

UNJUST WAR IN IRAQ

For most of us who live in countries in which the threat of invasion and military occupation has been negligible or nonexistent for decades, it seems virtually impossible to understand the situation in Iraq with any imaginative vividness. American soldiers are stationed throughout the country in order to enable distant American politicians to direct the affairs and determine the fate of the country and its people in a way that conforms to American interests and values – or at least to the interests and values of the politicians and their domestic supporters. Americans seem incapable of the sort of imaginative identification with those affected by their country's action that moralists and philosophers had been advocating long before Jesus offered his version in the form of the golden rule. It would never occur to most Americans to imagine that Iraqis might be feeling much the way Americans would feel if Arab Muslim military forces were occupying their national capitol and killing those who sought to resist them. Even most opponents of the war focus their objections on the consequences of the fighting, particularly for the Americans who are being killed there and their families, rather than on the US's unreflective arrogation to itself of the right to be in Iraq at all. One can despise the insurgents for their vile methods and for the irrational creeds to which they subscribe and yet recognize that they are, all the same, patriots engaged in resisting a foreign occupation of their country.

I confess that, before the war began, I was ambivalent, despite the fact that most of the people whose judgment I respected were opposed. The Ba'athist regime of Saddam Hussein was monstrous by any standard. The litany of that regime's appalling crimes is familiar: the war of aggression against Iran, the invasion of Kuwait, the use of poison gas against its own population, the torture and murder of political opponents, and so on. It would have been a catastrophe if such a regime had been able to achieve its indisputable ambition to possess an even more formidable arsenal of weapons of mass destruction (WMD) than it had amassed earlier. Even though the Bush administration's frenzied determination to go to war no matter what Iraq or the UN might do revealed that it had an ulterior agenda in addition to the acknowledged aim of eliminating the regime and any WMD it might have, it was still possible that a war that would eliminate any prospect of that regime's ever being able to use WMD might thereby achieve a just and beneficial aim at a proportionate cost.

In retrospect, however, I see that the opponents were right. This acknowledgement is not just the product of hindsight. It is not that the administration has been the victim of bad luck in moral matters. Although (John Kerry notwithstanding) the moral case against the war has been strengthened by all that has emerged in the wake of the fighting, we in fact had access to a decisive case well before we learned that there were no WMD and that the regime itself was militarily too feeble to pose a serious threat to anyone. This case is in large part comprised by refutations of the arguments that the administration advanced in the war's defense. So it is to these that I now turn.

The administration offered two broad arguments in support of the war. One presented it as necessary for national self-defense; the other portrayed it as an instance of humanitarian intervention.

Wars of self-defense may be divided into three broad categories. First, the paradigm case of self-defense is a war fought in response to an actual attack. This is legal under international law. Second, *preemptive* war involves defense against an imminent attack, an attack that is clearly in preparation and is on the verge of commencing. The legal status of preemptive defense is controversial. Third, and finally,

preventive war is war initiated in response to a perceived threat of an attack that is not imminent. This is clearly illegal under international law. In practice, however, the boundaries between the categories may be somewhat blurred.

At the time the Iraq war was initiated, neither the US nor any other country was under attack by Iraq. The US had, however, recently been attacked by Al Qaeda and it was reasonable to believe that it was under imminent threat of further attacks. The Bush administration claimed that the regime in Iraq had collaborated with and provided support for Al Qaeda, so that an attack against the regime would undermine that source of support, thereby weakening Al Qaeda and contributing to the defense of the US. In particular, the dismantling of Iraq's arsenal of WMD would prevent Iraq from supplying those weapons to Al Qaeda terrorists for use against the US.

The problem with this argument is that there was no credible evidence at the time of collaboration between the traditional, secular dictatorship in Iraq and the Islamic fanatics of Al Qaeda. Nor was there compelling evidence that Iraq had any WMD that it could have provided to Al Qaeda, assuming it wanted to. And no evidence of either sort has emerged subsequently, despite the administration's frantic and exhaustive efforts to find it. What has emerged instead is that the world's most lavish supplier to unsavory customers of materials for WMD has been the US's ally in the war against terrorism: Pakistan.

Insofar as the Iraq war was supposed to offer indirect defense against Al Qaeda and terrorism, it has been spectacularly counterproductive. Perhaps the deepest source of motivation for Arab and Islamic terrorism is a profound sense of humiliation and injustice deriving from the perceived disparity between the idea that Muslims are the chosen recipients of God's final revelation and the poverty and oppression that characterize the lives of most Muslims, particularly in the Arab world. With the Iraq war, Arabs and Muslims worldwide have been treated to daily images of Arab men being tortured and sexually humiliated by Americans, including American women, Arab men and women forced to live their daily lives under the gaze of American soldiers, Muslim holy areas besieged and bombarded by American forces, and so on. There could hardly be a more effective way to inflame the hatred of Arabs and Muslims against the US, or a more potent recruiting tool for Al Qaeda.

