

JUST PEACE AND THE ASYMMETRIC THREAT: NATIONAL SELF-DEFENSE IN UNCHARTED WATERS

MICHAEL NOVAK

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On September 11, 2001, the United States awoke sleepily on a warm, bright blue late-summer day; by 9:30 a.m., it was violently thrown into a new era of history. A non-state actor, a loosely unified yet tightly disciplined terrorist network, operating in some four-score nations around the world, had just put an exclamation point on the war it had declared some years earlier, a war that everyone else had simply tried to ignore. This lethal reminder of the war, through a set of “sneak attacks” that made the Japanese attack at Pearl Harbor seem positively conventional, threw into disarray some of our classical conceptions about war. It forced us to rethink our notions of just war theory, on the one hand, and the legitimacy of various phases of subsequent acts of war (Afghanistan, Iraq) in addition to the legitimacy of turning to the United Nations, or going it alone, on the other. It has presented us with two new challenges we must face: making necessary revisions to just war theory and formulating new arguments about legitimacy in war and in peace.

Barely one hundred years after Mohammed founded the expanding

faith of Islam in what is today Saudi Arabia, his armies had conquered all of the Middle East, all of North Africa, all of Spain, and were soon marching into southern France. There, in AD 732, they were hurled back. In 1095, after 300 years of suffering retreat, harassment, raids, kidnappings, and the enslavement of captives, the Christians of Europe began the counterattack, the First Crusade. They regained the Holy Land and much of the Eastern Mediterranean coast by 1099, and held these for some generations. By 1200, however, Muslim armies began pushing the Christian forces back toward Europe, and gradually reclaimed the Eastern Mediterranean as a Muslim sea.

Then in 1571, threatening Europe on its eastern flank, and aiming first at Italy's Adriatic coast, an enormous Muslim fleet under the Ottomans gathered in major ports in Greece. In August, a smaller Muslim fleet had taken Famagusta, the Venetian port on Cyprus, and brutally tortured its inhabitants. In October, the Muslim commanders expected their new assault on all of Italy to be just as easy. They believed it would open up for them a major base in the total conquest of Europe.

Rather than heed the urgent calls of Pope Pius V to take to arms to prevent the loss of all of Europe to Islam, the Christian monarchs of Europe, now divided by the Reformation and many internal rivalries, dithered, dallied, and yakked.

The cold queen of England is looking in the glass;

The shadow of the Valois is yawning at the Mass;

From evening isles fantastical rings faint the Spanish gun . . .¹

In that vacuum, the young Prince Don Juan of Austria struggled virtually alone to put together a presentable European fleet, composed of squadrons from the Knights of Malta, from the Kingdom of Genoa and the Republic of Venice, from Spain and the papal states, plus a few stray ships from France and Britain. By September of that year, he managed to set this small armada to sea in order to make a preemptive strike on the Muslim fleet before it could come near to Italy.

By early October, Don Juan had lured the Muslim fleet out from its safe haven in the Greek Isles to sail into the Bay of Lepanto. So it was

1. G.K. Chesterton, *Lepanto*, in *MODERN BRITISH POETRY* 224 (Louis Untermeyer ed., 1920).

that on October 7, the Saracen fleet loomed into sight on the horizon in all its confident magnificence. So certain of victory was the Sultan that he had his treasure ships follow close up in the rear, for he intended to cut the smaller Christian fleet to shreds, and then sail on unimpeded for the conquest of Italy. But things didn't work out that way when the two fleets sailed directly into one another on that fair October day.

Splendid new technology and tactics gave the European fleet a surprising advantage, and they were also powerfully assisted by a timely rebellion of Christian slaves below the Muslim decks, who worked their chains free from their oars and emerged into the bright daylight, chains swinging, to engage the Muslim sailors from their rear. With these advantages, the Christian center, led by Don Juan's own flagship, split the Muslim line. The Venetian fleet on the Christian left, fighting with a fury ignited by the previous August's barbarities in Cyprus, made short work of the Muslim right. Altogether the Christians destroyed the backbone of the Caliph's navy for decades to come.²

Of course, that defeat did not make the Muslims give up their

2. VICTOR DAVIS HANSON, *CARNAGE AND CULTURE: LANDMARK BATTLES IN THE RISE OF WESTERN POWER 233-78* (2001), tallies the military innovations that gave the Venetians the upper hand in battle: replacing the beaks of their galleys with cannons, using superior cannons mounted on swivels and a greater number of harquebuses (guns) with more dependable gunpowder, better firearms, and better training in the use of firearms yielding greater rates of fire. JACK BEECHING, *THE GALLEYS AT LEPANTO 195-96* (1982), is even more vivid:

The West had certain substantial technical advantages. In the Turkish fleet, not even all the janissaries were yet armed with the arquebus. The Turkish leaders consoled themselves with the specious argument that a man trained in the use of a Turkish composite bow could loose off thirty arrows in the time it took an arquebusier to load and fire once. But many of their Christian opponents—and certainly all Don John's officers—would be wearing armour that was virtually arrow-proof, whereas an arquebus slug at 200 yards could put a hole right through a man wearing robes and turban, and perhaps through his neighbour as well. Massed arquebus fire could nowadays sweep decks which in Mark Antony's day could safely have been crammed with infantrymen. The heavy guns carried in the bows of a war galley could be traversed by skilful manipulation of the oars, and aimed with great precision, the whole length of the galley's hull serving as a waterborne gun carriage, so that the entire ship took the recoil as the great guns fired.

Id.

The League galleys were also fitted with boarding nets—then a novelty. And down from their Arsenal to join the fleet the Venetians were towing an unusual weapon which they hoped would disconcert the Turk—galliasses [galleys], six of them. In contriving their version of the galliass, the ingenious Venetians had taken a long stride towards making gunnery prevail in naval warfare.

Id. See also LORD JOHN PATRICK DOUGLAS BALFOUR KINROSS, *THE OTTOMAN CENTURIES: THE RISE AND FALL OF THE TURKISH EMPIRE 269-77* (1977).

dream—their mission—of conquering Europe. Within a generation, they were marching overland from their bases in Greece and the Balkans, and up through Budapest, to assemble an enormous army on the plains of Vienna. Their aim was to cut off Italy from the north; to divide Europe, and defeat it part by part. There on September 12, 1683, a Polish army led by Jan Sobieski's cavalry charged forward at full speed, to the eerie sound of its whistling feather headgear, and panicked the Muslim center. Sobieski's brave cavalry drove straight through the Muslim ranks to capture the headquarters and even the green harem tent of the esteemed Sultan himself. (That tent, faded from its early glory, is displayed today with other booty from that day in Czartoryski Museum in Krakow.)

