

1-1-2005

## The Many Faces Of Power: An International Law Response To Robert Kagan's Of Paradise And Power

Jason Morgan-Foster

Follow this and additional works at: <https://repository.law.miami.edu/umicl>



Part of the [Comparative and Foreign Law Commons](#), and the [International Law Commons](#)

---

### Recommended Citation

Jason Morgan-Foster, *The Many Faces Of Power: An International Law Response To Robert Kagan's Of Paradise And Power*, 12 U. Miami Int'l & Comp. L. Rev. 361 (2005)

Available at: <https://repository.law.miami.edu/umicl/vol12/iss2/5>

This Book Review is brought to you for free and open access by the Journals at University of Miami School of Law Institutional Repository. It has been accepted for inclusion in University of Miami International and Comparative Law Review by an authorized editor of University of Miami School of Law Institutional Repository. For more information, please contact [library@law.miami.edu](mailto:library@law.miami.edu).

*Book Review*

**The Many Faces of Power: An International Law Response to  
Robert Kagan's *Of Paradise and Power***

*Jason Morgan-Foster\**

<b>I.</b>	<b>Introduction .....</b>	<b>361</b>
<b>II.</b>	<b>Varying Conceptions of Power: An International Law Response.....</b>	<b>363</b>
<b>III.</b>	<b>The World Beyond Kagan's Realism .....</b>	<b>375</b>
<b>IV.</b>	<b>Kagan's Book as Integrationist Contribution.....</b>	<b>385</b>
<b>V.</b>	<b>Conclusion: The European-American Rift as Integrationist Project .....</b>	<b>390</b>

**I. Introduction**

Robert Kagan's *Of Paradise and Power: America and Europe in the New World Order*, appearing first in shorter form as an essay in *Policy Review* in Summer 2002,<sup>1</sup> was expanded because of its immense popularity into a 102-page book examining the growing "ideological gap"<sup>2</sup> in the way Europe and the United States view world politics. Kagan begins in his chapter "The Power Gap" by placing Europe and the United States in their respective historical contexts. Whereas post World War II Europe was both weak and anxious to forget its bloody past, the United States emerged from the war strong and dominating.<sup>3</sup> Against this background, Kagan proposes in his chapter "Psychologies of Power and Weakness" that "Europe's relative weakness has understandably produced a powerful European interest in building a world where military strength and hard power matter less than economic and soft power."<sup>4</sup> After further elaborating on American strength and European weakness in the context of the Kosovo conflict in his chapter

---

\* JD, University of Michigan Law School, expected May 2005; Fulbright Scholar, Morocco, 2003-04; BA, *Magna Cum Laude*, The Colorado College, 1997. The author thanks Tim Kuhner and Trent Thompson for their insight. All errors are the author's alone.

<sup>1</sup> Robert Kagan, *Power and Weakness*, POL'Y REV., June-July 2002, at 3.

<sup>2</sup> ROBERT KAGAN, OF PARADISE AND POWER: AMERICA AND EUROPE IN THE NEW WORLD ORDER 11 (2003).

<sup>3</sup> *Id.* at 12-18.

<sup>4</sup> *Id.* at 37.

“Hyperpuissance,”<sup>5</sup> Kagan proposes the central thesis of his book in his chapters “The Postmodern Paradise” and “The World America Made,” that “Europe’s evolution into its present state occurred under the mantle of the U.S. security guarantee and could not have occurred without it.”<sup>6</sup> Having established this thesis about Europe’s past, Kagan then focuses on the present in his chapter “Is it Still ‘The West?’” Noting that European strategy and interests focus increasingly around the European Union and less around the North Atlantic Treaty Organization, he questions whether it is still possible to view Europe and the United States as a cohesive unit under such titles as “The West.”<sup>7</sup> Finally, he turns to the future in “Adjusting to Hegemony,” concluding that the only way to resolve the ideological differences between norm-based Europe and militarily-strong United States is for Europe to simply “readjust to the new reality of American hegemony.”<sup>8</sup>

It is easy to see why Kagan’s book was so popular. It is an important, controversial, and thought-provoking book whose content transcends many disciplines, including international relations, political science, history, and world politics. But, one discipline is notably lacking from Kagan’s analysis—that of international law. It is therefore the purpose of this book review to provide a counterpoint to Kagan’s approach—an approach wholly based in international relations theory—by offering a response based in international law.

Part II responds to Kagan’s perception of power using the assumptions of international law, and it contrasts his definition of power to that of several international legal scholars. Part III places Kagan’s realist approach in a broader context of international relations (hereinafter “IR”) and international law (hereinafter “IL”) theory. It begins with a discussion of challenges to realism and concludes with an examination of the growing body of literature which posits that the fields of international law and international relations are merging (hereinafter “integrationist” literature). Part IV returns to the question of power, examining ways in which Kagan’s book challenges international lawyers to consider how military and doctrinal power interact, an inquiry which is particularly interesting in the European context, where doctrinal power is stronger than military power. The review concludes in Part V, agreeing with Kagan that the current rift between the United States and

---

<sup>5</sup> *Id.* at 42-53.

<sup>6</sup> *Id.* at 72.

<sup>7</sup> *Id.* at 85.

<sup>8</sup> *Id.* at 97.

Europe is likely to grow, but disagreeing on the result. Whereas Kagan foresees a world where the all-powerful U.S. eventually disregards Europe, its former friend who is no longer of any strategic use to U.S. interests, this review foresees a world where the powerful rules-based society of the European Union will continue to grow, creating a potent counter-balance to the United States.

## II. Varying Conceptions of Power: An International Law Response

As the title suggests, Kagan's book examines the different notions of power in the United States and Europe. But, although Kagan presents himself as a relatively neutral observer,<sup>9</sup> his entire book is written from the perspective of an American realist international relations scholar.<sup>10</sup> An equally valid and academically rich set of assumptions about the meaning of "power" exists within the discipline of international law. When Kagan's topics are re-examined under this alternative paradigm, a vastly different picture emerges. This Part re-examines the notion of power from an IL perspective, concluding that because Europeans may view the world more like an international lawyer and less like Kagan, his conclusions regarding European policy choices surrounding military power may also need to be re-examined.

Kagan states that Europe's "mission, if it has a mission beyond the confines of Europe, is to oppose power."<sup>11</sup> But this assertion is heavily laden with Kagan's own definition of power which permeates his book. To Kagan, there is only one type of power: military power.<sup>12</sup>

---

<sup>9</sup> Kagan claims that "as an American living in Europe" it is easier for him to see the contrast between the American and European international approaches. *Id.* at 4.

<sup>10</sup> David P. Calleo, *Power, Wealth and Wisdom*, NAT'L INT., Summer 2003, at 5 ("The book is well worth reading, not least for insight into what the intelligent and civilized American neo-conservative thinks about the world.").

<sup>11</sup> KAGAN, *supra* note 2, at 68.

<sup>12</sup> See, e.g., *id.* at 33 (minimizing the influence of "soft" economic power compared to "hard" military power); *id.* at 38 (using the general term "weak" to mean "militarily weak" and the general term "strong" to imply military strength); *id.* at 41 (claiming Europeans are not "wielding power" because they are not wielding military power). Realists have been criticized for their narrow conception of power in the past. For example, Martti Koskeniemi notes that realists "fail to see to what extent their determining concepts such as 'interest,' 'power,' or 'security' are themselves defined and operative within a normative context." Martti Koskeniemi, *The Place of Law in Collective Security*, 17

However, many international lawyers disagree with this narrow definition of power, preferring a much broader definition of power, such as the following offered by Professor Byers:

Power is the ability of one actor to compel or significantly influence the behavior of another. It may be applied through the use or threat of force, through economic incentives or penalties, or through a variety of social pressures. It may be derived from a number of different sources, including military capabilities, wealth or moral authority. It may be augmented or constrained by concepts, values, institutions and rules. It is above all a relational concept, in that the ability to compel or influence always depends on the relative abilities of the different actors concerned either to apply or resist pressure.<sup>13</sup>

---

MICH. J. INT'L L. 455, 465 (1996). See also Joseph Nye, *America's Soft Learning Curve*, ECONOMIST, Dec. 18, 2004-Jan. 1, 2005, at 61, 62 (spec. annual ed. 2004) (arguing that the United States should pay more attention to the soft power of rules and persuasion, that it was through such soft power that the United States won the Cold War, and that only through such soft power can the United States can win the war on terrorism).

<sup>13</sup> Michael Byers, *Custom, Power, and the Power of Rules: Customary International Law from an Interdisciplinary Perspective*, 17 MICH. J. INT'L L. 109, 113 (1995). Professor Anne Orford criticizes Byers' work for not acknowledging that "the work of international relations and international legal scholars in describing and explaining the world is itself an exercise of power, rather than a mere observation of the way in which powerful actors such as 'sovereign states' behave." See Anne Orford, *Positivism and the Power of International Law: Custom, Power and the Power of Rules: International Relations and Customary International Law by Michael Byers*, 24 MELB.U. L. REV. 502, 520 (2000) (review essay). Orford broadens the discussion of power yet again:

The work of feminist scholars, postcolonial scholars and queer theorists provides a way of thinking about the relationship between sovereignty and the operation of power in modern societies that differs from that developed by positivists. The model of power that emerges from these areas departs from a conception of power as a commodity or thing held by particularly powerful entities like states. Scholars in those fields have been arguing for decades that apparently

While Paul Kahn of the Yale Law School notes the importance of power in international affairs, he also cautions against viewing power and law as opposites:

When we compare the international to the domestic order, the balance between power and law tilts dramatically in favor of power—meaning the capacity to advance state ends independently of the norms and procedures of law. Many contemporary observers, however, believe that this situation is rapidly changing, as international law gains normative strength and institutional presence. This opposition of power and law—and the trade-off between them—offers too simple a view of the relationship between these concepts. This is not just because a great power may often find it in its interests to support the international legal order. That is no doubt true, but it still assumes that power and law can be measured against each other, i.e., on a single scale of state interests. The situation we confront, however, challenges the idea that any such scale exists.<sup>14</sup>

Furthermore, some human rights lawyers would find Kagan's notion of sovereignty—on which his idea of military power is based—to be somewhat simplistic in the modern international order.<sup>15</sup> After tracing the development of international law from post-World War II state-centered positivism to the development of the individual-centered international human rights movement,<sup>16</sup> Professor Kahn suggests that it

---

organizational and public issues, such as militarism, imperialism, law and monetarism, are deeply personal, while the personal issues of subjectivity and experience are deeply political.

