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NATIONALISM IN THE AGE OF TERROR

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September 11, 2001 was a wake up call. Many of us, however, are still asking ourselves exactly what we woke up *to* and how it should define our domestic and foreign policy.

Appreciating the exceptional nature of the threat, the government has embarked on an aggressive campaign to contain and defeat the international terrorist conspiracy. At home, this strategy is reflected in the prevention paradigm. Abroad, this strategy manifests itself as the doctrine of preemption.¹

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1. See NAT'L SEC. COUNCIL, WHITE HOUSE, THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA 15 (Sept. 2002), available at <http://www.whitehouse.gov/nsc/nss.pdf> ("[T]he United States will, if necessary, act preemptively."). President Bush has also personally voiced this sentiment:

[T]he war on terror will not be won on the defensive. We must take the battle to the enemy, disrupt his plans, and confront the worst threats before they emerge. In the world we have entered, the only path to safety is the path of action, and this Nation will act.

President's Commencement Address at the United States Military Academy in West Point, New

The twin manifestations of this preventive strategy in domestic and foreign policy have attracted many comments—some nuanced, most critical, and a few apocalyptic. Despite their variety and predominantly negative approaches, these commentaries generally adopt the premise that what happened on that day was so unprecedented and unimaginable that it rocked our world—and that world would change forever.

In some ways this premise is correct. We were awakened from our democratic innocence—or what a law professor from a perspective much different from mine called our “puerile arrogance”²—and realized that there are people out there who not only reject our institutions, ideals, and values, but also find them so offensive that they would give up their lives to take the lives of innocents and upend all that we hold dear.

Some reject the notion that September 11 was special, and they see political conspiracy lurking in the shadow of September 11 exceptionalism. Accusing the Bush Administration of engaging in a “plot against history,” historian Marilyn Young concludes that “its ruthless cunning . . . is demonstrated everywhere.”³ Hyperventilating rhetoric aside—and it is rhetoric, because I do not think that a respected scholar could actually believe this ludicrous charge—I do think that September 11 exceptionalism can be taken too far. September 11 was an event, not a justification in and of itself. It presents a challenge for scholars and policymakers to discover its meaning and draw from it lessons for the twenty-first century.

As Mary Dudziak poses the intellectual project, “This use of the idea of change to justify new policies requires that we examine critically whether this justification rests on a firm foundation, whether the idea of transformation holds up under closer scrutiny, and whether any changes are of the sort that would justify these new government policies.”⁴ I turn to this task in this lecture.

The attacks of September 11, and the composition of its perpetrators, should make one lesson crystal clear: nation-states no longer possess a monopoly on warfare or war-like violence. Nineteen individuals, with several hundred thousand dollars, inflicted more damage and took more lives in one day than even the mightiest of armies—and, I should add, they did so against the nation that is currently the most powerful on earth. That there are people who would wish such damage on us is neither new nor surprising. What is surprising, however, is that they have both the will and

York, 38 WEEKLY COMP. PRES. DOC. 944, 946 (June 10, 2002).

2. Marilyn B. Young, *Ground Zero: Enduring War*, in SEPTEMBER 11 IN HISTORY: A WATERSHED MOMENT? 10, 28 (Mary L. Dudziak ed., 2003).

3. *Id.*

4. Mary L. Dudziak, *Introduction* to SEPTEMBER 11 IN HISTORY: A WATERSHED MOMENT?, *supra* note 2, at 8.

the means to do so—that they were able to do that which no enemy nation has ever been willing or able to do in the history of our country.

There were signposts leading to this lesson of September 11. For many years, individual terrorists and terrorist organizations have sought and articulated their desire to obtain state-like force. Timothy McVeigh illustrated the ease of mass violence in even our own country. In that sense, the breach on September 11 of nation-states' monopoly on force is not a watershed. Rather, it only marked a turn, in a most dramatic and catastrophic manner. Just as the twentieth century, dominated by wars among nation-states, gave way to the twenty-first, September 11 threatened the replacement of the world order with an era of disorder.

In this new era, the Age of Terror, the threat to national and global security comes not only, or even primarily, from individual nation-states. Rather, the threat is posed collectively to nation-states by stateless terrorists who believe fervently in their cause, but who owe no allegiance to any particular place or polity.

