

ABSTRACT

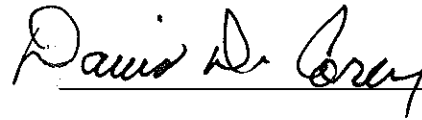
The War on Terror and the Question of Justice

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This thesis project uses the Just War Tradition to consider if the War on Terror qualifies as an ethical war. The question is difficult because the War on Terror differs so markedly from traditional wars that have been fought. Thus, I begin by establishing facts and background information about the war on terror. This reveals why its ethical dimension is difficult to analyze. I then turn to the just war tradition, examining some of the many different authors who have contributed to it, in order to see what different conditions authors have deemed necessary for a just war. I also consider the *kinds* of claims the tradition puts forward. Are the so-called “just war criteria” to be understood as legal claims, moral imperatives, ethical advice, or what? This turns out to be an important consideration, because it determines how the tradition should be applied to any particular case. Lastly, I analyze two specific claims of the just war tradition in reference to the War on Terror, whether or not there was a “legitimate authority” and the “likelihood of success.”

APPROVED BY DIRECTOR OF HONOR THESIS

A handwritten signature in black ink that reads "David D. Corey". The signature is written in a cursive style and is positioned above a horizontal line.

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THE WAR ON TERROR AND THE QUESTION OF JUSTICE

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CHAPTER ONE

Introduction

This thesis project will attempt to examine whether or not the War on Terror is a legitimate one. There are many ways to examine the legitimacy of a war; however, this project will use the Just War Tradition to determine whether or not it has been a just war. There are many different criteria that are included in the Just War Tradition such as probability of success, just cause, right intention, and last resort. While it is difficult to examine a war in light of all of these criteria, it is possible to examine a war through a limited scope such as this thesis will attempt to do.

The second chapter will contain a detailed history of the War on Terror including background information, the causes of the war, answering the question of whether or not this complicated phenomenon is a war at all, examining the goals of the war, and an evaluation of how successful the war has been in light of these goals.

The third chapter will contain information on the Just War Tradition. This chapter is vital to the thesis because without an understanding of the Just War Tradition, it is impossible to evaluate whether or not the war adheres to the tradition. This chapter will include a detailed history of the Just War Tradition including the different authors in both ancient and contemporary history who have contributed to the tradition. It is equally as important for this chapter to determine which of these claims apply to the War on Terror.

The fourth chapter examines the War on Terror in light of one of these criteria, that of legitimate authority. It has been accepted for years that wars must be declared by a legitimate authority in order to prevent common people from declaring wars which would result in an unlimited amount of wars.

The fifth chapter will examine the War on Terror based on the likelihood of success criteria. It is equally as important for this condition to be met. It seems inhumane to lose so much of the country's financial and human resources when the war has little chance of being won. Therefore, this is an important condition of the Just War Tradition.

This thesis will attempt to answer the question: Is the War on Terror just? While this is an overarching question that might be hard to answer based on such limited research, it is a good place to start. This proves to be a difficult question to answer because of some of the difficulties presented by the unique qualities of the War on Terror. For example, the War on Terror appears to contain two separate wars rather than merely one war with several battles. In a traditional war, battles are fought for the same reason in different locations. While this will be discussed in greater detail throughout the thesis, this is an important distinction in the War on Terror. The war in Iraq was started for a different reason from the war in Afghanistan. They are not only situated in different locations, but have different causes.

This also proves to be a difficult question because of the characteristics of modern-day warfare. The international sphere of warfare has presented some unique problems that apply to the War on Terror. The creation of the United Nations institutes rules and regulations that members of the United Nations must follow. This presents a

potential conflict for sovereignty, because a sovereign country reports to no higher authority. Placing these rules on countries makes it seem that they are being governed by some higher authority.

CHAPTER TWO

The War on Terror

The War on Terror has been coined the longest war in American history.¹ However, it is a more difficult war to analyze because of how different the war is from other wars in history, such as World War I, a more typical war. Some of the complications lie in the two separate wars that make up the war on terror—Afghanistan and Iraq—and the fact that these two were started for separate reasons. In the fact that it has become a global war, it could be considered similar to World War I and II, but there are still crucial differences.

It is important to note the differences between the War in Afghanistan and the War in Iraq. While both wars are a part of the much bigger War on Terror, it is impossible to examine the causes of the War on Terror as a whole without examining in detail the War in Iraq and the War in Afghanistan. A discussion on the War in Iraq is difficult because even years after the start of the war, there is still wide disagreement on what the exact cause was. The different arguments for the reasoning behind the war in Iraq range from Weapons of Mass Destruction that Iraq was claimed to have possessed to neoconservative ideology.² It is difficult to discern which one of these many factors caused the War in Iraq because it is likely that many contributed. Since the beginning of

¹Peter L. Bergen, *The Longest War* (New York: Free Press, 2011).

²Jane K. Cramer and A. Trevor Thrall, *Why did the United States Invade Iraq?* (New York: Routledge, 2012), p. 8.

the War in Iraq, it has become clear that it was perhaps inevitable, because of many of the different factors leading up to it.

While as I will argue in a later chapter that the 9/11 attacks were not the sole cause of the War in Iraq, they did play some kind of role. According to research done by Cramer and Thrall,³ the vast majority of public opinion at the time of the survey indicated that the public thought that 9/11 somehow played a role whether because 9/11 changed the way Iraq was viewed or it just provided an opportunity for what leaders already wanted. While it is possible that these other factors played some sort of role in the decision to go to war, it seems certain that the public would not have supported a war in Iraq had it not been for the terrorist attacks in 2001.

If one argues that 9/11 was a catalyst, it is still necessary to determine why there was a time lapse in between the 9/11 attacks and the beginning of the War in Iraq. Because the 9/11 attacks were directly responsible for the War in Afghanistan, that war was started shortly after the terrorist attacks. The causes of the war in Afghanistan seem clearer because of this. But was the war in Afghanistan enough to justify extending the war zone to Iraq?⁴ The war in Afghanistan apparently gave the administration the chance to espouse what it did in the 2002 State of the Union speech by Bush:

States like these, and their terrorist allies, constitute an axis of evil, arming to threaten the peace of the world. By seeking weapons of mass destruction, these regimes pose a grave and growing danger. They could provide these arms to terrorists, giving them the means to match their hatred. They could attack our allies or attempt to blackmail the United States. In any of these cases, the price of indifference would be catastrophic.⁵

³Cramer and Thrall, *Why*, p. 6.

⁴Thomas R. Mockaitis, ed., *Iraq War Encyclopedia*, (Santa Barbara: ABC-CLIO, 2013) p. xxi.

⁵U.S. Department of the State, *State of the Union Address*, (Washington, DC: GPO, 2002).

The fact that the Bush administration was able to frame the War in Iraq as part of a larger War on Terror stemmed from the 9/11 attacks that led to the War in Afghanistan. The American public was genuinely afraid of further terrorist attacks.

However, the 9/11 attacks were not the only justifications given for the War in Iraq; rather, the Bush Administration posited multiple justifications. In the 2002 State of the Union Address, Bush spoke of the evil that was being committed in Iraq against its own citizens: “a regime that has already used poison gas to murder thousands of its own citizens, leaving the bodies of mothers huddled over their dead children.”⁶ This is a type of humanitarian intervention argument. The United States should intervene because the injustices that are occurring against Iraq’s citizens amount to a grave injustice that needs to be corrected. Another important justification given for the war in Iraq was that this was a continuation of the first Gulf War. For example, Richard Land, president of the Southern Baptist Convention’s Ethics and Religious Liberty Commission, stated in a 2006 interview that he believed the war in Iraq was a continuation of the First Gulf War because Hussein refused to comply with United Nations Resolutions.⁷ All of these were posited by the Bush administration in the early 2000s to justify the war in Iraq, some in a speech given by Bush in 2003.⁸

⁶Ibid.

