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# Cross-eyed: Planning When Host-Nation and Intervener Rule of Law Strategies are Unaligned

By Major Dan Maurer\*

*This essay imagines a fictional future ground conflict pitting the United States and a host country against a non-state militant terrorist organization that has seized territory. This hypothetical scenario imagines a “rule of law” mission in the immediate wake of conventional combat, but suggests that this task will be, ultimately and inevitably, hampered when the intervening and host nation have different strategic understandings and intentions for their rule of law activities. Section 1 provides the context, explaining the roots and effects of the crisis, legal authorities involved in the conflict, and the challenges faced by US forces and the local government in the wake of conventional ground operations. Section 2 explores the tension between tactical and strategic planning in crafting a rule of law operation to address the ongoing challenges. The essay then examines the possible motivations, purposes, and strategies each side may pursue in Section 3, in order to determine whether the two parties are acting ‘cross-eyed’—with unaligned, divergent strategic views. After providing a road map for addressing this question, Section 4 discusses the dangers of cross-eyed rule of law interventions. It concludes by offering a two-front treatment program to get RoL eyes straightened and equally perceptive.*

Imagine that the United States Congress, after a spate of new viral ISIL [\[1\]](#) videos depicting hostage decapitations and slavery again terrifies and enrages the global public, passes an Authorization for the Use of Military Force (AUMF). This AUMF grants the President discretion to:

Use any means necessary, including persistent conventional ground forces as the President determines necessary, to degrade, dismantle, and defeat ISIL forces, to re-establish effective governance over territory currently occupied by ISIL and their collaborators in the sovereign nation of Iraq, in coordination with and in support of the Government of Iraq (GOI).

This AUMF includes a sunset provision, effectively terminating the President’s use of persistent ground combat forces 180 days later, unless reauthorized by [Congress](#). After negotiating a formal and public “request for help” from the Iraqi Prime Minister, and on the advice of the Commander of Central Command (CENTCOM), the President orders the immediate deployment of the Global Reaction Force from the XVIII Airborne Corps, [\[2\]](#) a follow-on force of a heavy brigade [“regionally-aligned”\[3\]](#) to CENTCOM, Marines from the 2nd Marine Expeditionary

Brigade, and an Army Division Headquarters to serve as the Joint Ground Task Force Headquarters.<sup>[4]</sup> Operation DESERT RETURN begins.

After five weeks of grueling continuous ground combat operations, including bloody block-by-block brawls in Mosul and smaller towns in Nineveh, ISIL ability to conduct coordinated attacks and a sustained presence in Mosul, Tikrit, and rural western Iraq is largely shattered. Popular local uprisings led by several large Shiite families—backed by Iranian arms and embedded advisors (suspected to be members of Iran’s Quds Force) and fueled by resentment of Sunni ISIL tactics—significantly shift momentum in favor of the GOI forces and enable impressive tactical intelligence gains for U.S. forces. What is left of ISIL command and control slips back into isolated havens in Syria, though their numbers are trimmed significantly by Special Operations Forces along the border.

However, after nearly two years of the terrorist organization’s presence and de facto rule, and the month of intense ground combat and maneuver in northern Iraq, any semblance of local government has dissipated, leaving the population without consistent or adequate civil governance, social services, or economic infrastructure. Saladin Province hosts more than a dozen refugee camps. Mosul in particular is now better described as a collection of armed enclaves, with no functioning court system, endemic crime, and its municipal police force scattered and intimidated by roving gangs. Rates of rape, assaults on assumed homosexuals, and intimidation of Kurdish aid workers from Erbil have been increasing, and many of these vicious attacks are captured with smart phones and uploaded to YouTube. Charred husks of armored vehicles tilt off the sides of roadways. Mortar tubes and rusting shell caches are found at the edges of dusty soccer fields. The international media is quick to describe the northern half of Iraq as a “scorched earth,” ripe for a [humanitarian crisis](#). CENTCOM leaders begin to speak of their new mission to stabilize what they call “ungoverned space.”

