Pictures from Afghanistan: Are we repeating the post-conflict mistakes of the past?

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I have spent much of the last two years travelling to Afghanistan on a number of issues, primarily digging up evidence to prove the innocence – and torture – of Dr. Aafia Siddiqui, who is perhaps the most abused women on the planet, and is certainly the person who has been most mistreated of all the people I have represented in the misguided 'War on Terror.' I am fortunate that, because I represented so many people when they were in Guantánamo Bay, members of the current Taliban government tend to give me the benefit of the doubt when it comes to my motives for visiting their country. Indeed, they have been extraordinarily helpful when it comes to encouraging people to become witnesses to what they know about Aafia's suffering.

That said, far from the stereotypes and representations of Afghanistan as a wild and beyond place, I find myself fond of the Afghan people and am motivated by a desire to help them. It has been dispiriting to witness the counter-productive policies being promoted by the West.

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If the Afghan occupation was America's longest and arguably most futile war, and if the territorial U.S. has not really been invaded since 1812, this was just one of many wars and invasions for the unfortunate Afghans. They were unwilling pawns in the "Great Game" – first played between the British and the Russians – where the Russians wanted access to the Indian Ocean, and the British wanted to keep it to themselves.

- The "First (British) Afghan War" in 1839-42 culminated in the "Catastrophe in Kabul" where the retreating British Army was wiped out.

- The Second British Afghan War (1878-80) resulted in Britain essentially taking imperial control of Afghan foreign policy, to keep the perceived Russian threat in check.

- The Third British Afghan War (1919) resulted in a period of unstable independence for the country, after forcing the war-wearing British colonialists out.

The Great Game continued, albeit increasingly as part of the dispute between the capitalist U.S.

and the Communist Soviets.

- The (Fourth) Soviet Afghan War and its political precursors wrought huge devastation between 1979 and 1989, and was followed by a vicious civil war.

- Then, ultimately, came the (Fifth) U.S. Afghan war, which ran from October 2001 until the U.S. withdrawal in 2022.

While each of these events is a subject in its own right, the point I make here is that, by the time the Taliban re-took power in 2022, the Afghans had been on the receiving end of great power invasions for two centuries, with continuous warfare for four decades – only some 10.5% of the population had known the relative peace before 1979.

Any government taking power in 2022 faced enormous challenges.

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The West insists, loudly, that the Taliban are sadly on the far end of chauvinism when it comes to the rights of women, and it would be difficult to dispute this. But it has been depressing to watch the way in which a Western unipolar vilification of everything about the new government of the country has undermined the hopes of the Afghan people.

Behind casting Afghanistan as a medieval and fossilized society, the West justifies its exclusion of Afghan people from the rest of the world. Yet, if we look at the overall situation of Afghans, life is generally better under the Taliban than it was under the corrupt government of Ashraf Ghani.

I have been to Afghanistan five times over the past two years, meeting many people, and travelling around the country in search of witnesses. Afghanistan faces many challenges, one of which is, indeed, backsliding towards an incomprehensible discrimination towards the rights of women. Yet, security is one area in which the current government has taken huge strides in the right direction

The UK Home Office tells us on its website:

> The first duty of the government is to keep citizens safe and the country secure. The Home Office plays a fundamental role in the security and economic prosperity of the UK.

I went to Kabul when the U.S. was in charge in 2017-18. Back then I was seeking out evidence for Asadullah Haroon, then the last 'low value' Afghan detainee in Guantánamo Bay. It was a nightmare of a place back then. I had to stay in a heavily fortified hotel that, bizarrely, discriminated against Afghans (I could not get my Afghan assistant into it, until fortunately he was able to show a Pakistan ID), and banned Afghans from the bar where alcohol was served. I was not allowed to leave the city of Kabul. The all-white, all-western security details were worse than useless – travelling with them was as good as holding up a sign asking to be kidnapped. It was much safer to slip out with some Afghans who were able to spirit me around the city and easier talk to the witnesses I needed to interview.

