

# A PROPOSAL FOR A CONSTITUTIONALLY BASED AMERICAN FOREIGN POLICY

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We here present a proposal for a coherent United States foreign policy, the underpinnings of which concern themselves with an individual's rights as a member of the community of man. We propose a moral foreign policy that has the objective of denying these rights to no one while seeking them for all. The criteria used as a moral basis for a foreign policy are necessarily controversial. We begin by quoting from an article<sup>1</sup> reviewing the Vietnam experience that alludes to the difficulties inherent in such an approach: "The troubling aspect is that moral judgments are not always universally shared. They often are subjective matters of conscience. There are many who view it as immoral for one country, if un-provoked, to intervene in the affairs of another .... It is feasible for the United States to pursue a policy grounded in morality only if the moral issues in question are ones upon which Americans are agreed." As Fromkin and Chace point out, moral concerns can lead to conflicting views of what is 'right'. Thus a moral foreign policy must be based upon broadly agreed upon values. Our premise, in what follows, is that there exists broad agreement in this country on a few principles that should govern our foreign policy, and yet these minimal constraints have not served to limit our government's foreign policy. We here describe this set of constraints that we feel derives from a broad consensus and indicate procedural steps that might ensure

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<sup>1</sup> Fromkin, D. and Chace, J. (1985) What *are* the lessons from Vietnam? **Foreign Affairs** 63: 742.

that future governments are, in fact, guided by such constraints.

The United States foreign policy should be guided and constrained by a respect for basic human rights and democratic principals. The United States Constitution guarantees to United States citizens certain fundamental rights. We propose that some of these rights are fundamental for all human beings and should be extended in our Constitution to include foreign nationals.

The Constitution serves to provide for certain individual rights and freedoms by defining and constraining government as laid out in the original articles and subsequent amendments. Broadly speaking, the Constitution is designed to insure : (1) the sanctity of the individual and a tolerance for diversity among individuals, and (2) the protection of the state. Importantly, the amendments also serve to protect minorities from oppression and/or domination by the majority. The Constitution is the set of rules by which the U.S. government interacts with its citizens and it forms a framework for the domestic policy of the United States. Analogously, we propose that a foreign policy must be set forth within a framework of rules by which the United States Government interacts with peoples outside our borders.

One may ask, "Why is it necessary to expand our Constitution to include further limitations on the United States foreign policy?" Consider a situation where individuals within our country find their rights threatened by some domestic policy. Their recourse includes the judicial system which applies constitutionally guaranteed protections to them, and failing this, the final recourse in our system of government involves the election of the officials who set the domestic policy. Contrast this situation with that of a foreign national whose rights may be threatened by U. S. foreign policy. These people have extremely limited access to judicial relief and more importantly they have no input to the legislative process that may in fact determine their future. Our system of government, that has careful checks and balances on our domestic policy, has no such equivalent structure for our foreign policy. Thus, if we are to respect the human rights of peoples outside our borders, some limitations are required on our government's actions to insure that individual rights, so prized in our country, are respected in our interactions with other peoples.

We no longer live in a parochial world where we can consider the election of our public officials

without concerning ourselves with the outside world. For good or for ill, the United States has become a dominant world power and the officials elected to national office will decide the fate of many peoples that had no voice in their election. This is not to say that we are advocating world participation in U. S. elections, but we do point out that there exist dramatic asymmetries between domestic and foreign policy with regard to the rights of the people affected by these policies.

The broad constraints laid out in the Constitution would serve well within a foreign policy. Ultimately, *individuals* are affected by the external actions of a government. Consequently, the external actions of a government should be constrained by the same considerations of individual rights that guide domestic actions. However, there will necessarily be a fundamental difference with regard to checks and balances on such a policy. We emphasize that foreign nationals do not and should not vote in U. S. elections, and thus special protections not necessary for those living within our national border may well be required for those, living outside of this country, that are affected by our foreign policy.

While individual rights as described in the Constitution of the United States provide a framework for determining a consensus foreign policy, their scope is not sufficient to encompass such a structure entirely. A further necessary restriction on our foreign policy is one of broad limitation on action. As stated by former Senator J. William Fulbright (Arkansas): "... insofar as a nation mobilizes its power and resources for aggressive purposes, that nation, regardless of ideology, makes itself our enemy. Insofar as a nation is content to practice its doctrines within its own frontiers, that nation, however repugnant its ideology, is one with which we have no proper quarrel."<sup>2</sup> We here postulate that most Americans would agree with Senators Fulbright's proposal to restrict the circumstances under which our government would act to actively overthrow an existing regime by force (as opposed to economic or diplomatic actions).

