

Fall 2003

## explore, Fall 2003, Vol. 7, no. 1: War

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**Santa Clara University**

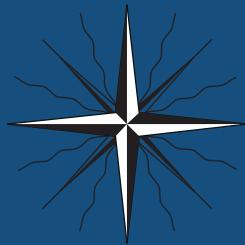
BANNAN CENTER FOR JESUIT EDUCATION

# explore

An examination  
of Catholic identity  
and Ignatian character  
in Jesuit higher education

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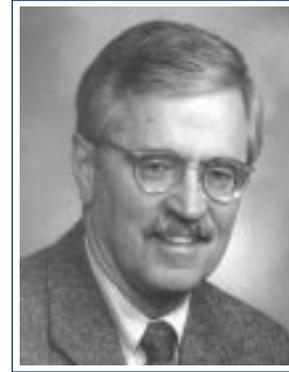
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Dear Friends,

**W**hat light can scholars at Santa Clara University shed on the two most vexing ethical problems that are gripping the country, namely the invasion of Iraq and the sexual abuse of minors by Catholic clergy? The events of Sept 11, 2001, radically changed the attitude of the United States toward groups and nations that threaten us. Few Americans seem to realize that 9/11 led to a fundamental change in the official U.S. strategic doctrine, moving away from the strategies that had been in place since the end of World War II to a policy that endorses preventive, unilateral military action against any group that poses a sufficient threat to national security. Although the demise of Saddam Hussein's brutal regime is welcome, will we come to regret the means employed to achieve that goal?

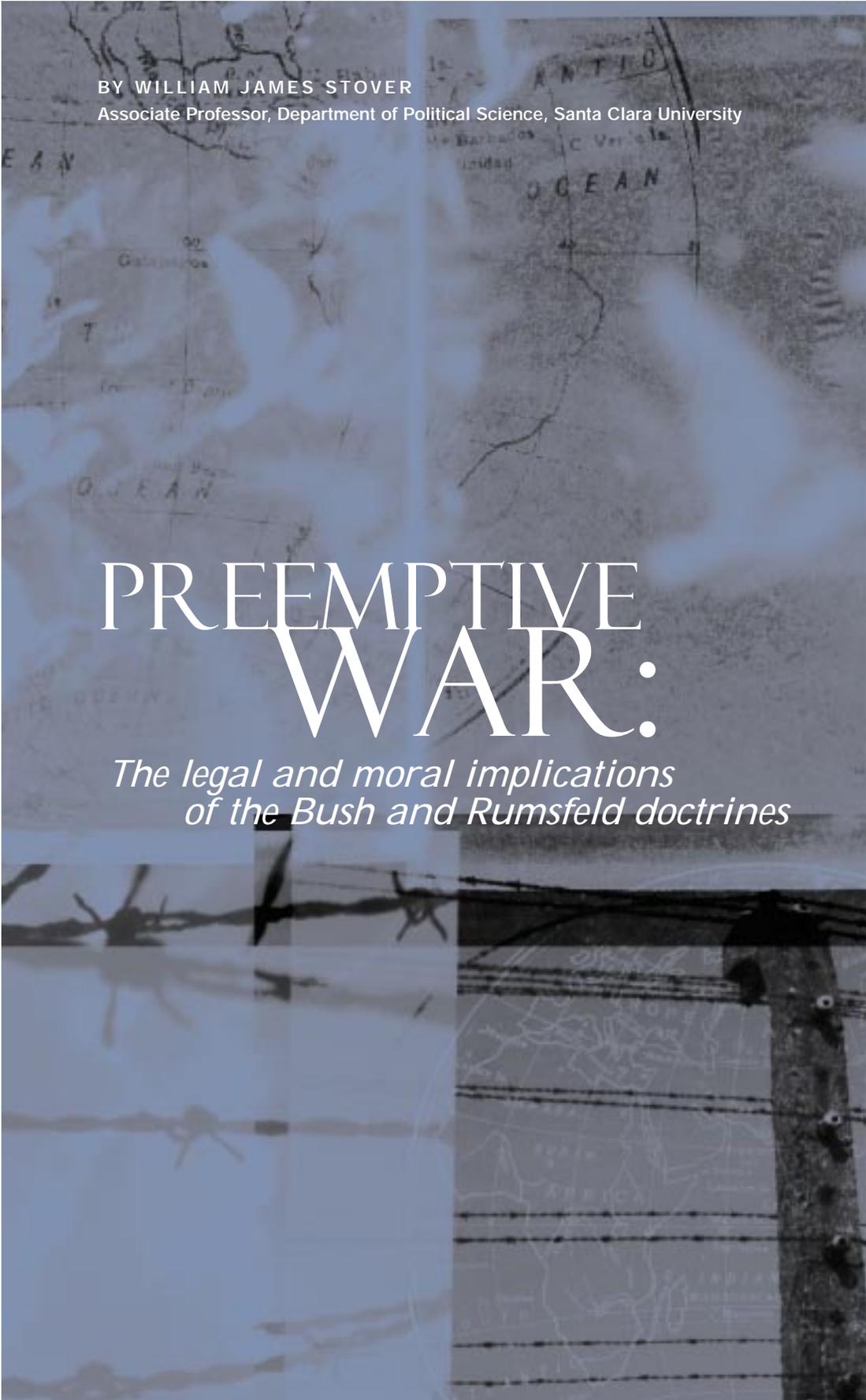


William C. Spohn

Three faculty members with extensive experience in the Middle East and Muslim countries help us think through the U.S. invasions of Afghanistan and Iraq. From the political science department, William James Stover analyzes the new "Bush Doctrine" that justifies preventive attacks and the "Rumsfeld Doctrine" that made it operational in Iraq. He does so against the backdrop of the ethical restraints on war embodied in the Just War tradition. David E. Skinner of the history department, a scholar of the history of Muslim nations, points out the intended and unintended consequences of the invasion of Iraq that have so complicated the situation there. Anthropologist Mary Elaine Hegland spent the past year in the Turkey, Tajikistan, and Afghanistan, where she learned of local peoples' reactions to the American military actions. A panel of SCU faculty wrestles with the question of whether the new U. S. strategic posture erodes the ethical barriers against the resort to war in international affairs. Constitutional scholar Margaret M. Russell warns of the erosion of ordinary civil liberties by the extraordinary legal measures adopted in the war on terror. David L. Perry, now professor of ethics at the U.S. Army War College, examines the ambivalent attitude toward violence in the scriptures of all three religions that clash in the Middle East: Judaism, Christianity, and Islam.

Our final essay turns to the second crisis. In an op-ed piece in the *San Jose Mercury News* last year, University President Paul Locatelli, S.J., promised that Santa Clara would bring its full resources to bear to understand the crisis and make constructive suggestions to prevent its recurrence. Thomas G. Plante, professor of psychology, convened an international group of experts at Santa Clara last May to address the clergy sexual abuse scandal. He will host a second conference May 14, 2004, on campus to launch the book that the group produced. One of the early researchers on this tragedy, he has been sought out by the national media to comment on what has become the most serious crisis in the history of the Catholic Church in the United States.

William C. Spohn  
Director, Bannan Center for Jesuit Education



BY WILLIAM JAMES STOVER

Associate Professor, Department of Political Science, Santa Clara University

# PREEMPTIVE WAR:

*The legal and moral implications  
of the Bush and Rumsfeld doctrines*

**L**ess than three months after the tragic events of September 11, 2001, I arrived in Jordan, one of the United States' closest partners in the Arab world. A government official met me in Amman, and we sat in the hotel lounge, drinking dark Middle Eastern coffee. I was the only non-Arab in the room, for European and North American travel to the Middle East had been drastically curtailed.

The official began our conversation by expressing his sympathy for my country's losses in New York and Washington. I thanked him, stating my hope that the events would not lead to deterioration in our relationship. The Jordanian official emphasized his belief that relations between our two countries would remain warm, but then added, "9/11 changes everything. The Middle East, even the whole world will never be the same again. You Christians have used B.C. and A.D. to mark the birth of Christ. Perhaps we should now use B.N. and A.N. to distinguish before and after 9/11."

At the time, I was puzzled by this remark. Would changes be as drastic as my Jordanian host feared? The attack exposed the United States' vulnerability to international terrorism, but many analysts had predicted the possibility of massive terror attacks for years. The motives for the assault underscored a deep hatred for U.S. economic and military dominance by radical fundamentalist elements in the Muslim world, but that realization is not new to anyone who reads a good newspaper. How would these events produce the kind of catastrophic change referred to by the Jordanian official?

Reflecting on his comments today, I now understand the fundamental change wrought by 9/11. The United States government has reversed a centuries-old effort to limit war, making it a last resort for defensive purposes alone. In place of these efforts at limiting war, our military preparation is designed to ensure U.S. world dominance in political, economic, and military power by threatening preemptive war.

### **The Measure: The Doctrine of *Bellum Justum***

Recognizing the recurrence of war in human affairs, philosophers and theologians have sought to place limits on its use by developing the Doctrine of Just War. Their evaluation consists of two parts: first, the need to consider whether a specific initiation of war is moral (*jus ad bellum*), and second, the need to consider whether the acts associated with the war are moral (*jus in bello*).

Rules established to regulate the conduct of armed conflict among nation states are based on this moral philosophy, and they first appear in religious writings. Ideas about the justice of a specific war (*jus ad bellum*) are expressed in the writing of St. Augustine and St. Aquinas. For these Christian thinkers, princes could engage in armed conflict only to avenge injuries caused by an enemy who has refused to make amends, to punish an injustice, and to restore the *status quo*. Thus, for the cause to be "just" there should be a wrong doer who was subjectively guilty and refused to desist.

These moral principles slowly began to be accepted by nation-states as customary international law, expressed by legal writers such as Francisco DeVitoria and Hugo Grotius. In short, state practice indicated that states could not use armed force to aggrandize themselves, to deny another country's basic rights, or to invade a neighbor in an unprovoked act of aggression. States also needed to act with proper intentions such as rectifying an injustice or restoring peace, not annihilating an enemy. There had to be proportionality between the objects sought through war and the destruction it caused. A legitimate authority should declare the war, and violence had to be the last resort, with less destructive means exhausted before using armed force.

*Jus in bello*, justice in war, examines how the acts associated with war should be conducted, and these principles are also traced to religious origins. The Hindu code of Manu required soldiers to refrain from attacking one who "joins palms of hands," sits down, flees, or says "I am yours." Abu Bahr reflects Islamic teaching when he instructs the Muslim army in Syria to refrain from treachery, mutilations, or killing the old, women, or children. From China, Sun Tzu writes that soldiers must treat their captives well and care for them. St. Augustine demands that soldiers must not regard the enemy as sub-human, lacking in basic rights.

These religious principles were also accepted gradually by nation-states as customary international law, expressed most clearly in Francis Lieber's *Instructions for the Government of the Armies of the United States in the Field* (1863). This was issued to the Union Army and later appeared in Russian, French, and Italian military manuals. In short, the use of armed force was governed by three principles: military force necessary to subjugate an enemy is permissible (military necessity); violence in excess of that is forbidden (humanity); and its use should be conducted under a code of fairness (chivalry).

Statespersons and diplomats subsequently refined these moral principles, already accepted as customary international law, by negotiating many treaties during the late nineteenth and twentieth centuries. Taken as a whole, these

"laws of war" assimilate the moral ideals of theologians and philosophers and the practice of states regarding *jus in bello*.

The most definitive statement regarding the initiation of war (*jus ad bellum*) is found in the Charter of the United Nations. Article 2 requires that members "settle their disputes by peaceful means" and "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations." Recognizing the persistence of war, however, Article 51 permits the "inherent right of individual or collective self-defense if an armed attack occurs ... until the Security Council has taken measures necessary to maintain peace and security."

