

# FOREIGN POLICY, NATIONAL SECURITY, AND NATION BUILDING

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Nation building has been, and will continue to be, an essential element of United States National Security Strategy. Weak and failing States are breeding grounds for insurgency movements. Nation building is a long and difficult process, even under the most favorable conditions. Under less favorable conditions involving counterinsurgency operations, it can be “mission impossible.” The problem is magnified when that process attempts to export the United States’ institutions, e.g., democracy and market economies, through the barrel of a gun.

## INTRODUCTION

The 9/11 terrorist attacks arguably signaled the greatest threat to the United States’ [U.S.] national security since World War II [WWII]. It was important for the U.S. to correctly identify the threat and craft the appropriate foreign policy and national security strategies to counter that threat. I will argue that the U.S. neither defined the nature of the threat accurately, nor adopted the correct response to the actual threat. As a consequence, the U.S. has found itself mired in the wrong war, in the wrong place, at the wrong time. Moreover, the U.S. has become engaged in a “mission impossible” by conducting counterinsurgency [COIN] operations, containing a civil war, and attempting to accomplish nation building all at once. The focus on Iraq has not only distracted us from the real threat, but has also increased that threat. Career Central Intelligence Agency officer and former National Security Advisor, Donald Gregg, has put it best:

In the name of the “war on terror,” we have abandoned the moral high ground on issues such as prisoner detention, torture

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and rendition. The Bush administration has become so obsessed by the Sept. 11 attacks that, as former deputy secretary of state Richard Armitage puts it, we are exporting fear, not hope.

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. . . When we at last accurately perceive the nature of terrorist challenges, we will recognize that effectively dealing with them is largely a job for intelligence officers and paramilitary specialists. Such people, skillfully employing the scalpels of deep insight and, if necessary, excision, are far better guardians of [U.S.] national security and [U.S.] global reputation than those who indiscriminately wield the broadswords of threat, force, torture and death.<sup>1</sup>

Most will agree that Operation Iraqi Freedom has not gone well. Much of the criticism focuses on its execution, rather than on its rationale and strategy. The role of the military is specifically targeted as the key to success. Some argue that if only there were more troops, the U.S. could provide the necessary security and stability to succeed in its nation-building project. Leading presidential candidates of both parties are calling for a significant increase in Army and Marine Corps troops to correct this deficiency.<sup>2</sup> Implicit in these positions is the notion that we will conduct future COIN operations and nation building, which will be successful if we have sufficient troops who are properly configured to fight insurgencies.

This paper will challenge the basic rationale for our strategy of COIN and nation-building activities and argue that the kind of nation building and COIN operations undertaken in Iraq—and Vietnam several decades ago—are doomed to failure. The unfavorable conditions in both situations put this kind of effort in the class of “mission impossible.” I will argue that nation-building efforts have the best chance of success in countries that have stable institutions and little or no active insurgency movements. As I will explain, even under these more ideal circumstances, success will require a different approach than the U.S. has pursued in the past.

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<sup>1</sup> Donald Gregg, *George Smiley's War*, WASH. POST, Dec. 31, 2007, at A15. Donald Gregg was National Security Advisor to then Vice President George H. W. Bush. See LAWRENCE WALSH, I FINAL REPORT OF THE INDEPENDENT COUNSEL FOR IRAN/CONTRA MATTERS 485 (1993), available at <http://fas.org/irp/offdocs/walsh/>.

<sup>2</sup> Mark Benjamin, *Does a Bigger Army Mean Another Iraq?*, SALON, Sept. 27, 2007, [http://www.salon.com/news/feature/2007/09/27/bigger\\_army/](http://www.salon.com/news/feature/2007/09/27/bigger_army/).

## HISTORICAL BACKGROUND OF NATION BUILDING

Iraq is only the latest episode in what can arguably be termed “American neocolonialism.” In a penetrating account of American intervention in foreign countries, Stephen Kinzer’s book, *Overthrow*, summarizes the naked quest for worldwide economic and military hegemony, which began in 1893 with “regime change” in Hawaii.<sup>3</sup> During the following twenty years, the U.S. waged a concerted strategy to control the Caribbean and Central American regions for ideological, economic, and military purposes.<sup>4</sup> In addition, the Philippines were added to the U.S. sphere of control.<sup>5</sup> Reportedly, one of the major reasons for the Spanish-American War was to open markets for U.S. business, but one can argue that another goal was empire building.<sup>6</sup> It is not easy to separate the two goals. These activities were cloaked in moral terms of bringing the “blessings of freedoms” to the liberated people of these countries,<sup>7</sup> but little or no nation-building activities were attempted in these liberated countries. Essentially, the U.S. engineered the regime change to establish military bases and to gain economic access.<sup>8</sup> Operation Iraqi Freedom continued along that same pattern.<sup>9</sup>

The Bush administration’s current focus on nation building as an element of the U.S. National Security Strategy is ostensibly based on the belief that failing and unstable States represent a threat to national security; nevertheless, the U.S. nation-building effort is a form of neocolonialism, as I will explain. Under the current administration, this effort is focused on exporting economic and political institutions to other parts of the world. While the present form of neocolonialism has the imprimatur of the neoconservative movement, it has its origins in Wilsonian Idealism, which was based upon the notion that democracy is the political system that is needed to bring peace to the world.<sup>10</sup> That

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<sup>3</sup> See STEPHEN KINZER, *OVERTHROW: AMERICA’S CENTURY OF REGIME CHANGE FROM HAWAII TO IRAQ* 85-86 (2006).

<sup>4</sup> See *id.* at 83-84.

<sup>5</sup> *Id.* at 49-50, 86-87.

<sup>6</sup> See *id.* at 83-84.

<sup>7</sup> See *id.* at 83-84, 315.

<sup>8</sup> See *id.* at 37 (noting that negotiations without war “would most likely have led to an independent Cuba where neither the United States nor any other country would have military bases”).

<sup>9</sup> *Id.* at 316.

<sup>10</sup> THE PHILOSOPHY AND POLICIES OF WOODROW WILSON 153 (Earl Latham ed., 1958) (explaining the idea of Wilsonian Idealism).

idealism has been deeply embedded in the American psyche for the past century; indeed, it has united with the belief that the U.S. has a manifest destiny to transform the world into the U.S. image. This quest to make the world “safe for democracy” is seen as a benevolent, if not moral, imperative for America.<sup>11</sup>

The moral imperative to export our values implicitly gives the U.S. the moral high ground and supports the notion that the U.S. is a “benevolent power.”<sup>12</sup> The morality of U.S. efforts is judged by its motives in assisting countries to build strong political and economic systems. To the extent that the U.S. is perceived as having other-than-benevolent motives, our moral standing in the world suffers, and our chances for succeeding in a given instance are lessened. As will be discussed below, the U.S. claim that it is a benevolent power is seriously questioned throughout the world.

U.S. involvement in nation building became a formal tool of foreign policy after WWII in the form of the Marshall Plan.<sup>13</sup> This form of nation building was largely focused on economic development in European countries where there was a long history of national identity and national institutions.<sup>14</sup> Moreover, while these policies were clearly based on their contribution to national security in general, and the containment of communism in particular, they had the aura of benevolence, and the U.S.’ moral standing throughout the world grew.<sup>15</sup>

As the Cold War progressed, the nation building focus shifted to the Less Developed Countries [LDCs] and was used primarily as a means to deny the intrusion of communism in those countries.<sup>16</sup> In

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<sup>11</sup> A DAY OF DEDICATION: THE ESSENTIAL WRITINGS AND SPEECHES OF WOODROW WILSON 308 (Albert Fried ed., The Macmillan Co. 1965) (President Wilson’s address to Congress, seeking a declaration of war against Germany).

<sup>12</sup> See generally JAMES BOVARD, *TERRORISM AND TYRANNY: TRAMPLING FREEDOM, JUSTICE, AND PEACE TO RID THE WORLD OF EVIL* 328-29 (2003) (discussing President Bush’s rhetoric for spreading freedom and democracy but asserting that this is contrary to past U.S. foreign policy decisions).

<sup>13</sup> See F. Roy Willis, *The Marshall Plan*, in *THE ENCYCLOPEDIA AMERICANA*, INT’L ED. 368 (vol. 18, 1995) (1829) (describing the Marshall Plan and how the U.S. used this plan for nation building after WWII).

<sup>14</sup> See *id.* at 368.

<sup>15</sup> See David Ekbladh, *From Consensus to Crisis; The Postwar Career of Nation-Building in U.S. Foreign Relations*, in *NATION-BUILDING: BEYOND AFGHANISTAN AND IRAQ* 19, 27 (Francis Fukuyama ed., 2006) (discussing how Post-WWII and Cold War development programs were well received).

<sup>16</sup> See *id.* at 24 (noting that after the Cold War the U.S. was interested in the development of new states for strategic purposes in the context of a larger global

addition to the containment of communism, the U.S. policy was also focused on maintaining access to critical resources. An article written by a member of the National War College faculty in the mid-1970s summed it up this way:

The simmering Middle East crisis, the Indochina War, the receding memories of the Korean War, the current worldwide energy and food crises, and our growing concern about the reliability of access to a variety of critical and strategic raw materials have all served to sensitize the national security community to the growing importance of the developing countries . . . to [U.S.] security.<sup>17</sup>

As an element of national security strategy, the nation-building efforts during the Cold War were not focused on democracy as much as they were on stabilizing allied countries against communism;<sup>18</sup> efforts were based on pragmatic considerations. The fact that many of these countries were dictatorships was a secondary matter.<sup>19</sup> In the long term, U.S. support of such countries has undermined our moral legitimacy and benevolence regarding this element of foreign policy.

While the Cold War policy of nation building has downplayed the requirement for democratic political institutions, the U.S. was less tolerant of deviations from the free market economic model. A distinction was made between “authoritarian” regimes and “totalitarian” regimes; the former promoted capitalism and access by U.S. businesses.<sup>20</sup> The emphasis on free markets, especially emphasis on some of the draconian privatization measures forced on developing countries by the World Bank and International Monetary Fund,<sup>21</sup> [IMF] has hindered U.S. efforts at nation building and has allowed people like Hugo Chavez to gain appeal throughout Latin America.<sup>22</sup> To the contrary,

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struggle); see also Walter G. Stoneman, *The Developing Countries and United States Security*, NAT'L SECURITY AFF. F., Winter 1975, at 1, 3.

<sup>17</sup> Stoneman, *supra* note 16, at 1.

<sup>18</sup> See Ekbladh, *supra* note 15, at 19 (recognizing that nation building during the Cold War period was focused on “the development of new states for strategic purposes in the context of a larger global struggle”).

<sup>19</sup> MICHAEL H. HUNT, *IDEOLOGY AND U.S. FOREIGN POLICY* 161 (1987).

<sup>20</sup> See generally HANS BUCHHEIM, *TOTALITARIAN RULE: ITS NATURE AND CHARACTERISTICS* 21-23 (Ruth Hein trans., 1968) (describing totalitarian and authoritarian regimes and the differences between the two).

<sup>21</sup> NAOMI KLEIN, *THE SHOCK DOCTRINE; THE RISE OF DISASTER CAPITALISM* 163 (2007).

<sup>22</sup> See Associated Press, *Chavez: Venezuela to Exit IMF, World Bank Move is Largely Symbolic Since Nation Has Canceled Debts to Institutions*, MSNBC.COM, May 1, 2007, <http://www.msnbc.msn.com/id/18406119> [hereinafter Chavez].

China has been able to compete economically in LDCs, especially in Latin America and Africa, largely because it does not require the more drastic measures of capitalism, which can create inequities and social unrest.<sup>23</sup>

While nation building is usually perceived in terms of political and economic development, much more is involved. In essence, the most fundamental goal is to create a sense of nationhood.

Psychologically, few of the developing states comprehend how to battle the blandishments and false hopes aroused by communism among students, educated youth, intelligentsia, the rural dispossessed and the urban underprivileged. Except in a few of the modernizing states with articulate and social-minded leaders there is a psychological gap between the government and the people . . . .

. . . .

. . . The U.S. must always keep in mind that the ultimate and decisive target is the people. Society itself is at war and the resources, motives and targets of the struggle are found almost wholly within the local population.<sup>24</sup>

Clearly, the policymakers realized that nation building was a war of ideas. This is essential for current policy makers to keep in mind because nation building is, in the strictest sense, a social/psychological endeavor. While the focus of most nation-building projects must necessarily be on political and economic institutions, developing a sense of nationhood is primarily a psychological task; this is a task that requires a national identity based on a heritage that causes the people to give allegiance to a national authority and make sacrifices for that authority. Many areas of the world lack the ingredients for nationhood, particularly in the Middle East, where artificial boundaries were established after the dismantling of the Ottoman Empire.<sup>25</sup>

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(stating that other Latin American leaders have joined Chavez in rejecting the World Bank and IMF as tools of the U.S.).

<sup>23</sup> See Humphrey Hawksley, *China's New Latin American Revolution*, FIN. TIMES (London), Apr. 5, 2006, at 17; Robyn Dixon, *On His Africa Tour, Hu is All Business: The Chinese President Offers No-Strings-Attached Economic Partnerships and Avoids Political Controversies*, L.A. TIMES, Feb. 7, 2007, at A5.

<sup>24</sup> U.S. Dep't of State, *U.S.: Overseas Internal Defense Policy: Arms Control; National Security; Foreign Economic Policy*, FOREIGN RELATIONS OF THE UNITED STATES [FRUS] mdc1xxxviii-ix (1997).

<sup>25</sup> B. WAYNE QUIST & DAVID F. DRAKE, *WINNING THE WAR ON TERROR: A TRIUMPH OF AMERICAN VALUES* 54 (2005) (describing how the British and French

U.S. efforts at nation building after WWII were initially focused on Western Europe and Japan.<sup>26</sup> Note that all of those countries had a long tradition of nationhood and had relatively homogenous ethnicity, religion, and culture. New political institutions had to be created and economies reconstructed, but the sense of nationalism was there. All of those countries readily adapted to democracy and some form of capitalism, with considerable economic support from the U.S. This economic support was in the form of both direct assistance and favorable trading arrangements.<sup>27</sup>

U.S. efforts at nation building in the LDCs were less successful for many reasons. Initial optimism, partially based on the success of the Marshall Plan, turned to frustration as it became evident that economic and technical aid did not produce the anticipated economic progress, and even where living standards were raised, democratic institutions often did not accompany economic progress. More often than not, economic growth was accompanied by political instability. This was due, in part, to the lack of experience in political activity and also, in part, to the inequities associated with market economies and the revolution of rising expectations that made people impatient.<sup>28</sup>

Many of the countries had cultures that emphasized community sharing more than the individualistic, Protestant culture of the U.S., which is conducive to, if not necessary for, laissez-faire capitalism. As a result, entrepreneurial energy was lacking. There was also a lack of capital not only to build production facilities but also to build the infrastructure of transportation, power plants, schools, etc. needed for a modern economy. Generating the necessary capital was a difficult task in countries where the vast majority of people lived below the poverty level. Some economists believe that since economic growth is proportional to a country's investments, it is possible to estimate a country's needed investment amount in order to grow the economy. A country that requires 4% of Gross Domestic Product [GDP] for investment to have a 1% growth in standard of living would require a higher invest-

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arbitrarily established boundaries in the Middle East "after defeating and dismantling the Ottoman Empire that had sided with the Germans during the First World War").

<sup>26</sup> See Ekbladh, *supra* note 15, at 4-5.

<sup>27</sup> See *id.* at 21-22 (describing U.S. assistance to developing countries during the Cold War).

<sup>28</sup> See generally Garry Jacobs & Harlan Cleveland, *Social Development Theory*, THE INT'L CENTER FOR PEACE AND DEV., Nov. 1, 1999, [http://www.icpd.org/development\\_theory/SocialDevTheory.htm](http://www.icpd.org/development_theory/SocialDevTheory.htm) (summarizing the "revolution of rising expectations" as the advancement of society and the improvement of the accomplishments of past generations).

ment rate if the population was likewise increasing.<sup>29</sup> In a typical African country, which is already 12% below the investment rate for a neutral economy, one can see the enormity of the problem when coupled with population growth: such nations will require a massive influx of investments to grow their economies.<sup>30</sup>

Where does one get the needed capital for modernization when the masses are barely surviving? Forcing savings by limiting workers' salaries and benefits is an attractive alternative. This approach has several drawbacks. The U.S. use of that policy was based on the use of direct U.S. private investments in LDCs, which has created much resentment.<sup>31</sup> Moreover, keeping salaries low and denying benefits caused social and political unrest.

Providing capital to the host countries through international institutions such as the World Bank and International Monetary Fund is another way of investing in these economies. However, these two institutions have policies that sometimes require draconian measures of privatization in order for LDCs to qualify for loans.<sup>32</sup> While those policies have some merit simply because the culture of governmental corruption requires restrictions to ensure that the money is wisely used, the policies also have merit because the rationale is also ideological – the private sector is best suited to provide services to the people. Much of the world, including most of the Western world, does not agree with that ideological stance, at least not to the degree that the U.S. does.

It is important to understand the failure of U.S. efforts in LDCs because we are currently facing a renewal of competition for influence and resources in Latin America and Africa. Currently, the primary competition comes from China, which does not insist on the acceptance of democratic and laissez-faire capitalistic economic systems as does the U.S.<sup>33</sup> The appeal of Castro and Chavez in Latin America offers evidence to suggest that we need to rethink our approach to this

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<sup>29</sup> Council for the Dev. of Soc. Sci. Research in Africa Eleventh General Assembly [CODESRIA], Maputo, Mozambique, Dec. 6-10, 2005, *On Development and the State in Africa*, 9 (prepared by Lwazi S. Lushaba).

<sup>30</sup> *Id.* at 7.

<sup>31</sup> See, e.g., Angela Joya, *Theorizing Post-Cold War Imperial Strategies in the Middle East: Integrating the Region into the Capitalist World Market 6* (York Centre for Int'l and Sec. Stud., Working Paper No. 37, Dec. 2005), available at <http://www.yorku.ca/yciss/publications/documents/WP37-Joya.pdf>.

<sup>32</sup> KLEIN, *supra* note 21, at 163.

<sup>33</sup> DIXON, *supra* note 23, at A5.

region of the world.<sup>34</sup> Will the next insurgency movement be based in Latin America? There is already some evidence that this may be the case.

As I will argue below, the Middle East specifically, and the entire Islamic world in general, share some of the conditions that stymied our efforts in Latin America and call into question our plans for nation building in those countries. The notion—that our political and economic institutions can be the basis of nation building and stability throughout the world—is based on a sociocentric view of the world that has led us into a quagmire in the Middle East.

#### THE ROLE OF THE MILITARY IN NATION BUILDING

During the Cold War, U.S. policymakers also recognized the role of the U.S. military in the nation-building effort. This role was necessary for two fundamental reasons. First, many of the LDCs were faced with political instability, often with incipient or active insurgencies.<sup>35</sup> Second, the military institutions in many countries represented the one institution that provided a link from the people in rural areas to the central government. While much of the effort was initially focused on advisory teams to Latin American countries,<sup>36</sup> the most ambitious military project came after the fall of the French in Indo-China.<sup>37</sup>

When the French were ousted from Vietnam in 1954, after a ten-year COIN operation,<sup>38</sup> the U.S. stepped in to fill the void. Vietnam had been divided by the Geneva Accords with the provision for national elections in 1956.<sup>39</sup> When it was evident that such an election would put Ho Chi Minh in power, the U.S. decided to abort that provision and support President Diem, the temporary leader of South Vietnam.<sup>40</sup> Our effort was initially limited to an advisory role, which con-

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<sup>34</sup> See generally Chavez, *supra* note 22 (discussing Chavez's meeting with other Latin-American leaders to discuss their displeasure with the Washington based World Bank and IMF).

