



A Symposium on Confronting Global Terrorism and American Neo-Conservatism: The Framework of a Liberal Grand Strategy.
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Tom Farer's Liberal World Order: A Realist Utopia

By Richard Falk

Reading Tom Farer's challenging and eloquent Confronting Global Terrorism and American Neo-Conservatism evoked two persistent reactions. The first, and foremost, was the reminder of my long unfulfilled wish that the U.S. was a country where the "liberal" presidential candidate of the Democratic Party would have the courage and clarity of mind and heart to rely on someone with Farer's deep understanding of how to (re)shape American foreign policy in the early twenty-first century rather than turn the job over to those tired "old hands" that might improve things by five percent, but not by much more. (even the word liberal is now disfavored by liberals in public discourse almost as much as the taboo word "socialist," the former having been effectively discredited by George H.W. Bush two decades ago; the rhetorical preference in general discussion has shifted to "progressive," but I will stick with liberal here taking advantage of the greater latitude of academic discourse). It is not actually an indictment of any particular individual, and certainly not Barack Obama, but rather the constraints of a climate of public opinion, reinforced by media gurus and special interests, that restrict the roster of credible candidates for high elective office in the United States to those who quibble at the margins, while affirming the consensus verities however discredited and bereft of any basis for the necessary drastic modifications of future policy. To his credit, Farer does not shy away from such disqualifying affirmations so as to keep alive the chance he might be called upon to play a prominent role in the future making of American foreign policy. On the contrary, he practices his form of controversial truth-telling with vivid prose, disarming wit, lucid and persuasive reasoning, an unflagging respect for evidence, as well as an engaging willingness to push provocatively the hottest red button issues.

Unfortunately, the extent of the gap between the sort of coherent and genuinely liberal perspective on American foreign policy advocated by Farer and what Obama/Biden are likely to

offer the American people and the world provides ample grounds for despair about the abyss that separates what is politically viable within the United States from what the needed transformation of America's global role. Despite this, the gap between Obama and McCain was certainly significant enough from Farer's liberal perspective to do everything possible to elect the former and defeat the latter, and to celebrate the electoral outcome as a restorative moment in American political history. What this double message suggests is that post-Bush foreign policy is likely to represent a dramatic improvement, but that it still will fall far short of creating a desirable equilibrium between American capabilities, values, and foreign policy posture.

A telling example illustrates why Farer is correct, and the credible mainstream is mistakenly preventing the country from adapting to the security challenges of post-9/11 period. Farer manifests his intention to confront what might be called "establishment liberalism" by giving prominence to his critique of the American approach to the Israel/Palestine conflict, which remains the hottest button on the foreign policy panel, and the one to be avoided if a person's ambitions include the possibility of advising presidential candidates or serving in their administrations. Farer is deeply critical of Israel's post-1967 occupation policy, and repudiates such mainstream American articles of faith as that Israel has done all that can be reasonably expected to achieve peace with its Palestinian adversary and its corollary that the United States has played a constructive role as an "honest broker." Uttering such heretical sentiments, truisms for the rest of the world, are enough by themselves to keep Farer, or others with similar truth-telling impulses, off any roster of possible foreign policy appointees under consideration by a presidential transition team, and this tells us a great deal about the hole we have dug for ourselves as a country, unable to act in conformity with its interests, much less its professed values.

Admirably, from the perspective of illuminating the subject-matter, Farer goes much further than standard criticisms of Israel, indicting the Israeli government and non-state Zionist organizations for pursuing policies that, from the origins of the Zionist project, are deeply abusive of the Palestinian "other," and for being far more dedicated to maximizing their territorial control over the former British mandate than to working out a set of compromises with the Palestinians in relation to such litmus issues as land, borders, Jerusalem, settlements, and refugees. In this important respect, as is characteristic of his approach overall, Farer depicts foreign policy challenges and responses from the perspective of offering policy recommendations, which if accepted in Washington, are calculated to produce solutions that respect the rights and reasonable expectations of both sides in a conflict. It is only because the American debate has become so skewed to the Israeli side that an attempt to achieve balance is likely to be immediately dismissed in most circles as pro-Palestinian, if it is not ignored altogether.

Farer offers a devastating critique of the ongoing occupation of the Palestinian lands seized after the 1967 War, but it is not one-sided. Farer's critique follows his initial acceptance of the Israeli claim that the occupation started out as a *lawful* sequel to Israel's valid claim of self-defense in 1967. It was the conversion of the occupation as a temporary incident of a defensive war into a permanent, or quasi-permanent, colonizing project, undertaken by way of large settlements throughout the West Bank and Jerusalem that led Farer to adopt a highly critical posture toward the occupation as it has unfolded over the course of more than four decades, and still shows no credible signs of ending. Farer concludes, in this regard, that the oppressiveness of the occupation, and its illegalities in relation to international humanitarian law, intensified when the Palestinian resistance

emerged, which happened dramatically in the first intifada in 1987. This resistance, relying mainly on the symbolic violence of stones, was brutally repressed by Israeli security forces, and a cycle of escalating violence on both sides has ensued, with Israel holding the upper hand due to its possession of modern weaponry.

Farer also endorses the key inflammatory indictment of the Israeli occupation as having become in form and substance a species of apartheid. Both in Gaza and the West Bank, the rigid control of entry and departure, amounting to a siege in Gaza since the Hamas takeover in July 2007, converts these two Palestinian territories into what Farer considers to be huge open air prisons, with the prison guards largely withdrawn to the perimeter. When the prisoners grow restive, then the occupied territories are targeted either by high tech military incursions or sophisticated missile attacks. This mode of occupation is reinforced by documented massive detention of Palestinian suspects, house demolitions, targeted assassination of suspected militants, and reliance on abusive interrogation practices. Farer's conclusions, although expressed in elegant language, with scrupulous regard for evidence and a somewhat anguished acknowledgement of his Jewish identity, deserve to be widely read and studied, especially as they are at such odds with the approach taken to Israeli occupation by even most American liberals, not to mention the religious right.

To discover and identify the contours of reasonable expectations in relation to the two sides, Farer avoids purely subjective assessments of the issues in dispute. He carefully relies on the guidelines provided by international law and by the values embedded in the international human rights movement. Although very helpful in clarifying what would constitute a fair outcome for the two embattled peoples in this conflict, Farer's more enduring contribution is to offer a more general rationale for relying on international law to frame our perceptions of what is reasonable to expect and claim. He instructs us with great intellectual finesse that the norms embedded in international law should be viewed as the encoded wisdom of seasoned and realist diplomats, and not be regarded as dreamy idealism somehow given the stature of law while experienced statesmen were somehow distracted.

When such a law-oriented methodology is applied to the Israel/Palestine conflict, it works to the favor of Palestinian claims on every major disputed issue, including the status of the Israeli settlements in occupied Palestine, the right of Palestine refugees to return to their pre-1948 homes, the land claims to the totality of Palestinian territory occupied since 1967, and the claim to establish a Palestinian capital in East Jerusalem. It should not be surprising, then, that Israeli diplomacy has effectively excluded considerations of international law from the peace process although the main issues are all susceptible to legal disposition. Farer shows indirectly, and tragically, that reliance on international law in the context of the Israel/Palestine conflict has come to seem "utopian" in the fundamental sense that it is not now possible to anticipate circumstances in which the parties would agree to take account of international law as integral to a negotiated solution to the conflict leading to the establishment of a viable and fully sovereign Palestinian state as the only meaningful substantive and politically possible realization of a Palestinian right of self-determination, and even this is now questioned due to the accumulation of "facts on the ground," especially the settlement complex and the alterations of municipal Jerusalem. This refusal to seek a solution in rough accord with international law leads Farer to a tone of suppressed pessimism. Farer argues persuasively, in my view, that the failure to solve this conflict injects poison into the entire relationship of the West,

and particularly the United States, with the Middle East, and the Islamic world, and that this toxic element can only be removed by a peace process sensitive to the legitimate claims of the weaker Palestinian side. The expression of such sensitivity, Farer argues, is best established by reliance on the guidance provided by international law and human rights values.

The realism that is present here is to call our attention to the existence of a plausible solution-oriented path based on reasonableness as embodied in applicable law, and to discard continued geopolitical efforts to resolve the conflict by insisting that the Palestinians swallow whatever the Israelis are willing to offer, which in fact remains far removed from Palestinian legal entitlements or Israeli negotiating positions. What should be discouraging to discerning readers is Farer's demonstration that what is realistic is perversely being excluded from practical politics to the extent that its realization is so unlikely that it must be located in the realm of the utopian, that is, outside the boundaries of "responsible" debate on how to resolve the conflict. This prevailing perspective is most plainly set forth in the elaborate published commentary of Dennis Ross, who was the chief Middle East advisor to Bill Clinton and now serves Barack Obama. For Ross, what is "reasonable" is understood not by reference to the respective rights of the parties, but by what the Israeli leadership and public are prepared to accept the Palestinian claims and demands (see Dennis Ross, *Missing Peace: The Inside Story of the Fight for Middle East Peace* (2004)).

Farer's critique of the foreign policy approach to the Israel/Palestine conflict has been highlighted because it is suggestive of his overall orientation, but it is not the main argument of the book, which is devoted to an analysis and prescriptions relating to counterterrorism in the post-9/11 world. I find that Farer impressively provides a superior approach on this centerpiece of 21st century American foreign policy, namely, responding effectively to the threats posed by the sort of terrorism that mounted the 9/11 attacks, which he aptly labels as "catastrophic terrorism." As with Farer's treatment of the Israel/Palestine conflict, so with counterterrorism, the recommended approach challenges the bipartisan consensus that has prevailed during the last several years, giving George W. Bush virtually a free pass in foreign policy. Farer's indictment of neoconservative militarism and globalism is appropriately devastating, but it is misleadingly held fully responsible for the fundamental distortions of the American engagement with the world. I feel that Farer somewhat scapegoats neoconservatives when it comes to allocating responsibility for the failed approach of the Bush presidency, or more accurately, he lets the rest of the mainstream off the hook. The Democrats in Congress, and elsewhere, meekly supported most Bush foreign policy initiatives, and have yet to offer an alternative conception of security, and this became awkwardly evident when, even after the 2006 by-elections gave the Democrats a clear mandate to end the Iraq War as soon as possible, nothing changed. In my view, Farer needs to take this observation on board, and by so doing, reformulate his critique of the foreign policy establishment to extend beyond the tactical excesses and ideological bluster of the neoconservatives. I do not mean to belittle these excesses. The Iraq War would not have been *initiated* but for the presence of neoconservative influence in the White House, and Iraq, the United States, and the Middle East would be far better off today.

Pointing a finger only at the neoconservatives seems to make Farer's call for addressing the legitimate grievances of the Islamic world as a major feature of the "smart" counter-terrorism he advocates as an alternative to the neoconservative Bush "dumb" counter-terrorism, appear out of touch, being situated well beyond the horizon of political feasibility. Any politician on the liberal side of public debates that calls seriously for addressing these grievances would be instantly crucified as

weak and cowardly. Only mindless militarism enjoys bipartisan backing and remains immune from backlash politics. I contend that American militarism is mindless because it is immune to reasoned criticism. This is reflected in the prevailing consensus that any serious effort to cut the defense budget should be dismissed without argument as a tactic of ‘the extreme left.’ Such a viewpoint, endorsed in the mainstream media, is almost certain to keep in place an excessive global military presence at a time of severe financial stress, and to exact huge opportunity costs by way of domestic welfare spending. It is notable that at no point during the recently concluded presidential campaign was the size of the American military budget raised as an issue, and it never surfaced as a debate question even though the United States spends approximately as much each year on the military as does the rest of the world put together. In this crucial respect, getting rid of neoconservative leadership is highly unlikely to produce a revision of policy along the lines advocated by Farer.

My second reflection while reading this fascinating and quite remarkable book, written with enviable literary verve (so rare in academic writing), with expert knowledge energized by apt cultural references, and the overall argument enriched by a sophisticated appreciation of the interface between analysis and policymaking, is embarrassingly narcissistic. I kept trying to figure out to what extent our approaches to this subject-matter diverged beyond what has already been mentioned. On the most obvious issues of substance, including how to conceive of the Israel/Palestine conflict, and what might have been the best response to the 9/11 attacks, we are in total agreement. Indeed, the clarity and depth of Farer’s interpretations helps me to articulate my own parallel views in a more compelling fashion. I would certainly recommend reading Farer’s Confronting Global Terrorism over my own The Great Terror War, although we cover some of the same ground. It is true that Farer’s book comes out five years later, and is able to take apt account of the colossal miscalculations of the neoconservative approach as it has played out throughout the Middle East and especially in Iraq. Yet even taking this advantage into consideration, any objective critic should give the nod to Farer without hesitation. He offers us a deeply felt and thought through worldview that is both coherent and humane, and confronts, rather than evades, the uncomfortable circumstances of America in the world.

