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Preemption and Just War: Considering the Case of Iraq

FRANKLIN ERIC WESTER

This article demonstrates that the use of military force by the Bush Administration against the regime of Saddam Hussein does not meet the ethical criteria for “preemptive war” set forth in the classical Just War tradition. It considers ethical questions raised by the US-led attack against Iraq as part of the war against global terrorism and argues that the doctrine of preemptive war as applied in the case of Iraq fails crucial ethical tests.

Could Operation Iraqi Freedom and the global war on terrorism be as pivotal in the history of ethical decisionmaking as the emergence of the nation-state in the Peace of Westphalia in 1648? Do new ethics for the war on terror sever the fourth-century Augustinian roots of Just War theory and the ties to Thomas Aquinas’s *Summa Theologica* 700 years later? Could the first major war of the 21st century inaugurate a revolution in ethical decisionmaking about warfare, justifying a new set of criteria for preemption or preventive war? Answers to these questions hinge on whether or not the doctrine of preemption matures into new ethical criteria. Such criteria would build not on foundations for constraining unavoidable human violence, but stretch toward a vision of an ideal of liberty that justifies the selective killing of some to achieve a greater good of liberty for many others. This emerging ethic installs the United States as the guardian of a universal, even transcendent, cause of freedom and the ultimate arbiter in that cause.¹

This article applies the classic categories of Just War tradition to the doctrine of preemption as advanced by the current Administration in the justification for Operation Iraqi Freedom. It does not address the range of other explanations for and postures toward war outside the Just War tradition. Specifically, it does not develop details of three other major ways to think about war:

- Realism, the belief that war is essentially a matter of power, self-interest, and necessity, largely making moral analysis irrelevant.

- Holy War, the belief that war is an instrument of divine power and that individuals, groups, or nations apply decisions about violence to coerce or destroy those opposing divine will.
- Pacifism, the belief that all war is intrinsically evil and can never be justified.²

The article begins with a summary of the national security debate as expressed in the buildup to war against Iraq, including the views of policy experts and decisionmakers, ethicists and academics. Second, it considers Just War ethical frameworks and definitions for two facets of warfare: justice in going to war (*jus ad bellum*) and justice in the conduct of war (*jus in bello*), focusing on the six criteria of *jus ad bellum*. In its attack on Iraq, the Bush Administration redefined criteria for preemptive and preventive war that do not satisfy the criteria established in the classical Just War tradition and may signal development of an emerging ethic.

Preemption, Prevention, and the National Security Strategy Debate

When the *National Security Strategy* was published by the Bush Administration in 2002, one of its most notable shifts specified a doctrine or principle of “preemption.” Preemption—and, more notably, preventive war—exploded onto the scene of ethical debate as a major change in US security strategy. The 2002 *National Security Strategy* asserted, the “United States has long maintained the option of preemptive actions to counter a sufficient threat to our national security,” and “the United States will, if necessary, act preemptively.”³

This argument is moot if one sees the context of the war against Iraq as a continuation of the 1991 Desert Storm war, as does ethicist Thomas Nichols, Chairman of Strategy and Policy at the US Naval War College, and as the Joint Chiefs of Staff may have.⁴ Professor Nichols presents an appeal for debate about how the 2003 attack against Iraq is a proper application of *jus in bello*. This argument contends that the leaders of Iraq remained at war against the coalition despite their signing the 1991 treaty at the end of Desert Storm; therefore, Operation Iraqi Freedom was not preemption but a justified

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use of force. The two pivotal issues in this regard are Iraq's defiance of UN resolutions and pre-war Iraqi aggression. Nichols describes the situation before the war as follows:

In a repeating pattern, Iraq is served notice with [UN] resolutions, agrees to them, and then breaks them. . . . There is no longer a credible way to envision any peaceful road to Iraqi disarmament. . . . He [Saddam Hussein] has pledged and promised and agreed, and then reneged, so many times that only the most trusting (or cynical) diplomats would encourage him to play and win such a pointless game one more time."⁵

For Nichols, the military attack was morally right and justified based on Iraq's noncompliance with international standards. If one concedes Iraq's noncompliance, the Just War ethical question then shifts to legitimate authority, away from preemption and just cause. If Iraq was defying the previous coalition or the United Nations, then the legitimate authority for war is not a US-led "coalition of the willing," but a more clearly recognized international body—either the coalition from the 1991 war whose treaty was violated, or the United Nations, whose resolutions were ignored.

Nichols also states that Iraq did not accept the UN-imposed no-fly zones intended to prevent humanitarian abuses. "The Iraqis . . . fired on coalition aircraft over 700 times since 1998 alone, in an attempt to harm those engaged in the protection of the innocent—itsself an action sufficient to trigger a presumption of Just War."⁶ The anti-aircraft fire of the Iraqis drew bombs and missiles from coalition aircraft, in a continuing exchange of tactical fires. As to his second argument that Operation Iraqi Freedom is not a preemptive or preventive war, Nichols summarizes, "The United States and its allies [were] already at war with the Iraqis; one cannot 'preempt' or 'preventively attack' a regime whose forces one is already attacking on a regular basis."⁷

Although Professor Nichols does not view the war against Iraq as preemptive, the Bush Administration made preemption the reason for resorting to armed conflict. The President and key presidential advisors, including the National Security Advisor and the Secretary of Defense, did not justify toppling Saddam Hussein primarily as a response to Iraq's attacks against coalition forces or the humanitarian needs of Iraqis. The principal reason for war stated by the Bush Administration to the nation and the world was the possible use of weapons of mass destruction (WMD). Disarming Iraq was the desired end, and regime change in Iraq was the only possible way to achieve that end. Preemptive military action was required, and thus justified, to prevent possible use of WMD. As expressed by Alan W. Dowd, "The Bush Doctrine's principle of preemption was tailor-made for Baathist Iraq—a country with growing ties to terror, an underground uncon-

ventional weapons program, and the means and motive to mete out revenge on the United States.”⁸