<sup>35</sup> MICHAEL E. BROWN, *THE INTERNATIONAL DIMENSIONS OF INTERNAL CONFLICT 272-78* (1996); MICHAEL D. GAMBONE, EISENHOWER, SOMOZA & THE COLD WAR IN NICARAGUA, 1953-1961, at 191 (1997).

<sup>36</sup> GAMBONE, *supra* note 35, at 86.

<sup>37</sup> BROWN, *supra* note 35, at 176-79.

<sup>38</sup> See FOREIGN MILITARY INTERVENTION: DYNAMICS OF PROTRACTED CONFLICT 27 (Ariel E. Levite et al. eds., 1992) [hereinafter FOREIGN MILITARY INTERVENTION]; see also DAVID L. ANDERSON, TRAPPED BY SUCCESS: THE EISENHOWER ADMINISTRATION AND VIETNAM, 1953-1961, at 4 (1991).

<sup>39</sup> See FOREIGN MILITARY INTERVENTION, *supra* note 38, at 27.

<sup>40</sup> See ANDERSON, *supra* note 38, at 1.

tinued into the early 1960s.<sup>41</sup> Thus began the most ambitious effort at nation building in our history to that date.

Our first military strategy was focused on “search and destroy” missions<sup>42</sup> that would take advantage of our technical military superiority. Little attention was paid to the matter of “winning hearts and minds.”<sup>43</sup> Displaying an ignorance of the nature of asymmetrical warfare, the challenge was initially defined in terms of classical military operations. When it was apparent that this strategy was failing, the Army Chief of Staff, General Harold K. Johnson, ordered a review of our doctrine in the mid-1960s, and the review’s conclusion was that we needed to drastically change our strategy to deal with asymmetrical warfare tactics.<sup>44</sup>

Several major field manuals in the mid-1960s<sup>45</sup> emphasized that these kinds of conflict were, first and foremost, political battles that competed for the loyalties of the people. A central goal of COIN operations was to shrink the human sea and isolate the insurgents.<sup>46</sup> While military and police forces were necessary to provide security for the people, forces also had to avoid overreactions that would alienate the people. These manuals also argued against the use of U.S. combat forces to conduct COIN; rather, emphasis should be on the use of highly skilled advisors who were knowledgeable of the culture and

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<sup>41</sup> See FOREIGN MILITARY INTERVENTION, *supra* note 38, at 29; see also ANDERSON, *supra* note 38, at 1.

<sup>42</sup> JOHN A. NAGL, COUNTERINSURGENCY LESSONS FROM MALAYA AND VIETNAM: LEARNING TO EAT SOUP WITH A KNIFE 161 (2002).

<sup>43</sup> Joseph S. Nye, Jr., *Today, It's a Question of Whose Story Wins; Government Reform Could Help Sell Our Values to the World*, L.A. TIMES, July 21, 2004, at B15.

<sup>44</sup> NAGL, *supra* note 42, at 175; see generally 1 DEPUTY CHIEF OF STAFF FOR MILITARY OPERATIONS, A PROGRAM FOR THE PACIFICATION AND LONG-TERM DEVELOPMENT OF SOUTH VIETNAM [PROVN], (1966), available at <http://handle.dtic.mil/100.2/AD377743> [hereinafter PROVN].

<sup>45</sup> PROVN, *supra* note 44, at 56 (noting that a possible reason problems in Vietnam was that there was not a sufficient number of competent advisors who knew the Vietnam culture); DEP'T OF THE ARMY, NATION BUILDING CONTRIBUTIONS OF THE ARMY [NABUCA] (1968) [hereinafter NABUCA]; DEPT. OF THE ARMY, FIELD MANUAL 90-8 COUNTERGUERRILLA OPERATIONS (1986), available at <http://www.globalsecurity.org/military/library/policy/army/fm/90-8/toc.htm> [hereinafter COUNTERGUERRILLA OPERATIONS].

<sup>46</sup> John H. Johns, *Counterinsurgency Operations: Mission Impossible*, COUNCIL FOR A LIVABLE WORLD, Mar. 16, 2007, [http://livableworld.org/work/counterinsurgency\\_operations\\_mission\\_impossible/index.html](http://livableworld.org/work/counterinsurgency_operations_mission_impossible/index.html).

nation-building techniques.<sup>47</sup> According to these manuals, military and police functions should be conducted by indigenous forces.<sup>48</sup>

It is noteworthy that the Civil Affairs doctrine set forth in Field Manual 41-10 warned our nation builders to avoid trying to make other nations in our own image by imposing political, economic, or social institutions.<sup>49</sup> We have ignored that advice in Iraq.

There was a great deal of debate about whether to deploy U.S. combat forces to quell the insurgency in Vietnam. While many argued that the use of U.S. troops was inappropriate, the decision was made to do just that. Over the years, we escalated the use of American forces to over 500,000.<sup>50</sup> After twenty years, we left Vietnam without solving the problem. It is debatable whether the systematic application of COIN doctrine was a failure in Vietnam because it was too late in being used.

#### NATION BUILDING IN IRAQ

Unintentionally, the Iraq venture has turned into the largest and most ambitious effort at nation building in U.S. history. The planners of the war never envisioned that we would be faced with the problems we have encountered. This lack of planning was due in a large measure to ideological rigidity. While it is difficult to sort through the rhetoric of the Bush administration regarding the rationale for going to war, some facts stand out. There was a strategy dating back to the late 1980s calling for U.S. world hegemony based on our dominant military, economic, and political power.<sup>51</sup> Accompanying this desire to exercise hegemony was the belief in the universality of the American value system – particularly democracy and free markets.<sup>52</sup> The assumption was that everyone desired these systems and, if given the opportunity, would select them. Moreover, the establishment of de-

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<sup>47</sup> See generally PROVN, *supra* note 44; NABUCA, *supra* note 45; COUNTERGUERRILLA OPERATIONS, *supra* note 45.

<sup>48</sup> DEPT. OF THE ARMY, FIELD MANUAL 41-10 CIVIL AFFAIRS OPERATIONS (1967).

<sup>49</sup> *Id.* at 53.

<sup>50</sup> *Vietnam War*, GLOBALSECURITY.ORG, <http://www.globalsecurity.org/military/ops/vietnam.htm> (last visited Jan. 29, 2008).

<sup>51</sup> NATIONAL SECURITY COUNCIL, THE NATIONAL SECURITY STRATEGY, iii, 1 (2002), available at <http://www.whitehouse.gov/nsc/nss.pdf> [hereinafter 2002 SECURITY STRATEGY] (describing the current idea that the U.S. must use its military, economic, and political strength “to create a balance of power that favors human freedom”).

<sup>52</sup> *Id.* at 17-23.

mocracies and free markets would solve the world's problems and create universal peace – values Americans have a moral duty to export.<sup>53</sup> The decision to go to war with Iraq had nothing to do with 9/11 and worldwide terrorist insurgency; rather, it was the implementation of an ideological strategy that combined Wilsonian Idealism, muscular militarism, and a hubristic belief that the U.S. could take unilateral action without regard to international opinion.

This ideology, which had its roots in a movement in the 1980s and 1990s, was formalized in the national security strategy that took us into Iraq:

The great struggles of the twentieth century between liberty and totalitarianism ended with a decisive victory for the forces of freedom—and a single sustainable model for national success: freedom, democracy, and free enterprise. In the twenty-first century, only nations that share a commitment to protecting basic human rights and guaranteeing political and economic freedom will be able to unleash the potential of their people and assure their future prosperity. People everywhere want to be able to speak freely; choose who will govern them; worship as they please; educate their children—male and female; own property; and enjoy the benefits of their labor. These values of freedom are right and true for every person, in every society—and the duty of protecting these values against their enemies is the common calling of freedom-loving people across the globe and across the ages.<sup>54</sup>

The above is a declaration of Pax Americana writ. The strategy adopted Wilsonian Idealism and added the use of military power to the recipe. It was no longer enough to act as a beacon for spreading democracy and free markets: it was time for action. Additionally, this use of power was to be used as we saw fit; we would do it on our own if the rest of the world did not want to join us, and we would do it even if they disapproved.<sup>55</sup> In June 2002, President Bush announced a policy of preventive wars to remove potential threats.<sup>56</sup> It should be noted

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<sup>53</sup> *Id.* at iii-v.

<sup>54</sup> *Id.* at iii.

<sup>55</sup> See ROBERT J. PAULY, JR. & TOM LANSFORD, STRATEGIC PREEMPTION: U.S. FOREIGN POLICY AND THE SECOND IRAQ WAR 40-41 (2005) (noting that Bush pledged to “take action . . . unilaterally if necessary,” stating “that ‘we cannot stand by and do nothing while dangers gather’”).

<sup>56</sup> George W. Bush, U.S. President, Commencement Address at the United States Military Academy in West Point, New York (June 1, 2002), in 38 WEEKLY

that “preventive wars” are to be distinguished from “pre-emptive wars.”<sup>57</sup>

The first execution of this strategy was to be in the Middle East, starting with Iraq.<sup>58</sup> Syria and Iran were next on the list. How was this to be accomplished? By regime change. The architects of this policy, variously known as the “Vulcans” and “Neoconservatives,”<sup>59</sup> were impatient with change from within, which the wimpish policies of Presidents H.W. Bush and Clinton sought. Now was the time to use our military power to unseat Saddam; it would be a “cakewalk.”<sup>60</sup> Once Saddam was gone, we would go into Iraq with a cadre of Western-oriented people that were led by Ahmad Chalabi, have elections, establish a market-based economy that would pay for the reconstruction—the movement would transform the Middle East. The new government would be a strong ally that would invite the U.S. to establish permanent military bases that would allow for U.S. hegemony in the region.

Something happened on the way to the forum, and the rest, as they say, is history. Brent Scowcroft labeled Iraq “a failing venture.”<sup>61</sup> Jo-

COMPILATION OF PRESIDENTIAL DOCUMENTS 944, 946 (2002), available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002\\_presidential\\_documents&docid=pd10jn02\\_txt-5.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002_presidential_documents&docid=pd10jn02_txt-5.pdf).

<sup>57</sup> Preemption is not controversial: legally, morally, or strategically. To preempt means to strike first (or attempt to do so) in the face of an attack that is either already underway or is very credibly imminent. The decision for war has been taken by the enemy. . . . By way of the sharpest contrast, a preventive war is a war of discretion. It differs from preemptive war both in its timing and in its motivation. . . . [T]he preventor strikes in order to prevent a predicted enemy from changing the balance of power or otherwise behaving in a manner that the preventor would judge to be intolerable.

Colin S. Gray, *The Implications of Preemptive and Preventive War Doctrines: A Reconsideration*, STRATEGIC STUDIES INST., July 24, 2007, available at <http://www.strategicstudiesinstitute.army.mil/pdf/files/PUB789.pdf>.

<sup>58</sup> See PAULY & LANSFORD, *supra* note 55 (noting that Bush pledged to “take action to eliminate the threats Iraq posed to American interests—with the UN’s help if possible, but also unilaterally if necessary”).

<sup>59</sup> Tom Barry, *The Rise of Stephen Hadley: The Vulcans Consolidate Power*, COUNTERPUNCH, Nov. 20-21, 2004, <http://www.counterpunch.org/barry11202004.html> (referring to George W. Bush’s foreign policy advisors as Vulcans and Neoconservatives).

<sup>60</sup> Joseph S. Nye, Jr., *The Freedom Crusade, Revisited*, THE NAT’L INTEREST ONLINE, Dec. 1, 2005, <http://www.nationalinterest.org/Article.aspx?id=10334>; see also Ken Adelman, *Cakewalk in Iraq*, WASH. POST, Feb. 13, 2002, at A27.

<sup>61</sup> Glenn Kessler, *Scowcroft is Critical of Bush: Ex-National Security Advisor Calls Iraq a ‘Failing Venture’*, WASH. POST, Oct. 16, 2004, at A2.

seph Nye said this is not “idealism,” it is “illusionism.”<sup>62</sup> Instead of reforming the existing institutions as was done in Japan and Germany after WWII, we instead abolished the military, the police forces, and the civil service. This appears to have been the result of an ideological fixation that those institutions were unredeemable masses of Saddam loyalists. The fact that most of the leaders were Sunnis guaranteed that this element of the population would be alienated.<sup>63</sup>

When the vacuum caused chaos, looting, and an outbreak of crime, our leadership proclaimed that this was a price to be paid for democracy.<sup>64</sup> When the growing violence became a coordinated effort, our leaders banned the use of the term “insurgency.”<sup>65</sup> In spite of the evidence that the situation was unraveling, our leaders painted a rosy picture of the events. The elections were touted as great milestones in the march to democracy in the Middle East.<sup>66</sup> Members of Congress displayed purple-inked fingers during the President’s State of the Union address, in marked celebration of free elections in Iraq.<sup>67</sup> It did not seem to matter that the candidates could not publicly identify themselves because of security reasons.<sup>68</sup> But, it was sold to the American public as a triumph for democracy.

The civilians sent to do the nation building in Iraq were unskilled and seemingly chosen more for their ideological orientation than for

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<sup>62</sup> Nye, *supra* note 60.

<sup>63</sup> See Dan Murphy & Jill Carroll, *Why Iraq’s Sunnis Fear Constitution*, CHRISTIAN SCIENCE MONITOR, Aug. 24, 2005, <http://www.csmonitor.com/2005/0824/p01s01-woiq.html>; Robert F. Worth & Richard A. Opiel, Jr., *Cabinet is Sworn in, but 6 Positions Still Remain Unfilled*, N.Y. TIMES, May 4, 2005, at A1.

<sup>64</sup> See Sean Loughlin, *Rumsfeld on Looting in Iraq: ‘Stuff Happens’*, CNN.COM, Apr. 12, 2003, <http://www.cnn.com/2003/US/04/11/sprj.irq.pentagon/>.

<sup>65</sup> Donald H. Rumsfeld, Sec’y of Def., News Briefing with Sec’y of Def. Donald Rumsfeld and Gen. Peter Pace, United States Dep’t of Def. News Transcript (Nov. 29, 2005), available at <http://www.defenselink.mil/transcripts/transcript.aspx?transcriptid=1492> (stating that using the term “insurgency” gives “Zarqawi and his people . . . a greater legitimacy than they seem to merit”).

<sup>66</sup> George W. Bush, U.S. President, Address Before a Joint Session of the Congress on the State of the Union (Feb. 2, 2005) in 41 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS 126, 126, 132 (2005), available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2005\\_presidential\\_documents&docid=pd07fe05\\_txt-9.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2005_presidential_documents&docid=pd07fe05_txt-9.pdf).

<sup>67</sup> President Bush Gives State of the Union Address, CNBC News Transcript, Feb. 3, 2005.

<sup>68</sup> See Christiane Amanpour et al., *Sporadic Violence Doesn’t Deter Iraqi Voters*, CNN.COM, Jan. 31, 2005, <http://www.cnn.com/2005/WORLD/meast/01/30/iraq.main/>; Dan Murphy, *Threats Hinder Iraqi Candidates*, CHRISTIAN SCIENCE MONITOR, Jan. 18, 2005, <http://www.csmonitor.com/2005/0118/p06s01-woiq.html>.

knowledge of their mission. Few knew the culture and fewer spoke the language. Moreover, they were sent to export American institutions to Iraq. Democracy and free markets were thrust upon the country. Arguably, these political and economic systems are inappropriate for the culture of the Middle East, at least in the short term and in the form insisted upon.

The political situation in Iraq is in chaos. After effectively putting into power a Shiite government dedicated to establishing an Islamic theocracy,<sup>69</sup> we have watched the country split into factions that will be difficult to form into a nation. The Kurdish region has been a de facto sovereign nation for some time.<sup>70</sup> Presidents H.W. Bush and Clinton laid the groundwork by providing a no-fly zone that removed the region from control of the central government.<sup>71</sup> Since Saddam was removed, the consummation of the independence has progressed quickly. The Kurds are consolidating their gains through ethnic cleansing of the regions around Kirkuk and Mosul.<sup>72</sup> The forced migration includes both Arabs and Turkmen.<sup>73</sup>

The Kurds have pined for their own nation for centuries. Now that the U.S. has helped them achieve their goal in Iraq, the Kurds can be expected to attempt the same in the Kurdish regions of Turkey, Syria, and Iran. The most visible evidence of Kurdish independence is in Turkey, where terrorist groups are active.<sup>74</sup> It is unlikely that Turkey will allow its eastern territory, along with twelve to fifteen million

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<sup>69</sup> Darrell Williams, *Iraq is Now a Shiite Islamic Theocracy, Thanks to Bush*, AM. CHRONICLE, Oct. 15, 2007, <http://www.americanchronicle.com/articles/40367>; see also KENNETH KATZMAN, IRAQ: ELECTIONS, GOVERNMENT, AND CONSTITUTION, CRS REPORT FOR CONGRESS 4, 6 (Aug. 2, 2005), available at <http://fpc.state.gov/documents/organization/71684.pdf>.

<sup>70</sup> Lydia Khalil, *Internal Divisions Threaten Kurdish Unity*, TERRORISM MONITOR, Mar. 15, 2007, at 4, 4-5; see also Jack Wheeler, *The Kurdish Key to the Middle East*, THE VANGUARD.ORG, Sept. 29, 2006, [http://www.thevanguard.org/thevanguard/other\\_writers/wheeler\\_jack/060929.shtml](http://www.thevanguard.org/thevanguard/other_writers/wheeler_jack/060929.shtml).

<sup>71</sup> See STEPHEN ZUNES, THE UNITED STATES AND THE KURDS: A BRIEF HISTORY, FOREIGN POLICY IN FOCUS [Policy Report], Oct. 25, 2007, available at <http://www.fpi.org/fpifxt/4670>.

<sup>72</sup> Hooman Peimani, *Power Play in Northern Iraq*, ASIA TIMES ONLINE, Apr. 23, 2003, [http://www.atimes.com/atimes/Middle\\_East/ED29Ak01.html](http://www.atimes.com/atimes/Middle_East/ED29Ak01.html).

<sup>73</sup> *Id.*

<sup>74</sup> See Dogu Ergil, *International Terrorism and Turkey's Kurdish Problem*, TURKISH DAILY NEWS, Dec. 25, 2006, available at <http://www.turkishdailynews.com.tr/article.php?newsid=62538>; Christopher Hellam & Reyko Huang, *Terrorism Project: List of Terrorist Organizations*, Center for Defense Information, <http://www.cdi.org/terrorism/terrorist-groups.cfm> (last visited Mar. 17, 2008).

Kurds,<sup>75</sup> to break away to create a Greater Kurdistan.<sup>76</sup> Nor will Syria and Iran allow such a movement of Kurds within their borders.<sup>77</sup> Will those countries be as brutal as Saddam when he repressed the Kurds? If the U.S. were to be driven from Iraq, and then were to move its military base to the Kurdish region in Iraq, what then would the U.S.' role be in the conflicts in Turkey, Syria, and Iran?

