

Building Post 9/11 Security: Permanent War Abroad and Permanent War At Home

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Most of the speakers at this conference have addressed the legitimate concerns that face us all concerning the use of weapons of mass destruction, primarily nuclear weapons. I do not think that an attack using weapons of mass destruction is the only scenario we should be anticipating. I do not think that such an attack is the most probable scenario, but, of course, it would certainly be the worst.

What we are facing now is a permanent war, a war in which the United States military response to 9/11 was essentially a unilateral response, a bypassing of international institutions and a non-adherence to and refusal to abide by and sign certain treaties. In the speech that follows, I would like to discuss some key aspects both of that permanent war abroad and the domestic consequences of what appears to be as a permanent war at home.

How Has the United States Chosen to Build Post September 11th National Security; What are Some of the Dangers of its Responses; and Was There Another and Better Way to Go?

After September 11th, the United States had essentially two paths of response to decide upon. It could have moved in a direction of international cooperation through the United Nations and other multilateral institutions. It could have treated the attacks of September 11th as crimes against humanity; established courts through the United Nations to try the perpetrators; and addressed some of the foreign policy, justice, and equity issues that lead to terrorism and to war. The other direction was toward war; it could bypass international institutions; it could pursue an essentially unilateralist policy; and refuse to examine the root causes of war and terror, and its own role in those causes. As we all know, the United States chose war.

The reaction to the attack has exacerbated and emphasized some of the worst aspects, in my mind, of United States practices and policies. On a certain level, our response has been a continuation of past practices and policies. War as a solution to our problems, war fought by bypassing the United Nations, or, at best, using the United Nations as a fig leaf, the continuation of super power unilateralism, and a refusal to give up any United States sovereignty to create a safer world. The United States has shown little regard for international institutions, whether the International Court of Justice at The Hague, or the United Nations. Little regard has been given to the adherence to or ratification of numerous treaties, whether on issues of justice, landmines or biological weapons. So that in many ways, the United States reaction is one that I expected, and seems consistent with past practices.

A Fundamental Shift: The Congressional Blank Check for War

While I say the United States reaction is consistent, I also think there are some breathtaking *qualitative* differences, not just quantitative, but *qualitative*. First, is the license given by congress to President Bush, giving him the sole authority to attack any individual, nation, person or organization that was in any way linked to September 11th. No names or time limits are stated in the resolution; the only specification is that targets have some relationship to September 11th. That link may be subjective and tenuous, even fabricated by the president. If he declares war on Iraq, obviously, he could justify his actions by simply citing a claimed meeting that someone allegedly from Al Qaeda had with an Iraqi official. Congress, basically, gave the president a blank check to make war upon whomever he wants. The resolution is not limited to attacking countries, nations, organizations or people overseas. The president may attack and bomb in the United States. If an alleged terrorist is holed up in Topeka, he can bring in the B-52's. In all of the lawsuits I have brought, I have never seen a resolution that so broadly grants that kind of authority to a president.

The Conceptualization of a Permanent War Abroad and At Home

A second difference and an extension of United States policies is the conceptualization of this as a permanent war abroad, and most likely a permanent war at home, as well. It is a war that the president repeatedly has stated will take many years, a war without end, and we can only really, at this point imagine what that means, and the dire consequences for all of us. Of course, a permanent war abroad means even more money to the military, more military bases, more bombings and more killings.

A permanent war aboard also means permanent anger against the United States by those countries and people that will be devastated by military actions. Hate will increase not lessen; that hate will necessitate more restrictions on civil liberties in the U.S. and may ultimately result in the militarizing of law enforcement at home. Other wars ended and with them came an end to the worst deprivations of constitutional rights and civil liberties. In this war without end, we are facing a curtailment of our rights--without end.

A Draconian Response to Our Civil Liberties

In the United States, war has always brought some restrictions on civil liberties. Most of those, or many of them, were later found to have been unnecessary. The best example is the Japanese internment camps during World War II. Wars always bring some curtailment of civil liberties, now, however, because the attack was on the United States and in the United States, we are seeing an utterly Draconian response. It is justified because the attack, for the first time, made us feel unsafe at home. We now have war abroad, an attack at home and an Attorney General, Ashcroft, who appears willing to attack the constitution and those who support it. The combination may well be fatal to our notions of a free society and represents a shift from even the normal restrictions imposed during wartime.

So far, there has not been a great outcry against these new restrictions on our liberties; in part, this is because the primary focus is the targeting of non-citizens. Although there are twenty million non-citizens living in the United States, the government is painting them as the other and not as part of our community. We must not let this happen; we must see their rights as the rights of all of us. Unless we do, those of us who are citizens may not realize that we are certainly facing the worst and most outrageous curtailment of civil liberties in many, many years.