Historically, under pre-United Nations customary international law, this inherent right of self-defense was limited to an "instant and overwhelming necessity with no choice of means and no time for deliberation." As the nature of warfare changed, however, most commentators agree that "anticipatory self-defense" became permissible. An aggressor's army or rockets need not cross a border before defensive force can be used. It's enough that an attack is imminent for a state to defend itself. To do so, however, there should be credible evidence that aggression is indeed imminent, and that peaceful means of settling the dispute have been exhausted.

Let's apply these measures of moral principle as well as customary and statutory international law to the U.S. war on Iraq. We'll first examine the motives for this war as expressed by the Bush Administration (*jus ad bellum*), and then evaluate the means (*jus in bello*).

### **The Motives: The Bush Doctrine**

On the night of March 19, 2003, U.S. military forces launched "Operation Iraqi Freedom" to oust the regime of Saddam Hussein. Within two weeks, what little resistance Iraqi soldiers offered was suppressed, and U.S. troops occupied Baghdad. During the months before the "shock and awe" campaign, the Bush Administration presented its arguments for going to war: Iraq's links

to terrorists and its weapons of mass destruction, particularly nuclear weapons.

The war was based on a National Security Strategy Doctrine issued September 2002 in response to what President Bush called “a threat with no precedent.” The Bush Doctrine expands the idea of preemptive defense to deal with new threats of terrorism, weapons of mass destruction, and rogue states. This doctrine rejects deterrence because “if we wait for threats to fully materialize, we will have waited too long. ... We must take the battle to the enemy ... and confront the worst threats before they emerge. In the world we have entered, the only path to safety is the path of action. And this nation will act.” (President George W. Bush, Speech at West Point, June 1, 2002).

To clarify this concept, William H. Taft IV, legal adviser at the State Department, issued a statement on January 13, 2003. A state’s “significant military power...would not, in the absence of any evidence that it intends to use its power against others aggressively, justify a preemptive strike against it ... After the exhaustion of peaceful remedies, and after careful consideration of the consequences, in the face of overwhelming evidence of an imminent threat, ... a nation may take preemptive action to defend its nationals from catastrophic harm.”

Taft goes on to link the doctrine to principles of customary international law. The United States would exhaust “efforts to address the situation by peaceful means, by diplomacy, and any other way short of the use of force” before engaging in preemptive war. The use of force would be limited, “sufficient to defend against the specific

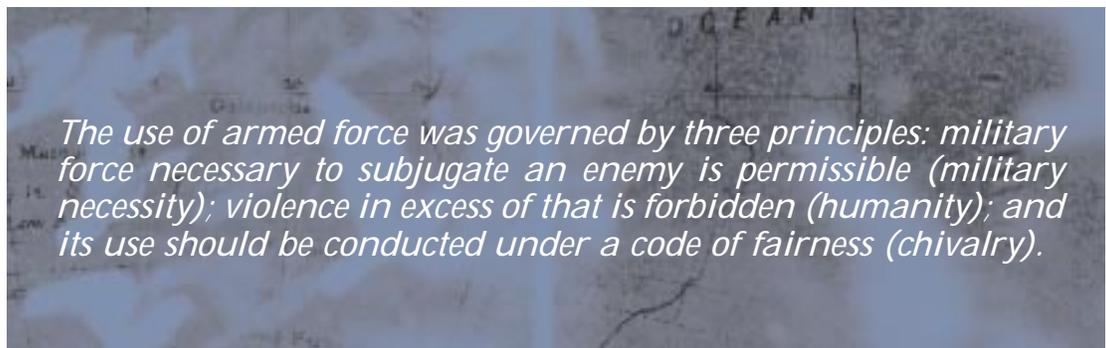
threat.” Finally, the threat should be “imminent” taking into account “the capacity of today’s weapons, and also the tactics of those who may hold them.”

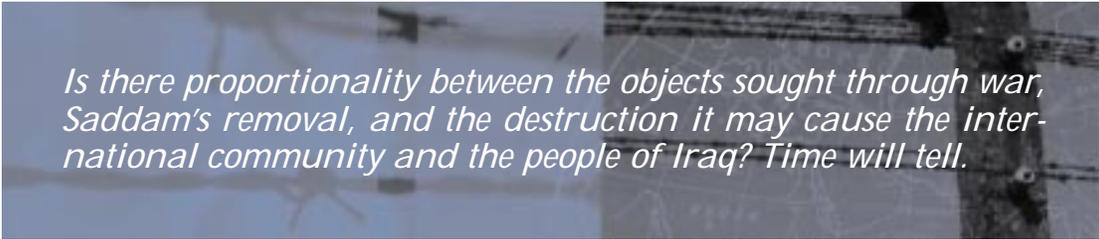
This broadly expands the moral and legal principles of self-defense found in the United Nations Charter, even the widely accepted notion of anticipatory self-defense. If the United States believes another country has the capability to cause harm, preemptive war may be justified even without a clear understanding of the other state’s intent. Simply the possession of such harmful weapons may be a reason for war. Thus, according to the Bush Doctrine, war is permissible if:

1. the opponent possesses weapons of mass destruction;
2. the threat against our nationals is imminent; and
3. peaceful remedies have been exhausted.

Given these parameters, the war against Iraq seems to have violated not only the U.N. Charter, but the Bush Doctrine as well. While the U.S. government claimed that Iraq possessed weapons of mass destruction, particularly nuclear weapons that could threaten the U.S. itself, such evidence has been illusive. In fact, U.S. military forces were in no great hurry to find these weapons—weeks after the end of hostilities, the U.S. was still assembling a group of specialists to search for them.

If, as the Bush Administration claimed, Saddam Hussein would have distributed weapons of mass destruction to terrorists, why didn’t our forces secure Iraq’s main nuclear waste site at the Tuwaitha Nuclear Research Center, 11 miles





*Is there proportionality between the objects sought through war, Saddam's removal, and the destruction it may cause the international community and the people of Iraq? Time will tell.*

south of Baghdad, where four thousand pounds of partially enriched uranium and more than 94 tons of natural uranium as well as radioactive strontium, cesium, and cobalt were stored? Yet this site remained unguarded by U.S. troops for days while looters entered the facility and carted off much of the waste material. If we waged war against Iraq to prevent weapons of mass destruction from falling into the hands of terrorists, why didn't the U.S. war plan have forces dedicated to stop this possibility? Where is the evidence that the Ba'ath regime, a secular dictatorship, supported al Qaeda terrorists, a militant, radical Islamic Fundamentalist group whose goal is the overthrow of all non-religious governments in the region?

And why did we need to attack in the beginning of March, when United Nations inspections were still underway and peaceful remedies had not been exhausted? These questions call into doubt the motives of the Bush Administration and render the Bush Doctrine meaningless in providing any guidelines limiting preemptive war.

Can Saddam's removal by force without broad international support be justified as humanitarian intervention? Rarely, if ever, did administration spokespersons cite the need to rid Iraq of its tyrant, Saddam Hussein, before launching the war. Perhaps they recognized the hypocrisy of declaring immoral a leader with whom both Presidents Reagan and Bush (senior) cooperated in the 1980s and early 1990s. Perhaps they believed the American people would not support regime change by force unless the vital security of the U.S. was imminently threatened.

Clearly the international community may act to stop extraordinary acts such as genocide or ethnic cleansing. However, the use of force without United Nations Security Council authorization poses risks. It cloaks selectively applied military

action for narrow self-interest as humanitarian intervention. It undermines fragile norms for the peaceful settlement of disputes. More worrisome, such intervention sets precedents for other states that seek unilaterally to change regimes, inviting unilateral attacks and unhinging the stability of the international system. Is there proportionality between the objects sought through war, Saddam's removal, and the destruction it may cause the international community and the people of Iraq? Time will tell.

### **The Means: Rumsfeld's Lean, Hi-Tech Machine**

Donald Rumsfeld assumed office January 20, 2001, with a vision for the future of U.S. strategy. His earlier experience as Defense Secretary in the 1970s taught him that U.S. strategic policy needed rethinking and reorganization. This country's reliance on strategic nuclear weapons and its focus on Cold War deterrence were outdated, and Rumsfeld had a plan: faster forces with lighter equipment that could be rapidly airlifted into battle. "Speed matters," said one of the Secretary's assistants. "Speed kills. It leads to less collateral damage and fewer U.S. casualties." Coupled with better communication, information technology, and surveillance, the U.S. military developed what another advisor called "an unblinking eye over the battle space."

Rumsfeld's new doctrine was tested during the war against Iraq. The troops deployed were as few in number as possible, permitting a quicker build up and giving Saddam Hussein less time to react with chemical weapons, oil well sabotage, or massive fortifications. In fact, the ground force of 125,000 that subjugated organized Iraqi resistance in two weeks was only half the size of the army that fought the first Gulf War. This force was even smaller than planned. Turkey denied the U.S. request for transit of military

forces, and Secretary Rumsfeld elected to start the war three weeks early with only one heavy division in place rather than two. The result was spectacular, according to Bush Administration officials. Before the war ended, Vice President Dick Cheney claimed that Iraq was “proof positive of the success of our efforts to transform our military.”

Indeed, the use of this lean, quick, hi-tech military force limited battlefield casualties. By May 1, 2003, when President Bush declared “an end of major combat in Iraq,” the U.S. military had fewer than 130 dead, with a relatively small number wounded. Iraqi casualties are more difficult to calculate, but before its collapse, the Iraqi government claimed 2,252 civilians killed with 5,103 injured.

Any casualty of war is regrettable, of course, especially those inflicted on civilian non-combatants. Yet these figures are considerably lower than similar past conflicts. Proponents of the Rumsfeld Doctrine point to quick, light U.S. forces that produced rapid subjugation of Iraqi troops, precision munitions, real-time intelligence, and secure communication as reasons for relatively low number of casualties.

This same aspect of the Rumsfeld Doctrine—the use of small numbers of troops to conduct military operations—has unforeseen consequences, however: “blowback” effects that continue to haunt the U.S. occupation of Iraq. The first is a failure to provide public safety for the Iraqi population. Under the Doctrine of Just War (*jus in bello*), a conquering military force has a responsibility to provide public order in the territories occupied during warfare. This moral duty has been codified in Article 43 of the 1907 Hague Regulations as well as Article 27 of the Fourth Geneva Convention and articles 72-77 of its 1977 Protocol Relating to the Protection of Victims of International Armed Conflict. The U.S. has signed and ratified the Hague and Geneva conventions, and treats most principles in the 1977 Protocol as customary international law. According to the Hague Regulations, an occupying force “shall take all measures in his power to restore and insure, as far as possible, public order and safety.”

The U.S. did not fulfill this obligation in Iraq, and continued failure to do so borders on criminal negligence. Rape and violent crime are still widespread. Much of the country has been ravaged by looters and armed thugs while citizens hide in their homes. While criminals looted, burned, and destroyed government buildings and schools, occupying troops did little to stop them, fearing their numbers were too few to provide police protection. As looters stole Iraq’s cultural treasures from the National Museum, American soldiers turned away, guarding instead the Ministry of Oil. The responsibility for filling any vacuum of authority is a responsibility of the occupying power, yet no pre-operational rehearsal for this kind of peacekeeping was conducted by U.S. forces.

The occupying power also has a moral and legal obligation to ensure that medical services work properly. Based on the Fourth Geneva Convention, the occupying force has a legal obligation for “ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health, and hygiene in the occupied territories.”

Little thought seems to have been given to this responsibility before, during, and immediately after the war. Coalition forces failed to protect hospitals, leaving them vulnerable to looters who stripped them of medical supplies, even dragging oxygen tanks away from needy patients. Looters took nuclear waste products from storage facilities near Baghdad previously known to U.S. intelligence officials. These contained radioactive materials that could contaminate a large area. Water, sanitation, and electrical services remain interrupted. Doctors Without Borders reports individuals suffering from chronic conditions such as diabetes, kidney disease, and epilepsy due to inadequate medication, and life threatening diseases such as tuberculosis and kala-azar, a fly-borne sickness, go untreated due to lack of medicine. The World Health Organization feared cholera outbreaks in southern Iraq due to poor sanitation, and the International Red Cross pleaded with U.S. military officers to take charge of hospitals, pay the staff, and get essential services running again.