President Bush addressed preemption in a major policy address at the US Military Academy on 1 June 2002. He stated, “If we wait for threats to materialize, we will have waited too long,” and he declared that “our security will require all Americans . . . to be ready for preemptive action when necessary to defend our liberty and defend our lives.”⁹ In the background of these remarks, remember that US and coalition forces were consolidating their prompt success in scattering the al Qaeda terrorists in Afghanistan and replacing the neutered Taliban regime with a new government led by Hamid Karzai. The West Point speech foreshadowed the run-up to the Iraq war of an economic, political, and by March 2003, a military coalition.¹⁰

Beyond the President’s statements, National Security Advisor Condoleezza Rice amplified the security strategy. She used a graphic analogy to convey the increased risk of waiting and her rationale for preemptive action: “We don’t want the smoking gun to become a mushroom cloud.”¹¹

Secretary of Defense Donald Rumsfeld, in an August 2002 interview with Fox News, argued that America could not wait for proof that Saddam had weapons of mass destruction. He compared the prelude to war against Iraq with the prelude to World War II, when the Allies appeased Hitler. The Secretary rejected alternative points of view other than war, saying, “The people who argue [against invading Iraq] have to ask themselves how they’re going to feel at that point where another event occurs and it’s not a conventional event, but it’s an unconventional event.”¹²

Secretary of State Colin Powell presented the Bush Administration’s case to the United Nations Security Council for disarming Saddam Hussein’s Iraq. He provided information from the core assessments made by the chief UN-appointed inspector, Dr. Hans Blix, indicating ballistic missiles were moved and hidden from inspectors and that Iraq had failed to account for biological and other weapons. Secretary Powell did not ask anything of the UN Security Council. He challenged the Security Council in a general way: “We must not shrink from the responsibilities that we set before ourselves.”¹³

In contrast to the unanimous voices from within the Administration advocating war against Iraq, a former Secretary of State, one often thought of as a pragmatist and hawkish, Dr. Henry Kissinger, urged a diplomatic approach and cited a potential second-order effect of war against Iraq. He warned, “It is not in the American national interest to establish pre-emption as a universal principle available to every nation.”¹⁴ He argued not so much against the war as for the United States to use its power to shape an international response, believing that preemptive or preventive war could destroy the international order that had prevailed since Westphalia.

“Preemptive strikes and preemptive war have a recognized historic and narrowly defined place in the Just War tradition.”

Interestingly, the 2002 *National Security Strategy* indirectly acknowledges the Just War ethic. Logic in the document relies on the special case of preemption based on “imminent threat,” recognizing that Just War tradition makes room for arresting or resisting “imminent threat” as an extension of legitimate self-defense. However, the *National Security Strategy* goes on to assert, “We must adapt [that is, change] the concept of imminent threat to the capabilities and objectives of today’s adversaries.”¹⁵ How to change a concept like “imminent threat” or the moral reasoning associated with the Just War ethic is not specified. The *National Security Strategy* assesses that the United States faces a new threat from the convergence of rogue states, failed states, and terrorists operating with potential access to weapons of mass destruction. This combination makes measuring the imminent nature of threats so difficult that both preemptive war and preventive war are justified. In addition, the *National Security Strategy* concludes that against such adversaries with such weapons, deterrence is no longer possible.

With these introductory aspects of the ethical issues as background, we now turn to some practical problems in the case of Iraq. The first relates to the compressed time in moving toward and implementing the current military doctrine, Rapid Decisive Operations. Military actions connect concepts and ideas; military decisionmaking connects ethical decisionmaking and outcomes. The question may then be asked, Is preemption just another way to take “rapid” to the next level? A second practical problem is the risk of a wrong decision. Given the potential threats cited in the 2002 *National Security Strategy* and elsewhere, the stakes for either action or inaction are very high. Just as the doctrine of Mutually Assured Destruction kept the world in a precarious balance, a doctrine of preemption elevates the risks of premature action or useless inaction and increases the danger of mistakes. A nation preempting another nation or group may win a battle against a specific threat, but lose the war of acting rightly. Right actions include obtaining victory while addressing the moral duty to prevent destruction of vital resources (e.g., oil) and Western ways of life (universal human values, inalienable rights), as well as preventing unnecessary casualties among noncombatants.

A third practical problem is that of having inaccurate or incomplete information which then becomes “actionable intelligence.” Information overload and faulty patterns of selecting information can create stepping stones to incorrect decisionmaking. In the case of the war against Iraq, significant complications with human intelligence emerged—relying on people with much to gain from regime change in Iraq, a shortage of human intelligence sources, and poor translation of human reports. All conspired to weaken a critical link in building a case for preemptive or preventive war.

How much accuracy in intelligence is needed? In the case of the US use of an inaccurate white paper from Great Britain reporting Niger’s providing yellow-cake uranium as a component for weapons of mass destruction, more information or a better analysis was clearly needed. And in the post hoc analysis, the findings by Dr. David Kay, chief UN inspector, confirmed pre-war reports presented by Hans Blix to the UN:

- Iraq’s nuclear weapons program was dormant.
- No evidence suggested that Iraq possessed chemical or biological weapons.
- But Iraq was attempting to develop missile capability exceeding the UN-mandated limit of 93 miles.¹⁶

Views of Ethicists

Noting these practical problems, we return to some of the ethical difficulties. With preemption included in the *National Security Strategy*, the reaction of ethicists and academics in social science, law, religion, and philosophy was prompt, if not widely noticed. Part of the debate occurred in the public square of newspaper opinion pages and magazines. Even more discussion percolated among academics, and in the *Chronicle of Higher Education* on 23 September 2002, 100 scholars made a one-sentence declaration: “As Christian ethicists, we share a common moral presumption against a pre-emptive war on Iraq by the United States.”¹⁷ Signatories ranged from Duke University pacifist professor Dr. Stanley Hauerwas, to Dr. Shaun Casey, a just-war ethicist from Wesley College in Washington, D.C.

