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## Risking Aggression

Matt Beard

University of Notre Dame Australia, matthew.beard@nd.edu.au

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## Introduction

The moral legitimacy of preventive war has been perhaps the most serious debate in military ethics over the past decade. Following the US-led invasion of Iraq in 2002, serious questions begun to be asked about the legitimacy of a type of action which was, until then, generally agreed to be unjust.

Here I want to suggest that the ongoing debate between preventive war supporters and deniers can be usefully examined through the dual lenses of liberty and risk. How much risk ought a state to tolerate, or be required to tolerate, before a military response is justifiable? In what follows, I will argue that states are required to accept a degree of risk as a necessary effect of state liberty, and deny the morality of preventive war. However, I will note that the case of WMDs might require certain policies be put in place in order to mitigate that risk.

## Preventive and pre-emptive war

It is worth beginning by taking a moment to distinguish between preventive and pre-emptive war. The two terms are often, confusingly, used interchangeably. Here I follow the distinction generally accepted throughout military theory, clearly explained by Barnes & Stoll as follows:

Preemption is the taking of military action against a target when there is incontrovertible evidence that the target is about to initiate a military attack. Prevention is the taking of military action against a target when it is believed that an attack by the target, while not imminent, is inevitable, and when delay in attacking would involve greater risk.<sup>1</sup>

The point of distinction between pre-emptive and preventive war is the balance of evidence and the degree of commitment by the allegedly hostile nation. Pre-emptive war has long been part of just war theory (JWT), and requires as a *jus ad bellum* condition that the hostile nation's attack be *actual*. This means that a state is able to pre-empt a hostile attack before it has done any harm, but only after the hostile nation has demonstrated that their intention to attack is certain (by troop movements, a declaration of war, etc.). Such actions are the national equivalent of reaching for the gun: the decision to attack has been made and the intention is clear. Preventive war, on the other hand, is war declared on spec. If there is evidence of possible hostility and inaction would mean that the potential war would be more devastating because of the inaction, one is morally permitted to act.

Preventive war sees the burden of proof for pre-emptive war as being unreasonably, and imprudently high; by the time sufficient evidence is gathered, the opportunity to nip the threat in the bud has passed.<sup>2</sup>

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<sup>1</sup> Joe Barnes & Richard J. Stoll, 'Preemptive and Preventive War: A Preliminary Taxonomy', The James A. Baker III Institute for Public Policy, Rice University, 2007, Accessed:

<http://bakerinstitute.org/publications/Preemptive%20and%20Preventive%20War-1.pdf> [30/7/12].

Commander Donald K. Ulrich also provides a similar distinction in 'A Moral Argument on Preventive War', Masters Dissertation, US Army War College, Pennsylvania, 2005, p. 1

<sup>2</sup> One such argument is presented by theologian Stephen Strehle, who outlines clearly the just war argument against Bush's 2002 invasion of Iraq, before dismissing them as products of a bygone era: "According to these criteria, the Bush policy is unnecessary in the present circumstance—at least for the time being. Saddam Hussein is not a present danger (imminence); other options for a number of months could prove fruitful (cost of delay); and it is unlikely that Saddam would hand WMD to terrorists based on his past actions and

### Preventive war: moral and political landscape

Although the preventive war debate has experienced something of a revival in the last decade, its moral legitimacy has been the subject of discussion throughout the history of the just war (JW) tradition. In the fifteenth century, Francisco di Vitoria codified the belief that the primary just cause for war was a "wrong received."<sup>3</sup> Given that *iustus causa* requires that a wrong be *received*, to defend a strike that has not yet come would be entirely unjust, as Vitoria expressly notes in condemning preventive war (although not by that name), saying "it is intolerable that any one should be killed for a future fault."<sup>4</sup> These views are echoed later by Hugo Grotius, who also endorses pre-emptive war, where the threat is certain and immediate.<sup>5</sup>

The history of JWT is not, however, unified in its condemnation of preventive war. The 20<sup>th</sup> century saw an increased interest in restricting the damage caused by war, and this included the possibility of parrying a blow before it had been struck. Elizabeth Anscombe, a prominent JW theorist of the 1960's, suggested that if the end of war is the good of humanity, then what matters is not who strikes first, but on whose side the justice of the issue is.<sup>6</sup> However, Anscombe's version of preventive war is justified with recourse to the natural law – "the common good of mankind"; the majority of preventive war supporters frame their arguments not on the basis of a universal ethic, but through prudential reasoning.