As a final restriction, we see these limitations not only on the goals of United States policy, but, more importantly, as a limitation on the methods used to achieve such goals. It is a broadly accepted principle in our country that in no case does the end justify the means: immoral means may not be used

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<sup>2</sup> Sen. J William Fulbright, 2<sup>nd</sup> session of the 88<sup>th</sup> Congress, 25 March 1964

in the 'pragmatic' pursuit of a moral end. While it is clear that this view is not universally accepted, one needs merely look to the imprisonment of many governmental officials in the past two decades to demonstrate that this principle has both legal and moral status in our country. Thus, we look for constitutional constraints on United States foreign policy (including both actions and goals) that protect the individual (human) rights of foreign nationals and limit our government's actions with respect to foreign governments.

*Constitutional Constraints.* Given the notion of extending the protection of some basic human rights to foreign nationals, it then needs to be defined which are those human rights that require constitutional protection for foreign nationals. These constitutional constraints will strongly impact our foreign policy and are not to be taken lightly. They should be few and simply stated; they should have value independent of any particular epoch, culture, race or nationality, and they should be a subset of rights already enjoyed by United States citizens. Moreover, it is not the purpose of this paper to reiterate broad sets of rights such as have been delimited through international agreements such as The United Nations Universal Declaration of Human Rights and the Helsinki Accords. Many of the rights and provisions of these documents have to do with the behavior of a government toward its own citizens. Furthermore, international law purports to limit the actions that one country can take with respect to another, but these limitations rarely provide a restriction to action. Thus constitutional limitations are necessary to ensure that the United States' actions are consistent with the individual rights of foreign nationals.

The principle of the sanctity of the individual speaks of the fundamental principles of life and freedom. We begin with the statement that neither a person's life nor his liberty can ever be sacrificed against his will for the purposes of state except when that person is directly engaged in acts that threaten the security of our country (an exception must occur with the declaration of war, as discussed in the next section). To allow sacrifice of these most fundamental human rights, of any individual, for any purpose short of security of state, threatens the fundamental rights of all individuals and will ultimately act to restrict the diversity among peoples that must be tolerated for people to be truly free.

If in the process of struggling to achieve freedom for many, we restrict or eliminate the freedom of some, then we must ask ourselves what noble end we have really achieved. Therefore our foreign policy must be aimed ultimately at freedom for the individual, however that individual may define such, while not limiting the freedom of any other individual.

Along with the human rights of life and freedom, the right of an individual to the security of property is a widely held notion. Though the definition may vary from culture to culture, indeed in some cases property is for the most part communal/tribal, the essential idea is that privately and legally owned objects can be expected to be invulnerable to claims by others (without due process of law), and we must ascertain that our government's foreign policy does not violate this fundamental right.

A moral foreign policy, in so far as it constrains the action of our government, tacitly assumes that only those individuals living within a country have the responsibility and the authority to change their regime. The goal of this policy is not to seek human rights for all individuals; rather, we seek to ensure that our government does not have a role in restricting the individual rights of any foreign national. Thus, while we hope for democratic values and respect for individual rights in other countries, ultimately it is a decision for each group of people to make based on their own values and beliefs.

Is it necessary to include in the Constitution these values which all Americans have prided themselves in advancing? We have a Congress, elected of many good people from around the land. Cannot these people look into their hearts and find the proper foreign policy without the hindering of constitutional constraints? ... we feel not! Our Constitution has embodied certain values that cannot be changed by a simple vote of Congress. Changes in this towering document require a two-thirds vote of the Senate followed by the approval of three-quarters of the state legislatures -- the framers of the Constitution felt that certain special protections could not be left to the whims of lawmakers. These protections were built into the Constitution, with explicit reference to a judiciary to ensure their proper application. We feel that similar protections for foreign nationals must now be added to the Constitution. Otherwise, constructive policy of one administration is easily reversed by the next -- the basic human rights of life, liberty and pursuit of happiness should not need to be debated in each and every congress (as they have been in recent years).

Thus, we feel that a requirement for the protection of the fundamental human rights of foreign nationals is a constitutional amendment to the United States Constitution that would specifically protect these rights.

*Non-intervention into the affairs of other countries.* A further human right, recognized in our constitution, is the right to participate in the decision-making process within one's own nation. This is a right that we cannot bestow upon the peoples of all foreign lands; however, we must ensure that our government takes no action that will restrict the political access of any person or group of peoples in any other country. In fact, it has been a principle of long standing in our country that we should stay out of the affairs of other countries. In a world community of nation-states, no one nation can make an uncontested claim of a monopoly in moral rectitude. U. S. foreign policy must be tempered by a doctrine of nonintervention in the internal affairs of other members of the world community. Simply put and broadly interpreted, the United States should have no military involvement or interactions with other countries except at the invitation of those countries involved.

