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Civil Liberties, Civil Society and Civility by Douglas J. Feith

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Remarks at John F. Kennedy School of Government

Harvard University

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Good evening. It's good to be back at Harvard. As you've heard, I went to school here, at the College. I want to reassure the students in the audience: a Harvard degree does not have to be a liability. In conservative political circles, I've found, it may require some explaining, but many conservatives are open-minded and others are forgiving. As an example of this generosity of spirit, I'll tell you a true story: Nearly thirty years ago, I had a piece of foreign policy juvenalia published in the journal of a conservative think tank. The biographical squib mentioned my recent college degree. A reader sent me a fan letter, asserting as a compliment that I must have slept through my political science courses at Harvard to have written so sensible an article. So much for right-wing humor. Actually, I stayed rather attentive in my government classes in college - without much ill effect. As it happens, some of what I read in a "gov" course on political philosophy has had some bearing on work I've done at the Pentagon, some of which I'll discuss this evening. Two concepts I studied here are particularly relevant to the US strategy for the war on terrorism. The first is civil liberties, and how to think about the balance between individual freedom and the powers of government. The second is the local character of governmental



institutions, and whether they measure up to principles that are said to be universal.

As much civil liberty as possible

In the United States, national security refers to more than protecting territory or people. The United States is not just a country; it's a country that lives in a certain way. The word "American" proclaims not an ethnic identity, but an association with a community regulated by our Constitution. That's why, though one cannot instantly change one's ethnicity, millions of people have, by taking an oath, become not just American citizens, but Americans. All of this is to say that civil liberties are not just a feature of life here, they are what defines us as a nation. The civil liberties of the American people therefore are what we aim to secure when we work on national security policy. Part of my education here at Harvard was reading John Stuart Mill, who championed the ethical and practical benefits of liberal principles, principles that respect the worth of individuals and their equality under the law. In his writings, including his 1859 essay *On Liberty*, Mill argued that humane and sensible societies allow their people as much individual freedom as is consistent with "self-protection" or public safety. ¹ Much of what makes Americans happy - their political freedom, economic prosperity, domestic tranquility and opportunity to better themselves - derives from the liberal and democratic nature of our society and the degree of mutual trust - sometimes referred to as social capital - that such a society engenders. It's hard to overstate the moral and material benefits that are rooted in that social capital, in that trust, in our freedom.

9/11 and the War

This, we should all appreciate, is what's at stake in the war on terrorism. Beyond the cost in lives and property, the 9/11 attack - or rather our reaction to it - exposed a far-reaching element of the threat posed by terrorism: To protect ourselves physically, we might feel compelled to change fundamentally the way we live, sacrificing our society's openness for hoped-for safety. Because of our historical good fortune, we Americans enjoyed for a long time a high degree of public safety and so became accustomed to thinking that the liberal openness of our way of life is not only sacred but immutable. But a community's freedom depends on circumstances. Societies inevitably adjust to allow the state to fulfill its most basic duty: providing security. As noted, even such uncompromising champions of liberty as Mill bow to the exigencies of public safety. Our Constitution and the judges that interpret it often seem to be saying that our freedoms are absolute, but when danger becomes oppressive, people are wont to recall the quip that the Constitution

is not a suicide pact. In the immediate aftermath of 9/11, concerned that another attack may be in the works, our government took actions to eliminate vulnerabilities that the hijackers had turned to their advantage.

- We shut down air travel throughout the U.S. When it resumed, we intensified airport security measures and folks now have to remember to wear duly mended socks when they plan to fly. At the same time, the government restricted the issuance of visas, thus affecting not only the freedom of foreigners to travel, but the freedom of Americans to host them.
- And new legislation allowed intelligence and law enforcement agencies to share information more readily.

