September Eleventh, A Citizen's Responses (Continued).

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SEPTEMBER 11TH, A CITIZEN’S RESPONSES (CONTINUED)

George Anastaplo†

Introduction

This article is the law review sequel to a two-hundred page series of responses to the September 11th crisis published by me in the Oklahoma City University Law Review in 2004.¹ That collection includes thirteen essays commenting (directly or indirectly) on developments following upon the assaults in 2001 on New York City and Washington, D.C. Those essays (of 2001–2002) offered assessments of events as they developed, beginning with my talk on September 12, 2001. These thirteen essays were preceded in that series by three letters to the Federal Bureau of Investigation (on September 12, 13, and 17, 2001) and were followed by fifty-two letters to newspaper editors (from 1997–2003), and by three appendices providing background discussions.

A critical aspect of my periodic discussion of American responses to the September 11th challenge has been an awareness of how the United States has come to be regarded worldwide. It is obvious that considerable sympathy for Americans was at once evoked everywhere because of the shocking attacks in 2001.

Also obvious, however, has been a steady deterioration since then in the standing of the United States in the estimation of international public opinion. This is, in large part, it seems, because of the determinedly unilateralist manner in which we have conducted ourselves, especially with respect to Iraq. General Colin Powell, upon denouncing the harsh interrogations of terrorism-related prisoners that the Administration has insisted upon, observed, “The world is beginning to doubt the moral basis of our fight against terrorism.”² How we are regarded by others may affect the level and kind of cooperation that the United States can expect to secure from other peoples and their governments in the effort to anticipate the plots of “terrorists.” That ever more cooperation may be needed in the years ahead is suggested by an assessment, in a classified National Intelligence Estimate report completed in April 2006, that the American invasion and occupation of Iraq have helped spawn a new generation of Islamic radicals and that the overall terrorist threat has grown since the September 11th attacks.

It remains to be seen what lessons we have taught other peoples about the legitimacy of preemptive warfare, lessons that can be particularly ominous when

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¹ See George Anastaplo, September Eleventh, The ABC’s of a Citizen’s Responses, 29 OKLA. CITY U. L. REV. 165 (2004). The editors of the Loyola University Chicago International Law Review have added footnotes to this 2007 article indicating the dates when the original remarks were given and providing citations to materials referred to where appropriate.

² See Anne Plummer Flaherty, Panel Defies Bush on Terror Trials: 4 GOP Senators Back Measure President Vows to Block, CHI. SUN TIMES, Sept. 15, 2006, at A22.
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one or more of the parties involved in quarrels during the coming decades possess nuclear weapons. The extent to which effective international law depends on mutual respect and a shared “moral basis” is now being put to a grim test.

The perhaps unprecedented unpopularity these days of the United States as an actor on the world stage may seem inconsistent with the continuing efforts made by multitudes of foreigners to get into this country to work and to live. But the hostility that is now worldwide does seem to be directed primarily at our National Administration—and not only because of what it does abroad, but also because of how it routinely justifies itself (including the cavalier way it has dealt with the venerable writ of habeas corpus).

The thirteen essays published in 2004 recorded my periodic assessments of events through the first two years of the September 11th challenge. Subsequent assessments, of the third, fourth, and fifth years of the September 11th challenge, are collected here, along with general observations in 2005 about an unseemly fearfulness among us—assessments that see in our fearfulness with respect to “terrorism” too much of the European dread of witchcraft four centuries ago. This 2007 collection includes remarks made by me after the November 2006 Mid-term Congressional Elections.

A. The September 11th Challenge in Its Third Year: Lessons in Citizenship\(^3\)

Prologue

No one can accuse us of engaging in a mere “academic” exercise when we consider this morning, in Martin Marty’s seminar on religion and its consequences, the significance of the American people’s responses to the monstrous attacks of September 11th. This exercise is obviously in marked contrast to what we are doing in my parallel seminar this week on the Tao school of thought in ancient China.

Reinforcing the sense of the practical importance of our “September 11th” inquiry on this occasion is the recognition that Wisconsin is regarded as “a Battleground State” during the current Presidential election contest. My own State, Illinois, is not so regarded, which can mean that we, at least for the time being, may not approach these matters as seriously as you do up here.

The range of political interests and possibilities in Wisconsin is suggested by the recollection that the names of politicians as diverse in character and talent as the LaFollettes and Joseph McCarthy should be so prominent in this State’s history. The range of possibilities suggested by this juxtaposition of “iconic” figures can license the citizen who is not himself in public life to address issues in a way that might be difficult, if not even improper, for the practicing politician to deal with directly.

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\(^3\) These remarks, of August 18, 2004, were prepared for a seminar conducted by Martin E. Marty of the University of Chicago, at Lawrence University’s Björklunden Center in Door County, Wisconsin. The preliminary publication of these remarks was in GREEK STAR, Sept. 16, 2004, at 8.
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But whatever one’s station in the community, one should not attempt to deal with September 11th matters without recognizing that nothing one can say is likely to deal adequately with the profound sense of loss and with the enduring pain of those who lost loved ones in New York, Washington, and Pennsylvania on that fateful day three years ago.

I

It can be salutary to begin my remarks by adding something to what Professor Marty, in his examination this week of the use and abuse of religion, has said about that memorable Churchman, Pope John XXIII. It is reported that he was once asked, “How many people work at the Vatican?” His answer, “About half of them.”

His sense of humor probably contributed to the appeal he has long had for many, both in his Church and out. That appeal is reflected in what one can see upon visiting the crypt below St. Peter’s where the tombs of recent Popes may be found. For years now, the tomb of John XXIII has been apt to have more flowers and other signs of spontaneous public affection left on it than may be seen on all of the other nearby papal tombs combined.

There is suggested, by this Pope’s sense of humor, an openness to the humane that can reflect, in turn, one’s sense of proportion as a leader.

II

Three stories can help me prepare the ground for the assessment I have been asked to provide of the public response in the United States to the September 11th attacks.

The first of these stories takes us back to an encounter I had, more than thirty years ago, with Daniel Ellsberg of Pentagon Papers notoriety. We were on a Chicago television program during a recess in his trial for having distributed, to unauthorized recipients, sets of the massive Top Secret documents discussing the involvement of this country in the Vietnam War.

I ventured to suggest, on our program, that Mr. Ellsberg would never spend a night in jail because of what he had done. He was startled to hear what I had said, adding that his wife would be glad to hear such a prediction. He then wondered why his lawyers had never talked to him this way. That, I suggested, is because his lawyers were on the East and West Coasts. We here in the Midwest, I further explained, are much more moderate about such matters.

It is a thoroughgoing moderation that can be useful in thinking about our September 11th problems. (It turned out, by the way, that my encouraging prediction about Mr. Ellsberg’s fate proved to be correct.4)

4 See National Public Radio, Moral Aspects of Leaking Top Secret Government Documents (Radio broadcast Feb. 25, 2004) (indicating that criminal charges against Daniel Ellsberg were dismissed in 1973 due to government misconduct).
III

The second of my stories is about a talk I gave to law students in Chicago during the week immediately before the September 11th attacks. I lamented on that occasion the abysmal passivity of airline passengers that I had happened to observe (and even to challenge) on our flight, over the preceding Labor Day weekend, to the American Political Science Association Convention in San Francisco.

Of course, I did not anticipate the deadly hijackings that would take place a few days after my talk. But the murderous hijackers very much relied upon such passivity, something which they were effective in ruthlessly exploiting in three of the four flights they commandeered on September 11. It seems that the passengers on the fourth targeted flight were shocked enough out of their usual passivity, evidently because of what they had heard on their cell phones, to interfere substantially with what the hijackers were trying to do with their plane.

It is unfortunate for the hijackers that all of them were not similarly thwarted. After all, it soon became evident that the monstrous deeds of the hijackers were not truly in the long-term interests of their causes—nor, of course, in their natural interests as decent human beings.

IV

I have suggested, with my story about Daniel Ellsberg, how people with “liberal” inclinations could be led astray in their fears by Cold War passions. My third story, to which I now turn, suggests how people with “conservative” inclinations could also be led astray by Cold War passions.

Our family enjoyed, in 1960, a six-month, seventeen-thousand-mile camping trip by automobile across Europe, which included time for a fortnight in the Soviet Union. What we saw, in our drive from Minsk and Smolensk to Moscow and Leningrad (on our way over to Helsinki and thereafter to the Arctic Circle), made it obvious that the Russians were condemned, at least in their everyday lives, to a crippled economy. This placed a severe limit, in the long run, upon how many resources could be diverted by them to their military forces and to worldwide activities.