The prudential argument for preventive war is simply that given a state's duty to protect its own citizens, it would be – as US Ambassador Miriam Sapiro puts it – "foolish, if not suicidal, for a state that believed its fundamental security interests were at risk to wait until the first attack."<sup>7</sup> In the development of the Bush Doctrine, the reason for this foolishness was made clear: war in the age of WMDs is different, and we cannot apply the old precepts of international law in the same way anymore. So much was argued in the 2002 National Security Strategy (NSS):

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.

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present interest [...] However, this preference for absolute, deontological ethics does not allow the tradition to meet the changing needs of the human condition. It becomes a pretext for doing nothing because it is based upon past concerns and does not relate to modern times." See: 'Saddam Hussein, Islam and Just War Theory', *Political Theology*, Vol. 5, Iss. 1, 2004, pp. 76-101 at pp. 85-86

<sup>3</sup> Francisco di Vitoria ed. Ernest Nys, *De Indis et de Ivre Belli Relectiones*, in Kinsella & Carr (eds.), *The Morality of War: A Reader*, Lynne Rienner Publishers, London, 2007, p. 78

<sup>4</sup> Vitoria, *op. cit.*, p. 77

<sup>5</sup> RWP, Bk. II, I.V

<sup>6</sup> Elizabeth Anscombe, 'War and Murder', in Walter Stein (ed.), *Nuclear Weapons: A Catholic Response*, Sheed & Ward, New York, 1961, p. 2, Accessed: <http://philosophyfaculty.ucsd.edu/faculty/rarneson/Anscombe.pdf> [30/7/12]

"[T]here being such a thing as the common good of mankind, and visible criminality against it [...] [t]he present-day conception of 'aggression', like so many strongly influential conceptions, is a bad one. Why must it be wrong to strike the first blow in a struggle? The only question is, who is in the right, if anyone is."

<sup>7</sup> Miriam Sapiro, 'Iraq: The Shifting Sands of Preemptive Self-Defense', *The American Journal of International Law*, Vol. 97, No. 3, 2003, pp. 599-607 at p. 602

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.<sup>8</sup>

Many international lawyers have questioned whether the law as currently written supports this claim, but Rex Zedalis notes that while the spirit of the law suggests that immediacy of attack is epistemically *helpful*, “there seems no reason why [the law] cannot be understood to encompass threats of attack that lack such proximity, yet are every bit as sure to arise in the future.”<sup>9</sup>

I think we have to take Zedalis' point, which follows from Anscombe's, as true. There seems no reason why if we were certain of a forthcoming attack and had no other means of averting it, we could not militarily prevent it from coming about, no matter how far in the future that attack might be. The standard, as this argument goes, is the degree of certainty that the attack will take place; if we *know* it will happen, and - presumably - cannot reasonably avoid it in any other way, then one may attack. However, it seems utterly inconceivable how this might happen in reality.

It does seem clear from the 2002 NSS and other literature that the existence of WMDs has been the central motivating factor in the resurgence of interest in preventive war. Buchanan and Keohane argue that it is, in fact, the existence of WMDs that renders the JWT prohibition inadequate.

