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Reconstruction and Constitution Building in Iraq

*Addresses by Professor A. Kevin Reinhart and
the Honorable Gilbert S. Merritt at
Vanderbilt University Law School, January 23, 2004*

*A. Kevin Reinhart**

I would like to thank Vanderbilt Law School and all of the many sponsors for the invitation, and especially the Foreign Service Legal Society whose officers worked so hard to put this together. I appreciate very much the opportunity to talk to you all about Iraq. I need to begin with sort of a prelude: the things that were part of my training are in a way irrelevant to what I was doing this summer. I was not there in a professional capacity, as an Islamicist; I was there instead as a volunteer for the International Rescue Committee (IRC). I would like to mention that the views that I'm about to express are not those of the IRC, nor are they the views of Dartmouth College. They are my views though.

The reason that I went to Iraq was because we invaded that country, and in the immediate period afterward I was not terribly happy with what was going on. I wrote to a friend who was the head of the IRC and said "Look, you know, I grew up in the military, so I'm not afraid of the military. I'm in religious studies and have spent a lot of time with the *ulema* in various countries. I'm also fluent in Arabic, so is there something you can do with me?" And it turned out they were opening this center in Karbala, which as some of you may know is the religious heartland of Shi'ism in Iraq. So, they said "Yes, we'd like somebody who wouldn't put his foot in it right off the bat, and who could provide a certain amount of cultural training for our guys."

We were interested particularly in working with people who had been forced out of their homes in the south and who had settled—mostly as squatters—in Karbala. There were about 120,000 of them with whom we were concerned, and for whom we were trying to do basic things: we hired engineers to bring them water, we hired

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lawyers to get them integrated back into the system. Many of them had fled Saddam or were AWOL from the army. Many did not register their kids so that they would not be drafted and so on. So, that was basically the way I spent my summer; it was a very unacademic summer, which was actually nice. (Decision making was a lot easier, as a matter of fact.) But on the other hand, it was a terrific learning experience for me to live in the world of Shi'ism, to spend practically every waking hour with people for whom Hussein, the imam and martyr, was a living presence in their lives. I learned an awful lot from them.

Now I want to talk about the reconstruction of Iraq and not the invasion because the invasion is over; it is not, it seems to me debatable at this point. For this lecture, I think I will just sketch a few points, then let Judge Merritt talk, and then we will both be open to your questions.

When I arrived in Iraq, although I had taught about it and was fully aware, I imagined, of the wretchedness of Saddam and his regime, and of the terrible cost to Iraqis, I was still unprepared emotionally for the psychology of the people I was working with in these two towns of Najaf and Karbala. There was an overwhelming need to confess. It was striking to me that people, as soon as they discovered that we could have the conversation in a language with which they were comfortable, wanted to talk about their experiences. They wanted to talk about people who were dear to them, or near to them, or whom they had known and were killed or raped or tortured. They wanted to talk about their own experiences with torture. They wanted to talk about a friend who made a pilgrimage, an illegal walking pilgrimage between Najaf and Karbala, and how he was arrested and thrown into a prison that was bombed by the Americans and from which he escaped temporarily. They wanted to talk about how this friend then had to sit and listen as the guards discussed, just as a matter of efficiency, whether they should ship the prisoners to Baghdad, put them in the local jail, or just kill them—just the experience of sitting, listening to somebody debating in the same way one might debate going to 7-11, or Star Market, or Shaw's—should we kill these guys?

There was also a sense of self-loathing in that people realized that they had not been complacent but silenced by the overwhelming amount of force that had been applied to them, particularly in the early 1990s. It had made it simply impossible to have anything that we might call public opinion, or even a frank discussion with anyone no matter how close they were. There were whole codes and obscure ways of talking that substituted for political discourse.

There were also high expectations, in the period when I was there, and I think particularly during the period Judge Merritt was there. People really sensed an enormous world of possibilities. They had been cut off—forbidden to travel for thirty years, forbidden to

listen to foreign radio stations—so there was this enormous sense of possibility. And yet it was a country that had been in so many ways destroyed. It was destroyed by the massive casualties of the Iran-Iraq war. This was a war in which on both sides there were perhaps a million casualties. It was a society that had been damaged by the sanctions, and I think there is every reason to describe these sanctions also as “weapons of mass destruction.” These sanctions essentially destroyed the middle class in Iraq, killing thousands of people who were simply innocent victims. So this was a society very much destroyed—its infrastructure in tatters. The only people who had money were people who had been Ba’th party officials and people who had been smugglers of one sort or another in the period during the sanctions.

On the other hand, the body politic was enormously well-educated. I have never lived in a place in the Arab world where there were so many people with advanced degrees. You could go down to the clothing-selling section of town, for instance, where people had little shops selling infants’ clothes and so on. If you threw a rock you would hit someone who had a master’s in economics, or you would hit a civil engineer, or an electrical engineer. Maybe these guys were not up to date in their fields since education and the opportunity to travel had been so restricted, but nonetheless, many people were highly educated, eager and on the whole, as we found when we employed them, well-trained, reliable and scrupulous.

So, it was clear within moments of arriving that, whatever might have been said, there was no doubt that the United States had to be “in to nation-building.” And I think one of the most important lessons that we are to draw from the last twenty to twenty-five years, is that failed nations are the places where terrorists and other enemies of civilized order go to live. It is where they go to train. It is where they go to multiply and set-up their operations—Lebanon in the 1980s, Somalia, Afghanistan of course, and now I have to say, as a result of the invasion, Iraq.

There are now thousands of Islamic fighters in Iraq. The problem is that, as we think about nation-building, the previous models are in many ways, irrelevant. They have largely been countries that are, completely prostrated by war—in which the war is over and everyone sees the NGOs and the U.N. as neutral and helpful. By contrast, in Iraq and I think in other countries in the future, the NGOs and the U.N. are going to be seen as representatives of the world order and therefore as opponents; that is, the forces against which they are arrayed, in a certain sense, are forces that want them to fail. Disorder serves the interests of a certain group in Iraq and presumably elsewhere in Afghanistan, and so NGOs and the U.N. are no longer a neutral or positive force. In a certain sense they are combatants, insofar as they attempt to restore order and a prosperous economy. It is not clear that either the U.N. or the NGOs have responded

imaginatively to this change in circumstance, and this is something that has to be done over the next little while.

Now, I will just say a word about nation-building from a political point of view. I know that will be covered in more detail, and of course with more wisdom and experience, by my colleague, but it is important to note that the dysfunction in Iraq is not merely material. Here I want to draw from an article that David Brooks wrote in the *Atlantic Monthly* in which he argues from Hannah Arendt's discussion of Germany and the origin of evil that, in a totalitarian state, the leader tries to get inside people's heads. He constructs a regime that is everywhere, one that seeks to obliterate spontaneity, creativity, and individual initiative, and to dictate thought. The result is not over-politicization but a perverse de-politicization of life. People come to understand that they cannot think a political thought because the wrong one could get them executed; and so they lose the habits of citizenship. Society becomes atomized and individuals experience psychological isolation and loneliness because they cannot be sure even that their own family members will not betray them. They fall into a passivity induced by the impossibility of action. All they have is their perpetually whipped-up nationalism and the omnipresence of their dictator.