⁷Richard Land, interview by Kim Lawton, *Religion and Ethics NewsWeekly*, PBS, March 24, 2006.

⁸U.S. Department of State, *President Bush Outlines Iraqi Threat*, (Washington, DC: GPO, 2002).

While the War in Iraq was not started until 2003, the War in Afghanistan was started mere weeks after the terrorist attacks in 2001. In addition, the War in Afghanistan had a clear justification:

Strikes against al Qaeda terrorist training camps and military installations of the Taliban regime in Afghanistan. These carefully targeted actions are designed to disrupt the use of Afghanistan as a terrorist base of operations, and to attack the military capability of the Taliban regime.⁹

The United States plan in going to war in Afghanistan was to stop or at the very least greatly reduce the power of the Taliban, who at the time was known to be responsible for the 9/11 terrorist attacks.

Both the War in Iraq and the War in Afghanistan can be traced back to the 9/11 attacks, whether as a direct cause or an indirect one. Thus, the War on Terror as a whole is directly linked to the terrorist attacks of 2001. It is a global war that the United States began in order to increase the security of our own country and to increase the safety of the world.

As I will discuss further in a later chapter, the goals of the War on Terror are important to consider. While I will not discuss in this chapter whether or not the United States has met these goals, it is important to discern what the goals are. In the State of the Union address of 2002 by President Bush, he declared that the goals of the war were to “shut down terrorist camps, disrupt terrorist plans and bring terrorists to justice. And second, we must prevent the terrorists and regimes who seek chemical, biological or nuclear weapons from threatening the United States and the world.”¹⁰ Because it is clear

⁹U.S. Department of the State, *Presidential Address to the Nation* (Washington, DC: GPO, 2001).

¹⁰Bush, *State*.

that eliminating terrorism from the face of the earth is nor a possible or practical goal. However, the goal must be consisted with the actual history of the War on Terror and the plans of the Bush administration who initiated the war. According to the National Strategy for Combatting Terrorism,¹¹ a major part of American strategy to defeat terrorism has always been to cut off funding to terrorists. For example, this is precisely why it was considered such a victory when Iraq became a democratic state and ceased its support of terrorists and Libya. Ensuring that terrorists do not have resources to rely on is a way to diminish the power of terrorists. The most important goal of the War on Terror is to prevent terrorists from recruiting new members.

The final point that I think important to address in this chapter is the rise of ISIS in the time since the United States has ended the War in Iraq. While I will return to this when I examine the likelihood of success, it is critical to understand ISIS and the threat that it now poses to the United States in reference to the War on Terror. ISIS which refers to the Islamic State of Iraq and Syria has become the most recent problem in the War on Terror. While it seemed that the War on Terror at one point was winding down enough to consider it some kind of success, the rise of ISIS questions that very assumption. It is an especially important topic because the War on Terror was originally aimed at al-Qaeda, and ISIS stemmed from al Qaeda, specifically the faction in Iraq. It then grew into Syria because it was close to Iraq and Syria was suffering from civil war at the time. It appears to be just as much of a threat as al Qaeda was more than ten years ago when the War on Terror began. Its use of social media has made the public aware of

¹¹U.S. Department of Defense, *National Strategy for Combatting Terrorism* (Washington, DC: GPO, 2006).

just how dangerous ISIS is, showing scores of executions.¹² The last chapter of this thesis will cover ISIS in more detail and examine what the rise and success of ISIS means for the War on Terror and its potential success.

In conclusion, the War on Terror is an incredibly unique war because of its shifting target, where it has been fought, and later threats that have appeared. All these are important considerations when trying to determine whether or not this war has been ethical or not. For example, it is impossible to determine how successful the War on Terror has been without considering the threat of ISIS and what it means for the future of the United States and its role in the Middle East. The next chapter will focus on the Just War Tradition and what conditions have been deemed necessary for a just war, and decide which of these conditions are particularly relevant to the War on Terror.

¹²Lee Ferran and Rym Momtaz, "ISIS: Trail of Terror", *ABC News*, <http://abcnews.go.com/WN/fullpage/isis-trail-terror-isis-threat-us-25053190>.

CHAPTER THREE

Establishing an Ethical Framework: The Just War Tradition

What is the tradition?

The Just War Theory is something different from the Just War Tradition. While it may be tempting to look at the just war tradition to determine if a war is morally justifiable, matters are not that simple. The just war tradition has a long history that has evolved through the work of many diverse authors. Far from presenting a clearly articulated theory, it presents many. Thus, today the just war tradition is different from hundreds of years ago, for example when Augustine developed his own notion of a just war. The diversity of the tradition is captured especially in the fact that it was a religious concept when developed, but became increasingly secular over time. People who have no religious beliefs are able to use the just war tradition to consider whether a war can be justified on ethical grounds.

Early Christian writers did not feel one particular way about war. Some were pacifists and believed it imperative for a good Christian to avoid all types of violence. They used different passages in the Bible to support their views. Nevertheless, there were also early Christian thinkers who advocated violence in particular situations. Augustine, cited as the founder of the just war tradition by many, changed the view of war and ethics tremendously. He challenged the view of some early Christian pacifists because:

The wise man...will wage just wars. Surely, however, if he remembers that he is a human being, he will be much readier to deplore the fact that he is under the

necessity of waging even just wars. For if they were not just, he would not have to wage them.¹

He was adamant that a just cause is necessary for any war to be considered ethically acceptable. “Wars of desire”² should not be waged; only wars of necessity were acceptable. Also, a proper authority was necessary for a just war. “If a just man should happen to serve as a soldier under a human king who is sacrilegious, he could rightly wage war at the king’s command, maintaining the order of civic peace.”³ All that is clear in these early writings is that a legitimate authority is necessary. Another requirement Augustine laid out is a condition of the actual war itself—it must serve peace because “the natural order... seeks the peace of mankind.”⁴ The war must be in the best interest of everyone involved. These basic conditions, Augustine thought, were necessary in order for a war to be considered ethical. While Augustine was neither the first nor the last thinker to write on “just war,” he made many contributions to the tradition and later thinkers owed much to his thoughts. While at the time Augustine was writing, this was seen as spiritual advice for Christian soldiers, it is used today in a much wider context.

There are many thinkers in the Middle Ages who wrote on this topic. However, it is not simple to determine what each thinker believed because each one cited so many previous thinkers. This is especially true of Gratian. It is hard to discern what the author’s beliefs are and what he is developing from another’s thoughts. Thomas Aquinas

¹Augustine, *City of God*, (Cambridge: Cambridge University Press, 1998), XIX.7.

²David Corey and J Charles, *The Just War Tradition: An Introduction*, (Wilmington: ISI Books, 2012), p. 58.

³Augustine, *Reply to Faustus the Manichaeon*, (Gnostic Society Library), XXII.75.
<http://gnosis.org/library/contf1.htm>.