From that high water mark, the Muslim world has receded for more than three hundred years, and fallen into sullen impotence. In recent generations, trying to cope with the collapse of secular versions of Islamic power such as Nasser's socialist pan-Arabism, Ba'athist repression in Iraq and Syria, the secularism of the Shah of Iran, and the shabby secular remnant of the glories of the Ottoman Caliphate in Turkey, the world of Islam has in effect split into two. To capture this split we must distinguish between the religion of *Islam* and the political sect of *Islamicism*. By far the larger of the two groups, the religion of Islam consists of those who pursue prosperity and personal dignity, while cherishing their religion as an especially pure and intense source of transcendence in their lives. A significantly smaller but intensely energetic group, composed chiefly of the hostile young men of the Muslim world, best described as Islamicists, have developed a new politico-religious idea. These Islamicists are a minority within Islam, and their passion is far more political than religious, although they are quite willing to use a distorted, anti-intellectual, and narrow version of religion to achieve their political purposes. Their leaders have studied intensely the organizational methods and the political uses of terror perfected during twentieth-century political movements, such as those led by Lenin, Mussolini, Hitler, and Stalin,³ and fused these into a distorted, secular version of primitive Islam.

3. See Bernard Lewis, *Saddam's Regime is a European Import*, NAT'L POST (Canada), Apr. 3, 2003, at A17, available at 2003 WL 17382871.

In the Western world, knowledge of history is poor—and the awareness of history is frequently poorer. For example, people often argue today as if the kind of political order that prevails in Iraq is part of the immemorial Arab and Islamic tradition. This is totally untrue. The kind of regime represented by Saddam Hussein has no roots in either the Arab or Islamic past. Rather, it is an

These Islamicists are followers of the doctrine of the Wahhabis, the spiritual descendants of the founder of militant Islamism, Muhammad ibn Abdul Wahhab (1699-1792), who have been the official spiritual mentors of the Saudi Kingdom since 1750.⁴ (Since the Wahhabi doctrine dates back before the United States or Israel yet existed, neither Israel nor the United States can be said to lie at the

ideological importation from Europe—the only one that worked and succeeded (at least in the sense of being able to survive).

In 1940, the French government accepted defeat and signed a separate peace with the Third Reich. The French colonies in Syria and Lebanon remained under Vichy control, and were therefore open to the Nazis to do what they wished. They became major bases for Nazi propaganda and activity in the Middle East. The Nazis extended their operations from Syria and Lebanon, with some success, to Iraq and other places. That was the time when the Baath Party was founded, as a kind of clone of the Nazi and Fascist parties, using very similar methods and adapting a very similar ideology, and operating in the same way—as part of an apparatus of surveillance that exists under a one-party state, where a party is not a party in the Western democratic sense, but part of the apparatus of a government. That was the origin of the Baath Party.

Id. See also CON COUGHLIN, *SADDAM: KING OF TERROR* (2002). Al-Turabi, one of the leaders of the Sudanese Muslim Brotherhood in the early 1960s, also studied Mussolini, Hitler, and Stalin. Since the 1986 elections, Turabi has led the National Islamic Front (NIF), a new faction of the Muslim Brotherhood. See *Biography of Hassan al Turabi*, Human Rights Watch, at <http://www.hrw.org/press/2002/03/turabi-bio.htm> (last visited Aug. 5, 2004).

4. See DORE GOLD, *HATRED'S KINGDOM: HOW SAUDI ARABIA SUPPORTS THE NEW GLOBAL TERRORISM* 17-30 (2003). The founder of the modern Saudi nation, Muhammad ibn Saud, and the founder of the resurrected jihad, Muhammad ibn Abdul Wahhab, formed a pact, and sealed it with the marriage of their children:

Muhammad ibn Saud [ruled 1744-1765] and Muhammad ibn Abdul Wahhab thus established a *mithaq*, or covenant, under which ibn Saud established the first Saudi state and ibn Abdul Wahhab determined its official creed. It was, in short, a political bargain: ibn Saud would protect ibn Abdul Wahhab and spread his new creed, while ibn Abdul Wahhab would legitimize Saudi rule over an expanding circle of bedouin tribes, which were subdued through a new jihad. Ibn Saud also became the imam of ibn Abdul Wahhab's new religious community. (He apparently used only the title *emir*, however; subsequent generations of Saudi leaders actually adopted the term *imam*.)

Id. at 20-21. Gold also speculates on the reason for Wahabbism's resurrection of the strategy of jihad:

With the stagnation of Islamic expansionism, the concept of jihad became internalized as a moral or spiritual struggle. Thus, unsurprisingly, fundamentalist groups in the 1990s, like Egyptian Islamic Jihad, called jihad "the neglected duty." The fundamentalists were clearly nostalgic for the militant jihad of the seventh century Wahhabi writings, however, elevated jihad to a central obligation of Islam by attributing to the Prophet Muhammad such sayings as: "Jihad is the ultimate manifestation of Islam, as the Messenger said It is a furnace in which Muslims are melted out and which allows the separation of the bad [Muslim] from the good one. It is also a pass to the Eden [Paradise] and the Eden is in the shade of swords." ... By reviving jihad and condemning enemies as polytheists who have no right to live, Wahhabism set the stage for the swift success and infamous cruelty of its eighteenth- and early-nineteenth-century military campaigns.

Id. at 24-26.

core of the Wahhabi hostility toward the West.) The murderous passions that now confront us burn from a deep and abiding resentment at centuries of weakness, which long antedate recent episodes.

These new Islamicists argue that Islam has endured this humiliation of weakness and inferiority for two main reasons. First, the people who follow the Koran have not been faithful to the laws and habits of the seventh to the thirteenth centuries, when Islam was ascendant and Islamic power grew almost unimpeded and unrivaled. Second, its leadership cadres have heretofore lacked organizational discipline. They have failed to master techniques of clandestine organization, precise concentrated action by small cells, and rigorous training in the dark arts of terror. It is these skills, the Islamicists have concluded, which could make of their current asymmetric weakness a future asymmetric strength. They have set out to become masters of terror.

Islamicist leaders concede that “the Crusader powers” of the West have overwhelming military and economic power. But the complexity of the West’s technical organization makes the West vulnerable, they have observed. In their eyes, the West’s lack of transcendent belief weakens the West’s willpower, and its reluctance to shed blood discloses a spiritual emptiness. Under the proper pressure, they have concluded, the West habitually surrenders. Appeasement has become its *modus operandi*.