Initially, the U.S. policy was to support the central government, giving only limited autonomy for the Kurds.<sup>78</sup> Most of the insurgencies were based in Sunni areas,<sup>79</sup> which was predictable since the U.S. had dispossessed that element of the population. Efforts to get the Shi'ite government to bring the Sunnis back into the fold have largely been unsuccessful. Not only have these efforts been unsuccessful, but the Shi'ite and Sunni militias have been systematically attacking each other.<sup>80</sup> Further, the conflict is growing. The Shi'ites have been aided by their Shi'ite brothers in Iran<sup>81</sup> and the Sunnis by their religious brothers in Saudi Arabia,<sup>82</sup> Syria,<sup>83</sup> and Jordan.<sup>84</sup>

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<sup>75</sup> See Sudeshna Sarkar, *Turkey: Polls Predict Ruling Party Win*, ISN SECURITY WATCH, July 20, 2007, <http://www.isn.ethz.ch/isn/Current-Affairs/Security-Watch/Detail/?id=53545&lng=en>.

<sup>76</sup> ENFORCING RESTRAINT: COLLECTIVE INTERVENTION IN INTERNAL CONFLICTS, at 93 n.108 (Lori Fisler Damrosch ed., 1993); Chris Hedges, *Kurds in Iraq Warned by Turkey, Iran and Syria*, N.Y. TIMES, Nov. 15, 1992, at 9.

<sup>77</sup> Hedges, *supra* note 76, at 9.

<sup>78</sup> ZUNES, *supra* note 71.

<sup>79</sup> Ahmed S. Hashim, *The Sunni Insurgency in Iraq*, MIDDLE E. INST., Aug. 15, 2003, <http://www.mideasti.org/scholars/editorial/sunni-insurgency-iraq>.

<sup>80</sup> Sabrina Tavernise, *Sunni-Shi'ite Violence Points to Religious War*, INT'L HERALD TRIB., May 28, 2005, available at <http://www.nytimes.com/2005/05/27/world/africa/27iht-sunni.html>; *Iraq's Spiraling Sectarian Strife*, BBC NEWS, Aug. 15, 2006, [http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/world/middle\\_east/4795987.stm](http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/world/middle_east/4795987.stm).

<sup>81</sup> Stephen Simon & Ray Takeyh, *Iran's Iraq Strategy*, WASH. POST, May 21, 2006, at B02; Ann Scott Tyson, *Iran Continues To Support Shi'ite Militias in Iraq*, *Pentagon Says*, WASH. POST, Dec. 19, 2007, at A14.

<sup>82</sup> Elise Labott, et al., *Official: Saudis to Back Sunnis if U.S. Leaves Iraq*, CNN.COM, Dec. 13, 2006, [http://www.cnn.com/2006/WORLD/meast/12/13/saudi\\_sunnis/index.html](http://www.cnn.com/2006/WORLD/meast/12/13/saudi_sunnis/index.html).

<sup>83</sup> *Iraq 'Rebels' Claim Syria Backing*, BBC NEWS, Feb. 23, 2005, [http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/middle\\_east/4292529.stm](http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/middle_east/4292529.stm).

<sup>84</sup> Scott Lasensky, *Jordan's Role in Iraq Is Modest, but Positive*, U.S. INST. OF PEACE, available at [http://www.dailystar.com.lb/article.asp?edition\\_id=10&categ\\_id=5&article\\_id=20846](http://www.dailystar.com.lb/article.asp?edition_id=10&categ_id=5&article_id=20846) (last visited Oct. 1, 2009).

This civil war between Shiites and Sunnis has had a devastating affect on the societal structure of Iraq. Before the war, seventy percent of Baghdad was Sunni; now it is sixty-percent Shiite.<sup>85</sup> The separation of these groups into enclaves with walls constructed to prevent violence has indeed reduced the number of violent incidents,<sup>86</sup> but at what cost in future efforts to unify the nation? Over four million people have been displaced, with half of these relocating to other countries.<sup>87</sup> Many of those are Christians who have only escaped with their lives.<sup>88</sup> These relocations, based largely on religion, have fragmented the region in a way that will be difficult to undo.<sup>89</sup>

Holy alliances are further fragmenting the region. The Sunni insurgents have also been aided by their Sunni brothers in al-Qaeda.<sup>90</sup> The U.S. has been frustrated with these holy alliances and has recently shifted its strategy in a fundamental way. Instead of fighting the Sunni insurgents in such areas as Anbar Province, the U.S. has persuaded Anbar's Sunni tribal leaders to work together to defeat the al-Qaeda element.<sup>91</sup> This cooperation with Sunnis seems to be working quite well, but it further fragments the country. The central government opposes this strategy simply because it arms an already hostile element of society.<sup>92</sup> Although this strategy has been touted by General Petraeus as evidence of the progress the U.S. is making,<sup>93</sup> it could be an example of the achievement of short-term goals at the expense of the

<sup>85</sup> Alissa J. Rubin, *Sunni Baghdad Becomes Land of Silent Ruins*, N.Y. TIMES, Mar. 26, 2007, available at <http://www.nytimes.com/2007/03/26/world/middleeast/26sunni.html?scp=1&sq=&st=nyt>.

<sup>86</sup> See Oxford Analytica, *Prospects 2008: Iraq*, INT'L HERALD TRIB., Dec. 18, 2007, available at <http://www.iht.com/articles/2007/12/18/news/19oxan-Iraq.php>.

<sup>87</sup> See Refugees Int'l, *Iraq: The World's Fastest Growing Refugee Crisis*, RELIEFWEB, Oct. 23, 2007, <http://reliefweb.int/rw/RWB.NSF/db900SID/MMAH-79N3MC?OpenDocument>.

<sup>88</sup> *Statement on Iraq and Its Christian Communities*, WORLD COUNCIL OF CHURCHES, Sept. 28, 2007, <http://www.oikoumene.org/?id=4238>.

<sup>89</sup> See *id.*

<sup>90</sup> See KENNETH KATZMAN, IRAQ AND AL QAEDA, CRS REPORT FOR CONGRESS 9 (Dec. 7, 2007), available at <http://www.fas.org/sgp/crs/terror/RL32217.pdf>.

<sup>91</sup> Associated Press, *Sunni Leaders Vow To Defeat Terrorism in Anbar*, INT'L HERALD TRIB., July 7, 2007, available at <http://www.iht.com/articles/ap/2007/07/07/africa/ME-GEN-Iraq-Anbar.php>.

<sup>92</sup> See *id.*

<sup>93</sup> DAVID H. PETRAEUS, 110TH CONG., REPORT TO CONGRESS ON THE SITUATION IN IRAQ 1, 5 (2007), available at <http://foreignaffairs.house.gov/110/pet091007.pdf>.

long-term goal of national unity. Indeed, some are calling for the permanent establishment of a loose federation of three states.<sup>94</sup>

It seems that the U.S. has caused the worst-case scenario for nation building in the Middle East. Not only has it dismantled a nation-state, but it has also upset the balance of power that has kept the region relatively stable. By any rational measure of assessment, the U.S. Middle East policy has been an unmitigated disaster.

### COUNTERINSURGENCY OPERATIONS IN IRAQ

The military strategy in Iraq did not envision an insurgency; therefore, no plans were made to conduct COIN operations. In fact, there were no plans for combat forces to take a role in establishing security. General Tommy Franks told commanders that they should be prepared to pull most of the U.S. forces out of Iraq by the fall of 2003.<sup>95</sup> The flowering of freedom would take care of the insurgency. Bush, Rumsfeld, the Joint Chiefs of Staff, and Franks had ignored warnings from senior military officials such as General Anthony Zinni and Army Chief of Staff Eric Shinseki who said the mission would take 300,000-500,000 troops.<sup>96</sup>

The military was unprepared for the COIN role in Iraq, but the military leadership cannot be totally faulted. The focus on COIN operations had waned after the Vietnam War, and our national military strategy relegated it to the back burner. As the Assistant Division Commander of the 1st Infantry Division in the late 1970s, I cannot

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<sup>94</sup> See Peter Galbraith, *There is One Way to Preserve Iraq - and Give Us a Way Out: A Federation of Shia, Sunni, and Kurdish States Will Avoid Civil War*, THE GUARDIAN (London), May 17, 2004, available at <http://www.guardian.co.uk/world/2004/may/17/usa.iraq2>.

<sup>95</sup> Michael R. Gordon, *Presenting the Depths of Miscalculation in the Iraq War*, INT'L HERALD TRIB., Feb. 15, 2007, available at <http://www.ihf.com/articles/2007/02/15/news/military.php>.

<sup>96</sup> See Barbara Slavin & Dave Moniz, *War in Iraq's Aftermath Hits Troops Hard*, USA TODAY, July 21, 2003, available at [http://www.usatoday.com/news/world/iraq/2003-07-21-war-aftermath\\_x.htm](http://www.usatoday.com/news/world/iraq/2003-07-21-war-aftermath_x.htm) (noting that 'Desert Crossing,' a game and exercise supervised by Gen. Zinni, "recommended 400,000 troops to invade and stabilize Iraq"); see also RUUD JANSSENS, OF MICE AND MEN: AMERICAN IMPERIALISM AND AMERICAN STUDIES 11 (2004) (noting that Gen. "Shinseki had estimated 400,000 to 500,000 soldiers would be needed for the occupation of Iraq"); see also 60 Minutes: Gen. Zinni: 'They've Screwed Up,' (CBS Television Broadcast May 21, 2004), available at <http://www.cbsnews.com/stories/2004/05/21/60minutes/main618896.shtml> (reporting that Gen. Zinni said his plan was "much in line with Gen. Shinseki's view" in calling for approximately 300,000 troops).

recall any focus on COIN doctrine or training; the focus was on plugging the Fulda Gap in case of a Warsaw Pact attack. As a presidential candidate, George Bush pledged in 2000 that, as President, he would get the military out of the nation-building business, even in the Balkans, and return it to its legitimate mission of fighting wars.<sup>97</sup>

Without repeating the mistakes made in executing the COIN mission in Iraq, it is, nonetheless, important to address the question of whether the mission itself was appropriate. The jury is out regarding the recent efforts of General David Petraeus and his “surge strategy.”<sup>98</sup> He is using sound COIN doctrine<sup>99</sup> and has the best and brightest crew of advisors. That is irrelevant; it is far too little and far too late. While there has been a reduction in violent attacks, much of this is due to factors unrelated to the increase in troops, as discussed above. The test will be in the measure of the political progress in uniting the country. Moreover, as I will argue below, the venture would have been doomed to failure even if the U.S. had gone into Iraq with the force levels recommended by Generals Zinni and Shinseki, or even if our forces had been trained in COIN doctrine.

The military mission in nation building is to provide security and stability in order to provide time for development of economic institutions and stable, indigenous, political forces, both of which are neces-

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<sup>97</sup> George W. Bush, Gov. of Tex., First Gore-Bush Presidential Debate (Oct. 3, 2000), in COMMISSION ON PRESIDENTIAL DEBATES, available at <http://www.debates.org/pages/trans2000a.html>.

<sup>98</sup> Jim Lobe, *U.S. Surge Strategy Successful* - in *Shifting the Violence*, IPS-News.net, Apr. 19, 2007, <http://ipsnews.net/news.asp?idnews=37416>. The surge strategy, which calls for the addition of some 30,000 U.S. troops to the 140,000 marines and soldiers already deployed in Iraq as of February [2007], is based on the assumption that securing Baghdad was essential for preventing an all-out sectarian war between Sunni insurgents and Shia militias . . . . Id. Compare Man of the Year, NAT'L REV. ONLINE, Dec. 14, 2007, <http://article.nationalreview.com/?q=MzRkNzBmMDRkMmY5NDRmZDY4ODgwMzc5ZWExOTgzZDk> (praising Gen. Petraeus' development and execution of the surge strategy), and *Democrats in Denial: The Presidential Candidates Won't Admit Any Iraq Surge Success*, WALL ST. J., Jan. 8, 2008, available at <http://www.opinionjournal.com/editorial/feature.html?id=110011096> (claiming success of the surge), with Sudarsan Raghavan, *Weighing the 'Surge': The U.S. War in Iraq Hinges on the Countersurgency Strategy of Gen. Petraeus. The Results Have Been Tenuous*, WASH. POST, Sept. 4, 2007, at A01, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/09/03/AR2007090301486.html> (doubting the effectiveness of the surge of U.S. troops into Iraq).

<sup>99</sup> See *Man of the Year*, *supra* note 98 (praising Gen. Petraeus' “brilliant counterinsurgency plan”).

sary for economic development. The development of institutions, created by a battle of ideas, creates loyalty to the central government. The use of foreign troops to provide security is counter-productive to that battle under the most desirable of circumstances. The approach taken by the U.S.-appointed Administrator of the Coalition Provisional Authority, L. Paul Bremer, III, created a political climate in Iraq that made COIN operations impossible.<sup>100</sup>

My research and experience have convinced me that where there is a broad-based, highly motivated, indigenous insurgency, COIN operations cannot be won by foreign military forces—regardless of their structure, training, and size. This is due to several factors.

### *Collateral Damage*

The nature of modern insurgencies presents various obstacles for successful COIN operations conducted by military combat units; COIN operations must be conducted by police units who know the culture and the people. Foreign forces are at a disadvantage to indigenous police units. Whether the combat is conducted in rural or urban areas, insurgents operate by embedding themselves in the “human sea.”<sup>101</sup> Without knowing the culture, it is impossible to use force without some collateral damage to innocent people, including women and children. Such damage is not easily swept aside by explanations of good intentions. The extensive use of artillery, bombs, and other high tech weapons increases the collateral damage.

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<sup>100</sup> Rajiv Chandrasekaran, *Back on Capitol Hill, Bremer is Facing a Cooler Reception: Republicans to Join Democrats in Criticizing Decisions in Iraq*, WASH. POST, Feb. 6, 2007, at A09 (criticizing Bremer’s decision to disband the Iraqi Army, his de-Baathification policies, and his formation of the Commission on Public Integrity in effort “to ferret out government corruption”); see also Kenneth M. Pollack, *The Seven Deadly Sins of Failure in Iraq: A Retrospective Analysis of the Reconstruction*, THE MIDDLE E. REV. OF INT’L AFFAIRS, Jan. 28, 2008, [http://www.brookings.edu/articles/2006/12iraq\\_pollack.aspx](http://www.brookings.edu/articles/2006/12iraq_pollack.aspx) (noting three rushed decisions that “crippled the reconstruction effort” while Bremer was in control: the decision to disband “the Iraqi military and security services”; the decision to “accelerate massively the training of the new Iraqi Army”; and the decision to “create an Iraqi Governing Council” when “there was no readily available pool of leaders who genuinely represented the people”).

<sup>101</sup> See Johns, *supra* note 46.

### Atrocities

In addition to the unintentional collateral damage, atrocities will occur regardless of how well the troops are trained and led. The frustration that comes from seeing one's comrades led into ambushes, or from passively allowing such ambushes to happen, can eat away at discipline. Atrocities can follow out of revenge for fallen comrades, or flow out of the nature of COIN operations.<sup>102</sup> Such atrocities have been well-documented for Vietnam and Iraq. There were hundreds of convictions of U.S. military personnel in the Vietnam War,<sup>103</sup> not including the assassinations under the Phoenix program and the uncounted number of innocents killed in free-fire zones.<sup>104</sup>

### Torture

In the various Army manuals of the Vietnam era, the use of torture was not included as an approved tactic.<sup>105</sup> However, torture was used in Vietnam even though it was against the Geneva Convention.<sup>106</sup> The revelation of widespread torture of prisoners in Guantanamo Bay, Iraq, and Afghanistan<sup>107</sup> justifiably shocked the world community, including the American people.<sup>108</sup> The stark photos of the degradation of the prisoners left little need for words to convey the implications of world

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<sup>102</sup> MARK J. OSIEL, *OBEYING ORDERS: ATROCITY, MILITARY DISCIPLINE, AND THE LAW OF WAR*, 174-176 (1999).

<sup>103</sup> JAMES F. DUNNIGAN & ALBERT A. NOFI, *DIRTY LITTLE SECRETS OF THE VIETNAM WAR* 235 (1999).

<sup>104</sup> Douglas Valentine, *Torture, the CIA and the Press*, COUNTERPUNCH, May 8, 2004, <http://www.counterpunch.org/valentine05082004.html>; see DOUGLAS VALENTINE, *THE PHOENIX PROGRAM*, 340-43 (1990) [hereinafter PHOENIX PROGRAM].

<sup>105</sup> See generally COUNTERGUERRILLA OPERATIONS, *supra* note 45, at ch. 3 (citing the tactics for counter-guerilla operations); PROVN, *supra* note 44, at 31 (describing the short range actions to be taken to ensure U.S. goals in Vietnam).

<sup>106</sup> See PHOENIX PROGRAM, *supra* note 104, at 340-42, 377 (noting tortures in Vietnam); see also ALFRED W. MCCOY, *A QUESTION OF TORTURE: CIA INTERROGATION, FROM THE COLD WAR TO THE WAR ON TERROR* 13 (2006) (noting torture of thousands of suspects at interrogation centers in South Vietnam).

<sup>107</sup> MCCOY, *supra* note 106, at 5-6, 13.

<sup>108</sup> *Id.* at 5.

opinion.<sup>109</sup> The damage to our moral standing in the world—and to the support for our war against terrorism—was profound.<sup>110</sup>

The nature of COIN operations makes these outcomes almost inevitable. It is difficult enough to curb devastation even when indigenous military and police forces are used; the use of foreign troops makes it “mission impossible.”

#### NATIONAL WILL AND PUBLIC DISSENT IN WARTIME

Maintaining public support for costly and protracted wars, such as Vietnam and Iraq, is very difficult in a democracy, but that support is essential if the U.S. is to “stay the course.”<sup>111</sup> Clearly, widespread public dissent, especially by members of Congress, the media, and senior members of the military, undermines that will. Moreover, such dissent can give aid and comfort to our adversaries and affect the morale of our military forces. Not only is the U.S. bitterly divided over the Iraq war, but many senior military officers are also speaking out publicly against the war.<sup>112</sup> This is unprecedented.

Historically, criticism of foreign policy, especially during wartime, was supposed to stop at the water’s edge. Support of foreign policy by members of Congress was a patriotic duty once a decision had been made by the interaction of Congress and the Executive Branch.<sup>113</sup> The U.S. also expected the media to support its war policies. Further, public criticism by senior military officers, active or retired, was taboo.<sup>114</sup>

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<sup>109</sup> *Id.* at 5; William Branigin, Senators See Abu Ghraib Prison Photos Held by Defense Department: Photos Show Snarling Dogs, Disrobed Iraqi Women, WASH. POST, May 12, 2004, at A2.

<sup>110</sup> See John McCain, *Transcript: John McCain on ‘FOX News Sunday,’* FOX NEWS, Dec. 9, 2007, <http://www.foxnews.com/story/0,2933,316254,00.html> (stating that CIA destruction of interrogation tapes for two detainees “harms the credibility and the moral standing of America in the world again”).

<sup>111</sup> Bush: Stay the Course on Terror War, President Says al Qaeda Against ‘Freedom and Democracy’ in Iraq, CNN.COM, May. 6, 2004, available at <http://www.cnn.com/2004/ALLPOLITICS/03/17/bush.terror/>.

<sup>112</sup> Jason Blindauer et al., *The Real Iraq We Knew*, WASH. POST, Oct. 16, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/10/15/AR2007101500841.html> (criticizing the war in Iraq). This article was written by twelve former army captains who served in Babil, Baghdad, and Ninevah, among other places in Iraq. *Id.*

<sup>113</sup> H.R. McMASTER, DERELICTION OF DUTY: LYNDON JOHNSON, ROBERT McNAMARA, THE JOINT CHIEFS OF STAFF, AND THE LIES THAT LED TO VIETNAM, 322 (1997).