Within days of a United States-declared cease fire in the Joint Ground Task Force’s Area of Operations (AOR), headquartered (once again) in Tikrit, platoon-sized patrols begin to receive widespread claims from the local population of “war crimes” committed by other Iraqis—sympathizers and abettors to the once-nascent ISIL regime. Rumors of community-based vigilante justice begin to flood media outlets. Stories compare these reprisal slayings of suspected ISIL adherents and ad hoc prisons (hastily erected in dank basements and quickly shuffled neighborhood to neighborhood) for those suspected of aiding ISIL to extrajudicial mob lynching. At a tense joint hearing of the Senate and House Armed Services Committees, the Secretary of Defense, sitting beside the Chairman of the Joint Chiefs of Staff, describes the state of urban living in northern Iraq as “approaching feral.”<sup>[5]</sup>

In response, several Congressman voice their concerns that the U.S. military has not yet deliberately focused its forces on “improving the conditions in the current CENTCOM AOR such that basic rights, duties, and security of the population are reinforced through a commitment to the Rule of Law” so that Iraq “does not descend into a country of savage ghettos.” By the next day, the Task Force Headquarters—now well-informed of the burgeoning civil disorder, its effect on national and international opinion, and its effect on post-combat stability operations<sup>[6]</sup>—is ordered to begin planning sustainable Rule of Law (RoL) projects as an operational line of effort synchronized with its on-going offensive mission of hunting remnants

of ISIL, and aiding the GOI's faltering attempt to reestablish urban order and civil control.<sup>[7]</sup> As a first step, the Task Force adopts the USAID definition of "[Rule of Law](#)"<sup>[8]</sup>—and resolves to generally seek the "effects" (*e.g.*, no arbitrary state action; state monopoly on the use of force; access to an impartial legal system; the state protects basic human rights) encoded in Joint and Army doctrine.<sup>[9]</sup> Not all are so enamored: one Congresswoman stirs up controversy when, on *Meet the Press*, she quotes John Adams, describing RoL efforts in Iraq "as arrant an illusion as ever hatched in the brain of an enthusiast, a politician, or a maniac."<sup>[10]</sup>

## Putting the Cart Before the Horse

Before the Task Force jumps into full-fledged RoL planning efforts, it should first appreciate the dilemma they now face. Though in receipt of a crystal-clear mission order from its higher headquarters, questions remain open and subject to considerable disagreement: they will directly or indirectly affect the long-term viability of the projects they chart and prepare. Unfortunately for the staff and commanders, the very planning process to which they subscribe may make answering those questions—or even resolving them clearly enough to fully understand their relevance and materiality—a daunting affair. As Sun Tzu wrote (probably apocryphally), "tactics without strategy is the noise before defeat."<sup>[11]</sup>

It is still unclear, for example, the extent to which the national government in Baghdad is willing to commit resources to this effort, or whether the U.S. Congress will provide a new round of [CERP funds](#)<sup>[12]</sup> to spur local commanders to undertake micro-development projects. Nor is it obvious whether the U.S. military's own doctrine and strategy have adequately emphasized the reality of RoL efforts within larger military campaigns and general security cooperation [missions](#). During recent testimony before the Senate Armed Services Committee, three former Secretaries of State discussed "global challenges and the U.S. national security strategy" and RoL was not mentioned [once](#). Nor was RoL ever mentioned by the Senate Armed Service Committee Chair, the ranking Minority Member, the Chairman of the Joint Chiefs of Staff, or the Secretary of Defense at an even more recent [Congressional hearing](#) on future planning in the DoD. If American grand strategy and its implementation abroad could be analogized to Hollywood filmmaking, based on the importance RoL has in the national political conversation, RoL would be the un-credited cast of extras that found a prominent role in the screenplay's script, but did not appear in any of the movie trailers.

Returning back to the urgent tactical concerns of the actors involved in the fictional future scenario posed earlier, other questions remain unanswered. How involved (if at all) should the Iraqi military be in the RoL effort, and at what echelon? Will American infantry platoons disembark their Bradley Fighting Vehicles to assist local communities rebuild courtroom facilities? Will civil affairs teams, military police, and judge advocates be investigating allegations of Iraqi-on-Iraqi abuse, or instead be taking a lower profile approach to mentoring the GOI agents who will, in time, conduct those inquiries?

