

Heritage Lectures

No. 1007
Delivered July 20, 2006



Published by The Heritage Foundation

April 10, 2007

Redefining Sovereignty

*Orrin C. Judd, Paul Driessen, Ramesh Ponnuru,
Jeremy Rabkin, and Becky Norton Dunlop*

BECKY NORTON DUNLOP, Vice President, External Relations, The Heritage Foundation: I want to begin by thanking Marisa Kraus, whose publishing company, Smith and Kraus Global, published *Redefining Sovereignty*¹ and who worked with me to bring this program to fruition.

Redefining Sovereignty is a very useful tool for those who are interested in or concerned about the subject of national sovereignty. It presents views from perspectives as varied as those of Kofi Annan and Jesse Helms. Before I turn the microphone over to our moderator and our guests, I'd like to share with you a portion of Senator Helms's speech to the United Nations in January of 2000. I'm taking this from his memoir, *Here's Where I Stand*.²

The American people want the U.N. to serve the purpose for which it was designed: they want it to help sovereign states coordinate collective action by "coalitions of the willing" (where the political will for such action exists); they want it to provide a forum where diplomats can meet and keep open channels of communications in times of crisis; they want it to provide to the peoples of the world important services, such as peacekeeping, weapons inspections and humanitarian relief. This is important work. It is the core of what the U.N. can offer to the United States....

[People of the United States] see the U.N. aspiring to establish itself as the central authority of a new international order of

Talking Points

- National sovereignty, free enterprise, individual rights, sound science, and economic prosperity are under increasing assault.
- Well-off environmental elites try to impose their views, concerns, policies, and agendas on the rest of humanity. For too long, this "eco-imperialism" has kept our least fortunate citizens from taking their rightful places among the Earth's healthy and prosperous people.
- Britain is showing signs of drifting away from the "Anglosphere" countries that share a common heritage and toward the European Union. That threatens the continuation of the traditional Atlantic Alliance.
- Sovereignty is fundamentally about defending our view of what the natural, reasonable, moral standards are. It is not something which you can outsource to lawyers in Geneva or New York or anywhere else.

This paper, in its entirety, can be found at:
www.heritage.org/research/worldwidefreedom/hl1007.cfm

Produced by the External Relations Department

Published by The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002-4999
(202) 546-4400 • heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

global laws and global governance. This is an international order the American people will not countenance, I guarantee you.

The U.N. must respect national sovereignty. The U.N. serves nation-states, not the other way around. This principle is central to the legitimacy and ultimate survival of the United Nations, and it is a principle that must be protected.

The Secretary General recently delivered an address on sovereignty to the General Assembly, in which he declared that “the last right of states cannot and must not be the right to enslave, persecute or torture their own citizens.” The peoples of the world, he said have “rights beyond borders.”

I wholeheartedly agree.

What the Secretary General calls “rights beyond borders,” we in America call “inalienable rights.” We are endowed with those “inalienable right,” as Thomas Jefferson proclaimed in our Declaration of Independence, not by kings or despots, but by *our Creator*.

The sovereignty of nations must be respected. But nations derive their sovereignty—their legitimacy—from *the consent of the governed*. Thus, it follows, that nations can lose their legitimacy when they rule without the consent of the governed; they deservedly discard their sovereignty by brutally oppressing their people.

Slobodan Milosevic cannot claim sovereignty over Kosovo when he has murdered Kosovars and piled their bodies into mass graves. Neither can Fidel Castro claim that it is his sovereign right to oppress his people. Nor can Saddam Hussein defend his oppression of the Iraqi people by hiding behind phony claims of sovereignty.

And when the oppressed peoples of the world cry out for help, the free peoples of the world *have a fundamental right* to respond.

As we watch the U.N. struggle with this question at the turn of the millennium, many Americans are left exceedingly puzzled. Intervening in cases of widespread oppression and massive human rights abuses is not a new concept for the United States. The American people have a long history of coming to the aid of those struggling for freedom. In the United States, during the 1980s, we called this policy the “Reagan Doctrine.”

