

## **ON JUSTIFYING THE FIRST BLOW**

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## ON JUSTIFYING THE FIRST BLOW

Tom Rockmore

The National Security Strategy of 2002 (NSS 2002) authorizes first-strike, or preventive, military action under the guise of providing a new and (substantially) different meaning to the term “preemptive” warfare. In examining the distinction between preemptive and preventive military strikes, this chapter focuses on the justification of war of any kind. In the framework of the so-called war on terror, in an unusual use of the term “preemption,” what would ordinarily be called preventive military action is currently being applied in the war against and continuing occupation of Iraq. In standard usage in policy and scholarly circles, as distinguished from the term “prevention,” the term “preemption” refers to a military strike that prevents an adversary from inflicting an attack that is imminent. A good analogy comes from martial arts. An attacker begins an attack, say through launching a punch to the jaw; the person about to be struck preempts the blow with a kick to the stomach of the attacker. To continue the analogy, a preventive attack is one in which the attack is not expected in the immediate future. For example, if the United States launched a “surgical strike” against North Korea targeting all of its nuclear facilities and weapons (on the grounds that it expected a nuclear attack from North Korea in six months) the U.S. attack would be considered preventive, not preemptive. Since in both cases, the adversary possesses the capacity and presumably desires to launch an attack, one important difference between military preemption and military prevention concerns whether the attack is imminent or only extremely likely in the near future.

In the final analysis, war of any kind can only be justified on moral grounds, which, on an average, ordinary interpretation restricts military action to defensive responses, or preemptive attacks.<sup>1</sup> By “morality” I have in mind the well-known distinction between what one does (or conceivably could do) and what one ought to do. Since all actions of any kind are not necessarily moral, what one does or conceivably ought to can only be regarded as moral if the principal which motivates one’s acts is moral. This conception of morality presupposes Scottish philosopher David Hume’s notorious is-ought distinction, which has generated so much discussion. In simplest terms, suffice it say that actions can be chosen for (and justified in terms of) prudential, utilitarian, religious, military, medical, political, legal or other reasons. Actions are said to be moral if and only if the principle on which they are chosen concerns what ought to be the case. I will suppose that in time of war, when two or more countries are opposed in armed conflict, it is justified to take a person’s life if and only if to do so is the only realistic way to protect citizens against the consequences of foreign aggression. I will further be arguing that, from this angle of vision, what is being called “preemptive” war in Iraq, and which corresponds to a version of what until now has usually be called preventive war, is simply unjustified.

## WHAT IS “PREEMPTIVE” MILITARY ACTION?

Since I think that the new national security doctrine radically revises standard terminology for a specific purpose, much of the work of the paper will consist in analyzing the differences and consequences with respect to standard usage. In English, “prevention” is an ordinary word that is usually employed with the sense of stopping or arresting someone or something. “Preemption” is a less frequent term that is usually often utilized with respect to property. Thus the right of eminent domain can be exercised by a governmental entity in certain specifiable conditions. An example might be when a city or local government, in order to build a road, expropriates property a citizen owns but does not desire to sell.

In normal usage, the terms “prevention” and “preemption” function asymmetrically. For normal purposes, “prevention” includes “preemption,” but “preemption” does not, or normally does not, include “prevention.” If I prevent you from doing something, I am not normally preempting you in any way. Yet if I preempt you, I am also preventing you. If this is correct, then it follows that “preemption” is a subclass with the wider concept of “prevention.”

This link, which occurs in normal English usage, is apparently absent in normal scholarly discussion. In standard scholarly usage, the link between “prevention” and “preemption” is severed since these terms refer to different types of military threats in different, discontinuous time frames. In NSS 2002, the link is reestablished since there, “preemption” is made to refer to the normal objects of both “preemption” and “prevention.”

