

**SUBMISSION AND CONSENT:
LAW, WAR, AND THE SEARCH FOR NEW
STRATEGIC PARADIGMS**

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Philip Bobbitt's *Terror and Consent* brilliantly shifts the intellectual paradigm for considering the future of law, war, and the State, compelling overly sanguine, complacent Westerners to revisit our assumptions as we confront the age of globalized threats. It draws upon the best traditions of world history, strategic thinking, and legal scholarship to highlight challenges to the constitutional order of the twenty-first century State, asserting that we face a stark choice between states of consent and states of terror in our response.

The book is so original, so broad in its scope, and so intentionally confrontational that it would be impossible either to agree or disagree with *everything* that Bobbitt asserts. One thought-provoking passage follows another. To respond to this book is to be forced to refine, clarify and defend one's own thinking, to cast aside twentieth-century relics and focus on grave dangers to the legitimacy of the State. Bobbitt offers a remarkable lens through which to focus the mind, peer through, and glean a pathway ahead. The reader may come to different policy conclusions about the best way to proceed but without Bobbitt's illuminating masterpiece, there would be no clarifying vision at all. *Terror and Consent* is a contentious book that should be read and re-read as a classic of modern political philosophy, as well as a warning to all those who are mired in the intellectual paradigms of the twentieth century. Whether you agree with him in the end or not, it will force you to stretch.

The manuscript picks up where Bobbitt's earlier book, *The Shield of Achilles*¹ leaves off, in the ongoing post-Cold War transition from the Nation State to what he calls the Market State. Confounding the common tendency to see state threats as the most serious, Bobbitt asserts that three nonstate threats—global terrorism, nuclear proliferation, and catastrophic natural disaster—require a fundamental rethinking of conventional wisdom in international security. All of the assumptions about the nature of terrorism, warfare and victory are

* This article reflects only the author's personal views and should not be construed to be the official position of the National War College, the Department of Defense, or any other government agency.

1. PHILLIP BOBBITT, *THE SHIELD OF ACHILLES: WAR, PEACE AND THE COURT OF HISTORY* (Alfred A. Knopf 2002).

wrong and must be revised, he writes. Most important of all, the vital and growing vulnerability of the modern state is its inability to protect its citizens—its core responsibility. “What is at stake in the wars against terror is nothing less than building a basis of legitimacy for the new, emerging constitutional order,” he asserts.² Failure to engage effectively with these threats will destroy the international state system as we know it.

Creating a new constitutional order requires dispassionately re-examining and reordering the current one, so as to “defeat state-shattering terror in the twenty-first century.”³ Democracies are particularly prone to the challenge, because these three nonstate threats target civilians, the source of power and legitimacy for nation-states that depend upon the consent of the governed. In particular, the power of al Qaeda (and its successors) is their potential to rip apart the vulnerable seam between war and law, the internal and external faces of the state, combined with our inability to establish conditions of consent and legitimacy in confronting them. Struggles over illegal combatants, protecting human rights, or confronting Mosque-based threats, for example, have sweeping significance for the future integrity of the Western nation-state, he argues. The story of the twenty-first century is likely to be the struggle to establish (or reestablish) state legitimacy in using force, both internally and externally.

This is clearly the work of a jurist: according to Bobbitt, the answer is to strengthen the legal sinews of the state and the international system. Thus the book is not mainly about the characteristics of the threats (civil war in the Islamic world, global warming, “loose nukes,” etc.), but about our vulnerabilities; in particular, our recent tendency to circumvent the law and expose the State’s weakness and hypocrisy in places like Abu Ghraib, Guantanamo, post-Katrina New Orleans, and the U.N. Security Council. What unfolds is a muscular argument for revising the domestic and international legal order so as to shore up the State’s constitutional foundation, to enable it to respond to these challenges.