*Id.* at 522.

<sup>14</sup> Paul W. Kahn, *American Hegemony and International Law: Speaking Law to Power: Popular Sovereignty, Human Rights, and the New International Order*, 1 CHI. J. INT'L L. 1, 2 (2000).

<sup>15</sup> *Id.* at 6.

<sup>16</sup> *Id.* at 10-16. According to Kahn:

For a long time, this combination of views fit easily into the reigning dualist paradigm of international law. On this view,

is the latter development, international human rights based outside of or antithetical to the concept of popular sovereignty,<sup>17</sup> which left the United States in an impossible position with respect to international law: “[W]hile law functions in the United States as an expression of popular sovereignty that chooses to invest itself in particular rights, contemporary international law has little to do with popular sovereignty and gains its legitimacy from the defense of rights.”<sup>18</sup> Viewed in light of Kahn’s analysis, Kagan is correct that the United States fears usurpation of its sovereignty. But, rather than frame the issue as a divide between the United States and Europe, it is more accurately framed within the *global* growth and increased importance of international human rights law.<sup>19</sup> To do this, however, is to admit the importance of international law—something Kagan is unwilling to do.

---

the origin of international law was the consent of states. Although the modes of expression varied across the domestic and international contexts, both contexts shared the idea that law expressed the sovereign will. This era of international law is ending. The language of the international law scholar today is no longer the language of sovereignty; rather, it is that of the demise of sovereignty. The sovereign state is increasingly perceived as the problem to be overcome.

*Id.* at 5.

<sup>17</sup> *Id.* at 12 (“The rhetoric of human rights provided a legal ground by which to overcome claims of state sovereignty.”).

<sup>18</sup> *Id.* at 6.

<sup>19</sup> *Id.* at 14. This theory is consistent with recent scholarly work on neo-liberalism. See *infra* note 73 and accompanying text. Christian Reus-Smit notes:

Because liberal theory stresses the primacy of individuals and private groups in shaping political and legal outcomes, the traditional ordering of international law, which privileges the international public law of interstate relations, is turned on its head, with law that directly regulates individuals and groups (the first two tiers) taking precedence. Furthermore, within international public law, law that most directly affects individual-state relations is given priority, thus placing human rights law at the ‘core’ of international law.

Christian Reus-Smit, *The Strange Death of Liberal International Relations Theory*, 12 EUR. J. INT’L. L. 573, 586 (2001).

Unfortunately, Kagan's assumptions about power permeate even his analysis of European policy choices surrounding military power, leading to some potentially erroneous conclusions. For example, one of Kagan's primary arguments, presented in his chapter "Psychologies of Power and Weakness," is that "Europe's relative weakness has understandably produced a powerful European interest in building a world where military strength and hard power matter less than economic and soft power."<sup>20</sup> But, this argument is contradicted by Kagan himself, who concedes that Europeans could quite easily increase their military budgets to meet or even exceed that of the United States, but that they *choose* not to do so.<sup>21</sup> Similarly, Kagan asks, "If Europe's strategic

---

<sup>20</sup> KAGAN, *supra* note 2, at 37. Kagan appeals to a popular audience by making this argument through a series of simplistic analogies in which the complexities of interstate relations are personified. For example, he employs a "Wild West analogy," where the United States is the "sheriff" and Europe is the "saloonkeeper." According to Kagan, "[O]utlaws shoot sheriffs, not saloonkeepers. In fact, from the saloonkeeper's point of view, the sheriff trying to impose order by force can sometimes be more threatening than the outlaws, who, at least for the time being, may just want a drink." *Id.* at 36. Similarly, he contrasts a "man armed only with a knife" who "may decide that a bear prowling the forest is a tolerable danger," with "[t]he same man armed with a rifle" who "will likely make a different calculation of what constitutes a tolerable risk." *Id.* at 31. He even attempts to link Saddam Hussein to the September 11th terrorist attacks and glosses the fact that no weapons of mass destruction have been found in Iraq. *Id.*

<sup>21</sup> *Id.* at 53-54 ("Europe today has the wealth and technological capability to make itself more of a world power in military terms if Europeans wanted to become that kind of world power. They could *easily spend twice as much as they are currently spending on defense if they believed it necessary to do so.*") (emphasis added). Similarly, as part of a comprehensive study of European military prospects and economic constraints, researchers at RAND Corporation found that "the prevailing European view appears to be that there are *realistic opportunities for reallocation within existing patterns of military spending and military investments, thereby allowing for shifting resources from the existing pool of military procurement without a need for additional resources.*" CHARLES WOLF, JR. & BENJAMIN ZYCHER, EUROPEAN MILITARY PROSPECTS, ECONOMIC CONSTRAINTS, AND THE RAPID REACTION FORCE 23 (2001), available at <http://www.rand.org/publications/MR/MR1416/> (last visited Jan. 26, 2005) [hereinafter "RAND study"]. The RAND study, although cautious in its analysis, nevertheless confirms that Europe can, without major policy changes, increase its military budget in accordance with the European Union's European Security and Defense Policy (ESDP):



culture today places less value on hard power and military strength and more value on such soft-power tools as economics and trade, isn't it partly because Europe is militarily weak and economically strong?"<sup>22</sup> But, Kagan's question puts the cart before the horse. Europe does not prefer "soft" power because it is militarily weak; it chooses to be militarily weak because it prefers "soft" power. Comparatively low military spending in Europe is not necessarily European acquiescence to an American-provided security umbrella; at least a portion of this political choice must be attributed to entrenched European beliefs about the adequacy of international law to promote peace and security.<sup>23</sup>

---

[I]f at least one-third of the present allocations for annual military investments is shifted and reallocated to the procurement needs associated with the ESDP/RRF, then by 2010 sufficient funding would be available to meet the estimated capital costs of the force...[S]avings from increased efficiency in the defense industry and from movement toward a single defense market in the EU would contribute additionally, if modestly, to defraying the necessary capital costs.

*Id.* at 35-36.

<sup>22</sup> KAGAN, *supra* note 2, at 33. Kagan commits this same flaw in logic repeatedly. See, e.g., *id.* at 31-32 ("Europeans like to say that Americans are obsessed with fixing problems, but it is generally true that those with a greater capacity to fix problems are more likely to try to fix them than those who have no such capability."); *Id.* at 40 ("Those who cannot act unilaterally themselves naturally want to have a mechanism for controlling those who can."); *Id.* at 38 ("Since Europeans lack the capacity to undertake unilateral military actions, either individually or collectively as 'Europe,' it is natural that they should oppose allowing others to do what they cannot do themselves."). Kagan also commits the same logical fallacy in reverse, assuming that American military participation is a result of American military capacity, instead of a geo-political world view that favors military intervention: "Americans know that when international crises erupt, whether in the Taiwan Strait or in Kashmir, they are likely to be the first to become involved." *Id.* at 35.

<sup>23</sup> This is consistent with the premise of liberal international relations theory. See *infra* notes 72-75 and accompanying text. Moravcsik, an IR liberal, states that, "[a]mong advanced industrial democracies, a stable form of interstate politics has emerged, grounded in reliable expectations of peaceful change, domestic rule of law, stable international institutions, and intensive societal interaction. This is the condition Deutsch terms a 'pluralistic security

From Kagan's "intelligent and civilized American neo-conservative"<sup>24</sup> viewpoint, it is unthinkable that social welfare budgets would ever take priority over defense spending,<sup>25</sup> and it is with this assumption that Kagan builds his hypothesis that Europe channels its money into social welfare only because the United States has eliminated the "primary" concern of security.<sup>26</sup> Kagan appears so firmly rooted in his beliefs that he mistakenly attributes them to the Europeans he is attempting to analyze. As Calleo notes, if the European strategists were operating with American neo-conservative assumptions and values, Kagan's argument based on security and military force would be a plausible explanation for European actions.<sup>27</sup> But, Europeans are *not* American neo-conservatives.<sup>28</sup> It is equally plausible to take their actions at face value. Perhaps Europeans care more about social welfare

---

community' and Keohane and Nye term 'complex interdependence.'" Andrew Moravcsik, *Taking Preferences Seriously: A Liberal Theory of International Politics*, 51 INT'L ORG. 513, 535 (1997).

<sup>24</sup> Calleo, *supra* note 10, at 5.

<sup>25</sup> KAGAN, *supra* note 2, at 54 n.39 ("Europeans insist that there are certain structural realities in their national budgets, built-in limitations to any significant increases in defense spending. But if Europe were about to be invaded, . . . would they insist nevertheless that their social welfare programs be left untouched?").

<sup>26</sup> *Id.* at 25.

