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JUST WAR THEORY POST-9/11: PERFECT TERRORISM
AND SUPERPOWER DEFENSE

In its devastating surprise attack on the American homeland on September 11, 2001 (9/11), the global terrorist network al-Qaeda used suicide fighters to crash hijacked airliners into the Twin Towers of the World Trade Center, killing some 2800 noncombatants, and into the Pentagon, killing some 200 combatants. Since the Cold War ended a decade before, the United States reigned as the sole world superpower (SWS) in military and economic might. No rival great power state could seriously challenge American military force without suffering rapid, decisive defeat in retaliation. Despite this, however, with the terrorist attack, America's historic invulnerability to foreign aggression on its soil, enjoyed since the 1812 War with Britain, was gone in a matter of a few hours.

Moreover, the 9/11 terrorist attack did not seek the defeat and surrender of the United States. Instead, it aimed to punish America for taking on the hegemonic role Britain had performed during the nineteenth century. That century was known as Pax Britannica, the century Britain used its naval superiority to rule the oceans to protect international trade from the disruptions of great power wars and high seas piracy. States need one of their number to take the lead, if they are to overcome the mutual distrust of each others' intentions. To engage cooperatively in fair and honest trading, states must have the mutual assurance that they are not foolish to rely on what each other says. This mutual assurance is possible, so Hegemon Stability Theory holds, only when there is a single hegemon that holds both the economy and military rings, so to speak.¹ The deep worldwide depression of the 1930s, for example, resulted from the absence of a world hegemon. Britain was too weak in 1914 to stabilize the international free market economy and the United States was unwilling at the time to take on the role: hence, the two world wars.

The 9/11 attack by a terrorist network with global reach presented an unforeseen threat to the hegemonic role the United States had assumed. This attack, unlike the truck bombing of the Twin Towers in 1993, clearly revealed the network's potential to deliver by surprise and at will weapons of mass destruction (WMD) against the United States, something no state, with its territorial location, could do and hope to survive. This form

of terrorism, whatever its content or purpose, I call *perfect terrorism*, perfect in the sense that, given its potential to involve WMD, even the SWS must fear its threat as a continuing clear and present danger.

The fact that the 9/11 attack hit the two most famous symbols of America's economic and military dominance clearly signaled al-Qaeda's intention to undermine the hegemonic role the United States reluctantly took on in 1945. Stability in the international economy for the last several decades has crucially depended on a reliable supply of oil, and most proven oil reserves are in Middle Eastern Muslim countries. The disruptive impact of modern secular culture and free markets on Muslim religious culture is intolerable to many of more than a billion Muslims, and not a few of them view the United States, because of its hegemonic role, as their real enemy. Hostile Muslims see 9/11 as dramatically initiating a cultural hot war that will be won only when the American hegemon withdraws from Muslim holy lands, especially from Saudi Arabia and other Muslim oil states.

With the world hegemon gone, extreme Islamic movements could more easily replace the existing moderate Islamic regimes. Extreme Islamic regimes could then significantly control the world oil supply and its wealth creation and use this wealth to empower Muslim minorities deeply embedded in Western states like Russia, France, Germany, Spain, and Britain, as well as, in particular, in the Muslim holy land of Israel. This limited victory over the SWS would be devastating. Not only would the international economy be seriously disrupted, harming most the people least able to bear it, but the military resources of all states would thereby be drastically weakened, thus facilitating the global spread of terrorist insurgencies.

Moreover, this limited victory is feasible because the American SWS is a liberal democracy. To realize its strategic aim, perfect terrorism has only to make the continued presence of the American hegemon in the Middle East more costly in American lives and fortune. Such costs are immediate and concrete, while the devastating economic consequences worldwide of the American withdrawal are remote and abstract. Americans tend to react more to immediate, concrete losses, particularly when the losses are on media display globally 24/7. The 9/11 attack may thus be seen as the first step in the al-Qaeda strategy of terrorism to intimidate the world hegemon for political purposes.