Resting upon classic Western liberal assumptions, precedents and mindsets in this response would be foolish, Bobbitt argues, because the world has changed. International law, such as that enshrined in the Geneva Conventions and the U.N. Charter, must adapt so as to reflect the realities of the world in which we are living. Domestic law must

2. PHILLIP BOBBITT, *TERROR AND CONSENT: THE WARS FOR THE TWENTY-FIRST CENTURY* 12 (Alfred A. Knopf 2009).

3. *Id.* at 13.

also adapt, by instituting new rules for preventive detention, requiring national identity cards, or collecting the kind of personal information that is gladly surrendered to private corporations, for example. If we do not recognize the seriousness of the threat and enable the State to respond more effectively to it, according to Bobbitt, our complacency will usher in an era that will *truly* undermine our rights and freedoms. "Only when broadly shared constitutional understandings are breached by government can we justifiably claim that the legitimacy of that government is at risk."⁴ In short, a State's government must be legally empowered so as to protect its citizens—as well as itself.

GLOBALIZATION, TERRORISM AND AL QAEDA

Bobbitt's analysis of the threat of twenty-first century terrorism is one of the most powerful elements of the book. Although having some characteristics of earlier eras, today's networked terrorist organizations are, indeed, an unprecedented malevolent force in many respects. I agree with him on this and have written at some length about the potential for today's global terrorism, especially al Qaeda, to delegitimize the concept of sovereignty, even undermine the international state system itself.⁵

The current wave of terrorism is both a reaction to globalization and facilitated by it, yet we are reacting anachronistically. The post-9/11 response by the United States has been to focus on state-centric threats so as to cast al Qaeda in more familiar terms and, in the process, to greatly enlarge the problem set for the United States. In particular, the second war in Iraq was embarked upon in an attempt to target a state that might plausibly have been the source of this scourge (but it wasn't), and the resulting efforts at state-building both in Iraq and Afghanistan were an effort to turn the threat of al Qaeda into a more state-focused, familiar problem (but it isn't).⁶ Globalized terrorism (or what Bobbitt would call "market state terrorism") should have been met with globalized responses that fully exploited the opportunities of the new century,

4. *Id.* at 246.

5. See, e.g., Audrey Kurth Cronin, *Rethinking Sovereignty: American Strategy in the Age of Terror*, SURVIVAL, Summer 2002 at 119-39; Audrey Kurth Cronin, *Behind the Curve: Globalization and International Terrorism*, INT'L SECURITY, Winter 2002/2003 at 30-58.

6. A supporter of the war in Iraq, Bobbitt disagrees with me on this: I believe that when the United States invaded Iraq in 2003, it was responding within the old, nation-state paradigm, and that we did not need to occupy that state with traditional nation-state forces when there were smarter, more effective "market-state" ways to respond to the threat of proliferating weapons of mass destruction.

including sophisticated use of information technologies (the internet, mobile phones, instant messaging, etc.); effective supply-side control of dangerous materiel (highly-enriched uranium, nuclear technology, conventional arms, etc.); and vigorous superstate and substate coalitions to address all of these threats. On the whole, that did not happen.⁷

Our answer to al Qaeda was a twentieth-century, nation-state response: al Qaeda acted and the United States reacted, mainly by targeting states. I concur with Bobbitt that this is an era of unprecedented danger, particularly with respect to the threat of globalized, networked threats. But I would go a step further. The danger lies in two, intertwined aspects: on the one hand, the hazards of the threats themselves, especially global terrorism but also proliferation and natural disasters. On the other hand, the risk that states will respond to those threats in ways that are counterproductive, thereby enhancing them and undermining *themselves*.

Al Qaeda leveraged its position with respect to the nation-state by attacking the State's vulnerabilities in the realms of law and strategy, undermining its legitimacy but also forcing a response that was self-defeating. Bobbitt luminously describes and exposes the risks inherent in this threat, which has the potential to change the nature of the state itself, especially the character of the new sovereignty. His analysis of the problem is wonderful. But he writes mainly about the Western state's weakness, much less about the nature of the threat, what drives it, and what might undermine it.