<sup>27</sup> Calleo, *supra* note 10, at 2. Calleo writes:

The role [Kagan] assigns Europe in the newest American century may seem satisfactory in Washington and perhaps in London, but it does not appear to go down well in Paris or Berlin, nor in Moscow or Beijing. Kagan's argument nevertheless seems powerful at home, but less because of its conclusions than its premises. These premises reflect a variety of interlocking assumptions widely shared among American foreign policymakers and analysts. We should be grateful to Kagan for demonstrating these assumptions so forcefully and showing just where they lead. Those uneasy with his triumphalist conclusions might therefore start by re-examining his triumphalist assumptions.

*Id.*

<sup>28</sup> *Id.* ("What Europeans see as prudent self restraint, neo-conservative Americans count as pusillanimous diffidence.").

programs than security,<sup>29</sup> and their decision to allocate a relatively small budget to defense while allocating a relatively large budget to social spending is a political choice by the European electorate, influenced by a moral vision about both international peace and domestic social welfare—in other words, something completely disconnected from U.S. action.<sup>30</sup> Rather than strategically attempting “to capitalize on a sizeable peace dividend,” as Kagan argues,<sup>31</sup> it is equally plausible that Europeans simply possess different values. In other words, it is possible that, regardless of how much “free security” the U.S. supposedly provided Europe, Europeans still would have made similar allocations towards social welfare and away from military spending because that is what they value most.

This choice to focus on international peace and domestic social welfare is illogical if made under Kagan’s assumptions about power and security, but it is legitimate if Europeans believe, as the international lawyer does, that cooperation through international law actually has the potential to prevent armed conflict—that rules do matter.<sup>32</sup> Professor Byers offers an alternative explanation as to why many states, including European states, prefer rules-based power to military force:

---

<sup>29</sup> Discussing potential funding sources for increased European military activity, researchers at RAND Corporation note that a “source could, in principle, be reallocations in existing government budgets from nondefense to defense purposes—for example, from . . . various entitlements. *It goes without saying that our European interlocutors were even more emphatic in rejecting this option as unrealistic, so we omit it from the discussion.*” RAND study, *supra* note 21, at 33 (emphasis added). Similarly, German interlocutors interviewed by RAND corporation “emphasized that paying down Germany’s public debt—swollen by the burden of financing reunification costs—is a higher-priority claimant for budgetary resources than is any addition to military spending.” *Id.* at 23.

<sup>30</sup> This being said, as Europe begins to balance its strong doctrinal power with some form of European defense force, *see infra* Part IV, the political choice of where to allocate funds is also likely to balance more evenly between social welfare and defense. *See* Robert Graham, *France Seeks to Reassure US over NATO Commitment*, FIN. TIMES, Oct. 18, 2003, at 7 (quoting French Defense Minister Michèle Alliot-Marie: “Today we have to realise that defence spending is not a luxury but a necessity; and you cannot spend one year, then cut back the next.”).

<sup>31</sup> KAGAN, *supra* note 2, at 25.

<sup>32</sup> *See, e.g.,* Kahn, *supra* note 14, at 4 (“While the Europeans are pursuing a deeper and deeper integration within the Union, the American political imagination remains strictly parochial.”).

On occasion [states] may apply raw, unsystematized power in the pursuit of a short-term goal. However, the application of raw power promotes instability and escalation, and is not particularly subtle or efficient. More frequently, states will apply power within the framework of an institution or legal system. States develop and utilize institutions and legal systems because they create expectations of behavior, which lessens the risk of escalation and facilitates efficiency of action, and because they promote stability, thus protecting states, which recognize that they could find themselves on the opposite side of an issue in future situations.<sup>33</sup>

Similarly, Professor Hudec notes that “[g]overnments . . . usually have a *longer - term* [sic] *interest* in the efficacy of the *legal* relationships they have established with other governments, and so they are more inclined to act in ways designed to preserve those relationships. Ultimately, the compliance decisions of governments are determined more by *calculated self-interest* than by force.”<sup>34</sup>

---

<sup>33</sup> Byers, *supra* note 13, at 122 (citing JOHN RAWLS, A THEORY OF JUSTICE 235-43 (1st ed. 1971)).

<sup>34</sup> Robert E. Hudec, *The Adequacy of WTO Dispute Settlement Remedies: A Developing Country Perspective*, in DEVELOPMENT, TRADE, AND THE WTO: A HANDBOOK 81, 82 (Bernard Hoekman et al. eds., 2002) (emphasis added). Professor Kritsiotis of the University of Michigan Law School makes the same point:

[I]nternational law offers a much more constructive communicative medium (with all the prospects and risks that this entails) than naked power could ever hope to do. Its very rules promise peace; they preach pacifism. Compared with power, its old rival, international law creates the conditions for a genuine peace (based on negotiation and cooperation rather than threat, intimidation, and force) and a stable peace (which is protected by law and not by the balance of power). This peace is the platform for the prosperity of the system's participants.

Rather than operating under American neo-conservative assumptions that military defense is inviolable and explaining European action based on this assumption, Europeans are operating with an entirely different assumption altogether: that the best and most lasting guaranty for international peace and security is cooperation through international law.<sup>35</sup> Viewed from this alternative perspective (that of international law), one could completely reverse Kagan's conclusion that

---

Dino Kritsiotis, *Specific Applications: The Power of International Law as Language*, 34 CAL. W. L. REV. 397, 404 (1998). Similarly, Kahn observes:

Both internationally and domestically, political power operates at the origins of law--for example, within legislatures or treaty negotiations. But, for both, the move from political disagreement to legal resolution represents a shift of norms from inequality to equality. Once the legal rules are set, outcomes should not depend on the relative power of the disputants. To identify the operation of political power within an institution of law is to discover a 'defect,' a site at which reform must be pursued if the values of law are to be maintained.

See also Kahn, *supra* note 14, at 1.

<sup>35</sup> See, for example, *Id.* at 15-16:

The moral content of international relations is being absorbed by claims of legal right, leaving less and less room for a morally driven politics outside of law. The United States still wants a moral discourse that is not a legal discourse. To the rest of the world, however, this insistence on both law and power looks like a form of a discredited colonial discourse. To them, the resistance of the United States to anything that looks like a subordination of its own political center to international legal institutions suggests that human rights law may be a continuation of a Cold War political strategy, directed now at the Third World.

To his credit, Kagan makes this point to some degree: "Europeans over the past half century have developed a genuinely different perspective on the role of power in international relations . . . . This is a perspective on power that Americans do not and cannot share." KAGAN, *supra* note 2, at 55. But, far from recognizing the intrinsic value of the rules-based European approach to international affairs, Kagan fixates on the importance of American-provided free security to the European project.

a European insistence upon international law has hindered U.S. efforts to promote peace militarily.<sup>36</sup> Instead, it is equally possible to view the United States as a hindrance to European and international efforts to promote peace doctrinally. Examples of such American obstruction include sole “no” votes in the General Assembly,<sup>37</sup> sole “no” votes in the Human Rights Commission,<sup>38</sup> violating Security Council resolutions or other international legal norms,<sup>39</sup> weakening the International Criminal Court,<sup>40</sup> disregarding a request of the International Court of Justice,<sup>41</sup>

---

<sup>36</sup> *Id.* at 51.

<sup>37</sup> WILLIAM BLUM, *ROGUE STATE 185-97* (2000) (cataloguing a sample of 139 UN General Assembly resolutions between 1978 and 1987 in which the U.S. was either the sole “no” vote or was accompanied solely by Israel in its opposition).

<sup>38</sup> *See, e.g., The Right to Food*, U.N. ESCOR Comm’n on Human Rts., 59th Sess., 56th mtg., U.N. Doc. E/CN.4/RES/2003/25 (2003); *The Right to Food*, U.N. ESCOR Comm’n on Human Rts., 57th Sess., 70th mtg., U.N. Doc. E/CN.4/RES/2001/25 (2001); *The Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, U.N. ESCOR Comm’n on Human Rts., 59th Sess., 56th mtg., U.N. Doc. E/CN.4/RES/2003/28 (2003); *World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Comprehensive Implementation of and Follow-up to the Durban Declaration and Programme of Action*, U.N. ESCOR Comm’n on Human Rts., 59th Sess., 57th mtg., U.N. Doc. E/CN.4/RES/2003/30 (2003).

<sup>39</sup> *See, e.g., John Quigley, International Law Violations by the United States in the Middle East as a Factor Behind Anti-American Terrorism*, 63 U. PITT. L. REV. 815 (2002); Amnesty Int’l, *United States of America: Hypocrisy or Human Rights? Time to Choose*, AI Index No. AMR 51/075/2002 (May 15, 2002), available at <http://web.amnesty.org/library/index/engamr510752002> (last visited Jan. 26, 2005) (“On 14 August 2000, the day that President Clinton told his party that the USA was the most progressive force for human rights, the U.N. Sub-Commission on the Promotion and Protection of Human Rights affirmed that the use of the death penalty against child offenders—defendants who were under 18 at the time of the crime—violated customary international law. It called on offending countries to stop the practice. The U.S., failing to stand firm for the rule of international law, has ignored such calls.”).

<sup>40</sup> *See, e.g., Human Rights Watch, U.S. Proposals to Undermine the International Criminal Court Through a U.N. Security Council Resolution*, June 25, 2002, at <http://www.hrw.org/campaigns/icc/usproposal.htm> (last visited Jan. 26, 2005); Human Rights Watch, *The United States and the International Criminal Court*, at <http://www.hrw.org/campaigns/icc/us.htm> (last visited Jan. 26, 2005); Diane Marie Amann & M.N.S. Sellers, *The United States of America and the International Criminal Court*, 50 AM. J. COMP. L. 381 (2002); Eric P.

denying access to U.N. Special Rapporteur,<sup>42</sup> and failing to ratify<sup>43</sup> or severely limiting the effect<sup>44</sup> of human rights treaties. From this international law perspective, far from painting the United States as the "key," allowing Europe to pursue its agenda of international law, the United States is rather the biggest obstacle—through passive ignorance or active sabotage—of an international legal order to which an increasing number of states subscribe.<sup>45</sup> Against this background, Europe's position

---

Schwartz, *The United States and the International Criminal Court: The Case for "Dexterous Multilateralism"*, 4 CHI. J. INT'L L. 223 (2003).

