

Perspectives on the war

Afghanistan, Iraq, and Military Tribunals

The Cato Institute has held several Policy Forums on issues related to the war on terrorism. At one, Cato chairman William A. Niskanen addressed the question of expanding the war to Iraq. At another, Cato's vice president for defense and foreign policy studies Ted Galen Carpenter and Alan Tonelson of the U.S. Business and Industry Council discussed nation building in Afghanistan. And at a third, Cato criminal justice project director Timothy Lynch looked at military tribunals. Excerpts from their remarks follow.

William A. Niskanen: The Bush administration should not follow a successful prosecution of the war in Afghanistan with another war in Iraq unless the administration can present conclusive evidence that Saddam Hussein helped finance, organize, or implement the September 11 attacks or that he has supplied weapons of mass destruction to some terrorist group to use against American lives and property. There are at least five reasons for that.

One, American popular support may not be sufficient to prosecute a war against Saddam. Americans have properly learned to be suspicious about ambiguous evidence of a distant event, such as the one that led to congressional approval of the Gulf of Tonkin Resolution and the buildup of American forces in Vietnam.

Two, we may have few, if any, of the regional allies necessary for logistics support, bases, and overflight rights. Turkey is concerned that supporting Kurdish forces in Iraq might lead to a Kurdish state on its border. Kuwait is concerned that it would be anathematized by the rest of the Muslim world.

Three, we may have little, if any, support from the other major governments of the world. Several European governments have already warned the U.S. government that they would not support another war in Iraq on the basis of the evidence presented to them to date. The British defense secretary recently commented that a coalition action against Iraq did not seem justified. And the German chancellor has questioned the basis for continuing anti-terrorist actions in the Middle East "other than the ones underway in Afghanistan at present."

Support of the European governments for another war in Iraq, though valuable, would probably not be necessary. But their continued willingness to locate and prosecute local terrorist cells and to share intelligence is critical to the success of the broader and more important sustained war against terrorism. A unilateral U.S. action in Iraq, even with the cooperation of Turkey, could very well break apart the larger coalition that is necessary for the successful prosecution of the broader war against terrorism.

Four, in the absence of allies and regional bases, it is not clear how U.S. forces could prosecute another war in Iraq. In any case, such a war could be more costly in time,



William A. Niskanen: "The most viable long-term strategy is probably not a series of wars but changes in our policies that would reduce the incentive to single out the United States as a target."

lives, and resources than the first Gulf War. The successful prosecution of the war in Afghanistan to date provides no assurances of a similar successful, low-cost war in Iraq. Iraq still has about 400,000 military personnel, with moderately modern arms, whereas the Taliban had only about 40,000 lightly armed troops.

The opposition forces in Iraq are small, unorganized, and lightly armed, even in comparison with those in Afghanistan on which the United States has relied for almost all ground combat. The only victories of the Iraqi National Congress since 1996 have been here in Washington. Moreover, Saddam may be more willing to use weapons of mass destruction if his regime is at stake, in which case the costs would be unusually high.

And last, another war in Iraq may serve Osama bin Laden's objective of unifying radical Muslims around the world in a jihad against the United States, increasing the number of anti-U.S. terrorists and probably future attacks. In contrast, the September 11 attacks and the successful prosecution of the war in Afghanistan have divided the Muslim political elite and, maybe, Muslims on the street.

Yes, there would be one benefit of a successful prosecution of another war in Iraq—the death of one dangerous, evil man. And maybe his regime would collapse and there would be a temporary reduction of the potential of one government to inflict great harm on others and us. But what do we do for an encore? There are any number of dangerous, evil men in the world, and a much larger potential supply. One way or the other, we have to learn to live in a world of dangerous, evil men, without an indefinite series of wars against them, unless they initiate or assist in attacks on our vital national interests.

The most viable long-term strategy is probably not a series of wars to reduce their potential to do us harm but changes in our policies that would reduce their incentive to single out the United States as a target. The best defense may be to give no unnecessary offense.

The key issue is whether we try to achieve a better outcome by negotiation, by threat, or by conquest. Cato Institute analysts have made a good case for negotiations to restore UN inspection of facilities that may be producing or storing biological or chemical weapons in exchange for suspending the bombing and reducing the scope of the embargo on Iraqi imports except those that may have a dual military capability.

