

Going Legit

International legitimacy isn't a restraint on American power, but a precondition for its effective use.

It's a truism today that America's position as the world's superpower is shakier than it used to be. The nation's military is overstretched and unable to take on new commitments. Interest payments on the national debt topped \$400 billion in the 2006 fiscal year, threatening to crowd out needed expenditures to sustain economic competitiveness. And Washington has made little progress on urgent foreign policy objectives, including stabilizing Iraq, curbing Iran's and North Korea's nuclear programs, expanding global trade, and ending anti-American extremism in the Arab and Muslim worlds.

The Iraq war has directly caused much of this damage. Financially, it has been a huge drain: The Congressional Budget Office reported in mid-2006 that costs topped \$432 billion. Militarily, it has been punishing: The Pentagon

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admits that the conflict has badly stretched the Armed Forces, with 70 percent of troops scheduled to return to Iraq next year set to serve their third tours. In human terms, the price has been high: nearly 3,000 American troops have died to date.

The war's dearest casualty, however, has been to America's international standing, specifically its legitimacy abroad. The Iraq intervention has eroded the esteem, respect, and trust that the United States once commanded on every continent, hampering a host of current policy objectives and putting ambitious and important new goals out of reach. Rehabilitating America's legitimacy, therefore, will be essential to ensuring that the Iraq war does not exact a permanent toll on American global influence.

International legitimacy is a measure of the acceptability and justifiability of a state's actions in the eyes of other states and their citizens. Legitimacy, a kind of moral capital, reflects a collective judgment that the assertion of power, through a policy or an action, is valid even if it is unpopular. After all, leadership requires taking the occasional unpopular stand; but whereas popularity is inherently ephemeral, contingent on personalities and temporary alignments of interest, legitimacy is more enduring. It provides a foundation for respect and understanding that can transcend short-term, conflicting goals. Practically, when America's purposes are well-founded, openly articulated, and broadly consistent with its professed values, the use of power toward those ends is generally judged legitimate. But when the United States misleads others about its motives, acts on inadequate or selective evidence, flouts its own principles, or unilaterally exempts itself from broadly agreed standards of conduct, its legitimacy suffers.

The current administration has put little weight on legitimacy as a criteria for policy-making. The Iraq war, for instance, wasn't waged without regard for international legitimacy; on the contrary, eschewing legitimacy was part of the plan. From the start, Bush Administration officials derided the idea that American power should answer to international norms. Vice President Dick Cheney resisted calls by Secretary of State Colin Powell to bring Washington's case against Iraq to the UN, judging such diplomatic machinations a waste of time. The Administration even sometimes seemed to suggest, perversely, that if leading European nations or the UN were involved, results would be slower and less effective.

Undoing this damage is a precondition for setting U.S. foreign policy back on course. International legitimacy, viewed by the Bush Administration as constraining American power, must now be recognized as an indispensable tool for fortifying and extending it. As we look to a post-Bush foreign policy, progressives need

to recognize that a concerted effort to reconstitute America's legitimacy is the best way to safeguard American superpowerdom in the long term.

A History of Legitimacy

The increasing importance of international legitimacy and the rise of the United States as a global power go hand-in-hand. During the colonial era of great power politics, military prowess and territorial control ruled the day; countries with resources and armies did not worry much about the court of international opinion. But after World War II, as leading nations grappled with how to administer war-ravaged Europe and Japan and how to prevent future world wars, legitimacy moved to the forefront. International law was expounded through treaty-based organizations like the UN, NATO, and the Bretton Woods institutions. The dismantling of far-flung colonial empires and the emergence of the principle of self-determination helped fulfill the widening belief that power needed to be made accountable to peoples affected by it.