That is the society into which we stepped when we occupied Iraq and the idea that we can import democracy in the same sense that you might import a radio or a power plant, is simply a mistake. Building Iraq, from the political point of view is every bit as complex as constructing the electrical grid, but it is likely to take longer, and we have to be prepared for the fact that there are going to be slips along the way. Now unfortunately, my experience was that by and large the Americans who were sent as direct members of the CPA were not in a position fully to help Iraq in this nation-building process. In the whole time I was there, I met only one American who spoke any Arabic at all. The U.S. civilians increasingly have almost no contact with any Iraqis aside from the handpicked elite. They live in a bunker—and this is seen as symbolically significant—in Saddam Hussein's palace and, literally, they never go out or if they go out, they go out in big convoys, in huge white SUVs that might as well have big targets painted on them.

What is regrettable now is that because we are so focused on getting out, we are cutting deals with elements of the old regime: the people who provided domestic intelligence to Saddam, militias—the ones who actually usurped democracy or such democracy as there was throughout the 1940s and 1950s—tribal forces which are made up of a combination of ward bosses and feudal landlords. So there is a daunting task of nation-building in that respect.

It seems to me that the actors in this infrastructural reconstruction are roughly three. The first is the military. Now, I grew up in the military and so perhaps I am predisposed to think well

of them, but I was very impressed with the military. First of all—and I am talking about them as actors in the reconstruction—I found that the civil affairs people (the ones I dealt with mostly) were very well-meaning and they were working very hard. I thought they were really terrific. Most of them had been sort of yanked out of their lives—initially told that they would be working there for six months, then six turned into nine, nine into a year—and they were doing things that nothing in their lives had prepared them to do. For instance in Karbala, there was a fellow who was in his early twenties who was doing a Ph.D in plasma physics, so the colonel in charge of Karbala said, “Well, plasma physics: that has something to do with electricity doesn’t it? You’re in charge of restoring the electrical grid in Karbala”. Well, this young man worked very hard and did all he could do despite getting very little support from Baghdad, but it was nothing that he had been prepared for and it was nothing that he was particularly helped with; it was just his own initiative.

The problem with the military life is that they are terribly overstrained and overstressed. I want to quote from a letter if I might. This is from a captain in Baghdad, and was sent to a friend. I have censored it a little for the purposes of public distribution. He writes:

The biggest gripe I have isn’t the heat or the security or the Iraqis. It’s what in military parlance is known as the op-tempo—essentially, the amount of overtime you work. I begin my day with a meeting at 0800 and end it with another at 2200. I work most of the time in between and hardly get to do much else. A lot of what I do is stupid . . . stuff that some dumb . . . major or colonel wants done but doesn’t need to be done. I’ve had three days off in the last five and half months. These three days off I had only because I was able to do R and R in Qatar last week. I’m stressed out and tired and it doesn’t look like we’ll get to slow down anytime soon. I think I’m broke. I’m starting to become an angry man and lose my patience and not care about things. It’s not good for soldiers to work without rest because everyone needs time to breathe and relax and we just don’t get to do that. I’m burned out. For the guys who go out on the line and don’t get enough rest, it’s even worse. I remember when I was still a platoon leader back in June, we’d go out on a four-day patrol schedule and by the fourth day we were so tired and exhausted, that we had no patience when dealing with the civilians. I saw kids getting pushed out of the way, dogs kicked, old men cussed at. I tried to stop it where I could but even I got mad and did it sometimes, especially when I had huge crowds of people around me constantly complaining about the same things and asking me why we didn’t fix it. A few days ago, some Iraqis got beat up by some soldiers out on patrol and nobody’s entirely sure what happened. I know exactly what happened. The guys were pissed off because so much of their life sucks and they can’t take a . . . breather so they beat . . . some dude on the street who was probably yelling at them or giving them a hard [time]. We had a platoon leader and a platoon sergeant removed a couple of months ago for unnecessary violence in stopping some Iraqis by pumping them full of rounds.

Now what I want to suggest here is that anybody in this situation will find it difficult to maintain the sort of civility that we expect of our soldiers and of our police. When I was there, it was 133 degrees for weeks at a time (fifty-six degrees centigrade) and these guys were wearing full body armor and, for example, driving around on the top of a vehicle. Imagine hours on patrol, wearing body armor, constantly in fear of someone throwing a grenade at you: I would be pretty stressed out too, especially when you never get out of the theater and the amount of time that you are expected to be there keeps getting extended and extended.

Still, on the whole, I would say that the military is doing as good a job as they can. I left with considerable respect for them and, in some ways, I wish that they had a larger role because, in my experience, the civilian authority was not particularly gifted at all. The Coalition Provisional Authority (CPA) was made up of many people who had done advance work for the campaign, for the Republican campaign, and that was the extent of their experience. I met one young man—a nice fellow—whom I asked, “well gosh, you know, have you been in the Middle East before?”—he was working with electrification—“Are you an expert in electrical engineering?” He told me no, that he had done advance work and this was his first passport. People come after two months, they leave after two months. They live inside this huge compound. To be perfectly honest, even with the best will in the world, there is no way that they could be effective because they simply do not know what Iraq is like any more than somebody sitting in Nashville knows what Iraq is like. Also problematic is that their mandate keeps changing as political circumstances in the United States keep changing.

Yet they were not helpful to the military when the military were trying to get things done. There was a guy I worked with, a Marine—whom I liked a lot and respected—and he had figured out that Karbala needed thirty-two megawatts of new electricity in Karbala to allow a twenty-four-hour power supply. He had found a Swedish company that specialized in turnkey power generating plants in Sweden and which specialized in third world work. They were willing to have a generator up and running in about forty-five days (or something like that) for about seven million dollars. Now seven million dollars is chump change—we just approved eighty-seven billion if I am not mistaken—and this would have generated twenty-eight megawatts out of the thirty-two needed for Karbala. It would have made a huge political difference. Also, electricity is not just about the lights, it is about whether you can have an economy or not—if you cannot have a cash register running, if you cannot have a fan working, if you cannot have advertisements on TV, or if the printing presses do not work, you cannot have an economy. So, he filled out all the forms and sent the stuff up the line to Baghdad, but he never heard back. They stopped answering his email not just

about the power production but about anything. If he wrote them and asked them if tomorrow were Tuesday, they would not answer his email. He never found out what he had done wrong. Was it because this was seven million dollars, was it because the company was Swedish, was it because he had overstepped his mandate somehow? He never heard. So, unless things have changed radically since I was there, the civilian authority is not up to the task and this is a serious problem.