Though a necessary constraint, the concept of 'intervention by invitation' is not sufficient in itself to insure that the United States would act in a manner consistent with the preservation of rights of foreign nationals. We must also require that the leadership of any country that would invite United States involvement within its borders be duly constituted<sup>3</sup>. This constraint is necessitated by a revisit of post World War II United States foreign policy in which the United States has installed a number of puppet regimes (e.g. Vietnam, Guatemala, Nicaragua, Chile) and that in some cases those regimes have then "invited" the United States military to aid them in preserving their fragile hold on power (e.g. Vietnam). The Soviet Union also used this strategy in its invasion of Afghanistan.

Under no circumstances should U. S. troops be brought into a civil dispute. Our military presence around the world should be in the role of enforcing a doctrine of non-intervention around the world.

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<sup>3</sup> That is to say: democratically elected by a citizenry enjoying universal suffrage in a free election process, succeeded from such elected leaders in a manner previously provided for and likewise approved by the electorate, or enjoying wide-spread popular support.

Economic incentives and sanctions would assume increased importance as means for influencing world affairs.

The U.S. as a world power cannot bestow the right to self-determination upon a group of people. That prerogative must be actively obtained and constantly reasserted by the peoples themselves. We can only declare that our own foreign policy will be such that we will never act in a fashion contrary to these basic values even for some 'greater good'. We should help any group of struggling people using economic and other political incentives, but the U. S. must have greater respect than it has previously shown for national borders, irrespective of whether the borders shelter friend or foe. For this purpose, we will require a second amendment to the Constitution.

*Security considerations.* We do, while seeking rights for peoples outside of our borders, recognize that national security is a legitimate concern and in fact, must form much of the basis of a foreign policy. However, we must here be careful to define exactly when our national security is indeed immediately threatened, and look to alternatives to force. Nonetheless, the world respects force, and if we as a country are indeed threatened, we must be ready and willing to use whatever level of force might be necessary to protect our own lives and liberty.

We must therefore define situations wherein national security concerns supersede concern for a moral foreign policy. Fortunately, this distinction is already well-defined historically -- this set of circumstances is known as WAR. War is the declaration of suspension of the normal accord of law, and instead the adoption of a limited set of principles, recognizing that national security becomes paramount over all other concerns. Only under this unusual set of circumstances can the due process of law be interrupted.

There are those in this country who oppose this limited distinction, and argue that the declaration of war is a slow process that can impede the necessity of rapid actions in a modern world. This opinion, of course, is that of those who oppose the War Powers Act. However, the suspension of the normal process of law, and the use of military force in another country, should be extraordinary, worthy of careful and **slow** examination. It seems that Americans have never been in a rush to get into

a war, and we should make sure that there is a broad consensus and support for any foreign adventures that our government might decide for us.

*Specific Amendments.* We propose that the human rights to be constitutionally protected for foreign nationals include (i) the right to life, (ii) the right to secure property, (iii) the right to due legal process (vis-a-vis the United States Government) and (iv) the right to participate in the self-determination of their country. With those considerations foremost, we propose that the following amendments be added to the Constitution of the United States:

- I *Except in the time of war, Congress shall pass no law, and the United States Government shall take no action, that has the effect of denying the rights of life and liberty to any human being, regardless of citizenship, without the due process of law in the United States of America.*
  
- II *Except in the time of war, the United States Government shall not send any member of the Armed Forces, any military equipment or support for military equipment to any foreign country, nor shall it send any funds to a foreign government, except when requested by a duly constituted government as ascertained by a two-thirds concurrence of the members of the United States Senate.*

The restriction "except in time of war" is, obviously, necessary to insure that the government can provide for the national defense.

This amendment to our Constitution will then be used to protect the individual rights of foreign nationals. "Due process of law" will ultimately involve the judiciary in deciding whether foreign policy actions are consistent with the goals set forth here. It is within the courts that protections under the Constitution are specifically defined, whether affirmatively or by exclusion. The role of the courts should not be to shape foreign policy, but in an analogous vein to the domestic role of the courts, they

will recognize the trends that are precedents set in this new foreign policy, and affirm that our actions are in harmony with the goals of these amendments.

