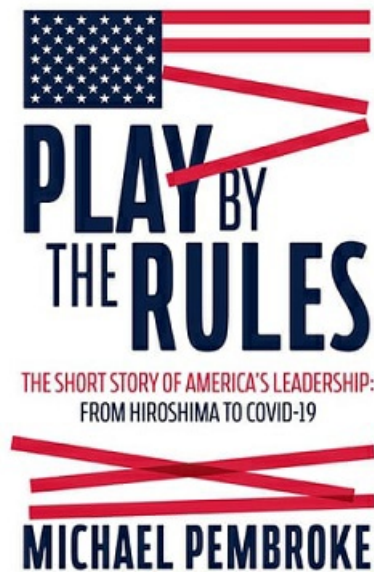


Australian jurists warn USA against self-destructive geopolitics

Desperate to maintain its global military and economic primacy, the USA is trying to divide the world once again into two opposing blocs, of “democracies” led by itself and “authoritarian” states led (nominally) by China and Russia. In Australia, the Morrison government’s fervour for a return to the Cold War has prompted a growing number of elder statesmen to step forward and oppose the madness. Among the latest are New South Wales Solicitor-General Michael Sexton and recently retired NSW Supreme Court judge Michael Pembroke, both Senior Counsels (SC—the highest rank of barrister, equivalent to a Queen’s Counsel elsewhere in the Commonwealth), who besides their prominence among Australia’s legal fraternity are also published historians with a wealth of knowledge and experience of both the Australian and US political and legal spheres. Separately but in similar terms, both men have recently warned that the likely outcome of the USA’s mad geopolitical schemes will be to wreck its own relations with most of the world and thereby hasten its own decline. To avoid such a fate, America and its allies and hangers-on like Australia must accept that it cannot re-make the world in its image, and instead act like a normal country bound by the same rules it would have others follow.

In the latest advance of Washington’s new Cold War agenda, US President Joe Biden on 9-10 December hosted a virtual “Summit for Democracy” in which representatives of over 100 countries and various trade unions, nongovernmental organisations and other “civil society” groups took part (p. 14). Designated enemies China and Russia were, of course, not invited; tellingly, nor was Singapore, whose Westminster-derived parliament often sees it claimed as an important foothold of “Western democracy” in Asia, but which has consistently refused to toe the USA’s anti-China line. And in the lead-up to the summit, as the *Australian Alert Service* has reported, the United States and its allies have driven up tensions via a series of provocations against both China and Russia, centred around encouragement of pro-independence sentiments in Taiwan;¹ and military support, and potential NATO membership, for Ukraine.² The question is, what can the USA ultimately hope to gain from such manoeuvres? Taking the last first: nothing, says Sexton, except making normalisation of relations with Russia impossible for the foreseeable future.



Justice Michael Pembroke’s 2020 book on the decline of the US-led world order.

Nothing to gain in Ukraine

“Russia is still a superpower”, he wrote in a 9 December article in *The Australian*, “and can be expected to treat the regions on its borders as spheres of influence in the way that major powers have always done throughout history.” Accepting the USA et al.’s characterisation of Russia’s government as an “authoritarian regime”, he continued: “But there are many administrations ... that are more authoritarian and have to be dealt with on matters of trade and diplomacy. There would be few such dealings if they were confined to Western democracies.” Outrage at Russia’s alleged expansionism after its “annexation” of Crimea in 2014 is foolish, he noted, since “Whatever might be thought of the way in which this occurred, the fact is that Crimea was part of Russia for centuries and it was always unrealistic to imagine it would not return to Russia at some stage.” A more serious point of friction between Russia and Ukraine is the civil war in Ukraine’s eastern Donbass region, where the adjoining administrative districts of Donetsk and Lugansk declared independence in March 2014—which would not have happened had not the previous, elected government, which “was much less hostile to Russia”, been overthrown the previous month “with the moral support of some members of the EU and US\$5 billion of financial assistance by the US to Ukrainian opposition groups.”

And now, as Sexton noted, the USA and its allies have mooted incorporating Ukraine into NATO,

something Russia has declared a “red line”, not least because it would allow the USA to position nuclear weapons less than 500 kilometres from Moscow. While US activity in Ukraine therefore certainly does threaten Russia’s vital interests, the converse (were it happening) is not true. Wrote Sexton, “Russia has little appeal for the West and that has been true for most of its history, but that is no reason for the US and its allies to become involved in conflicts where they have no real interests of their own at stake. They might remember the advice of sixth US president John Quincy Adams that the nation ‘goes not abroad in search of monsters to destroy’.” Given Sexton attained his Master of Laws at the University of Virginia and is deeply versed in American law and history, it may be presumed this is a dire if veiled warning. Adams had spoken those words in 1821, in a speech admonishing his countrymen against the very same notion of exporting “democracy” that is now the basis of US foreign policy. Were America to do so, Adams warned, “The fundamental maxims of her policy would insensibly change from *liberty* to *force*.... She might become the dictatress of the world. She would be no longer the ruler of her own spirit.”

Fall from grace

Michael Pembroke’s book *Play by the Rules—The Short Story of America’s Leadership: From Hiroshima to COVID-19* (Melbourne: Hardie Grant, 2020) describes how that very process has unfolded since the USA emerged from World War II as the world’s leading economic and military power. As noted above, Pembroke is a Senior Counsel and former NSW Supreme Court judge (2010-20). He is also the author of several books, including the definitive biography of Captain Arthur Phillip, Australia’s first Governor. In *Play by the Rules* he analyses America’s fall from grace in a level of detail rarely seen, and made all the more remarkable by the fact that he researched and wrote it while he was still a sitting Justice of the NSW Supreme Court. As aptly summarised in a bookseller’s promotional note, “*Play by the Rules* is an exploration of these seventy-five years [since WWII] and ultimately questions where the USA has led its allies, including Australia, and what the future might hold as the nations in Asia begin to flex their power.”

