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A CONVERSATION WITH MICHAEL OREN

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Army Chief Chaplain Rabbi Shlomo Goren, surrounded by Israeli Defense Force soldiers of the Paratroop Brigade, blows the shofar in front of the Kotel ha-Ma'aravi, or Western Wall, during the Six-Day War, June 7, 1967. Built by Herod the Great, the Kotel is a segment of a much longer, ancient, limestone retaining wall that encased the hill known as the Temple Mount. Under the British Mandate of Palestine, the blowing of the shofar at the Kotel was criminalized, and from 1948-1967, when the Old City of Jerusalem was controlled by Jordan, Jews were denied access to the Wall entirely. Today, in accordance to agreements with Muslim authorities, the Kotel is the holiest place on earth where Jews are allowed to pray. Photo Credit: David Rubinger, Government Press Office.

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Saint Thomas Aquinas, by Carlo Crivelli, 1476. National Gallery, London. Source: Wikimedia Commons.

JUST PRUDENCE: DEFENDING AQUINAS ON PREEMPTION, PREVENTION, & DECISIVENESS IN WAR

ROBERT G. KAUFMAN

When martial force becomes necessary, the just war tradition has contributed nobly to mitigating the tragedy of war by instilling a disposition to avoid moral evil and to pursue instead the greatest possible good. As is well known, statesmen must satisfy two sets of requirements for a war to qualify as just: the *jus ad bellum*—when it is just to fight; and the *jus in bello*—how to fight justly. Beginning with Immanuel Kant, some just war thinkers have formalized a third requirement which Aquinas’s notion of *tranquillitas ordinis* (the tranquility of order) always implied: the *jus post bellum*—the justice of the post-war peace agreement, encompassing not only the details of the peace, but its enforcement and the broader context affecting its efficacy.¹

The just war tradition rightly requires a moral as well as geopolitical rationale for using military force, which statesmen ignore at their peril. The American people will not support long and costly wars unless they meet the dual requirements of being right as well as being in our self-interest. Yet modern religious and secular just war theories imperil rather than facilitate the achievement of provisional justice by making the use of force categorically a last resort.² The United Nations Charter contains an even stronger presumption against war than even the most restrictive versions of these modern theories, prohibiting the use of force with two exceptions: the

rare-as-a-solar-eclipse event when the UN Security Council overcomes its organic gridlock to sanction collective action; or else individual or collective self-defense against attack, as permitted by Article 51.³

This essay offers a robust dissent to these well-intended but unwise modern trends unduly to restrict the use of force. Ruling out anticipatory defense in various modes confounds morality and practicality, entailing a cure worse than the disease. Instead, prudence as St. Thomas Aquinas envisaged it—the cardinal virtue of right reason about right things to be done—ought to determine whether or not to use force sooner rather than

later in accordance with the other criteria for *jus ad bellum* Aquinas stipulates: rightful authority, just cause, and right intention.⁴ Aquinas maintains a wise silence on the question of precisely whether or when force should be used sooner rather than later.⁵ So should we.

Nor, as James Turner Johnson observes in his splendid analysis of the subject, does Aquinas elevate the requirements of proportionality in waging war to a near categorical imperative.⁶ On the contrary, the preeminence that Aquinas accords prudence as a moral virtue ought to inform the relationship between the requirements of *jus ad bellum* and *jus in bello*, with decisiveness

taking priority over proportionality when the two come in conflict. Aquinas's formulation of just war theory grounded in the cardinal virtue of prudence should loom large in any calculation of when, how, for what purposes, and to what effect the United States should wage war.

Whether the United States resorts to force sooner rather than later should be a prudential judgment, not a categorical one. Statesmen should weigh the interplay of the gravity of the danger, the probability of its realization, the availability of plausible alternative means, and the prospects for success. Although the burden of proof should be greater for resorting to force preventively (forestalling more distant threats) rather than preemptively (forestalling an imminent grave threat), and while the burden of proof should be greater for resorting to force preemptively rather than responding to attack, prudential statesmen ought to have prevention and preemption in their repertoire of options.

