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Response to Bobbitt

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Response

Michael Okrob

This essay is a critical response to Philip Bobbitt's article entitled, "Terrorism and the Market State," in which he analyzes 21st-century terrorism and how it relates to the development of the modern state.

In *The Shield of Achilles*, Dr. Bobbitt argues that the modern state as we know it is undergoing a fundamental transformation into a new constitutional order.¹ Based on the legitimating purpose of maximizing the opportunities for all of its citizens, the emerging market state will face challenges that the nation-state, its constitutional predecessor, has not been able to meet.

In his essay presented at Macalester's 2003 International Roundtable, the author relates the notion of a new constitutional order to the imminent threat posed by international terrorist networks. His analysis leads him to uncomfortable and disturbing conclusions about a society of states that has become increasingly intricate and multifaceted. In a nutshell, Bobbitt does not regard terrorism itself as the principal issue at hand. It is rather the predominant understanding or even misunderstanding of strategy and law that renders existing approaches to terrorism, such as the U.S.-led "war on terrorism," insoluble.

This response consists of three different sections that are directly linked to each other. The first section underscores the major contributions of Bobbitt's approach and analysis. The second part highlights difficulties and shortcomings of the argument that deserve further exploration and elaboration. The final section is primarily concerned with the aspect of root causes of terrorism and represents a more personal perspective on the notion of *complex contradictions* with regard to terrorism and the modern state.

Due to limitations of space and time, only those aspects that I regard as most crucial could be included. Furthermore, it should be noted that the literature on the central issues — international terrorism and the changing nature of the state — is extensive, to say the least. I acknowledge that this critique and its conclusions are based on an incomplete exploration of the academic discourse.

I will initially discuss the three main contributions of Bobbitt's essay. The first deals with the development of a larger framework for viewing the society of states. The second concerns the chronological account of events since September 11 and how it reflects structural changes on a global scale. Finally, I will address his thesis that the contemporary understanding of strategy and law leaves no solution for the war on terrorism.

Bobbitt makes an important point early on. The problem we are facing is not simply the sudden emergence of large-scale terrorism. The fundamental problem is our understanding of terrorism in the context of a world that is undergoing dramatic changes. In order to effectively confront terrorism—as well as numerous other threats to order, peace, security, and stability—it is necessary to reconsider the predominant understanding of the entire framework of state systems in the historical context. Bobbitt refers to this framework as the “constitutional order.” He explains that the constitutional order of the nation-state was characteristic of most states throughout the 20th century.

Bobbitt underlines a number of symptoms that altogether constitute unprecedented challenges to the nation-state: transnational environmental and epidemiological threats; the emergence of an international system of human rights; and last but not least, the development of delivery systems for weapons of mass destruction. As the constitutional order of the nation-state faces a “crisis of legitimation,”² due to its incapacity to meet these challenges, it will gradually be replaced by a new order, which he names the “market state.”³ The *New Left Review* summarizes Bobbitt's account of the market state: “Largely indifferent to the norms of justice, or for that matter to any particular set of moral values so long as law does not act as an impediment to economic competition,” the market state is defined by three paradoxes—government becomes more centralized, yet weaker; citizens increasingly become spectators; and welfare is retrenched while security and surveillance systems expand.⁴

Bobbitt is certainly not the first scholar to recognize that major changes for state, society, and the society of states are taking place. Nevertheless, what distinguishes his account is the incorporation of important developments reaching beyond the frame of reference of other theories. In this respect, the commodification of weapons of mass destruction, the emergence of a global terrorist network, and increas-

ing infrastructural vulnerability not only reflect the declining role of the nation-state, but also proclaim the arrival of the market state.⁵

Bobbitt's review of the war on terrorism over the past two years highlights a wide range of important events and developments that affected state and non-state authorities in and beyond the United States. Concurrently, he reminds us of three significant aspects of the war on terrorism.

First, the chain of violent events has taken on global dimensions. Terrorist attacks and terrorist-related activities since September 11, 2001 not only occurred in the United States, Afghanistan, and Iraq. Such activities also took place in countries ranging from the Philippines to Tunisia, Indonesia to Bali, and Saudi Arabia to France. These developments do not merely affect the United States, the so-called West, or a number of "rogue states," the repercussions of terrorism have reached a truly global scale.