If we go beyond this issue of comparative merit, I do find some differences in our assessments that are worth mentioning. For instance, on nuclear weaponry, Farer appears to opt for a rehabilitated approach to nonproliferation rather than to call for total nuclear disarmament, which I believe is the only path to a world liberated to the extent possible from weapons of mass destruction. On recalling the strategic bombing campaigns of World War II and the use of atomic bombs, Farer suggests the extent to which wartime erodes the principle of respecting civilian innocence, but holds back from describing such war fighting as deliberately seeking to destroy the political will of the enemy by breaking the morale of the civilian population. In other words, as with the conception of terrorism that he proposes, Farer refrains from drawing links between American tactics of World War II and recourse to “catastrophic terrorism” of the 9/11 variety that he appropriately deplors. And finally, Farer insightfully points to the loss of leverage by the United Nations, especially the Security Council, due to changes in the geopolitical landscape and to the nature of peace and security, but insists that only the United States has the leadership skills and capabilities to overcome what he calls “the institutional deficit” that he contends is undercutting the problem-solving capacity of the organized international community. In each of these policy contexts, what Farer favors is sensible and necessary, but it eschews the more radical outlooks that I

regard as responsive to the relevant realities. In these regards, Farer is more mindful of realist constraints on the political imagination than he appears to me to be when discussing the Israel/Palestine conflict or the need to address the grievances that generate catastrophic terrorism.

Beneath this consideration of specifics is a more serious point of difference with Farer, worth mentioning because mostly we are in agreement when it comes to prescriptive initiatives that are needed for a just and effective American grand strategy. The difference is this: Farer deftly focuses his attention on neoconservative excesses, but avoids the *structural* reinforcement of its basic policy outlook that currently entraps liberals almost as much as their right-wing opponents. Obama talks of shifting American military attention from Iraq to Afghanistan and Pakistan, but with no accompanying effort to address either Islamic grievance, to cut the American military budget and worldwide military presence, or to make the sort of regional massive economic reconstruction and development commitments that Farer proposes. In this sense, refuting the neoconservative way of doing counterterrorism does not go far enough. Neoconservatism may well be rejected, and yet the basic vectors of misguided American policy will continue, and may even produce new engagements leading to further instances of dysfunctional warfare, such as escalation in Afghanistan, extension of the war zone to Pakistan, and military confrontation with Iran. Farer adopts an intelligent view of counterterrorism that stresses the role of non-military options that is more forthcoming than the liberal mainstream. For instance, he suggests backing a massive educational effort under the leadership of Muslim intellectuals in West Asia to support *madrastas* operating with the legitimating imprimatur of UNESCO.

Listening to influential Democrats talk about dealing with Iran, there seems to be little that is new enough to break the menacing deadlock. It would be a political suicide for an American political figure to propose the establishment of a nuclear free zone in the Middle East that includes Israel, although this is the only kind of framework that is likely to restore some confidence in the nonproliferation regime. My point is not that Farer has selected too easy a target, but that by demolishing neoconservatism as an intellectually viable basis for foreign policy, he still cannot explain why the sort of alternative policies he favors are almost certain to remain pipedreams. Remember, the Clinton presidency maintained cruel sanctions on Iraq, used force unilaterally and unlawfully, and stubbornly confused a peace process with a willingness to do Israel's bidding while purporting to mediate the conflict. This does not mean that we should not welcome a return to Clinton era foreign policy, even in the Middle East, as compared to what the Bush presidency has given us over the last eight years, but sadly it is still far from enough, and this Farer does make clear. In this respect, I am arguing that Farer holds back from acknowledging the full force of his own diagnosis of where and how American foreign policy has gone wrong.

I would point out one peripheral puzzling feature. At several points in the book (79, 127, 251) Farer turns to the great American writer, Ernest Hemingway, for insight and wisdom, which turns out is an admiration shared by both Barack Obama and John McCain. I am puzzled by this declared affinity. Hemingway was someone infatuated with violence and skeptical of the role of reason in human affairs. Farer quotes approvingly, more than once, the Hemingway idea that "the true test of human character is the ability to display grace under pressure" (79) and Hemingway was thus understandably drawn to bullfighting and big game hunting, as well as war. Such a profile of machismo, however heroically portrayed, does not seem to me to fit with Farer's liberal humanism. And yet, it does fit with another facet of Farer's engagement with the world. Farer, in many ways, is

for liberal intellectuals what the late William Buckley was for conservative intellectuals: namely, an enchanting devotee of high style in life and letters, as well as a serious and influential purveyor of ideas. That Hemingway should be inspirational for Farer makes good sense with respect to his stylistic persona, even if it seems to fit uncomfortably with his liberal program of action. I find Hemingway as an inspiration for Obama more understandable, as it seems to relate to the quality of persevering in what one believes regardless of the cost, and represents an unconditional commitment to the good fight as memorably depicted in For Whom the Bell Tolls.

As far as locating himself, Farer's intellectual identity is multi-faceted. At one point in discussing the Cold War debates about intervention in Third World ideological struggles, Farer somewhat surprisingly asserts that "Kennanites like myself" (60) were skeptical about the prudence or the need for intervention. It is surprising because Kennan made it a point to deride liberals as "do-gooders" who messed up foreign policy whenever riding in the saddle of power. Kennan, like Morgenthau and Acheson, believed that the lawyers should not be given much weight in the counsels of governments insofar as they preached adherence to law. What brought Kennan and Farer together was their shared sense that power relations were part of the deep structure of international relations, and diversionary struggles at the margins of vital national interests were wasteful and self-destructive. This was especially important in the context of the Cold War where Farer, like Kennan, supported military containment as essentially limited to Europe, rather than on a global scale as promoted by hawkish cold warriors. This concern became a central aspect of the realist split with respect to the Vietnam War. Kennan and Farer, along with such other realist luminaries as Morgenthau and George Ball, opposed the war from the perspective of prudent realism and foreign policy priorities, while more hawkish realists favored the war until it turned sour. It is my sense of Farer, after decades of friendship and collegial interaction, is a realist when it comes to interpreting the play of major forces in world politics, but that he believes in a manner that Kennan would not admit, that justice and stability are often conjoined, and that law and lawyers can be useful in embodying such a convergence in concrete arrangements. That is how I interpret Farer's approach to both Israel/Palestine and post-9/11 catastrophic terrorism. In this respect, being smart in foreign policy also means seeking to address the legitimate ethical and legal grievances of an adversary, and for me this means being more of a "liberal" and less of a "Kennanite."

It may seem inconsistent for Farer to lend such strong support to international law and human rights, and yet associate himself with the outlook of a leading power-oriented realist such as George Kennan. Oddly, Kennan himself, especially when out of government, would often exhibit support for constraints on American foreign policy reflecting the relevance of ethics and law. Farer's sophistication is reflected in this acknowledgement of the contradictory character of security challenges in a world still dominated by sovereign states, despite the rise of non-state actors. In this deeper sense, it is quite consistent for Farer to be a realist to the extent *necessary* to address hostile and aggressive adversaries, while being an advocate of international law and human rights to the degree *possible*. This is a creative tension that lends overall plausibility to Farer's approach, but Farer might have helped readers by making this feature of his outlook explicit. As now stated, Farer's embrace of 'the humanistic tradition' seems somewhat at odds with his reliance on realist assessments of major security threats.

Setting aside this rather marginal ambiguity, Farer depicts his own uplifting worldview with characteristic eloquence, clarity, and self-awareness in several passages. I find the following language particularly descriptive of the normative edge that leads me to view Farer as a progressive version of liberal:

For me the humanistic tradition is marked by a transcendent respect for human reason as a means of unending inquiry into the nature of the world and the right conduct of life, by a commitment to defend that search, by respect for knowledge and the layered cultural legacy that every civilization has produced, and by the individual as searcher and creator of meanings. The tradition is by its nature cosmopolitan and regards violence and destruction as last resorts to preserve humanistic culture. It tolerates the warrior virtues and war itself only as a means to that end; it does not exalt them. In our age it is formally expressed in international law, and, particularly, in the normative body of human rights (80).

I believe these words express the essence of Farer's outlook in words that distance him from both Hemingway and Kennan, particularly with respect to the place of law and ethics in charting the policy imperatives of decency and a decent government.

I would summarize this depiction of Farer's outlook as post-metaphysical secular humanism that attained a certain intellectual hegemony among thinkers and citizens who were neither religious nor Marxist, nor of course, fascist. This outlook can be rendered algebraically: $l + r + H = F$ (with a lowercase l standing for liberalism, r for realism, a capital H for *secular* humanism, and F for Farer. The F could also stand for Falk, except that I would want to modify my humanistic affirmations with the word 'spiritual' rather than 'secular,' not a matter of subscribing to organized religion, but rather an affirmation of an ecumenical religious impulse that endows life and love with mystery and meaning (For further clarification see Paul Tillich's The Courage to be (1952), and especially, William Connolly's Why I am not a Secularist (1999)).

I hope that my interrogation of Farer's text are not understood as criticism, or divert attention from the main purpose of this essay, which is to celebrate Tom Farer's great scholarly achievement. I have not begun to do justice to the finely textured analysis and wide ranging and stimulating explorations that make Confronting Global Terrorism an extraordinary book that offers us a more constructive and comprehensive way to think about the relationship between international law and foreign policy in the twenty-first century. For instance, there is a brilliant discussion of the rise of various tribal and communal identities that have nurtured extremist political movements that are currently threatening the stability of sovereign states and the Westphalian international order (128-167). This inquiry gives us a nuanced appreciation of the religious, cultural, and political forces that incubated the al Qaeda phenomenon, and what this means for a responsive politics that is intelligent while being effective.

Above all, with this book Farer stakes his claim to be included in the front rank of both international jurists and international relations specialists. His presentation of the relevance of international law and human rights to the world we inhabit manages to achieve an extraordinary blend of sophisticated knowledge, empathetic wisdom, and practical guidance. Confronting Global Terrorism is a notable and distinctive contribution that stands alone at the pinnacle of the relevant scholarly literature, and is about more than its title promises. As I believe, if we are to become a species and a country that has any chance of addressing the multiple challenges threatening human well-being, we need somehow to find the political and cultural strength to follow the pathway that Farer has hacked through a jungle of conflicting forces, even if I am not as convinced as he is that

once we slay the dragon of neoconservatism we will be ready to embark upon such a journey. I believe there are additional, even larger dragons that are just as destructive of a viable human future for America and the world, and I would point especially to entrenched militarism and an unrelentingly cruel variant of capitalism. Perhaps, it is unfair to expect any warrior prince to do more than slaying a single dragon.

The War on Terror and the Problematique of the War Paradigm

By Dino Kritsiotis

This volume is not for the faint-of-heart. In Confronting Global Terrorism and American Neo-Conservatism: The Framework of A Liberal Grand Strategy (2008), Tom Farer reaches deep into psyche and soul of “a nation’s humanistic culture” (79),¹ and examines the “fateful decision” of the Bush Administration after September 11, 2001, “to pursue its ends unconstrained by conventional interpretations of the applicable law” (82). He argues that “it would strain credulity if someone suggested that [the torture memoranda] were spontaneously generated by mid-level officials” and locates the heart of decision-making in the White House of the Bush Administration who, Farer writes, “requested legal advice both to determine the limits imposed by acts of Congress and the risk of criminal liability particularly for persons not in a position to deny responsibility if they went outside statutory law and their actions became public” (85). There is no mincing of words here, no recoiling from the charges or criticisms made, and it is a process that comes with its unflattering and hard-hitting historical parallels (64). Yet, it is also the case that a strong sense takes hold in Confronting Global Terrorism that the path trodden by the United States in these years need not have been so—that *this* particular democracy need not have compromised its moral standing and its authority, or its commitment to the rule of law.

These sentiments find fitting and frequent expression throughout Confronting Global Terrorism, and, in the sixth and conclusive chapter of the work, they are channeled into a “liberal grand strategy,” or “a counter-terror strategy informed by liberal values” (6) and “the deep essence of human rights” (37).² Elsewhere, Farer has described this as his “liberal optic.”³ The “first of those

¹ To elaborate: “For me the humanistic tradition is marked by a transcendent respect for human reason as a means of unending inquiry into the nature of the world and the right conduct of life, by a commitment to defend that search, by respect for knowledge and the layered cultural legacy that every civilization has produced, and by appreciation of the individual as searcher and creator of meanings. The tradition is by its nature cosmopolitan and regards violence and destruction as last resorts to preserve humanistic culture. It tolerates the warrior virtues and war itself only as a means to that end; it does not exalt them. In our age it is formally expressed in international law and, particularly, in the normative body of human rights” (80).