<sup>114</sup> *MacArthur v. Truman*, TIME, Apr. 23, 1951, available at <http://www.time.com/time/magazine/article/0,9171,821524-1,00.html> (stating that a subordinate

Obviously, national will and cohesion are necessary for the successful execution of wars. In fact, the show of national unity is an essential element in diplomatic negotiations to prevent war. Potential adversaries must perceive a credible willingness to use force if peaceful means are to be successful. Thus, a unified front is essential. In a democracy, such a unified effort can only be achieved by convincing the public of the necessity of war. Likewise, such unity is critical for the successful termination of conflict on a favorable basis. Critics of the U.S. pullout from Vietnam argue that “we won the war” but “lost the peace” because of the lack of national will to stay the course.<sup>115</sup> The same argument is being made regarding the current public dissent.<sup>116</sup>

The quest for bipartisan support in wartime is more likely to be achievable when government actions are based on a “clear and present danger”<sup>117</sup> rationale. This has been an elusive goal for each of the administrations involved since WWII. The Vietnam conflict was the most difficult in this regard. Clearly, public criticism of policy by influential people, such as elected officials, senior military officers, and the media, can undermine the support necessary for successful execution of foreign policy, especially wars. On the other hand, stifling criticism is unacceptable in a democracy. The central issue is to know the

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officer has “an obligation to object to any proposed course of action that he considers unreasonable or unwise,” but he has no “right to make his objections public”).

<sup>115</sup> William A. Henry, III, *Richard Nixon's Tough Assessment*, TIME, Apr. 15, 1985, available at <http://www.time.com/time/magazine/article/0,9171,966206,00.html> (reporting Nixon's claim that “we won the war” but “lost the peace,” because “Congress lacked the will to honor its commitments”).

<sup>116</sup> See *Bush Invokes 'Tragedy of Vietnam' Against Iraq Pullout*, CNN.COM, Aug. 22, 2007, <http://www.cnn.com/2007/POLITICS/08/22/bush.iraq.speech/index.html> (comparing the debate about whether to withdraw from Iraq with our decision to withdraw from Vietnam and noting the “millions of innocent citizens” who paid for our withdrawal from Vietnam).

<sup>117</sup> See generally John A. Gorfinkel & Julian W. Mack, II, *Dennis v. United States and the Clear and Present Danger Rule*, 39 CAL. L. R. 475 (1951) (describing the “clear and present danger” rationale as applied in several free speech cases). The clear and present danger rationale is primarily used in free speech cases, but it could also be used to designate a harm that is both certain and imminent. In usual free speech cases, “[c]lear” implies the equivalent of a proximate cause test,” in which “the danger must reasonably be anticipated as the result of the speech.” *Id.* at 480. “Present refers to the time when the [imminent or immediate] evil may reasonably be expected” to occur. *Id.* “A substantive evil that the state has a right to prevent has been defined in terms of balancing interests, of weighing the importance of the interest to be protected against the degree of interference with the freedom.” *Id.*

difference between loyal dissent and irresponsible, destructive criticism.

In April 1816, naval commander Stephen Decatur toasted his victory over the Barbary pirates with these words: "Our country! In her intercourse with foreign nations, may she always be in the right; but our country, right or wrong."<sup>118</sup> Carl Schurz, who was a Major General in the Union Army and was later elected to the Senate, revised the quote in a speech to the Senate. His version is, "Our country—when right to be kept right; when wrong to be put right."<sup>119</sup> Senator Schurz framed the statement more appropriately for a democracy than did Decatur. Schurz went on to offer the following observation on patriotism:

The man who in times of popular excitement boldly and unflinchingly resists hot-tempered clamor for an unnecessary war, and thus exposes himself to the opprobrious imputation of a lack of patriotism or of courage, to the end of saving his country from a great calamity, is, as to "loving and faithfully serving his country," at least as good a patriot as the hero of the most daring feat of arms, and a far better one than those who, with an ostentatious pretense of superior patriotism, cry for war before it is needed, especially if then they let others do the fighting.<sup>120</sup>

Problems arise when a large segment of the nation perceives that government actions are wrong and need to be set right. When and how does one go about setting things right without undermining national will and unity in general and, more specifically, without harming the military morale of those fighting? When is it appropriate for influential members of the country to criticize policy publicly during wartime? Who judges the limits of this criticism? As I will argue below, the current policies in general, and the Iraq War in particular, dictate setting things right. In looking at the limits of such criticism, the next section will examine the three national institutions mentioned above: Congress, the military, and the media.

The Vietnam War should have taught us some lessons to put the current debate in perspective. During WWII, there was little public criticism by members of Congress and the media. There was none by senior members of the military. There was more public criticism, how-

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<sup>118</sup> CHARLES LEE LEWIS, *THE ROMANTIC DECATUR* 183 (1971).

<sup>119</sup> 5 CARL SCHURZ, *SPEECHES, CORRESPONDENCE, AND POLITICAL PAPERS OF CARL SCHURZ* 120 (Frederic Bancroft ed., 1913).

<sup>120</sup> *Id.* at 460-61.

ever, during the Korean conflict, and one senior military officer, General MacArthur, went public with his criticism while in uniform.<sup>121</sup>

Public dissent by members of Congress and the media increased dramatically during the Vietnam conflict. However, with a few exceptions, the military community, active and retired, remained silent. The difference between WWII and Vietnam and Iraq can be partially explained by the lack of a clear and present danger in the latter two wars. In the case of the Vietnam conflict, however, part of the dissent stemmed from the manner in which the people were persuaded to support the war.

It is fair to say that the Johnson administration used a great deal of deception in order to gain congressional support for the war. This deception was particularly apparent in the Tonkin Gulf incident.<sup>122</sup> In an effort to create a clear and present danger, the public was told that if the U.S. did not stop communism in Asia, communist insurgents would threaten the California coast.<sup>123</sup> The leadership's claims that there was a "light at the end of the tunnel" were used to maintain support for the war over the years.<sup>124</sup> It is also fair to say that the public was kept in the dark on many matters of the war, not the least of which was manipulation of the budget in order to have both "guns and butter."<sup>125</sup>

One of the best accounts of the deceptive practices of the Johnson administration is depicted in H.R. McMaster's book, *Dereliction of Duty*.<sup>126</sup> The subtitle, "Lyndon Johnson, Robert McNamara, the Joint

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<sup>121</sup> MacArthur v. Truman, *supra* note 114.

<sup>122</sup> JEFFREY W. HELSING, *JOHNSON'S WAR/ JOHNSON'S GREAT SOCIETY: THE GUNS AND BUTTER TRAP* 32-33 (2000) (describing the Tonkin Gulf incident in which President Lyndon Johnson ordered a retaliatory air strike and informed Congress and the public that North Vietnam had carried out an unprovoked attack on a U.S. patrol ship, knowing all the while that the North Vietnamese attack had not been confirmed).

<sup>123</sup> HOWARD JONES, *DEATH OF A GENERATION: HOW THE ASSASSINATIONS OF DIEM AND JFK PROLONGED THE VIETNAM WAR* 67 (2003). See HELSING, *supra* note 122, at 33-34 (stating that most of the force used at the beginning of the Vietnam War was authorized and carried out "in the name of preventing further aggression by the communists").

<sup>124</sup> Patricia Sullivan, *General Commanded Troops in Vietnam*, WASH. POST, Jul. 19, 2005, at A01.

<sup>125</sup> HELSING, *supra* note 122, at 9 (noting that President Johnson refused to "choose between guns and butter," and, instead, "played down the costs of the war" to get Congress to "legislate and appropriate money" in pursuance of his goals to make the U.S. a "Great Society").

<sup>126</sup> MCMASTER, *supra* note 113.

Chiefs of Staff, and the Lies That Led to Vietnam,” suggests the major conclusion of the book—the nation was deceived into going to war and misled as to the progress of the effort. McMaster accuses top officials, both civilian and uniformed, of failing to protest wrong policies.<sup>127</sup>

The deceptive actions by the Johnson administration wore thin over the years as the costs in lives and dollars became evident. The public turned against the war, and eventually, Johnson lost the presidency because of his failure to end the war.<sup>128</sup> It took years for the military, especially the Army, to recover from the damage done to it as an institution and to recover the public's trust. “The Vietnam Syndrome”<sup>129</sup> also decreased the public's willingness to support an aggressive foreign policy that relied upon a credible threat in order to justify the use of force.<sup>130</sup> The American people had lost trust and confidence in their government and the military.

If more prestigious people had spoken out against the Vietnam policy earlier, perhaps thousands of lives could have been spared. However, public criticism was seen, as unpatriotic at best, and as treason, at worst. Critics of foreign policy certainly aided and comforted the enemy and eroded national will. Would it have served the national interest to keep this information from the public? Many people hold that suppressing information would have been the right course; they argue that the U.S. could have won the war absent these critics, especially the media.

### *Congressional Dissent*

Many will argue that the only legitimate dissent in wartime should be within the confines of the political process. Narrowly defined, this could be interpreted as described below.

The Constitution establishes a process for going to war. While the president is given authority to provide national security, only Congress can declare war.

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<sup>127</sup> *Id.* at 294.

<sup>128</sup> See HERBERT Y. SCHANDLER, LYNDON JOHNSON AND VIETNAM: THE UNMAKING OF A PRESIDENT 347-48 (1983).

<sup>129</sup> “Stated simply, the ‘Vietnam Syndrome’ is the American public's disinclination to engage in further military interventions in internal Third World conflicts.” MICHAEL T. KLARE, BEYOND THE “VIETNAM SYNDROME”: U.S. INTERVENTIONISM IN THE 1980S, 1 (1982).

<sup>130</sup> *Id.* at 1-3.

The people elect governmental representatives. Those representatives debate the issues and decide on policy. Once the policy is decided by a democratic process, all should support the effort and cease public criticism. This applies especially to Congress as well as the military, both active and retired. Without that support, it is difficult, if not impossible, to prosecute a war. Not only does public dissent weaken national will and hurt military morale, but it also gives aid and comfort to the enemy.

Under ideal circumstances, that argument for support without criticism is valid. Unfortunately, current circumstances regarding our foreign policy in general, and the Iraq War in particular, are not ideal. The shock of 9/11 changed the political process significantly.

The 9/11 shock aroused the public to a clear and present danger—terrorism was brought to our homeland in a stark manner. The U.S. circled the wagons and for a period of time had national unity, as well as the sympathy and support of the world community. Congress and the American public overwhelmingly supported the President in his response to this danger.<sup>131</sup> In effect, Congress and the American people gave President Bush complete authority to do what he thought best to protect the nation. The decision to invade Afghanistan received domestic and international approval, including the United Nations [U.N.].<sup>132</sup>

When the President convinced the American public that Iraq represented the front line of terrorism, the public supported the decision. One poll showed seventy-eight percent of Americans supported the decision to go to war in Iraq.<sup>133</sup> Not only did President Bush convince the American people that Iraq had Weapons of Mass Destruction [WMD] that were an immediate threat, but he also convinced them

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<sup>131</sup> *USA Today/CNN/Gallup Poll Results*, NATION, Sept. 16, 2001, <http://www.usatoday.com/news/nation/2001/09/16/terrorism-poll2.htm> [hereinafter *USA Today/CNN/Gallup Poll*].

<sup>132</sup> See Press Release, Security Council, Security Council Condemns, 'In Strongest Terms', Terrorist Attacks on United States: Unanimously Adopting Resolution 1368 (2001), Council Calls on All States to Bring Perpetrators to Justice, U.N. Doc. SC/7143 (Sept. 12, 2001), available at <http://www.un.org/News/Press/docs/2001/SC7143.doc.htm> (calling "all States to work together urgently to bring to justice the perpetrators, organizers and sponsors" of the Sept. 11th terrorist attacks).

<sup>133</sup> GEORGE HORACE GALLUP, *THE GALLUP POLL: PUBLIC OPINION 2003*, 115 (2003).

that Iraq had a direct link to Osama bin Laden and the 9/11 attacks.<sup>134</sup> The public perceived a clear and present danger.

In a show of unity, the American people and their elected representatives supported Bush's discretion to use whatever force he deemed appropriate against Iraq. Congress passed a resolution authorizing the use of force, *contingent on certain circumstances*.<sup>135</sup> That resolution was designed to strengthen President Bush's bargaining power to use diplomatic means to force Saddam to allow U.N. inspectors into Iraq.<sup>136</sup> Congress trusted Bush to use the resolution in a responsible manner in order to persuade the U.N. to pressure Iraq into allowing inspections of suspected WMD sites.<sup>137</sup> Neither the congressional resolution, nor the subsequent U.N. resolutions, authorized the use of force absent the critical contingency, namely, a material breach by Iraq of U.N. Security Council resolutions. In that situation, U.S. intervention would force Iraq to allow U.N. inspectors to determine whether any WMD existed.<sup>138</sup>

A congressional resolution must be interpreted in the context of the political climate at the time. The resolution in the Iraq War was based primarily on the presumption of the truth of President Bush's claims regarding the WMD and al-Qaeda connections. Further, at least some congressmen trusted Bush to use force only as a last resort. Only a few members of Congress, such as Senators Chuck Hagel and Jack Reed, spoke out against the rush to war and questioned President Bush's rationale for going to war with Iraq.<sup>139</sup> During the Vietnam era, a few influential members of Congress, such as Senator William Fulbright

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<sup>134</sup> *Percentage of Americans Believing Iraq had WMD Rises*, Worldpublicopinion.Org, Aug. 9, 2006, <http://www.worldpublicopinion.org/pipa/articles/brunitedstatescanadara/238.php?lb=&pnt=238&nid=&id=>.

<sup>135</sup> Authorization for Use of Military Force Against Iraq Resolution of 2002, Pub. L. No. 107-243, § 3, 116, Stat. 1498, 1501 (2002) [hereinafter Authorization for Use of Military Force].

<sup>136</sup> Authorization for Use of Military Force, pmbl.

<sup>137</sup> See Authorization for Use of Military Force, § 2(2) (authorizing President Bush to "obtain prompt and decisive action by the Security Council to ensure that Iraq . . . promptly and strictly complies with all Security Council resolutions regarding Iraq").

<sup>138</sup> Authorization for Use of Military Force, pmbl., § 3.

<sup>139</sup> Shailagh Murray, *Hagel Ponders White House Run As War Criticism Raises His Profile*, WASH. POST, Jan. 26, 2007, at A01; David S. Cloud, *Rumsfeld Says War Critics Haven't Learned Lessons of History*, N.Y. TIMES, Aug. 30, 2006, at A6 (reporting Jack Reed's criticism of the war).

and Representative Pete McCloskey, spoke out against the war,<sup>140</sup> but many politicians during the Vietnam War hid their reservations for fear of being branded as “soft on communism.”<sup>141</sup> Similarly, many politicians hid their doubts during the signing of the Iraq resolution for fear of being branded as unsupportive of the troops. While many had serious reservations about giving Bush such support, there was incredible political pressure on individual members to show they were tough on terrorism.

As events unfolded, it appeared as if Congress, the public, the media, and the world community had been deceived about the rationale for going to war in Iraq. WMDs were not found,<sup>142</sup> and the links to bin Laden didn’t exist.<sup>143</sup> In fact, evidence indicated Saddam Hussein and bin Laden were enemies.<sup>144</sup> While the administration succeeded in convincing the majority of Americans that the Iraq war was an essential element in the war on terrorism, the administration has not sold that view to the international community.<sup>145</sup>

At least one leaked classified British document provides strong evidence that there was deliberate deception on the part of the Bush administration to justify going to war in Iraq.<sup>146</sup> Moreover, that docu-

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<sup>140</sup> DAVID RUDENSTINE, *THE DAY THE PRESSES STOPPED: A HISTORY OF THE PENTAGON PAPERS CASE 123* (1996) (noting that Senator William Fulbright and Congressman Pete McCloskey “both made public requests that the New York Times turn over a copy of the classified [Pentagon Papers] to Congress since the administration had refused to do so”).

<sup>141</sup> See DANIEL C. HALLIN, *THE “UNCENSORED WAR”: THE MEDIA AND VIETNAM 30* (1986) (noting that President Kennedy feared “that the Vietnam War would arouse the Right, which would put [his administration] under intense pressure . . . not to appear ‘soft on Communism’”).

<sup>142</sup> Report: No WMD Stockpiles in Iraq: CIA: Saddam Intended to Make Arms if Sanctions Ended, CNN.COM, Oct. 7, 2004, <http://www.cnn.com/2004/WORLD/meast/10/06/iraq.wmd.report/>; Iraq Survey Group Final Report: Key Findings, GLOBALSECURITY.ORG, [http://www.globalsecurity.org/wmd/library/report/2004/isg-final-report/isg-final-report\\_vol3\\_cw\\_key-findings.htm](http://www.globalsecurity.org/wmd/library/report/2004/isg-final-report/isg-final-report_vol3_cw_key-findings.htm) (last visited Feb. 9, 2008).

<sup>143</sup> Daniel Benjamin, *Saddam Hussein and Al Qaeda Are Not Allies*, N.Y. TIMES, Sept. 30, 2002, at A1.

<sup>144</sup> *Id.*

<sup>145</sup> Peter Baker, *Bush Aide Fires Back at Critics on Justification for War in Iraq*, WASH. POST, Nov. 11, 2005, at A01.

<sup>146</sup> Memorandum from Matthew Rycroft, Downing Street Foreign Policy Aide, on Iraq: Prime Minister’s Meeting to Def. Sec’y, Foreign Sec’y, Att’y-Gen., Sir Richard Wilson, John Scarlett, Francis Richards, CDS, C, Jonathan Powell, Sally Morgan, Alastair Campbell (July 23, 2002), in David Manning, *The Secret Downing Memo: Secret and Strictly Personal—UK Eyes Only*, SUNDAY TIMES (London), May

ment alleges the decision to go to war was made in early 2002 and that the intelligence was being fitted to support that decision.<sup>147</sup> In other words, the Bush strategy was based on deliberate deception and resulted in a breach of trust with Congress, the U.N., and the American public. Should Americans patriotically support the foreign policy, or should they speak out against the deceptions and the wrong policy?

It is very difficult for Congress to perform its duty to set things right in the current political environment. This is due to several systemic forces in our body politic in addition to the fear associated with 9/11. The Republican campaign during the 2002 midterm election was very successful in portraying several Democrats as weak on the war against terrorism.<sup>148</sup> This was a deliberate strategy coordinated by Karl Rove.<sup>149</sup> The most egregious case of that strategy was the election defeat of a Vietnam War hero, Senator Max Cleland. Accusing Cleland of being soft on defense, his opponent ran ads juxtaposing pictures of Cleland with Saddam and bin Laden, suggesting Cleland was "soft on national security."<sup>150</sup> That opponent, now Senator Chambliss, avoided service during the Vietnam War.<sup>151</sup>

The congressional resolution to support President Bush came during the context of that 2002 campaign. It is still dangerous to have an honest debate in Congress about our national security policy in general and the war in Iraq in particular. As one Senator told me, any criticism of administration policy, even within the Senate, is seen as a failure to

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1, 2005, available at <http://www.timesonline.co.uk/tol/news/uk/article387374.ece> [hereinafter *The Secret Downing Memo*].

<sup>147</sup> *Id.*

<sup>148</sup> See Amy Schatz, *Security Bill Bolsters Bush: Victorious Push For New Department Has President Riding High*, ATLANTA J. CONST., Nov. 24, 2002, at E1 (discussing Saxby Chambliss' and Jim Talent's campaigns in Georgia and in Missouri respectively).

