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SEPTEMBER ELEVENTH, THE ABC'S OF A CITIZEN'S RESPONSES: EXPLORATIONS

GEORGE ANASTAPLO*

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INTRODUCTION

Thucydides, an Athenian, wrote the history of the war between the Peloponnesians and the Athenians, beginning at the moment that it broke out, and believing that it would be a great war and more worthy of relation than any that had preceded it.

-Thucydides, *History*, I, 1

I.

I provide in this Collection a series of talks on post-September 11th events as they unfolded, extended comments which are reinforced by “snapshots” in the form of a sampling of Letters to the Editor which I sent to various newspapers. What is probably unique about this approach is that some of my talks included in this series are about the kinds of academic subjects I would otherwise be considering anyway (*King Lear*, *The Song of Roland*, *Heart of Darkness*, and *The Tempest*). Thus, the reader can see how the “philosophical” approach of an observer may affect what he sees in everyday events, and perhaps vice versa as well. Whatever has been done here and there by me to improve slightly the style of presentation in this manuscript, no attempt has been made to modify the analyses and judgments as they were presented in the circumstances indicated. (On the other hand, many of the notes for the talks collected here have been developed subsequent to the times when the materials thus annotated were originally prepared. The publication of this Collection, in law journal form, is likely to be three years after September 11, 2001.)

All this is, then, a somewhat introspective journal of our recent plague years, culminating in a talk two years after the September 11th events. By that time, there had been a shift in emphasis from a defensive War against Terror to an aggressive Foreign Policy as the primary focus of attention abroad by the United States. As a journal, this Collection should not only be of immediate interest but might also be useful for those who look back at all this a generation or more from now. I do leave materials for future students of these matters to draw upon, matters which include the challenges posed by the special relation between the United States and Israel. (One can be reminded here of the considerable American sympathy for the Kurds of Iraq, if not also for those in Iran, Syria, and Turkey.)

Particularly to be noticed is what all this can suggest, not only about how the War against Terror has developed, but also about how the Cold War took the form it once did – that is, how patriotic and other passions can be aroused and used (or abused), and what kinds of habits evolve in such circumstances. I happened to be in a position the past three years to observe how some of the people who allowed themselves to be trapped by our official Vietnam War rhetoric succumbed to the same kind of sometimes dubious rhetoric when it came to be directed against both Iraqi despotism and domestic “terrorism.”

This “project” has been instructive for me, and not only because it can remind one of what “citizenship” should mean. Certainly, one may even be encouraged, because of our way of life, to believe that what one thinks and says might make a difference, eventually if not immediately, even as one is obliged to recognize how limited one’s influence may be on any particular occasion. Critical to this enterprise is the access provided to a plausible organization of an observer’s running commentaries upon something so momentous as September 11th and its Aftermath. The illusory advantages of hindsight are not available if one attempts to be a commentator upon momentous events as they unfold. Such events cannot be properly understood, years later, if one’s grasp of them does not include an informed awareness of how things can seem as they develop.

II.

Part A of this Collection presents three memoranda prepared by me for the Federal Bureau of Investigation, memoranda that suggested official inquiries that might usefully have been made immediately after the September 11th attacks. Thus, a citizen’s engagement with the challenges of his day may be seen from the outset, with these efforts made in September 2001 to offer one’s services in the crisis at hand. (No acknowledgment was ever received by me of these suggestions, of which there must have been multitudes inundating Government agencies in September 2001. My memoranda had been sent both by FAX and by mail to the Chicago Office of the Federal Bureau of Investigation.)

Part B of this Collection presents thirteen Talks that I gave during a two-year span, beginning the day after the September 11th attacks, talks in which several kinds of responses to these attacks are provided. These talks include discussions of the legal, political, and military responses to the attacks, as well as discussions of relevant texts which are the usual concerns of academicians. Such “academic” concerns can illuminate,

and can in turn be illuminated by, the stirring events of one's day. Thus, there is here a movement back and forth between "current events" and "enduring issues," with particular emphasis upon maintaining a sense of proportion.

Part C of this Collection presents fifty-two Letters to the Editor. These Letters, half of which have been published in the press, comment on events of the day, suggesting the perspective from which these and like events might usefully be seen. Such letters can be, in effect, the kernels of essays. Furthermore, Letters to the Editor are useful, not only because they can help one to clarify one's own thinking from time to time, but also because one *can* count on a few influential readers, if only the editors who decide that they cannot print what one has offered to them. That is, the editorial decision not to publish does not foreclose the possibility that something one has said might end up being *thought* about, sometimes by someone at a newspaper who is much better informed (as well as more thoughtful) than the author of the Letter which has been submitted.

One third of the letters in Part C of this Collection were prepared by me prior to September 11, 2001; they suggest the general understanding of things drawn upon in my post-September 11th reflections. Thus, the criticisms made in this Collection of the way that Bush Administration leaders have conducted themselves since September 11th come from an observer who believed, in September 1998, that President Clinton should resign. (See Letter C-4 of this Collection.) Even so, I have been struck by the curious incompetence of the Bush Administration in preparing for and dealing with the Occupation of Iraq, an incompetence that has sometimes made the often distracted Clinton Administration shine by comparison. Troubling problems with a leader's sense of proportion are revealed when he attempts to liken the threats posed by Saddam Hussein's Iraq, or for that matter even by Al Qaeda, to the massive threats that had been posed to Western Civilization by Adolf Hitler's Germany or by Josef Stalin's Russia.

I have been reminded, by recent Bush Administration policies in Iraq, of the chronic incompetence exhibited by the American State Department in its responses to the even more incompetent Colonels who tried to rule Greece in 1967-1974. One of the lamentable consequences of all this has been the violent partition of Cyprus which has poisoned relations between Greece and Turkey for a generation.

Also prepared prior to September 11th were two of the three Appendices found in this collection, one of which records the privacy concerns among Americans a generation ago, the other of which recalls

the author's unconventional legal career, a career that comments, in effect, upon our Cold War follies. These two pre-September 11th appendices are preceded by an appendix which records a discussion of the USA PATRIOT Act of 2001, that I was asked to prepare for the Chicago City Council in September 2003.

III.

