

american  
civil liberties &  
human rights under

**SIEGE**

by Professor Richard Falk

2nd Annual Frank K. Kelly  
Lecture on Humanity's Future

A Project of the Nuclear Age Peace Foundation

## The Foundation

The Nuclear Age Peace Foundation initiates and supports worldwide efforts to abolish nuclear weapons, to strengthen international law and institutions, to use technology responsibly and sustainably, and to empower youth to create a more peaceful world.

Founded in 1982, the Foundation is comprised of individuals and organizations worldwide who realize the imperative for peace in the Nuclear Age.

The Nuclear Age Peace Foundation is a non-profit, non-partisan international education and advocacy organization. It has consultative status to the United Nations Economic and Social Council and is recognized by the UN as a Peace Messenger Organization.

## Vision

Our vision is a world at peace, free of the threat of war and free of weapons of mass destruction.

## Mission

To advance initiatives to eliminate the nuclear weapons threat to all life, to foster the global rule of law, and to build an enduring legacy of peace through education and advocacy.

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## Frank K. Kelly Annual Lecture On Humanity's Future



The Frank K. Kelly Annual Lecture on Humanity's Future was inaugurated in February 2002. The lecture series honors Frank K. Kelly, a founder and senior vice-president of the Nuclear Age Peace Foundation.

Frank Kelly has had a remarkable life. He has been a science fiction writer, a journalist, a soldier in World War II, a Nieman Fellow at Harvard University, a speechwriter for President Truman, the assistant to the US Senate Majority Leader, vice-president of the Center for the Study of Democratic Institutions, and a leader in the campaign to create the US Institute for Peace. He is the author of nine books and uncounted articles.

Beyond all of his achievements, Frank has had a remarkable faith in humanity and its future. He has lived with a spirit of optimism and hope, as a visionary advocate for humanity. He has inspired many people through his writing and teaching to take action on behalf of a more humane and decent future for humanity.

The Nuclear Age Peace Foundation, along with many of Frank's friends, sought to honor him by establishing the Frank K. Kelly Lecture on Humanity's Future. The lecture will be given annually by a distinguished individual and will be widely distributed by the Foundation. Frank himself gave the inaugural lecture in 2002.

# American Civil Liberties & Human Rights Under Siege

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# Introduction by David Krieger

## President, Nuclear Age Peace Foundation

The lecture presented in this booklet is the second Frank K. Kelly Lecture on Humanity's Future. It was delivered by Professor Richard Falk at the University of California at Santa Barbara in February 2003.

Professor Falk is the Albert G. Milbank Professor Emeritus of International Law and Practice at Princeton University and a Distinguished Visiting Professor at the University of California at Santa Barbara. He is also the chairman of the Nuclear Age Peace Foundation.

The lecture series, a project of the Nuclear Age Peace Foundation, honors Frank K. Kelly, a visionary leader who helped create the Foundation and has had a remarkable career working for a better world. Frank, at 88, has been a longtime advocate of humanity in general and of women's vision and leadership in particular. He is an extraordinary man who believes that, by our actions, we can create a far more positive future for humanity. He is an all weather optimist who stands by his belief in humanity's potential for a better future, even in such troubling times as the present moment in history.

In introducing Professor Falk, Frank Kelly stated: "He is a man of great erudition, great passion, great concern and great courage. He has stood up time and again against war and the forces of oppression. He's written more than 40 books. He is a scholar and a student and, as he says, a citizen pilgrim. We are all on the pilgrimage for a better life. So it's an honor and privilege to present Professor Richard Falk."

I will only add to this that, in my view, Richard Falk is one of the most outstanding academics in his field in the United States and in the world. He has deep insights into the relations among states and the forces at work in the evolving world order. His lecture, presented in these pages, is visionary, thoughtful and frightening. It is a call to action to create a more just and peaceful world. We would do well to reflect upon its warnings and join in resisting current trends toward unilateralism, militarism and restrictions of civil liberties.

# American Civil Liberties & Human Rights Under Siege

Frank Kelly is an inspirational presence in many of our lives and it's been my privilege to know him for quite a long time. The best short description that I can give of his special quality as a human being is to say that Frank Kelly has been a luminous presence on the planet for the past 88 years, and I hope that this is just the beginning.

It is a great honor to do this lecture, but it is also an intimidating assignment, first of all, because the first lecture was given by Frank and, from all reports, it had a very strong impact on its audience and, secondly, because it is a difficult test for the political and moral imagination to uphold the injunction to be an optimist at a time like this. I sometimes say, in defense against despair, that I'm not smart enough to be a pessimist because to know what the future has in store for us implies an ability to understand reality well enough to be able to predict the future, and as the Chinese have long taught us, "There is nothing harder to predict than the future." Of course, such an inability is as disabling for optimists as it is for pessimists. I would prefer to recast the choice as between struggle and passivity, with struggle taking the place of optimism and passivity standing in for pessimism.

