

Designing and Managing the Future of the State

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Reports of my death have
been greatly exaggerated.

Mark Twain

All politics is local.

Tip O'Neill

I

We encounter divergent trends. Worldwide communications and movements of persons, goods and services, and the resultant economic links, have created new interdependences. As a result, in more and more social sectors, activities that cross borders can no longer be regulated effectively by the parts of the state apparatus that have been responsible for them. Whether it be health, criminal activity, including terrorism and other forms of purposive political violence, economic organization, immigration or border control, protection of intellectual and material property – whatever – the state, acting alone, seems increasingly less able to accomplish what is expected of it without locking itself into more and more complex and durable inter-governmental arrangements. Each of these arrangements requires some yielding of national competence.¹

These new international dependencies are not those of 'failed' or 'imploding' states, but of some of the most powerful states. Indeed, it is precisely those states that are ineffective that can now claim an isolated sovereignty, a coincidence that is probably not accidental. Even the security of the remaining Superpower cannot be

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¹ It is interesting to relate these trends to the phenomenon of 'privatization', a movement of governmental reform and bureaucratic downsizing occurring, most dramatically, in Japan and Korea in Asia, in Sweden and the United Kingdom in Europe, and in the United States. Privatization acknowledges the inadequacy of government to discharge its responsibilities, but attributes this to an inherent inefficiency in public institutions rather than to changes in the larger context. Ironically, the response of privatization, which gives primacy to efficiency rather than to security and boundary-policing, tends to accelerate the process of transnationalization.

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accomplished alone. In terms of military *matériel*, the United States may have been the only country that could have fought the Gulf War on its own. But it could not *afford* to do it on its own. Hence the continuing need, for the largest and strongest as well as for all the others, to enter into alliances of varying durability, with the restraints they perforce impose on the national action of even the strongest alliance members. And when other national security issues, such as preventing the diffusion of nuclear, chemical and biological weapons to state and non-state entities, are augmented by other concerns, such as stemming the transnational migration of disease, protecting the environment, and assuring access to external markets, national subordination to international arrangements is seen as ineluctable.

These developments have inevitable consequences on the individual psychological and personal level. When traditional social units can no longer assure security and access to the other values for which their members look to them, many individuals initiate searches for new identifications which they hope will be more effective. Many of these new identities are transnational, thanks to the conditions that facilitate them. There is a *de facto* international language and a dynamic, homogenizing global culture of science and technology. For a relatively small but influential segment of humanity, the Internet has provided continuous opportunities for interactive transnational consociation. For a much larger proportion of our species, satellite communication of coordinated sounds and images has created vast, transnational 'audience' communities.

As a result of these conditions, the individual is presented with an unprecedentedly broad menu of opportunities for identification: regional systems, transnational associations, transnational religious systems and orders, transnational business entities, transnational and national gangs, transnational and sub-national tribal and ethnic communities, non-territorial cybernetic communities or 'audiences', and so on. At any moment, some individuals will be opting for some of these supra-territorial, non-territorial and non-state entities, expanding their identity systems beyond their inherited boundaries.

Some observers see, in this aggregation of social trends, the nucleus of a self-sustaining system, which will, henceforth, guarantee international peace and security. Thus, Donald Johnston, Secretary-General of the Organization for Economic Cooperation and Development (OECD), sees a process of 'globalization', driven by free trade and cross-border investment, as a systemic solution to the heretofore intractable problem of international security: 'Globalization is extending economic interdependence, and this will bring peace and stability.'² Other observers purport to perceive, in these transnational processes of interaction and interdependence, the decline and ultimate demise of the state, which will 'wither away', to be replaced, if not by transnational class formations, then by other newer, more inclusive and larger social organizations.

2 Bowley, 'Drive to Cut Costs Worries New Head of the OECD', *Financial Times*, 21 February 1997, at 6.

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These optimistic prognoses overlook the fact that the rising transnationalization of so much critical social and economic activity and the transnational expansion of some identities are encountering powerful counter-trends: the revival and political legitimization of isolationism in the United States, the surge of the National Front in France, the recrudescence of right-wing nativism in Austria, the rise of political localism in northern Italy, the acute politicization of religious nationalisms in countries as diverse as India, Iran, Egypt, Algeria, Israel, Turkey and parts of the Balkans, demands for extreme national action in Japan, and so forth.