The United States enjoyed a great deal of legitimacy in the postwar period. The conservative scholar Robert Kagan argued in *Foreign Affairs* that U.S. legitimacy derived mainly from the Cold War itself: Among Western European governments and publics American actions were seen as justified to face down a totalitarian menace. While violent proxy wars in Latin America and Asia had some corrupting effects on America's image, they did not outweigh the perception of credibility in the Cold War's primary battleground of Europe. In contrast, political scientists Robert Tucker and David Hendrickson contend that America's legitimacy derived not from its struggle against communism per se, but rather from the respect President Harry Truman and his successors showed for international law and norms.

The end of the Cold War scrambled the situation. On the one hand, it left the United States as the world's sole remaining superpower. With liberal democracy ascendant, American values—including the market capitalism that much of the world once saw as synonymous with imperialist exploitation—now enjoyed wide acceptance in Eastern Europe, Asia, and elsewhere. With the Soviet Union gone, what Kagan identified as the “legitimizing effect” of the Cold War struggle evaporated. At the same time, America's legitimacy also came under closer scrutiny. This imbalance led to concern over the unparalleled degree of U.S. influence over the world economy, decision-making at the UN, and oil supplies in the Middle East. Skeptics impugned American motives and methods by pointing to examples of Washington's hypocritical support for oil-rich oligarchies in the Middle East, uneven commitment to global free trade, and insufficiently aggressive efforts to halt greenhouse gas emissions.

The Clinton Administration handled these concerns through balanced policies and a degree of self-regulation. It showed enough respect for the views of allies and for the UN to get away with circumventing international rules from time to time—as when it failed for many years (due to congressional resistance) to pay its dues to the UN or failed to ratify the International Criminal Court (ICC).

During the Clinton era, conservatives sharpened their longstanding critique of the idea that American foreign policy needed to enjoy international legitimacy. Many of these thinkers and politicians had, during the Cold War, seen international institutions like the UN as Soviet-influenced impediments to American interests. Now they argued that America must not be constricted by external norms of legitimacy, particularly if legitimacy might be arbitrated by international institutions like the UN that, despite the Soviet Union's collapse, still counted dictatorships and tyrannies among their ranks.

Such an argument was implicit in Kagan and William Kristol's 1996 call for a foreign policy based on "benevolent hegemony"—a concept that continued to animate neoconservatives through the 2003 Iraq invasion. Rooted in the Cold War experience in which Eastern European peoples drew inspiration from Western liberal ideals, benevolent hegemony held that if the United States acted from passionate conviction, its moral rectitude would be recognized and followed, if not immediately then in the long run. The concept of benevolent hegemony guided the Bush Administration's foreign policy even before September 11—evident, for example, in its decision in late 2001 to withdraw from the Anti-Ballistic Missile Treaty. The Administration knew the action would initially be derided, but it believed that the world would come to recognize that the creation of a North American missile shield would ultimately enhance not just American security, but also "the interests for peace in the world."

After September 11, Bush's decision to frame the battle against terrorism as one of good versus evil also drew on assumptions of benevolent hegemony. Bush expected that the self-evidently moral basis of the fight against al Qaeda would insulate the United States from any potential questions about the legitimacy of its actions, much as the battle against Soviet totalitarianism had once done in many quarters. For a short time after September 11, that logic seemed to prevail broadly, uniting the world in swift approval for the U.S.-led invasion of Afghanistan and other aggressive steps to clamp down on global terrorism.

But while the 2001 terrorist attacks temporarily legitimized an aggressive American foreign policy, they also emboldened the conservative critique of legitimacy itself. Conservatives—such as Attorney General John Ashcroft and his Deputy John Yoo—crafted arguments on the premise that to be constrained by internationally accepted legal constructs after the attacks would

be to short-change U.S. security and abdicate America's natural right to defend itself as it saw fit. Bush and his supporters summoned the visceral patriotism of a wounded nation to argue that the United States must unshackle itself from the constraints of international rules that could tie its hands. The embrace of the doctrine of preemptive war in the 2002 National Security Strategy was a deliberate signal to the world that the United States no longer saw itself constrained by norms of legitimacy, arrogating for itself a unilateral right with no articulated justification as to why it alone was authorized to preempt threats with force.