These were steps deemed prudent, indeed necessary, in the light of what we knew - and what we didn't know - at the time. My interest here is not to defend particular measures. Rather, it's to stress that, beyond the human and material costs it imposes, terrorism takes advantage of and thereby endangers the openness and trust that allow us to enjoy freedom and prosperity. If another 9/11 happened, especially an attack involving the use of nuclear or biological weapons, who could doubt that our society would respond by increasing further the powers of government, affecting our freedoms? As has happened over and over again for the last 35 years or so, since the era of airplane hijacking got into full swing, security measures that once seemed outrageous could over time become routine. Such thoughts weighed on President Bush and his advisers as they considered, in the period immediately after 9/11, how to prevent the next attack against the United States. If the strategy for preventing that next attack were to be solely or even primarily defensive, it would require a wholesale clamping down, not just at our borders but throughout the country. President Bush early on recognized that 9/11 was an act of war, not merely a law enforcement matter and that the enemy is not a single group, but a network of extremists and their state and non-state supporters. The President declared that our war aim is to defeat terrorism as a threat to our way of life as a free and open society. We could not achieve that aim - for we could not maintain a free and open society - with a solely defensive strategy. To preserve civil liberties, the President had to adopt a strategy of disrupting terrorist networks abroad, where they do much of their planning, recruiting and training. He had to adopt a strategy of initiative and offense. I put it this way: The President decided that, in dealing with the terrorists, he either had to change the way we live, or change the way they live. Taking the war to the enemy has been necessary, but not

sufficient. Many months ago, in one of his famous "snowflake" memoranda (which leaked to a newspaper), Secretary Rumsfeld asked: Are we capturing or killing terrorists faster than our enemies can recruit new terrorists? Now, the Secretary knows that attacking enemy networks keeps the terrorists off balance and can deprive them of what they need to operate. What the Secretary wanted to highlight was that such action cannot produce victory in the war so long as those networks can regenerate themselves. Countering Ideological Support for Terrorism To defeat our enemies in this war, we'll have to do more than disrupt and attack; we'll have to counter their ideology. It's the attractiveness of extremist ideology to certain segments of the Muslim world that motivates people to join or help the terrorist groups. As the 9/11 Commission noted, the US aim, in addition to attacking the terrorist groups, should be to "prevail[.] in the longer term over the ideology that gives rise to Islamist terrorism." **2** The first part of this "battle of ideas" is the effort to de-legitimize terrorism. The purposeful targeting of ordinary people going about their lives in offices, markets and such places is not a political method that deserves credit or pardon from decent people. This is what President Bush is driving at when he says that US policy aims to make terrorism like the slave trade, piracy, or genocide - activities that nobody who aspires to respectability can condone, much less support. It's an ambitious goal to change the way millions of people think. But it can be done. History yields examples of successful ideological campaigns. Particularly noteworthy, in my view, is Britain's effort in the 19 th century to suppress the international slave trade. It was a protracted, multifaceted, far-flung enterprise. The British Navy had a leading role, as did the Church. Journalists, diplomats and university figures all worked for the cause. The effort took more than fifty years, succeeding ultimately not only in suppressing to a large extent that sad commerce, but in de-legitimizing it. At the end of the 19 th century, the civilized world didn't justify or excuse the slave trade, as had commonly been done when the century began. The British effort changed the way millions of people thought, talked and acted. Britain's fight against the slave trade involved - in today's phrase - all instruments of national power. It used "hard" (that is, military) power and "soft." It tapped the energies of the government and of society at large. Similarly, non-governmental institutions today - universities, think tanks, other NGOs - have a role to play in the ideological struggle against terrorism. Such institutions can in various ways wage the battle of ideas in the war on terrorism more effectively than can our government. Government policy makers have the task of finding proper and effective means to encourage that effort. De-legitimizing terrorism is but one component of the strategy to counter ideological support for our extremist enemies. President Bush, in recent speeches has been emphasizing another: promotion of civil society, political freedom and self-government. As he said in his Second Inaugural address: The survival of

liberty in our land increasingly depends on the success of liberty in other lands. The best hope for peace in our world is the expansion of freedom in all the world. America's vital interests and our deepest beliefs are now one. This has produced controversy. I'll deal here with two lines of criticism that I find particularly interesting. One is that the President is too ambitious, in that he should not expect to be able to implant democracy in what is said to be unfertile soil. The other is that the President is not ambitious enough in pressing certain countries to implement principles of liberal democracy.