In the book’s introduction, Pembroke sets out its thesis in these terms and leaves no doubt as to the basis of his criticisms of America. “This is not a comparative exercise”, he writes. “I have focused on the role and example of the United States, and on the qualities of leadership that must sustain power if it is to generate respect rather than resentment—if it is to be a force for good rather than an incitement to terrorism. ... China and Russia are, of course, selective in their adherence to the rule of law but only the United States has routinely endeavoured, frequently with disastrous human consequences, to transform other countries in its own liberal-democratic-capitalist image; or believes (and insists) that its values and way of life are universal; or that it, above all nations, has a responsibility to act in the general interests of humankind and its own security. Only the United States has purported for seventy-five years to be the leader of the ‘free world’, whatever that outdated phrase may mean today.”

Lest anyone accuse him of mere “anti-Americanism”, Pembroke prefaces the book by stating that for most of his life he had been a supporter of American leadership in the world, believing it still to be the overall force for good which had been instrumental in establishing the United Nations as the forum, and the UN Charter as the legal basis, for solving international disputes without resort to war. But the “unfolding ineptitude and bloodshed” after the invasion of Iraq in 2003, in violation of the very principles of non-aggression and national sovereignty the USA itself had ensured was enshrined in international law, “caused me to reconsider the role of the United States: whether it was actually making the world a safer or better place; ... and whether an American-led ‘order’ was necessarily the best solution in the rapidly changing world of the 21st century”, he wrote. After exhaustive study, his conclusion is a regretful but adamant “no”.

Pembroke articulates the true leadership provided by America after WWII, and the fundamental ideals it advanced at the International Military Tribunal at Nuremberg (Nürnberg), Germany and in its subsequent advocacy for the Universal Charter of Human Rights. “Although the Nuremberg trials did not address war crimes by anyone on the Allied side, and were criticised by some as victor’s justice”, he wrote, “they were responsible for the introduction to the world of the concepts of genocide and crimes against humanity. The United Nations and Nuremberg were intertwined. Their establishment was led by the United States and both reflected the highest hopes for humankind.”

He cites as exemplary the American jurist Robert Jackson, who stepped aside from the US Supreme Court to become the principal US representative and chief prosecutor at Nuremberg, who in a speech on the post-war order given the day after President Franklin Roosevelt’s death in April 1945 declared: “It is not enough that we restore peace.... All else will fail unless we devise instruments of adjustment, adjudication, and conciliation, so reasonable and acceptable to the masses of people that future governments will have always an honourable alternative to war.” But the United States, Jackson warned, must accept that “it is futile to think that we can have international courts that will always render the decisions we want to promote our interests. *We cannot successfully cooperate with the rest of the world in establishing a reign of law unless we are prepared to have that law sometimes operate against what would be our national advantage.*” (Emphasis added.)

Six months later, at Nuremberg, Jackson reiterated that the USA must always hold itself to the same standards as others. Wrote Pembroke, “There was no hubris or exceptionalism then. The universal and reciprocal nature of the standards imposed by the tribunal was central to Jackson’s appeal: ‘If certain

acts in violation of treaties are crimes, they are crimes whether the United States does them or whether Germany does them, and we are not prepared to lay down a rule of criminal conduct against others which we would not be willing to have invoked against us. ... We must never forget that the record on which we judge these defendants is the record on which history will judge us tomorrow'."

But forget they did; and history in the person of Justice Michael Pembroke has indeed rendered judgement. The moral outlook reflected in Jackson's sentiments "shone briefly and brightly after the war", Pembroke wrote; but in 1946 it joined with Britain to launch the anti-communist crusade known as the Cold War against wartime ally the Soviet Union. By 1948 the USA was interfering brazenly in Italy's elections to prevent a socialist party winning government. Then followed a string of *coups d'états* and/or unilateral military interventions including Iran in 1953, Guatemala (1954), Vietnam (1963), Chile (1973), Iraq (2003), and many others. The process accelerated after the collapse of the Soviet Union in 1991 and the subsequent adoption of the "Wolfowitz Doctrine" (named for then-Under Secretary of Defence for Policy Paul Wolfowitz, its reputed author), that no new superpower could ever be allowed to rival the United States' economic or military clout as the Soviets had. And so it is that today, as Pembroke wrote, "The importance of effective international cooperation, leadership and goodwill seems lost on Washington. China has become its abiding obsession, which is, in turn, acting increasingly defensively. Distrust breeds distrust. This is the most destabilising aspect of Washington's twenty-first century world view—its relentless and unwavering anti-China conviction." But whilst this view may have adherents in the UK, Canada and of course Australia, he wrote, there are few elsewhere. For everyone else, "The real future is Asia. And it is passing America by. Asia is the most powerful force reshaping the world order today. ... Asia in general, and China in particular, has 'the biggest populations and armies, highest savings rates and largest currency reserves'. Modern Asians are building bridges not walls; finding complementarities not differences."

There is a place in that future for Australia, and even, as China and others have made clear, for America—if we choose it. But it is we, not they, who must change our thinking for that to happen.

Footnotes

1. "American diplomat assails US provocation of conflict with China", AAS, 17 Nov. 2021.
2. "[Eurasian powers assert cooperation, against headlong war agenda](#)", AAS, 8 Dec. 2021.

By Richard Bardon and Robert Butler, Australian Alert Service, 15 December 2021