These counter-trends are manifestations of certain group-dynamic and psychological factors that are apparently fundamental to social organization; they must be considered in any projections of possible futures. The exclusive territorial community, to which the individual accords and insists that others accord primary loyalty, is a response to a persisting set of human demands. There are cogent, 'rational' reasons why human beings organize themselves in exclusive rather than the most inclusive of groups, why group boundaries are 'a functional necessity, not simply an inert artifact of primordial cultural identities'.

According to collective action theory, successful groups need to establish clear boundaries. Groups producing collective goods, such as defense and economic infrastructure, need boundaries in order to exclude non-contributors and to identify outsiders who might act opportunistically in transactions with group members. They also need boundaries to prevent crowding, which would diminish the value of membership in the club: tribes keep strangers from crowding their scarce land, and the United States bars access to immigrants seeking high wages. In addition, boundaries may help to limit commitments to people whose contributions to the collective good would be outweighed by the cost of defending them.³

Viewed from this perspective, ethnicity, for example, with its techniques and rituals of exclusion of outsiders and intense demands for loyalty and self-sacrifice by insiders, is seen as a political practice. It is not the cause of boundaries, but a means developed for policing them.⁴

Whether it be Rhesus and Howler monkeys, distributed at intervals along a tree trunk, or human beings locating themselves in social organizations, the distribution and allocation of space among actors is, as Durkheim taught us, a basic technique for conflict avoidance. When many exclusive groups coexist in contexts of low interaction, the techniques and rituals of exclusion of each have minimal transgroup costs, thanks to social spacing. But when interactions increase and things get crowded, these practices acquire a pathogenic, conflict-generating potential, as otherwise rational collective choices converge with the deep psychological demands of individuals for security. Latent insecurity among all individuals is generated by the ongoing expectation of violence and the perception that peace is an interim between major crises.⁵ Lasswell wrote that:

3 Snyder, 'Civic versus Ethnic Nation-Building: A Collective-Action Approach', unpublished paper presented at Yale University, 14 February 1994, at 17.

4 F. Barth, *Ethnic Groups and Boundaries* (1969), at 22.

5 H.D. Lasswell, *World Politics and Personal Insecurity* (1935, 1965 with new introduction), at 57.

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in crises, many persons revert to the symbols and formulas of childhood. If these formulas are mainly ceremonial, the individual may dispose of his tensions without working over changes in the environment; but the reactivation of these fundamentalist patterns is frequently associated with militant demands for action.

Fundamentalist movements during prosperity are principally laughing matters for the metropolitan sophisticates. An H.L. Mencken may scoff at the corn and bible belt and make sport of a monkey trial. But in depression, this sort of thing has serious meaning for political developments. With the declining economic power of the cities, and the search for soul-satisfying security in hard times, a substantial part of the population especially in the provinces may become incited to action around symbols of The Old Time Religion, and the ancient code of familial and personal morals, manners, and styles.⁶

Rather than sustaining and facilitating collective choices for survival, reactions such as these generate further conflicts with other groups that may threaten the group itself.

In a world in which increased interchanges and resultant interdependences among territorial groups are indispensable for the achievement of the basic social and political goals of each group, those interdependences also generate or exacerbate deep ambivalences and insecurities in many members of the rank-and-file of each community. Professor Robert Dahl, of Yale University, has written:

A country's economic life, physical environment, national security and survival are highly, and probably increasingly, dependent on actors and actions that are outside the country's boundaries and not directly subject to its government. Thus the members of the *Demos* cannot implore their national government, and much less their local governments, to exercise direct control over external actors whose decisions bear critically on their lives.⁷

Yet rational responses to this increasingly global condition require more transnational governmental structures and the transfer to them of competences theretofore reserved to the national bureaucracy. Each of these new creations, with its necessary transfer of competences, further reduces the range for personal involvement in the decisions that affect one's life. Hence a paradox: the search for political, military or economic security through the creation of transnational institutions simultaneously generates an insecurity, because the resulting interdependences stir deep uncertainty and anxiety in many individuals about their dependence on processes that are beyond the influence of their primary political communities. When the overall value-status of the individual is also imperilled because of other economic or social changes, themselves the result of transnationalization of many sectors, latent feelings of insecurity are further aggravated.