² To be distinguished from the “grand strategy of response” to September 11, 2001, of neo-conservatives in the United States, “one that in its very ambition and vision corresponded to the shock and fury of the U.S. public and to its congenital sense that wars should end in glorious, transformative victory” (34). Farer’s concentration in this work is on the shaping of neo-conservatism in the United States in response to developments “beyond the country’s borders” (29); for a detailed and enthralling account of developments and social history within the United States, see (Perlstein 2008). See, also, (Farer 2008a: 357-362).

elements” associated with his grand strategy, Farer writes, is “to cease thinking and speaking of the terrorist challenge in terms of a ‘war’”:

*Calling it “war” associates terrorists with the titanic clash of peoples, history-changing battles, and storied feats of arms by half-mythic figures like the great Muslim general Saladin who defeated the Crusaders by allowing them to achieve a key objective, which is glory and renown. It empowers them psychologically and, by enhancing their stature, it is bound to facilitate their efforts to recruit new members. Moreover, calling it “war” fosters a political environment in the United States supportive of increased investment in military instruments when a central principle of counter-insurgent doctrine, and insurgency is the closest analogy to the present threat, is the primacy of political and economic measures and information operations designed to isolate the violent. Calling it “war” activates what the historian Walter Russell Mead calls [in *Special Providence: American Foreign Policy and How It Changed the World* (2004)] the “Jacksonian” side of the American foreign policy culture, the side marked by wrath and blind hatred, an impulse to exterminate, a ferocious xenophobia, all-in-all a set of emotions not exactly conducive to the search...for political solutions to grievance that, if aggravated, can give the relatively few terrorists a whole sea of sympathizers in which to hide: empathy, after all, is one of war’s first casualties. And calling it “war”, and if war it is one that promises to be perpetual, will surely mean that at home we will have fewer freedoms to defend. (237)*

This passage seems to me to be a rich platform for one critique of the work because it contains two core assumptions that relate to other claims made in the volume. Let me identify them. One is the question of nomenclature, of how we go about describing or denominating things: in short, of how we “frame” them (Bai 2005). Though this passage does not articulate it thus, it is fair to say that the act of “calling” (with which the above excerpt commences) can and does occur on dual levels of interaction—the linguistic and the legal. We might wish to call something in terms not appreciated or accepted by others, but one that has no specific legal connotation or consequence (as in the designation of a “catastrophe” or of “tragic circumstances” or even of “imperialism” and “imperial domination” (65)). We might include in this class “a symbolically resonant phrase,” a phrase such as the “war on terror,” which evokes “the values, interests, identities, and policies that differentiate political factions” (Farer 2008a: 357).⁴

However, our “calling” of something might also occur within the context of an overarching juridical framework and vocabulary, so that what we are doing in fact is actually arguing for a particular legal appreciation of events, of the designation of a specific legal *condition*—something that might affect the status of the parties, or their interests, entitlements and obligations, or even the

³ See (Farer 2008) or, as argued in *Confronting Global Terrorism*, “the optics of law and the moral values embedded in human rights norms (best expressed politically by American liberalism and European social democracy) which constitute a particular way of visualizing human dignity” (132). And, further still, “the idiom of our grand strategy must be the only idiom we have that connects our constitutional values with the values of peoples all over the globe, the idiom of international human rights and international law, the idiom of liberalism” (241).

⁴ Farer’s reference to a “symbolically resonant phrase” is to that of “human rights,” as conscripted by the Democratic Party in the United States as well as by “liberal elites.” And which has been pursued with obvious and deep societal connotations: see (Faludi 2007: 13), “We were also enlisted in a symbolic war at home, a war to repair and restore a national myth.” “To the old rap sheet of feminist crimes—man hating, dogmatism, humorlessness—was added a new ‘wartime’ indictment: feminism was treason.” See (Faludi 2007: 22).

outcome of a given dispute (e.g. torture (98); “summary executions” (27) or, *pace* Art. 6 of the 1966 International Covenant on Civil and Political Rights, the arbitrary deprivation of life or an “armed attack” under the law of the United Nations Charter (46-48; 63)).⁵ This exercise leads us to the second assumption—an assumption that is hard at work in these pages—and that relates to the freedom that parties must possess in order to be able to “call” things in one direction or another.⁶ Implicit in the reasoning of the passage we have cited is the claim that the United States had such a freedom in its hands, as it were, when it invoked “war” as the organizing concept of its response to the events of September 11, 2001.

At the linguistic level, the choice of waging a “war on terror” reflected the exercise of this freedom, even though hindsight has made certain members of the Bush Administration question the full utility and appeal of this term.⁷ That must be contrasted with the *extent* of the freedom to determine the legal relationship between the United States and al-Qaeda as “war” because, as Farer himself posited in a separate but related context a generation or so ago now, it must be open to serious question whether a “choice” of this order can still be “entrusted exclusively to national whim” (Farer 1971: 39). Farer made that point in his assessment of common Art. 2 of the 1949 Geneva Conventions—a provision common to all four Conventions because it ordained the circumstances of their application—and it is instructive to return to, and engage the precise details of, this provision which makes abundantly clear that *war* is no longer the trigger mechanism for the rules of warfare. “War” remains a condition known to international law, it is true (Greenwood 1987), but common Art. 2 ensures that it is subsumed as part of a much broader normative phenomenon—that of an international armed conflict: the Conventions announce that they “shall apply to all cases of declared war *or any other armed conflict which may arise between two or more of the High Contracting Parties*, even if the state of war is not recognized by one of them” (emphasis supplied). This formulation should therefore be critical to the parameters of the debate that has ensued since September 11, 2001: in introducing the paradigm of an *international armed conflict*,⁸ the Conventions

⁵ Though Farer oscillates between terminologies, after an important discussion on the scope of an “armed attack” (46-48), he appears to regard the prompt for the right of self-defense as an “act of war” (55)—when that term might be considered to be somewhat broader than the notion of an “armed attack” (“Today [an ‘act of war’] is used to describe all military operations, including those (such as the announcement of a blockade) which involve the threat of force, once the parties are in armed conflict” (Greenwood 1995: 49-50)).

⁶ So the United States had no actual freedom to deny that it had used force against Afghanistan in October 2001, its “open military intervention” (85) was evident and plain for the world to see, and so it sought refuge in that justification for the use of force that is known as self-defense. Here, as the Security Council intimated with its Resolution 1268 of September 12, 2001, it had more plausible lines of argument, though an essential strength of Farer’s work is his dissection—apart from these freedoms accorded by international law—of considerations relating to operational necessity and the (politically) desirable (85).

⁷ Doubts did surface *within* the Administration as to the most appropriate “catchphrase of choice.” See (Schmitt and Shanker 2005). President George W. Bush stood firm over alternative nomenclatures (such as the “global struggle against violent extremism” advocated by Defense Secretary Donald H. Rumsfeld, amongst others (Stevenson 2006)). In more recent times, note the efforts of the Bush Administration to secure affirmation and acknowledgment from the United States Congress that “again and explicitly... this nation remains engaged in an armed conflict with Al Qaeda, the Taliban, and associated organizations, who have already proclaimed themselves at war with us and who are dedicated to the slaughter of Americans” (Lichtblau 2008). Farer addresses the monumental ambiguities that surround the concept of terror (and all of its derivatives) as a matter of law. See the discussion of the question of State terrorism (28).

⁸ The qualification of the armed conflict as one of “international” character is important, given the juxtaposition of

articulate in no uncertain terms that the law no longer confines its rules of warfare to occurrences of *war*—no more and no less than it does not discriminate between international armed conflicts of high or “low-intensity” (54).

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The purpose of this conceptual shift from war to armed conflict in August 1949 is well-rehearsed and it is well-known; it was to avoid technical denials that a “state of war” had come into existence and, at least as the authoritative International Committee of the Red Cross Commentary on common Art. 2 is concerned, “[t]he occurrence of *de facto* hostilities” is what is now “sufficient” to trigger the application of the rules of warfare (de Preux 1952: 23). The purpose, then, was to enhance the scope of application of *these* rules; it was to relax the circumstances that would make them relevant in the real world. We might want to question whether a certain *quantum* of violence is or ought to be required in order to satiate common Art. 2,⁹ but, whatever position is held on this matter,¹⁰ it is the case that the provision is much more explicit than antecedent formulations that this violence must occur between “High Contracting Parties.” In regard of this stipulation, it might be thought that the overall freedom which States have to determine whether the Conventions are applicable to their relationship with non-State actors such as al-Qaeda is very much enhanced, for here, we are confronted with “[n]ot a State” and “[n]ot even an organization, if one thinks in terms of some entity with vertical lines of authority and responsibility” (2):

Rather, in al Qaeda, we seem to have a shifting cluster of self-starting grouplets, in loose association, answerable finally to themselves, drawing inspiration, perhaps, from the iconic personality of Osama bin

common Art. 2 with common Art. 3 in the Geneva Conventions—a provision that is unique in contrast to common Art. 2 since it makes the sole provision of common Art. 3 (rather than the Conventions as a whole) applicable “[i]n the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties.” See (Roberts and Guelff 2000: 245).

⁹ See (Levie 1988). According to the Commentary, however, “Any difference arising between two States and leading to the intervention of members of the armed forces is an armed conflict within the meaning of Art. 2, even if one of the Parties denies the existence of a state of war. It makes no difference how long the conflict lasts, how much slaughter takes place, or how numerous are the participating forces; it suffices for the armed forces of one Power to have captured adversaries falling within the scope of Art. 4. *Even if there has been no fighting, the fact that persons covered by the Convention are detained is sufficient for its application.* The number of persons captured in such circumstances is, of course immaterial (emphasis supplied). See (de Preux 1952: 23). Evidently, this position takes a decidedly functional approach to the circumstances in which the Conventions become applicable as a matter of law.

¹⁰ No such threshold is in fact articulated in common Art. 2 itself—or, indeed, in common Art. 3, *supra* note 8. Compare, however, Art. 1 (1) of the Second Additional Protocol of June 1977: “This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions or application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party *between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol*” (emphasis supplied). See (Roberts and Guelff 2000: 484). Note that, in the *Tadic* judgment of October 2, 1995, the notion of a “protracted armed violence” was pressed into service for non-international armed conflicts, i.e. “between governmental authorities and organized armed groups or between such groups within a State.” See (*Prosecutor v. Dusko Tadic* 1996: §70).

Laden, bonded by a particular interpretation of the Islamic faith, by a narrative of redeemable humiliation, and by a perceived enemy. Having no authoritative leader, the phenomenon is immune to decapitation. Having no territorial base, it is immune to deterrence, for there is nowhere to send the deterring promise of massive retaliation and there are no critical capital investments at risk. Being nowhere, it could be anywhere.
(2)¹¹

While it is clear that this ingredient of High Contracting Parties in common Art. 2 serves as an important qualification on the *meaning* of an international armed conflict as far as the Geneva Conventions are concerned,¹² it should be apparent that our construction of all the facts of a given instance will very much shape the decision as to whether the Conventions are, or ought to be, applicable from a certain point in time. It would matter, for example, where it is in the world that the United States finds, or targets, one of these “self-starting grouplets” professing allegiance to al-Qaeda; it is almost as if common Art. 2 requires us to contextualize the operations of al-Qaeda in terms of statist geography and politics. As far as the above passage is concerned, a certain phenomenon or perpetrator of violence is identified, but nothing more is supplied: we are not told of the specifics of each situation where al-Qaeda personnel have been engaged by the United States. We cannot therefore assume that the belligerent relationship between the United States and al-Qaeda has occurred free of all other contexts, free of all other realities. We might find, for example, that al-Qaeda has operated from a State such as Afghanistan that is at one with its ambitions and methods (48),¹³ or it could be that a State is resistant to,¹⁴ and perhaps even unaware of, the presence of al-Qaeda on its territory (77). There is also the possibility, of course, that developments occur outside the space of any of the other High Contracting Parties, where, for example, one of al-Qaeda’s “grouplets” is located at some point on the high seas aboard a ship “flying no national flag” (76).

