

Why This is Not a War and Why It Is Important to Understand This Is Not a War

The Problem

September 11th, 2001: four passenger aircraft are seized in the air, and the suicide hijackers strike the twin towers of the World Trade Center in New York and a section of the Pentagon. The towers fall. GW Bush declares a 'war on terrorism'. American media fill with 'America's new war'. The US and British militaries are set in motion, and on 7 October launch piloted and pilotless air strikes into Afghanistan.

Why Is This Not a War?

How America defines the problem posed by 9.11 will largely guide its strategy of response. This is why it matters so much whether we adopt the White House framing of 'attack on America' and its response, a 'war on terrorism'. Who is the enemy? and what methods are best-suited? There are several reasons why Americans mislead themselves, and misrepresent themselves to the world, if they insist that they are in a 'war', a 'war on terrorism'.

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- There is no army to fight against.
 - The actual ‘attack on America’ was carried out by only 19 men.
 - Those responsible for the attack do not constitute a political unit.

And while there is no doubt that the United States and Britain brought war-fighting capabilities into play when they began attacking targets in Afghanistan on 14 October, it is as if this were the only dramatic action available to them, rather than an action which could be effective against the dangers exposed on 9.11. Among the attack’s drawbacks are that

- Use of military force against “Al Qaeda and those who harbor it” necessarily harms many more—if not altogether ‘innocents’ then ‘bystanders’ and ‘locals’—than the small group which acted against the United States. In turn, the attack fuels resentment and creates conditions favorable for recruitment into ‘terrorist acts’.
- The means of war—bombardment, invasion, assault—are ill-suited to prevention of future attacks.

What Military Means Can Accomplish

There could be reasons to use military force nonetheless. The best argument for military force runs something like this: there are “thousands” training in Afghanistan from whom Al Qaeda can recruit attackers, and only by destroying their training camps can the reservoir of recruits—subject to the closed world of a fundamentalist creed and the bonding of men bent on great deeds—be dried up. A second argument which must have had force among Pentagon and MoD planners is that raw destruction in a state ‘harboring terrorists’ warns other states of the consequences of refusing to cooperate on request.

Are these arguments compelling? They are, if there are no other places where small secret groups could recruit the disaffected to Holy War, and if the United States and Britain would judge it in their interest to unleash destruction—on, say, Baghdad or Teheran or Rome—if they believed a government to be inadequately responsive to a request for cooperation. Sober consideration suggests that neither requirement can be met.

Targeting Al Qaeda training camps places a premium on trainees' successful exfiltration from Afghanistan to other countries. Some remain to fight, some move on. Disruption and attention may make movement more difficult, but press reports tell of 'refugees' making their way to both Iran and Pakistan.

Military means offer the prospect of 'victory' to the US-British force. They do not, however, speak to the problem presented by the 9.11 attacks.

How Can We Best Understand the 9.11 Attacks?

There are several suggestive analogies to the situation presented to the United States on 9.11:

- *A criminal act.* There is no question that whoever knowingly contributed to the hijackings and attacks of 9.11 have committed criminal deeds, heinous and dark.

There exist ready institutions of law enforcement to pursue and seize those who commit murder or who are accessories to murder.

- *An act of piracy.* Among the earliest problems faced by nascent states was how to address the threat of pirates on the high seas. It was early agreed that pirates were outlaws who could be seized and dealt with by whoever could.

Traditional pirates sought booty. The 9.11 attackers did not. But their methods and organization share many parallels with those of pirates.

- *An outlaw act.* The ‘outlaw’ is a person who, judged to have committed serious crimes, endeavors to remain outside the workings of the criminal law. In so doing, he or she gives up the protections which criminal process affords. In Iceland a thousand years ago refusal to obey an order to go into exile meant exposure to the risk of being killed on sight.

While the hijackers have removed themselves from the law, those who knowingly aided them have not.

The problem posed by this characterization is that the United States will simply declare or decide who are ‘outlaws’ and simultaneously empower itself with the right to kill. The name for this is *vigilantism*. As GW Bush said, he would like Osama bin Laden “dead or alive.” Dick Cheney agreed he would have bin Laden’s “head on a platter.”

- *An anarchist attack.* By killing—by assassination, or even by bombing a public place—some anarchists have sought to use violence to show the weakness of government, undermine government, and so attack the practice of governance itself.

The 9.11 attackers oppose not governance, but a specific government and society, its interference in their world and the global spread of its cultural practices.

- *A clandestine operation.* Certainly the 9.11 attackers organized secretly, borrowing the techniques of spies and secret operatives to prepare and carry out the attack. The support, paraphernalia, and methods on which they relied—money transfers, false papers, casing targets, acquiring special skills, misrepresentation, ‘need to know’—are the stuff of the ‘secret world’.