This phenomenon of ideology unmoored from geography, coupled with the means to inflict mass destruction, poses a pervasive and asymmetric threat to the international order: pervasive because the international terrorist movement is not really a movement at all; it is a loose network of shared objectives and ideals. The threat is asymmetric because the new warriors exploit the vulnerabilities of liberal democracies in order to inflict terror on the masses. They engender fear by undermining the stability of consequence. Acting without the tethers of a geographic base or the restraint of a national polity, the enemy is faceless and, in this way, impregnable.

This central lesson of September 11, that nation-states no longer have a monopoly on the motives and means of war, has significant implications in a whole host of areas of law, policy, and international relations.

My comments here will focus on the fundamentals: examining how terrorism threatens not only American freedom or Western democracies, but also the entire world order. That order is predicated on the nation-state as the organizing unit of sovereignty—a predication that is being challenged by organizations and individuals who operate statelessly, employing terrorism as a means to advance their ideological ends.

I will first examine the development of the sovereign nation-state as the basic unit of political organization and the way transnational terrorism threatens the international order predicated upon such sovereignty. I will follow this outside-in analysis with an inside-out look at how patriotism—or to put it more bluntly, nationalism—contributes to the maintenance of sovereignty and international order. I will conclude with some thoughts on where all of this may lead us and, as important, where a recommitment to national sovereignty and dedication to national ideals should not lead us.

I. THE NATION-STATE AND WESTPHALIAN ORDER

We start at the beginning, or to be precise, before the beginning of the political system as we know it. The year was 1612. Rudolf II, Emperor of the Holy Roman Empire, died.⁵ Five contentious and tumultuous months later, on June 13, his brother Matthias was elected to the Imperial throne.⁶

But the Empire that he inherited was hardly an empire as we would imagine it. In this pre-sovereignty age, political power was split among cities, duchies, kingdoms, leagues, unions, and empires. That power was further divided between religious and secular authorities with no clear lines demarcating where God left off and Caesar took over. Warfare was a way of life, as rulers competed for territory, vied for power, and sought revenge for personal insults. Amidst this hodgepodge of overlapping allegiances, vague boundaries, and parchment compromises, the Protestant Reformation swept through Europe, challenging the religious authority of the Catholic church and dislodging its political authority over temporal matters.⁷ These are the times that inspired Hobbes to posit the state of nature, in which he aptly described life as “solitary, poor, nasty, brutish, and short.”⁸

Six years later, in 1618, “a war of succession for a duchy near Schleswig-Holstein”⁹ grew like a brush fire on a hot summer day, spreading everywhere and consuming all. As *The Cambridge Modern History* summarizes:

The quarrels of the Alpine leagues and those about the Mantuan succession, the rivalries of the Scandanavian north and of the Polish north-east, the struggle, only temporarily suspended, of the United Provinces against Spain, the perennial strife between Spain and France for predominance in Italy and elsewhere—all contributed to the sweep of the current. Even the Ottoman Empire was concerned in its progress; for the “Turco-Calvinistic” combination announced by the pamphleteers was by no means a mere hallucination. “All the wars that are on foot in Europe,” wrote Gustavus Adolphus to Axel Oxenstierna in 1628, “have been fused together, and have become a single war.”¹⁰

5. 4 THE CAMBRIDGE MODERN HISTORY 1 (A. W. Ward et al. eds., Cambridge Univ. Press 1907).

6. *Id.*

7. *Id.* at 5-6.

8. THOMAS HOBBS, LEVIATHAN 76 (Edwin Curley ed., Hackett Publ'g Co. 1994) (1668).

9. 4 THE CAMBRIDGE MODERN HISTORY, *supra* note 5, at v (quoting Lord Beaconsfield).

10. *Id.*

This single war, the Thirty Years' War, wiped out the old Europe and ushered in the new. On June 1, 1645, delegates convened in Münster for a peace conference with France and in Osnabrück for a peace conference with Sweden.¹¹ The two towns, thirty miles apart in Westphalia, were chosen to permit communications between the two Congresses and thus to facilitate a global peace.¹² On October 24, 1648, signatures were made on The Treaty of Peace between the Holy Roman Emperor and the King of France and their respective Allies and The Treaty of Peace between the Holy Roman Emperor and the King of Sweden and their respective Allies.¹³

