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SUPREME THREAT: THE JUST WAR TRADITION AND THE INVAISON OF IRAQ

by

JAMES C. FALLAIZE

Under the Direction of Timothy Renick

ABSTRACT

This work intends to be an application and understanding of the Christian just war tradition as it pertains to the actions of the United States government in Iraq. It includes a short history of the evolution of the tradition, the application and discussion of the three most controversial criterion, and a discussion of how the terror attacks on the World Trade Center may constitute a pre-emptive strike. Essentially, the piece endeavors to explore how untested, unseen dangers drive a government to act for the defense of its citizens and their way of life. The theory draws heavily on Michael Walzer's invention of the concept of "supreme emergency" which allowed for exceptional actions during war if a people's entire way of life is threatened.

INDEX WORDS: Iraq War, just war tradition, supreme threat, supreme emergency, just intent, just cause, reasonable hope of victory

SUPREME THREAT: THE JUST WAR TRADITION AND THE INVAISON OF IRAQ

by

JAMES C. FALLAIZE

An Honors Thesis Submitted in Partial Fulfillment of the

Requirements for Graduation with Undergraduate Research Honors

in the College of Arts and Sciences

Georgia State University

2006

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Electronic Version Approved:

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May 2006

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Chapter 1

Introduction

There is no doubt that the topic of war is one which has continued to challenge human society since its beginning. Indeed, our methods of waging war have evolved considerably since their inception. In much the same way, our ideas about when, how, and why to wage war have made strides as remarkable as the progression from a rock to a cruise missile. The moral discussion of war builds upon prior ideas and sets of standards for action which attempt to make war less horrible, or even avoidable. Yet, even given a seemingly endless set of rules governing conflict, wars continue to happen and, as a result, theorists continue to revise their thoughts as governing bodies impose new, more nuanced rules and considerations. My point is that no understanding of war is static. In the time it has taken to complete this work, current events continually force me to question mine and others' theories. Thus, in this work I seek to give the reader a snapshot of my theory as it applies to the morality of the recent conflict with Iraq. In what is a relatively short work I hope to convey an understanding that I believe is at the ethics of recent U.S. actions.

September 11, 2001 was like any other day. I was in a History of the World class. I remember another student receiving a call on her cellular phone. After a chastising look from the professor, she hung up the phone and with an astonished look on her face told the class that a plane had crashed into the World Trade Center. I initially assumed it was some small accident which more than likely involved a single-engine Cessna that could

only have caused marginal damage to such a large building. As I walked through the halls to my next class, I noticed that everyone was talking on cell phones. I entered my next class and the professor promptly dismissed the students explaining that his wife worked at a government building in the city and he needed to contact her to make sure his child was safe. By this time, I was starting to catch on that something was really wrong. As I left the classroom, I attempted to call home to find out what was on the news, only to find that all cells were completely jammed with traffic. I decided to return to work and find out what happened. On my way to the Five Points MARTA station, I heard a report from the radio claiming that the Pentagon had been hit, and judging by the huge number of people on the train "evacuating" the city, it was becoming increasingly obvious that what I thought was a small accident was much more serious. When I finally arrived at work, everyone was hovering around the small twenty-year-old TV in the back of the office. Upon seeing the footage it became painfully obvious that the United States was under attack. This was no accident.

There are a million recollections such as mine about that day, many far more terrifying. After the 9/11 attacks, the clean up, and the damage control, the question on everyone's mind was, how could this happen and what can we do to keep it from ever happening again? This question is at the heart of the actions taken in the 2003 invasion of Iraq. The legitimacy of the Iraq war has been possibly the most debated contemporary subject. Many, including myself, find themselves in a difficult situation. There was no direct attack on the United States by Iraq, nor can it be proven that Iraqi intelligence was in some way involved in the planning of the 9/11 attacks. The books I have read concerning the latter subject have been inconclusive. There are conjectures and "connect

the dots" explanations, but one cannot point to irrefutable evidence that Iraqi Intelligence helped the Al Qaeda hijackers. Yet, there is also irrefutable evidence that connects Iraq with Al Qaeda in other ways. This, combined with several Iraqi attempts to bomb U.S. embassies, set the stage for the country's fear that an uncontrolled Iraq posed an immediate threat to its security.

Certainly there are, as I intend to discuss, strong yet ultimately inconclusive arguments for the fulfillment of each of the major just war criteria concerning the war in Iraq. In the world before 9/11, it was easy to dismiss many fears and arguments as insufficient to justify drastic military action. Furthermore, until this point most terrorist attacks had been perpetrated on non-continental government and military targets, such as the bombing of U.S. embassies, the USS Cole, and attacks on military barracks. However, with the events of 9/11 a new world of possibilities became very real to the American people. A great fear pervaded the country as it became painfully obvious that we were not, as we had all come to believe after the end of the Cold War, invincible. On the contrary, the surprise attack by terrorists had resulted in drastic casualties; over one-hundred and fifty civilians were killed for every terrorist who died in the World Trade Center. Against such odds, the specter of defeat loomed large.

After the invasion of Afghanistan, Iraq became the most obvious target. It had openly defied U.N. resolutions, and it had a history of sponsoring terror bombing attempts such as that in Indonesia on January 18, 1991 and in the Philippines the next day. These actions lead one to suspect that Iraq would cooperate with terror groups like Al Qaeda. According to the book *The Connection*, Iraq had some irrefutable ties with Al Qaeda. "The authors of the document assert that bin Laden 'is in good relationship with

our [the Mukhabarat] section in Syria' The list was recovered after the war by the Iraqi National Congress…. The Defense Intelligence Agency has determined that the document is authentic." [1] But where are the "pay stubs" that lead back to Al Qaeda? How does one argue that a specific training camp was used by a single group? In short, even though a document mentions bin Laden, how do we prove that the Iraqi government continued to aid him? Another area of concern for Iraq was the state of the people; practically the entire country, save those favored by the government, lived in poverty and faced starvation under harsh despotic conditions. United Nation embargos made life more than difficult and any attempt to ease these problems, like the Oil for Food program, was ultimately subverted by the government and funds were bled off for other less "humanitarian" uses. Unfortunately, when people are imprisoned in these deadly conditions, the nation becomes a breeding ground for individuals who resent and blame the world for their predicament and thus are ripe for recruitment into terror organizations.

In this work I will endeavor to evaluate the way the Christian just war tradition would speak to the present situation. In chapter two I will offer a brief history of the tradition and the principles which contributed to its evolution throughout history. Next I will attempt to apply three of the key criteria of the tradition, evaluating whether or not the state of affairs before the invasion of Iraq fulfills these strictures. Finally in the concluding chapter I will posit a theory which can offer an explanation of how the just war theory may support the war in Iraq.

My ultimate conclusion will be grounded in the precedent set by Michael Walzer in his book *Just and Unjust Wars* in which he discusses what he calls a "supreme

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[1] Hayes, Stephen F. *The Connection*. (New York: Harper Collins, 2004), 11.

emergency." According to this theory, the leaders of a nation in extreme distress may gain the ability to set aside the principles of non-combatant immunity in order to accomplish the preservation of their way of life. In a parallel way I will posit the concept of "supreme threat" in which, not non-combatant immunity, but the criteria that determine whether one can embark upon a just war may be "modified" by the fact that a country faces a supreme danger in which a preemptive war is the single way to prevent its destruction. Their must be something greater at stake; the threat must be an attempt to violate not only the lives of the people of the nation but also to undermine their entire way of life, as Walzer puts it. Indeed, as I will suggest, we see this sort of subversion of the American lifestyle as the intent of the hijackers on 9/11. The World Trade Center was a symbol of the United States, not merely of its people, but what constitutes its philosophy of life.

We will continue these ideas further in the conclusion, but let us first gain grounding in the key elements of the just war tradition in order to have a common basis for our discussion.

Chapter 2

History of the Just War Tradition

In order to consider the application of the Christian just war tradition in present day society and, as a result, the leading elements in the decision to invade Iraq, we must first have a grounding in the essential evolutions of the tradition. Each of the main criteria will be explored in a general way in order to create a reference point or standard by which the causes sighted for the Iraq War will be judged.

Most major religions have developed a series of requirements which govern the actions of states engaged in war. Throughout history, the prevailing belief has been that states need coercive force to preserve sovereignty and the safety of their people. Thus, it is held that religions which have come into political power must develop some criteria that allows for the use of force in order to retain that power. If religion required the state to adopt a purely pacifistic moral code, it is feared that the result would likely be quick occupation by or destruction at the hands of a foreign power. Furthermore, without the ability to exercise coercive force, the government would be prohibited from providing necessary civil services; as Paul Christopher points out, "…if we were to adopt this [pacifist] interpretation, then no one should ever serve as a police officer, guard, or any other position that might require force." [2]

In order to meld coercive force with Christianity, Christianity develops what comes to be called "the just war tradition." Christianity began as a small persecuted religion with largely pacifist beliefs. Yet, one violent action, allegedly sponsored by God,

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[2] Christopher, Paul . *The Ethics of War and Piece: An Introduction to Legal and Moral Issues*. 2nd ed. (Upper Saddle River, N.J.: Prentice Hall, 1999), 20.

encouraged many Christians to reconsider the use of military power. On October 28, 312 A.D., the Roman general Constantine, after receiving, in a dream, the message *ev tovtw nika* (with this sign you shall conquer) superimposed on the cross, drew the conclusion that the Christian God was leading him into military battle. In recognition of his dream, he instructed his solders to paint the cross on their shields. In the ensuing battle, Constantine's troops were victorious, defeating the army of Maxentius at the battle of Milvian Bridge. After his victory, Constantine legalized Christianity in the Roman Empire and poured state money into the building of churches. Constantine saw Christianity as a uniting force in his diverse empire and used state coercion to establish an orthodox theology at the Council of Nicea. Theodosius, a few decades after Constantine, promoted Christianity to the status of official state religion, and thus the Church became legally entangled with the coercive and warlike prowess of the Roman government. This turn of events was a serious departure from the suppressed, pacifistic minority that once was the Christian community. From this point on, mainstream Christians would assimilate the use of force as a method of retaining state power and influence, and accept coercion as a necessary evil for the preservation of a greater good. As a result of this need, and over the course of many centuries, a doctrine for permissible use of force was formulated.