When I went back for my first visit of 2023, the Taliban insisted that I should have security guards provided by them, as they did not want me to be abducted by the latent ISIS threat. It was kind, but a waste of their time. As I told one of the tall men, dressed in all-black and carrying his AK-47, it was much more dangerous investigating in Texas – would he like to come there as my protection? (I was going there on Aafia's case the following week.)

In a word, the Taliban has fulfilled the government's first duty far better than the U.S. did spending an estimated six trillion dollars over the course of America's longest war.

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I write even that *milquetoast* sentence with some trepidation, as the immediate response of many will be to say that it is not an excuse for rampant chauvinism. And, of course, this is right. However, my recent experience in Afghanistan teaches me that Westerners shouting venom from the touchline is doing nothing to help the women of Afghanistan.

I used to say that the European national sport was not football, but "bashing America." (It is a fairly stupid sport that everyone can enjoy, the more so with Donald Trump as president.) If this is so, then the Western sport *du jour* is to pillory Afghanistan and everything about it by reviling the chauvinism of the current regime. A review of the media in the West includes virtually nothing about Afghanistan that does not focus on women's rights, with the occasional mention of a foreigner being held in Afghan prisons.

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After the U.S. left Afghanistan, the West granted asylum to people from Afghanistan quite liberally. It is important to look at the actual figures as they reveal important themes. I should say first that I believe in free movement – particularly when we have spent 21 years helping to mess up their country. That is really the least we can do. I also believe in "economic asylum" – my very first brief in the U.S. Supreme Court advocated this (unsuccessfully) in *INS v. Stevic*, 467 U.S. 407 (1984). Where we have taken steps to destroy their economy, it is no better to be starved to death than threatened with persecution.

As one commentator has written:

> The UK continues to receive a high number of asylum claims from Afghanistan, with 8,508 claims making it the second biggest nationality in 2024. This reflects the ongoing poor security and humanitarian situation in Afghanistan. After the collapse of the Afghan government, the Home Office published a country policy and information note ("CPIN") that effectively acknowledged that all perceived opponents to the Taliban were entitled to international protection. This meant that between the first quarter of 2022, immediately after the updated CPIN, and the fourth quarter of 2023 there were only 127 refusals out of 11,672 grants of international protection: a grant rate of over 99%. *** In the last quarter of 2023, 48 Afghans had their protection claims refused compared with 4,697 grants, a recognition rate of 98.5%. It is extremely jarring that the newly published immigration statistics record that in the last quarter of 2024, following the publication of the new CPIN, over 2,050 Afghans had their asylum claims refused compared to 1,859 individuals who were granted international protection. This a recognition rate of just 47%. Surprisingly, given the Taliban's position on women, the figures also indicate that 26 women had their asylum claims refused, although it is difficult to know the precise reasons without sight of the decisions.

What this means is that the U.K. has taken 35,700 Afghans resettled under official programs since the withdrawal from the country, and a further 33,970 have claimed asylum since October 2021, with many arriving irregularly by the so-called "small boats" (for which they have been vilified).

Whatever one can say about these people – and I am sympathetic to their causes – this is a little under 0.2% of the Afghan population. In other words, 99.8% of Afghans (and at least an equal proportion of Afghan women)[1] have *not* been admitted to the U.K. I am concerned for the rights of the 99.8%.

Indeed, one of the extraordinary issues I have repeatedly run across has been the number of perpetrators of war crimes – who were allies of the Coalition – who have been given refuge in coalition countries. For example, I know the names of the two officers who disappeared and murdered Naseeb ur-Rahman, and both are in the U.S. now. The U.S. have provided no help to his family, who only want to be able to grieve, and allow his young wife to remarry if she wishes.[2]

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So the big issue becomes what we *can* best do for the people of Afghanistan who stayed there.

I have brought up the issue of women's rights in many meetings with Afghans, though I do try to do it without being too pious. In general, with the male respondents, I have encountered three primary responses – first that, all in all, the people in Afghanistan are better off under the Taliban, regardless of various problems, because of the security. "We are safe to walk where we wish," is the common refrain, even if an increasing number of women are constrained in how they can be dressed when they do so.

