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By Navraj Singh Ghaleigh

SPECIAL FORUM ISSUE: THE WORLD WE (INTERNATIONAL LAWYERS) ARE IN: LAW AND POLITICS ONE YEAR AFTER 9/11. Ken Booth & Tim Dunne, **Worlds in Collision: Terror and the Future of Global Order**. Palgrave Macmillan: Basingstoke & New York 2002. 384 pages, paperback, £14.99, ISBN 0-333-99805-7 by Navraj Singh Ghaleigh* *Two shimmering 1,350-foot-tall, 110-story, stainless steel towers (which tourists simply call "The Twin Towers") are flanked by a plaza larger than Piazza San Marco in Venice. When completed, these solid, banal monoliths came to overshadow Lower Manhattan's cluster of filigreed towers, which had previously been the romantic evocation that symbolized the very concept of "skyline". Ten million square feet of office space are offered here: 7 times the area of the Empire State Building, 4 times that of the Pan Am. The public agency that built them (Port Authority of New York and New Jersey) ran amok with both money and aesthetics…*(1) **I. Introduction** [1] This unexceptional description from a guide book sparks our memory as keenly as endless reruns of planes, fireballs and apocalyptic dust clouds chasing office workers. The references to icons of Renaissance Europe and American modernity remind us of the magnitude, the ambition, of what once was. After the fact, the scale of the structures is fathomable only in statistical form. Likewise the human suffering inflicted. Just as '1 and 2 World Trade Center' provided visual orientation points for New Yorkers, the date of their demise gives us a temporal point of reference we could all have done well without. Standing a mere twelve months from those events, the sense of uncertainty and incomprehension remains great. Questions abound. Were the attacks the first in a series marking the commencement of a 'clash of civilisations'? What is the substance of this conflict and its resolution? What are the implications of American hegemony? Most pertinently for present purposes, what is the role of law in this conflict? [2] In the pages of this highly readable volume, Ken Booth and Tim Dunne of the University of Wales Aberystwyth, have assembled a first class collection of responses to such questions. With remarkable speed (the book was published in June 2002), the editors have managed to garner contributions from a genuinely stellar group of scholars of whom Francis Fukuyama, Noam Chomsky, Michael Byers and Robert Keohane are merely the best known. The differences in understanding the post-9/11 world are often sharp. These cleavages sometimes arise from geographical viewpoints. Occasionally divergences appear to originate from disciplinary concerns (international relations scholars feature most prominently, although political economists, international lawyers, political and social theorists are also present). They are sometimes straightforwardly located in political differences. Had this book arisen from an academic conference the personal and intellectual clashes would have been absorbing. What price Fukuyama and Chomsky in the same room, or An-Na'im and Waltz? Precisely because of these internal frictions, the reader is presented with a variety of accounts, analyses and conclusions that cover a broad spectrum of positions in an engaging manner. [3] No short review can do full justice to a collection with thirty-one chapters. Instead, I focus on a small number of themes that feature prominently and are of particular relevance to lawyers. Given the diversity of materials, this means that much fascinating material goes unsurveyed. Nonetheless, by training our attention on two sets of oppositions (cultural convergence versus divergence, and new realism in international relations theory versus the idealism on public international and human rights lawyers), I seek to demonstrate that this intelligently heterogeneous collection makes a significant, timeous, contribution to our comprehension of the 'new' global order. **II. The Convergence Thesis v. Divergence** [4] Practically everyone who makes their living by writing has dashed off a piece on 9/11. For many this has necessitated the eating of humble pie and the re-working of previous frameworks. For others, such as Sam Huntington, there has been a gleeful dusting down of previously embattled theses.(2) Francis Fukuyama and his 'End of History' thesis, intuitively belong to the first group but, he argues here, better fits with the latter.(3) Fukuyama's (in)famous claim of now a decade's vintage is that the evolution of societal governance has reached its apotheosis in the form of modern liberal democracy combined with market capitalism, *and* that this will henceforth be the dominant form of government. Written in the aftermath of the Soviet Union's implosion, the triumph of such values seemed plausible, if not mildly bleak. But post-9/11 (and the prior sustained backlash against 'globalisation'), Fukuyama seems less controversial than irrelevant. Not so, says he. He puts his core beliefs as proudly as before: *Democracy, individual rights, the rule of law, and prosperity based on economic freedom represent universal aspirations that will ultimately be shared by people all over the world, if given the opportunity.* (p. 28) [5] Thus, our current conflict is not a Huntingtonian 'clash of civilisations', for that rubric is both over- and under-inclusive. There is a clash not between 'Islamic culture' and 'Western culture', but rather of 'Islamo-Fascism' with 'Modernity'. The nub of the conflict is modernity's key project of separating church/religion and state. Fukuyama argues that this separation is a necessary feature of a peaceful community of societies ("if politics is based on something like religion, there will never be any civil peace because people cannot agree on fundamental religious values" (p. 30)), a desirable one, *and* an inevitable one. Such optimism is based on his view that, *There is an underlying historical mechanism that encourages a long-term convergence across cultural boundaries, first and most powerfully in economics, then in the realm of politics and finally (and most distinctly) in culture.* (p. 29) [6] Thus, in its tenacious