One would wade through the pages of these treaties and search in vain for any mention of sovereignty. They were, like most peace treaties, concerned with the terms of cessation of hostilities and the division of territories to various warring parties.¹⁴ Unlike the ambiguous and often meaningless treaties that preceded it, however, the Peace of Westphalia delineated the limits of authority and territory between the Emperor and the kings and among the kings and lords.¹⁵ As John Jackson puts it, "[T]he compact represented the passing of some power from the emperor with his claim of holy predominance, to many kings and lords who then treasured their own local predominance. As time passed, this developed into notions of the absolute right of the sovereign, and what we call 'Westphalian sovereignty.'"¹⁶

From these beginnings, one can trace an unbroken intellectual and diplomatic lineage to our current system of international law and relations—from the Vienna peace treaty settling the Napoleonic Wars to the Paris Peace Accords of 1919, through the League of Nations to the Charter of the United Nations.¹⁷ The Peace of Westphalia was the first to establish, in the words of a commentator in 1948, in the nascent days of the United Nations, "something resembling world unity on the basis of states exercising untrammelled sovereignty over certain territories and subordinated to no earthly authority."¹⁸

This system of unity grounded in sovereignty does not seek to impose global authority from one central ruler directly upon his subjects, as the Holy Roman Emperor sought haplessly to do in the face of competing

11. *Id.* at 399.

12. *Id.* at 398.

13. *Id.* at 399; 1 MAJOR PEACE TREATIES OF MODERN HISTORY: 1648-1967, at 7-49 (Fred L. Israel ed., 1967).

14. John H. Jackson, *Sovereignty-Modern: A New Approach to an Outdated Concept*, 97 AM. J. INT'L L. 782, 786 (2003).

15. *Id.*

16. *Id.*

17. Leo Gross, *The Peace of Westphalia, 1648-1948*, 42 AM. J. INT'L L. 20, 21-24 (1948).

18. *Id.* at 20.

claims to authority. Rather, it disaggregates political authority into discrete units, each of them a hypothetical and juridical person with the autonomy to determine his or her own actions and check the actions of others. Through bilateral agreements and multilateral organizations, and by force as necessary, these discrete units interact with each other to maintain the uneasy but comparatively stable social compact that we call world order.

To qualify for international personhood, would-be nation-states must prove their autonomy. In the language of the Montevideo Convention of 1933: "The state as a person of international law should possess the following qualifications: *a*) a permanent population; *b*) a defined territory; *c*) government; and *d*) capacity to enter into relations with the other states."¹⁹ Each of these requirements serves to ensure proper disaggregation and to support the critical assumptions of autonomous personhood—that each unit can internally govern its territory and subjects and externally interact with other units.

By so transforming the world of billions of actual persons into a club of far fewer juridical persons—191 states, or 193 if one counts the Holy See and Taiwan²⁰—the international community can bring order to the chaotic task of governance. Citizens are answerable to nations, and nations in turn are answerable to each other. The value of the nation-state as the basic unit of political organization is perhaps best, and most relevantly, illustrated by the use of force. Each sovereign has an internal monopoly on the use of force within its jurisdiction. Each nation can project force externally in order to wage war. Because preventing and limiting war is the whole point of the exercise, the law of nations as it has traditionally developed governs, first and principally, use of force.

Richard Haass summarizes well the concept of order grounded in sovereignty and also highlights the challenges to that vision:

Historically, sovereignty has been associated with four main characteristics: First, a sovereign state is one that enjoys supreme political authority and a monopoly over the legitimate use of force within its territory. Second, it is capable of regulating movements across its borders. Third, it can make its foreign policy choices freely. Finally, it is recognized by other governments as an independent entity entitled to freedom from external intervention. These components of sovereignty were never absolute, but together they offered a predictable foundation for world order. What is significant today is that each of these

19. Convention on Rights and Duties of States, Dec. 26, 1933, art. 1, 49 Stat. 3097, 3100, 165 L.N.T.S. 19, 25.

20. WIKIPEDIA, UNITED NATIONS MEMBER STATES, at http://en.wikipedia.org/wiki/United_Nations_member_states (last visited Oct. 13, 2004).

components—internal authority, border control, policy autonomy, and non-intervention—is being challenged in unprecedented ways.²¹

