove Rabkin's implicit point by denying that "the most obvious difference between government and governance is that governments deploy force" while governance depends for its effectiveness on moral suasion. In other words, this latest point drives us back to the already mentioned fixation of the author with a threat of global legal imperialism cloaked global governance upheld by the

[19] *Id*., 146.

[20] RABKIN (note 2), 147.

[21] *Id*., (note 2), 9.

[22] RABKIN (note 2), 197.

[23] RABKIN (note 4), 147.

[24] RABKIN (note 2), 9.

[25] 171 states of the world -including Russia, China and India- have already ratified the 1997 Kyoto Protocol, http://unfccc.int/2860.php (last acceded 16th May, 2007) Note, furthermore, the developments occurred in the June 2007 G8 Summit concerning this issue.

[26] RABKIN (note 2), 36.

[27] RABKIN (note 4), 146.

[28] RABKIN (note 4), 146.

[29] RABKIN (note 2), 148.

[30] RABKIN (note 4), 148.

European Union. Or, to put it even more bluntly, Rabkin falls only short of recalling à la Carl Schmitt that "whoever invokes humanity wants to cheat!"

From a strictly international legal perspective, however, in this, as in many other fronts dealt by Rabkin in both books, the fundamental underlying legal argument core is not other that the Founder Fathers designed the US' Constitution to assure that nothing external to it could rightfully take priority over its guarantees to US' citizens. The very legitimacy of the federal government's *raison de être* relies on that premise. International legal standards should, accordingly, be perceived as a threatening infiltration by others' States in the perfectly balanced domestic legal order of the United States of America. They jeopardise the supreme principle that the constitution shall remain "the highest constitutional authority"[31] and undermine the very foundation of the US sovereignty, otherwise "sovereign power is the right to make binding law in a particular territory."[32] One of the most dangerous channels of foreign legal infiltration is, in Rabkin's view, the reinterpretation of the US' Constitution by the US' Supreme Court to satisfy international legal standards.

C. From the American Nationalist School of International Law to the Neoconservative Theory of International Law

Rabkin's efforts in this domain are, however, but a parcel of the greater design of a broader doctrinal strand. This has been credited with the responsibility for "the revival and intensity of the current debates in Foreign Affairs Law"[33] since the late nineties. Alejandro Lorite captured the scholarly work of the authors that composed that group under the label of the "American Nationalist School of International Law"[34] (NIL), identifying a multi-faceted concerted and highly coherent doctrinal contemporary trend. As far as the constitutional theory (or inner-realm) is concerned, NIL's authors have being defending, among others, the enhancement of the war powers of the US' President beyond Congress' approval.[35] At least three interconnected questions emerge, in my view, when

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[31] RABKIN (note 2), 44.

[32] RABKIN (note 4), 38.

[33] Alejandro Lorite Escorihuela, *Cultural Relativism the American Way: The Nationalist School of International Law in the United States* 5 GLOBAL JURIST Issue 1, Frontiers, 1-166, 70 (2005).

[34] *Id*.

[35] JOHN C YOO THE POWERS OF WAR AND PEACE: THE CONSTITUTION AND FOREIGN AFFAIRS AFTER 9/11(2005).

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one confronts the inner realm of NIL. Whether in separation or as a whole, they constitute the core-question/s brought up by these works and deserve, thus, to be highlighted in a de-contextualised manner. By de-contextualising I am referring in this context to the convenience of postponing the presentation of a selection of some of the more provocative remarks and bold views (of which some notice has already been offered) scattered through both books of this member of the Board of Academic Advisors of AEI as, *exempli gratia*, that according to which "the post-modern challenge" is equated with a sort of sexual adolescent incontinence.[36]