Experience is a stern teacher. We know from history that sometimes using force sooner can save much blood, toil, tears, and sweat later. No statesman speaks more authoritatively about that than Winston Churchill:

Still, if you will not fight for the right when you can easily win without bloodshed, if you will not fight when your victory will be sure and not too costly, you may come to the moment when you will have to fight with all the odds against you and only a precarious chance of survival. There may even be a

worse case. You may have to fight when there is no hope of victory, because it is better to perish than to live as slaves.⁷

We know that had the democracies heeded Churchill's warnings and stopped Hitler at various watersheds during the 1930s, particularly when Nazi Germany invaded the Rhineland on March 7, 1936, in violation of two international agreements, the worst war in history might have been averted. Hitler admitted as much, calling the first 48 hours of the Rhineland crisis the most nervous of his life, because French resistance would have caused his regime to collapse.⁸ Of course, we also know, given the nature of the academy, that *had* the democracies stopped Hitler sooner rather than later, generations of ungrateful professors would still be writing tomes complaining about preventive war and exonerating Hitler as a legitimate folk nationalist.

Nazi Germany hardly stands as a unique case when the actual, pre-emptive, or preventive use of force averted vastly greater moral and geopolitical evil. In July 1940, with Nazi Germany triumphant in Europe, the Soviet Union neutrally pro-Nazi, the United States still isolationist, and Great Britain clinging precariously to freedom, Winston Churchill ordered a preventive strike against the Vichy French fleet harbored in Oran, killing nearly 1,300 Frenchmen. He did this despite Vichy's nominal independence, which the United States recognized, and despite possessing no hard evidence that Vichy's Minister of War, Admiral Jean François Darlan, intended to turn the French fleet over to Hitler. Darlan insisted until his dying day that he had no

such intention. Yet Churchill was right not to risk jeopardizing Great Britain's maritime supremacy—especially given Hitler's serial mendacity, his malevolence, and the dire consequences of erring on the side of optimism at a point of maximum peril.⁹

During the Cuban Missile Crisis of October 1962, the Kennedy Administration may have launched a preventive attack against Soviet missiles deployed in Cuba despite no proof of an imminent threat of war had the Soviet Union not conceded under pressure to remove them. President Kennedy was right to consider the option. The United States could not risk allowing the Soviet Union to transform the balance of power to the detriment of our vital moral and geopolitical interests.¹⁰

In an issue featuring commentary on the Six-Day War, it's appropriate to mention Israel in this context. But we can look beyond the legitimately preemptive attack of 1967 to another case, June 1981, when Israel launched Operation Opera, a preventive strike against Iraq's nuclear reactor at Osirak. It was an attack which the United Nations unanimously condemned. Yet Israel was right. Otherwise, Saddam Hussein would likely have possessed a nuclear capability when he invaded Kuwait in 1990, by the reckoning of UN inspectors, which may have deterred the United States from responding decisively or, at least, would have exponentially raised the cost and risk of doing so.¹¹

Sticking to the region, the world should, again, thank rather than scorn Israel for launching a silent strike in September 2007 on a Syrian nuclear reactor at al-Kibar. Though Syria never

admitted to even having a reactor, let alone one with a military purpose, in the face of credible intelligence to the contrary, Israel was right not to tolerate a genuine, if not demonstratively imminent, threat that the rogue Syrian regime of Bashar al-Assad would cross the nuclear weapons threshold. Imagine how much worse the already horrible sectarian war raging in Syria would be if Assad possessed nuclear weapons. The tyrant's lack of compunction using chemical weapons on his own people does not inspire confidence that Israel's forbearance would have induced reciprocal restraint.¹²

For all our mistakes in execution, the tragedy and injustice of the Iraq War of 2003 is not found in President Bush's decision to fight it, but in President Obama's premature withdrawal, which snatched defeat from the jaws of victory. Saddam's bellicosity, propensity to take enormous risks, deception, the vigor of his pre-1990 WMD program, the brutality of his regime, the lack of any plausible alternatives for his removal, and his serial defiance of 17 UN resolutions more than justified President Bush's decision to forcibly remove him. Although, we plausibly overestimated the progress of Saddam's WMD program, as Churchill momentarily overestimated the state of German rearmament as of March 7, 1936. But even the Iraqi Survey Group's 2004 Duelfer Report, much used by many to "prove" the Bush Administration was wrong about Iraqi WMDs, cited in the first lines of its Key Findings summary that Saddam actively sought to reconstitute his WMD capability eventually.¹³ But additionally, and crucially, the strategy of containing and deterring Saddam also had passed the

point of diminishing moral and strategic return. Sanctions punished millions of innocent Iraqis without addressing the root cause of their misery and the source of danger—i.e., Saddam's odious regime. We succeeded provisionally in establishing an Iraqi regime more decent to its people and safer for its neighbors before all unraveled when President Obama used the alleged rather than real Iraqi refusal to negotiate a status of forces agreement as an excuse for leaving Iraq in the lurch.

