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# The Madman and the Sword

*by C. Douglas Lummis*

At the very beginning of the long dialogue between thinkers that makes up western political theory there is Plato's Republic, and at the very beginning of the Republic there is this strange and interesting exchange. Socrates asks an old man, Cephalus, if he can define justice. Cephalus says, Of course, justice means to tell the truth and to return anything you have borrowed. Socrates then asks, Suppose you have borrowed a sword from a man, and while the sword is in your possession the man goes mad. In this state of madness (mania) the man comes and asks for his sword. Does justice require that you return it?

Cephalus gives up, other younger people take over, and the dialogue continues. In the course of the dialogue it becomes clear that what Socrates means by the sword is the violent power of the state (OK, the polis), and that what he means by mania is political madness, the madness that can overcome a person who possesses, or thinks he possesses, absolute power. In his portrait of the despot, Socrates describes a person who believes that there is no power on earth that can limit his action, and that he (and only he) is free to do whatever he chooses. As he sees no limits outside himself, the limits within his own mind also disintegrate, and he descends into madness. Does justice require us, Socrates asks, to give this man the sword?

You could apply the same question to an international treaty. Suppose your country makes a military treaty with another country, and then the other country descends into political madness. Suppose, for example, your country had made a treaty of mutual defense with the Weimar Republic, which then metamorphosed into the Nazi regime. Under international law you are still bound by the treaty, but ethically hasn't the meaning of the treaty utterly changed?

By now most of you will have understood what I am talking about: the Japan – U.S. Mutual Security Treaty. When this treaty was first made in 1952, and when it was revised and renewed in 1960, the official foreign policy of the United States was based on two principles, containment and deterrence. Don't get me wrong, this was not the Golden Age of U.S. foreign affairs. Containment and deterrence, or in some cases their pretense, got the U.S. involved in terrible and unjust wars, as we all know. But the people in Japan who did support the Security Treaty presumably did so on the assumption that the policy of containment and deterrence was at least relatively sound and safe.

But since the U.S. government began its "war on terrorism", it has abandoned these principles. It has announced that the circumstances under which it is prepared to go to war are different from what they were. Doesn't this mean that the Security Treaty, which is the basis for a military alliance, has utterly changed its meaning? Does the obligation incurred by signing the treaty in the earlier situation, extend to this new situation?

Since it began its "war on terrorism", the U.S. government has conferred upon itself three new rights. One is the right of preemptive attack. The second is the right forcibly to bring about regime change in countries whose governments act against U.S. interests. The third is the right to send government agents, civilian or military, into foreign countries, arrest foreign nationals, including some who have never been inside territorial United States, and imprison them, try them, or hold them indefinitely without trial. In some cases this has been extended to the "right" to assassinate suspects on the spot, for example by firing rockets at them from the air. I will talk about these in turn.

The U.S. government has repeatedly announced, in speeches by the President and other government officials and also in official documents, that it has arrogated to itself the right of preemptive attack. Preemptive attack is, of course, another name for aggressive war. And aggressive war is prohibited by international law, in particular by the Charter of the United Nations. At the Nuremberg Trials, war crimes were divided into three categories, the first of which was called the Crime against Peace, namely, starting a war in a place where there was no war. This was considered the primal war crime, and a number of men in Germany and Japan, including Tojo Hideki, were found guilty of it and sentenced to death. Now the U.S. government has announced that, for the U.S., it is no longer a crime. Presumably it remains a crime for every other government (unless acting in alliance with the U.S.), but for the U.S. it is permitted. And this is no bluff. Twice in the past two years the U.S. has actually carried out aggressive wars, and no one has been arrested, or even charged, for it.

Second, the U.S. has claimed for itself the right to force regime change in countries whose governments are believed to be acting against U.S. interests. At least since the Westphalia Treaty of 1648, trying to force regime change in other countries has been condemned as internal interference. Of course in the past the U.S. has committed, or attempted to commit, such internal interference in Vietnam, Cuba, Nicaragua and other places. But always until now it has at least made a pretense of working through some indigenous group. Now the U.S. has claimed the right to send in its own military and/or CIA and to bring about regime change directly. And this too is not simply big talk; twice in the last two years the U.S. has brought about regime change in countries it considered unfriendly, by the method of attacking them militarily.

Third, the U.S. government has granted itself the right to arrest foreigners in foreign lands, and to imprison them indefinitely. This too is something that, under the system of sovereign states established by the Treaty of Westphalia, had been prohibited by international law. For a familiar image, think of the old U.S. cowboy movies. The bandits rob a bank or a train, and escape to the south. The sheriff jumps on his horse and rides after them. The bandits cross the border into Mexico. When the sheriff reaches the border he pulls up his horse and curses: "They got away!" It's no use following them because in Mexico he's not a sheriff, and has no legal authority to make an arrest; if he tries to, he risks getting arrested himself. So there's nothing for it but to begin the tedious process of extradition.

