

Justifications of the Iraq War Examined¹

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Imagine three cases:

Corporal Greene returns to the United States in a body bag having been killed by an elite armed guard in a war that had been officially authorized as a defense of her country against foes who have the capability and desire to attack her fellow citizens and soldiers at home and abroad with acts of terrorism. Such foes may either be planning eventually to launch their own attacks or to facilitate attacks by others who have an established record of using terrorism against U.S. soldiers and citizens.

Private Smith returns to the United States in a body bag having been killed by a roadside bomb in a war that had been authorized as enforcing international law against a rogue state with a recent history of ignoring or avoiding U.N.-authorized inspections to track and dismantle weapons of mass destruction (WMD).

Sergeant Jones returns to the United States in a body bag having been killed by a suicide bomber in a war that had been officially described to him as a rescue operation aimed at saving citizens in another country from human rights abuses carried out against them by a despotic regime.

The deaths of Greene, Smith, and Jones are equally tragic. All three soldiers had been fighting in the same conflict, Operation Iraqi Freedom. Assume for the sake of argument that they were motivated by the causes for which they each understood themselves to be fighting. Are their deaths, then, *morally* the same?

I raise this question in part to frame an ethical analysis of the war in Iraq. I ask that we imagine Greene, Smith, and Jones for two reasons: one, their cases

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reflect different rationales offered for the Iraq war; and two, their deaths are arguably not morally the same. The goods for which they have been asked to risk their lives not only differ, they are not on par with each other. Nonetheless, they have been sent to war on the premise that the goods for which they are risking their lives are of the same gravity. In the ensuing discussion I will assume that taking risks to protect goods that redound to one's collective interests is more intelligible—and easier to motivate—than taking risks for altruistic reasons. Stanley Hoffmann puts the point succinctly: "The peaceful citizens of democratic countries, even when they are stirred by compassion and shocked by atrocities, are reluctant to wage war 'for others'—self-defense is another matter."² Non-altruistic actions join duty and interest in ways that altruistic actions do not. On that premise, the risks taken by Greene, Smith, and Jones shoulder different burdens of proof. That fact raises meta-theoretical questions about practical reasoning and the justification of war.

In this essay I will do two things in light of these ideas. First, I will critically assess claims on behalf of the Iraq war made by the Bush administration and by various defenders of the war. These claims will move us into careful considerations of the Iraq war as a form of self-defense, law enforcement, and rescue, which will thereby take us into moral and practical implications of U.S. foreign policy. Second, I will step back from the specifics of these three rationales to ask whether they are in fact of the same sort. One of my points is that debate about the Iraq war has been muddled by the notion that these rationales stand on the same footing. On the assumption that nonaltruistic risks are more intelligible than altruistic risks, we can presume that each set of risks shoulders different burdens of proof. Put more abstractly, reasons for war are not interchangeable, not convertible to the same currency. That fact, I will argue, ought to frustrate those who wish to substitute one rationale for another in the effort to provide a retrospective justification for the Iraq war.

In the argument that follows, I defend these ideas by evaluating the case for the Iraq war within the framework of just war doctrine, concentrating on *ad bellum* issues. The *jus ad bellum* is a major stumbling block for proponents of the Iraq war because the war's basic rationale is far from established. I focus largely on whether a *just cause* exists for the war in Iraq. The *ad bellum* criterion of just cause has us look back to the occasion of war, the infringement of justice that war aims to rectify. Recalling Aquinas's claim that one criterion for a just

war is that it is waged “on account of some fault,” just cause cites the grievance to which war is a necessary and proportionate response.³

To frame this discussion I will distinguish between two models for classifying the war in Iraq. First is the “invasion” model. I will point to two possible reasons for invading Iraq—*self-defense* and *law enforcement*—and then pose questions about each. The first of these reasons, self-defense, will recall the case of Greene. The other reason for invasion will require us to examine legal justifications of the war and will recall the case of Smith.

Second is the “rescue” model. A rescue operation might seem to be a form of invasion, but it has some distinctive features: unlike an invasion, a rescue mission presupposes the oppression of defenseless people within a state or region who need help. An invasion, in contrast, needs no such assumption. When considering rationales for rescue, I will point to two possible reasons and then raise doubts about each as they pertain to the Iraq war. Here we focus on the war as it was justified to Jones.

INVASION: SELF-DEFENSE AND LAW ENFORCEMENT

Self-Defense: Preemption and Prevention

The self-defense argument presumes that states have the right to wage war as a means of self-defense against an attack or imminent attack on their territory. In the context of Operation Iraqi Freedom, it is tied to the alleged possession and likely use of WMD by the Iraqi regime. The Bush administration insisted that Baghdad could use such weapons against its neighbors or against the United States, or could ally itself with terrorist organizations, such as al-Qaeda, which could use WMD to pursue terrorist attacks against the United States and its interests.⁴

When considering appeals to self-defense, we do well to distinguish between self-defensive wars in the traditional sense, in response to the crime of aggression, and wars as either preemptive or preventive, in response to a threat or fear of aggression. Obviously, the traditional paradigm of self-defense does not apply to the case at hand because Iraq did not attack the United States in or around 2003. As a form of self-defense, the Iraq war must pass as either a preemptive or preventive war.

Preemptive war is a response to an imminent danger, a real and tangible threat. In *Just and Unjust Wars*, Michael Walzer identifies three components for considering preemptive action: (1) A manifest intent to injure; (2) active preparation

that turns that intent into a positive danger, a fear of being “fatally exposed”; and (3) a situation in which doing nothing greatly magnifies the risk.⁵ These components clarify when it is permissible to attack in response to what Walzer calls a “sufficient threat.”

Consider Walzer’s three components in the case of Iraq. Although Saddam Hussein might have provided sufficient verbal evidence to satisfy the first of Walzer’s conditions, it is likelier that his statements against the United States were an attempt to acquire political capital and garner support at home and in the region. The second component is more difficult to establish: postwar intelligence failed to corroborate that Saddam was planning to mobilize an arsenal of WMD against the United States. That said, it might be argued that he was working to acquire weapons and weapons programs. The National Intelligence Estimate (NIE) report of October 2002 on Iraq’s WMD, representing the consensus of sixteen intelligence agencies, claimed that Iraq had chemical and biological weapons as well as missiles with ranges that exceeded U.N. restrictions; and, if left undeterred, could develop nuclear weapons capabilities during this decade.⁶

Given this report, we might say that it seems reasonable to think that Baghdad posed a real and imminent danger to the United States, even if we know now that no WMD existed. On this line of argument, the Bush administration was subjectively reasonable although objectively wrong. We might say, then, that the Bush administration was a victim of bad luck of the sort that exonerates them from acting on their mistaken views.⁷