STORMS DON'T THINK; TERRORISTS DO

Bobbitt's silence about the historical, cultural and local forces from which these enhanced globalized terrorist threats arise puzzles me. Admittedly, he states at the beginning, "This book is not principally about al Qaeda and the anti-Western revolution within Islam. Ultimately, it is about the changing nature of the use of force in establishing conditions of consent and legitimacy when confronting terror. This

7. There were some exceptions, particularly in the formation of superstate coalitions against terrorist financing and money laundering. Intelligence cooperation also took strides forward, although most of the enhanced relationships were bilateral. And Interpol (The International Criminal Police Organization), an enforcement agency composed of 187 countries and based in Lyon, France, has played a much more active role, especially in collecting, storing, analyzing, and exchanging information. But all of these activities lag well behind the threat. For further information, see *Public Safety and Terrorism*, INTERPOL, <http://www.interpol.int/Public/Terrorism/default.asp> (last visited Feb. 19, 2008); see also *TERRORISM AND THE U.N.: BEFORE AND AFTER SEPTEMBER 11* (Jane Boulden and Thomas G. Weiss, eds., 2004).

confrontation will transform the emerging constitutional order of the twenty-first century State."⁸ Fair enough: there is so much here, such a broad sweep of issues covered in *Terror and Consent* that this is an understandable omission. But if the book is about the evolving use of force and how to establish new paradigms, without the other party (the enemy), are we not getting a skewed picture? I do not understand how you can write about the future of the State in the twenty-first century without also analyzing the threat against which it is matched and with which it is wrestling. Particularly in an age of globalization, we are in an ongoing strategic dynamic. Each side will affect the other, and both will affect the outcome—the nature, strength, form and legitimacy of the successor to the nation-state.

Bobbitt's emphasis on one side, the nation-state, makes much more sense to me with respect to the other two threats—proliferation and natural disasters. Twenty-first century, nonstate proliferation can be fought by more supply-side control of highly-enriched uranium, as well as more aggressive international regulation to track down cheaters. Illicit proliferators are a potential threat to *everyone* and, unless they intersect with terrorist organizations, have little political power or popular legitimacy. The answer is to use better state-level or international-level regimes to crush or preclude them, for the sake of civilians everywhere. Likewise, strengthening a state's legal and executive authority unquestionably enhances its effectiveness in serving the needs of citizens in the aftermath of a storm. Altering or predicting the course of nature is difficult, if not impossible, to do, and also probably a waste of time (at least over the long-term). A hurricane or a typhoon is not sentient. We must have beefy state structures in place well before it starts raining. In both cases the answer is to legislate more power to the state (or groups of states) so as to protect it.

Yet the logic of brawny state power may fall short of achieving a new strategic framework for effectively countering the third nonstate threat, globalized terrorism, which adapts dynamically to the inherent flaws of the Western nation-state and what it does. This is a fundamentally strategic question and it requires fresh strategic thinking. As we move forward, we must construct a more fully developed, fresh strategic paradigm to deal with these terrorists if we are to build a better and more survivable state, and though the ground is well-laid, that is not quite accomplished here. To explain what I mean, let me turn to the history of law, war and strategy, as Bobbitt presents them.

8. TERROR AND CONSENT, *supra* note 2, at 19.

THE DYNAMIC INTERPLAY OF LAW, WAR, AND STRATEGY

One of Bobbitt's central theses is that nothing fundamental happens in the strategic realm that does not have equally fundamental consequences in the constitutional realm. This is a brilliant observation that I have savored for many years. It has had a large influence on my own work, and I am greatly in his debt. Briefly reviewing the historical argument he made in the *Shield of Achilles* (and that he takes as a foundation for *Terror and Consent*), Bobbitt explains the evolution of the constitutional foundation of the Western state, from the sixteenth-century princely state, to the seventeenth-century kingly state, to the eighteenth-century territorial state, and so forth. Each new constitutional order was founded upon a unique claim to legitimacy, with the definition of victory redefined by the war aims of the states in conflict, and then codified by the peace congresses that concluded epochal wars. Legitimacy was established anew through this ongoing, iterative process.

This applies to the emergence of the most recent constitutional order, for example. The twentieth-century nation-state fought what Bobbitt calls the "long war" from 1914 to 1990, to establish a single, ideological paradigm for improving the material well-being of its people. The outcome was a victory by parliamentary nation states against communist and fascist alternatives. That victory was achieved not only by the triumph of the parliamentary nation-state, but also through the failures of the ideological paradigms of fascist and communist states. It was a dynamic process.