***Applications of these principles to current world problems and situations.***

*South Africa.* The actions of the United States Government toward the country of South Africa, as practiced in the later part of the 1980s, is model of the type of United States interaction with a foreign government that we seek to encourage. On the basis of the moral principles stated earlier, we feel that all U.S. investments in South Africa contributing toward the maintenance of the status quo must be identified and eliminated. The policy of 'constructive engagement'<sup>4</sup>, practiced by our government through much of the 1980s not only proved to be a failed policy, but did not meet the criteria we here propose for interactions of our government with another foreign government (specifically, the second new amendment here proposed). Note that there is no substantial disagreement in our country over the abhorrent nature of apartheid, but rather how we should deal with this undesirable state of affairs.

Many private concerns in the United States have eliminated economic ties to the South African regime by divesting themselves of any holdings in companies doing business in South Africa. The United States Government took the important step in 1986 (Comprehensive Anti-Apartheid Act) of enacting legislation which banned new United States investment in South African businesses, restricted importation of (non-strategic) products into the United States and canceled United States landing rights for South African Airways. The success of these actions toward the elimination of apartheid are evident by the rapid changes in South African society that occurred toward the end of the 1980s and the beginning of the 1990s, and suggest that a moral United States foreign policy can lead to desirable results.

*Nicaragua.* Like South Africa, Nicaragua must be regarded as a success for the foreign policy as proposed here. Through the Reagan era, the United States undertook a very active, and some believe

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<sup>4</sup> "... encouraging change in the apartheid system through a quiet dialogue with that country's white minority leaders" (Ungar,S.J. and Vale,P. 1985 South Africa: Why Constructive Engagement Failed, **Foreign Affairs 64:** 234.)

illegal, policy of attempting to overthrow the Nicaragua regime through the use of force via a proxy force (the "Contras" or "Freedom Fighters"). When this effort finally failed, and the United States and the other countries of Latin America used diplomatic and economic leverage to force an election in that country (a step our country had previously opposed on the grounds that a fair election could not be held), democracy prevailed as it might have much earlier if the misguided Reagan policies had been abandoned. A peaceful transition of power took place and a sad period of history is now over; one wonders how many other Nicaraguans might have died if Conragate and the actions of Col. Oliver North had not been discovered and halted.

Had the amendments we here propose been part of the United States Constitution, Reagan would have been constrained from the beginning (long before the Boland Amendment attempted to limit United States activities in Nicaragua) from these reactionary policies, and this embarrassing aspect of American history might have been avoided.

*Eastern Europe.* Little need be said here about the almost surrealistic changes now occurring on what was just one year ago the other side of the "Iron Curtain". Yet we should reflect on the notion of *containment*, as envisioned by George Kennan in his now famous article<sup>5</sup> under the pseudonym X. The momentous changes in Eastern Europe came about, not by American force of arms, but internally, by their own hand. The basis of the philosophy of containment was firstly that we had not the means to change the Soviet empire, but just as importantly was the postulate that if we could contain the communist encroachment on the remainder of the world, then internal forces would slowly, but inexorably replace those repressive regimes. Military force was not used to change those regimes, but instead to contain them. We can trust that, given time, and if outside intervention is prevented, then all peoples will eventually act to put their house in order.

*Iraq.* It may seem that the proposals we have raised here might be relevant to the recent conflict in Iraq. However, it is important to note that both proposed amendments begin with the phrase: "Except in the time of war ...". Our proposals here have their basis in the proposition that American foreign

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<sup>5</sup> X (1947) The Sources of Soviet Conduct, **Foreign Affairs 25**: 566.

policy must be based on broad consensus within our country. The Iraqi conflict was a declared war and certainly had wide popular support. Thus the restrictions proposed in the two amendments would be unnecessary.

*International drug trade.* The recent enthusiasm in this country for the prosecution of foreign citizens involved in the international drug trade illustrates the need for the assurance of the due process of United States law in the case of criminal complaints against foreign nationals. Criminals in foreign countries are not due less protection under United States law due to their lack of United States citizenship. If we believe in our system of criminal law, we need not violate it for the apprehension of a foreign national violating United States law.

Drug traffickers are widely regarded as "extremely dangerous individuals", both in our country and abroad. The urge to bring them to justice -- get them out of society -- is great, so great perhaps that there naturally follows a temptation to use any expedients necessary (e.g. kidnapping) to accomplish this goal. If we truly respect our own legal code, we must forbid the use of extra-legal means of apprehending foreign criminals. As with the domestic protections described in the United States Constitution, these limitations exist not for the guilty, but to protect the innocent.

We feel that the first of the amendments, phrased above, would serve to limit our government to obeying the due process of law in convicting foreign criminals of a crime. While it may be a bitter pill to swallow when a person widely regarded as a criminal is able to go free, as will surely happen on occasion following application of the amendment, such fundamental protections serve us all by protecting against the whims of a tyrannous state.