However, the Senate Select Committee on Intelligence found serious defects in the Bush administration’s assessment of intelligence and concluded that Iraq’s prewar abilities were exaggerated in the NIE report.⁸ According to the Senate Select Committee on Intelligence Report, the NIE’s judgments “either overstated, or were not supported by, the underlying intelligence reporting. A series of failures, particularly in analytic trade craft, led to the mischaracterization of the intelligence.” Flawed judgments, the Senate inquiry adds, stemmed from the intelligence community’s “collective presumption that Iraq had an active and growing weapons of mass destruction . . . program. This ‘group think’ dynamic led Intelligence Community analysts, collectors and managers to both interpret ambiguous evidence as conclusively indicative of a WMD program as well as ignore or minimize evidence that Iraq did not have active and expanding WMD programs.”⁹

Even more damning is evidence against the Bush administration from the Duelfer investigation and report of fall 2004. Led by Charles A. Duelfer—who was chosen by the administration to investigate Iraq’s weapons programs—this investigation concludes that Saddam’s desire for any kind of arsenal was driven by his concerns about Iran, not the United States, and that he had the desire, but not the ability, to develop WMD.¹⁰ It was more important for Saddam to end U.N. sanctions, not develop his weapons arsenal. Indeed, the Duelfer report contradicts virtually every prewar claim by Washington about the danger that Saddam posed to the United States. Duelfer found that Saddam’s ability to produce nuclear weapons “progressively decayed” after 1991 and that no evidence could be cited to support the claim that there were concerted efforts to restart the program.¹¹

The findings are virtually identical on biological and chemical weapons. Saddam destroyed his arsenal of biological materials in the early 1990s, well before the U.S. invasion in 2003. Saddam did seek to resume the production of long-range delivery systems of weapons, the report adds, but none of those systems had the capacity to target anything even close to the United States.¹² After interviewing Saddam and top officials in the Baath regime, Duelfer’s team concluded that Saddam wanted to enhance his image in the Middle East and deter Iran, not that he was motivated to strike the United States with WMD. Given these facts, it seems unlikely that there was an immediate and mounting danger to the United States. Walzer’s second condition was, therefore, not satisfied. Finally, consider Walzer’s third criterion: Given the state of Iraq’s weapons capabilities before the war, it seems likely that maintaining the no-fly zones and maintaining weapons inspections (resumed late in 2002) would have been enough to protect U.S. interests. Thus, an imminent threat did not exist, and did not justify a form of self-defensive preemptive action.

We should be clear about how these facts bear upon moral judgment. The Senate Select Committee on Intelligence Report and the Duelfer report are not saying that invading Iraq was justified in March 2003 but is not justified now. Nor are they saying that the Bush administration was a victim of bad luck. Rather, these two reports strongly suggest that the Bush administration suppressed and manipulated data to support its case.

But perhaps we should amend Walzer’s criteria regarding preemption in light of the facts and dangers at hand. Thus, we might claim that, because of the special nature of WMD, a *preventive war* is justified. As Walzer observes, preventive

war aims to maintain a balanced distribution of power, “to stop what is thought to be an even distribution of power from shifting into a relation of dominance and inferiority.”¹³ On this thinking, preventive war is less a response to an imminent threat than to a more general fear about power asymmetries among nations and subnational groups. Prevention is a key feature of the U.S. National Security Strategy (NSS) policy statement, providing the defining rubric in two of its nine sections. Released by the White House without much fanfare in September 2002,¹⁴ this policy statement appears to depart dramatically from basic assumptions regarding the ethics of war. The core idea is that states have the right to attack other states in order to stop the proliferation of WMD, especially those weapons that would enable a state to carry out a surprise and devastating attack. Because the National Security Strategy is part of the background for the Bush administration’s justification for invading Iraq, we do well to examine it here.

We should begin by scrutinizing the very idea of “preventive war.” The concept seems oxymoronic. “To prevent” means to keep from happening, to hinder, to make impossible by a prior action. Performing an act while claiming to prevent that same act seems incoherent.

Perhaps preventive war might be understood (and defended) on analogy with prophylactic measures. Consider controlled fires. In those instances, small fires are created in order to reduce the occasions or risks of greater fires. But controlled fires require planners to carefully calibrate levels of damage, not burn down whole forests. Better yet is the analogy with preventive medicine, which could involve enduring a minor illness in order to guard against more serious risks, as when we use vaccines. But typically such preventive measures involve few and controlled risks and never the intentional loss of individual life as a means to an end. Preventive war does not allow for such a finely tuned balancing of risk and benefit.

Preventive war doctrine is best pictured as a form of anticipatory self-defense, distinct from preemptive war. Its justification involves three steps. We would begin by saying that all nations have the right to self-protection, a right derived either from a state’s right to collective security or the duty to protect human rights. The central premise is that as a matter of justice states cannot be expected to suffer an attack without acting to protect their territory, citizens, and institutions from further danger.

Second, nations need not wait until they have suffered injustice or aggression in order to act self-protectively. A justified war need not only be a reflex action.

Requiring states to wait until they are attacked before allowing them to use force would be to require them to operate at a disadvantage, and that seems unfair. On this line of reasoning, states have the right to use force when strong evidence indicates that they will soon be victims of aggression. So that preventive war is not confused with pure aggression, it should satisfy conditions like those set out by Walzer: first, a people must be fatally exposed to danger; second, action should be tailored to self-defensive aims; and third, acting now should greatly reduce the costs of acting later. In brief, the criteria are cause, intention, and proportionality.

President Bush used something like this framework to extend U.S. doctrine beyond this permission by adding a third step to preemptive war reasoning in his NSS statement. As to Washington's policy, the president said:

For centuries, international law recognized that nations need not suffer an attack before they can lawfully take action to defend themselves against forces that present an imminent danger of attack. Legal scholars and international jurists often conditioned the legitimacy of preemption on the existence of an imminent threat—most often a visible mobilization of armies, navies, and air forces preparing to attack.

We must adapt the concept of imminent threat to the capabilities and objectives of today's adversaries. Rogue states and terrorists do not seek to attack us using conventional means. They know such attacks would fail. Instead, they rely on acts of terror and, potentially, the use of weapons of mass destruction—weapons that can be easily concealed, delivered covertly, and used without warning. . . .

The United States has long maintained the option of preemptive actions to counter a sufficient threat to our national security. The greater the threat, the greater is the risk of inaction—and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively.¹⁵

Although the president uses the language of preemptive war, he organizes his comments under the rubric of prevention.¹⁶ Preemptive war relaxes the requirement of having to suffer aggression before attacking, allowing for the use of force in situations of imminent danger. Preventive war relaxes the notion of imminent danger. The president states: "We must adapt the concept of imminent threat to the capabilities and objectives of today's adversaries." But such adaptation allows the United States to use force outside a situation of imminence—for example, where possible threats may be targeted to eliminate danger. Each step from the

paradigmatic case of self-defense to preemptive war to preventive war allows for greater permissiveness for using force, but no step is conceived as a qualitative departure from the paradigmatic case. The idea is to move us along a spectrum from thinking reactively to thinking proactively, but not in a way that moves us along a spectrum from thinking defensively to thinking aggressively. Rather, the hope is to conceive of a proactive policy that is also defensive.