<sup>41</sup> Pending review of the case by the International Court of Justice, on April 14, 1998, the governor of Virginia ignored a request of the International Court of Justice to stay the execution of Breard, who was a Paraguayan citizen. The governor found "no reason to interfere with his sentence" and proclaimed that "the safety of those residing in the Commonwealth of Virginia is not the responsibility of the International Court of Justice." See Jonathan Charney & Michael Reisman, *Agora: Breard: The Facts*, 92 AM. J. INT'L L. 666, 674-75 (1998).

<sup>42</sup> In 1998, Radhika Coomaraswamy, UN Special Rapporteur on Violence Against Women, was denied access to prisons in Virginia and Michigan. *Report of the Special Rapporteur on violence against women, its causes and consequences: Mission to the United States of America*, U.N. ESCOR, 55th Sess., Agenda Item 12(a) at ¶ 9, U.N. Doc. E/CN.4/1999/68/Add.2 (1999).

<sup>43</sup> See, e.g., Paula Donnolo & Kim K. Azzarelli, *Essay: Ignoring the Human Rights of Children: A Perspective on America's Failure to Ratify the United Nations Convention on the Rights of the Child*, 5 J.L. & POL'Y 203 (1996); Julia Ernst, *U.S. Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women*, 3 MICH. J. GENDER & L. 299 (1995); Philip Alston, *U.S. Ratification of the Covenant on Economic, Social and Cultural Rights: The Need for an Entirely New Strategy*, 84 AM. J. INT'L L. 365 (1990); Amy C. Harfeld, *Oh Righteous Delinquent One: The United States' International Human Rights Double Standard—Explanation, Example, and Avenue for Change*, 4 N.Y. CITY L. REV. 59 (2001).

<sup>44</sup> See Timothy K. Kuhner, Note, *Human Rights Treaties in U.S. Law: The Status Quo, Its Underlying Bases, and Pathways for Change*, 13 DUKE J. COMP. & INT'L L. 419 (2003); Connie de la Vega, *Civil Rights During the 1990s: New Treaty Law Could Help Immensely*, 65 U. CIN. L. REV. 423, 452-57 (1997) (examining the Reservations, Understandings, and Declarations attached to the ICCPR and CERD); Stefan A. Riesenfeld & Frederick M. Abbott, *The Scope of U.S. Senate Control Over the Conclusion and Operation of Treaties*, 67 CHI.-KENT L. REV. 571, 584-85 (1991) (discussing the Reservations, Understandings, and Declarations to the ICCPR).

<sup>45</sup> Kahn, *supra* note 2, at 18. Kahn states:

is aptly summarized in the draft European Constitution, which says, “the transatlantic relationship is ‘irreplaceable’ but also says the United Nations charter is ‘the fundamental framework for international relations.’”<sup>46</sup>

Like any scholar, Kagan approaches his analysis from a particular angle and with certain biases. Certainly, approaching these same issues from the perspective of international law is no less biased. But it is definitely complementary, a complementarity upon which quality scholarship depends. Two weak points in Kagan’s book, therefore, are the lack of discussion of his disciplinary biases and the missed opportunity to enhance his text by providing, and then refuting, alternative views. This section has attempted to provide this missing complementarity by re-examining the concept of power and the policy choices related to it from an alternative perspective.

### III. The World Beyond Kagan’s Realism

The notion of “power,” as explored in Part II of Kagan’s work, is essentially limited to power supported by military force.<sup>47</sup> By repeatedly

---

Much of the world today is tired of the politics of nation-states that has marked the modern era as one of deep and unrelenting violence. The European Union confronts a large number of states that want to enter, even though entry will require a reordering of the relationship among the conceptions of state, sovereignty, and law. Much of Latin America, too, has experienced a disgust with the politics of the nation and is turning toward a world of markets and international law. For many who distrust their own national politics—a wholly justified distrust in many parts of the world—the promise of international law is its restraint on these domestic political forces.

*Id.*

<sup>46</sup> Thomas Fuller, *E.U. Leaders Agree on Defense Policy*, INT’L HERALD TRIB., Dec. 13-14, 2003, at 1.

<sup>47</sup> Although Kagan consistently downplays political and economic power to military power, he at least acknowledges them as forms of power in their own right, albeit insubstantial ones. KAGAN, *supra* note 2, at 21 ([I]n economic and political realms, the European Union produced miracles.”); *Id.* at 48 (“For all Europe’s great economic power and for all its success at achieving political union, Europe’s military weakness . . . produced diplomatic weakness and



pairing the terms “international law” and “power” in syntactic opposition, he implicitly rejects that international law, outside Europe, is powerful at all.<sup>48</sup> This concept of law and power as opposites must be taken for what it is: the limited view of one particular school of international relations—realism. This post-World War II discipline, dominated by scholars such as Hans Morgenthau,<sup>49</sup> George Kennan, Georg Schwarzenberger, Reinhold Niebuhr, Arnold Wolfers and Robert Strausz-Hupe,<sup>50</sup> believes

in the polarity of law and power, opposing one to the other as the respective emblems of the domestic versus the international realm, normative aspiration versus positive description, cooperation versus conflict, soft versus hard, idealist versus realist. Regardless of their domestic colors, states in the international realm were champions only of their own national interest. ‘Law,’ as understood in the domestic sense, had no place in this world. The only relevant laws were the ‘laws of politics,’ and politics was ‘a struggle for power.’”<sup>51</sup>

Thus, Kagan’s point about the relevance of international law in a world dominated by U.S. hegemony is a well-worn one; the post World-War II realists were challenging the utility of international law in a world they (like Kagan) viewed as controlled by power politics long before *Of Paradise and Power*. But, what Kagan does not acknowledge is the rich scholarly dialogue which resulted from this original realist challenge, in

---

sharply diminished its political influence compared to that of the United States.”).

<sup>48</sup> *Id.* at 73 (describing Europe’s preference for international law as a “rejection of power politics” rather than a different form of power); *Id.* at 95 (implying military power when stating that “Americans . . . remain realists in the limited sense that they still believe in the necessity of power in a world that remains far from perfection”); *Id.* at 65 (equating “military power” and “global rule,” which are contrasted to “European integration”); *Id.* at 41 (“Europeans hope to contain American power without wielding power themselves.”).

<sup>49</sup> Reus-Smit, *supra* note 19, at 581 (citing HANS J. MORGENTHAU, *POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE* 5-18 (6th ed. 1985)).

<sup>50</sup> Anne-Marie Slaughter Burley, *International Law and International Relations Theory: A Dual Agenda*, 87 AM. J. INT’L L. 205, 207 n.5 (1995).

<sup>51</sup> *Id.* at 207 n.6.

which international lawyers responded to the realists,<sup>52</sup> neo-realists responded to them,<sup>53</sup> and regime theorists responded to the neo-realists<sup>54</sup>—all of which has been concisely documented by Anne Marie-Slaughter<sup>55</sup> and Christian Reus-Smit.<sup>56</sup>

Without placing his realist ideology in this greater historical context, not only is it difficult for Kagan to claim impartiality, but it is also difficult for him to respond to the gamut of post-realist ideologies, some of which have challenged realism significantly.<sup>57</sup> For example, by proving through empirical evidence in particular international crises that international law could have verifiable compliance effect, scholars such as Abram Chayes have forced realists to reconsider their premise that international law was irrelevant to state behavior.<sup>58</sup> Louis Henkin made

---

<sup>52</sup> *Id.* at 209-211. Anne Marie Slaughter notes that “[t]he chief legal or jurisprudential response to the Realist challenge was the reconceptualization of the relationship between international law and politics.” The most important effort came from Myres McDougal and Harold Lasswell of the Yale Law School, who “reinvented international jurisprudence, creating a comprehensive framework within which international lawyers, retrained as public policy experts, could use empirical data and theoretical insights from political science and a range of other disciplines to ascertain and critique existing law . . . to determine which law, or which system of laws, best furthers ‘human dignity.’” *Id.* Some of McDougal’s students, particularly Richard Falk, Saul Mendlovitz and Burns Weston, expanded this work “from the perspective less of human dignity than of systemic stability.” *Id.*

<sup>53</sup> Reus-Smit, *supra* note 19, at 581-582 (citing *Preface* to KENNETH WALTZ, *THEORY OF INTERNATIONAL POLITICS* (1979)).

<sup>54</sup> *Id.* at 582-83.

<sup>55</sup> Slaughter Burley, *supra* note 50, at 209-25.

<sup>56</sup> Reus-Smit, *supra* note 19, at 577-89.

<sup>57</sup> See generally *INTERNATIONAL REGIMES* (Stephen D. Krasner ed., 1983); Kenneth Abbott, *Modern International Relations Theory: A Prospectus for International Lawyers*, 14 *YALE J. INT’L L.* 335 (1989). For a complete examination of the evolution of IR scholarship, see Friedrich Kratochwil & John G. Ruggie, *International Organization: A State of the Art on an Art of the State*, 40 *INT’L ORG.* 753, 754 (1986). For additional challenges to realism, including post-modernism, critical theory, and constructivism, see Richard Price & Christian Reus-Smit, *Dangerous Liaisons? Critical International Theory and Constructivism*, 4 *EUR. J. INT’L L.* 259 (1998).