There are two classes of NGOs—and this is going to sound a little tacky but this is why I said it's nobody else's opinion but my own: One class I would say, gets it: CARE, IRC, Mercy Corps, CHF, some branches of Catholic Relief and a few others. They are the real deal: they are in there, they have their sleeves rolled up, they are out there in the middle of nowhere building wells, constructing roads, opening and running programs to teach people about democracy and so on and so forth. I met a lot of totally admirable people whom I greatly admired, and they learned more about Iraq than you can imagine. Most of them had no Arabic, it's true, or had never been in the Middle East before, but nonetheless they worked very hard, they had relevant experience, and they did good work.

There were other groups however that were either in over their heads or were grand-standers. And you have to understand, as I said before, that the model for NGO work in the past has been these prostrate nations where everything was politically calm and everybody thought of the NGOs as good guys. So they drove around in big white SUVs with the names of their organizations on the side, everybody deferred, they got through all the checkpoints, and everything was fine. But the circumstances were different in Iraq, and some adapted themselves to it but others did not. Some insisted on driving around in their big white SUVs and they got shot at. ICRC lost four people, IOM had the driver killed and two people scared practically to death by a sustained machine gun attack on them. Another incident had to do with mines in the north, the vehicle was attacked and the driver, a British NGO guy, was killed. But the organizations that I respected said, "OK, things have changed," and figured out how to deal with it. They went to regular civilian vehicles—for instance, we had a clapped out old white Toyota that would probably get you arrested if you were driving it in Nashville. IRC was particularly good at just getting cars and minivans that looked like ordinary vehicles on the roads and using those to go out and work. But, some others were still grand-standers. They were opposed to U.S. policy. Fine, I can understand that but they used the circumstances and the deteriorating security situation as a way to make political points, and they all quickly ran away to Amman where they lived on nice per diems and issued press releases saying it was all the Americans' fault. I will refrain from naming names here, except for IOM, but some of them are quite well-known organizations.

The U.N. was not flexible either and, as far as I could tell, although it is politically important to have the U.N. there, the various aspects of the U.N. that were supposed to help in the rebuilding of Iraq were among those that were unable to cope with the fact that they were perceived as the enemy by some people. Further, the combination of “we-are-not-the-Americans, we-are-here-to-be-friends” and the denial of the reality of things is what played a major part in the Canal hotel bombing which killed a number of people I knew and injured lots of people, including the fiancée of one of my fellow workers at IRC. So NGOs have to evolve. There were eighty-two NGOs there when I came in June, there are now I believe eight operating. Many people just came and did not have a clue and so left immediately. As far as I know, the grand-standers are still in Amman.

The real group that I want to talk about, because if we are losing the occupation, it is my belief that it is the structure that we chose for the reconstruction that is losing it for us, is the major contractors, Halliburton, and particularly Bechtel—the fact is that Bechtel is a huge sort of General Motors-type organization. What we need is a lot of little contractors going around and repairing particular problems. Yet the major contractors also sit in their bunkered hotels surrounded by rent-a-cops, and they hire Iraqi contractors without investigation beforehand, and they fail to inspect the work afterwards. Then, you might see a school with a big sign on it saying “this school repaired by Bechtel” written in Arabic.

I was with some people from IRC in the office of the local Minister of Education when a principal came in who did not understand who we were and immediately launched into this whole complaint with the Minister about his school, which had just been restored by Bechtel. He was furious, and it really was a litany of horrors. The ceiling—a concrete-rebarred ceiling—was falling in and all the contractor had done was push it up and hold it together with spackle. There were two rooms with tiled floors, so they scraped up the tiles from one room and tapped them down with concrete in the other and then just poured concrete over the floor in the first room. They did nothing in the bathrooms except put new sort of plaster floorboards in the toilets, when the big problem was that the septic tank was full and the pipes out of the toilet were corroded or clogged. They did nothing about that. On and on and on he went. And when the Minister asked him, “Well didn’t you have a chance to talk to these people? Who were they?” He responded that they were Iraqi contractors for Bechtel. The problem was that the Minister did not even know how to contact Bechtel, because they had simply chosen these schools without talking to him. No one could find out which schools were picked for rehabilitation; there was no list to which the Minister of Education had access.

As an American, I could contact Bechtel over email and get the list so we did not duplicate our efforts. But the Iraqis had no idea which schools were going to be reconstructed. In the time I was there, no work was done on the electrical infrastructure of these two major towns, these two politically powerful towns at all. Email that I continue to get from Iraqi friends says that the electrical system, if anything, is deteriorated. After a year, no progress has been made whatsoever.

We have a serious problem here and it is going to be the reconstruction of Iraq physically. As Tip O'Neil said "all politics is local" and Iraqis are thinking locally. They want to know about potholes, they want to know about water, they want to know about electricity. Those can be victories, and right now, quite apart from everything else that is happening in the country, they are, instead, defeats.

I am going to end now by asking the simple question: "Why should we be involved in Iraq after all?" First of all, there is a sense in which we should do it simply because these are people who desperately need help. And, unless you are callous or bigoted, or very, very shortsighted, you want to help them. Americans in particular should support the reconstruction because for whatever reasons, however justifiably, we did destroy the infrastructure in 1991, we did maintain its destruction through the sanctions throughout the 1990s, and we did invade and occupy the country in this last year. So, in a sense, if you break it, you should fix it. But also, I think what is really important is that it is in our interest to have a stable Iraq that will not turn into another Afghanistan. And it very well could. More importantly, perceptions of the United States throughout the Muslim world are very, very negative, and to the extent that we fail to reconstruct Iraq, it will be seen as a deliberate act and an act of the unkindest, most subversive sort. A terrorist act against civilians, if you will. In place after place, I would go in and people would complain about the electricity. They would say "look, this army of Iraq kept us subjugated for twenty years, and the Americans cut through it like butter. Now they say they cannot fix the electricity? I don't believe it. I don't believe it. They must be doing this for a reason. They want to keep us weak. They want to keep us miserable." Now, we can talk about democracy until we are blue in the face, but it seems to me that our competence, our pragmatism, our tradition of being un-ideological and problem-solving-oriented is one of the great things about the United States. That is what we should be exporting. If we fail to fix things, if we cannot make it work, that suggests that we are not all we are cracked up to be. People will no longer believe us about democracy if they can't believe us about electricity. Thank you very much.

*The Honorable Gilbert S. Merritt**

I would like to begin with two or three stories that seem to me to provide a little setting, a little insight on the culture—the legal culture to some extent but also the general culture and the Iraqi people—anecdotes that I think are somewhat symbolic. Then I will talk about the problem we have now in trying to create a constitutional democracy in Iraq.

