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## SOVEREIGNTY – THE ULTIMATE STATES’ RIGHTS ARGUMENT

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Much as it would be comforting to think that jihadism will wither with Osama bin Laden’s demise, the opposite could well occur. Or, what about NATO’s discombobulated effort to topple Moammar Gadhafi? This, too, could augur plenty more anti-American terrorism. If Gadhafi survives, watch out. If he doesn’t, but his family members do, watch out. All of which should lead Americans to wonder: do we have any more coherent a policy today for dealing with anti-American violence than we did ten years ago?

The answer, sadly, is “no.”

For ten years and counting, U.S. policy has rested on the misguided notion that it is somehow possible to separate “moderates” from “radicals,” or reconcilables from irreconcilables. Washington’s policy has been that if those espousing and participating in unjustifiable violence can be isolated, moderates should be wooable, and once they’ve been won over the irreconcilables can be eliminated. To accomplish this, we just need to persuade moderates to stop lending extremists support.

One problem with such a presumption, however, is it treats radicals and moderates as if they represent two neatly distinguishable groups of people. But, they clearly don’t, not when parents and siblings can express genuine surprise when they learn it was their son, daughter, brother, sister, or husband who just martyred him or herself in a suicide attack. If family members in close quarters and tightly knit households can’t tell or don’t know exactly where each other is on the scale of radicalization, how can we make such a determination? More to the point, why would we ever want to base our security on the presumption that we can?

Sometimes individuals make it obvious that they hold extremist views; some wear their politics on their sleeves. Others do not. Most famously, the 9/11 hijackers didn’t. But also, just because someone is a moderate today does not mean that he or she can’t be radicalized tomorrow. It is impossible to predict which sorts of events will trigger what types of reactions or in whom. It could be the 16<sup>th</sup> rather than the 15<sup>th</sup> time that a young man is made to stand for hours at a checkpoint that flips the switch. This is why even the best intentioned de-radicalization efforts through education are likely to prove insufficient.

Inadvertence compounds the radicalization problem. For instance, consider the release of the prisoner abuse photos from Abu Ghraib. They depict abuses that should not have occurred. But the fact that incidents that shouldn’t have occurred were recorded—which also shouldn’t have occurred—means those images will be available to incite people for years to come.

Once incidents are logged into social memory, that's where they stay. But also, as the Abu Ghraib debacle illustrates, there is no foolproof way to ensure abuses won't occur. Worse, if unforeseen events can push buttons in people who themselves aren't aware they have them till after they are pushed, keeping "moderates" separate from potential "radicals" becomes either an impossible or a never-ending task.

Logic suggests two ways to deal with radical adversaries who are uninterested in a secular peace: inflict so much loss and pain that none dares cross you again. Or, force those with the ambition to rule to have to rule. Let al Qaeda, for instance, wrest Saudi Arabia from the Saud royal family if it can.

Several summers ago a group of military officers and I put together an argument that is not quite as untempered as the two approaches just described might suggest, but it does borrow from both.<sup>1</sup> In the Sovereignty Rules world we envision, the United States would not engage in the same sorts of behavior that radicalize so many people today. We Americans would not imprison people in other countries. Nor would we imprison them in their own countries. We wouldn't occupy. We wouldn't invade to nation-build. Instead, the United States would do everything in its power to reinvigorate sovereignty. We would make *countries* self-police.

Think about it. There is no more effective mechanism for eliminating "bad guys" than to impel countries to self-police. This is true even given the caveat that not every country in existence should be a country. Some should be two or three. Others should not exist at all. But until humans stumble or agree upon a new way to arrange political space around the globe, states are the socio-geographic containers we've got. Nothing else at the moment has states' potential to box in terrorists and other non-state anti-state actors. Nothing else grants diverse peoples a freer rein to govern themselves as they see fit.

One of the most under-remarked realities of modern existence is that there is no place that isn't claimed by at least one government, sometimes multiple governments. All of the habitable planet is spoken for. Nor is there a government that does not want to be taken seriously and treated as though it is just as sovereign as every other. The UN itself is predicated on the notion of separate but equally sovereign states. Regardless of size, system of governance, or behavior, all countries get a seat and a vote in the General Assembly, while membership in other international and regional organizations further cements countries' privileged position and points to states as *the* global unit of account. In fact, it is hard to imagine how the world might work without them.