<sup>58</sup> Slaughter Burley, *supra* note 50, at 213 n.34 (citing ABRAM CHAYES, *THE CUBAN MISSILE CRISES* (1974); THOMAS EHRLICH, *CYPRUS, 1958-1967* (1974); ROGER FISHER, *POINTS OF CHOICE* (1978)). Harold Koh cites to further scholarship establishing the compliance effect of international law in areas such

the same point more broadly, arguing in his canonical work *How Nations Behave* that “almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time.”<sup>59</sup>

At the same time realism was being challenged, international lawyers were forced to admit that state compliance, although common, is not guaranteed, thus causing them to de-emphasize “the constraint function of international law.”<sup>60</sup> Indeed, this might have been the downfall of international law were it not for the development of regime theory. Keeping consistent with realist premises, Robert Keohane’s neoliberal institutionalist theory of regimes explained the “pervasiveness and persistence” of norms (“regimes” in IR speak)<sup>61</sup> in international politics, arguing that because regimes lower transaction costs, increase information, reduce cheating, enhance the value of reputation, and facilitate monitoring, they are useful to and frequently followed by self-interested utility maximizing states.<sup>62</sup> Although rules may not guaranty compliance quite as much as international lawyers had hoped they would, regime theory demonstrated that rules are more important to

---

as international trade, international adjudication, international human rights, and international environmental law. Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 YALE L.J. 2599, 2599 n.2 (1997).

<sup>59</sup> LOUIS HENKIN, *HOW NATIONS BEHAVE* 47 (2d ed. 1979).

<sup>60</sup> Slaughter Burley, *supra* note 50, at 212.

<sup>61</sup> *See id.* at 218.

<sup>62</sup> [R]ules, as part of the environment faced by a state, exert an impact on state behavior. They do so, in this view, not because the norms they reflect persuade people that they should behave differently. Rather, they alter incentives . . . . The revised Restatement of American Foreign Relations Law emphasizes state interests: “international law generally is largely observed because violations directly affect the interests of states, which are alert to deter, prevent, or respond to violations.”

Robert O. Keohane, Comment, *International Relations and International Law: Two Optics*, 38 HARV. INT'L L.J. 487, 490 (1997). *See also* Reus-Smit, *supra* note 19, at 582-83; Slaughter Burley, *supra* note 50, at 218-20; Phillip R. Trimble, *International Law, World Order, and Critical Legal Studies*, 42 STAN. L. REV. 811, 834 (1990) (“International law conditions the behavior of participants and observers alike. It channels the ways in which officials think about a given situation, and it organizes their responses.”).

international strategizing than previously acknowledged.<sup>63</sup> The seed was planted for an ongoing marriage between IL and IR.<sup>64</sup>

Viewing international law as a mere tool in IR strategizing is a dismal future for the discipline of international law, however. In this regard, the most interesting scholarship being carried on today analyzes IR and IL not as complementary, but as synergistic.<sup>65</sup> Rather than

---

<sup>63</sup> Anne-Marie Slaughter Burley notes that international lawyers had, however, recognized this facilitative role of international law at least two decades before Keohane's institutionalism. Slaughter Burley, *supra* note 50, at 219-20 (including a valuable chart comparing regime theorists' notions of the functions and benefits of international regimes with IL scholars' understandings of the functions and benefits of international law).

<sup>64</sup> This interrelation between the instrumentalist and normative roles of international law is neatly summarized in Keohane, *supra* note 62. See also Abbott, *supra* note 57; Kenneth Abbott, *International Relations Theory, International Law, and the Regime Governing Atrocities in Internal Conflicts* 93 AM. J. INT'L L. 361 (1999). Professor Kritsiotis of the University of Michigan Law School offers a modern restatement of regime theory, reformulating many of the precepts of institutionalism from the standpoint of international law. Kritsiotis focuses his analysis on the power of international law as a language within international relations, "a new communicative medium which professes to be: more peaceful in its outlook on solving problems; more economical as far as human and financial resources are concerned; more secure in terms of the answers and solutions it provides; and, finally, more inclusive of the participants that make up the international system." Kritsiotis, *supra* note 34, at 398. Kritsiotis states that the increased use of the language of international law "opens up a series of fundamental and recurrent questions - about compliance with and enforcement of the law - but it is the very existence, speaking and use of legal language that allows us to ask (and answer) such questions in the first place." *Id.* at 407. Kritsiotis believes that as international law is increasingly used to frame international relations debates, its "language of law, principle, precedent, and procedure" will eventually have an overwhelming effect, resulting in "a radical new reality for the conduct of international relations." *Id.* at 398.

<sup>65</sup> See, e.g., Byers, *supra* note 13, at 112 ("[S]eek[ing] to demonstrate that increased movement between the two disciplines, while not necessarily leading to better solutions to practical problems, may well lead to better understandings of the international society in which we live."); Gerry Simpson, *The Situation on the International Legal Theory Front: The Power of Rules and the Rule of Power*, 11 EUR. J. INT'L L. 439 (2000); Onuma Yasuaki, *International Law in and with International Politics: The Functions of International Law in International Society*, 14 EUR. J. INT'L L. 105 (2003); Judith Goldstein et al., *Legalization and World Politics*, 54 INT'L ORG. 385 (2000); MICHAEL BYERS,

viewing IL as a tool for IR, like institutionalists (regime theorists) do, the “new generation of interdisciplinary scholars[]”<sup>66</sup> view both fields as inseparably intertwined. One of the most interesting works is by Professor Michael Byers, who attempts “to synthesize the two perspectives into a general theory of customary international law.”<sup>67</sup>

Byers seeks to “explain[] the process of customary international law as a social institution created and shaped by the shared understandings and patterned behavior of self-interested states. According to this theory, customary rules largely arise through the application of power by states within a framework made up of the customary process and a number of fundamental structural principles of international law.”<sup>68</sup> His use of customary international law is a particularly interesting avenue with which to approach the disciplines of international law and international relations simultaneously because it shows, unlike Kagan, the ways in which power is both manifested in and created by international law. Byers “seeks to bring the study of power within the scope of international legal scholarship in a way that does not deny an important element of stability and determinacy to law. It might also encourage some international relations scholars to regard

---

THE ROLE OF LAW IN INTERNATIONAL POLITICS (2000); Anne-Marie Slaughter et al., *International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship*, 92 AM. J. INT'L L. 367 (1998). The synergistic relationship of IR and IL is also a major theme of the liberalist school. See *infra* notes 72-75 and accompanying text.

<sup>66</sup> Slaughter et al., *supra* note 65, at 373.

<sup>67</sup> Byers, *supra* note 13, at 115-16. See also *id.* at 113 (“The customary process gives weight to power because, rather than involving quasi-contractual agreements, it concerns patterns of legally relevant behavior which, if not effectively opposed, may develop into legal rules.”). Byers adds, “Furthermore . . . the maintenance, development, or change of customary rules usually involves a weighing of different amounts of supporting, ambivalent, and opposing behavior. Power, and its relational nature, is therefore particularly important in the process of customary international law.” *Id.*

<sup>68</sup> *Id.* at 111. See also Kritsiotis, *supra* note 34, at 402 (“Through the use of the law as language, we can then identify strands of *opinio juris* thought in state behavior (that is, incidents in state practice) - an essential legal ingredient in the creation of custom which, in turn, produces a normative system more reflective of the interests of its addressees. With its extraordinary dynamic and adaptability, custom is especially appropriate as a dialect of international law for allowing states to respond to complex emergencies or unanticipated crises, or perhaps to depart from treaty texts when appropriate.”).

international law as a constraint on the exercise of power which cannot be ignored or changed in response to short-term interests.”<sup>69</sup> After analyzing four fundamental principles of international law, (the principle of jurisdiction, the principle of personality, the principle of reciprocity, and the principle of legitimate expectation),<sup>70</sup> Byers concludes, contrary to Kagan’s view, that “the customary process and certain fundamental structural principles of international law act to qualify applications of state power.”<sup>71</sup>

Another powerful integrationist effort is the liberal school, including the work of Anne-Marie Slaughter, Andrew Moravcsik, Andrew S. Tulumello and Stepan Wood. These scholars have sought to explain how “state-society relations—the relationship of states to the domestic and transnational social context in which they are embedded—have a fundamental impact on state behavior in world politics.”<sup>72</sup> They believe that “the configuration of state preferences matters most in world politics—not, as realists argue, the configuration of capabilities and not, as institutionalists (functional regime theorists) maintain, the configuration of information and institutions.”<sup>73</sup> By linking state

---

<sup>69</sup> Byers, *supra* note 13, at 111.

<sup>70</sup> *Id.* at 149-79.

<sup>71</sup> *Id.* at 180. Reaching this result, Byers notes that

[i]nternational relations scholars who have previously dismissed and derided the role of international law may wish to reevaluate the accuracy of their essentially anarchical picture of international society. Similarly, for those international relations scholars who have begun to explore the role of international institutions and international law, the ideas expressed in this article may confirm their intuitions and encourage them to join international lawyers in a cooperative study of the complex issues which separate, yet bind, international politics to international law.

*Id.*

<sup>72</sup> Moravcsik, *supra* note 23, at 513. See also Slaughter Burley, *supra* note 50; Anne-Marie Slaughter, *International Law in a World of Liberal States*, 6 EUR. J. INT’L L. 503 (1995); Anne-Marie Slaughter, *Interdisciplinary Approaches to International Economic Law: Liberal International Relations Theory and International Economic Law*, 10 AM. U. J. INT’L L. & POL’Y 717 (1995); Slaughter et al., *supra* note 65.