<sup>149</sup> The Associated Press, *Rove: War on Terrorism Central in Elections: 'Democrats Have a Pre-9/11 View of the World,' White House Adviser Says*, MSNBC.COM, Jan. 20, 2006, <http://www.msnbc.msn.com/id/10946712/>; see also James Carney, *Karl Rove's Flawed Vision*, TIME, Aug. 13, 2007, available at <http://www.time.com/time/nation/article/0,8599,1652423,00.html> (discussing Karl Rove's similar strategy for the 2006 midterm elections).

<sup>150</sup> Andrea Stone, *Cleland Defeated by Conservative*, USA TODAY, Nov. 6, 2002, available at [http://www.usatoday.com/news/politicselections/2002-11-06-chambliss\\_x.htm](http://www.usatoday.com/news/politicselections/2002-11-06-chambliss_x.htm); see also Schatz, *supra* note 148.

<sup>151</sup> See Bob Kemper, *Attack Ad on Cleland Blamed on Rove*, ATLANTA J.-CONST., Aug. 14, 2007, at A5 (explaining that Chambliss received a medical excuse from service in Vietnam due to a bad knee); see also Mary McGrory, *Dirty-Bomb Politics*, WASH. POST, Jun. 20, 2002, at A23 (explaining that Chambliss' bad knee prevented him from serving in Vietnam).

“support the troops.” The reluctance to challenge the aggressive foreign policy of the Bush administration in general, and the Iraq War in particular, is due to the jingoistic attitude among the American people as well as the knowledge that the American culture is supportive of an aggressive use of military power. Andrew Bacevich describes this culture in *The New American Militarism*.<sup>152</sup> At the end of WWII, Americans felt a sense of responsibility to serve and support the military, but the Korean War tempered that idea somewhat because of that war’s futility.<sup>153</sup> The Vietnam War shattered that American sense of responsibility.<sup>154</sup> Several groups, particularly the neoconservatives, were dedicated to reviving that culture during the Iraq War—and to taking it one step further—to use it to establish hegemony over the globe.<sup>155</sup>

In the context of this history, the public responds favorably to jingoistic rhetoric such as “he can run, but he cannot hide,”<sup>156</sup> “either you are with us, or you are with the terrorists,”<sup>157</sup> and “mission accomplished.”<sup>158</sup> It is very difficult for an elected official, however, to separate criticism of war policy from support for the troops in the midst of that rhetoric. Consequently, the normal political process is not working. Congress cannot set wrong policy right without being accused of not supporting the troops.

The Iraq War cannot be honestly debated in Congress; thus, the U.S. has no political mechanism for correcting misguided policy other than the administration’s recognition of error. The Bush administration

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<sup>152</sup> See ANDREW J. BACEVICH, *THE NEW AMERICAN MILITARISM: HOW AMERICANS ARE SEDUCED BY WAR*, 1-2 (2005).

<sup>153</sup> See *id.* at 98 (noting that though most understood war’s effects and their duty to serve during WWII, there was a greater need during the Korean War “to conjure up reassuring explanations of what the armed forces were doing and why”).

<sup>154</sup> *Id.* at 99 (“Vietnam demolished the notion of military obligation and brought the tradition of the citizen-soldier to the verge of extinction.”).

<sup>155</sup> See *id.* at 2.

<sup>156</sup> Chris Suellentrop, *Which Terrorist is Kerry? Choose from Bin Laden, Qaddafi, and Abu Abbas*, SLATE, Oct. 10, 2004, <http://www.slate.com/id/2108018> (explaining that, though Bush never actually said “he can run, but he cannot hide” in relation to Osama bin Laden, he did use this phrase to refer to John Kerry in an attempt to remind voters of “the post-9/11 Bush” and “the perpetually popular Reagan,” who once used the phrase to refer to a terrorist who was convicted of hijacking an Italian cruise ship in 1985).

<sup>157</sup> George W. Bush, U.S. President, Address to a Joint Session of Congress and the American People (Sept. 20, 2001), <http://www.georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010920-8.html>.

<sup>158</sup> Dana Bash, White House Pressed on ‘Mission Accomplished’ Sign: Navy Suggested It, White House Made It, Both Sides Say, CNN.COM, Oct. 29, 2003, <http://www.cnn.com/2003/ALLPOLITICS/10/28/mission.accomplished/>.

has not followed the advice of private military dissent of its policies.<sup>159</sup> Ideologues in the administration will not likely ever admit error in the absence of public pressure, but there will be no public pressure if the public is kept in the dark.

### *Loyal Dissent by Military Leaders*

A minority of the military community publicly dissented during the Vietnam War. A few respected leaders, such as retired General David Shoup, former Commandant of the U.S. Marine Corps, spoke out against the war in the late 1960s.<sup>160</sup> They believed the policy was wrong and needed to be set right. In 1971, Daniel Ellsberg, a former Marine and member of a highly classified Department of Defense [DOD] study group, leaked what became known as the "Pentagon Papers," which revealed official assessments that contradicted public statements of the administration.<sup>161</sup> In the same year, ex-Navy Lieutenant John Kerry made allegations of widespread atrocities in Vietnam.<sup>162</sup> Did the activities of Daniel Ellsberg and John Kerry in 1971 erode national will? Of course they did, but an argument can be made that national will needed to be undermined because it was based upon deception.

The concept of setting wrong policy right<sup>163</sup> presents a special dilemma for military officers, both active and retired. Adopting the original Decatur phrase would result in one merely saluting and ceasing to

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<sup>159</sup> See Peter Baker, *President Confronts Dissent on Troop Levels: Bush Indicates Military Won't Dictate Numbers; Top General to Retire*, WASH. POST, Dec. 21, 2006, at A01 (describing the administration's policy of listening to, but not necessarily following, the advice of dissenting military).

<sup>160</sup> See generally Howard Jablon, General David M. Shoup, U.S.M.C.: Warrior and War Protester, 60 J. MIL. HIST. 513 (1996).

<sup>161</sup> PETER SCHRAG, TEST OF LOYALTY: DANIEL ELLSBERG AND THE RITUALS OF SECRET GOVERNMENT (1974) (discussing the controversy surrounding the pentagon papers); see also John T. Correll, The Pentagon Papers: A Secret Study of the Vietnam War Set Off an Incredible Sequence of Events, AIR FORCE MAGAZINE: J. AIR FORCE ASS'N, Feb. 2007, available at <http://www.afa.org/magazine/feb2007/0207pentagon.asp> (detailing government deceptions regarding the justifications for the Vietnam War, commissioned by McNamara in 1967 and completed in 1971).

<sup>162</sup> John Kerry, Vietnam Veterans Against the War, Statement by John Kerry to the Senate Committee of Foreign Relations, April 23, 1971, <http://www.vietnamwar.com/johnkerryvietnamveteransagainsthewar.htm>. A search of the National Archives will validate Kerry's allegations. The author was a member of a committee in the Office, Chief of Staff, Army during this period and can vouch for the allegations made by Kerry.

<sup>163</sup> See LEWIS, *supra* note 118, at 183.

question policy, whether it is right or wrong. That is precisely the approach that was taken by the Germans and Japanese military leaders in WWII. They made a plea that they were merely loyal military who carried out the government's policies. The Nuremberg trials rejected that argument and the international community established a norm against blind obedience.<sup>164</sup>

How does a professional military officer go about dissenting without exciting public criticism that may weaken national will, give aid and comfort to the enemy, and damage troop morale? The answer is relatively simple for active duty officers—they provide loyal dissent in the decision-making process, and then salute and carry out the decision without hesitation—as long as it is a lawful order.<sup>165</sup> On rare occasions, whistle blowing is justified.<sup>166</sup> If one cannot execute orders because of moral qualms, then he should resign.<sup>167</sup>

The dilemma is hazier for retired military officers. Some are criticized for speaking out against our current foreign policy, in general, and the Iraq War, in particular.<sup>168</sup> That criticism is similar to that leveled at dissenters during the Vietnam era. The implication is that public dissent is unpatriotic, at best, and perhaps treasonous. Do those who disdain such dissent adhere to a totalitarian model of state? If not, how does the U.S. put things right in a democratic society? Clearly, public dissent of government policies has negative consequences—it does weaken national will, give aid and comfort to the enemy, and damage troop morale. But, to deny dissent in a democracy is to create a totalitarian state.

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<sup>164</sup> See David Weissbrodt, *Non-State Entities and Human Rights Within the Context of the Nation-State in the 21st Century*, in *THE ROLE OF THE NATION-STATE IN THE 21ST CENTURY* 175, 178 (Monique Castermans-Holleman et al. eds., 1998); see also London Charter of the International Military Tribunal, art. 1, Aug. 8, 1945 (“There shall be established after consultation with the Control Council for Germany an International Military Tribunal for the trial of war criminals whose offences have no particular geographical location whether they be accused individually or in their capacity as members of organizations or groups or in both capacities.”).

<sup>165</sup> See MARK OSIEL, *OBEYING ORDERS: ATROCITY, MILITARY, DISCIPLINE & THE LAW OF WAR* (Transaction Pub. 1999); Fred Kaplan, *Resign, Retire, Renounce: What Should Generals Do If Bush Orders a Foolish Attack on Iran?*, SLATE, Oct. 17, 2007, <http://www.slate.com/id/2176122>.

<sup>166</sup> See OSIEL, *supra* note 165; see also Kaplan *supra* note 165; see also Military Whistleblower Protection Act, 10 U.S.C. § 1034(c)(2)(A)-(B) (1994).

<sup>167</sup> See OSIEL, *supra* note 165; see also Kaplan, *supra* note 165.

<sup>168</sup> Solomon Moore, *Generals' Criticism of Runsfeld Gets Mixed Reaction Among Troops*, L.A. TIMES, April 20, 2006, at A19.

Some retired military officers consider the current national security policy, in general, and the Iraq War, in particular, to be tragic mistakes that need to be “set right.”<sup>169</sup> Policy will be “set right” only when the public becomes aware that it is wrong. There is a fine line between patriotism (loyalty to one’s nation when it is morally right); chauvinism (militant glorification of one’s country); vainglorious patriotism (unreasoning attachment and bias towards one’s nation); and jingoism (boasting of one’s patriotism and favoring an aggressive foreign policy). Schurz’s concept<sup>170</sup> offers the formula for drawing those distinctions. Those who adopt the creed of blindly following wrong policy fit the chauvinistic/jingoistic category.

True patriots make an effort to set things right when they first conclude that a policy is wrong. The U.S. will be divided on which terms apply to each specific circumstance, and it will be particularly divided in wars that are not in response to a clear and present danger. Even if a genuine danger exists, it is often difficult to generate national will that requires self-sacrifice if that danger is ill-defined. Thus, leaders are tempted to manufacture a clear and present danger, as many believe was done by the Bush administration to gain support for the Iraq War.<sup>171</sup> Should this kind of subterfuge go unchallenged? I think not.

Evidence reveals that several high-ranking active duty officers have considered resigning over the current policies in the Middle East, especially if President Bush orders an attack on Iran.<sup>172</sup> This raises serious constitutional questions that go beyond the scope of this paper. Fred Kaplan framed the debate well in a provocative article: *Resign, Retire, Renounce: What Should Generals Do if Bush Orders a Foolish Attack on Iran?*<sup>173</sup>

As was the case during the Vietnam conflict, do we retired military personnel stand silent even though we are convinced that we are in the midst of misguided policy that has long-term negative consequences? By giving uncritical endorsement of the policy, we, in effect, jump into the hole we have dug and help shovel deeper. Or, do we believe the American public needs to hear our dissent so they can make a

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<sup>169</sup> Jon Sawyer, *Unprecedented Highs, Lows Mark Bush’s Term*, SEATTLE TIMES, Aug. 29, 2004, at A19.

<sup>170</sup> See generally SCHURZ, *supra* note 119, at 460-61 (stating that one who resists an unnecessary war is as great a patriot as the one who fights bravely in the war).

<sup>171</sup> Andrew M. Fraser, *Answer These Questions Before Voting for Blair*, HERALD (Glasgow), April 7, 2005, at 19.

<sup>172</sup> See Kaplan, *supra* note 165.

<sup>173</sup> *Id.*

more informed decision? This is not an easy dilemma to solve, but some of us have decided it is patriotic to speak out. While some insist that, since the U.S. is at war, everyone should refrain from criticism, I would argue that such acquiescence is tantamount to aiding and abetting those who refuse to learn from their mistakes. If Americans, as a people—and the media in particular—follow that advice, we all surrender our right to live in a democracy.

### *Media Responsibility in Wartime*

Viewing the media conduct in the broader context of wartime dissent, it is fair to ask if the media can be accused of undermining the war in Iraq. Regardless of how one feels about the wisdom of American policies and the conduct of the war, Americans can all agree that it behooves us to present a united front to the enemy, if it can be done in good conscience. Anything that undermines that unity will give aid and comfort to the enemy. This was true in the Korean War and the Vietnam conflict. Did the exposure of the My Lai massacre<sup>174</sup> and the leak of the Pentagon Papers<sup>175</sup> give aid and comfort to the enemy and undermine unity during the Vietnam War? Of course they did! But were the exposures considered patriotic duties?

The media, as watchdogs for democracy, can be very irritating. This is especially true during periods of national emergency when national unity is critical for success. Freedom of the press is the price of a democratic society. To eliminate this freedom would turn the U.S. into a totalitarian state. It is doubtful whether any thoughtful person would call for that. The problem, then, is where to draw the line. Few Americans expressed concern over the torture of prisoners when it was exposed.<sup>176</sup> Some, on the other hand, including Senator James Inhofe, were “outraged at the outrage” over the incidents.<sup>177</sup> A 2005 survey revealed that two-thirds of Americans approve of torture in some circumstances,<sup>178</sup> and Americans seem even less concerned with torture

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<sup>174</sup> *An American Tragedy*, TIME, April 28, 2001, available at <http://www.time.com/time/nation/article/0,8599,107922,00.html> (describing the massacre of the My Lai village in Vietnam where 109 civilians were killed); see also *infra* note 186.

<sup>175</sup> Correll, *supra* note 161.

<sup>176</sup> Editorial, *Time to Ask a Very Difficult Question*, AUSTRALIAN, June 18, 2007, at 15.

<sup>177</sup> Charlie Savage, *General Faults Prison Leader*, BOSTON GLOBE, May 12, 2004, at A1.

<sup>178</sup> See Tom Carney, *Americans, Especially Catholics, Approve of Torture*, NAT'L CATHOLIC REPORTER, March 24, 2006, available at [http://natcath.org/NCR\\_](http://natcath.org/NCR_)

now. Did the public disclosure damage war efforts and international opinion? Of course it did! On the other hand, would Americans rather not know about such behavior?

Judging the media tends to reflect the personal, philosophical orientation of the person judging. For those who endorse the current policies and resent criticism of them, the line is sharply drawn: any criticism is tantamount to treason. Donald Rumsfeld asked that Americans remember that this is an all-out-war against terrorism, implying that any criticism of effort is unpatriotic.<sup>179</sup> The basic problem is that loyal citizens differ on the basic policy of the administration and the conduct of the war. Should we who are critical remain silent because criticism gives “aid and comfort to the enemy”?<sup>180</sup> Many think precisely that.

The exposure of documents in the Department of Justice, the White House, and the DOD—documents that revealed the policy regarding torture—arguably did far more damage to our moral standing than did the Abu Ghraib photos. Without the revelation of those policy documents, the Pentagon might have been able to make a persuasive case that those specific events were the isolated actions of a “few bad apples.” While the Pentagon has tried that approach, the media have done a credible job of exposing the attempt to cover up these actions.<sup>181</sup>

The U.S. government has had a pattern of deceptive activities that have undermined our credibility throughout the world. Polls show that Americans are distrusted, not just among the Islamic community, but among allies as well.<sup>182</sup> America is accused of failing to use its values and culture to win “hearts and minds” and counter the negative per-

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Online/archives2/2006a/032406/032406h.htm (showing that, in Oct. 2005, two-thirds of Americans believed that torture is justified under certain circumstances).

<sup>179</sup> Ann Scott Tyson, *Rumsfeld Assails Critics of War Policy*, WASH. POST, Aug. 30, 2006, at A6 (Rumsfeld attacked critics and the media: “Any kind of moral and intellectual confusion about who and what is right or wrong can severely weaken the ability of free societies to persevere.”).

<sup>180</sup> Erwin Chemerinsky, *Eavesdropping on Americans: the President Ignores the Constitution*, SAN DIEGO UNION-TRIB., Dec. 22, 2005, at B9 (quoting then Att’y Gen. John Ashcroft).

<sup>181</sup> See e.g., Molly Ivins, *Examining Why Torture Took Place: The Problems Go All the Way Back to the Bush Administration’s Refusal To Abide by the Geneva Conventions*, CHI. TRIB., May 20, 2004, at C21.

<sup>182</sup> Bay Fang, *U.S. Out to Buff Its Global Image: Grass-Roots Diplomatic Initiative Tackles Ill Will Abroad, but Skeptics Say Much More Is Needed*, CHI. TRI., July 2, 2007, at C1.

ceptions.<sup>183</sup> The implication is that negative world opinion is due to its failure to use the right techniques of persuasion. The Washington Post's *In the Loop* column cites an Army colonel who urged that responsibility for presenting U.S. policy should be moved from the State Department to the "Pentagon Psy-war guys."<sup>184</sup>

The suggestion to move the propaganda function from the State Department to the military fails to fully solve the problem. Having served a great deal of my military career in the field of Psychological Operations, I have learned that at least two conditions must underlie a successful program: (1) You need a sellable product, and (2) you must be credible. Some believe that the current administration has neither of these essential conditions. The Pax Americana policy of the Bush administration is not a sellable strategy to foreign audiences, as demonstrated by the Iraq venture.

Contrary to the allegation that the liberal media are undermining U.S. policy, the media have been far too lax in holding this administration's feet to the fire in regard to its duplicity. I agree with those who question the self-righteous attitude of the administration, given their record of false allegations that provided the rationale for going to war. Ample evidence shows that the so-called lapses in intelligence were engineered to support an already-made decision to go to war.<sup>185</sup>

With respect to the media's reports on incidents that weaken the moral standing of the U.S. (e.g., the publicity on torture clearly damages our standing in the world and gives aid and comfort to the enemy), the question remains: would Americans rather not know about such atrocities? Seymour Hersh, the reporter who publicly exposed the My Lai atrocities,<sup>186</sup> has been the catalyst for exposing atrocities in

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<sup>183</sup> See Nye, *supra* note 43, at B15.

<sup>184</sup> Al Kamen, *This Just in from the Middle East*, WASH. POST, May 20, 2005, at A19.

<sup>185</sup> *The Secret Downing Memo*, *supra* note 146. See also Seymour M. Hersh, *The Stovepipe*, NEW YORKER, Oct. 27, 2003, at 77.

<sup>186</sup> See Seymour M. Hersh, *The My Lai Massacre, An Atrocity Is Uncovered: November 1969*, in REPORTING VIETNAM: PART TWO: AMERICAN JOURNALISM 1969-1975, 13 (Penguin Putnam Inc., 1998); see also SEYMOUR M. HERSH, MY LAI 4: A REPORT ON THE MASSACRE AND ITS AFTERMATH (1970); see also *An American Tragedy*, *supra* note 174 (describing the massacre of the My Lai village in Vietnam where 109 civilians were killed). Seymour M. Hersh originally published three articles about the My Lai Massacre in the St. Louis Post-Dispatch in 1969: *Lieutenant Accused of Murdering 109 Civilians*, ST. LOUIS POST-DISPATCH, Nov. 13, 1969; *Hamlet Attack Called "Point-Blank Murder,"* ST. LOUIS POST-DISPATCH, Nov. 20, 1969; and *Ex-GI Tells of Killing Civilians at Pinkville*, ST. LOUIS POST-DISPATCH, Nov. 25, 1969.