There are some lines of poetry that express for me part of the dilemma that I feel. On the one side, I sense the great dangers that confront us here in this society and threaten the peoples of the world and, yet, I struggle not to be overwhelmed by this challenge and to think constructively about the future of humanity. The great German playwright and poet, Bertolt Brecht asked the following question: "In the dark times, will there also be singing?" He answered, "Yes, there will be singing about the dark times." What I seek to express as best I can, is how we find the strength of character, the faith in the mysteries of history and of our own destiny to show an affirming flame despite the clouds of war-making that are darkening our skies these days.

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I also wanted to say a word at the outset conveying my appreciation of the joint sponsors of this lecture. One of the great pleasures for me to be here in Santa Barbara has been the opportunity to work so closely with David Krieger at the Nuclear Age Peace Foundation, an organization that has, for the past 20 years, clearly understood the menace that humanity is faced with by the continued reliance of several important governments on nuclear weapons. Nothing could give the future and our children's future greater confidence in the potential of humanity than to start implementing the program of the Foundation, and start ridding the world of nuclear weapons and other weapons of mass destruction. It is time that we all

joined in this struggle, as it seems even more urgent than in prior years, responding as energetically as possible in this present setting of global tension and danger, which includes new indications of an American willingness to claim a right to make battlefield uses of nuclear weapons.

It is also a great pleasure for me to be associated these past two years with the Global and International Studies Program at the University of California at Santa Barbara. It is a new and satisfying experience, both for my wife and myself, and we have very much enjoyed our participation in an academic atmosphere that has happily been both socially friendly and intellectually stimulating, a combination one doesn't find often enough on university campuses.

## **Unprecedented Assault on Our Liberties**

It is no longer controversial to assert that there has been an unprecedented assault on our liberties as a free people since September 11th. There is no question that these events, the attacks of that unforgettable day, administered a terrible shock to the American sense of itself as secure and safe. The attacks themselves were inscribed deeply in our political and moral consciousness by the power of TV imagery that may have done more lasting injury to our sensibility than the devastation itself. From the outset, I think, it seemed clear that, as terrible as the attacks were, one had to worry that an over-reaction by the US Government would prove more enduringly dangerous to ourselves and to the rest of the world than the visionary terrorism of the Al Qaeda network. There are several reasons for this. We need to take these considerations into account in trying to understand what it is that is so dangerous about the way in which the United States Government and our political leaders in and out of government have responded to September 11th.

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The first element that is very important to grasp is the degree to which the world is dealing with a new kind of conflict, a struggle of global scope that has never existed before in history. There is a determined terrorist network that has no specific location. Al Qaeda could be everywhere and nowhere. Such an adversary cannot be defeated in the manner relied upon in the past by countries under attack, seeking to defend their territory and remove or neutralize the source of threat. There is little useful that could be done to disable the Al Qaeda threat through the use of our extraordinary military machine designed for a different type of combat.

And here we were, afraid and angry, as well as frustrated, having invested so heavily for decades in developing a superior military capability that was designed to prevail in wars against other states, or better, to deter provocations making actual war unnecessary.

To find ourselves a helpless giant under attack by an elusive terrorist network that was spread out around the world and concealed, possibly lurking in sleeper cells even within our own country, was a reality that it was not possible for our leaders to cope with, or even to acknowledge. In this fundamental sense, it is important to recognize that there was a genuine security challenge posed on September 11th, and that it hasn't yet been addressed in an appropriate manner. To meet the Al Qaeda threat will require some changes in the way national security is conceived and upheld. It is not reasonable to expect a government to wait for an attack by a mega-terrorist network before seeking to nullify or minimize such a threat to the extent possible. It is not reasonable to wait for a repetition of September 11th. But it is equally unacceptable to engage in irrelevant or unjustifiable war making because a more effective response cannot be fashioned at this time, or to engage in state terrorism to offset Al Qaeda non-state terrorism.

It is necessary to determine what it is helpful to do to diminish the threat, but what seems so disturbing is that what might have been helpful has mainly not been undertaken and what is definitely harmful to our security and to the peace of the world has been pursued with what one can only call a fundamentalist zeal. In trying to understand this unfamiliar challenge posed to us as a free society, it is also instructive to realize that America has tended to curtail the liberties of its citizens in responding to threats that come from outside and it hasn't done so well either with threats from inside its own borders. We need only to recall bits of our past - the burning of witches at Salem, or the fear of the French Revolution that produced the Alien and Sedition Act in 1798, or the infamous Palmer raids after the Russian Revolution that mindlessly rounded up supposedly dangerous American radicals just after World War I.

