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**NAVAL
POSTGRADUATE
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MONTEREY, CALIFORNIA

THESIS

**EXPLORATIONS ON JUST WAR: HAS IT EVER
EXISTED?**

by

Jamison D. Braun

June 2006

Thesis Advisor:

David R. Henderson

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EXPLORATIONS ON JUST WAR: HAS IT EVER EXISTED?

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Captain, United States Air Force
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Submitted in partial fulfillment of the
requirements for the degree of

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from the

**NAVAL POSTGRADUATE SCHOOL
June 2006**

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I. THE INTRODUCTION

A. AN OVERVIEW

In the immediate aftermath of the devastating terrorist assault on the United States, President George W. Bush told U.S. citizens that the country faced “the first war of the twenty-first century.” A few days later, Vice President Dick Cheney vowed that the coming conflict would be “global in scope.” Defense Secretary Donald Rumsfeld said that the international campaign would be waged on many fronts—from military strikes, better intelligence, and stronger banking regulations to more-effective international cooperation in policing against terrorists. Perhaps more significant than Bush’s statement but less well understood: the first war of the twenty-first century is also the first major war in the age of global terrorism.¹

Entering a war suggests one look at the 3 principles, largely shaped by Christian moral philosophers and ethicists of the 17th and 18th century, embodied in Just War Theory: (1) Entering a war justly (defending oneself from an aggressor); (2) once in war, fighting *it* justly (via moral and ethical codes); and (3) leaving the war-torn area in a just manner (helping to rebuild infrastructure so as to prevent harm to the greater population in the foreseeable future).

While the early Christian ethicists were more concerned with constraints that allowed them to fight with a clear conscience, the conduct of war itself was further clarified by a separate secular group of moral and religious philosophers intent on maintaining order among the common people. This *Jus in Bello* principle, would, over the next 300 years, prove to be the undoing of Just War Theory: it appears that no war in the last few centuries has been fought completely justly.

The power to bear arms, much like the power to vote, was a jealously guarded privilege. Arguments can certainly be made that this was the way of Classical Greece, but the Western Europeans, namely United Kingdom, France, Germany and Italy, were enthralled with the organized industry of warfare, often studying and asking the mundane

¹ Campbell, Kurt M, *Globalization’s First War?*, Washington Quarterly, 25:1, pp. 7-14, Winter 2002.

questions pertaining to the plunder and ransoming of prisoners.² Questions like “How long can I torture an individual? Is it fair to execute for no reason? What if they surrender? What about rape or dismemberment?” These inquiries into the conduct of warfare, and the establishment and disagreement on the full spectrum of this conduct, set the stage for the remainder of this thesis.

Supposedly, Just War Doctrine has provided a framework to aid in the moral decision-making that world leaders need to conduct wars, but does it ever survive beyond the opening rounds of the first engagement? Even when wars are begun justly, have there been *any* that have been conducted justly throughout? Has there been a war in the last 100 years that adhered to all tenets of Just War Theory and its subparts and thus been truly just? Or has the centuries-old Just War Theory failed to evolve with today’s world? Has its relevance now been lost on political leaders?

B. RESEARCH QUESTIONS

What is Just War Theory?

What historical precedents/analysis validate(s) or dispute conventional Just War Theory thinking?

C. SCOPE AND METHODOLOGY:

The scope includes: (1) a review of Just War Theory and its doctrine, statutes according to religious law, and acceptable organizational concepts, (2) an analysis of the issues, problems associated with Just War Theory, and (3) literature review regarding possible solutions. The thesis is an assessment of currently adopted methods and beliefs on this centuries-old system and concludes with recommendations for prospective improvements.

² Howard, Michael; Andreaopoulos, George J.; and Shulman, Mark R. *The Laws of War*. Yale University Press, New Haven and London, 1994.

The methodology includes the following steps:

1. Conduct a search of documents currently published on Just War Theory
2. Analyze the issues associated with the centuries-old philosophy
3. Identify target areas with possible improvements

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II. JUST WAR THEORY

Very little forethought has been given by scholars to globalization's impact on large-scale global war³. With more and more of the world becoming interconnected, predominance for security to protect future global economies is inevitable. Rogue state actors seek to undermine the shrinking of this interconnectedness and opt instead to repel globalization. These terrorists attempt to do this with a means of warfare that grossly contradicts any type of civility. Today's war is global in scope, and the strongest of political leaders are forced to evaluate how to combat terrorism that plays without rules.

A reasonable moral code must allow for effective action within the real world. Michael Walzer argues fiercely for maintaining a vigilant commitment to Just War Theory but is acutely mindful of the need to provide security for individuals and, particularly, communities. For example, he argues for modifying civil liberties if they are incompatible with the effectiveness of necessary police work in the war against terrorism.⁴

International terrorists are changing the way political leaders conduct defense. The Bush Administration has opted for a method of preemption of terrorist acts. Preemption is not necessarily a new option. The United States has contemplated preemption military against weapons of mass destruction several times, but has not taken military action.⁵ In the 1940s and 1950s, the US considered attacking Soviet and Chinese nuclear capabilities but did not act.⁶ This Bush administration has repeatedly cited the naval quarantine imposed by President John F. Kennedy on Cuba in 1962 as an impressive example of effective pre-emptive action. Additionally, in 1994, US officials considered a conventional weapon preemptive strike on a North Korean nuclear reactor to

³ Lexis/Nexis and Proquest search conducted on 4 December 2005 turned up only 7 articles that met the criteria of Just War Doctrine or Theory and Globalization.

