

Law, war and the Petraeus doctrine: How to take democracy seriously in Iraq and the AfPak theater

Is US General's counter-insurgency strategy in line with the principle of democratic peace?

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Rule of law and democracy are for me the same in modern, complex societies, with democracy the be-all and end-all of human societies in the 21st century. I am a supporter of the democratic peace school of international relations, also known as cosmopolitan law or Kantian universalism. In the United States, Woodrow Wilson's view in 1917 that the war's main objective was to "make the world safe for democracy" is a world leader's closest promise of perpetual peace for humankind. The occasion was missed when European victors saw otherwise, and used their American-allowed victory to enlarge colonialism at the expense of Germany.

The ugly vindictiveness of Nazism fed on the sense of injustice meted on the German Reich, and peace lasted two short decades. So the premise is the following: perpetual peace will happen in the international sphere when all nations are democratic, and by democratic I mean formally so: the people voting leaders in and out of office, laws passed by a majority of elected parliamentarians, and an active judiciary in support of individual rights and discrete and insular minorities.

In the international sphere, this is easier said than done, as we know from the Wilsonian legacy, but this simple premise of democracy should constitute the universally agreed measure for any military action, both in terms of the purpose and the means of any violence. Alternatives of the Realpolitik or national-interest school offer a counter-narrative of importance, as does criticism of formal democracy from the left, which focuses on economic and social rights. Both views are cogent, of course. Still, flawed or incomplete as it may be, privileging democracy is key to ending the wars raging in Iraq and in the AfPak theater.

We have, in the three countries where the US is officially at war battling an ongoing insurgency, precise legal pointers in David Petraeus' counter-insurgency strategy, known as COIN and developed in Field Manual 3-24 (December 2006), the most current embodiment of the democracy-rule of law dimension of Kantian universalism. Field Manual 3-24, a document widely discussed in military academies, deserves to be as intensively discussed in law schools within the US and abroad. I have summarized the doctrine in my "Iraq: Guide to Law and Policy," around five central ideas, the first four of which are applications of the democratic peace principle in the context of an insurgency:

- (a) political primacy;
- (b) popularity of local government (Host Nation, HN) as main criterion for success of COIN;
- (c) initiative and adaptability of military operations;
- (d) importance of legal framework; and
- (e) Iraq as a privileged testing ground, which shows in the large number of illustrations from the Iraqi theater.

How does Petraeus' COIN grid test in Iraq, Afghanistan, as well as, more briefly, Pakistan as the other express terrain of the AfPak war theater ?

Iraq: protect a fragile

democracy beyond elections

Iraq is largely considered, for the moment, a success story for the doctrine. This can change, and the persistent absence of government will inevitably tear away at the stability achieved. To solve the persistent deadlock, the appointment of the prime minister is key. Last week, I made the case for Jaafar Sadr as prime minister, together with Saleh Mutlak as president and Fuad Masum as speaker. One hopes the Iraqis can finally agree on filling the three top positions and get the government into place.

But we should look beyond this key obstacle of government formation. The military dimension operates on a different plane, and the announced plan of withdrawal of US troops from Iraq remains on course. One does not disturb a success story, so item "c" on "military adaptability" is important: expectations are high, for the continued efficacy of COIN, that major combat troops will be reduced further with an end to the operations by December 2012. I propose to pay attention to the following, so far secondary item.

If my premise above is correct, that the sacrifice of American and Iraqi soldiers can only be justified by a democratic imperative, then I should underline a legitimate fear that Iraqis have about the return of authoritarianism, and the military adaptability needed to prevent it.

When the Green Zone was nominally terminated in early June, many Iraqis were worrying about a military coup, which the government might not be in a position to counter in the absence of US troops. This concern should be given more than passing reference, to add to the COIN tactics the following strategic objective: if you want to succeed in protecting a successful COIN, as in Iraq, you must be ready to use c above to prevent the collapse of a, b and d, namely the political order, the Host Nation's legitimacy and the legal framework. Now if most of your troops are not on the ground, you will face several problems. Suppose there is a coup, what action can be taken by the available US troops? Who decides, and with whom in Iraq, if any military intervention "for democracy" is needed? What if the coup is rapidly making progress, and is accompanied, say, by a policy of assassination of the elected leadership?

The situation on the ground will inevitably be in flux, but the overall basis for legitimacy in the resort to force in countering a coup needs more public attention, and more careful contingency planning. In fact, the legal arrangements are far more solid than one thinks, in the shape of a full treaty known as the Strategic Framework Agreement (SFA). Not the SOFA (which is actually called the Withdrawal Agreement) that regulates military presence and will be increasingly secondary as troops withdraw, but the SFA of which Section II clearly states that "the United States shall ensure maximum efforts to work with and through the democratically elected government of Iraq to ... Support and strengthen Iraq's democracy and its democratic institutions as defined and established in the Iraqi Constitution, and in so doing, enhance Iraq's capability to protect these institutions against all internal and external threats."

So it is all there, against any coup if it were fomented, or carried out, and for which c - initiative and adaptability of military operations - must be tailored.

Afghanistan: End Karzai's

dictatorship

Afghanistan is proving the worst possible disaster in the making for the United States, and to be a far worse outcome for the Afghans and the region. Let us face some facts: the consensus of both independent UN and EU observers is that the presidential election in Summer-Fall 2009 was rigged by the Afghani president. The oppositional leadership pulled out from the election

because of the fraud, and Hamid Karzai was reinstated unopposed in the second turn. In the process, a, b, and d were undermined flat out, and the US had to eat its words, recall US Ambassador Karl Eikenberry's leaked memo on Karzai's "inadequacy as a strategic partner," as has president Obama himself when he rolled the red carpet for Karzai in Washington last month.

