



11350 Random Hills Road, Suite 800, Fairfax, Virginia 22030 Phone (703) 934-6101 Fax (703) 352-3678

fff@fff.org www.fff.org

Randy Barnett's Wrong-Headed Defense of the Iraq War

by Jacob G. Hornberger

In an op-ed in the July 17, 2007, issue of the *Wall Street Journal*, Georgetown law professor Randy Barnett stated that President Bush's war on Iraq could be defended on libertarian principles. He argued that the president's attack on Iraq fell under the libertarian principle of self-defense. He also suggested that the reason that the occupation of Iraq has turned out so badly is poor postinvasion planning by U.S. officials.

In other words, under Barnett's brand of libertarianism President Bush had the right to attack and invade Iraq, killing and injuring hundreds of thousands of Iraqis in the process, because the United States has the right to defend itself from a country that never attacked the United States. Moreover, the moral responsibility for all the postinvasion mayhem, chaos, violence, death, and destruction that now plagues Iraq lies with those U.S. officials who adopted the wrong postinvasion plans, not with those supporters of the war who would, Barnett suggests, have adopted the "correct" plans for the occupation if they had been in charge.

There are several fallacies in Barnett's thinking. Let's examine them.

First and foremost: Neither the Iraqi people nor their government ever attacked the United States, either on 9/11 or at any other time. That made the United States the aggressor (and occupying) nation and Iraq the defending (and occupied) nation in this particular war. By attacking Iraq, the United States waged a war of aggression against Iraq, a type of war that was punished as a war crime by the Nuremberg War Crimes Tribunal after the end of World War II.

In his op-ed, Barnett agrees that a central tenet of libertarianism is: no waging of wars of aggression. War is justified only as a defensive measure.

Given that the United States is clearly the aggressor nation in the Iraq War, how does Barnett then reach the conclusion that Bush's war on Iraq is consistent with the libertarian principle of self-defense?

Barnett suggests that since the United States is defending itself from terrorists and jihadists, presumably as part of President Bush's war on terrorism, the U.S. government had the moral and legal right to invade Iraq.

Now, that is an astounding claim, one that Barnett fails to support with any legal citations. What he is saying is this: When Nation A (e.g., the United States) suffers a terrorist attack by citizens from Nation B (e.g., Saudi Arabia), Nation A has the moral and legal right to attack, invade, and occupy Nation C (e.g., Iraq).

How does Barnett arrive at such a startling principle? He says that by bringing democracy to Iraq through a military invasion, the Iraqi people will be less likely to become terrorists and jihadists. Therefore, by attacking Iraq and forcibly imposing democracy, Barnett's argument goes, the United States is defending itself from the possibility that the Iraqi people could join the ranks of terrorists and jihadists from other countries.

In effecting regime change in Iraq, the United States has killed, maimed, or incarcerated hundreds of thousands of Iraqi citizens, none of whom ever committed terrorism or jihadism against the United States. Never mind that the regime change has brought into existence a radical Islamic regime that has aligned itself with Iran, an enemy of the United States, and that Iraqi citizens are now swelling the ranks of the terrorists and jihadists. As any good liberal will remind us, when it comes to government programs, what matters is good intentions, not the actual results of the programs.

Foreign-policy blowback

Barnett conveniently ignores an important fact: The reason that the United States suffered the 9/11 attacks and the previous acts of terrorism and jihadism, including the 1993 attack on the World Trade Center, the attacks on the U.S. embassies in Kenya and Tanzania, and the attack on the USS *Cole*, was that the U.S. government was knowingly, intentionally, and deliberately poking hornets' nests in the Middle East, especially after the fall of the Berlin Wall and the Soviet empire. After all, even though he didn't mention the blowback from U.S. foreign policy in his op-ed, surely Barnett doesn't take the conservative and neo-conservative position that the terrorists and the jihadists hate us for our "freedom and values."

As Ron Paul pointed out in his now-famous debate exchange with Rudy Giuliani, an exchange to which Barnett refers in the opening to his op-ed, the terrorists came over here because "we" are over there. That is, long before the 9/11 attacks, there were U.S. support of Saddam Hussein (including the delivery to him of those infamous WMDs), U.S. intervention in the Persian Gulf, the intentional destruction of Iraq's water and sewage facilities, the brutal sanctions lasting more than a decade that contributed to the deaths of hundreds of thousands of Iraqi children, UN Ambassador Madeleine Albright's infamous statement that the deaths of half a million children from the sanctions had been "worth it," the stationing of American troops on Islamic holy lands, the unconditional foreign and military aid provided to the Israeli government, and the no-fly zones over Iraq that killed even more Iraqis.