The modern challenge to sovereignty comes from many sources: the ascendancy of international institutions, the development of regional unions, the delegation of governmental authority to non-state actors, the impotence of weak or failing states, and other factors that have led to the increasing irrelevance of the sovereign nation-state. Some scholars see national sovereignty as an obstacle to regional and global governance; others see national sovereignty as unnecessary in light of such governance structures.²² Some, in this increasingly interdependent world, identify the seeds of cosmopolitan citizenship as superior to claims of national allegiance.²³ To many others, sovereignty is an empty vessel, “of more value for purposes of oratory and persuasion than of science and law.”²⁴ The title of one book seems to summarize the prevailing assault: *Sovereignty: Organized Hypocrisy*.²⁵

These criticisms all challenge sovereignty-based order from within. That is, they argue that nation-states, by their action or inaction, have so manipulated or abused the concept of sovereignty that it has little or no enduring analytical value. Indeed, one strand of criticism explores sovereignty as a social construct and argues that “[n]umerous practices participate in the social construction of a territorial state as sovereign.”²⁶ Freed from its inherent characteristics and requirements, sovereignty can be reconstructed to fit the policy or political needs of the day.

21. Ambassador Richard N. Haass, Remarks to the School of Foreign Service and the Mortara Center for International Studies, Georgetown University (Jan. 14, 2003) (transcript available at http://www.georgetown.edu/sfs/documents/haass_sovereignty_20030114.pdf).

22. See, e.g., ABRAM CHAYES & ANTONIA HANDLER CHAYES, *THE NEW SOVEREIGNTY* (1995) (critically analyzing what states, international organizations, officials, and other actors actually do when trying to implement regulatory treaties); THOMAS L. FRIEDMAN, *THE LEXUS AND THE OLIVE TREE* (1999) (arguing that globalization is the new international system that, more than anything else, is shaping world affairs today); *THE GREENING OF SOVEREIGNTY IN WORLD POLITICS* (Karen T. Lipton ed., 1998) (exploring whether existing political institutes, including the prevailing norms of sovereignty, can be altered in ways that permit and even foster ecologically benign practices).

23. See, e.g., Martha C. Nussbaum, *Patriotism and Cosmopolitanism*, in MARTHA C. NUSSBAUM, *FOR LOVE OF COUNTRY?* 3-17 (Joshua Cohen ed., 2002).

24. QUINCY WRIGHT, *MANDATES UNDER THE LEAGUE OF NATIONS* 278 (Greenwood Press 1968).

25. STEPHEN D. KRASNER, *SOVEREIGNTY: ORGANIZED HYPOCRISY* (1999).

26. *STATE SOVEREIGNTY AS SOCIAL CONSTRUCT* 278 (Thomas J. Biersteker & Cynthia Weber eds., 1996).

II. THE TERRORIST CHALLENGE

Whatever the validity of these criticisms, they fundamentally differ from the external assault on sovereignty-based order mounted by stateless terrorism. Armed with the means and motives of war, and yet operating outside the community of nations, the terrorist poses an external threat to the ordering structure of that community. His access to the means of mass violence breaks the monopoly on force held by sovereign nation-states. His use of those means elides the nation-states' internal exercise of monopoly power, criminal law—and their external projections, war. This modern terrorist threat goes beyond ideology unmoored from geography. It is, more accurately, force unchecked by sovereignty.

Knowing what we now know about al Qaeda, we can say that its extremist, fundamentalist ideology is offensive to our liberal democratic ideals. Al Qaeda seeks to subjugate women; we work for their liberation. Al Qaeda seeks to deny choice; we celebrate the marketplace of ideas. Al Qaeda seeks to suppress speech; we welcome open discussion.

Were al Qaeda a nation, we would deal with these differences the same way we deal with nations with whom we have fundamental disagreements. Subject to certain limits, we would respect its sovereignty. But we would use our own sovereignty to bring political, diplomatic, and economic pressure to cajole and coerce the nation of al Qaeda to adopt a more humane and civilized exercise of its sovereign power. Nonetheless, were al Qaeda a nation, many of its actions would fall outside the limits of sovereignty. Václav Havel reminds us that “human life, human freedom and human dignity represent higher values than State sovereignty.”²⁷ As Kofi Annan declared in 1999, “If states bent on criminal behaviour know that frontiers are not an absolute defence—that the [United Nations Security] [C]ouncil will take action to halt the gravest crimes against humanity—then they will not embark on such a course assuming they can get away with it.”²⁸

Of course, al Qaeda is not a nation, and its offense to the United States and other nations is not limited to its extremist ideology. By adopting the way of terror, it has attacked not only our citizens in our territory, but also the very foundation of world order grounded on sovereignty.