I agree with almost everything my colleague said—not quite everything, but almost everything. I certainly agree with him about the CPA, for whom I supposedly worked—not worked, but advised (to use the euphemistic description of what I did). I also agree with him, or with his implication that really the only plausible reason for our being there now is, looking with hindsight, the humanitarian reason that we, in Desert Storm, simply departed and left the people of Iraq under the jurisdiction of Saddam Hussein. Then we called upon the Shi'a by radio and otherwise to rise and rebel, and many thousands of them did so, and many thousands of them were killed as a result. The bones that are being found along the roads and in other places in Iraq mark the burial grounds of many of those Shi'a. The second thing we did, as my colleague suggests was to impose sanctions. The sanctions had the effect, as I was told by almost every Iraqi—and keep in mind I was talking to Iraqi lawyers, and judges, the Supreme Court members of Iraq, court of appeals members and lawyers and that they were unanimous in this view—of further impoverishing the Iraqi people. So, the plausible reason for being there, for me, is entirely the humanitarian reason, to try to some extent to right the wrong that we created as we left after Desert Storm.

We now know that at least there is no evidence of biological, chemical, and nuclear weapons, and that there is no significant evidence so far that Saddam was deploying or financing Al Qaeda or similar terrorists, so that leaves us with the humanitarian reason and it leaves us with the promise we have made to Iraq of a constitutional democracy, to be held up as a model in the Middle East.

I will talk about that latter thing last for just a very few minutes. Let me first say that when I got the call to go over there as an “advisor” the first thing I did—this was about a week before I was supposed to

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leave and I guess they couldn't find anybody else who was willing to go—was to call a dear and longtime friend of mine from Nashville with whom I went to college, Rocky Suddarth. He had just retired from the State Department. He was an Arab expert, and he was an ambassador to Jordan. Of course he spoke Arabic. I talked to him many times about his experiences in Jordan and Saudi Arabia. I asked him, "Rocky, should I do this?" and he said "Oh for God's sake, yes! You know they've got it so screwed up, that you can't screw it up any worse, so you should go." And he said, "But, when you get there . . ." and he gave me all the background of the fight between the Pentagon and the State Department over who was going to control things there and the rejection by the civilians and the Pentagon of the planning that took place over a number of months by Arab experts in the State Department who thought they knew, and he told me why he thought General Gardner was being discharged and replaced. He said:

When you get over there, my guess is that they're not going to have anything much for you to do. They're not going to have a plan, they're not going to operate the way you are normally accustomed to operating, and let me suggest to you, look upon it as an adventure, when you get there if that's the case, make up some things you think yourself might be helpful, and go about it and tell em over there that's what you want to do.

Sure enough, when I got there, there was not any plan. I met several Iraqi lawyers and judges, and within two or three days I could see a few things that I might do that would be helpful. (In the question and answer session I will be happy to tell you the chores I did in interviewing judges and making reports about that.) I met some very interesting people. Let me give you a few little anecdotes.

When I got there I quickly met two Iraqi lawyers. One, a Sunni, who was married to a woman lawyer, a Shi'a woman. They had two children. I went out to his house many times: he has a little bitty garden, and where he lived, his house had been burglarized twice or three times there in Baghdad. He was also an engineer, and he had been a major, I believe, in the Iraqi army during the Iraq/Iran war. He escaped from getting killed by becoming an engineer and not having to go to the front. Actually both of these fellows were sort of translators, bodyguards, and drivers—we had a car—but more than anything, they were teachers. And they were very interested in learning about our civilization, our culture, and they were very fit also, in trying to teach me about theirs. The other lawyer, Zuhair, had been the lawyer for the Arab league in Baghdad before the war, he had majored in English at Baghdad University, he had a master's in English literature, and had written his thesis on *Paradise Lost*, he was also married to a lawyer. I had met these two, one through the other, they were in law school together, Zuhair and Samir. Zuhair was married to a Sunni, has one child. He is now a judge, but when I got there, neither one of them was doing much of anything. Everybody was unemployed for the most part.

Rocky, my friend at the State Department, had also told me to “Try to stay out of that palace over there if you can, you’ll get stuck there and you can’t get out.” I stayed in a hotel, which could have been blown up easily but at the time when I was there it was not as dangerous as it is now. The car bombing by the al Qaeda types had not started yet. Anyway, Zuhair, Samir, and I went all over Baghdad talking to people and going to the shops, the so-called Ali-Baba bazaars, the places where after the looting, all of the stolen goods were being fenced. It was an amazing situation over there—the looting that took place should never have occurred. I mean we should not have permitted it to occur. The whole of Baghdad was practically destroyed as a result, not of our bombing, but of the looting. Anyway, Zuhair, Samir, and I and his family became fast friends and I continue to correspond with them.

Let me give you a little example of what I found about Arab culture and Islam just through a little anecdote. Zuhair particularly, the Shi’a lawyer, liked to talk about philosophy and religion, to compare Islam, Christianity, and Judaism. So, he said to me, with Samir there and a couple of other people, “Judge, what do you think about the theory of evolution, Darwinism?, What’s the attitude about that in the United States?” and I said “Well, most people who are fairly well-educated believe that the theory of evolution, natural selection, is the best explanation for creation, and I must say I agree with that.” And, we had a conversation about what exactly the theory of evolution as we now, as we now talk about it, consists of and finally, Samir said, “Judge, that just can’t be true; we’re not descended from the apes.” And I said, “well that’s not exactly what it is, but why do you disagree?” He replied:

Well, you know the Koran doesn’t say anything about evolution or a theory of creation other than a kind of a Hebraic theory of creation by Allah. But, in the sayings of Muhammad—which are not the word of God, but the prophet says that these are his opinions and they are just up for discussion—it says that the apes descended from man, not the reverse. The prophet said the apes descended from man because many eons ago, there were all these desperate sinners and Allah got tired of the sins of this group and so he changed them into apes. So, we’ve had apes ever since and they were descended from human beings and not *visa versa*.

And I said, “Do you believe that?” And he said, “Well, that’s what the sayings say and you know we’re inclined to believe the words of the prophet here.” You have to transport yourself to a culture that is unlike our own, which is very heavily influenced by Christianity and Hebraic tradition, to quite a different basis in their culture—the Islamic tradition. This tradition is probably more powerful in Iraq, and certainly in Saudi Arabia and other places, than the Christian tradition is in the West, in Europe, and in the United States.

Another little story here: I asked my friends in Iraq, particularly Zuhair and Samir, how all these bus drivers are taking people all

around Baghdad? Baghdad's a city of who knows how many, six or seven million, and when I got there, a few days after the war and looting were over, there were big red buses, double decker buses as you might see in Manhattan or in London, traveling around carrying people, and many small buses. Zuhair and Samir tried to explain to me that the bus drivers were private. There was no governmental sponsorship. There was no government, except the CPA, which was not a very effective government. So, this was all private initiative taking place, both the small buses and the great big buses. I said to them "Could we get together with these bus drivers or some of them, and could you translate so that we can find out how this took place?" I was just curious about it. He said sure there's a bus terminal where they meet right in this location, and he set it up for two or three days later. This was during the first couple of weeks I was there.