I wonder what Barnett would say about those things. Would he say that they were all justified under libertarian principles of self-defense? Unfortunately, we don't know because Barnett mentions only one of them in his op-ed — the no-fly zones over Iraq, which he uses to provide another libertarian self-defense rationale to justify President Bush's war on Iraq. Barnett suggests that because Saddam's anti-aircraft batteries were firing on U.S. planes in the no-fly zones over Iraq, President Bush was simply defending the United States from Iraq's attacks when he ordered the invasion of Iraq.

Barnett, however, ignores a critical point about the no-fly zones: neither the Congress nor the UN ever authorized them. That made them illegal under both U.S. law and international law. Therefore, under what legal theory could the United States claim that it was defending itself from Iraq's violations of the no-fly zone restrictions, given that the United States had no legal right to establish and enforce the no-fly zones? Again, Barnett fails to cite any legal authority for his claim, no doubt because no such authority exists.

I wonder what Barnett's position would be if, say, Venezuela imposed a no-fly zone over Florida because of President Bush's refusal to extradite accused terrorist Jose Posada Carriles to Venezuela. Posada is accused of planning the terrorist bombing of a Cuban airliner over Venezuelan waters, which killed dozens of Cuban citizens. Despite an extradition agreement between Venezuela and the United States, U.S. officials, are refusing Venezuela's extradition request claiming that Venezuela might torture Posada.

If Venezuela imposed a no-fly zone over Florida because of the U.S. government's decision to harbor an accused terrorist, which side would Barnett defend — the Venezuelan pilots enforcing the no-fly zone or the U.S. anti-aircraft guns shooting at the Venezuelan planes? My personal hunch is that Barnett would cast his libertarian self-defense principle aside and go the nationalist route: "My government, right or wrong!"

Since the no-fly zones that the U.S. government established over Iraq constituted acts of aggression against Iraq, how in the world can they be used to convert a war of aggression into a war of national self-defense? Again, as Ron Paul pointed out, the terrorists came over here because "we" were over there enforcing those no-fly zones, the sanctions, and other interventions.

The power to declare war

Barnett failed to address another critically important point in his analysis — the U.S. Constitution and, specifically, that provision that delegates the power to declare war to Congress, not the president. As every freshman law student knows from his constitutional law class, under the Constitution while the president wields the power to wage war, he is precluded from doing so without a declaration of war from Congress.

While conservatives and neo-conservatives have argued that the congressional resolution that Congress enacted prior to the November 2002 congressional elections operated as a

declaration of war, nothing could be further from the truth. Instead, the resolution simply left it to the president to make the call. Congress essentially said, “We don’t want to have to decide whether to go to war with Iraq. We’ll leave the decision to you, Mr. President.”

However, as Barnett knows, Congress cannot constitutionally delegate its power to declare war to the president. That means that since the president failed to secure the constitutionally required congressional declaration of war, his war on Iraq was illegal under our form of government.

How does Barnett justify an intentional violation of such an important constitutional principle? Aren’t limited-government libertarians supposed to be defending constitutional restraints on governmental power? Doesn’t relieving the president of complying with the Constitution lead to the exercise of dictatorial power?

Unfortunately, Barnett doesn’t address those questions and instead does what many conservatives did in the run-up to the war — he reverts to Saddam Hussein’s violations of UN resolutions relating to those infamous (but quite nonexistent) weapons of mass destruction.

However, Barnett ignores an important principle: Only the UN can enforce its own resolutions. That is, even if a nation is violating UN resolutions, the member-nations of the UN are not authorized to enforce the resolutions; only the UN as a body has the authority to do that. In fact, even President Bush implicitly acknowledged that, when he initiated the steps to secure UN authority to invade Iraq. It was only when he realized that the UN was not going to give him such authority that he backed off and decided to invade unilaterally.

Second, what many conservatives and neo-conservatives tend to forget is that Saddam Hussein had, in fact, cooperated with the UN resolutions and the weapons inspections by destroying the WMDs that the United States and other Western powers had delivered to him during the 1980s. Moreover, we shouldn’t forget Saddam Hussein’s repeated willingness to let the UN inspectors look for those (nonexistent) WMDs anywhere they wanted — and why not, given that he knew that there was nothing to find?