These examples are all rallied to powerful effect in Farer’s commanding synthesis, but are done so more as part of his assessment of the entitlements states have under the *jus ad bellum* than under the *jus in bello*. Yet, their relevance for the *application* of the Geneva Conventions might have been tested and mapped out a touch further in this work, for these differing factual configurations might well lead to separate appreciations of whether an “international armed conflict” has come into being in relation to al-Qaeda in a given situation—or not.¹⁵ This line of thinking, it seems to me, is much more at one with the dispensation of the Geneva Conventions than what Farer describes (in a

¹¹ See, further, the excellent historical expositions of (Wright 2006). See, also, (Bobbitt 2008: 125; 128).

¹² See, further, the invocation of the State in Farer’s assessment of the scope of the right of self-defense against “Libyan-organized attacks on U.S. installations and personnel” (54). Were it otherwise, and common Art. 2 of the Geneva Conventions specifically encompassed the actions of non-State actors, there would have been no need for the Bush Administration to declare such a “war on terror”—because declared wars continue to come within the framework of an international armed conflict as announced in common Art. 2 of the Conventions, and Osama bin Laden declared war on the United States in August 1996 (“Declaration of War Against the Americans Occupying the Land of the Two Holy Places”). See (Bobbitt 2008: 126).

¹³ Or, in a felicitous turn of phrase by Farer, “whether by the State itself or by terrorists it might enable” (48).

¹⁴ Consider, for instance, the position of Yemen (Printer 2003). However, we must enquire whether the consent of that other State was forthcoming for the use of force in question (Pincus 2002).

¹⁵ As in the “close and respectful cooperation with other states and peoples” which Farer advocates, “at considerable expense, and with a mix of means unlike the mix required to wage inter-state wars” (237).

beautiful turn-of-phrase) as “simply folding Afghanistan into a generalized war against terrorism” (87), an approach that “could arguably legitimate targeted killing of al-Qaeda operatives all over the world, not simply in Western Asia” (87). One does wonder, though, whether the Bush Administration gave unremitting pursuit to this thought even if it had entertained it—whether, in its pleading, a “war on terror” initiated on one continent could then be sustained on all others by virtue of that status or designation. This reasoning would have suggested an interpretation of the *jus in bello* as the magical begetter of entitlements under the *jus ad bellum*, but what is important and interesting to note from the historical record is how the Bush Administration viewed each of these fronts in its “war on terror” as discrete episodes under international law—and that it went on to argue them as such under the *jus ad bellum*.¹⁶ These arguments have taken different forms to be sure,¹⁷ from the activation of the right of self-defense (Afghanistan) to the consent of the targeted State (Yemen) and the authorization of the Security Council (Iraq), acts of official justification that would have been rendered unnecessary if the belief was held that the “war on terror” served as a source of ongoing or perpetual legitimation.¹⁸

The upshot of this discussion is to emphasize the statist context in which al-Qaeda exists and undertakes its operations. It is for us to pay close heed to the full nature of the *modus operandi* of al-Qaeda, but also to the broader context in which its relationship with the United States has evolved. One can discern elements of this approach in the construction awarded to an *international armed conflict* in the Appeals Chamber of the International Criminal Tribunal in the Former Yugoslavia, when it said that “[i]nternational humanitarian law applies from the initiation of such [i.e. international] armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply *in the whole territory of the warring States* or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there.”¹⁹ At the same time, we cannot afford to elide the fact that the Geneva Conventions envisage a broad church of combatant actors on the field of an international armed conflict—on those who partake in hostilities. Note that, although common Art. 2 of the

¹⁶ As Farer himself does in distinguishing between “each attack [against Americans] that can be fairly seen as analogous to a ‘battle’ in an ongoing war [and which] may be renewed at any time” by a terrorist group—and a situation in which that group has secured and plans to use weapons of mass destruction: see (Farer 2008b). Consider, however, the relevance of this consideration to overt as opposed to covert actions. See (Schmitt and Mazzetti 2008a).

¹⁷ Arguments that have been very specific to the state targeted for intervention, and to its relationship with al-Qaeda—although here, as in other things, there have been realms of inconsistency. Here is President George W. Bush speaking on March 20, 2006: “I don’t think we ever said—at least I know I didn’t say that there was a direct connection between September 11th and Saddam Hussein. We did say that he was a state sponsor of terror—by the way, not declared a state sponsor of terror by me, but declared by other administrations. We also did say that Zarqawi, the man who is now wreaking havoc and killing innocent life, was in Iraq. And so the state sponsor of terror was a declaration by a previous administration. But I don’t want to be argumentative, but I was very careful never to say that Saddam Hussein ordered the attacks on America” (Bush 2006).

¹⁸ And made all the more clear from the various stances of the Bush Administration (including the right of hot pursuit) regarding its use of force *within* Pakistan (Shah, Schmitt and Perlez 2008). See, also, (Filkins 2008). As this article was being prepared for press, it was reported that, in July 2008, President Bush had approved orders for American Special Operations Forces to undertake ground assaults in Pakistan without the prior approval of the Government of Pakistan see (Schmitt and Mazzetti 2008).

¹⁹ See (*Prosecutor v. Dusko Tadic* 1996: §70).

Conventions insists on an international armed conflict *as between* High Contracting Parties, Art. 4 of Geneva Convention (III) Relative to the Treatment of Prisoners of War does not limit the question of participation to regular combatants, combatants who are acting for their respective High Contracting Parties. This is made apparent from the inventory of combatants contained in Art. 4 of Geneva Convention (III)—which, alongside “[m]embers of the armed forces of a Party to the conflict as well as members of militias or volunteers corps forming part of such armed forces” in Art. 4 (A) (1), mentions in Art. 4 (A) (2):

[m]embers of other militias and members of other volunteers corps, including those of organized resistance movements, belonging to a Party to the conflict and operation in or outside their own territory, even if this territory is occupied, provided that such militias or volunteers corps, including such organized resistance movements, fulfill the following conditions: (a) [t]hat of being commanded by a person responsible for his subordinates; (b) [t]hat of having a fixed distinctive sign recognizable at a distance; (c) [t]hat of carrying arms openly [and] (d) [t]hat of conducting their operations in accordance with the laws and customs of war.²⁰

Further corroboration of this stylization of hostilities might be obtained if we set this arrangement of August 1949 against Art. 1 of the Regulations annexed to the 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land,²¹ which made no distinction between “regular” and “irregular” forces; and it is an approach that we see consolidated and developed when we turn to Art. 44 (3) of the First Additional Protocol of June 1977 (which standardizes the criteria for lawful combatant status irrespective of one’s membership of regular or irregular formations).²²

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Part of this resistance to the “war” paradigm that appears in Confronting Global Terrorism (237) must stem from the understanding that it develops of how the Geneva Conventions work or

²⁰ Though one must admit the possible complication that might arise from Art. 4 (A) (2)’s reference to the “belonging to a Party to the conflict” as an inference to the State. However, on this point, consider (Mallison and Mallison 1977: 55): “If they do ‘belong’ in such a meaning, they are no longer irregular forces under Art. 4 (A) (2) but are regular militias or volunteer corps under Art. 4 (A) (1) [of the 1949 Geneva Convention (III)]”.

²¹ Regarding “not only armies, but ... militia and volunteer corps fulfilling the following conditions: 1. [t]o be commanded by a person responsible for his subordinates; 2. [t]o have a fixed distinctive emblem recognizable at a distance; 3. [t]o carry arms openly; and 4. [t]o conduct their operations in accordance with the laws and customs of war.” See (Roberts and Guelff 2000: 73).

²² Under the requirements of the Protocol, “combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack,” but Art. 44 (3) goes on to provide that “there are situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly: (a) during each military engagement, and (b) during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate.” See (Roberts and Guelff 2000: 444-445).

are intended to work in practice. That is an understanding that makes no equivocations—to be sure—of the importance of the canon of human rights in the normative architecture for warfare, notwithstanding the much later pedigree of this canon when compared with its humanitarian counterpart (i.e. the *jus in bello*). “What distinguishes the idea of human rights from earlier normative declarations concerning rights and human dignity is precisely its comprehensiveness in time and space. The rights adhere to people by virtue of their being born rather than being Englishmen or Christians or persons at different levels of the feudal hierarchy” (81). Nevertheless, it is also an understanding that appears to admit all combatants as prisoners-of-war under Geneva Convention (III)—or, in default of this classification, as “civilians” for the purposes of Geneva Convention (IV) Relative to the Protection of Civilian Persons in Times of War.²³

Farer credits the Bush Administration with the development of a “third category of persons” beyond the dichotomization of the Conventions (91), those who were neither prisoners-of-war nor civilians under the Conventions and thus not entitled to any of their respective protections.²⁴ It has become common currency to view this interpretation of the Conventions as innovative—it is indeed undeniable that the Bush Administration has pedaled and made much of the notion of “enemy combatants” in its so-called “war on terror” (238)²⁵—and, it seems to me, it is right to question what *legal* value can be obtained from promulgating such a designation: all combatants, after all, are *enemy combatants* depending on what position or perspective they are viewed from on the battlefield. Yet, it is a question worth asking after given the broader historical sweep of the Conventions (and, now, of course, the First Additional Protocol), which might in fact *require* us to distinguish between *lawful* and *unlawful* combatants—this, indeed, is the entire premise behind the concept of prisoners-of-war and the rules for the classification of combatants found in Geneva Convention (III),²⁶ which occurred

²³ Pursuant to the interpretation of “the semi-official steward of the Conventions, the widely respected International Committee of the Red Cross” (89). According to Art. 4 of Geneva Convention (IV), “[p]ersons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals” (noted by Farer (90)). In this positive definition, there is a clear sense that the Convention develops of *who* constitutes a “protected person” for the purposes of the Convention; however, the Convention is equally clear who does *not* constitute such a person by the negative definition that appears later in Art. 4: “[p]ersons protected by the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, or by the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, or by the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949, shall not be considered as protected persons within the meaning of the present Convention.” See (Roberts and Guelff 2000: 302-303). Consider, however, Farer’s later appreciation of the function of the Fourth Geneva Convention to “offer[] some floor for the population of the occupied territory to prevent their sinking into an abyss of rightlessness” (197).

²⁴ “On the theory that persons arrested for being parts of the terrorists conspiracy against the United States are, by definition, *unlawful combatants unprotected by the Geneva Conventions*, the President also claims the right to have such persons tried by military commissions created for this purpose rather than by civilian courts or courts martial under the Uniform Code of Military Justice” (125) (emphasis supplied).

²⁵ For an earlier circulation of the term, see, however, the ruling of the United States Supreme Court in *ex parte Quirin* in July 1942 (See also footnote 30 below).

²⁶ Art. 4 of Geneva Convention (III) developed the Regulations annexed to the 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land (Arts. 1–3), itself invoked in Art. 1 (1) of the 1929 Geneva Convention Relative to the Treatment of Prisoners of War. Art. 1 (2) further provided that, in addition “[t]o all persons referred to in Arts. 1, 2 and 3 of the Regulations annexed to the Hague Convention (IV) of 18 Oct. 1907,” the Convention would also be applicable to “all persons belonging to the armed forces of belligerents who are captured by the enemy in the course of

within a tradition of the branding of unlawful combatants alongside lawful combatants (Dörmann 2003) (one can and should think here of the spy (Arts. 29–31 of 1907 Hague Regulations; Art. 46 of the First Additional Protocol) and the mercenary (Art. 47 of the First Additional Protocol) (Baxter 1951)).

It matters, then, how we go about making this distinction, and Farer proceeds to unpack the “dry lawyer’s language” of Art. 4 of Geneva Convention (III) to argue against the incorporation of any of the criteria leveled for irregular forces in Art. 4 (A) (2) of the Convention for regular forces (in Art. 4 (A) (1) of the Convention) (91).²⁷ The Convention thus means what it says, as Farer concentrates on the wearing of “distinctive uniforms” (91) by regular forces and on their compliance with the laws and customs of war (92): “[t]he units of a regular army engaged in large-scale combat, armed with rockets and cannon, are pretty easy to distinguish from the general population whether or not they wear uniforms” (91). At 92–93:

In a large-scale conflict, some individuals and possibly whole units on each side may commit grave breaches, giving no quarter, killing prisoners when they become burdensome, or torturing them for information or for pleasure. Determining whether the delinquencies of some units should be imputed to all can be a complicated question, one unlikely to be resolved in favor of the captured in the middle of a bloody war. Arguably more humane outcomes will result from a bright-line rule that imputes POW status to all regular forces and then with due deliberation the captors can single out for prosecution those individuals who have committed grave breaches, for they are most certainly not immunized by POW status from severe punishment.