Thus the Administration approached the Iraq conflict with broad confidence in the world's belief in America's benevolent hegemony and a dismissive attitude toward the constraints of legitimacy. Although Powell managed to convince the Administration to make a pitstop at the UN Security Council to seek approval for its planned invasion, the UN membership (and much of the American public) correctly suspected the decision had already been made. And indeed, when the Security Council balked at Bush's case, the Administration moved forward anyway, constrained by neither the holes in its case for intervention nor by the world's resistance. Washington was convinced that its rightness, even if not ratified in advance, would be revealed after the fact.

But instead the opposite happened. As Francis Fukuyama describes in *America at the Crossroads*, it became apparent soon after the invasion that benevolence would not come to America's rescue. Instead of welcoming American soldiers with sweets and flowers, Iraqi society exploded into a complex civil war. U.S. forces failed to find weapons of mass destruction, debasing the war's central aim in both domestic and foreign eyes. And high-profile cases of prisoner abuse and war crimes against civilians made a mockery of Bush's lofty vision of bringing liberty and democracy to the Middle East. Both at home and abroad, even those who initially believed the invasion was well-intended—not just conservatives, but also many Democrats in Congress—came to feel duped.

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The Case for Legitimacy

While the United States remains preeminent in its military and economic strength, the most potent global challenges it faces—nuclear proliferation, terrorism, failed

states, and the scramble for energy—are not amenable to resolution through money or firepower. They depend on America’s ability to forge agreements, build consensus, and persuade others, all of which in turn are contingent on whether Washington enjoys international legitimacy.

A drive to restore America’s legitimacy, then, must rest on a clear understanding of what legitimacy is, how it is attained, and why it is useful. Bush has caricatured legitimacy as a straitjacket, a “permission slip” from the world. But legitimacy has two rather more respectable sources: rules and rectitude. The first involves authorization by a formal body or written set of laws, such as an international agreement or treaty. Acts that meet the criterion include measures taken in self-defense against an imminent threat under the UN Charter, policies on detention that match the Geneva Conventions, and extradition agreements consistent with the Rome Statute of the ICC.

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The second source of international legitimacy, rectitude, cannot be granted or taken away through any formal process; it must be earned. It revolves around the perception that a policy or action is justified and is not as easy to come by as following a set of

prescribed rules. Indeed, codified international law is too ill-defined, incomplete, and unevenly applied to be the only test of international legitimacy. For example, when the United States has employed the technique of targeted assassinations against al Qaeda leaders, international outcry has been muted despite the fact that such extralegal killings violate international law. Judgments of the rectitude of particular actions take account of individual circumstances: whether an action is provoked, what alternatives were available, and whether appropriate methods were used. In the case of targeted terrorist assassinations—where the provocation is clear, the prospects for capturing an elusive and well-protected terrorist alive are low, and the harm to innocents is nil—the weight of legitimacy may be on the side of the assassin.

International legitimacy—whether derived from rules, rectitude, or both—can be affirmed and judged in three different forums. First, standing multilateral institutions—principally the UN Security Council, but also international courts or regional entities like NATO and the African Union—can formally ratify actions such as military interventions. Second, states can individually express their support or acquiescence with the actions of other states. For example, when the United States, Europe, and others indicated in the spring

of 2006 that they would reduce funding to the elected Hamas-led government in the Palestinian territories because Hamas was a terrorist organization, they helped legitimize Israel's decision not to turn over collected tax monies to Hamas.

Third, legitimacy gets arbitrated by the public at large in newspapers, cafés, web sites, and street protests. Particularly in this last form, legitimacy can sound slippery and hard to define. But the concept's elusiveness does not diminish its importance. Liberal advocates of legitimacy need to embrace alternative sources of legitimacy when, for example, the UN Security Council is paralyzed in the face of a threat. The United States can—and should—act alone if it must. While the withholding of international support will suggest that others doubt the legitimacy of an action, such misgivings do not—in themselves—render the act illegitimate. While not prohibiting action, broad international reservations should occasion a hard look at why support is not forthcoming and whether reasonable measures—for example, further attempts at resolution short of the use of force—are warranted. A certain measure of legitimacy will derive from the very willingness to engage and debate where the boundaries of legitimacy lie, rather than standing aloof and claiming that such questions don't matter to Washington.