Again, like the power granted to the President to wage war, the reaction to the attack is characterized by the congressional granting of sweeping powers to the executive and an utter bypassing of our system of checks and balances. Courts are considered dispensable under this new system, and the executive is running the war at home without the checks and balances so essential to our liberties. The executive, and not the courts, will decide which non-citizens remain in jail; and the executive not the courts will determine who is brought before a military tribunal.

The New Restrictions On Our Rights

The newly created Homeland Defense Office may well be the opening shot in the actual militarization of domestic law enforcement. Its name alone harks back to fascist Europe when homeland militias, called homeland defense forces, were established to advance fascism with arms. Doubtless, there will be security improvements made by the Homeland Defense Office-- we have already seen positive airline security changes. But, the idea that by curtailing civil liberties, and that by so doing we will somehow create a fortress America that will make us safe from terrorism, is absurd. The Canadian border is 5,000 miles. I do not care what is done, we are not going to be able to block that border. There are 30,000 flights a day; we can never make them all safe as long as terrorists want to attack.

Looking at the draconian options the United States has set into motion with regard to civil liberties is horrifying. The United States is holding over 1,000 people in detention, essentially anonymously, and without giving us almost any information. They have still not given us the names of the majority of such detainees and most are still without attorneys some three months after their arrests. I worry about the measures any government, including ours, takes against people that are jailed without access to counsel, relatives or friends. I refer to these people, these detainees, as the disappeared. I call this our modified Chilean option; I say modified because, as far as I know, no one has been killed, although one person has died in custody

We now have the indefinite detention of immigrants—a practice that was always believed to be unconstitutional. This is permissible under both newly issued immigration regulations and under the USA Patriot Act. As I have said, there is permanent war and now there is permanent detention: six-month renewable periods without end. We can keep non-citizens in jail forever without ever bringing criminal charges against them. What kind of country are we living in?

Then there have been suggestions floated by the administration, of what is referred to as using the Israeli option—that is pressure tactics to make the jailed talk. The word for this is torture. If torture is unacceptable at home, then it has been stated that we have the option of sending detainees abroad to our allies for interrogation and torture. Of course, all of this violates fundamental U.S. laws; it takes us back hundreds of years to Torquemada and utter barbarism.

We are now subject to attorney-client wiretapping without any court authority. The attorney client privilege, guaranteed by the Sixth Amendment, was always considered sacrosanct. Only a judge could authorize such wiretaps and only if there was probable cause to believe the attorney was conspiring with a client to commit crimes. No more. Now the decision on wiretapping will be up to Ashcroft and Ashcroft alone.

With the passage of the USA Patriot Act we are seeing the final evisceration of the Fourth Amendment in terms its requirement that probable cause is necessary for wiretapping and black bag jobs (surreptitious entries) into your home. These wiretaps and searches will no longer require probable cause and will be approved by a secret court that meets in a sealed room in the Justice Department. This court has never, never turned down a request. Our new America will see many other restrictions on our rights including broad questioning of thousands solely because of their ethnicity, increased spying on our e-mail, the use of the carnivore system to track our computer usage and a new crime of domestic terrorism that potentially could target everyone from WTO protestors to Greenpeace.

So I think we are seeing a really fundamental shift here at home with regard to our rights, and I am afraid to say it is not going to be one of those two or three-year shifts that we have experienced during other war times. Given the way we are conceptualizing this war, it is going to be a permanent shift.

Military Commissions: Courts of Conviction

A significant departure from our constitution that deserves specialized mention is the instituting of military commissions. I call them the Peru option because this is exactly what the United States has continuously criticized Peru and other countries for employing. Most recently, the U.S. condemned the Peruvian military tribunal that tried the U.S. citizen, Lori Berenson and the Nigerian tribunal that condemned environmental activist Ken Saro-Wiwa.

Another way of describing military commissions is as courts of conviction or--murder by the president. Under this system, the president designates who goes before the court, the president appoints the judges, and most likely will appoint the lawyers. There will be military judges, who will sit as the jury. Cases are decided by a two-thirds jury vote; there is no appeal process, except to the President or the Secretary of Defense. The death penalty is allowed. The commissions can be held in secret and on an aircraft carrier. We may never know about these trials; essentially the entire process could be

completed secretly, including dumping the body overboard. This is not an exaggeration; a *kangaroo court* is a mild description for military commissions.