⁴Ibid.

solved this problem by looking at the just war tradition and putting the information in a different form from either Augustine or Gratian. In order to have a just war, Aquinas stated, “three things are necessary:”⁵ authority of a sovereign, a just cause, and right intention. Aquinas appears to be more specific on the right authority condition than Augustine was in his earlier years. Aquinas gave a more detailed reason why a proper authority is needed to declare war. It is because wars involve everyone to some degree. It is not “the business of a private individual to summon together the people,”⁶ rather a public matter. Both Augustine and Aquinas agreed a just war cannot be waged by any person on the street. First of all, this would result in utter chaos. Second of all, not every citizen is able to take other factors into consideration to determine whether or not the war should be waged. Both authors agreed on this because they agreed with the implicit premise underlying the issue: war is a public act, thus a legitimate authority must declare the war.

The second condition defined by Aquinas is a just cause. A country should only “be attacked because they deserve it on account of some fault.”⁷ Any other reason is not a just cause because it leads to countries being attacked for retribution and territorial attacks. The third condition that Aquinas detailed for a just war is right intention. This condition grows out of an understanding of Augustine’s just war theory. Augustine stressed the importance for a war to serve peace. Aquinas took this condition a step further and stated that it is imperative that the authority who declares the war have the

⁵Thomas Aquinas, *Summa Theologica*. (Westminster: Christian Classics, 1981), 2a, 2ae, Q. 40, a1, respondeo.

⁶Ibid.

⁷Ibid.

right intention in mind. The right intention would be the “advancement of good, or the avoidance of evil.”⁸ Thus, it is not acceptable for a sovereign authority to go to war in order to satisfy “the thirst for vengeance or the desire to inflict harm.”⁹ Aquinas agreed with Augustine’s conditions for a just war; he took it a step further and added clarity to the issue.

More than two hundred years later, Martin Luther was interested in this topic of whether it is possible for a Christian to participate in a war. He developed thoughts initiated by Thomas Aquinas and Augustine. He likewise argued that a just cause is imperative. Because “unintentional consequences abound in war,”¹⁰ it is necessary for a war to have a just cause if civilians and innocent people are going to be harmed in the process. If the war is “a small misfortune that prevents a great misfortune,”¹¹ it is just because it serves peace. A small period of violence is acceptable if it brings about eternal peace. He limited the just cause condition more than earlier writers did. While all of the authors agreed that only wars of necessity qualify as just wars, Luther believed that only wars begun after an attack can be considered a war of necessity, whereas previous authors may have allowed a just war before actually being attacked. He made a distinction between wars of desire and wars of necessity. He declared that war is only just if “you have to defend and protect yourselves and the office which you bear compels you to fight.”¹² Therefore, a preventive war would be unjust because it is not absolutely

⁸Ibid.

⁹Corey, *Just War Tradition*, p. 79.

¹⁰Ibid., p. 93.

¹¹Theodore Tapert, ed., *Luther’s works*, (St. Louis: Concordia Publishing House, 1955), p. 41.

¹²Ibid., p. 120.

necessary to wage war. Next, Luther took the idea of right intention Gratian theorized to a next level with the idea of last resort. He argued that in order for a war to have the right intention, other steps must have been taken prior to declaring war such as attempts to “settle the case by legal procedure, discussion, or agreement.”¹³ An agreement does not have to result from these actions; however these actions must be taken. Otherwise, a ruler can declare war with a just cause without even trying to work it out peacefully. The last unique thing to be said about Luther’s view of the just war tradition is that he was seemingly quiet on the idea of loving one’s enemy in wartime, a grave departure from his predecessors. This stems from the fact that Luther does not say much on the subject of how soldiers are to act during wartime whereas, Augustine and others agreed that it is important to “serve peace and show mercy,”¹⁴ which would limit many actions in the war itself.

Another voice within the tradition was Calvin, who also relied heavily on his own interpretations of scripture. First of all, he agreed much with earlier thinkers on his idea of a just cause. He agreed more with Augustine and Thomas Aquinas than with, Martin Luther though, in light of Luther’s restriction of just cause to wars of self-defense. Calvin was clear that a love for one’s enemy is crucial in order for a war to be just, another distinction from Martin Luther. Calvin echoed Gratian’s thoughts about a duty to go to war when an injustice is being committed in his assertion that “if rulers sheath their sword and keep their hands unsullied by blood, when the wicked roam about massacring and slaughtering, then so far from reaping praise for their goodness and justice, they

¹³Ibid., p. 125.

¹⁴Corey, *Just War Tradition*, p. 99.

make themselves guilty of the greatest possible injustice.”¹⁵ Equally as important, Calvin returned to a view articulated by Augustine, a view Luther had broken with, which states that mercy and peace must be shown to the opposing side. After a war is over, one’s enemy is treated amicably with love and benevolence. A just war must involve treating one’s adversaries in the same way.¹⁶ This is a return to the view Augustine articulated in *City of God*.

By the modern age, more writers emerged with strong opinions on the subject of the ethics of war. One such thinker is Grotius who had an enormous impact on the just war tradition going forward in the modern period. He both agreed with earlier thinkers, yet broke from them. Thinkers, in the modern period starting in about the 17th century, began to focus on the importance of right conduct in war. Thus, it is not only necessary that the proper authority declare a war and with a just cause, but how soldiers act in the war is crucially important as well. This is to prevent mass innocent casualties from occurring. While this cannot be eliminated completely, it is important to prevent it as much as possible. The conditions he comes up with for a just war are just cause, sovereign authority, proportionality, reasonable chance of success, last resort, and formal declaration.¹⁷ As one can see, it is clear these conditions have been extended greatly since the time Augustine was writing on the subject. Nevertheless, it is not a completely different idea. These conditions all grow from the grounds Augustine began with.

¹⁵Harro Hopfl, ed., *Luther and Calvin On Secular Authority*, (Cambridge: Cambridge University Press, 1991), p. 62.

¹⁶Calvin, *Institutes of the Christian Religion*, (Westminister: Christian Classics, 1995), IV.20.

¹⁷Corey, *Just War Tradition*, p. 143.

A final writer who influenced the just war tradition is Immanuel Kant. Kant was not a part of the just war tradition, but his writings on international law became important to the just war tradition and the precepts that emerge with it. First of all, Kant argued that a state has “the right of preventative attack.”¹⁸ In this sense, he broke from Martin Luther. Luther argued there was no right to a preventative attack. They both agreed, though, that no matter what the cause of going to war is, it is necessary to consider other alternatives including diplomacy. War should be a last resort of trying to settle the disagreement in other ways. Though if this process is unsuccessful, a sovereign authority should declare war. The reason for some of the marked differences between Kant and earlier thinkers could be that earlier thinkers are clearly writing for Christian audiences. Their purpose is to distinguish whether and in what cases a war would be justified for Christian soldiers. By the time that Kant is writing, this has changed much. The world had become a more secular place; the just war tradition was no longer exclusively about Christians and war.

Lastly, there seems to be a difference between Augustine and Kant’s *post bellum* arguments. While Augustine argued that peace should be shown to the opposing side after a war is over due to its Christian precepts, Kant instead argued that a peace treaty should be drawn up, and no state could be forced into giving up its civil freedom, such as becoming a colony of the other side of the war. Nevertheless, these two actually have something in common. Both argued that a country should not be taken over once the war is over; Augustine merely asserts it in a more religious way.

¹⁸Immanuel Kant, *The Metaphysics of Morals*, (Cambridge: Cambridge University Press, 1196), p. 116.

These different thinkers are all figures in the just war tradition. Augustine is a key player in this tradition. Many of these thinkers and their thoughts stem from Augustine's *City of God*. While Augustine was not the first writer on this subject, he is crucially important to how the just war tradition developed.