Almost a year has passed since the last talk was prepared for this Collection. There are now three "fronts" in what had been our Campaign against Terrorists: (1) *Afghanistan*, which seems to have been somewhat neglected of late; (2) *Iraq*, which has proved ever more troubling, even for many who initially supported the American intervention there, especially as a horrendous civil war threatens to erupt in that "country"; (3) *Homeland Security*, which has called for an appalling expenditure of spirit and treasure in this country. (Should the Afghanistan operation have always been regarded more as a police action than as a military operation -- and, as such, less in need of special Congressional authorization?)

Many of the resources devoted to Homeland Security do seem to have been misdirected. Consider, for example, the intensive airport inspections to which we are all routinely subjected. The key concern there, however, should not continue to be with whether the passenger-cabin of an airliner might be commandeered by the wicked, but rather with whether such men can thereafter take control of the movements of the airliner by being able to enter the cockpit. It remains virtually impossible to prevent would-be hijackers from ever equipping themselves for taking over an airliner passenger-cabin in flight, with a view to destroying the plane. (Even so, *that* objective can be more easily secured by other means such as the use either of explosive devices in checked baggage or of ground-to-air missiles.) However dreadful such destruction may be, it is nowhere near as serious as the destruction that was inflicted on September 11th, *destruction that would probably not even have been attempted* if it had been known that forcible entry into airliner cockpits was virtually impossible (Such seizure of cockpits does seem to have been warned against before September 2001.) Nor is even the September 11th destruction anywhere near the seriousness to be expected from the unleashing of biological weapons and nuclear devices, including "suitcase bombs." It is here that our precautions should be emphasized, along with a sensible protection of dams, nuclear plants, and

the like. (I venture to suggest that the proposed, exorbitantly expensive, missile shields are hardly likely to be useful here.)

One thing, on the bright side of the present encounter, should be noticed: there has not yet been any significant curtailment of civil liberties, especially the freedom of speech, *for people at large* in this country, however harshly some “terrorism” suspects have been treated from time to time in Guantanamo Bay and elsewhere. All this is in marked contrast to our crippling Cold War experience, something that I have studied at length in my book, *The Constitutionalist: Notes on the First Amendment* (1971). There *has* been, however, a promotion, a sometimes cynical promotion, of considerable unseemly fearfulness among us, something which may even *invite* attempts upon our well-being by the sadistic and the misguided. Vital to our enduring security is a general sense of what is truly good and evil, that sense which is reflected in (among other places) that international law which we seem at times to disparage. The headstrong “unilateralists” among us, who consider themselves “realists,” do not seem to appreciate that awesome displays of force cannot suffice in shaping and sustaining informed opinions worldwide as to what horrible deeds should be regarded as virtually unthinkable, opinions which we can be thankful continue to be shared by millions of decent Muslims everywhere. (Even such a supposed enemy of the United States as Fidel Castro, it should be remembered, was evidently moved to offer us support immediately after the September 11th assaults.)

Particularly in need of emphasis among ourselves is the recognition that We, the People of the United States, are both powerful and mortal. The challenges we face, as human beings -- as human beings who naturally remain vulnerable because of our mortality, despite any accomplishments we may justly lay claim to -- these challenges are far more serious than anything that would-be “terrorists” might say or do. Certainly, human beings everywhere, including the People of the United States, have always faced far more demanding challenges than those we seem to face now, and have faced them with displays of intelligence and grace that are worthy of admiration by decent men and women everywhere.

Afterword for the Introduction

I provide here, for the guidance and encouragement of my readers, excerpts from the Summer 2003 commentary provided by a

distinguished humanist upon reviewing most of the manuscript for this Collection:

. . . Your first essay, "A Second Pearl Harbor?" [delivered the day after the September 11th attacks], is wonderfully sane and calming with the perspective of history, which is what you continually do so well. So too with the essay on Muslims in America, on their adaptability. I read with particular interest what you say about Edmund in *King Lear* and stealth. A wonderfully apt analogy about surprise attack and legitimacy, with the counter force in Edgar's view that we must endure. Well said, and moving.

And a fine idea to bring *The Song of Roland* to bear on the Islamic issue, by way of historical and literary perspective. You're certainly right that most students today don't know this book. Excellent on how misinformed the poem is about Islam.

Really very fine on how the Cold War started. I share your views on the Communist "menace" back then, on Korea, and on Vietnam. There is a fine essay giving a sense of proportion on September 11th six months later, and then a year later. All this hangs together in terms of its author and his role as a conscience for us all. A fine primer on Constitutionalism. I enjoyed the Caliban essay, focusing on him as a questioner, a challenger of Prospero.

The letters are useful. I think all of this works as a unit - engaging, serious, also witty. It's very personal in a way that I like.

I also provide here, for readers who want to pursue further the course I have charted, citations to seven additional appendices (of already published materials of mine) which bear upon the matters discussed in this Collection:

1. "An Introduction to Islamic Thought," in Anastaplo, *But Not Philosophy: Seven Introductions to Non-Western Thought* (Lanham, Maryland: Lexington Books, 2002), pp. 175-224.

2. "The European Witch Trials," in Anastaplo, *Church and State: Explorations*, 19 *Loyola University Chicago Law Journal* 61, 65-96 (1987).
3. "Clausewitz and Intelligence," 16 *Teaching Political Science: Politics in Perspective* 77-84 (1989).
4. "The Gulf War," in Anastaplo, *On Freedom: Explorations*, 17 *Oklahoma City University Law Review* 465, 604-30 (1992).
5. "A Return to Pearl Harbor," in Anastaplo, *On Freedom: Explorations*, 17 *Oklahoma City University Law Review* 465, 645-66 (1992).
6. "UFOs and Scientific Integrity," in Anastaplo, *Lessons for the Student of Law: The Oklahoma Lectures*, 20 *Oklahoma City University Law Review* 17, 187-98 (1995).
7. "President Lincoln and the Challenge of His Day," in G. O. Mazur, ed., *One Hundred Year Commemoration to the Life of Hans Morgenthau* (New York: Semenenko Foundation, 2004), pp. 43-53.

These seven additional appendices could well be added to this Collection if it should be published as a book.

Among the controversies generated by American foreign policy in recent years has been one with respect to the supposed influence of Leo Strauss on our adventurous "Neo-Conservatives." See Letter C-49 of this Collection. A detailed inventory of the remarkable Strauss influence is provided by John A. Murley, ed., *Leo Strauss: A Bibliographical Legacy* (Lanham, Maryland: Lexington Books, 2004). See also 20 *Northern Illinois University Law Review* 581-710 (2000); 39 *Brandeis Law Journal* 219-87 (2001).