That the Islamicists are putting this pressure on the West is borne out by several sobering facts. In a recent article, Samuel Huntington notes that Muslim states account for five out of seven on the State Department’s list of states supporting terrorism. Islamic extremists perpetrated at least eleven of the sixteen major terrorist acts between 1983 and 2000. In the year 2000, of 32 major wars underway, 23 involved Muslims. The roots of this violence, writes Huntington, are not inherent in Islam as a religion, but in “a great sense of grievance, resentment, envy and hostility towards the West.”⁵ Moreover, “Islam is less unified than any other civilization,” riven by “[t]ribal, religious, ethnic, political, and cultural divisions”⁶ Finally, we are witnessing world-leading birthrates among Muslims, with a great but temporary “youth bulge” between the ages of 16 and 30.⁷ “Young males are the principal perpetrators of violence in all societies: they

5. Samuel Huntington, *America in the World*, HEDGEHOG REV., Spring 2003, at 7, 14.

6. *Id.*

7. *Id.*

exist in over-abundant numbers in Muslim societies,” Huntington adds.⁸ Yet there is hope: “In two decades their numbers will decrease in most Muslim societies.”⁹

Fortunately, then, the war in which we are now engaged, and will be engaged for some years to come, is not a war against the religion of Islam nor even against the vast majority of Muslims. It is against a much smaller political sect within Islam, one that has distorted the traditional religion to its own political doctrines. The political doctrine of Islamicism is often harshly secular, certainly far more political than religious, and quite willing to depart from theological and ethical Islam whenever political motives require it. Its source is not a deeper and more vigorous study of Islam’s spiritual origins, nor a deeper re-appropriation of Islam’s magnificent intellectual resources—from those early centuries when the lost manuscripts of Plato and Aristotle were known to the Muslim world, but barely available in Christian Europe. The source of Islamic extremism is not transcendent religion at all, but resentment. Furthermore, in politics Islamicism does not promise its adherents the protection of human rights, emergence from poverty, a better life. Its aim of using destruction and disorder to permit the ascendancy of its particular political vision was well expressed in the destruction of the ancient Buddhist sculptures of Afghanistan in 2001, and in a long chain of other destructive acts in every quarter of the world since at least 1983.

As we saw at the end of August, 2003, the Islamicist movement did not hesitate to plant huge car bombs outside the holiest shrine of the Shi’ites, Najah, to kill its chief Imam just after a solemn service, and blast to death more than a hundred other Muslims worshipping with him. Their aim is destruction. Their aim is disorder. They impose an eleventh-century interpretation of Shari’a law upon the unfortunate lands they govern, less for religious reasons than as an instrument of terror. Anyone who criticizes this law is said to be committing “blasphemy,” for which the assigned punishment is death. The sheer secular misuse of Islam by extremists is so severe that a great many Muslims around the world are prepared to give their lives rather than to accept them as rulers.¹⁰ What those Muslim rebels who follow

8. *Id.*

9. *Id.*

10. For example, in September, 2002, I described my vivid experience with resistance leaders in Sudan: “Muslims are outspoken and emphatic in their disdain for the abuses of the good name of Islam perpetrated by the government in Khartoum. ‘Our problem is not religion,’ one after another insists, ‘but a politicalization of religion, an abuse of religion.

traditional Islam saw in Afghanistan under the Taliban, in Iran under the Mullahs, and in Sudan has repelled them. That is why so many in Afghanistan fought against the Taliban, and so many Muslims in Sudan are warring shoulder-to-shoulder with Christians and others against the Islamicist government. This is why it is crucial, then, to distinguish the destructive political ideology of Islamicism from Islam as a religion.

What, then, is the relative strength of Islamic extremism within the Islamic world? Some experts have put the proportion of Muslims who cheer on the Islamicist politicalization of Islam at 10-15 percent,¹¹ but there are indications that the proportion of actual supporters is at the lower end of that range, or even less. Among these indications are the widespread rebellion of many in Afghanistan against the Taliban and public strikes and protests by millions of young people in Iran against the politicized Mullahs. Other indications are the ability of many Muslim leaders such as President Musharaf in Pakistan to run counter to the militant Islamicists, whose ranks had been swelling for many years.

Of course, ten percent of one billion Muslims in the world means one hundred million supporters and cheerleaders for *jihād*. But it is wise to look also at the other side: nine of every ten Muslims prefer a world of personal dignity and prosperity, in which their rights would be protected and their opportunities for growth and advancement would become abundant. In the current war, the Coalition of the Willing is fighting not only in our own self-defense, but in their defense, too.

In addition, we have sound reasons to esteem greatly Islam's extraordinary sense of God's greatness, vastness, and transcendence. With a little effort, it is easy to imagine Islam's affectionate hold upon the souls of hundreds of millions of adherents. Under the vast starry sky above the desert, Arab Muslims may have seen more starkly than others the enormity of God's power and mystery. Under the implacably hot, blistering daily sun, they have also witnessed the fragility of each single human life. Islam is one of the world's truly great religions. It justly commands the love of hundreds of millions,

They are not true Muslims!" Michael Novak, *Adventure in Asmara*, NAT'L REV. ONLINE (Sept. 19, 2002), at <http://www.nationalreview.com/novak/novak091902.asp>.

11. For example, Daniel Pipes, *Bin Laden Is a Fundamentalist*, NAT'L REV. ONLINE (Oct. 22, 2001), at <http://www.nationalreview.com/comment/comment-pipes102201.shtml>, estimates that "[b]y recognizing the wide backing of bin Laden's evil for what it is, Americans must begin a process of confrontation with 10 to 15 percent of the vast populations of the Muslim world."

and the respect of millions more who are not its adherents. The manifest devotion of Muslims to the greatness of Allah fills many Christians with awe. And it is sometimes said that Jews feel closer to Islam because of its severe monotheism than to Christianity, with its puzzling belief in the Trinity.¹²

Our concern today, however, is far more mundane and immediate than this long historical backdrop and complex set of religious considerations. Our concern is the military threat to our nation and our civilization, and all the civilizations based upon laws and rights, the threat quite starkly thrust upon us by Islamicist terrorists on September 11, 2001. Of course, even before that date, there had been many warning blows, going back to the killing of 243 Marines in the huge explosion of a Marine barracks in Lebanon in 1983. Our reaction to a long series of provocations during those years seemed to confirm the diagnosis of our spiritual condition made by the Islamicists, viz., that we lacked both the spiritual conviction and the stomach to defend ourselves. For many years, at the sight of blood we abandoned the field.

Our concern today is also with the peculiar problems that asymmetrical warfare and the recurrent use of clandestine terror now create for us: first, for our classic moral arguments about war; second, for our classic political arguments about legitimacy; and third, the directly military problem, viz., What are the best military tactics to use to halt these acts of terror? Though this third problem can have a bearing on just war theory in terms of *jus ad bellum*, it is dependent upon the knowledge of those who run the military, and thus is beyond the scope of this paper.

I. PROBLEMS CONCERNING JUST WAR

Discussion of the entirety of the Just War theory is neither necessary to nor within the scope of this paper. Therefore, I will focus on four particular points.