Lastly, many contemporary thinkers have had much to say on the issue of just war. This is important because as time progresses, wars change in nature; the best example of this is the War on Terror. For example, Jimmy Carter, who published an article in the *New York Times* in 2003 as the elusive War on Terror was beginning, argued that an attack on Iraq would not have met the just war conditions.¹⁹ Carter did precisely what many have done with the just war theory and he used it as a checklist. It becomes increasingly difficult to do that, as Carter discovers, because it is quite easy for a war not to meet one condition or another. Is it then acceptable to decide the war as a whole is unjust? Still, Carter did not declare the War on Terror as a whole as being unjust, but rather the specific attack on Iraq that was part of the much bigger war. Elshtain also raised this issue in her book *Just War Against Terror: The Burden of American Power in a Violent World*, but Elshtain decided the war on terror was a just war looking at the issue in light of the many different authors that have added to the tradition. She was able to do this because she made a distinction between using violence for the sake of violence and using violence to prevent a greater evil, because we have a responsibility to do something “if our neighbor is being slaughtered.”²⁰ Because she makes this distinction, Elshtain is able to classify the War on Terror as a just war.

¹⁹Jimmy Carter. “Just War—or a Just War?” *The New York Times*, March 9, 2003.

²⁰Jean Elshtain, *Just War Against Terror*, (New York: Basic Books, 2009), p. 51.

What is the status of its claims?

There are three different types of claims: *jus ad bellum*, *jus in bellum*, and *jus post bellum*. Because it is impossible to incorporate all of the different thoughts that have contributed to the tradition, it could never be the type of “bare list of rules...clear guidelines”²¹ that some would prefer. This is why the just war theory could never be considered a type of international law. While international law is inherently hard to enforce, resolutions passed by the United Nations qualify as law in the international sphere. Rather, these just war claims could be construed as ethical advice. Defining the just war tradition as ethical advice rather than law has major implications. If one item within the tradition is not met by a potential war, the war is not necessarily unjust. Some wars will have some of the items on the checklist and not others because so many different authors have added to this list.

The different claims of the just war tradition are all quite different from each other. Not all questions posed by just war thinkers invite such simple answers. First of all, one must consider the factors in *jus ad bellum*. One factor is a just cause, which is a categorical claim. It is a simple yes or no answer. If the cause of going to war is not just, the war is not just. Another categorical requirement is a legitimate authority. Everyday people on the street do not have the right to declare war. This would lead to an infinite number of wars being waged for idiosyncratic. Thus, it is crucial that some type of legitimate authority declare war. A final categorical requirement is right intention. This concept stems from Augustine’s requirement that a war must serve peace in order to be just. Last resort stems from the idea of right intention. A country with the right intention

²¹Corey, *Just War Tradition*, p. 7.

would automatically only use war as a last resort. No country with a right intention would use war as a last resort.

However, bigger questions emerge that cannot be answered as simply. The likelihood of success is a more complex problem, and requires more research and thought. It is a prudential claim. One must consider what assets each side has and what factors will come into play during the war. If for example country X has only a 10% chance of winning a war, then even with its just cause it might not be just for Country X to wage war.

The next category in war is *jus in bello*. One such claim that appears in this category is how proportional attacks are in comparison with the enemy's attacks. This is a prudential claim, because it certainly cannot be answered with a simple yes or no. It is imperative to consider how harsh the attacks are from the enemy's side, and also consider what our own counter attacks consist of. How many people were killed and whether the people killed were military or civilians is also important to consider. Did the enemy kill civilians? Did we kill civilians? If the enemy is not killing civilians, but we are, this could lead to a conclusion that this is unjust. If both sides are, it is important to consider whether the killings are necessary. This leads to an important prudential doctrine: The doctrine of double effect. In other words, the only time the death of civilians can be considered just is if the civilians are killed as a byproduct of the death of the enemy, and not as a strategic military action. All of this is wrapped up in this simple question: if civilians were killed, why were they killed?

The last category in war is *jus post bellum* and refers to what occurs after the war

has ended. Augustine first believed that we should show mercy to the losing side of the war. This is a categorical claim that can be answered with a simple yes or no. This stems from the Christian beginnings of the just war tradition. It is no longer believed that it is important to show “mercy” to the other side, but more emphasis is currently placed on the treaties that are developed after the end of the war, which aim at retaining the authority of the enemy state. Countries draw up a peace treaty at the end of war. *Jus post bellum* involves prudence, because it requires an assessment of what was agreed upon at the end of the war by countries and how it will be enacted. Was any property taken after the war was over? This is a categorical claim that can be answered simply. Most thinkers agree that if one is to show mercy to the opposing side, property cannot be taken as compensation for the war.²² This is evidence of the influence Locke has had over the just war tradition. Kant, though, similarly believed the winning side of the war should not take the other country as a colony.

What kinds of claims might apply to the War on Terror?

I want to argue that the just war tradition does help the United States to think about the ethics of this unique war. One claim relevant to the War on Terror is the necessity of a just cause. Most American citizens agree that terrorism is an evil, should be rid from our world, and presents clear dangers to our safety. In the second fatwa of Al-Qaeda in 1998, Al-Qaeda called on “every Muslim who believes in God and wishes to be rewarded to comply with God's order to kill the Americans...civilians and military.”²³

²²Ibid., p. 166.

²³Al-Qaeda, “Al-Qaeda’s Second Fatwa”, *PBS NewsHour*, Feb. 23, 1998, http://www.pbs.org/newshour/updates/military/jan-june98/fatwa_1998.html.

The clear objective of this fatwa was to destroy Americans. Not only were Americans in danger though, people are being killed all over the world. In Islamist countries, extremist groups are constantly killing people. Therefore, most Americans see just cause in responding to terrorism. Even if some innocent people must die, many more may be saved. This returns to the view that a period of violence is acceptable if it is a means to a more stable peace, the view forth by Luther.

Legitimate authority also applies to the War on Terror. While the different just war authors have not always agreed on who constitutes a legitimate authority, it seems clear the president of the United States certainly qualifies. Therefore, if Congress declares war it is one that is to be waged by a “legitimate authority.” This is because war is a public matter, as iterated by different just war thinkers. By the same token terrorists are unjust fighters because they are private individuals summoning together others.

The United Nations complicates the matter though. How should the United Nations play into war between countries? If notifying the United Nations of a country’s intentions to declare war satisfies this condition,²⁴ the United States cleared this condition in the case of the War on Terror. However, it is unclear if this is enough. Does the United Nations have the right to decide when a war is justified? According to the United Nations Charter, the United Nations does have the right to decide when a war is ethically justified²⁵ insofar as it does not conflict with a state’s right to self-defense as iterated in Article 51 of the United Nations.²⁶

²⁴Elshtain, *Just War*, p. 61.

²⁵United Nations, *Charter of the United Nations*, 24 October 1945, Chapter VII, Article 39.

²⁶United Nations, *Charter of the United Nations*, 24 October 1945, Chapter VII, Article 51.

Right intention is another consideration in *jus ad bellum* that certainly applies to the War on Terror. It is important that a country does not go to war for the wrong reasons. Even if there is a just cause, it is still possible to go to war to punish another country for something unrelated. The intention of the war must be directly related to the “just cause.” The country must be trying to better the civilians and innocent people of both countries. If civilians will not be bettered through the process of the war, it is possible the intention of the war is not right. This applies to the War on Terror because while it is clear that there is a just cause (to rid the world of terrorism), our intention of entering the different countries we have occupied at different times may not always be right. It is necessary to assess this on a country-by-country basis, which is one main difference between the War on Terror and other wars throughout history. The main difference between this war and other wars is the fact that other wars have been against states. The definition of a war is a conflict between two states for some underlying political reason. Otherwise, war would be no different from mass killings.