This most closely captures the recruitment, organization, planning, and execution of the 9.11 attacks.

Then What Are the Best Means With Which to Respond?

The *law enforcement* analogy dictates how ‘justice must be done’: by securing those responsible and bringing them before a court of justice. [This stands in contrast to the *vigilantism* model, with its problems, noted above.]

The attack was a *clandestine operation*, and it is only by clandestine means, complementing those of day-to-day law enforcement, that secret operations can be identified, disrupted, and exposed.

There are strong analogies to *piracy*. The instinct to seek global cooperation was sound, just as there was a global consensus against piracy centuries ago. Many observers have pointed out since 9.11 that the surveillance capabilities of a large number of governments are better-sited and better-suited to identifying those involved in the 9.11 attacks, and those who might undertake future attacks, than are those of the United States and Britain.

It should surprise no one, however, that just as there were fundamental differences about who was a ‘pirate’, so there are arguments today about who are ‘terrorists’ and who are ‘state sponsors of terrorism’. We understand striving for national independence or autonomy, whether by Chechens, Uighurs, or Palestinians; and it simply will not do to define those who seek autonomy and respect for their community as ‘terrorists’ because some among their number commit violent acts. But the message is out—and it is as much as Chinese and Russian centralists can expect—that violence *against innocents* will be denounced as terrorism pure and simple. The attacks of 9.11 do not accord *carte blanche* to state repression. They do imply urgency—as the US and UK may be showing in the case of Palestine—to acknowledge community calls for independence and autonomy.

A prime difference between the age of piracy and today is that the United Nations exists. The UN Charter accords the UN

Security Council “primary responsibility for the maintenance of international peace and security.” It was in that vein that the United States secured UNSC Resolution 1368 on the day after the 9.11 attacks. But the United States was careful in its drafting to make room for its unilateralist predilections: so Resolution 1368 recognizes in the brief preamble “the inherent right of individual or collective self-defence in accordance with the Charter.”

But *politics is all*. To secure the needed cooperation of other states to prevent future terrorist acts where possible, and to render the preparation of such acts more difficult, the United States must undertake a sustained and good-faith effort to align its ‘anti-terrorist’ initiatives with the legitimate interests of other states, winning effective cooperation from their police and clandestine services, and *avoiding steps which render it politically more difficult for states to accord cooperation*. Unilateral, or near-unilateral, military means compromise possibilities for effective cooperation in those states where that cooperation is most needed and most vulnerable.

Issues of Civil and Personal Liberty

A free society, given the 9.11 attacks, is faced at once with contradictions between its characteristic liberties and the instincts of police and security officials.

It is similarly evident that clandestine foreign operations fit uneasily in a system of open politics, openly accountable.

The evils of scapegoating are clear and undoubted, but so is the widespread psychological tendency to identify suspect groups.

How does a polity draw lines when choosing between the evil of vulnerability to attack and the evils of racism and the police state?

There are some guidelines. They may not resolve every question, but they chart a path:

- The ‘terrorist threat’ poses investigatory problems that are *no greater than* those which investigators of conspiratorial crime and fraud routinely face.

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- No enlargements of investigators' powers to intercept communications, or place bugs, are required.¹
 - 'Sharing' of data among investigatory agencies should proceed according to well-fashioned gateway rules, to prevent promiscuous storage and redistribution of data, and any abuse of the privacy of those who are subjects.
 - The presumption of innocence and access to counsel should be strictly respected.
 - The 'terrorist threat' should not be used as a back door to expand investigatory access to computer transactions. The 'expectation of privacy' should extend to addresses and subjects, content of email, and other transactions. The same standards should apply which apply to intercepting and recording the source or addressees of a target's postal mail, or opening and reading personal correspondence.
 - A requirement of unambiguous spoof-proof identification may be reasonable—for example, to board an aircraft, obtain a driver's license, or borrow money—but only as specifically provided in an Act of Congress. [And note the 'sharing' proviso above.]
 - Persons intending to visit the United States should be treated with respect. A method should be instituted to ensure that persons who have qualified (obtained visa or an *in lieu*) are not refused entry at the border.
 - No person—citizen or alien—should be subject to detention, in the absence of criminal charges, longer than is reasonably required to bring that person before a grand jury.

¹ Excepting that permitting a wiretap authorization to apply to whatever telephone the target uses should be permitted, provided that the tap is confined to the individual named target alone.

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- Procedures which vet people for access to facilities, or identify people for closer scrutiny, must be equivalent across all groups and sectors, and so free of ethnic and religious stereotypes.