Second, the war on terrorism has already resulted in significant structural changes both within the United States and internationally. Bobbitt highlights the fact that the declaration of war by the U.S., the enormous expenditures related to the war on terrorism, the ratification of the Patriot Act, and the formation of the Department of Homeland Security all constitute significant structural developments.

Looking beyond the United States, one encounters the same phenomenon: NATO's first-time-ever invocation of Article Five, unprecedented collaborative efforts among intelligence services, and sanctions by the United Nations against a member state in order to suppress terrorism all represent important structural transformations.

Third, Bobbitt reminds us of three critical occurrences: the Bush administration's pronouncement to consider a defense strategy that explicitly includes the option of preemption; the unauthorized invasion of a sovereign state; and the legal difficulties posed by the undetermined status of terrorist combatants. The author thereby accentuates the inadequacies and differing, if not contradictory, notions of contemporary international law.

In the context of the developments mentioned above, Bobbitt comes to a disturbing conclusion of central significance. The strategies and tactics employed in the war on terrorism predominantly reflect an understanding that was suitable for conflict and its resolution during the constitutional order of the nation-state. Nevertheless, the prevailing understanding of strategy and law is inappropriate for confronting decentralized terrorist operations.

Since “winning” the war on terrorism is itself ill defined, it is unclear what this war is being fought for and what it essentially requires. There is no consensus over legal and strategic parameters for state action and not even a commonly accepted definition of terrorism. Furthermore, the possibility of losing this war has not even been considered. The problem of fighting a war on terrorism at this point is therefore “practically insoluble.”

Philip Bobbitt provides a powerful argument. The aspects that I just highlighted as significant contributions, however, also raise questions and concerns. The concept of constitutional orders forms the basis for Bobbitt’s conclusions. It is hence legitimate to look for difficulties, shortcomings, and imperfections that might challenge this concept. In summary, one could ask the following questions:

- (1) Is there sufficient historical evidence to justify the notion of constitutional orders in general?
- (2) Is the society of states truly undergoing a transition toward a system of “market states”?

The first question would require a rigorous analysis of historical trends in terms of strategy and law that falls beyond the scope of this response. One should keep in mind, however, that the issue has been raised in the literature, and some critics have expressed stark opposition.⁶

With regard to the second question, critics claim that the purpose and main characteristic of the market state, i.e., “maximizing the opportunity for all its citizens,” reflects an approach that various states have pursued in the past. The critics do agree that the consequences of technological change and its implications for terrorism will have a profound effect on the nature of the state. Nevertheless, they strongly disagree with the idea that this will bring about anything like a new

constitutional order, in particular one that suggests the emergence of the market state.⁷

The late Paul Hirst of the University of London claimed that Bobbitt's account of different constitutional orders involves too many distinctions without fundamental differences. He further questioned the durability of the market state concept, arguing that in spite of high levels of international trade and intercultural exchange, territoriality and nationalism "still dominate the forms of state legitimization."⁸

In my opinion, this is a significant critique. Whereas I agree with the observation that the nation-state is facing unprecedented challenges (international terrorism certainly being one of them), I have not been able to relate this to the origins of a so-called market state.

As I pointed out earlier, Bobbitt's chronological account of the developments that followed September 11 suggests that extensive structural changes within and beyond the United States have taken place. In this context, it would be worthwhile to extend the analysis to the structural power exercised by terrorist networks such as Al-Qaida.

The late Susan Strange argued that capabilities or resources are a poor way of judging relative power. Rather than focusing on "power from," Strange emphasized that it is "power over" outcomes that really matter. "Power over," she added, need not be restricted to outcomes that were consciously or deliberately sought.⁹

Susan Strange distinguished between relational power (directly exercised coercive power) and indirect structural power (conscious or unconscious power over outcomes).¹⁰ This distinction raises further questions about Bobbitt's analysis: What would the distribution of relational and structural power look like in the constitutional order of the market state? To what extent have international terrorist organizations altered and affected the structural and relational power framework that used to be dominated by the nation-state?