And then, more recently, we need to recall and reflect upon the shameful internment of more than 100,000 Japanese-Americans during World War II. This grotesque denial of the rights of citizens, stigmatized ethnically, was actually pronounced legal by our Supreme Court in the famous *Korematsu* decision. We have to remember the days of black listing, loyalty tests, and the discrediting of many decent and gifted people during the cold war, the excesses of the McCarthy Era in the 1950s, the degree to which our Congressional institutions were used as a means not to uphold the constitutional system, but to challenge the integrity and the wellbeing of those Americans who were suspected and accused of having sentiments and affiliations that were conceived to be subversive in the context of the cold war. Such views and activities attacked in this period often arose out of an idealistic concern for the suffering and economic deprivations that brought the capitalist system to its knees during the economic depression of the 1930s. It was a humane reaction to economic failure that led persons of good will to recommend the Soviet approach as a model, or to look with favor upon Communism and the Soviet socialist experiment. Such people were punished unjustly for

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these views that later became unpopular during the years of "the Red Scare."

This record leads to the unhappy conclusion that ours is a political culture that doesn't handle stress very well. It has set some dreadful precedents in past dealings with groups and ideas that were viewed as hostile to the beliefs and interests of the American mainstream. A distinguished American intellectual historian, Richard Hofstadter, studied this dynamic and famously referred to it as "the paranoid style of American politics." The American nativist approach reminds one of the Green Berets' ethics of kill or die, an extremist way of thinking about "the other." Hofstadter discussed this tendency as based on a religiously fueled understanding of reality that above all conceives of conflict as an ultimate struggle between absolute good and absolute evil. What is necessary in the face of such attitudes is to avoid compromise, and even more so, to reject any offers of reconciliation. What is expected is the display of an unflagging will to fight things out to the finish regardless of consequences. There is little doubt in my mind that we find ourselves as a country currently in the grips of a mood and leadership that fully embodies this paranoid style, indeed represents an extreme version that endangers the world as well as ourselves. President Bush's rhetoric in relation to the Iraq War is emblematic.

### **Political Extremists Shaping Policy**

This situation is made even more serious when we comprehend the extent to which American foreign and domestic policy, at the highest levels of our government, is being shaped by some of the most extreme political figures

that have ever been this close to the control of our governmental machinery. In other words, if you look back at these earlier distressing events that I mentioned, they put a troublesome pressure on the political leadership of the time, but the hard core of extremism was always located at a certain distance from the center of power. American values associated with civil liberties eventually generated reactions to repressive moves, displaying a reassuring resilience that enabled the American political culture to correct these unfortunate historic abuses before they tainted the system as a whole. What is here, I think, so troubling, is that this present national climate of fear and anger evoked by the events of September 11th is coupled with an American grand strategy for world domination that had been lurking in the wings of the White House well before the September 11th attacks. The attacks allowed this grandiose vision of how the United States should reor-

ganize the world after the cold war, based on taking advantage of its leverage as the sole surviving superpower, to come out into the open as the official policy of the United States, pre-

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sented as an acceptable policy by waving furiously the banner of anti-terrorism. Anti-terrorism provided the cover, in effect, for pursuing geopolitically ambitious design of how the world should be organized in the future on the basis of American dominion.

These ideas have been forcefully articulated by President Bush, especially in his West Point address delivered in June of 2002, but also in the very important White House document, the National Security Strategy of the United States of America that was issued in September of 2002. It is significant to take note of the fact that these maximalist conceptions of the American global role had been set forth rather clearly in a document released by the New American Century Project prior to Bush's arrival at the White House. This report was signed by many individuals who are now working in government, and have emerged as the most influential advisors of the Bush leadership, being especially prominent in the Pentagon and the White House. What I think we have to realize, with alarm, is that a group of evangelical geopoliticians have seized control of the government, sensing their historic opportunity to shape the future of the world, and that this reactionary cabal is supported and reinforced by the religious right in America that is also now, for the first time, exerting a direct influence on our political destiny, challenging the secular heritage of the country. Born-again Christianity seems to mesh very well with the geopolitics of world domination. Such a partnership is both potent and particularly menacing.

It is important that we understand, as the background of the circumstances that exist today, that this global vision is intimately connected with the suppression of our rights at home and only incidentally and opportunistically connected with the threats posed by terrorism. In introducing the National Security Strategy document, President Bush includes a cover letter, in which he makes a rather startling claim. On first reading, it would make us think that the president was unexpectedly endorsing the spirit of the Kelly lecture, by managing to express an idealistic and hopeful view of humanity's future, despite the weight of everyday evidence to the contrary. Bush writes, "Today the international community has the best chance since the rise of the nation state in the 17th Century, to build a world where great powers compete in peace instead of continually prepare for war. The US will build on these common interests to promote global security." This seems, on an initial reading, to be an astonishing statement coming from the Bush White House, but such an impression of amazement vanishes as soon as you read the fine print. The fine print informs the reader that the reason there will be peace in the world is because the United States possesses the exclusive capacity and necessary will to provide global security for the rest of the world, that it will continue to spend at least as much as the next 15 countries on its military budget, that it will weaponize space, that it will maintain a network of military bases around the world, and that it will, in Pentagon jargon, ensure for itself "full spectrum dominance."