Saint Ambrose (339-397), an early theologian and bishop of Milan who lived during the fourth century, was the first Christian figure to begin the theory of just cause. The just cause argument is a limitation placed on the state requiring it to show a right or just reason for entering in to a conflict. In his *Duties of the Clergy,* Ambrose described one of the emerging duties of just cause: "He who does not keep harm off a friend, if he

can, is as much in fault as he who causes it."[3] Later these early innovations were picked up and combined to create a series of criteria for just cause in a conflict, but Ambrose's standard, intervention for the protection of another, remains central to the modern understanding of just war.

Saint Augustine (354-430), a contemporary of Ambrose but far more influential, was bishop of Hippo in northern Africa. Born in Tagaste in 354, he lived through the fall of Rome and died in Hippo in 430 as the city was under siege from "barbarians" (non-Roman peoples). His ideas about war were tied to his life experiences and he worked to synthesize the beliefs of Christianity to the ability of a Christian to be a solder for the state. Augustine writes of the necessity of war: "As if he would not all the rather lament the necessities of just wars, if he remembers that he is a man; for if they were not just he would not wage them, and would therefore be delivered from all wars. For it is the wrongdoing of the opposing party which compels the wise man to wage just wars;…"[4] According to Augustine, Christians live in a world of necessary evils. That is to say, they subsist during the "in-between times" after the coming of Christ and his preaching of a kingdom of peace but before the eschatological event when Jesus will inaugurate his perfect kingdom. As inhabitants of this "in-between time," Christians must tolerate and participate in "evils" which would not be required in Jesus' Kingdom. Thus, a Christian state may regrettably have to go to war as a "necessary evil" provided that this war is "just."

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[3] Christopher, *The Ethics of War and Piece*, 22.

[4] Augustine. *City of God* . (New York: Image Books Doubleday, 1958), 19.

Saint Aquinas (1225-1274) was the next major contributor to the just war tradition. However, understanding the origin of his ideas will first require a consideration of the times in which he lived. During the first Crusades, Christians encountered Muslim ideas of spiritual essence and philosophy of God, as well as Arabic translations of Greek philosophy such as Aristotle. This influx of classical Greek philosophy is important to Aquinas's development of his natural law theory. Aquinas began to use reason to, he held, determine God's law and set up a less subjective method through which one could make judgments about various circumstances based on experience and reason. Aquinas melded church doctrine with the logic of philosophers and paved the way for many of the legal considerations that are incorporated in modern just war tradition.

Aquinas introduces a method for determining morality called natural law theory. Aquinas believes that the natural law is a portion of the divine law that humans have some ability to understand. Christopher explains: "all mankind has access to the *eternal law* (written [by means of their reason] in the mind of God) by discerning the fundamental tendencies of nature (*natural laws);* and by reflecting on these tendencies, rational agents can develop knowledge of the principles that underlie moral judgments."[5] By applying and using the divine law one is capable of creating a hierarchy of ethical offences. Aquinas' theory makes up a major part of the *jus ad bellum* (just reason for going to war) and is the basis for what is called *jus in bello*, justice in war. In his contribution to the *jus ad bellum*, "Aquinas stipulates that for a war to be just it must be declared by the authority of a head of state (proper authority), for a proportionally good

[5] Christopher, *The Ethics of War and Piece*, 50.

reason (just cause), and with a morally good aim (right intention).[6] Furthermore, his natural law theory sets up a relationship between intent and result. Aquinas would argue that, in a military situation, one is required to have a just intent. A government is not permitted to engage in indiscriminate killing of enemy civilians, for this exceeds the law of proportionality and is considered an act of murder since the death of innocent civilians is the government's means to an end. Indeed, as Christopher explains "Aquinas is careful to stipulate that the harm done by the means employed in effecting justice must not exceed the harm that is being done by the injustice one seeks to correct."[7] The killing of civilians is permissible only when it is not the means to the end, and the evil does not outweigh the good produced.

Just war tradition further developed with the introduction of international jurisprudence. The figure pivotal to the transformation of the Christian just war tradition into modern international law was Hugo Grotius (1583-1645). Grotius was born in Holland and lived through a drastic upheaval in the western world. The Catholic Church had lost much of its power and Europe had fragmented into many smaller nation states. Many of these nation states had imperial ambitions couched in enlightenment ideas. Grotius confronted a world where war was an everyday reality. His goal was "to prevent war; failing to prevent it he [and the tradition] seeks to minimize its brutality."[8] Thus Grotius distilled early Christian just war theory into legal thought and expanded the scope and implications of the tradition in the process. From this he set up an internationally recognized standard that seeks to limit the power of states to engage in arbitrary conflict.

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[6] Christopher, *The Ethics of War and Piece*, 51.
[7] Christopher, *The Ethics of War and Piece*, 52.
[8] Christopher, *The Ethics of War and Piece*, 81.

Grotius was the first to sketch the "skeleton" of what will be the *jus in bello* and *jus ad bellum* criteria.

The most important time for the development of the modern just war tradition was during the late 19th and early 20th centuries. During this time the ideas of Grotius were formulated into what is known as international law. Yet, this process is far from clear and straight forward. Because of the new theories of international law, there are many unanswered questions and untried premises. Can international law be binding, and just what is this "law" based on? How can the values of one society be imposed on different cultures throughout the world? Proposing laws to restrict the conduct of war is plagued with enforcement problems. First, many believe that in times of war the law is silent and any expectations of obedience to rules should be dismissed. To these "realists," war is by definition the break down of rules, and winning at all cost is the only concern. Save for a role it might play in tactical advantage, morality is worthless. Others propose a sliding scale of morality allowing countries to modify their actions based on the atrocities committed by their foes. Perhaps, the most difficult challenge just war and international law face is legal positivism.

The legal positivists believe that there is a fundamental difference between ethics and law. They argue that any universal international law will fail because it will give an advantage to those who may choose not to follow it. Essentially, the argument is that in a time of war "law exists, but who will enforce it?" There is no overall governing body for the world that will use coercion to enforce the laws, and without a shared understanding of morality and a common distrust of "opportunistic realism," nations are free to act as they wish so long as they are capable of overpowering any foe.

Despite the individual philosophical discussions which have come about in the international law debate, just war has been adapted into the thought process of many western countries. Indeed, when George H. W. Bush issued his reasons for the first gulf war, they fit almost perfectly and quite self consciously into the stated requirements of the theory. Indeed, in his speech George H. W. Bush makes clear ideas such as just cause to aid Kuwait, last resort after U.N. sanctions have failed, and a specific just intent.[9] Furthermore, the extent of the first Gulf War was governed by the stated intentions of this traditional theory. War was undertaken to defend a sovereign nation, and after this goal was fulfilled the army was called off (much to the consternation of some realists who thought that Saddam Hussein should have been toppled). Today the just war tradition has become an almost unconscious common vernacular throughout the populous. People not only expect that a war must be winnable, they expect there to be a just reason to embark upon it. They expect wars to be conducted through conventional and controlled means, and for alternate, peaceful means to be pursued if at all possible. These expectations, along with several others, seem to constitute a common version of what scholars see as modern just war theory. This brings us to the point where we shall address the academic version of just war and become familiar with the vernacular which will be present in our discussion throughout the body of this work.

The first element of modern just war, the *jus ad bellum*, or just reasons for going to war, is generally accepted to have seven criteria. According to the tradition all of these

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[9] Bush, George HW. *President George Bush Announcing the War Against Iraq*. (The History Place: Great Speeches Collection. http://www.historyplace.com/speeches/bush-war.htm).

requirements must be met for a government to justly use military force. Each requirement contains many subsets, or contingent ideas, spawned by specific situations in history that have influenced the evolution of the criterion. The requirements of the *jus ad bellum* are as follows: (1) there must be a just occasion or cause; (2) war must be made by a lawful authority; (3) the country must have a just intent; (4) war must be the only means for righting the wrong; (5) there must be a reasonable hope of victory; (6) the good produced must outweigh the evil; and (7) only right means may be used in the conduct of the war.

We will briefly discuss each of these criteria. In addition, the three criteria most important to this project --just cause, just intent, and reasonable hope of victory-- will be discussed in detail in the following chapters.