What metrics or indicia of success should determine that essential services have been restored, infrastructure repaired, and legitimate civilian control regained? Who, ultimately, decides what an "essential service" is, what priority it ought to receive and level of effort it should demand

relative to other such (competing) services? How “secure” and “stable” must the AOR be in order to justify a transition of RoL to other, non-military, agents?

Finally, should the military’s strategy be one of “arrest, detain, prosecute,” or “[clear, hold, build?](#)” This question is particularly pressing given the AUMF’s sunset clause and because answering it in one way implies using RoL as a tactical weapon *against an enemy* (here, criminal law and procedure and judicial system-building) to create conditions of security and stability so that the intervening United States can justify a credible departure on its own terms (*i.e.*, declaring “victory”).<sup>[13]</sup> Answering it another way, however, may imply that RoL is, instead, the end state—the goal that *signals to the population* that the GOI is legitimate, in control, credible, and the guarantor of citizen rights. In this way, the *prefatory* question becomes: is RoL a tactic, a strategy to reach an “end,” or the “end” in and of itself? Even more challenging: who decides the answers?

### What Being Cross-Eyed Looks Like

Before describing conditions in which two states might have differing strategic views, “strategy” should be defined. For the purposes of this essay, let “strategy” or “strategic” relate to decisions, flowing from a legitimately-enacted policy choice, that enable preparation for deployment of armed force, decisions to use armed force, decisions during armed conflict that continue or adjust the use of armed forces, and decisions about what will end that conflict. It generally follows the definition offered by strategic theorists.<sup>[14]</sup> Lawrence Freedman condenses and generalizes “strategy” to mean “the art of creating power;” but for the practitioner, he suggests that the best way to think of strategy (or, to think strategically) is to think of it as a “story about power told in the future tense from the perspective of a leading character.”<sup>[15]</sup>

This suggests a need for defining “power” as well. An actor—whether it is a group, person, or state—“express power by influencing, changing, or controlling the behaviors, expectations, resources, or the capacity to volitionally act among other relevant parties and [institutions.](#)” This definition is deliberately broad: there is more than one reasonable way to use military might against another, and recognizes that it is not just nation states with professional armies that engage in the professional exercise of force. Moreover, “power”—even if demonstrated with military force and the best of intentions—is not inherently strategic. Delivery of medical aid, installment of newly-elected city council, or the re-building of schools and courts can ease local tensions—or they may just as easily incite angry mob protests against “The West.” It is only with hindsight and context can we ascertain whether this “effect of power [has] become strategic in quality [in that it] materially advance[d] an actor’s freedom of choice and freedom of action.” Even then, two conditions must be met: “the effect is consistent with that actor’s policy objective that originally animated the expression of power [and] the effect redirects an adversary’s or a competitor’s actual or perceived policy [objective.](#)”

A bright signal that the host nation and intervening state are venturing into their RoL objectives cross-eyed—that is, with unaligned, divergent strategic views—would be evidence that demonstrates conflicting prioritization of their limited resources, and the extent to which intergovernmental organizations (IGOs), non-governmental organizations (NGOs), and intervener states are permitted to exert influence and ply their various capabilities for the benefit

of the host nation. In the fictitious Operation DESERT RETURN, imagine that Iraq begins to assertively shoulder the lead RoL role, excludes or places significant logistical or mission constraints on IGOs and NGOs, devotes its manpower and money to rebuilding a visible and muscular police presence with its military forces to deter local militia and gang crime, and emphasizes its border defenses to interdict returning ISIL fighters. This evidence suggests that the GOI's goal is three-fold: one, to reassert legitimate national authority over what had become "ungoverned" territory; two, to reassure its domestic population that the central government both appreciates the local plight and is capable of improving day-to-day security; and three, build confidence in the security of sovereign borders, spurring confidence in foreign investors and global markets that Iraq was not sliding into anarchy. Clearly, the end state, for Iraq, is the Rule of Law as generally understood.[\[16\]](#)