The lampooning of legitimacy by the Bush Administration, of course, has made the concept taboo in some circles. After the first presidential debate in 2004, John Kerry was drubbed by critics for suggesting that acts of preemption should have some widely recognizable justification (in his ill-chosen words, passing a “global test”). Afraid of being portrayed as weak on defense, many progressives now hedge their arguments, calling for building support for U.S. policies and rebuilding America's popular image, but not speaking of restoring international legitimacy.

Though a worthy goal in its own right, renewing America's popularity is not the same as restoring its legitimacy. A charismatic new president who traveled the world could help rebuild America's image and favorability ratings. A generous new foreign aid program might do the same. But, unless accompanied by visibly increased attention to international norms, these changes will not allay concerns over America's motives.

The crumbling of American legitimacy has had wide ripple effects, from the spread of jihadism to the rise of anti-American governments in Latin America to the inability of the United States to muster UN support for an intervention in Darfur. According to the UN's special envoy for Sudan, that country's beleaguered population is wary that international intervention is a first step to recolonization and has a “genuine fear of the Iraq scenario being repeated.” As

human rights advocate David Rieff has pointed out, even liberal interventionists clamoring to stop the Darfur genocide must confront the fact that, after Iraq, a U.S. invasion may well be more inflammatory than pacific.

Taking Legitimacy Seriously

Legitimacy is not a sweeping foreign policy vision, but rather a principle that functions like a set of guardrails to keep the country on course toward the overriding goal of sustaining American superpowerdom. Mouthing the rhetoric of legitimacy will not help. The Bush Administration's Orwellian invocation of the language of liberal internationalism—active promotion of freedom, human rights, and the rule of law—amid policies marked by unilateralism, preemptive force, and human and civil rights abuses has all but drained the meaning from those terms. In projecting the embrace of legitimacy as a centerpiece of its foreign policy, the United States will be judged not by its words but by its actions.

First, we must eliminate the most glaring contradictions between American values and policies. Practices including secret detentions, the rendition of suspected terrorists to countries known to practice torture, sub-standard judicial procedures for foreign detainees, and interrogation methods that violate the Geneva Conventions must be ended. Remedial half-measures like the Military Commissions Act of 2006 that attempt to unilaterally redefine long-standing international legal obligations only compound the problem. Senior officials responsible for torture, extralegal renditions, and the degradation of prisoners should be sacked and, where appropriate, prosecuted. The Guantánamo Bay detention center, a symbol of discredited practices and disregard for international norms, should be shuttered. Evidence against detainees that is obtained through methods judged coercive must be excluded. The right of all detainees to access U.S. courts through the writ of *habeas corpus* should be restored. By ridding itself of these most egregious emblems of illegitimacy, the United States will begin to change the terms of the debate, depriving critics of their most obvious targets.

Second, we need to take steps that demonstrate that the United States will make future actions conform to its values. The creation of an autonomous intelligence oversight body, perhaps modeled on the Federal Reserve Board, would help safeguard against the misuse and distortion of intelligence and could convince skeptics that the United States is committed to stopping the manipulation and misuse of intelligence. Augmented congressional oversight of overseas missions, military procurement, and contracting would likewise signify that U.S. defense policy decisions are based on stated criteria, not cronyism.

