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Jeremy A. Rabkin: Law without Nations?

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CHAPTER ONE

INTRODUCTION: BY OUR OWN LIGHTS

FOR SOME MONTHS following the terror attacks of September 11, 2001, pundits affirmed that the event had irrevocably changed America and the world. Subsequent events proved that changes in America and changes in the world were far from symmetrical. Perhaps there was not even that much change.

Nations, like individuals, may respond in new ways when confronted with new challenges. But even new responses are shaped by old habits of thought and established patterns of conduct. American political ideals have often differed from those embraced by people in western Europe. Differing responses to the challenge of international terrorism simply highlighted the underlying divergence.

In the immediate aftermath of September 11, “the world”—speaking through the United Nations (UN)—condemned the attacks. But what could the “international community” do to catch the perpetrators or to ensure that such attacks did not recur? The “international community” offered condolences. America then had to summon its own resources to defend itself.

Working with Afghan resistance forces, the United States mounted a counterattack on the Taliban regime in Afghanistan, a principal host for the terror network that perpetrated the September 11 attacks. The Taliban regime was overthrown in less than four months. Hundreds of Islamist terrorists were captured and imprisoned. But the United States provided virtually all the outside military force to accomplish this result.

For most Americans, the experience offered a clear lesson: The nation must depend, in the end, on its own exertions for its own security. At home, police warn crime victims not to take the law into their own hands. The world as a whole, however, has no international policing capacity. When attacked, a nation must be able to take the law into its own hands because self-defense is the most basic right.

Most Europeans drew quite different conclusions. In the months after the Afghan war, the United States was scolded by the International Red Cross, by the UN Commissioner for Human Rights, and by many European leaders for refusing to accord prisoner of war status to captured Afghan terrorists. Their view was that even a justified war must be fought

under international supervision, on terms acceptable to international authorities.

And on second thought, much of the world doubted that terror attacks could actually justify military responses. In April 2002, after hundreds of Israeli civilians had been killed by terrorist attacks on civilians in Israeli cities, the government of Israel sent troops into towns on the West Bank to seize terrorist leaders and dismantle the terrorist infrastructure. The United Nations issued fierce denunciations of Israeli “aggression” without making any reference to the terrorist attacks which provoked it. European leaders spoke of “massacres” and “war crimes”—on the evident assumption that even a conscript army of a democratic nation was quite capable of committing mass atrocities, unless constrained by international authority. The correct response to terror attacks, Europeans insisted, was to work with international authorities to defuse tensions and satisfy the grievances which provoke people into committing terrorist acts.

A year later, American and British troops invaded Iraq and overthrew the government of Saddam Hussein. The UN Security Council had demanded that Saddam’s government demonstrate that it had dismantled all its programs for producing weapons of mass destruction. The same demand had been repeatedly reaffirmed since 1991, when it had been included in the truce terms ending that earlier Gulf War. In the previous war, a UN-authorized, American-led force had liberated Kuwait from Iraqi conquest but left Saddam in power in Iraq itself. By the spring of 2003, there was general agreement on the Security Council that Saddam was still not complying with disarmament obligations imposed in 1991. It was also widely understood that Saddam’s government had developed friendly relations with international terror networks.

But the Security Council still would not authorize a second war to enforce its own demands. When the United States and Britain proceeded to war without formal authorization from the Security Council, the war provoked strong condemnation at UN Headquarters and in many capitals around the world. In Europe, the governments of France and Germany remained most adamant in their condemnations. Outside of Britain, European public opinion remained quite disapproving. American opinion generally supported the war.

For critics, the war showed that the United States was a dangerous “rogue nation,” claiming the power to attack other countries on its own initiative.¹ For most Americans, it was hard to imagine who else, if not the American government, could decide when and where American military forces would be ordered into action. The United States had, in fact, secured endorsements of the war from some forty countries, many of

which offered some degree of direct assistance to the military campaign. To critics, the war remained “unilateral” or in any case “illegitimate” because it was not sanctioned by the United Nations.

For most Americans, it remained strange to think that American defense efforts required authorization from the United Nations. The United States had fought many wars, large and small, since the founding of the United Nations in 1945. It had rarely sought or received UN approval for these efforts. How could the UN limit American defense efforts, when the UN had no troops to provide an alternate means of security? Criticism of American actions presumed, on the contrary, that no country would be safe unless international institutions were acknowledged to be paramount to the impulses of individual states.