There’s much more that could be included here, but in the interests of time I’ll conclude by saying, “God bless Jesse Helms.” And now I will turn the program over to Mr. Judd.

ORRIN C. JUDD, editor, *Redefining Sovereignty*:

Today, we’re going to hear from three of the people who contributed to the book: Paul Driessen, who is a senior advisor to several public policy think tanks, including the Congress of Racial Equality and the Center for the Defense of Free Enterprise. Paul also is the author of a book, *Eco-Imperialism: Green Power, Black Death*,³ which describes how the environmental fetishes of Western liberals have often devastated the poor of developing nations. We included a chapter from the book in our own, and today he will describe the concept of eco-imperialism for us.

He will be followed by Ramesh Ponnuru, who is a senior editor at *National Review*. He is the author of an excellent new book, *The Party of Death: The Democrats, the Media, the Courts and the Disregard for Human Life*.⁴ In *Redefining Sovereignty* we included the essay, “The Empire of Freedom: Where the United States Belongs, the Anglosphere,” which expands

1. Orrin C. Judd, ed., *Redefining Sovereignty: Will liberal democracies continue to determine their own laws and public policies or yield these rights to transnational entities in search of universal order and justice?* (Hanover, N.H.: Smith and Crouse, Inc., 2005). Essays by each of the participants in this panel, as well as by Senator Jesse Helms, can be found in the book *Redefining Sovereignty*.
2. Jesse Helms, *Here’s Where I Stand: A Memoir* (New York: Random House, 2005).
3. Paul Driessen, *Eco-Imperialism: Green Power, Black Death* (Bellvue, Wash.: Merril Press, 2003).

upon James Bennett's idea that the nations of the English-speaking world—in particular, but not exclusively—have the basis for a natural alliance because we share a distinct set of cultural values, institutions, overlapping histories, and social ties. This could afford an alternative to the Atlantic Alliance with the nations of Continental Europe, that seems finally to have come a cropper after 9/11, when they didn't show much interest in helping us. Mr. Ponnuru will offer some thoughts on where our alliances stand today.

Then we will hear from Jeremy Rabkin, who is a professor of Government at Cornell University, author of two recent books on sovereignty issues in his own right, *Law Without Nations? Why Constitutional Government Requires Sovereign States*⁵ and *The Case for Sovereignty: Why the World Should Welcome American Independence*.⁶ He is currently working on a book about the Law of the Sea Treaty, which represents yet another threat to American sovereignty. We included two of his pieces in the book, one on the Kyoto Treaty and one on the Geneva Convention. In light of recent developments in the Supreme Court in the *Hamdi*, case he'll focus on just the latter today.

PAUL DRIESSEN: Let me add yet another angle to this important review of how national sovereignty, free enterprise, individual rights, sound science, and economic prosperity are under assault. I got involved in the environmental movement back in the early 1970s. The river I grew up on was a working river—lined with towns, factories, farms, and paper mills. It was also a receptacle for all kinds of chemicals and wastes. You couldn't swim in it. The fish were unfit to eat, and there were no eagles or herons.

The environmental movement played a pivotal role in changing laws and attitudes about reducing pollution, conserving resources, and protecting species and habitats. It helped clean up our river, bring

back its eagles and herons, and reduce automobile emissions. If it weren't for the Greens, we wouldn't have made the improvements we have in environmental quality and human well-being.

But the movement became wealthy, politically powerful, and increasingly radical. It lost its moral compass. As Greenpeace co-founder Patrick Moore notes, it was hijacked by people who are politically motivated, economically and scientifically illiterate, and ideologically opposed to business, science, and technology. It particularly despises fossil fuels, biotechnology and chemicals, especially insecticides. Where it perceives a conflict between people and the environment, people typically come second.

The movement also became adept at generating a new crisis every week. As the Audubon Society's Dan Beard has put it, "What you get in your mailbox is a never-ending stream of shrill material, designed to evoke emotions, so that you'll sit down and write a check."