1. THE NECESSARY HEGEMON

Hegemonic dominance needs military supremacy to back its claim to deter states from unfair and dishonest trade practices and disruptive aggression. The only alternative is seeking peace through a balance of

power under the anarchic Westphalian Paradigm of Positive International Law (WPIL). But this alternative fails in the face of the *security dilemma*. If the power to defeat other states is truly equal among all states, then it would be futile for any state to attack another state; for wars could not then be won for gain, but only negotiated for a zero-zero outcome. But, in fact, states are typically unequal in military and economic power. Weaker states tend to distrust stronger states and thus seek security by arming themselves to exercise more effectively their right to self-defense. But, stronger states see this as a threat, and thus arms races start. Arms races make it rational for the stronger state preventively to strike first while still in a stronger position. Preventive first strikes tend to start wars neither side really desires. Thus, balancing actual powers in fact leave all states less secure.

Nor does the purely normative force of the WPIL resolve the security dilemma. In the absence of a common sovereign, WPIL can work only by promulgating abstract norms grounded on state consent explicit in treaties and implicit in past state practices. The rules of WPIL may sometimes be enforced by multilateral institutions, like the International Monetary Fund and the World Bank, and by economic sanctions short of intervention into state sovereignty. But even when states consent to the promulgated norms, which is not always, the only sanction for violating the norms, besides shame, which not all states fear, is exclusion from the benefits of cooperating with other states. The perceived advantages of preventive strikes, however, often moves states to risk the costs of sanctions. Thus, while the norms of WPIL may rhetorically condemn preventive war, they cannot always prevent the worst outbreaks of armed conflict.

The WPIL, in operating through the multilateralism of equally sovereign states, fails to pay adequate attention to the key principle in effectively enforcing norms: when negotiations stalemate, inaction can be worse than unilateral action, and when all else fails, the buck must stop somewhere and clubs are trump. Multilateralism avoids this principle for the very good reason that respecting it is inconsistent with the practice of multilateralism and its ideal view that continuous negotiation is in itself effective enforcement. The point of having a hegemon is precisely to impart credibility to the threat of effective force, not only to deter violations of WPIL by aggression and unfair trade practices, but also to resolve the security dilemma by making arms races futile. Where the less coercive sanctions inherent in the WPIL may especially fail to work is when states tempted to cheat become rogue states, ready to attack the system itself by attacking the hegemon. Within WPIL constraints, rogue states in the guise of self-defense can often attack the hegemon with

impunity, especially when they have a UNSC veto holder on their side. Rogue states may even seek to attack the hegemon by using nonstate surrogates practicing perfect terrorism.

But military force wielded unilaterally by a hegemon must be grounded in the co-opted consent of the other states in the system. Such consent is needed for the hegemon's legitimacy, and so for its effectiveness. The other states must recognize that a stable world economy is a public good from which all but the hegemon receive net benefit as free riders and without which all states would lose their opportunities for prosperity, thus endangering their domestic legitimacy. The world hegemon, in other words, is not a Hobbesian sovereign on the world stage with the power of coercive command to enforce obedience from the other states. But it must be a state with the credibility and political will to enforce rules equally against all sovereign states.

But the legitimacy of a world hegemon in the eyes of other states must be continuously earned and is never free from controversy and challenge. Its legitimacy is always at risk. First, the WPIL, even as modified by the United Nations Charter, denies the legitimacy of a hegemon and its protective role. From the UN perspective, hegemonic dominance subverts the peace sought multilaterally through the rules of the WPIL and the balancing of power among equally sovereign states. Second, the hegemon, when it acts unilaterally, creates its own peculiar dilemma, the *international legitimacy dilemma*, a dilemma inherent in the hegemonic role itself. The legitimacy of the hegemon in coercively enforcing the rules of fair trade and discouraging arms races comes mainly from the public good of a stable and protected international free market economy, as recognized by the free rider states that benefit from it. But the international legitimacy of the hegemon is at risk precisely because it performs its hegemonic duties. Other states may come to fear the power and the unilateral freedom of the hegemon, and they may become reluctant to grant it hegemonic status. Whenever the hegemon has to make good its deterrent threats by the actual use of lethal force, its legitimacy may be eroded by the other states' fear that the hegemon's unilateral action may endanger them. Thus, international legitimacy dilemma is the idea that the coercive actions the hegemon must take to protect and fulfill its stabilizing role simultaneously risk its legitimacy.