All this was dramatized for us by the chance loss, in Poland, of one of our two car keys. This led to our repeated efforts, in one Russian city after another, to have a duplicate made of our remaining key, something that could easily have been done in any five-and-ten-cents store in an American small town at that time. Our efforts were unsuccessful, however much the Intourist people we consulted tried to help us. Of course, if we had been permitted to visit a Russian missile base, something could probably have been done for us. But that would not have told us anything about the soundness of the civilian economy upon which the Russian military ultimately depended.

Misapprehensions about the strength, moral as well as material, of the Soviet Union and its supposed allies contributed to our determination to go to war in Vietnam, an ill-conceived intervention which cost us more than fifty thousand lives and which cost the Vietnamese perhaps as many as a million lives.
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V

Would we have prepared better for our Vietnamese deliberations if those making the decision had personally shared the costs? By and large, however, the influential families that supported that war did not consider themselves obliged to put their own sons at risk.

That is, family influence and clever manipulations of the system were used to permit the avoidance of combat service by those who were quite willing to have others conscripted to fight a dubious war. It would once have been taken for granted that young men willing to shift risks in this way to the less privileged, in a war they supported, should never thereafter be authorized to send other young men to war.

VI

Indeed, it would have once been considered shameless for such shirkers, years later, to have permitted their partisans to question publicly the patriotism of others who had been willing to put themselves at risk. It should be remembered here that our most recent ex-President also avoided wartime military service—but in a war that he did not want anyone conscripted for. (He of course exhibited, and suffered from, his own form of shamelessness.)

If the disparagement of another's war service, in our circumstances, can "safely" be done, on behalf of calculating shirkers in high offices, then we should face up to what this suggests about the debasement of public morale in this country.

VII

Has the shock of "September 11th" blunted our sensibilities here and elsewhere? This is suggested by the magnitude of the casualties we are willing to inflict on others, at relatively little cost in lives to ourselves. In this, we are in danger of imitating the September 11th organizers who were willing to sacrifice a score of their own people in order to kill thousands of ours.

We are properly troubled by the steady losses we have indeed suffered in Iraq since "Mission Accomplished" was proclaimed. But how should we regard our now-routine killing there of dozens, if not even of hundreds, of "them" (combatants and non-combatants alike) for every soldier we lose? Little if anything is said about this in our press or by responsible leaders among us.

And yet, such a lack of public concern for an appropriate proportionality makes it far harder for us to help ensure a sound world opinion about the "un-thinkability" of various spectacular misdeeds. It is upon a humane world opinion that we must depend in the long run, if we are to be reliably safe. To proceed otherwise is to reveal that we do not truly know what we are doing.
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VIII

Another symptom of the debasement of public morale in this country may be seen in the unseemly sense of vulnerability, at the hands of would-be “terrorists,” that we see promoted among ourselves.

This sense of vulnerability is reflected in, and is often intensified by, the wide-ranging measures taken by us to protect ourselves in these circumstances. Our measures include enormous expenditure that could be put to far better uses by a community properly informed as to what is likely to enhance an enduring security.

IX

None of us would want to deny the dreadfulness of the deliberate September 11th assaults which did cost four thousand lives. But we should not permit ourselves to forget the “killings” among us that we have long permitted annually, on a much grander scale, the “killings” for which the ingenious purveyors of alcohol, of tobacco, of ever more lethal automobiles, of guns, and of narcotics are in large part responsible.

It should be evident that a small fraction of the resources devoted to Homeland Security, if used instead for routine health and safety measures, would save many more than four thousand lives annually in the United States. An informed hard-headedness, on the part of the community at large, is called for here. Also called for is a sober recognition of the fact that we are indeed mortal, no matter what may be done on our behalf by our most conscientious public servants.

Too much of our response to the September 11th challenge has both drawn upon and promoted an unbecoming sentimentality. Where among us have been the public men and women who have tried to remind us of what we have long known about “the human condition”? The proper stories remain to be told here, thereby putting who and where we are in the proper context. The distortion, if not even the corruption, of our inherited religious sensibilities may be seen in how we speak of ourselves these days.

X

Much of what has been done among us in response to the September 11th assaults reflects a lack of serious thought. It is still not generally recognized, for example, how much of a fluke the “success” of the September 11th operations were. (This is aside from the significance of our earlier failure to secure airliner cockpits from takeover by passengers, something which had evidently been warned against well before September 2001. Such takeovers of cockpits can be reliably prevented at relatively little cost hereafter, however difficult, if not impossible, it will always be to keep airliners from being knocked out of the sky.)

A former student of mine has become an internationally-recognized expert on arms-control. He and I have argued, for more than a decade now, about the usefulness, in our circumstances, of our proposed Missile Shield Program. That is, I have long believed that the available resources here are much better used in
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programs to head off attacks by way of “suitcase” nuclear weapons, of bacteriological releases, and of chemical and radioactive discharges.

An imaginative use of our resources is called for here as elsewhere. A healthy response to the risks we face and the losses we may suffer depends, in part, upon our informed awareness of our limitations both as human beings and as communities. It should not be forgotten, for example, how modest the preparations were that culminated in the dreadful Oklahoma City bombing a decade ago.

XI

The informed hardheadedness called for in these matters is made less likely when there is irresponsible political exploitation of our sense of vulnerability, an exploitation that it is up to an informed citizenry to curtail. Matters are made even worse when our government insists upon foreign policy initiatives that are likely to sacrifice the longstanding goodwill of people everywhere toward the United States.

Even the most powerful nations rely, for their continuing security and prosperity, upon the promotion generally of reliable opinions about what is unthinkable. For example, it hardly helps, in the proper efforts worldwide to contain nuclear-warfare risks, for us to announce that we propose to develop a new generation of specialized nuclear weapons. Our seriousness, as well as our good faith, can be called into question by these antics.

XII

Such antics can even seem bizarre when it is noticed how we have conducted ourselves toward the apparently insane North Korean tyranny during the past three years.

For some time we insisted, without sufficient reliable evidence, that Iraq had Weapons of Mass Destruction that immediately threatened our security. At the same time, and down to this day, we have insisted that we need not take anywhere near as seriously the threats posed to regional peace by the desperate North Korean regime.

Thus, nothing that the Iraqi tyrants might say or do could assure us, while nothing that the North Korean tyrants might do or say could alarm us, even when they seem to be trying to develop nuclear weapons.

One can be moved to wonder sometimes whether there are any “grown-ups” in charge of our affairs.

XIII

We can also be moved to wonder, when we encounter hostile measures directed against us, “Why do they hate us?”

Part of the answer (at times, most if not all of the answer) lies in the limitations and delusions that “they” suffer from. But part of the answer does depend

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at times on what we are—on our virtues and accomplishments as well as on our vices and failures (including mistaken foreign policy initiatives).

Among the grievances of the September 11th organizers is said to have been the resentment among them that there should be infidel military personnel stationed on the sacred soil of Saudi Arabia (We can be reminded here of the religious passions that Professor Marty has been examining this week). After the First Gulf War, I myself argued that we should insist that Saudi Arabia and Kuwait prepare to defend themselves against future regional threats. After all, their human and material resources do match those of any likely aggressor.

Even so, we should be cautious about reliance on simplistic diagnoses. No doubt, the intrusion by us in Saudi Arabia has become more intense during the past decade—but it is not as new as it sometimes seems to be made out to be. Indeed, the last airbase at which I personally was stationed, at the end of the Second World War, did happen to be at Dhahran, Saudi Arabia. I particularly recall both the intense daytime heat, even in winter, and the remarkable pastries conjured up for the officers' mess by our amiable Italian prisoners of war.

Epilogue

Thus, in small matters as well as in large, “the world” has changed far less than some among us sometimes “like” to believe.

It should not be forgotten that we, a nation of more than a quarter of a billion people (compared to the mere one hundred and thirty million of my youth), remain the most powerful military and economic power in the known history of the earth. We are at our most powerful when we use our strength sensibly—and are generally perceived to do so.

Those of us who have been studying in my own seminar this week the Tao school of thought have come to appreciate how difficult, if not virtually impossible, it can be for us in the West to understand a country such as China. Much the same, we are learning, can be said about “countries” such as Iraq.

However all this may be, we cannot reasonably assess and deal with others properly if we do not know ourselves. I have, on this occasion here in Wisconsin, touched upon the articles of faith that we, as a self-governing people, should take into account, especially as we confront (and not only during election years) official and mass media manipulations of our hopes and fears.

In short, we are not destined to remain a self-governing community if we are not as well a self-respecting people, a condition which should be significantly promoted by disciplined religious sensibilities that have stood the test of time.
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B. The September 11th Challenge in Its Fourth Year: What Are the Long-Term Risks?\(^6\)

I

We have now completed the fourth year of our responses to the monstrous attacks upon American targets on September 11, 2001.