"I'm somewhat offended by it, intellectually," Sierra Club conservation director Bruce Hamilton has said. "But it works. It's what builds the Sierra Club."

Well, it certainly does that. But what's good for general Greenpeace is not necessarily good for the USA, you and me, the world's poor, or even the environment.

Don't get me wrong. The movement—and our laws and regulations—still do a lot of good. But all this money and clout clearly puts environmental NGOs—and their allies in the media, United Nations, and government agencies—in an ever-stronger position to use laws, lawsuits, regulations, pressure, lies, and scare tactics to dictate to companies, citizens, communities, and entire countries how they will live, do business, and address pressing human needs.

I call it "eco-imperialism": imposing the views, concerns, policies, and agendas of well-off environ-

-
4. Ramesh Ponnuru, *The Party of Death: The Democrats, the Media, the Courts and the Disregard for Human Life* (Washington, D.C.: Regnery, 2006).
 5. Jeremy Rabkin, *Law Without Nations? Why Constitutional Government Requires Sovereign States* (Princeton: Princeton University Press, 2005).
 6. Jeremy Rabkin, *The Case for Sovereignty: Why the World Should Welcome American Independence* (Washington, D.C.: AEI Press, Second Revised Edition, 2004).

mental elites on the rest of humanity. It's bad enough when they do it to middle classes in developed nations. It's worse when they hurt poor families in those countries.

But it's simply unconscionable when they impose their agendas—and their worries about minor, distant, speculative risks—on our planet's most impoverished people. There's barely enough time here even to outline this complex issue. To understand it, you'll have to read my book—and Orrin's. Let's begin with the language.

We have to give credit where it's due. The eco-imperialist movement is amazingly adept at crafting language that promotes its ideologies and agendas. Stakeholders used to be people who would be directly affected by a decision. Now the term means any NGO that has an ideological interest in an issue or outcome and the political savvy to get what it wants.

Sustainable development means restricting resource use and economic development to safeguard the hypothetical needs of future generations, usually at the expense of current generations, and without considering that future technologies will need different energy, minerals, and materials; find and produce them more efficiently; and be as different from what we use today as today's technologies differ from those we used in 1906.

According to the precautionary principle, society should oppose any technologies or activities that might create a conceivable risk to human or environmental health—even if the risk is purely conjectural, and even if the benefits vastly outweigh the risks.

Corporate social responsibility (CSR) is the new umbrella term for the eco-imperialist agenda. If corporate actions reflect and promote the agenda, they're responsible. If they're neutral or contrary to the agenda, they're irresponsible. CSR also suggests ethics and accountability. But while dishonest advertising will certainly get company officers in trouble—even the most misleading or dishonest claims in fund-raising appeals, media statements, or lobbying materials get a free pass when it comes to eco-imperialists.

And while activists and bureaucrats certainly seek greater power and control, concepts of respon-

sibility and accountability are not in their lexicon—even for the most disastrous or lethal policies.

We've seen these terms and rules applied domestically—in cases like ANWR, mercury emissions, and climate change. In the international arena, their impact is far worse.

There, protecting healthy First World stakeholders from distant, conjectural, exaggerated risks imposes real, immediate, life-threatening risks on the world's most powerless, diseased, and destitute people.

If you've seen Disney's *Lion King*, you know there's a Circle of Life. For humans, it is composed of electricity, disease prevention, clean water, and nutrition. As Hurricanes Isabel, Katrina, and Rita reminded us, life without electricity, refrigeration, safe drinking water, sanitation, food, and modern housing just isn't all it's cracked up to be. Now try to imagine what life is like every day for two billion people who never have electricity; who struggle to survive on less than \$500 a year; who are wracked by killer diseases; and who never enjoy the nutrition and basic necessities that we often take for granted.