First, are Rabkin's and some of his like-minded, allied scholars[37] on these and other aspects merely the effect of a higher and entrenched legitimate perspective on how a nation (the US', not *e.g.* Iran) should govern itself according to its own Constitution? Second, is the paradigm adopted the ultimate bastion of an intellectual fallacy traditionally used to defend parochial interests domestically and abroad? Third, do NIL's inner-realm arguments possess a veiled doctrinal calling-effect? Invoking the Bartleby's exemption so as not to engage with the already apparent more bristling details of Rabkin's perspective as an intellectual punch-bag in the first place, justifies itself, therefore, as an attempt to approach his works, mainly and foremost, by placing them in the broader context of the not so new[38] legal fortress America. Both books pretend, indeed, to argumentatively reinforce a regressive sovereignist alternative of international legal impermeability in the context of what this self-defined "old-fashioned constitutionalist"[39] seems to implicitly consider the sober call brought about by the events on September 11th. A historical watershed, indeed, to settle scholarly accounts with those, like Louis Henkin, who were preaching in the 90ies the "away with the "S" word" whether on self-labelled Kantian premises or in pragmatic or utilitarian terms in favour of global governance and a post-sovereignty world order.[40]

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[36] "Many scholars thus seem to embrace post-modernism with the exuberance of adolescents, discovering that sex is a lot more appealing and lot more available than they had realised as children," RABKIN (note 2), 15.

[37] JACK GOLDSMITH, & ERIC A. POSNER THE LIMITS OF INTERNATIONAL LAW (2005), Michael Glennon *Platonism, Adaptivism, and Illusion in UN Reform* 6 CHICAGO JOURNAL OF INTERNATIONAL LAW, *(2006)* or John C, Yoo,*Force Rules: UN Reform and Intervention* 6 CHICAGO JOURNAL OF INTERNATIONAL LAW, *(2006)* among other referential authors.

[38] Andrea Bianchi, *International Law and US Courts: The Myth of Lohengrin Revisited* 15 EUROPEAN JOURNAL OF INTERNATIONAL LAW, 751 (2004).

[39] RABKIN (note 6), 33.

[40] RABKIN (note 4), 32.

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At a time when the international legal doctrine is steadily moving to the next conceptual level (inspired, perhaps, by the fact that the resistance to supra-national governance in Europe has been traditionally put, but always in crescendo, in terms of democratic deficit),[41] NIL pretends to turn back the announced shift from classical international law to international law as governance.[42] It does so in libertarian premises inspired by Hobbes and Locke and on the ground that "the strongest argument for sovereignty is that no nation can trust others to care as much about its own security as it does itself!"[43] This patent flag's waving of an unfettered American notion of sovereignty is in line *e.g.* with the theory of hegemonic stability[44] that some NIL associates, like John Yoo in the field of the use of force[45], have been using to sustain NIL's arguments in the "outer-realm" (otherwise foreign policy) so as to keep up with Lorite's terminology. As such, it constitutes an important explanatory factor behind the "hegemonic international law" doctrinal rhetoric by which it has been met.[46] This understanding is, as such, perfectly consonant with the doctrinal analysis that has been made of the "American Nationalist School of International Law."[47] We will be, entering, however, the realm of the neo-conservative theory of international law if we project that same creed beyond the United States of America.

The coinage of the neoconservative theory of international law as a new doctrinal label[48] widens, therefore, the current scholarly analytical framework

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[41] A brief comment by Rabkin on that debate can be found as Jeremy A Rabkin Reaction for Notre Europe to Andrew Moravcskik's article: "What can we learn from the Collapse of the European Constitutional Project?, NOTRE EUROPE ETUDES& RECHERCHES, (October 2006) at http://www.notre-europe.eu/uploads/tx_publication/Moravcsik-ReponseRabkin-en_01.pdf (last acceded, 16th May, 2007).

[42] Nico Krisch and Benedict Kingsbury *Introduction; Global Governance and Global Administrative Law in the International Order* 17 EUROPEAN JOURNAL OF INTERNATIONAL LAW, 1, pp. 1-15 (2006).

[43] RABKIN (note 2), 84.