Those responses by the United States began with the campaign in Afghanistan against the Taliban regime which was identified as the harborer of the al Qaeda organization evidently responsible for the September 11th atrocities. Once nominal control of Afghanistan was secured by us, the attention of Washington shifted to Iraq, a regime that Administration strategists had evidently been concerned about well before September 11th.\(^7\)

The American campaign against the Saddam Hussein regime began mostly with charges about the illicit development there of Weapons of Mass Destruction and ended with an invasion of Iraq that quickly toppled its rulers. This campaign, sometimes disparaged by critics as a “War of Choice,” was largely a unilateral initiative by the United States, with the United Nations not relied upon for support, however many United Nations resolutions were invoked in justifying an armed intervention by the Coalition directed by the United States.

Some complaints have been heard about the Iraqi campaign being a costly diversion from the challenges in Afghanistan and of “the War on Terror.” Certainly, the Iraqi Intervention has, during the past two years, required the bulk of our overseas military resources in our effort to show the people of the Middle East the workings and advantages of democratic regimes. Supporters of the current Administration in Washington explain that the sacrifices now being made by Americans will contribute significantly to the civilizing of regimes everywhere, thereby helping to make life safer for the United States, even as it serves the cause of justice worldwide. Whatever the debate may be as to whether the regime of Saddam Hussein had anything to do with the September 11th attacks, there can be no serious debate as to whether that now-defunct regime had long been barbaric.

II

Critics of the Administration, on the other hand, insist that the United States is now “bogged down” in Iraq, unable to suppress what seems to be a growing insurgency, with ominous prospects of a dreadful civil war when, if not even before, we are finally obliged to leave. Such critics are particularly distressed by what they consider the remarkable incompetence of the Administration in preparing for and thereafter in conducting the Occupation of Iraq.

\(^6\) These remarks, of September 19, 2005, were prepared for a conference on Law and the Iraq Intervention held at the Loyola University Chicago School of Law, Chicago, Illinois. The preliminary publication of these remarks was in GREEK STAR, Nov. 24, 2005, at 3.

\(^7\) See, e.g., Glenn Kessler, U.S. Decision on Iraq Has Puzzling Past, WASH. POST, Jan. 12, 2003 at A01.
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The continued vulnerability of American personnel in Iraq troubles everyone on the Home Front, especially as even the critics of the Administration have no obviously workable solutions for the problems we now face in that “country.” Both staying and leaving are seen as highly questionable courses of action for the United States.

Unfavorable judgments about the competence and reliability of the current Administration in Washington have been intensified by how the Hurricane Katrina disasters in this country have been dealt with by federal emergency authorities. The President has been portrayed as out of touch with “reality,” so much so (it is said) that far less than half of the public support his handling of the current American-led Coalition effort in Iraq. It is even asked whether all this had been “bound to happen” because of the personal interests, the intellectual presuppositions, and the ideological orientation of the most influential figures in the Administration. Particularly puzzling to some is the impression that the country is not being asked to make sacrifices (such as increased taxes) despite the troubles being endured at home as well as abroad.

But it should be noticed that the puzzles here are not only American. After all, the Tony Blair Administration in Great Britain, now facing terrorist attacks on its own soil, has long seemed to be an enthusiastic supporter of the Bush Administration in its determination both to topple Saddam Hussein and to democratize Iraq and its neighbors.

III

The immediate prospects in Iraq are uncertain—and solutions for the problems faced there remain highly debatable. This debate is affected somewhat by the doubts that continue to exist as to whether Saddam Hussein ever posed a substantial threat to the United States. Some argue, indeed, that more anti-American “terrorists” have been produced by our Iraqi Intervention than ever existed in the entire Middle East before.

Somehow or other, of course, the United States will weather this storm. But the truly grave risk is that our Iraqi experience, reinforced by our Vietnamese and Somali experiences, will make Americans hereafter far less likely than they perhaps should be to undertake military missions on behalf of liberty and justice. Thus, genocidal campaigns, which are a disgrace for mankind to permit, may continue to run unchecked by the world community.

IV

At the heart of our own needs in the years ahead is a robust world opinion. The Declaration of Independence, it should be remembered, could speak of a duty to respect “the Opinions of Mankind.” But the impression was left, by the way the United States went to war in Iraq this time around, that we really did not care much what world opinion was on this occasion.

Fundamental to all this may be our understanding of what law, domestic as well as international, depends upon. Law does not depend, as some legal realists
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among us argue, only upon an exercise of power.\(^8\) This is an argument critical, for example, to the justification for the dubious ruling in 1938 by the United States Supreme Court in *Erie Railroad Co. v. Tompkins*.\(^9\) (Consider, also, Thrasymachus' position in the first book of Plato's *Republic*.)

Particularly ominous can be our Government's apparent willingness to circumvent the law, whether domestic law or international law, in order to promote its policies. Thus, an American citizen, born in New York and arrested in Chicago, has been held for years as "an enemy combatant" without any charges or trial. Lawyers who see this kind of detention permitted by our courts might well wonder what has become of habeas corpus, that ancient guarantee which could once be spoken of by Judge Blackstone as "a second Magna Carta."\(^10\)

Be all this as it may, one consequence of the unilateralism exhibited by the United States in Iraq seems to have been not only to generate more "Islamic terrorists" but also to encourage questionable regimes to develop nuclear weapons in order to discourage American interventions. Thus, it can be said, the Iraqi campaign may have made the United States and its Coalition members even more vulnerable than they might otherwise have been.

V

We have seen before, in this country, the risks run whenever high-minded military measures come to be suspected. A conscientious citizen body can be made more cautious than is good either for the country or for humanity.

This may especially be seen in the run-up, in 1939–1941, to the American entrance into the Second World War. Critics of President Roosevelt's efforts to sustain Great Britain against the Nazi regime were quite effective for some time.

Particularly instructive for me, because of my longtime admiration for the educator who dominated my college days, is the January 1941 speech for neutrality by Robert M. Hutchins, the two-decades-long President of the University of Chicago. He was, I venture to say, simply wrongheaded in the counsel that he gave the country in 1940–1941, counsel which did not sufficiently appreciate what the survival of Great Britain meant not only to us, but also to decent regimes worldwide. His counsel found much, if not most, of the Country quite sympathetic at that time to an isolationist stance by the United States.

VI

How, we may well wonder, did someone as intelligent, well-informed, and sophisticated as Mr. Hutchins get to be as wrongheaded as I believe he was about

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\(^9\) Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938).

the threat posed even to the United States by the Nazis in 1941? (It should be added, on Mr. Hutchins's behalf, that he was more receptive to giving refuge in this country to the victims of Nazi persecution than were many of his fellow-citizens. It should also be added that, once the war started for us, Mr. Hutchins made available facilities at the University of Chicago that were important for the awesome development of the atomic bomb.)

It is sometimes said that the Second World War was made more likely because of America's refusal to join the League of Nations. That is, it is said, we should have listened to Woodrow Wilson in his campaign for the League of Nations.

But, it can also be said, this country had been too receptive to the Wilsonian rhetoric that contributed substantially to American entry into the First World War—and it was not long after that war that a profound disillusionment with foreign interventions set in not only in the United States, but also in much of Europe. (It has been noticed, by the way, that there is something Wilsonian, for both good and ill, in our current campaign to democratize the Middle East.)

Critical to the anti-war opinion in much of Europe and in the United States in the 1930s was the disaster that the First World War turned into. It did not take long for sensible people everywhere to recognize that that war had been a dreadful folly which almost destroyed European civilization and which opened the way to power for such tyrants as Stalin and Hitler.

The First World War was so dreadful, in fact, that it evidently made decent people everywhere in the Western World much more reluctant than they should have been to gear up for another major war in the 1930s.

VII

It remains to be seen, therefore, whether our current Iraqi Intervention will eventually come to be regarded as our First World War and Vietnamese Interventions have been. If that happens, salutary military interventions by the United States during the coming decades may be much harder to promote than they should be.

It also remains to be seen whether Israel comes to be held partly responsible in this country, as it already seems to be in parts of Western Europe, for the way we have conducted ourselves in the Middle East. Some will probably be inclined to believe so if it should become harder and harder to understand why we conducted ourselves there as we have. But it remains in our interest, as well as in the interest of humanity generally, that Israel continue to be regarded by us as a decent regime, even as a refreshing garden in that desert which is much of the Middle East today.