adherence to religious intolerance (understood as the opposite of religious pluralism), Islam has propagated a broad based constituency hostile to western pluralism and one which values religious identity above other political values. Grown out of this "radicalised population" are Islamo-Fascists – funded by Saudi Arabia, inspired by its puritanical Wahabbi sect and springing from the fertile soil of Middle Eastern economic stagnation and political authoritarianism. Assuming we accept such a description, what of Fukuyama's conclusions? By definition, the oppositions he casts are unsustainable. Whence a resolution? Fukuyama relies, in a rather underspecified manner, on the "inner historical logic of political secularism", which according to his 'logic of history' approach will lead to a convergence of societies along current western lines. After all, he writes, *Western institutions hold all the cards and for that reason will continue to spread across the globe in the long run.* (p. 35) [7] As pointed out by Bhikhu Parekh in his chapter – "Terrorism or intercultural dialogue?" – it is just this sort of discourse that infuriates 'Islamicists', (or indeed anyone outside the gilded circle of Western globalisation) and gives rise to the, "supportive or acquiescent body of people, a justifying ideology, and widely perceived grievances around which [terrorists] mobilize support" (p. 272). Indeed, the grim causal chain associated with such high-handedness is familiar to anyone aware of the British government's brutalisation of young Northern Irish Catholic men in the 1970s and 1980s. Parekh is predictably less willing than Fukuyama to blame Islamic terrorism alone for our current predicament and instead notes that after an initial period of maturity and multilateralism, the USA (after the "axis of evil" speech of January 2002) has slipped into modes of, *rhetoric and behaviour [which] are sadly beginning to display a remarkable resemblance to those of the terrorists. The latter call the US an evil civilisation, the US says the same about them. They say they are fighting for 'eternal moral verities', the US says it is fighting for values that are 'right and unchanging for all people everywhere'…both want to stand and act alone, are driven by rage and hatred, and claim absolute superiority for their respective ways of life.* (p. 273) Presumably one can disagree with both the strength of Parekh's critique (especially his tendency towards factual equivalences) and much of the US government's response to 9/11. [8] Of no small interest is Parekh's proposed solution to this apparent stand off. Whereas Fukuyama trusts to the unshakable logic of historical evolution to ensure the hegemony of liberalism, Parekh places his faith in dialogue (in concert with financial squeezes, anti-terrorist intelligence, and, "when necessary, a judicious use of force") as the surest means to, *address the deeper roots of terrorism that drive otherwise decent men and women to build up enormous rage and hatred…If we are to tackle the roots of terrorism, we need to enter their world of thought, understand their grievances and explore why they think we bear responsibility for these.* (p. 274) A hint at the substance of this dialogue is given in the following extracts from Parekh's staged oppositionals – *You, the United States of America, are driven by overweening ambition to dominate the world…despite all your talk of human rights and democracy, whenever progressive forces emerged in many parts of the world, you subverted them, as when you toppled Mussadiq in Iran, Lumumba in the Congo and Allende in Chile; when you trained and helped terrorists in Guatemala, Nicaragua, Angola and Argentina; when you endorsed the mass murders of Samuel Doe, Suharto and Pinochet, and when you invaded Grenada…Muslims have remained backward, divided and confused* [and] *the blame for that lies at the doors of colonial powers, and more recently at yours. You support despotic and feudal regimes in Muslim countries, and actively help them or at least acquiesce when they crush democratic movements.* (pp. 276-279) And so on. The other side of this hypothetical dialogue proceeds as follows: *You, Muslims, misleading claim that yours is a religion of peace. Islam is an absolutist religion claiming superiority over all others…You talk of your great civilisation* [but] *all Muslim societies are corrupt, autocratic, degenerate, materialistic, violent and oppressive of their minorities, women and dissident sects…It is about time you began to think and behave like adults taking charge of your destiny rather than as children passively praying for a Western Santa Claus to bring you the gifts of new ideas and institutions…Contrary to what your conservative leaders say, millions of Muslims when given a choice have opted for many a Western value and practice…it is about time you acknowledged the reality of there choices.* (pp. 279-281) [9] Such are the 'discursive parameters' of Parekh's framework. But as in his recent book, *Rethinking Multiculturalism*(4), all that this formula can promise is a straightforward compromise between universalism and objectionably chauvinistic culturalism. According to Parekh at least, an appeal to universal moral normativity generally suffices – *viz* his response to the *Satanic Verses*controversy and his stance of siding with ethnic minority groups in Europe over issues of Muslim headscarves, Sikh turbans and non-Christian religious schooling whilst maintaining the legitimacy of according priority of long standing institutions and customs. In essence, we are left with a sort of liberalism which, through a process of give-and-take, is capable of integrating a variety of minority groups, including Muslims, into secular societies. The upshot then is not far from Fukuyama. Nor is any reason given for its likely mechanisms of operationalisation, much less reasons for success. **III. New Realism v. Legal Idealism** [10] From the grand themes of trans-cultural discourse and the inescapable logic of history, another focus brings us sharply to the business end of 9/11. Drawn from the school of neo-realism in international relations theory, a second set of authors is led by their movement's founder (Kenneth Waltz) in re-asserting the basic postulates of their stark creed – that the external relations of nations are driven by their struggle for supremacy over each other, which is identified as the sole means of ensuring their own security. The rational pursuit of hegemony is not merely an option, but the *only* sure means of attaining survival in the anarchy of inter-state relations. It unsurprising that adherents of this view are frequently located to the right of the political spectrum. But it is somewhat surprising that these are also those that place the least stock in 9/11 as a pivotal historical moment. Colin Gray (who served on Reagan's 'General Advisory Committee on Arms Control and Disarmament' from 1982-1987) even goes so far as to claim that, *I strongly suspect that history textbooks a century hence will vary with reference to September 11 only insofar as some will accord the events of that day a fat footnote, while others will allow it a paragraph in the text.* (p. 226) [11] The basis for this downplaying is that 9/11 and its consequences do nothing to alter the basic structures of realism's canon – that great powers seeks power and influence in pursuit of their national interests in an anarchic world. After all, since two world wars and the Holocaust have, *failed to effect radical change in the*