In each of the three examples of self-defensive war—“traditional” self-defense, preemption, and prevention—the ethical challenge is to identify principles that would guide policy and distinguish just war from unjust aggression. I believe that a moral case for preventive war, if one is possible, would include several conditions. Toward formulating a justified preventive war doctrine, consider these criteria:

- *Considerable security danger.* Leaders embarking on a preventive war must identify and target a significant, ongoing danger to a nation or alliance of nations. The opponent must have a considerable capacity and intent to attack or support hostile plans by others. That threat cannot be vague, but must rely on genuine evidence of a real and credible danger. The danger may be distant rather than imminent, so long as it is real.
- *Proportionality.* Failing to act now greatly magnifies the risks of acting later.
- *Character of enemy.* The opponent must have an established record of belligerency. This criterion amends the first criterion of “considerable security danger” by saying that the danger must be probable. Instead of requiring that a people be fatally exposed to an imminent threat, this criterion states that a leader who supports violence against one’s country is a legitimate target of self-defensive action.
- *Beyond hope of deterrence.* The opponent must have an ideology of militancy and be difficult to deter with threats of retaliatory action in response to bellicose actions. The best way to handle such actors is not to increase disincentives to act—the standard goal of deterrence—but to deny them the ability to act. Preventive war, then, is a form of first-strike defensive action for contexts in which deterrence seems weak. Military doctrine would supplement the threat to retaliate if deterrence fails by assigning states the right to strike first if a dangerous actor or organization seems undeterrable.

Seen in light of this fourth criterion, preventive war could be either a new part of, or a replacement for, U.S. deterrent strategy. At one level, both strategies

seem structurally the same insofar as each involves a paradox: With preventive war, we seek to prevent a greater war later by going to war now; with deterrence, we threaten to wage war in order to prevent war from being waged. Each plan is held together by the aim of reducing risks.

Yet these policies differ in that deterrence involves a threat whereas preventive war involves using force. More important, preventive war doctrine presumes not the strength but the weakness of deterrence. Preventive war is an option for dealing with rogue or other actors who cannot be restrained with conventional threats of retaliation. Still, that difference is less important than the fact that Washington threatens preventive war as a feature of policy, and such threats may work to augment deterrence in an international environment of rogue states, terrorists, and WMD. I will return to this connection between preventive war doctrine and deterrence below. Before doing so, however, it is important to note that, as with its argument for preemptive war, the lack of empirical evidence for preventive war is fatal to the administration's argument.

One lesson we can take from this experience concerns the idea of *last resort* in just war doctrine. Preventive war doctrine wreaks havoc with the just war criterion of last resort. That criterion requires states to embark on war when they have no other reasonable options at their disposal to defend themselves, enforce the law, or protect human rights. It is meant to signal the radical change that happens when states move from diplomacy to war—to indicate that war is not a preferred option, but a regrettable necessity. In an important sense, a just war is *coerced*.

The Iraq war and President Bush's preventive war doctrine play fast and loose with the criterion of last resort. In his speech before the war, the president indicated that the United States had exhausted all other options, that it had no choice but war.¹⁷ But the president used that appeal as if it also freed him from having to provide clear and convincing evidence. The alleged urgency of the matter seemed to eclipse not only policy-makers' choices but also the evidentiary basis for going to war. Even if we grant some permissiveness when it comes to the urgency of war, we cannot relax the demand for information. As Whitley Kaufman notes in his argument on behalf of preventive war as a form of justified self-protection, it is necessary "to insist on very high evidentiary standards before resorting to preventive war."¹⁸ Equally important is the fact that in the NSS policy statement, President Bush entirely abandons the category of *duress* as a feature of justified war. Instead, U.S. war policy is one of *choice*. Recall a key part

of the National Security Strategy statement: We are to “adapt the concept of imminent threat to the capabilities and objectives of today’s adversaries.”¹⁹ This is not to adapt but to abandon the notion of “imminence.” It assigns great latitude to the United States to choose when and where it plans to use force.

Beyond the particular question of the Iraq war and the *jus ad bellum*, there are dangers surrounding the Bush doctrine of preventive war more generally.

- (a) The first danger concerns deterrence. The Bush doctrine assigns to the United States the prerogative to strike first, a dangerous prerogative when we understand how others might perceive and react to it. The problem is well known to those familiar with Cold War debates about nuclear war-fighting doctrines and deterrence. Asserting the right to carry out a first strike creates incentives for others to acquire the capacity to neutralize any advantage that one may gain from striking first.²⁰ Preventive war doctrine thus produces incentives for others to acquire the capacity to do the same. If other nations fear that they cannot deter with their threats of retaliation, then they are left with an incentive to develop capacities to neutralize the advantages that their opponents seek through first-strike capabilities. The effect is to create incentives for arms competition, where no sides feel safe if they are not militarily superior. Preventive war doctrine, as a first-strike doctrine, makes the world more dangerous. It creates the illusion of safety while increasing incentives for war preparation and a quest for advantage.
- (b) Preventive war doctrine not only creates incentives to develop first-strike capabilities, it generates incentives for others to develop the ability to retaliate. Consider the case of North Korea. As part of what Bush described as the “axis of evil,” that country may be a target for preventive war. But the United States is unlikely to attack North Korea, because it has nuclear weapons. And herein lies another outcome of preventive war doctrine: it gives nonnuclear states a powerful incentive to acquire nuclear weapons to deter aggression. In this way, too, the doctrine makes the world more dangerous. It provides a stimulus for nuclear proliferation among states that fear other, more powerful states. Ironically, preventive war doctrine generates incentives for states to create precisely the weapons it seeks to protect against.
- (c) Preventive war doctrine is not generalizable to situations of parity between states. It ignores problems that would arise if other states claimed a similar right. Stated differently, preventive war doctrine presumes U.S. military

superiority and thus generates questions about power as a presumption of its moral justification. The problem here is not political but moral. U.S. doctrine appears to be developing policy on an exceptionalist premise, suggesting that the American quest of military dominance is permissible while others' quests are not. According to the National Security Strategy statement, "Our forces will be strong enough to dissuade potential adversaries from pursuing a military build-up in hopes of surpassing, or equaling, the power of the United States." Why should any other state be willing to settle for such asymmetry?

- (d) Apart from these political and moral issues, preventive war is problematic because it makes war easier in principle. It weakens the barrier to war that the criterion of last resort imposes. Note how far the logic of preventive war can take us down a permissive line. We move from self-defensive war against aggression to preemptive self-defense against imminent threats to preventive self-defense against rogue states that pose a threat. From there we can plausibly take one more step toward war against rogue states that do not pose a threat, but that harbor terrorists who do. And from that step we can move one more increment to preventive war against other states, not rogue states but failed states, that harbor terrorists. From that footing we can move one more step to preventive war against states that wish to increase their military capacities and challenge American dominance. It is difficult to stop on such a slippery slope.
- (e) Finally, there is the problem of applying preventive war doctrine to other regional contexts. Imagine Pakistan and India, for example, adopting a preventive war policy by modeling their doctrines on that of the United States. The potential for conflagration is obvious.