Iraq.<sup>187</sup> He has been criticized for both exposures.<sup>188</sup> The release of pictures—of Saddam in his underwear—added fuel to the criticism of the prison guards' conduct.<sup>189</sup> Should those reporters have suppressed their knowledge?

One can argue that in the case of a clear and present danger, as existed in WWII, suspension of freedom of the press is justified. Suspension of constitutional protections has occurred numerous times during periods of national emergency,<sup>190</sup> beginning with the Alien and Sedition Acts in the 1860s when Lincoln suspended certain constitutional rights.<sup>191</sup> Similar actions were taken in WWI and WWII.<sup>192</sup> After each emergency, constitutional protections were restored.<sup>193</sup>

Formal government legislation is an extreme form of action to manage freedom of the media. Another extreme action is using the powers of the White House to intimidate the media. Many administrations have used this power,<sup>194</sup> some more blatantly than others. The Bush administration has been rather aggressive in this kind of manipulation. A longer-term strategy of intimidating the media is to brand it as "biased." Conservatives have been quite successful in their effort to label the media as "liberal" and, therefore, biased. Since the media groups in this country are businesses, they depend on the support of their audiences and are, therefore, sensitive to such labeling.

When a government uses deception to go to war, such as Lyndon B. Johnson in the Vietnam conflict and as Bush in the Iraq war,<sup>195</sup> the plea for uncritical support becomes difficult when the going gets

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<sup>187</sup> Seymour M. Hersh, *Torture at Abu Ghraib: American Soldiers Brutalized Iraqis. How Far up Does the Responsibility Go?*, NEW YORKER, May 10, 2004, at 42; Seymour M. Hersh, *The Gray Zone; How a Secret Pentagon Program Came to Abu Ghraib*, NEW YORKER, May 24, 2004, at 38.

<sup>188</sup> Adam Harvey, *US Refuses To Rule out Action on Iran Nukes*, COURIER MAIL (Queensland, Australia), Jan. 19, 2005, at 16.

<sup>189</sup> Adam Harvey, *Hunt for Origin of Saddam Pictures*, TELEGRAPH (Sydney, Australia), May 22, 2005, at 5.

<sup>190</sup> See THOMAS E. BAKER & JOHN F. STACK, JR., *AT WAR WITH CIVIL RIGHTS AND CIVIL LIBERTIES* (2005).

<sup>191</sup> Michael Kent Curtis, *Shaping Each Other and the Next Century: Teaching Free Speech from an Incomplete Fossil Record*, 34 AKRON L. REV. 231, 241-44 (2000).

<sup>192</sup> See WILLIAM H. REHNQUIST, *ALL THE LAWS BUT ONE: CIVIL LIBERTIES IN WARTIME* (Vintage Books, 2000).

<sup>193</sup> *Id.*

<sup>194</sup> See BAKER & STACK, *supra* note 190.

<sup>195</sup> See Robert F. Turner, *Operation Iraqi Freedom: Legal and Policy Considerations*, 27 HARV. J.L. & PUB. POL'Y 765, 788 (2004).

tough. Apparently, the Bush administration believed the conflict would be short and sweet like the 1991 Gulf War. If, indeed, the “Mission Accomplished”<sup>196</sup> boast had been valid, Bush would have been immune from criticism.

The media, which has a duty to inform the public and act as the watchdog over the government,<sup>197</sup> shares the dilemma with military officers. Arguably, the media generally erred in favor of endorsing government actions that have led this country into a quagmire -- a quagmire that has alienated most of the world and squandered the good will that the U.S. enjoyed in the aftermath of 9/11.

Would it have been better for such events to be hidden from the public during the Vietnam War? Would it have been better if Daniel Ellsberg had not revealed the secret study that questioned the war and contradicted the official version of events? The answer to those questions requires assumptions as to the role of public dissent in general, and the role of the media in particular, in a democratic society during wartime.

Who decides when there is a clear and present danger that warrants the suspension of constitutional guarantees of freedom of the media and freedom for critics to oppose policy? While the Patriot Act<sup>198</sup> does not go as far as previous Acts, it does have the disturbing potential to curb freedoms. The Act is now under review, and it will be interesting to see if fundamental changes are made to address those concerns.

The most important lesson to gain from this debate is that our leaders should be careful in how they go about leading the people into war. In an age of instantaneous communication, the truth will come out. The media must be the watchdog for the public. Do not blame the messenger.

#### WORLDWIDE COUNTERINSURGENCY AS A WAR OF IDEAS

The U.S. is facing a threat unlike any other faced in the past. The U.S. is sailing uncharted, perilous seas. As stated in the beginning of

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<sup>196</sup> Michael Abramowitz, *Bush Meets with Petraeus: In Kuwait, President Seems To Claim Vindication for ‘Surge’*, WASH. POST, Jan. 13, 2008, at A20.

<sup>197</sup> See David Shaw, *The Media: Media Under Public Barrage Over Content of War Coverage*, L.A. TIMES, Nov. 18, 2001, at A8 (noting that the many believe the media has a duty to inform the public in spite of criticism that reporting could provide information to our enemies).

<sup>198</sup> Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA Patriot Act) of 2001, Pub. L. No. 107-56, 115 Statute 272 (2001).

this essay, the U.S. has not accurately identified the nature of this threat, and, consequently, it is solving the wrong problem. Indeed, the phrase “War on Terror” is a misnomer that could indicate that the U.S. is on the wrong path, as President Bush recently acknowledged.<sup>199</sup> More accurately, the U.S. is facing a worldwide insurgency by radical Islamic groups dedicated to destroying legitimate institutions. As will be discussed below in more detail, terrorism is a means of violence for political ends; the ultimate purpose is to influence political decisions of adversaries. “Terrorism is a tactic used by individuals and organizations to kill and destroy. Our efforts should be directed at those individuals and organizations. . . . long-term success demands the use of all elements of national power . . . .”<sup>200</sup> If the U.S. focuses too narrowly on the violent acts—the symptoms—it will miss the target and exacerbate the war.

The threat is from radical groups and insurgents who intend to destroy established international institutions, especially the U.S. The most visible and dangerous of these groups of insurgents is al-Qaeda, a radical Islamic group responsible for the 9/11 attacks. Their primary means of violence is terrorism, a tactic that targets non-combatants to achieve political goals. The response to this insurgency threat is to conduct COIN operations.<sup>201</sup> There are two basic requirements for defeating insurgent movements: (1) marginalize and isolate the insurgents from the general population to dry up their recruiting base and logistical support, and (2) use precise force to eliminate the radicals. These are not primarily military problems.

“Traditionally, victory went to the country whose armies won. But in a global Information Age, victory also depends upon whose story wins. In addition to hard military power, we need skill at winning hearts and minds with soft power—the ability to attract others with our

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<sup>199</sup> See George W. Bush, U.S. President, Remarks to UNITY: Journalists of Color Convention and a Question and Answer Session (Aug. 6, 2004), in 38 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS 1477, 1486 (2004), available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004\\_presidential\\_documents&docid=pd09au04\\_txt-22.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_presidential_documents&docid=pd09au04_txt-22.pdf) (“We actually misnamed the war on terror. It ought to be the struggle against ideological extremists who do not believe in free societies who happen to use terror as a weapon to try to shake the conscience of the free world.”).

<sup>200</sup> THOMAS H. KEAN & LEE HAMILTON, THE 9/11 COMMISSION REPORT: FINAL REPORT OF THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES 363-64 (Authorized Edition 2004).

<sup>201</sup> See generally U.S. DEPARTMENT OF THE ARMY & U.S. MARINE CORPS, COUNTERINSURGENCY FIELD MANUAL (2006).

values and culture.”<sup>202</sup> Indeed, former Secretary of Defense Donald Rumsfeld seemed to sense that fact as early as 2003, stating, “Are we capturing, killing or deterring and dissuading more terrorists every day than the madrassas and the radical clerics are recruiting, training and deploying against us?”<sup>203</sup> Undoubtedly, recruitment into the insurgent ranks reflects a losing battle for the hearts and minds of the populations from which these recruits come, primarily, if not totally, from the Islamic world. In essence, the war is a war of ideas, which the U.S. is losing. If Rumsfeld ever answered his question in the affirmative, it certainly did not change his strategy, in spite of observations by such groups as the 9/11 Commission:

Support for the [U.S.] has plummeted. Polls taken in Islamic countries after 9/11 suggested that many or most people thought the [U.S.] was doing the right thing in its fight against terrorism; few people saw popular support for al Qaeda . . . . By 2003, polls showed that “the bottom has fallen out of support for America in most of the Muslim world.”<sup>204</sup>

The situation worsened after the Commission made that observation. In June 2004, a Zogby poll taken in Arab States found an overwhelming majority had a negative view of the U.S.: Egypt 98%; Morocco 88%; Saudi Arabia 94%; and United Arab Emirates 73%.<sup>205</sup> A major reason cited for those negative views was unfair foreign policy, e.g., support of Israel and the Iraq war.<sup>206</sup> Another telltale survey from 2002 showed the most admired people were: (1) Jacques Chirac; (2) Gamel Nasser, the martyred president of Egypt, (3) Hasan Nasrallah, the Hezbollah leader; and (4) Saddam Hussein and Osama bin Laden (tie).<sup>207</sup> Other polls show that this unfavorable view of the U.S. exists

<sup>202</sup> Nye, *supra* note 43, at B15.

<sup>203</sup> Memorandum from Donald Rumsfeld on Global War on Terrorism to Gen. Dick Myers, Paul Wolfowitz, Gen. Pete Pace, & Doug Feith (Oct. 16, 2003), in *Rumsfeld's War-on-Terror Memo*, USA TODAY, May 20, 2005, available at <http://www.usatoday.com/news/washington/executive/rumsfeld-memo.htm>.

<sup>204</sup> KEAN & HAMILTON, *supra* note 200, at 375.

<sup>205</sup> ZOGBY INTERNATIONAL, IMPRESSIONS OF AMERICA: 2004: HOW ARABS VIEW AMERICA: HOW ARABS LEARN ABOUT AMERICA: A SIX-NATION SURVEY COMMISSIONED BY THE ARAB AMERICAN INSTITUTE 3 (2004), available at [http://aai.3cdn.net/229fc3112466dc002f\\_wvm6bhed9.pdf](http://aai.3cdn.net/229fc3112466dc002f_wvm6bhed9.pdf).

<sup>206</sup> *Id.* at 3-4, 8 (showing that Arabs have an unfavorable view of American foreign policy in the Middle East); see also Dafna Linzer, *Polls Showing Growing Arab Rancor at U.S.*, WASH. POST, July 23, 2004, at A26 (noting that respondents in a 2002 survey stated that unfair foreign policy in the Middle East and U.S. support for Israel were the primary reasons for their negative views of the U.S.).

<sup>207</sup> Linzer, *supra* note 206.

throughout the world, including Europe.<sup>208</sup> The negative views toward the U.S. have not improved.

President Bush has described the problem in rather simple terms. "They hate us because we're free."<sup>209</sup> It is a war of "good versus evil."<sup>210</sup> Others see it as a religious war that is foreordained by God, which is to end in Armageddon. Still others see it in more specific terms commonly associated with historical international conflict. How can the U.S. explain these conflicting perceptions when its leaders see terrorism in such stark terms of good and evil? Naturally, people disagree on the nature of the conflict. Men of goodwill and comparable expertise can, and will, disagree on this matter, as one can see in the diverse views expressed in this symposium issue.

There are several dimensions to the war of ideas: religious beliefs and practices, economic policies and postures, political ideas, and historical events in the Middle East. These are exceedingly complex issues, and people have sharply differing views about the reality of conditions in the world today, reflecting the perceptual filters through which we each view the world. These complexities can be easily oversimplified. With this caveat, I will do my best to be objective in my approach, but my analysis will be influenced by my unique, perceptual filter.

Samuel P. Huntington provides an excellent summary of the clashing ideas between the Islamic world and the Western world in *The Clash of Civilizations: Remaking of World Order*.<sup>211</sup> He discusses the historical, cultural, political, economic, and religious dimensions that make up civilizations.<sup>212</sup> Many assume the Western world's values and doctrines represent a universal civilization, which "generally share[s] beliefs in individualism, market economies, and political democ-

<sup>208</sup> See BBC News, *View of US's Global Role 'Worse'*, Jan. 23, 2007, <http://news.bbc.co.uk/2/hi/americas/6286755.stm>.

<sup>209</sup> George W. Bush, U.S. President, Remarks at a Republican Luncheon in Greenwich, Connecticut (Apr. 9, 2002), in 38 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS 602, 605 (2002), available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002\\_presidential\\_documents&docid=pd15ap02\\_txt-13.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002_presidential_documents&docid=pd15ap02_txt-13.pdf).

<sup>210</sup> George W. Bush, U.S. President, Remarks Following a Meeting with the National Security Team (Sept. 12, 2001), in 37 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS 1302, 1302 (2001), available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2001\\_presidential\\_documents&docid=pd17se01\\_txt-16.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2001_presidential_documents&docid=pd17se01_txt-16.pdf).

<sup>211</sup> See SAMUEL P. HUNTINGTON, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* (Simon & Schuster 1997).

<sup>212</sup> See *id.* at 107.

racy.”<sup>213</sup> Many also believe “that the spread of Western consumption patterns and popular culture around the world is creating a universal civilization.”<sup>214</sup> Huntington rejects the notion that these beliefs are shared outside the West because “[o]nly naive arrogance can lead Westerners to assume that non-Westerners will become ‘Westernized’ by acquiring Western goods.”<sup>215</sup>

### *The Religious Dimension*

In regard to the religious dimension, Huntington says: “Of all the objective elements which define civilizations, . . . the most important usually is religion . . . . To a very large degree, the major civilizations in human history have been closely identified with the world’s great religions; and people who share ethnicity and language but differ in religion may slaughter each other . . . .”<sup>216</sup> Huntington warns against the resurgence of any religious fundamentalism that could become a force that threatens world order.<sup>217</sup>

### *The Cultural Dimension*

Huntington sees the conflict between the West and Islam as primarily focused on weapons proliferation, human rights and democracy, control of oil, migration, Islamic terrorism, and Western intervention.<sup>218</sup> Above all, he warns against the notion that the West can impose its values on the non-Western world. He says that “Western belief in the universality of Western culture suffers three problems: it is *false*; it is *immoral*; and it is *dangerous*.”<sup>219</sup> “That it is false [is] the central thesis of his book.”<sup>220</sup> It “is immoral,” he says, “because of what would be necessary to bring it about.”<sup>221</sup> It is dangerous “because it could lead to a major intercivilizational war between core states” and “could lead to defeat of the West.”<sup>222</sup>

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<sup>213</sup> *Id.* at 57.

<sup>214</sup> *Id.* at 58.

<sup>215</sup> *Id.*

<sup>216</sup> *Id.* at 42.

<sup>217</sup> *Id.*

<sup>218</sup> *See id.*

<sup>219</sup> *Id.* at 310 (emphasis added).

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *Id.* at 311.

Similarly, George Kennan warned the U.S. against demanding that the world adopt its version of democracy and economic systems.<sup>223</sup> According to Kennan, these institutions are “not necessarily the future of all mankind”; moreover, it is “not the duty of the U.S. to” insist that they become such.<sup>224</sup> He contends that much of U.S. foreign policy is the result of pressures from politically influential, special interest elements within society.<sup>225</sup>

### *The Economic Dimension*

The economic dimension is perhaps the most universal of the issues that leads to the discontent that can foster terrorism. Since WWII, the U.S. has been at the apex of economic well-being. No doubt that success has caused envy from around the world. The industrialized world has prospered and has closed the gap with the U.S. considerably in the past decade. Parts of the third world, such as China and India, see hope of making economic gains in the future. Other parts of the world, however, are not so fortunate. There is a widespread view among many people in those impoverished areas that wealthy nations, especially the U.S., have been morally weak in their control of the global economy.<sup>226</sup> Considering morality in the conduct of foreign affairs is complicated, especially in the area of economics. All moral theories include some concept of distributive justice, which includes the distribution of economic benefits.

The question thus becomes: How far should a wealthy nation, such as the U.S., go in sharing its wealth with less fortunate countries? In addition to foreign aid, trade policies affect the distribution of wealth. There is little consensus on what is just and unjust in these matters. Some argue that the duty of government is to meet the needs of its citizens without regard to the fate of others. Here again, one need not choose all or nothing in the moral considerations. Most would agree that the Marshall Plan at the end of WWII was not only a moral plan,

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<sup>223</sup> George Kennan, *Morality in Foreign Policy*, 64 FOREIGN AFF. 205, 211-12 (1985-86).

<sup>224</sup> *Id.*

<sup>225</sup> *Id.* at 210.

<sup>226</sup> See generally HANS W. SINGER & JAVED A. ANSARI, RICH AND POOR COUNTRIES: CONSEQUENCES OF INTERNATIONAL ECONOMIC DISORDER 20-21 (Routledge 4th ed. 1989).

but was also a practical policy that was in the long-term interests of the U.S.<sup>227</sup>

Currently, the U.S. ranks at the bottom of industrial nations in the percentage of its Gross Domestic Product [GDP] that goes to foreign aid.<sup>228</sup> And, even that small amount goes largely to two recipients—Israel and Egypt—chosen for their strategic importance for U.S. national security rather than because of economic or humanitarian needs.<sup>229</sup> Critics also claim that the U.S. dictates the policies of the World Bank and IMF in favor of the “haves” of the world.<sup>230</sup> Based on free-market ideology, conditions for economic aid from these agencies require recipient countries to structure their economies in a way that sometimes violates value systems or eliminates social safety nets.<sup>231</sup> Many see this as a scheme to open markets for foreign capitalists, rather than as a benevolent gesture. Perceptions of economic injustice are a fertile breeding ground for unrest and potential terrorist activity throughout the developing world.

The Middle East is a special case because of its oil resources and the U.S.’s dependency on that oil. Suffice it to say, the U.S. policy toward that region is dictated by the need to have access to oil, as well as by the U.S.’s vow to support Israel (discussed below). One of the rallying cries of bin Laden has been the perceived exploitation of the region by the U.S.<sup>232</sup> U.S. support of corrupt regimes that keep oil at artificially low prices is viewed by many as economic imperialism. The use of oil wealth to benefit the royal families and ruling elites is seen as a by-product of U.S. policies.<sup>233</sup> The fact that the region is Islamic is a contaminating factor, as will be discussed.

<sup>227</sup> Diane B. Kunz, *The Marshall Plan Reconsidered: A Complex of Motives*, 76 FOREIGN AFF. 162, 162 (1997).

<sup>228</sup> Tom Barry, *U.S. Isn't "Stingy," It's Strategic*, INT'L RELATIONS CENTER, Jan. 7, 2005, <http://www.irc-online.org/content/commentary/2005/0502stingy.php.htm>.

<sup>229</sup> *Id.*

<sup>230</sup> NAOMI KLEIN, *THE SHOCK DOCTRINE; THE RISE OF DISASTER CAPITALISM* 163 (Metropolitan Books 2007).