<sup>73</sup> Moravcsik, *supra* note 23, at 513.

preferences to individual preferences through the operation of domestic political systems, liberals have attempted to explain several notable IR phenomena, including the “democratic peace,” or absence of war between democratic states.<sup>74</sup> The liberalist premise is integrationist because of its emphasis on the causal importance of norms in IR, albeit from a “bottom up” rather than “top down” perspective.<sup>75</sup>

Professor Reus-Smit brings the discussion to another level, positing that because integrationist theories such as Slaughter’s are “proudly positive and explicitly eschew normative reflection, [they] . . . amount[] not to bridge-building but to an attempt to draw international law across the river on to the turf of American political science, in the process losing much of what is distinctive and important about international legal theory.”<sup>76</sup> In essence, Reus-Smit has accused Slaughter and her colleagues of the same error the institutionalists had committed, trivializing international law by grounding an integrationist theory too firmly in the assumptions of political science.<sup>77</sup> He contrasts this approach to the works of inter-war pre-realist scholars, which he believes to be more similar than typically acknowledged. For example, the prominent inter-war IR theorist E.H. Carr is “traditionally understood to have called for a science of international politics . . . purged of the utopianism of Wilsonian internationalism,”<sup>78</sup> and is often considered the nemesis of Norman Angell, portrayed as a “naive liberal internationalist.”<sup>79</sup> In reality, an effort to combine realism and normativity was at the heart of both of their philosophies. While Carr may have been known as a strict realist, he in fact “called for a science of

---

<sup>74</sup> Slaughter Burley, *supra* note 50, at 225-26.

<sup>75</sup> In other words, the liberalist school emphasizes the influence of domestic norms and preferences on IR, not the influence of IL on domestic preferences..

<sup>76</sup> Reus-Smit, *supra* note 19, at 590.

<sup>77</sup> *Id.* (claiming that Slaughter’s strategy “has been to work out from a particular model of political science and conception of politics, and to treat legal institutions, processes and norms as empirical data to be explained . . . . The result is a liberal international legal theory that makes good political science, at least from the perspective of the American mainstream, but normatively weak international legal theory.”). *See also id.* at 593 (“Positive international relations theory lacks the philosophical resources to inform the articulation of a mature liberal theory of international law, a theory that coherently mediates between the pragmatics of social and political circumstance, the practice of rule interpretation, and the prescription of new norms.”).

<sup>78</sup> *Id.* at 577.

<sup>79</sup> *Id.* at 578.

international politics that blended realism and utopianism.”<sup>80</sup> According to Carr, “[I]nternational relations will never be a mature science until it recognizes the need to bring the empirical and the normative into dialogue.”<sup>81</sup> Also, contrary to common portrayal, Angell was not ignorant of power politics and firmly recognized the need to compromise realist and utopian tendencies:

It seems fatally easy to secure either one of two kinds of action: that of the “practical man” who limits his energies to securing a policy which will perfect the machinery of war, and disregard anything else; or that of the pacifist, who, persuaded of the brutality or immortality of war, just leaves it at that, implying that national defense is of no concern of his. What is needed is the type of activity, which will include both halves of the problem . . . To concentrate on either half to the exclusion of the other half is to render the whole problem insoluble.<sup>82</sup>

According to Reus-Smit, the reason these two philosophically opposed scholars could find so much common ground was because, in the inter-war period, the underlying assumption of all theorists was that political theory had to take account of both the instrumental and the moral.<sup>83</sup> After World War II, however, “there [was] a shift away from the orientation of classical international theories, which confronted the

---

<sup>80</sup> *Id.* at 573.

<sup>81</sup> E.H. CARR, *THE TWENTY YEARS’ CRISIS: 1919-1939* 10 (2d ed. 1946), *cited in* Reus-Smit, *supra* note 19, at 579.

<sup>82</sup> NORMAN ANGELL, *THE GREAT ILLUSION* 327-38 (1933), *quoted in* Reus-Smit, *supra* note 19, at 579.

<sup>83</sup> Reus-Smit, *supra* note 19, at 579-80 (noting that inter-war international relations theorists “of both realist and liberal persuasions” recognized “the dual nature of international relations as a *political* science: it was political in the sense that it was expected to help provide solutions to the pressing political dilemmas of the day, dilemmas in which the is and the ought were inextricably intertwined; and in the sense that the analysis of international politics demanded an appreciation of the relationship between brute material facts and debate about the good.”); *id.* at 575 (“[P]olitics is distinctive ‘because it combines moral and instrumental considerations in a form of deliberation that is neither strictly instrumental nor strictly moral.’”) (citing RONALD BEINER, *POLITICAL JUDGMENT* 151 (1983)).



political in all of its . . . complexities, towards 'neo-theories' of both realist and liberal varieties, which have reduced international relations to instrumental rationality, effectively abandoning political inquiry, and forgone normative argument, abrogating political engagement."<sup>84</sup> Reus-Smit argues that, rather than attempting to conceptualize IL with a post-war IR lacking a normative dimension, a true integrationist theory must re-espouse the conception of politics as a socially-constitutive normative enterprise "that mediates between individual and group self-interest and utility, on the one hand, and ethical conceptions of what is right and good, on the other."<sup>85</sup> Although some would claim it unrealistic or even anachronistic to revert to a 70-year-old political dialogue,<sup>86</sup> Reus-Smit's effort to more carefully refine the integrationist project is outstanding and will surely provide insight to many future integrationist scholars.

Finally, Anne-Marie Slaughter's "community of courts" paradigm posits that, whereas European and American foreign policy may be moving farther apart, their judicial systems are increasingly in dialogue.<sup>87</sup> Increased judicial comity, "deference not to foreign law or foreign national interests, but specifically to foreign courts,"<sup>88</sup> could create another avenue toward the union of IR and IL. The United States judicial system, in the lower courts and in the Supreme Court, is increasingly acknowledging international and foreign law.<sup>89</sup> The most striking example of this is the United States Supreme Court's recent decision in *Lawrence v. Texas*, citing several opinions of the European Court of Human Rights (ECHR).<sup>90</sup> United States Supreme Court justices

---

<sup>84</sup> Reus-Smit, *supra* note 19, at 576-77.

<sup>85</sup> *Id.* at 591.

<sup>86</sup> Koskenniemi, *supra* note 12, at 455.

<sup>87</sup> The "Community of Courts" paradigm envisions "a global community of law, established not by the World Court in The Hague, but by national courts working together around the world, . . . a shift from deference to dialogue, from passive acceptance to active interaction, from negative comity to positive comity." Anne-Marie Slaughter, *Judicial Globalization*, 40 VA. J. INT'L L. 1103, 1114 (2000) [hereinafter "Slaughter Essay"].

<sup>88</sup> *Id.* at 1112-13.

<sup>89</sup> *Id.* at 166-69. See also Sujit Choudhry, *Globalization in Search of Justification: Toward a Theory of Comparative Constitutional Interpretation*, 74 IND. L.J. 819, 819 (1999), cited in Slaughter Essay, *supra* note 87 at 117.

<sup>90</sup> *Lawrence v. Texas*, 539 U.S. 558, 572-77, 123 S. Ct. 2472, 2481-2483 (2003) (citing *Dudgeon v United Kingdom*, 45 Eur. Ct. H. R. (1981); *P. G. & J. H. v United Kingdom*, App. No. 00044787/98, ¶ 56 (Eur. Ct. H.R., Sept. 25, 2001);

are also meeting with their European colleagues, from national constitutional courts and the European Court of Justice (ECJ), with increasing regularity. Justice Sandra Day O'Connor has led Supreme Court delegations to meet with their counterparts in France, Germany and England. There have also been two official meetings between the United States Supreme Court and the ECJ, one in 1998 in Brussels and another in 2000 in Washington.<sup>91</sup> In a very telling move, Chief Justice Rehnquist recently created a branch of the federal judiciary exclusively dealing with foreign policy issues, to "coordinate the federal judiciary's relationship with foreign judiciaries and with official and unofficial agencies and organizations interested in international judicial relations and the establishment and expansion of the rule of law and administration of justice."<sup>92</sup> The combination of these events represents a considerable change in American-European judicial relations and a substantial broadening of American judicial focus. An accurate assessment of the overall Euro-American relationship should recognize these developments.

Thus, the fields of IR and IL have grown and developed significantly since the IR realists and IL utopians of the post-war period talked past each other. In addition to the important recognition IR regime theory provided to IL, the past decade has brought a new wave of scholars working to unite the two disciplines. Kagan bypasses all of these new developments, proposing an analysis stuck in post-World War II realism. By restating the post World War II realist argument without acknowledging the subsequent responses by neo-realists, regime theorists, liberals, or others, Kagan's work is narrowly revisionist.

#### IV. Kagan's Book as Integrationist Contribution

In the chapters "The Postmodern Paradise" and "The World America Made," Kagan asserts the central thesis of his book: "Europe's evolution into its present state occurred under the mantle of the U.S.

---

Modinos v Cyprus, 259 Eur. Ct. H. R. (1993); Norris v Ireland, 142 Eur. Ct. H. R. (1988)).

<sup>91</sup> Slaughter Essay, *supra* note 87, at 1120.