In a passage devoted to “weapons of mass destruction” (WMD), NSS 2002 says in part that, “The U.S. has long maintained the option of preemptive actions to counter a sufficient threat to our national security” and then adds, “ even if uncertainty remains as to the time and place of the enemy’s attack . . . . to forestall or prevent such attacks, the United States will, if necessary, act preemptively.”<sup>2</sup>

What this amounts to is unclear and controversial. The unclarity and controversy concern both the precise nature of the new doctrine and its desirability as a relevant part of NSS 2002. In part, the difficulty is purely linguistic and due to the fact that ordinary words are arguably being used in unusual and possibly inconsistent ways.

A rough way to put the point is that it is usually accepted that preemptive military action, that is, military action directed against a clear and present danger, is acceptable, but preventive military action, that is, military action directed against a future but not imminent danger, one that may or may not someday occur, is not legitimate. The same point can be restated in terms of the intuitive test of a clear and present danger. Preemptive military action is justified in cases of a clear and present danger, which currently exists. But preventive military action, which reacts by anticipation to a potential danger that may never materialize, that is, may never become a clear and present danger, is not justified.

The difficulty in understanding “preemptive” military action is that NSS 2002 uses this term in an unusual, non-standard sense. This revision specifically authorizes so-called preemptive military action by calling “preemptive” that which, in normal usage, falls under the heading of “prevention.” As a result of this revision, there are two purely linguistic changes, which taken together result in a doctrine that specifically authorizes what used to be called preventive military action. On the one hand, the old distinction between the terms “preemption” and “preemption” is simply obliterated, since “preemption” now covers what earlier was known as preemption as well as prevention—that is, both a clear and present danger and a possible future danger. On the other hand, as a consequence of the new usage of “preemption,” “preemption” replaces what used to be called “prevention.”

Scholars are clearly confused about what is being said as well as its lessons and consequences. A number of observers, including Chomsky, Kröning, Freedom, Schlesinger, Knight and Crawford,<sup>3</sup> detect a deliberate effort to conflate doctrines of preventive and preemptive war. According to Chomsky, who employs the terms “prevention” and “preemption” in their ordinary scholarly senses, the new strategy authorizes preventive but not preemptive war.<sup>4</sup> Chomsky restates a more developed version of this claim in a recent book by utilizing the term “preemption” in the new, non-standard way outlined in NSS 2002. In referring to the difference between preemptive war (“whatever that might be”) — he imagines a case in which Russian bombers are approaching the U.S. with clearly aggressive intent — and preventive war (“which falls within the category of war crimes”) where the latter justifies “the use of military force to eliminate an imagined or invented threat.”<sup>5</sup> Volker Kröning, a Member of the German Bundestag, refers to the U.S. Department of Defense’s own *Official Dictionary of Military Terms* to suggest, plausibly in my opinion, that the new U.S. doctrine really favors preventive war.<sup>6</sup> Lawrence Freedman thinks that the new U.S. use of “preemption” means “prevention,” as when steps are taken to prevent disease before it starts, such as through vaccination.<sup>7</sup>

The scholarly confusion is warranted since the term “preemptive” is being used, perhaps deliberately, in a non-standard way that extends and broadens the justification for the U.S. to wage war against real or imagined adversaries. The consequence is to turn on its head the very idea that military action should be defensive only, hence, initiated in response to an attack already underway, or at the very least which is already looming, about to occur, in authorizing attacks on adversaries in response to no attack at all. The result, which is arguably deliberately sought in the revised doctrine, is to extend the legitimacy that would normally be accord to a preemptive strike, understood a response to a clear and present danger, which no one other than a pacifist normally questions, to what would normally be regarded as a preventive strike, whose justification is not automatic, and which requires a highly unusual case by case defense as well as a general justification. On the contrary, as a result of the new language, in simply conflating what would normally be regarded as preemptive military strikes with what would

normally be regarded as preventive military strikes, the doctrine now in force obliterates any difference in authorizing the extension of what would normally be a reaction to a clear and present danger, hence to an actual situation, to be extended to any potential situation whatsoever.