The United States, if it is to thrive in the face of "terrorist" threats, needs the goodwill and the informed and informing cooperation of peoples worldwide. Particularly useful, for encouraging others to help us when and how they can, is a steady display both of restraint and of confidence in facing the threats we do. (I venture to mention, in passing, that we should be confident enough to treat oil as another commodity on the world market, a vital commodity to be imported by us just as essential food and medicines are imported by other countries.)
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A sense of proportion, in these matters, should help us respond with an in-
formed confidence to terrorism and to threats of terrorism. After all, it is hardly
likely that even the most devilish terrorists will ever be able to visit upon us the
devastation that hurricanes, floods, and earthquakes can. After all, also, it is sen-
sible to remind ourselves that we are mortal, which means that if one thing does
not “get us,” something else certainly will.

C. The Unseemly Fearfulness of Our Time

I

A proper caution, particularly in the form of defensive measures, is to be en-
couraged in our affairs. We do tend to be enough aware of our mortality to take
precautions. Recklessness is certainly to be avoided.

There is provided in my 1971 treatise, The Constitutionalist, a detailed exami-
nation of principles vital to the American regime. The sources and applications
of such principles are examined. Those principles, especially with respect to the
First Amendment guarantee of “freedom of speech [and] of the press,” seemed to
be undermined because of desperate Cold War concerns in recent decades.

The apprehensiveness exhibited at times was hardly edifying. This is not to
deny the ferociousness of Stalinist regimes, in Russia and elsewhere, but there
were better and worse ways of responding to such threats. Particularly troubling
were the measures resorted to in this country that tended to make sensible re-
sponses less likely.

II

Our sometimes crippling Cold War responses went back, for important doctrinal
justification, to Justice Oliver W. Holmes’ ill-conceived opinion in 1919 for the
U.S. Supreme Court in Schenck v. United States. His talk in Schenck about
such things as a “clear and present danger” was brought to bear on efforts to
justify the suppression during the Cold War of “conspiracies” and “subversion.”
Since September 11, 2001, the campaign against “terrorism” and “Islamic fasci-
cism” has sometimes looked for inspiration and authority to Cold War measures.

However misconceived some of our Cold War measures were, they at least
had in the Soviet Union a formidable adversary, or at least a potential adversary,
to contend with. An anticipation of our current misconceptions is indicated in
my first prepared remarks in response to the monstrous attacks of September

11 These remarks, of November 10, 2005, were prepared for an Author Event presented by the
Seminary Cooperative Bookstore, Chicago, Illinois. The event was on the occasion of the publication, in
an enhanced edition, of George Anastaplo, The Constitutionalist: Notes on the First Amendment (Lexington
Books 2005).

12 George Anastaplo, The Constitutionalist: Notes on the First Amendment (Lexington
Books 2005).


14 Id. at 52.
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11th. Those remarks, of September 12th, addressed to a law school audience, were entitled, “A Second Pearl Harbor? Let’s Be Serious.”

It was already evident that day, it seemed to me, that the worst damage we would suffer in the months and years ahead would be self-inflicted. That has certainly been true of the economic reversals endured by us. Even more serious has been our moral, or spiritual, damage, illustrated by the campaign led in 2005 by the Vice President of the United States to block Congressional efforts to forbid American use (directly or by proxies) of torture, those restraining efforts led in Congress by a Senator who had himself been tortured for several years by the North Vietnamese.

III

It was obvious, in September 2001, that any regime that had permitted the development of the September 11th plot would have to go. It probably would have been prudent to regard the resulting campaign in Afghanistan as primarily a police action. This would have served as a sufficient warning to any regime anywhere which might harbor criminal activities aimed at the United States.

Our anti-drugs campaigns in South America should remind us of the limits of “nation-building” even by a great power. The obstacles in Afghanistan are even more formidable, something that can be testified to by both the British and the Russians after their experiences in that land during the past two centuries. Even so, American casualties in Afghanistan have been far less than those in Iraq.

The longer we stay and suffer in Iraq, the harder it is to justify our Intervention. The most that can be said for this enterprise is that it began as a sincere invocation of Wilsonian idealism against a bloodthirsty tyrant. But as a defensive measure on behalf of the United States, it has been a dubious undertaking, not least because Iraq seems to have been turned (with our help) into a remarkably productive breeding ground for suicidal “terrorists.”

IV

Of course, if Iraq had truly been as powerful as we sometimes made it out to be, we would never have invaded it. Our different responses to Iraq and to North Korea (which is sometimes believed to possess nuclear weapons) instruct vulnerable regimes worldwide as to the safety that may come with any publicized acquisition of nuclear weapons. This is a lesson that the Iranians seem to have taken to heart, along with what they see as an opportunity, because of the American Intervention in Iraq, to ally themselves as Shiites with the prospective Shiite regime in that country.

The costs for the United States of the Iraqi Intervention continue to mount. It soon required far more in lives, resources, and worldwide respect than was anticipated. Nor is it edifying to see the domestic apprehensiveness displayed by citizens of the most powerful nation in the history of the world.

Such assessments do not excuse those, sick of soul, who planned and executed the September 11th attacks, no matter what grievances they believed themselves to have had against the United States. However crafty these attackers may have
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been, they did not seem to recognize how much they would undermine the standing of their cause among civilized peoples everywhere. Also, there may even be survivors of the Taliban government in Afghanistan who recall warnings that must have been given by some among them against allowing preparations on their soil for a sneak attack on the United States.

V

Our primary concern in these matters should be with what has happened among citizens of the United States. It has been far from becoming to have the remarkably costly silliness we have seen in the measures devoted to domestic security, measures that have sometimes been advocated with the use of a strategy that seems to include the manipulation of scare tactics by those in authority. Comfortable Americans have been encouraged to recognize their mortality in a particularly corrosive manner.

We can be reminded, upon surveying these matters, of the limits of any political regime, no matter how well-ordered it may be. Thus, I have argued, in the concluding chapter of The Constitutionalist, that the dismal Cave depicted in Book VII of Plato's Republic could be taken to represent even "the best regime" (ruled by philosophers) described by Socrates in that dialogue. That is, critical to the limitations of any regime is the awareness that people generally do have of their mortality, something which can make them apprehensive about anything that seems to threaten their comfort, to say nothing of their very existence.

Even so, there are better and worse ways of responding to the dangers that we are likely to encounter. Certainly, it is unbecoming to be as intimidated as we sometimes appear to be, and as we are all too often stimulated to be, by the plots of evil men. Clear thinking is the key to being able to recover from our mistakes and to keep to a minimum our inevitable vulnerability as human beings.

VI

The analysis provided in The Constitutionalist of Cold War delusions can help us assess what is being said and done these days. It is curious to see that some of the people who were deceived by our Vietnamese delusions have lived long enough to be taken in as well by rhetoric conjured up for the current Iraqi Intervention. Unless one is a pacifist, a position that is very difficult to maintain in all circumstances, one must be discriminating in how one responds to calls for armed intervention by the United States.

Even when such intervention seems justified, or at least justifiable, there can be, as in Korea in 1950, better and worse ways to conduct the necessary operations. On the other hand, passivity in the face of extreme provocation can be demoralizing, as happened when American diplomatic personnel were held for months as hostages by "revolutionaries" in Teheran. It would probably have been more prudent, for the long run, if an ultimatum backed up by the prospects of discriminating aerial bombardment had been issued by the United States gov-

15 Anastaplo, supra note 12, at 278.
ernment, even if that course of action put at even greater risk the lives of the hostages themselves, as well as the lives of innocent Iranians.

Miscalculations of risks can make a people less equipped than they could otherwise be to deal with the serious challenges they do face. For example, it should have been apparent, to any visitor to the Soviet Union in the 1960s, how weak that country was, a recognition that should have encouraged us to be more sensible in preparing properly for how to deal with that country (with its vast store of nuclear bombs and other weapons of mass destruction) once its regime collapsed. The surprising thing about the Soviet Union was not that it collapsed when it did, but rather that it somehow managed to survive as long as it did.

VII

It is not generally appreciated how much of a fluke the September 11th “successes” were. Any number of things could have gone “wrong,” especially with so many people involved in the plot. It was particularly remarkable that dozens of conspirators should have been able to keep their rather complicated plans and activities so secret for years, suggesting thereby the ethnic, ideological, and other ties among them.

All of their plotting on that occasion depended on the expectation that they could secure ready access to airliner cockpits, where they could convert airplanes into manned missiles. Once airliner cockpits were substantially secured against such takeovers by anyone using primitive weaponry, it was no longer possible to plan as the September 11th perpetrators had done. This means, among other things, that most, if not all, of the vast resources devoted to commercial airport security in this country could be directed to far better uses, such as the detection of so-called “suitcase dirty bombs” and the like.