[44] DE LA RASILLA DEL MORAL (Note 1).

[45] John Yoo, *Using Force*, 71 U. CHI. L. REV. 729 (2004).

[46] For a good sample of the debate, see the "Agora: Is the Nature of the International Law System Changing", 8 AUSTRIAN REVIEW OF INTERNATIONAL AND European Law, (2003).

[47] LORITE ESCORIHUELA (note 33).

[48] DE LA RASILLA DEL MORAL (note 1). See also DE LA RASILLA DEL MORAL, "All Roads Lead to Rome or the Liberal Cosmopolitan Agenda as a Blueprint for a Neo-conservative Legal Order" in GLOBAL JURIST (ADVANCES), forthcoming (2007) INTERNATIONAL LAW.

by stressing the existence of a blind spot[49] in the lenses through which the evolutionary pattern of the neoconservative intellectual efforts in the international legal arena have been so far approached. The image of the exceptionalist hyper-power driven by a group of international "scofflaws"[50] has proven to possess a great doctrinal appeal.[51] Interpreting that the neo-conservative legal thinkers are *not* defending sovereignty in abstract, but merely an unfettered sense of American sovereignty and ensuing international legal exceptionalism as far as the US' is concerned is consonant with the current prevailing European doctrinal perspective on this issue that stresses the hegemonic nature of the US' post-11 approach to international law. Obstinacy on the notion of "hegemonic international law," which is as such becoming a new doctrinal catch-phrase,[52] as the overall current analytical framework does however, in my view, as already noted, risk obscuring other considerations.

Although the Bush administration's approach to international law is presumed being utterly "made in USA" and "for USA internal use only," some of their elements have already triggered fears related to a contagion-effect. The most prominently studied example is the pre-emptive use of force.[53] Effects over the lowering of human rights standards in view of the international state of exception created by terrorism which has been portrayed in terms of international public enemy[54] have also been widely noticed.[55] Both would

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[49] It should be noted that I am not attempting to trace with this remark a parallelism with what *mutatis mutandi* David Kennedy has defined as the "dark sides, unjustified biases and blind spots" of humanitarian thinking. *See* DAVID KENNEDY, EL LADO OSCURO DE LA VIRTUD, (trans. prel. essay by Francisco J Contreras and Ignacio de la Rasilla) 2007.

[50] Thomas M. Franck, "Is Anything "Left" in International Law?", 1 UNBOUND: HARVARD JOURNAL OF THE LEGAL LEFT 59, 61 (2005).

[51] Susan Marks "International Judicial Activism and the Commodity-Form Theory of International Law" EUROPEAN JOURNAL OF INTERNATIONAL LAW, vol. 18, 199 (2007).

[52] This framework of analysis was highly influenced by Vagts, Detlev, F., *Hegemonic International Law* in 95 AM J INT'L L 843 (2001). Among the different symposia see *American-European Dialogue: Different Perceptions of International Law* in ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT, 64/2, 2004; and the *Symposium: The US and International Law* in EUROPEAN JOURNAL OF INTERNATIONAL LAW, Vol. 15, No. 4, 2004.

[53] Michael M. Reisman, *The Past and Future of the Claim of Pre-Emptive Self-Defense* 100 AM. J. INT'L L. 525 (2006).

[54] Jörg Friedrichs, *Defining the International Public Enemy: The Political Struggle behind the Legal Debate on International Terrorism* 19 LEIDEN JOURNAL OF INTERNATIONAL LAW, 69 (2006).

[55] For a reaction *see*: Tobias Thienel, *The Admissibility of Evidence Obtained by Torture under International Law* EUROPEAN JOURNAL OF INTERNATIONAL LAW Vol. 17,367 (2006).

constitute imports by other States of NIL's elements respectively framed by Lorite in the outer-realm (foreign policy) and the border realm. Why presuppose, however, that the lasting legacy of the neo-conservative theory of international law should stop at their import? More crucially, why to presuppose, as the current analytical framework, which its insistence on the notion of hegemonic international law presupposes, that such an import would be an unintentional consequence of the neoconservative attempts to free the US' of international legal constraints in the unfettered pursue of their foreign policy?