Even as the United States was gearing up a bolder defense strategy in the months after September 11, European governments rounded up endorsements for a project which embodied this alternate view. A treaty establishing an International Criminal Court (ICC) had been negotiated in the summer of 1998, but it took some time to get the required sixty ratifications to put the plan into effect. The United States had, from the outset, sought revisions in the design of the project. European governments resisted these pleas and pressed forward with their efforts to see the court set up and running on the original plan. In the spring of 2002, the Bush administration announced its unalterable opposition to the court as now constituted. This stance provoked intense criticism.

The extent of the divergence in underlying attitudes was perfectly reflected in the differing perspectives on this new international project. The court would have jurisdiction to indict American soldiers for “war crimes” and could accuse higher officials of “command responsibility” for such “crimes,” even for abuses they had neither ordered nor known about. Ultimately, according to the original plan, the court would also have jurisdiction to indict American leaders for the general crime of “aggression.” Was it really to be expected that a government of the United States could submit itself to the judgments of such a court?

Europeans seemed convinced that only arrogance and selfishness could explain American resistance to this project. Why should America set itself above the rest of the world? The fact that China and Russia, India and Pakistan, Japan and South Korea, Israel and Egypt—in fact a majority of UN members—had also held back from the treaty did not receive so much attention. Certainly the recalcitrance of other states did not provoke so much criticism. European critics focused on the American stance: Why was the United States holding itself aloof from a project that aroused such hopes among democratic countries, western countries, peace-loving countries?

A short book by Robert Kagan offered an explanation which gained a good deal of attention in 2003: “Americans are from Mars, Europeans are from Venus.”² The problem, as Kagan diagnosed it, was that Americans still felt the need to cope with serious threats out in the world, while Europeans imagined that a network of legal institutions could bring peace to the world, as it had to Europe. Such formulas seemed especially astute amidst intensifying debates over the war in Iraq.

But it was, in fact, only the most visible or the most recent round in a dispute that was much older and much deeper. Long before the dispute over Iraq, European governments had complained about American resistance to many other international undertakings. Before the United States provoked European scorn for repudiating the International Criminal Court, for example, it had provoked European resentment for backing away from the Kyoto Protocol on Climate Change. Those with longer memories could recall that the United States had backed away from a number of previous international environmental treaties, human rights conventions, and arbitration agreements. Those with a wider perspective would notice that European states had harnessed themselves to supranational authorities in the European Union (EU), establishing an elaborate treaty structure over their own national constitutions, in ways that would be unthinkable for Americans.

There was already a growing divergence between Europe and America in the 1990s, when everyone dreamed of enduring peace in a world finally released from Cold War tensions. At some level, the divergence reflected differing notions of what peace should mean. Years before September 11, Samuel Huntington had warned of a coming era characterized by “the clash of civilizations.”³ But even Huntington’s pessimistic forecast took for granted that western Europe and the United States were part of the same cultural community—what he called “western civilization.” But “western civilization” itself has competing strands. In some ways, the debate that emerged after September 11, like the trans-Atlantic disputes gathering momentum before that supposed turning point, reflected very much older divisions.

How can any nation hold to its own law and still have peace with its neighbors? The question has been posed—and answered in quite different ways—ever since the emergence of modern nation-states. It is a question that has shadowed the modern world.

In some ways, indeed, the underlying debate is still older. It goes back to some of the formative thoughts or formative experiences of western civilization. Certainly, the longing for some overarching political structure, encompassing all or many nations, is a very old dream. For many centuries, it was even an achieved reality.

UNIVERSAL EMPIRES

At the height of its power, the Roman Empire seemed to rule the whole of the civilized world. If there were different empires in China or India, they were impossibly remote, scarcely more than legends or rumors. At least within Europe, the boundaries of Rome appeared to be the boundaries of civilization. Within Europe, even barbarians, on the far side of this boundary, were awed by Rome's empire.

Rome was the source of wealth and luxury, of order and law, of political wisdom and saving religion. So the barbarians remained in awe of the empire. They remained in awe of Rome, even as they overran the empire and reduced it to chaos in the last stages of Rome's decline. Even then, after the complete disintegration of the empire, the memory lingered.