Nuclear inspections, in contrast, have continued but should probably be broadened. An inspection by the International Atomic Energy Agency last January verified that Iraq was in full compliance with its own commitments to the Non-Proliferation Treaty Safeguards and Security Agreement, but the Iraqi agreement was less restrictive and less comprehensive than called for by UN Resolution 687. However, even the status quo policy toward Iraq, however unsatisfactory the outcome, seems to me

“We should continue to avoid another war in Iraq unless we have more justification than a shared agreement that Saddam is a dangerous, evil man. We should be prepared to risk peace.”

to be superior to another war, unless it proves that Saddam has been a terrorist of global reach—the Bush criterion that has fortunately focused the war on terrorism to date.

In conclusion, we should continue to avoid another war in Iraq unless we have more justification than a shared agreement that Saddam is indeed a dangerous, evil man. We should be prepared to risk peace.

Ted Galen Carpenter: I would argue that there are reasons for pessimism about nation building in Afghanistan under anyone’s auspices. First of all, there are intense ethnic rivalries involving the major ethnic blocs, the Pashtuns, the Tajiks, the Uzbeks, and the Hazara, who have barely tolerated each other in the best of times. That points to a root problem in Afghanistan that any would-be nation builder is going to have to face: the very weak sense of nationhood and identification with a nation-state.

In Afghanistan the primary allegiances are subnational—to clan, to tribe, and to ethnic group. And that is often difficult for Westerners to understand. In modern Western history loyalty has been primarily to the nation. In recent decades we have seen a new layer of loyalty added, namely, loyalty to supranational entities. We see this most evidently in Europe, where many people now identify themselves primarily as Europeans, not necessarily as Italians or French or Dutch or whatever. National loyalty is still there, but there is now a new layer on top of it.

That is not the case in Afghanistan, except of course for the very amorphous loyalty to the Muslim religion, which generally doesn’t dictate political behavior. Nor is it the case in many other areas of the non-Western world where the primary allegiances are subnational, not national or supranational. Indeed, I would say that it is uncertain whether Afghanistan will even hold together as a country. The jury is very much out on that. And I would offer an even more provocative observation—maybe it *shouldn’t* hold together. We might have greater long-term stability if Afghanistan divided itself into some of its subnational entities.

Afghanistan is not unique in that respect. One can make the same statement with regard



Ted Galen Carpenter: “All America needs for its own security interests is that Afghanistan not become a haven for terrorists the way it did under the Taliban.”

to Somalia, where we have seen, again, a “country” where the primary allegiances seem to be to subnational entities. The West tried a major nation-building venture there. In contrast to the initial humanitarian mission, it failed rather spectacularly.

We see a similar, although not identical, situation in Bosnia, a “country” that is no closer to being a viable national entity now than it was when the Dayton Accords were signed. What we have in Bosnia is basically a soft partition that the West is unwilling to recognize officially, a Potemkin country run by an army of increasingly autocratic international bureaucrats. But what we don’t have there, and have no prospect of seeing emerge, is a truly viable nation-state.

When we talk about nation building in Afghanistan, I think it is important to understand America’s real interest in that country. Our security does not require a stable and prosperous Afghanistan, much less a democratic Afghanistan. I would be very happy for the Afghan people if such a country emerged. But that is not likely to happen. From the standpoint of our interests, it does not really need to happen.

All America needs for its own security interests is that Afghanistan not become a haven for terrorists the way it did under the Taliban.

Our policy should be fairly direct. We give an option to a successor government (or, if the country divides, to successor governments): as long as that government does not harbor or aid terrorists in any way, the

United States will not interfere in Afghanistan’s internal political affairs. But should any regime go down the same path as the Taliban did, we will be back militarily and we will mete out the same treatment. I think any rational government would accept that option quite readily.

Finally, a little American humility is needed. The reality is that a majority of the nearly 190 countries in the international system are woefully misgoverned. And that is tragic for the people involved. But the overwhelming majority of those cases will not adversely affect the security and well-being of America. The United States cannot bring peace and prosperity all of those states, or even to Afghanistan. The Afghan people will have to do that for themselves. They have some hard decisions to make.

We have enough problems seeking out and destroying the terrorists who committed the atrocities of September 11. We should not become distracted by trying to engage in a futile nation-building mission in Afghanistan or, for that matter, anywhere else.

Alan Tonelson: Nation building is an inherently difficult subject to talk about for a reason that should caution us strongly about its very viability: it has never happened.

