THE IRAQ WAR OF 2003: A RESPONSE TO GABRIEL PALMER-FERNANDEZ

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Was the United States justified in invading Iraq? We can find some guidance in seeking to answer this question from just war theory, a body of thought dating back to Augustine in the late fourth century and still thriving today. Traditionally, just war theory has divided the moral dilemmas of war into two parts. *Jus ad bellum* concerns the justifications for waging war, *jus in bello* the rules that govern warfare once fighting has begun. *Jus ad bellum* provides a framework for judging whether the United States was justified in going to war against Iraq.¹

The justifications for waging war derive from what Michael Walzer calls the “legalist paradigm,”² a set of precepts governing international relations that undergirds post World-War II doctrine as set out in the United Nations Charter.³ The central premise of the legalist paradigm is that the international order consists of sovereign states, and that “use of force or imminent threat of force by one state against the political sovereignty or territorial integrity of another constitutes aggression and is a criminal act.”⁴ Aggression justifies self-defense by its victim, and (it is generally agreed) assistance by other states who may come to the victim state’s defense.

The paradigm of justified self-defense occurs when a state is invaded by another, aggressive state. Just as in cases of individual self-defense, however, to wait to respond until after being attacked is generally to wait too long. Thus Walzer argues that “Both individuals and states can rightfully defend themselves against violence that is imminent but not actual; they can fire the first shots if they know themselves about to be attacked.”⁵ The central questions, then, are when a state “knows” it is about to be attacked, and what kinds of steps the aggressor state must have taken to warrant preemptive action by its target.
In 1842 then-secretary of state Daniel Webster offered a strict interpretation of preemptive action. It must be shown, he asserted, that there is “a necessity of self-defense...instant, overwhelming, leaving no choice of means, and no moment for deliberation.” As Walzer argues, Webster’s view “would permit us to do little more than respond to an attack once we had seen it coming but before we had felt its impact,” and for this reason many would defend a more permissive account of preemptive action. Yet as the threat becomes less imminent, preemptive attack shades into preventive war, which by definition responds to a more distant danger and is therefore more difficult to justify.

Although some defend preventive war, it does not fit easily within the legalist paradigm. Potential aggression is not aggression, and the possibility of force is not identical with the imminent threat of force. That matter aside, allowing preventive war seems to open the floodgates. Walzer denies that preventive war is justifiable, and David Luban argues that “giving a green light to preventive war would make wars too frequent and too routine.” Recently some philosophers have argued against the legitimacy of preventive war on deontological grounds: that it is simply impermissible to attack someone who has not (yet) done harm. However, this sort of argument would seem to extend to preemptive strikes as well, and some will find that conclusion troubling and excessively idealistic.

Popular discussions of the legitimacy of the Iraq war did not often distinguish between preemptive and preventive war, despite the centrality of the distinction in just war theory. It’s clear that the war against Iraq, sometimes described by administration officials and others as preemptive, was at best preventive. Iraq was not about to attack the United States; there was no good evidence that Iraq had been involved in the attacks of September 11, 2001; and it did not possess weapons of mass destruction as the Bush administration had claimed before the war.

Nevertheless, because political action always takes place behind a veil of (greater or lesser) uncertainty about facts and risks, the standard by which to judge the legitimacy of a war cannot be whether such threats exist but rather whether the state contemplating war has good reason to believe they exist. About this question there will, of course, be disagreement, and perhaps a stronger case can be made for the Bush administration’s view than Gabriel Palmer-Fernandez’s analysis implies. Still, both before the war and since, prevailing international opinion, and even much domestic opinion, has been skeptical.
Palmer-Fernandez’s essay suggests two other possible justifications implicit in the Bush administration’s defense of the Iraq war. One is humanitarian intervention. Armed humanitarian intervention appears to run counter to the legalist paradigm, according to which states possess sovereignty and sovereignty forbids interference by outsiders in a state’s internal affairs. But it is broadly accepted as legitimate in extreme cases, such as when a state engages in atrocities or serious human rights violations.