Adherence to the Just War Blanket Prohibition is too risky, given the widespread capacity and occasional willingness of states and nonstate actors to deploy weapons of mass destruction covertly and against civilian populations.<sup>10</sup>

They continue, adding that JWT “requires states to refrain from acting even when they could prevent massive human rights violations *at little cost*.”<sup>11</sup>

### **Risk: freedom to, or freedom from?**

Buchanan and Keohane are right in at least one respect: to prohibit preventive war is to assume a degree of risk in relationships with other states, particularly antagonistic – or “rogue” – states. If it is impermissible to prevent aggression when it is pure *potentia*, one risks the actualization of that aggression, coupled with the likelihood of suffering harm. However this is not true only of rogue states: *any* free and independent nation poses *some* risk to my nation insofar as I cannot control what they will or will not do. Confiding a personal secret to a priest in the confessional is obviously less risky than confiding in a noted gossip, but the level of risk is never zero; the freedom of others correlates with the amount of risk one faces. The reverse is also true: the (genuine) limitation of freedom would lead to minimised risk. This is part of the claim of preventive war: that nations are not free from military attack if we have reason to believe they will attack us in future.

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<sup>8</sup> 2002 United States National Security Strategy, Accessed: <http://georgewbush-whitehouse.archives.gov/nsc/nss/2002/print/nss5.html> [30/7/12]

<sup>9</sup> *Ibid.*, p. 214

<sup>10</sup> Allen Buchanan & Robert O. Keohane, ‘The Preventive Use of Force: A Cosmopolitan Institutional Proposal’, *Ethics & International Affairs*, Vol. 18, Iss. 1, pp. 1-22 at p. 3

<sup>11</sup> *Ibid.*, p. 3. Italics added.

The state, however, under most understandings of international relations, is afforded certain rights. The two general rights that nearly all commentators agree on are political sovereignty and territorial integrity.<sup>12</sup> The right to territorial integrity includes naturally a right to securing that integrity: military capability. If a state has any rights at all, we must accept that it has the right to develop a military force; the sole source of my nation's risk of suffering aggression. So, it seems apparent that upholding state liberty affords another state the opportunity to put my nation at risk.

It seems we are left with two options: the first, the obviously objectionable decision to reject any state other than my own state's claim to liberty and thereby remove the risk of suffering aggression; or second, to uphold each state's right to liberty, and accept the accompanying degree of risk of their military eventually striking against us.

Risk, I have suggested, is a product of liberty. Preventive war accepts this, but errs on the side of freedom-restriction rather than risk-acceptance. However, the type of freedom-restriction they adhere to is of a particular variety: *interested* restriction. They do not claim that *all* liberty should be restricted to minimize risk; rather, the claim is that the freedom of *others* must be restricted to minimize *my* risk. However, there is no *prima facie* compelling moral argument for why this should be the case. If one state has the right to preventive war, then surely all states do, and this leads to absurdity. Consider the following:

Nation X has been vocally critical and antagonistic toward nation Y. They have simultaneously been developing sophisticated and powerful weaponry, the use of which would be devastating to Y. Y therefore decides that it would be prudent and justifiable to destroy the weapons-developing capacities of X by bombing their factories. However, news of this plan is leaked to nation X who then, learning of a plan to commit an act of war against them, in turn act preventively against Y.

Who had just cause here? Presumably the advocates of preventive war from nation X will claim X has just cause in preventing a planned military strike against them. Contrarily, supporters from Y will claim that the antagonism and weapons development of X placed them in a position of risk, and that Y had the right to prevent that risk from actualising. Buchanan and Keohane argue that "[i]t is a wrongful imposition of risk if those put at risk have neither voluntarily accepted the risk nor deserve to be subjected to it."<sup>13</sup> However, this point is moot in the case of preventive war, as each state has the *duty* to accept and respect the liberty of others, and this requires a degree of accepted risk.

The unreasonableness at the heart of the doctrine of preventive war is a desire to have one's cake and eat it too. Advocates of preventive war cling tightly to the states' right to liberty, but fail to accept the logical corollary of this: that liberty entails risk. The standard of justification for military action must be - as Zedalis noted - certainty, not possible threat and likelihood of significant harm.

