

THE RISKS OF POLICY CHOICES: THE WAR IN IRAQ AND THE DOCTRINE OF PRE-EMPTION

William Leiss

The Bush Doctrine claims the right of the US to defend itself from rogue states and terrorists by the use of pre-emptive force to remove deemed threats, and to achieve what the Bush administration calls “regime change” as it has with the invasion of Iraq and the overthrow of Saddam Hussein’s dictatorship. But the US never linked the dots between Saddam Hussein and terrorism, nor did it offer proof that the Iraqi regime was hiding weapons of mass destruction (WMD). The case for a pre-emptive strike against Iraq was never made. And where it might have been made, in terms of Saddam’s gross violations of human rights, it still would not justify invasion of a sovereign state by a foreign power, or else dozens of other countries might find themselves on an American hit list. William Leiss, who himself emigrated to Canada from the US during the Vietnam War, asks whether the invasion of Iraq was a just war, or just war, one of a precedent-setting nature that could expose the community of nations to anarchy and incalculable risk.

Selon la doctrine de George W. Bush, les États-Unis sont parfaitement justifiés de se défendre contre les États voyous et les terroristes en faisant usage d’une force préventive visant à éliminer tout ce qu’ils jugent menaçant, puis d’opérer suivant leur définition un « changement de régime ». Ce qu’ils ont fait en envahissant l’Irak et en reversant la dictature de Saddam Hussein. Les États-Unis n’ont pourtant jamais établi de lien clair entre le dictateur et le terrorisme, pas plus qu’ils n’ont apporté la preuve que le régime irakien dissimulait des armes de destruction massive. Si bien qu’ils n’ont pu légitimer vraiment leur concept de guerre préventive. Et même s’ils avaient invoqué les flagrantes violations des droits de la personne en Irak, ils n’auraient pu justifier l’invasion d’un État souverain par des forces étrangères, sauf à prendre pour cible des dizaines d’autres pays où ces droits sont aussi largement bafoués. D’origine américaine, William Leiss a émigré au Canada pendant la guerre du Viêt-nam et se demande si, plutôt qu’une guerre juste, l’intervention en Irak n’était pas une guerre sans précédent, susceptible d’exposer la communauté des nations à des risques incalculables, voire à l’anarchie.



For thirty years the people of Iraq suffered under one of the most brutal and criminal dictatorships on the planet. The crimes to which they were subjected include the following, all on a massive scale over long periods of time: arbitrary arrest, detention, and incarceration without trial, including children and infants; “disappearances” without trace; torture, murder, brutality, and bestiality; theft and confiscation of property; crimes against humanity; production, stockpiling, and use of chemical and biological warfare agents; persecution of minorities; deprivation of the means of livelihood; invasion of privacy; and cultural persecution (religion, language, intellectual life). The fact that Iraqis are in the process of being liberated from the long nightmare of this oppression and horror is an unambiguous good.

Those soldiers who have died or were injured in this process are honourable warriors, no matter what other agendas they may have been serving. They and their comrades also risked their lives in the service of the policy of minimizing civilian casualties, perhaps the first time in human history that a powerful nation going to war has adopted such a policy. Their medical teams have treated the enemy’s wounded. They have done what they could to deliver humanitarian assistance to the population, even while combat still raged. All these things too are unambiguous goods.

Now, here is a partial list of other countries and regimes in the world which have practiced, condoned, sponsored, or facilitated some important subset of those same crimes within living memory, arranged alphabetically:

Argentina, Belarus, Burma, Chile, China, Columbia, Congo, Guatemala, India, Indonesia, Kazakhstan, Libya, North Korea, Pakistan, Russia, Saudi Arabia, Somalia, South Africa, Syria, Turkey, Ukraine, Zimbabwe.

I have deliberately excluded Israel, which differs from the above-named in being a nation surrounded by oppositional forces, some of whom deny its very right to exist. Can anyone doubt that many of the citizens of the listed countries devoutly and fervently have prayed for “regime change” — a prayer that for the most part went unanswered? No “coalition of the willing” was ever formed, to my knowledge, with the purpose of terminating the horrors and oppression rampant at times in these and other countries. What is it about Iraq that is so different?

Certainly the answer cannot be, “its possession of weapons of mass destruction (WMD),” or even the regime’s unconscionable use of them against the Kurdish people at Halabja. So far as “possession” is concerned, a goodly number of the nations on my list, and a fair number of others not listed, fall into this category. I am assuming that WMD refer to those biological, chemical, and nuclear devices which are capable of inflicting massive numbers of casualties and damage in a single attack, and where in some cases the effects would persist.