We went down for a couple of hours and they translated and I gave them a few dollars so the bus drivers would loosen their tongues a little, and be as frank as possible. They explained to me how they had set up this system. All of the old bus drivers, or not all but most of the old bus drivers had gotten together not long after the war was over. They sat down together and discussed how they had taken the buses home before the war (they knew the war was coming, and so instead of taking the buses back to some central place to be perhaps destroyed, they had taken the busses and parked them near their homes or somewhere else where they could find them). There were 300 of these Chinese double-decker red buses and they decided they would need about half of them to be on the street, and they would use the other half for the parts, to keep the buses running and they had a big conversation about how much they should charge and they decided to charge the same amount that they were charging before because they would catch a lot of hell from the Iraqi customers if they jacked up the prices. They also did not think they should jack up the prices under such difficult circumstances because it would not be fair. So, they maintained the same price and got the big bus system back in operation.

The small buses were more private. The big bus drivers said they were going to take the buses back when there was a government set up, but the point of that story is simply the initiative of these bus drivers, they are not well-educated people, there are many many very well-educated people as professor Reinhart says, a lot of advanced degrees in and around Baghdad, but these were not such well-educated people. Still, their instinct was that there was a market out there, and that they should do this for both their own interests and for the interest of their customers. So, they set up a bus system—and I do not know what the system is now all these months later but it was quite an interesting way of going about. The initiative of the Iraqi people is substantial, and much of what has occurred that is good in Baghdad (which is where I was, and I can't speak for many

other towns) is primarily the result of the initiative of the Iraqi people after being freed from this tyranny.

I could tell you many other stories, but I will now turn to the effort to create a constitutional democracy in Iraq. Bremer has completely botched this job. There are, I think, plausible reasons for our being there, but there is no plausible reason in my view for doing it the way we are doing it.

When I got there in May, Gardner was leaving. Bremer had just arrived. Gardner was in the dining hall, eating with the troops and with the civilians who were there. He was very accessible. Bremer, it turned out, was not accessible at all. In our group—we had three federal judges—I was the only appellate judge and there were two federal district judges. We immediately asked if we could talk to Bremer a little bit about what he thought our mission might be. We never heard back. We repeated the suggestion several times during our couple of months there, and never heard back from Bremer. So, I do not have a great regard for Bremer as you might expect, but the problem was that what he was spending his time doing was creating the governing counsel of Iraq. The twenty-five members, now twenty-four members, who are supposedly running Iraq as our advisors, but the Iraqi people know that most of these members of the governing counsel are ex-patriots. There are few indigenous Iraqis who stayed and suffered on the governing counsel (one of whom I would like to mention in just a moment did so, and he is a very courageous man). But, they spent three months getting this counsel together. I suggested to some of Bremer's representatives that what they ought to do, and others suggested the same thing, was follow Gardner's general suggestion of having the Iraqi people see that the Americans are trying to turn over sovereignty and self-rule to the Iraqis as quickly as possible. My view was that the way to do that was not to have a governing counsel but to start a freestanding constitution-making process by which the Iraqi people would see that pretty soon they were going to have a permanent constitutional government in Iraq, but I got nowhere with that.

My thought was that we could set up a group, maybe a fifteen-member group of Iraqis. There are many Iraqis who know a lot about constitutional government. Iraq has had a constitution. The British set up a constitution which was, for its day in 1925, quite a good document. The group could draft a constitution and, at the same time, we would get the U.N. in there. Their expertise is in running and creating electoral systems. You cannot have a constitution adopted without having a constitutional convention and that should be done through an electoral process which required having a census. There is no census, still no census, eight or nine months later, still no census, still no electoral machinery, no system of voter registration.

But, if we got the United Nations in, we could have a census and electoral machinery established within four or five months. That did not occur, obviously and there is no census and there no electoral

machinery. That's the core of the problem now between the Shi'a clergy, particularly Sistani, who I think quite rightly is insisting that he does not want some transitional government being given sovereignty over Iraq on July 1, which is the plan suggested to and adopted by the governing council. He does not want that because for centuries, under the Ottoman Empire, as I understand it, and during the British mandate and under Saddam, the Sunnis have governed Iraq and the Shi'a who make up the majority, sixty to sixty-five percent most likely, have been ruled by the Sunnis. He says "You know that is not going to happen, that is not the constitutional democracy we were promised. A constitutional democracy requires elections, not the naming by the Americans or by some kind of caucuses that you don't know who's controlling. We want elections." And, I think he is justified in making that demand. But we are a long way from being able to do that because we have no electoral machinery, and no census. It is going to take I do not know how long to do that. So, the plan by the governing council is to have an election for a constitutional assembly, not for this sovereign transitional government but for a constitutional assembly, sometime in 2005. The constitutional assembly will be a large group. It will get together to come up with a constitution and, subsequently, there will be a referendum for the Iraqi people to vote up or down on the constitution. If they vote up, then a government will be elected. Well, that will not take place until (really God knows when) 2008 or 2009.

Putting a constitutional assembly together in this way is going to be very divisive. There are lots of ethnic, tribal elements in Iraq. There will be a lot of division over what the constitution ought to say, and if a coalition, for example, of dissatisfied Iraqis get together—if Kurds get together with some branches of the Shi'a and the Sunnis—the whole thing will be defeated and the process will have to begin again. So, I think, the CPA has been basically incompetent with respect to the way they hope to turn over sovereignty to the Iraqi people, and there is now no visible constitution-making process in place. I am particularly disappointed about that because that falls in with the daily work in which I am most interested. Why don't I stop there as I've taken more time than I intended to, and let's see what your views and your questions are, and comments. It's a pleasure to be here, and particularly a pleasure to be here with Professor Reinhart. I obviously don't speak Arabic, but my experience in the judiciary, in addition to being a judge, was running our judicial foreign relations group for a while, setting it up and going to different countries and it is always an adventure to go over and talk to the judiciaries of other countries and if you ask me questions about the judiciary in Iraq or the system of law based on the Napoleonic code, I'll be happy to talk about that. Thanks.

QUESTIONS AND ANSWERS

Q: What other countries are participating in the operation? Is there any hope of getting the United Nations involved?

M: Though there are some countries there, it is an American show: the CPA is run by U.S. authorities; the U.S. military is providing security. We have recently begun to get the Iraqi police force up and running but it is still basically an American show. All the major decisions are made by the Americans. Though the idea of getting the United Nations in place in any capacity was rejected for a long time, now we're coming to our senses a little bit, and trying to get the United Nations in there. We should have done that a long time ago, but it is still primarily a U.S. operation.

R: I might add that there is the coalition of the willing-to-be-bought which includes powers like Mongolia and El Salvador. In the town that I was working in, Bulgaria and Poland were responsible. There was a firefight in which some U.S. MPs were pinned down. They called over the radios for help but the Bulgarians had to go find somebody who could understand English to receive the call. Once they got that person, in order to respond—since they were under Polish jurisdiction—they had to go to the Poles. But the Poles didn't have anyone who spoke Bulgarian, so they had to find a Bulgarian who spoke Russian and a Pole who spoke Russian. The result was—and fortunately none of the MPs were killed—it took three hours to respond. So, I concur completely, this is an American show and to the extent that we're dressing it as an international thing it seems to me only to weaken our military posture.

