

**COLLOQUIUM ON
ETHICS OF WAR AFTER 9/11 AND IRAQ**
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Iraq and the moral dilemmas of preemptive/ preventive war
“Pre-emption and Prevention: Fear and Opportunity”
by John Langan, S.J.

Michael Walzer in his instructive and influential discussion of "Anticipations" in Just and Unjust Wars criticizes Daniel Webster's acceptance of pre-emptive or anticipatory attack when there is a necessity of self-defense against a threat which is "instant, overwhelming, leaving no choice of means, and no moment for deliberation."¹ He points out that "this would permit us to do little more than respond to an attack once we had seen it coming, but before we had felt its impact." In place of Webster's overly restrictive view, he proposes that we draw the line between legitimate and illegitimate first strikes not "at the point of imminent attack but at the point of sufficient threat."² He specifies the notion of threat in this way: "states may use military force in the face of threats of war whenever the failure to do so would seriously risk their territorial integrity or political independence."³ As is well known, Walzer's chosen example illustrating this point is Israel's initiation of the Six Day War in 1967. In his analysis of this war, he argues that the case can be made against Egyptian aggression "not only in the absence of a military attack or invasion, but in the (probable) absence of any immediate intention to launch such an attack or invasion."⁴ His view is more permissive with regard to anticipatory uses of force than the recently discussed requirement that the threat be "grave" and "imminent". He stresses the element of political judgment in the way these situations of approaching threat are to be handled, and he places the act of judgment in the political leaders of the sovereign state. There is no discussion of any need to seek authorization for attack from any multilateral or international body. Anticipatory attack in its various forms is not characteristically a multilateral activity.

If we want to use Walzer's treatment of the Six Day War as a starting point for Current reflection on the problem of pre-emption, we need to note several differences between the paradigmatic situation he is analyzing and our own situation almost forty years later. In the first place, the contest he discusses is between nation-states, even if the legitimacy of one of them is denied by its neighbors. The characteristic concern we feel today is about attacks from non-state actors. Striking first at them is likely to involve the use of force on the territory of other states. Some of these may be supportive of the terrorists, but some of them may be aligned with ourselves.

In the second place, we are not looking at a threat which seriously endangers our territorial integrity or our political independence. Even the explosion of a dirty bomb in New York Harbor, which would be a grievous tragedy in its impact on millions of people, would not of itself overturn our political system or deliver our country into the hands of adversaries who could hope to control it. This is in itself a significant difference from the way in which the threat from the Soviet Union was generally viewed. There was then a real and continuing possibility that our entire society could be destroyed. Obviously, no one should believe that the loss of one major city would be less than a massive calamity which would put our political system under enormous strain. But it is likely that if such an event were to occur, the more pressing challenge to our established constitutional order would rise from within our polity against those who had failed to prevent the occurrence of such a calamity. The vulnerability of American society is both qualitatively and quantitatively different from the situation of Israel. There is no prospect of the United States being driven into the Pacific Ocean or into the Atlantic, for that matter. This difference in scale also brings with it the consequence that the

¹ Michael Walzer, Just and Unjust Wars: A Moral Argument with Historical Illustrations (New York: Basic, 1977), 74.

² Walzer, 81.

³ Walzer, 85.

⁴ Ibid

threats, demands, and ominous maneuvers which preceded the Six Day War do not have a proper parallel in the American case. Because of the scale of the country and the dispersal of its capabilities, any potential aggressor has to reckon with the probability that any attack would still leave the United States with a decisive superiority in the task of pursuing and punishing its adversaries. An aggressor would need forces comparable to those of the Soviet Union to indulge in the hope of an unpunished attack.

Third, in the present situation as it is conceptualized by the Bush administration, there is a possibility that the categories of prevention and pre-emption would no longer be relevant. If the country is committed to a continuing war against terrorism, then a new episode of conflict would not count as a first strike against an adversary that had not as yet made aggressive moves but would be more appropriately considered as an event within the ongoing conflict, an event which might initiate a new phase of the overall war but which would not encounter the moral problems which an initial attack would raise. Among these problems would be: harmful actions arising out of uncertainty about the actual intentions and projects of the adversary; the use of deadly force against those who had not decisively affirmed their status as participants in an aggressive war; responsibility for the initiation of the use of deadly force. A critic might well counter that the administration's use of the expression "war on terrorism" is sufficiently vague and accusatory that there is no need to discuss it as a serious effort to modify our analytic discourse about war and that it should be treated as no more than a rhetorical instrument. On the other side, a friend of the administration can rightly argue that the president is doing no more than articulating a counterpart to the stream of threatening invective which pours forth from the leaders of radical Islam and their intellectual apologists. Even so, it seems likely that the concept of a war on terrorism contributes to blurring the questions which moral analysts should be asking about when and how it is right to begin to fight as well as to leaving most of the important decisions to an imperial executive which is clearly keen not to encounter or acknowledge limits to its discretionary authority. But I would also want to suggest that something quite important can be gained if we think about the notion of a war against terrorists rather than a war against terrorism, that is, a continuing conflict against specified adversaries, some of whom lay down their lives in particular suicide attacks but many of whom do indeed live to fight another day.

