

The Necessity of Persuasion: Keeping Congress Engaged



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This chapter discusses the need for new foreign policies and how to achieve them. The search for enlightened policy has to take account of science and of history because any rational policy has to build upon evidence, analysis, and judgment. Judgment can take account of factors beyond the evidence—values and considerations that lie outside the frame of reference for the particular subject—but it is obviously pernicious to have the evidence or the analysis infected by *a priori* judgment insensitive to the findings of the investigation and study. That is a recipe for self-deception and for collapse of public confidence in the integrity of decision making. I make this preface because we have some reason to be concerned about it in the current state of affairs, and we need to be open-minded in awaiting further study and examination, which I hope will proceed in the Congress in due course.

There is another test for determining what a rational and enlightened policy can be and should be. In a pluralistic nation, we must always meet the test of persuasion. We have to be able to demonstrate a respect for those who differ with us, and we have to be able to persuade them that our course is wiser and sounder than the one to which they may initially be attracted.

CURRENT FOREIGN POLICY

Not all of America's recent foreign policies have been misguided. I would include among the praiseworthy initiatives the fact that the government has put forward a Millennium Challenge account concept that has real promise for enhancing and making more effective America's foreign-assistance programs. If it is funded as promised, there will be more money. But, equally important, it has a structural design that is winning high respect among people in the development field. We also

have to list the powerful initiative that was mounted with regard to HIV/AIDS, the recognition that we have a global problem that must draw resources and multilateral effort. That owed a lot not only to President Bush and the internal dynamics of his administration—Secretary Powell was concerned about this from the first day he arrived—but obviously it drew on the specific interests and concerns of Senator Bill Frist, the Senate leader.

We also need to note, on the plus side of the ledger, that the Bush administration crossed the threshold to endorsing a two-state solution of the Israeli-Palestinian chronic conflict. That was a big change, and it bore on the process that now has been resumed.

Likewise there has been an important dynamic in the trade field. The Doha round of negotiations, with European Trade commissioner Pascal Lamy and Robert Zoellick working together, has a good deal of promise and importance and is getting some high-level attention.

Clearly, there was justified military action against al Qaeda in Afghanistan, and that deserved a great deal of praise, just as postwar operations in Afghanistan have invited questions because of their inadequacy and insufficiency. We cannot be satisfied if the outcome is to perpetuate “warlordism,” even if we are gratified that al Qaeda has been substantially damaged.

I would note that, although he later shifted course, President Bush did respond to the counsel of the Congress expressed in specific resolutions and to the advice of Prime Minister Blair and other allies when he went to the United Nations Security Council in the fall of 2002. It wasn’t the first impulse of the administration, but the American government did seek and win a unanimous Security Council resolution that returned the inspectors to Iraq to try to enforce prior Security Council resolutions.

Even the controversial national security strategy has emphasized the necessity of multilateral solutions across a broad range of international problems. That is why, in fact, at the United Nations the inside circle around the secretary general had a lot of praise for the national security strategy. Even though the policy has been sensible in the main, its more problematic features are, of course, the dubious emphasis on preemptive doctrine, which, as it evolved, was hard to distinguish from preventive war.

FOREIGN POLICY ALTERNATIVES

Despite these foreign policy successes, the balance sheet of recent American foreign policy shows a lot of heavy liabilities. The preemptive doctrine attracted critique, as did the notion of a permanent American dominance in world affairs. There are many things to be said about all of this. I will only make one point, because we already are

into a situation where there is an obvious impediment to effective implementation of the notion of preemption. Preemption, without sound intelligence, is Sampson without eyes. It can bring down the temple. And we have seen real cause to worry that intelligence was flawed, perhaps manipulated, or misread. This cautions against any repetition of a resort to the kind of preemption we have now seen.