The new doctrine deserves careful scrutiny. The statement that “The U.S. has long maintained the option of preemptive action to counter a sufficient threat to our national security” both conflates the normal use of the terms “preemption” and “prevention” as well as suggesting that a threat of any kind invites a military response when it crosses an unspecified sufficient threshold. As the doctrine is worded, crossing a sufficient threshold might include a specific threat, such as the verified use or even simply the discovery of nuclear, biological or chemical weapons in Iraq, which in turn justifies military action to eliminate threats posing a clear and present danger. Or it might include reference to the bare possibility that though Iraq does not now possess nuclear, biological or chemical weapons, it might conceivably have such weapons at an unspecified future time. In the latter case, there is no clear and present danger, though such a danger might later exist at some point in the future. The NSS 2002 seems to leave what is being said completely indefinite in adding the words “even if uncertainty remains as to the time and place of the enemy’s attack.”<sup>8</sup> It is reasonable to infer that the change in terminology and hence military doctrine is not accidental, but intentional, a strategic move designed to gain further space for military action that would not otherwise be permissible. I believe that the claim being made shifts attention from a clear and present danger, hence from the response to an immediate threat, to a threat that is situated in an indeterminate future, without distinction between these two possibilities.

My view presupposes that there is a relevant difference between an immediate threat, which in fact presents a clear and present danger, and an undefined future threat, which, at some later time will, or at least possibly might, become a clear and present danger, but which does not now present that characteristic. In other words, the revised version of NSS 2002 can reasonably be construed as referring not only to presently existing threats, which have already “materialized” as it were, and which call for immediate action, but also to future threats that might never “materialize,” but against which military action is justified. It seems reasonable to suppose that though many things are indeed possible, and the security of the U.S. might later be threatened in many different ways, some of these possible threats will in remaining strictly potential never become actual. It seems obvious that if Iraq did not possess unconventional weaponry at the time it was attacked by the US, as a result of the attack and the subsequent occupation it is highly unlikely to possess them in the near or even in the distant future.

The distinction on which my claim rests is controversial. Some observers might not want to admit my assumption that there is a difference between military action in regard to a clear and present danger and military action in regard to a danger located only in an indeterminate future. This distinction, which many find crucial, can be denied in various ways. One is to say that the mere capacity to develop such

weapons is, or at least should be regarded as, tantamount to actually possessing them. A further, more extreme claim is that there is no difference between having such weapons at a time in the past and having them again in the future. In an interview with Diane Sawyer on ABC Television, President Bush, who was obviously interested in justifying the invasion of Iraq, took both approaches simultaneously. In answer to the “hard fact that there were weapons of mass destruction, as opposed to the possibility that [Saddam] might move to acquire these weapons, “ the President’s considered response was “What’s the difference?”<sup>9</sup> He then added: “I’m telling you I made the right decision for America because Saddam Hussein used weapons of mass destruction and invaded Kuwait.”<sup>10</sup> The first passage in effect says that there is no difference between the fact that someone now possesses nuclear, biological, or chemical weapons, or might conceivably later acquire them, between a mere potential to possess weapons and actually possessing them, since in both cases military action is equally justified. The second, more extreme passage suggests there is no difference between once having had such weapons in the past and possibly later possessing them in the future for precisely the same reason.

Now in the heat of the moment, Bush, who is not a trained scholar, and who has never been seriously accused of having intellectual pretensions, could be using words imprecisely or even simply for political effect. Yet the perhaps intended result is to deny the well-established practice of distinguishing between a reaction based on a clear and present danger and one that might never materialize. To recur once more to the Iraq example, from Bush’s perspective, there seems to be no significant difference between the fact that Iraq once possessed nuclear, biological, or chemical weapons, now possesses them, or may later possess them in the future.

