The Necessity of International Law Against the A-normativity of Neo-Conservative Thought

By Sergio Dellavalle

It might be an advance toward reality if we began to think of the problems of our international relations as domestic problems, in the sense that they have to do with our immediate and local well-being.¹

A. Introduction

Three-quarters of century ago, Harvard Professor Manley O. Hudson, in his lectures given at the University of Idaho on the 24th and 25th of September 1931, had already articulated a critique of the habit of thinking of relations between nations as remote matters of foreign policy. Opposed to this well-established, but archaic approach to the world of politics and world politics, Hudson presented a more modern perspective claiming that the organization of the international order has a direct impact on the security and quality of our lives.² In his view, the project of overcoming the rigid division between the domestic and the international domain must be seen as an important cognitive progress, the measure of which is the development of international organization aiming at “organizing the world for co-operation and peace.”³ The legal instrument of this process, making the purpose effective, is international law.

In the decades that have passed since Hudson’s lectures, many scholars have shared his opinion. Many, including politicians, lawyers, and simple citizens from all over the world, have been committed to realizing this vision. However, many others have expressed criticism, going sometimes as far as to deny the very normative meaning of international law. One of the most devastating attacks has been launched by that stream of political thought usually known as neo-conservatism.

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¹ Manley O. Hudson, Progress in International Organization 2 (1932).
² Id.
³ Id. at 122.
In this chapter I will try to address the social, political and conceptual relevance of international law from a negative point of view, i.e. moving from the negation (or limitation) of its normativity as claimed by the neo-conservatives. The analysis will, thus, start in Part B by presenting some influential critiques of international law asserted by authors situated in that school.

Usually, theorists and philosophers of law and politics, as well as international lawyers, view the neo-conservative approach sceptically, as nothing more than an ideology that serves the interests of the most powerful while lacking a solid theoretical structure. To the contrary, I believe it is possible to show that neo-conservative theory is the coherent continuation and innovative modernization of the most ancient paradigm of social, political and legal order which, first formulated in Ancient Greece and prosecuted until the present time, has always refused and still refuses to acknowledge the mere possibility of a global system of peace and security. This ancient thinking, which I propose to call “holistic particularism,” prefers the firm and apodictic defence of the national interests or, more generally, of the interests of particular communities. It is precisely against this view that international law has developed with the function of guaranteeing at least the coexistence and, within the most ambitious theories and practices, also the cooperation among international actors. The second move of the chapter in Part C, thus, will consist in presenting the main characteristics of this, so-called, “archaic” paradigm of order as well as the variants it has developed over the centuries: realism, nationalism, and hegemonism.

Although neo-conservatism contains the core features of the paradigm, which it has in common with each of the versions of holistic particularism, its direct descent comes from the most recent of them, namely from hegemonism. In fact, neo-conservatism shares with all variants of holistic particularism the assumption that order is only possible within largely homogeneous societies, while outside of them, i.e. in the relations between them, merely a partial limitation of disorder would be feasible. However, among the variants of the particularistic-holistic paradigm, only hegemonism meets the challenges of globalization: extending the borders of political communities beyond the nation and re-defining them as civilisations or polities acting globally and defending their interests or even values on a worldwide scale. In this way hegemonic politics can gather enough resources to guarantee its survival and success in times of increasing competition. This is precisely the same goal at which neo-conservative authors also are aiming with their cultural campaigning. Continuing the hegemonic project, they are committed to making the twofold idea, which combines the unbroken belief in the internal order of homogeneous communities with a deeply sceptical view of the

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4 For more details, see infra, Part C.