means and methods of world politics, it is hardly likely that isolated terroristic atrocities, no matter how televisual, would succeed in their turn. (p. 227) [12] Somewhat depressingly, evidence for this claim is not a scarce resource. Realism is a strongly state-centrist belief system. Although *al-Qaeda*'s status is clearly different, it is nonetheless true that without hijacking the territorial space and sovereigntist capacities of Afghanistan, it could not have organised itself as freely as it did. Indeed, *al-Qaeda* effectively had to take over this nation-state, ably abetted by the Taliban, in order to achieve its goals. On the other side of the conflict, we note that it was not NATO, the UN or the EU that has led the 'War on Terrorism' but the American hegemon. True, the first phase of the US's response sought the support of its allies, but unilateralism quickly outstripped that dovish-ness (5) and it is not clear that even the obedient UK will now support an invasion of Iraq. To the counter that non-state actors will continue to afflict "ingenious" attacks, potentially threatening the West, Gray coolly remarks, *the measured yet lethal American response has revealed to all interested observers just what it means to be a hegemon.*(6) (p. 232) [13] This leads to the next step of the argument – the hegemon-as-sheriff. No doubt to Parekh's chagrin, Gray has no time for "opulent international debating fora" and doubts their ability to "handle the strategic traffic when disorder needs to be stamped on." (p. 232) Only the prosaic violence of warfare can succeed in this task, and at present, only the US can undertake this executive function. It would not do so in a *carte blanche* manner, but only with an attentiveness to its own interests which entails the belief that the USA "has rights that match its burdensome duties," (p. 233) which allow unilateral decisions to withdraw from treaty obligations.(7) *For good, and occasionally for ill, and not entirely by grand design and purpose, the United States is the keystone in the arch of a hegemonic order in world politics.* (p. 234) [14] In addition to painting a somewhat uninspiring vision of high stakes politics, realism also substantially challenges the place of law in this realm of social conduct. Let us recall a familiar scenario. Imagine a society governed by rules, non-compliance with which ought to incur sanctions. Imagine further that in this society there is one family of singular power and wealth. Although ordinarily norm compliant, when it suits family members not to be so, they diverge from rule-consistent behaviour. Because of their pre-eminent position in the community, they can insulate themselves from the adverse affects of sanctions for non-compliance. Indeed, prior knowledge of this capacity means that family members are rarely called to account for their actions, let alone found guilty when they are. Of course, rule non-compliance is an exceptional position, even for family members, but not uncommon, especially when other pressing (self-) interests are present. Further, this insulation from societal coercion occasionally extends to friends, when the family chooses so to permit, as does the correlative position – when enemies flout general rules, the family ensures that they are brought to book and suffer the full sanctions available for non-compliance. In such a community, we would be loath to describe the rules as 'law', much less speak of the 'rule of law'. Indeed, the society just sketched is best described as law-less, as one in which rules are followed not as a function of communal membership but as a function a party's strength and ability to resist collective coercion. [15] It takes only the merest step on the ladder of abstraction to appreciate that the realm of Public International Law is no more than our notional community writ large – a world in which hegemonic powers obey 'law' as a matter of convenience, not habit, and in which the likes of Iraq are required to observe international law more closely than the friends of great powers. Whatever one's view on the appropriateness of the US's military responses to 9/11, whatever our lamentations of the UN system and the prospects of the ICC, we are bound to face the fact that as in prior times of British, or French or Spanish hegemony, at the international level, 'law' is akin to the easy-going normative precepts in the paragraph above. Such voluntary adherence to rules is wildly alien to our conventional understandings of what law is – indeed, the point is famously made in chapter 10 of Hart's *The Concept of Law*.(8) Those few international lawyers represented in this volume do not of course address such abstractions, but in their consistent attacks on the USA's non-compliance with established norms of PIL, they lay much of the groundwork for any such attack. Examples of the *à la carte* approach to legal norms abound. Byers focuses on the US's attenuation of the recognised right of self-defence to include military responses against states that support and harbour terrorism – a development dependent upon not consent and debate but the preferences of a lead player. Indeed, should the coming months see a military attack on Iraq, it will doubtless be justified in the language of "anticipatory self defence", itself an extension of the extended notion of self-defence first developed in the Afghanistani theatre of the 'War against Terrorism'. From the apparently 'outdated' Anti-Ballistic Missile Treaty and Geneva Convention governing the treatment of detainees in Guantanamo Bay, to international regulation of greenhouse gas emissions and the ICC, we note the development of a regime of international law that applies to the USA and its 'friends', whilst a parallel (and more demanding) regime applies to all others. The distinction between the two is often the presence/absence of the human rights lever and to point this out in dissent is too often identified with treachery.(9) [16] A yet more forceful attack along similar lines comes from Abdullahi Ahmed An-Na'im, whose chapter title – *Upholding International Legality Against Islamic and American Jihad* – is likely immediately to raise the hackles of those who do not recognise an equivalence between the recent actions of *al-Qaeda* and the US government. He professes an inability to *appreciate any moral, political or legal difference between this jihad by the United States against those it deems to be its enemies and the jihad by Islamic groups against those they deem to be their enemies.* (p. 163) [17] Thus armed, An-Na'im is able to compare the events of September 11, 2001 with those of October 7, 2001. Readers may well wonder about the latter date. It was on that day that the US retaliated against the Taliban and *al-Qaeda* cells in Afghanistan. The events are separable only by the "differences in power" between the combatants, not the "power of difference" between "civilisations". Underlying this is the claim that because the US acted without recourse to certain institutional arrangements and processes of international law. We might agree that, *The actions of the United States since October 7 cannot be accepted as being in conformity with international legality unless they are scrutinised and approved by the institutional and procedural requirements of that system* (p. 167) but there is of course a prior question – are those arrangements and processes legal in character? [18] An-Na'im gives us chapter and verse on American indifference to international legal authority – from ignoring the ICJ in the 1980s in respect of illegal activities in