Q: To what extent do you find that the governing counsel is actually seeking counsel from the populous at large? Are they in the bunkers as are the rest of the U.S. civilians and the CPA? Second, given what you've seen, to what extent do you anticipate the new system of law, whenever it gets established, will incorporate elements of Islamic customary law—in terms of the way judges adjudicate cases involving marriage, property ownership, etc.

M: The governing counsel is trying to take the pulse of and be representative of the Iraqi people, though some more than others, and some of the members of the governing counsel are as I understand it, more politically ambitious than others. Let me say this about one of

them: Judge Dara, whom I got to know the first week I was there ended up going to jail. He was a court of appeals judge, and he went to jail because he held unconstitutional one of Saddam's edicts about taking property. He was from a very distinguished Kurdish family and he refused to relent and reconsider his decision. They hauled him before a revolutionary court—there was a regular court system which functioned for the most part just to deal with regular legal cases, then there was a revolutionary court system, and then there was execution without any kind of court system. The revolutionary court sentenced him to jail for two years and he spent a good bit of time in jail and was released in the general amnesty just before the war. I found all this out from the lawyers—he was their great hero.

When I asked lawyers and governmental people whether they knew any judges who you think are really outstanding people—any Nelson Mandelas who are judges, everyone would mention Judge Dara. I spent many hours talking to him and he passed along to me his views about the other judges, the lawyers, the legal system, how a constitution might be created, etc. They had no lawyers, or judges, or anybody like that on the counsel. I went to people I thought had some influence in the government section and said, "Look, you've got to have somebody protect the rule of law who knows something about it. This guy has not only shown the courage, showed the courage that he did—married, with two children, and still upholding the rule of law—a kind of Sir Thomas More of Iraq." So, they finally did agree to put him on the counsel. So, I know they have one good man on the counsel, and I think others too.

The second question you asked about the law. Yes I think there'll be Islamic elements in the system. The system is a civil law system which came through Egypt because Egypt, during the time of Napoleon's campaign, adopted a kind of Napoleonic code system with Islamic elements in it and that was later passed along to Iraq. The domestic law, the domestic relations law, family law, all those things, tended to reflect very much the Islamic system. However, the civil code, the codes of procedure, and the codes of contracts and the criminal code, more reflected the Napoleonic code than it did the Islamic tradition. That is what I was told by all the judges and lawyers and of course we're dependent on them to inform us as to how the system works. We don't have any independent knowledge, at least I don't. My friend does probably.

R: There's one interesting development in the last week: the governing counsel abrogated all of the Iraqi laws having to do with familial relations and simply declared that in cases of child custody, marriage, divorce, and inheritance, Islamic law would be enforced—without a democratic discussion or anything. They simply made a radical change in the code. It's not just values but actually Islamic jurisprudential norms now. Women have objected to it, there have

been some demonstrations. Furthermore, instituting Islamic law doesn't solve much either. With inheritance, for example, between the Shi'a and the Sunnis there are radical differences.

Q: What is the possibility of it ending up a theocracy, and what is the possibility of the end result being three states: Kurds, Shi'ites, and Sunnis?

R: I agree with Judge Merritt that a democratic government of Muslims is eventually going to reflect Muslim values, just as when this country was overwhelmingly Christian, our laws reflected Protestant Christian values. Everyone has repudiated the idea of a theocracy in the Iranian sense, including the Shi'a clerics. I think they understand that, having seen Iran, when the religious establishment gets tied up with politics, what actually ends up being weakened is the religious establishment. In Iran, Islam is an object of contempt for educated young Iranians, and they're afraid of that happening in Iraq. I think that's significant.

Before I went over, I thought it very likely we would end up with three states but, except for some Kurds, I found nobody who thought that was a plausible or desirable outcome. I was quite surprised. I have friends, in Najaf for example, who told me, "you know Baghdad is very dear to all of us Iraqis." I suspect much more likely will be a federated state, but I think the crucial thing is going to be that all Iraqis must have the right to live in all parts of Iraq. And if that's the case then it seems to me we could have a plausibly functioning Iraqi state without the kind of separation that you're talking about.

M: I agree that we are not likely to see three separate states. For example, this fellow Judge Dara who's a Kurd, his father was on the Supreme Court of Iraq and moved to Baghdad. There are lots and lots of Kurds in Baghdad. They say the biggest group of Kurds lives in Baghdad now but of course there are also a lot of Kurds in the north. His grandfather was one of the governors during the British mandate of two provinces and his great-grandfather was a judge in the old Ottoman Empire. He comes from this long tradition and he told me that there is not any, in his view, reasonable sentiment to split up Iraq into Kurdistan, the center, and the Shi'a in the south. So, I agree that it's not likely to happen. There is enough history here so that there is some national feeling in favor of an Iraqi government. It's going to be very hard to put together. And I think it does have to be some kind of federated state.

On the subject of theocracy, yes there will likely be theocratic elements in any new Iraqi constitution. All of the people I talked to were pretty well-educated and they were all pretty secular in their views. They told me that they didn't think there was a lot of sentiment for a great theocracy in Iraq but that they could be wrong.

That has yet to be determined but Islam is a great force. The two things that hold Iraq together are 1) the language, Arabic, and 2) ninety-nine percent are Muslims. Those two elements are the unifying elements—the *unum* in their *pluribus* so to speak—in Iraq without which I don't think you could have a unified state, federated or otherwise. They will have to work out how much theocracy is appropriate. After all Israel is a theocracy. There are benign theocracies.

Q: You mentioned earlier that there were two major contractors, Bechtel and Halliburton, and then you discussed the CPA. What is the relationship or interaction between these entities? Do you see a resolution to what seems to be their overall incompetence in the area.

M: Well I wouldn't say that the CPA, Bechtel, and Halliburton are incompetent. It's more that they made a lot of mistakes. Bechtel is much in evidence in Baghdad. They go out and fix schools and choose the schools they want to fix and everything else. They are a huge corporation. The operation sits in a park, next door to the republican palace in Baghdad, which is in the green zone or the protected zone—quite a large area on the bank of the Tigris River downtown. Bechtel's operation is practically as big as the whole CPA operation. Because they sit just next door, I went over there several times to talk to the Bechtel people. They had these very large prefabricated offices that they fly in—like big trailers—they do it all over the world. They must have had fifty or sixty of them on ten or fifteen acres, right in the middle of the CPA's operation. They have a communication system through satellite which was a very elaborate system, probably as good as the defense department's, or maybe not quite as good as the defense department's but it was a huge operation. I talked mainly to the middle management people, they thought they were going to make huge amounts of money, which I'm sure is true.

Halliburton was more in the oil business and the mineral business and they have contractors like Brown & Root to provide food, logistics, and things of that kind. They were not as much in evidence in and around Baghdad as Bechtel. One of the Halliburton people told me thought that they didn't know how much oil was on the ground and in Iraq, there might be as much as Saudi Arabia maybe twice as much as the proven reserves because nobody ever really made much of a scientific effort to find out how much reserves there were out in the desert towards Saudi Arabia and Jordan. And there could be two or three, maybe even four times as much reserves as we had found.