A distinguishing feature of elites is that they have access to more and better information. Hence they will have more accurate images of the interdependences among territorial communities and, accordingly, the need for transnational institutions, endowed with the competences to minimize conflict and facilitate the most productive interactions. But other social strata (and sometimes parts of the elite

⁶ *Ibid.*, at 120-121.

⁷ R.A. Dahl, *Democracy and Its Critics* (1989), at 319.

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itself), with less accurate information, can become prey to the belief that, in times of crisis, one must depend on one's own. The result is a cacophony, as if one were listening simultaneously to the language of the global scientific civilization over the throbbing tom-toms of tribalism whose hypnotic rhythms communicate, at levels far below overt consciousness, the virtues of the old modes of identification and operation. Because of this disparity of viewpoint, the trend towards globalizing so many activities, for all its glowing promises of widespread benefits, conceals, in its dark underside, politically exploitable feelings of personal insecurity, ineffectiveness and inessentiality. These experiences may impel desperate searches – on the parts of elites as well as members of the rank-and-file – for guarantees of personal and group security under the 'ancient codes'.

These contradictory conditions will continue to generate the need for transnational arrangements and the elevation of symbols of loyalty to them. Yet, at the same time, they will support and justify, in the minds of some elites and members of the rank-and-file, the need for exclusive territorial communities that can jealously police their boundaries and preserve their powers. Parts of governmental decision processes in these exclusive communities will operate in competition with, and even fierce opposition to, the transnational arrangements. Accommodations will be fragile and contingent, depending largely on perceptions of crisis. When such perceptions intensify, demands for retraction to increasingly exclusive, and possibly tribal, racial or fictitious identities may come to the fore. Though identification may then expand as perceptions of crisis ease, contractions will recur when feelings of insecurity increase.⁸

II

In plausible constructs of the future of the political organization of our planet, then, we will continue to find something akin to 'the state' we recognize: a territorially-based political organization. Its elite will demand and seek to police the loyalty of inhabitants to national symbols, in order to control and direct the use of internal resources as well as to deploy the people and resources as power bases in competitions with the elites of comparably organized entities. But this will not be an exclusively elite-stimulated and maintained organization. Many of the rank-and-file will demand reassuring borders and other indicators of personal and group security.

Realistic futures will certainly include intergovernmental organizations, concerned with the maintenance of security, the production and distribution of wealth, the provision of health and the prevention and containment of disease, protection of the environment and other matters of transnational concern. They will maintain no less a place than myriad non-governmental organizations: multinational corpora-

8 See, in this regard, Lasswell, 'The Interrelations of World Organization and Society', 55 *Yale Law Journal* (1946) 889.

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tions, religious institutions, pressure groups seeking virtually every conceivable end, transnational criminal organizations, gangs and private armies. Those individuals who are so disposed and capable will find greater opportunities for direct participation, thanks to the expanding grid of transnational communication. The categories of effective and authoritative actors in international politics and international law may continue to expand, but the territorial state will continue to figure prominently.

Extant territorial communities are extremely diverse: some are in the process of integration, some in disintegration. Some are highly effective in terms of maintenance of internal minimum order, economic productivity and governance practices that accord with the wishes of their politically relevant strata, while others are ineffective in many, if not all of these dimensions. Some have failed, in the sense that the social processes within their territories have become violent and chaotic. There is nothing particularly novel about this wide diversity of state phenomena. Max Weber observed that:

[t]he law of the state often tries to obstruct the coercive means of other consociations. . . . But the state is not always successful. There are groups stronger than the state in this respect This conflict between the means of coercion of the various corporate groups is as old as the law itself. In the past it has not always ended with the triumph of the coercive means of the political body, and even today this has not always been the outcome.⁹

The variety of territorial organizations that have called themselves states has always manifested a comparably wide diversity in terms of internal organization, efficiency, autonomy and the approximation of whatever was the contemporaneous international standard for minimally acceptable governance, which is now crystallizing in the authoritative code associated with the protection of human rights. At any moment, there have been some states that were tightly organized, whether on a centralized or federated model, capable of providing high levels of internal security to their nationals and of fostering an efficient economy. At the same time, there have always been states that were troubled, either because of internecine conflict, disintegration or the absence of administrative structures that were ever minimally effective. And, as Pareto observed, '[w]henver the influence of public authority declines, little states grow up within the state, little societies within society. So, whenever judicial process fails, private or group justice replaces it, and *vice versa*.'¹⁰