To summarize: An unprecedented and sweeping power was given by congress to the president to go to war. An imperial presidency is one phrase I have heard bandied about, but is actually too benign sounding, for the current situation. The president, acting unilaterally or using the President's syntax--as a lone cowboy--can make war anywhere he wants, even at home. The government can arrest and detain whomever they please. They can wiretap and search whomever they want. They can designate, try and execute non-citizens in secret. We have been presented with the conceptualization of a war without end. All of this has occurred with little or no recourse to international institutions and a bypassing of domestic institutions, as well.

The Ramifications of Permanent War and Future Dangers

I want to mention some dangers of the war and some of the dangers we face in the future. Obviously, one is Afghan refugees and their deaths from starvation. A second is the building up of hate in the Muslim populations of the countries we are attacking, as well as elsewhere in the world. Our current course creates more terrorists, more suicide missions, and more people willing to use weapons of mass destruction, rather than less. It is what is referred to as the blowback effect.

Obviously, stopping terrorism and hatred of America is difficult, but if the United States went through multilateral institutions, and called on the diplomatic participation of Muslim countries, we would be in a much better position. Third, is the destabilization of countries. How will destabilization play-out in countries with nuclear weapons, like Pakistan? Fourth are civilian deaths; we do not know anything about civilian deaths because of the secrecy surrounding the war. Fifth, there are the trade-offs with places like Indonesia. We may very well supply Indonesia with weapons again, because it is the biggest Muslim country in the world, we need their support and we use weapons to buy friends. Will we, once again, be arming future terrorists? Finally, there is a widening war, and there is, obviously, no examination of root causes of terrorism. We wrongly believe that the world can be bombed into peace.

We are facing a dire picture; I want there to be no doubt about it. I am very worried, not only about today, but I am very worried about my children and their children and what will happen in this country and others.

Alternatives To Permanent War

There are, and, as I said, there have been alternatives to our current course. None of them are perfect in the short-term. We cannot expect a country run as the United States has been run for the past 100 and more years to change course next week and end the terror and problems we are facing. I think we should have immediately treated the attacks of September 11th as a crime against humanity, and not as a war against the United States. That crime should have been brought before the United Nations. The

United States should have set up a court through the United Nations. The UN could have established a military force if it was necessary to arrest suspects or otherwise capture them. Obviously, had the United States followed this course unilateralism would have not been the order of the day and Muslim countries might have been more willing to go along with the United States.

There are objections to the United Nations; for one, it is a weak. Of course, why is it a weak United Nations--because the United States has been unwilling to cooperate and work with the United Nations. There is no Muslim country on the Security Council. The United Nations needs to make many changes, but by simply bypassing it, and giving up on it, we have taken, I think, one of the worst courses we could have.

Secondly, now that we have gone to war, where, when and how do trials of suspects happen? The military commissions are an abomination. In discussion with Justice Goldstone, from the South African Court and one of the prosecutors in the Rwandan and Yugoslavian tribunals, it was made very clear that a workable solution would be for the United States to set up ad hoc tribunals to try the suspects for September 11th. We have not done that, and consequently may not get the right guys, and very likely, we are going to convict the wrong people. Those convictions will have absolutely no credibility in the world. Who in the Muslim world, or any other world, is going to believe we got the right guys?

A remaining question is: Why did not we catch these guys? How did they get away with it? We need a full examination of our current intelligence agencies and why they failed us. Clearly, something went wrong but I do not believe that the remedy is the curtailment of civil liberties and the granting of more power to those agencies. Congress has utterly refused to do look at what went wrong and has put off an examination for at least one full year, if not forever. Until this examination is concluded, I am not willing to see more powers granted to those agencies or more rights limited. Therefore, in the short-term, I think there still are a number of alternatives.

In the long-term, we must examine our policies and practices in the Middle East. Were some of our policies responsible for bringing our world to this moment? We must examine why we are hated so much in the world and change. Will that stop every act of terror? No, it won't, but will it go some way to having hundreds of millions of people hate us less, probably it will.

In addition, we must address global issues of poverty, equality and justice. Unless we do that, it will not make a difference if the United States creates all the fortress Americas in the world, or drops bombs on every country in the world, we will not be safe, we will not have a peaceful world where my children will be free from terror.

Lastly, it is time to join the world community. It is time for the United States to support international institutions, to support multilateral treaties, to sign those treaties and to adhere to them. To do so, it is clear we are going to have to give up some of our sovereignty whether in the areas of justice (signing on to an International Criminal

Court), global warming (signing the Kyoto treaty), weapons (signing the landmines treaty); this is something almost no one in the current administration is willing to do. However, it must be done. Unless we become part of the global community, I do not believe we are going to have a safe world. We do not have a choice. Without doing so, I worry for us, for all of us, for my children and for the world.