In order to meet the first requirement of just occasion, or just cause, a nation must have a just reason for the use of force. The most universally acceptable circumstance is self defense; yet, self defense can be interpreted in a number of ways. For some interpreters, it can include pre-emptive strikes against probable attacks; for other theorists a country may also intervene in the defense of another nation or people who are facing mortal danger.

The second criteria states that war must be declared by a lawful authority. This requires that the sovereign authority of a state has the sole prerogative to declare war on its behalf. This is a relatively simple concept, though it is not without circumstantial complications. For example, there is the problem of rebellion in which war may, it would seem, justly be declared against a ruthless despot, but, by an uprising that is obviously not lead by the legally considered sovereign authority. Another ambiguity may become more problematic in the future. As organizations like the United Nations (U.N.) claim status as

world authorities, it becomes difficult to discern in which body rests sovereignty and whether individual countries have the right to declare war. At this point, most commentators would hold that the U.N. does not wield such control. Yet, the European Union (E.U.) may be a more interesting example. Are each of the nations involved in the E.U. sovereign enough to declare a just war, or does it require a consensus of all participating nations?

Just intent is concerned with the objectives of a nation that enters a war. In short "a nation waging a just war should be doing so for the cause of justice and not for reasons of self-interest or aggrandizement."[10] In chapter four, this element will be discussed in depth.

The requirement of last resort seems simple, but like all the criteria there are a plethora of nuances. Simply put, last resort requires that war should only be employed after all peaceful possibilities have been exhausted. This does not, however, apply once a nation has been attacked; at that point a response of force may be immediate, for the purpose of a standing army, in addition to serving as a deterrent, is to provide the capability to respond immediately when deterrence fails.[11] Yet, in many cases there is much debate about the point at which a state decides that diplomacy has failed and there is no other choice but war. There are so many different recourses available, at what point is war the only choice left? Can assassination be used if it will avert war? Are threats of nuclear attack permissible to resolve conflict?

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[10] Moseley, Alexander. *Just War Theory*. The Internet Encyclopedia of Philosophy. http://www.iep.utm.edu/j/justwar.htm.
[11] Christopher, *The Ethics of War and Piece*, 88.

A reasonable hope of victory is required. Even if every other element of the just war tradition is fulfilled, one must have a reasonable hope that the war can be won. Of course, this is difficult because one must first establish what is meant by victory. In chapter five the specific requirements of a victory in the Iraq war will be discussed. Simply defeating an army is not necessarily sufficient for victory, especially when the threat which spurred a war is not neutralized with this one result.

The end result of the war must create more good than evil. In other words, the war must, in the end, make life better for the nations involved. This is usually considered to be an issue of proportionality. Instead of focusing on a single occurrence, this requirement judges the probability of the overall outcome of the entire war. World War II may be a helpful example. By defeating the Nazis one could see an end to the turmoil and ever-expanding conflict which had engulfed all of Europe and threatened to spread throughout the world. Under this criterion, one may easily believe that the evil created by going to war was not as great as that which would have been created had Nazi Germany been allowed to continue its efforts unchecked. Thus the war created more good than the evil it caused.

Just means requires that only moral methods be employed in fighting. Such moral methods are crucial to making judgments about whether or not any of the other criteria can be fulfilled. For instance, one is not permitted to satisfy the criterion of reasonable hope of victory by stating that, should worst come to worst, one can employ nuclear weapons against the enemy citizenry and thus bring about victory. Such an act would severely violate the requirements of just means. One must make a judgment about the

other criteria by considering the use of only moral actions. These methods are dictated in the just war tradition by the *jus in bello*.

The *jus in bello* is, alongside the *jus ad bellum*, one of the two essential elements of a "just war." This tradition addresses the morality of a country's actions once a conflict has been initiated. The *jus in bello* consists of two major principles: discrimination and proportionality.

Discrimination concerns itself with actions preformed during conflict that would intentionally target the innocent and hence violate moral law. Just war takes special care to point out that moral laws may not be suspended in war, thus refuting the idea of *inter arma silent leges (*in times of war the law is silent).[12] By maintaining moral codes, such as that against murder, a government in a just war is in line with the natural law. This is illustrated in the idea that killing civilians as your end or as the means to your end is not permissible, even in a time of war. It is considered murder. This principle allows for what we consider collateral damage. In destroying a military target a certain amount of "civilian casualties" may be expected and permitted if the attacker does not require the death of these innocents to achieve the end of destroying a military target.

Proportionality addresses the scope of discrimination. That is to say, the evil of casualties produced cannot outweigh the good produced by the act. Each act within the war must result in more good than evil. Hence, even discriminate acts can be prohibited if they would produce a larger amount of destruction with only moderate military benefit.

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[12] Walzer, Michael . *Just and Unjust Wars*. (New York: Basic Books, 1977), 3.

If one of the requirements we have just discussed is not fulfilled, whether before the war as the *jus ad bellum* or during it under the *jus in bello*, then the Iraq war is not just. It is important to keep in mind the ideas briefly discussed in this chapter. Our following discussion will use this traditional understanding as a foundation. We shall apply three most controversial criterions separately, and then discuss how the tradition has been developed and re-interpreted from this strict foundation.

Chapter 3

Just Cause

Perhaps the most important and debated point concerning the 2003 invasion of Iraq is whether or not the United States had a just cause to use force. This question, however, cannot be answered simply. There are numerous shades of gray that permeate one's intentions, foreknowledge, action, and responsibility. The idea of just cause, founded in the thoughts of Augustine in the late fourth century, were intended in part to curb the indiscriminate use of military force which was rampant in the world at that time. Once a nation recognizes that it must possess a just cause to use military force, much violence can be avoided. Indeed, this concept constrains the use of violence to expand one's fortune. One might even go so far as to characterize it as an attempt to control state sponsored theft. Augustine sights the example of the pirate captured by Alexander the Great, who, when asked about his crimes, retorts that the only difference between the two of them is that Alexander practices piracy on a larger scale. "You and I are doing the same thing. We are leading exactly the same kind of life, only I am doing it in a very small measure. I may rob a few individuals and trading boats here and there, but you are doing it on a wide scale. How many countries you have conquered! How many lives you have needlessly destroyed! How many valuable treasures you and your soldiers have plundered! I tell you, it is you who should be ashamed, not I."[13] Just cause disagrees with

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[13] Chinmoy, Sri. *Alexander the Great and the Pirate*. http://www.srichinmoylibrary.com/sri-chinmoy-amusement-enlightenment/part5/5.html.

the pirate and rests on the fundamental principle that force can be justifiable when it seeks a just end. Yet, much as an amendment in the Bill of Rights leads to a plethora of laws addressing every variable where that right could be infringed, so too the principle of just cause raises questions about when exactly is one's end just.

Today the idea of self-defense has progressed to the point where, in some theorists' eyes, a just cause may be present before physical aggression has occurred. Many believe that a potential victim may establish sufficient grounds for a "pre-emptive strike" in order to subvert the possibility of upcoming civilian losses. Furthermore, an idea develops that one may use force to intervene in the case of a repressive régime. Jean Elshtain characterizes this intervention by arguing that "killing to defend oneself alone was not enjoined: It is better to suffer harm than to inflict it. But the obligation of charity obliges one to move in another direction: To save the lives of other, it may be necessary to imperil and even take the lives of their tormenters."[14] Indeed, even Grotious builds the idea of humanitarian intervention into *The Law of Peace and War* stating, "….those who possess rights equal to those of kings. Have the right of demanding punishments not only on account of injuries committed against themselves or their subjects, but also on account of injuries which do not directly affect them but excessively violate the law of nature or of nations in regard to any persons whatsoever"[15] As a whole, international law agrees that should an opponent attack unprovoked, it has acted unjustly and a nation may justly respond by defending itself with military force. Christian moral theory further expands

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[14] Elshtain, Jean B. *Just War Against Terror*. (New York: Basic Books, 2003), 57.

[15] Christopher, *The Ethics of War and Peace*, 191.

just cause to include an obligation to assist others in their struggle for liberation from an oppressive régime and allows a nation to come to the aid of a country being threatened by a hostile, unprovoked force. Additionally, the idea of self-defense extends to an anticipated act of aggression. The very existence of a standing army is a recognition of the idea that a force may be needed not only after an attack but once a threat begins to materialize. "Therefore, it is commonly held that aggressive war is only permissible if its purpose is to retaliate against a wrong already committed (e.g., to pursue and punish an aggressor) or to pre-empt an anticipated attack."[16]

Once pre-emption as a possibility is recognized, it falls to the theorist to judge just what acceptable grounds for such an extreme action are. The idea of this pre-emptive war is ripe for abuse causing any action of this nature which is undertaken quickly and cavalierly to seem like aggression. A nation must weigh possible actions carefully before embarking upon a pre-emptive strike. Unfortunately, leadership is not privileged to the inner workings of the goals and intent of the "enemy" and must, as a result, make decisions on limited information. It becomes exceedingly clear that national mood and tensions become very important to this decision. Ultimately, however, the decision for a pre-emptive strike must fall to public representatives who "are always compelled to act in a kind of fog."[17] Therefore, pre-emptive strikes are a kind of "educated bet" with the government hoping to gain the upper hand to prevent the death of their civilians.