During the early Cold War, the United States believed it was fighting "godless Communists," or, indeed, what Americans might then have called "states of terror." And that is exactly what the Soviet Union was, especially during the Stalinist era.⁹ But that generalization did not help us understand the attraction of the enemy's vision, the alternative constitutional order (in Bobbitt's terms) that they were trying to build. In the 1950s, we failed to parse the pull of the alternative order and sometimes pursued superficial policies against what we saw as a monolithic Communist menace. Yet an alternate vision of the constitutional order was driving Soviet citizens, some of whom sincerely believed in

9. A word on semantics. Like "war" and "sovereignty", the word "terrorism" reflects its political and historical context and is to some degree intentionally subjective. While there is no fully-accepted definition, however, certain elements are consistent. For our purposes, terrorism is the threat or use of seemingly random violence targeted at civilians for political ends by a *nonstate* actor. The term 'terror,' on the other hand, refers to comparable violence that is engaged in by *states*. See Cronin, *supra* note 5, at 32-34.

the ideology—especially for the first forty years or so. In other words, Communism was not just a negative goal, as hollow as it seemed to the rest of us; it also had true believers among intellectuals and ordinary people who supported it and propelled it along for decades. If the West had not begun to understand the ideology that Russians were attracted to (and it's various nationalist variants as well), and then to adapt our policies to respond to and exploit its weaknesses, I do not believe that the parliamentary constitutional order would have triumphed in the end. It was an iterative process.

Drawing this argument into the future, there is a more hopeful outcome possible when the nature of the threat, its strengths and weaknesses, is understood. It would be astrategic to slight the forces and worldviews that drive these competitors today. Bobbitt argues that we are in the process of redefining both terrorism and war, but no prior state or constitutional order has triumphed in such a contest without analyzing, adapting to and engaging the enemy. Over the course of the struggle, both sides evolve. The question of which one emerges, which State establishes the constitutional order of the twenty-first century, depends not only on the mutually affecting dynamic between strategic and constitutional transformations, as Bobbitt so vividly describes; but also on the interaction of the State and the threat, the old states and the new states—or, in today's terms, the old states and the newly threatening nonstate actors,¹⁰ all within an evolving historical context. This is also a vital and transformative strategic process.

STATES OF TERROR OR STATES OF SUBMISSION?

In laying out future constitutional alternatives as a contrast between "States of Consent" and "States of Terror," therefore, Bobbitt risks painting a caricature of the enemy that I fear is self-deluding and may hold us back in our efforts to defeat it. There is always a combination of a positive message and negative means in terrorism. As Bobbitt points out, victory is not simply the defeat of the enemy, but the achievement of a war aim. In addition to being a serious backlash against the predominant power of the United States and modernization, the constitutional order that these terrorists tout has an attraction—at least to someone. To concentrate on only one side of that antinomy, the means, is to overlook a large part of what gives terrorist attacks pur-

10. Included among twenty-first century nonstate actors would be the multiple problem sets of insurgency, terrorism, communal conflict, criminal organizations, and even to some extent state-sponsored terrorism. But I focus on al Qaeda and associates as they are the most threatening to the United States.

chase with an audience, the goal or the message. Al Qaeda is trying to hijack the constitutional order—but for what? Toward what end are they aiming? Or, in Bobbitt's astute framework, what is the potential constitutional order that we are battling against?