The NSS 2002 doctrine of preemptive military action can be construed in different ways, all of which are troubling. The radical view that henceforth the only acceptable defensive policy is a “preemptive” military stance, understood as military prevention extending to threats that have not and might never become actual, simply threatens the permanent possibility of naked aggression. This view, which features the argument that a defensive, or preventive, posture is inadequate in practice, abandons any connection between the specific case and the specific response, as in the adage that the punishment must fit the crime. In its place, the new doctrine offers a general response to any and all cases in relying on the revised conception of preemptive warfare through an enlarged conception of legitimate defense as charged with anticipating and countering any possible threat in advance. In effect, this is a form of the Old West so-called cowboy approach of shooting first and asking questions later.

The new “preemptive” view of national defense as attacking first and asking questions afterward is held at the highest levels of the Bush administration. For instance, President George Bush has said: “Terrorists and terror states do not reveal these threats with fair notice, in formal declarations – and responding to such enemies only after they have struck first is not self-defense, it is suicide.”<sup>11</sup> This

statement, which reflects a short term political intention, retrospectively justifies the preemptive attack on Iraq that actually occurred on the grounds that this was and remains, even now when the fraud concerning unconventional weaponry has been thoroughly exposed, the only adequate response. I take Bush to be suggesting that in his opinion the U.S. was in effect faced with a clear and present danger of such magnitude that the only reasonable course of action was to strike first before being struck, since an Iraqi strike on the U.S. was likely to be so devastating as to impede, or even to prevent, an adequate response. If granted, this point would effectively destroy any distinction between preemption and prevention as these terms are usually understood in suggesting that when the dust settles prevention rather than preemption is the just course of action, or in the terms of the NSS 2002 “preemption,” since, in a time of nuclear, biological and chemical weapons, the permanent possibility of an anticipatory form of “preemptive” war against real or simply imagined threats is the only responsible military stance.

This suggestion, which has the undoubted political merit of playing well in the hustings, and perhaps betrays the irrational fears of certain neo-conservatives who claim to detect real and imagined enemies everywhere, is difficult to take seriously. In the case of Iraq, such capable observers as Hans Blix, David Kay and Lord Butler say there never have been reliable reasons to believe such weapons existed at the time the U.S. decided to invade. All indications now point to the idea that a number of important figures in the Bush administration, including Bush himself, but also Wolfowitz, Rumsfeld, Rice, Cheney and others were committed to the idea of invading Iraq even before they came to power.<sup>12</sup> Even had there been such weapons, it does not follow that military aggression is the only or even the best course of action. Negotiation rather than war, where negotiation is still possible, is always the better alternative, as the US, which attributes the possession of WMD to North Korea, is now sporadically negotiating with that country. Other responses can be imagined which might be more useful than a military conflict in which human beings will be certainly killed. In the case of North Korea, where there is large-scale hunger, shipments of food and technical aid directed toward helping them to feed themselves, which would ameliorate the situation and perhaps reduce the military threat to others, is arguably preferable to launching a war.

The idea that a preemptive military response is the preferred course in all, or even the majority of, cases, hence the only responsible way to react to a possible future threat, simply fails since it cannot be shown that other responses are not better. “Preemption” as it figures in the new doctrine, or what is usually called prevention, can also be interpreted more moderately as selective preemption. According to this interpretation, a posture of military “preemption,” understood in the sense of a preventive attack against a foe that is not yet looming, is justifiable, if not as a rule in all situations, at least under some specifiable circumstances. When all else fails, the preemptive option, that is, the possibility of a military strike against a really existing threat, must still be on the table.

Even a selective use of “preemptive” military action as the new NSS 2002 doctrine redefines it appears problematic. A recent Brookings Policy Brief points out, it is difficult to distinguish “justifiable preemption [that is, as this term is now redefined in NSS 2002] from unlawful aggression in ways that will gain widespread adherence abroad.”<sup>13</sup> The authors of this Policy Brief are worried about whether, if this distinction cannot be defended, this particular policy might not result in justifying the opposite intention, that is, unjustified military strikes when a real threat is not already present or looming. They seem to believe that if the U.S. can win the hearts and minds of its allies and critics around the world, then what the NSS 2002 deems preemptive military action is acceptable. Implicit in this reasoning is the idea that there are at least some identifiable situations in which preemptive military action, that is, not as the term is usually employed, but as it is redefined in the NSS 2002 doctrine, is not only justified but even a good thing to do. If this were true, then a policy of preemptive unilateralism would be justified as long as others agreed to it.

