

Just War Theory and Democratization by Force

Two Incompatible Agendas

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PHOTO: Soldiers of the 55th Armored Infantry move through a smoke filled street, Wernberg, Germany, 22 April 1945. (PVT Joseph Scrippens. 111-SC-205298, National Archives).

THE AMERICAN MILITARY occupations of Afghanistan and Iraq have been neither military nor political successes. Both countries are still failed states that present potential risks to the United States. Afghanistan and Iraq have not become our allies, and are far from being stable liberal democracies. In short, the U.S. Army was unable to repeat the successes of its post-World War II military occupations of Germany and Japan. It is often argued that the Bush administration did not understand the political realities in the Middle East and Central Asia. According to this view, democratization by force cannot succeed in such underdeveloped societies fractured by deep ethnic and religious rifts, and without endogenous experiences in modern democracy and democratic constitutionalism.¹ Furthermore, the Bush administration is blamed for its lack of forethought and preparedness. Improvisation and ignorance allegedly led to erroneous conclusions about the economic, political, and cultural structures of societies without a history of democratic institutions and without powerful state bureaucratic structures.²

My contention is that the military occupations of Afghanistan and Iraq failed not because of the two countries' lack of democratic development prior to military occupation, but rather due to the type of wars that preceded them. World War II was a total war that ended with the total defeat of the Axis, and this allowed the Allies to carry out transformative military occupations. In a transformative military occupation, the political aim of the military government is not only radical regime change, but also the introduction of new ideological and normative paradigms.³

The American experiences in democratization by force in Germany and Japan (1945) suggest that it is necessary to first win the war in such a way that the enemy population is dissuaded from resistance. Total victory implies not only the total defeat of the enemy army, but also the destruction of the will to fight and resist of the civilian population. Only in this context can a military occupation be transformative, and the occupiers can implement radical institutional, political, and cultural reforms. In this paper I argue that—

- The principles of *jus in bello* are incompatible with total victory and, therefore, with democratization by force.

- It is impossible to fight and democratize simultaneously. The wars in Afghanistan and Iraq were limited wars, which were not aimed at total victory. If my hypotheses are correct, the United States should not have attempted grandiose projects of nationbuilding and democratization by force after conflicts that did not create a context in which social engineering projects had a chance of success.

World War II

In World War II, none of the belligerents, including the United States, respected the principles of *jus in bello*. President Franklin D. Roosevelt and his administration did not enter World War II with the aim of democratizing Germany and Japan, but rather of destroying their capacity to wage war. The Allies viewed the German and the Japanese civilian populations as enemy populations and did not hesitate in treating them as such. The most glaring Western violations of the principle of civilian immunity were the Anglo-American strategic bombing campaign against Germany and the American air war on Japan. In both cases, the aim was to terrorize noncombatants, to lower their morale, and to abolish their will to fight. The planners of the Allied bombing campaigns tried to maximize, not minimize, the killing of civilians. In 1943, the U.S. government built exact duplicates of German and Japanese houses in the Dugway Proving Ground in the desert of Utah to test the efficiency of incendiary bombs.

The number of civilians killed in Germany by the American and British strategic bombing campaign is somewhere between 300,000 and 600,000. In just three days (13 to 15 February 1945), 770 British Lancasters and 330 American B-17 Flying Fortresses dropped more than 3,100 tons of explosive and incendiary bombs on Dresden, causing the death of up to 40,000 people.

The treatment of Japanese civilians was as destructive. The fire-bombing of Tokyo and the atomic urbanicides of Hiroshima and Nagasaki show a similar disregard for the life of the enemy. On 10 March 1945, 334 American B-29 bombers dropped incendiaries on Tokyo, destroying 267,000 buildings and killing more than 100,000 civilians. This aerial attack, which razed nearly half of the city, was the most destructive bombing raid in history. On 6 August 1945, an American atomic bomb killed 140,000 civilians in Hiroshima, and on 9 August, another atomic bomb killed 70,000 in Nagasaki. World War II was maximally destructive and brutal, and violence was often indiscriminate.