## **US Military Domination**

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The message being sent around the world is that it has become obsolete for other countries to think of challenging American military domination and that instead of engag-

ing in traditional geopolitical rivalries based on a balance of power, these other countries should go about their national business peacefully, concentrate their energies on trade and doing things that are in their national interest, but leave the running of the world to the United States. It is a virtual certainty that the French leadership read this small print and recoiled in "shock and awe." If you put yourself in the position of another sovereign state being instructed to the effect that it is no longer necessary for it to invest in military capabilities to uphold its national security by a foreign government that is itself, despite its advice to others, devoting huge resources to ensuring the military means to sustain its global dominance, then we can assume the reaction. Such a message is sure to produce a variety of adverse reactions, setting in motion an expensive and risky rivalry.

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Of course, this is not the first time that President Bush's concept of peace is a silent testimony to his apparently unwitting sense of the absurd. Bush has made a practice of associating peace with the espousal of the most aggressive policies, as, for instance, in explaining his dedication to a peaceful solution to the Iraq crisis while taking every possible opportunity to make certain that war ensues. It was hard to believe that Bush would choose in the midst of some of the most brutal Israeli operations on the West Bank and in Gaza to identify Ariel Sharon as a man of peace. Now

if President Bush really thinks that Sharon is a man of peace, then I can understand why his West Point vision of peace seems so clearly merged with the policies of military domination.

There are two considerations that need to be understood. The first of these is this American drive to gain control over the way in which security is maintained in the world. There is also a second element that is of importance to Bush's militarist policymakers, what is called "asymmetric warfare" by defense strategists. This preoccupation with asymmetric warfare preceded September 11th. Asymmetric warfare represent the recognition that very weak countries and non-state political actors have a potential capability of overcoming their inferior capabilities by using unconventional tactics to inflict heavy damage on strong countries. In other words, military superiority as traditionally measured is no longer capable of assuring the control of hostile forces in the world. From this perspective, the September 11th attacks were themselves an extreme and telling example of asymmetric warfare. Pentagon officials had long been arguing that although the United States had overwhelming military advantages with respect to other states, it was more vulnerable to devastating attack than ever before. Until September 11th the Pentagon was crying in the wilderness, its warnings about dangers from extremist movements or hostile governments armed with weapons of mass destruction went unheeded. Suddenly the warning was received with an unquestioning sense of the greatest urgency.

This stress on asymmetric warfare identified two kinds of threats that could ruin the

American vision of a peaceful future based on global dominance. The one threat has to do with trying to eliminate those countries that are seen as potentially able to challenge the power structure, even though they seem like secondary and tertiary countries if their capabilities are traditionally assessed. Such countries were singled out by the Bush administration with great fanfare as the "axis of evil" countries. It is this preoccupation that explains, at least partially, the obsession with Iraq as a sufficient threat to justify recourse to a major war, despite the disconnect between Iraq and the menace of mega-terrorism. The second kind of adversary that cannot be located or destroyed is, of course, the non-state adversary exemplified by Al Qaeda.

Because this second challenge cannot be successfully addressed, American society needs to be misled into believing that a war against axis of evil countries somehow facilitates the struggle against Al Qaeda, rather than aggravating it. In addition, so as to be sure the patriotic mandate does not dissipate or criticism mount of the Bush administration's regressive economic policies, a state of fear and anger is officially manipulated by issuing periodic warnings of imminent terrorist attack. Such alarms are helpful in maintaining a high level of domestic support for the expansive and expensive role of the United States as the guardian of global security. There exists an insidious underpinning for these policies that is not accidental, but brings great anxiety and discomfort to the American people. The FBI Director and the head of the CIA inform us that it is a virtual certainty that suicide bombers will soon be stalking our cities and shopping malls, or that a "dirty bomb" with radioactive effects will be released in densely populated urban areas, or that there is evidence of plans to attack crucial bridges, tunnels, nuclear power plants, and the like. Such warnings, especially if some incidents do occur, are likely to produce a mood of national panic, inviting the government to encroach further on the rights of American citizens and others resident in the country.

