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Sovereignty is formally assumed for the modern state, perhaps marking the distinction of simple authority (eg, Hobbes) measured against ideas of social contract (eg, Rousseau) that assume legitimacy under formal arguments about democracy and nationalism. At the same time, the legitimacy of various states and governments is increasingly subject to open question. The most current high profile example may be reflected in arguments about regime change opposing events in countries like Libya and Syria, linked with a sense that doctrines like a duty of rescue and ideas about the “international community” at the UN level have been ineffective. But the issue is also quietly present in many countries wherever claims are raised about the unsuitability of colonial administrative boundaries drawn by foreign colonial officials without regard to ethnic groups, etc. Defined in practical terms, internal and external legitimacy would seem to be different things.

“Failed states” arguably also reflect this judgment, simply because they are not viewed by their own people as legitimate enough to overcome the pull of clan or family, and culminate in a failure of public order. But the problem arguably was present for a much longer time in conjunction with the admitted failure of traditional non-intervention doctrines in proxy wars, as well as the observed problem in many developing countries incorporating legal pluralism (for example, Africa), in which the national government’s writ largely disappears beyond the capital (as traditional authority and their laws under legal pluralism are more effective locally than national law).

Under such circumstances, the practical issue is whether it still makes sense to even talk of sovereignty, and whether a better set of rules or at least approaches might be articulated to address in practical terms the uneasy relationship between sovereignty, legitimacy and intervention in terms of how foreign states undertake or justify actions reaching outside their own territory. In these terms, the problem is less about invasive short term self-defense or similar measures under traditional analysis like the Caroline rule, and more about how to deal with the longer term divide between sovereignty and legitimacy.