Taking these problems together, we can say that preventive war doctrine, far from being a prophylactic measure, exacerbates the disease that it presumes to guard against.²¹ But do these problems rule out all conceivable uses of preventive force? Imagine a rogue state researching and developing a strain of Ebola virus to use as a biological weapon.²² Imagine as well that this state has a hostile relationship with the United States. The new virus could be released on a large population with relative ease by terrorists, who could infiltrate the United States through one of its many unprotected harbors. After indubitable intelligence makes this research and its whereabouts known to the world, individual countries and the

United Nations pressure the rogue state to cease its research and development, but to no avail. Waiting only increases the threat. Here preventive force seems justified by my four conditions. But note that such a justification would permit military force to remove the danger, not embark on an all-out war.

Law Enforcement

Consider the death of Smith. His life was sacrificed on behalf of a second *ad bellum* justification for invading Iraq, international law enforcement. This criterion presumes that states have a right to wage war to enforce international law as a basis for maintaining international peace and security.²³ One feature of law enforcement is that it is more altruistic than self-defense; it implicates fewer immediate national interests. Political leaders have fiduciary obligations that are obviously discharged in wars of self-defense, but those duties are at best remote in cases of law enforcement. War taxes human and financial resources; wars that do not redound to the public good rightly must meet a more stringent moral and political test. The good of law enforcement must make a stronger case for itself.

In the context of the Iraq war, the law enforcement argument relates to a series of U.N. Security Council resolutions that were imposed on Iraq at the conclusion of the 1991 Gulf War, requiring Iraq to withdraw from Kuwait and destroy its weapons programs. Of special importance are Resolutions 678, 687, and 1441. According to the Bush administration, one of the main reasons for invading Iraq was to enforce U.N. resolutions by finding and eliminating WMD. Remarked President Bush: "Under [U.N.] resolutions 678 and 687, both still in effect, the United States and our allies are authorized to use force in ridding Iraq of weapons of mass destruction."²⁴ In November 2002 the Security Council passed U.N. Resolution 1441, finding Iraq in material breach of its obligation to disarm after the Gulf War. In response to these resolutions, President Bush observed, "a broad coalition is now gathering to enforce the just demands of the world."²⁵

Resolution 687 is the most important. It lays out the conditions to which Iraq agreed at the end of the Gulf War, most significantly regarding eliminating its WMD and ceasing its development programs. In his March 2003 speech, President Bush claimed that Iraq was in material breach of its obligations to disarm under this resolution, and that his administration was legally authorized to use force to enforce relevant resolutions.

According to U.N. Resolution 687, material breach of Iraq's obligations could happen on one of four counts:

- if Iraq refused to allow for the “destruction, removal, or rendering harmless” of its WMD as required by paragraphs 8 and 13;
- if Iraq refused to cease its programs for developing and acquiring WMD as required by paragraphs 10 and 12;
- if Iraq refused to comply with on-site weapons inspections as required by paragraphs 9, 12, and 13;
- if Iraq were to “commit or support any act of international terrorism or allow any organization directed towards commission of such acts to operate within its territory” under paragraph 32.²⁶

As to whether there was a material breach, the answer is yes and no. The answer is yes because Saddam expelled U.N. weapons inspectors in 1998. There was thus a clear breach of the requirements laid out in paragraphs 9, 12, and 13. But the Bush administration claimed that Iraq was in breach of all of its obligations as outlined above. Given the prewar intelligence and the postwar failure to find WMD or ties between Iraq and terrorist organizations, it is clear that the Bush administration overstated its case.

President Bush also appealed to Resolutions 678 and 1441 in his March 2003 speech. Do these resolutions authorize force to depose Saddam, and require Iraq to disarm and comply with weapons inspectors? Consider Resolution 678 first. Paragraph 2 authorizes states cooperating with Kuwait in the 1991 Gulf War “to use all necessary means to uphold and implement resolution 660 and all subsequent relevant resolutions.” Resolution 660 is a response to Iraq's invasion of Kuwait and demands an Iraqi withdrawal. Force is thus authorized in Resolution 678 to repel Iraq's invasion of Kuwait.

But Resolution 687 removes the authorization provided by Resolution 678. Paragraph 33 declares a “formal cease-fire” between Iraq and Kuwait and all U.N. member states cooperating with Kuwait. Further, in paragraph 4 of Resolution 687 the Security Council pledges to “take, as appropriate, all necessary measures to guarantee the inviolability of the Iraq-Kuwait border. That statement would seem to authorize the use of force only with regard to maintaining the border between Iraq and Kuwait. Force is not authorized, however, to enforce Iraqi disarmament.

Resolution 1441 declares that the Security Council finds Iraq in material breach of its obligations under previous resolutions and threatens “serious consequences” (par. 13) if Iraq does not immediately disarm and comply with renewed inspections. But the phrase “serious consequences” is ambiguous. It is not as strong as Resolution 678’s authorization to use “all necessary means,” but neither does it exclude military action.

Once we focus on the relevant legal details, we see that the principal problem is Saddam’s expulsion of weapons inspectors in 1998. Walzer argues that sometime during the 1990s, when Saddam was playing hide-and-seek with weapons inspectors, a case existed for going to war as a form of law enforcement.²⁷ In my mind the fundamental question is whether embarking on war in 2003 was a proportionate response to the expulsion of weapons inspectors five years earlier. I do not believe that it was. Saddam had been contained by sanctions, the deployment of troops in the region, and U.S. control over the northern and southern no-fly zones. A coercive strategy to contain Saddam was in place. Given the costs and risks involved in waging war, maintaining a lower level of coercion for the purposes of law enforcement was, on balance, the proportionate thing to do.

A related question is whether insisting on regime change is a proportionate response to the breach of Resolution 687. President Bush asserted, not without reason, that U.N. resolutions could not be enforced so long as Saddam remained in power. Here again it seems plain that the U.S. position was disproportionate to the aims of law enforcement. Given the risks and costs of going to war, the alternative of maintaining the coercive mechanisms in place is clearly preferable. Having Saddam in power was less than ideal, but that arrangement was the least of the conceivable evils when compared to the exorbitant costs of regime change and establishing a new government in Baghdad.