The Burkean Critique

The first line of criticism - that he is too sanguine about promoting democracy - might be labeled "Burkean," as in Edmund Burke, one of the philosophers to whom I was introduced here at Harvard. In college and since, I read and re-read his works with admiration and profit. Burke teaches that successful political institutions are rooted in local soil. They grow organically, as it were, out of the culture, situation and historical experience of particular people. Burke warns of the catastrophes that can result from arrogant rationalists using philosophical abstractions for the revolutionary remaking of societies. Burke's arguments have power not only because they are elegantly articulated, but because they were vindicated so bloodily in the French Revolution, in the course of which he wrote some of his greatest work, and then vindicated again repeatedly over the next two centuries in the Bolshevik Revolution and in other murderous projects of grand social engineering. If the test of a theory is that it predicts, then Burke's writings deserve high grades and careful consideration. I see President Bush's promotion of human freedom not as arrogance or naïve and rampant Wilsonianism. The President starts, I believe, from the well-grounded observation that societies with free political institutions provide their people with greater personal liberty and prosperity than do societies without such institutions. He observes that the rejection of tyranny and the aspiration for freedom are not peculiar to our particular culture. As he said in his Second Inaugural: "America will not pretend that jailed dissidents prefer their chains, or that women welcome humiliation and servitude, or that any human being aspires to live at the mercy of bullies." At the same time, the President has made a point of not urging, let alone imposing, American-style political institutions on other countries. He doesn't believe that there's a single model of democratic governance that can function everywhere. Actually, he has said the opposite: "As we watch and encourage reforms in the [Middle East], we are mindful that modernization is not the same as Westernization. Representative governments in the Middle East will reflect their own cultures. They will not, and should not, look like us." **3/** The President, I submit, is here voicing the modest

prudence of Burkean restraint.

Democracies on a Spectrum of Liberality

So we come to the second line of criticism - not that the Administration is trying to impose our ideas of democracy on unwilling or unready Afghans or Iraqis, but rather the opposite: that the Administration is tolerating political institutions in Afghanistan, Iraq and elsewhere that don't count as democratic because they don't measure up to American standards. The critics here commonly focus on the new Afghan Constitution and Iraq's interim constitution, known as the Transitional Administrative Law. Both refer to Islam as the state religion. Neither document, to be sure, would pass muster by US constitutional law standards. But are these freshly produced constitutions therefore undemocratic? Both documents state protections for rights of non-Muslims. The Afghan Constitution says that "Followers of other religions [other than Islam] are free to perform their religious rites within the limits of the provisions of law" and that the Afghan "state shall abide by . the Universal Declaration of Human Rights." **4/** The Iraqi interim constitution painstakingly balances Islam's official status with the rights of non-Muslims:

Islam is the official religion of the State and is to be considered a source of legislation. No law [may] contradict[.] the universally agreed tenets of Islam, the principles of democracy, or the [individual] rights cited in [the interim constitution]. [The interim constitution] guarantees the full religious rights of all individuals to freedom of religious belief and practice. **5/**

Among the individual rights referred to here are those in the following provision:

Each Iraqi has the right to freedom of thought, conscience, and religious belief and practice. Coercion in such matters shall be prohibited. **6/**

Are such provisions incompatible with a decent political order, with human freedom or with democracy? Before we answer, we should consider the rather wide spectrum of liberality across which are ranged the world's democratic countries. The more individualist democracies, generally the countries of "new settlement," are on the liberal side of the spectrum. On the other are those democracies, generally countries with national histories that reach back into antiquity, that are comfortable giving legal recognition to religious or ethnic groups. In some countries, democracy might not be workable if

groups as groups legal rights and privileges, it has been deemed necessary in some democratic countries, where historical experience has made it impossible for members of various groups to relate to each other simply as fellow-citizens. Now, on this spectrum of democracies, the United States is ensconced at the liberal end. We pride ourselves on laws that respect the liberty and political equality of individual citizens. Our political institutions (the US Senate and the Electoral College being notable anomalies) stand on the principle of one man, one vote. We have no king and no established church and our Constitution (since the Civil War, in principle, and since the civil rights movement, in fact) disallows invidious recognition of race, religion or ethnic identity. But, as I've noted, fundamental as these features are to the American political system, they are by no means universal among the world's democracies.