As discussed by Jessica Tuchman Mathews (chapter 3) and Joseph Wilson (chapter 15), among others in this volume, a central problem has been the erosion of traditional alliance relations and the rising animosity toward the United States—perhaps centered on the government but more broadly directed against America and Americans—in many parts of the world. There are doubts across the globe that American power is guided by sufficient wisdom and restraint.

World attitudes are very complex. The structure of opinion in much of the world still shows a striving for things associated with America. There remains a desire to prosper and to acquire many of the material benefits associated with the American economy. But that is not the only element. We are in danger, not of meeting the classical goal of statecraft—“it is better to be respected than to be loved”—but of being more *feared* than respected, and we need to take account of that as we contemplate options for our policy in the future.

Conceiving constructive alternatives to current policy requires that we first eliminate some of the unwise or implausible options for policy. The beginning of un-wisdom in the last few years, in my opinion, was to allow the rhetoric of the “axis of evil” to distort policy. It was a rhetorical flourish that has not served the country well. But it does define three subjects that need to be addressed: Iraq, North Korea, and Iran.

IRAQ: THE NEED FOR INTERNATIONAL PARTICIPATION AND LEADERSHIP

Those of us who doubted the wisdom of war in Iraq, based on the evidence presented, nevertheless had to pray for its quick success. Who could have wanted it to be prolonged once we had committed force? Even before force was employed, the problem has always been what would come next, and what would follow even a quick military victory.

There is a marvelous passage in a letter that Winston Churchill wrote to David Lloyd George in the 1920s. It was a time when Churchill shared responsibility for British oversight of Iraq. He lamented, and this is a close paraphrase, that Britain found itself spending, at that time, eight million pounds a year for “the privilege of living on an ungrateful volcano.”

Those who are trying to make a go of it in Iraq have reason to think of those words. There are increasing doubts now that this transition can be managed effectively

by a narrow coalition of occupying powers. The legal specification that the United States and Great Britain have accepted the obligations and responsibilities of occupying powers seems, to a number of people, a promising development. But it is not going to be sufficient, in my view, for two countries to assume that they can carry this off as agents in total control.

The notion that “we broke it, so we bought it” is widespread among allies and critics. But the reality is that we are not likely to be able to fix Iraq by ourselves. The time is already upon us when we need to be rethinking how to engage other participants in the reconstruction effort, and that means sharing authority.

This is neither Germany nor Japan after World War II. It is not Vietnam, though you can find elements of it that might bear some similarity. It is much like the Philippines after the Spanish-American War of 1898, where for several years we found Americans bogged down in a small-scale guerilla operation. We were fighting Aguinaldo and others in the Philippines for years, and that is likely to be the pattern that could emerge in Iraq. We are not likely to suffer massive casualties, on the order of Korea or Vietnam, but the steady drip of small numbers of casualties and fatalities may be so amplified that there will be a dramatic decline in the capacity and willingness of Americans to stay the course.

At this stage, we need help, but we do need to stay the course. We cannot simply pick up and leave and run the risk of, say, fundamentalist Islamists seizing power, perhaps fracturing the country. The reconstruction and legitimacy that we need in Iraq demand much wider international participation and international leadership. We need to yield guidance over the entire process to a U.N. authority.

NORTH KOREA: A NUCLEAR MOBILIZATION BASE

North Korea is another part of the “axis of evil.” “Axis,” of course, is the term originally applied to the German/Italian/Japanese relationship in World War II, and our European friends will know the name Theo Sommer. Sommer wrote his doctoral dissertation on Germany and Japan in the war, and there’s a wonderful phrase in his German that just describes how decrepit that relationship was. He described Germany-Japan as “komplizen ohne komplizität”—accomplices with no complicity.

Now we are in roughly the same situation. This is not an axis, and if they are complicit in any way that we might be worried about, it is hard to find. Even the reported trade in weapons and technology between Pyongyang and Tehran is a selective, occasional transaction, not a comprehensive bargain that would qualify as an “axis.”