These problems in public safety and health are a result of poor planning, inadequate resources, and the limited number of coalition forces available to provide order and care to innocents caught up in the unanticipated results of armed conflict. The Rumsfeld Doctrine may provide the U.S. with a quick and relatively painless means to use armed force for settling political problems, but it seems to care little for the civilians caught in the wake of “shock and awe” violence.

## Conclusion

I now understand more clearly why the Jordanian official who talked with me thought that 9/11 “changes everything.” That tragic event has made the U.S. government turn its back on nearly five hundred years of international law and moral norms that made the use of force legally and morally permissible for self-defense only, after all other means have been exhausted.

Earlier presidents have deceived the American public about using armed force. Johnson misled us into war in Viet Nam, and Nixon into the massive bombing of Cambodia and Hanoi. Reagan and Bush distorted the threat of communism in Central America to justify intervention in the name of self-defense. Clinton vilified the Serbs, ignoring Muslim and Croatian atrocities to claim that NATO intervention in the former Yugoslavia was morally and legally justified. What changed after 9/11, however, is this administration’s attitude that international law and moral norms no longer matter. The U.S. now ignores them simply because we’ve been attacked by terrorists.

This government may now use armed intervention when any opponent—state or terrorist group—might possess weapons of mass destruction, even without evidence. Its forces can strike when such an entity threatens our nationals—individual or corporate—anywhere in the world. It can launch preemptive war when our government has exhausted its own patience in seeking peaceful remedies, whether such attempts are working or not. The result is an agile, imperial giant, willing to take on any state or organization with which it is displeased, regardless of the consequences to international peace, stability, and the well-being of civilians in occupied areas.

Imagine you are a strategic adviser to the government of North Korea, Libya, Syria, or Iran with their values, perceptions, and national interests. Would you counsel surrender to American hegemony? Or would you advise the acquisition of nuclear, biological, or chemical weapons of mass destruction to dissuade U.S. domination and deter preemptive war? Given states’ historic drive toward self preservation, their leaders might choose unconventional means to assure their survival. If they do, the Bush and Rumsfeld Doctrines may become “a more clear and present danger” to the U.S. and to the world than the terrorism they seek to defeat. ✧

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BY MARGARET M. RUSSELL  
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# Civil Liberties in the U.S.:

## WHY THEY MATTER IN A POST-9/11 WORLD

### IS IT POSSIBLE TO MOVE FROM FEAR TO FREEDOM?

Terrorism and the threat of terrorism have irrevocably altered our lives. The grief, shock, and anger experienced by many Americans in the aftermath of 9/11 have abated somewhat, only to be replaced by a seemingly permanent sense of unease and fear. In two short years, mainstream national consciousness has weathered an attitudinal transformation from “We are no longer safe” to “How could we ever have thought otherwise?” As we consider our nation’s role in world events, we should not ignore the complex effects of national and international counterterrorist responses on people beyond our borders; as we consider our evolution as a constitutional democracy, we should be equally vigilant about the impact of counterterrorist measures on domestic civil liberties.

Civil liberties matter in a post-9/11 world because they enable us to move from fear to freedom; they give us both the ethical space and the analytical tools to balance the goals of liberty and security.

### CHECKS AND BALANCES: STRUCTURAL NECESSITIES TO PRESERVE INDIVIDUAL RIGHTS

Before 9/11, discussions about the need for governmental checks and balances perhaps carried a whiff of the academic and theoretical; now, however, they can be firmly rooted in urgent, ongoing examples of constitutional challenges. The principle underlying the separation of powers among three branches—the legislature, the executive, and the judiciary—is that a delicate balance ensures responsibility, accountability, and oversight. Yet, since 9/11 each of these goals has been undermined.

**Legislative Responsibility.** In recent years, legitimate concerns about national security and terrorist threats have led to illegitimate exercises of Congressional authority. Unfortunately, such overreaching can sacrifice the preservation of individual liberties in favor of the broad abdication of authority to the executive branch and an accompanying curtailment of opportunities for independent judicial review of executive branch actions.

The USA Patriot Act, passed by Congress and signed into law by the President six weeks after 9/11, is a prime example of why we need checks and balances to preserve individual rights in perilous and fearful times. Understandably, a pervasive sense of urgency fueled the government's determination to act quickly and decisively to combat terrorism. Unfortunately, many of the USA Patriot Act's provisions are simply bad law; they broadly curtail constitutional freedoms with no promise or measures of effectiveness. Particularly at risk are rights guaranteed under the First, Fourth, Fifth, and Sixth Amendments of the Bill of Rights.

**The USA Patriot Act, passed by Congress and signed into law by the President six weeks after 9/11, is a prime example of why we need checks and balances to preserve individual rights in perilous and fearful times.**

The most controversial provision to date is Section 215, which permits the federal government easily to obtain a judicial order granting it access to records on clients or customers from libraries, bookstores, doctors, universities, internet service providers, and other public and private entities. This section also prohibits an organization forced to turn over records from disclosing the very existence of the search to their clients, customers, or anyone else. Widely criticized for its overly broad sweep and concomitant threats for freedom of expression, Section 215 is being challenged in court and in Congressional efforts for its repeal. The Justice Department denies that this provision is being used in an unconstitutional manner, but it is the structural deficiency of this mechanism that causes the greatest constitutional concerns.

**Executive Accountability.** A systemic problem of the USA Patriot Act is its excessive concentration of counterterrorist powers in the executive branch, with few safeguards ensuring any meaningful kind of public accountability. In addition to Section 215, other provisions permit the executive branch, with minimal judicial review, to: conduct electronic surveillance of private internet communications, gain access to student records, and authorize detention of non-citizens and citizens. In proposed new legislation, the Domestic Security Enhancement Act (nicknamed "Patriot II"), executive branch powers would be extended even further to include: the right to obtain credit and library records without obtaining any judicially approved warrant, and the right to prevent disclosure of the identity of any detainee until criminal charges are filed—even if the detainee is a U.S. citizen and even if the detention is of long duration.

In addition to the USA Patriot Act and "Patriot II," the Justice Department increasingly relies upon Presidential orders and Attorney General directives to buttress law enforcement powers

with no opportunity for public debate. Certainly, in any valid counterterrorist efforts, law enforcement powers and executive branch authority must be strong. However, we should also be mindful of the pitfalls: government suppression of dissent in our recent history includes the Palmer Raids of the 1920s, the "Red Scare" of the 1940s and 1950s, and FBI surveillance of anti-war and civil rights protesters of the 1960s. Internment of United States citizens of Japanese descent was sanctioned through executive orders and U.S. Supreme Court case law. History has taught us that without measured, rigorous standards of transparency and accountability, the President, Attorney General, FBI, and CIA can trample upon the very freedoms of expression and association that they purport to protect.

**Independent Judicial Review.** The challenge of preserving a searching, vigorous role for judicial review is hardly new. In introducing the Bill of Rights in the first Congress, James Madison noted:

Independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the legislative or executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the Declaration of Rights.

Similarly, in Federalist No. 78, Alexander Hamilton described the role of an independent judiciary as follows: “In a monarchy, it is an excellent barrier to the despotism of the prince; in a republic, it is a no less excellent barrier to the encroachments and oppressions of the representative body.”

What is new—or, at least, disturbingly different in a post-9/11 world—is the tremendous pressure to take constitutional “shortcuts” by restricting judicial review when it seems time-consuming, onerous, or, worse yet, when it might yield a result contrary to government objectives. As mentioned above, several provisions of the USA Patriot Act minimize the role of judicial review. This trend reached full force in several statutes passed in the mid-1990s: the Anti-Terrorism and Effective Death Penalty Act, the Illegal Immigration Reform and Immigrant Responsibility Act, and the Prison Litigation Reform Act. These laws, promoted as a part of movement to “streamline” prosecutions, contain explicit “court-stripping” provisions that expedite prosecutions by eliminating the role of an independent judiciary. Yet, constitutional history underscores the need for court review as the only possible avenue for dispassionate, nonpartisan balance. The judicial branch would have little meaning if the President and Congressional majorities—of any era—could bring about laws that simultaneously abrogate individual liberties *and* deny individuals the opportunities to bring court challenges to those laws.

## PRESERVING SECURITY AND FREEDOM

Increasingly, concerns about the infringement of individual rights transcend stereotypical assumptions about “liberal vs. conservative” ideologies. People concerned about national security in the preservation of a democracy are concerned as well about the values of openness and accountability that are necessary characteristics of a constitutional democracy. In a bipartisan report issued in February 2003 by the Senate Judiciary Committee, members criticized the Justice Department and the FBI for their failure to submit to congressional oversight. As of September 2003, over 140 governments, including three states, have passed resolutions opposed to the USA Patriot Act’s infringements on civil liberties. In August 2003, the U.S. House of Representatives produced a strong vote forbidding the Justice Department from spending funds to carry out the Patriot Act’s controversial “sneak and peek” provision, which authorizes federal agents to conduct secret searches of homes and businesses.

As we move from fear to freedom, we can be guided by the principles of the Bill of Rights. As U.S. Supreme Court Justice Robert Jackson wrote:

The very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials, and to establish them as legal principles to be applied by courts.

Yes, the post-9/11 world is tragically, irreversibly changed. But our principles of freedom and equality need not be. \*



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# THE CONSEQUENCES OF WAR: IRAQ, A CASE STUDY

The history of modern Iraq has been shaped by three political-economic factors: international trade in the Persian Gulf and Indian Ocean, a territorial buffer against Russian expansion, and the development of the petroleum industry. The United Kingdom, France and, later in the 20<sup>th</sup> century, the United States of America became absorbed by protecting and/or controlling western Asia and northern Africa. Beginning in World War II, the region has developed as one of the most significant foci of U.S. foreign policy, and every presidential administration from 1944 to the present has been directly involved in shaping economic and political conditions there. Lest Republicans feel unjustly attacked in the current circumstances, it should be pointed out that the policy of U.S. expansionism in west Asia was formulated by George W. Kennan during the administrations of Franklin Roosevelt and Harry Truman. President Dwight Eisenhower sent troops to Lebanon to assist the British in efforts to oppose a military *coup d'etat* in Iraq in 1958, and every subsequent administration was directly involved in the economic and political affairs of several countries, including Egypt, Israel, Saudi Arabia, Iraq, and Iran, the latter three among the most significant suppliers of petroleum. It was openly accepted policy that military intervention would be used if U.S. national interests were threatened.

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**Were there weapons of mass destruction?** Evidently not, at least not in significant amounts and not ready to be used in battle, as indicated in the UN inspectors' reports.<sup>2</sup>

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After Saddam Hussein became dictator of Iraq in a "palace coup" in 1979 and invaded Iran, U.S. policy tilted toward Iraq in an effort to undermine the Khomeini regime in Iran, and throughout the 1980s, the U.S. played a balancing game so that neither Iraq nor Iran would emerge as victors. A primary consequence of the war was that both countries were economically devastated, but the U.S. and several other nations in NATO continued to give support to the Hussein dictatorship until Iraq occupied Kuwait in 1990. Even then the official U.S. policy was to control, rather than destroy, the Hussein regime. The U.S. thrust toward Baghdad was halted, and uprisings by the Kurds in the north and *shī'ah* forces in the south were not given support. After 1991 a war of attrition through United Nations inspections, international sanctions, and periodic bombing by the U.S. kept Iraq militarily weak and economically devastated. However, some members of the first Bush administration, notably Dick Cheney and Paul Wolfowitz, were strong advocates of removing Saddam Hussein. In 1992 Wolfowitz prepared a study for Cheney in which he outlined the fundamental reasons for invading Iraq and reshaping its political and economic institutions. Securing access to Iraq's petroleum reserves was given as an important reason for intervention.<sup>1</sup> Indeed, plans for invasion continued to be formulated during the Clinton administration and bombing in the "no-fly zones" intensified from time to time. However, it was the formation of the second

Bush administration with Dick Cheney as vice president and Paul Wolfowitz as assistant secretary of defense, together with the terrorist attacks on September 11, 2001, that set in motion the already prepared plans for invasion. Bombing was intensified during summer 2002 to destroy air defenses and military installations, and the final preparations for invasion were made that September. The return of U.N. weapons inspectors, supported by several members of the Security Council and other U.N. members, was essentially a sideshow that produced a massive propaganda barrage by the U.K. and U.S. administrations.