(Library of Congress, oph.3a17434)

President Franklin D. Roosevelt signing the declaration of war against Germany, marking U.S. entry into World War II in Europe. Senator Tom Connally stands by holding a watch to fix the exact time of the declaration, 11 December 1941.



Twentieth Air Force B-29s dropping incendiary bombs over Japan, 1945. (U.S. Air Force)

In spite of these massacres, the U.S. government was able to create the image of a “clean” war for the home front. This required an unprecedented effort in psychological warfare that included censorship. The media did not show photographs that were deemed potentially upsetting to the American public, such as images of civilian victims. The coverage of the urbanicides carried out by the American and British strategic bombing campaigns was minimal, and the propaganda effort concentrated on the gallantry of American pilots, the technological achievements of American science, and the resolve of the American Army and Navy. *The New York Times* coverage of the Dresden bombing, titled “20,000 Reported Killed,” dated 16 February 1945, is 10 lines long. It reads: “The Swedish radio, quoted by the British Broadcasting Corporation, said today that between 20,000 to 35,000 people had been killed in Dresden during the first twenty-four hours of the Allied air assaults against that city. It added that 200,000 residents had fled in panic.”⁴ Such a brief statement illustrates the degree of indifference towards enemy civilian casualties that characterized the American coverage of war news during World War II.

Soon after the occupation of Germany and Japan, the victors insisted that they had not fought the war to punish the civilian populations but rather to defeat the criminal regimes of the Axis powers. In 1943 the U.S. government started to make plans for the democratization and demilitarization of Germany and Japan.⁵ The War Department organized military government schools at the University of Virginia and at Yale University to instruct future military occupation officers on issues related to the democratization of societies previously subjected to authoritarian regimes. Although the American military occupations were not vindictive and the emphasis was on material, political, and cultural reconstruction, they were nonetheless firm and often bordering on despotic. The Germans and the Japanese were dazed by the catastrophic dimension of their plight, and in this context the American military occupation authorities were able to establish almost absolute control in the American zone of Germany and the American sector of Berlin, and in Japan. In both Germany and Japan, the civilian population accepted the realities of defeat and occupation passively, and posed no resistance to the occupiers.

The lack of resistance allowed the Office of Military Government, United States, in Germany (OMGUS) and Supreme Commander of the Allied Powers in Japan to achieve the monopoly of violence, information, and propaganda, and this in turn allowed them to carry out their radical political, economic, and cultural reforms and to begin the process of reeducation and democratization. It is hard to overestimate the difficulty of these endeavors. In the German case, for instance, the magnitude of the problem posed by denazification was startling. In spite of the catastrophic defeat of the Third Reich, American polls showed that many Germans harbored anti-democratic feelings.

One year after the end of the war, only three in ten Germans in the American zone and sector were deemed to be consistently pro-democratic.⁶ In September 1946, 55 percent of respondents in the American zone and 44 percent in the American sector of Berlin still believed that National Socialism “was a good idea badly carried out.”⁷ In December 1946, OMGUS intelligence analyses found “an increase in antisemitic feelings among the German people.”⁸ These numbers remained

consistent during the occupation. In fact, OMGUS intelligence analysts reported increased feelings of hostility against the American presence in Germany, increased nationalism, increased political apathy, increased contempt towards Germans working for the U.S. military, and increased antisemitism and racialism. OMGUS had to engage in a cyclopean effort to reform German society and to suppress the allegiance to Nazism, militarism, antisemitism, and ultra-nationalism. American control, not simply German conviction, blocked the immediate reemergence of public expressions of Nazism and antisemitism in occupied Germany.

In July 1945, 80,000 Nazi leaders were arrested, and 70,000 Nazi activists were fired from the civil service. By 1 June 1946, more than 1,650,000 Germans—approximately one out of every ten persons in the U.S. zone—had been investigated, and 373,762 (nearly one-fourth) removed from their positions.⁹ Eighty to 85 percent of teachers were dismissed for political reasons.¹⁰ Universities were also purged—one-third of the faculty of the University of Frankfurt was dismissed, and in

the University of Heidelberg, more than half of the faculty lost their positions.¹¹ In fact, the 1946 American amnesty program pardoned 2,590,000 Germans.¹² The American occupation of Germany and Japan made the occupied populations conform to the new norms and regulations imposed upon them. Urbanicide did not guarantee the success of the process of reeducation and democratization, but it made the civilian populations malleable and obedient.