In North Korea, we face stark and unforgiving truths. There is no acceptable military option on the peninsula. We are deterred—as North Korea should be. We are deterred by the reality that if war came, there would be, in all likelihood, thou-

sands of artillery rounds on the city of Seoul, with a population of millions of people, within twenty-four hours. It is not merely a threatening claim made by Pyongyang that they could turn Seoul into a “valley of fire.” It is, in fact, within their capability to do so.

So we are deterred. And the only hope we can have for turning North Korea back from the path toward weapons of mass destruction, specifically nuclear capabilities, and toward a missile program that is troublesome to us in the extreme is the path of negotiation. There is a lot to be said for what has been tried in recent years—engaging China, South Korea, Japan, and Russia. But time is not a free good, and we can’t spend endless amounts of time attempting to get North Korea to sit down with all of us in response to their demand that they meet with the United States as the principal interlocutor. If we have to yield to their demand for bilateral negotiation, as I think we should, we need to face that quickly. We will always be able to consult with the others outside the negotiating room.

Under the best of circumstances, North Korea is very likely to retain what is often called a “nuclear mobilization base.” They have the knowledge, they have some of the capabilities, and they are very likely to be able to move in that direction again, whatever they promise, on day one. At this stage, the urgency is to re-engage the International Atomic Energy Agency to monitor what is going on in the North, ideally to reconnect North Korea to the obligations it originally accepted under the nonproliferation treaty.

We may be headed toward a need to interdict North Korean ships at sea. That is safer than the notion of attacking them on land, but who knows what that might trigger? They can’t fight us at sea, but they can inflict a lot of harm on land, and we will need to approach that issue, if it becomes necessary, with great caution.

IRAN

Iran is the third element in the “axis of evil,” and we need to understand there that the options for interfering in Iran are generally counterproductive. Embracing the reformers and the students in the streets is not likely to help them gain power. Even if we only applaud them, as some public statements have done, we run some risk of undermining those we favor as political forces within Iran.

In some quarters one is hearing about the Osirak precedent, the precedent in which the Israelis attacked the Iraqi nuclear reactor from which they feared nuclear weapons would soon emerge. And some are referring to that in discussions about Iran. That is a very flawed idea. The notion of military strikes to destroy or retard the Iranian nuclear program looks less and less plausible because of the structure of that program. It is very dispersed, and it is multitracked. Clearly it has clandestine features. We discovered some of those clandestine features, and indeed the International Atomic

Energy Agency has been on Iran's case because its nuclear program has been outside the agreed game plan to some degree. And that's the way Pakistan succeeded, after all, in gaining its nuclear-weapons capability.

These activities are very problematic but do not invite effective military response. The only plausible option is to elicit Iranian restraint through political engagement, for which there are two requirements, given our distance from Tehran ever since the hostage crisis: We have to encourage and exploit the ties between our Western European friends and the Russians with Iran, rather than constantly berating them. Somewhere back in the mind of many Americans, there is the fear, not entirely unjustified, that our friends are seeking commercial advantage, and we must discourage that, as we did with the so-called Iran-Libya Sanctions Act.

At this stage, in addition to encouraging our friends to engage actively with the Iranian government to moderate any interest they might have in breaking out of their nuclear-restraint obligations, we have to put ourselves in the situation of those in Iran. American forces now flank the country. We are in Afghanistan, we are in Iraq, and American forces are populating the southern reaches of the Persian Gulf, actively operating there in a variety of aerial and naval modes. We have to figure out a way to communicate with Tehran and to conduct our own security operations in a manner that will reassure them that they are not the next on the target list.

It is very hard for Americans to appreciate the radically different perceptions that have taken hold in the Islamic world—not just Iran, not just Iraq, but throughout the Middle East and throughout Islam, more broadly.