A neo-conservative thinker, like Rabkin, defends in his works that global governance is not anymore in the US' national interest. Should one interpret that he is merely making the case for the American sovereign right to invade Iraq, to not sign the Kyoto Protocol, not to ratify the Rome Statute or not seeing his constitution purportedly overridden by foreign law elements? Rabkin's dualism in steroids does also constitute a bad dissimulated attempt to avoid the incorporation of an international legal Trojan horse to affect the balance of legal partisan US' domestic policies. A constitutionalist isolationism in its aversion to "international authority" because "arguments for global governance obscure the liberal premises of the historic understanding of sovereignty"[56] will not merely try to exempt itself from international legal constraints in the range of its sovereign action, it will neither spare efforts to promote internal departures from what it understands as "the European consensus, which was supposed to be the emerging consensus for "universal governance."[57] The study of the neoconservative theory of international law constitutes, therefore, an attempt to widen the international lawyers' perspective beyond their current fixation on a doctrinal corpus designed to be exclusively used by a crude hegemonic exception-driven hyper-power. It is an open invitation to adopt a complementary perspective that could well begin by taking the old Latin adage *divide et impera* as the lenses through which begin to visualise the hidden design of a neoconservative international legal order in the making.

D. Rabkin or the neoconservative caricature of a formal truth

Once the broader doctrinal framing of this author's works has been summarily dealt with, no further methodological hindrance prevents us from focusing on the rhetorical paraphernalia that wraps up Rabkin's call for the US' sovereign

[56] RABKIN (note 4), 37.

[57] RABKIN (note 4), 280.

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constitutional independence and his ensuing confrontational approach towards liberal international law. In reviewing in 2006 A Law Without Nations? Paul Carrese signalled that "Rabkin's is a serious statement of all that cosmopolitanism and post-modern humanism must overcome in their quest for a more just global order."[58] If one accepts this remark in its literal sense, the task before cosmopolitanism and post-modern humanism would indeed appear as a Herculean one in its very mythological sense! Happily enough, however, one does not need to "buy" a radical perspective of marked disruptive features as the one put forward by Rabkin as a measuring rod in scholarly terms. This author's characteristic style of mixing blunt partisan political rhetoric and academic analysis constitutes his fatal Ulysses' heel. As a consequence of this style, the specialist sees himself soon diverted from a substantive reading of his works. Sadly enough, some of Rabkin's interesting criticisms that belong to what one could frame within the traditional honourable category of the disquieting lucidity of the conservative thought in sharp contrast with commonly accepted (but not so reflected or even hypocritical) mainstream views are soon overshadowed by this marked feature of his personal academic style.

To those mentions previously made, one could add the cobbling together of many excerpts from both books that are sufficiently revealing of this way of proceeding. Both books were written at a moment of major interest for the supposed intellectual sources of events of world significance. Beyond the expected analysis of current matters as the Iraq war, that the author, not surprisingly, defends, not in terms of the US' official position in the Security Council, but of mere *potestas* "in keeping with past practice and past experience,"[59] I have selected four major fronts of traditional attack of the conservative thought as brief revealing passages of Rabkin's academic interests in these books. The United Nations, the NGO's power, the international law of human rights and the universal jurisdiction constitute the dispersed and recurrent object of his cumulative attack in both works.

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[58] "Rabkin's is a serious statement of all that cosmopolitanism and post-modern humanism must overcome in their quest for a more just global order", Paul Carrese, *Review of Law Without Nations* 16 LAW AND POLITICS BOOK REVIEW, 182 (February 2006), http://www.bsos.umd.edu/gvpt/lpbr/subpages/reviews/rabkin0206.htm (last acceded, 14th May, 2007) Prof. Carrese's review constitutes a balance attempt to analyse the originalist constitutional approach of the book from a his "own scholarship" which "lies closer to Rabkin's perspective of originalism" insofar as "Rabkin elaborates the minority view on law and government among American and European academics" by stressing and engaging with the analysis of the libertarian philosophical foundations of the book.