Some ethicists and religious leaders endorsed military action. Some saw it as a continuation of the 1991 conflict, while others saw the action in 2003 as moral. For example, one theologian, the Reverend Richard Land, president of the ethics and religious-liberty commission of the Southern Baptist Convention, endorsed military action on grounds of self-defense: “I believe we are defending ourselves against several acts of war by a man who did not keep treaties and who has already used weapons of mass destruction.”¹⁸

In the press, futurist and military commentator Ralph Peters applauded the war and advanced the position that Operation Iraqi Freedom was

changing the criteria for imminent threat described in the *National Security Strategy*. As previously noted, the strategy document explained we must adapt the concept of imminent threat to the capabilities and objectives of today's adversaries. Peters said, "We have cast off old, failed rules of warfare" for a new paradigm "that makes previous models of warfare obsolete."¹⁹

Responding to Peters, Dr. John Brinsfield (Colonel, USA Ret.), a former professor at the Army War College and retired Army chaplain, challenged this view:

Adopting pre-emptive strikes (followed by bombing more massive than anything since World War II) should never be a *normative* part of our ethical thinking about war. To embrace pre-emptive strikes as normal policy rather than a very narrowly defined exception to the rules of civilized warfare is not to advance to a position of "waging just wars humanely" (quoting Peters) but rather to retreat to barbarism, waging war whenever we think "might makes right."²⁰

Another ethicist, Paul Schroeder, summarizing the Administration's justification for preemptive war, noted the arguments went largely unexamined and concluded the rationale will quickly prove unacceptable:

The Bush Administration's case for preemptive war asserts: the dangers and costs of inaction far outweigh those of acting now. Saddam Hussein, an evil despot, a serial aggressor, an implacable enemy of the United States, and a direct menace to his neighbors must be deposed before he acquires weapons of mass destruction that he might use or let others use against Americans or its allies and friends. A few thousand Americans died in the last terrorist attack; many millions could die in the next one. Time is against us; once Hussein acquires such weapons, he cannot be overthrown without enormous losses and dangers. Persuasion, negotiation, and conciliation are worse than useless with him. Sanctions and coercive diplomacy have failed. Conventional deterrence is equally unreliable. Preemptive action to remove him from power is the only effective remedy and will promote durable peace in the region.

Do we have a right to wage preemptive war against Iraq to overthrow its regime? Would this be a necessary and just war? What long-range effects would it have on the international system? On these questions the Administration won by default. The assumption that a war to overthrow Hussein would be a just war and one that, if it succeeded without excessive negative side effects, would serve everyone's interests went unchallenged in the mainstream. The Administration's claim of a right to overthrow regimes it considers hostile is extraordinary—and one the world will soon find intolerable.²¹

Preemptive strikes and preemptive war have a recognized historic and narrowly defined place in the Just War tradition. In the section that follows, the four criteria for anticipatory self-defense will be considered, noting

“Preventive war has no legal or ethical sanction, because the threat is neither clear nor present.”

the specific cases of the *Caroline* in 1837, precipitating events for World War I, and Operation Iraqi Freedom. Preventive war has no legal or ethical sanction, because the threat is neither clear nor present.

Definitions: Preemptive Strike, Preemptive War, and Preventive War

At this point, let us define and differentiate the terms preemptive strike, preemptive war, and preventive war. A preemptive strike is a tactical activity, intended to have a strategic effect. Preemptive strikes may be actions in war or discrete acts that one nation takes against another apart from war. Ethically, a preemptive strike in war is evaluated in the category of *jus in bello* and is a way to seize the initiative. A preemptive strike may be preceded by warnings and is not necessarily a “sneak attack.” The Confederate attack against Fort Sumter illustrates a preemptive strike. In a more recent example, perhaps the most well-known modern preemptive strike not associated with war is the long-distance attack by Israel in 1984 against Iraq. Israel successfully destroyed a nuclear power plant in Iraq based on the suspicion that eventually Saddam Hussein would have the means for a missile attack with a nuclear weapon against Israel.

In comparison, a preemptive war is associated with one aspect of the just cause standard of going to war (*jus ad bellum*). If attack is imminent, with a clear and present danger, a nation is right to defend itself. With Egypt’s tanks on Israel’s border in the Sinai as a clear and present danger, Israel launched the 1967 war. Also, the act of proceeding to war before actual attack is moral when the threat is real and so near at hand that launching war could be considered self-defense. A nation or nations also may rightly intercede to prevent humanitarian abuses, even inside the boundaries of another sovereign nation.

In contrast, a preventive war is started well before the imminent threat or humanitarian crisis, when the balance of forces is the primary consideration. As noted above, a preemptive war is launched at a time close to a documented or presumed threat, when the forces initiating war retain tactical,

operational, or strategic advantage. Preventive war, on the other hand, is built on a sheer calculation of advantage—nation X can gain an advantage by acting now to attack nation Y, regardless of the threat. By launching a war now, a later conflict—more costly in human life, national resources, or even lost victory—is avoided. The justification for such a war must withstand the critique of a just intent standard.²²

Six Criteria for Jus ad Bellum

The next two sections summarize the criteria of Just War ethics and apply these six criteria to the case of Iraq. By definition, ethical discourse about preventive or preemptive war fits in the category of *jus ad bellum* (justice in going to war).²³ The six criteria are as follows.

- *Legitimate authority.* Different countries assign different legitimate authorities for declaring war. In the United States, though the Constitution specifies Congress as the agent to declare war, the unresolved tension between the President wielding the War Powers Act and the control of appropriations by the Congress has functioned sufficiently to legitimize war by US forces. In cases of international forces, recognized organizations and institutions have formal procedures for legitimizing military power.

- *Public declaration.* National leaders or leaders of international organizations or institutions are called on to announce intentions to pursue war and to provide the conditions for avoiding or ending conflict.²⁴

- *Just intent.* A general rule for just intent, or just cause in going to war, is to restore the status quo ante bellum, a return to international relations when war was not pursued. Other facets of just intent are to protect the innocent, recover something wrongly taken, punish evil, or defend against wrongful attack.²⁵

- *Proportionality.* This criterion focuses on restraint and precision in the use of force. Warfare presents notorious difficulty in predicting its costs—both human and economic—yet the application of military force is legitimate only to the degree it takes account of such effects and outcomes.