A. *Waging War*

The term “just war” owes its prestige in the West to its early formulation by St. Augustine after the world-changing sack of Rome

12. Hillel Halkin, *Out of Andalusia*, COMMENT., Sept. 2003, at 39, 41, notes the cliché that “medieval Jews felt more comfortable with Islam than with Christianity because the former was, like Judaism, a pure monotheistic faith, whereas the latter, with its doctrine of the Trinity and its incarnate God, was tainted by polytheism and paganism.”

in 410 A.D. The Roman capital had never before been violated, and St. Augustine began imagining the future course of civilization as Christians (who were then a minority, but a growing one in the Empire) foresaw it. Although Christ called the world toward the universal brotherhood envisaged by its Creator, “the City of Man” is always so bound to ambition, the will-to-power, untruthfulness, cynicism, greed, pride, and other forms of “sin” that no utopia is in sight. Yet even war—that agglomeration of social breakdowns—is no excuse for Christians not to act like Christians. Even in war, they must think more carefully than others—first, about classic reasons for *not* going to war; second, if war is morally required, about moral limits beyond which they cannot go. There are restrictions to consider *ad bellum* (on the way to war) and restrictions *in bello* (in the very waging of war). The term “just war” does not signal that waging war is in general morally wrong though sometimes reluctantly tolerated. On the contrary, the term “just war” signifies that sometimes the virtue of justice *requires* the use of war, as a legitimate and sometimes necessary means to a just end. When waged for the right purposes, with the right means, and in the right way, war may be an act required by justice.

The method of reasoning that came to be called “the just war tradition” sprang from a twofold insight found in Book 19 of St. Augustine’s *The City of God*. First, in every circle of daily life, even in the family and even among judges (normally the most honorable of men), human ignorance and weakness regularly lead to moral failures. Spouses cannot read each other’s inner thoughts, judges can never be certain who is telling the truth, and in this darkness there is a high probability of frequent moral error. On the other hand, the virtual certainty of at least some moral errors does not exempt human beings from the need to keep acting with reflection, deliberation, and reasoned choice—that is, to keep acting morally. Due to the high probability of recurrent human sins, acts of aggression are highly likely to break out generation after generation. Therefore, humans will always need to keep at hand a method of reasoning by which to discriminate when and in what measure justice requires a nation to go to war, and also to discriminate how a moral warrior ought to comport himself in war.

To help provide Christians and others of good will with some guidelines based upon his own reflections (and upon the already existing tradition), St. Augustine referred to several criteria for reasoning about when it is required by justice for a nation to enter into

war, and how reason dictates that wars should be fought. The first set of criteria, the *ad bellum* considerations, is utilized by a nation in deciding “when” to use force, requiring for example that the nation have a just cause, right intention, competent authority to make such a decision, a reasonable chance of success, proportionality of ends, and that it use war as a last resort. The second set, *in bello* considerations, involves “how” a nation shall use force, requiring that the amount of force be proportional and that the military force discriminate between combatants and noncombatants.¹³ These criteria do not depend on the rightness or wrongness of *ad bellum* decisions, but rather the desire to maintain humanitarian conditions and dictate the “methods and means” of acceptable force.¹⁴ A fundamental principle of the tradition is that *bellum* is an activity that only states may engage in, through the decision of their legitimate authorities. *Bellum* is a public activity, of a wholly different order from a quarrel among private citizens, a mere *duellum*. That is a further reason why it requires a more public and formal method of reasoning that is open to public inspection.

To return to my first point in another way, a just war is a normal instrument of statecraft, in pursuit of noble ends and in fulfillment of necessary duties. Among these noble duties is to come to the defense of one’s own nation or of a weak nation under unjust attack by a stronger, to restore international order so that the rule of law and the protection of the rights of people can flourish, to punish terrorists and others who destroy civil order or employ violence to drive peoples apart, and the like. Justice sometimes requires the waging of war. It is important nowadays to stress this basic point. For too many glib thinkers these last thirty years have taken up a new mantra, that there is always “a presumption against violence,” and by extension, a presumption against war. Not so. George Weigel, one of the most distinguished students of just war, writes:

The “presumption against violence” starting point is not only fraught with historical and methodological difficulties. It is also theologically dubious. Its effect in moral analysis is to turn the tradition inside-out, such that war-conduct (*in bello*) questions of proportionality and discrimination take theological precedence over what were traditionally assumed to be the prior war-decision (*ad bellum*) questions: just cause, right intention, competent

13. Among the many sources listing both sets of criteria is CATHOLIC CHURCH, CATECHISM OF THE CATHOLIC CHURCH 497-98 (Eng. ed. 1994).

14. Michael N. Schmitt, *The Principle of Discrimination in 21st Century Warfare*, 2 YALE HUM. RTS. & DEV. L.J. 143, 145 (1999).

authority, reasonable chance of success, proportionality of ends, and last resort. This inversion explains why, in much of the religious commentary after the terrorist attacks of September 11, 2001, considerable attention was paid to the necessity of avoiding indiscriminate noncombatant casualties in the war against terrorism, while little attention was paid to the prior question of the moral obligation of government to pursue national security and world order, both of which were directly threatened by the terrorist networks.

According to St. Augustine, fallen human nature being what it is, there will always be a presumption that generation after generation some evil men will choose disorder, violence, and unjust aggression. At times, the only way to restore order will be to use war as a just instrument of statecraft. Therefore, when you hear anyone say, "There is always a presumption against war," say to yourself: That is not the view of the just war tradition. That is a novel and sentimental doctrine that will do much damage to the cause of justice. It is insufficiently realistic about the power of brutality, cruelty, ambition, cunning, and evil in human affairs in all ages.

At one of the anti-war rallies in San Francisco early in 2003, for instance, a counter-protester carried a clever sign. In very large block letters, he had printed: "WAR IS NOT THE ANSWER." Then in very small letters above that slogan, he had written: "Except for slavery, fascism and communism."

B. *Waging War Against Non-State Actors*

The common understanding of just war involves conflict between two different state actors. However, under traditional *ad bellum* reasoning (the reasoning one uses to show reasons for or against going into any particular war), there have occasionally been precedents for making war on non-state actors, such as organizations of pirates preying upon international shipping lanes. Recall the centuries during which piracy reigned on the high seas. The pirates took advantage of their looser organization, and their ability to lie in hiding, while biding their time, and in this manner chose moments for attack when they had little reason to fear retaliation. Meanwhile, the

15. George Weigel, *Moral Clarity in a Time of War*, FIRST THINGS, Jan. 2003, at 20, 23. For other relevant work by Weigel, see TRANQUILLITAS ORDINIS: THE PRESENT FAILURE AND FUTURE PROMISE OF AMERICAN CATHOLIC THOUGHT ON WAR AND PEACE (1987), and *Articles & Short Publications by George Weigel*, ETHICS AND PUBLIC POLICY CENTER, at http://www.eppc.org/scholars/scholarID.14,type.1/pub_list.asp (last visited Aug. 5, 2004) (archiving articles by Weigel on the Iraq conflict).

degree of organization required for adequate coverage of large stretches of ocean heavily taxed the navies of individual nations, and even frustrated alliances of several nations.

