

FORDHAM CENTER ON RELIGION AND CULTURE

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**THE ETHICS OF EXIT:
THE MORALITY OF WITHDRAWAL FROM IRAQ**

Monday, March 21, 2005
Fordham University, New York NY

**PANEL 3:
THE ETHICS OF OCCUPATION AND WITHDRAWAL: JUS POST-BELLUM**

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GERARD POWERS: Welcome back from lunch. We actually had figured 15–20 minutes ought to be plenty of time for lunch, but then we got generous and gave you a full hour, so sorry for the indigestion. My name is Gerry Powers. I am director of Policy Studies at the Joan B. Kroc Institute for International Peace Studies at the University of Notre Dame, one of the co-sponsors of this event. And I frankly think this morning's conversation was far too negative about the possibilities in Iraq. If two Catholic universities and a private foundation, particularly the Jesuits and the Holy Cross Order, can collaborate on event like this, I think there is a lot of hope for Iraq. (Applause.)

Actually I want to thank Peggy and Peter Steinfels, with whom I worked to put this together, and also David Cortright and Alistair Miller of the Fourth Freedom Forum. It really has been a pleasure and quite a privilege to work with them, in a sense quite easy to do, actually. And I think we will—we, at least, at Notre Dame—look for other opportunities to engage with other universities in these kinds of fora.

I want to welcome those from the University of Notre Dame who are watching this live via web cast and also those around the country who are watching this on their personal computers instead of working. (Laughter.) For those of you who have been studiously taking notes all morning, that wasn't necessary. The transcripts of this conference will

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be on the respective websites of the three co-sponsoring organizations, along with the video, so that will be available to you. Foreign Policy Magazine will be publishing short pieces by a number of the participants in its next issue. So there will be another opportunity to get the results of this. And finally, the Kroc Institute will be publishing an occasional paper or some sort of report on this conference.

Now, you might have noticed that we are taking an inductive approach to ethics in this conference. Rather than start with moral principles and then apply them to the Iraq case, we started with a very lively discussion of the political and military issues in Iraq and then we moved to some of the lessons that might be drawn from past experiences of occupation and withdrawal. In light of these conversations, we now move more explicitly to the task of defining moral criteria which should guide the U.S. presence in the withdrawal from Iraq.

Now, in putting together this panel, we have asked our three very distinguished three guests to focus on an underdeveloped area of ethics. Most of the ethical debate on war and peace relates to when and why military force maybe justified: the jus ad-bellum that Peggy Steinfels mentioned in her introduction or on how force may be used during a conflict: the jus in-bello. Each of our three panelists have long being leading voices in these important ethical debates, including the debate on whether the United States should intervene in Iraq. What we have asked them to do today is to use the Iraq case to help shape in area of ethics that is very much underdeveloped and needs more attention, and that is the jus post bellum issue. What are the moral issues—the moral responsibilities—involved in a post-conflict situation in places like Iraq?

Jean Bethke Elshtain is the Laura Spelman Rockefeller Professor of Social and Political Ethics at University of Chicago's Divinity School, where she has taught for the past decade. Her two dozen books include her 2003 volume on just war against terror, *The Burden of American Power in a Violent World*, which was named one of the best non-fiction books of 2003 by Publishers Weekly. She is just off the plane from France, where she attended a day-long colloquium on her new book, *One Electorate Under God: A Dialog on Religion in American Politics*, which I believe is on the resource table outside.

Professor Sohail Hashmi is associate professor of international relations at Mount Holyoke College, where he has taught since 1994. Professor Hashmi specializes in Islam, international relations, and comparative ethics. He has published widely on Islamic ethics of war and peace, Islamic political ethics, and humanitarian intervention. His newest book, "Ethics of Weapons of Mass Destruction," is available outside. And I take it that one of his roles on this panel is to prevent the panel from looking at this question too much from the perspective of the Judeo-Christian ethic, as he is coming from an Islamic ethical perspective.

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Finally, we have Professor Kenneth Himes, who is a Franciscan priest and chairperson of the theology department at Boston College. His books include “An Introduction to Christian Ethics,” “Fullness of Faith: The Public Significance of Theology,” and a forthcoming volume on Catholic social teaching, the flyer of which is available outside. It is not published yet. He has published widely on the ethics of war and peace, ethics in international affairs, and political ethics. He was president of the Catholic Theological Society of America in 2000 and 2001, and he has served as a consultant on social ethics to the Catholic Bishops Conference of the United States.

Each panelist will have 20 minutes and then we will have time for questions, as in the previous sessions. Not being particularly creative, we are going to go in alphabetical order. (Laughter.)

JEAN BETHKE EHLSHTAIN: I guess that means me. Good afternoon and thank you very much, Gerry. I, too, want to thank my good friends Peter and Peggy Steinfels for the invitation to join you today and the Kroc Centre at Notre Dame where I have visited a number of times over the years.

Now, in an earlier contribution to a series of reflections on the morality of Persian Gulf War I, I criticized Bush administration I for abandoning the language of just war after the anti-Saddam Hussein military operations ceased. The run-up to the war was conducted in and through considerations of jus ad-bellum; as you have already heard that portion of the just war tradition that offers criteria for evaluating the justness of a commitment to the use of armed force. As well, during the conflict the United States military means were guided by the jus in-bello norms of proportionality and discrimination or non-combatant immunity. Indeed President George H. W. Bush’s calling a halt to the strafing of fleeing Iraqis on a so-called highway of death came not because prisoners fleeing the scene of a crime should go altogether unpunished, but because the Iraqis were at that point essentially disarmed and helpless before aerial onslaught. That starts to look like a massacre and is perforce forbidden by in-bello constraints.

But something was missing in the post-truce situation and we are calling that jus post-bellum, a feature of the just war tradition that has been underdeveloped as Gerry indicated historically, particularly if one contrasts it to centuries of robust development of both ad-bellum and in-bello norms and this may help to explain why in the postwar environment following the restoration of Kuwait to the Kuwaitis – I’m obviously still talking about the earlier Persian Gulf War—the language of diplomacy central—certainly as used by the Bush administration quickly reverted to standard realpolitik and a discussion of interests as understood within traditional balance-of-power politics.

Now, there is nothing wrong in thinking about national interest or balancing, of course, but the question is rather whether an ethical and moral norm, for example a

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commitment to human rights, can be understood as an interest. But my minimal point in that earlier essay was that just-war criteria and concern should not be abandoned once military operations cease. If you begin with this framework, you should remain faithful to it. So, my question is what would this entail?

Now, some of you may know that just war isn't just about war. It is the framework of politics that eschews realism; not realism altogether, but realism of the sort embodied in the infamous Melian Dialogue in Thucydides' classic *The Peloponnesian War*. The moment when the Athenian generals say to the hapless Melians that the strong do what they will and the weak suffer what they must. And on the other hand, this framework also eschews the illusory claims embodied in pacifism as a stance for statecraft; understanding that, in the words of Martin Luther, on this earth, if the lion lies down with the lamb, the lamb must be replaced frequently. (Laughter.)