This was readily foreseeable before the war began. Although Americans may have had difficulty perceiving the relevance of recent history, there can be few Iraqis who failed to notice that the invaders were from the same country that a little over a decade earlier had bombed their capitol, decimated their civilian infrastructure, and insisted on the continuing imposition of devastating economic sanctions that had kept many of those who had managed to survive the war in deepest misery ever since. They were even aware that this second assault was led by the son of the man who had led the first. Only someone in the grip of an insane ideology could have failed to foresee that there would be popular resistance, even among those who loathed the Ba'athist regime, that would have to be met by force and inevitably in front of cameras.

Just recently the number of American soldiers killed in Iraq passed the 1000 mark. As the insurgency continues to escalate, it may not be too long before that number exceeds the number of Americans killed on September 11, 2001. Meanwhile the diversion of the US's energies and military resources to Iraq impedes its ability to address the serious threats to American security posed by Al Qaeda and the nuclear ambitions of North Korea and Iran, among others. In short, the war in Iraq cannot be and never could

have been justified as self-defense against an actual or imminent attack; rather, it has increased the US's vulnerability and weakened its capacity for self-defense.

The Bush administration, however, also advanced the different claim that war was necessary to defend the US from *future* attack by Iraq. In its National Security Strategy, which was released prior to the initiation of the Iraq war, the administration noted that the US now has adversaries that “rely on acts of terror and, potentially, the use of weapons of mass destruction – weapons that can be easily concealed, delivered covertly, and used without warning. ... The greater the threat, the greater the risk of inaction – and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively.”¹ The idea that preventive war has become a legitimate option for the US in an age of terrorist threats came to be known as the “Bush doctrine.”

The administration's assertion of a right to preventive war raises two questions. First, is it true that preventive war can sometimes be justified? Second, if it can be, is the Iraq war an instance of justified preventive war?

Preventive war is, as I noted earlier, illegal under international law and is not recognized as permissible by the traditional theory of the just war. The traditional view, in domestic law, international law, and morality, is that self-defense cannot be justified in the absence of an actual attack or a threat of imminent attack. This no doubt explains why the National Security Strategy refers repeatedly to “preemption” but not to “preventive war,” despite the fact that it is a right to the latter that is clearly being asserted (“uncertainty remains as to the time and place of the enemy's attack”).

Why do both law and morality require action – an attack or preparations for an attack – by a potential aggressor before self-defensive action can be permissible? One obvious answer is that the significance of action is evidentiary. If either individuals or political leaders were permitted to be guided by their perception of the intentions of those who might threaten them, there would be a great deal of unnecessary violence deriving from either actual or pretended misperceptions. To guard against this, both law and morality insist that there must be an actual attack or at least action preparatory for an attack. This minimizes the possibility of mistake and denies aggressors the excuse that they felt sure that they would have been attacked if they had not attacked first.

As a practical matter, an actual attack provides almost decisive evidence that self-defense is necessary to avoid harm (“almost” because some attackers are incompetent, or may change their minds before any harm is done), and active preparations for attack also make the probability of harm sufficiently high to justify some form of defensive response. But the insistence of law and morality is not that actual or imminent attack is *sufficient* for self-defense to be justified; rather, the claim is that one or the other is *necessary*. But if the significance of actual or imminent attack is merely evidentiary, this is implausible. For there can be forms of evidence that are at least as reliable in establishing a high probability of future attack as, for example in domestic law, the sorts of active preparation for an attack that would be sufficient for arrest and detention for conspiracy to commit a crime (which we may interpret as preemptive defense against an imminent attack). There have, for example, been cases in domestic law in which a woman with a history of being battered by her husband has killed him in his sleep in the reasonable belief that her life would have been at grave risk when he woke, perhaps even more so if she had tried to flee. In some cases of this sort, the objective risk to the woman was significantly higher than it often is to the intended victim of a conspiracy to

commit murder at the time the conspirator is arrested. Yet when these women have been charged with murder they have been denied a plea of self-defense because of the absence of an actual or imminent attack – even when the court has conceded the reasonableness of their belief that they would be in grave danger of being killed and would be incapable of self-defense once the husband woke.