It is this condition of collective fear and uncertainty that has been disabling our collective critical faculties. We as a society seem unable these days to think critically about existing policies or to envision and evaluate alternative courses of action. An individual facing severe danger, or a people facing such a danger, finds herself unable to assess and understand the true nature of the situation, and often finds herself politically paralyzed. America has been so frozen since the attacks of the World Trade Center and Pentagon, although the imminence of a war against Iraq has awakened many citizens, but without yet giving rise to a politically relevant strategy of resistance and renewal, or to a viable alternative image of security to that of the armored fist.

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## The Magnitude of the Crisis

It is first necessary to acknowledge the magnitude of the crisis confronting the American people. I think we are facing nationally and internationally the first real challenge that is directed at our system of government, our way of life, and the manner in which the whole world is organized. With reluctance, I think we need to escalate the language used to identify properly the precise nature of this danger. I have come to the unhappy conclusion that the danger we and the world face is the distinct possibility that American foreign policy as now practiced, to the extent successful, will eventuate in a form of world order that is best described as "global fascism." Why global fascism? The Bush administration's grand strategy seems intent on achieving a monopolistic concentration of military power to be used to destroy opponents who are perceived as embodiments of evil. Being evil, means that it is both pointless and immoral to rely on diplomacy to resolve conflict. Further, given the depravity of such enemies, there is no need to admit the existence of legitimate grievances that might call for changes in American policy. The impulse is to destroy and to regard an adversary as "the other," an unconditional enemy, an evil that is so defined by this evangelical Christian underpinning, and nurtured by a new form of geopolitical ambition that seeks to build security on the basis of political purification. Such a worldview is so threatening to the rest of the world that it is generating waves of spontaneous opposition in many places, which, in turn, gives rise to governmental impulses here in America to rely on repressive techniques.

The assault on traditional American liberties began immediately after the September 11th events. This assault on our liberties, and more generally on human rights here and abroad, was rhetorically justified as part of the anti-terrorism campaign, but without being connected in any reasonable or convincing way with actual security threats. Such sweeping claims for enforcement agencies were exaggerated responses that gave the impression, probably correctly, that our Attorney General and those that are making national policies found this challenge of terrorism a wonderful excuse for doing a lot of things that they wanted to do anyway. An enormous window of opportunity was opened for John Ashcroft by Osama Bin Laden. There were many dubious moves taken against this inflamed background. Among the first occurred when President Bush issued an Executive decree in November 2001 that authorized the creation of military commissions that were able to operate in secret and were allowed to inflict a death sentence without giving any kind of assurance of a fair trial, without providing an accused with any kind of appeal, thus institutionalizing a very extreme form of quick kangaroo justice available to the US Government for the prosecution of any non-citizen alleged to be connected with terrorist activities. It was a dragnet capable of almost indefinite abuse, especially given a vague definition of terrorism that could be stretched to cover virtually anyone the government wanted to punish or repress.

Soon after the end of the Afghanistan War, the world was treated to the appalling spectacle of captured Al Qaeda and Taliban soldiers being exhibited as if caged animals in Camp X-Ray located on the American base at Guantanamo in Cuba. This was a gratuitous display

of cruelty that could not be plausibly justified on the basis of security considerations. Such behavior encouraged, I think, a widespread sense of anxiety overseas about how the United States was dealing with mega-terrorism. What sort of message did we want to send the world about the way in which we dealt with those who opposed us and were our enemies? There was no acceptable reason to explain these departures from the standards of international humanitarian law as set forth by the Geneva Conventions. These standards were drafted and agreed upon by governments, and are designed to be compatible with the pursuit of military victory in war, and as such, are minimally demanding.

And then, of course, there was the rush to enact the USA Patriot Act in 2002, a sweeping legislative enactment hardly debated in Congress despite the comprehensive enlargement of governmental enforcement powers that included a dangerously broad re-definition of terrorism that could be used to sweep up whoever the government wanted to apprehend, including many of those engaged in innocent activities. Such a definition of terrorism, if applied fairly, could indict our leaders for their reliance on violence to achieve political ends not consistent with law, or due to their harboring of violent exile groups that rely on terrorist tactics. The legislative powers given to the US Government enabled unwarranted intrusions on privacy, a capacity to detain individuals on frivolous charges, often denying the accused access to lawyers or the possibility of confronting the evidence against him. It subjected non-residents, non-citizens, and even permanent resident non-citizens, to deportation for all sorts of minor law infractions that could have been quite innocent, or at least were trivial, and certainly not justifications for disrupting families and lives in an anguishing and likely permanent manner. Much of the repressive fury was directed toward young males who were from the Islamic world and were placed under special forms of surveillance and control, with the threat of arbitrary deportation hanging over their heads. We have learned recently that the Justice Department wants even more power and has prepared a very extensive proposed legislative enactment called the Domestic Security Enhancement Act that is proposing to give the state many additional powers, including authority to track credit card purchases, monitor internet activity, and enlist citizens in a campaign to report suspicious activity by neighbors. Such initiatives appear as deliberately Orwellian moves to create a controlled society in the United States, while all the time singing the praises of freedom.