Consider the nation that sees a buildup of forces along its border, threatening national interest, and instilling fear in the citizens of a peaceful country. It is not prudent,

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[16] Moseley, Alexander. *Just War Theory*. The Internet Encyclopedia of Philosophy. http://www.iep.utm.edu/j/justwar.htm.

[17] Elshtain, *Just War Against Terror*, 52.

nor is it in keeping with the spirit of just cause, to claim that these acts are not equivalent to an act of aggression and, thus, that the threatened country had no just grounds to defend itself. If a pre-emptive invasion offers the possibilities of fewer casualties, and a more reasonable hope of victory, then it should be employed.

The just war theorist must also look back upon just cause after a conflict has ended. This allows the theorist to understand what elements led to the conflict and aids in making a better judgment the next time. On a long enough timeline the understanding of all elements of the conflict will become clearer, and one will gain the opportunity to evaluate decisions more objectively. Once we understand contributing factors we may use them to set precedent and determine how we should act in the future. Looking back on previous wars can help us make judgments about future conflicts and allows us to determine whether or not our goals are realistic. In Iraq the United States may expect to rebuild the country and create an economically powerful and stabilizing force where a dangerous and unpredictable regime once stood. American post-war actions with Japan in WWII set a precedent for this. The United States completely rebuilt and reorganized Japan and today it is one of the wealthiest countries on earth.

Also, if a country has acted in a particularly dangerous and unpredictable way in the past, then we must take this into account when judging its potential threat in the future. We may illustrate this with a popular idea that pervaded in the Cold War era. Mutually assured destruction was enough to deter either side from initiating a nuclear strike and thus prevented war. However, this idea was predicated on the belief that both sides viewed “mutually assured destruction” as the worst possible scenario. However, had the USSR proved in its past action to be entirely self destructive and suicidal, it

would have been more plausible at the time to believe that the Soviets would initiate a strike even if they knew it would result in the destruction of both sides.

Finally, with the idea of just cause and pre-emptive action in mind, how these principles relate to the war in Iraq should be considered. Did the United States have just cause for the pre-emptive strike in order to topple the Hussein régime? There are three aspects of just cause which may justify the invasion: (1) as a response to direct hostile military acts; (2) as a response to a perceived threat which places one in enough danger to warrant a pre-emptive strike; or (3) as intervention to assist others against an oppressive and murderess government. Unless one of these elements can be undoubtedly proven, the United States would lack sufficient cause to attack.

These three aspects have a kind of "pecking order." Direct hostile action from an opposing force is tantamount to an immediate fulfillment of just cause; there is little argument concerning whether retaliation is justified once an explicit invasion has occurred. In the case of Iraq one cannot see an outright act of aggression. Forces were not mobilized; no navy blockaded our shores; and an invasion was not mounted in the traditional sense. Instead the strongest case to be made for Iraq's participation in "direct hostile military action" against the United States is through terrorism. Under this umbrella we see many acts of aggression in which Iraqis attempted, usually unsuccessfully, to blow up American embassies. "January 18, 1991, the day after the Gulf War began, police in Indonesia defused a bomb planted in a flower box below a window of the U.S. ambassador's residence in Jakarta. An Iraqi operative had secretly inserted himself into a team of laborers renovating the home and buried twenty-six sticks

of TNT in the dirt."[18] Then "The following day, on January 19, 1991, Ahmed J. Ahmed and Absul Kadham Saad, two Iraqi students living in the Philippines, attempted to detonate a bomb at the U.S. government building that housed the U.S. Information Service and the Thomas Jefferson Cultural Center in Manila."[19] However, these instances are trumped by a key question, "was Iraq involved in the planning and execution of the Al Qaeda terrorist attack on the United States on September 11, 2001?" If Iraq was involved, then to what extent does its involvement qualify as a direct act of aggression and what responsibility would it bear for "initiating hostilities?" Indeed, if one could prove this involvement, one could wrap up this entire chapter here. If Iraq had orchestrated the World Trade Center attack there could be no refuting the presence of a just cause by most just war standards. However, Iraqi involvement with Al Qaeda is shady at best. The Bush administration claims that "Iraq's connections with Osama bin Laden and Al Qaeda"[20] were one of the reasons for the invasion. Congress echoed this assertion in its joint resolution on Iraq asserting, "…The United States is determined to prosecute the war on terrorism and Iraq's ongoing support for international terrorist groups combined with its development of weapons of mass destruction in direct violation of its obligations under the 1991 cease-fire and other United Nations Security Council resolutions make clear that it is in the national security interests of the United States and in furtherance of the war on terrorism that all relevant United Nations Security Council

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[18] Hayes, *The Connection*, 38.

[19] Hayes, *The Connection*, 38-39.
[20] Hayes, *The Connection*, XXI.

resolutions be enforced, including through the use of force if necessary."[21] Yet, though it may seem to the President and Congress that evidence of Iraqi involvement in terrorism was sufficient to warrant targeting the Hussein régime, there is not outright proof which would satisfy the current understanding of just cause. In fact, Grotious himself states, "if there is any doubt about whether a cause is just, one must refrain from war…."[22] While we cannot believe that the just war tradition is to be a "suicide pact" in which principles can never be altered regardless of mounting threats, the current understanding of the tradition fails to speak to an ambiguous and dangerous threat such as terrorism.

The second element of just cause concerns the use of a pre-emptive strike to defend against a perceived and imminent threat. Pre-emption is the newest, least understood, and most indefinite element of just cause. Once again I believe that the evidence we see is not enough to show convincingly that Iraq would, at a point in the near future, have initiated some sort of devastating military strike on this United States. The strongest argument here is the idea that Iraq may have attempted to construct a nuclear or biological weapon which then could have been used either to threaten its neighbors or to hand off to a terrorist group with the ability to infiltrate the United States. In a joint resolution from the House and Senate passed in October 2002, Congress agreed that, "Whereas Iraq both poses a continuing threat to the national security of the United States and international peace and security in the Persian Gulf region and remains in material an unacceptable breach of its international obligations by, among other things,

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[21] The White House. *Joint Resolution to Authorize the Use of United States Armed Forces Against Iraq*. http://www.whitehouse.gov/news/releases/2002/10/20021002-2.html.

[22] Christopher, *The Ethics of War and Peace*, 83.

continuing to possess and develop a significant chemical and biological weapons capability, actively seeking a nuclear weapons capability, and supporting and harboring terrorist organizations."[23] However, if these suspicions warranted some type of pre-emptive strike, one must wonder why an invasion was the only solution. Would not just war speak to a surgical strike to neutralize production facilities?

The precedent established by Israel will plague any attempt to use Iraq's weapons program as a justification for the invasion. After being hit repeatedly by "Al Hussein" cruise missiles, in 1981 the Israelis discovered the construction of a nuclear power plant in northern Iraq that could be used to enrich uranium. This presented an extreme threat; if this plant was allowed to "go hot" as its smaller sister reactor had just done (the sister reactor was too small to enrich weapons grade uranium) Iraq would obtain nuclear capability. Perceiving this future threat, in 1981 the Israeli government chose to initiate a strike in which combat aircraft took off from Israel, flew across Jordanian and Saudi Arabian airspace, and destroyed the power plant returning to Israel unharmed. In this quick action the plant was destroyed and the threat was neutralized. Why could the United States not use a similar method to neutralize weapon capabilities? Why was an invasion necessary?

The third aspect of just cause to be addressed is that of intervention in defense of others. This theory becomes bogged down in numerous terminology problems. Was Iraq's ability to attack and to occupy one of its neighbors a sufficient threat for the United

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[23] The White House. *Joint Resolution to Authorize the Use of United States Armed Forces Against Iraq*. http://www.whitehouse.gov/news/releases/2002/10/20021002-2.html.

States to "intervene" for a neighboring country's defense? Perhaps merely the ability to attack a neighbor, through the use of some long-range missile system, is sufficient hostile intent? Do such attacks already have to have occurred or is the threat sufficient?

The main fighting force of the Iraqi army was wiped out in Desert Storm, along with much of their ability to launch medium- to long-range missiles against surrounding countries. Furthermore, what long-range weaponry was left after the first Gulf War was ineffectual in comparison to the capabilities possessed by other much more dangerous régimes, like Iran and North Korea.

The strongest argument to be made for intervention is in assisting others against a repressive government. One could certainly argue that the Iraqi regime was oppressive. Hussein drained much of the country's resources in order to build "bomb proof" palaces. Secrete police ravaged the population creating a constant state of fear, like that of the Stalin period. People were imprisoned and tortured, executions had become commonplace. "According to Human Rights Watch, 'Each year their have been reports of dozens-sometimes hundreds-of deaths, with bodies of victims at times left in the street or returned to families bearing marks of torture: eyes gouged out, fingernails missing, genitals cut off, and terrible wounds and burns."[24] Thus, the United States may intervene to help fellow humans liberate themselves from an oppressive regime.

This argument, though, begs the question: why did the United States wait until now to assist in the liberation of the Iraqi people? At the end of the first Gulf War America had the perfect opportunity to continue pushing forces to Baghdad and bring down the regime. There were uprisings in the south of Iraq sparked by the request of the

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[24] Kaplan, Lawrence F., and William Kristol. *The War Over Iraq: Saddam's Tyranny and America's Mission*. (San Francisco: Encounter Books, 2003), 10.