In the tenth century, German princes tried, with the blessings of a universal church, to revive the idea of a universal empire. These princes styled themselves rulers of an empire (*reich*) not only "holy" but "Holy Roman"—and claimed the title of *kaiser* to appropriate the luster of the ancient caesars. In the fifteenth century, after the Ottoman Turks conquered Constantinople, the last remnant of the Eastern Roman Empire, the rulers of distant Muscovy proclaimed themselves the final heirs of Roman glory—new caesars ("czars"), builders of a "Third Rome," which would be the ultimate and most enduring empire.

Centuries later, a different group of Russian rulers sought to build a new empire, again centered in Moscow, now seeking world dominance not as a "Third Rome" but as masters of a "Third International." By then, Germans were entranced with a new scheme for the German domination of Europe—a successor to the medieval revival of the Roman Empire, a "Third Reich," which would leave architectural monuments as grand and enduring as those left by ancient Rome.

Almost everyone now shudders at the horrors inflicted by these mid-twentieth-century efforts at restoring universal empire. But in their time, these projects inspired great hopes among millions of Europeans. People in France, in Belgium, in the Netherlands, and elsewhere in western Europe greeted the triumph of German arms in 1940 with relief. They hoped for peace. Relinquishing national sovereignty seemed a reasonable price to pay for the promise of peace.⁴ Millions of people in conquered countries looked upon continued British resistance as an affront to peace. As late as the summer of 1943, the president of France, chosen by a freely elected parliament, insisted there could still be a general peace in Europe if only Britain were "not led by the fanatical Churchill and the United States by the Jews."⁵

There was reason, after all, to think that a triumphant empire could

bring peace. While the Roman Empire lasted, it provided security from one end of Europe to the other—and good roads throughout. Medieval Europe, torn by endless feudal conflict and religious squabbles, longed for a revival of the Pax Romana—which it connected with the inner peace to be secured by a universally acknowledged faith.

There was more than a little yearning for peace in this sense, too, in western Europe, in the summer of 1940. Advocates of collaboration envisioned a Europe where harmony would reign between classes as between nations, where selfishness and petty interests would give way to common European structures, so encompassing as to preclude any possibility of future conflict. Europe's new leader voiced the ultimate promise of peace in this first modern effort toward European integration: "When National Socialism has ruled long enough, it will no longer be possible to conceive of a form of life different from our own."⁶

The victory of outside powers put a definitive end to this particular dream of assured peace through imposed unity. Millions of Europeans continued to embrace—or turned now to embrace—a rival vision of assured harmony. International socialism had defeated National Socialism in the east. Even in western Europe, hopeful followers assumed that the new faith had harnessed the irresistible tide of History. The underlying appeal was much the same. Communism, too, promised an escape from conflict—only this time, a more comprehensive escape. By eliminating private property, it would eliminate any impulse to distinguish "mine" from "thine" and allow all mankind to embrace a common humanity.

But contrary to the predictions of many European observers in the 1940s, the defeat of the Third Reich did not open the way for the triumph of the Third International in western Europe. Instead, postwar European governments pursued moderate social welfare policies. Prominent advocates spoke of the social welfare state as—invariably—a "Third Way." This way would avoid the extremes of cutthroat capitalism and of bureaucratic socialism, providing a final synthesis that could be accepted by everyone.⁷ To anchor this third way, Europeans began, in the 1950s, to build yet another overarching political structure, which would ensure that states in western Europe, like the classes within them, would no longer be drawn into conflict.

Perhaps there was more than a slight echo of the Pax Romana in this project, too. It was founded in 1957—by an agreement called, in fact, the Treaty of Rome.⁸ The Italian prime minister at the time called attention to the "deep significance" attached to the launching of this new European Community "in Rome, this city which . . . has been recognized as the cradle of that European civilization which [the treaty] aims to advance . . . [and which] will help to make Europeans politically important in the world again."⁹ Over the ensuing decades, the Community acquired more

and more power and was finally given a new name in 1991, to emphasize that its bonds would be far stronger than those linking, say, “the Atlantic community.”

Like the Roman Empire of old, today’s European Union purports to provide Europeans with a common citizenship and a common legal system. Modern Europe also imitates ancient Rome in its submission to a governing scheme with republican (or parliamentary) trappings which still leaves almost all power with energetic administrators. Such arrangements are a considerable departure from the parliamentary form of government within each member state. But bureaucratic government is accepted at the European level as the price of “unity.” Dominant opinion in Europe remains entranced with the idea of a universal authority and impatient with the claims of individual nations.