Since pirates had already defeated traditional policing activities, a more strategic offensive war plan was required: to strike at bases of operation and supply, as well as at safe havens. When non-state actors cause damage equivalent to that of an aggressive nation, they must not be allowed to hide behind their status as non-state actors.¹⁶ This was the reasoning of Thomas Jefferson in building an international coalition to pursue the Barbary Pirates of North Africa.

Modern urban societies depend upon dense populations and a high degree of technical organization to supply water and electric systems. They also depend upon open and trusting practices, among peoples who have internalized a sense of law, order, and open cooperation. Modern cities are not built for security first of all, but for open commerce and a free commingling of peoples. Modern American and European airports, for instance, were not built for self-defense against terrorists armed with rockets, plastic bombs, poison gas, or other easily hidden weapons, let alone for those lone terrorists willing to carry small destructive agents onto airplanes. As we have discovered, those very planes can be used as bombs, just as automobiles and trucks loaded with explosives have begun to be, with disturbing frequency. Nowadays, even small cells from international organizations of non-state actors can cause enormous mayhem in urban societies.

Determined and disciplined clandestine agents, even though not the agents of any one particular state, can inflict enormous damage on the public expectation of law and order. They can destroy confidence in the citizenry. They can make otherwise strong people cower. Jefferson was justified in attacking the Barbary Pirates; even more did the attacks of Sept 11 justify under *ad bellum* reasoning the use of military force against those non-state actors as if they were sovereign nations.

C. Preemptive Strikes

Preemptive tactics against terror have a long tradition in just war

16. See COLONEL K.W. WATKIN, HARV. PROGRAM ON HUMANITARIAN POL'Y AND CONFLICT RES., COMBATANTS, UNPRIVILEGED BELLIGERENTS AND CONFLICTS IN THE 21ST CENTURY (2003), for discussion on the classification of non-state actors such as terrorist organizations in modern warfare.

theory. Such classic writers as Vitoria and Suarez spoke of preemptive attacks as well as punitive attacks.¹⁷ But two things may be new, and are certainly difficult to defend against: both the vulnerability of the modern city to clandestine terrorism and the terrible destructiveness of even small packages of modern weaponry. These two new developments have forced a change in the legitimate timing of preemptive strikes.

1. *Timing of Preemptive Strikes*

The preemptive strike of the Christian fleet sailing to Lepanto in 1571 was justified by signs of preparation by the Muslim invasion force that were detected for upwards of a year in advance. This allowed the Don Juan to determine that a specific military attack was being planned and thus lead a preemptive strike against that particular attack. But at which precise moment did the United States detect that an attack on the Twin Towers in New York City on September 11 was imminent? Speaking only for myself, even as I saw the first plane

17. The Dominican friar Francisco de Vitoria (d. 1546), the Father of International Law, is the 16th century authority on just war, midway between Thomas Aquinas (1225-1274) and the 20th century. The following passages show three classic just causes for war, to punish wrongs, to defend a population, to remove evil rulers:

Those wars are described as just wars which ... avenge a wrong done, as where punishment has to be meted out to a city or state because it has itself neglected to exact punishment for an offence committed by its citizens or subjects or to return what has been wrongfully taken away.

FRANCISCO DE VITORIA. THE SECOND REFLECTIO OF THE REVEREND FATHER, BROTHER FRANCISCUS DE VICTORIA ON THE INDIANS, OR ON THE LAW OF WAR MADE BY THE SPANIARDS ON THE BARBARIANS (John Pawley Bate, trans.), *reprinted in* JAMES BROWN SCOTT, THE SPANISH ORIGIN OF INTERNATIONAL LAW: FRANCISCO DE VITORIA AND HIS LAW OF NATIONS app. b., at li (Lawbook Exchange 2000) (1934) (quoting St. Augustine).

[O]ne who has been contumeliously assaulted can immediately strike back, even if the assaulter was not proposing to make a further attack.... For if within one and the same realm one city should take up arms against another, or one of the dukes against another duke, and the king should neglect or should lack courage to exact redress for the wrongs that have been done, the aggrieved city or duke may not only resort to self-defence, but may also commence war and take measures against the enemy and even kill the wrongdoers, there being no other adequate means of self-defence. For the enemy would not cease from outrage, if the victims thereof were content merely with self-defence. On this principle a private person also may begin an attack on his foe, if there is no other way of safeguarding himself from wrong.

Id. at lii-iii.

[Moreover, the State is entrusted to act in a manner consonant with] the end and aim and good of the whole world. For there would be no condition of happiness for the world, nay, its condition would be one of utter misery, if oppressors and robbers and plunderers could with impunity commit their crimes and oppress the good and innocent, and these latter could not in turn retaliate on them.

Id. at li.

crash into the Tower, I was not certain that action meant war until the *second* plane went into the second tower. Only after that did news of other planes with other destructive missions pour in. (I was in Europe that day, and my daughter was working on Capitol Hill, so you may imagine that my blood ran cold while every one of those threatening planes was still in the air. Other citizens carried even heavier weights upon their hearts).

In the old days, calculating the imminence of an aggressive attack was fairly easy, based upon the long lead time required for aggressors to bring their armies into the attack position. Under today's conditions of war, there is no such lead time, not at least when the destruction is wrought in such seemingly innocent events as a car driving into a hotel driveway, or a plane suddenly being commandeered from within, or a small briefcase being carried onto a train for explosion in a tunnel or underground station. Acts of preemption and prevention are no less necessary today, but sure knowledge that an aggressive attack is already underway is no longer easy to obtain in time for self-defense.

An analogous problem arose in the case of the secretive and totalitarian regime of Saddam Hussein. United Nations investigators announced that 8,500 liters of anthrax known to have been developed by Iraq were, as of early 2003, not yet accounted for, as by formal treaty and formal command of the U.N. they were obliged to be.¹⁸ Other seemingly credible intelligence led US military planners to go through extensive preparations for the likely use by Iraq of chemical or biological warfare against our troops. Many a soldier suffered through long hours of wearing chemical protection gear in that hot climate. In the nature of things, the evidence that these weapons were in readiness for use was not visible to the naked eye; it had to be inferred, and inferences can be mistaken. However, so rational was the fear of the actual existence of such weapons that, before the war began, many anti-war protesters argued against the war on the ground that going to war would increase the probability of these weapons actually being used.