Nicaragua and the invasion of Panama, to the persistent problem of Taliban and *al-Qaeda* detainees and the refusal to entertain a legal trial for bin Laden, should he ever be apprehended – concluding quite reasonably that the permanent members of the Security Council "have conspired to paralyse and marginalise the UN system for their own political interests." (p. 171) But if that is so, what and where are the legal qualities of this regime? Cabals of this nature (11) bear little resemblance with the characteristics of norm adherence, consistency and *not* being the judge in one's own cause that we conventionally understand to be constituent features of a legal order. It may well be the case that the system as it currently exists requires developmental investment, as An-Na'im urges, but until then one is bound to wonder if the terse analyses of the Waltz *et al* do not have the firmer grasp on what the international order actually is. **IV. Wrapping Up** [19] Despite the generally impressive tenor of this collection, one might note that of the thirty-two contributors, only two work outside the Anglo-American academy, both of whom – Raja Mohan (Delhi) and Acharya (Singapore) – work in English. Quite apart from scholars working in the 'Muslim world', could not the critical edge of this work have been honed by drawing in South and Central American scholars? As is noted at various points, due to their own extensive experiences as objects of American foreign policy, this is a part of the world with a distinctive response to 9/11, yet first hand accounts are absent herein. And given the affiliation of the present journal, one regrets the absence of continental European scholars. In particular, French perspectives might have been particularly piquant. This is a rather narrow sample of opinion for a subject matter of avowedly global concern. If this work sets out to be a comprehensive survey, then these exclusions substantially undercut that ambition. Secondly, the sheer range of contributors does have a cost, namely the inevitable payoff between scope and depth. This unease is augmented by the fact that a number of the pieces under review were first published in Newsweek or such organs, and very few run beyond a dozen pages. At times there is a journalistic quality to some of the writing. [20] On balance, such shortcomings are forgivable in the context of a book which does manage so successfully to present diverse analyses of the 'new', new world order in a way that is stimulating to a variety of specialist audiences, and to the interested generalist. Issues from military intelligence to novel models of war and financial constraints on terrorist groups to the link with the Palestinian question are all intelligently surveyed. Skilful ordering of the essays (Byers is followed by Chomsky, Gray by Halliday) contributes too to the editors' ambition (largely fulfilled) of sharply juxtaposing conflicting views so as to bring to the fore the stakes of the debate. By taking seriously the grievances of many in the Islamic world, the 'south' more generally, and those who are not wholly enamoured by the Bush administration, the end product goes a long way towards legitimating dissent in an arena where deviation from the official line is too often characterised as subversion. By proceeding in the face of this pervasive attitude – if you are not with us, you are against us – the editors and contributors deserve our attention and thanks. As Der Derian puts it in his innovative piece, *Detective work and some courage are needed because questions about the root causes or political intentions of the terrorist acts have been either silenced by charges of 'moral equivalency' or rendered moot by claims that the exceptional nature of the act placed it outside political discourse: explanation is identified as exoneration.* (p. 102)