⁴ Walzer, Michael *Arguing About War*, New York, NY: Yale University Press 2004.

⁵ Bunn, Elaine. *Preemptive Action: When, How and to What Effect?* Strategic Forum, July 2003, P 1-8.

⁶ William Burr and Jeffrey T. Richelson, "Whether to 'Strangle the Baby in the Cradle': The United States and the Chinese Nuclear Program, 1960-64," *International Security* 25, no. 3 (Winter 2000/2001), 54-99.

eliminate the removal of fuel rods that could have propelled catastrophic radioactive plumes and most certainly could have led to conventional war with South Korea. Luckily, this war was averted by a 1994 Agreed Framework negotiation.⁷ The United States is not the only country that has considered or carried out preemptive actions. The classic case is the 1981 Israeli attack on Iraq's Osirak nuclear facility because of concern that Iraq would use the reactor to produce highly enriched uranium for a weapons program. (Iran had previously bombed Osirak, in the opening days of the Iran-Iraq war in 1980, lightly damaging the facility.)⁸ After its 1981 attack, Israel claimed it was exercising its inherent right of self-defense, consistent with Article 51 of the United Nations (UN) charter. The UN Security Council censured Israel, and the U.S. Ambassador to the UN spoke against Israel for its action.⁹ Michael Waltzer, in his 1977 book *Just and Unjust Wars*, drew the line between legitimate and illegitimate first strikes *not* at the point of imminent attack but at the point of *sufficient threat*--a phrase he recognized as "necessarily vague." He meant it to cover three things: "a manifest intent to injure, a degree of active preparation that makes that intent a positive danger, and a general situation in which waiting, or doing anything other than fighting, greatly magnifies the risk."¹⁰

Further, China has set up enhanced firewalls for local internet users and has targeted Ghana and Nigeria with an intelligence gathering net and the United Kingdom and Spain have blanketed their public transit systems with audio and video surveillance devices. However, the motivation underlying the Bush Administrations emphasis on preemption barely addresses the surface of a larger issue with regard to Just War Theory: its applicability in the 17th Century and today in the 21st. In fact, the debate has been much more about the ethical implications of preemption and prevention than about the

7 Ashton B. Carter, "Three Crises with North Korea," prepared testimony before the Senate Foreign Relations Committee, February 4, 2003.

8 Rebecca Grant, "Osirak and Beyond," *Air Force Magazine*, August 2002, 74. Grant cites a statement issued by the official Iraqi news agency following the 1980 Iranian bombing of Osirak: "The Iranian people should not fear the Iraqi nuclear reactor, which is not intended to be used against Iran, but against the Zionist entity."

9 Anthony Clark Arend, "International Law and the Preemptive Use of Military Force," *The Washington Quarterly* 26, no. 2 (Spring 2003), 89.

10 Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), 81.

war itself. The US and the coalition of allied forces have been so concerned with adhering to ethical norms for the conduct of war that they never fully addressed whether or not the war is just. The underlying question must still be asked: Is the war against Terrorism Just? Further, is Just War Theory even relevant any more?

Legendary philosophers such as Augustine, Aquinas, Suarez, Vattel, Vitorio and Hugo Grotius offer some of the most influential perspectives on the ethics of war and peace. Most of the rules created by these philosophers have since been transcribed into international laws such as The Hague and Geneva Conventions, thereby setting a tone for international discourse and limits for reasoned debate. The “just war tradition” deals with the historical body of rules or agreements applied (or at least existing) in various wars across the ages.¹¹

Just War Theory is broken down into three parts: 1) *jus ad bellum*, the justice of resorting to war in the first place; 2) *jus in Bello*, just conduct within war; and 3) *jus post bellum*, the justice of peace agreements and termination of war. Because this thesis focuses on the continuing threat that terrorists and stateless extremists pose, it will not discuss the third element of Just War Theory, *jus post bellum*.

The next step is to break this theory down into its constituent parts.

A. JUS AD BELLUM

These rules on *jus ad bellum* are addressed to heads of state that start wars and are ultimately held accountable for the conduct of their respective nations. Each of the following criteria must be satisfied to override the strong presumption against the use of force.

Just Cause: Force may be used only to correct a grave, public evil (i.e., self-defense from external attack, the protection of innocents, and punishment for wrongdoing). Michael Walzer in Just and Unjust Wars argues that resorting to war can be justified only in order to resist aggression: unjustified and harmful violence. The key

¹¹ "Just War Theory," by Alexander Moseley, *The Internet Encyclopedia of Philosophy*, <http://www.iep.utm.edu/>, 14 Aug 2004.

principle underlying just cause is inherent in State and human rights as set forth by the United Nation's Universal Declaration (appendix 1).

Legitimate Authority: Only duly constituted public authorities may use deadly force or wage war.

Right Intention: Force may be used only in a truly just cause and solely for that purpose.

Probability of Success: Arms may not be used in a futile cause or in a case where disproportionate measures are required to achieve success.

Proportionality: The overall destruction expected from the use of force must be outweighed by the good to be achieved.

Last Resort: Force may be used only after all peaceful alternatives have been seriously tried and exhausted. One wants to ensure that something as serious as war is declared when it is the only alternative to effectively punish or deter aggression.¹²

Just War Theory insists all these qualifications are equal. Each must be fulfilled in order for a war to be justified.