United States government. However, the U.S. abandoned the idea and permitted Iraqi helicopter-gun-ships to fly in “no-fly zones”, thus giving the Iraqi military the perfect opportunity to destroy any anti Hussein voices. Americans watched as marshes were drained and poisoned to starve people while others were gassed with chemical weapons. If there ever was a time for intervention against a repressive regime it was in the first Gulf War.

Why then did America intervene in 2003? Iraq had been given time to rearm, and then the U.S. choose to attack. Indeed there was some significant change that had taken place in the outlook and policy of the United States after September 11th. There was something that convinced America that the thereat from Iraq required immediate attention. Perhaps it was political opportunism, perhaps it was fear.

The Iraqi invasion does not completely satisfy the requirements of a traditional application of just cause principles. No overt attack upon the U.S. by Iraq can be proven. The removal of Iraqi nuclear and chemical weapons, if they existed, could have been accomplished by strategic means, such as that employed by Israel, rather than by invasion. Human rights violations had been ignored in the past, both in Iraq and elsewhere.

In Iraq, we made our decision based on a lack of information. There was no absolute proof of Iraqi complicity in terrorist attacks on the U.S. There was no knowledge of the exact whereabouts or even the existence of Iraqi weapons construction and, hence, there was no perfect single strike which could eliminate a specific threat. Instead the invasion involved a total overthrow of the government and a systematic sweeping of the entire country to uncover a potential myriad of hidden threats. This action does not fit

well with the traditional application of just cause. In the conclusion we will explore just how this new threat may be judged by a more progressive view of just war theory.

Chapter 4

Just Intent

The second major aspect of just war tradition we will address is that of just intent. First let us consider a brief illustration to understand the problems that may during such a discussion.

Consider a nation, we shall call it Temoren. This nation has a population of a hundred million people. Within its borders there is a village that is occupied by a thousand Temoren citizens. A village, let us call it Bouson, is being persecuted by the central government of Temoren; in fact, the central government wishes to exterminate the people of Bouson. When presented with this injustice we must ask some key questions before embarking on a campaign of intervention. Further complicating the matter, let us consider that there are five villages in other locations throughout our fictitious globe that face the same problem. Thus we have two major questions, first, should we intervene, and second if we do see sufficient cause to act, how do we choose which of these villages to save? In our hypothetical situation, if we as a "world power" do choose to protect Bouson, how might we ethically define our purpose?

In a sense this third question is the essence of just intent. The actions we take are under the scrutiny of just war criteria and from a traditional standpoint this intent must be pure. Just intent argues "a nation waging a just war should be doing so for the cause of justice and not for reasons of self-interest or aggrandizement. Putatively, a just war cannot be considered to be just if reasons of national interest are paramount or

overwhelm the pretext of fighting aggression."[25] Essentially the tradition argues that for a nation to declare a just war there must exist nothing but a desire for justice. In keeping with the Christian spirit of just war tradition, our "world power" should be intervening to protect its neighbor. This action should in no way be calculated to benefit our nation for aiding another. Bouson is to be protected purely because the central government of Temoren is an unprovoked aggressor. Now consider that the village of Bouson sits on a huge supply of gold. As long as this village remains free, the price and supply of gold remains constant throughout the world. However, should the central government of Temoren destroy these people and seize their resources, they will corner the gold market, causing prices to rise and bringing powerful economic countries to their knees. This threat would be very important to a major economic power. Our "superpower" is now willing to spend manpower and resources to defend this village against injustice, while at the same time looking after its own economic interest. The distinction between Bouson and the other villages is now more pressing. Bouson has been selected for defense out of self-interest, and, as such, our action cannot be defended in the traditional reading of just intent. Our nation will claim it is intervening on behalf of the rights of Bouson, and this will be a true claim, yet it will also be intervening on behalf of its economy. Thus, we are faced with the ultimate question: if justice is served in the process of seeking benefit for one's self does this make the action unjust?

Just war theory traditionally answers this question with a yes. The problem is that this clear-cut view is often unattainable in real world scenarios. Nation states harbor many abstract and, at times, unknowable motivations which cannot be equated to justice.

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[25] Moseley, Alexander. *Just War Theory*.

It is hard to know, in the human psyche, the real reason behind any action, and more often than not the motivation for an action contains a number of instigating factors. Just intent, according to a strict reading of the tradition, does not endeavor to judge whether or not there is a "preponderance of the evidence;" it avoids the consideration that, "the reasons for this action were mostly just with a small element of self interest involved." The problem, then, is how to reconcile the theory with practical application. Indeed, as Elshtain points out, "We can not plum the depths of people's souls. We can only judge their words and deeds"[26] This is true, but we must make a judgment. Since just war purports to be a tradition by which states abiding by it are protected, one's judgment becomes clouded when one is faced with a threat that is not specifically addressed.

Perhaps an example may better illustrate this point. Let us consider that I have an unhealthy relative, my grandmother. For my grandmother's future survival, it is imperative that she have bypass heart surgery. This is a routine surgery in which a favorable outcome is almost certain. Furthermore, I am without means; this requires me to live with my grandmother. My grandmother is unsure about this surgery, she knows that she is not feeling well but nonetheless the small percentage of a chance that something could go wrong frightens her and she is wavering. This is the point at which I intervene and I will face a similar philosophical dilemma as the nation intervening through the just war tradition. My primary obligation is love for my grandmother and I should encourage her to have the surgery because it will result in a good which is the prolonging of her life. However, I also have another motive. I know that this surgery will require my grandmother to remain in the hospital for at least two weeks. During this time

[26] Elshtain, *Just War Against Terror*, 189.

I would have the house entirely to my self and that would allow me to have a party and exercise other freedoms that would otherwise be forbade. Now my intervention cannot be considered to be one-hundred percent for the good of prolonging my grandmother's life, but it also involves self-interest on my behalf that would benefit me. Should this then bar me from convincing my grandmother to have the operation? While I have cast my friend in an unfavorable light, I have not divulged all of the reasons why I shared what might well have been useful information and good advice. Thus, to judge any situation correctly, we must adopt an enlightened view of just intent and understand that the motivating factors which serve justice are always intertwined with "selfish" interest; to think otherwise seems quite naive. Yet, far from impeding just action, this "selfishness" actually helps spur a nation to perform just acts.

The fact of the world is that rarely, if ever, do nation-states take action out of the goodness of their hearts; instead there is some self-centered motive that compels action. Thus, when considering intent, we are required to weigh the contributions of a host of influences on the decisions, and though we may wish to have an assayer, we have, at least at this point in human development, a rudimentary balance. Yet before attempting to weigh such an action, we should explore how this would be judged from the traditional standpoint.

The traditional reading of just war, commonly called absolutism, would certainly consider my views to be pure blasphemy. However, the idea of just intent itself is defeating for absolutists for there has never been and never will be a conflict that was based purely on justice. The civil war was fought as much for central government power as it was for the freedom of slaves. World War II was fought, in part, because the loss of

Europe as an American market could not be allowed; the liberation of the Jews and other oppresses peoples was not the only reason. History is filled with numerous examples that few would contest were wars for justice, which made the world a better place, yet they were initiated, in part, by selfish interest. From an absolutist standpoint, these wars could not be seen as just. In fact if an absolutist were to conservatively stick to his or her "guns" (so to speak), we might correctly term this person a pacifist. As Augustine points out, "A good man would be under compulsion to wage no wars at all, if there were not such things as just wars."[27] Since one's intent is never pure and since wars will never fit perfectly into our expectations of just intent, we must realize that this criterion may only be fulfilled imperfectly. I fail to see how those who style themselves absolutist yet still allow for "just wars" are really anything more than, in practice, hypocrites or self-delusional.

Those of us who understand the world to have unavoidable grey areas will now endeavor to apply, to the best of out ability, the knowledge which we do have about the motivating factors in the Iraq War.

First let us construct our scale of just intent. Just intent states that a nation waging war should do so in the name of justice and not for self interest and aggrandizement. If "national interests" becomes more important than the goal of fighting aggression, then the war is no longer just. However, the term national interest is problematic. Characteristics like maintaining global peace, safety, and law are all aspects of our national interest yet are just in their own right. Thus we must ask, "If the result of a war is

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[27] Augustine. *City of God*, 447.

a just and stable régime governing Iraq, which emphasizes human rights and law, then is this good somehow negated by the idea that this outcome would also serve the interest of the United States?" Of course not! To deny that a stable régime is a good and to argue that this is not in keeping with the spirit of the just war tradition would be foolish. The only party that is not served by such logic is the tyrant running the oppressive régime. Just war does not take up for a dictator who murders the very people which government is to protect.

Further problematizing the situation, governments are the only authorities capable of waging war; yet, they are secular authorities whose sole purpose is the public good and the interest of their citizens. Thus, to ask a government to wage a war for nothing more that the furtherance of civil justice for citizens of other nations is counter to the interest and the purpose of a state. War requires a massive outpouring of resources. Tremendous amounts of money, lives, and equipment are at risk in military action. How can a secular authority pursue this course of action if it does not contribute to the national interest? Thus the United States laments, according to Elshtain, that "we rightly fault ourselves for too little intervention in situations of genocide…." Elshtain reminds us, though "…[in the case of Iraq] moral responsibility and enlightened self-interest combine."[28] This "enlightened self-interest" then allows a nation-state to commit its resources to a moral action which carries a selfish benefit for its citizens. Thus our choice to use coercive action in Iraq was one that would both benefit the citizens of Iraq as well as the United States.