The invocation of “distinctive uniforms” in this context is intriguing, given that the relevant rule for irregular forces in Art. 4 (A) (2) of Geneva Convention (III) concerns a “fixed distinctive sign recognizable at a distance”; there is no provision made for the wearing of uniforms in this formulation,²⁸ and Farer is right to sense and reject this pastiche of the Bush Administration for differentiation from the civilian population can indeed be achieved *via* a multitude of means. (Note that Art. 44 (7) of the 1977 First Additional Protocol acknowledges “the generally accepted practice of States”—not the *universal* practice of States—“with respect to the wearing of the uniform by combatants assigned to the regular, uniformed armed units of a Party to the conflict” (Roberts and Guelff 2000: 445)). Uniforms can of course be important for members of regular armed forces if there is no other “fixed distinctive sign recognizable at a distance,” as the four petitioners in *ex parte Quirin* discovered after landing at Amagansett Beach on Long Island, New York, in June 1942:

Lawful combatants are subject to capture and detention as prisoners of war by opposing military forces. Unlawful combatants are likewise subject to capture and detention, but in addition they are subject to trial and punishment by military tribunals for acts which render their belligerency unlawful. The spy who secretly

operations of maritime or aerial war, subject to such exceptions (derogations) as the conditions of such capture render inevitable. Nevertheless these exceptions shall not infringe the fundamental principles of the present Convention; they shall cease from the moment when the captured persons shall have reached a prisoners of war camp.

²⁷ See footnote 20 above.

²⁸ Or, indeed, under the arrangement of the First Additional Protocol—which, once it announces its principle of distinction from the civilian population in Art. 44 (3) (see footnote 22 above), does not become prescriptive as to how this might be obliged. This aspect of this provision has been regarded as a statement of customary international law: Rule 106 announces in part that “[c]ombatants must distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack.” See (Henckaerts 2005: 207).

*and without uniform passes the military lines of a belligerent in time of war, seeking to gather military information and communicate it to the enemy, or an enemy combatant who without uniform comes secretly through the lines for the purpose of waging war by destruction of life or property, are familiar examples of belligerents who are generally deemed not to be entitled to the status of prisoners of war, but to be offenders against the law of war subject to trial and punishment by military tribunals.*²⁹

This reasoning suggests that prisoner-of-war status for regular armed forces cannot be taken for granted and is revocable—that it is dependent on one of a series of unspoken assumptions the law makes so that the *presumption* of prisoner-of-war status for regular armed forces can be rebutted if these conditions are displaced or go unfulfilled.³⁰ So ruled the Federal Court of Singapore in October 1966, when faced with “a regular combatant who chooses to divest himself of his most distinctive characteristic, his uniform, for the purpose of spying or of sabotage thereby forfeits his right on capture to be treated as other soldiers would be treated i.e. as a prisoner of war,”³¹ and it would have been good to have had some recitation of these and related authorities—of the same order we find accorded to torture under the 1984 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (105–107).³² (The jurisprudence is not limited to the donning of uniforms, it must be said. In *Mohamed Ali and Another v. Public Prosecutor*, in July 1968, the Judicial Committee of the Privy Council considered whether members of the Indonesian armed forces “forfeited their rights under the Convention by engaging in sabotage in civilians clothes,” but it hinted at the prospect of forfeiture of these rights “by breach of the laws and customs of war by their attack on a non-military building in which there were civilians”).³³

Having made this distinction, it matters, then, what is to become of the unlawful combatant—and we need to get beneath the claim that such combatants are “unprotected” as a matter of law (125), even accepting this dichotomization between lawful and unlawful combatants. Can this actually be so? Or are we to treat them, as Farer maintains (89), in the same breath as civilians under Geneva Convention (IV)?³⁴ Here, a temporal consideration needs to be injected into our deliberations for, while the Privy Council concluded in *Mohamed Ali* that “[i]nternational law deliberately neglects to protect unprivileged belligerents because of the danger their acts present to their opponents,”³⁵ what might have been the position at an one point in time might in fact be no

²⁹ (See *Ex parte Quirin* 1942: 20–36): “The four were there landed from the submarine in the hours of darkness, on or about June 13, 1942, carrying with them a supply of explosives, fuses and incendiary and timing devices. While landing they wore German Marine Infantry uniforms or parts of uniforms. Immediately after landing they buried their uniforms and the other articles mentioned and proceeded in civilian dress to New York City”. In defense of its position, the Supreme Court made citations of Winthrop 1920:1196–1197, 1219–1221; Instructions for the Government of Armies of the United States in the Field, approved by the President, General Order No. 100, April 24, 1863, sections IV and V.

³⁰ A formulation I owe to Professor Christopher J. Greenwood during his lectures at the University of Cambridge in the 1992 Lent Term.

³¹ See (*Stanislaus Krofan* 1979) (regarding an armed conflict between Indonesia and Malaysia, on the assumption that the appellants in the case “were members of the armed forces of Indonesia, that they entered Singapore as saboteurs to commit acts of sabotage”).

³² Note, though, Farer’s defense of this emphasis on torture (122). *Quaere* whether the law offers a generic treatment or understanding of torture—of whether its conceptualization divides between war (armed conflict)/peace lines: see (Sivakumaran 2005).

³³ See (*Mohamed Ali* 1968).

³⁴ See footnote 23 above. Note, however, the important qualifications entered to this position in (Dörmann 2005: 48–58).

³⁵ See footnote 33 above.

more. We know this because of the “fundamental guarantees” articulated in Art. 75 of the First Additional Protocol,³⁶ guarantees that the United States has accepted as reflections of custom.³⁷ The

³⁶ And whose contents are deserving of comprehensive study:

1. In so far as they are affected by a situation referred to in Article 1 of this Protocol, persons who are in the power of a Party to the conflict and who do not benefit from more favorable treatment under the Conventions or under this Protocol shall be treated humanely in all circumstances and shall enjoy, as a minimum, the protection provided by this Article without any adverse distinction based upon race, color, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria. Each Party shall respect the person, honor, convictions and religious practices of all such persons.

2. The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:

(a) Violence to the life, health, or physical or mental well-being of persons, in particular:

- (i) Murder;
- (ii) Torture of all kinds, whether physical or mental;
- (iii) Corporal punishment; and
- (iv) Mutilation;

(b) Outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;

(c) The taking of hostages;

(d) Collective punishments; and

(e) Threats to commit any of the foregoing acts.

3. Any person arrested, detained or interned for actions related to the armed conflict shall be informed promptly, in a language he understands, of the reasons why these measures have been taken. Except in cases of arrest or detention for penal offences, such persons shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.

4. No sentence may be passed and no penalty may be executed on a person found guilty of a penal offence related to the armed conflict except pursuant to a conviction pronounced by an impartial and regularly constituted court respecting the generally recognized principles of regular judicial procedure, which include the following:

(a) The procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;

(b) No one shall be convicted of an offence except on the basis of individual penal responsibility;

(c) No one shall be accused or convicted of a criminal offence on account of any act or omission which did not constitute a criminal offence under the national or international law to which he was subject at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

(d) Anyone charged with an offence is presumed innocent until proved guilty according to law;

(e) Anyone charged with an offence shall have the right to be tried in his presence;

(f) No one shall be compelled to testify against himself or to confess guilt;

(g) Anyone charged with an offence shall have the right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(h) No one shall be prosecuted or punished by the same Party for an offence in respect of which a final judgement acquitting or convicting that person has been previously pronounced under the same law and judicial procedure;

(i) Anyone prosecuted for an offence shall have the right to have the judgement pronounced publicly; and

provision is significant because of the scope of its addressees (“persons who are in the power of a Party to the conflict and who do not benefit from more favorable treatment under the Conventions or under this Protocol”) and the nature of its protections, which somehow seem wholly germane to current circumstance (“[p]ersons who are arrested, detained or interned for reasons related to the armed conflict shall enjoy the protection provided by this Article until their final release, repatriation or re-establishment, even after the end of the armed conflict”) and which are neither tailored to, nor made conditional upon, considerations of military necessity or political expediency.³⁸ In addition, we might argue that Art. 75 is itself a testament to the diffuse and sublime influences of human rights thinking; that the protections bestowed as a matter of humanitarian warfare are not just a product of the attainment of a certain type of classification scheme or status, but can also result from the fact of a person “being born” *pace* Farer (81)—that is, by virtue of their humanity.³⁹ Importantly, it is around the nucleus of Art. 75—or, more properly, its customary incarnation—that the more recent attentions of the Bush Administration have been focused, due in no small measure to the efforts of John B. Bellinger III, the legal advisor of the Department of State (Barnes 2008).

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(j) A convicted person shall be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised.

5. Women whose liberty has been restricted for reasons related to the armed conflict shall be held in quarters separated from men's quarters. They shall be under the immediate supervision of women. Nevertheless, in cases where families are detained or interned, they shall, whenever possible, be held in the same place and accommodated as family units.

6. Persons who are arrested, detained or interned for reasons related to the armed conflict shall enjoy the protection provided by this Article until their final release, repatriation or re-establishment, even after the end of the armed conflict.

7. In order to avoid any doubt concerning the prosecution and trial of persons accused of war crimes or crimes against humanity, the following principles shall apply:

(a) Persons who are accused of such crimes should be submitted for the purpose of prosecution and trial in accordance with the applicable rules of international law; and

(b) Any such persons who do not benefit from more favorable treatment under the Conventions or this Protocol shall be accorded the treatment provided by this Article, whether or not the crimes of which they are accused constitute grave breaches of the Conventions or of this Protocol.

8. No provision of this Article may be construed as limiting or infringing any other more favorable provision granting greater protection, under any applicable rules of international law, to persons covered by paragraph 1.

³⁷ See (Taft 2003: 322): “While the United States has major objections to parts of Additional Protocol I, it does regard the provisions of Art. 75 as an articulation of safeguards to which all persons in the hands of an enemy are entitled.” On the broader empirical support for this proposition, consider (Hampson 2007).

³⁸ As intimated by President Bush in February 2002 (101). See, further, Office of the Press Secretary of the White House: Fact Sheet Status of Detainees at Guantanamo (2002): “The United States is treating and will continue to treat all of the individuals detained at Guantanamo humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of the Third Geneva Convention of 1949.” Curiously, no mention is made here of Art. 75 of the First Additional Protocol.

³⁹ See (Meron 2000). Hence the overarching stipulation of Art. 75 (1), that such persons “shall be treated humanely in all circumstances and shall enjoy, as a minimum, the protection provided by this Article without any adverse distinction based upon race, color, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria. Each Party shall respect the person, honor, convictions and religious practices of all such persons.”

Reading *Confronting Global Terrorism* reminds us just how much of an exercise in the interpretation of treaties the “war on terror” has actually been and become, and how this exercise has traversed states as well as international institutions in their bids for persuasion and for “the dignified language of officialdom” (123). Farer’s clever and compelling excursus rides a further thematic current, and that is the constant division it draws between liberal democracies and other states—how different the human rights demands are in these respective polities,⁴⁰ the nuances developed around terrorism in democratic States,⁴¹ and how democracies regard hostilities in relation to one another (36; 75). To this, we might also add the tremendous sense of *expectation* that accompanies how liberal democracies comport themselves during warfare as well as in states of emergency (127),⁴² a sense of expectation that is as great as it is enduring, and we come to fully appreciate why perpendiculars are run in this work between the Bush Administration’s “war on terror” and the “iconic conflict” that has engulfed Israelis and Palestinians (the subject of the engrossing penultimate chapter of the book).⁴³ It is a sentiment that seems most boldly captured in recent times with the reflection that Senator Barack Obama made in August 2008 as he accepted the Democratic nomination for the Presidency of the United States, that “people have always been more impressed by the power of our example, than by the example of our power” (*Guardian*. 2008).

This is a crucial perspective to bring to bear on the “neo-conservative” elements of the thesis that Farer advances—of “the will of a right-wing Republican Administration” in contradistinction to “its Democratic predecessor” (85)—since, it will be recalled, the Bush Administration has not always acted alone in its engagements; instead, it has found a willing partner and co-participant in the “normally compliant” Prime Minister Tony Blair of the United Kingdom (242)—a premier who hailed from the left side of the political divide, from the British Labour Party. What imperatives impelled him to act thus are difficult to configure to be sure,⁴⁴ but it is not inconceivable that he saw opportunities good enough in these passings to exorcise perceptions of his Party’s weakness on national security affairs and to acquit it favorably for the longer term.⁴⁵ The same specter might well hover over and haunt an incoming Democratic administration in Washington D.C. in January

⁴⁰ Compare the Islamic treatment of women and the criminalization of conversion in *Sharia* States like Iran and Saudi Arabia (13).