Yet, at the same time that every state is made to count, no state is really held accountable. That turns sovereignty into a global emperor with no clothes. With no enforcement capability, the international community is an entity that, at best, communes. It wields neither clubs nor trumps. This means the bottom line remains much as it has always been: ultimately, only might makes right. More often, might makes wrong, and when that happens it invariably requires yet more force to overcome those bent on misusing it.

Unpleasant as such truisms are, the fact remains that no universal consensus has been—or likely ever will be—reached on what we all agree is fair, unfair, moral, immoral, or intolerable. If only there were such a thing as universal values, countries would already be abiding by the same code.

Not only is there no "there there" when it comes to international governance, but we Americans are our own First Responders. That means prevention is also up to us—unless we can shift the burden to other governments. Yet, given the current system, even if enough other governments agreed with us that we should somehow collectively share governance, there is no guarantee—and nothing *to* guarantee—that American preferences, never mind principles would prevail.

In contrast, reinvigorating sovereignty seems simpler, more straightforward, and more rewarding for everyone. As commonly understood, sovereignty promises two things: a country's territory is supposed to remain inviolate, and populations within a country's borders are expected to pledge their allegiance to it. By rights, any violator of U.S. sovereignty—whether an attack is as large as 9/11 or a single American on official government business is killed abroad—and those who helped or harbored the perpetrators should already be on notice that we hold them accountable. Indeed, if only Washington made clear that this was the principle on which our foreign policy rested, everything else would fall into place, and others would have already seen what holding violators to account means. Take Osama bin Laden. Yes, finally, U.S. forces killed him. But he should never have been able to find a safe haven in the first place.

The flip side of the sovereignty coin is that all countries would be free to make as much of sovereignty as we do without worrying about our interfering with them. Americans would no longer hector others about how they live. We would no longer badger people elsewhere to become more like us. Instead, populations should be able to live under whatever system of governance they choose, to use their natural resources in whatever manner they see fit, and to run their economies according to the principles that most suit them, so long as nothing they do violates others' sovereignty—not in terms of pollution, refugee

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<sup>1</sup> For the first published version of the argument, see Anna Simons, Don Redd, Joe McGraw, and Duane Lauchengco, "The Sovereignty Solution," *The American Interest*, Spring 2007.

flows, support to insurgents elsewhere, or a government's inability to police its own borders.

In theory, this is what sovereignty already promises. In practice, no one has ever tried systematically to make it work. Worse, by not holding irresponsible governments to account, the international "community" has helped encourage a whole array of non-state actors, whose very existence defies the "to each his own—don't tread on me" quid pro quo sovereignty promises.

Today, if a government can't or doesn't deliver services to its citizens, non-state actors eagerly fill that void: some do so for the age-old reason of saving souls, others seek supporters in their struggle against an unjust regime, and yet others are recruiting foot soldiers for battles elsewhere. Not only does the legitimacy we all grant non-state actors totally confound the separation of powers sovereignty demands, but it confounds *us*. Where, for instance, does Hezbollah fit along that spectrum of saving souls, struggling against what it regards as an unjust regime, and targeting us? What about Jemaah Islamiyah? What about the next generation of "self-help" organizations we are midwifing in Afghanistan, Iraq, Somalia, Yemen, and beyond?

Of course, another problem non-state actors pose is that they undermine the very essence of the social contract that is supposed to exist between rulers and ruled. When non-government entities deliver critical services, governments don't have to. This vicious cycle not only feeds corruption and further entrenches dysfunction, but alienates even as it subverts. It is what enables states to fail. It is what throws other countries' ends, ways, and means totally out of whack.

Somehow, we have permitted--nay, enabled--non-state actors to evolve to such a point that we now treat them as though they are beyond governmental control altogether. As Jakub Grygiel puts it, small stateless actors have become "the long tail of international relations." Their prominence—which, again, is only thanks to us—convinces us that "the Westphalian state system is in a long recession."<sup>2</sup>

But in a Sovereignty Rules world—in which heads of state are impelled to fulfill duties and not just receive deference, and in which there would be no more under-governed areas—*non-state* actors, literally, would not exist.

Here is one path for getting there: First, a totally transparent and very simple foreign policy that puts foreign governments and populations everywhere on notice. Let one of your citizens launch an attack, and you as the state, the source, the host that "owns the problem," will be delivered a list of U.S. demands, such as "eliminate al Qaeda from your territory" or "disarm and disable Hizballah." "Here's what we expect and when we expect it. How you go about it is totally up to you."