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[28] Elshtain, *Just War Against Terror*, 167.

This enlightened self-interest theory, however, grows more complex when we begin to ask questions like “to what extent, if any, did national interest outweigh the interest of justice?” Was national interest economic or civil security? And most importantly “was this action really in the ‘national interest’?” Not all of these questions will be answered at this point. Simply shaping the first two will take us into an intense discussion. The third question will be the most important when we consider the way that the just war tradition is seen today and the ways in which it will adapt to meet the ever new and changing challenges of the world.

When considering the weight of national interest and justice, we are presented with a difficult and harsh reality. The doctrine of enlightened self-interest requires that the justice imposed by our coercive force benefit our country to the extent that it warrants the resources to which we are required to commit. When we consider the world at the time before the Iraq war, we see a number of instances in which coercive power could have been used. Problems in Korea, Somalia, Darfour, and many other nations require armed protection. Yet, out of all these, for some reason Iraq was picked. The only explanation for this is that there is some level of national interest which made this situation the most important to address. Certainly strong arguments can be made that other locations posed a more imminent threat as far as weapons capability (North Korea) or deaths of innocents (Darfour). The Bush administration and Congress, however, felt that the Iraqi régime was the most important to subdue. Thus we may conclude that Iraq’s history probably made it stand out, its continues defiance of UN resolutions made it dangerous to world civil authority, and its weapons programs and terrorist connections made it dangerous to the United States. “Putting together the admitted existence, by Iraq,

of chemical and biological agents with the clear and present danger that such weapons could be transferred to international terrorist groups, the prudent statesperson could find reasons to act in order to reduce that threat"[29] As we shall see in the last chapter, a perceived terrorist threat, with some form of unconventional weapon, is more than likely the reason for Iraq making the top of the "list" for the U.S.

Secondly, we must consider whether the United States was seeking economic or security interests. The first idea which comes to mind is that of oil. Oil has been one of the most debated aspects of the Iraq war. Yet, the reality is that oil was probably one of the smaller factors which contributed to the conflict. As Sam Vankin writing for the United Press International points out, "The United States [in as much as it was seeking oil] would probably have taken over Venezuela, a much larger and closer supplier with its own emerging tyrant to boot."[30] We must realize that "the flow of Iraqi crude is simply too insignificant to warrant such an exertion"[31] since "Middle Eastern oil accounts for one-quarter of U.S. imports, Iraqi crude for less than one-tenth"[32] Therefore we must seek some other supporting explanation.

Upon entering into the first stages of military action against Iraq, President Bush explained his intent as "American and coalition forces are in the early stages of military operations to disarm Iraq, to free its people and to defend the world from grave danger."[33] Security, though, is no clearer cut a rationale for the war than is economies. Certainly

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[29] Elshtain, *Just War Against Terror*, 188.
[30] Walker, Martin, ed. *The Iraq War: As Witnessed by the Correspondents and Photographers of United Press International*. (Washington, D.C.: Brassey's, Inc, 2004), 35.
[31] Walker, Martin, ed. *The Iraq War*, 35.
[32] Walker, Martin, ed. *The Iraq War*, 35.
[33] Walker, Martin, ed. *The Iraq War*, 21.

there was an element of security, for people victimized and treated harshly usually project their anger on those who are not suffering like they are. However, the immediate threat is yet to be seen, and though the United States leadership may perceive a threat from Iraq, it has not acted before this time to fix the problem. There may well be some other motivating factors such as the security of oil in the region which contributed to the decision leading to the invasion of Iraq, though, as we have discussed, this would not be sufficient to warrant military action. The amount of oil derived from Iraq, while not at all insignificant, is still small in comparison to other "opportune" targets. Furthermore, the assertion that, "Bush seems bent on a personal crusade. One motive is to avenge his father. Another seems to be to prove himself to his father"[34] fails to explain why there would be such overwhelming popular and congressional support for the invasion. Thus, we must admit that there were many contributing factors which lead to the invasion of Iraq, not all of them entirely just, but neither were they purely subversive of justice.

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[34] Wormer, Katherine van. "Addiction, Brain Damage and the President." (*CounterPunch*. http://www.counterpunch.org/wormer1011.html).

Chapter 5

Reasonable Hope of Victory

The goal of all who embark upon war is, of course, victory. But what does victory mean? It could entail any number of scenarios that neutralize an outside threat. But in thr just war tradition we are expected to have a “reasonable hope of victory” before committing to a conflict. Thus, we must endeavor to determine what form of victory we must achieve in order to right the wrong or secure the threat which has driven the country to war. Thus the victory required in the Iraq war may differ drastically from that required in the first Gulf War. In the case of Iraq we wish to deter a threat which is dependent upon a friendly base of operation, that is to say, because the terrorists can derive support from the nation of Iraq under Saddam Hussein, we must completely alter and reform the world view of the government and citizens of Iraq in order to remove any support they may have for terrorists. This contrasts with the first Gulf War endeavored only to expel an invading army in the defense of a sovereign nation.

As a result, victory in the Gulf War was attained by simply repelling the attacker and restoring the *antebellum* borders. The wrong had been righted and Kuwait was safe. As a further deterrent the coalition forces attempted to destroy a majority of the equipment that Iraq would need for further aggression. Thus, the U.S. victory included, but did not require, an attempt to limit Iraq’s war-making ability. This is an important point to note. When judging the reasonable hope of victory, righting the wrong did not require the destruction of the Iraqi army, but only expelling it from Kuwaiti territory.

The current Iraq war requires a radically different standard of victory. It is intended to, at least, drastically weaken if not completely defuse the terrorist threat posed by Iraq on the United States. In order to achieve this, once military forces have defeated the despotic and dangerous ruler in command, they must then rebuild the defeated country in the hopes that what was once a dangerous and aggressive nation may be transformed into a stable economic power. Thus, the United States will seek to alter the standard of living for the people in Iraq and in the end encourage prosperity over violence. This concept is not new. It was successfully applied to the rebuilding of Germany and Japan after World War II. Nazi Germany parallels the situation in Iraq well. The stress and hardships imposed on Germany after the First World War lead directly to the initiation of the second. Similarly, the hardships imposed on the people in Iraq encourage the development of the terroristic tendencies that pose a direct threat to the United States.

The first form of victory I have mentioned, that of repelling an aggressor, is perhaps the most acceptable *casus belli*, and by far the easiest to achieve. Should an aggressive nation in a time of peace cross, unprovoked, into the territory of a peaceful nation with the intent to deprive that nation of its property and sovereignty through the use of force, then, the aggressive nation has committed an obvious and damnable act. When the invaded country considers the criterion of reasonable hope of victory, they need only calculate the effort that will be required to repel the attacker. Indeed, it is simple to rally the people to support and forge a resistive identity to achieve the clear restoration of the *antebellum* status quo. Furthermore, it is apparent that the goal of the conflict will be to right the wrong committed: expulsion of the invading forces. The

defending nation does not consider the total destruction of the attacker, merely the deterrence of aggression. Thus, as the defending nation considers its chances for victory it may take into account that armies operating in the theater of their own nation have what we might call a “home field advantage.” They know and understand the terrain, they can easily re-supply from the already existing infrastructure, and they have a ready source of new soldiers who could be recruited and moved to the front quickly. Consider the Roman army at the height of the empire. The intent was to solidify and preserve their holdings; this desire essentially required the protection of the borders from “barbarians.” The Romans depended on their infrastructure of roads that would allow legions to move quickly around the country to meet an invading force. Roman solders could derive support from the surrounding land and were easily re-supplied when fighting on their own territory.

A country that seeks only to defend its national borders enjoys enormous advantage. In contrast, the nation that is the unjust invader must expend many of its resources in maintaining its armies abroad. Thus a much weaker, and economically inferior, nation may justly defend effectively against an unjust aggressor. In contrast, the idea of a pre-emptive strike employs an entirely different standard of victory. What is the wrong that an anticipatory strike wishes to right? Indeed, the key element of this action is that no wrong has yet been committed. Thus as a nation which seeks to head off conflict with a fight fire with fire approach, we must have a much greater “horizon” for victory. The just first strike must have the goal of not only ending what is an immediate threat leading to a war like that discussed above, the attacking nation must seek to eliminate the sentiment and ideals which flowered into the immediate threat. Thus, as the United States

wishes to prosecute a just pre-emptive strike, the end goal must be a restructuring of Iraq in such a way that it will cease to be a breeding ground for anti-American violence.