One must not ignore the substantial structural power of Al-Qaida. The mere existence of a global terrorist network continues to result in significant structural changes. In this sense, Bobbitt even regards the structural power of Al-Qaida as one of the greatest threats to victory in the war on terror. He suggests that a war against terrorism must be considered lost if the United States were forced to undergo further

structural changes and “to resort to martial law for an extended period.”

Furthermore, it would be worthwhile to analyze the relational power exercised within “virtual market states,”¹¹ such as Al-Qaida. Whereas it might be more clear-cut to identify and characterize the nature of a chief executive officer’s relational power in a multinational corporation, it becomes more complicated with regard to the type of leadership employed in a decentralized and de-localized terrorist network.

The question to be addressed involves the nature of the power exercised by Osama bin Laden and other leading commanders within their own organization. So far, several accounts suggest that even if bin Laden were killed or captured, Al-Qaida would continue its operations.¹² As a result, one must ask: If the leadership command is not the weak point in this organization, what is? What measures need to be taken in order to effectively undermine the authority of such “virtual market states”? Bobbitt’s notion of the market state neither provides a solution nor an approach because he overlooks this dimension of the problem.

Bobbitt argues that a new concept of strategy and law will be necessary so as not to lose the current war on terrorism. I would add that reconceptualizing our understanding of the distribution of power and, more specifically, structural power will allow us to develop strategies to better cope with the direct and indirect power of our adversaries.

Bobbitt fails to address the question of identity in the constitutional order of the market state. One of the reasons for this omission might be that it is yet undetermined exactly what type of market state will prevail in the long run.¹³ Nevertheless, identity and its implications for the war on terrorism are of immediate interest today, therefore this topic does deserve attention.

The wider question that comes to mind is concerned with identities that will motivate individuals or allow them to be organized and moved for political purposes. One must ask: Will the impact of ideology, religion, culture, and national identity largely disappear and give way to merely economic driving forces? As there continues to be no consensus with regard to motives and driving forces in international

terrorism, it might prove helpful to consider the impact of economic forces along with the capacity of identities.

If we need to prepare ourselves for the next epochal war—a possible evolution of the war on terrorism, as Bobbitt claims¹⁴—two questions come to mind. First, which parties will be involved in this conflict or series of conflicts? Second, which forces will be employed and by whom in order to draw individuals to these particular parties?

Bobbitt successfully demonstrates that the International Roundtable's theme of "Complex Contradictions" is more than appropriate to describe the unprecedented challenges in the context of the war on terrorism. The central thesis or perhaps central contradiction is that the technology, tactics, and strategies that helped resolve the conflicts of the 20th century and significantly increased global stability have brought about new challenges that the nation-state cannot cope with any longer. International communication networks, growing infrastructural vulnerability, and the proliferation of weapons of mass destruction set the stage for large-scale terrorism on a global level. Even though terrorism has turned into a phenomenon reflecting common characteristics around the globe, there does not seem to be a single root cause or even a common set of causes. One could call this yet another complex contradiction.

An international panel of leading experts on terrorism convened in Oslo in June to discuss the root causes of terrorism. The panel distinguished between more general structural preconditions, which allow terrorism to develop in the long run, and immediate precipitates, the "events and situations that... precede, motivate or trigger the outbreak of terrorism."¹⁵

The panel dismissed the notion that poverty, state sponsorship, and religion as such were root causes of terrorism. Instead, it highlighted such aspects as lack of democracy, civil liberties, and the rule of law; rapid modernization in the form of high economic growth, hegemony, and inequality of power; illegitimate or corrupt governments; and external actors upholding such governments. In addition, the experts identified factors that helped sustain terrorism. These include cycles of revenge, the need of the terrorist group for its own survival, and profitable criminal activities. The "no-exit" dilemma, which means that terrorists may simply continue the struggle because they see no option of

return to mainstream society, might be regarded as yet another challenge.