So European public opinion was strongly of the view that the United States must submit its war plans in Iraq to the approval of the United Nations Security Council. In practice, awaiting approval from the Security Council would mean leaving Iraqis under the murderous regime of Saddam Hussein. Europeans certainly deplored mass murder—at least in 2003. But as in the past, most Europeans held that peace must take priority over freedom. Peace could only be obtained by submitting to some higher structure, reigning above individual nations. It was well worth leaving Iraqis under a murderous tyranny if that were necessary to constrain American freedom of action.

There was much complaint in the aftermath that the United States was building a new empire in the Middle East or acting like an imperial power. When the United States insisted that it would withdraw from Iraq, after a new democratic government had been put in place, critics complained of hypocrisy and double standards, since the United States had “supported” so many dictatorships in other parts of the world. Was it really in the power of the United States to replace dictators with democracies around the world, without deploying military force on the scale that it did in its war against Saddam? Would the United States really secure more international support by sending troops around the world to establish new democracies, even where existing governments posed no threat to the United States or to other states? Even complaints about U.S. imperialism betrayed a longing for empire—but a better, more even-handed empire, which would assure peace and eliminate the need for hard choices.

NATIONS APART

Longing for empire is not unique to Europeans any more than longing for peace and security is unique to people in western countries. If anything,

Europe was, compared with vast stretches of Asia, rather unusual in its inability to sustain stable empires after the fall of Rome. Long after the fall of Rome, millions of people lived for many centuries under emperors in China, or under caliphs and sultans in the lands of the Islamic conquest. These empires, too, experienced periods of convulsion and disarray. But again and again, new rulers succeeded in reviving and restoring these ancient empires. Empire was a matter of deeply ingrained expectation. Perhaps it satisfied some genuine hopes or longings for peace and order among subject peoples.

Europeans had much more difficulty restoring and sustaining a continental empire after the fall of Rome. Part of the reason is that reverence for empire is not the only tradition in western political thought. Perhaps it is not even the main tradition. The deepest roots of western culture have often been traced to Athens and Jerusalem—relatively small cities, intensely aware of their distinctiveness. The literature of the ancient Greeks and ancient Hebrews certainly shows awareness of empires and of the temptations of empire. Their most important literature reflects considerable distrust or outright hostility toward imperial schemes.

In his sprawling chronicle of the war between the Greek cities and the Persian empire, Herodotus depicts the conflict as a struggle between Greek freedom and Persian despotism. Even within Greece, Herodotus emphasizes the paradoxical way the Greeks drew strength from their divisions and the way their divisions reflected their civic freedom. “Greece was saved by the Athenians . . . who held the balance” and “having chosen that Greece should live and preserve her freedom, roused to battle the other Greek states which had not yet submitted [to the Persians].”

Most of the Greeks were discouraged by the prophecy given by the oracle at Delphi, urging the “doomed ones” to “fly” from “fire and the headlong God of War.” The Athenian envoys insisted on seeking a second opinion from the oracle. A new prophecy suggested there would be security in “the wooden wall.” To the “professional interpreters,” this referred to an old thorn hedge around the Acropolis, where the Greeks might find refuge. Themistocles saw it as a reference to Athenian ships: “The Athenians found Themistocles’ explanation of the oracle preferable to that of the professional interpreters, who had not only tried to dissuade them from preparing to fight at sea but had been against offering opposition of any sort.”¹⁰

Under the leadership of Themistocles, the Athenians mobilized their navy and drove back the Persians after a great battle at sea. So Greece was saved in the end by the imagination and free spirit among the leading citizens of Athens, who dared to disregard the fatalism of other cities and the fatalistic advice of their own priestly authorities.

The Hebrew Bible begins with an account of Creation that emphasizes

the oneness of God and the unity of His Creation. All human beings are shown to have a common father and a common mother. But humanity's first family is ruptured by its first crime—a fratricide, emerging from a dispute over which form of sacrifice is most pleasing to God. Human wickedness becomes so pervasive that God is provoked to drown almost all humanity in a great flood and start humanity over again from the righteous family of Noah.