The second response is that these rules are not being applied as forcefully today as they were in 1995-2001 when the Taliban was previously in power. Many quite senior members of the government have candidly said that the rules are being imposed by Kandahar, where the leaders are generally elderly. "The only certainty in life is that when we are old we will die," said one person. Many men I have talked to say they have a wife and daughters, and they want the best for them; and go on to say it will come. It is, of course, small solace for a young woman today to tell her that women's rights will come one day.

The third response came from a member of the government in a cordial meeting we had. He was a sophisticated person, and I got the feeling that he was required to support the party line.

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[1] It is surprisingly difficult to find good statistics on how many of these are men versus women. The relevant tables are not helpful. See https://www.gov.uk/government/statistical-data-sets/immigration-system-statistics-data-tables#safe-and-legal-humanitarian-routes-to-the-uk. Of those coming on "small boats" or other illegal ways, one can say that in 2024 at least 85% were men (31,355/36,816) but only 16.5% (6065) were Afghan. Since there are special provisions for women and for reuniting families, it is likely that the overall proportion of women is higher than this. However, it is still a tiny proportion of the 20 million women in Afghanistan.

[2] In the media, a lot of the stories we read have been about people who helped the 'Coalition' forces as translators or guides, or fought with the coalition. As early as 2013, this was a politically-charged issue in the UK. Whatever their motivations, these were essentially people who would be considered *quislings* in Afghanistan – William Joyce, known as Lord Haw-Haw, was an American who sided with the Germans in World War 2, and was hanged for it in 1946. (Vidjkun Quisling was a Norwegian military officer who was executed by firing squad for collaborating with the enemy.) Again, I do not agree with the death penalty for anyone, let alone someone merely making money by working with the British army, yet it would be a strange if these were the only people we were concerned for.

But he said that, true, the U.S. would criticize the Taliban for attitudes towards women, in the same way as he would be critical of heartless treatment of poor people by the richest country in the world. (He went on to say that Afghans also looked askance at the fact that so few Americans had accepted Islam. I have to say I was more willing to accept his first point as valid, though the second was an interesting cultural insight.)

Another senior government official said, though, that the isolation of Afghanistan, combined with the continual vilification of the government on one issue and one issue alone – gender apartheid – was empowering the conservatives and sidelining the more liberal members of the regime. To me, this was the most significant view, since it is the one that we in the West can most readily change, it being entirely in our hands to do so. We need to identify and support our allies – those who wish at least gradually to improve the lot of women, as well as of everyone else.

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The international community's strategy is currently to marginalize Afghanistan from the global network of trade and politics with a series of "boycotts". With only very limited exceptions, I do not favour boycotts. Generally, a boycott avoids engaging and challenging what is happening, and economic boycotts harm the poorer members of a society more than others. Taking part provides opportunities limited only by your imagination; this was true of Guantánamo – the American Bar Association advised lawyers not to take part in such a reprehensible system, but we did, because we knew we could open it up and, in the end, tear it down so that it could be replaced with a better system.

Russia was the first country to recognize the Taliban government, and that did not come until July 2025. Bizarrely, in consequence, Afghanistan is currently represented at the UN by Nasser Ahmad Faig, a diplomat from the corrupt former government of Ashraf Ghani, while the Taliban's appointed envoy, Suhail Shaheen, remains unrecognized by the UN General Assembly.

Afghanistan remains subject to stringent sanctions. These are both economical and quasi-criminal in nature. Economically, it continues to be illegal to take part in many business ventures in Afghanistan. This means that it is next to impossible to use a credit card in the country – when I went there in 2023, I did not realize this and because I did not know how long I would stay I had only bought a one-way flight. When it came to flying out I did not have enough cash to pay, and I could not find any bank where I could even withdraw cash. In the end I found the one ATM in all of Kabul (and perhaps the country) where I could take money out. I maxed out all my credit cards to pay basic expenses. This was inconvenient, but it has much greater consequences for those who live there, since doing business internationally is difficult.