2. *Rational Decisions Leading to Preemption*

Like every other action of human beings, war-making is a rational

18. See Hans Blix, U.N. Monitoring, Verification and Inspection Commission, Briefing of the Security Council, 27 January 2003: An Update on Inspection, at http://www.un.org/Depts/unmovic/new/pages/security_council_briefings.asp#5 (last visited Aug. 5, 2004).

act to be judged by the canons of rationality applied to making real-time choices—without perfect knowledge, and without foreknowledge of all or even most consequences. Perfect certainty about what is the right thing to do in any one particular situation is not available in advance.

Often enough, anyone forced to make a difficult choice feels all too keenly the many ways in which he could be wrong. Nonetheless, such a person may well believe that he is making the best possible choice he can, based on what he knows at the time. He calls it the way he sees it, and does the best he can. The ancients called this mixed experience of liberty and risk-taking and uncertainty “practical wisdom,” *phronesis*, prudence. People of much experience get used to making practical judgments quickly and well, even if never infallibly.

The condition of good and virtuous decision-making, *phronesis*, practical wisdom, is that the practical agent actually does consider as many aspects of relevant reality as his intelligence is capable of, and becomes as aware as possible of the implications of his choices. War-making, too, is a human action, held to standards of strict scrutiny, no more and no less so than other moral acts. Since its consequences are very wide-ranging, so also must be the degree of consideration that goes into its decision-making. War-making is an activity of human practical reason. It must meet the highest standards of such reason.

If we review the chains of reasoning that led up to the decision to go to war in Iraq, for instance, and the reasoning that went into the war-plans and the aftermath, we are bound to see that some mistakes have become visible in hindsight. The decision, based on the information had at the time, was perfectly reasonable. That hindsight provides us with more information and a perspective based on the results of the action does not in any way detract from the rightness of the decision at the time it was made. Furthermore, even the exercise of scrutinizing the judgments made in the light of hindsight puts on display the abiding presence of reason throughout the process of going to war. We expect to find evidence of practical reason at work, and we expect to grade it for its performance in the light of reason’s own standards for practical action.

D. *Applying Just War to the Current Problem of Terrorism*

The just war tradition does not begin “with a presumption against war or violence,” but with the presumption that the protection of international order in every generation is likely to require either going to war for the sake of restoring justice, or (better) at least the

intimidating and well-honed *capacity* to fight just wars successfully, in order to prevent them in advance.

However, in this new century a new problem has thrown things out of balance. Rather suddenly, the ability of non-state actors such as al Qaeda, Hamas, Hezbollah, and dozens of other Islamicist organizations to wreak great harm on international order, to violate the rights of innocent peoples, and to work across international boundaries with impunity, has introduced a new factor into today's asymmetric warfare. First, the far-flung operations and unlimited ambitions of these loosely affiliated groups justify a description of the new and longtime war in which we are now engaged as World War IV (counting the Cold War now passed as World War III). This war will necessarily last a long time, for it has deep and complex roots, and can cause much destruction at a relatively low expenditure of its own ample resources. The war is worldwide, as the headlines about terrorist attacks and bombings daily inform us. It is also worldwide because, whereas westerners tend to think of states as divided among different religions, Muslims tend to think of one worldwide religion, Islam, divided into different nations.¹⁹ They tend to think globally.

Second, non-state actors are not the only new factor in our present perplexity. So also are technological developments in weapons of devastation, and in the miniature proportions in which great destructive capacity can now be packaged.

Third, the kind of evidence available for judging the imminence of an aggressive attack by asymmetrical forces is no longer as it was in

19. See BERNARD LEWIS, *THE CRISIS OF ISLAM* 13-14 (2003), for an exposition of this point:

It is in the realm of politics—domestic, regional, and international alike—that we see the most striking differences between Islam and the rest of the world. The heads of state or ministers of foreign affairs of the Scandinavian countries and the United Kingdom do not, from time to time, foregather in Protestant summit conferences, nor was it ever the practice of the rulers of Greece, Yugoslavia, Bulgaria, and the Soviet Union, temporarily forgetting their political and ideological differences, to hold regular meetings on the basis of their current or previous adherence to the Orthodox Church. Similarly, the Buddhist states of East and Southeast Asia do not constitute a Buddhist bloc at the United Nations, nor for that matter in any other of their political activities. The very idea of such a grouping, based on religion, in the modern world may seem anachronistic and even absurd. It is neither anachronistic nor absurd in relation to Islam. Throughout the tensions of the Cold War and after, more than fifty Muslim governments—including monarchies and republics, conservatives and radicals, practitioners of capitalism and of socialism, supporters of the Western bloc, the Eastern bloc, and a whole spectrum of shades of neutrality—built up an elaborate apparatus of international consultation and, on many issues, cooperation.

Id.

the days of great standing armies and their vast quantities of war-making equipment. Just the same, even the new terrorists need fairly elaborate training camps and ample time to train new recruits in the dark arts of terrorism. These requirements do give some advance warning of intentions and some lead-time for acts of preemption. Given the great destructive power available to terrorists today, preemption may be the only practical manner of self-defense. Soldiers who have required terrorists to approach them to be searched for weapons have paid for it with their lives and those of others nearby.

Finally, it is worth underlining again the sheer nihilistic destructiveness in which our enemies have so far indulged. In Iraq, terrorists have bombed not only American combatants, but also the supposedly "pacific" U.N. headquarters,²⁰ and even the holiest Shi'ite shrine in all Islam. Their intention is now as plain to all as the glint of a rocket-launcher in the dazzling desert sun: it is to disrupt every fabric of the civil order. It is sheer destruction. It is ruin. The Islamicists cannot tolerate the success of any Muslim experiment that is contrary to their own designs.

II. THE PROBLEM OF LEGITIMACY

A. *Legitimacy in Fighting the Iraq War*

It is not difficult to understand why so many Europeans have become alarmed by the sudden emergence of their erstwhile protector, the United States, both as the sole surviving superpower after 1989

20. See Paul Marshall, *Misunderstanding Terrorism*, Townhall.com, (Sept. 7, 2003), at <http://www.townhall.com/columnists/GuestColumns/Marshall20030907.shtml>, for a discussion on why Islamicists hate the UN:

Islamist terrorists are not fighting for third world liberation. As they announce repeatedly, they are messianic organizations explicitly fighting to restore a pan Islamic Caliphate governed by Islamic law. Throughout the world, they methodically kill people opposed to the Caliphate, whether U.N. or non-U.N., Muslim or non-Muslim, left or right, American, British, Israeli, French or Australian.

Id.

[T]he Al Qaeda web site that claimed responsibility for the bombing was quite clear. It asked "So why the United Nations? Number one, the United Nations is against Islam This issue does not need to be proved. It is clear like the light of the sun at midday."

