



A Response

By Tom Farer

Confronting Global Terrorism and American Neo-Conservatism: The Framework of a Liberal Grand Strategy. By Tom Farer. Oxford, UK: Oxford University Press, 2008.

First I want to thank Dick Falk, Paul Taylor and Dino Kritsiotis for their thoughtful comments on my book. Since, in the course of writing, one lives intensely with one's ideas, pushing them as far as one can at that moment, completion tends to carry in its wake a kind of intellectual complacency bred, in part, of exhaustion: "Been there; done that; prescribed optimally; there is nothing left to think." But of course there is.

All thinking about neuralgic issues of public policy is work in infinite progress. Lacking inductive or deductive means for achieving certainty about cause and effect, our diagnoses and prescriptions are, by their nature, hypotheses shaped by a highly subjective (partially unconscious) interpretation of history and by an intuitively normative (or perhaps it is more akin to aesthetic) preference. Even if, despite being blinkered by unavoidable preconceptions, we manage through a feat of imaginative analysis, to assemble all of the relevant parts of a problem, there is no protocol for assigning relative weights to them. After all the plodding cerebration come leaps of intuition.

History seen in terms of precedent is our testing ground. But what is a precedent? In policy thinking as in law, we speak of precedent as if two cases were essentially identical even while knowing that every case itself is a mental construct torn out of the seamless flow of circumstance. In other words, the problem is not simply that any case described in sufficient contextual detail is different from every other one. The problem is with the idea of a "case," for it requires that we isolate from the flow of countless potentially sensible phenomena a few perceived objects deemed to cluster naturally and to have an intrinsic reality separate from the multitude of phenomena washing along with them.

In short, diagnosis and policy prescription need to be seen as processes of successive approximation. And since most of us have difficulty being our own devil's advocate, we need the reviewer as a superior substitute for ourselves. So again my thanks to Dick, Paul and Dino.

I have neither the inclination nor the space to attempt a detailed response to their many astute observations. Instead, I simply want to clarify my position with respect to just a very few points.

In connection with my argument that we should not think of the struggle against terrorism as a “war,” Dino distinguishes between the political, or we might say “rhetorical,” use of the word and its use in the international legal discourse about forbidden means. Dino apparently sees a paradox in my position. I object to characterizing the struggle as a “war” in part because I fear the collapse of moral and legal restraints on the means employed to wage the struggle: The rhetorical employment of “war” tends to rally political support for whatever means the government chooses to employ. The paradox, he seems to be saying, is that once a government frankly admits that it is engaged in war, it automatically activates all of the detailed restraints enumerated in the laws of war. But as he also notes, the principal codification of the laws of war, that is the Geneva Conventions of 1949, operates in all “armed conflicts” however they may be characterized by the parties. Hence my position is not paradoxical.

Perhaps Dino is simply clarifying the distinction between legal and rhetorical characterizations as it affects the discretion of the American President. With respect to the former, the President has no discretion. Either a country is or is not engaged in an “armed conflict.” That is a matter of objective fact, although, in the absence of a World Court with compulsory jurisdiction, that “fact” will be independently and subjectively determined by governments and other influential actors in the global political order. Still, in theory, if on given facts any fair-minded observer would find an armed conflict to exist, the laws of war will be seen to apply.

With respect to the rhetorical use of the word “war,” the President’s discretion is restrained only by political prudence and an ethical sensibility, if any. But while the distinction between rhetorical and legal use may be sharp for purposes of international law, in U.S. domestic law it may be a bit muddy at the edges. Domestic legislation may specify “war” as a condition for the exercise, or more ample exercise, of Presidential power in a given field. But what concerns me more is a history of Supreme Court deference to Presidential claims of power in time of declared war where it is exercised in ways that would, in normal circumstances, appear to be gross violations of the Bill of Rights. I think, for instance, of the forced removal of American citizens of Japanese ancestry to prison camps during World War II.

A second point of clarification is the matter of so-called “unlawful combatants,” the Bush Administration’s characterization of all captured persons alleged to be associated either with Al Qaeda or the Taliban and then, except in cases where they were secretly transported to third countries for interrogation by means native to their intelligence services, detained either in Guantanamo Bay or Afghanistan. If I understand Dino correctly, he believes that I take the same position that I attribute to the International Committee of the Red Cross (ICRC), namely that all persons found in an occupied territory fall into one of two categories: Either they are captured soldiers and thus prisoners of war (POWs) whose treatment is governed by the 3rd Geneva Convention, or they are civilians whose treatment is governed by the 4th Convention (of course, in either case they could be tried for violations of the laws of war). In other words, no one in the occupied territories (or, for that matter, in zones of combat where occupation is still effectively contested) falls between these two legal stools into a black hole beyond the restraints of the Geneva Conventions.