An alternative and perhaps more plausible explanation of why we tend to insist, in both law and morality, that an actual or imminent attack is a necessary condition of justified self-defense has to do with considerations of *justice*. In general, for an act of self-defense to be morally justified, the target of the defensive action must have done something to make himself morally *liable* to attack. If he has done nothing to lower the normal moral barriers to attacking him, an attack against him will be unjust: it will wrong him or violate his rights. This, then, may be the most important moral objection to preventive war: that those who are the targets of preventive attack may have done nothing to render themselves liable to attack. They may be innocent in the relevant sense.

The Bush administration did not consider these niceties of moral and legal casuistry. Neither the administration nor its apologists recognized the importance of the question whether those the US attacked were in any way morally liable to attack. Instead the administration focused its case on Iraq's alleged possession of WMD. How might a country's possession of WMD make it morally or legally permissible to launch a preventive war against it?

Clearly the mere possession of WMD cannot make a country a legitimate target of preventive war. Nor could a country's possession of WMD combine with its having a recent history of aggressive war to make that country liable to preventive attack. For that would make the US and a number of other countries legitimate targets of preventive attack. But perhaps Iraq was a special case. Perhaps the brutality of the Ba'athist regime and the extensive record of recent Iraqi aggression were so egregious that the prohibition of preventive war had to be relaxed in this case as a matter of necessity. I thought at the time and still think that there is something to be said for this. It would have been a matter of the gravest consequence if nuclear and biological weapons had fallen into the hands of a regime with apparently no scruples about making war on its neighbors, gassing one of its own ethnic minorities, firing missiles at civilian areas in Israel, allowing thousands of its citizens to die from the effects of economic sanctions while erecting sumptuous palaces for a handful of its own elite, and so on. This might have been just the sort of case in which the threat of some future atrocity is so great that it becomes permissible to go to war even in the absence of an actual or imminent attack.

Notice that, although the previous aggressions and atrocities did provide evidence that further aggression would be likely if Iraq were allowed to retain the capacity for it, they were not a basis for liability to defensive action at the time the war began. Because they lay in the past, because they were *over*, they were not offenses to which the war could be a defensive *response*. In order for Iraq and its military forces to be *liable* to attack, Iraq must have been guilty of a new offense, or a *continuing* offense, that was causally connected with the threat of future attack.

There was in fact such an offense. It was a condition of the cease-fire that ended the Gulf War in 1991 that Iraq would disarm itself of WMD. Sanctions were to be enforced until the UN had determined via inspections that this condition had been adequately met. But Iraq had thus far refused to cooperate fully with the inspections. This continuing refusal to honor the terms of the earlier cease-fire could be interpreted as the offense that made Iraq liable to preventive war. Iraq was in continuing breach of its

obligations in a way that could have been enabling it to preserve or even expand its capacity for the sort of aggression that the Gulf War had been fought (in part) to stop and to ensure would not occur again. (Some commentators – for example, Thomas Hurka – have suggested that the second Iraq war might be understood as a resumption of the Gulf War in response to the vanquished country's refusal to abide by the terms of the cease-fire, and therefore not a pure case of preventive war.)

The Bush administration did not itself make the case that it was Iraq's continuing violation of the cease-fire agreement that constituted the offense that triggered the US's moral right to attack in preventive defense. It interpreted the significance of the breach of the cease-fire more in legal terms. But the moral argument was available and we should assess the moral case for the war in its strongest form. That argument, in brief, is that there was compelling evidence that Iraq possessed WMD, that its possession of these weapons was in violation of the legitimate demand, which it had committed itself to comply with, that it disarm to a level at which it would no longer pose a serious threat of aggression to other countries, as it clearly had in the recent past, and that there was no effective way to ensure that Iraq would disarm and stay disarmed other than going to war.

We now know, in retrospect, that this argument did not provide an objective justification for war because there were in fact no WMD. Iraq did not even have the capacity to manufacture WMD anytime soon. Most people, however, believe that the war should be judged, even in retrospect, by a subjective standard of justification. They believe, in other words, that whether or not the US was justified in going to war depends on what it was reasonable to believe at the time, not on truths that may have been unknowable then. Although I am skeptical of this view, I will assume that it is correct. Given that assumption, whether the war was justified as an instance of preventive defense depends on the answers to two questions. One is whether it was reasonable to believe, in the spring of 2003, that the risk posed by the possibility that Iraq possessed WMD was sufficiently high to outweigh the harm that was likely to be caused by the resort to war. The other is whether it was also reasonable to believe that, if Iraq did possess WMD, war was the only effective means of eliminating the threat they posed. (Those familiar with the traditional theory of the just war will recognize these questions as asking, in essence, whether it was reasonable to believe that the war would satisfy the *jus ad bellum* requirements of proportionality and necessity.)