Nor should the United States rule out categorically—on just war grounds infused with prudence—a preventive or preemptive attack against either North Korea's or Iran's nuclear programs. Both qualify as rogue regimes where conventional strategies of deterrence or containment may not prudently suffice under certain circumstances. The nuclear deal President Obama improvidently signed with Iran will aid and abet Iran crossing the nuclear threshold, even in the unlikely event the Iranians abide by it. The nuclear deal with Iran is also unverifiable—depending on Iran to provide access at its discretion to nuclear facilities—and unenforceable—depending on the UN Security Council to snap back sanctions in the event of Iranian non-compliance, which Russia and China would certainly veto. A nuclear, militant, and virulently anti-American Iran would trigger an unbridled arms race in the world's most volatile political region. In all likelihood, this Iranian regime will use the deal to wage war by other means, gulling the West into a false sense of security while steadily achieving a nuclear breakout capability.¹⁴ So the United States must keep on the table the option of a preemptive or preventive strike, should it

become the best of bad options. Thomas Aquinas's sparer but wiser tradition of just war theory infused with prudence would permit that. Many modern just war theories or the UN Charter imprudently do not.

II

A prudent statesman striving to be just must also weigh carefully Aquinas's third *ad bellum* criteria for a just war—that the war be waged with right intention for a rightly ordered peace, or what Kant would classify as *ius post bellum*.¹⁵ Our greatest military historians, such as Victor Davis Hanson and Geoffrey Blainey, have demonstrated that the most just and durable peace settlements usually occur when wars have decisive outcomes, eradicating the root cause of aggression, entailing regime change of a vanquished foe.¹⁶ This insight runs counter to modern just war thinking and international positive law, treating restraint and discrimination in the employment of force as co-equal or paramount virtues to decisiveness. Especially against implacable adversaries, it is better to err on the side of decisiveness rather than settle for an ambiguous outcome.

One of the major causes of World War II was the failure of the Treaty of Versailles to address the root cause of World War I. By October 1918, German generals knew they were beaten and forced the Kaiser to abdicate, expecting that a democratic German government would obtain more lenient peace terms. It did not appear to the German people, however, that defeat was inevitable or imminent as the German army retreated in good order with German territory unscathed. When the German people reacted with outrage to the Treaty of

Versailles—a treaty less harsh than what the Germans had in mind if they had won the war—the German generals did not admit Germany's defeat or the responsibility of the Kaiser's militaristic autocratic regime for the war. Instead, they mendaciously blamed the Weimar Democratic regime for "stabbing Germany in the back."¹⁷ Woodrow Wilson's insistence on accepting an armistice to minimize casualties rather than press for unconditional surrender—as Theodore Roosevelt and his own commanding general, John "Black Jack" Pershing, advised—had moral and practical consequences despite Wilson's good intentions. The Allies' unwillingness to enforce the Treaty of Versailles compounded the mistake of letting the Kaiser's regime off the hook in the first place. Hitler's diabolical exploitation of the stab-in-the-back myth facilitated his rise to power.¹⁸

President Franklin Roosevelt and Winston Churchill did not make the same mistake of letting understandable concerns for *in bello* proportionality trump their goal of decisiveness as a precondition for a rightly ordered peace. They would settle for nothing less than unconditional surrender and the total defeat of the Nazi regime in a manner so devastating that the German people could not deny it—perhaps a justification, or at least mitigating feature, of the allied strategic bombing campaign that technically lacked the capacity to distinguish civilians from combatants on the American side or to treat both categories as one and the same on the British side. Roosevelt's and Churchill's successors not only insisted on democratic regime change in Germany, but left sizable forces indefinitely without any premature exit to

enforce it, creating and sustaining the conditions for Aquinas's rightly ordered peace.¹⁹ Judged against the magnitude of the Nazi evil, the existential threat facing Western Civilization, the unavailability of effective alternatives to strategic bombing, and the essential decency of the Anglo-American allies, it is reasonable to declare justified even such an undeniably awful military action.