The terrorist does not seek to destroy the world ordered by sovereign states within our social construct; the terrorist seeks to destroy that

27. Czech Republic President Václav Havel, Opening Speech at the Conference “The Transformation of NATO” (Nov. 20, 2002) (transcript available at <http://www.nato.int/docu/speech/2002/s021120c.htm>).

28. Kofi Annan, *Two Concepts of Sovereignty*, *ECONOMIST* (London), Sept. 18, 1999, at 49, 50.

construct. In this sense, the terrorist is fundamentally different from the criminal offender normally encountered by the criminal justice system. By attacking the foundation of order in a society, the terrorist seeks to demolish the institutional structure that governs the lives of citizens. By fomenting terror among the masses, the terrorist seeks to incapacitate them from exercising the liberty to pursue their individual ends. This action is not mere criminality; it is a warlike attack on the polity.

In waging this war, the terrorist employs strategies that fundamentally differ from those used by nations. The terrorist does not abide by recognized rules of war; those rules were established among nations. Rather, the terrorist exploits those rules to his advantage. Civilians are no longer sacred; military installations are not necessarily the primary targets. By way of comparison, an enemy nation targets the instruments of our defense; the terrorist targets the core of society. Unlike a nation, which is subject to the vulnerabilities of a geographic territory and a defined population and which thus appreciates the cost of war, the terrorist appreciates only moral hazard: his movement does not absorb the cost and therefore does not internalize the risk of his bellicose actions. The world becomes his battleground—no country is immune from attack—and all innocent civilians are exposed to the threat of wanton violence and are incapacitated by the fear of terror.

This, then, is the enemy in the Age of Terror: a criminal whose objective is not crime but fear; a mass murderer who kills only as a means to a larger end; a warrior who exploits the rules of war; a war criminal who recognizes no boundaries and who reaches all parts of the globe. Neither endowed with the rights nor encumbered by the responsibilities of being a person in the international community, the terrorist attacks that community as a virus, moving from one person to the next, infecting each indiscriminately with its lethal poison.

III. NATIONAL PRIDE, WORLD ORDER

Faced with such an external threat, we naturally turn inward to find a spirit of national unity and resolve. Thomas Paine captured that spirit well when he wrote on a drumhead the following words, which were read to every soldier in the Continental Army:

These are the times that try men's souls. The summer soldier and the sunshine patriot will, in this crisis, shrink from the service of their country; but he that stands it *now*, deserves the love and thanks of man and woman. Tyranny, like hell, is not easily conquered; yet we have this consolation

with us, that the harder the conflict, the more glorious the triumph.²⁹

These are, indeed, times that try men's souls—and their hearts and their minds. For under attack on September 11 were not only the obvious targets—the World Trade Towers, the Pentagon, the White House, or the Capitol—but also the institutions and ideals that they represent. The expressions of resolve after those attacks evoke our assent precisely because we share a commitment to those institutions and ideals and to the land that gave them birth and nurtured them.

This spirit of national pride fortifies each metaphorical person in the international community by strengthening the body politic and building its defenses against harmful infections. Nations are not built overnight. The history, institutions, and memories of a people cultivate and reinforce their mutual commitment to each other. As Michael Walzer describes the process in his classic, *Just and Unjust Wars*: “Over a long period of time, shared experiences and cooperative activity of many different kinds shape a common life. ‘Contract’ is a metaphor for a process of association and mutuality, the ongoing character of which the state claims to protect against external encroachment.”³⁰ In his celebrated essay, Ernest Renan poses the question “What is a Nation?” in the title and provides his answer:

To have common glories in the past, a common will in the present; to have accomplished great things together, to wish to do so again, that is the essential condition for being a nation.

....

A nation is a grand solidarity constituted by the sentiment of sacrifices which one has made and those that one is disposed to make again.³¹

A national identity can be born from a shared commitment to its core principles, as the American example amply demonstrates. President George W. Bush put it best in his Inaugural Address: “America has never been united by blood or birth or soil. We are bound by ideals that move us

29. 2 THOMAS PAINE, *The American Crisis*, in *THE LIFE AND WORKS OF THOMAS PAINE* 263, 263 (William M. Van der Weyde ed., Patriots' ed. 1925).