The Vietnam War

The Vietnam war was a limited war, in which the United States did not deploy all of its military might. Yet American strategists did not pay much attention to collateral damage (and to its prevention). The American armed forces and the CIA intentionally killed thousands of civilians, destroyed villages, kidnapped and assassinated political opponents, carried out a defoliation campaign, and bombed Hanoi. Unlike in World War II, the U.S. government did not succeed in managing the propaganda efforts on the home front. The American public was able



(LC-USZ62-134159, Library of Congress)

Secretary of State Dean Rusk testifies on the Vietnam War before the Senate Foreign Relations Committee, 13 March 1968.

to see, read, and hear about what the U.S. armed forces were doing in Vietnam. Television images and photographs published in newspapers and magazines had enormous political repercussion at home and abroad. Awareness of the victimization of Vietnamese civilians, lack of military success and mounting numbers of American casualties led to a growing and widespread rejection of the war. For many of the domestic critics of the war, the Vietnamese civilian population was the innocent victim of an unjustified aggression.

The anti-war movement of the 1970s and the revival of the medieval concept of the Just War were the direct consequence of the American intervention in Vietnam. Michael Walzer's seminal *Just and Unjust Wars* was inspired by "the systematic exposure of Vietnamese civilians to the violence of American war-making."¹³ Walzer argued that the Vietnam war was not justified because the United States was not responding to aggression or involved in a humanitarian intervention. Therefore, the American intervention did not respect *jus ad bellum* and flagrantly violated the principles of *jus in bello*. After Vietnam, the precepts of *jus in bello* developed into a complete legal doctrine, lawfare that imposes a strict commitment to human rights even in times of war. The indiscriminate killing of civilians is seen as a violation of the rules of war, and therefore it is inconceivable to carry out military operations that target civilians or that will necessarily cause extensive collateral damage.

The Evolution of the American Military Doctrine

Just War theory has shaped the way in which the United States fights its wars. Since public pressure, international opinion, and lawfare demand that wars be fought following the exacting precepts of *jus in bello*, the United States has taken significant steps to minimize its own casualties and to reduce the chance of collateral damage. However, this change in military doctrine was not accompanied with a redefinition of the political objectives targeted in limited wars. The wars in Afghanistan (2001 to the present) and Iraq (2003 to 2011) illustrate this lack of internal coherence. In both cases, the United States attempted to adhere to the principles of *jus in bello* by minimizing collateral damage and avoid-

ing the indiscriminate punishment of the civilian population. At the same time, the United States became involved in exercises of regime change and democratization by force, in spite of the fact that neither Afghanistan nor Iraq had experienced total defeat.

"Operation Enduring Freedom" and "Operation Iraqi Freedom," were intended to transform Afghanistan and Iraq into democracies. Yet neither the Bush nor the Obama administrations planned for total victory in Afghanistan and Iraq. President George W. Bush and his advisors considered that it was possible to occupy Afghanistan and Iraq, defeat Al-Qaeda, the Taliban, and Saddam Hussein, and at the same time introduce drastic political reforms to transform failed nations with strong autocratic traditions into liberal democracies allied with the United States.

Eleven years later, it is obvious that the Bush administration was overly optimistic. The United States is not winning the war in Afghanistan. The Kabul government is inefficient, corrupt, and illiberal, and doesn't have control over most of the country. The Afghan army, the Afghan police, and the Afghan security services are weak and heavily infiltrated by the Taliban. Security is illusory, and unrelenting terrorist attacks underline the vulnerability of the Afghan society. Afghanistan is the world's main producer of opium poppy, and the Taliban, warlords, and drug lords control the countryside. Iraq has been transformed into a pseudo democracy with strong ties to Iran. Al Qaeda still operates in the country, and is participating in operations against the Bashar Assad regime in Syria. An extremely anti-American Shi'ite fundamentalist movement influences the country's political agenda, and religious, ethnic, and sectarian violence persists.