<sup>92</sup> *Id.* at 1122-23 (citing Chief Judge Michael M. Mihm, *International Judicial Relations Committee Promotes Communication, Coordination*, 1 INT'L JUD. OBSERVER 1 (Federal Judicial Center & American Society of International Law, Washington, D.C.) (Sept. 1995)).

security guarantee and could not have occurred without it.”<sup>93</sup> Although it is difficult to fully substantiate Kagan’s claim that Europe’s international legal regime developed “but for” the presence of U.S.-provided security, he is right to point out the extent to which Europe has relied on U.S. security and the extent to which it will need to outgrow this reliance if it is to complement its ever-more-important doctrinal strength.<sup>94</sup> It is this compelling hypothesis perhaps more than anything else that caused Kagan’s essay and (subsequently) his book to raise so many eyebrows in international law and policy circles. Rather than viewing Kagan’s assertions as challenges to the IL-focused European premise, it is more constructive to view them as an integrationist refinement on the current successful European international legal regime. Kagan’s book could challenge international lawyers to more carefully consider the ways in which military and doctrinal powers interact. It is premature to say, as some international lawyers might, that there is no place in today’s global order for military force. Yet, it is also wrong to claim, as Kagan does, that doctrinal/political force is completely hollow shell without military force to back it up. Present-day Europe disproves both of these notions,

---

<sup>93</sup> KAGAN, *supra* note 2, at 72. For example, Kagan argues that “[few] like to recall that the military destruction of Nazi Germany was the prerequisite for the European peace that followed.” *Id.* at 56. Similarly, he argues that “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.” *Id.* at 73. There is most certainly an element of truth in both of these claims. This thesis that European normative power could not exist without U.S.-provided security is similar yet analytically distinct from Kagan’s argument explored in Part II that U.S.-provided security allows Europeans to choose normative power. Whereas Part II is an argument about political choice of European voters or constituencies, the argument explored in this Part expands this theme beyond political choice to geo-political reality. They are analyzed separately because they present different issues: whereas Kagan’s argument as to political choice in Part II is problematic, his more general geo-political argument is much more compelling.

<sup>94</sup> See Anthony Browne et al., *European leaders deny defence threat to NATO*, TIMES (London), Oct. 18, 2003, at 4 (quoting Silvio Berlusconi, then Prime Minister of Italy, as saying, “The European Union can’t play a central role on the world stage without the back-up of an appropriate and adequate military force—it’s inconceivable that Britain could be a world power with an autonomous military capacity . . . . No diplomacy can exist without military strength. We have lived under the American military umbrella. The time has come to foot our own bill.”).

providing a third paradigm where both military and doctrinal force matter (contrary to the view of international lawyers), but where doctrinal force is the condition precedent to military force and not the other way around (contrary to the realist view).

Europe's political and doctrinal strength and legitimacy has been steadily growing since the formation of the European Coal and Steel Community (ECSC) in 1951.<sup>95</sup> Only in recent months, however, has Europe begun to seriously approach the question of common security as a step towards further political cohesion. Silvio Berlusconi, the Prime Minister of Italy when it held the presidency of the European Council, noted that "apparently, all the EU countries are aware that there cannot be any genuine foreign policy if there is not also a European military capability that is independent and complementary to NATO."<sup>96</sup> Similarly, French President Jacques Chirac stated that "[t]here is no Europe if it does not have the capacity to defend itself."<sup>97</sup>

Examples of increased European military planning and activity are multiplying rapidly. The first-ever independent European peacekeeping forces were deployed in May 2003 to the Democratic Republic of the Congo.<sup>98</sup> Perhaps more importantly from the standpoint of geo-politics are the discussions aimed at establishing a European force that goes beyond peacekeeping missions and would be capable of operating independent of NATO.<sup>99</sup> Whereas other areas, particularly

---

<sup>95</sup> See Treaty Establishing the European Coal and Steel Community, Apr. 18, 1951, 261 U.N.T.S. 167.

<sup>96</sup> *Inter-Governmental Conference: Presidency/Parliament/Commission in United Front on Institutions*, EUR. REP. (Oct. 25, 2003).

<sup>97</sup> John Tagliabue, *Blair Reassures U.S. on European Defense*, INT'L HERALD TRIB., Oct. 18, 2003, at 3. See also Thomas Fuller & Brian Knowlton, *Europeans Try to Reassure U.S. on NATO*, INT'L HERALD TRIB., Oct. 22, 2003, at 7 (quoting Chirac as having said, "We have decided to pursue this project [of a European military force] because we think that there will not be a Europe without a defense capacity.").

<sup>98</sup> Helle Dale, *EU Army to the Rescue? Heaven Help Us From Our Friends*, WASH. TIMES, Oct. 29, 2003, at A21.

<sup>99</sup> See William Pfaff, *A History Lesson for the Allies: NATO's Future*, INT'L HERALD TRIB., Oct. 23, 2003, at 4; *Amid NATO Row, Blair Says Europe Must Have Own Defence*, AGENCE FR. PRESSE, Oct. 23, 2003 ("British Prime Minister Tony Blair insisted . . . that Europe must have its own defence capability [but attempted to quell U.S. fears about the independent force by saying] 'I'm absolutely the strongest ally the US can have but I know there will be certain situations that, for perfectly good reasons, when [sic] the US doesn't want to

voting allocations, have stalled the drafting of Europe's Constitution,<sup>100</sup> the delegates to the intergovernmental Conference (IGC) have agreed on the provisions of the Constitution establishing a common defense policy separate from NATO.<sup>101</sup> These changes are a marked break from the political choice to avoid military strength, discussed in Part II, but also weaken Kagan's claim that "[t]oday, the European Union is no closer to fielding an independent force, even a small one, than it was three years ago."<sup>102</sup>

---

undertake military operation"') [hereinafter *NATO Row*]; *European Defence: Divide and Fall*, ECONOMIST, Oct. 25, 2003, at 13-14; Fuller & Knowlton, *supra* note 97; Thomas Fuller & Brian Knowlton, *Europe Allies Try to Reassure U.S.: They Say NATO Won't be Undercut*, INT'L HERALD TRIB., Oct. 21, 2003, at 1; Tagliabue, *supra* note 97 (noting Tony Blair's statement that "[t]here are going to be circumstances, we have them now in Macedonia, where America for one reason or another does not want to be involved."); John Tagliabue, *Europe Weighs Joint Defense, With a Nod to U.S. Concerns*, N.Y. TIMES, Oct. 18, 2003, at A4; Stefania Bianchi, *US Wants Guarantees on European Military Force*, INTER PRESS SERVICE, Oct. 22, 2003 (noting that at a September meeting in Berlin, "the leaders of Europe's 'big three'—France, Germany and Britain—agreed on a joint paper which sketches plans for the new initiative. The joint paper stated that the E.U. 'should be endowed with a joint capacity to plan and conduct operations without recourse to NATO resources and capabilities.'").

<sup>100</sup> See *infra* note 121.

<sup>101</sup> Fuller, *supra* note 46. See also Dale, *supra* note 98; *NATO Row*, *supra* note 99 ("[D]efence plans [are] linked to talks on a first-ever constitution for the enlarging bloc"); Tagliabue, *supra* note 97 (noting that the "European constitution . . . proposes, among other measures, the establishment of the office of European foreign minister, who would be broadly responsible for foreign and security policy."); *Inter-governmental Conference: Silvio Berlusconi Pledges to Secure Institutional Compromise in December*, EUROPEAN REPORT, Oct. 18, 2003.

<sup>102</sup> KAGAN, *supra* note 2, at 53. Even at the time Kagan wrote his book, his claim was spurious. In 2001, the RAND study stated that

[t]hrough NATO and the DCI [Defense Capability Initiative], and through the ESDP [European Security and Defense Policy], European members of NATO, as well as the non-NATO members of the E.U., have expressed their intention and commitment to enhance Europe's military capabilities. The result of their doing so could be a more balanced sharing of security burdens and responsibilities within NATO and, if circumstances warrant, a capacity for independent action by the E.U.

The American government has become increasingly concerned about these events. It views the proposal to locate the E.U. force's headquarters outside Brussels (NATO headquarters) as a serious threat to trans-Atlantic relations.<sup>103</sup> The increased concern shown by the U.S. government about European military development is difficult to square with Kagan's final chapter, in which he presents increased European military capabilities as a solution to the transatlantic divide.<sup>104</sup> The current trans-Atlantic tension over a European force is evidence that, rather than acting to preserve "the West," as Kagan predicts it would,<sup>105</sup> such a force will only increase the extent that the United States and Europe are becoming "positively estranged."<sup>106</sup> Kagan predicts that, amidst this divide, the United States will choose to ignore a Europe for which it no longer has any use.<sup>107</sup> Instead, it appears that the U.S. is paying a great deal of attention to what Europe is doing.<sup>108</sup>

In conclusion, although this book review has been critical of the manner in which Kagan ignores doctrinal power, international lawyers

RAND study, *supra* note 21, at 3.

<sup>103</sup> Dale, *supra* note 98 ("U.S. NATO Ambassador Nick Burns called the plans for a EU military headquarters 'the most serious threat to the future of NATO.' And Secretary of State Colin Powell is reportedly preparing to travel to Europe in November to stress the seriousness of Americans concerns with E.U. leaders."); *NATO Row*, *supra* note 99 ("[A] U.S. envoy warned that certain E.U. defence plans were a 'significant threat' to the future of the 19-member NATO alliance."); Browne et al., *supra* note 94.

<sup>104</sup> KAGAN, *supra* note 2, at 100-01.

<sup>105</sup> *Id.* at 101.

<sup>106</sup> Pfaff, *supra* note 99 (describing how "for the Western Europeans, everything has changed since the Iraq war," and that nascent plans for a European force capable of operating independently of NATO are akin to "a European declaration of independence" from NATO and U.S. control). For use of the term "positively estranged" by Kagan, see KAGAN, *supra* note 2, at 100.

<sup>107</sup> *Id.* ("The United States could become less inclined to listen [to Europe], or perhaps even to care [about it]. The day could come, if it has not already, when Americans might no more heed the pronouncements of the E.U. than they do the pronouncements of ASEAN or the Andean Pact."); *Id.* at 102 ("American leaders should realize that they are hardly constrained at all, that Europe is not really capable of constraining the United States.").