A final problem with the law enforcement argument is whether it permits the use of force to remove Saddam from power. A close reading of the U.N. resolutions in question indicates that no permission is granted to depose Saddam. Disarmament, not regime change, is the focal concern. Justifying the use of force in the name of law enforcement as a pretext for regime change is again to play fast and loose with the permissions provided by the legal rationale.²⁸

RESCUE: POLITICAL SOVEREIGNTY AND HUMAN RIGHTS

Consider now the death of Jones. His life was sacrificed on behalf of the third *ad bellum* justification for the war in Iraq, humanitarian intervention or *rescue*. This criterion presumes that states have the right to move military troops into another state or region for beneficent purposes: to stop the oppression of a defenseless group, to protect humanitarian relief efforts, to help refugees escape from or return to their native country, or to help a fledgling independence movement.²⁹ Nations that intervene for these philanthropic ends resemble Good Samaritans, assuming great risks to help others in need. In this vein, President Bush promised the Iraqi people that “we will tear down the apparatus of terror and we will help you to build a new Iraq that is prosperous and free. In a free Iraq, there will be no more wars of aggression against your neighbors, no more poison factories, no more executions of dissidents, no more torture chambers and rape rooms. The tyrant will soon be gone. The day of your liberation is near.”³⁰

Interestingly, Bush made no mention of liberating the Iraqi people in his letter to Congress on March 18, 2003, reporting his official grounds for authorizing the use of force in Iraq.³¹ Those arguments turned entirely on protecting the nation’s interests, fighting international terrorism, and enforcing U.N. resolutions. In response to the administration’s failure to uncover WMD, Bush increasingly turned to the rescue rationale. For that reason, and because many of the war’s defenders also embraced rescue as the strongest basis for the invasion and occupation of Iraq, it invites ethical scrutiny.

One feature of rescue operations is that they, like wars of law enforcement, are considerably more altruistic than wars of self-defense. Such philanthropic efforts implicate few if any national interests and thus seem distant from the fiduciary duties that politicians satisfy when they marshal a war of self-defense. It is considerably easier for a national leader to garner popular support for wars of self-defense than for wars with humanitarian purposes. Put more abstractly, a case must be made as to why the general duty to care for others falls on any specific groups or political communities, especially when self-sacrifice is at stake.³² That problem explains why rescue operations or, like them, law enforcement efforts shoulder a heavier burden of proof than wars of self-defense.

Interventions, moreover, involve states in crossing borders and infringing on another state’s political sovereignty and territorial integrity. Hence the question: On what basis may one state intrude into the affairs of another if its own

interests are not in peril? Is such intrusion not an act of unjust aggression? Two arguments address these questions, both of which we should examine with an eye to the ethics of rescuing the Iraqi people: the *limited sovereignty argument* and the *forfeited sovereignty argument*.

On the first account, sovereignty is a weighty value in international affairs but is subordinate to the rule of law on which all sovereign states depend. This view, developed by Walzer, argues that democratic and nondemocratic states generally have the right to be left alone so long as they abide by international law and avoid interstate aggression. Related to this idea is the norm of reciprocity: because states do not want other states to meddle in their affairs, they should not presume to meddle in the domestic affairs of others. The presumption of nonintervention may be overridden only under carefully defined and exceptional circumstances: for example, such visible and egregious violations of human rights as “massacre, rape, ethnic cleansing, state terrorism, contemporary versions of ‘bastard feudalism’.”³³ In those instances, respect for human rights trumps the value of sovereignty. According to Walzer, interventions should aim to rescue innocent people and restore a state’s capacity for self-determination, enabling it to govern itself within its own borders.³⁴ This account values sovereignty and the corresponding presumption of nonintervention in part owing to the good of international security. The core idea is that the occasions of war diminish considerably if states abide by the principle of noninterference.

An additional basis for valuing sovereignty is the good of collective self-determination, the right of a people to order their own domestic affairs. States should adopt a stance toward each other on the model of respect for persons or families: we (generally) leave it to them to work out what is best for them. Here we respect state sovereignty because that is the best way to respect others’ liberty. We do not presume to know better than others how to order their lives, just as we (generally) do not presume to rearrange the internal lives of families whose domestic arrangements disturb our sensibilities. Otherwise we open up human and political relations to overreaching and paternalism.

How might the limited sovereignty argument shed light on the Iraq war? In the case of Iraq, no offenses that shock the conscience of humanity were being committed when the war was launched. Although there is historical record of massacre and human rights violations by Saddam against Iraqi citizens and in the 1988 Anfal genocide against the Kurds, the international community did not respond when those atrocities were committed. There has to be something like a

“statute of limitations” on when states are permitted to respond to humanitarian crises, and that could extend beyond ongoing human rights offenses to their immediate aftermath and the likelihood of resumption. Otherwise states that have committed atrocities in the past would be subject to outsiders’ putatively beneficent meddling at any time. As to the situation in 2003, Kenneth Roth of Human Rights Watch put the point precisely: “Brutal as Saddam Hussein’s reign was, killing by his security forces in March 2003 was not of the exceptional and dire magnitude that would justify humanitarian intervention No one seriously claimed before the war that Saddam Hussein’s government was planning imminent mass killing, and no evidence has emerged that it was.”³⁵ Lacking an account of existing and ongoing human rights abuses, respect for sovereignty must remain the default position of the United States and its allies.

A second interventionist argument relies on the concept of forfeited sovereignty, one exponent of which is David Luban.³⁶ Building on a contractarian model of political legitimacy, Luban argues that a government can be legitimate only if it enjoys the consent of the people and provides them the material conditions for subsistence. “True” sovereignty is premised on the notion from social contract theory that political authority is legitimate owing to the “vertical” transfer of authority from citizens to the state.³⁷ States are legitimized by the consent of their citizens;³⁸ a regime that systematically undermines grounds for consent undermines its claims to legitimacy. It thereby denies itself the claim that its right to govern has been violated by internal or external resistance carried out in defense of human rights.

In addition, Luban cites security rights and subsistence rights as socially basic human rights, fundamental to any sort of life.³⁹ Like Rawls’s idea of “primary goods,” these rights provide means of satisfying other rights (or goods); they are instrumental to a variety of other pursuits.⁴⁰ States that infringe on these socially basic rights may provide moral grounds for violent struggle from within or without to defend such rights.⁴¹ Armed intervention in this account involves fewer tensions than we see in the first version of the rescue rationale, since here the value of sovereignty falls away with the charge that an oppressive regime is illegitimate. The barrier to intervention is lower because sovereignty is not so much trumped by rights as dependent on honoring them.

One question facing this rationale focuses on the basis for respecting legitimacy and the reasons for intervention. Luban argues that a state is not legitimate if citizens have not transferred authority to political authorities. That view,

emphasizing the importance of the social contract, would leave many nations without a claim to legitimacy and rights to sovereignty because few states transfer authority in this way. That fact would open the door to intervention in many parts of the world. A more promising line in Luban's thought, emphasizing the value of human rights, suggests that states are rightly subject to intervention if they fail to provide basic socially necessary goods. But here another problem arises. It is not obvious why a state's claim to nonintervention is a function of basic welfare provision. That fact would seem, in effect, to delegitimize most poor nations of the world. More to the point, Luban offers two bases for considering grounds for intervention—one from social contract theory, the other from considerations of social welfare. These reasons taken singly or together generate an extremely permissive stance toward intervention in global politics.

Those problems aside, let us consider Luban's ideas in relation to the Iraq war. We can say that two options exist on the forfeited sovereignty argument for justifying humanitarian intervention: (a) Iraq denied basic welfare rights to its people, or (b) Iraq undermined its citizens' capacity to exercise their right of self-determination.

