

## INTERNATIONAL LAW

# The threat from Europe

*Jeremy Rabkin's paranoid anti-European tract has one redeeming feature, says Andrew Moravcsik. It is utterly clear about the US conservative approach to world politics*

LIKE MANY AMERICANS these days, Jeremy Rabkin sees dangerous enemies abroad. Who are they? Islamic terrorists? The rising Chinese juggernaut? Tinpot dictators in failed states? None of these ruffle Rabkin—US military pre-eminence is enough to deter them. No, the great peril facing America is, amazingly enough, “European domination.”

European domination? That’s right. Rabkin believes that the US must secure itself against a united Europe, which poses a mortal threat to America’s constitution. Whence the European threat? A superstate in Brussels? Weapons sales to China? Hostile votes in the UN security council? Again, none of the above. The real danger is more insidious: international law. Global human rights and environmental activists have convinced EU governments to overturn national sovereignty and replace it with an “imperial” system of international law.

Rabkin is quite serious about this. The international criminal court, he warns, has “more sinister potential than the UN security council.” International human rights law is a sham, yet a dangerous one. Rabkin rails at any American who would “accept moral instruction on human rights from countries in Europe that, only a few decades ago, were accomplices to genocide.” International standards protecting the environment, labour conditions and an expanding array of “social and economic rights” pose “a serious threat” to American sovereignty.

Rabkin’s book is a call to arms against a Europe that “insists on projecting its aims into the larger world, independently of the United States and often in direct opposition to American aims.” Whereas in earlier times, the US secured its coasts from European navies by building fortifications, “today, the United States must secure itself against European governments wielding moralistic rhetoric and seductive assurances.”

The combination of assertiveness abroad and defensiveness at home that animates this book may seem odd to foreigners, most of whom perceive only the former quality. But Rabkin’s fear of a global left-wing conspiracy out to undermine the constitutional culture of the republic is, as historian Richard Hofstadter observed long ago, nothing new in American political life. Today this view may well dominate the supreme court. Rabkin himself is a senior professor of political and legal philosophy at Cornell, and a

## THE CASE FOR SOVEREIGNTY

Jeremy A Rabkin

(American Enterprise Institute, \$25)

former protégé of John Bolton’s at the American Enterprise Institute. The book comes splashed with effusive praise by leading conservative intellectuals such as Robert Bork, Robert Kagan, and George Will.

What is most instructive is not the philosophical rigour with which Rabkin advances such arguments, nor the depth of his knowledge about Europeans and their ways. Neither is much in evidence. What recommends the book is its utter clarity about the premises with which many American conservatives approach world politics. Resisting the temptation to acknowledge international law, Rabkin believes, “requires clarity of thought—a moral fortification of our national boundaries and our sovereign rights.”

The foundation, Rabkin believes, is absolute fidelity to the US constitution. Americans have a reputation for liking new things, whether cars, movies, jobs or fads. But when it comes to written constitutions, Americans are unique in their traditionalism. Few would defend the structure of a family or a corporation on the basis that it is 200 years old and has hardly been altered in nearly a century, but when it comes to the structure of government, the constitution’s longevity is often cited as evidence of superiority. “If forced to choose between the risk of undermining the constitution on one side and the danger of undermining some international treaty structure on the other,” Rabkin writes, “Americans cannot hesitate... Their paramount duty is to safeguard the constitution.” Rabkin disdains Europeans who would amend or reinterpret their constitutions to facilitate the application of international law—for whom his favourite adjective is “docile.”

Americans must remain true to their constitution because it embodies a sacred “American idea.” America, he has written elsewhere, is among the few lucky nations to view itself as “a new Israel—distinctive, luminous, faithful to some special destiny.” For Americans, the inspiration is ultimately religious, dating from the pilgrim fathers, but has been transferred to the constitution. The only other such nation Rabkin identifies approvingly is contemporary Israel.

Rabkin contrasts America’s rare and sacred mission with what he takes to be the dominant constitutional spirit of Europe—which similarly has not changed for hundreds of years. Europe, he believes, suffers from a “longing for empire.” The EU, he argues, is simply the latest in a

venerable line of schemes for universal continental domination. European-backed "human rights conventions" seek "to found a new church."

In the end, however, the most fundamental premise holding together Rabkin's argument for absolute sovereignty is not that of a sacred constitution based on the American idea. It is a particular conception of that constitutional ideal, one based on libertarian political values. Rabkin is a militant devotee of the view that constitutional jurisprudence should follow the "original intent" of the founding fathers, because this is the only way that the constitutional content can be fixed in its original libertarian form.

In this respect, Rabkin is not a conservative so much as a legal reactionary. He believes that the American federal government should be scaled back to its role in 1930, before the new deal decisively expanded its domestic role. He would have the US government return to an exclusive focus on national defence, trade policy and a few infrastructural activities. The federal government, Rabkin has written in detail elsewhere, has no business regulating the environment or social policy. Over the past century, in his view, the supreme court has betrayed the traditional American anti-statist ideal.

It is because international norms might impede this process of reaction that Rabkin so viscerally opposes them. This is why he is so

selective in his criticism. Free trade and defence alliances, he believes, do not threaten sovereignty—even though they unambiguously restrict the legal and political autonomy of nations. Rabkin has only positive things to say about Nato, as well as traditional Gatt/WTO trade liberalisation. Only "left-wing" policies, in Rabkin's view, restrict sovereignty. Thus he viciously criticises the WTO appellate body's recent efforts to regulate the relationship between free trade and environmental policy.

In the end Rabkin all but admits that it is not Europeans he fears. It is other Americans—Americans who do not share his libertarianism. The "greatest danger," he concedes, is not external imposition of legal standards, but instead that "American courts might come to embrace the customary international law of human rights," or other legal standards, "as an independent standard of law." And why should they not? Most Americans, as President Bush recently found out in seeking to privatisate social security, oppose ambitious schemes to turn the constitutional clock back 75 years. Many may take courage from the existence of western and international constitutional traditions that adhere to international standards of human rights, social protection and environmental quality. In the end, even in the modern world of legal globalisation, all politics is local politics.



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