If this form of reconstructive victory is not fully achieved, it results in drastic failure. Indeed, this type of goal could easily be one step forward, but two steps back. Failure to follow through in this pursuit often leaves a nation destitute and engenders an even greater rage and hatred in its peoples, which quickly springs into yet another conflict. After winning the military aspects of the First Punic War, Rome preceded to take Carthaginians provinces in an attempt to weaken their old enemy. Yet, as a result of these harsh policies, Hannibal emerged as one of the greatest threats Rome ever faced. We see a similar situation with the subjugation of Germany after WWI. The German state is destroyed and all money needed to rebuild the country and maintain a quality of life essential to avoid unrest is punitively drained from the state in reparation. This, of course, results in the rise of the Nazi party under Adolph Hitler, with a more devastating and advanced military that defeated of all of Europe.

For the United States the requirement for victory is dependent upon the threat it wishes to subdue. Since the goal is to make Iraq a secure state, the United States must, (1) win the military engagements (2) topple the government of Saddam Hussein, and (3) most importantly and most difficult, it must rebuild and re-establish Iraq as a prosperous and self supporting nation. This third element is the essential requirement, though this "conquest and political reconstruction of the state" may be the "outer limit" of what is acceptable;[35] nonetheless it is the only means of reworking the environment of Iraq to deter terrorist behavior. Indeed, the reconstruction of Germany after WWII established it

[35] Walzer, *Just and Unjust Wars*, 113.

as a productive economic power that today invades nations with well-engendered consumer products instead of the blitzkrieg. Hence allies would, as Walzer explains, "…not negotiate with Nazi leaders, would have no dealings with them of any sort, 'except to instruct them about the details of orderly capitulation;' second, no German government would be recognized as legitimate and authoritative until the Allies had won the war, occupied Germany, and established a new regime."[36]

This form of victory, which the United States is required to seek, entails years of work and a steady trickle of deaths at the hands of insurgent forces. When judging whether or not to engage in a just war, one must consider one's ability to maintain one's army and morale for an extended period of time in foreign territory.

Is such a victory possible in the case of Iraq? This question is certainly on everyone's mind, as one writer for the United Press International puts it, "[the Iraq war] is certain to generate guerrilla-type resistance that will be reminiscent of the Americans in Vietnam, the Russians in Afghanistan, and the Israelis in south Lebanon – three of the greatest military fiascos in living memory."[37] This idea is harsh in its criticism and does not entirely consider the instances in history where an insurgent force has been overcome. Furthermore, it fails to consider all of the factors present in the examples cited. In Vietnam the Americans had to curb their use of force and remain ever weary of intervention from the Chinese. In Afghanistan the Russians were defeated because the United States supplied the Afghani resistance fighters with weapons such as the stinger missile, which caused massive losses of Soviet aircraft. This, when combined with the economic collapse of the U.S.S.R. made a sustained fight in Afghanistan impossible. As

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[36] Walzer, *Just and Unjust Wars*, 113.
[37] Walker, Martin, ed. *The Iraq War*, 59.

long as the Russians had to face an Afghanistan armed with American stinger missiles and reinforced through money funneled into the country by the CIA through Pakistan's Inter-Services Intelligence Agency, these comparisons to our war with Iraq are shaky at best, for there exists no super power to supply or support the insurgency in Iraq. Indeed, the only other superpower in the world, China, does not seem likely to support religious radicals. This outlook also fails to take into account instances where insurgencies have been rebuffed and defeated by American persistence. After WWII, Germany was infested with a group of Nazi insurgents called the "Werewolves". This group was responsible for strategic bombings of key facilities and various assignations. Though this group lasted for years with reports of their activities occasionally appearing in newspapers, the American resolve did not falter.

Thus, there is potentially a light at the end of the tunnel; we have an important example which shows us that this form of victory is possible. It has been done before; the question is whether we can stomach it in this situation. Not only does the United States face a continuing loss of life, but also a debilitating drain of capital resources which must necessarily be poured into the devastated country. Even today Germany exists with a formidable garrison of American solders. If Iraq is completely abandoned, then there is a very real risk that there will soon be another dictator just as dangerous to U.S. peace. How, given these challenges, can we be reasonably assured of victory? Certainly it is clear that the U.S. military was capable of defeating the military of Iraq. Yet, what happens when we face the challenge of rebuilding the country? We will be involved in a culture which is unfamiliar, volatile, and promises to be a countryside which will be teeming with terrorist wishing to confront the American military. It is doubtful that the

American public will continue to maintain an undoubting support for the expenditure of the Iraq war, nor does America plan on the kind of long term occupation which was required in Germany. Hence, we can question whether a “reasonable hope of victory” is present.

Chapter 6

Conclusion

After exploring in depth three main elements of the *jus ad bellum* which the United States would need to posses to commence a just invasion of Iraq, one is left with mixed feelings. It is obvious that the U.S. faces what is a military danger; yet, it is also apparent that there is no specific country which carries the burden of responsibility for the attacks on the World Trade Center. We have seen that in applying each of these criteria, gaps are left in the reasoning, and in many cases the tradition requires higher levels of proof and certainty than we are able to divine. Nonetheless, I believe that there is just war support for the invasion of Iraq; however, to recognize how this may be the case requires the positing of a new theory.

I would like to propose in this final chapter a theory based on the idea of "supreme emergency" introduced in Michael Walzer's book *Just and Unjust War*. Walzer is very much concerned with the application of just war theory throughout history. Most importantly, Walzer is one who believes that the just war tradition is a tool of protection, and not of ideological or aggressive aggrandizement. In the modern sense we understand a just war as a war of defense. In various illustrations where Walzer applies the just war tradition to historical events, he maintains an almost absolutist's devotion to the principles which have been established by the tradition. This reverence for the utility of the tradition is not, however, complete. He introduces in his work the idea that there may be events that are outside the scope of normal historical events and which allow for special dispensation. These exceptional events take the form of "supreme emergency."

Winston Churchill first coined the term "supreme emergency" in 1939 when describing the Nazi threat to Great Britain.[38] Walzer points out that when we consider this term we are acknowledging that there is a possibility of some greater threat that surpasses the normal dangers of war. A "supreme emergency" is something which is outside of the normal vision of the law. Indeed, as the concept implies, it occurs when a society faces a life-threatening emergency which could result in the annihilation of a people and their entire way of life. Walzer introduces his concept of the "supreme emergency" with a particular occurrence in mind. This occurrence is Great Britain's inability to effectively preserve its "way of life" through conventional *jus in bello* methods when faced with the threat of Nazi invasion in 1939-40. As Walzer puts it, "Nazism was an ultimate threat to everything decent in our lives, an ideology and a practice of domination so murderous, so degrading even to those who might survive, that the consequences of its final victory were literally beyond calculation, immeasurably awful."[39] Thus, the threat faced is not the loss of some tangible territory or government, but the loss of an entire society's philosophy of life. This unprecedented threat, as a result, allows a "stretching" of the bounds of the tradition, for Germany at this time was "a threat to human values so radical that its imminence would surly constitute a supreme emergency."[40]

Essentially Walzer's theory argues that this "supreme emergency" allows a nation to over ride the *jus in bello* or rules which constrain action in war for the specific time

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[38] Walzer, *Just and Unjust Wars*, 251.
[39] Walzer, *Just and Unjust Wars*, 253.

[40] Walzer, *Just and Unjust Wars*, 253.

that a supreme emergency exists. Furthermore, ignoring the *jus in bello* carries with it specific consequences. Though violating the *jus in bello* rules may have been necessary, it may also be criminal. In what Walzer considers the time of the supreme emergency the Royal Air Force (R.A.F.) in 1939 was inflicting trifling amounts of damage on German war manufacturing. "British bombers could fly effectively only at night, and given the navigational devices with which they were equipped, that they could reasonably aim at no target smaller than a fairly large city. A study made in 1941 indicated that of those planes which actually succeeded in attacking their target (about two-thirds of the attacking force), only one-third dropped their bombs with in 5 miles of the point aimed at."[41] This was a shockingly wasteful use of very scarce resources, and though aerial bombardment was the only form of defense open to Great Britain at the time, the possibility that it could cause any significant damage to military targets was miniscule. The only way to use the RAF to any effect was to direct it toward bombing cities.[42]

This change in British policy was a direct violation of the rule against murder which is paramount in the *jus in bello*. According to the rule against murder, the intentional killing of the innocent[43] as your ends or means to your ends is murder. This is exactly what was taking place when the British targeted German cities. This targeting

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[41] Walzer, *Just and Unjust Wars*, 258.

[42] Walzer, *Just and Unjust Wars*, 255-256.

[43] Whether or not these people were innocent is a more ambiguous question. Many have argued that by contributing to the economic productivity and or moral of the country citizens are indirectly responsible for the ability of that country to wage war and thus cannot be considered entirely innocent. However, this is not the normally accepted view and in the interest of preserving moral decency, and quite a few pages arguing about whether or not women and children are innocent, for our purposes we will accept that these civilians must be considered noncombatants and innocent.

was intentional and ordered by the highest levels of the government as "Bomber command was instructed simply to aim at the center of a city."[44] The bombing most definitely produced massive amounts of civilian death and destruction.[45]

In addition, the deaths of large numbers of civilians was undeniably the means by which the British government intended to achieve their goal: "The purpose of the raids was explicitly declared to be the destruction of civilian morale"[46] and as a result the weakening of the German people's will to fight. Few actions taken in war so clearly violate one of the prescriptions of the just war tradition. There is little room to argue that the bombing of German cities did not violate the prohibition against murder. Indeed, even Walzer acknowledges that this is a direct violation of the just war tradition. Yet, his theory seeks to make this violation a permissible exception to the rule. That is to say, he sees it as permissible to stretch or break the rules of *jus in bello* if a situation constitutes a "supreme emergency."