One way to resolve the apparent contradiction between state sovereignty and humanitarian intervention is to insist that a state “forfeits” its sovereignty when it violates its citizens’ human rights, on the grounds that citizens’ consent confers legitimacy on the state and they can be presumed not to consent to their own harm or oppression. Justifying the Iraq war in terms of humanitarian intervention would be difficult, however, since the worst abuses committed by the Iraqi government against its own people took place during the 1980s, when the United States supported the regime. Moreover, those who contemplate intervention even for the altruistic reason of protecting human rights must consider whether the benefits of intervening outweigh its costs. How do Iraqis’ human rights and well-being, potentially advanced by intervention, measure up against the likely costs of war, including the large numbers of soldiers killed on both sides, Iraqi civilian casualties, damage to the country’s infrastructure, and regional or international destabilization? At this point, two years after the war’s official end, the cost-benefit picture doesn’t look very favorable (although perhaps better since the elections in January than it did before). But defenders of the war will say it’s too soon to tell.

The other justification for intervention Palmer-Fernandez mentions — “to change the Iraqi regime into a prosperous and stable democracy as a precursor to the political transformation of the Middle East” — raises some of the same questions. We may ask: “Will it work?” And also: “Is it right?”

The first response concerns the relation between means and ends. Assuming democracy and freedom for people in the Middle East are worthy goals, the question is whether the war will achieve them. Many have argued that the effect is likely to be the opposite: to sow the seeds for more, and more virulent, anti-American sentiment and anti-Western terrorism. (Perhaps these are not incompatible with Iraqi democracy and freedom, depending on what the Iraqi people want. But clearly this is not what the Bush administration had in mind in liberating the Iraqis.) The
question, again, is an empirical one: weighing the costs and benefits of war, deciding on the probable effects of various actions and policies.

But one might object to the democracy-spreading defense of the Iraq war on other, more principled grounds: not simply that the effects may not be what we aim for, but that the United States or other outsiders have no business intervening, even assuming beneficial consequences. On this view, American intervention reflects arrogance, or worse, violation of the rights of other peoples.\(^{13}\)

A strong version of this view would assert that a U.S.-led war to bring democracy and freedom to the Middle East violates the rights of the people of Iraq to self-determination. The Iraqi people must decide their own fate. As Walzer puts it, explicating the position of John Stuart Mill, “A state is self-determining even if its citizens struggle and fail to establish free institutions, but it has been deprived of self-determination if such institutions are established by an intrusive neighbor. The members of a political community must seek their own freedom . . .”\(^{14}\)

Why shouldn’t individuals in a repressive or tyrannical state get help from outsiders to become free? Mill seems to have thought that if people can’t liberate themselves, they’re not ready for freedom. But that doesn’t seem very convincing. Oppressed people battle the state and its apparatus on a playing field that is anything but level.

To fully evaluate the democracy-spreading defense of war would require a thorough analysis of the meaning and value of individual and collective self-determination and their relationship to state sovereignty. The conclusions of such an analysis might very well prove favorable to the democracy-spreading defense. My own belief is that the strongest argument against making war to spread democracy is not principled but consequentialist. It’s not so much about rights as about the thousand ways such interventions can fail and the harm they do in the process. If, in addition to the role of luck and the ripple effects of actions in the international arena, we have reason to mistrust the motives and competence of the original intervenors and of many other actors on the scene, choosing to go to war will rarely be the right or the wise thing to do.

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NOTES

1 Recently some philosophers have questioned the separability of *jus ad bellum* and *jus in bello*, but I shall ignore that complication here.


4 Walzer, pp. 61-62.

5 Ibid., p. 74.

6 Cited in *Just and Unjust Wars*, p. 74.

7 Ibid. Emphasis in original.


11 But thinking about humanitarian intervention may impel a more wholesale reconsideration of the legalist paradigm and the supremacy of state sovereignty.

12 Talk about humanitarian intervention by states, not to mention altruism, often sparks the objection that nations never act for altruistic reasons, even partly. Walzer’s response is apt: “There is no such thing as a pure will in political life. Intervention cannot be made to depend upon the moral purity of its agents” (*Just and Unjust Wars*, preface to 3d edition, p. xiii). Perhaps it is a mistake to talk about *motives* for intervention and we should talk instead only about *reasons* that can stand up to scrutiny — but that do not depend on an inquiry into motives.

13 Humanitarian intervention might seem vulnerable to this objection as well. I assume here (as do others) that it is possible to draw a line between the kinds of massive human rights violations that permit humanitarian intervention, as in Rwanda in 1994, and cases like Iraq.