Now, what does just war tell us about the goals or ends of war? The end is intrinsically related to the initial argument for conflict as couched in just war criteria, namely to repair or to remedy a massive injustice and to punish aggressors; that being the case, the goal is a more just situation than the one that existed before the resort to armed force. In the classic theological accounts that inaugurated the just war tradition in the West, this more ideal state of things is called *Pax Ordo*, or a tranquility of order—a decent civic peace. And a determining criterion for making a decision for the use of armed force is a prudential one: do you stand a good chance of succeeding – of achieving that end? One is not permitted to make a bad situation worse, or, perhaps better said, one is obliged to do everything one can to prevent that unhappy outcome.

Now, given this rough and ready framework of evaluation, what would an ethics of exit require if one adheres to just war norms? And, perhaps, we can call this the ethics of a just occupation and eventual withdrawal of combat forces. I regret to my good friend Michael Walzer could not make this conference because these were issues that he has talked about, and then he and I have discussed together many times.

Now, here in schematic form are the criteria consistent with just war of an ethics of just occupation and exit. First, the country that has committed to and completed major military operations—that phase—must assess its degree of responsibility for the postwar situation. If its role was minor, its responsibility is correlatively diminished. Certainly, a major party to intervention should bring as many others on board as possible when it commits to war, particularly given what we know. Alas, we learned to our regret in the 1990's and since what we know of UN ineptitude where the brutalities of dictatorial regimes are concerned.

So let's assume a country having evaluated and undertaken this intervention recognizes that it has taken a major part in military operations. So what follows from that? Second, what follows is that that country bears a major burden in repairing

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infrastructural and environmental harms that are the direct results of military operations. Civilian affairs team should concentrate on the basic necessities of life: first, water, electricity, and then attention can be paid to schools and hospitals, of course, as well as other basic institutions of any decent civic order.

Third, repair of the political infrastructure is made necessary, for the whole point of a just war is a just peace. This means leaving the people in a country that has been invaded and is being occupied—as well as the wider international environment—in better shape than before the intervention. Now there is a delicate balancing act involved here as one labors to restore authority – legitimate authority. The worst possible outcome of an intervention is a scenario reminiscent of chapter 13 in Hobbes's great classic *Leviathan*: a world within which human life is nasty, brutish and short. The international community has a huge stake in this outcome and should play a helpful, not a blocking or undermining, role because failed states pose as much of a threat to international peace as rogue states.

Fourth, continued provision of defense and security. If a country has been disarmed, the occupying power has taken on the responsibility for its security and protection from external and internal enemies. How long this provision will be, and how extensive, will depend on threat assessment and the rapidity with which the country occupied rebuilds its own defense and internal security capability.

Related to that, finally, is a major interest in responsibility—should any future horror like the emergence of yet another Saddam-type republic of fear begin to show its face—for deterrence. The complexity is that deterrence necessarily bears both an internal as well as an external aspect as one reflects on *jus post-bellum*. Even as the United States protected Western Europe, including a new German democratic state, throughout the Cold War and the decades of bipolarity, so the United States as one feature of having exited ethically must remain tied to the new Iraq in ways that are thick. Just as the allies would never have permitted a Nazi state to reemerge in Germany, so we have a responsibility, should internal forces of stability and decency falter and collapse, to do the same in Iraq lest the Iraqi people be victimized many times over.

Now, I suspect that if such *jus post-bellum* criteria are debated and considered explicitly as part of the overall set of issues attendant upon a decision to use armed force, it would add much to the ethical gravamen of the situation, and that is entirely appropriate.

Now, if the Bush administration is correct, then 9/11 and the terrorist attacks of the 1990s underscores the fact that we are in a new strategic environment, it follows that our thinking about matters of war and peace must take account of that altered environment. Throughout the years of the Cold War, there were many just causes that could not be pursued militarily; for example, open intervention on behalf of the Hungarian freedom fighters in 1956 because of the terrible dangers of nuclear exchange

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between the superpowers. During this era, the United States made its peace with many unsavory regimes in the interest of deterring Soviet revisionism.

We are no longer in that world. Many of the old constraints are off and the new constraints will, in many interesting ways, be constraints that we place upon ourselves in our exercise of power. That being the case, it is altogether a good thing that we have available to us the just-war tradition—a tradition of restraint even in a just cause—and the jus post-bellum as a continuation of that tradition of restraint. Now, let me hasten to add that restraint does not mean paralysis, neither inaction, nor in moral condemnation only. There is an active dimension. Now, in its grand strategy documents, as you know, the Bush administration as called this the forward defense of freedom, which is admittedly rather vague and open-ended.

President Bush in his speech on the 20th anniversary of the founding of the National Endowment for Democracy, on whose board I sit, spoke quiet powerfully of the fact that a half century of making our peace with authoritarian repressive regimes in the Middle East in the interest of stability had not made us safer and had not made the world better. It was clear, and many here would say this is the Wilsonian dimension to that argument, that the U.S. must be actively involved in encouraging and promoting democracy through diplomacy and moral suasion, and economic and trade policies first, but with military intervention as an option given certain conditions, should they add up to a justifiable casus belli.

Now, for many this has proven disconcerting. It sounds, perhaps, as if traditional restraints on the use of armed force have been abandoned. But this doesn't seem to me as correct or as necessarily correct, so long as discussions of armed intervention take place in and through the language of what the French call "la guerre juste" where embedded restraints are clear and undeniable. Where a striking innovation seems to me necessary is precisely in the jus post-bellum phase of conflict.

Our images of postwar and post-occupation situations are by now somewhat archaic. I see two primary angles of vision from past accounts of war and diplomacy, as well as from previous grand strategies concerning wars' endings. There is first the argument that the purpose of war is the restoration of the status quo ante. That model is a familiar one. State A has invaded State B. State B fights back. State A is deterred and sues for peace. State B calls for a restoration of violated borders, namely status quo ante. There is a variation, of course. State B, claiming it is the victim of unjust aggression, insists that State A be punished; a treaty of peace punishes State A by annexing part of its territory to state B, or insists that State A pay reparations, and so on. This is commonplace.

But status quo ante is not for the most part what contemporary jus post-bellum is about if a conflict is aimed at overthrowing a dangerous and oppressive regime. Perhaps

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borders will remain the same, but little else. The model with which we are most familiar in this sort of circumstance does have a historic lineage, namely, the occupations of Germany and Japan after World War II. The German occupation was marred by the fact that a brutal order responsible for the deaths of at least as many people as Hitler's Germany—namely, Stalin's Soviet Union—was one of the occupiers. It is rather difficult to speak of just occupation in toto and such circumstances.