Bin Laden and his cronies would not describe their goal as states of terror (even if that is what they would be to us). Freedom of the individual is a Western concept. The unit of concern for these violent competitors is the Muslim community (the *umma*) not the individual. Their goal is states of submission—submission to *sharia*, submission to *fatwas*, submission to the requirement of active jihad, submission ultimately to what they believe is the will of God (as interpreted these men, of course). Submission to personal sacrifice, as well. How will the global constitutional order answer that? If we fail to understand and carefully analyze that vision, we argue only with ourselves.¹¹

In Bobbitt's framework, the battle for the new constitutional order might be better described as a struggle between States of Consent and States of Submission—to a bizarre and marginal Salafist version of Islam. To say al Qaeda and associates seek "States of Terror," full-stop, is like arguing that Hitler and Stalin sought states of terror during the twentieth-century struggle over the State's constitutional order. While that may be what they achieved, it is not what they sought. That is, both *used* terror, both wanted to establish alternative constitutional forms that were fascist and communist, respectively, offering legitimacy on the basis of ethnic nationalism or state socialism, again respectively. Both Hitler and Stalin also had enormous moral and political appeal within their own countries and to some extent beyond. If they had sought merely states of terror, they would not long have held power or inspired anyone to follow them—or been a serious threat to anyone, really.

Bin Laden and Zawahiri are trying to achieve a stronger following that will give them greater influence over the course of history in the Muslim world. Yet they also realize that the future constitutional order within Islam is a subject of deep abiding conflict among their actual and potential constituencies. Nationalism and socialism have been abject

11. This is not the same thing as making the charge "...that we—states of consent—are responsible for the terrorist attacks against us and our forces." TERROR AND Consent, *supra* note 2, at 443. Bobbitt is spot-on that this insidious argument is flat wrong and helps to delegitimize nation-states. Yet I believe that the best response to this misguided thinking is to point out the hypocrisy and wrongness of al Qaeda's actions. The organization is killing the very people that it claims to be protecting. The answer is to understand, reveal and publicize *their* illegitimacy. For more on this, see Audrey Kurth Cronin, *Ending Terrorism: Lessons for Defeating Al-Qaeda*, 394 ADELPHI PAPER 59-70, for INT'L INST. FOR STRATEGIC STUDIES (Routledge, Apr. 2008).

failures in the Arab world; parliamentary democracy has never been given a chance. To the extent that bin Laden speaks of establishing a new political order, it is the reestablishment of the Caliphate that he wants, under which the *umma* (community of Muslim believers) are governed by what the Salafists consider to be God's law (their interpretation of *sharia*). If this were to come about it would be a far cry from a market state—although al Qaeda is employing the *means* of the market state to pursue it, as this book so insightfully points out.

It is one thing for terrorism to react against state authority but quite another to establish a new form of authority itself. Al Qaeda does not describe its vision in Market State terms. It does not want to maximize the opportunities of its people: rather, it seeks their spiritual purity and piety. It is hard to say what will arise with respect to the future of the State in many parts of the Muslim world as we move forward. Al Qaeda attacks not only Western liberal states (and only some of those) but also authoritarian states such as Saudi Arabia and Egypt, which are not States of Consent. The only thing one can say for sure is that, with the historical legacy of colonialism in much of the Muslim world, the future of the State there is unlikely to be determined by outsiders, and the future constitutional order there, whatever it is, will not hew to the familiar historical patterns laid out by the West—though in a globalized world, it will be greatly affected by interacting with Western states.

SOURCES OF LEGITIMACY

So, what will the sources of state legitimacy be as we move forward? This is the nub of the issue, after all. At one point, Bobbitt cautions that they can best be perceived in retrospect:

When we are able to appreciate the new basis for legitimation of the State, we shall be able to portray the changing nature of victory in the period ahead. A war on terror is coming into being owing to the market state's requirement that it be able to prevent or mitigate certain otherwise unavoidable and intolerable civilian catastrophes. As a result, our war aims and therefore the nature of the victory required to achieve them will be redefined once again.¹²

Yet creative and thought-provoking assertions about the evolving

12. TERROR AND CONSENT, *supra* note 2, at 188.

sources of State legitimacy also pervade *Terror and Consent*—indeed they are at the heart of the reforms of law and strategy that Bobbitt believes are so vital to shore up the sinews of the State. A third response to his argument, therefore, is to probe the strengths and weaknesses of these sources of legitimacy.