Are issues of civil and personal liberties related to the question ‘is this a war?’ Directly. Intimately. Because if it is a ‘war’, then one set of expectations, and one set of implications for domestic political life, follows. But if it is ‘something else’, something quite different from war, then we would bring different criteria to judging what is efficacious, and necessary, and right.

Why Is It Important to Understand That This is Not a War

Wartime has become associated with extreme measures. Concerned that the enemy would attack within, the US Government has in the past taken unusual measures, such as interning citizens of Japanese descent, and putting amateur radio operators off the air, in WWII.

Strikingly, such measures were not taken at the time of Korean War, or Vietnam War, or the Gulf War. There was conscription—the draft—for Korea, and for a time for Vietnam. The Nixon administration dropped the draft as part of its efforts to quiet public opposition to the Vietnam War.

There are several reasons why it is important to understand that this is not a war, and the first of these is that a blank check for restrictions on liberty would strike at the heart of our political compact.

- **Civil liberties.**

If this is a war, the argument that the state is *in extremis* will be made to support restrictions on personal and civil liberties.

If this is not a war, there may still be persuasive arguments that law enforcement should be given powers which have the effect of constricting personal and civil liberties, but the tests they

will have to meet—and the safeguards they may be compelled to accept—will be friendlier to liberty.

- **Censorship**

If this is a war, Washington could call for censorship.

If this is not a war, Congress, the media, and the public will wonder what the point of censorship might be, and be more ready to resist it.

In a few short days in October GW Bush and his staff have threatened to withhold intelligence information from members of Congress, called on six TV networks to censor material from Osama bin Laden and associates, and asked newspapers to refrain even from publishing transcripts of bin Laden et al. On balance, both Congress and the media may be said to have resisted the White House, while offering symbolic capitulation; or to have capitulated, offering symbolic resistance.

- **Expenditures**

If this is a war, Administration spending proposals will be accompanied—explicitly or implicitly—by the argument that to oppose them is unpatriotic.

After 9.11, Senate Democrats chose not to pursue arguments that Administration proposals for National Missile Defense spending should be reduced.

- **Who's In Charge?**

If this is a war, then the Department of Defense and the military services have claim to an important voice, perhaps decisive voice, in policy.

If this is not a war, then responsibility for policy is more distributed among Executive departments ... and especially the Department of State.

- **Use What Means?**

If this is a war, then the means suited to war—military means—will of course figure centrally in the response to 9.11.

If this is not a war, then the presumption that military means will be used, or their use emphasized, is absent, though military means may well be called on.

- **Vigorous Public Debate?**

If this is a war, then “partisanship stops at the water’s edge” and bi-partisanship is proclaimed, one and all contributing to the war effort. Criticism of the Executive—at least in matters concerning the ‘war’—is muted or absent. Central issues are simply not debated.

If this is not a war, the opposition may proceed to question, criticize, and reject Administration proposals. It may subject to close scrutiny all those acts which culminated in the ‘war against terrorism.’

- **Consequences for 2002 and 2004**

If this is a war, GW Bush is saved from a lackluster seven-plus months as President in name. At least until 9.11 there was a widely-held suspicion in the land that Vice-President Cheney was running the country—managing key decisions—while GW Bush made polite political appearances. After 9.11, once ‘war’ was declared, the importance of Cheney’s and Rumsfeld’s roles becomes clear.

If this is not a war, it would not preempt public discussion about National Missile Defense, and it would be problematic

whether the issues would prove sufficiently frightening to the American public that they would credit GW Bush with leaderly qualities.

It remains to be seen whether pre-9.11 Cheney-Rumsfeld unilateralism can survive the need for allies, especially European allies, and Russia and China. As September began, the GW Bush group remained set on adopting National Missile Defense, abandoning arms control by treaty, declining the Kyoto Protocol, holding back the Comprehensive Test Ban Treaty from Senate consideration, and even moving toward military control of space. Since 9.11 Bush and his colleagues have insisted that NMD remains a prime objective. They have evaded calls to say clearly whether they will withdraw from the ABM Treaty, but continue to speak of the treaty with vitriol. *If this is a war*, their energies will remain centered on its prosecution, rather than political means to achieve national ends.

Still five weeks after the attacks of 9.11, Bush's presidency appears to have captured the public mood as it earlier had not.

- **Will the War Spread?**

If this is a war, it has—as every war has—the risk of spreading. It could spread if the United States moved against other states, or if it prompted a military response against US actions.

At this writing there is no state ready to take up arms against US use of military means. Broad sympathy to the plight of victims of 9.11, US moves to pre-legitimate subsequent actions by obtaining UNSC 1368, and subsequent US diplomatic efforts have led to a coalition of sorts.