These failures reflect the impossibility of carrying out grandiose plans of social engineering while at the same time fighting a strong insurgency. "Post-conflict" reconstruction was not successful because armed conflict and insecurity continued. Paul Bremmer, III, failed not because he did not understand the mechanism of denazification on which he modeled deBa'athification; his mistake was not realizing that denazification had worked because the capacity of German resistance had been eliminated by catastrophic defeat.

In 2003, the Iraqi regime had been decapitated, but Iraqi society was intact and Iraqis were able and willing to resist the impositions of a foreign military government. In the case of Afghanistan, the only possibility of success would imply the military and political neutralization of the Pashtun population in Pakistan and Afghanistan itself, an objective unattainable with a minimal expeditionary force and a policy characterized by restraint.

The United States exerted restraint in fighting the wars in Afghanistan and Iraq to minimize collateral damage. Both the Bush and the Obama administrations adhered to the modern standards of lawfare. While the U.S. Air Force used 5,000-pound, laser-guided bomb units (GBU-28) to target cave and tunnel complexes in southern Afghanistan, the Bush administration refrained from using tactical nuclear weapons against Al-Qaeda. The nuclear version of the GBU-28, the B61-11, was not used.¹⁴ Similarly the Obama administration rejected the proposal of an airstrike by B-2 Spirit bombers to destroy bin Laden's residential compound, because launching 32 2,000-pound smart bombs would have destroyed the entire city of Abbottabad. In order to minimize civilian casualties, both Bush and Obama embraced the use of small units of special operations forces as well as smart weapons to launch precision strikes against military targets.

Drones, the *primus inter pares* among smart tactical weapons, have become the symbol of the new American technological approach to war, and they figure prominently in the Obama administration's strategy in Afghanistan and Pakistan. In theory, drones allow the targeted ("surgical") killings of the enemy and the decapitation of its leadership

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while sparing civilians.¹⁵ Yet drones reduce but do not eliminate collateral damage, and this is enough to fuel anti-American critics. The London-based non-profit Bureau of Investigative Journalism recently released a report, widely reproduced in the American and European press, claiming that the CIA drone program in Pakistan is responsible for civilian deaths. According to the report, the 291 strikes credited to the drone program since 2004 have killed 2,000 militants but also caused 385 civilian deaths, including that of 168 children.¹⁶ The fact that 385 civilian deaths in seven years of war (an average of 55 casualties per year) are considered excessive shows how far the limits of tolerance have evolved since World War II. The electronic battlefield is challenged by a political/cultural weapon, the depiction of the war zone population as innocent bystanders. This allows for the characterization of the United States as an all-powerful nation-state that does not value human life. Much like in the Cold War, the United States is often chastised as an imperial monster driven by greed and indifferent towards the suffering of other peoples. The current American wars are often represented as a struggle between the rich and the mighty, and the poor, marginalized, and defenseless. Decapitation operations through drones may be useful to convince the American public of the success of the war against terror, but it is not clear if the tactical successes of smart weapons offset their potential for exploitation by anti-American propaganda.

The End of Transformative Military Occupations

The precepts of Just War theory demand that we fight wars according to the exacting standards of modern lawfare, even if our enemies do not share these values. Therefore, it is imperative to rethink the types of wars the United States can fight. Since radical programs of social engineering cannot be realized without the total defeat of the enemy, the United States should not engage in attempts at democratization by force if it is not ready to achieve total victory. In the absence of an existential challenge that overrides all moral constraints, the military and political objectives of limited wars must be strictly circumscribed to the elimination of specific elements (resources, leaders, etc.) that are

considered a danger to the United States, knowing beforehand that the institutional, political, and cultural structures of the enemy are likely to survive.