Were there weapons of mass destruction? Evidently not, at least not in significant amounts and not ready to be used in battle, as indicated in the UN inspectors' reports.<sup>2</sup> Was Iraq an imminent threat to the United States or to countries in the region? Based on the types of main-force military resistance to the invasion one must conclude that Iraq was poorly prepared to wage war, and immediate neighbors such as Iran, Turkey, Syria, Jordan, and Saudi Arabia expressed no fear of attack and (except for Jordan) did not support the U.S. invasion. Did Iraq support al Qaeda or similar militant Muslim organizations? Here the evidence clearly indicates that Saddam Hussein, a secular socialist, was considered an enemy of Islam by these groups, and their intention was to subvert and destroy his regime.<sup>3</sup> This the U.K. and the U.S.

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## Wars have intended, foreseeable, unintended, and unforeseeable consequences.

Certainly, they are violent and intend to destroy infrastructure, people, and institutions, but—no matter how many “smart” bombs or missiles are used—the amount of destruction and the consequences of that destruction are not foreseeable.

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did accomplish, and they are now an occupying force held responsible for their actions by international law. At this point we arrive at the central theme of our analysis. Wars have intended, foreseeable, unintended, and unforeseeable consequences. Certainly, they are violent and intend to destroy infrastructure, people, and institutions, but—no matter how many “smart” bombs or missiles are used—the amount of destruction and the consequences of that destruction are not foreseeable. Human beings are not always smart or insightful, and passion overwhelms reason. Just because Donald Rumsfeld appears cool and collected on television does not make him a reasonable person.

The widespread perception by West Asians, based on previous United States activities in the region and based on the 2003 invasion and its aftermath, is that these actions are driven solely by self-interest and imperialist goals. Americans have the unfortunate opinion that we are well informed and “foreigners” are poorly informed. I have done considerable research in villages in West Africa and have discovered that their residents are often better informed about world affairs than many of the students in my courses. The U.S. tendency to support corrupt dictators and suppress popular, nationalist movements—as in the overthrow of prime minister Mossadeq and the reinstatement of the Shah in Iran in 1954—has devalued U.S. political currency in the region. When the U.S. failed to gain any substantial support for an invasion and had no credible plan for post-invasion administration and security, perceptions of self-interest, arrogance, and imperialism were reinforced. Arabs have a realistic and detailed view of the war and the postwar period through regional television, radio, and Internet sites. They know about the U.S. use of weapons of mass destruction, the targeting of civilian infrastructure and residential areas, the lack of interest in the number of civilian deaths and injuries,<sup>4</sup> poor postwar security

and slow reconstruction,<sup>5</sup> the awarding of lucrative contracts to politically connected U.S. corporations, and the creation of prison camps to house, interrogate, and mistreat Iraqis swept up in raids or who were going about their daily business. These developments have produced widespread anger, resentment, resistance, and rebellion in many areas of central and southern Iraq. In part this accounts for the random and organized attacks on British and American troops, on Iraqis who cooperate with the military administration, and on public facilities. An ironic and unintended consequence of the war has been an influx of fighters from militant organizations who use terrorist tactics to oppose the occupation.<sup>6</sup>

George W. Bush declared on May 1 that major combat had ended. Most Iraqis were expected to welcome their liberation, political stability and democracy would be promoted in West Asia, and the war against terrorism would be enhanced. None of these projections are proving to be true. The Syrian government has been affronted by U.S. accusations of development of weapons of mass destruction and harboring Baath leaders, Turkey is concerned about the creation of a Kurdish state in the north, Iran and many European states are angry about the soft treatment of *mujahideen al-khalq*, an Iraq-based terrorist organization dedicated to the overthrow of a democratically elected government. A significant consequence of the war is the development of well-organized *shi'ah* opposition groups who had been suppressed under Saddam Hussein's dictatorship. The *shi'ah* comprise more than 60 percent of Iraq's total population and are led by three prominent families who are planning to rejuvenate educational and religious centers and to promote Islamic based political institutions. On a global scale there has been no diminution of terrorism. There exist dozens of “*al-qaeda*,” small, efficient and dedicated organizations that feed on the conditions created by the U.K. and

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**Every gun that is made, every warship launched, every rocket fired,  
signifies in the final sense a theft from those who hunger and are not fed, those  
who are cold and are not clothed.<sup>8</sup>**

—DWIGHT DAVID EISENHOWER

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the U.S. in Iraq. In addition, the U.S. economy has been compromised by the cost of the war,<sup>7</sup> global economic recovery has been retarded, and U.S. relations with the European Union, Russia, China, India, and many important countries in the “Third World Bloc” have been undermined. In an era of so-called globalization the invasion and its postwar developments have produced serious reservations about U.S. motives and plans for future operations. True globalization only will develop through mutual respect for cultural values, institutions, and philosophies and by creating cooperative programs that benefit all societies.

I will conclude this article with a statement by Dwight David Eisenhower in 1953:

*Every gun that is made, every warship launched, every rocket fired, signifies in the final sense a theft from those who hunger and are not fed, those who are cold and are not clothed.<sup>8</sup> ✨*

## ENDNOTES

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1. Paul Wolfowitz, “Draft: Defense Planning Guidance.” Department of Defense, 1992. Refer also to [www.newamericancentury.org](http://www.newamericancentury.org) for a forthright analysis of the reasons for U.S. expansionism in the 21<sup>st</sup> century. Cheney, Rumsfeld, and Wolfowitz, among several others in the second Bush administration, have been active in this organization, which was founded in 1997.
2. Weapons of mass destruction (WMD) were used in the war—by the United States. Cluster bombs, chemical/fuel bombs (known as napalm during the war against Vietnam), and depleted uranium-clad shells are classified as WMD by the United Nations, by non-governmental organizations, and by science research institutions.
3. For analysis of reasons for the invasion refer to Martin Kettle, “America Wanted War,” *The Guardian*, London (July 16, 2003); Eric Hobsbawm; “America’s Imperial Delusion,” *Le Monde diplomatique*, English language version (June 2003); William Dalrymple, “Who Is the Real Enemy?” *The Observer Review*, London (July 20, 2003); Review of *al-Qaeda: Casting a Shadow of Terror* by Jason Burke.
4. The U.S. government denies any interest in civilian casualties. Although there will never be an accurate accounting of civilian casualties, various news and non-governmental sources have compiled reasonable estimates of between 6,000 and 8,000 dead ([www.iraqbodycount.net](http://www.iraqbodycount.net)).
5. The use of soldiers trained for aggression and not police work, the lack of translators, the mass dismissal of Iraqi police, and the purge of Baath party bureaucrats have contributed greatly to poor security and chaotic conditions. An excellent study of the costs and consequences of U.S. foreign and military policies since World War II is *Blowback* by the distinguished political scientist Chalmers Johnson. A fine analysis of the current situation in Iraq has been written by Max Rodenbeck, “The Occupation,” *The New York Review of Books*, Vol. 50, No. 13 (August 14, 2003).
6. Neil MacFarquhar, “Rising Tide of Islamic Militants See Iraq as Ultimate Battlefield,” *New York Times* (August 13, 2003).
7. In addition to the dollar costs of the war and reconstruction there is a human cost. Many members of the military in Iraq and their families are beginning to speak out about their conditions in Iraq, the length of their tour, and the lack of a well developed, long-term plan before the start of the war ([www.mfso.org](http://www.mfso.org)); also H. D. S. Greenway, “Fire Rumsfeld and Wolfowitz,” *International Herald Tribune*, (July 18, 2003).
8. Eisenhower speech, April 16, 1953, Washington D.C., to the American Society of Newspaper Editors. It is also important to recall that upon leaving the presidency in 1961 Eisenhower warned United States citizens about the creation of a “military-industrial complex,” a situation that unfortunately has come to pass. He said, “In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex. The potential for the disastrous rise of misplaced power exists and will persist. We must never let the weight of this combination endanger our liberties or democratic processes.” The entire speech is printed in *Public Papers of the Presidents*, Dwight D. Eisenhower, 1960: 1035-1040.



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## A DIALOG:

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# WAR AND PEACE

## IN THE 21ST CENTURY

*Editor's Note: This conversation took place on June 2, 2003. What follows is an edited version of the transcript.*

**SPOHN:** Until about a year ago the predominant post-WWII strategy for the U.S. was containment and deterrence, which were the two pillars of American foreign policy during the whole Cold War. Now, the new U.S. strategic document that came out last fall essentially says that the U.S., as the only superpower in the world, has a special responsibility and that it can act unilaterally and even preemptively to prevent attacks on its interests. One could say that the Iraq war was the beginning of this. Has the war on terror changed the official rules of the game? What are the moral implications of that change of strategic posture?

**MEYER:** I think unilateralism is a vice because it does not allow for building community. Assuming that a global community represents international concern for human rights and other reasonable goals, you just can't build those things unilaterally. Is an imperial U.S. ruling the world a good thing or a bad thing? I think it is pretty clearly a bad thing if you are trying to form certain kinds of communities. You don't build a community from the top down. Com-

munities require genuine engagement with others. Yet that is not the way unilateralism works.

**RAVIZZA:** I think it is important to see that the National Security Strategy of 2002 has seeds that go back at least ten years to the Defense Planning Guidance that Paul Wolfowitz took the lead drafting in 1992. That draft put forth many of the concepts that are now contained in the Bush Doctrine. In particular, it argued that with the end of the Cold War, a policy of containment was outdated, and it stated that the U.S. should now be willing to take preemptive action to protect itself and maintain its status as the sole, dominant world power. The draft of the Planning Guidance was leaked to the *New York Times* and the *Washington Post*, and there was such an outcry that President Bush backed away from it. But Wolfowitz and company continued to promote this new approach to foreign policy. When you see many of their ideas finally adopted ten years later in the National Security Strategy of 2002, you realize that really this is a doctrine that has been in search of a justification. And the justification was Sept. 11.

**SPOHN:** Why is that doctrine morally suspect? Someone could say, "We have been good guys in the world. The American dream is the best thing that could happen in the world."

## PARTICIPANTS:

(all from Santa Clara University)

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**RAVIZZA:** The problem for me is posed by the Just War theory as it comes out of the Christian Tradition. Within that tradition there has always been a regulative ideal of non-violence. According to this tradition, violence should be a last resort and should only be used as a defense against aggression. To paraphrase Augustine, war is always at best a tragic necessity.

In contrast, what we now see is a willingness to use violence not just as a response to aggression, but as a means to prevent aggression. The idea is that because terrorists are now operating in secret and we cannot see them amassing forces on our borders, it is necessary to loosen the traditional constraints of Just War theory. According to the Bush Doctrine, violence may be used not simply to respond to actual attacks, but even to prevent possible ones.

**DECOSSE:** I think the question of violence itself is an important aspect of our discussion. For instance, the Vatican has increasingly said that war is always a failure, although they have said this while continuing to affirm, in some instances, the validity of Just War theory. An

important part of the Vatican's judgment that war is always a failure is a judgment about the destructive—both physically and morally—nature of violence itself. What does violence do to the person who carries it out? What does it do to the person on the receiving end? Is violence itself a neutral moral or philosophical category? I was looking at some work by James Turner Johnson, an important just war theorist. He speaks of violence in a much more morally neutral way than does the Vatican.

