

TOWARDS A WATERSHED IN U.S. GLOBAL POLICY: FROM NEO-CONSERVATISM TO NEO-RATIONALISM

Prof. Dr. Herbert R. Reginbogin
Touro Law School, New York

1. Overview of U.S. Global Policy

Conventionally, American foreign policy aims have been interpreted generally as vacillating between power-oriented Realists *à la Kissinger* and reform-minded Idealists in the vein of Wilson. While mainstream neoconservatism aligns themselves with the free market, limited welfare, and traditional cultural values, their key distinction is in international affairs, where they prefer an interventionist approach that seeks to defend national interests while rejecting social liberalism. In his latest book, "America at the Crossroads" leading neoconservative thinker Francis Fukuyama analysis the mistakes that led to the Iraq debacle and concludes that we still don't know what long-term consequences will fall out of Washington's laying claims to hegemony and some abandonment of its commitment to upholding the rule of law in their pursuit of fighting the 'Global War on Terror', or its wide-ranging sacrifice of diplomatic traditions that earlier American administrations, like Harry S. Truman's, had judged so important. But even Fukuyama fails to explain how people like the neo-cons which are so opposed to state intervention, or "social engineering," in their domestic politics could place such fantastic hopes on forcing democracy on a foreign land.¹

Paul Berman depicted in his *New York Times* review of Fukuyama's new book that "...neoconservative foreign policy thinking has all along indulged a romance of the ruthless -- an expectation that small numbers of people might be able to play a decisive role in world events, if only their ferocity could be unleashed. It was a romance of the ruthless that led some of the early generation of neoconservatives in the 1970's to champion the grisliest of anti-Communist guerrillas in Angola; and, during the next decade, led the neoconservatives to champion some not very attractive anti-Communist

¹ Marian Lau, "Is Neoconservatism Dead," available at <http://www.spiegel.de/international/0,1518,415868,00.html>

guerrillas in Central America, too; and led the Reagan administration's neoconservatives into the swamps of the Iran-Contra scandal in order to go on championing their guerrillas. Doesn't this same impulse shed a light on the baffling question of how the Bush administration of our own time could have managed to yoke together a stirring democratic oratory with a series of grotesque scandals involving American torture -- this very weird and self-defeating combination of idealism and brass knuckles?"²

With some 130.000 American troops occupying Iraq and in what has been acclaimed by both Democrats and Republicans as an historical speech on November 6th 2003 by President Bush George W. Bush Jr. to actively promote a liberal democracy and free market economic reforms, not just in Iraq but throughout the region, the United States has been criticized for its 'new approach' about the underlying norm governing the use of force by asserting that it will use force to pre-empt 'emerging' threats as well as those which are imminent. It argues that changing circumstances warrant new strategies. This suggests an attempt on the part of the USA to withdraw from the accepted norm embodied in Article 51 of the UN Charter by support a change in the norm it sought to criminalize at the Nuremberg Trials in 1945/46. This action has been portrayed by some as America's new boldness with Manifest Destiny on the one hand, and ineluctable workings of Realism in international politics on the other.

Curious enough the bulk of the Democratic Party believes in the neoconservative foreign policy preferring an interventionist approach that seeks to defend national interests. Thus, America's interventionist foreign policy started before George W. Bush Jr. took office in 2001. Already French Foreign Minister Hubert Vedrine complained about the "hyper-power" in 1998 while Americans like Samuel Huntington and others argued a year later that

² Paul Berman, "Neo No More," in New York Times, March 26, 2006 available at <http://www.nytimes.com/2006/03/26/books/review/26berman.html>

much of the world saw the United States as a “rogue superpower, intrusive, interventionist, exploitative, unilateralist, hegemonic, hypercritical.”³

The foreign policies of both democratic and republican presidents show some striking parallels and criticism:

- a. USA pursued military superiority over a combination of all potential competitors;
- b. Went to war without UN approval, whether in Kosovo or Iraq
- c. Refused to sign international agreements such as the Kyoto Protocol, the International Criminal Court, the Comprehensive Test Ban Treaty, or the ban on land mines.
- d. Moreover, both administrations asserted an over confidence in their faith and own capability to be a force of good throughout the world, especially with regard to the promotion of democracy and human rights.

2. Liberals & Neo-Conservatives Join Ranks

Both administrations have been also blamed for constantly boasting about ‘American power and American virtue’. As one of the more thoughtful neoconservatives, Robert Kagan wrote that the origin of America’s ideological sense of moral mission can be traced to the very beginning of the American republic.⁴ However, there is another source of the problem for America boasting about its power and ‘American virtue’. It was the geopolitical shift that followed the crumbling of Soviet power end of the 1980s, the fall of the Berlin Wall and a final peace settlement popularly known as the ‘Two Plus Four Agreement’ negotiated in 1991 between the Federal Republic of Germany and the German Democratic Republic (the two) and the occupying powers of Germany, the United States, Great Britain, France and the Soviet Union (the four), Germany was reunified as a single sovereign state.