B. JUS IN BELLO

The Just-War Tradition seeks also to curb the violence of war through restraint on armed combat between the contending parties by imposing the following moral standards:

Discrimination: Civilians may not be the object of direct attack, and military personnel must take due care to avoid and minimize indirect harm to civilians.

Proportionality: In the conduct of hostilities, efforts must be made to attain military objectives with no more force than is militarily necessary, and to avoid disproportionate collateral damage to civilian life and property.

¹² Stanford's Encyclopedia of Philosophy.

Right Intention: Even in the midst of conflict, the aim of political and military leaders must be peace and justice, so that acts of vengeance and indiscriminate violence, whether by individuals, military units or governments, are forbidden.

Underlying jus ad bellum and jus in Bello is *aggression*. Aggression is the formal ruling that allows countries to defend themselves and wage war in the event that they feel threatened. Without aggression, essentially there is no justification for war. Aggressions, described by the early clerics, were those traits of warfare that infringed upon another country's or tribe's way of life. Walzer defines aggression as the name we give the crime of war.¹³ The wrong the aggressor commits is to force men and women to risk their lives for the sake of their rights. The wrong is to confront them with choice: your rights or (some of) your lives.¹⁴ Aggression is unique because it is the only crime that states can commit against other states: everything else is, as it were, a misdemeanor.

¹³ Walzer, Michael *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, New York, NY: Basic Books, Inc., 1977.

¹⁴ *Ibid*, p. 51.

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III. HISTORY'S LESSONS

In the course of hundreds of years of political invention, the tradition boiled down to a set of rules established in the 16th Century¹⁵ as alluded to in the previous chapter. Because theorists wrote from the perspective of the era in which they lived, and because the 16th Century presented a plethora of problems not seen today and vice versa, it makes sense to focus on specific examples of warfare of the last one hundred years. What follows are examples of clear disregard for Just War Tradition principles: the Russo-Japanese War, World War I, World War II, the 1st Gulf War, the Kosovo Intervention and today's Global War on Terror.

Today, the most common types of conflict are revolutions, civil wars and coups d'etat¹⁶. Today there are fewer nation states with distinct and declared armies lining up on battlefields to settle their differences. The world today is a world *without* traditional rules. The distinction between combatants and non-combatants has become even more difficult for politicians and Just War theory adherents to make. Because of the stateless nature of terrorist entities, Just War gives less guidance than it used to give. In fact, political leaders may be ignoring Just War altogether. An analysis of specific acts of aggression in the last 100 years should provide a reasonable framework.

A good starting point is the Russian Imperialism that ended in East Asia in 1905 when Russia lost the Russo-Japanese War.

A. RUSSIAN IMPERIALISM

In the late 19th and early 20th century, Western countries were fighting for territory, influence and trade as Japan was emerging as a modern great power. Japan was intent on expanding its span of influence and had in the previous decade won wars in Taiwan, Korea and China. In 1903, it had its sights on Port Arthur in southern Manchuria. Japan declared it an absolute necessity to maintain control of the seas and the

¹⁵ Mark Douglas, "Changing the Rules: Just War Theory in the 21st Century," *Theology Today*, Jan 2003, Page 59.

¹⁶ *Ibid.*

seizure of Port Arthur would give it a stronghold for mainland fighting in Russia and allow for expansion.¹⁷

Russia was a great power and succeeded with its many Czars in claiming territory among the northern land edges of the world. Russia amassed a military force 10 times that of the Japanese and was very competent at protecting the seas. But with the small victories propelling its confidence and its desire to be a great power, Japan launched an all-out attack on the people in and around Port Arthur for 24 months. Around the mainland, Japan drove ordinary citizens away from their homes into Port Arthur, which was surrounded by water on three sides. Japan then launched the first offensive mine-fielding within the port so that no Russian ships could enter or leave. This brought widespread famine to the area; and the bombardment continued. Finally in 1905, Russia surrendered to the Japanese

Japan's victory and method of warfare was met with shock in the Western world and Asia. The world's major powers looked with condemnation at the atrocities created by the innovative evolution in maritime warfare. Never before had mines been used as an offensive weapon. This change would make modern naval warfare even bloodier and deadlier just nine years later in the muddy trenches of Europe during World War I.

B. WORLD WAR I

During World War I, German war plans were still based on the tactics of Hannibal of Cannae.¹⁸ That is to say, German war plans were developed on the foundations of order, merit and circumstance. They did not allow room for innovation and flexibility. This Great War, as it came to be known, showed scholars that the twentieth-century military experience was different; rendering the final blow to the ideal of ancient glory and bringing into question many of the earlier-negotiated Hague Conventions.¹⁹ These conventions are mentioned throughout the text.

¹⁷ Pipes, Richard, *Russia Under the Old Regime*, Penguin Books, 1974.

¹⁸ Dawson, Doyne *The Origins of Western Warfare: Militarism and Morality in the Ancient World*, Oxford: Westview Press, 1996, pp. 190.

¹⁹ Howard, Michael; Andreaopoulos, George J.; and Shulman, Mark R. *The Laws of War*. Yale University Press, New Haven and London, 1994.