While one element of the withdrawal agreement negotiated by the U.S. in Doha was that the personal sanctions against the Taliban and various senior members would be lifted, here we are more than three years later, and the United States has not lifted sanctions on the Taliban and the Haqqani Network. The Taliban remains designated as a Specially Designated Global Terrorist (SDGT) under Executive Order (E.O.) 13224. The Haqqani Network remains designated as an SDGT under E.O. 13224 and a Foreign Terrorist Organization (FTO) under section 219 of the Immigration and Nationality Act (INA). Thus many transactions involving the Taliban or the Haqqani Network remain prohibited.

Perhaps most directly impacting the welfare of the Afghans, the United States froze approximately $7 billion of Afghanistan's central bank (Da Afghanistan Bank, or DAB) assets held in the Federal Reserve Bank of New York following the Taliban takeover in August 2021. While such a sum might not seem a lot to Elon Musk, the total revenue for the country for the last fiscal year was only around $3.5 billion so this is an enormous dent in the country's ability to operate. There are serious legal issues when it comes to freezing funds from a national bank, but the Taliban's reticence in trusting the U.S. legal system has prevented them from litigating to get the money back.

All of this imposes great difficulties on the people of Afghanistan – and it is not entirely clear what is achieved by the sanctions, or why they are in place. The U.S. had something of a blank cheque after 9/11 to do what they wanted in Afghanistan, but the 21-year long war achieved absolutely nothing, and the American-installed government was ejected.

It seems pointless to withhold full recognition from the current government. It has no legitimate basis, and harms all the people. It is foolish to continue with sanctions – again, they achieve nothing but suffering for the people. And we should give them their money back. But these decisions are in the hands of governments if the Taliban does not accept *pro bono* assistance in U.S. courts – which I have offered, as it is a relatively simple matter and the U.S. position is untenable.

Some people seemed to be surprised by the rapid fall of the Ghani government. The people of Afghanistan were not – certainly not the Taliban. I was talking to Imran Khan when he was Prime Minister of Pakistan and he told me that he had been trying to talk a Taliban delegation into negotiating with the Americans for an interim government. They laughed, and said there was no need, as Kabul would fall to them the moment the Americans pulled their military prop from under the Ghani government. And so it transpired. Whatever questions anyone might have of the Taliban's democratic legitimacy today – and there are dozens of such "illegitimate" governments who sit comfortably in the U.N. – it is clear that the American puppets had none.

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So if our path is pointless today, where should we be going in Afghanistan?

There are some goodwill gestures we can make ourselves. One is providing free legal representation to people who need it there. The issue is an obvious one, and the same as that faced in Guantánamo: when I first went to Yemen in 2003 to offer legal help to those whose loved ones were held in Cuba, the finances were stark. The *per capita* annual national income was $300; the corporate lawyers with whom I went to Columbia law school all those years ago now charge $1,000 or more per hour; this means that if a Yemeni did not eat all year, he or she could afford about 20 minutes of a lawyer's time.

In other words, we had to find *pro bono* assistance for them, and we put together around 500 quite high-powered people to do it.

The same is true for those in Afghanistan. For some, like Naseeb's family, we just need to help them try to find out the truth of what happened to a loved one. But with others we need to help them get their children back. Overall, 1,450 Afghan children were apparently evacuated to the US without parents between August and December 2021, 250 of whom are said to remain under government custody. These were allegedly children with no relatives in the U.S.[3] The unaccompanied children being placed in U.S. government custody do not have parents in the United States.[4] Only one case has got any publicity – because the Afghan family had relatives in the U.S. who were able to challenge the fact that Marine Corps Major Josh Mast had illegally taken a child from Afghanistan after the U.S. had killed most of the infant's immediate family. The Virginia Court of Appeals later ruled that he should never have been allowed to take the child with him. See *A.A. v. J.M.*, Record No. 0876-23-2 (Va. Ct. App. July 16, 2024).

Imagine that it was your niece or nephew, or even your child, who had gone missing…

I have proposed that we hold a conference in Kabul in 2026 where those who are missing children can come and fill us in on the details – name, age, photos, etc. – so that we can follow it up in the U.S. To make this work, we need lawyers of course, but more important will be those willing to help with the investigation and documentation of cases, those who have organized conferences, fund-raisers, those familiar with the rules of adoption and (above all) those with passion for helping those in need.