³ Robert Kagan, “The September 12 Paradigm: America, the World, and George W. Bush,” in: *Foreign Affairs*, vol. 87, No. 5, (2008).

⁴ Robert Kagan, *Of Paradise and Power: America and Europe in the New World Order*. (New York, 2003), pp. 85-88.

While the treaty symbolized an era of a 'New Enlightenment' imbued with hope that both the former Soviet Union now known as Russia and the USA would develop a new relationship to strengthen the institutions of democracy and seek peace and security throughout the world, it also was proclaimed a peace treaty. It marked for the world the end of the Cold War, thereby, triggering a wave of judicial and political actions in the United States, which had remained unsettled following the end of the World War II. The unresolved Holocaust-related issues like compensation for slave and forced laborers in German industry, dormant bank accounts, unpaid insurance policies, and looted Jewish art hanging in European museums and in private collections were some of the major issues which became part of the Holocaust Restitution Era.

3. Case of the Swiss Banks

It was the role Switzerland and its banks played during the war which became the first most prominently known legal case, which had a dramatic effect on US foreign policy because through the cooperation of Clinton Administration, who was committed to help return property to their legal owners, the plaintiffs were enabled to apply utmost pressure against the Swiss banks and eventually other European countries whose companies were involved in other Holocaust related issues. Congressional hearings were held with survivors of the Holocaust making emotional appeals for justice while politicians had an occasion to enter the fray. Along with the politicians, public officials joined their accusations of economic sanctions against Switzerland.

As America media picked up on the courtroom cases and European anti-Americanism spilled over into transatlantic relations, America portrayed itself as a crusader correcting the wrongs of the dark past of European countries and seeking justice for the victims of the Third Reich. Remarkably, the actions begun in American courts were crowned with success. The Swiss settled in August 1998 for \$1.25 billion. Other banks settled similarly, as did corporations for their use of slave and forced labor and, to a much lesser extent, the insurance companies for their failure to honor obligations to clients who were victims of the Nazis. In all, \$8 billion was paid out by European

governments and private entities for their wartime and postwar reprehensible behavior. By now not only had the Swiss banks claimed a settlement, the German industry was forced to pay billions of dollars in compensation for using both Jewish and non-Jewish victims as slaves during the war and profiting from their labor.⁵

4. The Impact of the Restitution Era on International Relations

The end of the Soviet bloc also prompted new demands to reckon with past wrongs. Out of the wreckage of the Soviet Union emerged new states like the Baltic States, the Czech Republic, Ukraine and Poland lodging reparation claims, which had a major influence on the restitution campaigns for slave and forced labor. NATO and the European Union now thought about expanding eastwards, and with this there were calls to harmonize the settlements of the Second World War. The bitter warfare in the former Yugoslavia in the 1990s forced Europeans and others to confront memories of genocide even as they contemplated its continuing manifestation as in the case of Srebrenica without taking immediate prompt measures to prevent a genocide or a policy of forcible humanitarian intervention with the 1999 NATO bombing of the territory of the Federal Republic of Yugoslavia intended to protect the Kosovo Albanians against a potential ethnic cleansing in the absence of explicit authorization by the Security Council of the United Nations and in violation of international law. "Terms like 'ethnic cleansing,' a contemporary version of Nazi euphemisms for murder, hold up the greater Holocaust as the measure of lesser ones,"⁶ noted Jonathan Steinberg. In Austria, the amnesia facilitated by postwar confrontations began to wear off. In Switzerland, there were calls to re-examine the country's longstanding neutrality. Such developments inevitably called forth new kinds of memory politics that fed restitution claims, calls not only to resolve current conflicts but to acknowledge a country's wartime past and for the USA to adopt a foreign policy to help recompense the Jews and many other victims of the Third Reich, which as the American

⁵ Michael J. Bazylar and Amber J. Fitzgerald, "Trading with the Enemy: Holocaust Restitution, The United States Government, and American Industry", in: *Brookings Journal of International Law*. Vol.28:3, 2004, available at www.brooklaw.edu/students/journals/bjil/bjil28iii_bazylar.pdf

⁶ Jonathan Steinberg, "Compensation Cases and the Nazi Past: Deutsche Bank and Its Historical Legacy," in Diefendorf, *Lessons and Legacies*, Vol. VI, *New Currents in Holocaust Research*, p. 424.

diplomat Sumner Well in 1945 at the end of World War II said, "surely constitutes the moral obligation of the free people of the earth....."⁷