Hyde Park
Chicago, Illinois
July 4, 2004

A. *Three Memoranda by George Anastaplo for the Federal Bureau of Investigation*

A-1. September 12, 2001

Permit me to make a suggestion about your inquiry related to the hijacking of the four commercial airliners, a suggestion which your Bureau has probably already considered. But I offer it, just in case it has not been thought of.

It seems to me possible that additional planes may have been targeted by the group responsible for the hijacking yesterday -- but, for one reason or another, those planes were not used. I would check, therefore, to see what planes from the same airports of origin (or nearby), and about the same time, might have been cancelled. The prospective passenger list for those planes could then be checked carefully. I would also check similar planes, which did fly -- planes which had three or four or five men fail to make the flight (because of an accident en route, or second thoughts, or whatever).

This line of inquiry might possibly turn up names of people who did survive the plot and who might be readily available in this country.

A-2. September 13, 2001

I should like to add to the suggestions I made yesterday about your hijacking inquiry. Again, I suspect that you have already thought of this.

The records of American and United Airlines might usefully be checked to discover who had, at any time, made reservations on the four fatal flights -- and what the circumstances were of those who, for any reason, did not fly on those planes last Tuesday morning.

In short, is it not highly unlikely that everyone who was ever part of the group destined for Tuesday's missions actually ended up on one of the four fatal flights?

A-3. September 17, 2001

I supplement hereby my memoranda to you of September 12 and 13 about the inquiry related to the hijacking last week of the four commercial airliners. Again, I suspect that you have anticipated the following suggestions:

The records of American and United Airlines might usefully be checked to discover who had, in recent months, made reservations for or flown on the same flights which eventually proved to be fatal flights. It

is possible, that is, that “test runs” were made to see how things were done on those flights. It is also possible that not all those involved in the plot who can be identified as having been on the “test runs” were also on the fatal flights -- and those additional passengers might be worth talking with. In addition, innocent passengers on those “test runs” might have noticed odd conduct worth looking into.

I continue to believe that various people might have indicated, before last week, their involvement in this sad matter.

B. Talks for Students by George Anastaplo

B-1. A Second Pearl Harbor? Let's Be Serious¹

September 12, 2001

Imagine men in a cavelike underground dwelling . . . The men have been chained foot and neck since childhood. The chains keep them in place and prevent them from turning their heads, so that they can only see forward. . . . Do you think such prisoners would ever see anything of themselves or each other except their shadows thrown on the facing wall of the cave by the fire burning at a distance above and behind them.

– Socrates²

I.

Constitutionalism, I have suggested, is an organized shrewdness in managing the affairs of a community. It is, to a considerable extent, the “institutionalization” of prudence, even though prudence includes

1. This talk was given in a Constitutional Law class, The School of Law, Loyola University, Chicago, Illinois, September 12, 2001. See, for critical questions confronting us, *infra* notes 151, 301.

2. PLATO, REPUBLIC 514A-B.

knowing when to modify, if not even to circumvent, institutional arrangements.³

My remarks today are prompted by the gripping events yesterday in New York City, Washington D.C., and Pennsylvania -- and even more by the immediate nationwide responses to those events. How should such highly publicized events be understood and responded to? What is a properly proportionate response to indefensible actions which are much more the conduct of the weak than of the strong?

II.

It is highly desirable, when assessing and responding to traumatic events, to be what is today called "realistic," both about the damage suffered and about the dangers faced.

As to the damage: the kind of disaster witnessed in New York City can happen any day, because of routine air traffic over our cities. The casualties suffered and the property destroyed can be massive -- and, as such, they can be sobering, even when caused by natural disasters such as tornados and earthquakes.

Repeated comparisons were made yesterday to the 1941 Pearl Harbor attack.⁴ There was something of the surprise of Pearl Harbor, with evidently even more casualties this time. But much of our Pacific Fleet was lost at Pearl Harbor, and the country seemed to be seriously weakened in the short-term as it faced an enemy with substantial resources, an enemy whose principal ally had already conquered much of Europe. That was hardly the situation yesterday, however distressed and infuriated our responses were bound to be because of the malice exhibited by the attackers and by the massive damage suffered.

It is not surprising, in any event, that the afflictions of the moment are dramatized, especially when we are inundated by the waves of images provided us by our electronic media.⁵

3. See, on a proper constitutionalism as the "institutionalization" of prudence, GEORGE ANASTAPLO, *THE CONSTITUTION OF 1787: A COMMENTARY* (Johns Hopkins University Press 1989). See also *infra* note 56.

4. See, on the Pearl Harbor attack, George Anastaplo, *On Freedom: Explorations*, 17 OKLA. CITY U. L. REV. 465, 645 (1992).

5. See, on the case for abolishing broadcast television in the United States, GEORGE ANASTAPLO, *THE AMERICAN MORALIST: ON LAW, ETHICS, AND GOVERNMENT* 245 (Ohio University Press 1992). See also *infra* note 159.

III.

Shortly after I reached my office here at the law school, at midmorning yesterday, I received calls from men on both the West Coast and the East Coast. (One is a liberal, the other a conservative.) Both of them considered our world radically transformed because of what had happened.

I considered myself obliged to dissent from their dire assessments, pointing out, for example, that the fact that I could receive their telephone calls suggested that our overall system was pretty much working as it had been. I also argued that the shutting down of institutions nationwide, which was just beginning (and which included the Water Tower Campus of Loyola), was excessive, if intended as other than a show of sympathy (such as the flags flying at half-mast today).

I pointed out as well that it was virtually certain that the men involved in these atrocities had concentrated their efforts, that they did not have either the numbers or the resources to strike immediately anywhere else in the country in like manner. It was possible, I added, that one or two more airliners had been targeted by them.⁶

It was obvious that two things had been critical for the assailants: a willingness (if not eagerness) to die in their attempts, and an ability to steer hijacked airplanes to their designated targets. It seemed likely, very early yesterday, that no serious weapons had been needed by the hijackers. (I have myself routinely carried a pocketknife on to airliners.) Also needed was the usual passivity of airline passengers and crew who must have considered this no more than a "routine" hijacking. (I happened, last week in a class here at the law school, to deplore airline passenger passivity, following upon what I had observed during a late August flight to San Francisco.⁷)

The shut-down response to the danger nationwide that we are witnessing, understandable though it is, may cause more total material damage (in the economic sense) than what has happened in New York and Washington. Certainly, an excessive response in the days and weeks

6. See, for my memorandum of September 12, 2001, to the Federal Bureau of Investigation, Memorandum A-1 of this Collection.