<sup>231</sup> *See id.* at 164-66.

<sup>232</sup> *See* J.M.B. Porter, *Osama Bin-Laden, Jihad, and the Sources of International Terrorism*, 13 IND. INT'L & COMP. L. REV. 871, 882-83 (2002-2003).

<sup>233</sup> America's Oil Dependence and Its Implications for U.S. Middle East Policy: Hearing on U.S. Foreign Policy, Petroleum, and the Middle East Before the Subcomm. on Near Eastern and South Asian Affairs of the S. Comm. on Foreign Relations, 109th Cong. 2 (2005) (testimony of Dr. Gal Luft, Executive Director, Inst. for the Analysis of Global Sec.).

*The Israeli-Palestinian Conflict*

The Israeli-Palestinian Conflict has to be high on anyone's list of controversial U.S. policies. One of the most critical issues in the main insurgent threat is the Israeli-Palestinian conflict. The subject is too complex to cover here, but based upon international opinion polls, the world perceives the U.S. as biased in its unqualified support for Israel.<sup>234</sup> U.N. resolutions calling for Israel to return to the 1967 borders, such as resolutions 242 and 338,<sup>235</sup> have repeatedly been ignored. Not only has the U.S. supported the expansion of settlements in the West Bank and the Gaza Strip, but it has also indirectly financed them.<sup>236</sup>

This secular foreign policy has now merged with religion. Many Fundamentalist Christian and Jewish groups have allied to support a Greater Israel of biblical prophecy. Some Fundamentalists call for a Greater Israel so that biblical prophecy can be fulfilled to prepare for the "Second Coming."<sup>237</sup> Thomas Friedman, noted author and widely acknowledged expert on Middle East affairs, has this to say:

American Jewish leaders, fundamentalist Christians, and neo-conservatives . . . together have helped make it impossible for anyone in the U.S. government to talk seriously about halting Israeli settlement-building without being accused of being anti-Israel. Their collaboration has helped prolong a colonial Israeli occupation that now threatens the entire Zionist enterprise.

. . . Either leaders of goodwill get together and acknowledge that Israel can't stay in the territories but can't just pick up and leave, without a U.S.-NATO force helping Palestinians oversee their state, or Osama wins—and the war of civilizations will be coming to a theater near you.<sup>238</sup>

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<sup>234</sup> Henry Munson, *Lifting the Veil: Understanding the Roots of Islamic Militancy*, HARV. INT'L REV., Winter 2004, at 20-23. See Michael Scott Doran, *Palestine, Iraq, and American Strategy*, 82 FOREIGN AFF. 19, 19 (2003).

<sup>235</sup> S.C. Res. 242, U.N. Doc. S/RES/242 (Nov. 22, 1967); S.C. Res. 338, U.N. Doc. S/RES/338 (Oct. 22, 1973).

<sup>236</sup> See Sara Roy, *The Gaza Strip: A Case of Economic De-Development*, J. PALESTINE STUD., Autumn 1987, at 56, 73 (stating that Israeli authorities have redirected "U.S. foreign aid earmarked for [Palestinian] industrial development projects inside the Gaza Strip and West Bank").

<sup>237</sup> See Jane Lampman, *Mixing Prophecy and Politics*, CHRISTIAN SCI. MONITOR, July 7, 2004, available at <http://www.csmonitor.com/2004/0707/p15s01-lire.html>.

<sup>238</sup> THOMAS L. FRIEDMAN, LONGITUDES AND ATTITUDES: THE WORLD IN THE AGE OF TERRORISM 151 (Anchor Books 2003).

It remains to be seen whether the recent November 25, 2007, Annapolis Conference will have any positive results.

### *The Iraq War*

The Iraq War is another issue that creates resentment throughout the world. Even before the war, the U.S. policy toward Iraq was controversial. The economic sanctions imposed by the U.N.—at the urging of the U.S.—were widely perceived to be unjust. Some estimates indicate some 500,000 people died because of these sanctions.<sup>239</sup> Osama bin Laden has cited the sanctions, along with the presence of U.S. forces in Saudi Arabia, as prime motivations in his hatred of the U.S.<sup>240</sup> The fact that people in the region still admire Saddam Hussein is cause for reflection. Surveys in Europe show that the majority of people view the U.S., Israel, Iraq, and North Korea as the primary threats to world peace.<sup>241</sup> Being included on that list is even more disturbing.

Victory in the worldwide COIN effort will be achieved only if the U.S. wins the hearts and minds of several target audiences. To date, the U.S. appears to be losing that battle among some audiences. A crucial question: *Is the U.S. losing the battle because of its failure to communicate effectively or because of faulty policies?* This question is best answered by looking at specific target audiences. In doing so, the U.S. must keep in mind that borders between these audiences are vague and porous. Unlike wars of the past, in which nations could more or less separate these audiences, what is said to one audience is likely to be available to the others. Truly, this is the age of instantaneous, global communications. The message that appeals to one may alienate another.

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<sup>239</sup> David Cortright, *A Hard Look at Iraq Sanctions*, THE NATION, Dec. 3, 2001, available at <http://www.thenation.com/doc/20011203/cortright>.

<sup>240</sup> See Porter, *supra* note 232, at 884; see also Cortright, *supra* note 239; see also *An Elusive Enemy: The U.S. Presence in Saudi Arabia Fuels Osama Bin Laden's Jihad*, CNN.COM, Jan. 2001, <http://www.cnn.com/SPECIALS/2001/gulf.war/legacy/bin.laden/index.html>.

<sup>241</sup> Andrew Kohut, *Anti-Americanism: Causes and Characteristics*, PEW RESEARCH CTR. FOR THE PEOPLE & THE PRESS, Dec. 10, 2003, <http://people-press.org/commentary/display.php3?AnalysisID=77>.

### *The Domestic Target*

The domestic target is critical. The greatest strength of any group is not its military might, but its will to make sacrifices and cope with adversity; this strength is often referred to as morale, esprit, or national will. Research shows such cohesiveness depends on several factors: leadership, a sense of equity, trends in recent experiences, and crises generated by external threats are among the most important factors. In the aftermath of 9/11, the American public was in a state of shock. This was the crisis that galvanized the people. Americans looked for a concrete target against which they could retaliate. By and large, this was left to the leader—the President—to define. Polls showed that the people were ready to follow his leadership.<sup>242</sup>

When it was determined that al-Qaeda and Osama bin Laden were responsible, Americans gave overwhelming support for the U.S. to retaliate with whatever force was deemed necessary. The President had the complete trust of the vast majority of the public. Support and trust extended throughout the world, including the Islamic world.<sup>243</sup> This support carried into the war in Afghanistan, where the Taliban refused to hand over bin Laden. A reluctant Pakistan, which had helped put the Taliban in power in the 1980s (with U.S. support), provided critical support for this effort.<sup>244</sup> Russia and Iran also cooperated fully with U.S. intervention in Afghanistan.<sup>245</sup>

The President then made the case to the American people that Iraq was a central player in the terrorist attacks on the American homeland; Iraq was capable of, and intent upon, providing WMDs to bin La-

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<sup>242</sup> N.Y. Times/CBS News Poll, [http://www.nytimes.com/packages/html/politics/20030322\\_poll/20030322poll-results.html](http://www.nytimes.com/packages/html/politics/20030322_poll/20030322poll-results.html) (last visited Jan. 21, 2008) (showing President George W. Bush's approval ratings to be between 84% and 86% from Sept. 13 to Dec. 10, 2001) [hereinafter *News Poll*]; CNN, *Opinion Research Poll*, CNN OPINION RESEARCH CORPORATION, June 22-24, 2007, at 3, <http://i.a.cnn.net/cnn/2007/images/06/26/rel7c.pdf> (last visited Jan. 21, 2008) [hereinafter *Opinion Research Poll*] (showing President George W. Bush's approval ratings to be between 86% and 90% from Sept. 14 to Dec. 16, 2001).

<sup>243</sup> *Contemporary Practice of the United States Relating to International Law* 96 AM. J. INT'L L. 237, 245 (Sean D. Murphy ed., 2002).

<sup>244</sup> Iftikhar H. Malik, Pakistan in 2001: The Afghanistan Crisis and the Rediscovery of the Frontline State, 42 ASIAN SURV. 204, 204 (2002).

<sup>245</sup> See Michael A. Lev, *Afghanistan the Focus of a New Great Game: U.S., Allies Signal Interest in Fighting to Control Country*, CHI. TRIB., Oct. 4, 2001, (News, Zone N) at 4; see also Barbara Slavin, *Iran Helped Overthrow Taliban, Candidate Says*, USA TODAY, June 10, 2005, at 14A.

den.<sup>246</sup> President Bush persuaded Congress to pass a resolution to authorize force if Saddam would not allow weapons inspectors to verify that Iraq had no such WMDs.<sup>247</sup> The U.N. endorsed that resolution by passing a similar resolution to authorize force,<sup>248</sup> and it sent an inspection team into Iraq. The U.N. resolution specified that the Iraqi government was in material breach of prior U.N. resolutions, that it would have one “final opportunity to comply with its disarmament obligations,” and that, if Saddam refused to allow the inspections, Iraq would face “serious consequences.”<sup>249</sup> In early 2003, the U.S. declared that Iraq was in material breach.<sup>250</sup> When it was clear that the U.S. could not gain support in the U.N. Security Council for authority to use military force, President Bush went to war without the U.N. resolution. He claimed the first resolution gave the U.S. that authority; much of the rest of the world, including major allies, disagreed.<sup>251</sup> Thus, the U.S. went to war without legitimacy conferred by the world community.

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<sup>246</sup> See George W. Bush, President, Address Before a Joint Session of the Congress on the State of the Union (Jan. 28, 2003), in 39 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS 109, 115 (2003), available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2003\\_presidential\\_documents&docid=pd03fe03\\_txt-6.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2003_presidential_documents&docid=pd03fe03_txt-6.pdf) (stating that “[e]vidence from intelligence sources, secret communications, and statements by people . . . in custody reveal that Saddam Hussein aids and protects . . . members of Al Qaida” and that “he could provide one of his hidden weapons to terrorists or help them develop their own.”).

<sup>247</sup> See *Senate Approves Iraq War Resolution*, CNN.COM, Oct. 11, 2002, <http://archives.cnn.com/2002/ALLPOLITICS/10/11/iraq.us/>.

<sup>248</sup> See *U.N. Passes Iraq Resolution on Weapons Inspections*, CNN.COM, Nov. 8, 2002, <http://archives.cnn.com/2002/US/11/08/iraq.resolution/> (stating that the U.N. passed a resolution demanding “unfettered access for U.N. inspectors to search for weapons of mass destruction in Iraq” and that, according to U.S. ambassador John Negroponte, the resolution did not restrict member states from “acting to defend [themselves] against the threat posed by Iraq or to enforce relevant [U.N.] resolutions” if the Security Council failed to act); Cf. Michael Byers, *Agreeing to Disagree: Security Council Resolution 1441 and Intentional Ambiguity*, 10 GLOBAL GOVERNANCE 165, 165 (2004) (concluding that, though countries disagreed on whether “the text of the [S.C. Resolution 1441] authorized [U.N.] member states to use force to uphold its provisions,” the Council members had intentionally “negotiated and agreed to [ambiguous] language that they knew could be used to support arguments on both sides.”).

<sup>249</sup> S.C. Res. 1441, ¶¶ 1, 4, 11-13, U.N. Doc. S/RES/1441 (Nov. 8, 2002).

<sup>250</sup> Howard Witt, *U.S. Reveals Evidence to UN; Powell Uses Secret Recordings, Satellite Images to Make Iraq Case*, CHICAGO TRIB., Feb. 6, 2003, at 1.

<sup>251</sup> Michael Byers, *Letting the Exception Prove the Rule*, ETHICS & INT’L AFF., Mar. 2003, at 9, 13 (stating that while the U.S. and several other member states interpret S.C. Resolution 1441 to authorize the use of force by member states; China, France, and Russia not).

Rightly or wrongly, the U.N. is the institution that can best confer such legitimacy.

Polls showed that approximately three-quarters of America supported Bush's decision to go to war.<sup>252</sup> Morale was high as the conventional military phase was quickly successful. The President's ratings were extremely high.<sup>253</sup> However, events in Iraq did not go as predicted by the administration. No significant numbers of WMDs were discovered,<sup>254</sup> and ties to al-Qaeda were found to be dubious at best.<sup>255</sup> The torture scandals dealt a deadly blow to our moral standing in the world.<sup>256</sup> In short, the occupation, COIN operations, and nation building have not gone well. While a significant portion of Americans still believe the President is handling the war well,<sup>257</sup> support has eroded.<sup>258</sup>

Rationale for the war has shifted: Saddam was an evil man who needed to be removed. This morality-based rationale has been somewhat successful to both the U.S. and the Iraqi people. However, the war has taken much longer than expected and Iraqis are growing impatient with U.S. mismanagement and misdeeds.<sup>259</sup> Fast, low-casualty wars, such as the 1991 Gulf War, are popular and good for morale.

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<sup>252</sup> See News Poll, *supra* note 242 (showing that 74% of Americans polled between Feb. 24 and 26, 2002 approved of the U.S. taking military action against Iraq to remove Saddam Hussein from power); *Opinion Research Poll*, *supra* note 242, at 8 (stating that on March 29-30, 2003, 73% of Americans polled believed that U.S. action in Iraq was morally justified).

<sup>253</sup> See News Poll, *supra* note 242 (showing that 59-64% of Americans approved of the way that Bush was handling his job as President between Mar. 15 and 17, 2003); see also *Opinion Research Poll*, *supra* note 242, at 3 (showing that 58-71% of Americans approved of the way that Bush was handling his job as president between Mar. 14 and Apr. 23, 2003).

<sup>254</sup> Associated Press, *CIA's Final Report: No WMD Found in Iraq*, MSNBC, <http://www.msnbc.msn.com/id/7634313/> (last visited Jan. 23, 2008).

<sup>255</sup> Walter Pincus & Dana Milbank, *Al-Qaeda-Hussein Link Is Dismissed*, WASH. POST, June 17, 2004, at A1.

<sup>256</sup> See *supra* notes 107-10 and accompanying text.

<sup>257</sup> Iraq, POLLINGREPORT.COM, <http://www.pollingreport.com/iraq.htm> (last visited Apr. 2, 2008) (showing that between 25-30% of Americans approved of the way President Bush is handling the situation with Iraq between Sept. 14, 2007 and Mar. 18, 2008); *Opinion Research Poll*, *supra* note 242, at 2 (showing that Bush's approval ratings were between 32-42% between May 16, 2006 and June 24, 2007).

<sup>258</sup> *Opinion Research Poll*, *supra* note 242, at 6 (showing that between June 8, 2006 and June 24, 2007, 28-43% of Americans believed that things were going well for the U.S. in Iraq).

<sup>259</sup> Jennifer R. Ridha, *The Trouble with the Tribunal: Saddam Hussein and the Elusiveness of Justice*, MIDDLE E. REP., Autumn 2004, at 40, 41.

Quagmires, such as Vietnam, are not. Morality sells to the domestic audience, but it does not sell well to the rest of the world.

Another factor in the eroding support is the *equity* in the sacrifices being made to fight the Iraq War. Criticism has surfaced regarding the composition of the military, i.e., that it comes disproportionately from the poor and minority segments of the population.<sup>260</sup> Attacks have been made regarding the “stop-loss” policies and the recall of retirees, which are being implemented due to low military enlistment.<sup>261</sup> The shrinking numbers in the military have also forced the U.S. to rely more heavily upon the Reserves and National Guard than in previous military actions.<sup>262</sup> While rational arguments can be made that these are unjustified criticisms, war rationale must be considered.

The support of the American people will depend in a large measure on their belief that necessary sacrifices are being made to protect them from a threat. Polls show that the President has lost credibility and popular support, largely due to the Iraq War.<sup>263</sup> I have no suggestions for changing the message to the domestic audience unless things turn for the better in Iraq. That will occur only if the U.S. is either able to enlist the assistance of the wider world community in the effort in Iraq or the situation in Iraq improves dramatically.

A major step in gaining domestic support would be to find a bipartisan policy. The Iraq Study Group (Baker-Hamilton Report) offered a reasonable approach,<sup>264</sup> but it was rejected by President Bush.<sup>265</sup> The major recommendations are valid, and should be pursued. The most important step is to internationalize the problem by getting regional and world powers to accept responsibility for stabilizing the region. This would require U.S. compromises, including the

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<sup>260</sup> See Charles B. Rangel, *Bring Back the Draft*, N.Y. TIMES, Dec. 31, 2002, at A19.

<sup>261</sup> See Sylvia Moreno, *Veteran Questions Ethics of War Policies*, WASH. POST, Aug. 29, 2007, at B6; Josh White, *Soldiers Facing Extended Tours: Critics of Army Policy Likened It to a Draft*, WASH. POST, June 3, 2004, at A1.

<sup>262</sup> See Neela Banerjee & John Kifner, *Along With Prayers, Families Send Armor*, N.Y. TIMES, Oct. 30, 2004, at A8; *Death Toll Rises for U.S. Reservists in Iraq*, USA TODAY, Oct. 10, 2005, [http://www.usatoday.com/news/nation/2005-10-10-reservestoll\\_x.htm](http://www.usatoday.com/news/nation/2005-10-10-reservestoll_x.htm).

<sup>263</sup> Polling Report, *CNN Opinion Research Corporation Poll*, <http://www.pollingreport.com/iraq.htm> (last visited Jan. 21, 2008).

<sup>264</sup> James A. Baker III & Lee H. Hamilton, *The Iraq Study Group Report*, [http://www.usip.org/isg/iraq\\_study\\_group\\_report/report/1206/iraq\\_study\\_group\\_report.pdf](http://www.usip.org/isg/iraq_study_group_report/report/1206/iraq_study_group_report.pdf) (last visited Jan. 21, 2008).

<sup>265</sup> See Peter Baker & Robin Wright, *Bush Appears Cool to Key Points of Report on Iraq*, WASH. POST, Dec. 8, 2006, at A1.

abandonment of the current plan to keep permanent military bases in Iraq for the purpose of exercising military hegemony over the region. If the U.S. could get the international community involved, including a U.N. military command, perhaps the U.S. could get bi-partisan support for leaving some U.S. forces there to stabilize the country and prevent interference from neighboring countries.

### *Islamic Extremists*

As a target audience in the war of ideas, Islamic extremists will not be persuaded by words. Moreover, they will not be mollified by policy changes. Even if the U.S. settled the Israeli-Palestinian issue, withdrew all forces from the Middle East, and allowed them to establish Islamic theocracies throughout the region, these efforts would not abate the extremists' implacable hatred for the U.S. The only way to deal with this element is to shrink its support base, isolate it, and eliminate it. Unfortunately, the extremists have metastasized into splinter groups spread around the world. The task is becoming more difficult. The longer the U.S. loses the war of ideas, the more difficult this task will be.

### *Islamic Moderates*

Islamic moderates are a crucial target audience. Immediately after 9/11, there was a great deal of sympathy for the U.S. and little support for al-Qaeda. Those attitudes have shifted dramatically since the Iraq war.<sup>266</sup> Unfortunately, the conflict of ideas between the Islamic world and the U.S. and its coalition partners has increasingly evolved into a conflict of religions. If those attitudes continue, the fallout will be difficult to reverse. Compounding this problem are the inflammatory statements of some Christian fundamentalists.<sup>267</sup>

In addition, President Bush has inflamed the situation by his statements. The President initially used some unfortunate terms such as "crusade" to define the conflict.<sup>268</sup> This evoked some deep-seated resentment among Muslims. President Bush tends to reduce the problem to simplistic terms such as "Either you are with us, or you are with

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<sup>266</sup> KEAN & HAMILTON, *supra* note 200, at 363, 375.