Both of these bases are complicated. The first, regarding basic welfare rights, hinges on determining how we are to construe security and subsistence rights violations. If violating the rights of security and subsistence must involve mass killing, torture, and so on, then we approximate Walzer's basis for justified intervention, focusing as he does on cases of massacre, rape, ethnic cleansing, and enslavement. That argument, as I noted above, finds little traction as a basis for intervening in 2003. On the other hand, one could argue that the right of security is violated when a state has the capacity and will to kill, torture, and terrorize its citizens. The situation in Iraq surely fits this description, although the case for it requires more evidence than the Bush administration provided. As for the right of subsistence, reliable reports indicate that many Iraqis did not have adequate food or health care during the period between the Gulf War in 1991 and the invasion in 2003. However, many observers credit this fact to the effect of U.N. sanctions, saying that many Iraqis died as a result of hardships imposed from without. The idea of denying the Baath regime legitimacy while ignoring the complex reasons for the suffering of Iraqi civilians seems self-serving, to say the least.

Another justification for rescue, concerning the Iraqis' right to self-determination, is complicated by the fact that there seem to have been no significant democratic

movements or opposition groups in Iraq whose presence would enable us to doubt Saddam's legitimacy. Clearly, however, the absence of political dissent was due in no small part to Saddam's repressive policies and police action. There is no doubt that Saddam was a ruthlessly brutal dictator, intent on maintaining power, expanding his wealth, and eliminating popular dissent. But, as noted above, the United States could not point to any ongoing human rights abuses in 2003 that warranted immediate action.

There is also the problem of the character of Saddam as a rogue leader with a record of human rights abuses that goes beyond events on the ground during or around 2003. That judgment may provide a basis for rescue if it can be established that removing Saddam would have eliminated the danger of human rights abuses being resumed. But in March 2003, Saddam lacked a clear path toward resuming any such actions. Roth correctly observes: "Boxed in by sanctions and no-fly zones, he lacked the capacity to launch the kinds of major military operations that had characterized his past murderous outbursts."⁴² Coercive measures were already in place to prevent recidivism, and there was no evidence to suspect that they needed to be supplemented by a direct assault from Coalition forces.

The largest question that faces the forfeited sovereignty argument is whether the concept of *intervention* is applicable. Intervention is a theory-dependent concept that presumes the existence of the sovereign state system and the presumption of nonintervention for which a permission to intervene is an exception. Terry Nardin puts it precisely: "The expression 'humanitarian intervention' . . . belongs to the world of interstate relations, as a modification of that world. One state can 'intervene' in the internal affairs of another only if there are rules that distinguish internal from external. In a world without sovereignty there is no rule of nonintervention to which exception can be made, and therefore no room for intervention."⁴³ Arguments that justify a resort to force in which sovereignty has been forfeited presume an altogether different picture of world order: one in which fairly well-off democratic states—those that pass Luban's tests of legitimacy—may intrude in other regions with an eye to institutionalizing economic and political reforms modeled in their own image. But not having to heed the value of sovereignty requires such states to redescribe their actions. As it stands, they trade on one set of assumptions to justify actions that should be classified in different terms.

RETROSPECTIVE REASONS, GOODS, AND BURDENS

I began this essay by stating that soldiers' lives have been lost in the Iraq war for reasons that attach to different goods in defense of which the war was authorized. That fact has important implications for practical reasoning about war, especially when one set of reasons is substituted, retrospectively, for another.

Consider defenses of the Iraq war provided by Fernando R. Tesón and David Mellow. They offer justifications for the war as a humanitarian intervention that seek to skirt challenges put to the self-defense rationale. Specifically, these authors offer a defense knowing that critics of the war latch on to the argument that President Bush (and Prime Minister Blair) deceived the public about the existence of WMD, thereby removing the plank of self-defense from their justification. Tesón asks whether the Iraq war can be justified as a humanitarian intervention even if the Bush administration offered different justifications for the war.⁴⁴ One target of his apology are critics who do not believe that "helping the Iraqis to build democratic institutions during reconstruction might be a good thing, but . . . not enough to characterize the intervention as humanitarian, and thus not enough to justify it retrospectively under the humanitarian intervention doctrine."⁴⁵ Mellow focuses on the question of deception and asks: "Let us assume that the Blair and Bush governments were deceptive in their representation of the facts. Should we then conclude that the war to overthrow the Iraqi regime was immoral? The answer is, in an important sense, no."⁴⁶

Tesón supports this line of thinking by distinguishing between agents and motives, on the one hand, and actions and intentions, on the other. Following Mill, Tesón argues that having an unacceptable motive for acting does not mean that one has acted with an immoral intention or purpose. In such cases, we criticize the person but not the action. Tesón states: "If the Coalition leaders were unprincipled (say they were trying to find after-the-fact reasons that would vindicate them in the eyes of the public), then that is a reason to criticize *them* and eventually to make them pay the political price for erring or deceiving. But it is not a reason to refuse to even consider whether the *intervention* was justified on humanitarian grounds."⁴⁷ In a similar vein, Mellow grants that deception, if it was indeed deception, is morally wrong. Nonetheless, he argues, "the deception is a moral matter internal to the deceiver and the deceived and can be separated from the question of the morality of the war. In slightly different terms, the deception provides no basis for Saddam Hussein (nor you or I) to claim that the resort to war was, *in itself*, immoral."⁴⁸

Tesón's view is that the Bush administration may have deliberated with the wrong motives but can be credited for the removal of a tyrant from power. The rightness of the act is a reason to justify the war, one that falls to the credit of the administration. "The humanitarian outcome should be a central factor in evaluating the intention of the intervention," he writes.⁴⁹ On those grounds, we may say that the Bush administration acted with the right intention.⁵⁰

But this kind of reasoning fails to grasp intention's temporal structure along with its relation to moral character. Contrary to Tesón's bifurcation of agency and action, we cannot bifurcate agency from the *ex ante* deliberations implied by the idea of "having an intention." Intention describes how an agent or leader deliberatively organizes plans to achieve a present or future purpose. Conceived in this teleological way, intentions are structured prospectively. Intentions cannot thus be redescribed after the fact as having different purposes simply because other outcomes occurred. To do so is to impute to agents purposes they did not have and to supplant *ex ante* deliberations with *ex post* justifications.

Seen from another angle, Tesón's retroactive justification confuses first- and third-person perspectives in the course of justifying an act apart from an agent's motives. That problem is exacerbated by the fact that the act under consideration involves many agents in a coordinated effort. Assume, for the sake of argument, that there are certain kinds of decisions that I cannot justify until luck decides the outcome, as Bernard Williams suggests. On that view, there are some decisions that I can justify retrospectively to myself in the event that I am the beneficiary of good luck.⁵¹ But such justifications are matters of agent-centered or first-person morality, not matters of act-centered or third-person assessment. They do not suffice to justify the decision to others—third parties—affected by it. That fact makes it difficult to impute to soldiers, such as Greene and Smith, forms of agency that they do not ascribe to themselves, involved as they are in cooperative efforts ordered to ends that differ from humanitarian purposes. Tesón's argument imputes to persons an alien moral character.