<sup>108</sup> This is consistent with the RAND study, *supra* note 21, at 3 (predicting that increased European military commitment and cohesion "will significantly influence the character of U.S.-European security relations during the next decade").

risk committing just as big a gaffe by ignoring other forms of power, such as military force. Professor Anne Orford notes that international lawyers are already recognizing alternative forms of power to an increasing extent: "The structure of international argument has swung between apologetic or pragmatic approaches to the fact that international lawyers have to be realistic about where power lies and idealistic approaches that make great claims for the possibility that international law can constrain such power."<sup>109</sup> This is a positive trend, and to the extent that Kagan's book adds a pragmatic voice to the integrationist literature, it is a valuable tool for the international legal scholar.

#### V. Conclusion: The European-American Rift as Integrationist Project

Kagan cautions against the idealist European who fails to acknowledge the unique geo-political conditions that led to the rise of the European Union.<sup>110</sup> Yet, he risks committing as big an error by focusing *solely* on these factors, unnecessarily downplaying the resulting international legal regime.<sup>111</sup> For example, he claims that "the early promise of the 'new' Europe . . . bonding together into a single political and economic unit . . . to recapture Europe's old greatness in a new political form [as] . . . the next superpower,"<sup>112</sup> has been unfulfilled. But,

---

<sup>109</sup> Orford, *supra* note 13, at 521 n.131 (citing MARTTI KOSKENNIEMI, FROM APOLOGY TO UTOPIA: THE STRUCTURE OF INTERNATIONAL LEGAL ARGUMENT (1989)).

<sup>110</sup> See *supra* note 93 and accompanying text.

<sup>111</sup> Europe may have begun through the serendipitous combination of geo-political factors, but its international legal regime continues to endure, and strengthen, even as factors change, leading Professor Shaw to note that

the E.U. either already is (in legal terms at least) beyond sovereignty and therefore post-Hobbesian, or at least it will become so in the near future. What [is meant] by post-Hobbesian is that the E.U. would be beyond the "well-known Hobbesian dogma that for order to exist there must be a hierarchical coercive structure to keep man in awe."

Jo Shaw, *Sovereignty and European Integration*, at [http://www.europeanbooks.org/europeanbooks/bookreviews/bookreviews\\_12.htm](http://www.europeanbooks.org/europeanbooks/bookreviews/bookreviews_12.htm) (last visited Jan. 31, 2005) (reviewing and citing MARLENE WIND, SOVEREIGNTY AND EUROPEAN INTEGRATION 80 (2001)).

<sup>112</sup> KAGAN, *supra* note 2, at 20-21.

to the international lawyer, the new Europe has made the world a very different place indeed. Whereas Kagan spends several pages discussing the “decline of Europe into relative military weakness,”<sup>113</sup> the international lawyer is equally impressed by Europe’s relative doctrinal strength. Europe is now building a norm-based international society (and encouraging other countries to do the same) without the help of (or even in opposition to) the United States.<sup>114</sup> The European Union, established only a half-century ago with a simple treaty between nations over coal and steel tariffs,<sup>115</sup> has quickly become the world’s “leading example of actual organic integration.”<sup>116</sup> Today, the European Union is the quintessential example of the positive potential of international law. The E.U. treaties represent “some sort of ‘third way’ between the strictures of both national and international law.”<sup>117</sup>

After downplaying European doctrinal power throughout his book, Kagan *finally* discusses the potential global influence of these European changes in his chapter entitled “Is it Still ‘The West?’” In that chapter, Kagan notes that as European strategy focuses increasingly

---

<sup>113</sup> *Id.* at 22-25.

<sup>114</sup> Maria Gavouneli, *International Law Aspects of the European Union*, 8 TUL. J. INT’L & COMP. L. 147 (2000) (“There is no question that one of the primary players acting in the international scene today is the regional economic integration organization of the European states in its manifold manifestations.”).

<sup>115</sup> *Id.* at 148.

<sup>116</sup> John H. Barton, *International Law: Two Ideas of International Organization*, 82 MICH. L. REV. 1520, 1531 (1984). See generally ERIC STEIN, P. HAY & M. WAELBROECK, *EUROPEAN COMMUNITY LAW AND INSTITUTIONS IN PERSPECTIVE* (1976); Eric Stein, *Lawyers, Judges, and the Making of a Transnational Constitution*, 75 AM. J. INT’L L. 1 (1981), cited in Barton, *supra*. It was Professor Eric Stein of the University of Michigan who first began studying Europe within the paradigm of a growing federalist system as opposed to an international organization of sovereign states.

<sup>117</sup> Shaw, *supra* note 111. See also VOLKER RÖBEN, *CONSTITUTIONALISM OF INVERSE HIERARCHY: THE CASE OF THE EUROPEAN UNION* (Jean Monnet Ctr. for Int’l and Econ. L. & Just., Working Paper No. 8/03, 2003), at <http://www.jeanmonnetprogram.org/papers/03/030801.html> (describing the E.U. as a complex, three-tiered constitutional government with an inverted hierarchy in which member states, through their executive organs and courts, act at the lowest level to carry out E.U. policies and, through heads of state assembled in the European Council, national constitutional courts and national parliaments, act at the highest level in their treaty-making capacity, leaving the E.U./E.C. occupying a middle level).



around the E.U. and less around NATO, it becomes progressively more difficult to view Europe and the United States as a cohesive unit under such titles as "The West."<sup>118</sup> His questions about the possible future of this divide created by a doctrinally-strong Europe and a militarily-strong United States will likely prove to be the book's most lasting contribution. His answers, however, are heavily value-laden with his realist premise.<sup>119</sup> Whereas Kagan views Europe as destined to merely "follow where America leads,"<sup>120</sup> the international lawyer, concerned with international doctrinal power, views Europe as the leader. Endogenously, this power manifests itself, most recently, in the project for a European Constitution and the development of a common strategic and defense policy.<sup>121</sup> Exogenously, this power becomes more evident as the European Union expands from 15 to 25 members, exercises substantial control over policy decisions in the growing number of E.U. candidate countries,<sup>122</sup> increases its use of powerful association agreements,<sup>123</sup> and continues to

---

<sup>118</sup> KAGAN, *supra* note 2, at 85.

<sup>119</sup> *Id.* at 97 ("The task, for both Europeans and Americans, is to readjust to the new reality of American hegemony").

<sup>120</sup> *Id.* at 96.

<sup>121</sup> William Pfaff, *Moral choices in Europe: E.U. Expansion*, INT'L HERALD TRIB., Sept. 11, 2003, at 8. Although efforts to establish a European Constitution were stalled in December 2003 because of prolonged discussion over voting allocations, they will resume in 2004. *European Constitution Summit Collapses*, N.Y. TIMES, Dec. 14, 2003 (noting that Prime Minister Tony Blair felt that "differences could be overcome and the constitution adopted, but [that] ... leaders would take at least several months before a breakthrough," and quoting Blair as stating, "I don't think there's any point to rushing this before we have the basis of an agreement"). Interestingly, even the voting impasse itself is evidence of Europe's role as counterweight to the United States. See John Vinocur, *Europeans Stress the Positive in Breakdown of Talks*, N.Y. TIMES, Dec. 14, 2003 (noting that the voting debacle "hinged on the constitutional draft's provision to reduce the voting rights of Spain and Poland, seen as faithful allies of the United States, and together capable of forming the basis of a blocking minority").

<sup>122</sup> *Id.* (referring to Bulgaria, Romania, and Turkey, and mentioning further expansion possibilities in the former Soviet bloc states). See also Kahn, *supra* note 14, at 18 ("The European Union confronts a large number of states that want to enter, even though entry will require a reordering of the relationship among the conceptions of state, sovereignty, and law.").

<sup>123</sup> See, e.g., Helen E. Hartnell, *Subregional Coalescence in European Regional Integration*, 16 WIS. INT'L L.J. 115, 121 (1997) (noting that "the increase in number and types of association agreement [sic] since 1989 has been

exercise tremendous power over its former colonial holdings in Africa, Asia, and the Pacific. William Pfaff notes, "American neo-conservatives . . . who formerly dismissed the E.U. as a grouping of over-regulated and non-competitive economies, now have begun to issue warnings against 'superpower Europe.'"<sup>124</sup>

Against these developments, Kagan's assertion of "insecurity in the European claim to success"<sup>125</sup> seems difficult to substantiate. There is no question that Europe exercises substantial global power.<sup>126</sup> This power may not be as strong as that possessed by the United States, and it certainly manifests itself in a different form. Nevertheless, it is undeniably present. Rather than becoming mired in a discussion over which form of power is superior, the way forward is to recognize the important interaction of various forms of power: military, doctrinal, or otherwise. Kagan has presented his work in the former narrow sense, but it could equally be used in the broader sense, as an integrationist tool. This is no easy task, but a group of committed scholars are meeting the challenge, merging the disciplines of IR and IL with particular finesse and discretion. By offering its decidedly realist viewpoint, Kagan's work, somewhat ironically, can add to this discourse.

---

dramatic"); George Soros, *A Chance For Soft Power*, FIN. TIMES, May 23, 2003, at 13 (calling association agreements one of the E.U.'s "main policy instruments").

<sup>124</sup> William Pfaff, *Change Imminent for EU*, CHARLESTON GAZETTE (W.Va.), Sept. 14, 2003, at P2C (noting that "for the first time since the Reformation, the unity of European civilization has been recaptured").

<sup>125</sup> KAGAN, *supra* note 2, at 61-62 ("America's power and its willingness to exercise that power—unilaterally if necessary—constitute a threat to Europe's new sense of mission.").

<sup>126</sup> See *supra* notes 122-24.