But the opening chapters of the Bible make clear that restored unity has its own dangers. Only a few generations after the flood, a united humanity embarked on the building of a tower “with its top in heaven,” in order to “make us a name, lest we be scattered abroad upon the face of the whole earth.” God sees that “they are one people, and they have all one language” so “now nothing will be withholden from them, which they purpose to do.” The building of the tower is halted when God confuses the builders by giving them different languages (Gen. 11:1–9). Immediately preceding this narrative, the Bible provides an extended series of genealogies (Gen. 10:1–32). This placement suggests that it was the “confusion of tongues” at Babel which rendered these different families into separate nations. The entire account suggests that this division of mankind was, in some way, necessary or providential.

What was the precise affront to God or the danger to man in the building of the tower? It appears to be a symbol of human over-reaching: The unity of mankind tempts men to think they can challenge the ultimate authority of God—to think that their own united strength allows them to displace the omnipotence of the One God. Ancient and medieval commentators saw a connection, which is not explicit in the biblical text, between the over-reaching ambition of the tower builders and the ambitions of Nimrod, mentioned earlier in Genesis as a “mighty one” and a “mighty hunter.” So the tower was seen as the project of an ambitious tyrant; tyranny, in turn, was seen as the inevitable concomitant of imposed unity.

Milton's *Paradise Lost* gives a version of this view that may still resonate with readers in the English-speaking world. Given a glimpse of human history, Adam is told that after the great flood men will “spend their days in joy unblam'd, and dwell/ Long time in peace by Families and Tribes . . .”

. . . till one shall rise
 Of proud ambitious heart, who not content
 With fair equality, fraternal state,
 Will arrogate Dominion undeserv'd
 Over his brethren, and quite dispossess
 Concord and law of Nature from the Earth;

Hunting (and Men not Beasts shall be his game)
 With War and hostile snare such as refuse
 Subjection to his Empire tyrannous:
 . . .
 He with a crew, whom like Ambition joins
 With him or under him to tyrannize,
 Marching from Eden towards the West, shall find
 . . . that stuff they cast to build
 A City and Tow'r, whose top may reach to Heav'n;
 And get themselves a name, lest far disperst
 In foreign Lands their memory be lost,
 Regardless whether good or evil fame.
 . . .
 O execrable Son so to aspire
 Above his Brethren, to himself assuming
 Authority usurpt, from God not giv'n:
 . . . Man over men
 He made not Lord; such title to Himself
 Reserving, human left from human free.
 But this Usurper his encroachment proud
 Stays not on Man; to God his Tower intends
 Siege and defiance: Wretched man!

(12.22–74)

Immediately after it recounts the frustrated ambitions of the tower-builders, the Bible proceeds to describe the immediate ancestry of Abraham, the father of a particular nation, whose history is narrated through all the subsequent books of the Hebrew Bible. That special nation must hold fast to its own special law. Moses emphasizes this trust to the people of Israel in his last admonition: “this is your wisdom and your understanding in the sight of the nations, which shall hear all these statutes and say, Surely this great nation is a wise and understanding people” (Deut. 4:6).

Israel will be “a light to the nations”—not by its direct rule but by its example: “Kings shall see and arise, princes also shall worship, because of the Lord that is faithful” (Isa. 49:6–7). The prophets foresee an era of ultimate peace between nations but no prophecy foretells the merger of all nations into one. “The wolf and the lamb shall feed together” and yet “not hurt nor destroy” (Isa. 65:25). The vision is wondrous precisely because it assumes that wolves will still be, in some way, wolves and not merely lambs in wolf clothing.

Only God, it seems, can finally bring this wondrous reign of peace to the world. “They shall beat their swords into plowshares, And their

spears into pruning hooks”—but only after “the Lord . . . shall judge between the nations, And shall decide for many peoples” (Isa. 2:4). As it waited for divine deliverance, Christian Europe still preserved the memory of the heroism and civic spirit of the independent Greek city-states. And it added to the biblical canon the record of the Maccabees, who rose against a Hellenistic empire to preserve their own worship in their own temple in Jerusalem.¹¹

Almost from its origin, then, western civilization has wrestled with warnings against the all-encompassing empire. Imperial pretensions have been seen as threatening, both to freedom and to proper piety. Resistance to empire seems to rest, in the first place, on this insight: In a world where so many are led astray, boundaries are necessary to preserve the possibility of pursuing the true way. By living independently, a pious or righteous people can save themselves from the corruptions of others. By defending the independence of their own free states, free citizens can preserve their freedom.