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We already have the sorry experience of two American citizens - Yasser Isam Hamdi and José Padilla, both members of a minority - who have been denied their constitutional rights as citizens by being declared by the Justice Department to be "enemy combatants." These individuals are American citizens, but because they are regarded as enemy combatants, they abruptly lose their "inalienable" rights. They are not entitled to consult with a lawyer. They are potentially subject to indefinite solitary confinement without charges and they are, in

effect, stripped by unilateral fiat of their privileged status as citizens. This pattern is extremely troublesome for its own sake but, even more so, because it is related to the kind of official American response to this wider international movement of opposition and resistance to the US project of global dominance. More and more grassroots militancy is present in this country and overseas.

The very untenability of the American global strategy and its penchant for aggressive war making is, as a byproduct, leading to the transformation of America into a militarist society reinforced by a submissive citizenry and media. This process gives rise to a vicious cycle, it engenders opposition and the very fact of opposition leads the government to seek more and more control over what people can do by way of political action within the society. So, we are unwittingly part of a vicious cycle, internationally and nationally, that is producing an extraordinary pressure on our constitutional system, both in relation to our rights as citizens and with respect to the functioning of a governmental process that is legitimate only so long as it is based on checks and balances and the separation of powers.

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## Finding Hope

It is against this depressing background that I now want to say, in my concluding remarks, something about what we can do to find hope in a better future. It is worth recalling a famous observation made early in our history by Benjamin Franklin: "Those that can give up essential liberty to obtain a little temporary safety, deserve neither liberty nor safety." And I think we should all, as individuals, ponder what that sage remark means in the concrete reality of our own lives, because we are being profoundly challenged as individuals to act now as citizens, not as subjects. It is the most difficult test of whether our democracy is deeply enough rooted to withstand this shock treatment being administered against it from outside and inside. Such circumstances make it plain that this is not a time when we as individuals can remain spectators on the sidelines, which reminds us of Lincoln's call to heed "our better angels" in times of national crisis. An analogous sentiment was also well expressed by a great conservative philosopher, Edmund Burke, who declared that "the hottest fires in hell are reserved for those who remain neutral in times of crisis." We are unquestionably faced with a foreboding crisis, but there is more on the global stage of history than these negative developments.

There are some extraordinary things happening in the world that should give us at least vectors for the struggle to create a better world, should give us a sense of what is possible. To begin with, we have the unfolding of the first genuinely global peace movement that is mobilizing large segments of the population of free societies everywhere. It is unprecedented to have countries opposed to the American war policies directed at Iraq by between 85 and 90 percent, even when these countries are led by governments supportive of Washington, as in the case of England, Italy and Spain. These governments, ignoring the overwhelming sentiments of their own people, are for various reasons supporting the war policy being pushed so hard by the White House. So we have unfolding, I think, a great popular movement of

global scope that subscribes to a vision of a better world that is not addicted to militarism and violence as the path to global security. It is perhaps an occasion of perverse encouragement that the United States Government felt so isolated that it had to boast of acquiring a new ally, Bulgaria, to demonstrate that it was winning over uncommitted governments throughout the world. I would, in contrast, say with enthusiasm, "Thank God for the 'old Europe.'" Let us wish for the return of "old America"!

There are other encouraging things happening in reaction to this growing sense that it is a time to begin to propose alternative ways to arrange the world, that it is not enough to oppose the American global design. The Prime Minister of Malaysia, Mahathir Mohamad, gave an extraordinary speech of welcome on February 24, 2003 to the Non-Aligned Movement that was meeting in Kuala Lumpur and brought together the representatives of more than a hundred countries from the south. Mahathir said that it was time for the countries of the world, led by the countries of the south, to mount a campaign to make war conditionally illegal and that it would be a contribution to world order if the non-aligned states would take the lead by repudiating war as an instrument of national policy. He also said, "Isn't it time that all the countries in the world were put under the same constraint as Japan and limited to spending one percent of their GNP on military budget?" When Mahathir put forth this bold proposal, he reportedly received huge applause from the assembled leaders of the 116 member states of the Non-Aligned Movement.

I believe we live increasingly at a time when there exists a renewed receptivity to bold ideas that might have been dismissed as utopian just a few years ago. Jonathan Schell has an eloquent essay in the March 2003 issue of Harpers Magazine on the futility of war as a way of solving the problems confronting humankind. More and more people here and abroad are turning away from their fears of terrorists to their fears associated with the pursuit of global dominance by the sole remaining superpower. Such a dramatic turn of mind can help us here to build our own movement that will represent a commitment to a future based on liberty at home, peace with equity abroad, and a restored confidence in the continuing viability of our constitutional arrangements.