7. This passivity had been exhibited also by an airline steward (on this August 2001 flight) whom I had questioned about why more than a hundred passengers should have to pull down their shades to block out the sunlight so that some silly "shorts" and commercials could be shown which very few watched. Almost everyone else involved readily succumbed to "following orders." Compare *infra* notes 66 and 191. Compare also *infra* note 30.

ahead can be far more damaging materially, perhaps even psychically as well.

IV.

Care must be taken in these situations to avoid the temptation of self-dramatization. A peculiar feature of all of this, perhaps symptomatic of the national spirit these days, was the way that the President of the United States was himself moved around the country yesterday.

Did he or his guardians really believe that he was in personal danger -- or that he could not readily learn, wherever he was, what was going on? First, he was taken from Florida to an Air Force base in Louisiana, then to a highly secure command center in Omaha, before he could be returned to Washington.

There was about all this something immature, if not even unseemly. Had the President's advisors, as well as the public at large, seen too many disaster films? (I was reminded of what had seemed to me at the time the excessive response to the Cuban Missile Crisis.⁸) There is talk that Air Force One was also "targeted" by the hijackers -- but it is hard to imagine how such an assignment could have been carried out. If the President's guardians "had" to be so apprehensive, what have the people at large been told thereby about their own safety as airline passengers, as occupants of tall buildings, and as members of large crowds?

V.

Indicative of the problems I am touching upon is the language routinely used yesterday, both by political leaders and by media people.

I have already referred to the "Pearl Harbor" talk. Similar to this was the insistence that we are "at war." But are we really any more so than we were the day before yesterday? Also dubious in these circumstances was the promise by Congressional leaders that the Congress would "unite behind the President." This is not sound Constitutional doctrine, considering the fact that the ultimate supervision of relations among the branches of our national government is assigned by the People to Congress, not to the President or to the Courts.⁹

8. See GEORGE ANASTAPLO, *HUMAN BEING AND CITIZEN: ESSAYS ON VIRTUE, FREEDOM, AND THE COMMON GOOD* 58, 154, 169, 257 (Swallow Press 1957).

9. See, e.g., Letter C-26 of this Collection. See, on legislative supremacy, ANASTAPLO, *THE CONSTITUTION OF 1787* at 332 (Index). See also *infra* note 11.

Then there was the insistence that the attacks had been "cowardly." That is hardly the term to be used about fanatics determined to die for their cause, however questionable that cause may be. It makes far more sense to recognize them as insane (although perhaps not in the clinical sense).

Also misused was the term "tragedy." This may be related to the distorted appetite we have these days for entertainment and welcomed distractions, an appetite which keeps us from distinguishing tragedy from disasters (which tend, unlike tragedies, to be meaningless).

Indicative of how insane these monstrous attacks were is the significant harm that has almost certainly been done to the long-term cause of the perpetrators, whatever that cause may turn out to be. The justice that there may indeed be to their cause will be harder for Americans to recognize for years to come because of yesterday's vicious assaults.¹⁰

VI.

It should be understood, of course, that the organizers of these attacks and any knowing supporters of them should be severely dealt with -- if they can be located. It is likely, in the circumstances, that it will be revealed, sooner rather than later, who did what and how.

Once the facts are known, the proper response should be evident. If any government was involved, it will simply have to be removed, one way or another. How a great power is not to act in these matters can be seen in our acquiescence, a generation ago, in the year-long holding of American diplomats in Tehran as hostages. An ultimatum should have been immediately issued on that occasion -- and acted upon firmly (even at the risk of harming the hostages) if the Iranian government did not respond properly.¹¹

10. See for my 1991 argument (in effect) about the inadvisability of continuing to station American troops in Saudi Arabia (evidently one of the grievances of the September 11th perpetrators), Anastaplo, *On Freedom*, at 626; *infra* note 44. See also Section V of Talk B-2 of this Collection.

11. I believed then that the government in Tehran could be forced to do the right thing. I had occasion to say, to a conservative audience in 1988 after the Iran arms-Contra aid shenanigans had been exposed:

The Reagan Administration came to power in 1981 in part because of the dissatisfaction that various conservatives promoted with the Carter Administration policy toward Iran and the Embassy hostages held there. Then we learned in 1986 of our disgraceful dealings with the Ayatollah's regime,

It should be evident, by the way, that missile shields and the like (including heightened security at airports and in government and other prominent buildings) can do little to thwart attacks based, as these were, upon relatively primitive means.¹² (Whether the airliner cockpit can be safely sealed off from the passenger cabin will no doubt be considered.) Certainly, future airliner hijackers, whatever their purposes, can expect to encounter violent resistance from passengers. The more serious attacks we can now anticipate, in our circumstances, remain biological and chemical, not assaults with crashing airplanes or with explosives -- and, against these biological and chemical attacks, worldwide intelligence agencies and the stockpiling of medical supplies by local governments are likely to be far more useful than missile shields and our own horrendous weapons of mass destruction.¹³

VII.

That which makes us as vulnerable as we can be, in any particular situation, to irrational attacks is related to the tremendous resources we have (because of our efficient technology) which make such attacks relatively trivial in their long-term material consequences. Underlying our unsettling sense of vulnerability is the insubstantiality of the images upon which we rely in our effort to understand who we are and what can be expected to happen to us. The shock felt in many quarters today testifies to how strong and hence sheltered we have long been -- and, in fact, continue to be, however severe the temporary shock expressed nationwide.

evidently with the very people who had been implicated in the murder of scores of sleeping Marines in their Beirut barracks.

I must say that the only missiles I would have provided *those* people would have been launched from a firing range [if the Embassy hostages were not released upon our demand], not delivered by cargo planes. If Mr. Carter in office had himself done what was later done by Mr. Reagan, evidently with the approval of Mr. Bush [his Vice President], his impeachment would have been demanded by conservatives. Even more serious has been the willingness of the current [Reagan] administration to circumvent Congress in its clandestine "appropriation" of money for the Contras.