Looking at the COIN elements more closely, one must conclude that on "a," political primacy, the Petraeus adaptation of Clausewitz, war as the continuation of politics on the domestic level, was thrown out of the window. The central meaning of politics is a fair competition for elected position. There is no politics left when the head of the executive undermines the electoral process and his government's source of legitimacy. The subsequent weak focus on corruption appears as a metaphor for failure in the wake of the presidential election debacle. You can focus on Karzai's brother all you will, or on Kandahar's opium mafia and warlords' protection in Kabul, and win marginal victories here and there. This is meaningless considering the amount of sacrifice needed to win in Afghanistan. In item b terms, the rot is at the center of the Host Nation, in the Kabul that you patrol, and where night after night, the rot in and around the presidential palace is fuelling increasing victories for the insurgency. If US soldiers find it naturally difficult to put their lives on the line for a Host Nation headed by a corrupt president, in the worst political sense of corruption, i.e. rigging the elections to stay in power, then what does one expect the Afghani soldier or policeman to offer his life for? The few pennies he gets at the end of the month? The legal framework under d also follows. I am not necessarily against some accommodation with the Taliban, including an open policy of respect for prisoners of war, a reconsideration of drone attacks, and due process at a level far more advanced than the one prevailing in the various prisons inside and outside the country. This would be all part of "d," legal framework, to which I would add an announced, modifiable, exit strategy timetable.

But we shouldn't lose the forest for the trees. The USG is a laughing stock every night in Taliban houses, where the leadership sees Karzai, a man established by a universally supported UN Bonn process in 2001 and sustained since at the cost of billions of dollars and thousands of lives, threatening to join their ranks and be allowed to get away with it. If the one person who owes his leadership position to the full force of international law and military might thumbs his nose at those without whom he does not exist in the first place, and without whom he cannot survive a second outside his gilded palace, then surely something is wrong with the most powerful army in the world and its Afghanistan COIN strategy.

Let me carry this logic to its natural consequences: I believe Karzai should be deposed, or arrested, or forced to resign, now. Well, perhaps not quite now, because there have been so much kowtowing and obfuscation by the American leadership that ending his illegitimate status must be more carefully prepared. To be truthful to the message of democracy which is the only worthwhile message for young soldiers dying thousands of miles away, and to the very logic of the COIN doctrine, indeed to react to the continuing, inexorable descent into the abyss because of Karzai, the message of Ambassador Eikenberry should be made less metaphorical: as surely as Karzai is not a strategic partner, he surely is not a tactical one. Should he not resign willfully, Hamid Karzai should be arrested, and brought to trial for rigging the elections. Nor is there a reason to hesitate about who should replace him, at least until free elections are carried out again: Abdallah Abdallah was the runner up in the elections, and from all accounts, fought a decent democratic battle.

This would also send a strong message to Iran and the rest of the region, whose people are hard pressed to find a difference between rigging a presidential election in Iran or in Afghanistan.

Pakistan: rely on "the people of the law"

Undivorced from Iran is Pakistan. President Obama coined a new word, the "AfPak" theater of war: he brought Pakistan fully into the US war in Afghanistan, and followed the geo-strategic conflation of words with determined military action. Afoot in Pakistan is an insurgency of a very different nature because of the nature of the host nation. In Pakistan, over the past three years, an extraordinary civilian-led battle, with the judiciary and the bar at its head, succeeded in ousting dictator Parviz Musharraf, forcing free elections, getting a new president and a new government elected, and reinstating the Chief Justice. All is not rosy at the center, and there is a good deal of corruption, including around the person of the current president, but the main

problem in Pakistani history has been the armed forces, which have provided the most brutal dictator-presidents from before Zia al Haq to Musharraf, and the Pakistani intelligence services (ISI) that created the Taliban in the first place.

By all accounts, the ISI is the most duplicitous such organism in the region. An extensive report published at the London School of Economics confirms an open secret "as clear as the sun in the sky": the continuing collusion between ISI and the insurgents in both Pakistan and Afghanistan. Unless ISI is firmly brought under control by the civilian authorities, and reshaped to be useful to Pakistani society rather than to carve itself out as a power broker of the shadows, the Host Nation's stability will remain endangered. This no doubt must take a great deal of behind the scenes discussion in the Pentagon, but the issue needs to be made public both in Pakistan and in the United States.

Reforming ISI is insufficient. To preserve the fragile democracy in Pakistan, a bridge must be made, in COIN terms, between those elements in the host nation that provide democratic legitimacy and those in charge of the counterinsurgency. The best allies of the United States, if the US wants to be true to its democratic vocation, are the "people of the law."

"The Pakistani lawyers' movement and the popular currency of judicial power," a recent article in the Harvard Law Review shows the lawyers' heroic, non-violent fight over the past four years to end Musharraf's dictatorship. The more law and its people are privileged in a fragile Pakistan, the better the chances for COIN to succeed on its very own terms. This is true in any country, but the difference in Pakistan is the unusual track record of its people of the law. Only by aligning the Petraeus Doctrine with the achievements of lawyers against dictatorship in Pakistan can the Pakistani democratic experiment prevail against the insurgency.

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