- *Last resort.* This criterion presents a logical conundrum. In theory, something else can always be done. The point of this specification is to clarify that force is justified only as a sad necessity after other good faith ways to avoid or resolve conflict have failed.

- *Reasonable hope of success.* Leaders make a morally grave decision to commit the lives of their military forces, and those of innocent civilians, to death for the hope of reversing the cause of going to war. Only conflict with some expectation of restoration to an acceptable status quo is usually ethical. Revenge and “suicide stands” are not moral choices in cases where there is no hope whatever of success.

Asserting the Bush Administration Did Not Meet the Just War Criteria

• *Legitimate Authority.* The first test of legitimate authority includes determining the legitimacy of the person as a rightful office-holder. In the case of President Bush, there is certainty that he is the legitimate national leader acting properly in his role in the United States. Gerald Bradley, law professor at Notre Dame, asserts that the morally upright leadership of the President of the United States in concert with credible advisors is recognized,²⁶ and that assertion is uncontested here.

A second test of legitimate authority focuses on whether the office-holder is in a position to properly authorize war. In the case of the war against Iraq, in which President Bush led a “coalition of the willing,” this aspect is in doubt. Consider the proper authority criterion along a continuum of legitimacy. From the most to the least credible authority for taking military action against a nation-state or national leader, the continuum would be: (1) unanimous international commitment, (2) a United Nations decision, (3) a UN Security Council decision, (4) other regional or international alliance, (5) an ad hoc coalition, (6) unilateral action. Viewing these frameworks as being from most to least legitimate and compelling, the US-led coalition is in the range of 5 to 6. Even the strongest advocates for military action against Iraq express the legitimate authority for the war as being based on a loose coalition of nations. Critics describe the military action as being a case of a limited number of nations trailing along behind the United States out of obligation, or, more bluntly, describe the war as unilateral action by the United States.

If the reason for going to war was based on violations of UN sanctions by Iraq, then the United Nations would be the legitimating authority. If the war was based on international humanitarian concern for the victims of the Hussein regime in Iraq, then some international body, such as the North Atlantic Treaty Organization or the UN, would be the legitimating authority. To act on the authority of a “coalition of the willing” relies on vague ethical criteria. US leaders indicated they possessed persuasive information that an attack against the United States or US interests using weapons of mass destruction was possible, and that Iraq was advancing terrorism. Both the assertion of possible attack with WMD or conventional means and the involvement of Iraq with terrorism (specifically al Qaeda) have since come under considerable dispute, to say the least.

• *Public Declaration.* The second criterion, a public declaration of an ultimatum, was met by the President on 19 March 2003 when he demanded that Saddam Hussein and his sons disarm and step down from power in Iraq

within 48 hours. Public communication of intentions for the use of military force by the US-led coalition is clearly recognized.

- *Just Intent*. The war against Iraq presents problems, however, regarding the just intent of the US-led coalition. Conventional Just War logic uses high standards to grant legitimacy for going to war. National self defense and overcoming a grave evil, such as the suffering of innocents, are typical.

Just intent in Operation Iraqi Freedom focused on the preemptive use of force to disarm Saddam Hussein and replace his regime, based on defending against an imminent threat. Dr. Michael Walzer, Professor of Social Science at the Institute of Advanced Study, in Princeton, N.J., argues that the intent to disarm Iraq was just, based on the failed inspections linked to monitoring compliance with weapons restrictions. The intended end—a disarmed Iraq—met with international support. However, many nations preferred the ways of sanctions and inspections, not war and regime change. To Paul J. Griffiths, Professor of Catholic Studies at the University of Illinois, the definition of imminent has not changed: “It means the gun is at your head.” And in the case of Iraq, “We just don’t have that.” He states that redefining imminent offers “well-intentioned support for US foreign policy, but it’s not defensible in terms of traditional Just War theory.”²⁷ Professor Griffiths proposes two standards for a just, preemptive attack in the framework of Just War:

- Knowledge that the threat is in place; that nuclear, biological, or chemical weapons are armed and ready to be used.
- Knowledge that the weapons are aimed at the nation proposing preemption in self-defense.

The intended end of a disarmed Iraq was founded on the conviction that the regime of Saddam Hussein had both motive and means to launch biological and chemical attacks and would very soon have a capability for nuclear attack or the threat of nuclear attack. Bush Administration proponents for preemption believed both standards proposed by Professor Griffiths were met. Two practical questions intrude on this ethical discussion: How does one determine the threat from a regime continuously demonstrating no willingness to comply with treaties, international sanctions, or standards of truth-telling, and what culpability rests on the preempting nation if and when the rationale for preemption is proven false?

Another facet of the just intent for war with Iraq was the idea of protecting innocent people from humanitarian abuses. International law has developed rapidly along these lines in recent interventions in Africa and even more explicitly in the former Yugoslavia. In 1999, when “ethnic cleansing” in Kosovo exceeded an unspecified threshold for public and international tolerance, the United States led NATO in an intervention, employing air attacks

and the evacuation of noncombatants, to bomb the Serbian forces into stalemate and halt the slaughter of Albanian Muslims. This was one of the most vivid examples of an international intervention within the boundaries of a sovereign state to protect innocents from humanitarian abuses. In Saddam's Iraq, there were graphic reports and references to widespread humanitarian abuses, including the use of chemical weapons against separatist, civilian populations in the Kurdish areas of northern Iraq and the religiously distinct minority in southern Iraq. But humanitarian intervention was never seriously advanced by either the Clinton or Bush administrations, until it was included as part of the justification for ousting the regime of Saddam Hussein. In this instance, protecting victims from humanitarian abuse is probably most accurately described as an *ex post facto* reason for war.