One of the major causes of the Iraq War of 2003 was the ambiguous outcome of the Gulf War of 1990-1991. We meant well, but we did no good in letting well-intentioned concerns for proportionality—best exemplified perhaps by prematurely stopping the bombing of the retreating, or repositioning, elite units of Saddam's Republican Guard on the so-called highway of death—ultimately allowing Saddam to survive and continue to oppress and menace for more than another decade longer. Conversely, a decisive outcome and democratic regime change would have improved exponentially the chances for a rightly ordered peace settling the root cause of aggression.

Granted, to paraphrase the immortal words of the Rolling Stones, the United States cannot always get what it wants. Sometimes, the weight of prudence dictates settling for less-than-total or immediate victory. During the Cold War, for example, nuclear weapons precluded the United States from defeating the Soviet Union directly by traditional military means. The Korean War of 1950-1953 is a prime example of a just war when fighting for less-than-total victory was a more prudential alternative than either capitulation or an all-out war. When, however, the United States does have to fight, it should be with

the strong presumption of striving for total victory in order to achieve a rightly ordered peace. This accords not only with St. Thomas's just war thinking, but the traditional formulation of the doctrine of double effect that Catholic casuists devised in the Middle Ages, conceptualizing the proper relationship between the requirements of *jus ad bellum* and *jus in bello*. Michael Walzer summarizes the four conditions of the doctrine.

1. The act is good in itself or at least indifferent, which means for our purposes that it is a legitimate act of war.
2. The direct effect is morally acceptable—the destruction of military supplies, for example, or the killing of enemy soldiers.
3. The intention of the actor is good.
4. The good effect is sufficiently good to compensate for evil effect.²⁰

In a triumph of good intentions over good judgment, however, Walzer imprudently imposes additional restraints on the *jus in bello* detrimental to achieving a decisive outcome essential for a rightly ordered peace. He recommends, for example, modifying the doctrine of secondary effect to oblige even the just side to expose their soldiers to greater risk to minimize even unintended but foreseeable enemy civilian casualties.²¹ This is untenable as a categorical imperative.

Normally, the beneficial effect of fighting to achieve total victory warrants prolonging the fighting, despite the increase in casualties that may alas include large numbers of traditional



Saint Thomas Aquinas, Protector of the University of Cusco, circa 1690. Museo de Arte de Lima, Peru. Source: Google Art Project, via Wikimedia Commons.

non-combatants. I defend, for example, the morality and practicality of the American strategic bombing campaign against Nazi Germany and Imperial Japan from start to finish, even though technology often precluded distinguishing between civilians and combatants, no matter what American bomber command argued to the contrary. As Richard Overy demonstrates authoritatively, strategic bombing shortened the war, saving hundreds of thousands and perhaps millions of lives—allied soldiers, German and Japanese soldiers thrust into battle as suicide warriors, concentration camp victims liberated from extermination.²² By my reckoning, such geopolitical and moral triage trumps *in bello* requirements of proportionality. A similar calculus justifies President Truman's decision to drop two atomic bombs on Japan—an action which the

preponderance of evidence suggests saved millions of lives, given the fanaticism and implacability of the Imperial Japanese regime committed to fighting to the finish despite their defeat being certain.²³ Decent statesmen should always deliberate rigorously whether less severe means could achieve the same result. Tragically, a prudent statesman sometimes must conclude no alternative plausible option exists to avert great moral and geopolitical evil.

The First Battle of Falluja between the U.S. and Islamist insurgents fought in April 2004 and Israel's 2008-2009 War with Hamas in Gaza illustrate the moral and geopolitical risks of honoring *in bello* proportionality as a near-categorical imperative even against implacable foes who embed themselves among civilian non-combatants as a deliberate strategy to take

advantage of our self-imposed *in bello* limits. In both cases, well-intended but imprudent restraint swelled the costs for all concerned in the long run, because the cancer of aggression recurred by stopping the fighting too soon, while decisiveness may have eradicated it once and for all.