On the Western side of course the aim was a stable democratic German regime and state. That aim was achieved, and in Japan as well, where something that would now be nigh unthinkable occurred: one powerful westerner, namely General Douglas McArthur, delivered a constitution. He didn't write it by himself, but imposed a constitution on a conquered state and put it in place. That now would look too much like hubris, and we would question the legitimacy of such a regime.

So we need a third model, one that looks to the creation of a minimally decent, stable society and that relies to a great extent on the processes of democracy itself to achieve that end. I refer here, of course, to elections, representative assemblies, consultative coalition building, constitution writing, and all the rest. This process, as you know, is fraught with difficulty. It is cumbersome. It virtually guarantees a period of instability and uncertainty, but the outcome will be one—if things work out—that vests a new government with a legitimacy it would otherwise lack, particularly in conflicts involving countries with distinct and striking cultural histories and differences—that I assume are going to be part of that process.

Now, I have here a long quote from Noah Feldman's book, *What We Owe Iraq*, (Princeton University Press, 2004) but I am going to skip them in the interests of time and move to conclude. The *jus post-bellum* model most consistent with just war as just politics cannot be one in which, in the interest of a strong and stable state, we forfeit the essential features of a workable human rights—respecting, representative government—even though aiming for the latter is the far more difficult route.

The initial tragedy in occupied Iraq was a failure to provide for a stable postwar security environment. I would submit that a harsh lesson has been learned: lives have been lost in this process. At this point I think we can thank not only the courage and persistence of American troops, but also the courage and persistence of the Iraqi people for the fact that, despite insurgent violence, a remarkable election was held; that insurgents are scorned by the Iraqi people; and that a representative assembly that includes women—which is a concern of mine—is now doing its hard work.

Now, without firing a shot, our message of support for human rights has helped to embolden the protestors in Lebanon—as they themselves have stated repeatedly. Change, however slowly it will go forward, is stirring in Saudi Arabia and Egypt. I am hopeful – I am never optimistic, but I am hopeful—that ways will be found to create

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stable regimes that are consistent with aspirations for human rights and justice. I am not assuming that they will all look alike, because I think there are number of different ways that such orders—political orders—can be construed.

When I was studying European history and diplomacy as a graduate student, we were taught that 1848—Europe's springtime of the peoples—was, as our professor told us, a turning point when Europe failed to turn. 1989 was another springtime of the peoples, and history did turn and for the better. If we are fortunate, perhaps the year 2003 will mark the beginning of what will undoubtedly be a decades-long process aimed at greater democratization, human rights, the creation of human rights—respecting regimes, and civic decency in the Middle East. Our role will be primarily to encourage, to assist, to mediate, and to goad, if need be; For example, the Egyptian human rights protester, Mr. Ibrahim, in a small consultation with some of us at the National Endowment for Democracy, argued he thought U.S. aid should be conditional on democratic performance and so on. So there are many different kinds of options, but as I said, primarily encouragement, assistance, mediation, goading. But whatever we do, the peoples of the Middle East will assess our efforts by the outcome in Iraq as a political and ethical benchmark and that is why attention to jus post-bellum is needed now more than ever.

Thank you very much. (Applause.)

MR. POWERS: Under about five minutes. Under about five.

SOHAIL HASHMI: Ladies and gentleman, as the United States contemplates the best way to leave Iraq, the Muslim world needs to contemplate the best ways to enter it. Now, this will require a concerted effort on the part of Muslim leaders, both inside and in opposition – both inside governments and in oppositions, among leaders of Islamic NGOs, and among Islamic religious scholars – the ulema – to move beyond the deep resentment and hostility engendered by the Iraq War.

No Muslim state was willing to commit troops to the coalition of the willing and few have been willing to commit troops to the postwar stabilization of the country. Indeed, they have done nothing but take only token measures. Numerous public opinion polls show that popular attitudes toward American policies in the Middle East and in the Muslim world in general have moved steadily over the past two years toward greater animosity among greater percentages in all Muslim countries.

And most significantly in terms of Islamic law and ethics, which is my charge today, religious scholars from Muslim communities around the world have not only condemned the American invasion of Iraq, but many have also issued fatwa, or religious rulings, calling on Muslims to assist the insurgency. For example, in early November of last year as American and Iraqi forces were preparing to assault the city of Fallujah, 26

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Saudi scholars and preachers posted an open letter on a website calling on all Muslims to rush to the assistance of the insurgents. They declared that armed attacks launched by militant Iraqi groups on U.S. troops and their allies in Iraq were legitimate resistance.

After the January elections in Iraq, though, I don't think Muslims can afford to continue harping on all of the wrongs of the war. They need to consider what Islamic ethics require of them to help their Iraqi brethren build a more peaceful and prosperous country. As the Koran commands, "Let not enmity of any people divert you from justice; be just, that is closest to piety."

So what do Islamic ethics require of Muslims outside of Iraq? To paraphrase an author who has been already quoted many times, my good friend Noah Feldman, what do we Muslims owe Iraq? I think the key to answering this question is that Muslims cannot see themselves as their Iraqi brothers' and sisters' keepers, but they should, according to the commands of Islamic ethics, see themselves as their Iraqi brothers' and sisters' protectors and helpers in their time of need. The operative Koranic verse that has to do with conflicts among Muslims reads as follows—this is versed 49:9. "If two parties of the believers fall into quarrel; make peace between them, but if one of these parties transgresses against bounds then fight all of you together against the one that transgresses until it complies with God's commands. But if it complies, then make peace between the parties with justice and be fair."

Now, I think a number of moral actions or requirements stem from this very general Koranic command. The first requirement is that Muslims refrain from materially or morally assisting murders and terrorists parading as Islamic fighters, as so-called Mujahidin. Because many Muslims around the world sympathize with the insurgents' goal of driving the United States out of the Iraq, they have come to accept, tacitly if not explicitly, the atrocities these insurgents are committing. They confuse ends and means. By doing so, they violate one of the basic points of the jihad tradition, which is that *jus ad-bellum*; that is, the rational or the grounds for war, and *jus in-bello*—the means of fighting a just war – are morally separate categories. Kidnapping, torture, beheading, and the random killing of civilians through suicide bombings quite simply are not the work of Mujahidin. They are the acts of criminals and should be firmly denounced as such by all Muslims, especially the ulema.

The second requirement I believe that stems from the general Koranic command that I read earlier is that Muslim troops should replace American, British, and other European forces as interim peacekeepers and even as interim peacemakers in Iraq until the Iraqi security forces have been properly trained. These troops should be approved by both the Arab League and the Organization of the Islamic Conference. Because of obvious geopolitical considerations, these troops can't come from countries neighboring Iraq. No Iraq is prepared to see thousands of Turkish troops crossing the frontier, nor would

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the Iraqi Shiites welcome a large Saudi presence, nor would the Sunnis welcome a large Iranian presence, but this Muslim peacekeeping or peacemaking – (audio break, tape change) – legacy of imperialism.