There was some reason at the time to believe that Iraq had WMD. It had possessed chemical weapons in the past and had clearly sought to develop a nuclear arsenal (an ambition that suffered a devastating setback when Israel preemptively destroyed Iraq's Osirak reactor in 1981). One piece of circumstantial evidence that I found persuasive is that the Iraqi regime had consistently resisted and obstructed the work of the UN inspectors. Given that the penalty for noncooperation was the continued imposition of sanctions that were undermining the economy and causing the deaths of thousands of Iraqis, why would rational people refuse to cooperate unless they had something important to hide?

We can now see the fallibility of this sort of a priori reasoning. It may seem hard to believe that a political leader would force his own people to endure so much suffering just to avoid the shame of capitulation, but something like this seems to have been true. So circumstantial evidence is not the sort of evidence that can justify a course of action as serious as starting a war. But beyond this circumstantial evidence, there was little evidence at all. Throughout the period before the war began, skeptics repeatedly pressed the administration for hard evidence but were answered with emphatic assertions of

certainty that the weapons were there and promises that more evidence would be forthcoming. One specific piece of evidence – documents that according to the administration showed that Iraq was purchasing uranium from Niger – were forgeries whose authenticity was known within the administration to be highly dubious well before Bush cited them as evidence in his 2003 State of the Union address to Congress and the nation. In fact, little or nothing had emerged to cast doubt on Secretary of State Colin Powell's public statement in 2001 that Iraq "has not developed any significant capability with respect to weapons of mass destruction."²

The conclusion seems unavoidable that what little evidence there was was far too insubstantial to justify a course as drastic as war. The presumption against the moral permissibility of war is high. Preventive war, in particular, imposes an especially stringent burden of justification. Because of the risk that preventive war will attack those who are in fact innocent, and because the appeal to possible future threats is easy to exploit as cover for aggression, the probability of future attack and the magnitude of the harm that would be suffered if the attack were to occur must both be demonstrably high if preventive war is to be justified. Of course, even the best evidence may turn out to be wrong. But the Iraq war is not a case in which what seemed like compelling evidence turned out, through bad moral luck, to have been misleading. It is instead a case in which the flimsiest evidence was inflated to provide justificatory cover for a war that, for a variety of reasons, the Bush administration was apparently determined to fight whether there were WMD or not.

It was, after all, a more or less risk-free option to wait a bit longer before resorting to war in order to allow the UN inspectors time to determine whether Iraq's repeated protestations that there were no WMD were true. One thing the administration's bellicosity did achieve was an apparently genuine willingness on the part of the Iraqi regime finally to allow for full inspections. But having achieved this notable concession, the administration immediately tossed it aside and attacked as if the question whether there were WMD was irrelevant. And the administration's subsequent inability to find a single weapon of mass destruction has certainly not prompted an admission that the war was a mistake.

There is also the second question I noted – namely, whether even if there had been WMD, war would have been necessary to eliminate them. Although it is impossible to be certain about this, it seems that the administration had already set in motion a serious and concerted global effort to neutralize any threat from Iraq even before the war had begun. Many countries, alarmed as much by the Bush administration's strident bellicosity as by the threat from Iraq, had begun to mobilize under the auspices of the UN to achieve the long-delayed resolution of the problem posed by Iraq and its weapons programs. Again, the administration had achieved a noteworthy goal: it had moved the problem of the Iraqi threat to the top of the world's agenda and made an immediate resolution necessary. But instead of pursuing the peaceful disarmament of Iraq in cooperation with other nations in the new atmosphere it had created, it opted for immediate war. There could hardly be a clearer case in which war was *not* the only option, *not* the option of last resort.

When the administration's claims about Iraq's WMD began to evoke a skeptical response that could not be adequately answered, a second rationale for the war was brought forward. This was that war would liberate the Iraqi people from the regime of Saddam Hussein. It would be a war of rescue, and instance of humanitarian intervention.

It is hard to believe that individuals in the Bush administration have cared any more about ordinary people in Iraq – people who suffered terribly from US-backed sanctions during the administration’s first three years in office – than they care now about the victims of the continuing genocide in the Sudan. But skepticism about the administration’s professions of concern for the Iraqi people is irrelevant to whether the war was justified as humanitarian intervention. If the situation in Iraq made humanitarian intervention permissible or even required, a war that achieved the humanitarian aims could have been justified even if the administration had been motivated by entirely different concerns – just as the prevention of a rape or murder can be permissible even if the rescuer’s only aim is to enjoy a good fistfight.