[59] RABKIN (note 4), 27.

Thus, the former Secretary General of the United Nations is pinpointed as of as directly responsible of Rwanda's genocide[60] and the "utterly corrupt"[61] UN and its "feminist social policy"[62] are characterised as rationales for explaining that the UN "remains a forum to bolster the self-confidence of tyrannies."[63] Rabkin's also projects a clear distrust of the power of the "global civil society" and NGO's on account of what he sees perceives as their double-standards in detriment of the worst abuses. [64] NGO's see furthermore denounced what the author defines as their "*fiat justitia, pereat mundus"* complex that he considers to be "the perfect motto for advocates and institutions that take pride in answering to no one,"[65] therefore, blaming them for their irresponsible attitude in the context of the Pinochet case and the International Criminal Court. Rabkin's does also express his clear opposition to the "free-floating international law of human rights" which constitute (in Rabkin's view) "at best [66] a sort of shadow law, conferring shadow rights"[67] which, as already noted, constitute in the authors' view a threat to the US' sovereignty. The author's frequent attacks to any universal jurisdiction schemes and to the legitimacy of the ICC,[68] another of the traditional fronts of neoconservative distrust of international law, do not either stop short

[60] In justifying US' unilateralism through the exemplification of the absolute lack of faith that one should posed in the UN in light e.g. of Rwanda's genocide, "The UN official responsible for withdrawing the peacekeepers, Kofi Annan, was later promoted to secretary-general, and was subsequently awarded a Nobel Peace Prize – for peacekeeping! RABKIN (note 2), 84.

[61] RABKIN (note 4), 124.

[62] RABKIN (note 4) 123.

[63] RABKIN (note 2), 124.

[64] e.g. AI's campaign against capital punishment in the US vs withholding of comment about mass murder in Cambodia, RABKIN (note 4), 176.

[65] "Is the perfect motto for advocates and institutions that take pride in answering to no one" RABKIN (note 4), 188.

[66] "That could mean that "fundamental elements of American domestic law would, in effect, be made in international forums or in other countries and then simply appropriated by American judges" RABKIN (note 4), 23.

[67] RABKIN (note 4), 31.

[68] The ICC, perhaps the single front to which more references are to be found in both books, is one of the black beasts of NIL. Rabkin's attacks on the ICC do not stop in subtitles: "Europeans are drawn to relativizing abstractions. For Germans, the ICC promises to "overcome the past," by licensing German judges to try Americans and Israelis for war crimes". Note, however, that such a remark is not an isolated passage in one of the books under review or even a discreet footnote, but it makes part of the abstract itself of Jeremy Rabkin, *World Apart on International Justice* 15 LEIDEN JOURNAL OF INTERNATIONAL LAW, 835 (2002).

of recalling that "legislation enacted in 2002 authorises the President to use all means, including armed force, to ensure the release of US personnel held for trial at the ICC."[69]

Rabkin's catalogue of regressive views could be easily prolonged *ad nauseam*. To note however that most of his arguments can be found in a more sophisticated form, and absent of the crisped remarks that so often accompany Rabkin's exposition, as the official positions of different governments (both under Republican and Democrat administrations) of the United States allows to place this authors' views as representative of an entrenched domestic partisan perspective on the field of the US' foreign affairs law. The overall perspective portrayed by these two books is, thus, that of a post- 9/11 reloaded restatement of the shameless creed of the conservative US' right wing in the field of international legal foreign affairs. Hopefully, this essay has been able to frame the "sound and fury" of which Rabkin's books are full within a more ordered doctrinal perspective.

[69] RABKIN (note 2), 116.

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