In Bobbitt's historical analysis of the evolution of the state, the legitimacy of the nation-state was drawn from its people, not the other way around. In other words, legitimacy was not defined by those who governed, but by those who consented to being governed. Bobbitt's primary goal in writing the book is to mitigate the damage to the legitimacy of nation-states. His answer is to strengthen the State's law and strategy with respect to these nonstate threats, as it will help the State defend its citizens against attack and thereby shore up its *raison d'être*. But no state can successfully defend its citizens *every* time, so this could be a slender reed upon which to rest. What about shoring up the support of the people *directly* as well?

In addition to their roles in maximizing opportunity and protecting citizens from attack, the legitimacy of States is derived from the ability to inspire and mobilize popular support. That is, in addition to the globalization of nonstate threats, the globalization of *audiences* and the blurring of constituencies is a key element that might be the source for future state legitimation. Whether this kind of twenty-first century populism is desirable or not, it deserves a bit more emphasis in Bobbitt's projection of the future of sovereignty, as it is playing out before our eyes in the fractionating realms of communication across borders. The new means of communication are removing the transactional costs of organizing, undermining the relative advantages of businesses, armies and governments compared to the individuals they represent and enabling people to gather together in groups that can take action without the traditional structures of markets, battlefields, or political assemblies. The democratization of knowledge and ideas brings with it great possibilities but also huge potential for lowest-common-denominator beliefs, an undercutting of authority, and violent mob behavior. Mass amateurization of communication is increasing the power of both individual and groups outside traditional organizational structures, including the state.¹³ So, a key question this book prompts is

13. For an excellent discussion of the broad implications of this communications paradigm shift, see CLAY SHIRKY, *HERE COMES EVERYBODY: THE POWER OF ORGANIZING WITHOUT ORGANIZATIONS* (The Penguin Press, 2008). On the implications for the future of conflict, see JOHN ROBB, *BRAVE NEW WAR: THE NEXT STAGE OF TERRORISM AND THE END OF GLOBALIZATION* (John Wiley & Sons, 2007).

whether or not the new modern state will evolve so as to recapture the imagination and loyalty of the people.

The leaders of Al Qaeda think they have an answer. The *wrong* answer, categorically, but we cannot avoid the question. As we move forward into the twenty-first century, we cannot ignore the power of appeals to spirituality, to religion or to God as sources of State legitimacy. Although apparently anachronistic or alien to secular Westerners, they may be sources of legitimacy for those from other cultures who will, after all, influence the long-term legitimacy and staying power of their own twenty-first century States—and ours as well.

THE POWER OF STRATEGIES OF LEVERAGE

“[W]e desperately need a body of theory to understand the Wars on Terror. It is shocking that, years after 9/11, the U.S. government has generated no consensus on the general nature of the struggle we face,” Bobbitt argues.¹⁴ Without commenting on the detailed legal innovations offered in this book (which I am unqualified to do and thus surrender to other members of this symposium), I will offer my own modest ideas for strategic innovation, another way to see the interplay between strategy and the legitimating goals of the State, particularly as it confronts the threat of globalized terrorism.

Bobbitt observes that there have been many types of terrorism, reflecting the types of states against which they are arrayed. He argues that the Barbary pirates were the terrorists of the 17th and 18th centuries, for example, reflecting the territorial states against which they were arrayed.¹⁵ The threat of terrorism follows the constitutional order of its era. Similarly, the strategies of terrorist organizations exploit the vulnerabilities of the states against which they are arrayed. Thus, in the nineteenth century, because of the nature of aging autocratic regimes, terrorism was used mainly for provocation—to force the state to overreact and thereby undermine its own interests. Compellence, which tries to force states to withdraw from foreign commitments through a strategy of punishment and attrition, best fit the mid-twentieth century, because it aligned well with nationalist movements whose aims could be expressed in terms of territory. Polarisation was at the core of Marxist movements in the early years of the century, and it reappeared at the end of the century with terrorist attacks designed to polarize along racial, religious, tribal linguistic or ethnic lines. And mobilization is

14. TERROR AND Consent, *supra* note 2, at 442.

15. *Id.* at 235-38.

uniquely well suited to the twenty-first century, with its vast, sweeping changes in communications and economic ties, porous borders and dramatic cultural and political developments.