In contrast, the American RoL effort might signal a potentially competing strategy. Believing that a functioning democratic state—viewed as credibly accountable to both domestic and international audiences—is a necessary bulwark against foreseeable post-intervention genocidal violence and civil war,[\[17\]](#) the U.S. task force and CENTCOM may prioritize RoL projects that flash immediate signals of functioning, healthy democratic civil institutions. Rather than support border security operations, ISIL interdiction, detention, and prosecution with the same zeal as the GOI security forces, the Joint Task Force may instead direct its uniformed experts in RoL (generally, judge advocates) to create information management systems that help local government officials transparently track reports of vigilante justice, and to engage in public relations efforts to tout the trustworthiness and competence of the criminal justice system and courts in much the same way that Coalition forces engaged in RoL missions during the "transition" phases of Operation IRAQI FREEDOM and later during Operation NEW DAWN. Finally, with micro-efforts to stall social and political fragmentation, U.S. forces may de-emphasize the importance of police and prisons, instead focusing on rehabilitative and restorative justice programs. It might invest in community development ventures, all with an integrated team-based approach with the International Committee of the Red Cross, private donor organizations, the Department of Justice's International Criminal Investigative Training Assistance Program, and USAID to rebuild infrastructure and local businesses.

In essence, the U.S. effort could be described as "inside-out," emphasizing small-scale domestic civil good-governance projects—using RoL as a "means to an end." In contrast, the GOI effort would be described as "outside-in." This effort would emphasize territorial integrity and signal Iraq's international credibility in a region upended by civil war in neighboring Syria that serves as a safe haven for cross-border terrorists. The three prongs of the Iraqi goal are not illegitimate, unwise, or impractical. Nor are the lines of effort that American forces seem interested in pursuing. Nevertheless, they circumstantially suggest that Iraq's vision of RoL as an end state differs from the U.S. vision of RoL as the "means" toward the end. In practical terms, the U.S. military will likely rely on conventional planning methodologies, like the Military Decision-Making Process,[\[18\]](#) that may result in a series of concurrent projects. As a natural consequence of the Army's analytical planning framework that deploys a course-of-action only after significant war gaming, iterative assumption-testing, and top-down approval, the need to continually reassess "progress" of these projects—lest resources be unreasonably used—is self-evident. Therefore, the success of this RoL "inside-out" strategy will be viewed as contingent on measuring various outputs and grading development metrics.[\[19\]](#) But it is difficult to imagine

statistics that, over a short burst of time and over a large and diverse geography, *meaningfully* measure upticks in trust in government, community cohesion, cultural respect, and an optimistic belief in the “rule of law,” not of men. In this way, the stats will miss the trees for the larger forest.

While American forces would likely amass ambiguous data, the GOI RoL attempt at similar analytical measuring sticks for its own “outside-in” strategy would spike the risk of accumulating strategically *meaningless* data. The number of checkpoints established, or the number of suspects captured, would signal only that GOI forces have pounced on a problem they believe to be of some consequence. This data would fail to uncover systemic, cultural triggers of violence or disenfranchisement inside its own borders unrelated to (or evolving from) the ISIL regime. It would not preclude an already bruised and restless population from revolting against their own government for turning to heavy-handed police state tactics. Ultimately, it foretells only solutions to short-term problems, not resolution of long term territorial stability problems under the “rule of law.” In other words, it misses the forest for the trees.

### **(Un)principled**

That these two views of RoL’s role in the Task Force’s campaign are cross-eyed does not necessarily foreshadow a tragic “epic fail” of post-intervention stability. An adequate amount of time, preparation, and communication can, in theory, overcome the two actors’ natural inclinations to follow divergent paths laid by their initial strategic motivations and intentions. But, with the natural pressures of time, finite political patience, and critical observation and fluctuating support from domestic populations and international partners, likely future scenarios that pit the U.S. military in RoL development roles during or immediately after ground combat operations in a host nation will not look much like theory. Instead, circumstances may not be conducive at all to the coherent design of a *unified* RoL campaign strategy.