We don't have the time here, nor do we really need to delve into all these factors, but there is one question that I believe deserves much greater attention than it has otherwise received up to this point; and this question is, why have Muslim religious scholars generally condemned Muslim troops joining a non-Muslim coalition? Again, there are many political factors that could explain this, but one important part of the answer, and a part of the answer that's often neglected as American policymakers go around the world soliciting Muslim participation in military coalitions, is the strong aversion to such alliances in Islamic law.

In his famous treatise on the rules of war, the 8th Century Syrian jurist Ashay Banni expressed quite succinctly the view of the school of law to which he belonged, that is, the Hanafee school. He writes, and I quote, "I disapprove of Muslims fighting along with unbelievers against unbelievers. It is even worse if they fight along with unbelievers against other Muslims," that is, against Muslim rebels. The reason he gives is that Muslims should never be subordinate to unbelievers when fighting, especially when their targets are other Muslim fighters, presumably because the unbelievers cannot be expected to adhere to the strict limitations on fighting that is incumbent upon any Muslim force when it is engaged in suppressing or combating miscreant Muslims.

Now, Ashay Banni, the Hanafee jurist, was prepared to accept the cooperation of non-Muslims if Muslims were in dire need, if they were being overwhelmed by rebels, and so long as Muslims were in control of the military operations. This opinion of the Hanafees, however, was not shared by jurists belonging to other juristic schools. They tended to be even more stringent on prohibiting any military cooperation with non-Muslims.

The American intervention in the Gulf War of 1990-1991 brought all of these legal issues squarely to the forefront among modern Muslim scholars. Remember, these are the views of an 8th-century jurist, but they have extreme valence in the 21st Century. From the time that American forces entered Saudi Arabia in August of 1990 until – I think it's quite accurate to say—the present day, the willingness of some Muslim states to join the American-led coalition dominated all Muslim discussion of the ethics of the Gulf War; not Sadaam Hussein's invasion of Kuwait, but the American intervention in that dispute.

The conduct of Operation Desert Storm confirmed for many Muslims observers the validity of the classical jurist concerns that non-Muslims would not adhere to the strict limitations incumbent on Muslim forces when they are fighting other Muslims. And because American troops are still in the Kingdom of Saudi Arabia, the controversy

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continues to this day. Al-Qaeda's various statements of grievances against the United States invariably place the presence of U.S. troops in Saudi Arabia at the very top of the list.

So to return to the present situation in Iraq, the insurgency will continue as long as American and British troops are in Iraq. Their presence, I think, is the oxygen that fuels this fire. The insurgency will certainly not end if Muslim troops replace the American and British forces, but its rationale, its legitimacy, and most importantly its outside support – support from Muslims around the world who are concerned about the American presence and not concerned about the future shape of the Iraqi government—will significantly diminish.

Now, I'd like to add here a word in addition to what Professor Hoffman mentioned during his remarks that the United States cannot wait for the Iraqi government to invite us to leave. We went in on America's terms, by and large, and this very difficult moral issue of when and how to leave must also be primarily based on America's interests. We've heard a lot of talk about not abandoning Iraq. Well, I'm not suggesting we abandon Iraq. I'm just suggesting the United States consider what it is in its interests because, as Professor Hoffman pointed out, we cannot be sure that the Iraqi government is looking after America's interests. They are looking after their own interests in terms of how long the United States stays.

And I'm reminded that anyone who has benefited from Arab hospitality knows exactly what I'm talking about. If you visit an Arab family, they will never allow you to leave. It's just not done. At 2:00 in the morning you can say, "Well, please excuse me." They'll grab your arm and say, "Why, are you leaving so early? It's too early. It's too early." At 4:00 in the morning you can try, but they still will not let you go. So this is a decision that I think we really need to weigh in terms of our own interests.

The third requirement for Muslims now, turning the focus back to Muslim states and Muslim NGOs, the third requirement is that all Muslims should encourage and assist as needed Iraq's fledgling democracy. Now, the drafting of the country's constitution will undoubtedly stoke old controversies within and outside Iraq about the compatibility of Islam and democracy. We've already seen this debate revived in recent weeks. While Muslim critics of democracy will allege, as they have many time before, that in an Islamic state only God Almighty can be the sovereign, not the people. They will suggest that the rule of an enlightened, pious, and meritorious leader, the imam or the emir is the only system provided by the example of the prophet, and by his first four successors, the rightly-guided caliphs, as Muslims call them.

On the other hand, Muslim proponents of democracy will argue that the Koran calls for democracy when it speaks of shura or mutual consultation as the way for Muslims to

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best decide their affairs. They will point out that the classical Islamic political thought placed the rule of law above the rule of the imam.

Well, ladies and gentlemen, to me these debates on Islam and democracy fundamentally miss the point. The fact is that the Qur'an and the Sunna, the example of the Prophet Muhammad, do not prescribe any specific political institutions for an Islamic community. Instead, what they do is establish only broad moral guidelines. And foremost among these is the right of Muslims and non-Muslims to live in peace and justice within their own state. Time and again in recent history when ordinary Muslim men and women have been given a chance to speak for themselves, they have declared firmly that democracy and not dictatorship is what Islamic principles demand.

The Iraqi constitution that best provides for the security, welfare, and justice of all Iraqi citizens, Sunni and Shi'a, Muslim and Christian, and others will inherently be an Islamic constitution. If democratic institutions best provide for this security, welfare, and justice of all Iraqis, then that is the form of government that Islam demands.

The Iraqi people have embarked on a bold and perilous experiment. Their decisions and their actions may in later years comprise of only a small section in the history of democracy, but they will be an important chapter in the history of Islamic democracy. A successful Iraqi democracy will benefit all Arabs and all Muslims. A collapse of the Iraqi experiment into civil war will help no one.

A fourth requirement and my final suggestion, Muslim leaders have an obligation to avoid the mistakes they committed leading up to the American intervention in Iraq, not just in the year 2003, but in the years 1990–91 as well. Muslim leaders had an obligation to isolate and to remove the brutal regime of Saddam Hussein when he attacked Iran, but they either watched from the sidelines or they actively assisted Saddam Hussein. When the Iraqi regime terrorized its own people, killing hundreds of thousands, very few Islamic scholars spoke out in condemnation. The crime of Halabja in March of 1988 [the chemical gas attack on March 16, 1988 against the predominately Kurdish city of Halabja in northern Iraq] was met with deafening silence. When Iraqi forces invaded Kuwait in August of 1990, Muslim leaders finally did something because now they learned that the cost of riding the tiger's back is to end in its belly. Decades of action or inaction on the part of Muslim leaders made the present American intervention in Iraq all too easy, and in the minds of some, all too necessary.

