

“INTERNATIONAL LAW & US EXCEPTIONALISM”

Speech delivered by Tom Spencer at the Global People’s Assembly Conference “Toward a Democratic United Nations for the 21st Century”, San Francisco State University

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Dear Colleagues,

I am delighted to once again join you at a Global People’s Assembly. You have asked me to speak on the subject of International Law, knowing that I am not a lawyer. Indeed, I am well known for believing that historians make better parliamentarians than do lawyers. A lawyer in politics will tell you what you can do. I am always more interested in what you should do. This difference is of crucial importance at the current moment in world politics, where legality and legitimacy are crucial for effectiveness. I would not claim to be able to judge whether the United States acted illegally in Iraq, but I am convinced that it undermined the effectiveness of its power by being perceived to act without legitimacy. So this morning I want to concentrate on the intimate links between domestic and international law in the American tradition.

I speak as a Conservative politician in the tradition of Edmund Burke and as someone who loves America and her generous, confident people. I speak as someone above all who believes that the world needs active American participation in the face of all the challenges that now press in upon us. The newspapers report an America that is no longer sure of its relationship with the rest of the world. Should you ever need confirmation that the USA is part of the planet, I recommend taking a daytime flight from London to San Francisco. You can look down on Greenland, on Canada and on the thousand miles of extraordinary mountains. I have made this trip regularly during my life and I can now report a frightening melting of the ice pack in the northern waters of Canada. If nothing else the USA is intimately part of the climate system. No doubt our children will look back and wonder why we were so inactive in the face of our destruction of climate balance. Perhaps now is the time to make “climate denial” a crime, just as “holocaust denial” is a crime in Germany.

I last spoke at this Conference in June 2001. For those of us who love America, the months since then have been like a long, dark night of the soul. America has not appeared as the “shining city on the hill”, a triumph of Hamiltonian Federalism devoted to the control of power and defence of the common man. All too often it has seemed rather to be a sordid Hobbesian altar to the worship of brute power. In the

days after September 11th, your pain really was our pain. It is a criminal folly for this Administration to have alienated the world by its conduct on Iraq.

Let me make it clear, even at the risk of unpopularity in this gathering. I am not against war. I am not against the use of force. In certain circumstances I was not against an Iraq war. I supported the war in Kosovo. All depends on the perceived legitimacy of the action. Long dark nights of the soul are designed to teach us lessons. It is too easy to blame this Administration, or George Bush personally, for the mess which the West now finds itself in. I choose to identify the core problem as being rooted in the American experience which stresses the primacy of domestic law. This is in the tradition of "American Exceptionalism", the belief that the Republic somehow has a god-given right not just to enjoy this continent, but to lead the world. This is part of the English Protestant inheritance which you can no more set aside than you can give up speaking English or suffering from occasional bursts of collective hypocrisy! In a similar vein, I have no problem with the use of the word "Empire". All I ask is to be a provincial participant in an intelligently run empire.

The rule of law is an essential underpinning of federalism, both domestic and international. You eat at the marble columns of your national identity if you choose a president on the basis of who appointed whom in the Supreme Court. You destroy the vitality and checks and balances of a Federal system if "money power" can buy more and more access in a system where political parties are in decay. Undoubtedly the polarisation of the American political system has been helped by computer-aided gerrymandering. Please don't feel me impertinent in looking at the malfunction of the US political process. Your problem is our problem. Domestic dislocation leads to international disaster. The belief that American law takes precedence over international law can only lead to a situation where America is distrusted rather than liked, feared rather than respected.

The Bush Administration led a co-ordinated attack on multi-lateralism, justified on the grounds that America did not need to respect treaties, even those treaties which had been signed! The United Nations was in the front line of this attack, but the European Union and NATO were close behind, subjected in turn to both scorn and indifference. The treaties on the International Criminal Court and the Kyoto Protocol fell to the same fundamentalist assertion of America's divine right "to do whatever it felt like".

This would have been damaging enough in any decade since World War II, but in this first decade of the twenty-first century it is positively suicidal. The world we have now is not the same as the world which welcomed the United Nations to San Francisco in 1945. Whether the ideologues like it or not it is a multi-polar construct. Everyone has their own sacred geometry to describe this world. My preference is the "double quad". The old Quad of the WTO, made up of the USA, the EU, Japan and Canada must now interact with the new Quad of China, India, Brazil and South Africa as the leaders of the G20. Missing from this geometry is the Arab world. If you read no other book this year can I recommend "The Peace to end all Peace" by Professor Fromkin. His book is an analysis of the mistakes made by the British in the destruction of the Ottoman Empire in the early 1920s. It makes uncomfortable reading today as American behaviour in the greater Middle East has replicated almost

exactly the British mistakes. If we are to have a “governed world”, the leading power must abide by the rule of law if its actions are to have any lasting legitimacy.

At a recent conference in Paris I listened to an intelligent Russian, involved in climate change discussions, bemoaning the way he was trapped between “American ignorance and European arrogance”. The best hope for our beleaguered planet in the twenty-first century is to pull together the best of both American and European traditions. It is now fashionable to declare that America is from Mars and Europe from Venus, that America is Hobbesian and Europe Kantian. The truth is that we are both sprung from the same roots and we both need a balanced approach. An America devoted only to power will be as ineffective in the real world as a Europe obsessed by its own progress based on treaties and the web of international co-operation. The key must lie in respecting International law as the natural partner to a domestic rule of law. The time is ripe for the re-integration of the traditions of European and World Federalism in the cause of a just and transparent system of global governance, crowned by a democratic United Nations with a functioning parliamentary assembly.

Tom Spencer

Executive Director European Centre for Public Affairs and
Visiting Professor of Public Affairs, Brunel University.



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