What it means to be an American should definitely not be understood as the USA Patriot Act would have us believe and act. It is both interesting and worrisome that these repressive initiatives should seek to preempt the language of patriotism as if what it means to be a patriot is to renounce our liberties! This choice of that word "patriot" to describe this legislation is most revealing of a manipulative mentality in our government, exhibiting a profound disrespect for our great national traditions of citizen liberties.

*We can only begin to imagine how different would have been the pre-war debate within the United Nations on Iraq policy if there was a peoples' assembly that spoke for the 90 percent of the world's population opposed to this war, rather than the kind of discourse on the nuances of coercive diplomacy that has dominated the Security Council debate.*

I also feel strongly that we have an opportunity, at this time of challenge, to turn toward the traditions of Mahatma Gandhi and Martin Luther King, adopting the tactics and values of nonviolent struggle, a type of faith and militancy that can truly claim Jesus and the Buddha as spiritual forebears. We need to infuse our educational experience from start to finish with the relevance of a nonviolent pedagogy, from the earliest moments of schooling to the last hours of our lives. We need to purge our own political culture of the violence that finds security in an arsenal of weapons, whether stockpiled at home or collectively expressed by the deployment of weapons of mass destruction around the world. I am convinced that if we are able to disseminate this nonviolent pedagogy, that good things will begin to happen in ways we cannot now anticipate. Such an altered climate will also affirm a culture of human rights as integral to the quest for an alternative to the kind of future that the Bush Administration is offering us.

It is also empowering to remind ourselves that there was occurring, during the 1990s, a series of extremely positive global developments that I can only mention here by reference. I wish to stress the relevance of reviving a global justice revolution that was beginning to take hold during the final decade of the 20th century. We need to recall the legal pursuit of dictators like Pinochet and Milosevic, seeking to impose criminal accountability on individuals responsible for the commission of terrible crimes of state. These initiatives, in turn, inspired social movements and many governments, rapidly leading to the establishment of an International Criminal Court in mid-2002, which may in time prove to be the most important international innovation since the United Nations was founded on the ashes of World War II. We also experienced, during the 1990s, significant international efforts to protect vulnerable societies facing ethnic cleansing and genocide. The humanitarian interventions, although controversial for some weighty reasons, did, at least, express a rising sense of responsibility on the part of the international community to disallow atrocities to be committed behind the walls of sovereign states. The liberating idea of human solidarity was beginning to prevail over the excesses of sovereignty and tribal passions fueled by nationalism, making the supreme authority of the state no longer sacrosanct if those governing grossly abused their power by committing crimes against humanity.

*I think if we genuinely want to restore our security and our sense of democracy, we have to reinvent what it means to have a functioning representative democracy that isn't distorted by money, isn't distorted by a sense of electoral impotence.*

There was also born at the end of the 1990s a robust anti-globalization movement that was, in an exciting way, developing a grassroots global consensus dedicated to achieving a more equitable, democratic, and sustainable ways of governing the world economy. A significant part of that vision expressed the conviction that we needed to build a global democracy in a world that was growing more interdependent, complex, and fragile by the day. Among the many proposals for making global democracy into a practical reality was the proposal to

establish a Global Peoples' Assembly that could begin to represent directly the peoples of the world rather than have their voices muffled by the more parochial concerns of govern-

ments. We can only begin to imagine how different would have been the pre-war debate within the United Nations on Iraq policy if there was a peoples' assembly that spoke for the 90 percent of the world's population opposed to this war, rather than the kind of discourse on the nuances of coercive diplomacy that has dominated the Security Council debate. In this debate, the governments negotiate within a framework set by geopolitical power relations, calculating their own benefits, seeking their own piece of the economic pie that will result from the occupation of Iraq, and acting to avoid the wrath of Washington. However grateful we may be for the role of France and Germany, and other governmental opponents of war against Iraq, the debate was officially framed by an unfortunate unanimous acceptance of the premise that if Baghdad resisted inspection or was found in serious violation of its obligations under the ceasefire restrictions imposed in 1991, then a war against Iraq should be authorized by the Security Council. This framing avoided the essential, indispensable question as to whether war against Iraq is legally, morally, and politically justified under present conditions, and whether the burdens of "disarmament" had been fairly applied in the first place.