Thus, a major concern among us should not be with the safety of commercial airliners, however sobering it can be to have one or more of them destroyed by explosives smuggled on board or by primitive missiles fired from the ground. The costs of reducing completely, or almost completely, all the risks that may chance to threaten us, are too great to be sensible. Here, as with many of our stupendous Cold War expenditures and as with the considerable Iraq Intervention costs, much better uses can be made of our resources, uses which would truly strengthen us at home and which should earn us a useful respect abroad.

VIII

A recognition of an inevitable vulnerability can be salutary, a vulnerability that accompanies human life itself and that may be deepened by the kind of life we much prefer to have. After all, one man, acting alone, with, say, a rented truck filled with readily available fertilizer, can easily kill several hundred people. After all, also, natural catastrophes can suddenly kill tens of thousands of people far less equipped than we are to respond with restorative measures whenever we are afflicted.

In short, it is worth repeating that what is needed by us is a Sense of Proportion in assessing and responding to the dreadful things we are likely to encounter
from time to time. Of course, such losses can seem even more threatening (as well as offensive) when deliberately done to us by other human beings. But that is no reason for serving the purposes of evil men by crippling ourselves, in an even more destructive manner, by how we respond to the wickedness we encounter.

The best defense, in the long run, is an informed awareness of our own virtue, an awareness that is not paralyzed in its effectiveness by an unbecoming fearfulness. That the United States is still able, despite all its shortcomings, to attract the rest of mankind is testified to by the efforts that have to be made by us to keep out hordes of illegal immigrants. A properly informed, self-confident people can be particularly effective in exposing, by precept and by example, the wickedness and woeful ignorance that have to be reckoned with all over the world.

IX

It can be instructive to recall from time to time how the People of the United States allowed themselves to be misdirected and misused as they were during the Cold War. But it is also instructive to notice a critical difference “this time around”—and that is the fact that the freedom to discuss and criticize governmental measures remains substantially unabridged, except perhaps for some people in this country identifiable as Middle Easterners. Vigorous criticisms can be, and are, leveled against all aspects of the way we went to war in Iraq and of how that Intervention and the subsequent Occupation have been conducted.

These criticisms can include observations about the scandalous unwillingness of “the elites” who have taken us to war to devote either their sons or much of their treasure to the current campaign. Criticisms at this time can even include reminders of how some of our most “hawkish” leaders today were able to avoid combat service during the Vietnam War, a dubious war that they and their families were in favor of only if other people’s sons were conscripted to fight it. So long as such, and even more serious, criticisms can be made, the deeply-rooted good sense of the American people can eventually be expected to assert itself properly in assessing what is being done and why.

It is this type of good sense that can consider properly how human mortality is to be understood. This consideration both encourages and permits us to identify what kind of life is truly worth having and how it might best be secured. It is thus, with a minimum of unbecoming fearfulness, that we can put to the best possible use our natural desire for genuine self-preservation.
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D. The September 11th Challenge in Its Fifth Year: Does Anyone Have a Plan?16

I

The fifth-year anniversary of the September 11th challenge found the People of the United States in a troubled state of mind. The dire predictions of those who had counseled against our 2003 Iraqi Intervention seemed to be coming true.

Those who had counseled against the Intervention as planned were, for the most part, in two camps. Some had argued against any Intervention at all; others had argued that, if an Intervention was undertaken, it would need three or four times more military personnel devoted to it than had been planned.

Conditions in Iraq, at the five-year mark, do seem to be getting worse, or at least our accomplishments there are easily lost sight of because of the frightful daily slaughter by and of civilians. At the same time, it seems that the original successes against al Qaeda and the Taliban in Afghanistan have been steadily undermined, perhaps because so much of our attention and effort has been diverted to Iraq.

Indicative of how troublesome Afghanistan, an always-restive region, has become are the reports that heroin production there (for the world market) has now reached record proportions, perhaps as much as 90% of the world’s total production.17 This is at a time when the United States continues to prosecute, particularly in South America, its “War on Drugs.”

II

It now seems to be widely believed that our Administration, in conducting its “War on Terror,” has been remarkably incompetent. This assessment is heard again and again, especially from critics of how the Occupation of Iraq has been conducted.

The overwhelming military power of the United States could be seen at work in the early stages of our operations both in Afghanistan and in Iraq. But it now seems that the Administration should not have been as disdainful, as it once appeared to be, of the cautions voiced by widely recognized experts familiar with both the Middle East and Afghanistan.

Particularly difficult to deal with, it seems, is the ferocity, even the obscene savagery, with which Iraqi factions are going at one another these days. It is now open to debate how much the fierce passions exhibited daily in that “country” preceded the decades-long atrocities of the Saddam Hussein regime.

Of course, it remains to be seen whether Iraq should continue to be regarded as a single country. It must be apparent to the Kurds in that association that they now have the best opportunity they may ever have to take charge of their own

16 These remarks, of September 11, 2006, were prepared for a meeting at the Loyola School of Law, Chicago, Illinois. The preliminary publication of these remarks was in Greek Star, Oct. 19, 2006, at 8.

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affairs after centuries of oppressive treatment by Iraqi Arabs, whether Sunni or Shiite.

III

It now seems to be generally recognized that the threats to the United States perceived before the invasion of Iraq were remarkably exaggerated by our Administration. The only substantial debate here seems to be as to whether or not those grievous misconceptions were knowingly promulgated by our leaders.

Thus, the issue of competence takes various forms. But the competence issue affected our country in an unexpected way a year ago when it became obvious, for all to see, that the National Administration could not deal reliably with the massive challenges posed by Hurricane Katrina.

That is, the Administration suffered considerably from the general public perception that it simply could not see what “everyone else” in the country (and indeed worldwide) could see of what was happening on our Gulf Coast. This perception strengthened the hand of those who had been insisting all along that the Administration could not begin to grasp adequately what was happening halfway around the world in Iraq and Afghanistan.

“Katrina” did for the Bush Administration what “Monica” had done for the Clinton Administration. Credibility and trust, among the public at large, were severely damaged.

IV

The damage here was compounded by the clumsy way that the Israeli incursion into Lebanon during the summer of 2006 was handled by our State Department. My Letter to Editors, of August 21, 2006 (reproduced here in its entirety) commented on this matter:

We hear of an agonizing reappraisal, among Israelis these days, of how and why their government conducted itself as it did during its recent Lebanese intervention. Critical to such a reappraisal should be an examination of why the Israeli government relied as much as it evidently did on the American government in proceeding as it did in Lebanon. Why could not the Israeli government see that it should, in dealing with Arabs, use with considerable caution any military or political advice from a government that has repeatedly shown itself so woefully incompetent in Iraq?

Thus, a series of misadventures, both at home and abroad, has evidently created public unease with respect to the Bush Administration, however ineffectual its political opponents have themselves sometimes seemed to be. But it is not generally appreciated that still another misstep by the Bush Administration, in full public view, may have been critical to its remarkable decline in public esteem.

That misstep was the attempt by our President, with his allies in Congress, to exploit the pathetic Terri Schiavo issue in March 2005. This fiasco culminated in “the midnight flight” of the President from Texas to Washington in order to sign
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a bill that had been conjured up in Congress, thereby displaying to the country at large how far shameless ideologues could go for an apparent political advantage, no matter who might be hurt in the process.

That is, people generally seemed to sense that someone who had been diagnosed as in an irreversible vegetative state for more than a decade should not be exploited in this way for what seemed to be political gain. It did not help the Administration and its political allies when an autopsy, shortly thereafter, confirmed how badly damaged the brain of that exploited woman had long been.

V

In the summer of 2006 the homicide rate in the Iraqi civil strife hit three thousand a month, reminding us of the number that had been slaughtered at the World Trade Center in September 2001. This current carnage, it should be remembered, is in a “country” one-tenth the size of the United States in population.

Something does seem to have gone dreadfully wrong in what we, not without some altruistic yearnings, have undertaken to do in Iraq. And yet the Vice President of the United States could say about our Iraqi Intervention, during a September 10, 2006 television interview, "If we had to do it over again, we'd do exactly the same thing."18

Perhaps this insistence by the Vice President, who is known to have been a vigorous advocate for the Iraqi Intervention, is supposed to be a commendable display of determination and confidence. But it can appear instead to be a childish insistence, suggesting to an exasperated public that "they still don't 'get it.'"

It remains to be seen how the emerging challenge of Iran in the Middle East is to be dealt with. It does seem likely that the principal immediate beneficiary of our Iraqi Intervention will be the Shiite Iranian regime, which is now likely to have another Shiite regime as a neighbor in Iraq, something that the democratically-minded opponents to the dictatorial Ayatollahs in Iran will have to contend with.

VI

It also remains to be seen how effectively we can redirect the tremendous resources devoted to Homeland Security in this country. We can be reminded of our misapprehensions here by the efforts we have already devoted to air-travel security.