In the past and to this day, elites of all territorial communities have expected and demanded of each other a general recognition of their autonomy or 'sovereignty', i.e., their insusceptibility to legal control by the elites of other states. That normative arrangement served common elite purposes more effectively than would alternatives, even though one of the consequences was that when inefficient states could not provide basic security to their inhabitants, no one else could. As long as transnational interaction and interdependence were comparatively low, the *international* systemic consequences of insufficient state organization as well as the unrestrained

9 M. Rheinstein (ed.), *Max Weber on Law in Economy and Society* (1967), at 18, 19.

10 V. Pareto, *The Mind and Society*, Vol. 4 (1935), at 1519.

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discretion to initiate violence internally or externally were essentially localized. There was no need for a concept like 'rogue state', because the noxious consequences of a rogue's behaviour were likely to be contained within its borders. Indeed, the aggregate consequences of most civil wars or of internal chaos remained local; lethal diseases that flared in one place were likely to burn themselves out *in situ*, and so on. In short, the basic normative regime of the sovereignty of each of these exclusive entities did not pose an inclusive threat.

What is new and radically different in contemporary world politics is the emergence of a common global civilization of science and technology, in which continuously intense levels of interaction between and across territorial communities are creating intricate patterns of tight interdependence. With such high levels of interaction and interdependence in the modern world, internal conflicts generate refugee out-flows that can threaten the stability of other states where refuge is sought. Local economic failures, too, result in the exporting of people, desperate to find the life-opportunities denied them at home. 'Local' diseases may be carried within hours, by modern civil aviation, from one venue to another.

The international normative arrangement that emphasized 'sovereignty', with its local elite control over matters of 'domestic jurisdiction', was once systemically anodyne, tolerable and, for some policies, beneficial. In this new environment, however, it now becomes, in many contexts, destructive. Normative regimes based on a discretionary state power to engage in cross-border violence become ever more dangerous to the whole, given the destructiveness of modern weapons, the ranges over which they can be delivered and the ease with which large numbers of refugees can flee the theatre of conflict for havens that are unwilling or unprepared to accommodate them. Hence, while lip service continues to be paid to the old language of sovereignty, it is becoming increasingly mythic. The operational code of international law has moved quite far from it. A critical question is whether it, and the myths that accompany it, have or can move far enough.¹¹

III

States, like other groups, persist when they are the indispensable instrument for achieving, at the local level, the psychological and material conditions that ensure the survival of their inhabitants. In general, states are believed to do that. In terms of their external or international dimensions, however, states have a common politically pathogenic potential. Because their *raison d'être* is the protection and pursuit of the interests of the members of their respective national communities, the pursuit of those interests may clash and create, in some circumstances, conflicts with members of other states. The aggregate destructive consequences of those clashes increase with the level of interdependence.

11 On operational codes in law, see M. Reisman, *Folded Lies: Bribery, Crusades and Reforms* (1979), at 15-16.

The issue we face here is, thus, one of policy. It is not whether the territorial organization we call the state, '*entre l'éclatement et la mondialisation*', will figure in the future, but whether that form of recurring territorial organization can be designed or set in transnational control contexts that restrain its pathogenic potentials while increasing its capacity and likelihood for contributing to the fundamental goals of modern international law: the optimalization of inclusive security, the maintenance of a highly productive international economy, the protection of human rights, the maintenance of an international health system, the protection of the planetary environment, and so on.

These observations prompt a number of conclusions and policy recommendations.

1. While the pathogenic potential of states must always be taken into account, states, themselves, should not be viewed as *per se* pathological, to be suppressed and replaced by some 'higher' form of social organization. Aside from the fact that such an effort would be quixotic, there are also compelling policy reasons for retaining the state as a form of political organization. A good deal of the perception of the need for the state is realistic and may be analogized to demands for local participation in national systems. States will continue as primary organizations and value providers. The international bureaucracy lacks the resources and the incentives necessary to fulfil the essential value demands that individuals make on their political communities: security, productive economic arrangements, health services and the various 'safety nets' in the event of recession or calamity. Indeed, while some will decry the state as an atavism or the primary violator of human rights, the provision of internationally guaranteed human rights depends essentially on the apparatus of the state. The major human rights crises of this decade, Bosnia-Herzegovina, Rwanda, Burundi and the continuing violence in central Africa, are not failures of the international system or bureaucracy so much as failures of particular states. The notion that everything can be internationalized and the institutions of the state by-passed by some, as yet to be created, international bureaucratic arrangements, is fanciful.