This fits Al Qaeda's pattern. In his post 9/11 videotape, justifying his attacks on America, bin Laden declared that: "Those who ... continue to appeal to the United Nations have disavowed what was revealed to Prophet Muhammad Under no circumstances should any Muslim or sane person resort to the United Nations. The United Nations is nothing but a tool of crime."

Id.

and as a nation so advanced in military technology that no European power can keep up with the American armed forces. To begin with, there is the long-respected maxim that unchecked power tends to be abused. On the part of France, at least, there are also clear signs of ideological envy—a fierce pride in the French way of doing things, and in its own superior civilization, combined with a tradition of looking down on American (and other) ways of living. Europe has recently entered into perhaps the most resolutely secular and anti-Christian phase in its history, quite out of tune with the Fourth Great Awakening—that new stirring of religion and tradition—in America.²¹ In basic convictions, moral direction, and spirit, Europe is not at all in the same place as the United States. However, not a few of American elites may be more in tune with the secular Europeans than with the religiousness of their fellow Americans.

Moreover, the collapse of socialism as an economic idea has failed to awaken the European left to a fresh appreciation of the resiliency and creative capacities of capitalism. On the contrary, the European left seems more eager than ever to insist on the moral superiority of its own social democracy. Perhaps the European left protests too much. On account of falling birth rates, the rapidly increasing longevity of the elderly, and new drugs and medical procedures, health and pension costs in welfare states are rising astronomically, just when the number of workers paying the tax bills is shrinking dramatically. The welfare states have promised higher benefits than they can possibly pay for. The fiscal future of social democracy seems bleak.

Nowadays, too, Europeans consider themselves more secular and enlightened than Americans, and also more moral and politically advanced. It is plain enough that a part of Europe in 2003 led by France and Germany was in no mood to accept the United States as its leader: not economically, not politically, and certainly not morally. It wanted to tie the United States down; it wanted to force it to submit to the United Nations in the name of legitimacy. Europe, and particularly France, believed (at least for a time) that it is better able than the United States to guide and control the U.N.

From the point of view of the United States, the record of the United Nations is among our citizens a source of division. Some praise it almost reflexively, and have great hopes for it. Others hold in

21. See generally ROBERT WILLIAM FOGEL, *THE FOURTH GREAT AWAKENING AND THE FUTURE OF EGALITARIANISM* 25-28 (2000).

scorn its record in Rwanda and many other places. In any case, there is no utility in idealizing the United Nations. It is, like all things human, deeply flawed. Further, it is like all political bodies deeply mired in the muck of self-interest, disguised alliances, double dealings, conspiracies, and cabals. The member states singled out for the special privileges of the Security Council in 1948 no longer represent the political realities of the twenty-first century. Meanwhile, those special privileges give a very few nations the power to veto cooperative action by many other nations, based solely on the self-interest of that one nation. Since France, Russia, and China all had serious financial stakes in the regime of Saddam Hussein in Iraq, it is not surprising that many Americans believed that, regarding Iraq, the United Nations Security Council lacked the necessary impartiality to confer moral legitimacy.

In any case, the canons of self-defense put forth in the U.N. Charter, as former President Cossiga of Italy recently pointed out,²² sufficiently established the moral legitimacy of the removal of Saddam Hussein from power by the Coalition of the Willing. The alternative was to leave in place a major supporter of world terrorism against the United States and other nations, a particularly cruel tyrant over his own people, a bellicose, destabilizing threat to his immediate neighbors, and a leader ordered by the United Nations (in vain) both to destroy his known weapons of mass destruction and to provide proof that he had done so. Peace, as St. Augustine defined it, is the tranquillity of order, and a serious disruption of international order is a just cause for war.

B. *Legitimacy of Post-War Government in Iraq*

More difficult than the legitimacy of going to war is the question of

22. Francesco Cossiga, *La Guerra preventiva è legittima: intervista di Carlo Jean con Francesco Cossiga* [The Preventive War is Legitimate: Interview of Carlo Jean with Francesco Cossiga], LIBERAL, Feb.-Mar. 2003, <http://www.liberalfondazione.it/archivio/fl/numero16/cossiga.htm>.

Da un punto di vista del diritto internazionale classico—anteriore alla Carta delle Nazioni Unite—nonché dell'etica politica, io ritengo legittima la difesa preventiva, la *pre-emptive self-defence*. Negarla sarebbe come sostenere che, vedendo aggirarsi dei banditi armati attorno a casa mia o anche a quella del mio vicino (Stati Uniti nei confronti di Iran e di Israele, ad esempio) io debba astenermi dall'intervenire, e aspettare di essere attaccato, io o i miei <<vicini>>. Io ho invece il diritto—e anche il dovere—di intervenire, anche se tale aggressione non possa essere considerata imminente o immanente. Paesi come Stati Uniti e Regno Unito sono legittimati, sia sul piano del diritto interno, sia su quello della nuova prassi internazionale, a compiere azioni preventive.

how to achieve a legitimate and working government in Iraq after the war. There is no doubt that full governmental powers ought to be handed over to Iraqis themselves. The question is when and how. Victory in April 2003 showed very quickly that the Saddam Hussein regime, while lavishing disproportionate wealth on palaces and monuments glorifying Saddam, had allowed the infrastructure of the oil fields, the electrical grid, the water mains, roads, and bridges to deteriorate to a disgraceful degree. Although destruction caused by the war itself was relatively light and confined almost exclusively to the facilities of the regime, the military, and the secret police, larger than expected infusions of funds for a substantial overhaul of the entire national infrastructure were quickly judged to be necessary. For security reasons and quick action on basics, the utility of American leadership in the early days of liberation seemed obvious. The faster that the Iraqis take responsibility for their own self-governance, the better—with one major caveat.

One slogan of the Wahhabi and other Islamicists in regard to democracy has been: “One man, one vote, one time.” In other words, the Islamicists regard democracy as a method for seizing power, taking control and never relinquishing it. The use of an eleventh-century interpretation of Islamic law is for them a neat way to sweep from view the development of what the American founders called “the new science of politics”—that long, slow development down through history of the ideas and practices of human rights, limited government, checks-and-balances and, in a word, “government of the people, by the people, for the people.” These, the Islamicists hold, are “anti-Islam,” but it would be more exact to call them anti-Islamicist. For Islamicism is an ideology of total centralized control of the whole of life, both public and private, political and cultural, outward and inward. Its aim is total submission.

For this reason, it is a grave error to turn self-governance over to Iraqis until sufficient checks-and-balances are in place so that no one faction can seize total control over everybody and everything. The long, bitter suffering of the peoples of Iraq—Shiites, Kurds, and Sunnis—has taught them that none of them can survive alone. They need each other. If they had not suffered so much under Saddam Hussein, perhaps they would not now be so committed to federalism. Nor would they have ever conceived so stunning a declaration of human rights—rights of individuals, of women, of religious groups—such as they agreed to in March 2004.