ANASTAPLO, *THE AMERICAN MORALIST*, *supra* note 5, at 112. See also *supra* note 9.

12. See, on the problems with missile shields, Letter C-9 of this Collection. See also the text at note 164 of this Collection.

13. See, on the limits of intelligence services, Anastaplo, *Clausewitz and Intelligence*, 16 *TEACHING POLITICAL SCIENCE* 77 (1989). See also *Afterword to Appendix 3* of this Collection.

I have, on many occasions, flown from Chicago-area airports in private planes. There is no way that such planes, even several at a time, can be kept from being loaded up with explosives and flown into "landmark" buildings or crowded stadia in this city -- unless, of course, all such planes are grounded altogether or are inspected before each take-off or are continually monitored in-flight by fighter patrols -- all of which measures are highly unlikely to be done in this country for years at a time. Then, of course, there are always rental trucks and easily obtained fertilizer to contend with.¹⁴

No doubt, there are proper, and largely effective, precautions to be taken in these matters. But the most critical protection depends upon a sound political order, which includes a proper moral training for the community at large, a prudent watchfulness, and civilized discourse worldwide.¹⁵

I mention, in passing, that it has long seemed to me that the air shows we permit every summer along the Chicago Lakefront are themselves potentially lethal on a large scale. It is somewhat reassuring that these exhibitions are usually held on weekends, when our tallest office buildings are mostly empty. But the pilots do practice during the week -- and, I have argued, one of those jet fighters, if momentarily out of control, could end up plowing into a building like a locomotive. Even on weekends, moreover, a plane could accidentally explode into the thousands on a beach watching them.¹⁶

Prudence, I suggest in the light of yesterday's assaults, requires an awareness both of the risks to be encountered because of the lives we do want to live and of the limitations on our control of events to be expected thereby, especially those inherent limitations which depend upon our mortality.¹⁷ After all, we are, no matter what we try to do, all ultimately vulnerable: mortality means that if one thing does not get you, something else will. Constitutionalism -- an ordered and known way of using the powers we want governments to have -- makes it more likely than it would otherwise be that we will make the best use in our circumstances

14. When grievances are permitted to fester, means will be found by the more spirited (not necessarily the wisest) to strike out at "symbols" of authority. See, e.g., Letter C-52 of this Collection.

15. It remains to be seen what the American determination to go to war against Iraq in 2003, despite serious reservations worldwide among our longtime associates, does to the effectiveness of civil discourse in international relations. See, e.g., *infra* note 45.

16. See Letter C-3 of this Collection.

17. See, on death and dying, ANASTAPLO, HUMAN BEING AND CITIZEN, *supra* note 8, at 214. See also the text accompanying note 176 of this Collection.

of the kind of life we obviously want. Vital to this is that sense of proportion upon which depends the virtue of justice, an informed and disciplined watchfulness, and hence an enduring statesmanship.

B-2. One Month Later: September 11th Further Considered¹⁸

October 10, 2001

Life is a bridge. You pass over it
but build no houses on it.

— Jesus¹⁹

I.

How do things look one month after the monstrous attacks of September 11, 2001? I continue to believe that, in the long run, things in this country will become much as they had been before that fateful day. This is partly because much of what we are enduring is of our own making -- and, as such, is largely uncalled for.

We heard much talk a month ago — somewhat imprecise talk, perhaps — about being at war. Now, with the steady bombardment of targets in Afghanistan, which commenced earlier this week, we are indeed waging war. And yet the Constitutionalist must notice that there has not been the Congressional declaration of war that seems to be required by the Constitution. But then, we have dispensed with declarations of war since December 1941. The closest we have come since then to a proper declaration followed upon the debates in Congress leading up to escalation of the Gulf War. (Earlier there had been the Gulf of Tonkin Resolution dubiously connected with our Vietnam involvement. And even earlier there was a United Nations Security Council authorization to go to the aid of South Korea.²⁰)

We hear calls for more bombardment elsewhere, with Iraq a prime candidate for some. But there is hardly anything said these days about

18. This talk was given in a Constitutional Law class, The School of Law, Loyola University of Chicago, Chicago, Illinois, October 10, 2001.

19. This saying, attributed to Jesus, is said to be inscribed in the arabesques of a Muslim mosque. See THE ZONDERMAN PICTORIAL BIBLE DICTIONARY 850-51 (1963).

20. South Korea was invaded by the North Korean army in June 1950. See *infra* note 55.

any declaration of war before we go even further than we already have.²¹ It should be noticed that to require a declaration of war is *not* to suggest that going to war is improper. Indeed, any government elsewhere *should* be vulnerable if it was knowingly involved in the September 11th attacks in New York and Washington. But a respect for constitutional proprieties does tend to encourage self-discipline and clear-headedness.

A respect for constitutionalism may also take the form of a concern for the authority and justification for various "internal security" measures advocated these days by the national administration. It is highly likely that many of the currently proposed measures will be enacted by Congress. But the risk here can be limited if the emergency measures adopted in these circumstances are of limited duration, subject to renewal by Congress two or three years from now.²²

II.

The oddest aspect of what we have witnessed during the past month is the apprehensiveness abroad in the land. (This is to be distinguished from, although it may be influenced by, the disheartening effect of the mindless slaughter of September 11th.) This has been contributed to, sometimes inadvertently, by various governmental bodies in this country and by the mass media (which are "naturally" inclined, it can sometimes seem, toward the apocalyptic, as may be seen in the subjects routinely featured in the ten p.m. local news).

Thus, a distinguished University of Chicago leader could say publicly last Thursday (October 4, 2001), "We live in a time of peril." This may have long been true, of course, but it was evidently offered by him as something new. And a national magazine can speak of the September 11th attacks as having been productive of the "most horrific story in our magazine's history."²³ Perhaps the qualification should have been added, "and in our neighborhood." Certainly, one does not have to go very far back in history -- for example, to what happened a few years ago in Rwanda -- in order to find even more "horrific" events.²⁴

There is something rather unbecoming in our current apprehensiveness. That itself should be a sufficient indictment of how

21. *Cp., e.g.*, Letter C-21 of this Collection.

22. *See, e.g.*, Letter C-20 of this Collection.