Another indication of the legitimacy problems of a hegemon is the way in which its actions place it at odds with key aspects of just war theory (JWT), especially in terms of what counts as defense (self-defense or defense of another) to justify going to war (*jus ad bellum*).² The hegemon may need to take defensive action that would not be regarded as defensive

by JWT. JWT seeks to limit wars to cases of defense against a direct attack, and it does this, in part, to avoid some wars. But a hegemon uses force, or its threat, to prevent all the wars it can, but for those it starts. Sometimes an appropriate use of force by a hegemon, especially when it seeks a necessary defense of its own hegemonic role, will not be in response to an actual attack, but will be anticipatory. The prospects of this have increased greatly in the age of perfect terrorism. The only anticipatory force allowed by JWT is preemption, a response to an imminent attack. But the hegemon may need to use anticipatory force in cases that go beyond preemption.³

For this reason I focus on two issues most relevant to this possibility: (1) Is it just or right for the SWS, simply because it has the hegemonic stabilizing role, to defend itself against perfect terrorism by exclusively exercising a right of first strike when in its own judgment this is necessary? (2) Can the SWS go beyond the preemptive right of first strike without abandoning the Westphalian paradigm of equal territorial sovereignty? I argue for a yes to the both questions. I argue that a hegemon has what I call *the protective right of first strike*, a strike that goes beyond preemptive, but stops short of being a preventive strike.

In Section 2, I sketch a model of the special threat perfect terrorism presents to the SWS (whichever state it may be) solely because it has taken on the hegemonic role. This unprecedented threat of perfect terrorism falls outside the moral scope of JWT as it informs WPIL. In the third section, JWT is examined more closely to identify which of its constraints obstruct an effective defense by a SWS, and I focus on the constraint that a SWS may only launch first strikes that are defensive in the traditional sense. I conclude that JWT and its reliance on WPIL must be rejected to the extent that it fails to provide in the post-9/11 world a coherent alternative in denying the hegemon a right of self-defense.

For this reason, in the final section, I argue for going beyond JWT to a morally constrained position that allows a SWS to protect itself and its hegemonic role from perfect terrorism by unilateral action, when necessary. Allowing a SWS to defend itself in this way, however, would grant it and it alone a special exemption privileging it to go to war without preemptive constraint when necessary in its own judgment. I propose that the hegemon be allowed a different right to go to war (*just ad bellum*), the protective right of first strike, a right that as a last resort can be exercised to lead to regime change. This different right, because it is special and exclusive to the world hegemon, encounters serious objections, among them that it sets a double standard and allows the hegemon to be sole judge in its own case. I argue, however, that with appropriate constraints these objections can be avoided.

2. PERFECT TERRORISM

How is it possible, as happened on 9/11, for a few people organized in a terrorist network successfully to attack the United States, the reigning SWS, whose military and economic might has no recent parallel and suffices to deter any attack on it by another state or coalition of states? It is precisely this unprecedented capability of contemporary international terrorism that warrants calling it perfect terrorism. Perfect terrorists are perfect in the sense that they can do what no territorial state could risk, namely, to attack the SWS with WMD and survive. Perfect terrorists can accomplish what no rival state could do, to make it impossible for the SWS to resolve its own security dilemma by winning the arms race against all other states.

David Fromkin presented in 1975 the classic theory of “the strategy of terrorism,”⁴ and this theory provides the background for the idea of perfect terrorism. In using lethal force terrorists aim not at a physical result that would defeat the enemy state, but at a psychological result, and this result is not their final goal but simply a means to it, the means of creating fear to induce the enemy state to act as the terrorists desire. Unlike assassins, revolutionaries, guerrilla fighters, and even soldiers, all of whom kill those they desire to conquer, terrorists are in the paradoxical position of killing those whom they may have no desire to kill. They may be completely indifferent. Killing is simply an efficient means to maximum fear in the expectation that the fear indirectly serves the terrorists’ cause. Hence, for terrorists, constraints of justice during war (*jus in bello*), in particular, have no relevance. Fear is best maximized by indiscriminate and disproportionate killings of noncombatants.