30. MICHAEL WALZER, *JUST AND UNJUST WARS* 54 (2d ed. 1992).

31. Ernest Renan, *Qu'est-ce qu'une nation?* (Ida Mae Snyder trans.), in *NATIONALISM* 17, 17 (John Hutchinson & Anthony D. Smith eds., 1994).

beyond our backgrounds, lift us above our interests and teach us what it means to be citizens.”³²

But patriotism means more than just intellectual attachment to a set of principles. It is a commitment to the polity, and it is a shared sense of belonging. Stephen Decatur delivered his famous toast in 1816 in this spirit: “Our country! In her intercourse with foreign nations, may she always be in the right; but our country, right or wrong.”³³ The reflexive and unyielding patriotism that his toast symbolizes has been much criticized and even scorned, perhaps justly, on the ground that the unconditional pledge of allegiance leaves too little room for exit or voice. But loyalty there must be, even in dissent. “For patriotism,” in Wilfred McClay’s eloquent words, “like any love, withers and dies if it is not accorded some degree of instinctive assent.”³⁴

If patriotism is a kind of love, then it is unfortunately a love that often dares not speak its name, especially in cosmopolitan academic circles.³⁵ In a highly influential 1996 essay, Martha Nussbaum argued that “this emphasis on patriotic pride is both morally dangerous and, ultimately, subversive of some of the worthy goals patriotism sets out to serve—for example, the goal of national unity in devotion to worthy moral ideals of justice and equality.”³⁶ Labeling nationality as “morally irrelevant,”³⁷ she advocates for global identity, as defined by “allegiance . . . to the worldwide community of human beings.”³⁸

These are by no means trivial objections, for we know all so well the atrocities committed in the name of nationalism. But they underestimate the value of the nation-state as the basic political unit of international order. “International” presupposes “national.” As Michael Walzer answers:

I am not even aware that there is a world such that one could be a citizen of it. No one has ever offered me citizenship, or

32. President George W. Bush, Inaugural Address, 1 PUB. PAPERS 1, 1 (Jan. 20, 2001).

33. Commodore Stephen Decatur, Toast at a Dinner in Norfolk, Virginia (Apr. 1816), in ALEXANDER SLIDELL MACKENZIE, LIFE OF STEPHEN DECATUR 295, 295 (1848).

34. Wilfred M. McClay, *America—Idea or Nation?*, PUB. INT., Fall 2001, at 44, 53.

35. George Orwell famously wrote that “almost any English intellectual would feel more ashamed of standing to attention during ‘God Save the King’ than of stealing from a poor box.” 2 GEORGE ORWELL, *The Lion and the Unicorn: Socialism and the English Genius*, in THE COLLECTED ESSAYS, JOURNALISM, AND LETTERS OF GEORGE ORWELL 56, 75 (Sonia Orwell & Ian Angus eds., David R. Godine 2000). Wilfred McClay makes the same observation in contemporary American academia, where patriotism “must face a disdain even more deeply rooted than the incest taboo.” Wilfred M. McClay, *The Mixed Nature of American Patriotism*, SOCIETY, Nov./Dec. 2003, at 37, 40.

36. Nussbaum, *supra* note 23, at 4.

37. *Id.* at 5.

38. *Id.* at 4.

described the naturalization process, or enlisted me in the world's institutional structures, or given me an account of its decision procedures (I hope they are democratic), or provided me with a list of the benefits and obligations of citizenship, or shown me the world's calendar and the common celebrations and commemorations of its citizens.³⁹

Nussbaum acknowledges, of course, that there is no world state and does not necessarily advocate for one. Instead, she argues that nationalism, not nationality, stands in the way of cosmopolitanism.⁴⁰ But as much as we like to think globally, we love locally: "To be attached to the subdivision, to love the little platoon we belong to in society, is the first principle (the germ as it were) of public affections. It is the first link in the series by which we proceed towards a love to our country, and to mankind."⁴¹ As Michael McConnell puts it, "We will not love those distant from us more by loving those close to us less."⁴²

That we love those close to us, of course, does not mean that we cannot love those distant from us. And it certainly does not mean that we can disrespect them. Indeed, loving one's country allows one to love others more. Liberal democracy requires a healthy dose of mutual commitment. Countermajoritarian norms, protection of minority rights, and redistributive justice go against parochial self-interest and take a lot of enlightenment—the empathy and commitment that national identity and unity facilitates.