The first major act of the Great War came in August 1914 as Germany invaded and occupied neutral Belgium to gain strategic dominance and position over France for later in the war. Just seven years earlier, Germany sat as one of the drafting powers for the Hague Convention V on Neutrality in Land War, whose Article 1 said: “The territory of neutral Powers is inviolable.”²⁰ This violation would prove to be the beginning of many.

In 1915, a new weapon of war was used when Germany released asphyxiating gas from cylinders along a 6km front. All in all, nearly 100,000 troops died from gaseous weapons during the First World War despite the fact that Germany was party to the 1899 Hague Declaration on Asphyxiating Gases which said “The contracting Powers agree to abstain from diffusion of asphyxiating or deleterious gases.” This was a clear violation of the *Jus in Bello* principle and one for which the Germans showed no remorse. The Germans used the gas once again in May 1915 in Poland and the allied forces used them in the Battle of Loos in 1915. There were land violations of war doctrine; naval violations of agreed warfare doctrine were also evident.

At the opening of the war, the world’s most powerful Navy, the British Navy, exercised its might in declaring a maritime blockade that was as harsh as anything experienced during the Napoleonic Wars. A British declaration in 1914 labeled the entire North Sea a military area²¹ and that “merchant shipping of all kinds, traders of all countries, fishing craft and all other vessels, will be exposed to the greatest dangers from mines that it has been necessary to lay and from warships searching vigilantly by night and day for suspicious craft.”²² The British government justified this action by declaring it retaliation--its own fishing vessels suffered on trade routes indiscriminately mined by merchant ships flying neutral flags.

²⁰ Orvik, Nils, *The Decline of Neutrality, 1914-1941: With Special Reference to the United States and the Northern Neutrals*, 2d ed. (London: Cass, 1971).

²¹ *Ibid*, p. 111.

²² Letter of British foreign office to British ambassador in Washington, Nov 3, 1914, in Naval War College, *International Law Documents* (Washington, D.C.: Government Printing Office, 1945), 52.

In 1915, the German Navy followed suit, declaring it would indiscriminately destroy *any* merchant vessel in the North Sea around the British Isles.²³ And, since both parties, the Brits and Germans, often flew neutral flags to sail incognito, neither country recognized neutrality for the duration of the war. The larger underlying factor was the disturbance of the trade routes; the German ambassador said “my people are dying of starvation through the destruction of legitimate trade with foreign neutral countries.”²⁴ In January of 1917, Germany declared unrestricted submarine warfare against all vessels in the North Sea to preempt further suffering. The ambassador went on to declare that “all ships met in this military zone will be sunk.”

Innocent and neutral targets were attacked during this North Sea fiasco. In 1918, the hospital ship *Llandoverly Castle* was torpedoed and sunk by German U-Boat 86, and there was additionally the murder of eleven survivors of sunken German U-27 by the British Q-ship *Baralong* in 1915.²⁵ Both these are examples of violations of the principles of *Jus in Bello* as was the further development of strategic airpower in 1918.²⁶ One starts to see the underlying theme develop...that adherence to just war tradition had fallen to the wayside.

The German Air Force was ahead of its time in 1917 with development of a long range bomber nicknamed the “Giant” which mirrored closely that of the World War II era B-29. With that development came another type of warfare that violated the tenets of Just War: untargeted bombing. In June 1917, the German *Luftwaffe* planned a raid on London docks, wharves, railways, government stores, and warehouses, but because the

²³ Ibid, p. 112.

²⁴ German ambassador to the secretary of state, Feb 15, 1915, Ibid., 54-55.

²⁵ Schwengler, Walter. *Volkerrecht, versailer Vertrag und Auslieferungsfrage: Die Strafverfolgung wegen Kriegsverbrechen als Problem des Freidensschlusses 1919/1920* (Stuttgart: Deutsche Verlags-Anstalt, 1982), 348.

²⁶ It is very important to note that the flagrant disregard for Just War principles fed off itself and allowed opposing countries to continue to disregard the laws and instead set in motion a cycle of reprisals and counter reprisals that continued throughout the war.

bombing technology was so crude, an East End council school was destroyed instead, causing the death of many students.²⁷ Twenty years later, history would repeat itself in World War II

C. WORLD WAR II

Pope Pius XII, in an address to the United Nations in 1952, said “The enormous violence of modern warfare means that it can no longer be regarded as a reasonable, proportionate means for settling conflicts.”²⁸ His concern at the time was the possibility of nuclear warfare. Without humankind exercising restraint, he argued, moral judgments cease to exist. As was the case during WWII, atomic bombing set the precedent of a war without limits. This could be a gross overstatement however, as it can be argued that although the atomic bombing of Hiroshima and Nagasaki, Japan took a tremendous human toll, this bombing saved an even greater number of aggregate lives (Japanese and US combined) than had this war been allowed to continue as it was being fought. There is another side though, one that suggests Japan was close to surrendering: “On May 5, May 12 and June 7, the Office of Strategic Services (the predecessor to the Central Intelligence Agency), reported Japan was considering capitulation. Further messages came on May 18, July 7, July 13 and July 16.”²⁹ Further, Alperowitz points out “The standing United States demand for ‘unconditional surrender’ directly threatened not only the person of the Emperor but such central tenets of Japanese culture as well.”³⁰ Mr. Alperowitz concludes by quoting the Chief of Air Forces, General LeMay, “The war would have been over in two weeks without the Russians entering and without the atomic bomb. PRESS INQUIRY: You mean that sir? Without the Russians and the Bomb? LeMay: The atomic bomb had nothing to do with the end of the war at all.”³¹ In the end, on one day during the dropping of Fat Boy, according to U.S. estimates, 60,000 to 70,000

²⁷ Spaight, J.M., *Air Power and War Rights*, (London: Longmans, Green, 1924), pp. 220.