So far as “use” is concerned, this is more ambiguous, because most of the foulest crimes itemized earlier do not require them as instruments, and so the case for “regime change” is independent of this factor. In fact, the total number of cases where such weapons in the strict sense have been used, say, during the last fifty years, is quite small. Perhaps the most extensive use of such weapons in this period was by the United States, against the Vietnamese and Cambodian peoples, in the period 1963-1973. The instruments used extensively included high-explosive bombs (“carpet-

bombing”), napalm and, of course, chemical weapons (defoliants) with known human health risks, all of which were deployed indiscriminately against noncombatants as well as combatants. The perpetrators of these crimes against humanity were never arraigned.

When I consider the question of Canada’s role I cannot overlook — for biographical reasons — the comparison between today’s events and those of the decade during which the United States, the country of my birth, committed atrocious crimes against humanity in waging war against the Vietnamese. I immigrated to Canada in 1968, after a period of years spent on a campus of the University of California where antiwar activities competed

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equally with the demands of degree completion. I had never before set foot in Canada and was astonished at what I encountered, both at the level of federal government policies and among the attitudes of most citizens here.

Not only was Canadian policy set firmly against that of the United States, not only did Canada welcome the legions of draft resisters who flowed north across its borders — all of whom were violating US laws — but Canada even turned a blind eye when large numbers of deserters from the US armed forces followed in their train! The latter situation is almost without precedent in relations among Western nations in the modern world. Following the amnesty, those who wished to stay who had put in their five years of waiting time were awarded Canadian citizenship.

What is so different about the times in which we Canadians now live?

How is it possible that the federal Official Opposition, as well as many citizens, could portray Canada’s decision to opt out of the coalition of the willing — ambiguously, as always with the current government — as some kind of betrayal of principle? Which of the two nations, Canada and the US, had chosen the honourable course in 1939 and gone to war against the evils of Nazism, and a formidable military machine possessing weapons of mass destruction, even though it had not been attacked? Which has the right to assume the stance of “holier than thou”?

Is it the new reality of the risk of terrorism that makes the difference? Here too the ambiguities and ironies are plentiful. Although the Bush regime has laboured mightily to connect its Iraq policy with the war on terrorism, this is perhaps the most implausible and even farcical aspect of its entire rationale. In saying this I do not for a moment discount either the reality of a terrorism risk or the need to confront it resolutely. The September 11 attacks were a *casus belli* for the United States and its allies, who reacted instantly and unanimously by invoking, for the first time ever, the collective self-defense provisions in the NATO alliance. The Taliban regime in Afghanistan was at that time self-evidently the protector and enabler of the international criminal conspiracy founded by Osama bin Laden, for whom the lives of innocent civilians are pawns of no value whatsoever in the game of unconventional warfare. The quick demise of that rogue regime, as well as the subsequent crippling of al-Qa’ida’s international network by dedicated police work in many countries, were unambiguous goods.

Yet the awkward truth is that Saddam’s regime — included on bin Laden’s own long list of rogue states run by “infidels” — was perhaps the last place in the world that al-Qa’ida’s terrorist entrepreneurs would have been allowed to operate freely.



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Hundreds of thousands of Canadians, and millions of people around the world, took to the streets to oppose the US-led war in Iraq. It was the first pre-emptive war of the 21st century, launched under the Bush Doctrine claiming the right to remove deemed threats by force. Was it a just war, or just a war?

Britain's prime minister appears to have been the only person in the world outside Washington, D.C. who professed to believe that the link between Saddam and bin Laden had been proved. For most of the rest of us, the implausibility of this case was matched only by that of the American "evidence" about Iraq's WMD facilities, presented by the US Secretary of State at the UN Security Council.

The lasting effect of the September 11 terrorist assaults on American policy is to be found elsewhere, namely, in the foundations of the policy of pre-emption. There is currently a lively discussion in the US around the old doctrine of "just war," originated by Thomas Aquinas and developed by the 17th-century jurists Grotius and Pufendorf. This doctrine includes

prescriptions on how war may rightly be fought (and is thus the ultimate source of the Geneva Convention) and when one has the right to initiate war (*jus ad bellum*). The latter includes two types of actions in self-defense, namely, responding to an actual attack, and pre-emption of one that is anticipated. An example of a justified pre-emptive attack would be if the Soviet Union had struck first against Germany in June of 1941, before the Nazis had launched against it the

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rationale for waging war on Iraq. However, only by the most tortuous exercise of logic could this be considered as an application of the ancient doctrine of *jus ad bellum*. It is, rather, a reckless new version of the gunboat diplomacy — although the preferred circumlocution at present is "muscular diplomacy" — which the United States has practised for well over a century in Central and South America and now seeks to extend to the entire world.