It should be noticed that the alleged anti-airliners plot exposed by the British during the summer of 2006 was not detected by elaborate airport security measures. Rather, Intelligence efforts (that is, old-fashioned police work) seem to have been relied upon.

All this should make us wonder whether it has been a mistake to believe that the September 11th attacks call for a “War on Terror,” rather than for enhanced police work, reinforced by ever more international cooperation. Intelligence ef-

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forts are far more likely to be productive, with far less public apprehensiveness stimulated, than much of what we are doing now, at airports and elsewhere (so long as airliner cockpits are indeed secured against takeovers that can convert airliners into manned missiles).

Far more important than our efforts to make air travel safer (while forty thousand people continue to be killed annually on our highways) is the need to guard against the equivalent of "suitcase dirty bombs." In short, hardheadedness is needed in assessing risks and allocating resources.

VII

Systematic reassessments of what we are doing in response to the September 11th atrocities are not likely to be developed, in our circumstances, until Congress resumes its proper supervisory powers. This has perhaps begun with the concern expressed recently by Members, including a few leading Republican Senators, about the Administration’s seeming eagerness to continue to torture "enemy combatants."

Here, as elsewhere, a greater “Respect for the Opinions of Mankind” needs to be exhibited by us. This can be particularly important both in discouraging the bloodminded and in exposing criminal “terror” plots.

A properly-guided world opinion can contribute significantly to the development of a salutary understanding as to what simply should not be done. It is such an understanding that an effective system of international law depends upon to do what it, and only it, can do to make the world safer for civilized conduct.

Critical to all these developments, including a useful assessment of what we as a nation have been saying and doing, is a reliance upon a proper sense of proportion. Only then are we likely to conduct ourselves, both in word and in deed, like the most powerful nation in the history of the human race.

E. Iraq and the 2006 Mid-term Congressional Elections

We observed yesterday the culmination of the Mid-term Congressional Elections campaigns that came to be regarded as a nationwide referendum on how the Republican Party, both in the National Administration and in the Congress, has handled our affairs, especially with respect to Iraq. Attempts had been made by Republican leaders both to dramatize further “the War on Global Terrorism” (with an emphasis on a concern for domestic security) and to extol the achievements of the Administration’s economic policies. But Iraq has dominated the news in recent months, especially with steady reports from Baghdad about the daily wholesale murders (dozens at a time) of ferociously tortured Iraqi civilians, regularly punctuated by assaults on American military personnel. Nor did it help

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19 These remarks, of November 8, 2006, were prepared for an Author Event presented by the Seminary Cooperative Bookstore, Chicago, Illinois. This was on the occasion of the publication of George Anastaplo, Reflections on Constitutional Law (University Press of Kentucky 2006). The preliminary publication of these remarks was in GREEK STAR, Oct. 19, 2006, at 8.
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Republican candidates to have reports out of Afghanistan these days which suggest that the original 2001–2002 achievements there by the United States, directly in response to the September 11th assaults, seem to have been sacrificed to the determination of our Administration to devote the bulk of our military efforts abroad since 2003 to Iraq, a decision which some analysts have called the greatest strategic blunder in American history. (I suggest, in passing, that it can seem odd to hear an Administration tout itself as superior to its political opponents on “domestic security against terrorists” when it was on its watch that the infamous September 11th attacks took place.)

President Bush, in the opening statement for his news conference of October 25, 2006, assessed in this fashion the current situation in Iraq:

The events of the past month have been a serious concern to me and a serious concern to the American people. . . . The enemy we face in Iraq has evolved over the past three years. After the fall of Saddam Hussein, a sophisticated and violent insurgency took root. . . . We learned some key lessons from that early phase in the war. We saw how quickly Al Qaeda and other extremist groups would come to Iraq to fight and try to drive us out. We overestimated the capability of the civil service in Iraq to continue to provide essential services to the Iraqi people. We did not expect the Iraqi Army, including the Republican Guard, to melt away in the way that it did in the face of advancing Coalition forces.20

Even so, the President singled out accomplishments that (he said) portend well for the future of our efforts in Iraq, continuing his news conference remarks in this way:

Despite these early setbacks, some very important progress was made in the midst of an incredibly violent period. Iraqis formed an interim government that assumed sovereignty. The people elected a transitional government, drafted and adopted the most progressive democratic constitution in the Arab world, braved the car bombs and assassins to choose a permanent government under that constitution, and slowly began to build a capable national army. Al Qaeda and insurgents were unable to stop this program. . . . In an intercepted letter to Osama bin Laden, the terrorist Zarqawi laid out his strategy to drag Iraq’s Shia population into a sectarian war. . . . The cycle of violence in which Al Qaeda insurgents attack Shia civilians and Shia death squads retaliate against Sunnis has sharply increased in recent months, particularly in Baghdad. As the enemy shifts tactics, we are shifting tactics as well.21

It is far from clear, if it ever was clear, who “the enemy” is these days.

An instructive assessment of the overall Administration strategy was provided last week by a journalist who had originally endorsed our Iraqi Intervention:

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21 Id.
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I supported the removal of Saddam Hussein. I believed that Arabs deserved a chance to build a rule-of-law democracy in the Middle East. . . . I still believe that our removal of Hussein was a noble act. I only wish the [Bush] Administration had done it competently. . . . Yet, for all our errors, we did give the Iraqis a unique chance to build a rule-of-law democracy. They preferred to indulge in old hatreds, [sectarian] violence, ethnic bigotry, and a culture of corruption. It appears that the cynics were right. Arab societies can’t support democracy as we know it. And people get the government they deserve. For us, Iraq’s impending failure is an embarrassment. For the Iraqis—and other Arabs—it’s a disaster the dimensions of which they do not yet comprehend. They’re gleeful at the prospect of America’s humiliation. But it’s their tragedy, not ours. Iraq was the Arab world’s last chance to board the train to modernity, to give the region a future, not just a bitter past. . . . Iraq could have turned out differently. It didn’t. And we must be honest about it. We owe that much to our troops. They don’t face the mere forfeiture of a few Congressional seats but [rather] the loss of their lives. Our military is now being employed for political purposes. That’s unworthy of our nation.22

The assessment just quoted seems to suggest that things might have turned out much better in Iraq if the Administration had been more competent in pursuit of its worthy objective. A quite different approach has been taken by a distinguished sociologist in his weekly column on the Friday before the Mid-term Congressional Elections (compare the grim predictions in his column of October 13, 2006):

Why did we invade Iraq in the first place? We no longer hear that Iraq had weapons of mass destruction aimed at us. Or that, as Secretary of State Condoleezza Rice put it, the invasion was the “right thing to do.” Or that the goal is to make Iraq safe for democracy. Or that we must fight to the end to preserve the honor of those who have died. . . . My hunch is that the answer can be found in the President’s words when he was told about the [September 11th] attack: “This is war!” In point of fact, it was not. It was a vicious assault by a gang of international criminals, not a war in any sense that the word has traditionally meant. The President’s spontaneous eagerness to find a war where there was only a terrible crime marked the genesis of such phrases as “war on terror,” “war on global terror,” and “war on Islamo-fascism.” . . . Unfortunately, after the quick clean up of Afghanistan (as we thought then), there was no war around. Bush needed a war—another quick, easy victory that would eliminate any discussion of the possibly stolen 2000 election. Whatever the motives of the other chicken-hawks, like the neo-cons who wanted to go to “Jerusalem through Baghdad,” ultimately the reason for the invasion of Iraq was that the President at some level of his personality wanted a war, needed a war. He also wanted and needed an enemy, and Saddam Hussein was the

ideal enemy. . . . I do not question the President’s sincerity. He undoubt-
edly persuaded himself that war was what God wanted him to do. . . . The
war has become the main issue in the election. Americans will vote
Tuesday on whether they support the war or oppose it. Have they come
to realize that it is [for the President] a vanity war, or do they still want
revenge on terrorists and are they still afraid?23

A more dispassionate view of these matters seems to be provided by the pro-
Iraq War British journal, The Economist, which opened a recent editorial in this
way:

When a great democracy such as the United States holds elections at a
time of war, voters are torn between two instincts. One is to show grit
and solidarity by rallying around the flag and the President. The other is
to treat the election as a referendum on the war. Ever since September
11th, 2001 George Bush has milked the first instinct for all it is worth.
But having gained so much from presenting himself as a war President,
Mr. Bush can hardly complain now that the voters are moving in the other
direction. Many seem intent on using the November mid-terms to give
their verdict on his handling of the war in Iraq. That is bad news for the
Republicans. According to a Gallup poll this week, only 19% of Ameri-
cans still think that America is winning. In Britain, America’s chief ally
in Iraq, the disenchantment is deeper. [One] poll this week found that
45% of Britons wanted their troops to leave at once, and a further 16% wanted them out by the end of the year. . . . This loss of faith among the
people of Britain and America is easy to understand. They have already
shown a lot of patience. More than three years after the overthrow of
Saddam Hussein, Iraq has become progressively more violent. Some
2,200 American soldiers and 120 British ones have been killed, and the
death toll among Iraqis may stretch into the hundreds of thousands.24

Even so, the Economist editors felt obliged to caution against the Coalition’s
giving up in Iraq at this time:

For the politicians (and newspapers like ours) who argued strongly for the
invasion of Iraq, it is no longer enough to accuse those who want to head
for the exit of “cutting and running,” as if using a pejorative phrase set-
tled the argument either way. Cutting your losses is sometimes the sensi-
ble thing to do, even for a superpower, and even after paying a heavy
price in lost lives and wasted money. If you genuinely believe, as many
people now do, that the likeliest long-term outcome in Iraq is that
America will end up cutting and running anyway, with no improvement
to be expected even three or four years hence, why simply postpone the
inevitable? Because [it can be argued] failure may not be inevitable. It is
true that Iraq is not poised to become the exemplary democracy the

23 Andrew Greeley, U.S. is casualty in Bush’s Vanity War, CHI. SUN TIMES, Nov. 3, 2006, at 37.
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American neocons dreamed of carving out in the heart of the Arab world. But that definition of success was always a peculiar one to apply to a war the United States launched primarily to secure its own interests. . . . The question Americans need to ask is what impact their own staying or going is likely to have on the balance of probable outcomes. And in answering this question, the case for staying becomes a good deal stronger.25

The Economist editors conclude, therefore, with this counsel:

Leaving now stands a fair chance of plunging Iraq into an enlarged war and a far bigger bloodbath than anything seen so far. For Mr. Bush, the Iraq war has in one sense already been lost, whatever result the mid-terms bring. This President's legacy will forever be tainted by what he over-promised and how much he underperformed. The voters of America are entitled to judge and punish his party as they see fit. But Americans would be wrong to extend this punishment to the people of Iraq, who have suffered so much already. Even if it was a mistake to blunder into Iraq, it would be a bigger mistake, bordering on a crime, for a nation that aspires to greatness to blunder out now, without first having exhausted every possible effort to put Iraq back together and avert a wider war.26

This is probably as hopeful an account of American prospects in Iraq as is available at this time from sober observers somewhat familiar with the region. Most such observers, it seems to me, expect conditions in Iraq to continue to deteriorate so long as something that can be considered by many Iraqis as an "Occupation" continues, a deterioration that evidently has precedents in how other Western incursions have been responded to in Iraq during the past century and a half. Many observers do expect the deterioration triggered by our Intervention to get even worse when Coalition forces finally do have to leave Iraq.27

II

It is apparent, this day after yesterday's Mid-term Congressional Elections, that Democrats will assume control of the House of Representatives in January, 2007. It remains to be seen whether they can confirm as well the control of the Senate that they seem to have won. That depends on the final resolution of the contest in Virginia, where the Democratic candidate leads after the first count. However that may turn out, Democratic opportunities to take more Republican-held Senate seats could well be even greater in 2008 than they were this time. Besides, during the next two years, all Senators (whether or not up for reelection next time) will want to study the election returns this time around and conduct themselves accordingly, especially with respect to the war in Iraq and to recent deficit spending.

25 Id.
26 Id.
27 For an analysis in the spirit of the Economist editorial that has been quoted, see Fareed Zakaria, Rethinking Iraq, Newsweek, Nov. 6, 2006, at 26.
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The critical question for months has been about who would control which House in Washington in January 2007. Citizens familiar with our Constitutionalism know that such control is reflected in the funding that is legislated and in its accompanying conditions. Perhaps even more critical may be the uses likely to be made of the oversight powers available to Congress. Congressional investigations, especially with respect both to how the Iraqi Intervention was originally justified and prepared for and to how financial and other resources devoted to it have been used—such investigations, if properly conducted, should illuminate what it now seems sensible for us to try to do in and with Iraq. All this may affect as well the 2008 Presidential Election, something that can also be affected by the increase in the number of Democratic Governors following upon the 2006 elections.

Underlying the political maneuvering we are familiar with are deeper-rooted developments that affect surface manifestations. The outcome of yesterday’s Mid-term Congressional Elections was dramatically forecast for me personally during a telephone call I received from a prominent pro-Israel Reaganite Republican two months ago. He evidently considered the National Administration to have made a hopeless mess of things in the Middle East. At the root of the Administration’s problems, he lamented, were naive opinions held by various influential Neo-Conservatives about how a reliable constitutional system is established and maintained.

III

This was, yesterday, a November 7th election, the first on that very date since the 2000 Presidential Election. Critical to that election was what the United States Supreme Court did in “deciding” it. Particularly troubling, for the Constitutionalist, was the apparent unwillingness of a majority of that Court to allow the Presidential election process to develop as prescribed by the Constitution. That is, it was up to the House of Representatives (a Republican-controlled House), and not the Supreme Court, to resolve whatever questions remained after Florida, along with the other States, had submitted its electoral results to Congress.

The insecurity of the Bush Administration, especially since it did seem that more citizens had gone to the polls in Florida (as well as nationwide) intending to vote for Al Gore than to vote for George W. Bush—this insecurity may even have affected how the September 11th atrocities were responded to by our government.

Some of us, no doubt, were heartened by the show of official outrage and determination in response to the September 11th challenge. But there are better and worse ways to display one’s passions. Consider what merit, if any, there may be to the judgment pronounced last Friday evening (on the News Hour with Jim Lehrer) by a Democratic Party partisan, Mark Shields:

George Bush says, “Words have consequences.” George Bush said that. This is a man who, with his false braggadocio and his swaggering macho,
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stood up and probably put more American troops in danger with a taunt to the insurgents of “Bring 'em on.”

The unfortunate insensitivity attributed to the President here and elsewhere can be said to have been anticipated by the insensitivity he had repeatedly exhibited, as Governor of Texas, to the parade of executions over which he blithely presided.

IV

A fundamental problem with the way the so-called “War on Global Terrorism” has been conducted is with respect to the Sense of Proportion that is called for in the effective use both of constitutional processes and of national resources (spiritual as well as material). It is odd that so much has been invested by us in Iraq, a “country” that could initially be overrun by our Coalition in a few weeks and with very few casualties.

We have, in the way we have proceeded, displayed the lack of a feel for the history of the Middle East and its volatility. The fragmentation of that “country” is anticipated by the autonomy that its Kurds (as non-Arabic Muslims) are already developing for themselves in Northern Iraq. (It is not inconceivable that any “permanent” American bases in that region would be in “Kurdistan,” serving thereby both to discourage incursions from Turkey, Syria, and Iran, and to police “terrorist” exports from the rest of Iraq.)

Even more dangerous than what we have done in Iraq has been our insensitivity to Islamic passions worldwide. An American Administration that has made much of “faith-based initiatives” sometimes seems blissfully unaware of how other peoples are moved by their own faiths. It is further curious that such an Administration in this country should have initiated developments in Iraq which have led to a steady decline in the Christian population in Iraq.

A Sense of Proportion is to be contrasted to that Arrogance of Power, which is apt to be developed and displayed whenever our National Government happens to be dominated for years at a time by one or another political faction among us. One consequence of such a display this time around has been the considerable alienation by the United States of international goodwill. Such goodwill is essential for a useful reliance by us on the law of nations and on day-to-day diplomacy, both of which are essential for suppressing the criminal activity and the perverse exhibitionism that we have imprudently dramatized as “global terrorism.” The salutary repudiation of the Bush Administration recorded yesterday in our Mid-term Congressional Elections could help assure troubled people everywhere that the American people are more sensible than their Government—and that could help restore a useful goodwill worldwide with respect to this country.

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Our attack in 2001 on Afghanistan was inevitable (with considerable support among decent peoples everywhere), once it was determined that the September 11th assaults had been deliberately developed there. The Iraqi Intervention, on the other hand, has been widely condemned, in this country and even more abroad, as a “War of Choice.” The judgment of those who had endorsed such a war is bound to remain suspect.

Our realists can remind us that critical to our interest in Iraq and its neighbors is our dependence on Middle Eastern oil. One way of putting the long-term problem here, however, is to suggest that our oil is probably much under priced. This is evident as one rides a bus down the Outer Drive to the Chicago Loop: one can see that more than three-quarters of the automobiles which clog Chicago streets carry only their drivers. A better (and healthier) use by us (and by others) of oil and of alternative energy sources would probably be encouraged if the price of oil were to be much higher than it now is in the world market. (Of course, the economist might want to figure into the cost of the oil we presently import the considerable military-related expenditures we make to secure our oil supplies.)