If I interpret Dino correctly, he misunderstands my position. I accept the argument that combatants who choose to conceal themselves amidst the civilian population, strike, and then melt back into that population could fairly be seen as neither civilians nor persons who qualify for POW

status by virtue of being members of organized fighting units that distinguish themselves in specified ways (carrying arms openly, wearing a distinctive insignia, etc.) from the civilian population. Labeling such persons “unlawful combatants” is possible (not inevitable), I argue, without arbitrary manipulation of the language and underlying intentions of the Geneva Conventions. But as Dino and I agree, they are not thereby confined to a normative jungle where tooth and claw prevail. Rather they fall into the ultimate humanitarian safety net, the International Convention on Civil and Political Rights, which protects all human beings in all circumstances from summary execution, torture, cruel and inhuman treatment, and long-term detention without fair trial. They are also protected in those respects by common Article 3 of the Geneva Conventions which, through general acceptance, has been absorbed into the customary law of nations.

I turn now to a central theme in Dick Falk’s comments. As Dick notes, we broadly agree that the Bush Administration’s response to the terrorist attack of September 11, 2001, has in important respects violated international legal norms governing the occasions and methods for employing force across borders, and violated legal norms protecting basic human rights. It has also associated itself with grave violations of the human rights of the Palestinian people by the government of Israel. By virtue of its acts and omissions in waging “war” on international terrorism and its other policies in the Middle East, the Bush Administration has reinforced the *jihadi* terrorist narrative to the long-term detriment of U.S. national security. By comparison with the range of our agreement, our differences about the origins and content of American foreign policy are marginal.

Like a number of other interlocutors, he questions the emphasis in my critique on the neo-conservative arm of the American Right rather than the Right as a whole which, by its nature, is indifferent to the wellbeing and justice claims of other peoples, hostile to external institutional or normative restraints on the exercise of American power (hostile to constitutional, judicial and legislative restraints as well), and inclined to see international relations in zero-sum and Manichean terms. It is those modes of thought shaping Bush Administration policy, not simply the neo-conservative version of them, that needs to be confronted, he argues.

Moreover, in Falk’s view, the elites and grassroots of the Right do not constitute the entire obstacle to a counter-terrorism strategy inspired by liberal values. For given the political and economic interests and the historically embedded narratives that dominate the political scene, he anticipates that those values will be no more than thinly reflected in the policies adopted by the newly triumphant political center-left represented by President Barack Obama and his national security team. Kritsiotis, recalling the slide of the U.K.’s Labor Party into partnership with a right-wing American president, similarly discounts the prospects for a liberal foreign policy in the U.S. under a notionally left-liberal administration; in his final footnote he reminds us that during the presidential primaries and the presidential campaign, Barack Obama advocated attacks on Pakistan-based Al Qaeda *jihadists* without the permission of the government of Pakistan, and the new Secretary of State, Hillary Clinton, announced the intention of obliterating the country and hence the population of Iran with nuclear weapons if the government of Iran were to deliver a nuclear strike on Israel. Neither position, Kritsiotis implies, can be squared with liberal values.

In my book, I state plainly that neo-conservatives are merely one element in the coalition of the Right that had shaped U.S. policy during the administration of George W. Bush. But unlike their coalition partners, they insistently invoke liberal ends—defense and promotion of democracy and human rights—to justify the foreign policy agenda of the administration. To be sure, even classic right-wing nationalists like Vice President Dick Cheney sometimes buttresses the chauvinist’s appeal to national self-interest at the expense of other peoples’ with a neo-con-like claim to be coincidentally advancing the human interest. Any rational politician, like any competent lawyer, will deploy rhetorical tropes that appeal simultaneously to the altruistic and selfish impulses uneasily coexisting in the minds of an electorate composed of immigrants who must find their community in shared ideals rather than an imagined common ancestry. But, as I elaborate in my book, it was self-identified neo-conservatives who insinuated Wilsonianism-with-bayonets into the discourse of movement rightists and they remain its leading conservators.

Neo-conservatives’ celebration of themselves as liberals with spine has, in my judgment, effectively served the cause of the Right precisely by helping to reconcile two elements of the American foreign policy culture: Wilsonian idealism and Jacksonian chauvinism. It has tended to confuse people in the muddled middle of the American political spectrum, people with a measure of liberal instincts who thereby feel a certain unease about the compatibility of unambiguously ruthless national aggrandizement with the universalistic values sounded at the founding of the nation in our Declaration of Independence. So it seemed to me important to illuminate as best I could the fraudulent character of the neo-conservatives’ claim to be the true heir of American idealism. I hoped to protect persons with liberal instincts from the neo-conservative appeal by clarifying the nature of liberalism as it has evolved over the past two centuries.