A very sophisticated Arab diplomat pointed out something recently that would never occur to an American. While the administration wisely moderated some of the original rhetoric, after President Bush inadvertently used the term “crusade” at one point, deep historical suspicions persist. From the Islamic perspective, consider a couple of the aspects of the 2003 Iraq war. In Islam, many of the crusaders centuries ago came from France. They were known as “Franks”—the very name of the general who commanded the force that attacked Iraq. This was totally accidental, but the Arab diplomat says it compounded the psychological reactions in the region. And who was the senior British advisor to Franks? *Cross*. General Cross. We laugh about this, but put it in the mind of a totally different culture; even though they will rationally recognize it has no bearing on what transpired, it registers. It connects to a history that is very different for them than for us.

THE NECESSITY OF PERSUASION

If persuasion is essential to a sustainable policy, Congress is the institution that forces leaders to bear the burden of persuasion. The election of 2000 was the closest thing to a mandate for coalition government that our system is capable of producing. It did

not yield the kind of coalition, the cooperative environment, one might have hoped for—mainly because of the impact of September 11. After September 11, there was such a powerful rallying to the president that questions were submerged and the path of cooperation was not necessarily viewed as essential. Yet the basic balance in the Congress has remained extremely close, infighting has been intense, and it is not likely to end.

But beyond the partisan contest that continues, there are two larger challenges crucial to Congress's capacity to function in an age of terrorism. First, Congress needs to make sure that it can operate if Congress itself becomes a target of terrorist attack. Many think that the plane that went down in Pennsylvania on September 11 could well have been headed to the Capitol. So the danger of an attack on the Congress, killing or incapacitating a sizeable fraction of the membership, is real. It requires some action.

The second challenge that is indispensable, institutionally, is to define a path that guarantees Congress will remain engaged and effective in the stream of decisions about the use of force in this open-ended war against terrorism. A decision at one point in time may not fit the circumstances and facts as they emerge. Just as wars sometimes go sour and presidents have to change policy en route, and generals have to shift strategies, Congress has to be able to adjust its policy guidance from time to time.

Ensuring Congressional Continuity

A commission chaired by Lloyd Cutler and Alan Simpson recently issued a report urging for a constitutional amendment to deal with the problem of potential discontinuity in Congress's operations. This problem is unique to the House of Representatives. If the Senate loses a member, a governor can appoint a replacement—that is the standard procedure. But the Constitution only provides one way to replace a member of the House of Representatives: by special election. That special election, in recent years, has taken an average of about four months across the country.

That is too long. Particularly in an emergency, you don't want gaps in congressional membership. To begin with, if it were a really large gap, you might have quorum problems. Furthermore, in the case of the House in particular, you could have entire states denied representation. Seven states have only single members. You could lose major representation with even a fraction of the House of Representatives killed or incapacitated.

We must have some provision for temporary, gap-filling representation in the House. My view is that such temporary representation is best determined by each representative. I favor having each representative designate, in advance, an agent to act for him or her in the event that he or she is not able to function for a period. This would be an agent chosen by the elected member on the basis of his or her legitimacy as the representative of that constituency. This is *not a successor* but someone who

would temporarily carry on the duties of office until a special election of a successor can take place. One reason to favor a comprehensive arrangement for such temporary designees is that, in the case of temporary incapacitation, the arrangement would permit a member to resume his duties and a special election would not be needed. Representatives would also be more confident in a procedure that empowered them to choose their own agent, in the expectation that the designee would yield the office if the representative were able to resume his duties. This would be very akin to what the French do in their National Assembly. The French choose alternates as a part of elections to the *Assemblée Nationale*. So there are precedents and other experiences that we need to have in mind for this.

The argument over this has been very intense, because some members of the House are profoundly committed to the view that only a person elected can vote in the House. There are some tangential precedents in the House and Senate, although none in the House in recent years. People have used proxies as a sort of way of conveying intent, through committees mainly, rarely in other cases. They use paired voting in the Senate as a way of permitting members to act in absentia. So there are variations that are not directly on point, but close enough to establish some precedence.