2. Since the state is likely to remain a basic social organization, the international system should assume, as a matter of urgent security concern, some responsibility for developing viable institutional arrangements in every territorial community. Former Secretary-General Boutros-Ghali's *Agenda for Peace*¹² correctly identified this form of institution-building as a fundamental part of the international function. Institution-building should not assume a single model, but take account of the diversity of political cultures, focusing on securing minimum order within territorial communities, after which optimum order concerns may be addressed.¹³

12 *An Agenda for Peace*, UN DOC. A/47/277, 17 June 1992; reprinted in 31 *ILM* (1992) 953 and in B. Boutros-Ghali, *An Agenda for Peace* (1995, 2nd ed. with new supplement and related UN documents).

13 For further discussion, see M.S. McDougal, H.D. Lasswell and L.C. Chen, *Human Rights and World Public Order* (1980).

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3. Viable political institutions are inseparable from productive economies. Hence international decision should focus equally on encouraging the emergence of such economic arrangements within territorial communities. Under the contemporary dispensation, the Bretton Woods institutions now insist on 'free market' practices for states that wish to secure their benefits, since it is contemporary dogma that that form of political economy is the only one which will allow for productive and self-sustaining economies. Where the transformation to the free market is successfully accomplished, the material gains sought are, indeed, achieved. Where 'structural adjustment' is unsuccessful or highly traumatic, however, it may bring to the fore precisely those political forces that promise a return to the 'ancient codes' that pose threats to international order. Hence, political and economic changes within states should not be disruptive and, insofar as possible, should be monitored carefully. The implications of the traumatic shock treatments recommended by some economists should be carefully considered.

4. Paradoxically, consensus on the political-economic goal – self-sustaining, productive economies – and on the instrument for achieving it – free market practices – often ceases to be effective when it encounters the competitive character of international trade, one of the struts of globalism. Though the mantra of comparative advantage is that all will be better off in the long-run through free trade, much of free trade's short-run arithmetic is a set of zero-sum equations; for the elites of the competitive national units are under pressure from below to get as much as they can for their own constituents. So even when free market institutions are set in place in states-in-transition, they can be starved to death by adverse terms of trade. The consequences, again, can be the ignition of domestic political forces, promising internal security, yet threatening inclusive security. Accordingly, the custodians of the trade network of the modern international political economy should be alert to the implications of free competition for the weakest members. Though inconsistent with economic myth, it may be a prudent preventive political praxis.

5. The practice of 'preventive politics', as proposed by Harold Lasswell,¹⁴ becomes more urgent as interdependence increases and the aggregate social costs of unlawful actions rise. Political and economic *instability* within states should be viewed, henceforth, as matters of international concern and should be so viewed at an early, rather than an advanced, stage. Similarly, the rise of extreme nationalism in any community should be promptly viewed as a matter of international concern. In this context, an urgent function of politics and law becomes the containment of the demagoguery that incites and exacerbates anxiety as well as, more generally, the management of anxiety.

6. More than any other current phenomenon, the disintegrating state has prompted doubts about the future of the state. The phenomenon is not, as we have seen, a uniquely modern problem. Wherever and whenever it occurs, the problem in failed

14 H.D. Lasswell, *Psychopathology and Politics* (1930, 1960, 1977, with introduction by F. Greenstein), esp. Ch. 10, at 173–203.

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states is classically Hobbesian. Order has broken down and life has become nasty, brutish and short. The modern addition is that in interdependent contexts, the disintegrating state cannot be quarantined and the consequences may infect proximate states.

For the disintegrating state, the most urgent challenge is to re-establish internal order. One method, which has recently enchanted the international community, has been to conduct internationally organized and supervised elections to see which of the contending forces has the most popular support.¹⁵ The idea behind this strategy is that *vox populi*, if only given the opportunity to make itself heard, will acquire a quasi-divine compulsory force and will promptly be accepted by the warring factions. In many cases, this does not occur and the elections only polarize the situation.