⁴¹ Where “the definition [of terrorism] [was] expanded to incorporate politically motivated violence of any kind, including attacks on military and police targets. American officials have, moreover, labeled attacks on American armed forces, such as bombings of U.S. military facilities in the Middle East and of the *U.S.S. Cole*, a warship, as terrorism” (18).

⁴² For a much fuller treatment of this particular point, see (Gross & Ní Aoláin 2006).

⁴³ Of course, amongst other considerations: “Since Israel is a rich, well-integrated state with powerful conventional and nuclear-armed forces utterly superior to those of its neighbors, while the Palestinians are a fractured community with a rag-bag of ill-armed, mutually antagonistic militias and a nominal, insolvent government lacking sovereignty much less true operational control over a single hectare of land, it is hard to envision more unequal parties to a negotiation. How is it possible, then, to negotiate an agreement that will be seen as a just, i.e. a ‘legitimate’ outcome?” (174).

⁴⁴ See, generally, (Naughtie 2004); perhaps with a view to influencing the greater conflict raging in the Middle East (242).

⁴⁵ As the book nears its end, Farer becomes quite masterful in his deployment of the possibilities of the “idiosyncratic” politician or political operator (247)—the politician or operator who trades places or is seen to trade places, as in the “Right-wing appeasers” of the Nazi period who make an appearance in Kazuo Ishiguro, *Remains of the Day* (1990) (232), and in “the episodically triumphant Victorian Conservative leader” of Benjamin Disraeli (247).

2009,⁴⁶ so that Farer’s remonstrance for “grace under pressure” (79) for the world’s most powerful democracy serves as much an inspiration for the critique he has shared with us in Confronting Global Terrorism as it does a clarion call for vigilance and for action in the years that lie ahead. To that end, the virtues of international law shine through time and again in this powerful and provocative volume; its “norms are the historical moment’s synthesis of ideas and justness and shared national interests that, unlike the Bible or the Koran or any other text commanding the loyalty of only one community, transcends the fault lines of culture and faith” (174). And, for the good of the world, may it be so.

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⁴⁶ On the campaign trail during the 2008 Presidential Election, Senator Barack Obama threatened Pakistan with the use of force in order to strike al-Qaeda bases on its territory—and claimed that, as President, he would act against Pakistan without its consent. See (MacAskill 2007). Note, also, that in April 2008, Senator Hillary Clinton, Senator Obama’s main rival for the Democratic nomination, announced that, with her as President, the United States would undertake a nuclear attack and “totally obliterate” Iran in the event of an attack upon Israel: see (MacAskill 2008). “Language,” her main contender for the nomination, Senator Barack Obama, said was “reflective of George Bush.” See, also, (Pilkington 2008).

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Tom Farer's Crisis of U.S. Liberalism

By Paul Taylor

Confronting Global Terrorism is an account of the agenda for dealing with terrorism as it faces a concerned liberal in the early twenty-first century. The response to the appearance of terrorism, and the role of the U.S. Neo-Conservatives (Neocons) in determining how this response was made, and how badly, correctly heads the list of agenda items for Farer. But it is also necessary to deal with some of the other causes of the increasing problem of terrorism. One problem is that of how to deal with minorities in developed democracies—not much more to be said on this in these comments, except that Farer's judgments are profound and absolutely correct. Another is the problem of the Middle East, which must be seen as being at the core of the problems surrounding global terrorism facing us all, including the Neocons. Farer has produced a profound and courageous chapter on Palestinian-Israeli relations, since what he has to say is bound to irritate the more blinkered pro-Israelis in the U.S. For them, it should be required reading. The points made seem incontestable: that the balance of guilt for the awful situation is at least as much that of the Israelis as the Palestinians, and that there can be no solution unless Israel returns to the pre-1967 frontiers and accepts the internationalization of Jerusalem. All of this is backed up with detailed evidence and strong legal argument. I doubt, however, whether the Neocons will be persuaded.

Tom Farer's book begins with an excellent discussion of the development of Neo-Conservative and realist political views in the U.S. and how they are different from liberal views. The problems of defining terrorism, and the abuse of the word in political rhetoric, are discussed. Farer reports the conclusions of the Report of the High Level Panel on Threats, and Challenges, "A More Secure World: Our Shared Responsibility," of December 2004: terrorism "targets innocent civilians and non-combatants," is intended to "cause death or serious bodily harm and by its nature or context to intimidate a population, or compel a government or an international organization to do, or to abstain from doing, any act." The development of U.S. unilateralism, with its concomitant supremacist [the present writer's word] attitudes, is also discussed. The chapter concludes with a powerful argument about the moral difficulties in pursuing democracy at the expense of human rights, indeed of pursuing foreign policy goals, which cause suffering to innocent civilians in the absence of an existential challenge. Ideas are as much the consequence of circumstances as their cause. The Neo-Conservatives' ideas are in part a reaction to the "unipolar moment," the appearance of U.S. military supremacy. They claim that nothing must be allowed to curtail U.S. power, even the judicial process, international law, and multilateralism norms. Though the Neocons' claims to U.S. exceptionalism go back a long way, the dreadful events of 9/11 were the moment of destiny. Their man was in the White House; their star was in the ascendant.

The U.S. often violated the U.N. Charter during the Cold War, as did the USSR, Israel and Britain! This was a result of its views of strategic necessity, but Farer rightly argues that the balance of power would not have changed much, since it was hard wired into the international system, had the U.S. allowed some ideological non-conformity in its realm. Insistence on right wing orthodoxy in the Western Hemisphere, and preparedness to use force to achieve this, are what the Neocons would have wanted. In the short period of hope about the U.N. Charter system after the fall of the Iron Curtain, the Neocons were disappointed rather than encouraged. They justified actions that contradicted the Charter's principles by insisting upon the primacy of the U.S. as defender of freedom. They were contemptuous of any system of international law, which claimed to deny the right of the U.S. President to act unilaterally, seeking to conceal transgressions, or saying that the Charter had been discredited because it had been so often violated—including by themselves. Farer concludes that the Neocon position was in essence like that of the Germans before the First World War: nothing could be allowed to constrain the power of the dominant state. In any case "we are not fact-dependent because we have the power to create the facts." (Quoted in Farer 2008: 64)

This comment is equally applicable to reality as it is to the debate about that reality. The Neocons are adept at shaping the reality of a discourse by placing their opponents in a general category of those in grievous error. The liberal argues on grounds of logic and morality. The Neocon does not respond in these terms, but rather sees the liberal as being of necessity, profoundly mistaken. Similarly, Neocons are adept at denigrating their opponents by classifying them as anti-Semitic or anti-American. This habit of argument reflects a more widespread anti-liberalism in the U.S. Farer's excellent book will not persuade the Neocons: they are so attached to the facts they have created as to be immune to rational argument. For Neocons, a liberal is incapable of getting it right.

Later, Farer argues that dealing with terrorism does not require the kind of contempt for the Charter and the U.N. that Neocons represent. A starting position would be to re-order the interpretation of the crisis of terrorism. It was not the result of a paroxysm of cultural collision, but

rather a natural response to a whole series of impositions by the West, particularly by the U.S. A long list may be constructed, including the consistent favoring of Israeli imperialism and the collusion with local repressive dictatorships, such as those in Egypt and Saudi Arabia, and so on. The situation is akin to anti-colonial civil war, and could easily be mitigated by a small number of concessions, starting with a guarantee of non-intervention. There are many ways in which intelligent review of the Charter principles could evolve into a system which was flexible enough to deal with terrorism and which allowed states or regional organizations to deal with pressing security problems without prior sanction by the Security Council (Farer sets out the principles on page 74). The Responsibility to Protect Doctrine is a realistic development of existing principles in the light of humanitarian challenges. Preventive action by a state under U.N. authorization could be justified, but not unilateral preemptive action. Some regional organizations, which have the mechanisms to permit a reasoned collective decision about necessary action, could also properly act without Security Council approval. But in these cases, as required by Chapter VIII of the Charter, reporting to the U.N. about action that had been undertaken was necessary. But the emerging adjustments of the Charter principles are as far removed from the views of the Neocons as were the classical interpretations. “To persist in these interpretations risks casting the United States as a rogue state, a role not well calculated to enhance the broad measure of international cooperation required to contain the terrorist threat” (72).

Chapter Three is a damning account of the Bush regime’s attempts to justify the use of torture in collusion with a number of right wing academic lawyers. Attempts were made to distinguish torture from highly coercive interrogation (HCI) techniques so that a way could be found to legalize HCI. Farer argues that the distinction is hard to maintain in practice since repeating coercive interrogation practices amounts to torture. Farer deals with the argument that there are occasions of such great risk—the ticking bomb case—that exceptional interrogation methods could be justified. The difficulty is that a society permanently set up to deal with such ticking bombs would be unbearable, and that the number of known examples is miniscule. Sensible and skilled surveillance is necessary but brutality to force confessions—possibly false—is pointless. Experience shows that dealing with those accused of terrorism in this way simply adds to the number of terrorists and increases the chance of ticking bombs. Torture might be best treated as akin to euthanasia—it should not be sanctioned by the law though on a very small number of exceptional cases an individual might feel justified in acting illegally and take on the risk of being punished for the crime. However, allowing torture easily slips into a general sanction to behave brutally. To illustrate the point, Farer quotes the view of an Argentine General in the 1980s: “First we kill the subversives. Then we kill everyone who helped them. Then we kill everyone who did not help us” (111).

For such a brutal company, the U.S. regime was strangely anxious to appear to be complying with what was morally acceptable by denying episodes of torture that were well documented, by using flawed case law about torture to justify it, and by arguing that the law which applied to the treatment of prisoners of war and of civilian non-combatants covered in the Geneva Conventions, did not apply to the new type of combatant. There was now to be a new category of person, which was exempt from the laws and norms of war, called unlawful combatants. In addition, attempts were made to ensure that those found out in the use of torture were immune from prosecution. To maintain “deniability,” those held as non-combatants were subject to rendition for torture elsewhere,

even though under the Geneva Conventions rendition was itself illegal. Prisoners were denied the right to trial in the U.S. and had no rights either as civilians or as prisoners of war. For them, there was no doctrine of *habeas corpus*. Trials were held behind closed doors. Evidence that could have been used by defense lawyers was deliberately withheld. There were at least three instances of prisoners being subjected to repeated retrial by military tribunals when they had been found innocent. In one case, the trial was repeated three times until the verdict of guilty, the verdict preferred by the authorities, had been reached.

Farer argues that under President George W. Bush and the Neocons, the judicial process in the U.S. had become reminiscent of what he had seen in Latin America in the 1980s; a system that had been dominated by executives, generals and presidents, who regarded themselves as above the law. Similarly in the U.S., the powers of the Executive had grown compared with those of the other arms of government as a result of special powers claimed by the Neocons for the presidency—the doctrine of the Unitary Executive: In times of war, there were exceptional circumstances that required special executive powers. For Neocon lawyers, calling the defense against terrorism a war was the necessary legal basis of this claim. Congress had approved legislation to stop torture, proposed by Senator John McCain in 2005, but the President attached conditions to it, which essentially allowed him to overrule its stipulations whenever he judged necessary. Farer concludes this section by saying, “but that was hardly surprising in their case [that of the Latin American countries in the 1980s], since they never imagined themselves as the champions of liberal democracy” (127).

The book reveals the dangers of associating too closely with the Bush regime. It adopted non-liberal methods to defend liberalism, and supported democracy only when it produced the right results (nothing new about this). It condoned brutal behavior towards people jailed without trial at the risk of creating a model for other countries with equally flawed leaders to emulate, especially Britain. The British first denied that they had cooperated in the practice of rendition, and then later admitted that they had. They connived with the U.S. authorities in denying access to evidence, which could establish the innocence of prisoners held in Guantanamo Bay. They also accepted the denials of the Americans, without any supporting evidence, on whether prisoners with the right of residence in the U.K. had been tortured. Such an erosion of civilized values was dangerously contagious.

The behavior of the Bush regime after 9/11 showed, as Farer after Hemingway suggests, a lack of grace under pressure. The present writer would add that more than half of the U.S. electorate voted for a continuation of his presidency, even though there was convincing evidence of malpractice. The regime seems to have sold its policy of illiberality to a majority of Americans. The picture they had of themselves was of a unique moral giant, attacked in a uniquely offensive and devastating way, and uniquely justified in seeking vengeance.