*Terrorism.* While we cannot here hope to give solutions to this most intractable problem, we would like to make several comments regarding United States foreign policy toward terrorism. Terrorism is heinous and diabolical; we have neither sympathy nor understanding for terrorists; no apologies can be made for their activities. They have lost fundamental respect for human life, and have lost that to which they aspired. However, we must always ask what was their original goal that they were so frustrated from that they lost their humanity in its pursuit.

There can be no peace without justice, and in many places around the world, justice is still lacking.

The United States has, in the Middle East, in Central America and in Southeast Asia, pursued foreign policy goals and used methods that are in sharp contrast to the limitations contained in the amendments proposed here. The actions have led to the radicalization of many opposition movements with dehumanizing results. We must recognize that the United States is not blameless in the rise of terrorism.

Once again we emphasize that in no way do we intend here a defense or apology for terrorism. We must ensure however, that our actions in the future are more consistent with the notions of international human rights for all people, not just those with whose viewpoint we agree; while this will not eliminate terrorism, it will reduce our culpability in the rise of these movements.

One further point must be made with respect to terrorism, identical to that previously made concerning the fight against the international drug trade: in the process of fighting terrorism, we must not resort to their tactics and thus dehumanize ourselves. Blindly dropping bombs on Tripoli may bolster the American ego, but is sadly reminiscent of terrorism where innocent bystanders are killed for an apparent "greater good". We hope that application of the amendments proposed herein will lead to a reasonable limitation on such American actions. We recognize that this is not a solution to the problem of terrorism, but the ends do not justify the means, *ever*.

*Arms Sales.* Finally, we feel that we must comment on the sales of arms to other countries. As a single class of commercial interactions, U.S. weapons sales are often of unparalleled importance in affecting the civil rights of citizens of foreign countries. The very same weapons that are sold for a country's national defense are too frequently employed for purposes of internal repression. It must never be forgotten that the United States is the single larger supplier of arms sales in the world. We recommend that Congress pass a law that clearly prescribes acceptable behavior as a minimum condition for the sale of arms to any foreign country. It would be hoped that such legislation would be consistent with the standards proposed herein.

***Potential Applications for Hypothetical Problems in the Future.*** The availability of rapid and extensive communication of information together with the increasing internationalization of the world's

markets continues to change the world we live in. The cliché "global village" is becoming smaller and simultaneously more complexly interrelated among its component nation states. Democratic values in government and the lure of advancement in a market economy are in ascendance. Political institutions such as the European Community are redefining the traditional concepts of what is within the scope of a nation's authority.

These events would seem to bode for a new age of wonder and prosperity. Yet, it would be premature (and hopelessly idealistic) to presume that conflict and tensions in the world are soon to vanish. Beyond the reduction of superpower tensions, a further change in the world is becoming apparent: the beginning of the break-up of the nation-states. The press has concentrated on the possible break-up of the Soviet Union, especially with respect to the Baltics. Perhaps even more noteworthy, however, are the separatist movements in Canada (Quebec), the United Kingdom (Northern Ireland), Spain (Basque), Yugoslavia (Croatia), India (Sikh), and Ethiopia (Eritrea) to name a few. As the incentive to have strong nation-states recedes (the decrease in global tensions), the religious, tribal and economic differences can be expected to lead to an expansion of this trend. While ultimately this trend may be very desirable in allowing different peoples greater control over their own circumstances, the potential for conflicts in the near term will be significant.

Economic competition will also lead to new conflicts; we can already see the strains in our relationship with Japan. Energy supplies are sure to be scarce in the next century. The developing Third World may become impatient with their debt and with their exploitation by multinational corporations; these multinational corporations may even threaten national sovereignty. As the world retreats from superpower confrontation, it will soon find that mankind's problems have not disappeared, but instead have been obscured by the specter of nuclear weapons.

The United States is now and will remain for some time the dominant world power. Even as its economic prominence diminishes with respect to the Far East and Europe, and its worldwide military presence is scaled back, the opportunities and obligations for leadership faced by the United States will continue for many years. Without strong disincentives, the pressure will be overwhelming for the United States to involve itself in these struggles, especially if close allies are involved, especially if the

struggles turn violent.

In closing, the many marvelous and surprising changes throughout the world in the past several years should not lead us to assume that all of mankind's problems are now behind us. We must learn both from our previous errors but also from our successes. We must begin to ensure that while we seek to strengthen our democratic institutions here at home, we also remain faithful to these virtues for peoples of other countries. We must always remember justice cannot be maintained without the law.

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