There's a famous hadith, or saying, ascribed to the Prophet Muhammad, which reads as follows, "The highest form of jihad is speaking truth to the tyrant." Yet, regrettably few examples of such jihad are to be found in Islamic history. Classical Islamic political thought virtually ruled out the possibility of rebellion against a usurper or a tyrant all to preserve the unity and the stability of the Muslim community. Sixty years of tyranny—as the old adage has it—60 years of tyranny, rather than one hour of strife. One check

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remained on the ruler according to Islamic political theory, and that check was the Sharia or Islamic law. If the ruler systematically violated or renounced the Sharia, the Muslim community had an obligation to remove him. But short of his death, the classical theory provided very little guidance as to how to hold accountable or how to remove the unjust ruler.

Among modern Muslim theorists, the accountability of ruler to ruled and the right of Muslim communities to remove and to punish authoritarian leaders are all topics receiving a great deal of attention. Still, despite the renewed interest in the 19th and 20th Centuries, Islamic political thought on this subject remains rather inchoate. The impending trial of Saddam Hussein offers an unprecedented opportunity to stimulate Islamic political thought and to develop Islamic law. Now that Saddam Hussein is facing trial for crimes against humanity, I would recommend that he be tried under both international and Islamic law.

The revolutionary Iranian government placed several key members of the Shah's regime on trial back in 1979 once they had come to power. And this government did prosecute the Shah's officials on Islamic principles, but serious procedural flaws marred those proceedings. This time, in the trials of Saddam Hussein and key figures of his regime, Muslims have a chance to get things right.

In addition to Iraqis, Iranians and Kuwaitis should be allowed to participate in the trial, as has been suggested. Not just as aggrieved citizens of a foreign country, but as Muslims victimized by a dictator who cloaked himself in the guise of a Muslim ruler. Holding Saddam Hussein accountable under Islamic law can only help other victims speak truth to other tyrants. (Applause.)

KENNETH HIMES: Well, good afternoon. After this rich intellectual feast that we've had all morning and afternoon, we come to the final speaker on the last panel, and you get me. And I was thinking after this rich bill of fare, perhaps you should think of me as the after-dinner mint. I'll try to be brief and leave you with a good taste in your mouth as my words dissolve.

I should also mention that several people have asked me since I've arrived, how does a Franciscan wind up the chairman of the Theology department at Boston College, and it really depends upon whom you talk to. My Franciscan friends think I'm doing missionary outreach, and my Jesuit friends think they're doing affirmative action, so you make of it what you will. (Laughter.)

With great efficiency and military skill, the United States won what I judge to be an unjust war in Iraq. Then, with poor planning and managerial ineptitude, the administration put at risk any hope of a just peace. Given the shoddy score card, should the U.S. simply withdraw from the place it never should have invaded? Just war

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theorists are used to inquiring into the justice of war's cause, the *jus ad-bellum*, as well as its conduct, the *jus in-bello*. Now we must probe *jus post-bellum*. What obligations does the occupier have and when are they discharged?

I'd like to do three things in my remarks. First, say something about why the just war tradition is evolving towards creation of a *jus post-bellum* category. Second, I'd like to comment on the relevance of this development for the case of Iraq. And then finally, I'd like to conclude with my own opinion about where the *jus post-bellum* leads us for thinking about exiting Iraq. So first, the development of the just war tradition.

Any tradition must have two ends. One end is rooted in the past out of which it emerges, and this gives the tradition its historical memory. The other end of a tradition is open-ended. It is the growing edge, to use the language of the late John Courtney Murray. At any Jesuit University conference, you must always quote John Courtney Murray at least once.

MS. ELSHTAIN: Absolutely.

FR. HIMES: Development within a tradition must be organic. Change must be coherent with the past in order to remain part of a recognizable tradition and not pure novelty. At the same time, development and change must occur in a tradition if the wisdom of the past is to be useful for the present and future. An interesting development in the just war tradition is precisely the emergence of the category *jus post-bellum*. What is the rationale for this third category of the just war tradition?

St. Augustine, one of the founding figures of that tradition, argued that people fight wars for the sake of peace, and Augustine saw no contradiction entailed by this assertion. For peace is not simply the absence of conflict, rather it is the establishment of a measure of social harmony that reflects, in the words of Sir Michael Howard, "a political ordering of society that is generally accepted as just."

This positive understanding of peace as more than simply the cessation of armed conflict is what Augustine meant by the expression *tranquillitas ordinis*, or an order of tranquility. An order of tranquility is the result of a political community that is rightly and properly ordered, meaning that people live in truth, in freedom and justice directed toward the common good. It is a peace that is within the grasp of human possibility, not just a distant goal for the end time; nor is it the interior peace that is achieved by knowing one's self to be in right relationship with one's Creator. Rather, political peace is the construction of an exterior space through institutions and practices that permit men and women to live together; if not as a community of faith, then at least as a properly human community.

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Peace that is rightly ordered political community is a noble thing to achieve. This sort of political peace has its counterfeit and inadequate expressions as well. That peace can be counterfeit is testified by the Prophet Ezekiel where he reveals Yahweh's judgment upon those false prophets who misled the people by saying, "Peace where there is no peace." Recall, too, the ancient historian Tacitus' description of how the Britons bitterly described their Roman conquerors. *Ubi solitudinem faciunt, pacem appellant*, they make a desert and call it peace.

There is, in short, a false peace that results from oppression, from fear in the absence of public life. Both history and our contemporary age provide illustrations of a peace unworthy of the name. The risks of creating a false peace; the need to know when to end a conflict; and what must be done in order to secure true peace: all suggest a third dimension of just war reasoning is useful. Recall war, even the most just war, can only remove obstacles to peace. War cannot create peace itself. That comes only after the conflict stops and the hard work of building peace begins.

Besides the meaning of peace, the internal logic of the just war tradition also implies the need for a jus post-bellum. For example, one of the criteria of the jus ad-bellum is reasonable hope of success—Jean referred to this earlier—meaning that one ought not go to war if there is little chance of success in achieving the purpose of war. Typically in the modern age, this has meant that there should be a realistic opportunity to successfully resist aggression.

More recently, however, debates over humanitarian intervention have encouraged a revision about thinking about war's goals. The question of what is to be achieved by conflict is important here, because the purpose of humanitarian intervention is not to repeal foreign aggression, but to enhance the lives of the people suffering under an unjust regime. Punishment of wrongdoing is not the aim. Instead, the goal that victors must seek is transformation of the defeated state so that the causes of the humanitarian crisis are addressed.

