

A MADISONIAN PERSPECTIVE ON INTERNATIONAL INSTITUTIONS: OVERCOMMITMENT, UNDERCOMMITMENT, AND GETTING IT RIGHT

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Much has been written in recent years concerning the provocative topic of this panel—the relationship of the United States to international institutions. Little of that commentary, however, has been directed at developing a theoretical framework that might govern that relationship. As a consequence, those relationships continue to be sorted out on a case-by-case basis. No consensus has thus emerged concerning overarching principles that might govern those relationships. I shall today try to sketch out the barest contours of such a framework, and then to give a couple of examples to illuminate how it might apply.

First, the theoretical framework. In *The Federalist No. 10* James Madison propounded a theory concerning the management of power within a state. I suggest that Madison's theory applies with equal force to the management of power *among* states. Madison's immediate concern was the application of the rule of law to groups—he called them factions—within a state; my concern today is the application of the rule of law to groups—we call them states—within the community of states.

Madison's theory is as familiar today as it was novel in 1787. It was framed largely as a rejoinder—as a response to the Anti-Federalists, who had argued for a governmental structure grounded upon the premise of "civic virtue." Civic virtue on the part of individual citizens, the Anti-Federalists believed, was the only true bulwark of freedom. If citizens could be counted upon to exercise civic virtue—to seek out and vote for the public good, rather than their own individual good—the Republic would be safe; indeed, it would not then be a "republic", or need to be a republic, in the sense that no filtering of the popular will would be unnecessary. Civic virtue exercised by individual citizens would make possible a true popular democracy and dispense with the need for Platonic guardians of any

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stripe.

Madison was more skeptical. If men were angels, he acknowledged, no government would be necessary. But they are not. Men do not act for the public good. They seek their own individual good. That is the central truth on which Madison believed that power must be managed. The solution that he and the Framers of the Constitution sought was to establish a structure of separated powers that set ambition against ambition, creating a dynamic equilibrium that would cancel the excesses of naked self-interest shamelessly pursued.

I submit that human nature is no different in the realm of international governance. Human nature is not changed when individuals are aggregated in groups, and groups are no more inclined to civic virtue than the individuals they comprise—whether they are called groups, factions, or states. “But what is government itself, but the greatest of all reflections on human nature?” Madison asked. Indeed, a state is a subset of a faction, as Madison defined it: a faction, he said, is a group that is “united and actuated by some common . . . interest, adverse to . . . the permanent and aggregate interests of the community.” Factions and states, like the individuals they comprise, act in their own self interest.

One need hardly sign onto a Gordon Gecko, greed-is-good philosophy of life, or government, to recognize three profound implications of Madison’s insight with respect to international engagement. First, it is not simply *appropriate* for a state to seek to advance its own national interest through its international commitments; for a state *not* to do so would disadvantage such a state in its relations with other states that *do* seek to advance their own interests. If all others stand to get a better view, only the foolish continue to sit. The meek may inherit the earth, but they miss the winning touchdowns.

Second, international institutions premised upon state involvement motivated by civic virtue are doomed to failure. A Madisonian approach counsels that international institutions work best when participating states act in their own national interest, as they inevitably will do, and that international institutions ought to be structured to harness the energy of states that act to advance their national interests, as they inevitably will.

Third, international institutions should be structured in such a way that the pursuit of individual interest by one mem-

ber state will advance the common interests of all member states. As a global power with an interest in global stability, the United States should favor those institutions over others that merely provide a forum for the pursuit of individual interest with no benefit to the community interest. The reason is plain: it turns out that the capacity to translate the pursuit of individual interest into community interest is one function served by the rule of law; institutions that do that advance the rule of law, and the United States has a national interest in promoting the international rule of law.

I therefore start with the premise that the United States ought to take a Madisonian view of interstate relations. The objective of the United States in the community of nations ought to be to advance its own national interest. I will not digress into the *cul de sac* of seeking to identify those interests; obviously, the national interest embraces the interests of American allies and other peoples of the world to the extent that the United States depends upon them for the safety and well-being of its citizens. The point here is simply that the United States, like other states, ought to pursue its national interest without apology in the community of nations, and that, like other states, it should participate in those institutions that permit it to do so and avoid those institutions that do not. Specifically, the United States therefore needs to evaluate each international organization—and the legal regime that goes with it—individually, on its own merits, with a view toward determining whether that organization and legal regime in fact advance the interest of the United States. If we do so in a hard-headed, politically agnostic way, I suggest, we will find that the United States' involvement in those organizations is characterized in some cases by undercommitment, in many cases by about the right level of commitment, and in a few cases by overcommitment. Let me give an example of each.