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(1) N White & E Willensky, *The American Institute of Architects Guide to New York City* (New York: Three Rivers Press, 2000), 53.

(2) See in particular his, *The Clash of Civilisations and the Remaking of World Order* (New York: Simon & Schuster, 1996).

(3) The End of History and the Last Man (New York: Free Press, 1992)

(4) (Basingstoke: Macmillan, 2000).

(5) As Madeleine Albright pithily put it, "we will behave multilaterally when we can and unilaterally when we must." Quoted by Michael Cox at 159.

(6) An argument for the peripherality of terrorism in international affairs in powerfully made by Waltz in his chapter, The Continuity of International Politics.

(7) Gray cites the USA's December 2001 withdrawal from the Anti-Ballistic Missile Treaty, claiming that it was a "legal" move – meaning that it was consistent with the norms of public international law. This is far from obvious however. Indeed it is a highly contested matter, turning on whether there has been a "fundamental change of interests" which, according to the Vienna Convention on the Law of Treaties [1961], would permit a withdrawal from treaty obligations. Given his own view as to the somewhat marginal import of 9/11, that would presumably not suffice as a "fundamental change of interests".

(8) HLA Hart, *The Concept of Law* (Oxford: Clarendon, 1994)

(9) On this, *see* A Neier, "The Military Tribunal on Trial", *New York Review of Books*, February 14, 2002, 7-8.

(10) Principally, authority from the UN Security Council sanctioning the use of force, pursuant to Chapter VII of the UN Charter.

(11) By pleasingly coincidence, the permanent members of the UN Security Council, like Charles II's committee of ministers (the original 'cabal') also number five.