²⁸ Tremblay, Rodrigue, *Just War Theory*, *The Humanist*, May/June 2003, p16.

²⁹ Alperowitz, Gar, *The Decision to Use the Atomic Bomb*, Knopf, NY 1995, p16.

³⁰ *Ibid*, p36.

³¹ *Ibid*, p334.

people were killed or missing as a result of the bomb.³² This example of a war without limits provides further evidence that political leaders and war fighting commanders have moved away from the adherence of Just War Tradition...in fact, they are ignoring it altogether.

As part of the *jus in Bello* criterion, civilians are not to be the direct focus of hostility. WWII violated this logic in the pursuit of the greater good. According to Just War Theory, legitimate war is limited war.³³ This violation of limited war extends from Dresden (where hundreds of Allied bombers released a firestorm of bombs killing 135,000 people and demolishing 80 percent of the city) to the fire bomb raids on Tokyo. It is worth noting that the attacks on Tokyo were more demoralizing for the Japanese than the actual fires, although also consequential. To know that the US could reach its soil and drop bombs was worse than the act of death by fire. East Asian studies suggest that, in the mind of the Japanese, saving face and honor are far more important than the outcome of a given conflict. The fact that Major Jimmie Doolittle and his *Raider* flying squadron reached the mainland in effect crippled the Japanese military's will to fight.

Many critics from the 1940's argue whether or not the atomic bomb should have been used to end World War II. They contend that any alternative was preferable to unleashing "Fat Man" and "Little Boy." Others assert that only the bomb, used in the way that it was, could have ended the war. Above all, they argue, it saved countless American lives. American GIs, who had been shipped halfway around the world to invade Japan after Germany surrendered, were elated. The bomb also precluded a Soviet invasion of Japan and gave the United States the upper hand in the postwar world. "Let there be no mistake about it," Truman later wrote, "I regarded the bomb as a military weapon and never had any doubt that it should be used."³⁴

It is important, for perspective, to point out that the total loss of life in World War II was nearly 44 million, of whom 11 million were citizens or residents of Allied nations.

³² Encarta Encyclopedia, Microsoft Corporation. All rights reserved.

³³ J. Bryan Hehir, *The Lessons of World War II*, Commonweal v122, p9-10 Aug 18, 1995.

³⁴ Microsoft Encarta, Microsoft Corporation. All rights reserved.

Nearly 300,000 American lives were lost in direct conflict, a little over 400,000 in all. The argument still exists among just war theorists that 110,000 deaths combined between Hiroshima and Nagasaki was far less than the human toll of allied and opposing forces had the war continued. However, there is still no evidence that all tenets of Just War Theory were adhered to, and again, this war was another example of an unjust war. Are there examples of others? What about Gulf War I?

D. PERSIAN GULF I

On the 2nd of August, 1990, after the Kuwait government had refused to forgive a debt of 80 billion dollars owed it by the government of Iraq, Kuwait City was overrun by nearly 150,000 Iraqi troops under the reign of Saddam Hussein. Iraq's withdrawal from Kuwait, completely, immediately, and without condition, *and* security and stability of the Gulf³⁵ was the Charter imposed on Saddam Hussein by the Council of the United Nations the day after the siege. In effect, the UN Council had demanded that Saddam Hussein withdraw his forces from Kuwaiti land and return to its own borders without negotiation. Declared by Legitimate Authority³⁶, the siege to oust Kuwait from the Iraqi Empire was supported by an unprecedented UN solidarity, based on the principle of collective self-defense, twelve Security Council resolutions and, on the ground in the Gulf, 28 nations from six continents. As a Last Resort³⁷, the US Secretary of State James Baker had more than 200 meetings, ten diplomatic missions, and six congressional appearances, and traveled over 100,000 miles to talk with members of the United Nations, the Arab League and the European Union. ³⁸ There was a courtesy phone call between Secretary Baker to the Soviets one hour before the air war began, and President Gorbachev requested an additional hour to try a last chance effort to negotiate with Baghdad. Secretary Baker turned down the request and recalled in a personal interview that "it was too late."³⁹ Militarily, there was no retreat. Ample time had been given over

³⁵ US Department of State Dispatch, Feb 4, 1991 v2 n5 p67.

³⁶ Capitalized because this is a principle within the Jus ad bellum construct. See page 6 for sub-parts.

³⁷ Ibid.

³⁸ US Department of State Dispatch, Feb 4, 1991 v2 n5 p67.

³⁹ <http://www.pbs.org/wgbh/pages/frontline/gulf/oral/baker/2.html>, November 2005.

the course of 18 months for the Iraqi regime to adhere to the UN demands. A last ditch effort through the Soviets was desperation at best. The 12 years after this war further validate that the Iraqi regime had no intention of negotiating with UN demands. These factors represent the many justifications in support of Jus ad Bellum. What follows are the results and violations of Jus ad Bello.