Obviously, the world has seen hugely successful exercises in the economic, physical, and even political “rebuilding” of states destroyed by war, but there was always a society underneath the rubble that could be rebuilt. Now we are talking about building a nation from scratch, where none has existed before.

Likewise, the term “failed state” is a highly misleading, nonserious term. It implies that real statehood and viability existed in some previous era. But the regions on everyone’s failed-states list were never states at all. Most, at various times, have had the superficial trappings of statehood. They have had flags. They have had national airlines. They have had postage stamps—often, very nice ones. They have had UN missions. They have even had what looked like national militaries.

Continued on page 8

“The terrorists we know about don’t come from low-income families. They are the sons, largely, of elites that have lost out in the endlessly violent struggles of Arab politics.”

POLICY FORUM *Continued from page 7*

The frustrating thing is that when you look at a failed state on a map, it looks exactly like a real state. Just think of the map of France and the map of Afghanistan.



Alan Tonelson: “Nation building is irrelevant to fighting terrorism and strengthening U.S. national security.”

They look very much alike. They are different shapes, but they are areas that are bounded by solid lines. Images like this are utterly misleading.

The reason is that some regions—I don’t want to fall into the intellectually lazy habit of calling them “states” or “failed states”—lack the defining intangible qualities of nation-states. First, as we have heard from Ted Carpenter, you need a sense of national cohesion stronger than subnational loyalties. Second, you need a notion of government that is something more than unrestrained repression, exploitation, and outright theft.

There is no question that the essential qualities of nationhood, the intangible qualities, can develop and evolve over time. If they couldn’t, we would not have states at all. But there is no evidence whatsoever that those qualities can be transplanted by an outside power. The qualities of nationhood, the essential intangible qualities, can emerge only gradually, organically, in the uncounted individual and group transactions and relationships and instances of learning that take place every day in the private, economic, social, and cultural dimensions of life. They aren’t produced by government fiat.

There is a reason for that gradual pace.

In regions that are not states, or not yet states, there is no meaningful consensus on legitimate authority or appropriate behavior.

Therefore, groups within those regions have placed an entirely understandable and inevitable premium on what might be called monopolizing the guns. And monopolizing the guns is extremely important, because you have to assume, if you value your life or your family’s lives, that any gun you don’t have is possessed by someone else, and it can and will be used against you. That is an essential characteristic of a “failed state.”

In other words, politics in “failed states” is not about human improvement or any public purposes as genuine states understand those goals, however imperfectly genuine states pursue them. It is about gaining and wielding power for self-defense and aggrandizement.

The good news is that nation building is irrelevant to fighting terrorism, or global terrorism, and strengthening U.S. national security in any significant or cost-effective way. First, the more closely you examine the supposed link between “failed states” and global terrorism, the weaker the link looks. Most “failed states” have not generated global terrorism or even hosted global terrorists.

The terrorists we know about don’t come from low-income families, by and large. They are not Afghan herdsmen. They are not Pakistani school kids. They are the sons, largely, of elites that have lost out in the endlessly violent struggles of Arab politics. There are few signs that global terrorist groups have made major inroads among the Arab world’s poor. The “Arab Street” seems rather quiet. That is what a smashing military victory will do. That is why victory is good and you should seek it when you need to. U.S. embassies are not in flames from Jakarta to Morocco. I would imagine that al-Qaeda recruitment is down.

All of which leads to the conclusion that the best and most cost-effective ways of preventing and combating global terrorism involve combining military strength, which is the best form of preventive diplomacy ever invented, with sensible homeland security measures. As in so many realms of life, the key to American success in the anti-ter-

ror campaign will be keeping it simple, at least conceptually.

Timothy Lynch: I believe that President Bush and Attorney General Ashcroft are acting in good faith and that they are attempting to forestall additional attacks by other terrorist cells that may be here in America. At the same time, I am absolutely certain that the president overstepped his authority under the Constitution when he issued the military order on November 13. That order sweeps way beyond the



Timothy Lynch: “The president is saying, ‘I am assuming the powers of the legislature, and the powers of the judiciary. I will be the policeman, the prosecutor, the legislator, and the judge.’”

idea of capturing al-Qaeda leaders in Afghanistan and trying them for war crimes. The president is basically saying:

I am declaring a national emergency. I am assuming not only the executive powers of the police and prosecution, which the Constitution vests in the office of the president; I am also assuming the powers of the legislature, and the powers of the judiciary. I will be the policeman, the prosecutor, the legislator, and the judge. I am also suspending the right to trial by jury, the right to a speedy trial, the right to a public trial, the protection against self-incrimination, and the protection against double jeopardy. And I am suspending the writ of habeas corpus. For the time being, the special powers that I am assuming will affect only noncitizens in America. However, I reserve the right to revise this executive order at any time. Abraham Lin-

coln and Franklin Roosevelt suspended the Bill of Rights for American citizens, and I reserve the right to do so if I deem it appropriate.