In the early twenty-first century it is against terrorists that the argument for striking first is most likely to be made. Later perhaps parallel arguments for action against China or India might be made, if either of these potential superpowers should manifest a desire to follow the path trod by the Soviet Union. These arguments would bring us closer to the considerations which shaped the approach to great power conflict in previous centuries, though the stakes would be vastly higher because of the availability of weapons of mass destruction to participants in these great power conflicts of the future. But the availability of WMD to terrorist groups is not something which should be taken as a given either now or in the foreseeable future. It has to be established by competent intelligence, something which has not been in abundant supply over the last few years. The argument is commonly made that terrorist groups cannot be deterred as the Soviet Union was. Because of their religious motivation, they are impervious to the threats to survival which are central to a strategy of deterrence. Because they are not states, they do not have fixed assets of which they can be deprived. Because they operate across international boundaries and in areas where political control is weak and unreliable, they are very elusive and cannot be caught within the nets of standard national security arrangements. This is not a line of argument which I would reject out of hand, since it builds on some commonly recognized features of terrorist groups, even though I have reservations about imputing an absolute psychological inflexibility to people of other cultures and about interpreting political actors in terms of one attribute or strategy taken in isolation.

But what this line of argument does not establish is a right to wage preventive or even preemptive war against states. By definition, the terrorist groups are not states. If we are dealing with a terrorist groups which has already been active against us and our allies, it is clear that we have a right to defend ourselves and to use force against the groups which have actually used force against us as well as against those whom we have good reason to suspect of being about to do so in the immediate future. If a terrorist group is in our territory or is attacking our forces elsewhere, then it is clear that we have a right and a duty to act against them. If they are on the territory of one or more foreign states, then it seems that there are three principal possibilities. First, the other state is willing and ready to take action against the terrorists. In this case the appropriate response is help through providing military and intelligence and financial resources and through joint operations, if that

should be appropriate. Second, the other state declines to take action either because it is unwilling to do so or because it feels that it is unable to do so, for a variety of reasons. In this case, we are, I believe, entitled to follow an escalatory strategy in which we would move from persuasion through pressure to active pursuit of the terrorists in the territory of the other state. We would then be engaging in military action on the territory of a neutral power against the terrorists. This would be a different project from waging war on the state which was attempting to maintain a stance of neutrality. But each step on the escalatory ladder would require confirmatory intelligence and suitable justification. The military forces of the other state would only become legitimate targets if they attacked our forces; it would be the responsibility of our forces to minimize the harm done to those who were not actively participating in or giving support to terrorist activities. It would still be true that the violation of the sovereignty of the other state which was involved in the pursuit of the terrorists would require serious justifying reasons. Third, the other state actively supports the terrorists in their nefarious and destructive activities. It then becomes an outlaw state or, to use the expression of President Bush's 2002 State of the Union address, a "rogue state." But on the approach I am recommending it only becomes through specific actions against our forces and interests. This I take to be the situation of the Taliban government in Afghanistan after it refused to expel al-Qaeda forces after 9/11. It is not the situation of Saddam Hussein's government in Iraq after that same catastrophic event.

What I am proposing is a rationale for the vigorous pursuit of terrorists across international boundaries as opportunity arises. But it is essentially a responsive strategy in reaction to what particular groups of terrorists have done or to what they have given clear signs they are about to do. It does not construe the mere combination of destructive capability and hostile desire as tantamount to a commencement of hostilities. It is not fundamentally anticipatory in its structure. It does not aggregate terrorists and their sympathizers and supporters into one group which constitutes a massive super-target. It demands from intelligence agencies something of the precision which we require of prosecutors who have to convince a skeptical audience of government officials and military leaders that the right targets for our responsive violence have indeed been identified.

What this approach does not do is to resolve the problem of nuclear proliferation in an a priori fashion. States that hand over nuclear weapons and other weapons of mass destruction to groups that have been conclusively shown to engage in terrorist activities would deserve corrective and retributive action. The possession of nuclear weapons by unfriendly governments would not in itself constitute a justifying reason for war. For the United States to advance such a view would amount to a demand that no state should ever be in a position to deter the United States. This may be a desirable position for U.S. policymakers, but it can hardly be presented as a demand of justice in a universalist ethical system.