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I am not sure I am going to get far on my second project, but I will try. I think we could get Afghanistan their $7 billion back without a lot of trouble, at no cost to them if I could get the green light to take this ahead we would have to approach it the same way I approach anything.

First, we would have to take account of the "language" spoken by both sides and figure out common ground. For example, since the West does focus almost exclusively on the rights of Afghan women, while all men in Afghanistan believe women should have access to healthcare, that seems like a good starting place. I was particularly touched that the wife of one of my erstwhile Guantánamo clients could not get basic treatment in Kabul – I gave her the last cash I had on my departure (only $200) which was enough for her to go to Pakistan. That is just an anecdote, but it would be possible to construct a compelling, and saleable, plan to bring vast amounts of healthcare machinery to Kabul, and equip maternity and hospital facilities.

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3 Catherine Choichet, *1,450 Afghan Kids Were Evacuated To The Us Without Their Parents. Some Are 'Never Going To Be Reunited With Family'*, ABC News (Nov. 27, 2021), available at https://edition.cnn.com/2021/12/27/us/afghan-children-evacuated-without-parents-cec#:~:text=But%20about%20250%20of%20the,with%20in%20the%20United%20States (accessed 2025.06.10).

4 Ted Hesson, *Dozens of unaccompanied Afghan children evacuated to the United States,* Reuters (August 27, 2021) <https://www.reuters.com/world/dozens-unaccompanied-afghan-children-evacuated-united-states-2021-08-27/> accessed 2025.06.21.

Second, there is the issue of who are the best advocates for such a project. Initially, I have spoken to Afghan-American medical professionals to get them to come to audit the abysmal state of healthcare for women. This is not the fault of the Afghans – it is shocking that after spending *trillions* on the Afghan war the "Coalition" failed to leave a marginally acceptable healthcare system behind.[5] (American figures suggest they put more than 85% of the expenses at warfare, with less than 15% in "reconstructing" the mess, and one must take account of the corruption that was endemic in the Afghan political hierarchy.)

Then there are the advocates for returning the Afghan national bank funds to Afghanistan. While the U.S. has said the money is for the victims of the war – with domestic political expediency leading to a loose definition which includes the family members of the 9/11 attacks –the vast majority of the victims are in Afghanistan. The best people to refute the rather fatuous U.S. approach are to be found in a wonderful group called Peaceful Tomorrows, "an organization founded by family members of those killed on September 11th who have united to turn our grief into action for peace." It is much more powerful for them to say that the Afghan money is for the Afghans, than it would be coming from you or me.

So perhaps we can move such a project forward – or perhaps we cannot in the short term. But it is worth trying.

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Prejudice is a word derived from pre-judgment – making up one's mind without knowing the facts. The ultimate solution to prejudice is education; or in the words of the Florida Sunshine law, "transparency is the ultimate disinfectant" when it comes to "fake news".

At some level, I like to think my job is less concerned with law than it is to be an ambassador, helping to create points of contact between those the West appears to hate rather blindly, and those who may have cause to hate the West. When I first went to Yemen in 2003, for example, we held a conference in a Sanaa hotel for the families of men locked up in Guantánamo. People were confused and angry that President George W. Bush had hauled their sons and brothers half way around the world, and abused them. I always began any talk I gave with an apology – while Bush was not likely to say sorry to them, as an American I could, and promise to do what I (and others) could to help them. We would do it without cost, since we had made the mistake, so it was up to us to sort it out.

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[5] The combination of the Afghanistan and Iraq wars are said to be the most expensive in U.S. history (more than World War Two) costing a total of $4-6 *trillion*. See Linda Bilmes, *The Financial Legacy of Iraq and Afghanistan: How Wartime Spending Decisions Will Constrain Future National Security Budgets* (2013), available at https://www.hks.harvard.edu/publications/financial-legacy-iraq-and-afghanistan-how-wartime-spending-decisions-will-constrain (accessed 2026.01.06) (note this estimate was made 13 years ago). See also Giovanna Coi, *The war in Afghanistan — by the numbers*, Politico (Aug. 16, 2021) ("Washington spent over $2 trillion on the Afghan conflict. This figure doesn't include the future interest on war borrowing, nor any future costs to assist veterans"; just the cost of treating veterans is estimated to cost a further $2 trillion).