A UN Study in 1991 found that 567,000 Iraqi children under the age of 5 died from malnutrition exacerbated by the sanctions imposed by the UN on Iraq since 1990.⁴⁰ Using high-altitude bombing from B-52 Stratofortresses, cluster bombs and 15, 000 pound “daisy-cutters”, the Allied action left in its wake the destruction of electricity networks and the devastation of water purification plants. In fact, a report of the UN envoy in 1991 disclosed “Iraqi infrastructure has been reduced to the stone age.”⁴¹ A Pentagon report stated “at least 5% of our cluster bombs failed to detonate on impact, and instead detonated after greater than a week and often when picked up by playing children.”

In short, the Allies held others to moral criteria that they did not always follow themselves. They imposed risk on others but refused to accept the risk themselves; hence the high-altitude, high-variance bombing raids. The media played an important role in keeping information minimal, which is the opposite of the role most people expect it to play. They made no mention of bloodshed, wounds or casualties on television⁴²; even to this day the media do not typically show the horrific nature of war. Specifically in the first Gulf War there is no documented video footage of Allied forces suffocating entrenched Iraqi soldiers by bulldozing tons of sand into and over their bunkers.

Just War Theory is prospective, not retrospective.⁴³ In other words, the tenets of just war ought to be planned for in advance of war and not simply argued after the fact. As it relates today, this doctrine focuses on causes, means, *and* ends of war. There are two points worth making about the first Gulf War: 1. It provides a provisional and

⁴⁰ Scheinin, Richard, *When is a War Just?*, San Jose Mercury News, Sep 22, 2001, p1F-2F.

⁴¹ Achar, Gilbert, *Is NATO's Onslaught a "Just War"?*, Monthly Review (New York, NY) June 1999.

⁴² Callahan, Sidney, *Confronting the Generals*, Commonweal, v125, Sept 1998.

⁴³ Walzer, Michael *Notes from an Israel Journal: What the students taught the teacher about just and unjust wars*, The New Republic, Sept 5, 1983 v189 p 13.

limited endorsement of the Afghanistan war; advocating for the withdrawal and elimination of another warring state: Taliban is to Afghanistan as Iraq was to Kuwait; and 2. It reinforces prudential arguments for the extension of the Global War on Terror to other settings, most relevantly Iraq in 2003, clarifying that harboring of terrorism is aggression under common-day definition.⁴⁴ Iraq for years in coordination with Syria, Lebanon, and Iran has invested a great deal of money into terrorist training camps that serve to undermine the Globalized world. This is really a scholarly debate. The Bush doctrine argues for preemption due to the threat of aggression. Does this doctrine abrogate the tenets of Just War theory? Does it matter when just war theory has never really been adhered to? It is important to continue with further examples such as Kosovo, Serbia and Montenegro.

E. KOSOVO (OTHERWISE KNOWN AS YUGOSLAV SUCCESSION PLAN)

Not since WWII had the military might of international allied partners been used to intervene militarily for purely humanitarian purposes. That all changed in 1999 when CNN brought to people's living rooms full-color atrocities (e.g. mass graves, gross famine, and slaughtering) that the UN and the US representatives did not turn their backs on. UN and NATO leaders anticipated this event as the beginning of ethnic cleansing of 1.5 million ethnic Albanians. Today, while the trials still continue in the Hague and all the stories have yet to come to the surface, documented evidence shows that 640,000 were forced to flee from their homes, and 780,000 were unaccounted for (although some question the validity of the reporting documents, which were never substantiated). Because of the unsuccessful negotiations of the late President Milosevic, and the rest of the Former Republic of Yugoslavia, in Paris and his reluctance to sign the agreement restoring autonomy and order to Kosovans, NATO intensified its air strikes. The targets of the attacks now included bridges, railroads, oil and electricity facilities, and factories throughout the FRY, including downtown Belgrade and other cities.

⁴⁴ Falk, Richard, *In Defense of 'Just War' Thinking*, The Nation, Dec 24, 2001, p23.

Justification in Righting a Grievous Wrong was evident.⁴⁵ In this case, the righting of the grievous wrong was in ending the mass butchering that was alleged to be happening within the borders of Serbia. The Serbs felt they were acting in self-defense, although proportionality certainly was disregarded as the conflict continued to escalate, so some doubt still exists as to the validity of the claim of the 780,000 Kosovans unaccounted for. Milosevic, on the other hand, was just trying to keep his country from fracturing due to rebel “ethnic” Albanians in country. The larger issue underlying the Kosovan War is: why did the Allies intervene here? Why not in the Sudan, East Timor, or later on Somalia?

According to one of the tenets of Just War, armed force must be the last resort. The Joint Chiefs of Staff argued for further economic sanctions; however the North Atlantic Treaty Organization (NATO) wanted to engage quickly in halting the action militarily and did not exhaust all forms of non-military forms of coercion.⁴⁶

Legitimate Authority⁴⁷ claims that war must not be declared by public or private groups but by sovereign or legitimate authorities. In this case, NATO is a qualified, legitimate authority with many nation states where each nation state played an active role. However, President Bill Clinton committed military personnel without the approval of the US Congress. By contrast, both Presidents Johnson and Bush Sr. sought congressional approval before sending troops to Vietnam and the first Persian Gulf War, respectively. In fact, virtually all Presidents of the United States in the 20th century violated the Constitution by making war without a formal Congressional declaration, further providing evidence that the U.S. did not engage in a clearly just war in the 20th century.