Mellow's defense moves along similar lines, distinguishing the motives of an agent from a moral description of his or her acts. Consider, he asks, the analogy of having to deceive a spouse in order to leave one's house to stop a violent neighbor from killing his or her family member. Mellow writes: "Notice that the immorality of that deception did not make it immoral for you to proceed next door and stop the neighbor." A line exists "between any deception carried out by

the Blair and Bush governments and the moral judgment we make about the resort to war to overthrow Saddam Hussein's regime."⁵²

The analogy is flawed. In Mellow's example, lying to the spouse does not lead that spouse to assume grave risks to him or herself. Bush and Blair's claims, in contrast, led individuals to assume risks for goods that are considerably more altruistic: global law enforcement or other citizens' benefit. A better analogy would be one in which a husband lies to his spouse, saying that she must go defend her family against a violent neighbor as a pretext for sending her into the neighbor's house to rescue that neighbor's family from the abusive husband. That deception not only puts the spouse in danger, it imposes altruistic risks on her. In effect it acknowledges that altruistic reasons, by themselves, would not suffice to move her to action. That fact is an embarrassment to anyone seeking to use the cause of self-defense as a basis for deploying rescue operations.

Apart from the problems of supplanting *ex ante* deliberation with *ex post* reasoning, Mellow and Tesón overlook the fact that the two reasons at stake in this comparison—self-defense and rescue—are not of the same sort. Appeals to self-defense allowed Bush to play down the stakes involved in the conflict when understood as a rescue mission, thereby enabling an altruistic resort to force to pass under the cover of a war in which duty and interest are more obviously alloyed. Collective self-defense and rescue implicate different values: the latter are altruistic and shoulder a considerably greater burden of proof than actions carried out in self-defense. Failure to draw out those differences publicly is not to respect the very individuals whose lives were put in harm's way.

Perhaps most worrisome is the fact that retrospective argumentation of the sort provided by Tesón and Mellow permits the government to speak in bad faith toward those whose lives it endangers. Call this the Bad Faith Objection: One implication of a retrospective justification is that knowing in advance that it is available allows a leader to hedge or even deceive on issues of public morality that involve commitments of the sort that we see in war. It allows leaders to benefit morally from an "all's well that ends well" scenario.⁵³ Knowing in advance that such justifications are available, leaders may be tempted to conceal or leave ambiguous their motives or ill-conceived strategies on the wager that circumstances or outcomes may prove themselves favorable at the end of the day.

CONCLUSION

The Iraq war puts questions of just cause—the grievance in response to which war is warranted—in bold relief. I have examined the main possibilities: preemptive or preventive self-defense, law enforcement, and defense of human rights. But for empirical and moral reasons, the Iraq war lacks a just cause. There is not, nor was there at the time, sufficient evidence to say that the United States was in danger from Iraq, to conclude that the U.N. resolutions authorized the use of force to depose Saddam, or to argue that existing mechanisms of legal enforcement were ineffective. The Duelfer report indicates that Saddam's arsenal was more or less destroyed by the Iran-Iraq War and the 1991 Gulf War and that Baghdad showed little signs after 1996 of having resumed its military buildup. Nor is there sufficient evidence to say that his dictatorship was such that humanitarian intervention was justified in 2003.

Equally problematic, defenses of the Bush administration's arguments fail to understand different burdens attached to *ad bellum* rationales. To assume that arguments can shift ground from self-defense to rescue, without recognizing that these ventures entail different kinds of sacrifice, is to discount the respect due to those whose sacrifice is required. If altruistic policies are expected of soldiers and the public, stronger reasons than self-defensive purposes are necessary to justify the risks—reasons that can avoid the charge of leading in bad faith.

NOTES

- ¹ The title of this article is taken from G. E. M. Anscombe's essay "The Justice of the Present War Examined," originally published in 1939 at the outset of Britain's entry into the Second World War. Swimming against the political tide, Anscombe cast moral doubts on how British authorities presented their case for war to the public. See G. E. M. Anscombe, *The Collected Philosophical Papers of G. E. M. Anscombe*, vol. 3: *Ethics, Religion and Politics* (Oxford: Basil Blackwell, 1981), pp. 73–81.
- ² Stanley Hoffmann, "What Is to Be Done?" *New York Review of Books*, May 20, 1999, p. 17. Hoffmann penned these words in the context of the Kosovo crisis, but his words obviously have more general applicability.
- ³ Thomas Aquinas, *Summa Theologiae*, II-II, Q. 40, a. 1. See also Jeff McMahan, "Just Cause for War," *Ethics & International Affairs* 19 (Fall 2005), pp. 1–21.
- ⁴ "President Says Saddam Hussein Must Leave Iraq within 48 Hours," at www.whitehouse.gov/news/releases/2003/03/print/20030317-7.html; accessed on March 19, 2003.
- ⁵ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 3rd ed. (New York: Basic Books, 2000), p. 81.
- ⁶ "Iraq's Continuing Programs for Weapons of Mass Destruction," at www.dni.gov/nic/special_keyjudgements.html; accessed on November 10, 2004.
- ⁷ For a discussion, see Bernard Williams, *Moral Luck* (Cambridge: Cambridge University Press, 1981), pp. 20–39.
- ⁸ See "Report on the U.S. Intelligence Community's Prewar Intelligence," at www.globalsecurity.org/intell/library/congress/2004_rpt/iraq-wmd-intell_toc.htm; accessed on November 10, 2004.
- ⁹ *Ibid.*
- ¹⁰ "Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD," at www.cia.gov/library/reports/general-reports-1/iraq_wmd_2004/index.html; accessed on November 14, 2004.