R: Let me just add that Halliburton, aside from the oil sector, mostly serves the U.S. troops. They do the mail, the food and so forth. Bechtel I found, as I said, elephantine, unable to respond quickly, the whole time I was there, according to their own official press release, they had fixed one bridge. They were working on hospitals and so on but again I didn't feel that they were supervising the contractors very closely. Hearing a lot about the Halliburton price gouging on oil, and I just want to explain that briefly because it tells you a lot about how things are going on—and to be fair to Halliburton, they have been told that there's an agreement between the U.S. government and Kuwait: in return for Kuwait being the forward staging area, we agreed to that all petrol would be purchased from one of four sources. The Kuwaiti government has since said that the petrol is all to be purchased from one source, which charges \$2.42, I think, a gallon. This is in Kuwait where you can buy a gallon of gas for forty-five cents or something like that. But the problem is that we have stipulated they have to buy from this company, that company the Kuwaitis are charging \$2.42 a gallon, there's nothing Halliburton can do, it's not that they're not making this huge bundle, it's that some sweetheart deal that was cooked up between the U.S. government and the Kuwaitis has led to this. That's the kind of stuff we're getting entangled in, and maybe some part of that may be necessary but eighty-seven billion doesn't go far as it might when you're paying four to five times the going rate for stuff.

Q: About your belief that our main argument for being there is humanitarian, what about the possible link between Al Qaeda and Saddam Hussein? What changed your opinion and, can you tell us any more about the documents you were talking about that were delivered in that story?

M: The two lawyers asked me if I'd be interested in a newspaper that in November 2003 listed the honor roll of 600, one of whom was the Ambassador to Pakistan, who was said in the list to be in charge of relations with the Osama bin Laden group. I thought that was perhaps some evidence, but it's unclear and I don't doubt perhaps that Saddam would have tried to make league with al Qaeda. But, although the Vice President continues to say he believes that there is a clear relationship, I haven't seen any evidence that specifies what that relationship is. I've somewhat changed my mind because we've had a lot more time now to pin it down, and I haven't seen anything, really, that suggests to me that we have pinned it down. It's like the so-called weapons. After a while you begin to wonder—the President's probably right, the kind of a guy Saddam was, he probably did have any kind of weapons he could get—but after so long when there is no

evidence you know, as a judge, I say "Well, where's the evidence?" and I just haven't seen it and so I'm beginning to be skeptical about that.

Q: Do you think there are any successes that we can count as a result of this military action and its consequences?

M: Well, we've overthrown Saddam Hussein and we've gotten rid of one of the worst dictators in the Middle East, maybe in the world perhaps on the order of Hitler, a dictator who was a tyrant and we could start naming things that he did that were terrible. We've overthrown him and we have the prospect of a constitutional democracy in Iraq. That is a great thing! And, if we are able to not only overthrow him, but to bring about a constitutional democracy in Iraq, as a model for the Middle East, that will be a wonderful thing. That's yet to be determined, but we've made a first step and that's great.

R: I'd say also that one of the things that has impressed me is the resiliency, the sort of entrepreneurial spirit that Judge Merritt talked about with the buses, but the universities also reconstituted themselves and in many ways are trying, in the face of considerable pressures from lots of different directions, to model a plural Iraqi society. Visiting the campuses is on one hand demoralizing because they have almost no money, yet they are really trying to put together something that has never existed in Iraq and seldom elsewhere in, well in the world really, which is a really vibrant, democratic, sort of debating society where all possibilities are on the table. At the moment—and it could be one of those magical moments—but at the moment it's remarkably pluralist, remarkably innovative. There are some terrific scholars both in technical fields and in the humanities, and I enjoyed visiting the universities. And again, we took the wraps off and the Iraqis did it themselves which I think could be a useful model for the whole business.

M: If this is accomplished, I think the vision of the Bush Administration is wonderful. It's kind of like the Promised Land over there. My criticism is that it seems to me we are inhibiting the Iraqi people from creating the kind of democracy I would like to see at this point. The vision is great, but the occupation and the implementation of the vision while perhaps not incompetent has involved so many errors, beginning with the looting and on down, that the Iraqi people may have to do it over our dead body to some extent.

Q: What can the United States do to protect the rights of women threatened by a return to pure Islamic law?

R: My problem with the whole process was that it was not done democratically. If there's a popular vote and Iraqis choose to institute asymmetrical inheritance shares, then that's what democracy is about, as long as everybody gets to vote. The problem is that this was done undemocratically, and my understanding is that nothing is being done by the Americans because we're trying to get everyone to sign on to the overall multi-leveled democratic development plan, which as Judge Merritt said will go into the indeterminate future. It's shortsighted for us to allow them to do that but that's the kind of trade off that we're making in hiring former members of the *mukhabarat* and cozying up to tribal chiefs. I think that these are all short-sighted moves. The United States could just void it but they're not going to.

M: You have to keep in mind, legally, we are an occupying power, and as the occupying power we have an obligation to act under international law, properly. International law will not recognize making women second-class citizens. We have to insist on equality for women in Iraq, as under international law. So for the most part we've tried to uphold international law in our insistence on things, I don't know much about what's just recently happened.

Q: I have a question about the terror attacks—and perhaps some of this is more foreign directed, from outside Iraq—but what sort of progress is being made there? Do you think the Iraqi citizens in general support the suicide bombings and other activity?

M: No, I don't think so. Just like public opinion anywhere, if the electricity's off all day long or there are other problems, public sentiment is going to be negative. They may think "Well, the Americans got was good for them about that." But, if you think about it more deeply, if we lose the support of the Iraqi people, we've had it. We can't erect a democratic government without the support of the great majority of the Iraqi people. I don't think we've lost that yet but we need to do better.

R: I would say also that you have to realize that the overwhelming number of people who are killed—I mean for every American that's killed by one of these things, twenty or thirty Iraqis are being killed. What the Iraqis are angry about is that we're letting this happen. It's Iraqis who are being killed, so, I don't think there's support for that. Of course, the area I was in was more sympathetic. The other thing that was really striking to me was, for example that head of military operations said this summer that he had only recently been advised by his Iraqi advisors, that breaking into people's houses, putting bags

over their husbands heads, cuffing them, and dragging them out was perceived as humiliating, and that perhaps we should think about not doing it that way. Now, it doesn't take a lot of cultural sensitivity to imagine that that would be perceived as humiliating, and humiliating people is not what you want to do if you want to win them over. It's that sort of thing that can harm us. So I believe there has been recently a fall off, about a twenty percent drop in support. But, if you stopped all of that tomorrow, that would not make the occupation a success. That's the thing I'd like to leave you with: Let's suppose we stopped, there were no more suicide bombings, there were no more improvised explosive devices, no more sniping, let's suppose all that happened. All the reporters from the CNN would go home, but it would not make the occupation a success, and it would not guarantee the sort of state that everyone involved thinks is necessary for future democracy and order.