Undercommitment is clearly the U.S. posture with respect to the International Court of Justice. The United States today does not accept the so-called compulsory jurisdiction of the ICJ. It should. To do so would permit the United States to bring an action in the ICJ against other states that accept the ICJ's compulsory jurisdiction if they violate international law. As a global economic power whose citizens live and work in a global economy, the United States has an interest in an orderly world. It can advance that national interest by promoting the interna-

tional rule of law. To the extent that it disagrees with a particular customary norm, it can enter a reservation to its acceptance of the compulsory clause by entering a reservation that exempts itself from the adjudication of that norm. The Court is a classic example of an institution grounded upon the pursuit of national self-interest by member states, and there is no reason why the United States should not join with other states in doing so, for, with respect to the ICJ, self-interest and community interest closely coincide.

About the right level of commitment probably characterizes most of the international organizations to which the United States is a party. One with which I am familiar is the International Atomic Energy Agency. The IAEA exemplifies the high level of proficiency and respect that an international organization can achieve when its mission is seen by member states to carry out their core interests, and when those states effectively pursue their own interests in supporting that mission. The mission of the IAEA is critical—overseeing the use of nuclear energy and guarding against the potential misuse of nuclear materials. Consequently, states such as the United States have participated vigorously, funded the Agency fully, and sent the cream of their diplomatic corps to represent them within it. The IAEA thus personifies the professionalism, technical competence, and far-sighted leadership that an international organization or any domestic governmental organization ought to represent. It should be widely studied and widely replicated as an example how self-interest, responsibly pursued, promotes community interest.

I should like to devote most of my attention to the problem of overcommitment, for two reasons. First, a bureaucratic inertia tends to develop in organizational relations, an inertia that obscures the inefficacy that has overtaken some bodies that do not now, and perhaps never did, rise to the hopes of those who founded them. Second, a sense of misplaced internationalism and misguided idealism accounts for continuing American support of some entities of the UN that no longer serve American interests or, for that matter, the interests of the rest of the world community either. An emperor's clothes phenomenon has developed around these international organizations, waiting for some one to point out what every one already knows but is simply unwilling to articulate. Such a situation, I suggest, now prevails with respect to the UN Security Council and the

use-of-force regime surrounding it.

I draw here upon my forthcoming article in *Foreign Affairs*, entitled *The New Interventionism: The Search for a Just International Law*.¹ In it I suggest that the demands of justice concerning military intervention no longer are served by the UN Security Council and the old rules governing military intervention. I argue that the old regime prohibits intervention where it should not; that it is grounded on the incorrect premise the central problem is interstate violence, which it is not; that the old regime did not prevent the abuses at which it was directed; that its rules are now used for an invidious purpose not contemplated in 1945; and the old regime never did represent the rule of law.

To present the argument in sheerest outline, I begin by pointing out that the draftsmen of the Charter focused in 1945 on the problem of inter-state violence in fashioning its limitations and prohibitions on the use of force. The main problem today, however, is intrastate violence, not interstate violence, which is not addressed by the Charter. Thus Security Council has been forced to deal extra-legally with internal violence in connection with the several recent occasions serious human rights violations.

To the extent that interstate violence persists as a problem, it does so in a form resistant to the Charter's strictures: state-sponsored terrorism. None of the principal incidents—the bombing of the American embassies in Kenya and Tanzania, the bombing of Pan Am flight 103 over Lockerbie, the assassination of Orlando Letelier—has been satisfactorily addressed by the Charter. Nor for that matter was the Charter any more effective in curbing earlier interstate violence. Indeed, it did nothing as the superpowers established effective spheres of influence in which they intervened at will. And the typical response of the Council to cross-border violence by lesser powers has of course been nothing.

One reason for the Council's ineffectiveness has been the veto. During the bi-polar period following World War II, Soviet use of the veto thwarted the will of the United States but did little to change basic power relationships. During the uni-polar period following the Soviet Union's collapse, however, the re-

1. See Michael J. Glennon, *The New Interventionism: The Search for a Just International Law*, 78 FOREIGN AFF., May-June 1999, at 2.

quirement of unanimity among the Council's permanent five members has provided a crowbar for France, Russia and China to leverage their diplomacy with American military power. Time and again, "diplomacy backed by force" came to mean their diplomacy, our force.

Moreover, the Security Council is not structured so that the pursuit of individual national interest by the five permanent members of the Council ultimately maximizes the community interest. Russian opposition to NATO military action against Serbia may serve a Russian interest in maintaining influence *somewhere*, but it surely advances no community interest. Chinese opposition to air strikes against Iraq may serve a Chinese interest in keeping foreign human rights meddlers at bay, but it surely advances no community interest. Who seriously can believe that the long twilight struggle of the Cold War was shortened by one day because the Soviet Union wielded the veto?

Finally, I argue in *Foreign Affairs* that, if the Charter truly represented the rule of law, its flouting would be unfortunate. But in the veto the Charter institutionalizes the very essence of self-dealing that is antithetical to the rule of law. I conclude by noting pessimistically my belief that humanity will not soon devise a global legal system in which the risks of centralized coercion are outweighed by the benefits.

In the meantime, if we look without blinders at each international institution, individually, to assess whether it advances our national interest, and look further to see whether it is designed to advance the community interest by furthering individual national interests, we will at least remain on the road to realizing that dream, and, in the process, do what is best for the safety and well-being of our people.