I know full well that President Bush has not expressed himself in that way. But when it comes to people in government, it is always much more important to watch what they do than to focus on what they say, at least if you really want to know what is going on.

I know that the president and his advisers say that his order is very, very limited. Perhaps there will be only a dozen people tried before military tribunals. But the fact is that this military order is attempting to set a precedent about what the president can do under our Constitution.

There are people in the White House and in the Justice Department who believe that during wartime the president can assume legislative and judicial powers. They do not say so explicitly and candidly. It is poor public relations to do that. It is very shocking to think that the president can do those sorts of things. But that is the philosophy that has manifested itself in some of Bush's actions, especially in the military order.

The Constitution applies in both peacetime and wartime. If you read the Constitution, you will see that it anticipates tumultuous events, such as rebellions in our home-

land and actual invasions of our country by foreign troops. The Constitution allows the writ of habeas corpus to be suspended by our government in certain circumstances. And the president can use the military to repel an invading army if Congress is out of session or if there just is not time for it to convene. So the constitutional text anticipates emergency-type circumstances.

However, once someone says that the president can place himself above the law of the Constitution and that he has the power to set aside certain provisions of the Constitution, there just is no intelligent way to discuss the matter. We would be putting the rule of law of the Constitution to one side and replacing it with something else that is unknowable and dangerous.

The central problem with the order is that it represents a belief on the part of the president that he can, and a willingness to, abrogate the rule of law that sets the boundaries and the limits on the institutions of our government. Those limits were set down in writing in order to protect individual rights. Even if this military order is withdrawn tomorrow, we should still be shocked and upset that there are people around the president who looked at this order, studied it very closely, and said, yes, this is all right. Those advisers, while acting in good faith, have completely lost sight of what our troops are fighting for. ■

Cato Calendar

Social Security: A Women's Issue
Cosponsored with Women Influencing Public Policy
Washington • Cato Institute
April 9, 2002

Speakers include Leanne Abdnor, June O'Neill, Edith Fierst, and Grace Hinchman.

Policy Perspectives 2002
New York • Waldorf=Astoria
April 10, 2002
Speakers include Dinesh D'Souza and Tim W. Ferguson.

25th Anniversary Gala
Washington • Hilton • May 9, 2002
Speakers include John Stossel and P. J. O'Rourke.

Public Policy Day
Washington • Cato Institute
May 10, 2002
Speakers include David Boaz, Tom G. Palmer, Roger Pilon, David Salisbury, Veronique de Rugy, and Ted Galen Carpenter.

Social Security and Hispanics
Cosponsored with Hispanic Business Roundtable
Washington • Cato Institute
May 21, 2002

Speakers include José Piñera, Julie Stay, and Fidel Vargas.

Cato University
Chantilly, Virginia • Westfields Marriott • July 27–August 2, 2002
Speakers include Walter Williams, Randy Barnett, Tom G. Palmer, Don Boudreaux, and Edward H. Crane.

International Financial Crises: What Role for Government?
20th Annual Monetary Conference
Cosponsored with The Economist
New York • Waldorf-Astoria •
October 17, 2002

Speakers include William McDonough, Anne Krueger, Jeffrey D. Sachs, Samuel Brittan, Charles Calomiris, and John Taylor.

News Notes



The staff of the Center for Educational Freedom: analyst Casey Lartigue, director David Salisbury, research assistant Emily Porter, and analyst Marie Gryphon.

Marie Gryphon has been named an education policy analyst in Cato's new Center for Educational Freedom. She practiced law in Seattle and has worked with the Institute for Justice and the Education Excellence Coalition. Casey Lartigue, Cato's staff writer, has also been named an education policy analyst. He holds a master's degree from the Harvard Graduate School of Education and has written for *USA Today*, *Education Week*, and the *Washington Post*.