Terrorism as a strategy works against the strongest states, and perhaps the stronger the state, the more successfully it works. While war is the strategy of the strong, terrorism is the strategy of the weak. The weak always lose in direct military confrontation with the strong. Thus, the weak must resort to terrorism, and terrorism by suicide fighters is by far the most effective. Terrorists cannot strike the military of the strong state, so they must strike its people. The strong state, however, is expected to protect its people not only from foreign violence, but also from the fear of it, a fear that can become so pervasive that it disorients and paralyzes normal everyday living. Once this happens, the state loses its domestic legitimacy to alienation and chaos, and the terrorists can claim victory.

This, however, is terrorism in general. Perfect terrorism differs in a crucial respect. It aims not to defeat or take over the SWS as a state,

although its attacks could lead to delegitimizing the SWS in the eyes of its people and so put its regime into question. Rather, the aim is to influence the foreign policy of the SWS by intimidating it into abandoning its hegemonic role. While perfect terrorism, like all terrorism, uses terror to instill fear, it uses the fear strategy on the world stage against the SWS and its allies. No state is immune from the attacks of perfect terrorism. But the SWS has to be the specific target for perfect terrorism to realize its overall goal: to undermine the hegemonic role of the SWS and thereby disrupt the international free market economy on which its political legitimacy depends.

When two states distrust each other, they face the security dilemma. The stronger state fears that the other may arm itself to overcome its relative weakness and thus prevail in a future war. The stronger state must then choose between unpleasant options, either engage in an arms race to seek to deter the rival state until they reach the point of mutually assured destruction and hence a cold war or quickly strike first in a preventive attack when a war against the rival state can more easily be won. While preventive war may make the stronger state secure for a time, the precedent invites other states to engage in an endless series of preventive wars. However, this security dilemma appears not to apply to the SWS. It is the SWS because it has won, at least for a time, the global arms race against all other states. But this dominance and security in relation to other states does not end the threat to the SWS from perfect terrorism.

When the SWS faces the asymmetrical threat from perfect terrorism, it confronts its own peculiar, legitimacy dilemma, both domestically and internationally. For the domestic part, there are two unpleasant options. First, the SWS may ignore the terrorist attacks on its people on the theory that if the terrorists cannot provoke the SWS to overreact, then the strategy of terrorism fails. But this threatens the domestic legitimacy of the SWS in the eyes of its people for failing to protect them. Second, the SWS may respond by homeland security measures to prevent further terrorist attacks. But it then jeopardizes its domestic legitimacy by imposing overly stringent police measures in seeking to capture terrorists who covertly infiltrate its population. Thus, perfect terrorism creates a domestic legitimacy dilemma for the SWS by creating the perception that it has done either too little or too much to protect its own people.

States historically have taken one or the other horn of the dilemma depending on their political judgment as to which alternative least risks their domestic legitimacy. Perfect terrorism, however, ups the stakes. First, its network not only infiltrates the target state, but it has global operations. Domestic police actions alone will not work for they leave

perfect terrorists to operate freely from the outside. War has to be declared on the terrorist network itself and the states connected with it. Second, the network of perfect terrorism, through covert infiltration, may be more effective, for example, than missiles for delivering WMD without prior detection. A terrorist network with covert global operations and with potential access to WMD thus becomes the supreme threat to the SWS, which alone can respond to it globally.

The result is that perfect terrorism, unlike ordinary terrorism, creates a legitimacy dilemma with an international dimension. If the SWS takes what may seem the easy way out in the face of perfect terrorism and accepts the terrorist demands to abandon its hegemonic role, it would face loss of legitimacy not only from its own people, but more importantly and more quickly from the free rider states that count on its hegemonic role. For example, were the United States to withdraw from the Middle East, it could permit governments serving the terrorist cause to control over half the world's proven reserves of oil. The resulting instability from the terrorist disruption of a vital part of the international economy, possibly leading to extreme inflation and depression, would inflict economic hardship worldwide.

On the other hand, if the SWS reacts aggressively to the international dimension of the terrorist threat, it puts its legitimacy at risk beyond its borders. This is the other horn of the SWS's peculiar, double legitimacy dilemma. The difficulty with waging a counterwar on terrorism is that the war against the terrorist network has to be waged in states from whom no imminent armed attack would be observable or even forthcoming. Such use of force clearly goes beyond the preemptive self-defense that JWT and WPIL permit. But the unilateral use of force has the SWS claiming a special right to preventive action, acting on a double standard and serving as judge in its own case, thus creating fear among other states that they may be next. How is this international legitimacy dilemma to be avoided within the constraints of WPIL, as influenced by JWT, without undermining the underlying Westphalian paradigm of equally sovereign states on which the world hegemonic role depends?