As mentioned above, the last resort criterion grows from this condition. If the intention of the war is right, war would have been the last resort. Here, it is necessary to assess what other alternatives have been tried before deciding to go to war. It is necessary for a country (the United States in this case) to assess whether diplomatic negotiations are even possible. If the United States decided to go to war without giving any consideration to other possibilities, it would certainly not have been the last resort, even if there probably weren't any alternatives. The Bush administration did consider other ideas to stop terrorism besides actual fighting in a war zone: “deny, contain, and curtail our enemies' efforts to acquire dangerous technologies...cutting off terrorist

financing...and deliver greater development assistance through the New Millennium Challenge Account to nations that govern justly, invest in their people, and encourage economic freedom.”²⁷ Thus, this is a prime example of last resort as war was not the first option attempted. Rather, war was declared because other options were not reaching the goal of stopping terrorism.

The probability of success is a final consideration of *jus ad bellum* that certainly applies to the War on Terror. Because this type of war is so different from ones in the past, it could be argued that the United States had no probability of success despite its having such a powerful military. While the United States has done a lot to eradicate terrorism in the world, there are still many more hurdles to face. It is a crucial factor to consider in deciding whether the United States was just in its declaration of war.²⁸ In some sense, this is the most difficult war ever fought because we are fighting elusive individuals rather than a country. This alone could make it an unjust war since the fighting could easily go on indefinitely. It is hard to give an exact prediction of when the fighting will be over. “When terrorism is completely eradicated from the world” does not seem to be a practical answer.

The double effect doctrine is another important idea in the War on Terror. This sets the United States apart from terrorists. On both sides, civilians are being killed. However, the manner in which they are being killed could not be more different. If the United States can prevent killing a civilian, it will. Civilians are not killed as a military strategy like they are with terrorists. The double effect doctrine states that civilians can

²⁷U.S. Department of State. *The National Security Strategy of the United States* (Washington, DC: GPO, 2002).

²⁸Elshstain, *Just War*, pg. 62.

be killed if it's an unavoidable side effect. If the casualties occur while killing an enemy, it is acceptable. This is an important concept to take into consideration with the War on Terror. Terrorists by their nature will kill civilians.

Jus post bellum issues are difficult to consider at this point in the War on Terror because the war has not come to an end yet, and it is extremely difficult to tell when that point will come. Mercy being shown to the other side is a relevant claim to the War on Terror. However, it is more complex than most wars because we are not fighting one particular country, rather terrorism as a whole. Thus, the United States will certainly not show mercy to terrorists who have killed so many people. Thus, is the war still just even though mercy isn't being shown?

The just war tradition has changed over the years and been influenced by many thinkers, some medieval and others contemporary. As shown, it is not a law we can consult at moment's notice to determine if a war is just. Many of its claims apply to the War on Terror. Did it start justly? Are we still fighting a just war? Two aspects of the Just War Tradition that I'd like to consider more closely in the following chapters, legitimate authority and likelihood of success.

CHAPTER FOUR

War on Terror & Legitimate Authority

Legitimate authority is one condition that all authors in the just war tradition insisted upon for good reason. It creates a reasonable limit for how many wars can be fought. For much of history, this was as simple as maintaining that only the leader of a sovereign country could declare war. The issue, however, becomes much more complicated with the invention of the United Nations. With an international organization to govern the international world, would states still have the authority to make decisions or would it be necessary to get U.N. approval to take action? Almost 70 years later, this question still has not been completely resolved. For example, could Bush bypass the United Nations when no authorization was given, as he did? Are there any circumstances when it is acceptable to not request United Nations approval before waging war? It is important to answer these questions to assess whether or not the United States met the “legitimate authority” condition.

Article 2 of the United Nations Charter states that:

- 1) The Organization is based on the principle of the sovereign equality of all its Members.
- 2) All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.

- 3) All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
- 4) All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

Along with this, the United Nations Security Council was created. The Security Council must approve the use of force. Between the United Nations Charter and the Security Council, the intention is that countries are not routinely going to war against each other for no legitimate reason. Rather, the United Nations became a legitimate authority for the purpose of keeping peace and security on a global level, but does not conflict with a state's right to defend itself.

Rhetoric of the Bush Administration on the War on Terror

While both the war in Iraq and the war in Afghanistan started as part of a global War on Terror, there are central differences in these two wars. There was not one central reason for the fighting in both regions. The war in Afghanistan was clearly a counter-attack to the attacks on September 11, 2001 because of the Taliban regime within Afghanistan. The evidence for this is found in the timeframe of the war. The war in Afghanistan was officially started less than a month after the 9/11 attacks and was initially aimed at destroying the Taliban terrorist camps.¹ The same, however, cannot be said of the war in Iraq. Rather, the reasoning used for going to war against Iraq was the

¹U.S. Department of State, *Address to a Joint Session of Congress and the American People*, (Washington, DC: GPO, 2001).

claim that Iraq was in possession of WMD. In a speech made by Bush in 2002, Bush states knowledge of the following:

The regime has produced thousands of tons of chemical agents, including mustard gas, sarin nerve gas, and VX nerve gas. Saddam Hussein also has experience in using chemical weapons. He has ordered chemical attacks on Iran, and on more than forty villages in his own country. These actions killed or injured at least 20,000 people, more than six times the number of people who died in the attacks of September the 11th.²

An earlier speech by Bush less than a month after the September 11th attacks reveals Bush informing American citizens that “the battle is broader. Every nation has a choice to make.” Any nation to be found helping terrorists is no better than the terrorists themselves.³ Both of these speeches reference the fact that the war is not confined to either Iraq or Afghanistan, but to any terrorists throughout the world, and any nation harboring or aiding those terrorists. Here it is important to take note of the differences between Iraq and Afghanistan even though they are part of a broader War on Terror. It might not be the case that both wars were waged by a legitimate authority. It is critical to determine if that means the War on Terror in general was not waged by a legitimate authority.

Rhetoric of War in Afghanistan

With the war in Afghanistan, unlike the war in Iraq, there had been an actual attack and the United States had reason to think another attack would occur. Fewer than two weeks after the attacks, Bush made the following address to a session of Congress:

The United States of America makes the following demands on the Taliban:
Deliver to United States authorities all the leaders of Al Qaida who hide in your

²U.S. Department of State, *President Bush Outlines Iraqi Threat*, (Washington, DC: GPO, 2002).

³Ibid.

land. Release all foreign nationals, including American citizens, you have unjustly imprisoned. Protect foreign journalists, diplomats, and aid workers in your country. Close immediately and permanently every terrorist training camp in Afghanistan, and hand over every terrorist and every person in their support structure to appropriate authorities. Give the United States full access to terrorist training camps, so we can make sure they are no longer operating. These demands are not open to negotiation or discussion. The Taliban must act and act immediately.

Because “none of these demands were met,”⁴ Bush declared war in order to pursue the goals outlined in the demands. Condoleezza Rice, the United States National Security Adviser at the time of the September 11 attacks, claimed that a preemptive view of self-defense must be used because “there has never been a moral or legal requirement that a country wait to be attacked before it can address existential threats...It does not give a green light to the United States or any other nation to act first without exhausting other means...the threat must be very grave.”⁵ To determine if the decision to go to war with Afghanistan could hold up to this standard, examining how the United Nations has held the attacks against the United States is important because the United Nations requires self-defense as the only exception to go to war without United Nations approval. In United Nations Security Council Resolution 1368, the Council takes the position that it “unequivocally condemns the horrifying terrorist attacks.”⁶ This attack was one of a great magnitude that had never been seen before.