- The heads of state of such venerable democratic countries as Norway, Sweden and the United Kingdom are hereditary monarchs. The UK and Denmark have established churches. In a number of democracies, such as France and Germany, the state pays clerics. Many democracies have religious symbols on their flags - for example, Switzerland and Norway each have a cross; on the UK flag there are two crosses.
- Even in liberal and tolerant Canada, there are laws concerning the font sizes in which store-front signs must announce their wares in French and in other languages.

And democracies differ from one another also regarding other matters of civil liberties:

- British libel laws are much stricter than those in the United States. Germany and France make the uttering of certain opinions (for example, denial of the Holocaust) a criminal offense. Such laws would be regarded in the United States as violations of freedom of speech.
- Finally, police search powers differ widely among democratic states. Many European states give their police powers that would, in the United States, be regarded as unreasonable infringements on privacy.

Given the variety of political institutions even among the advanced industrial democracies of the West, no one should be surprised if and when new democracies in other parts of the world emerge looking quite different from our own. As more and more societies achieve self-government, they will evolve institutions and practices that fit their own cultures and circumstances. Conclusion: Democracy and Debate One of the impressive things about the Afghan and Iraqi constitutions I've been discussing is that they were created through democratic debate, not dictatorial fiat. Indeed, orderly, reasoned and respectful debate of controversial subjects is crucial for the functioning of democratic government. It may even have a place at American universities. As you've heard, I'm a fan of Edmund Burke. At the end of his "Reflections on the Revolution in France," he claims that he is someone "in whose breast no anger durable or vehement has ever been kindled, but by what he considered as tyranny." ^{7/} This strikes me as a kind of gold standard for those who would enter the public debate in a democracy. In a similar vein, J. S. Mill, though hardly an ally of Burke on most issues, notes with respect to democratic debate: "The worst offence . which can be committed by a polemic, is to stigmatize those who hold the contrary opinion as bad and immoral men." ^{8/} Indeed, as Mill points out:

In the case of any person whose judgment is really deserving of confidence, how has it become so? Because he has kept his mind open to criticism of his opinions and conduct. Because it has been his practice to listen to all that could be said against him; to profit by as much as was just and expound to himself, and upon occasion to others, the fallacy of what was fallacious. ^{9/}

In both Afghanistan and Iraq democratic debate is in its infancy. We hope that tolerance and compromise will become habitual there and make possible - though the process will likely be long and tumultuous - the creation of prosperous democratic societies. We may even be seeing early signs that political progress in those countries is having benign influence on others in the region, including the Palestinians and the Lebanese. This has been an exciting time to be in government and to witness, encourage and perhaps help enable the blossoming of humane ideas of liberty and self-government, the exposition of which one had the good fortune not to sleep through many years earlier in a Harvard classroom. Thank you. ^{1/}

The Philosophy of John Stuart Mill , Page 197, Modern Library 1961. ^{2/} 9/11 Commission Report, p. 363. ^{3/} Remarks At The 20th Anniversary Of The National Endowment For Democracy, November 6, 2003. ^{4/} Articles 2 and 7. ^{5/} Article 7(A). ^{6/} Article 13(F). ^{7/} Burke, Reflections on

the Revolution in France , (Penguin Books, 1968), p. 376. **8/** The Philosophy of J. S. Mill, ed., Marshall Cohen (New York: Modern Library, 1961), p. 247.

9/ The Philosophy of J. S. Mill, ed., Marshall Cohen (New York: Modern Library, 1961), pp. 208-09.

Mr. Feith was the Under Secretary of Defense for Policy from July 2001 to August 2005

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