

## Comment: 'If I had a Hammer' - A Review of Robert Kagan's "Power and Weakness"

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By Olaf Dilling

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### A. Introduction\*

[1] In recent years it has become a truism that after the Cold War Europe no longer plays the important role it used to play. The focus of US foreign policy seemed to shift away from Europe towards other regions like the Middle East or Asia. This process is even accelerated by the recent disagreement of European politicians with the military action against Irak planned by the Bush Administration. The climax of this development so far was the strict and explicit refusal of German Chancellor Gerhard Schröder to participate in any form of military action against Irak, be it sanctioned by a UN-resolution or not. (1) In consequence the German Federal Minister of Justice Herta Däubler-Gmelin was replaced by Brigitte Zypries after the elections for having compared Bush's war against terrorism with Hitler's strategy to concentrate on foreign policy trying to distract attention from domestic problems (thereby, as *The Economist* put it, giving a fine example of "the pot calling the kettle black"). (2)

### B. Kagan's "Power and Weakness" (3)

[2] While many observers, especially German newspaper commentators, ascribed this conflict to the populist policy of Gerhard Schröder desperately pulling this issue out of the deep surprise packet of his election campaign, its roots lie deeper. In his much debated article "Power and Weakness" published in *Policy Review* of June 2002, Robert Kagan gives an explanation which is not limited to the above mentioned strategic reasons for the increasing insignificance of Europe. Instead he blames 'European trust' in international law. He analyses it as the symptom of an unrealistic view of the world, which originates in a different collective experience and leads to the divergence of American and European perspectives.

[3] Kagan compares the foreign policy strategies of the US and of the European governments. He states that Americans are generally more inclined to the use of military force and to unilateral proceedings. Europeans normally resort to international law, diplomacy and economic sanctions. This corresponds with the military power of the USA, on the one hand, and the weakness of Europe since World War II on the other. But above all, the divergent strategies are manifestations of the Hobbesian philosophy of the Americans and the Kantian *Weltanschauung* ('world view') of the Europeans.

[4] According to Kagan, the fact, that the use of military power is necessary for the solution of interstate conflicts poses a serious threat to the fundamental values of the European project. This holds true insofar as the EU is premised to be a political and legal order based on the assumption that the "rule of law" is possible without sovereign states as a guarantors of legal compliance. (4) According to Kagan, from its early beginnings the European project depended on US military protection and still depends on its guarantee of interior and exterior peace. With his analysis, Kagan tries to disenchant the miracle of the evolution of an autonomous European legal order by tearing away the veil that conceals US military power standing behind those developments.

[5] Kagan's reasoning consists of two main arguments. In a social-psychological argument he analyses European risk perception as being shaped by the relative weakness of Europe's military forces. In a historic argument he states that Europeans are blind to their dependence on US military support, because this fact collides with their vision of a legal order independent from sovereign state power.

### C. "I'd hammer out a warning . . ."

[6] In a major part of the essay, Kagan analyses the diverging risk perceptions of Europeans and Americans. Kagan shows how, in the special case of foreign policy, each actor's options of different actions shape his perceptions of risks. Kagan writes:

"Europeans like to say that Americans are obsessed with fixing problems, but it is generally true that those with greater capacity to fix problems are more likely to try to fix them than those who have no such capability."

Regardless of the truth of this analysis it is possible to draw diverging political conclusions from it. Besides it is not

really new. As the Norwegian pacifist Johan Galtung already put it in 1999:

"And they follow the old American rules, if someone has a hammer, the world looks like a nail. Unfortunately they have got a hammer. This hammer is called an army, and so they are inclined to see problems as military problems."  
(5)

[7] Apart from his argument about risk perception, Kagan believes the different positions of Europeans and Americans on the use of military power to be based on the difference between the European vision of peace and of the rule of law which he contrasts to the Americans' Dream of "Life, Liberty and Pursuit of Happiness". (6) He describes the European vision as a consequence of a collective learning process initialised by World War II which, in Kagan's eyes, led to the construction of the European legal order, which is ultimately self-executing in the sense that it does not need a military or police force of its own.

[8] This vision of self-executing rules of a "law without a state" lent valuable impulses to European legal scholarship, especially in the fields of legal and constitutional theory, international law and - *sub verbo* societal self-regulation ("*gesellschaftliche Selbstregulierung*") - even of national law. (7) Is Kagan right in claiming that these concepts are merely the phantasms of peace-loving Europeans, who have - under the care of US foreign policy - completely lost touch with reality?