The goal was regime change

The fact is that the U.S. government was going to effect regime change in Iraq, come hell or high water. That was the point behind encouraging uprisings against Saddam after the Persian Gulf War, the brutal sanctions, the no-fly zones, and ultimately the invasion of Iraq.

Contrary to what Barnett and, for that matter, conservatives and neo-conservatives have suggested, President Bush’s invasion of Iraq was never about self-defense, spreading democracy, or the welfare of the Iraqi people. The invasion was about regime change, pure and simple. Chagrined that the Persian Gulf War, the uprisings against Saddam after the war, the deadly sanctions lasting more than a decade, and the no-fly zones had failed to oust Saddam from power,

the U.S. government ultimately turned to military invasion and occupation to effect the regime change it had long sought.

After all, if democracy was the goal of the invasion, as Barnett suggests, then why would the U.S. government support such anti-democracy dictators as the shah of Iran, Saddam Hussein, and Pervez Musharraf, and authoritarian regimes in Saudi Arabia, Egypt, Jordan, and Kuwait?

What U.S. officials simply never imagined was that regime change in Iraq would prove to be difficult. They thought the Iraqi people would embrace U.S. domination with open arms and rose petals once Iraq was liberated from the dictatorial clutches of Saddam Hussein. U.S. officials wrongly assumed that the Iraqi people would roll over and accept the inevitability of U.S. control, much as the people of Grenada, Haiti, and Panama had done after the U.S. government effected regime change in those countries. What U.S. officials never anticipated was that the Iraqi people would, after the ousting of Saddam, devote themselves to liberating themselves from the clutches of foreign occupation.

The enemy of liberty

Equally important, as I have pointed out in a [prior series of articles](#), the “war on terror” and the war on Iraq have brought with them the most severe infringements on civil liberties in our lifetime, a result that should not surprise any libertarian. After all, as James Madison, the father of the Constitution, warned, of all the enemies to liberty war is the most dangerous because it encompasses all the rest, a point that was later emphasized in Randolph Bourne’s famous dictum, “War is the health of the state.” It is not a surprise that the centuries-old privilege of habeas corpus, which is the linchpin of a free society, has now been canceled for foreigners accused of terrorism. It’s also not surprising that the president now claims the omnipotent power to take people into custody as “enemy combatants” and deny them due process of law and trial by jury, to spy on people by monitoring their emails and telephone calls, to conduct warrantless searches and seizures, to execute “signing statements” ignoring laws enacted by Congress, and to issue an ever-growing number of executive orders without congressional approval. None of this is surprising, at least not to libertarians, because it’s all part and parcel of the president’s “war on terror” and his invasion of Iraq, both of which are rooted in the U.S. foreign policy of empire and intervention.

How does Barnett reconcile the loss of these liberties with support of the invasion of Iraq and the federal “war on terror”? How does he reconcile such a loss with libertarian principles? How does he reconcile them with the principles of a free society? He doesn’t. In fact, he doesn’t even mention them in his article.

A philosophy that holds contradictory principles is obviously not much of a philosophy. The notion that libertarianism can embrace both supporters and opponents of the Iraq invasion and occupation is ridiculous. It’s either one or the other. After all, what’s next? Pro-drug-war

libertarians? Pro-welfare libertarians? Pro-government-schooling libertarians? Pro-socialism libertarians? Just think, under Barnett's brand of libertarianism, the libertarian movement could actually be a "big tent" — one that could encompass both pro-liberty libertarians and anti-liberty libertarians.

Barnett is wrong. Libertarians who supported the invasion of Iraq were not advancing libertarianism. They were instead reverting to conservative and neo-conservative principles of empire, intervention, and militarism. Today, the result is an Iraqi wasteland of death, destruction, chaos, mayhem, torture, and absence of liberty. By their fruits you will know them!

I only wish Randy Barnett had attended our recent conference, "Restoring the Republic: Foreign Policy and Civil Liberties," which set forth the genuine libertarian case on foreign policy and civil liberties with 24 of the greatest, most compelling speeches by libertarians, liberals, and conservatives on these two burning issues of our time.

Libertarianism holds the key to getting our nation back on track — away from the principles of empire and intervention and toward the principles of non-interventionism and limited government that the Founding Fathers envisioned for us. Now is not the time to corrupt libertarianism with conservative or neo-conservative principles or, for that matter, with liberal principles. Now is the time for libertarians to adhere to genuine libertarian principles, both in foreign and domestic affairs, and thereby lead the world to becoming the freest, most peaceful, prosperous, and harmonious society in history.

Jacob Hornberger is founder and president of The Future of Freedom Foundation.

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