⁴U.S. Department of State, *Presidential Address to the Nation* (Washington, DC: GPO, 2001)

⁵Condoleezza Rice, “A Balance of Power that Favors Freedom,” (*Manhattan Institute*, 2002) <http://www.manhattan-institute.org/html/wl2002.htm>

⁶U.S. Department of State, *Security Council Resolution 1368* (Washington, DC: GPO, 2001)

Legitimacy of War in Afghanistan

Rhetoric, though, is not all that must be analyzed. Because this war is one that has lasted for so long and brought about such casualties, it is crucial to determine if the United Nations needed to authorize the United States to declare war in Afghanistan. The legitimacy of the war in Afghanistan opens up the question of self-defense. According to Article 51 of the United Nations Charter, “nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations.”⁷ Therefore, no nation is required to wait until it receives the permission of the United Nations Security Council before going to war if for reason of self-defense. So, if the United States went to war against Afghanistan to defend itself, then it seems clear that there was a legitimate authority: the United Nations Charter. The attacks against the United States, however, were clearly over, and the United States was in no *imminent* danger of being attacked again.⁸ However, nothing in Article 51 requires that in order for a state to defend itself, it must be in imminent danger. The language in Article 51 states that nothing can impair the right of self-defense if an armed attack occurs. Thus because of the 9/11 attacks it seems clear that the United States had the right to self-defense. Because of this, two questions must be answered to determine whether or not a war in Afghanistan could be considered self-defense: 1) May a state go to war to defend itself against attacks from a non-state actor? 2) May a state go to war after an attack is over if it has a reasonable fear of another attack?

⁷United Nations, *Charter of the United Nations*, 24 October 1945, Chapter VII, Article 51.

⁸Christopher Greenwood, “International law and ‘the war against terrorism,’” *International Affairs* 78, no. 2 (2002): p. 311.

Traditionally, wars are against other states. However, this is not the case in the war with Afghanistan. While the state may not have stopped the terrorist attacks from occurring, the military, on behalf of the state, did not carry the 9/11 attacks out—rather the attacks came from Al-Qaeda. *Nicaragua v. United States* helps to solve the problem of non-state actors. In it, the ICJ held that “acts of armed bands of irregular forces could amount to an armed attack where the acts of armed force are, 'of such gravity as to amount to an actual armed attack conducted by regular forces.'”⁹ Certainly, it would seem that the forces who carried out the 9/11 attacks carry “such gravity.” In addition, the state of Afghanistan did nothing to make amends for the crimes of its citizens and it is therefore culpable for these attacks. Thus, the 9/11 attacks amount to an armed forces attack that the United States had the authorization to defend itself against.

The second question is addressed later by the historic Secretary of State Daniel Webster, who articulated that an anticipatory reaction is acceptable when the necessity of self-defense is "instant, overwhelming, and leaving no choice of means, and no moment for deliberation" in dealing with the *Caroline* case. This refers to what we call today, “preemption.” This rule remains an important consideration for self-defense with the United Nations Charter.¹⁰ This is not important for looking at the war in Afghanistan because the war in Afghanistan was not an “anticipatory reaction” but rather a reaction to actual attacks. However, this can be an important consideration to look at with the war in Iraq.

⁹Lindsay Moir, *Reappraising the Resort to Force*, (Oxford: Hart Publishing, 2010), p. 48.

¹⁰David Bederman, *The Spirit of International Law*, (Athens: University of Georgia Press, 2002), p. 126.

Authorization for War in Iraq?

The United Nations clearly never explicitly authorized the use of force by the United States in either case through the many resolutions passed by the United Nations Security Council on the subject of terrorism. This paper will first discuss the different relevant United Nations Security Council Resolutions that were passed. The first resolution passed by the United Nations Security Council after the attacks was the day after, September 12, 2001. Resolution 1368 stated that the United Nations was:

1. Determined to combat by all means threats to international peace and security caused by terrorist acts;
2. Recognize[s] the inherent right of individual or collective self-defense;
3. Condemns in the strongest terms the horrifying terrorist attacks which took place on 11 September 2001...like any other act of international terrorism;
4. Calls on all states to work together urgently to bring to justice the perpetrators, organizers, and sponsors of these terrorist attacks and stresses that those responsible for aiding, supporting or harbouring the perpetrators, organizers and sponsors of these acts will be held accountable.¹¹

Fewer than three weeks later, Resolution 1373 was passed by the United Nations Security Council. It reaffirms the previous resolution, and also holds that states need to prevent terrorists from accumulating funds for the purpose of carrying out a terrorist act, and affording "one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist

¹¹Department. of Treasury, *Resolution 1368*.

acts, including assistance in obtaining evidence in their possession necessary for the proceedings.”¹² Lastly, Resolution 1378 was passed on November 14, 2001, about two months after the attacks. It reaffirms previous resolutions concerning terrorists. More importantly though, it states that the United Nations will “support international efforts to root out terrorism.”¹³ Among these three resolutions passed by the United Nations Security Council, it is clear that the United Nations holds that:

- 1) All states should make it more difficult for terrorists to attack
- 2) States should not aid the actions of terrorists by allowing their cross-border movement
- 3) States should not allow terrorists to accumulate funds for the purpose of terrorist attacks.

In addition though, the following year another resolution was passed by the United Nations Security Council, Resolution 1441. It condemned Iraq for its refusal to comply with prior resolutions. This resolution is the one that comes closest to an authorization of force against Iraq. It is proof that the United Nations finally had agreed with the rhetoric that the United States had been using for some time: “Iraqi President Saddam Hussein has systematically and continually violated 16 United Nations Security Council resolutions over the past decade.”¹⁴ The resolution goes on to say that Iraq will face “serious consequences” referring to military penalties if it does not comply this final time. Nonetheless, the resolution also states that the Security Council would reconvene to

¹²U.S. Department of State, *Security Council Resolution 1373* (Washington, D.C.: GPO, 2001).

¹³U.S. Department of State, *Security Council Resolution 1378* (Washington, D.C.: GPO, 2001).

¹⁴“Administration Makes Case Against Iraq,” *ABC News*, January 6, 2006, <http://abcnews.go.com/International/story?id=79852&page=1>.

decide whether or not Iraq had complied with the resolution—it does not authorize a member state to carry out the resolution. Some argued that Resolution 687, which authorized force against Iraq in 1990, was somehow still relevant to the situation at hand in 2003.¹⁵ While this claim makes sense because the conditions of the truce were violated, this is problematic because if the United Nations had wanted member states to have had the ability to use force against Iraq, it would have included an authorization of force in Resolution 1441. The United States had asked the United Nations to do just this, and yet in the resolution, no authorization of force was given. The United Nations refused to authorize force on “a lack of significant hard evidence demonstrating that Iraq was in actual possession of chemical, biological, or nuclear weapons.”¹⁶ What was clear to the United Nations was that Iraq had refused to comply with United Nations Security Council resolutions that required Iraq to allow the United Nations to verify they had stopped producing WMD. It becomes evident that the United States did not have the authorization to go to war with Iraq based on vague language in United Nations Security Council warning Iraq of “serious consequences” if it did not comply.

While the war in Iraq cannot be considered to have been authorized by the United Nations Security Council, it is important to consider whether or not the war can be considered just based on the principle of preemption as cited in the *Caroline* case earlier. An anticipatory reaction is acceptable only in the following circumstance: necessity of self-defense is "instant, overwhelming, and leaving no choice of means, and no moment

¹⁵John Yoo, "International Law and the War in Iraq", *Public Law and Legal Theory Research Paper Series*, no. 145 (2004): p. 6.