The reason why the Iraq war cannot be justified as an instance of humanitarian intervention is not just that at the time the persecution of the Iraqi people failed even to approximate the scale necessary to justify the resort to war (a failure of proportionality); it is also, and more importantly, that there was no indication that the people whom the US claimed to be saving actually welcomed American intervention. For humanitarian intervention to be justified, it must be consistent with the will of the supposed beneficiaries. People who suffer under tyrannical regimes often resist the overthrow of their government by a foreign army. They may prefer to try to liberate themselves (as John Stuart Mill insisted they must do in order to be truly self-determining); or they may prefer to be ruled by a domestic tyrant than by a self-professedly benign but alien power. (There is a Haitian character in Graham Greene’s novel, *The Comedians*, who risks his life to oppose the dictatorship of “Papa Doc” Duvalier but who also says, “I’m not sure I wouldn’t fight for Papa Doc if the Marines came. At least he’s Haitian. No, the job has to be done with our own hands.”)

As I noted earlier, it is hardly surprising that Iraqis would decline to welcome their foreign tormenters as their saviors. Even now, after the US has had more than a year to demonstrate its benignity and altruism, the population of Iraq seems more solidly antagonistic than ever. It was possible that if, after the rapid and relatively bloodless initial military success, the US had acted quickly to restore and rebuild the country and had immediately involved Iraqis from all sectors of the country in the work of running the country, it could have earned the gratitude and respect of the people and thereby have achieved a retroactive justification of sorts for the war. Instead the Bush administration squandered its opportunity by allowing and perhaps even encouraging corruption, venality, brutality, and even torture, with the consequence that there is now armed opposition to the US presence in virtually every Sunni and Shiite town in the country.

As Iraq becomes ever more deeply submerged in a cauldron of violence and chaos, Bush resorts to predictably macho clichés about staying the course and disdaining to cut and run. He crows triumphantly at campaign rallies that “this country is headed toward democracy!” But many Iraqis do not want an American-style democracy. Many Muslims, for example, believe that democracy is impious, that human beings must not make their own laws but must submit to the laws of God. One may hope that most Iraqis take a more sensible view. But again the question is whether the US has the right to use force to establish democracy in Iraq even if many people there wanted it. Indeed, even if the US did have that right, one would be obliged to ask the further question whether the Bush administration in fact seeks or would even tolerate democracy in Iraq.

It seems unlikely that genuinely free elections in Iraq, if they were possible, would result in the establishment of a liberal, secular government. It is far more likely that a popular vote would lead to an Islamic theocracy or a government dominated by the

Shiites that would be a potential ally of Iran. We need to ask ourselves whether it is credible to suppose that the Bush administration, with forces present in the country, would tolerate the democratic installation of a government that would be hostile to the US but would control the country's oil resources.

The war and subsequent military occupation have been carried out with arrogance and transparent indifference to the people of Iraq. And Bush himself has throughout the war shown something bordering on contempt for Americans as well. It goes deeper than the unconscious contempt he reveals in stunts such as landing on an aircraft carrier in quasi-military regalia to trumpet his putative victory. It goes deeper even than the deceptions about WMD. What is one to think of a man who impugns the honor of political opponents who fought in but protested against an earlier pointless and unjust war that he supported but evaded, who at the same time sends a new generation of young to kill and be killed in a war that has lost all pretense of justification? How much can their lives matter to him? What are they dying for? There are no WMD. There is no Saddam Hussein. As the banner proclaimed, "Mission Accomplished."

I am struck by the contrast with Woodrow Wilson's reaction to the tumultuous applause that greeted his address to Congress in which he committed the US to participation in World War I. On returning to the White House, Wilson remarked in despair to a friend and advisor: "My message today was a message of death for our young men. How strange it seems to applaud that."³ Even as the death toll continues to mount at an ever-increasing rate, it is impossible to imagine George W. Bush, with his perpetually ill-suppressed smirk of complacency and self-congratulation, having the imagination or sensitivity to be haunted by such a reflection.

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¹ "The National Security Strategy of the United States of America"
<<http://www.whitehouse.gov/nsc/nss.pdf>>, p. 15.

² Quoted in Peter Singer, *The President of Good and Evil* (New York: Plume, 2004), p. 162.

³ Richard Hofstadter, *The American Political Tradition* (New York: Vintage, 1989), p.351.