- ¹¹ Ibid.
- ¹² Ibid.
- ¹³ Walzer, *Just and Unjust Wars*, p. 76. For another discussion, see David Luban, "Preventive War," *Philosophy and Public Affairs* 32 (2004), pp. 207–48.
- ¹⁴ "The National Security Strategy of the United States of America" (September 17, 2002), at www.whitehouse.gov/nsc/nssall.html; accessed on November 23, 2004.
- ¹⁵ Ibid., pp. 9–10.
- ¹⁶ Two of the nine rubrics in the National Security Strategy statement highlight the goal of prevention, and the section from which I have cited the president's comments is entitled "V. Prevent Our Enemies from Threatening Us, Our Allies, and Our Friends with Weapons of Mass Destruction."
- ¹⁷ "President Says Saddam Must Leave Iraq within 48 Hours."
- ¹⁸ Whitley Kaufman, "What's Wrong with Preventive War? The Moral and Legal Basis for the Preventive Use of Force," *Ethics & International Affairs* 19 (Fall 2005), p. 29.
- ¹⁹ "The National Security Strategy of the United States of America," p. 10.
- ²⁰ See Thomas C. Schelling, *Arms and Influence* (New Haven: Yale University Press, 1966).
- ²¹ Neta Crawford likewise identifies instabilities for international security growing out of a context of mutual fear wrought by preventive war doctrine. See Neta Crawford, "The Slippery Slope to Preventive War," *Ethics & International Affairs* 17 (Spring 2003), pp. 30–33, at www.cceia.org/resources/journal/17_1/roundtable/868.html; accessed on March 30, 2005.
- ²² I owe this example to Henry Shue.
- ²³ See, e.g., Walzer's account of the "legalist paradigm" in *Just and Unjust Wars*, pp. 58–63.
- ²⁴ "President Says Saddam Hussein Must Leave Iraq within 48 Hours."
- ²⁵ Ibid.
- ²⁶ U.N. Resolution 687 (1991), at www.fas.org/news/un/iraq/sres/sreso687.htm; accessed November 10, 2004. I owe this digest of the relevant resolutions to the research assistance of James Bourke.
- ²⁷ Michael Walzer, *Arguing about War* (New Haven: Yale University Press, 2004), p. 144.
- ²⁸ Thanks to James Bourke for input and commentary on these legal points.
- ²⁹ For discussions, see Walzer, *Just and Unjust Wars*, pp. 101–8; Walzer, *Arguing about War*, pp. 67–81; and Terry Nardin and Melissa S. Williams, eds., *Humanitarian Intervention, NOMOS XLVII* (New York: New York University Press, 2005).
- ³⁰ "President Says Saddam Hussein Must Leave Iraq within 48 Hours."
- ³¹ See "Text of a Letter from the President to the Speaker of the House of Representatives and President Tempore of the Senate," March 21, 2003, referring to the president's determination to deploy forces against Iraq on March 18, 2003, at www.whitehouse.gov/news/releases/2003/03/20030321-5.html; accessed on November 24, 2004. See, e.g., "President Addresses Nation, Discusses Iraq, War on Terror," at www.whitehouse.gov/news/releases/2005/06/20050628%26%2382097.html; accessed on June 30, 2005.
- ³² For a discussion of general and specific duties, see Onora O'Neill, *Towards Justice and Virtue: A Constructive Account of Practical Reasoning* (Cambridge: Cambridge University Press, 1996), chap. 5.
- ³³ Walzer, *Arguing Against War*, p. 68.
- ³⁴ See Walzer, *Just and Unjust Wars*, pp. 101–8.
- ³⁵ Kenneth Roth, "Was the Iraq War a Humanitarian Intervention?" *Journal of Military Ethics* 5 (2006), pp. 84–92.
- ³⁶ David Luban, "Just War and Human Rights," *Philosophy and Public Affairs* 9 (1980), pp. 160–81. As I make plain below, the language of forfeiture is not entirely fitting to Luban's position because one plank of his argument holds that certain states lack legitimacy owing to the absence of popular consent. The language of forfeiture (in contrast to the language of lack) would presume having legitimacy in the first place. Yet Luban cites approvingly Walzer's language of forfeiture (p. 180). Luban reasons about states that lack legitimacy and states that forfeit their claim to nonintervention owing to human rights violations. For the sake of simplicity, I will cluster both examples under the rubric of forfeiture. The point of the language is to highlight the contingency of the value of sovereignty and the claims that it generates within this line of human rights argumentation.
- ³⁷ Ibid., pp. 167–72.
- ³⁸ Ibid., p. 169.
- ³⁹ Ibid., pp. 174–76. On rights of security and subsistence, Luban cites the work of Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton, N.J.: Princeton University Press, 1980), at *ibid.*, p. 174, *n.* 24.
- ⁴⁰ John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), pp. 90–95.
- ⁴¹ Luban, "Just War and Human Rights," pp. 175, 178. I say "may" because issues of proportionality or the gravity of the infringement are necessary *ad bellum* considerations, as Luban notes (p. 175).
- ⁴² Roth, "Was the Iraq War a Humanitarian Intervention?" p. 86.
- ⁴³ Terry Nardin, "Humanitarian Imperialism," *Ethics & International Affairs* 19 (Summer 2005), p. 23. Nardin's comments are directed to Fernando R. Tesón, whose ideas I discuss below, but they are

- pertinent to all arguments that diminish or dissolve the value of sovereignty in the effort to defend human rights on one or another view of postinternational global relations that blurs distinctions between internal and external relations. See, e.g., Jean Bethke Elshtain, "International Justice as Equal Regard and the Use of Force," *Ethics & International Affairs* 17 (Fall 2003), pp. 63–75; and Jean Bethke Elshtain, "The Responsibility of Nations: A Moral Case for Coercive Justice," *Daedalus* (Winter 2003), pp. 64–72.
- ⁴⁴ Fernando R. Tesón, "Ending Tyranny in Iraq," *Ethics & International Affairs* 19 (Summer 2005), p. 2.
- ⁴⁵ *Ibid.*, p. 4.
- ⁴⁶ David Mellow, "Iraq: A Morally Justified Resort to War," *Journal of Applied Philosophy* 23 (August 2006), pp. 293–310, at p. 302. There are several other problems with Mellow's argument—e.g., confusing the *jus ad bellum* criterion of right intention with right motives—which I will not pursue here. Mellow presents his argument as a defense of the Iraq war both "prospectively and retrospectively" (p. 293). However, it is unclear why a retrospective defense would be necessary if a prospective defense is successful. That is to say, Mellow does not make clear which of his reasons sort themselves out into prospective and retrospective rationales.
- ⁴⁷ Tesón, "Ending Tyranny in Iraq," p. 10.
- ⁴⁸ Mellow, "Iraq: A Morally Justified Resort to War," p. 303.
- ⁴⁹ Tesón, "Ending Tyranny in Iraq," p. 8. In a similar vein, Thomas Cushman writes in defense of the Iraq war as a humanitarian intervention: "One precondition for accepting the humanitarian case for the war is the acceptance of a certain kind of consequentialist ethics that judges actions based on their outcomes rather than the intentions and motivations of the actors involved." See Thomas Cushman, "Introduction: The Liberal-Humanitarian Case for the War in Iraq," in Cushman, ed., *A Matter of Principle: Humanitarian Arguments for War in Iraq* (Berkeley: University of California Press, 2005), p. 9.
- ⁵⁰ Tesón shifts his ground throughout his argument. In places he wishes to assign humanitarian motives, not only intention, to the Bush administration, and assigns to them prospective and not retrospective justification. He writes: "Liberating Iraq was always part of the motivations for the invasion" (p. 10); "There is no question that the Coalition intended to do exactly this [rescue victims of tyranny]. It aimed to do it, it committed itself to doing it, and it did it" (p. 11).
- ⁵¹ Williams, "Moral Luck," pp. 22–27.
- ⁵² Mellow, "Iraq: A Morally Justified Resort to War," p. 303.
- ⁵³ Thanks to Mark Wilson for enabling me to see the point in this way.