¹⁶Chris Dolan, *In war we trust: the Bush doctrine and the pursuit of just war* (Burlington: Ashgate Publishing, 2005), p. 91.

for deliberation.” Did the United States have to start a war in Iraq at the moment that they did for fear of an imminent attack? The answer is no. Iraq posed no imminent threat to the United States in the traditional sense. This becomes a more problematic consideration though when considering what kind of weapons it was thought Hussein possessed. Chemical weapons are more dangerous because chemical weapons can kill masses within minutes whereas there is a chance to stop more conventional weaponry. Thus, any knowledge (which the United States possessed, even if it was later proved to be false evidence) of these type of weapons constitutes an imminent threat. The fact that it was proven later that Iraq did not in fact possess what it was at one time thought to possess does not matter. The United States could have faced immediate catastrophic consequences had Iraq attacked. Thus, the war in Iraq can be considered a preemptive war based on this knowledge. However, this brings up the problem of preemptive wars. It is difficult to determine when a threat is imminent enough to justify a war. It becomes problematic to justify a war being justified on these grounds because it is so subjective and subject to change with later knowledge (as was the case with the war in Iraq).

Looking at Iraq and Afghanistan Together

At this point, it is necessary to discern how the war in Afghanistan and the war in Iraq relate to each other. It is tempting to call them separate wars because they were started at different times for different reasons. However, they are both a part of a bigger War on Terror; they can be considered battles of the War on Terror. The rhetoric of the war in Afghanistan began as a direct reaction to the 9/11 attacks. Had it not been for the 9/11 attacks, the War on Terror might be quite different today because while officially there has been an end to the War in Iraq, there still is yet to be an end to the war in

Afghanistan. Because the United States never received explicit authorization to go to war with either Iraq or Afghanistan, the motives of the war are crucially important. While the attack from Al-Qaeda, stationed in Afghanistan, was over, the United States had reason to believe that another attack would ensue with the knowledge that Al-Qaeda had taken credit for other attacks, specifically the attack on the USS *Cole*.¹⁷ Iraq, though, is another story. There had never been an attack either from the state of Iraq or any non-state actors acting from within Iraq. The United States merely believed Iraq to be in possession of dangerous chemicals. The United Nations refused to authorize force because there must be a real threat in order to go to war. This also proves problematic because if a country has the right to self-defense, including preemptive self-defense, should it not be able to determine when and if it feels an imminent threat.

One “battle” was clearly waged by a legitimate authority. The other was perhaps justified with its right to preemptive self-defense. What does this say, though, about the overall War on Terror? To decide this, it is important to analyze when the first use of the term “War on Terror” was used. In fact, the first use of the term was by President Bush on September 20, 2001 in an address to Congress and a nationally televised audience with his statement that “our War on Terror begins with Al Qaida, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped, and defeated.”¹⁸ Thus, this is when the War on Terror ultimately started, and this marked the beginning of the war in Afghanistan. Therefore, the War on Terror was a use of the United States’ right to defend itself articulated by Article 51 of the United Nations

¹⁷Greenwood, *International Law*, p. 312.

¹⁸Department of State, *Address*.

Charter despite the fact that the second “battle” was not authorized by the United Nations. While the war in Iraq can be justified only on a vague notion of preemptive self-defense, it is an extension of the War on Terror as started in 2001.

CHAPTER FIVE

War on Terror & Likelihood of Success

Likelihood of success is another condition that just war writers deemed important because of the substantial cost of wars, including the cost of lives and numerous costs. It seems unethical to allow thousands of soldiers and billions of dollars on a war that has virtually no chance of success. In order to decide the likelihood of success, though, one must first determine what the goals of the war are because success is measured by one's goals.

Costs vs. Benefits

Will the costs of this all-consuming war outweigh the benefits that will be reaped if the United States is successful in ending the War on Terror? It has become abundantly clear that the War on Terror has a relatively good chance to be the most expensive war in history.¹ While this could be expected because of the new technology that we have today, the extent of the cost is not something that one would have expected in 2001 not even counting the thousands of members of the military that have given their lives. I think, however, that the benefits of any possible victory for the United States would outweigh the massive costs for the United States. This is because terrorists present a threat not only to the United States, but also to countries internationally. Because terrorism is a global problem, the United States would be saving lives in many countries

¹Sabir Shah, "US Wars in Afghanistan, Iraq to Cost \$6 Trillion," *Global Research*, September 20, 2013, <http://www.globalresearch.ca/us-wars-in-afghanistan-iraq-to-cost-6-trillion/5350789>.

and thus the significant costs that the United States would bear would outweigh the benefits of solving a global problem.

Goals of the War

According to the speech by Bush on September 20, 2001, the War on Terror “will not end until every terrorist group of global reach has been found, stopped and defeated.”² Thus, the goals of the War on Terror revolve around defeating all terrorist groups. What this means may depend on how words like “terrorist” and “global reach” are defined, but this is the goal in general.

One clear problem seems evident with a goal like this and it was a criticism of the war from the very start in 2001. Because the goal of the war is so incredibly broad, it is opened up to the argument that the war might be impossible to win based on those goals. To kill all terrorists seems unrealistic. While this became a very contentious issue, it is a valid argument. Everyone knew it would be a very lengthy war and it does seem immoral to allow thousands of soldiers to die when it is absolutely impossible to win the war to begin with. If this is the only way that success of this war can be measured, it seems clear that this war had a very low probability of success from the beginning.

Gordon in his article “Can the War on Terror be Won?” gets to the heart of many of these criticisms with his argument that the War on Terror can be won, but perhaps with a slightly different goal in mind than the one President Bush initially articulated. In fact, the goal has not stayed consistent throughout the entire War on Terror. This can be attributed to the fact that there was a change in presidency about halfway into the war.

²U.S. Department of State, *Address to a Joint Session of Congress and the American People*, (Washington, DC: GPO, 2001).

The goal articulated by Gordon is more like the goal of the war since President Obama took office. With this view, victory will come when there is a “reduction of the risk of terrorism to such a level that it does not significantly affect average citizens' daily lives, preoccupy their thoughts, or provoke overreaction. At that point, even the terrorists will realize their violence is futile.”³ The goal of eliminating all terrorists is unrealistic because there will always be people who have evil intentions. However, if those people have virtually no power, then the goal of the War on Terrorism has been met because terrorists can only be as successful as they are effective. Therefore, this final chapter will focus on the question of the probability of the United States’ “reducing the risk of terrorism.”

What would success look like?

In order to measure the success of this war, it is necessary to determine what success would actually look like. This is especially important for the War on Terror because the War on Terror looks so different from previous wars. For example, at the end of WWI, the countries involved signed an armistice, which promised that the fighting would end. Because the War on Terror is not being fought against another state, this is not the type of end that would come. Similarly, there was no official treaty-signing end to the Cold War. The end of the War on Terror though will be an even vaguer end than the Cold War because the war is not aimed at just one country even if it is concentrated in a small geographic area. Because the Cold War was aimed at a state, the fall of the USSR, the communist regime, resulted in the end of the Cold War. Therefore, while there are similarities in the two wars in that they are very different from other historical

³Philip H. Gordon, “Can the War on Terror Be Won?,” *Foreign Affairs*, December 2007, p. 55.

wars, the War on Terror is unique even in its comparison to the Cold War. We can be certain that there will be no official treaty to end the War on Terror since the United States is fighting non-state actors and the definition of a treaty is “an international agreement concluded between states.”⁴ Rather, the President of the United States will have to make an executive decision to formally end the war by bringing home the majority of the armed forces once it is determined that the influence of al Qaeda is minimal. This is a difficult position because some people might perceive the United States as ending the war before its goals were attained; however, with the uniqueness of the War on Terror, it is the only ending possible.