The concept of proportionality requires that we ask the question: did the bombing raids assist in the cessation of genocide or propagate it further? As NATO bombing began, Milosevic intensified his mass killings as a retaliatory measure. As the bombings continued, Serbian assaults on ethnic Albanians intensified, with police, paramilitary

⁴⁵ Capitalized because this is a principle within the Jus ad bellum construct. See page 6 for sub-parts.

⁴⁶ Colson, Charles *Does Kosovo Pass the Just-War Test?*, Christianity Today, May 24, 1999, p96.

⁴⁷ Capitalized because this is a principle within the Jus ad bellum construct. See page 6 for sub-parts.

units, and the Yugoslav army razing villages and forcing residents to flee at an even more intense pace.⁴⁸ At first then, it would appear that the bombing of Serbian facilities caused further genocide and thus the bombing was not warranted. 15 years later the NATO authorities are still in the Balkans in a peace-keeping role, and while there are no longer mass atrocities, there are still insurgents fighting for gridlines and country borders. The governing body of the 50,000 person peace-keeping force that still occupies the borders of the Former Republic of Yugoslavia should certainly be asking the question...was the intensified bombing in accordance with the tenet of proportionality? One certainly should take into consideration the idea that the Kosovo War was also an unjust one.

F. GLOBAL WAR ON TERROR

Terrorists serve to undermine the basic foundations Augustine and Aquinas referred to in fighting and waging war by removing order, justice and peace.⁴⁹ The Terrorists in this Global War undermine the very notion of a moral code. Terrorism sees the Globalized world in as its enemy...and seeks to undermine any system or combination of systems that are against it, further stating that terrorism is not in the majority, but the extreme minority. They have gone after Singapore and Hong Kong banks, which led the banks to implement retinal scan technology.⁵⁰ Further, terrorists have struck Japan, UK, Spain, France and the US, to name only a few.⁵¹ The new challenge now lies in the actions of rogue actors instead of aggressive states, and Kosovo represented the beginning of this new war. The concepts of victory and reasonable aspirations of success associated with countries laying down their arms, surrendering on battlefields, and negotiating terms to end all hostilities have all but vanished in today's world. Aquinas and Augustine placed supreme confidence in rationalism and its ability to win over the irrational. This is simply not the case today.

⁴⁸ Microsoft Encarta, Microsoft Corporation. All rights reserved.

⁴⁹ Scheinin, Richard, *When is a War Just?*, San Jose Mercury News, Sep 22, 2001, p1F-2F.

⁵⁰ Yeo, Vivian, "Singapore Banks gear up for stronger authentication." *ZDNetAsia* (August 8, 2005).

⁵¹ *Patterns of Global Terrorism: 1996*, Patterns of Global Terrorism, April 1997, p1-75, DOS

Looking back at Saddam Hussein and the first Persian Gulf War, the self-defense clause in Jus ad bellum was used as the rationale to invade Iraq nearly 12 years later. After using nerve gas on his own people and Iran⁵², after invading another country and being ousted militarily, after agreeing to a truce that entailed following UN resolutions and an inspection regime, he had instead ignored the wishes of the international community and, for the four years prior to the Allied invasion in 2003, had been operating out of sight of federal inspectors. There is a counterpoint to the above justification however; social order as envisioned in the 16th Century no longer applies. There no longer is a heavenly (meaning religious affiliation, particularly Christianity) order to things as there was in the original drafting of Just War Doctrine. Instead, the United States and other Western nations are being asked by the non-globalized states to export hegemony of the Western lifestyle slowly to the rest of the world. The United States' own Declaration of Independence lays out the framework: "That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security."

After September 11, President Bush II vowed to preempt instead of react to threats from abroad. For that reason, he began, with members of a coalition, namely the

⁵² McGinn, Paul R. "U.S. team substantiates Iraqi chemical weapon use." *American Medical News* 32.n9 (March 3, 1989):

United Kingdom, to pursue rogue actors and those countries that harbored terrorists. In this new national security paradigm, four provisions of Just War Theory merit further discussion:

Right Intention is prevalent⁵³. Intention on behalf of the western world is warranted in the securing of free trade and furthering international prosperity provided that denying safe haven of known terrorists, destroying existing training facilities, and demoralizing existing cells to promote safety of participants in the global marketplace is the common theme.

Free trade protects peoples' livelihood. In effect, the security of a nation or many allows it to compete in the global marketplace, thereby generating a greater good for that marketplace. But, in order to embrace that philosophy, nations and their citizens must feel safe and secure to operate. The counterpoint is that mere revenge⁵⁴ for grave atrocities to demonstrate military might is not a worthy or morally acceptable motive for military efforts.

Justification in the Proportionality tenet of *Jus ad Bello* is violated. Prolonged high altitude bombings in the vast wasteland of Afghanistan as winter approaches prevent food and supply lines from reaching millions of civilians and ensure more deaths by malnutrition during the cold months in a land already struck with 4 years of drought and low crop production. A second point worth noting is that non-combatants must not be the direct targets of attack. While it appears that great harm will come to the civilian populations, the loss of the few for the greater good of the masses will and can be an acceptable risk according to the Proportionality⁵⁵ tenet.

Just Cause and Humanitarian Intervention⁵⁶ are evident. This represents the classic insistence of Augustine: "love may require force to protect the innocent." In a 1992 presentation to the global community, Pope John Paul II cited "conscience of humanity and international humanity law" and claimed that nations and the international

⁵³ Capitalized because this is a principle within the Jus ad bellum construct. See page 6 for sub-parts.