As a consequence, we find just war theorists taking up new questions about the obligation of victors in war. Simply put, any just war must serve a political goal. And there must be a good-faith effort to seek the attainment of that goal after the war is over. Development of a jus post-bellum is simply the attempt to enumerate and refine the moral criteria that can guide us in assessing the justice of a war by examining the outcome that results from the conflict.

The relevance of this for Iraq: this is not a conference on whether we ought to have invaded Iraq. Thus, I want to avoid certain controversial issues of whether the U.S. was the unjust aggressor in the war and what duties of compensation we might have as a result of that, or whether our leaders ought to be subject to war crimes trials as initiators of aggression. (Applause.)

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These latter issues are properly part of any jus post-bellum category, but I will not address them. In the last few years, several lists of jus post-bellum criteria have been proposed by just war thinkers. Not all of the possible jus post-bellum criteria are germane to the question under discussion. As Michael Walzer has written, it seems clear that you can fight a just war and fight it justly and still make a moral mess of the aftermath by establishing a satellite regime, for example; or by seeking revenge against the citizens of a defeated nation state; or after a humanitarian intervention by failing to help the people you have sought to rescue.

On the other hand, even if we have fought an unnecessary war of prevention that can end with the demise of a tyranny and the rise of a decent political regime where one did not previously exist, there is the possibility of a just peace following an unjust war. Whatever our positions on the war, these do not determine what our positions need be on the occupation.

This conference is about the morality of exit. The relevant questions are, how long should we occupy Iraq, how much should we do to help rebuild Iraq, when and how to transfer power back to the Iraqis, and who should be the people who have a say in answering these questions. Let me proceed by making a simple claim: we have a moral obligation to assist the Iraqi people in their efforts to build a better future. It is not an absolute obligation. There may be conditions under which the obligation ceases to bind. It is a presumptive obligation. And the force of the presumption is directly related to why we fought the war. That is, I want to suggest that our duties to Iraq look different depending on why we went to war. And here we run into a problem, since one of the difficulties with the Bush Administration was the ever-shifting rationale employed to justify the war. Without rehearsing all the arguments we heard prior to the war, it is fair to conclude that regime change played a central part in the rationale for the conflict. Indeed, with the passing of time and the waning of other rationales, the regime-change argument only looms larger.

Again and again, the president has stated that the war was justified, even though no weapons of mass destruction were ever found, because the Iraqi people now have freedom and the world is a safer place since the demise of Saddam Hussein. Despite what I judge to be the near—certainty that the American public would never have approved of regime change as a sufficient reason to go to war, I will accept for the sake of the argument that the Bush administration had a humanitarian aim all along as part of the jus ad-bellum. If that is the case, then it is certainly imperative that the postwar situation be factored into any ethical assessment of the war. If what we have in Iraq is a quasi-humanitarian intervention, then the war was meant to enhance the well-being of Iraqis, not vanquish or punish them. The very purpose of war was to alter the internal situation of the Iraqi nation so as to increase stability and the chance for a just peace, both in Iraq and in the region.

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Therefore, it is crucial to ask, what kind of Iraq will emerge from this war? What is the obligation of the U.S. to the Iraqi people, who again were not the enemy but the victim, according to the present logic of the American case for war? Nothing in international law suggests that the U.S. is simply free to do whatever it wants in Iraq. The Hague Convention, however, does stipulate at least one thing the U.S. must do, and that is, protect innocent life and preserve public order (Hague IV); October 18, 1907, Annex, Section III. There is an obligation from an occupying army to guarantee that the occupied people are safe and secure. The inability of the United States to meet that basic duty is the key failure in the postwar situation. It is not just a strategic failure, though it is that, but it is foremost a moral failure. Of our own free will and largely on our own, we dismantled the state of Iraq, and in its place we have handed the Iraqi people anarchy.

At present, it may be that we are unable to do better, but until that is demonstrably the case – and we’ve heard different opinions about that so far today – I do think there is a presumptive obligation on our part to satisfy the most basic obligation of an occupying army, to restore social order after war, and to help reestablish the operations and institutions of public life. This obligation is an especially strong presumption in cases of humanitarian intervention, or when the occupying army claimed that it fought a war for the sake of the occupied people. While this presumptive obligation may seem obvious to many, it cannot be taken for granted that it will be met. The tragic example of Haiti is only one, among many illustrations that could be cited, of the United States largely abandoning commitments to other people after interventions.

The jus post-bellum criteria: Besides the fundamental obligation to protect life and maintain public order, what else might be expected of an occupying victor in war? Most of those who are riding on the jus post-bellum propose some variation on what is called the “principle of restoration,” or a principle of post-conflict assistance. Minimalist renderings of this principle refer to the duty to return to the battlefield and remove the instruments of war: mines, toxic wastes, unused munitions. A stronger reading of the duty is to assist in the reconstruction of basic infrastructure—Jean referred to this earlier—electrical grids, essential roads and bridges, water and sewage treatment, basic healthcare systems, food supplies, housing stock.

A maximal reading of the duty would expand basic infrastructure to include not only the material infrastructure of roads and utility plants, but also the human infrastructure for peaceful communal life. Securing domestic peace through protection of civil liberties and human rights will entail organization and training of the police and judiciary so that the necessary social space is created for women and men to begin the work of restoring public life. In effect, the maximal rendering of the duty encompasses assistance in the creation of civil society.

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The traditional expectation has been that restoration meant to return to the status quo ante, as again Jean had mentioned earlier. As a number of commentators have noted, however, the destructive force of modern war has made any literal restoration of the pre-war situation impossible. More importantly, why should we seek to return to the situation that led to the conflict in the first place? And in the case of humanitarian intervention, it makes even less sense to want to restore the social and political order that caused the humanitarian crisis. In the case of humanitarian intervention at least, it would appear that what the occupation must provide is not a restoration, but a remaking of the political order, what one commentator has called institutional therapy. This is, of course, a challenging point. The extent of internal reform that an occupying force can promote requires extensive debate.

The extent of internal reform most directly affects sovereignty. Victory in war does not create a victor's right to fix another nation according to the winner's preference. If the former regime was so threatening or heinous that the dismantling of the political order is necessary to secure the peace, this leads to an extensive commitment to rebuild the nation. The criticism of nation-building, of course, is that U.S. resources will be overtaxed and depleted. Though this criticism can be overdone, there are limits to what one nation can do for another, and the U.S. record in this area historically is not outstanding. In the Iraqi situation, we had an abusive and aggressive regime that has been removed from power. But the Ba'ath regime appears to have had roots in a minority of the population, as several of the Ba'ath speakers have suggested. Neither the Kurds nor the Shi'a nor even all the Sunnis were supporters of this ideology and its operations. Thus, finding Iraqis were not implicated in the abuses of the past is not difficult. And this, I believe, provides a sound base for a new Iraqi political order.