Some members do not wish to have a constitutional amendment, which would in any case require a long process for approval. But I believe there is scope for the House to address this problem. I read the relevant court cases as justifying the House to authorize a member to designate a temporary agent under its Article I rulemaking authority. That's an arcane legal argument, but we must solve this problem, and we must have prompt action on it.

KEEPING CONGRESS ENGAGED

We also must make sure that we keep Congress engaged in the stream of decisions likely to arise with regard to the use of force in the war on terrorism. We have had a running disagreement between the Congress and the executive branch about the so-called war powers. Part of that disagreement has been based on a substantial misunderstanding of what the War Powers Act is, what its intent is, and what it does. So we first have to get the premise right if we're going to shape a constructive congressional role in this realm.

Contrary to many interpretations, the war powers resolution was designed primarily to force Congress to reach decisions, after years of incapacity to do so during the Vietnam War. Senator Javits and the other primary authors had a great regard for the necessity for vigor in the chief executive, but they recognized that there had to be a mechanism to guarantee that the Congress would face the issue and vote on the policy involved in the use of force. That is the premise that commends itself as we think about how to craft the current process.

My recommendation is that we play a variation on the War Powers Act, separating policy judgment from the consequences of that judgment. The War Powers Act is one that ties a judgment on the merits of the military operation to a timetable for disengagement. My argument now, since we have not been able to make that statute work effectively, is that we should separate any consequence—any timetable for disengagement, any termination of funding—from the basic policy decision. We should set that verdict aside as a decision to be reached separately, and the policy issue should be presented to the Congress in pristine form. Is this a use of force that should be initiated, sustained, or terminated? The objective should be to reach the policy judgment in pure form. Is it wise for the country to enter or continue on this military path?

To accomplish this, we have a device already in place. Presidents, complaining all the while, have nevertheless filed the reports required under the War Powers Act, beginning with President Ford in the *Mayaguez* case in 1975. Reports were sent forth by President Bush, for example, in the early months of the Afghanistan operation. Those reports could be the occasion to trigger a congressional debate and vote expressing the policy verdict, and that is a device that I think we should encourage Congress to exercise.

THE ROLE OF CONGRESS IN NATIONAL COHESION AND INTERNATIONAL STANDING

For America to be effective in the world, we must maintain national cohesion. We will not do that if we find ourselves drowning in legislative-executive disputation, protractedly and repeatedly. Cohesion is a hard thing to come by. It is a precious national asset, and not just inside our own body politic.

During the Kosovo intervention, Congressman Thomas Campbell and some two dozen other legislators sued President Clinton in connection with the War Powers Act. When the bombing stopped after sixty days, the issue was treated as moot and did not reach a Supreme Court decision, as the congressmen hoped. In the course of that case, General Edward Meyer, one of our most distinguished military officers, wrote a letter to Congressman Campbell, saying, “I believe it is essential that when American servicemen are sent into combat, they have the support of their fellow Americans. The War Powers Act causes the people’s representatives, the Congress, to take a position, and not leave the troops dangling on threads of definition and interpretation.” That is a compelling argument to keep Congress in the act.

There is the additional consideration that how Congress stands on the ways we use the nation’s mighty arsenal bears crucially on America’s standing in the world. Even among our closest allies, American power elicits mixed reactions—awe and fear, respect and anxiety. That should surprise none of us. Military and economic capabilities of the

magnitude America possesses cannot fail to cause alarm in other countries, however benign our intentions. That alarm is heightened to the degree that American force appears to be too easily employed. In the eyes of others, no less than of American citizens, American military action may be seen as most legitimate when it is demonstrably subject to democratic governance. Marshaling international coalitions to wage the war on terrorism will depend, importantly, on giving our allies confidence that American power is guided and restrained by a disciplined relationship between Congress and the president.

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