This rule still applies for the governments of most countries. For example, the government of Peru would like very much to arrest its former president Alberto Fujimori. In Peru, Fujimori is considered by many to be a criminal on the scale of Osama bin Laden. But the Japanese government refuses to extradite him, so there's nothing Peru can do. What would happen if Peruvian police came into Japan and arrested Fujimori without the Japanese government's permission? They don't have that right, much less the right, say, to bomb Tokyo because the government won't hand Fujimori over. But the U.S. has announced that it does have the right to arrest people in foreign countries. No other country has that right. The United Nations doesn't have that right. The recently established International Criminal Court doesn't have that right (it too must ask governments to extradite criminal suspects under their jurisdictions). Only the U.S. has it. And this, too, is no bluff: the U.S. is holding more than six hundred prisoners on its base at Guantanamo Bay, Cuba. It has announced that they are not prisoners of war, so they do not have the rights of prisoners of war guaranteed under both customary international law and the Geneva Convention of 1949. But also, under a Presidential Decree

issued by George W. Bush shortly after the 9/11 attacks, they don't have the rights of criminal suspects guaranteed under the U.S. Constitution and criminal law either. Most importantly, they are denied what may be called the Mother of all Human Rights: the right to know for the suspicion of what crime one has been arrested. The U.S. government argues that the right of habeas corpus does not apply to them, because the U.S. Constitution does not extend to Cuba. But of course Cuban law doesn't apply to them either, nor does U.S. military law, as they are not members of the U.S. military. Evidently the government chose Cuba as their prison because there they would be protected by no law at all. In effect they would be thrown back into the situation of people before human rights were invented, when kings and queens could have people executed because they didn't like their looks.

These three new rights, taken together, amount to a right to rule. This is something that any college freshman should be able to understand by the third or fourth week of an introductory class in political science. If there is government A and territory B, and government A has the right to send police agents or troops into territory B at will and to arrest people there, then government A is the government of territory B. A government is the government over just the territory where it can do that, and not beyond.

During the anti-Vietnam war movement many people, myself included, shouted the slogan, Smash American imperialism! But when we spoke of imperialism in those days, the term was to some extent metaphorical. The argument was not that the U.S. had established the same kind of regime as, say, the old British Empire, but rather that it was trying to achieve the same results by largely economic means and by working indirectly through client governments. But now we have a situation where the U.S. is asserting a direct right of governance beyond it borders. And it is asserting this not only in words, but through military force. The term for this, not as a metaphor or an exercise in name-calling, but as the correct technical term in political science, is not imperialism. This is no "ism", this is the thing itself. The correct term is empire.

The United States, by granting itself rights and powers that neither the United Nations nor any other state has, is transforming itself into an empire. But the present structure of international law, under the Charter of the U.N., does not permit empire. Thus the United States is not simply disobeying international law, it is destroying it and remaking it. International law is a delicate structure built up from charter, custom and precedent. If the U.S. invades Afghanistan and gets away with it, and then invades Iraq and gets away with it, this becomes precedent. By doing these things without being punished for it, the U.S. is establishing its right to do them. The international law experts may not have grasped this yet, but soon they will have to begin rewriting their textbooks, using radically new principles.

If one had a taste for black humor, one could put it this way: When Japan was trying to build an empire, the U.S. was no help at all, so now that the U.S. is trying to build an empire, why should Japan spend blood and treasure to further that project along?

But of course the Japanese government has its own agenda. By sending armed troops into a combat zone for the first time since World War II, the government is delivering what it hopes will be the final blow to Japan's Peace Constitution. For while the ruling Liberal Democratic Party (LDP) has hacked and whittled away at the war–renouncing Article 9 of the Constitution for more than half a century, it has not been able to build a public consensus in favor of having it amended, and as binding law, the Constitution is not altogether dead. The last sentence of Article 9 reads, "The right of belligerency of the state shall not be recognized." The right of belligerency means the right to make war; concretely it means the right of soldiers on the battlefield to kill people without being arrested for murder, the right to burn buildings without being arrested for arson, the right to take prisoners without being arrested for kidnapping, etc. It is the right that makes war legally possible. Japan's Self – Defense Forces (SDF), surely one of the more bizarre government organs in the world, are dressed up like soldiers, trained as soldiers, equipped like soldiers, but they do not have this right. The law allowing them to be sent into Iraq authorizes them to use their weapons only for self – defense. That is, they have only the same right of self – defense that is guaranteed all civilians under Japan's criminal code (Articles 36 and 37). And the right of self – defense is utterly different from the right to carry out military action. Dispatching such a group, which looks like, and is armed like, a military organization but doesn't have the legal authority to operate as a military organization, into a war zone like Iraq is extremely dangerous and, one would think, foolish. But the Government is following a plan. It hopes that by sending the SDF to Iraq it can bring the contradiction between the Constitution and the SDF's existence to a head. The odds are that at some point the SDF will find themselves under attack, and will have to decide whether to shoot back or withdraw. The odds are that somebody on one or both sides will be killed. However it comes out, the Government can say to the people who oppose striking Article 9 from the Constitution, "See how it ties the hands of our brave troops!" But it is a gamble, and might have the opposite effect of stimulating a new wave public support for the Constitution.

Article 9 was one of the great peace initiatives of the 20th century; it is a tragedy that the government that operates under it can't see its value and can only think of schemes to get rid of it. And it will be tragic if their present scheme, that of sending the SDF into the Iraqi war zone, succeeds, as well it might. But it is doubly tragic and also ominous that the Government has chosen a clear war of aggression as the occasion for Japan's reentry into the fraternity of war – making states. We have enough madmen running around with swords; we don't need another.

This is the English language summary of a talk given in recent months to anti-war groups in Japan. C. Douglas Lummis, a former U.S. Marine on Okinawa and the author of Radical Democracy, taught political theory at Tsuda College.

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