**CURRY:** The strategy of preemption or prevention clearly fits this historical period when the U.S. has won the Cold War without really doing anything. It has seemed, as a result, that our values are the best. Our interest in prevention is ironic, because what we are really looking at is the first time that human rights have been a justification for war, but we claim the right to judge others. The U.S. wants to impose *our* definition of human rights. Our definition includes some of the rights that we don't live up to. If you impose them from outside, it is very difficult to get people to observe them. So we are not creating a world culture of human rights. Violence

becomes the way to impose human rights or human rights violations become justifications for violence.

**SPOHN:** The Just War theory is prefaced on sovereign states that are in dispute, who have assets, who have armies, and who have identifiable territory. Now we are dealing with these so-called non-state actors who don't have territory, who don't have identifiable assets, for the most part, and who have not affirmed any sort of international agreement, for example, the Geneva Convention. Has the international order slipped from a relatively regulated framework of the Cold War back into a kind of Hobbesian "state of nature"<sup>1</sup> where it is a war of all against all and there really are no rules?

**RAVIZZA:** President Bush has defined this war as a war against evil, and in particular against terrorism that can take a variety of shapes. Our enemies are not only terrorists but also any nation that harbors terrorists. This claim allows us, potentially, to expand the war in all sorts of ways. But are we expanding it in ways that are responding to actual threats against our national security? Or, are we expanding it in ways that promote our own self-interest?

These are two very different questions. The 2002 National Strategy document makes it quite clear that U.S. is the sole judge of the legitimacy of its use of preemptive force. Yet isn't it morally dangerous to deny that a neutral, multinational source could help judge whether a preemptive use of power is appropriate? One of the things we have learned is that power corrupts and absolute power corrupts absolutely. If we say that as the dominant world power we are the only ones who can judge our own use of preemptive force, then are we setting ourselves up for a terrible moral tragedy?

**DECOSSE:** I think the national security strategy is, in effect, a doctrine in search of a cause.

Among other weaknesses of the document, I think its assertion that rogue states and terrorism are pretty much the same issue is not in fact correct. Just War criteria apply differently to the pursuit of al Qaeda than to the situations with Iraq, Iran, and North Korea. Part of the problem here is the "over-moralization" behind the Bush policy. Under the influence of the false certainty behind the language of evil, some important rational distinctions have been lost about how Just War criteria are to be applied and about the need for evidence to justify military action.

**SPOHN:** I think the people who authored that '92 document were full of regret that they didn't finish off Sadaam. And, I think there are ways in which this second Gulf War was the unfinished business of the first Bush administration by the same foreign policy team.

**RAVIZZA:** Let me try to take their side for a moment. I think they felt that we had been constrained in that first Gulf War by an outdated Just War theory, and so we decided not to go to Baghdad and not to remove Sadaam Hussein. But some in the Bush Administration feel that this decision was a mistake, and that we are still living with the difficult aftermath of this mistake. The

inability of the U.N. to enforce weapons inspections in Iraq has simply fed this sentiment, and led people to doubt whether multinational organizations like the U.N. can be effective.

**CURRY:** But we haven't found any weapons of mass destruction, which would suggest that what the U.N. was doing likely had some effect.

**SPOHN:** From 1989 to 2002 there was a 13-year window when both the first Bush administration and the Clinton administration voluntarily pursued multilateralism. And now with globalization, the reality of American military power makes voluntary multilateralism superfluous. Next year we will spend more on our military

Has the international order slipped from a relatively regulated framework of the Cold War back into a kind of Hobbesian "state of nature"<sup>1</sup> where it is a war of all against all and there really are no rules?  
—WILLIAM SPOHN

budget than the rest of the world put together—\$400 billion. There is no one to challenge us.

**RAVIZZA:** The economics raise a moral question. And our commitment to military spending is not a new trend. In 2002, the U.S. and its allies spent \$548 billion on their military budget. In comparison, the “Axis of Evil” spent \$12 billion; China spent \$42 billion; and Russia spent \$60 billion. Even adding these latter three budgets together, the U.S. and its allies still were spending \$434 billion more on defense. Is that really necessary? If you look at our own federal budget in 2002, we were spending \$343 billion on the military. In contrast, \$39 billion was allotted for children’s health, \$34 billion for K–12 education, \$6 billion for Head Start, and \$1 billion for world hunger. That means we were spending \$263 billion more on defense than on all these other programs. So the price of this kind of military dominance is steep. And the dollars that we spend to be the dominant world power are dollars that we are not spending on other needs at home and abroad.

**SPOHN:** So what moral guidelines from the Just War theory apply in the war on terrorism? Are there canons of Just War that ought to be observed as ways of limiting the resort to violence and the damage of violence even in a war on terror?

**MEYER:** I don’t see why “last resort” and “proportionality” don’t still have a lot of relevance. It seems to me you don’t go out and kill people, including completely innocent civilians, unless it is the very last thing that you need to do to protect yourself. And then you have got to have a sophisticated sense of what counts as protecting yourself. Not looking at the unintended but predictable consequences of this kind of unilateral violence in terms of al Qaeda recruitment or other kinds of nefarious activities is insane.

**CURRY:** I am not an ethicist or a theologian but it seems to me on a practical basis those considerations are difficult when you are looking at a nation-state versus an enemy you cannot see or define. We have managed to embody the whole enemy as Sadaam Hussein or Osama bin Laden. But there are lots of people involved, and our actions in many military and non-military conflicts encourage, justify, or trigger their violence.

**DECOSSE:** There is a disconnect when I think of 9/11, because preemptive military action would not have stopped it. In using the Just War theory in light of terrorism, we would militarize the response way too much. The people who are aligned with the Bush Administration want to greatly restrict Just War criteria to “just cause,” “right intention,” and “legitimate authority.” And, they stop right there. That obviously would permit the use of violence to a far greater degree.

**RAVIZZA:** It is essential to appreciate that the rules for Just War cannot be understood apart from the interpretive tradition of the people who are applying those rules. Let me contrast two such interpretive traditions. On the one hand, you have a Christian tradition out of which

thinkers like Augustine and Aquinas developed Just War thinking. In that tradition there is a regulative ideal of non-violence based on the command to love your enemy and your neighbor as yourself. This law of love is the presumed starting point of any deliberation. If you are applying Just War theory out of this kind of interpretive tradition, the assumption is that any use of violence is a tragedy. And when you evaluate something like “proportionality,” you are not simply considering what is going to be the proportion of good to evil in a particular act of violence, you must take into account the whole aftermath of war. If we apply this to the current conflict in Iraq, we should not simply ask, “Do we have some narrow justification for using vio-

The price of this kind of military dominance is steep. And the dollars that we spend to be the dominant world power are dollars that we are not spending on other needs at home and abroad.

—MARK RAVIZZA

lence in this region to protect our national interests?” We also have to ask, “Will our intervention ultimately lead to a just peace in the area for all people?”

This Christian tradition, with its presumption against violence, is very different from an interpretive tradition based on a Hobbesian “state of nature” and the kind of political realism that sees each nation struggling against others to promote its own self interest. In a Hobbesian framework it is more natural to view violence as an acceptable tool to advance national goals. From this starting point, it is not so objectionable to ask “How might the use of preemptive force advance my own nation’s power and advantage?” In this context, Just War theory can simply become a rhetorical tool deployed to justify a use of violence already decided upon.

**SPOHN:** So even though a given administration might invoke the language of Just War—“last resort,” “just cause,” “fair hope of success,” and “proportionality”—the danger is that interpretive framework within which they are operating could mean something very different. Political realists like Cheney, Wolfowitz, Rumsfeld, Armitage, and others are going to have a very different framework than people like Jimmy Carter or others in public life, maybe even Tony Blair, so using the same words is a problem.

**RAVIZZA:** They could use Christian language and they could use Just War principles. But if they are operating out of that Hobbesian contractarian point of view, they may be simply trying to promote their national interests.

**MEYER:** May I follow up on that? Mark made a connection that I think is crucial between a Just War and a just peace. And I think there is a tendency to talk about Just War theory and not look at a broader set of questions than the questions of war; we need to consider questions of peace.

If you were to take a small percentage of those hundreds of billions the U.S. spends on defense and spend it to improve the lives of people all over the world, would we win friends or what? Now I am not saying that makes ideological differences go away. I am not saying that makes radical Islam disappear. But I really do think that the degree to which, and the ways in which, and reasons for which people are attracted to radical Islam, or are attracted to anti-U.S./anti-western value systems is a function of a whole bunch of unintended effects of things that we do. Foreign aid cannot be all about guns, which it largely is.

If you were to take a small percentage of those hundreds of billions the U.S. spends on defense and spend it to improve the lives of people all over the world, would we win friends or what?

—MIKE MEYER

**CURRY:** I think the other problem is that, in claiming to attempt to force democracy on other countries, we are not very democratic about doing it and we don’t protect democracy in our own country. We are not really thinking about other civilizations having other ways to rule themselves that are equally acceptable. The American system in our equation is the best, or sometimes, only acceptable one.

**SPOHN:** Let me raise another topic that is related to this. To what extent is there a moral responsibility for one nation to intervene in the internal affairs of a sovereign state? There is an increasing sense that if there are profound internal human rights violations, there is a responsibility of the international community to do something. The Treaty of Westphalia after Europe’s wars of religion was founded on the integrity of the nation-state. What happens when that integrity is no longer seen as a limit for military action from the outside?

**CURRY:** That assumes that states are made from the inside out. The treaty of Westphalia was very much about self-established states and states that were communities of people who came together as they did in Germany. Yugoslavia, Africa, and many of the countries in Asia are artificial cre-

ations. External powers drew somebody else's boundaries based on nothing that had to do with the people there. So we created this problem, in many ways, from the outside by dividing up the world our own way.

I think we focus so much on economic globalization that we have forgotten that the most remarkable transformation is that it is now the world's or the United States' business to judge how governments govern—and to go in to change how they deal within their own borders with their own populations. This is really the most important part about globalization. All of a sudden we have a universalization of human rights. The irony is that we are reluctant to let other people make their own judgments when it is inconvenient for us. You demand free elections and that others allow sovereignty and freedom of religion, all of which are guaranteed by international accords. Then if a Muslim government wins in a free election in Iraq, oh well, we say that would not be acceptable.

**DECOSSE:** Humanitarian intervention is actually a good development in some ways. I think of this in terms of the build up domestically to the war in Iraq and the evidence of widespread violation of human rights there. In that sense it is a good thing that we are not regarding national borders per se as the be-all and end-all of determining possibilities for intervention.

**MEYER:** It opens up questions about whether or not there is a “there” there. In Iraq clearly there is no nation. The state is a completely artificial construct. We drew state boundaries after WWI in the Middle East and they are completely out of whack with the cultural and historical traditions of that place. We have to be able to intervene in cases of severe injustice. But the nature of the intervention and this idea of nation building still strike me as genuinely problematic.

**CURRY:** The real issue is how do you create a just peace. And how do you create peace in such a way that will not create another war? What we have seen in Yugoslavia was that the peace that was forced on them had nothing to do with resolving the issues that had created the first con-

flict. And so those conflicts were replayed with worse weapons in a later period.