The response to 9/11 was not measured and reasonable, designed to seek redress, or to reduce the chances of it happening again. Rather, it was that of a dangerously overgrown and demented child, anxious only to hit at anything in the way of its righteous anger. Astonishingly, the U.S. response to 9/11 makes most sense in the light of the Jewish principle of a tooth for a tooth, or the Christian fundamentalists’ view of the vengeful and omnipotent Lord. George W. Bush and the Neo-conservatives arrogated to themselves the powers of the God of the Old Testament when he dealt with those found worshipping graven images after Moses’ descent from the mountain. The U.S. response, aided and abetted by a similarly vengeful Christian British Prime Minister—who

justified the invasion of Iraq on the grounds that Saddam Hussein “was evil”—was untouched by the concerns of sensible diplomacy, or the need to maintain the standards of decent humanity and liberal government. The episode gave power to the unholy. This is not to deny that there were those who realized things had gone too far. Tom Farer has dealt skillfully and courageously with the arrogant and dangerous Neocons. A large number of liberal Americans would support him.

Both the European and the international systems had states that were not fully committed to the increasingly dense systems of international organization, global norms, and rules often placed under the heading of embedded multilateralism. These were what could be called the exceptionalist states. In the international system, that position was often held by the U.S. In Europe it was held by the U.K. In both cases, their diplomatic stance was dominated by attempts to claim to be exceptions to the general rules on the grounds that they were essentially different from the rest. The reasons for this exceptionalist position are hard to fathom, but they probably derived from a long standing conviction that for them life was better because their state had distanced itself from the rest. A certain remoteness was regarded as an asset, whereas multilateralism tended to be inclusive. By the early twenty-first century, the gap between embedded multilateralists and the exceptionalist states at the global level had become one of the world’s major diplomatic cleavages. But after the paroxysm of unilateralism, whilst still maintaining its exceptionalism, the U.S. found itself forced to deal with the world in a more cooperative manner.

The conflict between U.S. exceptionalism and increasing embedded multilateralism came to a head with the emergence of the neo-conservative administration of George W. Bush in 2001, which unashamedly asserted U.S. unilateralism. But probably it started during the Reagan presidency in the 1980s, illustrated by the 1985 decision in the Senate to reduce U.S. contributions to the U.N. budget, and the administration’s dramatic change of stance on population control between the two World Population conferences of the 1980s, from liberal encouragement to the bigoted opposition required by Christian fundamentalists. The Reagan administration viewed the U.N. system with dislike, especially in its early phase, and appointed known opponents to key positions. At that point, the Heritage Foundation and the Christian conservative right, both hostile to the multilateral world, became powerful.

Nevertheless, the U.S. continued to insert itself as the monitor of rectitude. When it held the Presidency of the Security Council, it insisted on investigating peacekeeping procurement, which was a matter for the General Assembly, and again used the threat of withholding funds to force through preferred reforms. It was ironic that at the time of the Enron crisis, and the failure of auditors Arthur Anderson, one U.S. plan was for U.N. finances to be audited by Washington financial authorities. Far from being the multilateralist hegemonic leader of the post-World War II period, the U.S. under George W. Bush opposed the development of a stronger multilateralism, rather like the U.K.’s opposition to stronger multilateralism in the European Union. The annoyance of U.S. unilateralists with multilateralism became overweening. Their exceptionalism had to be asserted. The position of the neo-conservatives towards the U.N. was similar in some ways to that of the Eurosceptics in Britain towards the European Union. Ideally, new roles for international organization should be prevented. Failing that opt-outs should be obtained.

Examples of U.S. global exceptionalism included non-membership in the International Criminal Court, non-adherence to the Kyoto arrangements, the claim of the right to act without

U.N. approval, and more recently, the explicit refusal to comply with the decades-old norm on state aid to the developing world, fixed at .7% of GDP. In 2008, the U.S. was still at the bottom of the list of industrialized countries in official per capita contributions to development—ahead only of Italy among developed states. George W. Bush’s administration claimed further exceptions in asserting the right of the U.S. to act unilaterally in preemptive strikes against its enemies, and to maintain military supremacy over all other states. Washington remained uninterested in any beefing up of the U.N. rapid response forces, continued to insist that U.S. troops would not be commanded by anyone under the U.N., and failed to respond to complaints that the U.S. had betrayed the Charter’s stipulations on the unilateral use of force. It also claimed to be an exception to the general obligation to continually reduce the level of nuclear weapons agreed upon in the Non-Proliferation Treaty, and refused to accept restrictions on its right to develop and deploy land mines.

The U.S. was also an exception in the extent to which it claimed extra-territorial legal jurisdiction; for instance, with regard to the imposition of sanctions against companies that failed to comply with U.S. rules on matters such as providing goods judged to be of military significance to states of which the U.S. disapproved. One commentator reported that the U.S. maintained a studied indifference to Kofi Annan’s U.N. Reform process. No fewer than six congressional committees had been set up to look at alleged abuse of the U.N.’s Oil-for-Food Program—six more than would enquire into the U.S. government’s postwar abuse of Iraqi oil money. It was pointed out in the British press that the original draft of the Iraqi constitution in 2004 affirmed the equal rights of women and the ownership of Iraqi oil by the Iraqi people. The Bush administration bargained away the rights of women in order to open ownership of the oil fields to foreign companies(The Independent, 2q3 October, 2008)

The appointment of John Bolton as U.S. ambassador to the U.N. demonstrated the neo-conservative contempt for that organization. The nadir of U.S. exceptionalism was probably the annotations made by John Bolton to the documents prepared for the follow up to the Millennium conference in 2005. He sought to purge the outcome documents of all reference to the Millennium Development Goals. His outrageous annotations showed such disregard for the organization that U.S. Secretary of State Condoleezza Rice and President Bush—in a later speech to the General Assembly—felt it necessary to back off. It was not that reform did not need to be pushed, but that the U.S. under George W. Bush seemed not to be committed to the organization, and indeed, it was easy to find evidence that it wished to remove it.

It was probably after this paroxysm of unilateralism that things began to go right again for U.N. reform. The U.S. found itself faced with a system of embedded multilateralism with which it had to engage. Just as Britain was compelled to make concessions to Europe, so the U.S. had to make concessions to the multinational system. The Iraq experience may at least have had the benefit of convincing U.S. political leaders that there had to be a retreat from exceptionalism and a greater involvement with the evolving synarchy. After 2005, the regime of the Neocons and George W. Bush seemed to be weakening from within. The administration went along with a number of new developments in the United Nations, which included the new doctrine of the Responsibility to Protect, the improved “One U.N.” development arrangements, and the new Peace-building Commission. It remains to be seen whether this marked a new enthusiasm for multilateralism, to be strengthened under a new president in 2009, or whether it was a sullen acceptance of the need to work with the outside world in the light of the failures in Iraq.

U.S. exceptionalism, of which the attitudes to torture and the views of the Neocons are illustrative, was all the more regrettable when it is remembered that much of the multinational system after the Second World War was established under U.S. leadership. Essentially the neo-conservative position was a rejection of this heritage. An increasing illiberality, such as Tom Farer describes, was bound up with an increasing anti-multilateralism. British Prime Minister Gordon Brown argued in a speech in Boston on April 18, 2008 that the U.S. administration should return to a more multilateralist approach. He quoted the words of John F. Kennedy, “acting alone we cannot establish justice throughout the world. We cannot ensure domestic tranquility.” Brown’s comments went down well in Boston. It remained to be seen whether they would go down equally well in Washington.

The development of a degree of embedded multilateralism at the global and regional levels was related to another Great Game, the Balance of Power. It could not be denied that in the early twenty-first century there are changes in the distribution of state power: the decline and re-emergence of Russia, the emergence of China and India, as well as the embedding of multilateralism. The European Union, if the process of embedding regional multilateralism is taken further, could emerge as a global strategic player in its own right. But for the time being, European power is better seen as soft power. This is not in opposition to the further embedding of global multilateralism, and it does not detract from the possibility of strengthening trans-Atlantic partnership. The new Great Game continues at the global level, though between players that have an increasing range of common norms, principles and expectations. This is little more than a restatement of Hedley Bull’s argument in his classic book The Anarchical Society: that a stable international society rested on a supporting political culture. Embedded multilateralism softened the balance of power but did not exclude it and was a part of the emerging international political culture. American exceptionalism, unless subdued, was likely to make the emerging new balance of power more unstable and more dangerous.

Farer’s concluding chapter sets out the main principles of a liberal strategy for dealing with the major problems facing this globalized society. It does not contain details of tactics and strategies. Above all, we are enjoined to avoid seeing the world through a prism of grand designs, and overarching, or reductionist theories. The liberal dilemma is that we need to stand back and let the facts speak independently of any theory, though we all know that some kind of premonition about what they mean is unavoidable. We should be careful to understand the way in which parties to disputes try to capture and control narratives about them so that they appear in a good light. In brief, we need to look at the facts and try to understand the other’s interpretation, and avoid imposing our own. There are specific objects of criticism here, some of which, the present writer adds, were identified in Karl Popper’s Open Society and its Enemies—Marxism and other historicist accounts—which was a devastating attack on the enemies of liberalism. Farer brings home the point that in modern America there are equally dangerous enemies of a liberal order. These would include, the present writer suggests, the proponents of Ronald Reagan’s grand theory of the evil empire, Bush’s axis of evil, or Huntington’s tract on the inevitable clash of civilizations (how much damage to international peace has the latter done?). To this list must be added the principal target addressed by Farer, the ideologues who dominate the Republican administration of George W. Bush—the Neocons—who see the Muslim world as a single, deluded, and dangerous community, then insists on calling for a war on terror at the risk of setting in motion a self-fulfilling prophecy.

We should try to get into the mindset of those who appear to have become half crazed with hate and prejudice. Farer asserts, and this writer agrees, that such pathologies can usually be traced back to specific and real grievances, which would be recognized by most people. On the horrific day of 9/11, the present writer observed, many intelligent Americans asked, “why do these people hate us?” This intelligent research agenda was forgotten by the politicians in the bluster and deeds of retribution. This is most definitely not to be soft on terror. There is a pressing need for efficient intelligence collection, perhaps a degree of compromise with regard to our democratic freedoms, and a preparedness to use force as and when necessary. But the overriding concern must be to win hearts and minds, which requires particular techniques and excludes others. The diplomacy needs to be clever rather than cruel. Machiavelli wisely pointed out that the Prince should be feared but not hated. This means protecting human rights except in absolute emergencies such as military necessity. The best diplomacy is of course focused on avoiding, both now, and in the future, that military necessity. Neo-conservative policies are almost the opposite of that.

It remains to be seen whether the U.S. could once again put its shoulder to the wheel in order to build better global governance, and escape from the clutches of these deluded and dangerous ideologues. U.S. diplomacy in its routine and habit is entirely supportive of cooperative multilateralism—the problems are with those who direct the big decisions. So far the continental European states seemed to have escaped infection, and, to the utter horror of the U.S. Right, have proved resistant to Neoliberal and Neoconservative blandishments. Perhaps this is an example of the Old World coming to the rescue of the New. Tom Farer’s book is an excellent account of the crisis of U.S. liberalism with regard to its defense against terrorism. It is to be hoped that his argument proves to be the winning one, because an America ruled by Neocons is a world at risk.

A Response

By Tom Farer

First I want to thank Dick Falk, Paul Taylor and Dino Kritsiotis for their thoughtful comments on my book. Since, in the course of writing, one lives intensely with one’s ideas, pushing them as far as one can at that moment, completion tends to carry in its wake a kind of intellectual complacency bred, in part, of exhaustion: “Been there; done that; prescribed optimally; there is nothing left to think.” But of course there is.

All thinking about neuralgic issues of public policy is work in infinite progress. Lacking inductive or deductive means for achieving certainty about cause and effect, our diagnoses and prescriptions are, by their nature, hypotheses shaped by a highly subjective (partially unconscious) interpretation of history and by an intuitively normative (or perhaps it is more akin to aesthetic) preference. Even if, despite being blinkered by unavoidable preconceptions, we manage through a feat of imaginative analysis, to assemble all of the relevant parts of a problem, there is no protocol for assigning relative weights to them. After all the plodding cerebration come leaps of intuition.

History seen in terms of precedent is our testing ground. But what is a precedent? In policy thinking as in law, we speak of precedent as if two cases were essentially identical even while knowing that every case itself is a mental construct torn out of the seamless flow of circumstance. In

other words, the problem is not simply that any case described in sufficient contextual detail is different from every other one. The problem is with the idea of a “case,” for it requires that we isolate from the flow of countless potentially sensible phenomena a few perceived objects deemed to cluster naturally and to have an intrinsic reality separate from the multitude of phenomena washing along with them.