But for the vast oil pools underlying the Middle East, we probably would not have the sometimes obsessive interest we have had for decades in that part of the world. (It can be sobering to consider what could have been done, with one-tenth of the resources already devoted by us to Iraq, to suppress recent genocidal impulses in Africa and elsewhere.) The Middle East includes, of course, Iran, a country that we were at times so concerned about during recent decades that we seemed to encourage Saddam Hussein to help us “contain” it.

The Iranian leaders, evidently taking their cue from the North Koreans, seem to have learned that one way to discourage such an American Intervention as that currently seen in Iraq is to appear to have nuclear weapons. Illustrative of the general incompetence that has come to be associated by observers with the Bush Administration is (as we have noticed) that it is likely that the principal short-term beneficiary of the mess that has been made in Iraq will be the current Iranian dictators. This, too, was predicted by some critics of what our “hawks” very much wanted to do in Iraq once Afghanistan had been “settled.” Already there seem to be in Southern Iraq Iranian-sponsored theocratic enclaves.

Thus, the incompetence of the Bush Administration has been displayed both at home and abroad. The public at large somehow came to sense that its fearfulness was being deliberately exploited by “patriots” who were neither thoughtful nor candid about what was going on. And the public has also begun to suspect that there is something demeaning about such constant exploitation of its anxieties.

But why, it can still be wondered, has the Administration been as incompetent as it has been in dealing with one emergency after another? One can suspect that this has something to do with the fact that so many of the Administration’s most
influential ideologues do not really "believe in" government. Such a belief may be essential if a constitutional system is to work efficiently.

Even more puzzling may be the way that Tony Blair allowed himself (against the decided opinion not only of his country but also of his own party) to get as close as he did to George W. Bush on Iraq. Did he, too, underestimate what would be needed for an enduring success in Iraq? Do we see in both of these leaders the risks of an evangelical fervor in politics, something that was exploited by Woodrow Wilson in promoting American involvement in that catastrophic folly known as the First World War?

However that may be, the equivalent of the repudiation of the President registered yesterday by our Mid-term Congressional Elections may be seen in what the Labour Party has had to do to what had been the remarkable career of its Prime Minister.  

VII

My analysis on this occasion should be accompanied by a caution: it is not unusual that there should be a drop in support of the dominant political party registered by the public at the Mid-term Congressional Elections during a President's second term. We can even be reminded of the repudiation of Winston Churchill once victory over Germany had been secured during the Second World War.

Thus, it is not the decline of support for the Administration that was significant yesterday, but rather the issue somehow identified by the public as critical. Don Erler, a solidly conservative pundit in Fort Worth, can speak (in a pre-Elections column) of "the Iraqi debacle." He quotes "one woman, typical of millions, [as saying] that she would vote for 'Happy the Clown' if that represents 'a vote against the powers that put us in [Iraq].'"

The primary concern in this country has been, it seems, the cost in American lives and treasure required for our Iraqi Intervention. But the "debacle" extends beyond American sacrifices, sobering though they are (especially as they now approach the number of New Yorkers murdered at the World Trade Center on September 11, 2001). The published estimates of Iraqi dead as "a result of the war" range from thirty thousand to several hundred thousand—and this in a population one-tenth the size of ours. It is understandable why so many Iraqis complain (however mistakenly) that conditions are worse now than they were even during the tyranny of Saddam Hussein. The dismal conditions in Iraq these days are reflected in the hordes (evidently in the hundreds of thousands) who have fled the “country” for sanctuary elsewhere. We should not be surprised to learn that Iraq has now become a training camp for "terrorists" who are eager to strike out at American interests elsewhere, something more readily accomplished by them.

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29 See, e.g., Who Killed the British Prime Minister?, ECONOMIST, Sept. 16, 2006, at 32 (“Mr. Blair may believe it is still too early to judge the success of what is being attempted in Iraq, but his party holds him personally responsible for what many regard as the greatest debacle in British foreign policy since Suez, 50 years ago”).

A Citizen’s Response

now that the United States has alienated world opinion as much as it evidently has and thus undermined Intelligence and other institutional cooperation among nations by its arrogant unilateralism. Indeed, the more thoughtlessly we conduct ourselves now, the more understandable, in the eyes of the unsophisticated and the resentful, the atrocities of September 11, 2001 may become.

It can be hoped that the evident public repudiation of our Iraq policy said to be represented by our 2006 Mid-term Congressional Elections will encourage a sensible reassessment in Washington, by both Democrats and Republicans, of how we are conducting ourselves. Somehow or other, we are going to get out of Iraq, with an exception made perhaps for “Kurdistan” (which is both secular and pro-Western in its orientation, somewhat as Israel is, still another people worthy of both sensible support and useful restraint by us). Some day, a Texas-born Democrat observed this morning, the American people will recognize that Osama bin Laden should not be conducting our affairs. After all (it was also observed), he is a deluded man surrounded by fanatics, hiding in a cave, spiritually as well as physically. We certainly should not continue to allow ourselves to be trapped with him in such a cave. It should be evident that we have begun to emerge into the light of an old-fashioned Constitutionalism when our government respects once again the full scope of the venerable writ of habeas corpus, even on behalf of so-called “enemy combatants,” held by us for years at a time without proper hearings. ¹¹

Constitutionalism may be seen as well in that restoration of Congressional oversight of Executive initiatives which seems to have been authorized by yesterday’s Mid-term Congressional Elections. The President conceded, in a statement today, “It’s clear the Democrat [sic] Party had a good night.” Corrections are needed here as elsewhere in the Presidential assessment of things: it was “a good night” not only for the Democratic Party but even more for the People of the United States and their Constitution.

Conclusion

A politically-bipartisan Iraq Study Group issued in December 2006 its long-awaited Report, ratifying thereby the general assessment by the American public that the ideologues-led involvement by the United States in Iraq since 2003 is in need of serious reconsideration. The Administration’s response to recent developments, and especially to the 2006 Mid-term Congressional Elections, featured President Bush’s justification on January 10, 2007 of an addition by some twenty thousand American soldiers to the forces we already have in Iraq.

All this is at a time when our Coalition partners, especially Great Britain, are preparing to reduce their troop levels in Iraq, and at a time when it does appear that the principal short-term beneficiaries because of our Intervention in Iraq will be the theocratic dictatorship in Iran and the Taliban in Afghanistan. It is also at a time when we have yet to assess properly the considerable human costs of the


Conservative Republicans have joined indignant Democrats in expressing dismay at the addict-like recourse by our Administration to “more of the same in Iraq.” Troubled Republicans have been represented, most dramatically, by a Nebraska Senator who protested on January 11, 2007, “I have to say . . . that I think [the] speech given last night by [the] President represents the most dangerous foreign policy blunder in this country since Vietnam.”

This comment recognizes, in effect, that a Republican Administration is now attempting to match in the Middle East the Vietnamese follies which a Democratic Administration (also without due regard for world opinion) had staged forty years ago in Southeast Asia. It should be recognized as well that the remarkable incompetence displayed by our current Administration in dealing with Iraq has been exceeded only by the incompetence of the September 11th perpetrators, with both “teams” unable to anticipate how adverse an effect their campaigns would have worldwide on their respective causes.

It is likely that vigorous Congressional oversight efforts in 2007 will expose numerous questionable actions by the Administration, including the shameless mishandling of billions of dollars—questionable actions both in Iraq and in Afghanistan. It is to be hoped that such revelations will eventually contribute not only to a revived respect for international law in this country but also to the recognition that our Congress was intended by the Framers of the Constitution to be the ultimately dominant Branch of the Government of the United States.

Whatever may be considered by us at this time, it can be hoped that the United States will, one way or another, begin to withdraw from what is now known as Iraq. Troubled governments in the Middle East will be inclined (preferably after a proper regional conference) to settle for, if not even to encourage, a takeover thereafter of that fevered “country” by a sensible Iraqi military faction which is appalled by the ferocity there of sectarian violence and which is determined to exhibit the nobler elements of Islam.

It remains to be seen whether the United States will be invited to stay indefinitely in what turns out to be Kurdistan. It can be hoped, if not even expected, once the increasingly provocative American “Occupation” ends, that those who do take charge in Iraq will consider it very much in their interest to suppress “terrorists” tempted to use any part of the Iraqi federation, as Afghanistan is said to have been used before September 2001, to prepare sneak attacks upon the United States or its friends by ideologues of a different stripe from our own.