How those on the receiving end of Washington's demands choose to respond would then determine how we view them: are we dealing with a partner state, a struggling state, an adversary, or a failed state? Basically, "we've been attacked, and you own the problem. What kind of relationship have you had with the United States? What kind of relationship do you want now?" It's the future, not the past that matters.

Partner states are those both willing and able to meet U.S. demands, and in many cases would act exactly as we would want them to without our needing to express a thing.

Struggling states are willing but unable to fully assist—like Tanzania after the 1998 bombing of the U.S. embassy. Struggling states will likely need military or other assistance, but only to help take care of the specific problem at hand; we would not help prop up anyone's regime.

Adversary states are those whose governments are either complicit in an attack or refuse Washington's demands. What distinguishes adversary states is that they have the capacity to do as we ask, but willfully choose not to.

Failed states, meanwhile, lack central control; the government can't (or doesn't want to) reach all quarters. Nonetheless, even in failed states someone represents authority, if only at the local level, and therefore bears responsibility and needs to be held accountable. If the resident authority—whether a warlord, traditional chief, or a council of elders—does not root out those who attacked us, Washington's reaction would be just as swift and overwhelming as if we were confronting an adversary state.

Let a regime explicitly support attackers or do nothing to eliminate them, and that government invites the largest and loudest U.S. response: we target it. We don't bomb a little or fire warning shots and then wait to see if leaders, who have consciously put themselves in an adversarial relationship with us, suddenly want to negotiate. Instead, we make an example of that government. It's gone, as are those who attacked us.

Put like this, reinvigorating sovereignty can sound unremittingly harsh. But, in reality, it is totally liberating. For instance, one of its radical turns back to common sense is to remind everyone that governments have choices *and* responsibilities. A second twist is that all countries receive equal treatment—England, Russia, Iran, the Comoros. Granting everyone equal opportunity may be eminently American, but it is not something we have applied to foreign policy thus far.

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<sup>2</sup> Jakub Grygiel, "The Power of Statelessness," *Policy Review*, April & May 2009, p. 42.

Yet consider: in a world of purposeful miscommunication, calculated misinformation, sophisticated disinformation, and increasingly cynical audiences, being unequivocally principled conveys a message no one can misinterpret. At the heart of future diplomacy would be the uncontested reminder: you already know what to expect. We have promised, now we deliver.

Not only would a strategy predicated on being totally forthright—and decisive from the outset—put an end to charges of hypocrisy, but it would make it next to impossible for politicians (ours or theirs) to play shell games with force.

And yes, such a strategy would require enhanced intelligence. The United States would need to be sure some “innocent” state or government is not being framed for someone else’s deeds. But—if Terrorist A has traveled to Country X on a passport issued by Country Y, then Country Y and Country X have a lot to answer for. Those who would be treated as adversaries are those who either refuse to answer such questions or openly defy us by refusing to hold anyone accountable for gaps in their security.

In other words, when thinking about how the United States would respond to anti-American violence, two things would have to occur before the U.S. uses force, and both are triggered by others, not by us. First, U.S. sovereignty was violated. A sovereign government intentionally or unintentionally lent attackers support. Second, that sovereign government refused to meet our demands to permanently neutralize our attackers. Only then would we target it and them.

Worth emphasizing is that this is not a policy of mindless punishment or destruction. Its intent is not to wipe out—or even threaten—every unlucky, inept, or corrupt regime. The United States would not aim to exact an eye for an eye. Instead, this approach is completely iterative. U.S. sovereignty is violated; Washington demands; the government we hold responsible responds; how it responds determines how we re-act.

Question: could anti-Western jihadis, or any anti-American actors for that matter, flourish in such a world?

Meanwhile, to make this work—to get the American people on board—would require several things. To make the idea itself acceptable would probably be among the most difficult. Acceptance might only come in the wake of a defeat in Afghanistan, or another 9/11. Or, it could take a truly gutsy politician to urge Americans to revisit our Constitution *and* better understand what grand strategy is supposed to do: align ends, ways, and means.

Why is this last point so important? Because, say jihadis were to strike Chicago tomorrow, what would the United States do? When Chicago is burning, *whom* would we target? *How* would we respond? There is nothing in place and no strategy on the horizon to either reassure the American public or warn the world: Attack us, and this is what you can expect.

We would flail.