#### **D. Metaphysics of Power**

[9] Kagan tries to expose the belief of constructing a peaceful world by means of international law rather than military power as the living lie of Europe. He claims that they are not noticing that their "Kantian paradise" stood from the beginning onwards under the military protection of the United States of America and would still not be possible without this global hegemon and his military protection against threats of violence from "rogue states" and from within Europe itself. Kagan writes:

"Europe's evolution to its present state occurred under the mantle of the U.S. security guarantee and could not have occurred without it. Not only did the United States for almost half a century supply a shield against such external threats as the Soviet Union and such internal threats as may have been posed by ethnic conflict in places like the Balkans. More important, the United States was the key to the solution of the German problem and perhaps still is. (...) France's willingness to risk the reintegration of Germany into Europe — and France was, to say the least, highly dubious — depended on the promise of continued American involvement in Europe as a guarantee against any resurgence of German militarism. Nor were post-war Germans unaware that their own future in Europe depended on the calming presence of the American military."

[10] It is difficult to reject a strong argument like this off hand, not least since it is only partly empirically based. Without any doubt, it is true that the US military came to Europe to end the fighting between the European states and stayed there to protect western Europe from communist expansion. But is it also true that the US military was also needed (and maybe still is) to keep Germans and French from jumping at each others throats?

[11] In fact the US never really had to take any military action within EU territory to defend one nation against the other. But the omnipresence of the global hegemon's military power might be a "latent structure" that keeps everything in place without ever needing to be used. It is impossible to refute the assumption of such latent structures as it is not subject to empirical evidence. Indeed, not only on this point does Kagan's thesis come close to a metaphysical speculation on American omnipotence and, as such, disqualifies itself. Put bluntly, Kagan's perception seems to match perfectly with the underlying principles of American foreign policy since the election of George W. Bush, namely 'sovereign power' and 'infinite justice'. (8)

#### **E. The Hen, the Egg & the Creator of the European Legal Order**

[12] In his article Kagan addresses an issue he calls the "Kantian paradox":

"The United States, in short, solved the Kantian paradox for the Europeans. Kant had argued that the only solution to the immoral horrors of the Hobbesian world was the creation of a world government. But he also feared that the "state of universal peace" made possible by world government would be an even greater threat to human freedom than the Hobbesian international order, inasmuch as such a government, with its monopoly of power, would become "the most horrible despotism." How nations could achieve perpetual peace without destroying human freedom was a problem Kant could not solve. But for Europe the problem was solved by the United States. By providing security from outside, the United States has rendered it unnecessary for Europe's supranational government to provide it. Europeans did

not need power to achieve peace and they do not need power to preserve it."

[13] Speaking of a world government with its monopoly of power one could think that Kagan was addressing America with "Kant's paradox". But even if Kant was more concerned with the problem of how the *power* of a world government could be moderated by *law* Kagan seems to be primarily interested in the opposite problem: how European *legalism* could come to *power*. In other words, how could European law (or the international legal order of peace promoted by the Europeans) create its proper institutions, thereby ensuring its own execution.

[14] In fact, the evolution of a supranational legal order independent from state power poses grave questions, which have been addressed at length by scholars of European law. (9) Kagan does not discuss these attempts to solve the dilemma of how law can lead to peace without state power (or respectively: how power can lead to freedom without law). Instead he tries to dissolve the problem of priority of law or power by way of analogy, similarly to the question about who comes first: the hen or the egg. To put an end to the endless circle of mutual production one has to introduce an external power which - in an act of creation - poses a beginning. Kant's jinxed circle of the law which has to come to power and the power which has to become lawful is accordingly made invisible by Kagan, who sees the USA as an external power making the development of the Community legal order possible.