Finally, it is important to note that the “democratic deficiency”

sometimes discerned by commentators on Islam far more heavily correlates with Arab nations in which Muslim populations predominate than with non-Arab Muslim nations. There are thirty-one predominantly Muslim non-Arab nations, and only sixteen Arab nations. Of the Arab nations, only Lebanon managed to hold at least three consecutive transfers of power through elections. But thirteen predominantly Muslim nations outside the Arab world did so.²³ For whatever reasons, Arab nations have so far developed fewer demonstrated skills in making democracy work than have Asian and African nations. It is time for freedom, human rights, and prosperity to flower in the Arab world as elsewhere.

III. CONCLUSION

Militarily, the Iraq War of 2003 was one of the most brilliantly conceived and executed campaigns in military history. It was politically original in its conception and its effect: It removed a regime just as neatly from its surrounding tissue as a good Italian chef slices a fish and lifts out the spine and the bones. With a minimum of urban damage and civilian casualties—far less than either critics or proponents of the war predicted in advance—the Ba'athist regime was lifted out from the body politic. So successfully was this done, in fact, that its thoroughness may have impeded the later establishment of security, order, and law. But the larger strategic effect was to strike a cold fear into the heart of tyrannical regimes in the vicinity, at the ease with which they could lose their own power, should their cooperation with terrorism and breeding of international disorder so demand.

In sum, the United States has recently faced—and may some day face again—three separate problems of legitimacy. Regarding the first: The United States plainly had legitimate reasons for going to war, since the alternative was stark. It would have meant leaving in power a leader whom the U.N. had declared many times to be in violation of international order; an exceedingly cruel oppressor of his own people, and constant threat to his neighbors in a volatile region; and a potential source of anthrax and other deadly agents for al Qaeda and other terrorists of worldwide destructive ambitions.

23. See Alfred Stepan & Graeme B. Robertson, *An "Arab" More Than "Muslim" Electoral Gap*, J. DEMOCRACY, July 2003, at 30, 32 Non-Arab Muslim nations holding at least three consecutive successful elections are Albania, Bangladesh, Djibouti, the Gambia, Malaysia, Maldives, Mali, Niger, Nigeria, Pakistan, Senegal, and Turkey. *Id.*

It is true that some critics of the war judge the case of Saddam Hussein in isolation from the Islamicist terrorists just now mentioned. But the flocking of the latter to Iraq after Saddam's fall showed plainly the total concentration of the terrorist organizations on the United States as their number one enemy. As their own public declarations often insist, they see the United Nations, in the words of Bin Laden, as "a tool of crime" and an instrument for the "followers of the cross."²⁴ They *cannot* allow a moderate democratic alternative to succeed in an Arab Muslim state. For that would expose their claim to being the only alternative for Muslims as a ringingly hollow mockery.

The second type of legitimacy concerns which power is the rightful guardian of the security of Iraq and its transition to self-government. Does the mantle of legitimacy properly fall on the Coalition of the Willing, which is gradually growing in number as of early September, 2003, or the United Nations? Since France was, until the end of 2003, determined to block the second alternative, legitimacy necessarily rested with the first. This solution was probably in any case the more practical, since the U.N. is necessarily uncertain in its political principles and unsteady in the committee structure of its peacekeeping operations. Against determined terrorists, it would have been easily divided against itself and heavily outgunned. At the first attack upon its headquarters, in fact, it fled the field. Perhaps at some point, fortified by international commitments, it will return.

The third type of legitimacy concerns the form of government the Iraqi people are in the early stages of choosing for themselves. The United Nations in practice is neutral as between democracies and dictatorships as a form of government, since so many of its members exemplify the dictatorial principle. That is why the governance of the transitional process by the allies of the United States—which has a proven record of helping nations to become democracies—is probably for the best.²⁵

Of course, the project of self-government requires a certain "learning curve" in the arts of self-government and even in "the new science of politics" and its fundamental, original, and recurrent

24. Marshall, *supra* note 20.

25. It should be noted nonetheless, that U.N. Security Council Resolution 1483, recognized the U.S.-led coalition as the official occupying "Authority" at the helm of the reform and reconstruction of Iraq, in certain distinction to traditional notions under international humanitarian law of the duties of occupying forces. S.C. Res. 1483, U.N. SCOR, 58th sess., 4761st mtg. at 2, U.N. Doc. S/RES/1483 (2003).

principles. These are best learned through experience. But the project of self-government is also a fragile one, since it rests on the acquired understandings, habits, and free choices of its participants. In this case, their own particular form of self-government will have to be chosen by the Iraqis, practiced by the Iraqis, and made to work by the Iraqis. If steady progress is to get underway, they themselves must learn that the great danger of democracy is excessive talk, talk, talk about inessentials, to the neglect of the few basics that are truly necessary. Advisers can warn them about certain pitfalls, and show them a way through the practical difficulties of self-government. Advisors can also lay down certain parameters that will keep the project focused, on track, and moving forward. But the actual self-government can be exercised only by the Iraqis themselves.

This third type of legitimacy can be conferred on their experiment in self-government only by the Iraqis themselves. They must come up with a good, workable design of the three great powers of government—executive, legislative, and judicial—and a few other basic elements, such as religious liberty, paired with due recognition of what George Washington called the “indispensable” role of religion and morality to self-government.²⁶ My own hope is that they keep their constitution simple, clean, and short. There will be time enough in the future to flesh it out by practice and check-and-balance, if they get a few basics correct in the beginning. In any case, whatever success they have will belong to the Iraqis, as their own achievement, rooted in their own choices and deeds. The legitimacy of their government will spring from the living principle of “the consent of the governed,” which they will have publicly and visibly exercised.

26. See President George Washington, Farewell Address (Sept. 19, 1796), in WASHINGTON'S FAREWELL ADDRESS 1, 14 (1941).

Of all the dispositions and habits, which lead to political prosperity, Religion and Morality are indispensable supports. In vain would that man claim the tribute of Patriotism, who should labor to subvert these great pillars of human happiness, these firmest props of the duties of Men and Citizens. The mere Politician, equally with the pious man, ought to respect and to cherish them. A volume could not trace all their connections with private and public felicity. Let it simply be asked where is the security for property, for reputation, for life, if the sense of religious obligation *desert* the oaths which are the instruments of investigation in Courts of Justice?

And let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure—reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle.

The Creator who gave us life, if I may paraphrase Jefferson, gave us liberty at the same time. So there is reason to believe that the Creator delights in and blesses the practice of self-government. And there is reason for us to express our own wish in our own way: “May God bless Iraq!”