In the context of Bobbitt's theses, one must inevitably ask how the market state would address these root causes? Even though Bobbitt encourages the continued search for root causes, he does not provide directions on how to proceed once the causes have been identified. Concurrently, we need to gain an understanding of the limitations of the market state. For instance, it is not clear whether the market state will in fact be more able than the nation-state to adapt to the dynamics of terrorism. These dynamics are reflected in the changing purposes, goals, and motivations of terrorist networks.

There is still much to be said and much to be asked about the changing nature of the state and the changing nature of terrorism. I would not be surprised if Philip Bobbitt's essay and the subsequent discussion, which includes this response, will leave the reader with more questions than answers. If I correctly interpret Bobbitt, this should be regarded as a positive first step in reconsidering our understanding not only of the society of states in a historical context, but also its implications for the relationship of strategy and law.

In conclusion, I do agree with Bobbitt that a new approach incorporating the "big picture" might be useful in developing this new relationship. Nevertheless, Bobbitt should acknowledge the limitations of his own framework due to differing interpretations of history.

In addition, even after accepting the notion of constitutional orders, I am not entirely convinced that the constitutional order of the market state, with all its alleged characteristics, will become the principal framework for the vast majority of states.

Finally, I disagree with the premise of the inevitability of future epochal wars that bring about new constitutional orders. I do acknowledge, however, that the challenges to today's nation-states, the rise of non-state authorities such as terrorist networks, and the uncertainty linked with the future of the state do provide the potential for violent and non-violent, conventional and unconventional, small- and large-scale conflicts in the future.

As an addendum, let me turn to a more implicit complex contradiction that I encountered in preparing this response. In a world in which generalizations and oversimplifications have become a comfortable standard for dealing with the ever-growing complexity of global affairs, it is a rare occurrence to encounter an argument that is as thoroughly developed and as convincingly presented as the one by Philip Bobbitt. Instead, government and opinion leaders repeatedly attempt to make sense of contemporary developments by drawing black-and-white pictures of an increasingly colorful world. These simplifications have resulted in a number of commonly known dichotomies, such as Good versus Evil (or the Axis of Evil) and “being with us” versus “being with the terrorists.”

Even though such inaccurate and oversimplified dichotomies have proven to be neither intellectually appealing nor helpful in terms of creating a more stable or just world, I dare to predict that complex arguments, such as the one presented by Bobbitt, will find it harder and harder to reach a sensible, interested, and engaged audience. We should, therefore, regard it as both a privilege and a challenge to discuss Professor Bobbitt’s analysis.

Notes

1. Philip Bobbitt, *Shield of Achilles: War, Peace, and the Course of History*, 2002a.
2. *Ibid.*, p. 213.
3. *Ibid.*, p. xxvii.
4. Balahrishnan, *New Left Review*.
5. U.S. Ambassador L. Paul Bremer, who currently serves as Presidential Envoy to Iraq, supports the notion of vulnerability by stressing that terrorists can take advantage of an important asymmetry: Whereas “defenders have to protect all their points of vulnerability around the world, the terrorist has only to attack the weakest point.” L. Paul Bremer, III, “A New Strategy for the New Face of Terrorism,” *The National Interest*, Thanksgiving Special Issue (2001): 23–31.
6. For example, see Paul W. Schroeder’s review of *The Shield of Achilles* in *The National Interest*. While Schroeder commends Bobbitt’s discussion of different approaches to relations between international law and international politics, he strongly questions the quality of historical scholarship, claiming that the notion of distinctive legitimating principles captured in the idea of “constitutional orders” is based on factual errors and misinterpretation of historical events. Paul W. Schroeder, “A Papier-Maché Fortress,” *The National Interest* (Winter 2002): 128–136.
7. *Ibid.*, p. 132.

8. Hirst, p. 6.
9. Strange, p. 25.
10. Ibid., p. 91.
11. David Runciman 2002.
12. Tony Karon 2003.
13. In this context, I highly recommend Bobbitt's discussion of *Possible Worlds* (chapter 25) in *The Shield of Achilles*. The author offers three fundamentally different future scenarios of a society of market states. See Bobbitt 2002a, pp. 715–775.
14. Bobbitt 2002b.
15. Norwegian Institute of International Affairs (NUPI), p. 2.

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