Still, 'wartime' is a time of strong emotions, sudden changes, and often unexpected turns in internal politics. Moreover, there is the possibility—captured by Geoffrey Blainey in the phrase

“when waterbirds fight”—that third parties take advantage of others’ preoccupations to launch adventures of their own: in this case, for example, India might choose to ‘settle’ the Kashmir problem by force, while Pakistan was focused on domestic dissent.

Could the United States itself expand the scope of its military campaign, attacking in other states? That is the threat implicit in US charges that states which ‘harbor terrorists’ are complicit. The *New York Times*’ article headlined “Some Pentagon Officials and Advisers Seek to Oust Iraq’s Leader in War’s Next Phase”² captures a debate ongoing in Washington. Deputy Secretary of Defense Paul Wolfowitz and former CIA head James Woolsey are identified as advocates of a scheme to seize southern Iraq and install a new Iraqi government.

If this is not a war, then the United States could more easily draw back from the use of military means, and the likelihood of its actions being tinder for further war would be reduced.

- **Has the Government Done Well?**

If this is a war, critical assessments expose their authors to charges of ‘unpatriotic’ conduct. And at a political level, fear of appearing to be contesting the President has led Democrats to be mute, or nearly mute.

If this is not a war, there is no reason for Democrats to withhold fair and germane criticism, especially if its effects would be to improve policy and avoid an eternal ‘anti-terrorism campaign’ on the battlefield using military means.

There are several harsh realities which will surely be studied, with the passage of time. These include that

² Elaine Sciolino and Patrick E. Tyler, *The New York Times*, 12 October 2001.

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- GW Bush came to 9.11 under a shadow remaining from the election, and a rather poor showing in his first months.
 - He did not respond with authority on September 11th itself.
 - Responsibility for failure to detect the impending attacks has not yet been attributed.
 - GW Bush's prompt framing of America's situation as 'war' may achieve domestic political advantage, but opens the United States to the criticism which war customarily evokes.
 - Incoherence of the Bush tax cut scheme, judged widely by economists as the wrong set of measures for an economy at risk, was even more striking in the wake of 9.11.
 - The implicit promise of retaliation, so much a part of GW Bush's first response to 9.11, would have been sorely disappointed if the United States had not undertaken military attacks in Afghanistan.
 - But military means are unsuited to most of the work which needs to be done to prevent further instances of deadly terrorism. In practical fact, the military means launched on 7 October may provoke unneeded hostility, and create grave difficulties for states whose leaders cooperate with the United States.
 - GW Bush et al. have not yet drawn back from their unilateralist declarations made during the pre-9.11 period: ABM, Kyoto, CTBT, NMD, 'space control.' Unwillingness to search for common ground with the EU and Japan, especially, puts the entire project of reasoned, negotiated, and just global governance in doubt.
 - Although much has been made by his champions of GW Bush's 'leadership' and 'determination' in the wake of 9.11,

his impressive speeches have been others' efforts read from a TelePrompTer, and his unscripted remarks offer no reason for confidence in his knowledge, articulation, or judgment. It is an unhappy fact that the job appears to be bigger than the man.

A Concluding Note

An assumption underlying this analysis is that no small group, employing whatever technology it may exploit, can overwhelm the capacities of the United States, and those others who share common interests in decency and stability.

As horrific, as full of warning, as stunning as specific attacks may be, there is no evidence that any group or groups can carry out such attacks on a large scale.

Even if they could, the remedy lies in patient identification of conspirators and conspiracies.

There are many other motives—unrelated to 'terrorism'—why officials, corporate officers, and law enforcement units seek to know, or be able to know, the activities, movements, and correspondence of individuals. Most of these motives have to do with being able to 'do their job' faster, or better, or more effectively. Some have to do with the quest for profit. Some have to do with discomfort with criticism. The most dangerous concern suppression of political dissent. Conventional means to suppress dissent have been employed throughout recorded time, in the United States as elsewhere. Because suppression of dissent closes the very possibility of correction through exercise of an open politics, it is qualitatively more dangerous than other forms of intrusion. Advances in IT—communications, computerization—make oppressive government easier. All these reasons place a special premium on the need that 'war' not be used as a means to shrink or deny civil and personal liberties.

If this is not a war, not a typical war, not a 'war on terrorism', then what is it? It is a response to assaults on our freedom and safety of movement, association, enterprise, and the right to life itself. Then how should the episode begun on that morning of 9.11 be framed and understood?

This is a political struggle, in which the means must respect the ends, a struggle for liberty.

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