Given the wisdom of restoring Iraqi sovereignty quickly and the poor history of the United States in nation-building, I would suggest the moderate form of institutional therapy. In addition to the basic material infrastructure, I would include police and military training, establishment and reform of the judiciary, standards of accountability for government bureaucracy, and assistance with the verification of fair elections as the obligations we have to the Iraqi people. We do not owe them a liberal American democracy. The obligation is threefold: to restore basic material infrastructure, create space for civil society, and assist with the establishment of the essential institutions of public life. Once this is done, that ought to end the occupation.

I have already indicated my sense of who should be the determinative decision-making body during the operation. The time table for returning sovereignty should be linked always to the character of the regime. As quickly as possible, sovereignty ought to be returned to the occupied people. In the case of the Iraqis, since there is a substantial body of the population who cannot be fairly accused of support for the Ba'ath regime, this would mean sovereignty is transferred promptly. Ayatollah al-Sistani was correct in pressing the United States for early elections.

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The United States has already undercut the authority of the occupation by preferring an essentially unilateralist approach. When you add in the crony capitalism that the Pentagon and White House favored in dishing out contracts, it is no wonder that the occupying army's authority has been tarnished. Despite all U.S. claims to the contrary, we are occupiers, not liberators, and our indifference to multilateralism heightens that image.

So then, what does the future hold? The more pessimistic assessment sees the die is already cast and the outcome as bleak. Others, despite the initial setbacks, envision a future that is clearly brighter and expect a democratic Iraq. Still others believe the situation defies certainty in prediction, but worry that a great deal of opportunity has already been squandered. At this point, should the U.S. simply withdraw from a place we never should have been? It is tempting to say yes, but I am uncertain as to whether we should. The invasion has created a moral obligation for the victors to maintain a measure of social order that we have not yet achieved.

Accordingly, the United States and its allies ought to continue to press to establish that social order. Up to now, the U.S. has done a very poor job of winning the peace after winning the war, and it is not that difficult to identify the culprits, both in Washington, DC, and elsewhere, as well as the reasons for the dismal performance of the occupation. However, and here I think I disagree with Professor Hashmi, it is not American pride or interests or arrogance, but Iraqi well-being that ought to be the main focus of the conversation. That is the moral imperative to be served. The United States should do all it can to see that a political regime legitimated by the approval of a majority of Iraqis assume sovereign authority promptly. And as we've heard, there's considerable disagreement as to whether or not that can be done easily. I'm not a political scientist. I won't try to mediate that debate.

The January elections, by my lights as a simple theologian, gave the next government a healthy chance at legitimacy, but the United States must still insure the stability of this government. When an independent and representative government of Iraq assumes power and tells the United States to leave, it should withdraw speedily. If they ask foreign forces to continue their presence or provide other forms of assistance, the United States should be open to discussing the requests. The jus post-bellum reminds us that an unjust war must not become an excuse for leaving behind an unjust peace.

Thank you. (Applause.)

MR. POWERS: Okay. We've got 132 questions and 15 minutes. Why don't we begin—there are a whole set of questions that relate to whether or not the intervention was just or unjust and because that's not the topic of this conference, I'm going to hold those till

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the end, and if we can't get to them, I would really encourage you to talk to the speakers afterwards about that very important question.

Why don't we begin with Ken Himes, since you're warmed up. There are a couple of questions that relate to whether the injustice of the intervention affects in any way the post-intervention moral responsibilities of the United States. Are they greater, less, or exactly the same, regardless of the morality of the intervention? I think you began to address that in your talk, but if you could elaborate a little bit on that.

And a related question is, if the United States failed in its moral responsibilities to plan for the postwar occupation, how does that affect our current moral responsibilities – the United States' current moral responsibilities? Does that increase the responsibilities or not?

FR. HIMES: I think it's fair to say – and here what I'm simply going to report is a survey of the literature that's out there right now in the area, and it's a developing literature. There's not a lot written on this topic at present time. But I think most people working in this area would suggest that, while there's a connection, there is a logical distinction between the jus post-bellum, the jus ad-bellum and the jus in-bello; that is, the obligation to secure a just peace holds whether or not one believes the jus ad-bellum categories were satisfied or, indeed, if one feels that the war was fought justly or unjustly. There still remains the obligation to try to secure a just peace.

I don't know, and I'm not sure that I would say that the obligation is any more or less depending upon the war was unjust or not. What I suggested is, what changes the war is the category of just cause that was employed for seeking the war; that is, a very different set of obligations results if you fought a war to repel aggression or if you fought a way for, say, humanitarian purposes. That, I think, changes dramatically the obligations one may have in the jus post-bellum, but not, I think, per se, the injustice or the justice of the war in hindsight.

The second part of that question was the –

MR. POWERS: Whether or not the initial postwar occupation was mishandled.

FR. HIMES: Oh.

MR. POWERS: And how that affects our current responsibilities.

FR. HIMES: My own take on this, and again, I'm not a political scientist. I don't have the intelligence, skills, and knowledge of the past that Patrick and others have. It seems to me, though, from what I can tell as a layman that it was very poorly planned, and there were a lot of disputes between Defense and State on this, and lots of arguments

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about planning. But in the end, the planning was poorly done, poorly conceived, and therefore what that did was, it seems to me, to make the jus post-bellum that much more difficult, indeed perhaps even impossible for the rest to fulfill their obligations.

I don't know that it makes the obligations more serious or not. It seems to me it simply made the fulfillment of those obligations far more difficult. A number of commentators that I read suggest that it was precisely the widespread looting and the collapse of social order in those early days in Baghdad that sent the signal throughout a lot of Iraqi society that no one was in charge, and that's what gave rise to give encouragement to the insurgency in significant ways, and certainly complicated the procedure. I don't know that we would have had more or less obligations whether we had done it right at the beginning.

MR. POWERS: There's another question that relates to jus ad-bellum to the jus post-bellum for Professor Elshtain. If the jus post-bellum requires reasonable prospects of assuring a just peace and one knows that war will lead to a violent insurgency which will prevent the establishment of a just peace, then is it not true that one is not justified in going to war in the first place?

MS. ELSHTAIN: Well, the question assumes a degree of prescience that often is not possible in political affairs. It would be nice if our political leaders could foretell the future, but that isn't the case. And as you know, the just-war tradition is in part about and indeed began as an account of statecraft that tries to put together in a single frame certain important ethical considerations with a recognition that prudential judgment will always be an essential feature of political life, whether in domestic political life or in international affairs. So the question I think should be – or question that we, I believe, could quite reasonably put would be, was every effort made to consider possible alternative scenarios for the postwar environment.

I don't think that you could have predicted with absolute accuracy any particular outcome. The worry would be if insufficient time was spent considering alternative outcomes and how the United States might, in light of these alternatives, try to guard against the worst possible outcome. If the worst possible outcome in one scenario seemed so overwhelmingly awful that it would swamp the considerations of use jus ad-bellum, then there would have been that cautionary note that might well have said it would be better, all things considered, not to intervene in the first place.