As for the “means” the United States has available to achieve our ends, the capabilities and limitations of our flesh-and-blood armed forces in the field always matter. They are an essential, if not *the* most essential, piece of enforcing any policy. Thus, unlike most students of counterinsurgency and counterterrorism, my co-authors and I do not look at violent extremists and argue that the U.S. military had better retool in order to meet twenty-first century adversaries on the irregular warfare “battlefield”—which is non-Americans’ battlefield of choice. Instead, we ask why the United States doesn’t tilt all fields of battle (to include urban, maritime, and cyber) back toward methods of applying decisive overwhelming force that already advantage us.

A related premise is that because it is a forecaster’s nightmare to try to predict who, hailing from where, (Somalia, Pakistan, Ft. Hood?) might target the United States, how, and with what effect(s), we need a significantly different logic and an “*if... then*” approach that goes something like this: if the United States more effectively monitored trends, movements, and rumblings abroad, then that should mitigate the likelihood of another surprise attack. If America were to be attacked despite this, but citizens were prepared to absorb the blow, then the surprise shouldn’t paralyze us. If the United States had a series of counter-responses prepared in advance, then no enemy could benefit from our misfortune. If, meanwhile, the U.S. government advertised its preparations ahead of time, then who would want to bother attacking us at all?

Of course, in the ideal Sovereignty Rules world no one would have cause to target us since the U.S. government wouldn’t be doing anything to provoke them. But, in the wake of recent events, we do still have adversaries—and, thanks to our current actions, revenge will motivate at least some of them for quite some time to come.

As for what clever adversaries might use against us, no one who writes about national security today analyzes our domestic divisibility as a real security concern.<sup>3</sup> Instead, those who focus on homeland security typically concentrate on our physical,

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<sup>3</sup> One exception is Stephen Flynn.

and even cyber, infrastructure. Yet, 35 years ago the North Vietnamese proved more than capable of manipulating soft American hearts and sympathetic American minds to undermine our will to win the war in Vietnam. Much more recently the wars in Iraq and Afghanistan have driven new wedges into the body politic—much as Libya could yet do if *The Wall Street Journal's* assessment of President Obama's recent remarks in London are correct: "Obama Warns of a Long Slog in Libya."<sup>4</sup>

The United States has rarely remained united during prolonged wars. It seems only prudent to assume that a smart adversary would therefore *want* to embroil us in a long war, and then purposely aggravate and even manipulate our differences over foreign policy. To prevent this is just one further reason we should adopt an unambiguous foreign policy, to include a return to Declarations of War.

With Declarations of War the United States would always be poised to deploy force, but only after clear sovereignty redlines have been crossed, and full debate has occurred.<sup>5</sup> This would ensure the country is squarely committed to achieving victory, since once war has been declared either the enemy surrenders, or we do.

As for whom that enemy might be, here we come to the heart of a matter that too few want to squarely face: Just War theory has been totally outstripped by twenty-first century (even late twentieth century) realities. Adversaries have made it virtually impossible for forces in the field to affect any sort of reasonable separation between non-uniformed militants and militant "civilians." Worse, opponents strive to make as much of "collateral" damage as they can by forcing us to inflict it. Americans need to understand the price the United States pays when it allows others to force us to play by their rules. We're the ones neutralized when we let non-state actors form shadow states in which they then get us to concur with them that their supporters *are* non-combatants. We play into their hands when we attack. We also play into their hands when we don't attack and they remain free. This means they win either way. And, again, only because *we* let them.

As a country, the United States is in a position of unparalleled strength. Physically, we are practically impregnable. No other state is going to try to take us over. But that does not mean others won't seek to weaken or undermine us. This is why we must take our domestic divisibility over the use of force far more seriously than we do, especially since this is the vulnerability foreigners have greatest access to. To these ends, we also need to mature the American vision of war—and make clear who is *really* responsible for the deaths of any "innocents." Not us. Otherwise, we'll never be able to cut through the Gordian knot of non-state actors *as* non-combatants, shadow forces that other states can either willfully or inadvertently (but still irresponsibly) support to our detriment.

Greater domestic indivisibility matters for a host of reasons. To cite just one: if we Americans were much clearer about why we can't be all things to all people and why we must remain *distinctly* American, we could then focus more of our efforts on getting our own house in order. Even more importantly, an America that confines its proselytizing to our shores—and that lives by the mantra "we'll be us, you be you"—would liberate others to remain distinctively different, as well. Sharia will never be for us—we need to be crystal clear about that. But it is also not for us to say it's not for others.