Finally, loving our country—loving this country—allows us (indeed requires us) to love others more. As President George W. Bush expounded, "Unlike any other country, America came into the world with a message for mankind, that all are created equal, and all are meant to be free. There is no American race. There's only an American creed: We believe in the dignity and rights of every person . . ."⁴³ Walter Berns sounds the same theme in *Making Patriots*, published in early 2001:

What makes us "one people" is not where we were born but, rather, our attachment to those principles of government, namely, that all men are created equal insofar as they are equally endowed by nature's God with the unalienable rights

39. Michael Walzer, *Spheres of Affection*, in NUSSBAUM, *supra* note 23, at 125, 125.

40. Nussbaum, *supra* note 23, at 4.

41. EDMUND BURKE, REFLECTIONS ON THE REVOLUTION IN FRANCE 40 (Frank M. Turner ed., 2003).

42. Michael W. McConnell, *Don't Neglect the Little Platoons*, in NUSSBAUM, *supra* note 23, at 78, 82.

43. President George W. Bush's Remarks at a "Saluting Our Veterans" Celebration in Ripley, West Virginia, 38 WEEKLY COMP. PRES. DOC. 1138, 1139 (July 4, 2002).

to life, liberty, and the pursuit of happiness, and that the purpose of government is “to secure these rights.”⁴⁴

Loyalty to our nation thus fosters a commitment to universal principles. It is not at all evident that rejection of national identity would foster global brotherhood—indeed, quite the opposite is more plausible. Nussbaum acknowledges that “[b]ecoming a citizen of the world is often a lonely business. It is . . . a kind of exile—from the comfort of local truths, from the warm, nestling feeling of patriotism, from the absorbing drama of pride in oneself and one’s own.”⁴⁵ I am not sure that the destination justifies the journey. Rather than aspiring to universal cosmopolitanism, statelessness may well foster reversion to a selfish individualism. Much worse and more relevant to our discussion here, a rudderless person in search of a fundamental identity may well find himself or herself in the comfort of zealotry and the community of terror.

IV. SOME PRESCRIPTIVE THOUGHTS

Where does this analysis lead us? First, we need to reaffirm the monopoly of nation-states on external projections of force. Fundamental to sovereignty-based order are the rules governing use of force among nations. War is traditionally a right reserved to sovereign nations as a last resort; even in self-defense, nations are to attempt peaceful resolution before resorting to violent retaliation. When war is unavoidable, it is fought in defined zones among identifiable combatants who are restricted by international agreements that define permissible combat tactics. Terrorists seek to exploit the rules of war by defying all restrictions on the use of force, and they seek to disorient their enemies by blurring the lines between war and crime. They act without the tethers of sovereignty, with no accountability to the international community, and with no regard for the conventions of combat. The rules of war must be fortified and applied to the framework of war waged on a universal battlefield by unidentified combatants with indiscriminate targets.

Second, we need to enforce vigorously the nation-states monopoly on internal force to prevent terrorist crimes. Disruption of terrorist activity has become the overarching goal of law enforcement. Law enforcement agencies have sought to further this objective by removing suspected terrorists from our streets before their plans can come to fruition. Material support and money laundering laws allow for apprehension and prosecution of those who would seek to assist a terrorist’s efforts.⁴⁶ A

44. WALTER BERNS, MAKING PATRIOTS 50 (2001).

45. Nussbaum, *supra* note 23, at 15.

46. See generally Ankush Agarwal, Comment, *Obstructing Justice: The Rise and Fall of the*

suspected terrorist who commits any criminal violation, no matter how minor, will face apprehension and prosecution. While our military continues to hunt down terrorists abroad, law enforcement tools need to be deployed aggressively to ensure that terrorists are tracked down at home.

Third, neither military strategy nor preventive prosecution can succeed without effective, coordinated intelligence. Prior to September 11, intelligence and law enforcement operated independently of one another; intelligence focused on detecting threats from abroad, while law enforcement prosecuted crime at home. In the War on Terror, intelligence must serve as a bridge, not a barrier, if both the military and law enforcement are to effectively combat the threat. Intelligence and law enforcement agencies have adapted to these needs by combining increased intelligence-sharing with more actionable intelligence; agencies are working together to determine who poses a threat, where they can be found, and how they can be apprehended. Assisted by essential technological advancements, these shifts in intelligence have led to critical victories both in capturing terrorists abroad and removing suspected terrorists from our streets.