In the case of the war on Iraq, regime change was a way, not an end, and the end of a disarmed Iraq was determined by the Bush Administration to be achievable only by regime change. Regime change as a "morally desirable side-effect"²⁸ of disarming an aggressor is consistent with the Just War ethic. Regime change as the end or intent falls outside the recognized standards of Just War logic. Regime change was incorporated explicitly in the justification for Operation Iraqi Freedom. Regime change is not a status quo ante bellum and commits the nation far beyond military application to postwar responsibility, building a new, politically functioning nation. This is a commitment shouldered determinedly, so far, by the United States, while most other nations and the UN still search for a morally and politically acceptable role. Regarding the ethic of regime change, in his letter to President Bush on 13 September 2002, Bishop Wilton Gregory, president of the US Catholic Conference of Bishops, asked, "Should not a distinction be made between efforts to change unacceptable behavior of a government and efforts to end that government's existence?"²⁹ This echoes the debate about the appropriate ends and leads to questions of appropriate ways—destroying Iraq, containing Iraq, isolating Iraq.

The vortex of the debate about just cause for this war swirls here: Was disarming Iraq morally required to prevent a destruction or endangerment of the core human value of freedom? Was disarming Iraq possible only through military victory over Iraq and replacing the government of Saddam Hussein? In the case of Operation Iraqi Freedom, the US-led coalition of nations acted to destroy the military and political forces of Iraq, and sought to replace the regime to protect all freedom-loving people, extend freedom to Iraq, and increase stability in the region.

The argument for this just cause, or just intent, points toward the central dimension of an emerging paradigm shift in the ethics of war. Preemptive war to prevent a potential threat through regime change using military

***“The Bush doctrine contends that
preemption is right, just,
and different from aggression.”***

force exemplifies the change proposed in the 2002 *National Security Strategy*. Disarming and restructuring a nation using preemptive or preventive war is driven by an ideal future vision, not defense of or return to the status quo. This model or framework for action employs military force to improve the lot of citizens in a foreign land while eliminating a real or potential threat to the territory of the United States, allies, and US political or other interests. This ethic asserts an idealist, universal, God-given liberty as the bedrock for decisionmaking. This freedom is to be advanced by the United States with or without coalition partners, not as a model nation or political persuader.

- *Proportionality*. Proportionality aims to limit the cost and damage of war. In the discussion of Iraq, proportionality relates to the validity of the threats. A strong aspect of the Bush Administration’s case for war is the worst-case risks associated with weapons of mass destruction. If tens of thousands—or millions—of people were killed by attacks with WMD, or should the entire Western way of life and the values of liberty and self-determination be obliterated, obviously the charge of negligence would rest against those who failed to act.

In the case of protecting innocents, proportionality becomes more tangible. Proportionality is intended to engage both restraint in the use of deadly force and precision in employing such force. In both regards, the coalition invasion of Iraq is viewed as acceptable in the damage inflicted to disarm Saddam.

Critics of the case for war argue that Operation Iraqi Freedom violated the Just War ethic because Iraq had not attacked nor threatened to attack the United States or other nations, so no proportional response was indicated. If the threat was genuinely the possible use of weapons of mass destruction, then disarming Iraq’s regime seems proportional. Regime change, however, exceeds that measure.

- *Last Resort*. As noted above, the standard of using war as a last resort is logically difficult. Something other than going to war can always be done. However, the prudential test is whether or not all reasonable options have been exhausted prior to launching military action. In the case of Iraq,

was military action the sad but necessary next step? Some of the harshest criticisms of the Bush Administration have focused on this criterion. Opponents of military action argue that the UN's inspection regime should have been given more time. But when does more time become too much time?

The Bush Administration's emphasis on the threat of WMD was an attempt to move the threshold of last resort forward and to discount the applicability of deterrence. In the book *Structure for Scientific Revolution*³⁰ a paradigm shift is said to occur when old scientific data can no longer explain new facts. The 2002 *National Security Strategy* argues that we face a threat that cannot be managed within the old paradigm, so a new paradigm is created. Preemption based on partial but sufficient evidence that we face a clear but not necessarily present danger is this new paradigm. In this view, the danger is so unpredictable and volatile that we must act immediately rather than waiting to act only as a last resort.

In the case of Iraq, supporters of military action sooner rather than later point to the habitual deceit and evasion of Saddam Hussein—signing a 1991 treaty he consistently violated, perpetually shooting at coalition aircraft in the UN “no fly zone,” and agreeing to inspections of weapon sites only to create obstacles and diversions with inspection teams. Should we have sought more inspections? Continued sanctions? Such steps are always alternatives, but the pragmatics of choosing when to consider war as a last resort are based on the prudential political and diplomatic perceptions of restraint, not on a theoretical last act.

- *Reasonable hope for success.* The reasonable hope for success is a criterion intended to prevent the pointless use of military forces that have no chance at victory. In effect, this protects military personnel and nations from authorities who recklessly steer a nation into armed conflict. In the case of the US-led coalition against Iraq, there is little doubt of the military superiority of the allied forces. Questions about success became more complex in two areas. First, would the application of military force provoke attacks with weapons of mass destruction that otherwise would have been unlikely?³¹ Second, reasonable hope for military success does not necessarily lead to reasonable hope for success in other domains of Iraq's future. Is there reasonable hope for success in building a secure and free Iraq? Will military success against Iraq provoke other regional conflict? And following a successful military campaign to change the regime, does the US-led coalition have the resources and endurance to effect the changes necessary in creating a stable government?

Focus on Imminent Threat as a Just Cause

Anticipatory self-defense is recognized in international law and Just War tradition as a just cause. The first test for this is whether one's action is

self-defense or aggression. Professor William Galston teaches at the University of Maryland and is Director of the Institute for Philosophy and Public Policy. He summarized much legal and philosophical argument by specifying four criteria of preemption as self-defense. These criteria are not dichotomous, either/or categories, but each presents a continuum of possibilities for consideration: the severity of the threat, the degree of probability of the threat, the imminence of the threat, and the cost of delay.³²

Historically, these four specifications emerged from the British military attack against an American ship, the *Caroline*, on 29 December 1837, when British forces crossed the Niagara River to the US side to intercept assistance reportedly being provided to Canadian revolutionaries by US nationals. Daniel Webster subsequently argued in a letter to Lord Ashburton that a British case for self-defense was untenable, because the risks to Britain did not meet the four criteria.