Variance in approaches to RoL, therefore, foreshadow dangers to the GOI and the U.S. plans in several areas. First, the contradictory “outside-in” and “inside-out” approaches imply a failure to harmonize the fundamental RoL “objectives”—those clearly-identifiable goals at which resources are economically aimed and which are necessarily correlated to the overall operation.<sup>[20]</sup> Second, ambiguous objectives, each justified by their own strategic understanding of RoL, suggests that neither the GOI nor American RoL missions will “judiciously employ[] and distribut[e] [their] forces” in ways that minimize devoting resources to “secondary efforts.”<sup>[21]</sup> Most importantly, weak or inconsistently-understood objectives, coupled with an inability to economically prioritize them could demonstrate tactical clumsiness (at best) or incompetence (at worst), or feed a public suspicion of fundamental unfairness. Either effect would substantially erode the civilian population’s trust and confidence in both the intervener’s and host nation state’s cloak of legitimacy, or their legal and moral right to assert themselves as the rightful, authoritative scriveners of the “rule of law.”<sup>[22]</sup>

### **Conclusion**

Under certain foreseeable conditions—such as when the host nation and the military intervener have these unaligned points of view on the strategic meaning of RoL efforts from the very

beginning—commanders and U.S. policy abroad face an underappreciated risk. This cross-eyed dilemma suggests a strong possibility that the two authorities, each with their own domestic and international incentives, motives, and capabilities, will prioritize their local efforts and value certain indicia of success in different terms. From “economy of force,” “legitimacy,” and other commonly-accepted principles of war (and joint operations) perspectives, this dilemma risks prolonging military campaigns as the actors untangle their knotted efforts and align their strategic visions. A prolonged military campaign, with boots on the ground attempting to recreate (or even stabilize) social, economic, and legal processes that have tattered, in turn will likely yield animosity, frustration, or even hostile aggression toward the intervening power. Becoming “un-cross-eyed,” then, in the midst of real-world missions, increases the risk of failing the very RoL objectives that initially incited the efforts.

So how does one become “un-cross-eyed?” For a person suffering from strabismus, treatment generally recognizes the following approach: a combination of neurological and eye muscle therapy. In other words, strengthening the motor controls through extensive workouts and conditioning the nervous system to recognize what “right” looks like. Realigning divergent RoL strategies should involve the same two-front approach. Our fictitious Operation DESERT RETURN’s awkward “outside-in” and “inside-out” RoL efforts might only be treated by explicit and early recognition that not only is RoL a probable undercurrent to operations more long-term in scope than a “surgical” raid by Special Operators or a drone strike, but that RoL will almost assuredly mean different things to the protagonists. Unless deliberate joint planning—the neurological treatment—addresses this potential, RoL tactics will continue to be mistaken for strategy and strategic understanding will continue to be based on meaningless data points.

However, even with the “brain” and “nervous system” now aware, the two RoL efforts (the physical manifestation of the intent) must be repeatedly trained in ways that meet the dissimilar understanding of what RoL means to each side. Muscle memory—in our case, two parts of the same body aligned and looking in the same direction with acuity—must become reflexive. The prime lesson that this cure should teach is *beginning* a campaign with and inside a host nation without this two-front treatment will guarantee that the parties will continue to walk into walls.

\* Major Dan Maurer is an active duty Army Judge Advocate. As a combat engineer officer, he deployed as a platoon leader to Iraq in 2003 for Operation Iraqi Freedom I; as a judge advocate, he deployed to Iraq in 2010 as a brigade’s senior legal counsel, and has also served as a prosecutor and appellate counsel. He most recently served as a strategist Fellow on the Chief of Staff of the Army’s Strategic Studies Group. He earned his J.D. from The Ohio State University in 2008 and an LL.M. from The Judge Advocate General’s Legal Center & School in 2015. Major Maurer’s previous publications include articles in Ohio State Journal of Criminal Law and Ohio State Journal on Dispute Resolution, Army Lawyer, Military Review, and Small Wars Journal. Major Maurer is a member of the Military Writer’s Guild. The opinions in this essay are the author’s alone, and do not reflect the policy or opinions of the Judge Advocate General’s Corps, the U.S. Army, or the Department of Defense.

[1] Islamic State of Iraq and the Levant, also known as Islamic State (IS) and the Islamic State of Iraq and Syria (ISIS).

[2] Brigadier General Charles Flynn & Major Joshua Richardson, *Joint Operational Access and the Global Response Force*, Mil. Rev., 38, 38 (July-Aug. 2013).