Fourth, the September 11 hijackers gained entry to our country not by force, but by exploiting the ease of international travel and the weaknesses in the enforcement of our immigration law. By enforcing rational immigration rules already in place, we can remove or deny entry to those who would penetrate our borders in furtherance of terrorism.⁴⁷ Any suspected terrorist who overstays a visa becomes subject to detention and deportation.⁴⁸ Visas will be denied to suspected terrorists who request them.⁴⁹ Returning the rule of law to the immigration laws minimizes the need for harsher measures. By using available intelligence and technology to enforce the laws we have, we ensure that our doors remain open to those who seek entry for the promise and opportunity America offers. A commitment to inspiring American ideals among immigrants will also help foster their dedication to the freedom and liberty for which we are fighting.

Fifth, the ease with which goods can be moved across international borders facilitates terrorists' efforts to acquire weapons and provides a

AEDPA, 41 SAN DIEGO L. REV. 839 (2004) (examining the Antiterrorism and Effective Death Penalty Act of 1996 as a means to deter terrorism post-September 11).

47. See, e.g., Exec. Order No. 13,228, 66 Fed. Reg. 51,812 (Oct. 8, 2001); Homeland Security Director Tom Ridge, Press Briefing (Nov. 2, 2001) (transcript available at 2001 WL 1346159).

48. President George W. Bush, Remarks on Immigration Policy (Jan. 7, 2004) (transcript available at 2004 WL 33672); OFFICE OF COMMUNICATIONS, WHITE HOUSE, FACT SHEET: INCREASING INFORMATION SAFEGUARDS AND IMPROVING VITAL INFORMATION SHARING (Oct. 29, 2001), available at 2001 WL 1326237.

49. See sources cited *supra* note 48.

global stage on which terrorists can act. The September 11 targeting of the World Trade Towers—the nerve center of the global economy—demonstrates the terrorists' strategy of exploiting international interdependence to disrupt world order. Terrorists have sought to execute this strategy through technologically sophisticated methods of communicating and through coordination and financing across countries and continents. The international community has recognized that such a global attack demands a global response. Terrorism is an international crime.⁵⁰ Each country therefore must help shoulder the burden by finding and apprehending terrorists within its borders, stopping terrorist financing in its economy, interrupting the flow of weapons through its borders, and exchanging information pertaining to terrorism with the international community.

Finally, neither the global effort against terrorism nor the sovereignty-based world order can be sustained unless each member of the international community maintains legitimate sovereignty. Nations whose governments have been infiltrated by terrorism and its supporters will require international intervention to restore the security necessary to maintain a stable world order. We should help fortify weak or failing states, while maintaining humility in efforts at nation-building in foreign lands. Rolodex constitutionalism has proven ineffective in past attempts; the rule of law, control of borders, and consent of the people must be secured for any nation to take on the rights and responsibilities of membership in the international community. National mutual commitment takes time and effort; commitment to universal ideals displacing parochial ones takes even longer. We should appreciate the genius of federal arrangements that allow for both local civic acculturation and national aggregation. Establishing these prerequisites for order will often require a long-term international economic and military commitment, but in the War on Terror, the benefits of that commitment far outweigh the potential consequences of allowing terrorism to take root.

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In many ways, the global community is currently navigating uncharted territory—we are at war with nihilistic terrorists instead of rogue nation-states. During these times, when the foundation of liberty is under attack, it is critical that each nation-state celebrates the stability of order grounded in sovereignty. Stability is fostered by the nation-state as the basic building block of world order. Each of these blocks forms an element of a communal wall against terrorism; a wall fortified from within

50. See Leila Nadya Sadat, *Terrorism and the Rule of Law*, 3 WASH. U. GLOBAL STUD. L. REV. 135, 145-52 (2004).

by each state's efforts to prosecute terrorist enemies; a wall fortified from without as a means to stand up to the terrorist challenge to global order. Like any structure with a function, a wall is dependent on the strength of its components. Weak blocks make weak walls. Likewise, weak states leave us all more susceptible and more vulnerable to terrorist attacks.