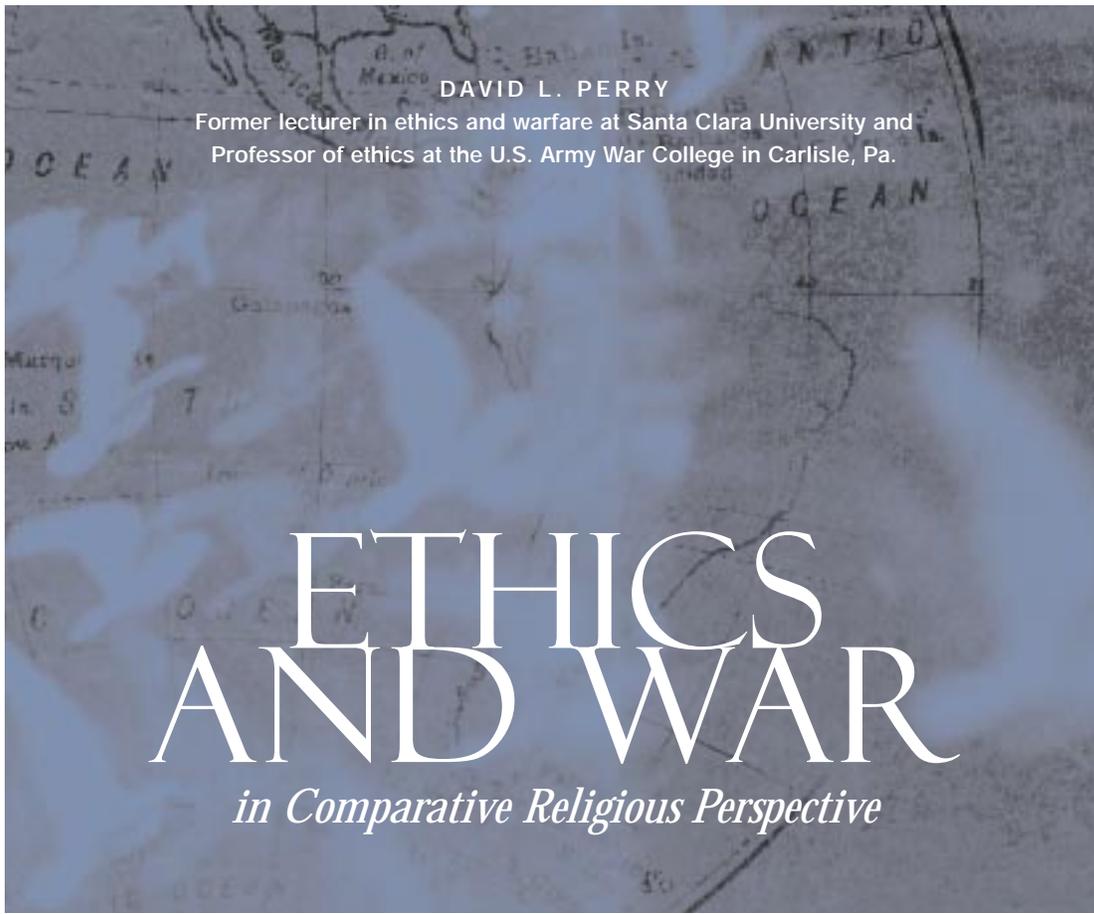
**RAVIZZA:** I think the question we have been asking over and over is, “How would our perspective shift if we asked not only about Just War but also about just peace?” Given the dollar amounts we discussed earlier, what would our national budget look like if we were to take the need for a just peace seriously? What kind of money would we be spending right now in Afghanistan and Iraq? What is the real cost of modern warfare?

One of the things that struck me when talking with students during the Iraq conflict was that there seemed to be an increasing willingness to use violence. Now that we have precision missiles and can readily perform surgical strikes, is military force becoming a tool that we are more willing to take off the shelf? Is “limited” warfare becoming a more acceptable option in global politics? During the Cold War, with the threat of atomic weapons that would destroy everything indiscriminately, the use of military force was becoming a risk that we were increasingly reluctant to take. In contrast, we now seem to be fascinated with the idea that we can deploy smart bombs and extremely expensive laser-guided missiles to resolve our international disputes. This concerns me. There seems to be a growing willingness to resort to military solutions. And what does this mean for our future? \*

## ENDNOTES

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1. For Hobbes (1588–1679) the “state of nature” was in a sense the original state of humans outside of, or prior to, society. It was a state of war and an unhappy one where the life of man was “solitary, poor, nasty, brutish, and short.” This situation gave the justification for the creation of society. The idea is influential for some in thinking about the relationship between different states—in other words, international relations are seen as in a Hobbsian state of nature (even if the people within each society/state have escaped this). Put differently again, for Hobbes humans are not naturally social but antisocial—they only choose society to escape their natural antisocial tendencies and the bad consequences these bring about. [Original text can be found in: Thomas Hobbes, *Leviathan*, originally published in 1651 (New York: Library of Liberal Arts, 1958), pp. 106-7.]



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# ETHICS AND WAR

*in Comparative Religious Perspective*

*This article is excerpted with the author's permission from a more lengthy presentation delivered on March 25, 2003, at Trinity Lutheran Church in Tacoma, Washington. NOTE: Perry's views do not necessarily reflect those of the U.S. Government.*

**I**n the Western monotheistic religions of Judaism, Christianity, and Islam, we encounter a mixture of moral values—some restraining war, others promoting it. I think it's fair to say, though, that the problem of total war has been more frequent in these faiths due to a more intense fear of unorthodox beliefs and idolatry.

Frequently in the Hebrew Bible, love of one's neighbor is said to be a fundamental duty; in fact, love is to extend beyond one's religious or ethnic kin to include resident aliens as well (Leviticus 19:17–18, 33–34). Murder and other forms of unjust violence are forbidden (Exodus 20:13). The primary ideas underlying those commandments appear to be: 1) God is loving; imitate God's love; 2) God has shown compas-

sion and mercy to you; show gratitude to God by being merciful to others; and 3) human beings are created in God's image; treat them as such. (See Psalm 145:8–9, Micah 6:8, and Genesis 1:26–27, 9:6).

If we considered these ideas in isolation from some other biblical values and commandments, we might infer an ethic of strict pacifism toward human beings, an absolute duty not to kill people. But that's not what the ancient Hebrews concluded, since murder and other serious offenses (Exodus 21–22) were subject to capital punishment. Genesis 9:6 says, "Whoever sheds the blood of a human, by a human shall that person's blood be shed; for in his own image God made humankind."

We might interpret that in modern terms to mean, "All persons have a basic right not to be killed, rooted in their having been created in God's image, but they can forfeit that right if they commit a serious enough offense." So far, this would only permit those who are guilty of

certain crimes to be executed. And if this ethic permitted war at all, it would seem to limit it to the defense of the innocent against unjust invaders, or for punishing their atrocities.

But collective punishment and indiscriminate war were also commanded or approved in the Hebrew Bible, especially in cases of idolatry. The first of the Mosaic commandments prohibited the Israelites from worshipping anyone but Yahweh. God demanded purity and strict obedience; idolatry and blasphemy were punishable by death (Exodus 20:3, 5). Non-Israelites who lived within the area believed by the Hebrews to have been promised to them by God were seen to pose a great temptation to them to abandon their faith. This led them to justify the slaughter of entire communities. Deuteronomy 20:16–18 says, “[In] the towns of the nations whose land the Lord your God is giving you as your holding, you must not leave a soul alive.... [Y]ou must destroy them ... so that they may not teach you to imitate the abominable practices they have carried on for their gods....”

When Jesus spoke with Roman soldiers, he did not recommend that they abandon their profession in order to serve God (Luke 7). Now an argument from silence is risky, but it’s puzzling how Jesus would have reconciled the military profession with nonresistance to evil and love of enemies.

Israel’s external enemies were first to be presented with peace terms, and if those were accepted then the people would be subjugated, not killed. But if they rejected the terms, the men would be slaughtered and the women and children enslaved (Deuteronomy 20:10–15).

Turning to the Christian New Testament, one question that has been the subject of considerable debate is whether Jesus was a pacifist. Some passages in the Gospels seem to clearly imply that, but others are more ambiguous.

Matthew 5 reports Jesus as saying: “You have heard that it was said, ‘An eye for an eye and a tooth for a tooth.’ But I say to you, Do not resist an evildoer. [I]f anyone strikes [or slaps] you on the right cheek, turn [and offer him] the other

also.... You have heard that it was said, ‘You shall love your neighbor and hate your enemy.’ But I say to you, Love your enemies and pray for those who persecute you.” These sayings seem to imply a strict rule of nonviolence.

By contrast, when Jesus spoke with Roman soldiers, he did not recommend that they abandon their profession in order to serve God (Luke 7). Now an argument from silence is risky, but it’s puzzling how Jesus would have reconciled the military profession with nonresistance to evil and love of enemies. Also, the Gospels portray Jesus as using some degree of intimidation or force to eject the merchants from the Temple in Jerusalem (John 2:13–16).

In light of this puzzling combination of texts, how did the early Christian community answer the question of whether force could ever be morally justified? Many of them seem to have constructed a dual ethic, one for Christians and another for the state. I’ll use Paul, Tertullian of Carthage, and Origen of Alexandria to illustrate

this. Those three influential Christians interpreted Jesus’ teaching and example to prohibit *all* uses of force by *Christians*, not only in self-defense but apparently even in defense of other innocent people.

Paul wrote to Roman Christians (Romans 12): “Do not repay anyone evil for evil, but take thought for what is noble in the sight of all.... Beloved, never avenge yourselves, but leave room for the wrath of God.” Over a century later, Tertullian wrote (*On Idolatry*) that when Jesus rebuked the disciple who defended him at his arrest, he in effect disarmed every soldier. He explained to Roman rulers (*Apology*) that Christians believe it’s better for them to be killed than to kill. And he stipulated (*On the Crown*) that when soldiers convert to Christianity, they must

Although Islam spread to some parts of the world such as Indonesia mainly by means of “beautiful preaching,” much of its expansion elsewhere was due to offensive war, first by Muhammad to unify Arabia, then by his followers in conquering the Middle East, North Africa, and so on.

leave the military. Origen claimed that Jesus prohibited homicide, so Christians may never kill or use violence for any reason (*Against Celsus; Commentary* on Matthew 26:47ff.).

Now these views are internally inconsistent: It's not possible to rule out killing entirely, and then permit it on the part of the state. But it's important to recognize that these authors—and possibly most early Christians—thought strict pacifism to be the only acceptable ethic for followers of Jesus.

In the Islamic tradition, the Qur'an repeatedly refers to God as compassionate and just. The Qur'an also says that “there is no compulsion in religion” (2:256), meaning that one's submission to God must be freely and sincerely chosen, not forced (Ali). The Qur'an urges Muslims to use “beautiful preaching” to persuade people to accept Islam, and to “argue nicely” with Jews and Christians who are seen as worshipping the same God as their own (16:125, 29:46, Firestone).

Those ideas taken in isolation might tend to preclude holy war, and perhaps even ground some form of pacifism. Indeed, the Prophet Muhammad was said to have practiced non-violence during the first 12 years of his prophetic career, even in the face of serious persecution by polytheists in Mecca (Kelsay; Hashmi). The Prophet's stance during that early Meccan period eventually served as the model for a nonviolent Islamic movement in 20<sup>th</sup>-century Afghanistan led by Abdul Ghaffar Khan, a friend and admirer of Gandhi (Easwaran).

But after the Prophet's escape to Medina in 622, he came to believe that God permitted and commanded the use of force in defense of his growing religious community. Qur'an 22:39–40 (Firestone) says, “Permission is given to those

who fight because they have been wronged ... unjustly expelled from their homes only because they say, ‘Our Lord is Allah.’” Like the Hebrew Bible, the Qur'an mandates capital punishment for certain offenses, though it also urges mercy and forgiveness in other cases. Muhammad often urged diplomacy rather than war to resolve disputes (Hashmi).

But some scholars believe that particular verses in the Qur'an (9:5 and 73) and other sayings of the Prophet go beyond defensive and retributive uses of force to permit offensive jihad to expand the territory of Islam. “Jihad” can refer to the struggle of the individual Muslim to conform his or her will to Allah's, or to a peaceful effort to persuade others to accept Islam. But jihad can also mean holy war. In fact, there's a sense in which the only completely just war in Islamic terms is a holy war, since it has to be approved by proper religious authorities and waged to defend or promote Islam or the Muslim community (Kelsay).