<sup>267</sup> See Lampman, *supra* note 237.

<sup>268</sup> Peter Ford, *Europe Cringes at Bush 'Crusade' Against Terrorists*, THE CHRISTIAN SCI. MONITOR, Sept. 19, 2001, <http://www.csmonitor.com/2001/0919/p12s2-woeu.html> (last visited Jan. 21, 2008).

the terrorists” and “terrorism is evil.”<sup>269</sup> While these words resonate with an American audience; they do not have the same effect on the rest of the world. When that resentment is intertwined with the bitterness over the Palestinian issue, it is a volatile mix. The fact that President Bush emphasizes his fundamentalist religious beliefs also compounds the problem. The perceived bias toward Israel’s security, as opposed to justice for the Palestinians—by both political parties—is also an obstacle. There is little likelihood this will change, however, so the U.S. will have to live with the outcomes or change tactics.

The U.S. needs to diffuse the polarizing trend that pits the Islamic world on one side and Christian and Jewish Fundamentalists on the other. Pushing moderate Muslims toward the radical base increases the numbers from which the terrorist organizations are drawing support—both recruits and sympathy. Reversing the polarizing trend will not be accomplished by improving propaganda techniques or restructuring television and radio organizations. Nor will it be accomplished by exporting democracy and market economies, as the administration seems to believe. Rather, it will require reexamining the entire U.S. foreign policy toward the Middle East.

### *Non-Islamic World Community*

The non-Islamic world community is also a critical target audience. The U.S. can only succeed in the war against the worldwide insurgent movement if it is a coordinated international effort. The current administration has alienated much of the world by its go-it-alone policies. The U.S. has shown outright contempt for allies and international institutions that do not fully support the U.S. In a broad sense, the U.S. rejection of protocols, on such issues as global warming, and international courts,<sup>270</sup> demonstrates that contempt.

The self-righteous hubris implicit in the 2002 National Security Strategy<sup>271</sup> is manifest in the Iraq War (the 2006 version<sup>272</sup> retains this

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<sup>269</sup> See *supra* note 157, (“Every nation, in every region, now has a decision to make. Either you are with us, or you are with the terrorists.”); see also George W. Bush, U.S. President, Remarks by the President and Prime Minister Vajpayee of India in Press Availability (Nov. 9, 2001), <http://georgewbush-whitehouse.archives.gov/news/releases/2001/11/20011109-2.html> (“I think there is one universal law, and that’s terrorism is evil . . .”).

<sup>270</sup> See *U.S. Signing of the International Criminal Court*, 95 AM. J. INT’L L. 397, 397 (2001); Shankar Vedantam, *Kyoto Treaty Takes Effect Today*, WASH. POST, Feb. 16, 2005, at A4.

<sup>271</sup> 2002 Security Strategy, *supra* note 51.

hubris) and lends credence to the perception that the U.S. has contempt for international institutions. Policies that do not have international legitimacy may satisfy the public's jingoistic, chauvinistic sentiments, but they do not serve our long-term interests. While there has been some shift in rhetoric regarding the U.N., President Bush and Vice President Cheney have shown no fundamental change in their attitude toward that organization. Unfortunately, their attitude reflects the American political climate. The American people applauded when President Bush alluded to the proposition that if no one joins us, we will go it alone—after all, this is America.<sup>273</sup>

Most polls show that the American public believes the policies of the nation are based on the highest moral principles.<sup>274</sup> One perception is that the U.S. has the moral high ground in its international conduct.<sup>275</sup> Surveys reveal that much of the rest of the world sees it differently.<sup>276</sup> Many people see U.S. foreign policy as being driven by the quest for cheap oil and support of Israel, rather than being driven by anti-terrorism and promotion of democracy.<sup>277</sup>

Criticism of U.S. policies is based upon personal, moral perceptions. World order, which is based on morality, requires shared values and beliefs about good and bad behavior. For example, charters of international institutions, such as the U.N. and World Trade Organization, contain abstract values of desired behavior as the basis for moral order. When nations flout the rules of behavior in these charters, moral order is weakened. Judgment on whether the U.S. has violated those rules is, therefore, based upon perceptions of morality.

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<sup>272</sup> NATIONAL SECURITY COUNCIL, THE NATIONAL SECURITY STRATEGY (2006), <http://www.whitehouse.gov/nsc/nss/2006/nss2006.pdf> [hereinafter 2006 SECURITY STRATEGY].

<sup>273</sup> See George W. Bush, President, State of the Union Address (Jan. 28, 2003), <http://www.whitehouse.gov/news/releases/2003/01/20030128-19.html>.

<sup>274</sup> Fergal Keane, *What Mr. Bush Has in Mind Is Nothing Less Than a Reshaping of the World*, INDEPENDENT (London), Feb. 1, 2003, at 18.

<sup>275</sup> Peter Baker & Josh White, *Bush Calls Iraq War Moral Equivalent of Allies' WWII Fight Against the Axis*, WASH. POST, Aug. 31, 2005, at A07.

<sup>276</sup> See Kohut, *supra* note 241.

<sup>277</sup> Cf. Valerie Marcel, *Oil Bonanza May Not Flow for US Firms*, IRISH TIMES, April 5, 2003, at 11; Dhiru Shah, *Let's Be Honest: Iraq Uproar Really about the Oil*, ATLANTA J.-CONST., Oct. 2, 2002, at 2F; see also Mark Weber, *Iraq: A War for Israel*, INST. HIST. REV., <http://www.ihr.org/leaflets/iraqwar.shtml> (last visited Mar. 31, 2008).

## SOCIOCENTRIC VIEWS OF WESTERN VALUES

This war of ideas involves a whole range of beliefs about what is right and wrong, good and bad, just and unjust. People in societies tend toward “sociocentrism”—the belief that their values and culture are the best—whether it is a question of economic philosophy, political philosophy, social organization, or religious beliefs.<sup>278</sup> Sociocentrism includes a tendency to see the world as “us” and “them” in terms of personal values and cultural traits.<sup>279</sup> Moreover, each person filters events in the world through the prism of personal belief systems. Most people would like to believe that they look at events through an impartial, objective lens. Fundamentally, people interpret events through the lens of preconceived convictions; the adage “seeing is believing” becomes “believing is seeing.”

The opening paragraph of the National Security Strategy<sup>280</sup> reflects the sociocentric nature of U.S. foreign policy. At best, the strategy reflects a naïve belief that the U.S. has a moral duty to bring its value system to the rest of the world. At worst, it reflects a hubristic, self-righteous attitude that can lead to self-destructive ventures. Paul Kennedy puts it well in *The Perils of Empire*:

Eighty-six years ago, another powerful invading army had just entered Baghdad. At the same time, other divisions driving north-eastwards from Egypt were occupying Palestine. Urged on by their own strategists and intellectuals, these forces would soon advance upon Damascus. They would exercise great influence upon Iran and the Persian Gulf states. Donning the mantle of liberators, they would encourage regime change in Saudi Arabia and Jordan. They would send out messages of hope that “the entire Arab world may rise once more to greatness and renown” now that its oppressors were defeated. These were folks determined to make the entire Middle East secure and stable—a blessing to the world, no doubt, but a particular blessing to their own hegemonic nation, and that nation was Great Britain.<sup>281</sup>

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<sup>278</sup> *Diversity: Making Sense of It Through Critical Thinking*, Foundation for Critical Thinking, <http://www.criticalthinking.org/articles/diversity.cfm> (last visited Mar. 31, 2008).

<sup>279</sup> *See id.*

<sup>280</sup> *See* 2006 SECURITY STRATEGY, *supra* note 272, at 1.

<sup>281</sup> Paul Kennedy, *The Perils of Empire*, WASH. POST, Apr. 20, 2003, at B1.

The U.S. venture in Iraq can arguably be seen as a replay of the British quest. In broad terms, the National Security Strategy tells the world that American/Western values are the values that should be adopted throughout the world. These values are sacred to Americans. In fact, it is often considered unpatriotic to question the universality of individualism, pluralistic democracy, and free enterprise. Some, however, have gone so far as to declare that these values represent “the end of history.” Francis Fukuyama, during his time with the State Department, wrote: “[W]e may be witnessing . . . the end of history as such: that is, the end point of mankind’s ideological evolution and the universalization of Western liberal democracy as the final form of human government.”<sup>282</sup>

Not everyone accepts that analysis. Further, Fukuyama has renounced the current policy in the Middle East:

Outside powers like the US can often help in this process by the example they set as politically and economically successful societies. They can also provide funding, advice, technical assistance, and yes, occasionally military force to help the process along. But coercive regime change was never the key to democratic transition.<sup>283</sup>

In his article, *Can Democracy Stop Terrorism?*, Gregory Gause III states: “The Bush administration and its defenders contend that this push for Arab democracy will not only spread American values but also improve U.S. security.”<sup>284</sup> “Further democratization in the Middle East would, for the foreseeable future, most likely generate Islamist governments less inclined to cooperate with the United States.”<sup>285</sup> In fact, there is a considerable body of evidence supporting the theory that democracy is inherently destabilizing, and will, indeed, increase the likelihood of instability and insurgent movements.<sup>286</sup>

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<sup>282</sup> Francis Fukuyama, *The End of History*, THE NATIONAL INTEREST, Summer 1989, available at <http://www.wesjones.com/eoh.htm>.

<sup>283</sup> Francis Fukuyama, *The History at the End of History*, GUARDIAN (London), Apr. 3, 2007, [http://commentisfree.guardian.co.uk/francis\\_fukuyama/2007/04/the\\_history\\_at\\_the\\_end\\_of\\_hist.html](http://commentisfree.guardian.co.uk/francis_fukuyama/2007/04/the_history_at_the_end_of_hist.html).

<sup>284</sup> F. Gregory Gause III, *Can Democracy Stop Terrorism?*, 84 FOREIGN AFFAIRS 62, 62 (2005).

<sup>285</sup> *Id.* at 64.

<sup>286</sup> See John H. Johns, Gen., Political Development and Modernization, Address at the National Security Affairs Forum (Winter 1975) (unpublished speech).

## FUTURE NATION BUILDING IN THE ISLAMIC WORLD

The theme of the Regent University School of Law Symposium that served as the stimulus for this paper, "Islam, Democracy, and Post 9/11 Nation Building," focused on the question of whether democracy is compatible with Islam. I have placed this question in the broader context of nation building in general, because I do not believe one can answer that question by looking solely at the Islamic world. The Iraq War is certainly not a model to use for reference. It is clear that the decision to go to war in Iraq was not so much an effort in nation building as much as it was a regime change by use of military force. Nation building was an after-thought.

Successful nation building is a long, arduous process that involves the development of institutions, which, in turn, allows for national political unity and economic development. This must be largely an indigenous effort that cannot be imposed by a foreign power, especially if the foreign power's motive is to exercise hegemony by the foreign power. Recent U.S. policies toward Islamic countries, particularly in the Middle East, are perceived largely as an exercise in hegemonic policy. The Iraq War has been an unmitigated disaster in this regard. Not only has the policy failed in Iraq, but it has also given democracy and free markets a bad name, as pointed out by Francis Fukuyama and others who initially championed the war.

Beyond the Iraq fiasco, U.S. efforts to export its value system to other countries—whether to Islamic cultures or otherwise—should be undertaken with caution. With respect to the Islamic cultures, the U.S. must be acutely sensitive to the perception that its efforts, especially in the Middle East, represent a Judeo-Christian crusade to exercise hegemony over the region. Current U.S. foreign policy fosters that perception. Furthermore, the U.S. must avoid associating nation building with regime change. If the U.S. is sincerely trying to assist countries in developing national institutions that will promote better lives, it must get rid of the hubristic notion that its institutions are the only answer.

There are many cultural features of Middle-East societies that require the U.S. to take different approaches to nation building. Most have tribal associations that focus political loyalty at a regional level and make it difficult to transfer loyalty to a central authority. Further, as is well-known, many of the political entities now called "nations" are nothing more than geographical areas grouped within political borders that were drawn by the colonial powers following the breakup of the Ottoman Empire after WWI. Of particular note is the division of ethnic Kurds among several countries. The common language and eth-

nic makeup introduces a dynamic that will be difficult to overcome when efforts are made by various central governments in order to gain the loyalty of this group.

The dynamic nature of the Islamic belief system forces a different approach to nation building. First and foremost, Islam melds religious and political institutions into a common system. That trend alone is a barrier to the U.S. brand of constitutional government. Moreover, Islam focuses on communitarian sharing, managed by the religious state, and is in direct contrast to the individualistic character of free markets. While the communitarian ethic is present in many Western societies, it is especially strong in Islamic culture. The U.S. must recognize that cultures change over time, and the globalization of instant communication transcends borders and erodes traditional cultures. Still, time is necessary for the changes to permeate and transform the Islamic culture. Islam tends to be fundamentalist in nature, and like all fundamentalist belief systems, it is resistant to change.

#### CONCLUSIONS AND RECOMMENDATIONS

Winning the protracted war against worldwide radical elements who use terrorism as their principal weapon will require national cohesion and a willingness to make sacrifices for years to come. Yet, the U.S. is a deeply divided nation in regard to how best to wage the war against extremist individuals and groups, who have set no apparent limitations on the use of terrorism. Some look for the answer in use of more military force. The war, however, has changed to a "war of ideas" and cannot be won with increased force; nor can it be won with the current tactics and policies. More extensive and sophisticated communication techniques will not solve the problem unless the U.S. recognizes the reasons why hatred of the U.S. is so intense. While some reasons for hatred may be illegitimate or contrary to our national interests, other factors are amenable to change, even if those changes will be politically difficult.

Courageous statesmen are necessary to make some of the required changes, since the current political climate in the U.S. is inclined toward jingoistic, self-righteous, moralistic, unilateral solutions. The U.S. ideological rigidity in favoring unilateralism and preventive wars without regard to international opinion will be a big obstacle, particularly when combined with religious fundamentalism. The U.S. needs to use more soft power, as Joseph Nye,<sup>287</sup> George Kennan,<sup>288</sup> and Sa-

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<sup>287</sup> See Nye, *supra* note 43, at B15.

muel Huntington<sup>289</sup> have suggested. The time to strengthen international moral order is when one is on top. Henry Kissinger suggests that “America’s ultimate challenge is to transform its power into moral consensus, promoting its values not by imposition but by their willing acceptance.”<sup>290</sup> In that regard, the U.S. needs to look at the policies of the World Bank and the IMF, two institutions that were crafted to reflect Western economic ideology. Too often, those institutions force struggling countries to adopt draconian economic restructuring, throwing many countries into poverty.

Nation building must continue to be a critical element of our foreign policy that includes countering insurgency activities, but it must be done differently than in the past. First, the U.S. must be more tolerant in the kind of institutions that it will support. Strong though the belief may be that democracy and free markets will save the world, all but the most rigid ideologue should recognize that some parts of the world are not ready for these institutions, are certainly not ready to adopt these institutions, and are most certainly not ready for them to be imposed through the barrel of a gun.

The focus of our national security policy regarding nation building should be on strengthening weak and failing states, as was recommended in a recent Congressional Research Service Report:

Although long a component of U.S. foreign policy, strengthening weak and failing states has increasingly emerged as a high-priority U.S. national security goal since the end of the Cold War. The past three *U.S. National Security Strategy* documents point to several threats emanating from states that are variously described as weak, fragile, vulnerable, failing, precarious, failed, crisis, and collapsed. These threats include (1) providing safe havens for terrorists and other illicit groups; (2) causing conflict, regional instability, and humanitarian emergencies; and (3) undermining efforts to promote democracy and good governance. The President, in his 2005 *National Security Presidential Directive (NSPD) 44*, asserts that “the [U.S.] should work . . . to anticipate state failure, avoid it whenever possible,

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<sup>288</sup> See Kennan, *supra* note 223, at 211-12 and accompanying text.

<sup>289</sup> See HUNTINGTON, *supra* notes 211-22 and accompanying text.

<sup>290</sup> HENRY KISSINGER, DOES AMERICA NEED A FOREIGN POLICY? TOWARDS A DIPLOMACY FOR THE 21ST CENTURY 288 (2001).

and respond quickly and effectively when necessary and appropriate . . . .<sup>291</sup>

While I endorse this report whole-heartedly, I would emphasize the last four words—“*when necessary and appropriate*.” First of all, the U.S. cannot rule the world. Furthermore, it will take the cooperation of the international community to defeat the world-wide insurgency movement. While the U.S. is still the most powerful nation on the planet, it cannot act alone. The current administration has pursued a go-it-alone strategy that has alienated the world. Although the U.S. can never surrender its right to protect its national interests, the U.S. cannot ignore the international institutions that confer legitimacy on its actions. While the U.N. can be frustrating at times, it is important that the U.S. work through that body whenever possible. Instead, this administration has gone out of its way to confront that organization.

Using COIN operations involving U.S. military combat forces is an inappropriate mission. The military element of nation building has the mission of providing physical security, which is a prerequisite to political stability and economic development. That can be done only by indigenous military and police forces; the U.S. elements must be used in an advisory role. The optimum use of U.S. forces is to advise the military in weak or failing states in the art of nation building and internal security, including advisement on how to suppress insurgencies. This should be done by highly educated and trained advisory teams which have area and COIN expertise. U.S. involvement should end with this advisory effort; there is no appropriate role for U.S. combat forces. The Army’s Foreign Area Officer career program is the appropriate vehicle for this effort. The indigenous military and police forces, not the U.S. military, are the proper institutions to “win [the] hearts and minds”<sup>292</sup> of the Iraqi people.

The U.S. military advisory team must be only one component of a broader U.S. advisory team under the coordination of the U.S. ambassador in the host country. Each civilian agency, e.g., State Department, Agency for International Development, and United States Information Agency, must also have a cadre of nation building experts. The combined country teams would compose a “National Advisory Corps” ready to deploy at the request of friendly regimes that need help in nation building. Only on rare occasions should such efforts be made

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<sup>291</sup> LIANA SUN WYLER, *Summary to WEAK AND FAILING STATES: EVOLVING SECURITY THREATS AND U.S. POLICY*, CRS REPORT (2007), available at <http://fas.org/sgp/crs/row/RL34253.pdf> (emphasis in original).

<sup>292</sup> See Nye, *supra* note 43, at B15.

after “regime change” instigated by the U.S. If the advisory effort fails, it should withdraw unless national security concerns dictate otherwise.

If there are circumstances where genuine national interests dictate that the U.S. help a country put down an insurgency, then we should do that with teams of highly skilled advisors. The National Security Strategy must reflect this philosophy so that our National Military Strategy developed in the Pentagon can focus on conventional warfare. The Pentagon leadership needs to avoid swinging the pendulum back too far in configuring our forces to perform COIN operations. This can occur only if the National Security Strategy deemphasizes this form of military missions. If, as some suggest, the military is to be prepared to perform both conventional and COIN operations, the U.S. must have a much larger force. The same forces cannot be expected to do both. These missions require different mindsets and different skills. Demanding a larger force would require a return to the draft, which is politically infeasible.

The central lesson for the American people and our military leaders is: do not let political leaders pursue an imperialistic, unilateralist national security strategy, and above all, do not allow them to use U.S. military combat forces in COIN operations.