Self-defense has been used sparingly in justifying preemption in the West over many centuries. Even in the post hoc analysis of World War II, preemption of Nazism by Allied power has not been advanced.³³ In an earlier case, historian David Fromkin analyzes the causes of World War I: “The archduke’s murder was the excuse Austria-Hungary wanted to declare war on Serbia. Things might have ended there. But then Germany, using Austria’s war as its excuse, declared war on Russia on the *possibility* that Russia might interfere in the Serbian conflict.”³⁴ This was aggression, not anticipatory self-defense.

Applying the four standards of preemption, one can reconsider “imminent threat” and interpret the proposal in the *National Security Strategy* for “adapting the concept of imminent threat to the capabilities and objectives of today’s adversaries.”³⁵ Professor Galston applied these four criteria to the case for war against Iraq as follows.

- *Threat*. In the analysis of the US national leadership, the threat was high. In the worst case, Iraq had nuclear weapons (or would have them within a near-term) that could be used against US citizens, allies, or friends, or transferred to terrorists.

- *Probability*. The probability of the threat was certain, based on analysis by US national leadership. This issue of probability is the decisive point of contention in international discussions after the fact. As certain as the Bush Administration was about the probability of Iraq’s motives and capability to use weapons of mass destruction, France, Germany, Russia, and the majority of the rest of the world were not convinced (or at least would not act on the evidence presented).

- *Imminence*. No persuasive case was argued that the threat was imminent, at least in any conventional definition of imminent.

- *The cost of delay.* This appeared to be low; that is, delay was rejected by the United States and other willing coalition partners based primarily on the analysis of the past intransigence of Saddam, not the risk of delay. In fact, most other nations argued in favor of delay, to allow inspections and sanctions to work.

Anticipatory self-defense, though technically justified, is an unusual case in military ethics and is not supported in this instance. Consequently we are left with the revolutionary idea of redefining imminent threat and just cause according to the Bush doctrine. The Bush doctrine contends that preemption is right, just, and different from aggression, transcends imperialism, and is based on a vision of the future achievable through preemptive or preventive war. The Bush doctrine builds on a vision of extending liberty and an open-market economy, and authorizes invading a sovereign nation to topple a regime through preemptive war against an enemy, using criteria such as these:

- The enemy is controlled by a despotic ruler with a record of aggression.
- The enemy threatens, directly or through proxies, neighboring people or nations.
- The enemy seeks weapons of mass destruction to use against or threaten others.
- The enemy is stoppable now, and delaying attack only increases the cost of action later.
- The enemy is unresponsive to persuasion, negotiation, deterrence, or conciliation.

Conclusions

In the case of achieving the end of a disarmed Iraq, the ethically preferred way would have been to use coercive inspections based on a significantly larger coalition, preferably an established alliance of nations. Even stronger legitimacy would have been based on a majority, if not a consensus, of member states of the United Nations to implement coercive inspections.³⁶

As stated in the introduction, a new paradigm for right thinking and right acting in war may be emerging. Preempting a nuclear, chemical, or biological attack (or any attack) against innocent people is a morally desirable action. In the case of weapons of mass destruction, the questions remain, “When is imminent, and when is too late?” But these questions can be framed in Just War language. The Bush doctrine of preemption builds on a conviction that using armed force is just when based on partial but sufficient evidence of a clear, unpredictable, and volatile danger that threatens the security of US citizens,

liberty for people in other nations, and the rational structure of nation-states. Redefining imminent, as called for in the *National Security Strategy*, may mean a clear danger is not necessarily a present danger.

The 2002 *National Security Strategy*, then, is used to justify selective killing of some to achieve a greater good of liberty for many others, driven by an idealistic approach for universal human freedom. This is a strategic move oriented toward future vision and away from the recent, realist historical politics of a balance of power or a balance of terror. In the ethical framework of increased good for the most people and balancing ethical ends and means, the Bush doctrine advances democracy at the tip of a spear. This application of military force presents a moral dilemma.

The case of Operation Iraqi Freedom is a catalyst for further thinking about this new ethic regarding the use of force, particularly the leaner, rapid, decisive, lethal new force of the US military. The pivotal issue about retaining “imminent threat” but redefining its criteria for preemptive self-defense is driven by the threat of terrorists with the means and motives to employ weapons of mass destruction. Until further moral thinking provides a more substantial ethical framework for decisionmaking, however, it seems proper to withdraw references to preemption as a doctrinal element of the *National Security Strategy*. Further, even should nations proceed toward a new ethic for launching war preemptively or preventively, consideration of second-order effects is important. Even accepting the benefit of preventing Iraq from obtaining nuclear weapons, will other nations pursuing nuclear weapons move more quickly and covertly, believing the United States would attack during their pursuit of WMD (such as Iraq) but not nations possessing them (such as North Korea)?

Recommended Areas for Further Study

The application of preventive war breaks new ground in the ethics of going to war. In the age of a so-called “clash of cultures,” how can nations inheriting the Just War tradition find ethical frameworks which intersect with, if they don’t correlate with and complement, the ethical perspectives of nations without this Just War legacy?

In the case of Operation Iraqi Freedom, the United States and other coalition nations were involved with military forces enforcing a no-fly zone. Diplomatic efforts to monitor, if not diminish, Iraq’s weapons-related activities meant warfare overarched Iraq’s interaction with the rest of the world. Lacking a clear and certain view of Iraq’s capabilities, especially for weapons of mass destruction, the issue of imminent threat was blurred. This blurring applied to the practical matter at hand, with questions about what weapons

Saddam Hussein might have and when and where he might use them. On a theoretical level, the case of Iraq's possible possession of WMD raised the question to be further explored regarding an imminent threat: How does imminence apply in cases where time and space before attack are not clearly discernible? In other words, when is it timely and when is it too late to act?