These changes in international relations meshed with others led in the mid to late 1990s to an international groundswell of popular theories emerging in the United States related to the Holocaust Restitution Era. Conceptions of the Holocaust were increasingly seen in the 1990s as a search for justice carried out with it a distinct flavor of human rights, a theme that was a rhetorical accompaniment of American foreign policy during the Clinton Administration. Journalists, politicians and scholars demanded that neutral European states of World War II acknowledge their wartime pasts. Switzerland was pilloried as the major offender while the USA - neutral until the end of 1941 - was not subjected to the same criticism and its own dreary efforts to organize restitution for America's shortcomings during the Holocaust era. According to two prominent international legal experts on the Holocaust Michael J. Bazylar and Amber J. Fitzgerald, "there seems to be a double standard at play. The demands made by the United States towards European governments and corporations to honestly confront and document their wartime financial dealings and other activities are not being registered in the United States itself."⁸ The United States did not embark on having a commission compare the international context of their findings with other commissions from other countries as well as examining very closely some of America's major financial institutions and corporate businesses between 1933-1945, which were not deterred by pogroms and mishandling of civilians to continue cultivating an intertwining set of amicable relations with their future enemies before it was forced to become a belligerent country.⁹

While American courts reached out to call upon others to account for their role during WW II in the late 1990s, history and law in the name of justice were being ripped apart. The narrative of history was not being completely and

⁷ Sumner Wells, "New Hope for the Jewish People," *The Nation*, May 5, 1945.

⁸ Michael J. Bazylar and Amber J. Fitzgerald, "Trading with the Enemy: Holocaust Restitution, The United States Government, and American Industry", in: *Brookings Journal of International Law*. Vol.28:3, 2004, available at www.brooklaw.edu/students/journals/bjil/bjil28iii_bazylar.pdf

⁹ Walther Hofer and Herbert R. Reginbogin, *Hitler, der Westen und die Schweiz*. (Zurich, 2001).

critically examined in different ways as told through a comparative analysis of the neutral countries during World War II to teach the lessons of the Holocaust to new generations about six million who died.. Justice needed to be served, but at what cost? Should it be at the price of a prejudicial and distorted history incurring self-denial, rationalization and utopianism leading to a prejudicial, hegemonic and interventionist public policy as some criticize American foreign policy?

Is the narrative we hold true as Americans nothing else than a self righteous utopianism that the United States, the world's natural leader, has "a sense of mission" to give other peoples the "blueprint that will help them be like us more", led America to a prejudicial and distorted truth about themselves, which is the price paid for seeking justice and at the end a rationalization of public policy? For if a people of a democratic superpower like the USA do not engage to critically look at their role as in the case of the Holocaust Restitution Era as they demanded from other countries as part of U.S. Global Policy, will America continue to develop public policies that are hypercritical intrusive, interventionist, exploitative, unilateralist, and hegemonic as Samuel Huntington and other scholars have voiced?

It is ironic that many in America who had urged that the *lex Americana* defined in the 1990's continue to be applied, live in a new millennium with America laying claims to hegemony and some abandonment of its commitment to upholding the rule of law in their pursuit of fighting the 'Global War on Terror'.¹⁰ Was the *lex americana* of the Holocaust Restitution Era in seeking justice for the victims of World War II, a prelude to the strengthening humanitarian intentions of intervention under the Clinton Administration in seeking justice which then turned into an opportunistic policy of hegemonic intervention under the Bush Administration?

¹⁰ Ibid.

5. Conclusion

The US is not a status quo power, but rather one that regards itself as called to promote change – whether it be political, economic or cultural , and both inside and outside its own borders. This anti-status quo orientation goes hand in hand with two other features of the US culture, the firm belief that democracy is the only legitimate form of government and the imperturbable confidence of Americans in their own exceptional perception of themselves. This will not change. However, there is a sea of change under way. The USA will very likely at long last give up its problematic mix of Realist and Idealist policy approach and embrace a down-to-earth Rationalist and at times Revolutionist interaction and international dialogue with America's rivals, which, if they fail, heightens the potential risk of war. The problem is can America's decision makers overcome the dominant strands in American foreign policy, which has been the unquestioned assumption that the USA, as torch-bearer of liberal democracy and the free market, has the capacity to transform the world in its own image. In terms of hegemony, this means military superiority and US-domination of international financial organizations. In terms of empire, it means exerting formal and informal domination over the politics of a number of other countries. While the ultimate aims of these policy-makers are praiseworthy, at least as far as the spread of liberal democracy is concerned, they discount contrary opinions and ignore in part cultural differences. The result have been inefficiencies, like recurrent transatlantic disharmonies, as well as violent reactions, namely in the Middle East. The election President-Elect Barak Obama is an historical watershed in American history – the first black-American to be president of the USA. As to US global policy changes the impression is that the Bush Doctrine will be dismantled and Guantanamo Bay closed. The pronounced word of 'Change' will imbue the spirit of neo-Kantian values for international law thus eventually becoming a member of the International Court of Justice, supporting the Kyoto Protocols and ever more far reaching endeavors in reforming the international organizations in their effectiveness to prevent genocide and alleviate poverty in the world.