The current US doctrine on the right of pre-emptive war was unveiled by President Bush in a speech last June and was later incorporated into

the “National Security Strategy” released in September. The claim is that the older right of pre-emptive action must be adapted to the new reality of “rogue states and terrorists,” as follows:

The greater the threat, the greater is the risk of inaction — and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy’s attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively... [but] will not use force in all cases to preempt emerging threats, nor should nations use preemption as a pretext for aggression.

Thanks to good investigative reporting by Seymour M. Hersh in *The New Yorker* and Steven R. Weisman in *The New York Times*, we know where and when the current doctrine actually originated — namely, in 1998 among the ranks of a conservative cabal known as the “Project for the New American Century.” Among the key players are some now-familiar faces — Donald Rumsfeld, Paul Wolfowitz and Richard Perle. These three are also among the signatories to an open letter addressed to President Clinton and dated January 26, 1998, which stated that “removing Saddam Hussein and his regime from power” should become “the aim of American foreign policy.” The date on this letter, of course, pre-dates September 11, 2001 by almost four years.

It is virtually self-evident that the Bush Doctrine, and its application to Iraq, is a policy choice that entails great risks for the entire world as well as for the United States itself. This is because there is neither an inherent limit nor an inherent rationale in its potential range of application. Bush’s June 2002 speech explicitly recognized the limitation that had been

built into the earlier concept of *jus ad bellum*: “Legal scholars and international jurists often conditioned the legitimacy of preemption on the existence of an imminent threat — most often a visible mobilization of armies, navies, and air forces preparing for war.” The existence of “rogue states and terrorists,” it is then argued, means that this “condition” must be repealed. But no other limitation is imposed in its place.

The key phrase is “imminent threat.” True, the al-Qa’ida operatives have no standing armies to mobilize. But there were not only clear threats of imminent actions in the run-up to September 11, there were also actions, — the planning for

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simultaneous attacks on airliners in the Philippines, the 1993 bombing of the World Trade Center and the Khobar Towers in Saudi Arabia in 1996, the horrific blasts at the US embassies in Nairobi and Dar es Salaam in 1998, and the attack on the *U.S.S. Cole* in Yemen in 2000. At least the last three were definitively linked to al-Qa’ida. Why would anyone think that bin Laden had called off his *jihad* after the last one, since all of his utterances delivered exactly the opposite message?

Thus pre-emptive action designed to forestall the next strike from al Qaeda would have been clearly justified by the traditional *jus ad bellum* anytime after 1996. But nothing in those events justified, at any time, action against Iraq. The confusion about the new doctrine’s range of application began in the famous and utterly illogical “axis of evil” charac-

terization. “Axis” means in this context an agreement among countries united in a common purpose. At no time in human history have Iraq, North Korea, and Iran ever formed an axis of any sort. The real message in this pronouncement is that the US reserves the right to label unilaterally any nation in the world as a “rogue state.” Or not to label them as such, at its sole discretion.

The bottom line for the Bush Doctrine is this: Any nation considered by the US to be a “rogue state” is at risk of having pre-emptive action taken against it. The importance of this message has not been missed by some of those so labeled, such as North Korea, which replied, in effect, “what’s sauce for the goose is sauce for the gander.” And then we were told that North Korea’s nuclear-tipped missiles have a range sufficient to reach the west coast of North America.

Little time need be wasted on observing that no country has the right to decide which of its contemporaries is in dire need of regime change directed from abroad — a Hobbesian world order if there ever was one. The Bush Doctrine of pre-emption destroys the meaning of the ancient *jus ad bellum* when it detaches the concept of imminent threat from its essential limitation (location in a *particular* source) and gives it an open-ended and arbitrary application. The Canadian government was clearly justified in announcing its explicit opposition to the former (regime change) and its implicit opposition to the latter (unrestricted pre-emption). The reason is straightforward, namely, that both expose the world of nations to anarchy and incalculable risk.

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