Their Circle of Life has been replaced by a Circle of Death. Indoor pollution from their wood and dung fires causes four million deaths a year from lung infections. Unsafe water and spoiled food cause intestinal diseases that kill another four to six million people a year. Over 800 million people are chronically undernourished, and 200 million children suffer from Vitamin A deficiency. A million children go blind annually from the deficiency, and two million die from starvation and diseases they might well survive with better nutrition. Malaria infects over a half billion people every year, killing millions and contributing massively to Third World poverty. Other insect-borne diseases infect and kill still more.

And yet, in all too many cases, eco-imperialists perpetuate the problems. Abundant, reliable, affordable electricity would generate jobs and prosperity, dramatically reduce lung and intestinal diseases, and help preserve habitats that people now chop into firewood. But extremist groups—and the foundations, companies, and government agencies that support them—vigorously oppose fossil-fuel

generating plants, nuclear power, and hydroelectric projects, because they obsess about global warming, nuclear accidents, and damming rivers. Rainforest Action and other extremists fight bank financing of electrical projects like the Narmada Dam in India and the Bujagali project in Uganda. And they use little children to confront Citigroup and other banks with accusations that they are “hurting the Earth” if they bankroll the projects.

Biotechnology would help reduce crop losses from insects and plant disease, alleviate hunger, disease and malnutrition, increase family incomes for Third World farmers, and decrease land and pesticide use. But Greenpeace, Sierra Club, and Earth-Justice battle biotechnology with almost religious passion while wealthy foundations and organic food companies pour millions into their coffers. The Center for Food Safety is even attacking the company Ventria over its new rice, which reduces the duration and severity of acute, chronic diarrhea.

Insecticides would control mosquitoes and flies that spread killer diseases. Just spraying tiny amounts of DDT on the inside walls of houses, once or twice a year, keeps 90 percent of mosquitoes from even entering homes and reduces malaria rates by 75 percent or more. This enables doctors to provide modern drugs to people who still get malaria. Using this two-pronged approach, South Africa slashed its malaria rates by 96 percent in just three years. Zambia, Swaziland, and Mozambique achieved similar success. And Kenya, Uganda and other countries want to follow suit. But Pesticide Action Network, the European Union, and other groups rail incessantly about supposed risks from insecticides, especially DDT, and studiously ignore the infinitely greater risks that these insecticides would prevent.

Eco-imperialists also attack oil and mining projects—even in areas where extracting minerals to meet the needs of modern societies is the best available source of jobs and revenues. Close these operations, and workers and their families will end up in Third World slums. But that hasn't stopped Oxfam, Christian Aid, Amnesty International, and other groups from using flagrantly dishonest tactics in their campaigns against Newmont Mining in Indonesia, the Doe Run Company in Peru, and Occidental Petroleum in Ecuador, to name a few.

To deflect criticism over their callous policies, the activists laud the redistribution of wealth, promote expensive solar panels that barely power a light bulb and radio in mud huts, and extol subsistence farming that is land- and labor-intensive, subject to massive crop losses, and a guarantor of continued poverty and malnutrition. They also blame malaria on global warming and promote bed nets that might reduce malaria by 20 percent (versus 75 percent with DDT), which means hundreds of thousands of needless deaths that DDT and other insecticides could prevent.

Eco-imperialists say these policies preserve indigenous cultures, foster sustainable development, and protect people from the dangers of “climate chaos, estrogenic chemicals and Frankenfoods.” But as Kenya's June Arunga observes: “Cute, indigenous customs aren't so charming when they make up one's day-to-day existence. Then they mean indigenous poverty, indigenous malnutrition, indigenous disease and childhood death. I don't wish this on my worst enemy,” she says, “and I wish our so-called friends would stop imposing it on us.” That, unfortunately, is the real meaning of sustainable development, appropriate technology, the precautionary principle, corporate social responsibility, and environmental justice.

For too long, this eco-imperialism has kept our least fortunate citizens from taking their rightful places among the Earth's healthy and prosperous people. Who elected these eco-imperialists? Who gave them that right to what level of life, liberty, technology, health, and pursuit of happiness the rest of the world will be “permitted” to enjoy? We need to challenge this attitude, this callous disregard for the world's poor—this lack of honesty, ethics, and accountability. We need to put sound science and economics back into our policy decisions, demand honesty and accountability, insist on national and community sovereignty, and put people first.