So in spite of the Qur'anic statement against forcing religion on others, Muslim leaders have sometimes threatened to kill unbelievers if they did not accept Islam. Although Islam spread to some parts of the world such as Indonesia mainly by means of “beautiful preaching,” much of its expansion elsewhere was due to offensive war, first by Muhammad to unify Arabia, then by his followers in conquering the Middle East, North Africa, and so on. In fact, for many years the caliphs or Muslim political leaders were expected to wage offensive jihad at least once a year (Johnson).

Tragically, some advocates of aggressive religious war can still be found today in all of the world's major religions. What they cannot legitimately claim, though, is that their position is *the*

authentic expression of their faith. Each of the traditions I've discussed contains ethical principles that are incompatible with total war.

But in order for members of those faith communities to continue to believe that God is compassionate and just, I think they must repudiate claims and values in their own scriptures and traditions that are incompatible with those ideas. It does not blaspheme or insult God to believe that God's actions are limited by objective moral principles. To say that God would never condone or command total war or other cruelty does not represent a significant limit on God's power.

Religious communities can help to ensure that political and military leaders abide by these rules

and inculcate respect for them in the training and management of soldiers. But just as importantly, faith communities can nurture firmly rooted habits and dispositions of compassion and nonviolence, reducing the likelihood and severity of war by dispelling the fear and hatred that too often inspire and escalate it. ✨



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## Middle East Anthropology and the Preemptive Strike— *One American's Painful Journey*



Logar region Pukhtun village girls waiting for class to start.

An anthropologist's journey must take her outside of her own comfortably familiar and confirming community in order to participate in (and observe and record) the ongoing life of people from another culture.

PHOTOS COURTESY OF MARY ELAINE HEGLAND

This last year, as fortunate recipient of a grant to conduct research about the elderly, people of Turkey, Tajikistan, and Afghanistan, I have had opportunity to interact with many people from the Muslim societies. However, facing the uniform disgust of Turks, Tajiks, and Afghans about the American war in Iraq, I have been on some painful journeys.

In late January I settled into the Istanbul American Research Institute in Turkey (ARIT), only to watch the build up toward the invasion of Iraq on cable television. It was clear that Turks did not approve of the war. I watched demonstrations, one of them in person, and listened to my academic Turkish friends' distraught and condemning commentaries about the war over their Turkish cooking. Those Turks with whom I interacted were not buying the American rationale of a preemptive strike against Iraq to prevent that country's deployment of weapons of mass destruction.

In May I traveled to Tajikistan. Russianized and secularized to a degree through their decades as part of the Soviet Union, Tajiks still identify themselves as Muslims. They felt sympathy with their fellow Muslims who were suffering in Iraq, and they were highly critical of Americans. And like people in Turkey, they did not accept the reasons the American government gave for the attack.

In June, I flew from Dushanbe, capital of Tajikistan, south to Kabul, Afghanistan, for ten days. There I saw firsthand the devastating effects of 25 years of war. With my hostess, anthropologist Patricia Omidian, who works for UNIFEM, I interviewed very poor workers and clients at women's bakeries sponsored by the World Food Program. We listened to poor widows, some of them weeping, tell about their war losses and their poverty, and how they were struggling to feed and care for their children. I saw destroyed buildings, graveyards of airplanes and electrical streetcars, and huge areas of mud brick rubble that used to be homes.

In Afghanistan, too, people were horrified over the war in Iraq. In Kabul, I asked a young woman whose mother is Pukhtun: "Do people appreciate having the international European ISF rather than the U.S. patrolling the area for peace-keeping?" "People in Kabul who understand the differences appreciate the ISF and prefer having ISF instead of Americans," she answered. "The people out in the villages don't know the differences. They think they are all Americans, and they hate them."

One Pukhtun Afghan woman told me, "The U.S. did a bad thing, going to Iraq, fighting against Iraq ... Hitler killed Jews, and Bush is killing Muslims. Wherever there are Muslims he is finding them and killing them."

In July I returned to Turkey. I spoke with students, professionals, and working people. Although usually very kind and friendly, everyone spoke in deeply negative tones about U.S. foreign policy and what they saw as a changed and terrible United States.

I asked a Turkish economist what he thought about the concept of preemptive strike, in regard to the U.S. attack on Iraq. "First of all, I think, just because of 9/11, some Americans think they have good reason to make a preemptive strike. Only stupid people believe in this theory. I don't like Saddam Hussein and his sons, but no one has the right to go and kill these people. It is execution. Where is the law? But most of the governments are afraid of America, afraid. It is so sad."

A retired teacher working as a taxi driver in a southwestern city said, "Bush is the king of the world. So many people have died. And they have died needlessly—only for oil." These terse comments summarized three common themes in the more lengthy discussions of many people with whom I spoke in these three countries: America's power, wielded without restraint now in the absence of the Soviet Union's balancing power;

Customers at an NGO-sponsored women's bread bakery telling interviewers about their war losses and current living difficulties.



If the intention of “preemptive strike” is prevention, many other types of preventive measures would seem to be more effective and avoid the unforeseen devastatingly negative consequences of war.



Article author Mary Elaine Hegland with initiator of an NGO-sponsored women's bakery branch in Kabul and two of her children.

compassion for the Iraqi people; and oil as a main motivation for the attack on Iraq, rather than any reasonable “preemptive strike” to prevent any deployment of “weapons of mass destruction.”

What about this concept of “preemptive strike”? The current on-going debates, indications about manipulation of evidence, inability to find weapons of mass destruction, and scandal point to some of the problems in delineating evidence parameters to permit preemptive strikes through international law. If the intention of “preemptive strike” is prevention, many other types of preventive measures would seem to be more effective and avoid the unforeseen devastatingly negative consequences of war. What about American support for the Saudi Arabia rulers, providing them with military and police support in exchange for political influence and access to oil? As a result of this partnership for repression, Saudi dissidents, unable to influence political process in Saudi Arabia, have turned to political involvement and terrorism in Afghanistan, the Taliban, al Qaeda, and now Iraq. If we are considering prevention, what about the U.S. armaments industry, providing any and all aggressors in the world with the military means to inflict harm?

Instead of a “preemptive strike,” the U.S. government might have thought more about the potential consequences of supporting Saddam Hussein when he attacked Iran in 1980. Saddam Hussein apparently believed that because of the Iranian Revolution and the newly formed Islamic Republic of Iran, Iraq might be able to gain some disputed territory through a war on a militarily disorganized Iran. In a state of enmity with the newly formed Islamic Republic of Iran, the U.S. favored the aggressor in this regional conflict, and provided Saddam Hussein and Iraq with military technology and weapons, helping to build up his military power.

During the Iran-Iraq war from 1980 to 1988, Iraq deployed chemical weapons against Iranian targets. Why did the U.S. not show more distress about Saddam Hussein’s use of weapons of mass destruction when he poison-gassed thousands of his own Kurdish citizens in the settlement of Halabja? The U.S. overlooked this and many other

dangerous behaviors on the part of Saddam Hussein and helped him to build up his position during the 8-year war.

Thousands upon thousands of Iraqis and Iranians became widows and orphans in this disastrous war, which was abetted and encouraged by the American government in order to weaken its enemy, the Islamic Republic of Iran. The U.S. took the side of a repressive dictator against an Islamic Republic that Iranians themselves brought about through a popular revolution overthrowing the Shah and then a referendum.

Instead of deciding to make a friend of the enemy of an enemy, the U.S. might have avoided political intervention in Iran that helped lead to the popular revolution and the Islamic Republic of Iran in the first place. Fifty years ago, Iranians had enthusiastically voted positively in a referendum for nationalization of oil. The popular prime minister, Dr. Mohammad Mosaddeq, who opposed western political control, had sponsored this referendum so that more of the benefit of the country’s petroleum resources would go to Iranians, rather than to England. When Mohammad Reza Shah Pahlavi fled the country, leaving the power in the hands of this leader who has been democratically elected to Parliament, the U.S. and Great Britain saw their economic and political control over Iran disappearing. The CIA and the British then engineered the 1953 *coup de etat* to reinstate the Shah and exile Prime Minister Mossadeq. (For details, see *All the Shah’s Men: An American Coup and the Roots of Middle East Terror* by Stephen Kinzer, New York: John Wiley and Sons, 2003.) Martial law was imposed. Subsequently, the U.S. government and the CIA continued to support the Shah as he kept his power through jailing and executing any dissidents. The CIA trained his secret police in surveillance and torture methods. U.S. military trained the Iranian armed forces and maintained a strong physical presence in Iran.

U.S. presence in Iran resulted not in democracy but in political repression. Under the tutelage of the U.S., the Shah’s government prevented Iranians from enjoying freedom of political expression and democratic political participation. When I

Manager of an NGO bakery transporting bread to the sale area.



With the end of the end of the Cold War, the U.S. forgot Afghanistan. If only the U.S. had spent even the same amount of money that they now spend in a month in Iraq (five billion dollars according to August reports) to build infrastructure, schools, and opportunities for Afghan children. But they did not.

Girls filling water bottles from a street pump in Kabul.



lived in Iran for two years as a Peace Corps volunteer from 1966 to 1968, portraits of the Shah necessarily took a place of honor in each shop and public place. People did not dare say a word against Mohammad Reza Shah or his government. Anyone who did say anything critical of the Shah became a political prisoner.

What might have happened if the U.S. had not prevented this budding democracy from blossoming? Perhaps the frustrated desire for political freedom would not have eventually spilled out in the only possible means of political organizing—by Shi'a Muslim clerics, and within their framework—resulting in the Shi'a religious establishment's channeling the popular revolutionary movement and transforming it into the Islamic Republic of Iran. Given the history of U.S. political intervention in the area, is it so surprising that people should be suspicious of U.S. intentions?

I conducted my Ph.D. dissertation field research in Iran during 1978–79 on the process of the Iranian Revolution as seen from a village perspective. Among the main complaints I heard from young villagers turned revolutionary activists were lack of democracy and political freedom and the U.S. political control of Iran. “The Shah is a U.S. puppet,” demonstrators accurately chanted, and students painted the accusation on walls. The U.S. had continued to support the Shah whom the CIA brought back as head of the country in 1953, getting rid of a democratically elected and popular prime minister in order to keep in power a Shah who would follow their directives. During the Cold War, the U.S. wanted pro-U.S. governments in power in the Middle East, heads of government who would serve as American agents in the region. The U.S. apparently did not care about their human rights records or lack of democracy in their governmental systems, and in fact helped them to repress dissidents against their monopolizing power.

In Afghanistan, the U.S. took a similar stance, making a friend from the enemy of an enemy, and providing that friend with huge amounts of revenue and armaments. Together with Saudi

Arabia, U.S. funding and support helped to create the Taliban, Osama bin Laden, and al Qaeda. The U.S. gave billions to the Mujaheddin leaders who were fighting the Soviet Union, choosing the most conservative and recalcitrant, Gulbeddin Hekmatiyar, as the U.S. favorite. Then after the Soviet Union left Afghanistan and the Soviet Union collapsed, the U.S. had no further interest in Afghanistan. The well-armed and well-funded Mujaheddin leaders were left to fight it out among themselves for control. Wanting to monopolize power, Gulbeddin began the war that destroyed Kabul.

With the end of the end of the Cold War, the U.S. forgot Afghanistan. If only the U.S. had spent even the same amount of money that they now spend in a month in Iraq (five billion dollars according to August reports) to build infrastructure, schools, and opportunities for Afghan children. But they did not. With no other choice available, parents sent their boys for food and education to become “*taliban*,” students at religious schools funded by the Mujaheddin groups and Saudi Arabia. At these schools in Afghanistan and Pakistan, they learned an aggressive, strict, Saudi-influenced interpretation of Islam and received military training. They were easily recruited to become Taliban, members of the movement that took over Afghanistan and hosted al Qaeda.