### **WMDs and proportionality**

If the principled argument against preventive war I have made above is insufficient ground to reject the morality of preventive war, then it can also be shown that preventive war in a nuclear

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<sup>12</sup> *Ibid.*, p. 34

<sup>13</sup> Buchanan and Keohane, *op. cit.*, p. 7

age necessarily fails the proportionality requirement of *jus ad bellum*. Consider the following example from David Rodin:

[I]f someone approaches you on the street and threatens to take your life if you do not give him a dollar, it seems clear that you do not act rightfully if you shoot him dead. The reason would seem to be that what is demanded in this case is not of sufficient value to justify the use of lethal force [...] even though the theft is accompanied by a conditional threat to life.<sup>14</sup>

This case was discussed by Jeff McMahan, who focussed on the nature of the “conditional threat”. It is the nature of the threat as conditional that makes a lethal response disproportionate, for the risk to my life is zero unless I act in a particular way, and the way I act is entirely up to me. To respond lethally to the *immediate* threat would be to kill someone for a dollar, which is blatantly disproportionate.<sup>15</sup> McMahan goes on to consider what might be a *proportionate* response in this situation. “[T]here are proportionate responses that might offer some chance of success: you might, for example, kick the thief in the shin and then try to knock the gun from his hand.”<sup>16</sup> However, this too is problematic:

If you attempt a proportionate response [...] but it fails, the thief will then act on his conditional threat to kill you: he will force you into a situation in which you must either kill or be killed. Suppose the chance of your being killed in that case is high. To follow that option might be sporting but it would be foolish, both prudentially and morally. The only acceptable options, therefore, are handing over the dollar and killing the thief in anticipation of his potentially lethal response to any proportionate measure you might take.<sup>17</sup>

It seems then that some situations are such that the proportionate response places one at severe risk – if not assurance – of suffering severe harm. An obvious circumstance in which this might play out is where one nation threatens another with a WMD if some terms are not met (for instance, the release of prisoners); to respond with conventional force will merely trigger the use of the WMD, it seems then that the disproportionate response is the only viable option.<sup>18</sup>

This is poignant. The wagers of preventive war are also makers of conditional threats: stop what you are doing (in most cases, the development of WMDs) or we will stop you. In the scenarios we see played out today, and in historical cases like Iraq, the wagers of preventive war have also been militarily superior. The proportionate response in these scenarios, therefore, is unavailable; all that remains is capitulation or disproportion. This, we will see, is particularly important in the case of Iraq, and the contemporary case of Iran, both of whom have been alleged to possess WMDs<sup>19</sup> given

<sup>14</sup> David Rodin, *War and Self-Defense*, Oxford University Press, New York, 2003, p. 134

<sup>15</sup> Jeff McMahan, ‘War as Self-Defense: A Response to War and Self-Defense’, *Ethics & International Affairs*, Vol. 18, Iss. 1, 2004, p. 77

<sup>16</sup> *Ibid.*, p. 77

<sup>17</sup> *Ibid.*, p. 77

<sup>18</sup> It may be the case that the doctrine *quod est necessarium est licitum*, which Grotius employs (“in war things which are necessary to attain the end in view are permissible” - *RWP*, Bk III, I.II) applies here, but is the response *necessary* if capitulating to the request is also an option?

<sup>19</sup> President George W. Bush himself contended that Iraq possessed WMDs in a Radio Address discussing ‘Operation Iraqi Freedom’, saying “our mission is clear, to disarm Iraq of weapons of mass destruction, to end Saddam Hussein’s support for terrorism, and to free the Iraqi people.” See: ‘President Discusses Beginning of Operation Iraqi Freedom’, 2003, Accessed: <http://georgewbush-whitehouse.archives.gov/news/releases/2003/03/20030322.html> [1/8/12]. In the case of Iran, it is suspected

that a seemingly disproportionate response to a lethal conditional threat may not, in fact, be disproportionate.

### Policy recommendations

I want to conclude by offering some possible alternatives to preventive war, particularly in cases of WMD. Here I will make three policy recommendations, two of which are relatively commonplace and uncontroversial, and one which is more unusual. All three of these policies are directed toward risk management, rather than freedom-restriction.

The first is *prioritized defensive technology research*: preventive war is desirable because of the threat posed by WMDs. Therefore, defensive weapons technology whose aim is to render WMDs impotent should be of the highest priority. This is true not merely strategically, but also given the morally precarious status of preventive war.