It was remarkable how the temperature in the room dropped with the simple words,

> *"I'm sorry for what we have done. We should not have done it, and I am here to do what I can to set it right."*

No matter what we think about the Taliban, in my experience they are more open to the world in 2026 than they were in 2000. It is ironic that we killed many of them, tortured some more, and locked several up in Bagram and Guantánamo Bay, and yet rather than making them hate us this has given people the opportunity to meet in ways they never would have before. The people I meet in Afghanistan are far more open to considering some of the rights that we in the West consider to be "norms" than they were 25 years ago.

While our current course is to cut off contact with Afghanistan, and spit venom from the sidelines, we need more contact rather than less. One of the young Afghans who has helped me on Aafia's case was denied a visa to come to do my internship in the U.K., which was a sad error on Britain's part. We should bring young Afghans, educate them, and then send them back to run their country. Zubair would only have come for three months, learned about human rights, and then gone home. I hoped then (and still do) to help him set up with a human rights NGO in Kabul.

In the meantime, though, on my last trip I got a call from a Swiss man who wanted help touring around some of Afghanistan, purely as a tourist. I thought this might be a way for Zubair, still a teenager, to start earning a living, so we created some fancy stationery with Z.A.T. across the top – Zubair Afghan Tours – and set about helping the man.

We created a tour for the visitor where, for example, Zubair would pick him up at the border with Pakistan, show him around Kabul (the British Cemetery is one of my favorite places, full of the folly of our various imperial essays into the country), drive over to Ghazni (once the center of the a huge empire itself), and then to Bamyan (a ski resort, to be sure, but also home to the remains of the huge Buddhist statues and much more).

Yet we could do much more to help the Afghans welcome people into the country, like what has been achieved in Vietnam – I have only worked on Vietnamese issues surrounding the death penalty, and so my understanding of tourism there is limited to reading about it – but I have always been impressed how they have lured American travelers to the country to look around the preserved residue of America's second-most-pointless war (in my opinion, Afghanistan now takes First Prize, though there are several contenders). Afghanistan could easily replicate this – the country is sadly full of reminders, starting with the amazing "Soviet Tank Graveyard" of Herat. I have talked to people at the Foreign Office in Kabul about taking the 22 CIA Black Sites and turning them into tourist venues.

This is not merely a money-spinner for the locals: one day, I would like to turn Guantánamo Bay into a museum too, since we will never learn the lessons of History if we do not make them known, and if we do not learn about our mistakes we are (as the saying goes) doomed to repeat them.

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To be sure, I hope and expect what we do to promote the rights of women in Afghanistan. That is done in important ways simply by improving the status of the country – in my experience talking to people there, it would be foolish to think that women do not want security above all else. Human rights are of little use to people who are dead.

However, opening up the country to visitors is by definition helpful. There are, essentially, three genders in Afghanistan already: men, women, and foreign women. While a Western woman who visits can wear a headscarf if she wishes, out of respect for the local customs, she is going to be treated very differently to an Afghan woman by the most conservative Afghan male. While this may be a strange notion to a Westerner, it is a reality that gradually opens up the country.

Right now, applying sanctions and shunning all Afghans does nothing but harm for them all, male and female. This is criminal folly.

In the end, we can only expect to encourage others to show dignity to those who are second class citizens is when we treat everyone with dignity and humanity ourselves, and disagree respectfully. I'm sure we should not expect everyone to love each other, after more than forty years of this work I count many people on Death Row as my friends even though they are thought to be the vermin of society; likewise, I have been blessed to make friends among the families of my clients' victims. If we can build bridges between the victim and the perpetrator, achieving positive relations in Afghanistan should be relatively simple.

The only sin would be not to try.