When elections are likely to bring to the fore a popular government that can command wide support, it is an appropriate international strategy. But when elections do not augur this happy conclusion, a different strategy should be pursued – encouraging the formation of a government of ‘national unity’. Let us not delude ourselves. A government of national unity is an oxymoron; it is, in fact, a division of official power and the benefits thereunto appertaining among different reciprocally hostile factions, commensurate with the actual power that each has and exercises. It is not democratic, nor are the elites necessarily driven by genuine concerns for the human rights and welfare of the inhabitants whom they will control. But a national unity government addresses the Hobbesian problem, restores order and creates the conditions under which the international community can then press that government to move toward an optimal level of comportment. When a government of national unity does not promise success, the remaining alternative for the international community is to select the least obnoxious of the contending factions and to back it, transforming it, in this fashion, into the government.

Hobbesian solutions are minimalist in that they do no more than restore minimum order in the community. The guns fall silent, but the essential conditions of human dignity, which the fundamental instruments of the international community have prescribed as essential to the legitimacy of governments, have not been attained. The Hobbesian solution, nonetheless, recommends itself, because the state is the only technique we have, to date, that can provide the basic conditions prerequisite to a life of human dignity. Once it is established, even in a most imperfect form, the diplomatic, economic and propaganda techniques that are available to the world community and, increasingly, to the network of non-governmental organizations can be mobilized to move the offensive government onto a vector of self-improvement and ultimately, hopefully, to a level deemed compatible with the international standard.

7. The divergent trends which we considered at the outset of this paper also suggest the need for a new approach to the psychological organization of the individual,

15 See, generally, Reisman, ‘International Election Observation’, 4 *Pace University Yearbook of International Law* (1992) 1.

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the ultimate actor in all politics. One need hardly elaborate the role of any community in the 'formation' of the personalities of its members. While such formation has long been a concern of municipal systems, the analysis developed here suggests that it should also be a concern of the international community.

In a rapidly integrating world, individuals will find themselves increasingly involved in more communities, each of which will make demands upon their loyalties. Newer identifications do not necessarily displace the older. They are often supplemental, grafted on, so to speak, to a network of prior identifications. The interlocking factual communities to which identification is owed are all operating, making simultaneous demands for the loyalty of the individual.

This problem is not uniquely international. In the most homogeneous societies, individuals find themselves living under different authority systems, which are not perfectly integrated and which may subject them, at times, to conflicting directives about appropriate behaviour. At the most elemental level, the drive for survival of the nuclear personality may conflict with demands for sacrifice by the immediate family or sib, the family's code (understood in its broadest sense) may conflict with that of the tribe, the clan, the village, the guild or skill group, the state, the ethnic group, religious group, regional group, and so on. As soon as identifications begin to differentiate, techniques for deciding 'conflict' cases between these competing identities must evolve: from 'render unto Caesar' on through to elaborate codes of 'federal jurisdiction'. Other than in the area of 'superior orders' in belligerency, we have no principle of 'render unto international law'. Can this continue?

There must be international policies of content and procedure about the national 'formation' of the personality to deal with the phenomena of multiple loyalties and to establish authoritative priorities and procedures for determining when loyalties are owed to the most inclusive international community and when to the territorial state?

IV

The international system in the next century will find not only that it must continue to live with the state, but that one of its systemic objectives will continue to be the improvement of the functions of the state in specific decision sectors. In this respect, the model (if not the degree of achievement) of the modern human rights programmes, which insists on *national* implementation and only provides monitoring and supervision of the actions of national agencies, may be worthy of emulation. At the same time, international policy should continue to characterize certain types of national developments as international pathologies which should be identified and remedied at very early stages. Extreme nationalism, propaganda and war-mongering, state-initiated or tolerated diffusion of racism and discrimination have all been characterized as internationally unlawful. Moral issues aside, these practices should be subject to an international programme of monitoring the state because, viewed from

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the perspective of the future of the state, in international politics and law, they are matters of urgent international security.¹⁶

- 16 See, in this regard, Snyder, Hermann and Lasswell, 'A Global Monitoring System: Appraising the Effects of Government on Human Dignity', 20 *International Studies Quarterly* (1976) 221.