3. JUST WAR THEORY

JWT limits the just cause for going to war to self-defense or defense of another state without regard to the security dilemma among states. Preventive war for the purpose of gaining or preserving greater advantage in the balance of power among sovereign states is absolutely prohibited because preventive war invites too much violence. In fact, however, the

intention proper to going to war is often conceived in ways other than self-defense; for example, a war may be thought just because it has the intention of restoring the *status quo ante* to either the divine order or the order of secular international law that aggressive wars violate. But both of these alternative ideals of international justice are controversial. Mutually distrustful states engaging in arms races for their security always take their particular controversial view of divine order or international law as the right view, thus inviting the security dilemma sketched earlier. But, the mere presence of a SWS, which, in its self-interest, provides mutual assurance for all states, can block the temptation for arms races even by great powers because they perceive the disparity of military might as so great that attempts to match the SWS militarily would be futile.

The rule that only self-defensive wars are just, however, even when extended to include preemption, leaves the SWS without an effective defense for the resolution of its double legitimacy dilemma. Effectively proscribing preventive war requires a clear rule that avoids controversy in its application, and this is that a state is permitted to go to war only when it has suffered, or is about to suffer, an attack. The moral justification for the self-defense rule is that states are endangered only by territorial intervention, and there is no intervention until another state has, or is about to, intervene. But, while this rule may reduce the occasions for violence, it still leaves mutually distrustful states in their security dilemma waiting for an excuse to strike first.

Moreover, perfect terrorism makes the self-defense rule obsolete for the hegemon. Perfect terrorism endangers even the SWS by delivering WMD by covert infiltration into the target populations, making imminence largely undetectable. No state can tolerate even one strike with WMD, and no homeland defense can perfectly prevent all WMD strikes, especially when carried out by suicide fighters. Thus, the risk of a terrorist WMD strike would apparently justify first strikes against individual terrorists and their network wherever located. Consequently, a SWS needs a more flexible rule, one that gives greater latitude to the first use of force, than one that permits first strikes only when preemptive. The SWS should be allowed to strike against terrorist targets in states in conspiracy with the terrorists in recruitment, indoctrination, training, financing, and communication, even when those states are not an active part of the terrorist network. The SWS right of first strike, in other words, should extend to neutral states that merely tolerate the presence of perfect terrorists within their jurisdiction.

Terrorists must locate in the territory of some states, and invading state sovereignty in the absence of an actual or imminent attack undermines

the principle of equal sovereignty. The rule that all states would equally have an extended right of first strike would violate JWT and WPIL, as well as undermine the legitimacy of the SWS. The SWS must claim the special and exclusive right of first strike beyond preemptive strikes. But that makes it vulnerable to the objections that it acts on double standards and as judge in its own case, thus eroding its legitimacy in the perception of the international community. Without the special right of first strike in its self-defense, however, not only the hegemonic role, but the sovereignty of the SWS, is jeopardized. What I propose in Section 4 for resolving the international legitimacy dilemma is a special unilateral right of first strike by the SWS that goes beyond the preemptive first strike allowed by JWT and WPIL, but stops short of the double standard and self-judging objections of the preventive first strike.

Before discussing this special right, however, let me say a brief word about moral constraints on the hegemon beyond those of *jus ad bellum*. The constraints of *jus in bello* – discrimination to avoid the loss of innocent lives and proportionality in the use of force – do apply to the hegemon, but not for the moral reasons of the modified pacifism advocated by JWT. A hegemon that uses violent force contrary to these constraints would quickly undermine its own international legitimacy. Moreover, JWT does not make explicit the stringent fiduciary-like obligation an attacking hegemon must undertake, to leave the target state and its people after war (*jus post bellum*) with a viable domestic order. The hegemon that leaves the target state in disorder, and thus vulnerable to perfect terrorist influence, becomes its own worst enemy.⁵

4. PROTECTIVE FIRST STRIKE

The special threat of perfect terrorism is directed at the SWS in its hegemonic role. The SWS cannot, like other states, afford to give in to terrorist demands. Its giving in would empower the terrorist conspiracy and undermine the legitimacy of the hegemonic role. That would have adverse worldwide economic and military consequences to be avoided if at all possible. Moreover, the perfect terrorist threat cannot be solved simply by the present hegemon “resigning” in favor of a new hegemon. For any successor hegemon would be faced with the same international legitimacy dilemma.