Third, the United States must take affirmative steps to restore relationships with other nations. The United States need not embrace the UN and its kin

uncritically, but it does need to wipe away the perception that it aims to undermine such bodies. Heavy-handed, punitive reform efforts at the UN have mostly failed. Instead, the United States should offer positive incentives that reward change at the organization with increased engagement, resources, and political support. For example, even though the United States voted against the formation of a Human Rights Council at the UN, it should nonetheless seek election to the body and help it build the credibility its predecessor lacked. Likewise, after years of standing aloof from the ICC and retaliating against allies that are party to it, Washington should reopen talks on terms that would allow the United States to join. The creation of new standing organizations and forums of like-minded states is another way to help legitimate U.S. policies. Replicating regional groups like the Gulf Cooperation Council, creating a regional security alliance with South Asia, or expanding a reconstituted NATO beyond Europe is a start. Beyond that, a worldwide organization of democracies could provide an important alternative to the UN. While jury-rigged alliances that are seen as rubber-stamping U.S. policy will not help, having a breadth of standing alliances that can be mobilized for different purposes will.

In addition to building new alliances and organizations, the United States must work to shape the norms against which legitimacy is judged. Having pledged itself to uphold legitimacy, the United States will continue to have a heavy stake in setting the rules used to assess it. For example, a major stumbling block to the kinds of humanitarian interventions that the country ultimately backed in Bosnia, Rwanda, and Kosovo was the absence of a legal framework to justify the use of force to prevent genocide. In late 2005, the UN membership adopted a “responsibility to protect” persecuted peoples, providing a legal foundation for future such interventions. Introduced by Canada, the doctrine initially drew opposition from countries fearing infringement on their sovereignty, but it eventually gained wide support. Such action provides a useful model for how the United States might shape new norms. Working with Canada and other countries that are viewed more benignly will allow the United States to piggy back on the legitimacy they enjoy globally.

Finally, a foreign policy predicated on legitimacy also requires a shift in the practice of U.S. policy-making and diplomacy. Some American diplomats, trained in an era when U.S. supremacy was unquestioned, are still accustomed to

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asserting U.S. positions by fiat. For some, acknowledging international norms and sensitivities is interpreted as reflecting weakness, rather than a sophisticated understanding of what it takes for American policy to succeed. By embracing a pragmatic, interest-based argument for legitimacy, policy-makers can factor it into decision-making without being accused of placing morality or deference to others ahead of hard-headed security calculations. To sustain legitimacy, the United States will need to put greater weight on retail diplomacy: adducing arguments, legal frameworks, facts, and evidence to justify American positions, and not expecting that its authority alone will carry the day. The United States should make clear that it is prepared to have its proposals, evidence, and experts held up to scrutiny, convincing others of its legitimacy, rather than assuming it.

A New American Legitimacy

While it may never make a good campaign slogan, the elevation of legitimacy as a pillar of U.S. foreign policy is deeply consistent with American values. Dating back to the colonial-era image of a “city on a hill,” America’s self-image has always been that of a country respected and admired for its principles. This attitude may explain why majorities of Americans polled in 2005 by the Center on Policy Attitudes and the Chicago Council on Foreign Relations report that they are supportive of the United Nations and even the ICC.

To be sure, Americans are strongly patriotic and deeply concerned about threats to their safety and way of life. They will reject concessions to international legitimacy that seem to interfere with America’s pride or its security, or to mandate inaction in the face of threats or moral imperatives. Nevertheless, accepting the imperative of American legitimacy does not imply that the United States can never claim some exemption from rules or norms. It does counsel judiciousness in choosing how and when to advance such claims. In asserting an exception, the United States should ground its claim not in subjective assertions of America’s benevolent motives or admirable values, but in objectively observable realities of its global position.

By taking legitimacy seriously, the United States will be able to mend relations with reliable allies, particularly in Europe, temper calls to rein in American power, and address domestic concerns about the misuse of American power, thus cutting into the attractiveness of new forms of isolationism. More than that, a foreign policy with legitimacy at its core both will enable the United States to restore its own standing in the world and make the promotion of its own aims easier. The challenge for the United States is to recognize the value of legitimacy now as it did some 60 years ago. In doing so, America can pick up tools it developed to save the world from tyrants and use them to save itself. ■