23. Nora McAniff, *Inside People*, PEOPLE, Oct. 1, 2001, at 7.

24. The massacres in that part of the world, by the hundreds of thousands if not even by the millions, evidently continue. *See also infra* note 301.

we have come to feel and (even more important) to think about our "situation." Others of a more "practical" turn of mind can notice the economic consequences of our apprehensiveness. This is most evident perhaps in what has happened to airline and related revenues. It can also be seen in other dampening of productive activity, as well as in excessive expenditures for "security," resources which can be put to far more productive uses.

Such apprehensiveness is remarkably self-centered and, as such, quite unrealistic (if not even somewhat sentimental). In such circumstances, the facts may not matter much, at least for awhile. The fact is, for example, that many more people were killed "on the ground" in New York City than in the hijacked airliners. The devastation caused by the airliners, and much more besides, could have followed upon an earthquake in any of our large cities.²⁵ And, as I have pointed out on several occasions, we do not adopt the measures that might be taken to save many more lives annually in this country than were lost so dramatically in New York City on September 11th.²⁶

A critical difference, it should at once be conceded, is the deliberateness, and hence malice, of the perpetrators of the September 11th attacks. But their ill will, evil though it may be, does not increase our vulnerability as much as we may "like" to believe it does. After all, how many hostile, suicidal enemies do we really *think* there are in this country? One can be reminded here of the Red Scares of the 1920s, and of the late 1940s and early 1950s.²⁷ This is not to suggest that the Soviet Union was not formidable then, especially since it did possess readily deliverable nuclear weapons. But the fear of agents of the Soviet Union in this country was always grossly exaggerated, contributing to substantial self-inflicted damage among us.²⁸ A greater respect for constitutionalism, which is hard to insist upon in troubled times, might have helped.

25. The horrendous Lisbon earthquake of 1755 reminds us of the sometimes irresistible forces of Nature.

26. See, e.g., Section VII of Talk B-2 of this Collection.

27. See, e.g., GEORGE ANASTAPLO, *ON TRIAL: FROM ADAM & EVE TO O.J. SIMPSON* 409 (Lexington Books 2004).

28. The costs, financial as well as psychic, of our Cold War loyalty and security programs were enormous, with remarkably little in the way of accomplishments to show for them. See, on the follies of the Vietnam War (a manifestation of woefully misdirected fearfulness), ANASTAPLO, *THE AMERICAN MORALIST*, *supra* note 5, at 623 (index). See also *infra* note 168.

III.

The sense of mortality, and hence of vulnerability, can generate a sense of adventure. But it is well to remind ourselves that our skills, social organization, and resources permit us to live healthier, much longer, and much more secure lives than our ancestors (here or abroad) ever could.²⁹

It should be noticed, moreover, that lapses in the airport security measures in place on September 11th did *not* contribute to the catastrophe. That is, the four or five men on each of the hijacked airliners were permitted there according to the rules -- and it is not likely that any workable rules in the future will prevent such a combination of malicious men. The "weapons" available to them a month ago will have their counterparts in what will be available to such men hereafter.

Even so, it is highly unlikely -- I dare say, virtually impossible -- that such men can soon do again in this country what was done on September 11th. They could count upon something that their successors will not have, passive fellow-passengers. Future hijackers (even those with much more modest objectives than the September 11th mass murderers) will face much greater difficulties, especially if cockpit doors are properly secured. Indeed, the future may have already been seen in what seems to have happened that day on the fourth hijacked plane, when *its* passengers evidently learned what had been happening elsewhere.³⁰

In a sense, then, the series of events (with virtually everything happening "just right" for the hijackers) was something of a fluke. This can mean that much of what we are doing now is another instance of preparing to "fight the last war." This also means, among other things, that most, if not virtually all, of the threats coming from terrorist spokesmen overseas these days are empty.³¹ Again and again, they exhibit in their actions and in their talk the condition of the weak, not of the strong, which was true also of the September 11th attacks.

I presume to offer these and like judgments for the benefit of those of you who will find yourselves someday in posts which call for an

29. See, e.g., D. Gale Johnson, *Population, Food, and Knowledge*, 90 *AMERICAN ECONOMIC REVIEW* 1 (2000); George Anastaplo, *Law, Judges, and the Principles of Regimes: Explorations*, 70 *TENN. L. REV.* 455, 539-40 n.333. (I am indebted to Chauncy D. Harris, of the University of Chicago, for the D. Gale Johnson citation.)

30. This is the plane, evidently bound for Washington D.C., which crashed in Pennsylvania. See *supra* note 7.

31. This is not to deny that people can be wantonly killed by them here and there from time to time. See, e.g., Letter C-52 of this Collection.

intelligent and imaginative use of the powers with which you will be entrusted as guardians of your fellow citizens.

IV.

It is useful in these situations to try to be clear about what the root causes of the principal problem is. Why, for example, is the United States hated as much as it evidently is in some quarters?³²

Particular foreign policy decisions have probably contributed to this hatred, and I will say something about those further on. But at the heart of the matter, it seems to me, is that the United States is the preeminent representative in the world today of the political, spiritual, and material aspirations of modernity. As such, the United States, with its great wealth, unprecedented power, and general attractiveness, can arouse both envy and fear in some quarters.³³

Modernity does threaten some ways of life, and especially the ways of life of those who want to retain the old constraints even as they take advantage of modern technology. It should be noticed, if only in passing here, that modernity does threaten as well features of our own way of life that should be cherished.³⁴ Whether those so fearful of the United States can ever be led to see us properly remains to be seen.

Be that as it may, we should take care lest we become infected by their fearfulness. One of our assets is that there are many among us available to do what needs to be done.³⁵ A recognition of this should help us moderate the excessive, and somewhat self-intimidating, apprehensiveness we permit to be exhibited about the safety of the President and Vice-President. A proper Constitutionalism recognizes that the President of the United States is far less important, far less vital, than we have come to regard him, no matter what his talent or limitations as a human being may be.³⁶

32. This country, or at least aspects of it, can be routinely condemned as "the Great Satan" in places such as Iran.

33. In short, the United States can be regarded, and even dreaded, as the likely Future if things continue as they have during the past century.

34. See, e.g., *supra* note 5.

35. For my generation, the transition from the almost mythic Franklin D. Roosevelt to the apparently prosaic Harry S. Truman proved most revealing.