The ancient aversion to empire also seems to rest on a deeper insight: all-encompassing power, in a geographic sense, inspires rulers with dreams of power that is boundless in other ways. An independent city or an independent nation must live with other cities, other nations that are near enough to be known—and may be known to be different. The different ways of others may raise some question about the rightness of what one has at home. The awareness of difference can be a stimulus to wonder and reflection and perhaps a spur to self-improvement.

That is a Greek idea, quite obvious in Aristotle’s discussion of the relative merits of the different constitutions and different regimes in different Greek cities. This idea may not be altogether remote from the Hebrew idea, that a single people may be a model or an example to other nations.

In the course of western history, a succession of empires imagined themselves successors to Rome. But a number of nations have viewed themselves as, in some way, a new Israel—distinctive, luminous, faithful to some special destiny. In the seventeenth century, Puritans were particularly taken with the vision of a new Israel in England—or in New England. In the era of the American Revolution, clergymen preached sermons again urging Americans to see their country as “God’s American Israel”—not a conquering empire but a special nation.¹²

At the outset of the Civil War, Abraham Lincoln spoke of Americans as an “almost chosen people.” Later he sought to comfort a stricken people, by assuring them that their agonies would have significance for the whole world, by “testing whether this nation *or any nation* so conceived and so dedicated can long endure.”¹³

STILL A SEPARATE NATION

Most Americans still cling to the belief that the United States remains a special country, that it is, in some way, different from others and has a right to continue in its different ways. Americans have retained many ways that have disappeared elsewhere. Americans even cling to the English system of weights and measures, long since replaced by the metric system in England itself.

And to the annoyance of Europeans, America clings to the idea that it can remain its own nation. The United States refused to participate in a range of global initiatives on the environment and human rights during the 1990s and set itself firmly against an international criminal court. And the United States continued to insist on its own right to defend itself against terrorist aggression.

In western Europe, the American stance appears selfish, obstinate, arrogant—indeed, stiff-necked. The association was irresistible to many Europeans. The foreign minister of France explained to the French National Assembly that the American resort to war against Iraq had been the work of a “Zionist lobby” in Washington.¹⁴ Following what was by then a well-established rhetorical convention, Villepin proceeded to single out American officials in the Bush administration with Jewish-sounding names. Europeans were united in their desire for peace but Israel and America insisted on pursuing the path of conflict. With unerring rhetorical instinct, M. Villepin also scolded Britain’s government for deserting Europe, adopting just the same tone of petulance as that displayed by French officials in the fall of 1940.¹⁵

Such complaints, of course, made little impact on American thinking. The United States owes its founding to an exodus of independent-minded people from Europe, seeking their promised land on a new continent, safely distant from the tyrannies and constraints of the Old World. The United States has often been out of step with prevailing currents of opinion in Europe. Still, Europeans have had reason to be grateful for American independence.

In the twentieth century, Europeans threw themselves into political schemes of boundless ambition—imposing total unity, seeking to build towers that would conquer Heaven by human will. And they brought death to millions and misery to hundreds of millions. More than once, the United States helped to save Europe from its own political frenzies. There was a time—a brief time, now some decades past—when many Europeans acknowledged that fact with appreciation.

Perhaps the United States retained the strength and decency to save Europeans from their own worst impulses, because Americans themselves

had remained loyal to distinctive American ways. Perhaps there is some value, then, not only for Americans, but for the world at large, in allowing America to adhere to its own traditions.

Of course, many leaders and thinkers in other nations see the world differently. So long as they do not threaten violent attacks against the United States, American leaders might simply agree to disagree with leaders or governments of other nations. Is peace more likely by imposing a common stance or by accepting differences?

Europeans protest that the United States now behaves like an imperial power. They do not imagine that the United States will soon invade Portugal or Iceland or that it will drop bombs on Europe to force Europeans to participate in American “imperial adventures.” Still, the United States inspires great fear and resentment in Europe. Is it more “imperial” to overthrow a particular dangerous tyranny—or to establish institutions which purport to judge all leaders of all nations? The charge against the United States is that it will not submit to global schemes of control which are strongly favored by Europeans. By asserting its own independence, the United States is disrupting projects for global law, which are supposed to achieve global peace. Apart from the actual consequences of any particular action which the United States may undertake, its overall stance looks to many Europeans as the moral equivalent of imperialism—now understood as asserting the right to differ. It follows, in a way, if one assumes that dissent from a universal faith must imply a design to impose a countering faith on the whole world.