It therefore follows that focusing on compellence is not the best way to understand the strategies of terrorism in today's context. Compellence, which is directed at changing the policies of states, is the nation-state's Achilles' heel but it does not apply in the same way to the new 21st century state.

Bobbitt employs the intellectual framework of compellence in this book: "Terrorists can do fatal damage to the conditions that underlie consent either with attacks using WMD or simply by rolling infrastructure attacks using conventional explosives: either can coerce policy changes from a democratically elected government (as happened following the Madrid attacks) or create the demand for an authoritarian regime."¹⁶ Indeed, this is the most widespread understanding of the purpose of the tactic today, and at times it has appeared to work. Oft-cited examples include the U.S. and French withdrawals from Lebanon in 1983, the U.S. withdrawal from Somalia in 1993, and the Israeli withdrawal from Lebanon in 2000. Many also see terrorism in Iraq as a means to force the United States to depart the region. Given the well-developed theology of air power and nuclear deterrence theory in the twentieth century, this framework for thinking about the struggle with terrorism is natural.

But, especially as we move into the future, a focus on compellence may blind policy-makers to other typical strategies of terrorism and how to respond most effectively to them. Terrorist organizations do not have the luxury of behaving as if they were mini nation-states, and it is foolish to formulate counter-strategies as if they could. Terrorism is uniquely well-suited for strategies of leverage that go beyond the dichotomous, game theoretical models to see a three-part relationship between the state, the group, and the audience. This triad turns traditional ends/ways/means formulations on their head: in terrorism, strategy is not just the application of means to ends, because the reaction of the various audiences involved can be a group's means, ends or both.¹⁷ Against the emerging twenty-first century state, a strategy of mobilization—of circumventing the nation-state's edifice of public diplomacy, official pronouncements, and technological inertia to

16. *Id.* at 188.

17. These strategies, and many historical examples of their use, see AUDREY KURTH CRONIN, *HOW TERRORISM ENDS: UNDERSTANDING THE DECLINE AND DEMISE OF TERRORIST CAMPAIGNS* (Princeton University Press 2009).

connect directly with vast and newly-fractionated audiences—may be the most effective way to undermine its legitimacy in the long run. Against these threats, the only thing worse than impotence is irrelevance.

CONCLUSION

If it were not for Philip Bobbitt's searing intellect and eloquent prose, we would have no insight into what is at stake. We would lack a clear, historically-based understanding of what the threat is, as well as common ground on which to argue about how best to respond to it. We would still be arguing about antinomies such as civilian/combatant, private/public, legal/strategic, civil liberties/state power, law enforcement/war, even war/peace, in ways that lead nowhere at all. We would react to the threats and opportunities of this new century without perceiving their deep connections to the historic changes underway in the nature of the state. In the end, whether you agree with him or not, Bobbitt gives us a framework for thinking creatively about how to move forward.

Yet, to paraphrase Yogi Berra, predictions are always risky—especially about the future. Looking ahead, one final and obvious response to *Terror and Consent* is to question the implications of the shifting global economic context for the future of the state. How fares the Market State when markets are collapsing all around us? Bobbitt writes that “the Wars against Terror are a response to the evolution of these threats (including the opportunities they present to states of terror), and these threats are themselves driving the growth of market states in part because they are so damaging to the legitimacy of nation states.”¹⁸ But apart from the strategic threats that we have all (including myself) focused so heavily upon, the world's economic paradigm is altering before our eyes. With a reassertion of regulation, renewed state intervention, and even a looming threat of protectionism, the argument that the Market State is the heir to the nation-state in the twenty-first century becomes much harder to grasp. Indeed, if what we were witnessing in the 1990s was the emergence of the Market State, it seems that it primarily maximized the opportunities of the elite and the imprudent, pushing the rest of us into a global meltdown. If globalization reverses itself, the implications will be deadly serious; indeed, I fear that this specter could be the source of the next epochal war. In the end, the State that re-invents itself successfully in the midst of the global econ-

18. TERROR AND Consent, *supra* note 2, at 23.

omic maelstrom may prove to be the strongest and most legitimate of all.

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