The core of my argument stems from Paul Berman’s observation that during the 20th century, liberalism as a moral vision and a political program became inextricably intertwined with the idea of human rights and the social movement that has fought to instantiate it. Liberalism alone can be seen as a movement to construct a political community which protects for each of its members the opportunity to pursue a personal vision of the good life. Building and sustaining a strong community on any scale, never mind a national one, cannot be done if every individual within it has an unlimited veto power. Nor is it possible to have an effective community if every action designed for its maintenance must be equally beneficial to all members all the time. So if a veto existed, individuals bearing what they took to be a more than average cost for some proposed community-sustaining action (or positioned to use the threat of veto to secure more than their fair share) would have incentives to exercise it. Hence the irony that in order to build a community where every individual has an equal freedom to shape a preferred life, it is necessary to override some individual preferences. Liberal democracy in its various forms has been the chosen means to mitigate this tension between individual and communal interests.

Human rights as a particular vision of human dignity sets limits to the supremacy of communal interests, however large the majority that favors them, over individual ones. In emergencies, of course, some rights can be suspended, but not the rights to security from raw physical intimidation and punishment without fair trial. The rights to life, liberty and limb cannot be compromised. Human rights, being the birthright of every human being wherever and however situated, is inherently cosmopolitan. Liberalism, resting as it does on the premise of the moral equality of all human beings, also has a cosmopolitan bent, a bent tempered, however, by liberalism’s

incorporation in national political parties. It is tempered as well by the need to build and maintain parochial communities, for the most part national states, where individual choice can flourish.

A multiplicity of communities rather than a single universal one is the corollary of what appears to be a genetically coded incapacity in most people for universal empathy. Political movements cannot thrive unless they are willing to privilege the members of the national community in which they compete. Liberal ones are no exception. But the inherently cosmopolitan character of liberal ideology and the progressively more intimate association of liberal activists with the human rights movement and its worldview restrain both the incentive to privilege one's own national community and the evangelical impulse native to liberalism and foreign to traditional Anglo-American conservatism as evidenced in Edmund Burke's observation that he knew nothing of the "Rights of Man" but a great deal about the historically accumulated rights of Englishmen.

Neo-conservatives may be sincere in their proclaimed desire to spread the blessings of democracy and free market capitalism to all the world's peoples. To that extent they are like liberals. But liberalism's now umbilical association with human rights restrains the means its leaders can employ for evangelical ends without ceasing to be liberal. The idea of human rights, precisely because of its emphasis on the imperative rights of each single individual, limits the justifying power of good ends.

Neo-conservatives have demonstrated that they are unencumbered by those limits. On behalf of the good, whether that good is democratizing the Middle East today or destroying leftist movements in Central America in the 1980s, "collateral damage," however horrific, and amiable association with torturers and killers, are acceptable if unfortunate means. Moreover, and this is another defining feature of their position on the Right, neo-conservatives categorically privilege what they take to be American interests, whatever the cost to other peoples; but they do so by blandly equating the enhancement of national power at the expense of other peoples with the advancement of the human interest. Thus, I have proposed, neo-conservatives are more akin to Marxists than they are to liberals. For Marxists too saw human freedom as the final end of their efforts. Once nations reached the stage of pure communism, the problems of production and distribution would have been solved and so a person would have a previously unimaginable range of choices. One could be a carpenter in the morning, a poet in the afternoon and a lover in the evening. Unfortunately, in order to achieve this early Paradise, we would have to pass through the slaughterhouse of the proletarian revolutions and the transitional dictatorship of the proletariat. But for those who survived life would be just and lovely. Pity the collateral damage.

In office, of course, the leaders of liberal parties, faced with serious threats to the perceived interests of their national communities, have been and will continue to be less than perfectly fastidious about means. The gap between ideals and practices will inevitably be larger where liberals govern a state with an enormous military establishment. Like the apocryphal matron in Newport who admitted that she thought wearing large diamonds was vulgar before she had any, a president who finds immensely powerful military instruments at her or his disposal will be more tempted to employ them in the dangerous and unruly world we inhabit, sometimes for parochial and sometimes for altruistic reasons, or for the common confusion of the two. And when there is in the national culture a strong strain of Manichaean thought and *machismo* sentiment allied with an idealized history of a nation that fights only for liberal ends, political survival instincts support the temptation to

employ force not only as a last resort for vital ends. As Jack Kennedy said in effect when told by his Secretary of Defense that missiles in Cuba did not alter the objective balance of power, if I do nothing I am politically dead.

Still, I think I am more optimistic than Falk that Barack Obama, because he has been endowed by his personal history with a remarkable capacity for empathy, as well as evident liberal values, will be more sensitive to collateral damage and more audacious about seeking political compromise than any of his predecessors since the death of another man from Illinois.

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