M: When I got there, it was right in the flush times of optimism, May and June, and the support for the Americans was very high and the terrorist types hadn't gotten into the country yet. I think there's a little less support now. My friends over there tell me that the Iraqi people understand that they've got to cooperate with the Americans for their own good, and then the Shi'a leadership like Sistani has been very moderate and doesn't want to create an Islamic state, just a theocracy in the narrow sense of the word.

Q: In so many of my conversations about reconstructing Iraq, so many people think that the work is in teaching Iraqis how to get democracy, about communicating philosophy and values. But, so much of what you have said shows that the core values and ideals are already there, especially your story about the bus workers. But, what you seem to be saying is that the systems need to be put into place, we need electricity, we need a census, rather than ideas. Do you think that the current people in power are doing too much visioning? What is preventing the systems being put in place—is it just that the Americans aren't getting it?

R: There are a couple of different issues. If, by systems, you mean the physical, hardware stuff, my own take is that it's like hiring a contractor for your house who turns out not to be the right one for the job. It's not getting done, and that's just a measurable outcome. It seems to me that when that happens when somebody's working on your house, you hire another contractor or you go to a bunch of different contractors. But I don't want to dismiss the idea, and

remember I quoted the David Brooks piece, I do think that there are problems of what you might call political psychology.

Just a quick anecdote: I worked with this really smart, curious, sweet guy, a really nice guy I respected a lot. Anyway, I was going down the road with this guy, and I said "So what do you think of Muqtada?" (a street politician on the Shi'ite side, with no credibility as a scholar, but who's organizing the constituency that used to be Communist; the Shi'i urban proletariat whom everybody has stepped on for decades). He said, "Oh he's really terrible, he's causing disorder, you know, he's really causing problems, and somebody should kill him." And I said, "Well that's not a good idea, why don't you organize demonstrations?" And he replied, "Oh no, everybody would be afraid to organize demonstrations, they'd kill us." And I said, "Well, but you've got to have demonstrations cause he's having demonstrations." And he said, "No, somebody should kill him."

Now, as long as that's a part of the political discourse, it seems to me that there are problems. There is some work being done, I think it's rather high priced for what's actually happening, but also at the lower level. The group that I was involved with—and I was not involved in this directly so I can blow the horn of the guy I was working with—developed a program of having all of the Iraqi NGOs in Najaf meet regularly. He got the military to give them a space so they would all have offices. He got grants for projects so they were doing things like recording the names of people who had been killed, recording all of the places that had been damaged in the war (because you're entitled to compensation if your house had been bombed). He organized groups that were putting together vocational training programs and things like that. There's real empirical data that supports the idea that these intermediary organizations are important for creating political culture but also for limiting the state. I do think there are practical things that are being done, practical things that need to be done as well as fixing the electricity; we also have to help Iraqis discover their ability to negotiate with each other.

M: On the governmental side of that, I think the basic problem is we just made a mistake in not going ahead and getting electoral machinery and a census. Instead we went with this governing counsel as the way we decided to try to present things to the Iraqi people. This decision got made instead of other possible alternatives and that has been a mistake. And we're living with that mistake right now.

Q: What political and legal implications does the current situation in Iraq have for the region as a whole? Do you see any trends developing or any possible transitions to democracy or regression based on what's going in Iraq?

M: The only thing I can say in answer to that question is not going to be very helpful: if you'll look at military historians from Theucidides and the Peloponnesian wars, down through von Clausiwitz to modern day military historians, the one thing they say is, once you initiate a military action like this, with some vision of what you want to happen, you have not the vaguest idea of what in fact is going to happen. That is, you are asking about the consequences of this in ten years, or even two or three decades. My understanding of the theory of military historians is that you never know. You may know that you can overthrow Saddam Hussein, and you may hope, with some understanding that you can create a constitutional democracy and self rule, but what effect that will have in the region. I think it is just anybody's guess.

R: I'd say right now in the short term, there's no doubt that antipathy toward the United States is much greater than I've ever seen it, and I've been going since 1967. If, for instance, Iraq is divided—that is what everybody is anticipating, that the United States is going to break Iraq up because the whole idea is that colonialism divides the Arab world in order to weaken it—so if Iraq is divided, or if it falls apart, then that will be seen as part of a great plot. If, on the other hand, we manage to construct something like this, and can point to it, that would have a profound effect on the Middle East.

People underestimate the extent to which Israel-Palestine remains the justification for the undemocratic states. And you can say that that's fictional, but fiction here is reality. Politics is based on perception and if that conflict were solved in an equitable way, if Iraq were to provide not just a model but another option, then, it seems to me, we could anticipate lots of good things. But, those are really big ifs.

Q: Will we get there with Paul Bremer, and if not, how long do you think he will be in place?

M: He's leaving July 1, 2004.

Q: I grew up in Lebanon under the French-instituted system. There is a functioning constitution that's been respected for the last fifty years except for some time during the civil war. We elect a representative every four years, still have colonialism, sectarianism, and tribalism in our system. The way we do it is we nominate one panel and everybody gets to vote so that it's not part of the culture, but the rule of law. What will the Americans leave behind to protect the rule of law from someone who wants to come in and take over?

M: I don't want to be pumping up the judiciary because I've been there long enough to see all the flaws in the U.S. judiciary. But you cannot have the rule of law—contracts enforced fairly, civil liberties protected, a whole panoply of things that we refer to under the rubric of the rule of law—without several things. Many people like Judge Hand have said in some ways the spirit of liberty lives in the heart of a population. It is not just in a written document. There's a lot of truth to that. I mean, it's history, it's tradition, it's institutions. But I do think that it's impossible without an independent judiciary which is relatively well-educated and relatively fair, and is trying to do the right thing, and is not a part of telephone justice and not a part of cronyism and has certain standards that it has to meet in terms of conflict of interest and so forth. We have enough flaws in our own system, but that has got to be created and institutionalized in Iraq or any other place before the rule of law can really prevail and become durable. That's my thought about it.

R: This may sound a little flippant, but I mean it perfectly seriously. A great Jewish philosopher at Princeton, Walter Kaufman, said, "Say what you want about Hitler, but he gave anti-Semitism a bad name." What I found in Iraq was a real resolution that Saddam was not going to happen again. People were saying, and this was when he was still at large, "That's it! I've had it! If he comes back now, we are all armed. Nobody's going to put up with this again." People would say of someone, "You know, he's a 'Saddami'" It referred not to the fact that he was a supporter of Saddam, but that he was thinking like Saddam. It seems to me also that just as the Lebanese are willing to make all sorts of compromises not to have the kind of disorder that they had in the 1980s, the Iraqis are really determined not to have another nationalist-statist dictator. This could be exactly what Judge Merritt is talking about, that the resolution not to go back is what propels you forward. I think that that's really a cause for hope in Iraq and I hope that it's an effective motivator as well.