I don't believe that the insurgency at this point has, in fact, overwhelmed the possibilities for a more decent, more just, and more stable human rights situation respecting Iraq. I agree with my colleague, Sohail Hashmi, on this. And others, I assume, have talked about this today. In fact, I think that we need to bear in mind that at this point the insurgency appears to be weakening, but it's certainly the case that in many of the provinces of Iraq, the insurgency is not, in fact, active. So I – one must be

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realistic, but I think not so gloomy that we fail to give credit where credit is due to those who are striving under very difficult situations to create and to maintain a decent, stable and more just civil society than certainly the one that pertained in Saddam's republic of fear.

MR. POWERS: Underlying this conversation is our different perspectives on whether the U.S. has a maximalist responsibility in a postwar situation or minimalist responsibilities. And I think you all come down in different places on that, but several of the questions are related to that. One is, to what extent should the United States be concerned about, not only restoring a functioning government in Iraq, but also restoring civil society and helping to create a civil society?

And I suppose somewhat related to that is to what extent—given the experience of the last 20 years and also this burgeoning literature about post-conflict situations—should the United States be also focused on questions of reconciliation? The trial of Saddam Hussein and how Islamic clerics would be involved in that is one question. The question of the U.S. accountability for its actions during the war and postwar, should there be some sort of apology or truth commissions to deal with U.S. responsibilities, the embargo, and the role of Saddam Hussein's government over the last several decades?

MS. ELSHTAIN: And is this for me?

MR. POWERS: It's for any of you.

MS. ELSHTAIN: Or all of us? Well, let me – boy, there were about, I think –

MR. POWERS: There were about six questions.

MS. ELSHTAIN: – I counted four. Yeah, four questions embedded in that long question and comment. As to the issue – the question that you concluded with, Gerry, about the possibilities of reconciliation, I wonder sometimes when I hear that what we would have thought about talk like that in post-Nazi Germany, for example. I mean, it strikes me that the issue of reconciliation is the one that the Iraqi people have to make the determination on, just as in South Africa that particular determination was made. And that's going to depend very much on the kinds of traditions available to people, the ways in – (audio break, tape change).

(Applause.)

MR. POWERS: The most specific question related to the responsibility of the United States in a postwar situation.

MS. ELSHTAIN: Whether it's maximal?

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MR. POWERS: Yes.

MR. HASHMI: Let me address that because I think that we can assume maximal responsibilities for promoting a stable and prosperous Iraq without also pursuing a maximalist military posture in Iraq. And to me maintaining 150,000 troops on Iraqi soil for the indefinite future is one of the surest ways to undermine the fledgling Iraqi sovereignty and Iraqi democracy. We can pursue as we do around the world these different goals through diplomacy, which is what we should have done before we went in. We can pursue it through non-violent means and draw down our forces. I am not suggesting for a minute that we abandon Iraq. My entire talk was very much aimed at countering that. But let's face it: the United States is not the only country with responsibilities in Iraq, nor the resources that can be brought to build in Iraq, and we should really draw now upon people who are better placed to help build this kind of civil society and democracy that you are talking about.

MR. POWERS: And you're for moderate institutional therapies – I mean, does that exclude these reconciliation and –

FR. HIMES: It doesn't exclude it, but I think the question of these truth and justice commissions is a dicey question because in some places the track record has been quite positive and it's brought about a fair amount of healing as Jean suggests. The time was right. At other times, it's a very dicey question. For instance, now there are some conversations going on about reconciliation commissions in Rwanda. You simply could not have done that a half dozen years ago or earlier.

There's a question of timing and prudence involved in these things because what you can get yourself into is a whole series of recriminations and people taking revenge on one another through these processes, damaging one another's reputations, names, and the like. I think really is a question of prudence and I wouldn't necessarily say that that's required. I certainly agree with what Jean and Sohail have been suggesting: if that happens, it's not a US concern; that has to be a concern of the Iraqi people.

The only other thing I would add to the question of the civil society is – there's a wonderful line of Vaclav Havel's that I've always liked which is that democracy doesn't begin with ballot boxes, it begins with conversations in public. And that's part of what we need to do is just create the space where people can have open communication and discussion in public. Let the Iraqis worry about that and some of the other things that come in terms of a political order, but I think what we can do in civil society is just try to create some space where people can gather and assemble in public and have open conversations and come to learn what their neighbors and people across the various divisions within Iraq think. If we can get anywhere to that point, that's a major contribution in constructing civil society.

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MS. ELSHTAIN: Obviously in order to get to that point the security issue has to be attended to because if people are afraid of being harmed, they are not going to go to public places and have these kinds of discussions. So I think that adds to the urgency of dealing with the security issue first and foremost. One of Vaclav Havel's arguments— I assume we are referring to the same essay or cluster of essays—is that people from themselves will generate those sorts of public spaces, but only largely under conditions where they have some sense of security, because you can't expect heroism as a consistent stance from people. You can't expect that level of risk taking. So that makes securing the internal environment and quelling the insurgents and the murderers and the terrorists absolutely vital to all the other purposes.

MR. POWERS: We just have time for one last sort of question. Professor Hashmi, there were a number of questions that related to your argument that Muslim religious leaders have not done enough to stand up the terrorism and unjust rulers, and there are a number of questions as to why you think that's the case.

MR. HASHMI: This is a very difficult issue because there the response has been varied. After 9/11 the perception in America is that Muslims in general did not condemn the terrorist attacks. I have spoken on number on occasions where people have asked me why Muslims haven't condemned the 9/11 attacks more than they have.

Well, the fact is that just about every credible Islamic scholar did condemn the attacks. They saw this as completely unjustified way to act on the grievances that al-Qaeda has expressed and that many Muslims do sympathize about it. But the problem with that kind of a response is, on the one hand 9/11 is condemned, but on the other hand the actions of Palestinian suicide bombers in Israel are not condemned: in fact they are glorified. The actions of the insurgents or the terrorists in Iraq are glorified as legitimate resistance. It's a pick and choose strategy and it is morally unjustifiable, as I have been arguing, in the jihad tradition. So it boils down to, I think, the idea that in the case of the United States the provocation wasn't great enough but in the case of the Israelis and the Americans in Iraq the propagation is great enough. But that fundamentally violates the separation of jus ad-bellum and jus in-bello, which is the heart of just-war theory and is the heart of the jihad theory as well. The problem is I think that Muslims scholars have tended to put expediency ahead of ethics too often.

MR. POWERS: Our next panel will begin in 15 minutes, after the break. And we will gather all of the participants today in one final session where we try to synthesize, but before we do that, will you join me and thanking our three panelists? (Applause.)

Thank you.

(End of session.)

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