## **We Must Reinvent Our Democracy**

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It is essential that activists around the world revitalize these elements of a global campaign for a more democratic world. And, finally, I think if we genuinely want to restore our security and our sense of democracy, we have to reinvent what it means to have a functioning representative democracy that isn't distorted by money, isn't distorted by a sense of electoral impotence. We have a problem within this country that is far deeper than the dangers posed by the Bush administration. We have a Democratic Party that is scared to act as an opposition party even when the country is deeply divided and confused, and on a matter as vital as the ultimate choice of war or peace. We have a Congress that is awkwardly impassive and largely silent when it should be impressively active and impassioned. We have a media that is orchestrating the society for war and conformity, rather than facilitating an invigorating debate about what policies are in the best interests of the country. We must address these issues in a spirit of civic urgency if we as a people and as a world are to reinvent the kind of democracy we all need if the 21st century is to become a success eventually, overcoming this most disturbing of beginnings.

I continue to hope and pray that there are richly imaginative forces of resistance and change that will halt this drift toward the sort of political catastrophe that I have identified with global fascism. I think more and more of us do understand that this is a moment where we have to accept a share of responsibility for the future. It will not be easy to change the course of world history or to rein in the exercise of American power. There are formidable obstacles arrayed against such a change of direction, but we should be engaged on the basis of what we believe is right and necessary, not by a sober calculation of the odds of success. Some words of W. H. Auden express, with a shriek, our dire circumstances: "We who are about to die, demand a miracle."

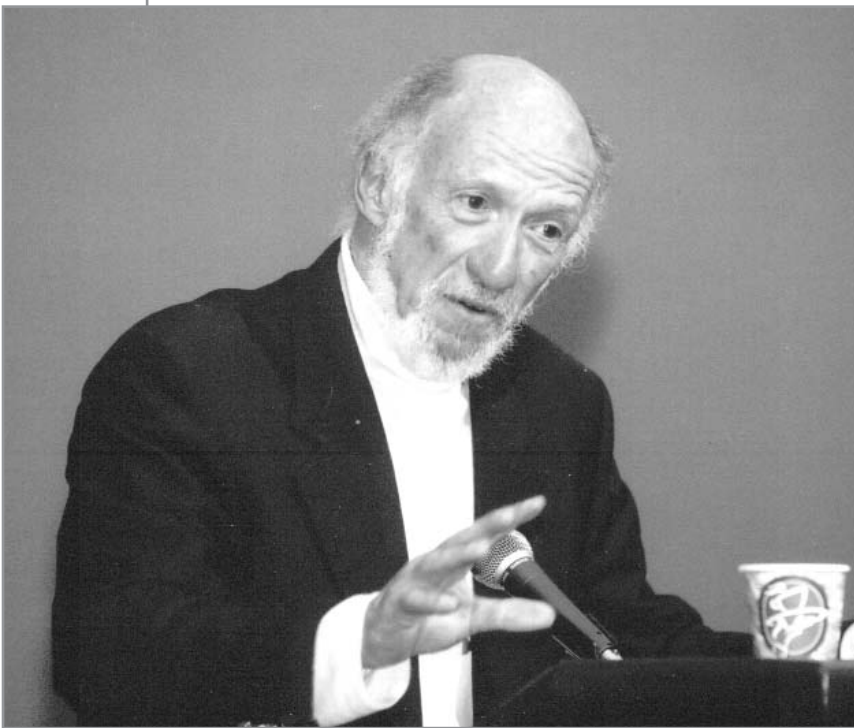
# About the Speaker

Richard Falk is the Albert G. Milbank Professor Emeritus of International Law and Practice at Princeton University and Visiting Distinguished Professor of Global Studies at the University of California, Santa Barbara. He serves as the chair of the Nuclear Age Peace Foundation, and is a recipient of the UNESCO Peace Education Prize.

Prof. Falk has been a Fellow at the Center for Advanced Study in the Behavioral Sciences, a Guggenheim Fellow, the Olaf Palme Visiting Professor in Stockholm and Visiting Distinguished Professor at the Mediterranean Academy of Diplomatic Studies, University of Malta.

He has been on the editorial boards of some ten journals and magazines, including the American Journal of International Law (1961-) and The Nation (1978-). Prof. Falk has served on the boards or been otherwise associated with scores of professional organizations, including serving as Chairman of the Consultative Council, Lawyers' Committee on

American Policy Toward Vietnam (1967-75). He is the honorary vice-president of the American Society of International Law.



Prof. Falk has provided expert testimony in many high profile cases and legislative and administrative hearings. He is the author, co-author or editor of more than 40 books on international law and the law of war.

He received his B.S. in Economics from the Wharton School, University of Pennsylvania (1952), his LL.B. from Yale Law School (1955), and his J.S.D. from Harvard University (1962).

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In order to ensure the continuity of the Frank K. Kelly Annual Lecture on Humanity's Future in subsequent years, the Nuclear Age Peace Foundation has set up a permanent endowment fund to support expenses associated with the Lecture. The Frank K. Kelly Annual Lecture Fund will allow the Foundation to invite a distinguished individual to present the lecture each year and to disseminate its publication broadly.

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-Richard Falk

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