Walzer defends a much narrower utilitarian ethic than I deem prudent, overriding *in bello* only provisionally as a near-one-time exception arising from "a supreme emergency": the overwhelming imperative of preventing a uniquely-evil Nazi regime's victory and overrunning of Western Civilization.²⁴

Finally, my defense of a more traditional version of just war theory infused with prudence raises the legitimate question of whether this standard adequately constrains the temptations for the United States to define its own interests too selfishly and, in defending these interests, to abuse the prerogatives of prevention and preemption that I've justified. Are not slavery, our treatment of Native Americans, and our internment of Americans of Japanese descent during WWII sobering reminders that we Americans often fall far short of our ideals? My answer rests on probabilities rather than certainties—the firmest if imperfect basis that this subject matter admits. For all our shortcomings, life is, in the words of Thomas Hobbes, much more "nasty, solitary, brutish, and short" when the United States retrenches and retreats. The greatest dangers to American ideals and self-interest arise not when the United States is too strong but rather too weak and irresolute in confronting the devils that lurk around the corner in international relations, even in the best

of times. Also, because democratic statesmen act on behalf not of themselves but of their citizens, they already face the salutary checks and balances of having to discharge a greater burden of proof to use force in the first place. As David Hackett Fischer observes, our founders and the leaders of the American Revolution never believed winning was enough. "One of their greatest achievements," writes Fischer, was to wage the war "in a manner that was true to the expanding humanitarian ideals of the American Revolution." That holds largely true of America's major wars ever since. American statesmen have honored the principle—usually not in the breach—that the United States must fight and win wars in a way consistent with the values of the Declaration of Independence, the American Founding, and the principles of its cause.²⁵

The just war tradition, as Aquinas conceived it rather than as more restrictive modern versions do, strikes the best prudential balance reconciling the desirable with the possible, consistent with Judeo-Christian ethics rightly understood. Aquinas knows more than his modern emendators do about grounding his just war deliberations—and much else—in the cardinal moral virtue of prudence. P

Robert G. Kaufman is the Dockson Professor of Public Policy at Pepperdine University. His most recent book is *Dangerous Doctrine: How Obama's Grand Strategy Weakened America*. This essay was written as part of Pepperdine's "The American Project: On the Future of Conservatism," a

two-year program to propel innovative ideas for reimagining the future of America's conservative movement.

(Endnotes)

1 The literature on just war theory is vast. The works of Michael Walzer and James Turner Johnson rank high in the pantheon of writing on the subject. See, for example, Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, fifth ed. (New York: Basic Books, 2015); James Turner Johnson, *Just War Tradition and the Restraint of War: A Moral and Historical Inquiry* (Princeton; Princeton University Press, 2014). For more recent worthy studies, among others, see Alex J. Bellamy, *Just Wars from Cicero to Iraq* (Malden, MA: Polity Press, 2006); and James Dubik, *Just War Reconsidered: Strategy, Ethics, and Theory* (Lexington: University Press of Kentucky, 2016).

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3 Charter of the United Nations, <http://www.un.org/en/charter-united-nations/>.

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12 David Makovsky, "The Silent Strike: How Israel Bombed a Syrian nuclear installation and kept it secret," *New Yorker*, September 17, 2012, newyorker.com.

13 Robert G. Kaufman, *Dangerous Doctrine: How Obama's Grand Strategy Weakened America* (Lexington and London: University Press of Kentucky, 2016), 106-11.

14 *Ibid.*, 203-209.

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16 Victor Davis Hanson, *The Soul of Battle: From Ancient Times to the Present Day: How Three Great Liberators Vanquished Tyanny* (1999; rept., New York: Anchor Books, 2001); and Geoffrey Blainey, *The Causes of War*, Third ed. (New York: Free Press, 1988), 3.

17 See, for example, Michael Burleigh, *The Third Reich: A New History* (Hill and Wang, 2001), 1-145.

18 Robert G. Kaufman, *A Tale of Bad to Worse: Progressivism and American Foreign Policy from Woodrow Wilson to Barack Obama*, Heritage Foundation, First Principles Series (forthcoming).

19 Michael Beschloss, *The Conquerors: Roosevelt, Truman, and the Destruction of Hitler's Germany, 1941-1945* (New York: Simon and Schuster, 2002), 13-19.

20 Walzer, *Just and Unjust Wars*, 153.

21 *Ibid.*, 153-57.

22 Richard Overy, *Why the Allies Won* (New York: Norton, 1996), 101-133; Richard Overy, *The Bombing and the Bombed* (London and New York: Penguin, 2014), 171-230, 428-37.

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