[3] The primary goal of RAF is to prevent war by partnering with nations within the region . . . [such] [p]artnering can be military-to-military training, providing disaster relief and humanitarian assistance, and sharing intelligence and interoperability [and] RAF is also about partnering with other government and nongovernmental agencies in disaster relief and humanitarian operations.

[4] This account is entirely hypothetical and fictional, but drawn from existing information about the region, its threats, and an extrapolation of trends.

[5] A “feral city” has been defined as a “metropolis with a population of more than a million people in a state the government of which has lost the ability to maintain the rule of law within the city’s boundaries yet remains a functioning actor in the greater international system.” Characteristics of “feral” urban centers include impoverished or unavailable social services, control over territory is held by unofficial centers of power and informal authority, like gangs, clans, tribes, and militias. Though the city itself is not utter anarchy, it lacks signs of a functional, formal, and legitimate government and its infrastructure (water, electricity, industry, gas, transportation access) is largely dependent on private payments in black market transactions. *See* Richard J. Norton, *Feral Cities*, Naval War C. Rev. (Autumn 2003), at 97-106.

[6] U.S. Dep’t of Army, Field Manual (FM) 3-07, *Stability Operations* (June 2, 2014).

[7] *Id.* at para. 1-12.

[8] “Rule of Law is a principle under which all persons, institutions, and entities, public and private, including the state itself, are accountable to laws that are publically promulgated, equally

enforced, and independently adjudicated, and which are consistent with international human rights law.”

[9] FM 3-07, *supra* note 9, at para. 3-100.

[10] David McCullough, *John Adams* 101 (2001).

[11] Gian Gentile, *A Strategy of Tactics: Population-centric COIN and the Army*, *Parameters* (Autumn 2009), at 16.

[12] Secretary of Defense Robert Gates said this about CERP funds during Congressional testimony:

Commander’s Emergency Response Program or CERP funds are a relatively small piece of the war-related budgets . . . But because they can be dispensed quickly and applied directly to local needs, they have had a tremendous impact- far beyond the dollar value-on the ability of our troops to succeed in Iraq and Afghanistan. By building trust and confidence in coalition forces, these CERP projects increase the flow of intelligence to commanders in the field and help turn local Iraqis and Afghans against insurgents and terrorists.

[13] Thereby completing its post-conflict Phase V mission of “enabling civil authority.” *See* Joint Publication 5-0, *Joint Operational Planning* (Aug. 11, 2011), at xxiv, III-39 (Fig. III-16), and III-44.

[14] *See* Donald Stoker, *The Grand Design: Strategy and the U.S. Civil War* 5 (2010) (“strategy defines how military forces is used in pursuit of the political goal”); *see also* Colin S. Gray, *Modern Strategy* (1999), at 17 (“[s]trategy is the bridge that relates military power to political purpose . . . [it is] the use that is made of force and the threat of force for the ends of policy”). Under Gray’s view, strategy is composed of seventeen “dimensions,” includes ethics, politics, culture, military administration, doctrine, time, and geography, among others. *Id.* at 24.

[15] Lawrence Freedman, *Strategy: a History* 607-08 (2013).

[16] *See, e.g.*, The Judge Advocate General's Legal Center & School, U.S. Army Center for Law and Military Operations, *Rule of Law Handbook: A Practitioner's Guide for Judge Advocates* 2-3 (2015) [hereinafter *Rule of Law Handbook*].

[17] Steven Pinker, *The Better Angels of our Nature: Why Violence has Declined* 341 (2011).

[18] *Rule of Law Handbook*, *supra* note 29, at app. D.

[19] *Id.* at app. E, especially at 202-08.

[20] Joint Publication 3-0, *Joint Operations* (Aug. 11, 2011), at I-2. This doctrinal statement "is the keystone document of the joint operations series. It provides the doctrinal foundation and fundamental principles that guide the Armed Forces of the United States in joint operations across the range of military operations." *Id.* at xxi. Definition of the principle of war, "objective," at app. A-1.

[21] *Id.* at app. A-2 (definition of war and joint operations called "Economy of Force").

[22] *Id.* at app. A-4 (definition of the principle of joint operations called "Legitimacy").

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