RAMESH PONNURU: I will confess that when I was first contacted about this book, I wasn't quite sure what I was doing in it. My essay, which is reprinted in the book, doesn't at first glance seem to be about sovereignty or the redefinition of same or about transnationalism. At second glance,

though, I think that Orrin did know what he was doing, because my essay is about a way of thinking about the future of world order that doesn't require submersion into a superstate or submission to a transnational class of bureaucrats and lawyers, on the one hand, or on the other hand, a lonely unilateralism, perhaps tempered by very transient ad hoc coalitions.

As Orrin mentioned, I was writing about an idea that has been developed and popularized by James Bennett: the Anglosphere. I think the opening insight behind his idea is that as transportation and information costs have declined, culture will matter more than geography. So it was a mistake for the U.S., Australia, and Britain to think that their future lay in a tighter and tighter embrace of their neighbors: that the U.S. had a hemispheric destiny, that Australia should embrace its allegedly "Asian" identity, or that Britain should pursue ever tighter links with the European Union. Rather, it might make more sense for these countries to cultivate their ties with one another. All of these societies are characterized by some of the same and interrelated traits. They are high-trust societies; they have strong civil societies, free markets, common-law legal orders, and, of course, the use of the English language; and "they formed one another's natural first circle of cooperation," to quote Bennett. I think that that claim has been amply borne out by these countries' foreign policies in the last few years.

While largely supporting the Anglosphere concept, my essay includes some skeptical or cautionary notes. For one thing, I thought that it was a mistake to try to constitute an Anglosphere alliance at the expense of trying to salvage as much of our traditional Atlantic Alliance as possible with both old and new Europe, and I thought that a vigorous pro-American policy in Europe was something that the Administration ought to adopt, trying, in intelligent and creative ways, to strengthen our friends and weaken our foes on the Continent.

Since I wrote the piece, about three years ago, the grounds for skepticism have somewhat eroded. The Anglosphere is looking better and better as a potential foundation for American foreign policy and the traditional European alliance is looking pretty ragged. Now, I don't think my bottom-line recom-

mendation on policy would change, because neither of those trends has changed enough. My main bottom-line recommendation remains that we should do what we can to keep Britain from falling into a European super-state. That strikes me as the chief threat to both the emergence of the Anglosphere and continuation of the traditional Atlantic Alliance.

I think that the periphery of the Anglosphere has become a little bit more important now that we are seeing a real cementing of an American-Indian Alliance since the beginning of March, when President Bush and Prime Minister Singh announced what is largely a nuclear deal between our two countries. The strong votes of the House and Senate foreign policy committees suggest that there is now a pretty strong bipartisan consensus in the United States for an alliance with India, and I do think that is related to the Anglosphere. It is related to the British legacy in India and the fact that we have an English-speaking elite in India, and that we have liberal democratic values in that country. Tom Donnelly of the American Enterprise Institute has argued that Bush's foreign policy, whether consciously or not, aims at the creation of a Big-Four system, where the U.S., Great Britain, Japan, and India are basically the pillars of that alliance. Two and half of those countries, not coincidentally, are Anglospheric countries. I think Bennett calls Japan an honorary member of the Anglosphere, which may be stretching the concept a little bit too far.

My major concern is that I think Britain is showing some signs of drifting out of the Anglosphere and towards the EU, largely because of the mistaken strategic and sentimental notions of its current prime minister, who has been so stalwart in other respects.

JEREMY RABKIN: I want to talk briefly about the concept of sovereignty and then I'll talk about the law of war. I think that what we need to do is not to redefine sovereignty, but just to restore it, to revive it, to make it clearer to people. I think it was good at the time of the American founding and it's still good; I don't think it needs changes. But I will say people are confused about it, and indeed people say the concept itself is inherently confusing and old fashioned and archaic. My answer to that is "No,

no, no.” The simplest way to put this is just to ask yourself: Are you in favor of world government? If your answer to that is “No,” then I have to ask you: Are you in favor of chaos as the alternative to world government? If your answer to that is also “No,” then you are in favor of sovereignty.