Another recommended area for further investigation involves distinguishing between preemption against non-state or "stateless" terrorists and their organizations³⁷ and sovereign states. Distinguishing among nations which harbor or financially support terrorists gives a focal point for conventional military, diplomatic, and economic planning. An additional area for investigation is the assertion that non-state actors and some states (specifically Iraq, though this will certainly apply in other future cases) are beyond deterrence. For those doubtful about deterrence, this method was linked and limited by the Cold War standoff between the United States and the former Soviet Union. Deterrence works in a framework of rational thought and a balance of power. However, even in hypothetical cases of holy war, which was not precisely a factor between the adversaries in Operation Iraqi Freedom, are deterrence and containment possible when dealing with so-called "rogue" states? How, besides deterrence, can one explain Iraq's not using its weapons of mass destruction against its avowed enemy who was within range of its delivery systems—Israel?

Finally, regime change was based on analysis that the only way to disarm Saddam Hussein and release the grip of his tyranny was by going to war. This is a significant departure from Just War standards where the status quo ante bellum is normative. This may, once again, indicate the importance of developing a new ethic when dealing in cases of conflict across the cultural divides separating nations inheriting and relying on a Just War tradition and those nations where the status quo represented a source of the conflict in the first place.

Given the decade of broken promises and provocative pin-pricks by Iraq toward the United Nations and the coalition of the early 1990s, perhaps Operation Iraqi Freedom is not a "pure" case of preemptive or preventive war. But if military forces are to be used to extend liberty, democracy, and free enterprise based on a universal principle of liberty, and if these forces will be called on by national leaders to wage war preemptively, or preventively, then it is imperative to probe for ethical models on which military personnel and legitimate political leaders can launch such wars.

NOTES

1. James W. Skillen, "Iraq, Terrorism, and the New American Security Strategy," *Public Justice Report*, First Quarter 2003, [http://www.cpjustice.org/stories/storyReader\\$933](http://www.cpjustice.org/stories/storyReader$933).

2. David Blankenhorn, moderator, "Iraq and Just War: A Symposium," Washington, D.C., Elihu Root Room, The Carnegie Endowment for International Peace, 30 September 2002, <http://pewforum.org/events/index.php?EventID=36>.

3. George W. Bush, *The National Security Strategy of the United States of America* (Washington: The White House, 2002), p. 15, <http://www.whitehouse.gov/nsc/nss.html>. Hereinafter, *National Security Strategy*.

4. "Military Chiefs Stand by War," Associated Press, 11 February 2004, <http://www.bvvinc.org/WebPages/Military.com%20images/standbywar.htm>. The article notes that in joint testimony to the Senate Armed Services Committee on 10 February 2004, Admiral Vernon Clark, Chief of Naval Operations, read a declaration on the morality of Operation Iraqi Freedom in his statement: "It was my belief that this cause was just. That was my position then [during the war] and that's what I believe today." In reviewing part of a letter he wrote to Secretary of Defense Donald Rumsfeld, Admiral Clark stated: "For some this is about WMD. For others, this is about al Qaeda. For us, it's about all these and more. Iraq has been shooting at our aircraft for over five years."

5. Thomas M. Nichols, "Just War, Not Prevention," Carnegie Council on Ethics and International Affairs 2004, <http://www.carnegiecouncil.org/viewMedia.php/prmTemplateID/8/prmID/867>.

6. Ibid.

7. Ibid.

8. Alan W. Dowd, "Thirteen Years: The Causes and Consequences of the War in Iraq," *Parameters*, 33 (Autumn 2003), 48.

9. George W. Bush, "Graduation Speech at West Point," 1 June 2002, http://www.nti.org/e_research/official_docs/pres/bush_wp_prestrike.pdf.

10. Richard Cheney, "The Vice President Delivers Remarks to the National Association of Home Builders," Washington, D.C., 6 June 2002, <http://www.whitehouse.gov/vicepresident/news-speeches/speeches/vp20020606.html>. Vice President Cheney spoke bluntly about preempting adversaries: "Wars are not won on the defensive. We must take the battle to the enemy—and, where necessary, preempt grave threats to our country before they materialize."

11. Condoleezza Rice, "Search for the Smoking Gun," CNN television interview by Wolf Blitzer, 8 September 2002.

12. Cited by Greta Knutzen, "Between Iraq and A Hard Place," From The Wilderness Publications, 27 August 2002, http://www.fromthewilderness.com/free/ww3/082702_iraq.html. Also, DOD News Transcript, 19 August 2002, http://www.dod.gov/transcripts/2002/t09122002_t0819foxanew.html.

13. Colin Powell, Address to the U.N. Security Council, 5 February 2003, www.whitehouse.gov/news/releases/2003/02/20030205-1.html.

14. Henry Kissinger, "Consult and Control," *The Washington Post*, 12 August 2002, sec. B, p. 1. His call to action and view of second-order effects were: "America's special responsibility, as the most powerful nation in the world, is to work toward an international system that rests on more than military power—indeed, that strives to translate power into cooperation. Any other attitude will gradually isolate and exhaust America."

15. Bush, *National Security Strategy*, p. 19.

16. Bill Nichols, "U.N.: Iraq Had No WMD after 1994," *USA Today*, 3 March 2004, p. A1.

17. Scott McLemee, "100 Christian Ethicists Challenge Claim that Pre-emptive War on Iraq Would Be Morally Justified," *Chronicle of Higher Education*, web daily, 23 September 2002, <http://maxspeak.org/gm/archives/chron.htm>.

18. "Support for Bush in 'Just War,'" The Ethics & Religious Liberty Commission of The Southern Baptist Convention, 4 October 2002, http://www.christianity.com/partner/Article_Display_Page/0,,PTID314166|CHID597896|CIID1554306,00.html.