Walzer adds a qualifier to his theory. He believes that someone (in this case the leader of the country) must be held responsible for this violation of the prescription against murder. Yet, how the leader is to be punished is left undefined, and the violation of the *jus in bello* remains.

Note here that not only does Walzer argue that a rule may be broken, but the specific rule that he argues for subverting is one of the most pivotal elements of just war. This is not a trivial violation resulting in a few accidental or unwanted deaths, nor is it a

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[44] Walzer, *Just and Unjust Wars*, 255.

[45] Walzer, *Just and Unjust Wars*, 255.

[46] Walzer, *Just and Unjust Wars*, 256.

dispute of whether enough good had come out of an action to justify the evil produced, as required by the theory of proportionality. Instead this action was a form of murder to serve for one's own preservation. It would be as though in order to stop someone from killing you, you grabbed your assailant's daughter and slit her throat with the intent to cause so much grief that the assailant's will to attack you would dissipate. Yet in the case of the British fight against Nazism, the moral violation was necessary to avoid a disaster of unthinkable proportions.

Essentially if we are to accept the idea that the violation of *jus in bello* is possible in the case of a supreme emergency, then it is not such a leap to believe that the violation of *jus ad bellum* principles is possible in a comparable situation. In fact the violation of *jus ad bellum* principles (especially in today's technologically advanced world) may be much easier to stomach than a *jus in bello* violation. In the case of Iraq I believe there is a supreme threat, which strengthens the case for the fulfillment of each of the previously discussed *jus ad bellum* criteria and allows the United States morally to embark upon a pre-emptive war of national defense.

As we have seen, in order to earn the stamp of justifiable violence, the just war tradition requires that the perceived threat meet the *jus ad bellum* criteria. In the proceeding chapters, we have examined some of the most important criteria. Yet, we have found the evidence and reasoning somewhat "lacking". That is to say, the Iraq war, by a strict traditional understanding of *just ad bellum* conventions, is not permissible and must be considered unjust. Yet, there is an evident danger that the United States faces, and some action needed to be taken to insure the safety of United States citizens within their own borders. Times have changed and new threats face those who abide by just war

theory. Perhaps, just war theory must adapt to face these threats. Walzer's "supreme emergency" is perhaps the best example in history of the suspension of just law for the preservation of society. By making a similar argument, the United States may, in a sense, step outside of just war constraints in order to defend against this new form of aggression.

Thus my theory intends to pick up on Walzer's argument and carry it to a different level. In many ways I believe that the line crossed by my theory is fraught with less peril and would be less likely to endanger innocent people than Walzer's. The line that I propose crossing would not allow for murder; rather it would allow only for discriminate attacks by justifying the U.S. entry into war. That being said, I do not in any way wish to claim that the resulting war has completely refrained from intentional death of the innocent, or that there have not been instances where those in the field may have overstepped *jus in bello* constraints.

As we have discussed in the previous chapters, it is impossible to make an iron clad argument for the satisfaction of any of the major jus ad bellum criteria leading up to the Iraq war, though it is important to note that there are strong cases for each of these criteria. Thus, when I propose that we declare a "supreme threat" and decide that we may overstep the constraints of these criteria, I am not declaring that a feeling of fear will allow an attack on any country that is clamed as a threat. Instead what "supreme threat" would seek to satisfy is a situation which is blurred because potency of evidence is deluded by the enemy's covert style. One may see this comparison akin to a prosecutor who may know that a criminal is guilty but be unable to prove this fact beyond a reasonable doubt in court. Yet, unlike the prosecutor, who in the case of a loss may let a murderer go free, thus risking the life of some small number of innocents, a state which is

unable to defend itself against a threat is risking the lives of a countless number of innocents. Thus I propose that amid a “supreme threat” we are allowed to defend ourselves against what we know to be a serious peril, but one which, because of secretive and underground methods of attack, we are unable to rigidly prove in the context of just war.

The “supreme threat” theory would apply directly to the criteria that we have discussed in the preceding chapters. It is clear from our discussions that there is not evidence to fulfill the requirements of just cause, just intent, and reasonable hope of victory sufficient to warrant a pre-emptive strike. However, there is sufficient evidence when the idea of supreme threat is applied. Imagine a bar that must be met or surpassed for a war to be considered just. Each of our criteria have come very close to meeting this bar, yet there are still shades of grey and doubt which prevent a just war. By not initiating this pre-emptive strike the nation is forced to wait for an attack which could very well be a knock out punch. In a worst case scenario, a nuclear weapon or weapons could be detonated in a U.S. city.

The “supreme threat” theory seeks to alleviate this possibility. By actively seeking to stop states which have shown a willingness to aid terror organizations and develop atomic weapons, we may avoid the possibility of this frightening scenario becoming reality. The “supreme threat” constituted by this possibility “lowers the bar” and allows our body of evidence to meet the *jus ad bellum* standards of justice. However, it is important that once we use this new theory to embark upon a war that we do everything in our power to keep the *jus in bello* criteria and preserve the tradition intact.

The extenuating circumstances after the September 11th attacks require one to recognize that this covert form of attack called "terrorism" is capable of massively destructive strikes. Iraq, before this time, was largely considered impotent; yet, our security and diplomacy also based its philosophy on the idea that people will seek to preserve their own lives. On September 11th we found that this was a false presumption. In light of this, Iraq assumes a new role as not only a nation which incompetently attempted terrorism but also as the potential supplier of unconventional weapons to more successful terrorist entities.

Even though the step of the "supreme threat" results in less needless death than that of the "supreme emergency," it should nonetheless be taken only in cases of extreme danger. As Michael Ignatieff puts it, "Democratic constitutions do allow some suspension of rights in states of emergency. Thus rights are not always trumps. But neither is necessity."[47] Thus, in order to suspend what are ironclad rules prohibiting the unjustified use of coercive power, we must have a unique and extenuating reason. Indeed, Walzer recognizes the danger in making the all too simple and dangerous claim, "in this case the rule should be bent or an exception should be made." It would seem that once the line is crossed allowing some rule to be manipulated, that any form of clever wording or intelligent sophistry could justify the same extra circumstances in a future conflict.

We recognize in Walzer's theory that a supreme danger and imminent destruction are required in order to over step the *jus in bello;* he characterizes it as the loss of a way of life. In my theory we must recognize a similar extreme. The very term "war on terror" is inconclusive. It stipulates no specific countries, nationality, race, or religion. Some

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[47] Ignatieff, Michael. *The Lesser Evil: Political Ethics in an Age of Terror*. (Princeton, N.J.: Princeton University Press, 2004), 2.

believe that this is simply a politically correct term wishing not to “ruffle” any feathers, but the term actually captures the nature of the war very well. There is really no clear idea who, how, and where we our fighting! This is an entirely new kind of war. Instead of Walzer’s supreme danger coming from an obvious aggressor who wishes to invade us and impose a new way of life, this new conflict is fraught by an invisible enemy. We are not sure how to confront the current threat. Any clues to future attacks come as hearsay and unverifiable evidence. Thus combating this threat purely at home would require a change in American philosophy and way of life so drastic that it would be similar to the result of Germany occupying Great Britain. All civil liberties would have to be suspended, backgrounds probed, and near police state measures enforced in order to make sure that no terrorist or covert agents endangered any major civilian concentrations. One option would be the total shutdown of immigration in and out of the country. Yet, this type of action is certainly not the freedom, liberty, and equality which are the American philosophies of life.

It seems that the war in Iraq offers a better alternative. If the U.S. military can focus the conflict in another sphere then it is possible that restrictions on the civil liberties so important in the United States could be minimal. Essentially, the idea is: if we can get the terrorist to concentrate on fighting the army in Iraq then they will be too occupied to attack on our home front. This distraction would allow the preservation of the American way of life. We also can disrupt the breeding grounds for terrorism overseas.

Thus we recognize that war has changed. There is no officially declared enemy, which can be distinguished as combatant or noncombatant. Perhaps the closest precedent we have to deal with the situation we face is our understanding of espionage. The Third

Geneva Convention states, “A captured person not wearing a uniform who is caught carrying weapons or engaging in warlike acts (such as a spy) is not a combatant and is therefore not protected by the laws of war. Such persons should be treated according to applicable civilian laws (if any). In practice they may be executed or tortured” (Geneva Convention). We certainly cannot treat all people suspected of being Al Qaeda agents in this manner. If so the very livelihood and openness that our country depends on will be lost. This “supreme threat” step, then, is required as an element of accommodation in order to provide for the necessity of embarking on a just war to quell this threat.

Thus I believe that the invasion of Iraq was a result of sufficient evidence that a “supreme threat” existed and that the chief reason for the war was the protection and preservation of the American people and their way of life. I admittedly tread on dangerous grounds in granting dispensation for the imperfection in meeting the *jus ad bellum* criteria. However, like Walzer, I believe that when faced with a necessary action, one must re-examine the tradition and look to past precedents which may set the stage for our actions to be consistent with just war. Should the tradition fail to protect those who preserve it, it has failed the test of time.

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