The second is the *continuation of incentivised disarmament*. Risk of widespread harm is at its highest in a world where WMDs are commonplace, even as deterrents. If defensive technology proves successful in being able to render certain types of WMDs impotent, then the more powerful nations in possession of them should lead the charge toward disarmament. Even if one does not endorse rogue states' development of WMDs, one can understand it; compared to the sophisticated conventional weaponry available to the United States and its allies, WMD technology is cheap,<sup>20</sup> and provides a mutually-assured-destruction type of insurance against militarily asymmetric foes.

This leads to my third point. *Militarily powerful nations should share advanced conventional weapons technology with other states*. This notion is what Richard De George calls "The Principle of Assistance to One's Enemies,"<sup>21</sup> the argument in favour of it being that it removes the incentive for more hazardous types of warfare (including WMDs).

[The principle] is after all both defensive and intended to reduce rather than augment damage. So even if such weapons were used against the nation that developed them, the non-combatant population of that nation would be better off than if the aggressor nation used non-conventional weapons.<sup>22</sup>

Iran provides an excellent case study here. Although much of Iran's motivation is expansionary and unethical, the pragmatic motivation for an Iranian bomb is security against both the US and

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that Iran have weaponised some biochemical weapons "if only for defensive purposes". See: Anthony H. Cordesman & Adam C. Seitz, 'Iranian Weapons of Mass Destruction: Biological Weapons Program', *Center for Strategic & International Studies*, 2008, p. 16, Accessed: [http://csis.org/files/media/csis/pubs/o81028\\_iranbw\\_chapterrev.pdf](http://csis.org/files/media/csis/pubs/o81028_iranbw_chapterrev.pdf) [1/8/12]

<sup>20</sup> It is not easy for civilians to assess exactly how much a WMD development program costs, but the price of developing a nuclear program was estimate in 1993 at 200 million, whilst estimates of Iran's military spending budget, for instance, are close to \$6 billion. See: US Congress of Technological Assessment, 'Proliferation of Weapons of Mass Destruction: Assessing the Risk', US Government Printing Office, Washington DC, 1993, p. 10 Accessed: <http://www.au.af.mil/au/awc/awcgate/ota/9341.pdf> [8/8/12]

<sup>21</sup> Richard De George, 'Post September 11: Computers, Ethics and War', *Ethics and Information Technology*, Vol. 5, 2003, pp. 183-190 at p. 187

<sup>22</sup> *Ibid.*, p. 187

geopolitical rivals. Providing a means other than WMDs for Iran to defend itself might *help* to remedy the single-minded pursuit of nuclear weaponry that defines the Iranian political hegemony today.

Although the precise, advanced weapons may mean that more powerful nations like the US may suffer increased military casualties and costs if war is necessary, it does fulfil the goal for risk-minimization without freedom-restriction, which provides the benefits that preventive war seeks without the moral costs. It is also clear that although the technology be shared, there need not be funding provided for the technology; the increased cost will still allow states to remain militarily dominant, but will provide smaller states with an alternative to WMDs.<sup>23</sup>

### Conclusion

The risk of aggression and war is a cost of affording liberty to states; this is inevitable. Nations are therefore faced with a decision: either to remove the liberty of others, or accept a degree of risk in relationships with them. Preventive war presents an unreasonable view of the relationship between risk and liberty, and to see it as morally permissible requires the unjust prioritization of one's own national rights over those of other nations. Furthermore, preventive war in the age of WMDs presents a number of moral and prudential difficulties, not least that it seems that the most reasonable response to a lethal conditional threat is a disproportionate one. As such, just war theorists, international relations scholars and political practitioners alike should explore alternative policy avenues to those which have been employed in recent history. Such a solution might adequately minimize the risks posed to national security and sovereignty without requiring unjust intrusions on liberty.

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<sup>23</sup> This policy recommendation has been made before. See: Robert E. Hunter, 'The Iran Case: Addressing Why Countries Want Nuclear War', *Arms Control Association*, 2004, Accessed: [http://www.armscontrol.org/act/2004\\_12/Hunter](http://www.armscontrol.org/act/2004_12/Hunter) [8/8/12]