[15] As far as biological science is concerned, Charles Darwin in the 19th century recognised that there is no need for an act of creation if the question of precedence (hen/egg) is left open. Both the hen and the egg have evolved with each other and out of each other. The Kantian dilemma, as Kagan refers to it, notably whether "power", or the self-executing - thus weak - "rule of law" comes first, could perhaps be solved accordingly, even if only indirectly. A simple answer, however, such as: "in the first place we need power, we can still care about a legal order later" or vice versa, would be incorrect since it would imply a wrong set of alternatives. Instead, the evolution of an autonomous legal order can only be understood if we keep in mind that social institutions, being the substrate of "power", are shaped by the law as law is shaped by social institutions. Both evolve from each other. (10)

#### F. "Sed quis custodiet ipsos custodes . . . ?" (11)

[16] While concentrating on the Kantian dilemma of how law might come to power, the correlative question how power might become lawful disappears from Kagan's sight. If the European problem is the lack of power to enforce its rules, the American problem is the question how this unprecedented global superpower can be checked and balanced. Even if America is the world's earliest democracy and has been the cradle of human rights, it is not a given that it will be always be the case. Above all, it should not be taken for granted that it will always be America who holds the global strategic hegemony. Finally the dismantlement of international law and its organisations by American foreign policy blocks every attempt to democratise global governance.

[17] After all, one could presume that Kagan "is wrong in everything" - except for his analysis that the United States and Europe have parted ways and there is not even a chance of mutual understanding. But hopefully even that is not true: he has made a point of criticising Europeans for their hypocritical attitude towards military action by the US. He accurately observes how Europeans dissent in the first place and then "do the dishes" and make a profit from the outcome. He is also right in stating that there are limits to self-executing law without a police and military force ensuring compliance. Of course, he accurately remembers how much help Europe got from the USA in the post-war period and how much it depended on it. Unfortunately, too many of these thoughtful insights are spoiled by his exaggerated view of the role American military power is playing in Europe and the world, leading to the repetition of European hubris with an opposite sign.

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\* Thanks to Henok Tsehaye for comments and critique.

(1) See only the Cartoon on <http://de.news.yahoo.com/020912/294/2yjfi.html>

(2) Economist, Sep 26th, 2002, America and Germany - The Poisoned Relationship, [http://www.economist.com/displayStory.cfm?Story\\_ID=1359855](http://www.economist.com/displayStory.cfm?Story_ID=1359855).

(3) Kagan, Robert, Power and Weakness, Policy Review, No. 113 (June 2002), <http://www.policyreview.org/JUN02/kagan.html>

(4) Bogdandy, Armin von, Supranationaler Föderalismus als Wirklichkeit und Idee einer neuen Herrschaftsform. Zur Gestalt der Europäischen Union nach Amsterdam, Baden-Baden 1999, pp. 32, p.38.

(5) "Und sie folgen den alten amerikanischen Regeln, wenn jemand einen Hammer hat, dann sieht die Welt wie ein Nagel aus. Sie haben leider einen Hammer. Dieser Hammer heißt eine Armee, also haben sie die Neigung, Probleme als militärische Probleme zu sehen." (translated by the author), Johan Galtung, Wiener Friedensgespräche, 11. 07. 99, <http://religion.orf.at/tv/vis/vi90711.htm>

(6) Declaration of Independence, Action of Second Continental Congress, July 4, 1776, <http://memory.loc.gov/const/declar.html>.

(7) For a theoretical concept of legal pluralism and its impact on political developments, leading to a decline of statehood, see Teubner, Gunter, The King's Many Bodies: The Self-Deconstruction of Law's Hierarchy. *Law and Society Review* 31, 1997, 763-787. in German also: <http://www.uni-bielefeld.de/sozsys/leseproben/teubner.htm>, last visited Dec. 4th, 2002; for more practical examples of the impact of these theories on national law, see for example: Klöpfer, Michael (editor), *Selbst-Beherrschung im technischen und ökologischen Bereich*, Berlin 1998.

(8) See the National Security Strategy of the United States of America, The White House, Washington, September 2002, which bluntly expresses a specific mixture of national interest and missionary fervor: "The U.S. national security strategy will be based on a distinctly American internationalism that reflects the union of our values and our national interests. The aim of this strategy is to help make the world not just safer but better."

(9) See only Weiler, Joseph, Transformation of Europe, *Yale L. Rev.* 100 (1991), p. 2402, also: <http://www.law.nyu.edu/weilerj/unit5/UnitV02.htm>

(10) Luhmann, Niklas, *Recht der Gesellschaft*, Frankfurt am Main 1992, ch. 6.

(11) Iuvenalis, *Satura VI* ("But who is guarding those guards...?").