The threat of perfect terrorism depends on states that permit terrorists, for whatever reason, to locate within their borders. Any member of a perfect terrorist network, anyone tied to the network as a criminal conspiracy, should be captured and punished within states in which they are

located. Part of the capture and punishment process would be extradition by request of the SWS. States willing to capture and punish terrorists on their territory, but lacking the capacity to do so, should be assisted by the SWS to acquire the capacity. If a state refuses to capture and punish the terrorists, or refuses the assistance of the SWS in doing so, then it would be classified as an unwilling state. Unwilling states would be proportionally subject to intervention by a protective first strike by the hegemon. If nothing less intrusive would be effective, the protective first strike could include regime change. The threat of perfect terrorism to instigate insurgencies globally should be a sufficient incentive for states in their self-interest to capture and punish network terrorists or cooperate with the SWS in doing so. If that incentive fails, the presumption must be that the regime of the unwilling state is itself a passive part of the conspiracy and thus as a last resort in the judgment of the SWS subject to regime change.

By its special right of protective first strike, the SWS aims to establish a minimum rule of law as the obligation of every state. A state may, of course, do more, but at a minimum it must be willing to capture and punish any person tied to the terrorist network as part of the criminal conspiracy. The special protective right of first strike is a necessary mechanism for making the minimum rule of law effective worldwide.

But the special right of protective first strike possessed by the hegemon would be subject to constraints. It is these constraints that would distinguish a protective right of first strike from a less restrictive right of preventive war. First and foremost, the protective right may be exercised only when justice after war is given priority over justice in going to war. In the case of regime change, for example, the SWS must be committed to an appropriate and feasible level of "nation building," assuring the defeated state a functioning order at least at the minimum level of the rule of law for capturing and punishing perfect terrorists. This constraint is compatible with leaving in place a stable despotic regime, provided it complies with the minimum rule of law. The basis of this constraint is that, however just the cause, the right to intervene forcibly for regime change is discredited unless the SWS can publicly convince relevant others that in a reasonable time the people of the state with the changed regime will come to see the invading troops not as conquerors, but as a legitimate policing force serving the public good of territorial security.

Second, the SWS must establish among its own citizens the domestic legitimacy of its interventionist policy. By reasoning in public with its citizens, through democratic processes, the government must convince them that the cost in their lives and fortune, a cost they alone may bear, is

worth the gain in the security forced regime change (if necessary) would bring to the world and the role the hegemon plays in that world. The SWS must convince its citizens through processes that effectively check and balance the governmental decision to go to war. Such reasoning, fully open to world opinion, may not persuade the world immediately, but it is necessary that it persuade the citizens of the hegemon.

Third, a protective first strike designed to lead to regime change is permissible only as a last resort, and even then it must be conditioned by fair notice so that the target state has reasonable time to show that it is willing to capture and punish perfect terrorists within its territory. Target states would include not only states that aid perfect terrorists, but also states that merely tolerate their presence for whatever reason. Fourth, the protective right of first strike, as a special and exclusive right, has to be available over time to a future world hegemon in its performance of the stabilizing role. A present hegemon cannot simply claim its role as its own property.

Fifth, the SWS must show that its action, though illegal under the restrictions of JWT, WPIL, or the UN Charter, is well grounded in principled precedents that previous actions of the hegemon have set in which other states at least acquiesce. Specifically, each exercise of the protective right of first strike whose legality is in doubt must be publicly justified case by case as consistent with past exercises on principles no state which benefits from the security and prosperity made possible by the hegemonic role could reasonably reject. The SWS must establish the legitimacy of its illegality by the accepted procedure of customary international law: it must openly assert the illegality of its action, publicly present the rationale to justify it, act on the illegality then and consistently thereafter, and convince other states to accept that making the illegality legal is the better practice.