36. A distant reflection of this attitude was seen when Greyhound Bus Company executives shut down all service nationwide for six hours on October 3, 2001 because of an attack by a single insane passenger on a bus driver in Tennessee.

Critical to what the United States is, and how it has come to be regarded in some quarters, is, of course, its intimate relation with Israel, which is the closest to an American-style regime in the Middle East. The perennial vulnerability of the Israelis is dramatized by the September 11th attacks here. It is now more likely than it has ever been that measures will be considered in Israel which will insure that that country will be predominantly, if not virtually exclusively, Jewish in the coming decades. The Israelis will confront in any such effort serious constitutional issues that should be approached in a compassionate and fair-minded way, even as firm policies are developed. It is highly unlikely that the American policy of toleration and assimilation can be depended upon there with respect to the Arabs of that region. The Roman, not the American, Republic might have to be looked to for guidance in these matters by the Israelis.³⁷

It is to be expected that some in this country will insist that the United States not continue as the primary protector of Israel in the Middle East. But, it should be recognized, the destruction of Israel, which could follow if that country should be abandoned by the United States, would have a profoundly demoralizing effect in this country, partly because of the significant contributions that Jews have long made to our cultural (including spiritual), intellectual, and commercial life.

Even more important, however, is the recognition of the extent to which the integrity of the West depends upon the fate of Israel. Israel is, in large part, the result of the Second World War. It is the humane redemption for what the West did *not* do in preventing, within its own ranks, the slaughter of millions of Jews by one of the most advanced countries in the West with the help of a score and more of other countries. Jews should be able to rest secure in such a tiny bit of land as they now have -- a strip of land which has "always" meant so much to them. Of course, it is said that that land means much to Arabs as well, or at least to some of them. But the Arabs do have, in their sole control, incomparably more land and resources than the Jews are desperately trying to develop for themselves in the one place on earth said to have been promised to them by God Himself.³⁸

37. See, e.g., Section IX of Talk B-6 of this Collection.

38. See, on the case for supporting Israel, ANASTAPLO, HUMAN BEING AND CITIZEN, *supra* note 8, at 155.

One must wonder whether there are any self-respecting leaders in the Arabic-speaking world who might develop observations along these lines for their people.³⁹

V.

All this is not to deny that there has been conduct by the United States, as well as by Israel, which has not been what it should have been. Grievances can follow upon such conduct, and they can fester.⁴⁰

There was, for example, the abandonment of the Afghans in their miserable condition once we had helped them repel the Russians. We evidently will try to do better next time.⁴¹

There is also the continuing campaign against Iraq, especially the program of sanctions which are *said* to have contributed to the death of hundreds of thousands of children in a country already suffering from oppressive rulers.⁴² On the other hand, is it not clear that no unsupervised development by the Iraqis of biological and chemical weapons can be permitted by the world community (or by Israel or the United States, the prime potential targets for such weapons)? It should go without saying that the possession of nuclear weapons by any irresponsible power anywhere should not be permitted.⁴³

Then there is the evidently troublesome provocation represented by American forces being stationed on the "sacred soil" of Saudi Arabia. More troublesome for me, however, is a concern I expressed at the time of the Gulf War. I did not see the need, after that war, for the continued dependence by the Saudis and the Kuwaitis upon the United States as

39. See, e.g., Letter C-19 of this Collection. See also Letter C-23 of this Collection.

40. We were exposed, during a visit in 1989 to Israel, to a far less lethal Intifada than that which has erupted in recent years. One could sense even then the deep resentment of those who were thus striking out in a somewhat futile (and even self-destructive) fashion. See, e.g., Letter C-52 of this Collection. See also *infra* note 287.

41. Some have complained that our long-term efforts in and around Iraq will keep us from devoting to Afghanistan the attention and resources it will need to become properly stabilized. See, for reservations about American military policies with respect to countries such as Afghanistan, John J. Mearsheimer, *Guns Won't Win the Afghan War*, N. Y. TIMES, Nov. 4, 2001, at 13.

42. See, e.g., Letter C-5 of this Collection.

43. It is curious (if not even grimly comic) how much our current National Administration has stretched the evidence (as in the President's 2003 State of the Union Address) in order to magnify Iraq as a nuclear threat (despite vigorous Iraqi denials) even as it stoutly refuses to believe the North Korean government when it insists that it will soon have, if it does not already have, deliverable nuclear weapons. See *infra* note 167. See also Section X of Talk B-13 of this Collection.

their defender against Iraq; those two people should be able, with the men and resources they have, to mount a proper defense of their own against Iraq.⁴⁴

However, all this may be, it does seem that the “unilateralism” (a form of isolationism), which seemed to be espoused by the current administration in Washington earlier this year, has had to be abandoned. Whether the policy which replaces it (a more aggressive unilateralism) will be more prescient remains to be seen.⁴⁵

VI.

Also to be seen is just how responsible Islam itself should be considered to be for the recent monstrosities. Dubious aspects of Islam in practice may be seen not only in the Taliban regime in Afghanistan but also in our longtime ally, Saudi Arabia, evidently the principal sponsor heretofore of the Taliban.

There is in Islam a spirited element which can remind the observer of various ancient peoples in the Western world and of some North American Indian tribes.⁴⁶ That spiritedness can sometimes be perverted, as may be seen in those responsible for the Oklahoma City bombing. Is Islam today peculiarly susceptible to the kind of abnormality seen in suicidal missions? (It might be useful to reconsider here the mentality of the Japanese kamikaze pilots of the Second World War, another instance of the desperation that can be resorted to by the spirited in their weakness.⁴⁷ It might also be useful to remind ourselves of the appetite for martyrdom that some early Christians seem to have had.)

Does Islam need the kind of Enlightenment movement which Christendom developed during the past five centuries? Is such a movement seen in some of the efforts of the modernists among Muslims today? (The patron saint of this development in Islam could be said to be

44. See, e.g., *supra* note 10. Americans have been stationed in Saudi Arabia since the Second World War. Thus, my own last “permanent” air base after the War was at Dharhan, Saudi Arabia. The food in the officers’ mess was excellent (because of our Italian prisoners-of-war); the daytime heat (even in the winter) could be oppressive; and the local women were to be left strictly alone.

45. See, on how even the most powerful must rely upon a fragile world order, Letter C-44 of this Collection. See also *supra* note 15.