Sovereignty is a way of organizing the world without having world government. People say that’s really simplistic, but that could be said about rights. If you like talking about rights, you should like talking about sovereignty because the two are not just analogues but they really grew up together. The first person to talk about rights in the way that we now use the term was Hugo Grotius, the 17th century Dutch jurist who is famous for writing about the law of war and peace. He explains sovereignty as a kind of analogue to rights, and rights as an analogue to sovereignty. Everybody understands this if they think about it for a minute. Some of you are young, so you can look forward to this experience when you have little children: “It’s my right,” they say, and you have to tell them, “You’re a child; you don’t have any rights.”

Rights talk, for all its limitations—and the most obvious limitation encourages people to think about their own rights in a way that is selfish and removed from other people—is still very valuable. It’s valuable to talk about rights and to maintain the rhetoric of rights. Talk of sovereignty is a reminder that the world is composed of units, and the units in fundamental ways have decision-power. People will say that this is a moral principle and will want to talk in some higher and more inspiring and spiritual way, and that’s good. But I think all the same moral objections to sovereignty apply to rights, and I think they also are based on a kind of misunderstanding.

Can you imagine rights and law in the state of nature? If you say no to that, then you must believe that all law and all rights are created by states. They’re all just a matter of positive law and whatever they are, that’s what they are, and you can’t resist them.

That, of course, is not our founding principle. Our founding principle is the opposite, that we are endowed with rights by our Creator, and therefore, our rights have a kind of moral force independent of being recognized in positive law. You could say the

same about the sovereignty of states, that it has a kind of moral force. That is even acknowledged in the U.N. Charter. More important, it is recognized in our own Declaration of Independence:

When in the Course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them....

That first appeal to the laws of nature and nature’s God entitles us to a separate and equal station, at least, among the powers of the earth. That is, it is appealing to a kind of natural-law basis for our sovereignty, for our independence. If you find that completely implausible, then you must think the world is in chaos and the only hope is world government. But if you put your hope in world government, I’ll tell you now, you’re going to be disappointed.

Similarly, if you can imagine a state of nature without an overriding government, can you imagine it as a place in which there is conflict? Well, yes, everybody always imagined it as a place of conflict because it was always understood that there could be aggressors, and there could be wicked people, so you would have to defend yourself. You might have to join with others in helping them defend themselves and opposing aggressors or wicked people. Sovereignty goes along with the right to defend yourself. It is, in some fundamental way, about the right to defend yourself, the right to be independent, as is our notion of natural rights.

So, let me talk briefly about the law of war. I think recent debates about the Geneva Conventions are symptomatic of people losing their grip on what the original idea was. Talk about the law of war is not new. It’s certainly many centuries old. If you look at Shakespeare’s play *Henry V*, people in Henry’s army are indignant because the French have killed the baggage boys and this is against the law of war. The chief judge on the Yugoslav war crimes tribunal, Theodor Meron, wrote several articles and a reasonably good book about the laws of war as you find them in the Shakespeare plays. This gives you an idea that people have

been talking about this for a long time. It was mostly customary, and people understood that there were going to be slip-ups, things that didn't go according to the rules, like massacring the baggage boys. When they first tried to codify this at the end of the 19th century in the Hague Peace Conference, they did so with a lot of precautions. For example, they said that the laws of land conflict would only apply among signatory states and only in conflicts when all of the participants in the conflict adhere to these rules. So, you were able to disclaim the authority of these rules if somebody else in the war was not living up to them. They didn't think it was reasonable to put yourself at a disadvantage, where you are bound by rules and other people can disregard them and get the jump on you.