The likelihood of success can be reframed as the following yes or no question: Can we succeed by eliminating unacceptable threats to peace? If there is little chance of this being the end result of the war, the war might be considered unjust in terms of likelihood of success. To determine this, several factors must be analyzed.

Can we correct the injustice that has occurred?

Of course, this question can only be answered after determining that some type of injustice has occurred—whether there is a just cause to go to war. Because this thesis will only focus on the issues of legitimate authority and likelihood of success, for the purpose of this chapter I will assume that terrorism has caused some type of grave injustice. Terrorists not only committed a grave injustice against our country, but also continue to commit injustice throughout the world. The best way to do this is to ensure that the Taliban has a limited amount of power that would make it highly difficult for it to regain power of Afghanistan, specifically as well as other countries in the Middle East.

⁴Anthony Aust, *Modern Treaty Law and Practice* (Cambridge University Press, 2013), p. 14.

The good news is that this is a much more practical goal than eliminating terrorism. Thus, it appears that it is possible to correct the injustices that have occurred due to the existence of terrorism.

Will victory improve conditions?

The Taliban has been without power in the area for a significant amount of time. Many countries that at one time supported al Qaeda no longer do so, such as Libya and Iraq. More countries today are standing with the United States taking active steps against terrorism, such as Afghanistan and Saudi Arabia.⁵ These facts show that al Qaeda has a more limited impact today than it did in 2001 when the War on Terror began. This in itself demonstrates that the United States has been able to some extent to correct wrongs undertaken by terrorists by limiting the influence the terrorists have, thereby preventing them from killing mass amounts of people as they have been able to do in the past. Bergin, in a CNN article,⁶ details why al Qaeda is not nearly the threat today as it was ten years ago. His analysis of the current state of the War on Terror fits with Gordon who argues that eventually support for terrorist groups like al Qaeda will diminish to the point that the group is unable to effect any change in the Middle East. This will happen because “liberty is ultimately more appealing than a narrow and extremist interpretation of Islam but also because they learn from mistakes, while al Qaeda’s increasingly desperate efforts will alienate even its potential supporters.”⁷ Thus because the United

⁵U.S. Department of State, “9/11 Five Years Later: Successes and Challenges” (Washington, D.C.: GPO, 2006).

⁶Peter Bergin, “ISIS: Is it really a threat to the U.S.?” *CNN*, August 20, 2014.

⁷Gordon, “War on Terror”, p. 58.

States has been able to limit the influence of al Qaeda, there is a good chance that with additional time terrorists throughout the world will become even less common and influential. Conditions have already improved in much of the Middle East. For example, the Taliban is no longer in control of Afghanistan. This has led to an improvement in education for young children. Clearly, improvements have been made in the region where terrorism is at its worst. However, the success in dealing with the Taliban opens up the problem that is more present today: the fact that the United States perhaps had too limited of a goal in dealing with terrorism. It dealt almost exclusively with the Taliban. This then brings up the topic of the rise of ISIS and the threat that it poses, as it seems that the United States was nearly blind-sided by the rise of ISIS.

The rise of ISIS is a problem that has made the United States realize that the goal of containing terrorism is not as practical as it once seemed. It appears that the goal the United States had too limited of a goal. The United States was successful in its goal, but now thirteen years into the war there is still a substantial threat. Liepman, a senior fellow at the RAND Corporation and former deputy head of the National Counterterrorism Center says that ISIS has “a lot of attributes that should scare us: money, people, weapons, and a huge swath of territory.”⁸ However, he also explains that ISIS seems like such a threat because of how little is known about it and how surprising it was. It had seemed for some time that the threat presented by terrorism in general was declining. Thus, with events such as the beheading of a journalist, it becomes clear that the United States is not finished dealing with significant threats from terrorists.

⁸Mark Mazzetti and Helene Cooper, “U.S. Officials and Experts at Odds on Threat Posed by ISIS,” *The New York Times*, August 22, 2014.

It could be argued that the question of probability of success might be the hardest question to answer because it is the question most relevant to the uniqueness of the War on Terror. One must analyze the different aspects of the war to determine the probability of success. When the war was waged in 2001 with the limited amount of information the United States had, I would argue that it had a reasonable chance of success. It is important to consider though the state of that goal today with the rise of ISIS. It becomes apparent that likelihood of success is one of the most difficult factors to take into consideration when deciding whether or not to go to war. This is because it is impossible to know what the different actors in the war will do in response to a particular situation. As has happened in this situation, goals sometimes change once a war has started, particularly if there is a change in political power in the course of the war. Because of these natural difficulties of assessing likelihood of success and the new threat presented by a group the United States had no way of predicting in 2001, the conclusion might be that likelihood of success is a less important consideration in these types of wars than typical wars that have been fought throughout history. Much about the war can change. This makes it nearly impossible to accurately assess likelihood of success at the beginning of the war. Because of the changes in the atmosphere of the war due to the rise of ISIS, it is unclear what reasonable chance of success the United States has, because the United States will have to drastically change the strategy it used to combat the Taliban.

CHAPTER SIX

Conclusion

This thesis project has attempted to answer the question: Is the War on Terror an ethical war? While it has brought up many difficulties based on the two criteria that this thesis has analyzed, my conclusion is that it is indeed an ethical war. I believe that through analyzing the different conditions of the Just War Tradition, it becomes apparent that the War on Terror is a just war.

While as I established in Chapter Four that the war in Iraq may not necessarily have been waged by a legitimate authority according to international standards and only if one agrees that Iraq posed an imminent threat, the war in Afghanistan on the other hand was waged by a legitimate authority, the United Nations Security Council which authorizes attacks of the self-defense nature. Because the Taliban, the organization responsible for the 9/11 attacks, was based in Afghanistan, going to war in Afghanistan was part of our right to self-defense. Because the war in Afghanistan was an essential part of the War on Terror, the fact that it was waged by a legitimate authority lends credence to the idea that the War on Terror was just based on this one condition.

The other condition analyzed in this thesis was the likelihood of success which I discussed in Chapter Five. As I determined, it may be necessary to view the goal of the War on Terror in a slightly different way—containing terrorism rather than completely eliminating it. However, in doing this it appears that the War on Terror does have at least some general likelihood of success. It is possible that the President of the United States

could determine that terrorism has been contained sufficiently and thus make a formal end to the war. This is because the ultimate goal of the war should be to contain terrorism to the point that there is not a high risk. Before the rise of ISIS, it appeared that likelihood of success was good and that the United States had a good chance of victory. While it is problematic to consider the rise of ISIS because it appears that our success in limiting the scope of the Taliban does not matter, this raises the issue of how difficult it is to rely on likelihood of success when determining how ethical a war is. Likelihood of success is impossible to calculate and even more so in a war like this one. This might be a condition that is no longer as important as it once was when evaluating the justice of a war.

Based on the two conditions analyzed in this thesis, my conclusion is that the War on Terror was indeed ethical. However, it is crucial to keep in mind that this focused exclusively on two limited conditions of a much larger framework. I have allowed these two specific criteria guide my thinking and have come to the conclusion that the War on Terror is a just war insofar as these two criteria are concerned.

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