⁵⁴ Cook, Martin L., *Terrorism and 'just war'*, Christian Century, Nov 14, 2001, p22.

⁵⁵ Capitalized because this is a principle within the Jus ad bellum construct. See page 6 for sub-parts.

⁵⁶ Ibid.

community have not only a right, but a duty of humanitarian intervention where “the survival of populations and entire ethnic groups are seriously compromised.” The counterpoint is that the international community is already upholding its end of this bargain and first did so during the first Gulf War. The international community provided safe haven for all the suppressed Kurds in Northern Iraq and Southern Turkey after Saddam Hussein’s genocidal campaign in 1988 that included weapons of mass destruction.⁵⁷ Perhaps the gravity of the situation, e.g. risk versus benefit, and its possible effect on the United States and coalition partners is the reason that Sudan, Rwanda, Somalia and others are not the first to be responded to by the international community. Further, the ability to choose one and not the other is additional evidence that nations have not satisfied all tenets of Just War Theory and thus, within the last 100 years, Just War has not existed.

⁵⁷ Gerard Powers, Robert Royal, George Hunsinger and Susan Brooks Thistlethwaite, *Would and Invasion of Iraq be a “Just War”?*, United States Institute of Peace Special Report, Jan 2003, Pages 1-15.

IV. CONCLUSION

Just War consists of three tenets: *Jus ad bellum*, *Jus in Bello*, and *Jus post bellum*. What Just War does not address and has never addressed is the issue of preemption, which is what the Bush Administration advocates. The lessons of wars in the last century repeatedly teach that Just War Theory falls apart after *Jus ad bellum*. Since this part of Just War Theory has never been adhered to, one must ask the pertinent question: why stand by the theory at all?

One can agree or disagree with the legitimacy of preemption; however, the evidence on *Jus in Bello* is a very compelling argument that Just War Theory has ceased to be followed as originally written. This is not actually a great surprise since all tenets must be satisfied for a *Just War* to exist. This theory was created to make addressing, committing and ending war the gravest of all man's acts, so severe in nature that there is no room for error. In fact, during the research of this thesis, a war that was fought justly according to tradition was not found. And, because Just War Doctrine decreed that in order for a war to exist justly, all tenets must be followed, this thesis has provided considerable evidence that for the last 100 years Just War Doctrine has not been adhered to and with the changing dimensions of warfare by terrorists, state and rogue actors, and increased interconnectedness through Globalization, Just War may never be relevant as it was in the early years of establishment. The changing and fluid dynamics of today's asymmetrical threats raises the following question: How do you square the ability to fight a war justly when, as a matter of fact, you presuppose an international arena in which justice no longer makes any sense?

“Just War Theory is not an apology for any particular war, and it is not a renunciation of war itself. It is designed to sustain a constant scrutiny and an immanent critique.”⁵⁸

⁵⁸ Walzer, Michael, *The Triumph of Just War Theory (and the Dangers of Success)*, Social Research, Winter 2002.

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APPENDIX A. CHARTER OF THE UNITED NATIONS

ACTION WITH RESPECT TO THREATS TO THE PEACE, BREACHES OF THE PEACE, AND ACTS OF AGGRESSION

Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Article 43

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.
2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.
3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

Article 44

When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfillment of the obligations assumed under Article 43, invite that

Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

Article 45

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

Article 46

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

Article 47

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.
2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.
3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.
4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional sub-committees.

Article 48

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.
2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

Article 49

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

Article 50

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

Article 51

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, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

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APPENDIX B. GENEVA AND HAGUE CONVENTIONS

Hague Conference of 1907

- Hague I - Pacific Settlement of International Disputes : 18 October 1907
- Hague II - Limitation of Employment of Force for Recovery of Contract Debts : October 18, 1907
- Hague III - Opening of Hostilities : 18 October 1907
- Hague IV - Laws and Customs of War on Land : 18 October 1907
- Hague V - Rights and Duties of Neutral Powers and Persons in Case of War on Land : 18 October 1907
- Hague VI - Status of Enemy Merchant Ships at the Outbreak of Hostilities : 18 October 1907
- Hague VII - Conversion of Merchant Ships into War Ships : 18 October 1907
- Hague VIII - Laying of Automatic Submarine Contact Mines : 18 October 1907
- Hague IX - Bombardment by Naval Forces in Time of War : 18 October 1907
- Hague X - Adaptation to Maritime War of the Principles of the Geneva Convention : 18 October 1907
- Hague XI - Restrictions With Regard to the Exercise of the Right of Capture in Naval War : 18 October 1907
- Hague XIII -Rights and Duties of Neutral Powers in Naval War : 18 October 1907

Geneva Conventions

- 1864 - Amelioration of the Condition of the Wounded on the Field of Battle; August 22
- 1928 - Geneva Protocol for the Prohibition of the Use in War of Asphyxiating Gas, and for Bacteriological Methods of Warfare; February 8
- 1929 - Convention Between the United States of America and Other Powers, Relating to Prisoners of War; July 27
- 1949 - Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12
- 1949 - Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, August 12
- 1949 - Convention (III) Relative to the Treatment of Prisoners of War; August 12
- 1949 - Convention (IV) Relative to the Protection of Civilian Persons in Time of War, August 12
- 1975 - Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (1972); March 26

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