Indeed, prominent thinkers in Europe warn that the United States remains in the grip of “religious fundamentalism.” Jürgen Habermas, Germany’s most prominent philosopher, shuddered in disgust at the idea of “a president who begins his daily business with public prayer and associates his momentous political decisions with a divine mission.” In Europe, such a leader is “hard to imagine.”¹⁶ No doubt, a previous generation of German thinkers reacted with equal disgust at reports that President Roosevelt had implored “Almighty God” to bless the American troops embarking for the liberation of Europe or that General Eisenhower had implored the troops, themselves, to “beseech the blessings of Almighty God upon this great and noble undertaking.”¹⁷ It seems to have been forgotten in Europe that the victory of American arms in 1945 was not followed by forced conversion of Europeans to the dominant Protestant faith in America or even to Christianity. It seems almost unknown to Europeans that the most evangelical sects in America have been the most insistent defenders of religious independence from government.

But of course, actual American religious practice is not the point. Even if Americans do not seek to impose their faith by force, their self-confidence is seen as an obstacle to the reasonable common management

of global problems. So European commentators persist in drawing bizarre parallels between religious “fundamentalism” in America and the kind of Islamic fundamentalism championed by Osama bin Laden.¹⁸ The United States may not practice or applaud terrorist acts, but it remains terrifying because it is, in its own way, a powerful obstacle to plans for assuring peace and harmony in the world.

Assuring peace and harmony may prove rather difficult, however. War has cast its shadow through all of human history. Religious faiths are also very old. The new idea is that international institutions can bypass religion and establish perpetual peace. Or perhaps it is simply the new version of the very old idea of a universal empire—a plan which has not done very well, either, in securing universal peace in recent centuries.

Will it be easier to learn to live with differences by insisting that differences be negotiated away in common global standards—or by acknowledging that differences run deep? Apart from doubts about whether programs of universal agreement can ever be really voluntary, we might wonder whether people prepared to agree on so much can retain their own freedom or their own principles. So we might come back to the idea that distinct nations have a right to be distinct—that is, in old-fashioned terms, sovereign.

POST-MODERN CHALLENGE

Europeans scoff at sovereignty. Many scholars disparage thinking about it in the name of pragmatic adjustment. An increasingly influential school of academic writers assures us that, if we do let ourselves look at it, we will find that sovereignty is merely a word or at most a passing “social construction” with no necessary or inherently compelling logic.

It is the central insight of “post-modern” thought: there are no “essential” qualities to any social arrangement or to any standard or concept with which we “discourse” about the world. All our categories for thinking about international law or international authority—“internal” vs. “external,” “domestic” vs. “foreign,” “sovereign state” vs. “international organization”—are all mere social constructions, the outcome of power impositions over time.

It follows that we do not need to take these categories or distinctions very seriously. Old books made much of them but “we” now know better. Part of the appeal of post-modernism may lie precisely in this liberating dispensation. There is no longer any need to read old books or study old history with any care when one knows in advance that there is no “essential” point to grasp.

But probably the greatest appeal lies in the implication that everything

is up for grabs, because there is no standard, no truth, no logic but only human willfulness. If all boundaries are socially constructed, all can be reconstructed on different lines. It is an enticing thought to intellectuals dreaming of worlds transformed.¹⁹

Many scholars thus seem to embrace post-modernism with the exuberance of adolescents, discovering that sex is a lot more appealing and a lot more available than they had realized as children. “Postmodernism exposes the smokescreens and the histories of the screens and the smoke, in brilliant, eye-opening ways,” as one scholar exulted. But a “post-modern feminist method” applied to international relations would go beyond moral relativism, emphasizing “gender relations over time” and questioning the “gendered assumptions” that have been “encrusted in the field” of international relations. If some theorists envisioned a world of “postinternational relations,” practitioners of feminist international relations theory protest that “gender relations persist untransformed, which must mean that important aspects of relations international did not change.”²⁰ Dazzled by such demonstrations, which claim to strip away the protective covering of conventional assumptions, scholars proclaimed, as if it were a titillating discovery, that sovereignty has been “socially constructed.”