19. Ralph Peters, "Revolutionizing Warfare on the Fly," *Atlanta Journal-Constitution*, 23 March 2003, p. D6.

20. John Brinsfield, "Going Against Rules No Reason to Rejoice," *Atlanta Journal-Constitution*, 30 March 2003, p. C2.

21. Paul W. Schroeder, "Iraq: The Case Against Preemptive War," *American Conservative*, 21 October 2002, http://www.amconmag.com/10_21/iraq.html. In trying to put preemption and preventive war in context, Schroeder goes on to say:

A more dangerous, illegitimate norm and example can hardly be imagined. As could easily be shown by history, it completely subverts previous standards for judging the legitimacy of resorts to war, justifying any number of wars hitherto considered unjust and aggressive. It would, for example, justify not only the Austro-German decision for preventive war on Serbia in 1914, condemned by most historians, but also a German attack on Russia and/or France as urged by some German generals on numerous occasions between 1888 and 1914. It would in fact justify almost any attack by any state on any other for almost any reason. This is not a theoretical or academic point. The American example and standard for preemptive war, if carried out, would invite imita-

tion and emulation, and get it. One can easily imagine plausible scenarios in which India could justly attack Pakistan or vice versa, or Israel any one of its neighbors, or China Taiwan, or South Korea North Korea, under this rule that suspicion of what a hostile regime might do justifies launching preventive wars to overthrow it.

22. Jeffrey Record, "The Bush Doctrine and War With Iraq," *Parameters*, 33 (Spring 2003), p. 19. In his conclusion, Record recounts an illuminating historical case of proposed preventive war by a US military leader when the Cold War was heating up:

In the earliest years of the Cold War, before the Soviet Union exploded the first atomic bomb, there were calls in the United States for preventive war against another evil dictator. The call continued even after the Soviets detonated their first bomb in 1949. Indeed, in the following year, the Commandant of the Air Force's new Air War College publicly asked to be given the order to conduct a nuclear strike against fledgling Soviet atomic capabilities. "And when I went to Christ," said the Commandant, "I think I could explain to Him why I wanted to do it now before it's too late. I think I could explain to Him that I had saved civilization. With it [the A-bomb] used in time, we can immobilize a foe [and] reduce his crime before it happened."

President Truman fired the Commandant, preferring instead a long, hard, and, in the end, stunningly successful policy of containment and deterrence.

23. US Army, "Apply Just War Tradition to Your Service as a Leader and the Profession of Arms," Training Support Package (TSP) 158-C-1131, Center for Army Leadership, US Army Command and General Staff College, Fort Leavenworth, Kans., <http://155.217.58.58/cgi-bin/atdl.dll/cctsp/158-c-1131/158-c-1131.htm>. This TSP presents a thorough introduction to the topic and the role of officers as leaders and professionals in thinking about foundations for and key references to the Just War tradition.

24. *The Law of Land Warfare*, requires a "previous and explicit warning" as a declaration of war or an ultimatum with a conditional declaration of war, based on the 1907 Hague III, Article 1. US Department of the Army, *The Law of Land Warfare*, Field Manual 27-10 (Washington: GPO, 18 July 1956, with Change 1, 15 July 1976), ch. 2, sec. 1, para. 20.

25. James Turner Johnson, "Threats, Values, and Defense: Does Defense of Values by Force Remain a Moral Possibility?" *Parameters*, 15 (Spring 1985), pp. 14-15.

26. Gerald Bradley, "Iraq and Just War: A Symposium," The Carnegie Endowment for International Peace, 30 September 2002.

27. Paul J. Griffiths, quoted in Joe Feuerherd, "Preemption, Aggression, and Catholic Teaching: Iraq War Highlights Problems of Seeking Justice Through Force," *National Catholic Reporter*, 25 October 2002, p. 25, http://www.findarticles.com/p/articles/mi_m1141/is_1_39/ai_94079348.

28. Bradley, "Iraq and Just War: A Symposium."

29. Joe Feuerherd, "Preemption, Aggression, and Catholic Teaching."

30. Thomas Kuhn, *The Structure of Scientific Revolutions* (Chicago: Univ. of Chicago Press, 1962).

31. Central Intelligence Agency, *Iraq's Weapons of Mass Destruction Programs* (Washington: GPO, October 2002).

32. William Galston, "Iraq and Just War: A Symposium," The Carnegie Endowment for International Peace, 30 September 2002. Also see Schroeder, p. 7.

33. *Ibid.* Schroeder considers, "the superficially plausible idea that a preventive war launched against Hitler's Germany in 1936 at the time of Germany's reoccupation of the Rhineland or in 1938 at the annexation of Austria would have prevented all the horrors of World War II and the Holocaust."

34. Cited by Malcolm Jones in his review of David Fromkin, *Europe's Last Summer* (New York: Knopf Publishing Group, 2004) in *Newsweek*, 5 April 2004, p. 60.

35. Bush, *National Security Strategy*, p. 19.

36. Michael Walzer, "Iraq and Just War: A Symposium," The Carnegie Endowment for International Peace, 30 September 2002. Walzer's proposal is an excellent approach. In order to conduct coercive inspections, both a strong, international case would be needed (and provide legitimate authority) and military force would be moved into position to express the will of the international community, protect the inspectors, and expand the diplomatic strength and military capability for future action, should coercive inspections be resisted.

37. Martin Cook, "Ethical and Legal Dimensions of the Bush 'Preemptive' Strategy," paper presented at the Marshall Center International Law Conference, Garmish-Partenkirchen, Germany, 16 September 2003 (and forthcoming in the *Harvard Journal of Law and Public Policy*), proposes that the contemporary setting is more akin to a "pre-Westphalian" world than a world of sovereign states: "In that respect, at least if one measures the contemporary situation by al Qaeda's aspirations, the contemporary Global War against Terrorism bears much more striking resemblance to Augustine's circumstance than it does to Westphalian states responding to aggression committed against them by other Westphalian states."