The need for this last condition is evident because even the most democratic processes for domestically legitimating a governmental decision to go to war are still open to the international danger of recreating the security dilemma: the effect of the hegemon's acting on a double standard and judging its own case has on the perceived security of other states. The double standard breeds the fear among states of which one is next, and the self-judging allows the SWS to seek its own self-advantage at the expense of all other states. Thus, the international legitimacy dilemma posed by perfect terrorism is not finally resolved even when SWS first strikes have the overwhelming support of its citizens. While world opinion should have no immediate veto, nor any major influence other than respectful consideration, world opinion over time is crucial. The fifth constraint is designed to bring world opinion along.

In the long run, the SWS must appear to be acting justly not only at home, but also before world. The SWS must be able to show through public reasoning that its exclusive final say does not promote its own national interests in disregard of the general security of all states. A process of principled precedents to constrain unilateral actions as the basis for making new international law in the customary way responds to these important concerns of world opinion.

Moreover, should the SWS fail to deliver to the world the expected economic stability while fighting perfect terrorism, another state could assume the special right for itself, but only if it complies with the same constraints. Thus, a significant constraint on a SWS abusing its special protective right for self-advantage is its awareness that a future world hegemon could rightly exercise the same special protective right of first strike against it in accord with the precedents it establishes. Before the hegemon sets a precedent for unilateral intervention, it must recognize that that precedent could make it subject to attack by a future hegemon.

There is, of course, the fear that a SWS by its very nature would seek to replace the Westphalian paradigm with an imperialist world order. But the legitimacy of the special right of first strike and the hegemonic role itself depends on furthering the minimum rule of law within the domestic jurisdiction of all territorial states. This goal would frustrate the imperialist ambitions of any SWS.

The overall purpose of the protective right of first strike is to make it possible for the SWS to resolve its double legitimacy dilemma, and hence the security dilemma among all states, by allowing it to do what it needs to do to create the public good of a world without any states unwilling to capture and punish perfect terrorists. In the end, the objections that such a right would allow the SWS to act on a double standard and to judge its own case are met by the SWS showing that exercising unilaterally this special right is not only rationally, but also necessarily, related to defeating the perfect terrorist threat, at least reducing the threat to the risk management of a criminal conspiracy.

In sum, because the SWS bears the final responsibility for performing the hegemonic role at its cost alone, if necessary, the SWS should have a protective right of first strike, once its citizens agree, as a unilateral right in relation to other states, when no other less interventionist, but equally effective, way to remove the perfect terrorist threat to it is feasible. It follows that the SWS, if it is to protect its hegemonic role effectively, cannot take the authority of JWT and WPIL, including the UN Charter, as the final word. Although those sources warrant respect, the final

judgment on exercising the protective right of first strike must belong to the SWS, if only because its people must be ready to bear alone the total cost in lives and fortune.

NOTES

1. This idea is developed in Hegemonic Stability Theory. See Charles P. Kindleberger, *The World in Depression: 1929–1939* (Berkeley, CA: University of California Press, 1973).
2. JWT finds its classic modern exposition in Michael Walzer's, *Just and Unjust Wars* (New York: Basic Books, originally printed 1977, 3rd edn, 2000 with new Preface). Further discussion by Walzer is in *Arguing About War* (New Haven, CT: Yale University Press, 2004)
3. Despite its title, JWT provides no resources for considering the justice of the terrorists' goals. The possible justice of perfect terrorism's goals in challenging the world hegemon with deadly, suicidal force, however, should not be dismissed altogether. There may be a cosmic conception of justice inclusive of humanitarian values that would allow Muslim and other traditional communities to justifiably resist with force disruptions of their local culture and economy brought on by modernity. But JWT avoids the cosmic question of justice for good reason: cosmic justice has yet to find its intelligible, coherent expression.
4. David Fromkin, "The Strategy of Terrorism," *Foreign Affairs* 53 (4) (July 1975), 683, 686, 692–693.
5. In *Arguing about War*, p. 161, Walzer comments that the least developed part of JWT is the *jus post bellum* constraint. This constraint, post-9/11, would require the aspiration that everything possible is done to ensure that regime change leaves the people of the territory with self-government. This aspiration goes beyond the minimum rule of law for capturing and punishing perfect terrorists as a criminal conspiracy and would exclude despotic regimes willing to abide by the minimum rule of law even though the people democratically refuse to reject despotism.