46. See, on the North American Indians, GEORGE ANASTAPLO, *BUT NOT PHILOSOPHY: SEVEN INTRODUCTIONS TO NON-WESTERN THOUGHT* 225 (Rowman & Littlefield 2002).

47. See, e.g., Letter C-52 of this Collection.

Alfarabi.⁴⁸) Should an Enlightenment movement among Muslims include questioning, however carefully, of some of the claims of the Prophet? (Cautions are provided here by the experiences of the author of *Satanic Verses* over the past decade.⁴⁹)

The most remarkable feature of the September 11th attacks -- aside, of course, from the savagery of what was done -- is that so many people (perhaps thirty or forty, if not more) should have been able to develop their scheme for as long as they evidently did (perhaps a year or two, if not longer), without any significant hint of it becoming apparent to the American society in which they very much lived. This suggests that the kind of bonds holding these people together is critically different from what we are accustomed to: they live in "a different world," for good perhaps as well as obviously for ill.⁵⁰

Insofar as critical elements in Islam contribute to the organized savagery that we have seen, it does seem to be the duty of thoughtful Muslims everywhere to make clear to their people that this sort of conduct is fundamentally at odds with the best of Islam.⁵¹ This conduct can remind us of the determined self-delusion of the perpetrators of the 1993 Waco debacle. Responses to such self-destructive tendencies sometimes have to include questioning the validity of what is believed by the victims of these delusions, both about the divine and about religious duties.

It has been frequently remarked that the suicidal bombers of September 11th are surprisingly different, in background and in social condition, from the youngsters recruited heretofore from the Palestinian Arabs for suicidal missions in Israel. I have referred to the kamikaze pilots as precursors of the September 11th actors. But perhaps closer at hand for us to ponder are some of the more irresponsible protestors in the 1960s and 1970s in this country against our dubious involvement in Vietnam. They, too, tended to be middle-class, "educated," fanatical in their "ideology," resentful of conventional authority, and eager for display. However cunning they could be at times, they could also be quite deficient in prudential judgment, something that could distress their allies even more than their opponents.⁵²

48. See, e.g., Christopher A. Colmo, *BREAKING WITH ATHENS: ALFARABI AS FOUNDER* (Lexington Books, forthcoming).

49. See, e.g., *ANASTAPLO, BUT NOT PHILOSOPHY*, *supra* note 46, at 205-07 n.45.

50. But consider the implication of Letter C-23 of this Collection.

51. See, e.g., Letter C-19 of this Collection.

52. See, e.g., *ANASTAPLO, ON TRIAL*, *supra* note 27, at 327.

VII.

What now, consistent with the constitutionalism to which we are properly dedicated, should be done? A recapitulation of what has been said on this occasion should be useful here.

Obviously, the surviving perpetrators of the September 11th assaults have to be hunted down. How much large-scale serial bombardments in a country such as Afghanistan contribute to this objective remains to be seen. And, perhaps more important here, any government anywhere which knowingly contributed to those assaults simply has to go -- and this, a Great Power, should be able to insist upon with effect.

Sensible security measures have to be employed in this country.⁵³ But much of what we have been doing the past month, including the heightened emphasis placed upon the safety of our President and Vice President, is not only quite wasteful (diverting resources from much more effective productive measures); it also feeds an undue apprehensiveness. The typical American remains at far greater risk from automobile traffic and from crime in the streets, as well as from what he eats, drinks and smokes, than he is from some "fanatical Arab" out to "get him."

On the other hand, we (and our allies everywhere) should be determined to destroy everywhere any productive facilities which can reasonably be suspected of being destined to put weapons of mass destruction (including biological and nuclear weapons) in the hands of irresponsible people, including rogue governments. Reasonableness here should include an informed awareness of the technical limitations confronted by would-be malefactors. (We can be reminded here of the service to all mankind that the Israelis are widely believed to have performed when they demolished, a generation ago, the incipient nuclear-weapons facilities in Iraq.⁵⁴)

At the heart of our current efforts may be the question whether we are truly engaged in a war. If we are, why should Congress not insist on its constitutional prerogatives and duties? Or should we consider ourselves to be involved instead in a police action designed to bring mass murderers to justice? If so, then more should be made of a generally recognized international authority, such as that of the United Nations, directing proper police action.⁵⁵

53. See, e.g., Part A of this Collection.

54. See, on the appropriate cautions here, Letter C-18 of this Collection.

55. It is this which provided at least the veneer of constitutional legitimacy to our

We should be careful, in any event, about the efforts being made to exploit, for domestic political purposes, the efforts of the United States at this time. There is, in much of what is being said and done these days, a substantial streak of political posing, especially in the way both warnings and reassurances are crafted. A "mandate" for people of limited political resources is being conjured up, it can sometimes seem.

We should also be careful to reduce our dependence upon oil -- not just upon that Middle Eastern oil which has distorted our policy for years in that part of the world. Both much-improved efficiency and an accelerated development of solar and wind power do seem to be called for, as well as treating oil as simply another commodity in the world market.

Also in need of improvement are the opinions that all too many people worldwide have about the nature of the divine and of revelation. It is not Islam alone that is in need of serious challenge here. And yet, it should at once be added, rampant secularism can promote, or at least permit, that extremism which may be seen in an addiction to relativism and hedonism.

This kind of caution can remind us of something that lawyers should always be aware of, that there is usually something to be said for "the other side" in any serious controversy. It is still another aspect of our mortality that the cures developed for one set of ills can promote other (sometimes even worse) ills. In short, it is difficult, in these matters, to overestimate the importance of prudence.⁵⁶

June 1950 Korean Intervention, which could then be identified as a "police action." It is likely that considerable authority for police action, abroad as well as at home, has long been provided to the Executive by Congress. See the text accompanying note 3 of this Collection.

56. See, on prudence, GEORGE ANASTAPLO, ABRAHAM LINCOLN: A CONSTITUTIONAL BIOGRAPHY (more aptly titled, THOUGHTS ON ABRAHAM LINCOLN) 368 (index) (Rowman & Littlefield 1999); ANASTAPLO, THE AMERICAN MORALIST, *supra* note 5, at 618 (index); ANASTAPLO, BUT NOT PHILOSOPHY, *supra* note 46, at 390 (index). See also *supra* note 3, *infra* notes 62, 197, 211; Letter C-16 of this Collection.