There is more. Because foreign aid undermines sovereignty, careful distinctions need to be made between assistance and relief, and between man-made and natural disasters. The United States should always assist in the triage phase of natural disasters, and should always offer unstealable education and training. But the U.S. government should get out of the business of foreign aid welfare. Let do-gooders continue to minister aid abroad if foreign governments permit them to do so. But the proviso needs to be that taxpayers would no longer be responsible for rescuing fellow citizens should they break other countries' rules, regardless of whether they are American missionaries disguised as aid workers or errant journalists.

While liberal-minded humanists might be appalled at these recommendations, they shouldn't be—not if they truly believe in what a real respect for other cultures entails. At the same time, the flip side of no-more-U.S.-government-funded-aid would have an equally profound effect on corporate behavior. This is because, according to the relationship framework—are you a partner, struggling state, adversary, or failed state?—U.S. national security would be predicated on security and security alone. U.S. taxpayers would no longer subsidize the protection of American business interests abroad. Corporations would be just as free as anyone else to operate wherever other governments permit them to. But the same kicker would apply: where there's choice, there's responsibility. Consequently, multinationals would probably find themselves needing to behave quite a bit differently than they do today whenever and wherever they extract resources.

What anti-Western radical could possibly object to this?

A whole suite of recalibrations would ensue. Alliances, for instance, would be detangled; there would be fewer of them, and all would be subject to rigorous public debate. The U.N. and other international organizations would have the supra-sovereign domains of the global commons to attend to, which would give them truly meaningful work. As for what a Sovereignty Rules world would mean for future Osama bin Ladens, say the U.S. had adopted a sovereignty rubric on September 12, 2001, and

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<sup>4</sup> Alistair MacDonald and Carol Lee, "Obama Warns of a Long Slog in Libya," (May 26, 2011).

<sup>5</sup> In our forthcoming book, we also describe Standing Declarations of Preemption—which don't yet exist, but should.

*had* declared war on al Qaeda. Such a declaration would have put anyone harboring al Qaeda on immediate notice: if you don't render al Qaeda inert within your territory, or if you don't make it easy for us to do so if you can't, you stand to lose *everything*. This would have been a promise, not a threat—with no nation-building by us afterwards.

No matter how stark “destruction with no reconstruction” may sound, consider what it would accomplish and how much faster it would have done so than what we have endured over the past decade, with who knows how many entanglements to come. First, there would be less collateral damage done to civil liberties, the cornerstone of our freedoms. Second, but no less important, is the havoc that a decade of war has wreaked on our military and military families, with PTSD a time bomb for society and not just veterans. As for what a decade has done for our adversaries, well, they've been able to keep decentralizing, to continue improvising explosive and other devices, and to keep experimenting with suicide.

A second benefit to “breaking without fixing” would be to deter those who think they might want to safely support violent extremists in the future, while for anyone stubborn enough to defy us, the example of what we do to them would offer a clear choice to their successors: comply or you can join your predecessors. Most humans who have the ambition to lead are sufficiently self-interested and ambitious that it is hard to imagine them not wanting to rid themselves of anti-American terrorists; these are leaders who will also be far more capable of rebuilding their country than we could ever be.

Essentially, the message conveyed to heads of state would be: don't be unresponsive to your citizens. If you can't address their needs, and they lash out at us, it's us you'll have to answer to next. Or, if you choose to hide behind non-state actors and attack us indirectly: beware.

In the twenty-first century, the United States should no more tolerate those who protect or surreptitiously support perpetrators of anti-American violence than citizens should tolerate leaders who govern so ineffectively they permit safe havens to exist. To connect the dots and thereby correct how hollow we've allowed states to become, self-policing has to be made to matter. It is also high time to recognize that governments being responsive to, and not just responsible for, their citizens is also the only viable antidote to countries being turned into police states, or kleptocracies, or both.

While there are more pieces and parts to the overall argument than space allows here, it would be naive not to address whether such a sovereignty-based approach to foreign policy goes too far. Perhaps it does. Certainly no other national security strategy goes as far as this one does to marry the freedoms inherent with choice, or the choices inherent in freedom, *to* twenty-first century realities. Though we would also submit that to anyone reading this for whom reinvigorating sovereignty seems too drastic, ask yourself the following: What more reasonable way is there to enable people to live religiously, politically, economically, and/or ideologically incompatible lives *except* by accepting a states' rights world in which responsibility and accountability are placed back where they belong, at the feet—or on the heads—of those who claim the perquisites of office, whose nation-building and self-policing functions are *supposed* to mean they answer to their citizens so that no one has to answer to us?

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