It says in the preamble to the Hague Convention that they want to have rules and restraints "as far as military requirements permit." You take it for granted that of course you have to win, and that that takes priority, because you have to defend yourself. If you are in war, you shouldn't be in a war unless you are right. But if you are right, then you have the right to pursue the war effectively. If others defy them, then these rules won't apply.

There is something that people have forgotten but which is worth remembering. After the Hague Peace Conferences in 1899, they got together just a few years later in 1906; they tinkered with the rules a little bit and thought that they would get together every few years to do this. In between 1899 and 1906 there were several small colonial wars that we don't remember anymore, but we ought to remind ourselves how nasty they were. We can remember this from just some of the phrases that we still have. In the Boer War, the British confined Boer civilians in camps which they called "concentration camps." And they were nasty. In the international force that was sent to put down the Boxer Rebellion in China, one of the large contingents was from Imperial Germany. The Kaiser said, "Be ruthless! We will be Huns of the 20th century. We will show them." We still have that phrase "Huns." And in the Philippines insurrection, the American Army was so brutal in putting down the rebellion that an American gen-

eral published an article saying that this was really out of hand. President Theodore Roosevelt said, "You're the last one to talk. You presided over the massacre of the Indians at Wounded Knee." That's still with us—the recollection of that massacre in the last of the Indian wars.

All these things happened between 1899 and 1906. When they met to reconsider the rules, what did they do? They made some minor adjustments and make no reference to any of this. Why? Because those were nasty colonial conflicts out there with people who didn't play by the rules, so in fighting them you were not bound by the same rules as in other wars.

The Geneva Convention in 1949 is more detailed and ambitious; in some way, it reflects the atmosphere of the post-World War II era. But even Geneva has specifications: it applies to the treatment of people who subscribe to the Convention and live up to its terms.

We are now in a world in which people think the Geneva Convention is simply the law of the world, period. And there's no recognition on the part of most people in Europe that it doesn't apply to terrorists, that it couldn't apply to terrorists. There's no recognition that it assumes in the background some reciprocity, even though the Convention talks about "contracting parties," which makes you think of it as sort of a contract. Europeans assume that the world is under world law and this is it. Geneva does have a provision that in conflicts not of an international character, there will be very basic restraints of humanity: You don't mutilate the captives. And what that's saying is that there is in the background some kind of natural-law standard, but that all the 150 articles of this Convention don't apply to every conflict.

The world has now come to think that we live in a world which already has a lot of positive law, and that that's all the law there is—that the alternative to the Geneva Convention's 150 articles is chaos and barbarism. If that is true, we have a lot of chaos and barbarism, because it's just obvious that the Geneva Conventions are not going to apply to a lot of conflicts and we won't be able to sustain them in such conflicts.

I think this is a dangerous way of thinking, not only because it is potentially restraining us more than it should, but also because it is conditioning us to think that there is only one standard in the world, only one moral standard, only one natural standard. It is, of course, not natural at all but something that depends on lawyers getting together, in Geneva, and working out all these details and without that, we're animals. This is not a reasonable description of how the United States has proceeded. This is not, I think, a reasonable description of how civilized countries have proceeded. And it's a recipe for, on the one hand, escaping into fantasy in which you imagine that there's more real reliable law in the world than there is, and on the other hand, descending into really monstrous evil—as the people we are fighting have, because they think Geneva is ridiculous. And then there's nothing. Then there is just victory at all costs.

The defense of sovereignty is not just about disclaiming standards in international law that don't apply, or we think don't apply. It is also fundamentally about defending our view of what the natural, reasonable, moral standards are. What sovereignty fundamentally means is that you can adhere to your view of what you think is right, just as with the rights of individuals. The most fundamental right is the right to religious freedom, which is not fundamentally there so that everyone can be free, but so that everyone can be religious, so they can worship in what they think is the correct way. Our claim to be sovereign here is our claim to decide what we think is our moral obligation. That has to be something that we take seriously, and we decide it for ourselves. It is not something which we can out-source to lawyers at the International Red Cross in Geneva or U.N. Headquarters in New York or anywhere else.