In many ways, they were kicking down an open door. American independence began with a declaration asserting that “governments are *instituted* among men, deriving their just power from the *consent* of the governed,” so it remains “the right of the people to *alter* or *abolish* [government] and to institute new Government . . . on such principles and . . . in such form, as *to them* shall *seem* most likely to affect their safety and happiness.” The same John Locke who spelled out the doctrine of government by consent, on which the Declaration draws, published an *Essay Concerning Human Understanding* which argues that all abstract concepts are human constructions (book III, chapter v, paragraph 12).²¹

But, after all, no one disputes that the George Washington Bridge is a human construction. It could certainly have been constructed according to a different design. Many designs, however, would risk tumbling drivers into the Hudson river instead of carrying them safely to New Jersey. Not every construction is as solid or serviceable as any other²²—a point one may also find in Locke’s *Human Understanding* (III.x.26–31) as well as in his *Second Treatise of Government* (Paragraphs 161–66).

It does not matter, in the end, whether one views the pattern of the past as a social construction or an accident of history or a providential design. There remain strong reasons to welcome the division of the world into separate nations and to endorse the principal safeguard of this division—the sovereignty of independent states.

Certainly the world could be different. We know for sure that it can be worse—because it has been. In the modern world, sovereignty has been closely associated with constitutional government, at least in the sense that constitutional government has only been achieved in sovereign states. And it is only in the modern practice of constitutional government that guarantees of personal liberty have been combined with political structures capable of sustaining stable democracy.

It is fair at least to wonder whether contemporary disdain for sovereignty does not reflect (or at least encourage) an impatience with its historic counterparts—that is, with constitutional government, with liberty and democracy. It is fair to wonder whether disdain for sovereignty does not, in fact, reflect a disgust with all the “constructions” of modern liberalism. It is fair to wonder whether it does not reflect a longing for a world in which—as in the promised wonderland of communism—there are no longer real differences, hence no longer any need for legal boundaries protecting the right to be different.

Perhaps the clever insights of post-modern imagination lost some of their appeal in the aftermath of September 11 or in the subsequent bitter dispute over the war in Iraq. In contemporary academic literature, however, those who reject the visions of post-modernism are rarely concerned to defend constitutional government in its own terms. Instead, critics of post-modernism generally respond with “realism.” They seem to counter grotesque “ideals” only with unpleasant “realities.” Stephen Krasner, for example, does not defend sovereignty—in his book of that title—but rather depicts it as an “organized hypocrisy” (in the words of his subtitle) which simply must be taken into account, because it will not go away.²³

It is surely better to be “realistic” (even in this sense) than fantastical. But these are not the only choices. Anyone interested in defending the American Constitution has to think in different terms. What sort of rule can we live with? That is not a cynical question, even if it excludes some fantastical answers at the outset. It is the sort of question that would naturally occur to a citizen, a statesman, a Framer of the Constitution—or anyone who wants to understand their choices.

This book is primarily about American ideas of constitutional government. It is not a study of international relations, as such. The book offers no advice about how to make peace or how to deal with other global challenges. Its aim is to explain why American constitutional traditions make it hard for the United States to embrace schemes of global governance which find so much favor in other countries, particularly in western Europe.

This book has other limitations which should also be acknowledged. Economics, sociology, and other social sciences may have much to say on

the viability of global schemes of governance. This book instead emphasizes trends or patterns in political thought. I believe that ideas and opinions are most decisive in structuring law and constitutions.

From some perspectives, the United States is simply a vast collection of consumers and producers, preference-holders who might be better off under global governance. That is not the grounding assumption of the U.S. Constitution, however. And it is ultimately the Constitution that makes the United States a nation.

To put it succinctly, this book aims 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.

As in the past, the American view differs from ideas prevailing in Europe. But difference can be the beginning of reflection. Aristotle’s survey of politics suggests that reflection can lead to moderation and sobriety. It is at least a plausible claim.

The opening passage of *The Federalist* put it as a question: “whether societies of men are really capable or not of establishing good government from reflection and choice or whether they are forever destined to depend for their political constitutions on accident and force”? By linking “choice” with “reflection,” this version of the question acknowledges that choice has inherent limits. Random choice is not much different from leaving matters to “accident and force.” By posing the question as one for “societies,” *The Federalist* still acknowledges that choice can remain for some, even when others choose differently. It asks about the possibility of acting by “reflection and choice,” not whether the answer can be guaranteed for all mankind. Framed this way, the question might be decided, as *The Federalist* concluded, “by the people of this country, by their conduct and example.” The most important “example” was to establish and adhere to their own national constitution.

That remains a plausible answer. This book is an extended effort to show why it is a plausible answer. It is an answer that may have something to contribute to contemporary debates about “global governance.”