Rather than indiscriminately supporting repressive and brutal leaders and forces, better U.S. strategy would be to avoid contributing to the making of political monsters. But now the U.S. is befriending and supporting the Afghan warlords who rule their local areas with iron fists and threaten the authority, power, and financial solvency of the central government, because they have expressed willingness to help the U.S. find the Taliban and Osama bin Laden. Through their invasion of Iraq, against world opinion and especially offensive to Muslim peoples and nations, the U.S. has sign-posted that country as the battlefield between America and the “infidel” West on the one hand and the Muslim world on the other. To what terribly destructive long-term effects might this very shortsighted “preemptive strike” lead? \*

BY THOMAS G. PLANTE

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# *Clergy Sexual Abuse and the Catholic Church:*

WHAT DO WE KNOW AND WHERE DO WE NEED TO GO?

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**F**ew recent topics have received the kind of media attention, heated debate, and discussion than the topic of sex-offending clergy, their victims, and supervisors. It is a story about too many bishops (and priests) behaving badly when they are purported to be the moral, religious, and ethical leaders of society. It is a remarkable story. However, it is a complex story that has had little scholarship and discourse driven by thoughtfulness, civility, and reason.

During May 2003, Santa Clara hosted an international conference to bring together some of the best minds in the world on this topic in order to shed some light on the problem of clergy sexual abuse in the Catholic Church. The conference was funded primarily by the Bannan Center for Jesuit Education but also received support from the Markkula Center for Applied Ethics, the SCU President's Office, the College of Arts and Sciences, and the Center for Professional Development. The conference also sought to produce a scholarly book, *Sin Against the Innocents: Sex Abuse by Priests and the Role of the Catholic Church* (Plante, 2004), to be published by Greenwood Press. The book is a companion to an earlier book on this topic that was also published by Greenwood and edited by me in

1999, *Bless Me Father for I Have Sinned: Perspectives on Sexual Abuse Committed by Roman Catholic Priests*. The May 2003 conference and resulting book project included leading journalists, theologians, canon and civil lawyers, ethicists, victim advocates, and mental health professionals from the United States, Canada, England, and Italy who gathered to better understand the challenges of clergy sexual abuse in the Roman Catholic Church following the crisis of 2002 in the American Church. In doing so, we sought to discuss, debate, and outline a state-of-the-art understanding of this important problem from multiple perspectives. Each chapter was read and discussed among the group and feedback was provided to the contributors for inclusion in their final chapters.

Sexual abuse of minors committed by Roman Catholic priests is a problem that has existed throughout the world and throughout the long history of the Catholic Church. Although a clear minority of all Catholic clergy (accounting for perhaps 2 to 6 percent with the majority of these offenders targeting post-pubescent adolescent boys), some priests have tragically chosen to become sexually engaged with children or younger adolescents. Most of these men who abuse minors experienced child sexual abuse when they were young and currently suffer from a variety of co-morbid psychiatric problems including substance abuse, personality, mood, and organic brain disorders. Some of these men are amenable to treatment while others are not. Victims usually are especially vulnerable due to their age at the time of abuse, trust in the priest

even if priests were allowed to marry and if all homosexual clergy were banished from the priesthood.

The high frequency of sexual abuse throughout the world does not excuse priests or the Catholic Church for this behavior. It would be a significant problem if only one priest sexually abused one child anywhere in the world. We rightfully expect much better behavior from clergy than from the general population of men. We expect priests and other clergy members to set an ethical, moral, and spiritual standard that is higher than what is expected of others. We expect priests to be closer to and more like God, bridging the gap between what is human and divine. Many may argue that if the percentage of priests who sexually abuse minors is not significantly

**We expect priests and other clergy members to set an ethical, moral, and spiritual standard that is higher than what is expected of others. We expect priests to be closer to and more like God, bridging the gap between what is human and divine.**

and the Church, and personal and family stresses that typically have occurred among victims who may seek out the spiritual and pastoral counsel of a clergy member. The number of clergy sexually involved with consenting adults is impossible to know at this time. Although the problem of clergy sexual abuse is not new, the intense media attention, public outcry, and numerous lawsuits are indeed new.

Tragically, sexual abuse of children and adolescents can be found in every area of the world and in every profession that has access to minors. Furthermore, since persons of varying sexual orientations as well as non-celibate clergy choose to sexually abuse minors, blaming this problem solely on the celibacy vow or on those who maintain a homosexual orientation is unreasonable. Celibacy and homosexual orientations cannot uniquely be blamed for the problem of sexual abuse committed by priests. Clearly, sexual abuse of minors by priests would likely continue

higher than among male clergy from other faith traditions or from the general population of men, then why does the Catholic Church appear to be so plagued by this problem? While there are many possible explanations for this phenomenon a few will be highlighted here. First, there are about 45,000 active priests in the United States while there have been about 150,000 during the past 40 to 50 years. Therefore, if the 2 to 6 percent figure of sex-offending clergy is accurate, then we can expect to have between about 1,000 and 3,000 sex-offending priests currently (or until recently) working in ministry. This number swells to between about 3,000 and 10,000 if we consider all of the priests working in ministry in the United States during the past half century. Research from the St. Luke's Institute that specializes in the treatment of sex-offending priests suggests that the average number of victims per priest is about eight. Therefore, we could expect up to 100,000 victims of priest sexual abuse during the past 40 to 50 years. One notable case in

Boston, which received intense media attention, had 138 victims.

More importantly, however, is how the Church structure manages these issues when they come to light. Most faith traditions have some kind of lay board of directors who hire, fire, and evaluate their clergy. In a nutshell, clergy from other traditions are on a shorter leash than Catholic clergy. If a particular religious superior such as a bishop does not manage a complaint or a problem with his clergy very well, then the virus of sexual abuse can spread rapidly. Moving problematic clergy from parish to parish without input from various lay boards of directors allows clergy sexual predators to continue to victimize vulnerable children and others. If someone doesn't like how a bishop or religious superior makes decisions, then what recourse exists? Bishops and priests are not elected to office and do not have contracts that are renewed with input from lay boards. So, while the percentage of clergy who victimize minors and others may not be significantly different across the various faith traditions, the number of victims and the ability to avoid intervention and potential prosecution can be quite

different across the faith traditions, which can result in more victims per perpetrator in the Catholic tradition.

The Church could have done more over the years to prevent sexual abuse from occurring. Victims and their families could have been treated with more respect and compassion. Offending clergy could have been treated quickly and relieved from duties that placed them in contact with potential victims. The current media attention to sex-offending clergy has acted as a spotlight to examine this problem more closely and to hopefully develop interventions at both individual and institutional levels. The problem of sex-offending clergy can be complex and often lacks simple answers. However, there are strategies and procedures that have been successfully used with other populations (such as mental health professionals) that can be used with the Church. We can perhaps never totally eliminate abuse of children among the ranks of clergy or any occupational profession but we can do much more to minimize the risk. At stake is the moral and spiritual authority of the Church as well as the well-being of countless priests and laypersons.

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During the conference at Santa Clara in May, Thomas Plante (left), SCU professor of psychology, participated in one of the seminars to discuss chapters in the forthcoming book: *Sin Against the Innocents: Sex Abuse by Priests and the Role of the Catholic Church*, which Plante will edit.



JOHN VONDOLLEN

So, where do we go from here? The following is a list of nine important principles for the future.

**1. Protect children and families.** The first priority must be the protection of children and vulnerable adults. Certainly, anyone who has a sexual predilection towards children does not belong in their company.

**2. The Church must be responsible and accountable.** Church officials must take responsibility and be accountable for their policies and procedures to ensure that their clergy do not victimize others.

**3. Attorneys and insurance carriers can only help so much.** While attorneys and insurance carriers must be involved with helping the Church cope with an onslaught of lawsuits, the Church must answer to a higher moral and ethical authority and perhaps have much higher standards to uphold relative to secular institutions.

**4. The Church should not forget its spiritual and moral tradition.** There is a Gospel-based accountability to uphold religious, moral, and ethical standards and not to simply do what might be the most practical or expedient.

**5. Zero tolerance has some appeal although must be considered carefully.** While zero tolerance is a concept that has a great deal of popular support, there are many complex issues that make zero tolerance easier said than done. Furthermore, many call for the defrocking of sex-offending clergy. If the primary goal is to protect children from abuse, defrocking a priest may not be in the best interest of keeping children and vulnerable others safe. The Church can use the vow of obedience to ensure that sex-offending clergy stay far away from children and others forever. This level of control cannot occur in secular society once someone is released from prison.

**6. Universality and clarity are needed in policies and procedures.** Policies regarding how to deal with accusations of sexual misconduct by clergy in terms of what the victims and

accused can expect must be made clear across the land. These policies must be easy to understand. Model programs demonstrating best practices need to share their methods with others to maximize the chances that good strategies and methods are used everywhere.

**7. Research is needed.** It is hard to solve important problems unless good data are available to help inform policy and procedures. It would be productive to complete comprehensive research studies that can help us make decisions based on the best available data.

**8. Keep the light on.** Michael Rezendes from the *Boston Globe* completes his chapter by stating that the *Boston Globe* Spotlight Team shed light on a very dark place and call us to continue keeping this light on the darkness. This image is an important one. Much good can ultimately come out of the crisis in the American Catholic Church if policies and procedures are developed to minimize the sexual victimization of minors in the present and future. The Church has much to lose yet much to gain from the recent crisis. Furthermore, the light shed on the sexual victimization of children can be directed to all places where children are victimized both in and outside of the Catholic Church.

**9. Follow the example of Jesus.** Lessons from the Gospel should help inform all of the Church's actions. Common sense and compassion must be the order of the day rather than hysteria and rage. Perhaps we should consider the words of Jesus himself as quoted in Chapter 5 of the Gospel of Matthew: "Be compassionate, therefore, as your heavenly Father is compassionate." ✱



**Thomas G. Plante**  
*Professor,  
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 of Psychology,  
 Santa Clara University*



## SANTA CLARA LECTURE

In 1994, through the generosity of the Bannan Center, the Department of Religious Studies at Santa Clara University inaugurated the Santa Clara Lectures. This series brings to campus leading scholars in theology, offering the University community and the general public an ongoing exposure to debate on the significant issues of our time. Santa Clara University will publish these lectures and distribute them throughout the United States and internationally.

JAMES W. FOWLER

“Theological Exploration of Vocation”

*Wednesday, February 4, 2004, 7:30 p.m.*

*Recital Hall, Center for Performing Arts*



Named a Candler Professor at Emory University in 1987, James W. Fowler earned his Ph.D. at Harvard University in religion and society in 1971, with a focus in ethics and sociology of religion. He taught at Harvard Divinity School (1969–75) and at Boston College (1975–76). He pursued post-doctoral studies at the Center for Moral Development at the Harvard Graduate School of Education (1971–72).

In 1977 he joined the faculty of the Candler School of Theology. His pioneering research and the resulting theory of faith development have earned him international recognition. His best known book, *Stages of Faith: The Psychology of Development and the Quest for Meaning*, is in its 35th printing, and has been translated into German, Korean, and Portuguese editions. \*

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For more information or to register, please contact Jane Najour, Bannan Center, 408-551-1951, [jnajour@scu.edu](mailto:jnajour@scu.edu) \*

# next issue:

Balancing the pressures of work and family is a struggle that many people face at some

point in life. In this culture where many families have two working parents, what is the best way to achieve this balance between work and personal and family needs? Do couples handle these challenges differently at various points in their lives?

In our next issue, we will explore this rich and complex subject with articles discussing what contemporary workers face socially, professionally, and psychologically in adopting healthy strategies for coping in the Silicon Valley culture and beyond it. Faculty and staff members will also share personal reflections on what does and does not work for them in their own lives.

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