In short, diagnosis and policy prescription need to be seen as processes of successive approximation. And since most of us have difficulty being our own devil’s advocate, we need the reviewer as a superior substitute for ourselves. So again my thanks to Dick, Paul and Dino.

I have neither the inclination nor the space to attempt a detailed response to their many astute observations. Instead, I simply want to clarify my position with respect to just a very few points.

In connection with my argument that we should not think of the struggle against terrorism as a “war,” Dino distinguishes between the political, or we might say “rhetorical,” use of the word and its use in the international legal discourse about forbidden means. Dino apparently sees a paradox in my position. I object to characterizing the struggle as a “war” in part because I fear the collapse of moral and legal restraints on the means employed to wage the struggle: The rhetorical employment of “war” tends to rally political support for whatever means the government chooses to employ. The paradox, he seems to be saying, is that once a government frankly admits that it is engaged in war, it automatically activates all of the detailed restraints enumerated in the laws of war. But as he also notes, the principal codification of the laws of war, that is the Geneva Conventions of 1949, operates in all “armed conflicts” however they may be characterized by the parties. Hence my position is not paradoxical.

Perhaps Dino is simply clarifying the distinction between legal and rhetorical characterizations as it affects the discretion of the American President. With respect to the former, the President has no discretion. Either a country is or is not engaged in an “armed conflict.” That is a matter of objective fact, although, in the absence of a World Court with compulsory jurisdiction, that “fact” will be independently and subjectively determined by governments and other influential actors in the global political order. Still, in theory, if on given facts any fair-minded observer would find an armed conflict to exist, the laws of war will be seen to apply.

With respect to the rhetorical use of the word “war,” the President’s discretion is restrained only by political prudence and an ethical sensibility, if any. But while the distinction between rhetorical and legal use may be sharp for purposes of international law, in U.S. domestic law it may be a bit muddy at the edges. Domestic legislation may specify “war” as a condition for the exercise, or more ample exercise, of Presidential power in a given field. But what concerns me more is a history of Supreme Court deference to Presidential claims of power in time of declared war where it is exercised in ways that would, in normal circumstances, appear to be gross violations of the Bill of Rights. I think, for instance, of the forced removal of American citizens of Japanese ancestry to prison camps during World War II.

A second point of clarification is the matter of so-called “unlawful combatants,” the Bush Administration’s characterization of all captured persons alleged to be associated either with Al

Qaeda or the Taliban and then, except in cases where they were secretly transported to third countries for interrogation by means native to their intelligence services, detained either in Guantanamo Bay or Afghanistan. If I understand Dino correctly, he believes that I take the same position that I attribute to the International Committee of the Red Cross (ICRC), namely that all persons found in an occupied territory fall into one of two categories: Either they are captured soldiers and thus prisoners of war (POWs) whose treatment is governed by the 3rd Geneva Convention, or they are civilians whose treatment is governed by the 4th Convention (of course, in either case they could be tried for violations of the laws of war). In other words, no one in the occupied territories (or, for that matter, in zones of combat where occupation is still effectively contested) falls between these two legal stools into a black hole beyond the restraints of the Geneva Conventions.

If I interpret Dino correctly, he misunderstands my position. I accept the argument that combatants who choose to conceal themselves amidst the civilian population, strike, and then melt back into that population could fairly be seen as neither civilians nor persons who qualify for POW status by virtue of being members of organized fighting units that distinguish themselves in specified ways (carrying arms openly, wearing a distinctive insignia, etc.) from the civilian population. Labeling such persons “unlawful combatants” is possible (not inevitable), I argue, without arbitrary manipulation of the language and underlying intentions of the Geneva Conventions. But as Dino and I agree, they are not thereby confined to a normative jungle where tooth and claw prevail. Rather they fall into the ultimate humanitarian safety net, the International Convention on Civil and Political Rights, which protects all human beings in all circumstances from summary execution, torture, cruel and inhuman treatment, and long-term detention without fair trial. They are also protected in those respects by common Article 3 of the Geneva Conventions which, through general acceptance, has been absorbed into the customary law of nations.

I turn now to a central theme in Dick Falk’s comments. As Dick notes, we broadly agree that the Bush Administration’s response to the terrorist attack of September 11, 2001, has in important respects violated international legal norms governing the occasions and methods for employing force across borders, and violated legal norms protecting basic human rights. It has also associated itself with grave violations of the human rights of the Palestinian people by the government of Israel. By virtue of its acts and omissions in waging “war” on international terrorism and its other policies in the Middle East, the Bush Administration has reinforced the *jibadi* terrorist narrative to the long-term detriment of U.S. national security. By comparison with the range of our agreement, our differences about the origins and content of American foreign policy are marginal.

Like a number of other interlocutors, he questions the emphasis in my critique on the neo-conservative arm of the American Right rather than the Right as a whole which, by its nature, is indifferent to the wellbeing and justice claims of other peoples, hostile to external institutional or normative restraints on the exercise of American power (hostile to constitutional, judicial and legislative restraints as well), and inclined to see international relations in zero-sum and Manichean terms. It is those modes of thought shaping Bush Administration policy, not simply the neo-conservative version of them, that needs to be confronted, he argues.

Moreover, in Falk's view, the elites and grassroots of the Right do not constitute the entire obstacle to a counter-terrorism strategy inspired by liberal values. For given the political and economic interests and the historically embedded narratives that dominate the political scene, he anticipates that those values will be no more than thinly reflected in the policies adopted by the newly triumphant political center-left represented by President Barack Obama and his national security team. Kritsiotis, recalling the slide of the U.K.'s Labor Party into partnership with a right-wing American president, similarly discounts the prospects for a liberal foreign policy in the U.S. under a notionally left-liberal administration; in his final footnote he reminds us that during the presidential primaries and the presidential campaign, Barack Obama advocated attacks on Pakistan-based Al Qaeda *jihadists* without the permission of the government of Pakistan, and the new Secretary of State, Hillary Clinton, announced the intention of obliterating the country and hence the population of Iran with nuclear weapons if the government of Iran were to deliver a nuclear strike on Israel. Neither position, Kritsiotis implies, can be squared with liberal values.

In my book, I state plainly that neo-conservatives are merely one element in the coalition of the Right that had shaped U.S. policy during the administration of George W. Bush. But unlike their coalition partners, they insistently invoke liberal ends—defense and promotion of democracy and human rights—to justify the foreign policy agenda of the administration. To be sure, even classic right-wing nationalists like Vice President Dick Cheney sometimes buttresses the chauvinist's appeal to national self-interest at the expense of other peoples' with a neo-con-like claim to be coincidentally advancing the human interest. Any rational politician, like any competent lawyer, will deploy rhetorical tropes that appeal simultaneously to the altruistic and selfish impulses uneasily coexisting in the minds of an electorate composed of immigrants who must find their community in shared ideals rather than an imagined common ancestry. But, as I elaborate in my book, it was self-identified neo-conservatives who insinuated Wilsonianism-with-bayonets into the discourse of movement rightists and they remain its leading conservators.

Neo-conservatives' celebration of themselves as liberals with spine has, in my judgment, effectively served the cause of the Right precisely by helping to reconcile two elements of the American foreign policy culture: Wilsonian idealism and Jacksonian chauvinism. It has tended to confuse people in the muddled middle of the American political spectrum, people with a measure of liberal instincts who thereby feel a certain unease about the compatibility of unambiguously ruthless national aggrandizement with the universalistic values sounded at the founding of the nation in our Declaration of Independence. So it seemed to me important to illuminate as best I could the fraudulent character of the neo-conservatives' claim to be the true heir of American idealism. I hoped to protect persons with liberal instincts from the neo-conservative appeal by clarifying the nature of liberalism as it has evolved over the past two centuries.

The core of my argument stems from Paul Berman's observation that during the 20th century, liberalism as a moral vision and a political program became inextricably intertwined with the idea of human rights and the social movement that has fought to instantiate it. Liberalism alone can be seen as a movement to construct a political community which protects for each of its members the opportunity to pursue a personal vision of the good life. Building and sustaining a strong community on any scale, never mind a national one, cannot be done if every individual within it has an unlimited veto power. Nor is it possible to have an effective community if every action designed for its

maintenance must be equally beneficial to all members all the time. So if a veto existed, individuals bearing what they took to be a more than average cost for some proposed community-sustaining action (or positioned to use the threat of veto to secure more than their fair share) would have incentives to exercise it. Hence the irony that in order to build a community where every individual has an equal freedom to shape a preferred life, it is necessary to override some individual preferences. Liberal democracy in its various forms has been the chosen means to mitigate this tension between individual and communal interests.

Human rights as a particular vision of human dignity sets limits to the supremacy of communal interests, however large the majority that favors them, over individual ones. In emergencies, of course, some rights can be suspended, but not the rights to security from raw physical intimidation and punishment without fair trial. The rights to life, liberty and limb cannot be compromised. Human rights, being the birthright of every human being wherever and however situated, is inherently cosmopolitan. Liberalism, resting as it does on the premise of the moral equality of all human beings, also has a cosmopolitan bent, a bent tempered, however, by liberalism's incorporation in national political parties. It is tempered as well by the need to build and maintain parochial communities, for the most part national states, where individual choice can flourish.

A multiplicity of communities rather than a single universal one is the corollary of what appears to be a genetically coded incapacity in most people for universal empathy. Political movements cannot thrive unless they are willing to privilege the members of the national community in which they compete. Liberal ones are no exception. But the inherently cosmopolitan character of liberal ideology and the progressively more intimate association of liberal activists with the human rights movement and its worldview restrain both the incentive to privilege one's own national community and the evangelical impulse native to liberalism and foreign to traditional Anglo-American conservatism as evidenced in Edmund Burke's observation that he knew nothing of the "Rights of Man" but a great deal about the historically accumulated rights of Englishmen.

Neo-conservatives may be sincere in their proclaimed desire to spread the blessings of democracy and free market capitalism to all the world's peoples. To that extent they are like liberals. But liberalism's now umbilical association with human rights restrains the means its leaders can employ for evangelical ends without ceasing to be liberal. The idea of human rights, precisely because of its emphasis on the imperative rights of each single individual, limits the justifying power of good ends.

Neo-conservatives have demonstrated that they are unencumbered by those limits. On behalf of the good, whether that good is democratizing the Middle East today or destroying leftist movements in Central America in the 1980s, "collateral damage," however horrific, and amiable association with torturers and killers, are acceptable if unfortunate means. Moreover, and this is another defining feature of their position on the Right, neo-conservatives categorically privilege what they take to be American interests, whatever the cost to other peoples; but they do so by blandly equating the enhancement of national power at the expense of other peoples with the advancement of the human interest. Thus, I have proposed, neo-conservatives are more akin to Marxists than they are to liberals. For Marxists too saw human freedom as the final end of their efforts. Once nations reached the stage of pure communism, the problems of production and distribution would have been solved and so a person would have a previously unimaginable range of choices. One could be a carpenter in the morning, a poet in the afternoon and a lover in the evening. Unfortunately, in order to achieve

this early Paradise, we would have to pass through the slaughterhouse of the proletarian revolutions and the transitional dictatorship of the proletariat. But for those who survived life would be just and lovely. Pity the collateral damage.

In office, of course, the leaders of liberal parties, faced with serious threats to the perceived interests of their national communities, have been and will continue to be less than perfectly fastidious about means. The gap between ideals and practices will inevitably be larger where liberals govern a state with an enormous military establishment. Like the apocryphal matron in Newport who admitted that she thought wearing large diamonds was vulgar before she had any, a president who finds immensely powerful military instruments at her or his disposal will be more tempted to employ them in the dangerous and unruly world we inhabit, sometimes for parochial and sometimes for altruistic reasons, or for the common confusion of the two. And when there is in the national culture a strong strain of Manichaeic thought and *machismo* sentiment allied with an idealized history of a nation that fights only for liberal ends, political survival instincts support the temptation to employ force not only as a last resort for vital ends. As Jack Kennedy said in effect when told by his Secretary of Defense that missiles in Cuba did not alter the objective balance of power, if I do nothing I am politically dead.

Still, I think I am more optimistic than Falk that Barack Obama, because he has been endowed by his personal history with a remarkable capacity for empathy, as well as evident liberal values, will be more sensitive to collateral damage and more audacious about seeking political compromise than any of his predecessors since the death of another man from Illinois.