The Afghanistan and Iraq experiences show that limited wars fought under the new American military doctrine of minimizing collateral damage are not compatible with a political program of democratization by force. The fact that limited wars are fought with restraint and deliberately avoid exceptional violence means that attempts at transformative military occupations will fail because the enemy population will resist the imposition of new institutions and ideologies. It is evident that an

occupying army cannot succeed in instrumenting drastic, substantive, and perdurable political reform while confronting indigenous military, political, and ideological resistance. From this, I conclude that a military occupation with dual targets, both punitive and transformative, cannot achieve the second objective (transformative change) unless the enemy population accepts the fact that it has experienced total defeat. Since the contemporary military doctrine of the United States precludes the achievement of total victory in limited wars, this class of conflicts should never include democratization by force among its final objectives. **MR**

NOTES

1. See, for instance, Eva Bellin, "The Iraqi Intervention and Democracy," *Comparative Historical Perspective*, December 2004; Bruce Bueno de Mesquita and George W. Downs, "Why Gun-Barrel Democracy Doesn't Work," *Hoover Digest*, 30 April, 2004; and Stanley N. Katz, "Gun Barrel Democracy? Democratic Constitutionalism Following Military Occupation: Reflections on the US Experience in Japan, Germany, Afghanistan and Iraq," *Princeton Law & Public Affairs*, Paper No. 04-010, May 2004.

2. Stanley N. Katz, "Democratic Constitutionalism after Military Occupation," *Common Knowledge* 12 (2):181-96, 2006; Francis Fukuyama, ed. *Nation-Building Beyond Afghanistan and Iraq* (Baltimore: The Johns Hopkins Press, 2006), 4.

3. For an alternative definition of transformative military occupation, see Adam Roberts, "Transformative Military Occupation: Applying the Laws of War and Human Rights," *American Journal of International Law*, 100(3) (2006): 580-622.

4. "20,000 Reported Killed," *The New York Times*, 16 February 1945.

5. See Michaela Hoenicke Moore, *Know your Enemy: The American Debate on Nazism, 1933-1945* (Cambridge: Cambridge University Press, 2010).

6. Anna J. Merritt and Richard L. Merritt, *Public Opinion in Occupied Germany* (Urbana: University of Illinois Press, 1970). "Basic Attitudes" Report No. 19, 19 August 1946, 99. In October 1945, the Intelligence Branch of the Office of the Director of Information Control set up its Opinion Survey Section. This agency conducted 72 major surveys during the next four years, and the reports of the surveys were distributed to the highest OMGUS authorities.

7. Merritt and Merritt, *Public Opinion in Occupied Germany*, "A Study of Attitudes Toward the Reconstruction and Rehabilitation of Germany" Report No. 22, 25 September 1946, 105.

8. Landesarchiv, RG 407, Box 119, Folder title: "Public Opinion U.S. Zone," Report 49, "Prejudice and Antisemitism," December 1946.

9. Elmer Pliske, "Denazification in Germany: A Policy Analysis, in Robert Wolfe, ed., *Americans as Proconsuls: United States Military Government in Germany and Japan, 1944-1952* (Carbondale: Illinois, 1984), 214-215.

10. Konrad H. Jarausch, *After Hitler: Recivilizing Germans, 1945-1995* (Oxford: Oxford University Press, 2006), 49-50.

11. Bernd Weisbrod, "The Moratorium of the Mandarins and the Self-Denazification of German Academe: A View from Göttingen," *Contemporary European History*, 2(1): 47-69, February 2003, 52.

12. Pliske, 216. Also see John Gimbel, "American Denazification and German Local Politics, 1945-1949: A Case Study in Marburg," *The American Political Science Review*, 54, No. 1 March 1960, 83-105.

13. Michael Walzer, "The Triumph of Just War Theory—and the Dangers of Success," *Social Research* (Winter 2002): 2.

14. Michel Chossudovsky, "Tactical Nuclear Weapons against Afghanistan?" Centre for Research on Globalization, 5 December 2001.

15. Kenneth Anderson, "Imagining a Fully Realized Regime of Targeted Killing Through Drone Warfare and its Moral Expression in Necessity, Distinction, Discrimination, and Proportionality," in "The Enduring Legacy of Just and Unjust Wars—35 Years Later" Conference, The Tikvah Center for Law & Jewish Civilization, 3 November 2010.

16. Scott Shan, "CIA Is Disputed on Civilian Toll in Drone Strike," *The New York Times*, 12 August 2011, 1.