This view is absurd and very dangerous. Though reputable thinkers continue to conflate consensus with truth,<sup>14</sup> this is a deep mistake. The idea of basing politics on what people seem to desire has led to the widespread practice of incessant public opinion polls, a practice which is as widespread in Europe as in the US. But agreement, or consensus, however obtained, has absolutely nothing whatever to do with truth, which does not depend on the fact of actually being believed. In the 1930s a large number of Germans agreed to a series of policies that Germans and others now find reprehensible, and no one, except the odd unrepentant Nazi, still regards as true.

#### ON JUSTIFYING WAR

There is an important distinction between the morality of going to war, and the morality of how it is conducted. A war can be morally justified, but carried out in a morally unjust manner; or morally unjust, but fought in a morally just manner. Whether the Vietnamese War was morally just—and I believe it was not—has no bearing, none at all on the moral injustice of the massacre perpetrated at My Lai.<sup>15</sup> The scandal at Abu Ghraib prison near Baghdad focuses attention on persistent disregard of human rights by the U.S. in Afghanistan, Guantanamo Bay, Iraq, and perhaps elsewhere, but says nothing at all about the legitimacy of the war in and occupation of Iraq.

Wars can and have been “justified” in a large variety of ways. An incomplete list, all of which have at one time or another been invoked for the war in Iraq, might include the mere whim of the maximum leader, electoral imperatives, the political ability to obtain authorization, a religious belief that this is God’s will, to gain access to fossil fuel, to deflect attention from interior political and economic difficulties, to respond to a real or imagined threat of some kind in the name of national defense, or in terms of national interest broadly defined, and so on. Certainly, it is not enough to say that a given war is

conducted according to rules, for instance military or legal rules, or the rules of the Geneva Convention, since the rules themselves require justification.

Since all justification of war of whatever kind ultimately comes down to claiming that a particular war in a particular time and place is legitimate as necessary to protect human beings, all efforts of whatever kind to legitimate not war itself, but a particular war, presuppose a moral justification. Yet even when a moral justification can be given, there are important moral limits to what one can do in ordinary and even in extraordinary times if our actions must respect other people not merely as means to an end but as ends in themselves. More generally, war must protect the citizens of one country while respecting as much as humanly possible the lives of others. This is obviously one of the things that was not being done at Abu Ghraib, hence one of the reasons why it is so important in focusing our views about this war.

The general idea that some individuals, or groups, have privileged access to mind-independent reality is the basis of all just war theories. Just war theories, which are rooted in theology, hence are grounded in faith rather than reason, invoke the support of sacred texts to justify military action. Just war theories are interpreted to suggest that a particular course of military action is sanctioned by, or at least generally agrees with, divine authority as understood by one group of believers, though not necessarily by other groups of believers. For a religious believer, it makes sense to claim one ought to carry out the divine will, if necessary through military intervention. In a just war theory, the grasp of reality as mediated through the authorized interpretation of the sacred texts of a particular religion justifies military action, though, since religions and their interpretations differ, not necessarily the same military action.

There are at least three insuperable difficulties in any known form of just war theory. First, a theological justification of war is only convincing to someone who accepts the specific religious framework on which it rests. An atheist, agnostic, or even a religious believer, who doubts claims to know God's (or Allah's) mind, will probably not be convinced by reference to sacred texts. Second, there is no rational, non-arbitrary way to distinguish between a correct ("true") and an incorrect ("false") identification of what a given religion requires of its faithful. The strife of textual interpretation, including interpretation of sacred texts, is literally endless. There is no way to know one is getting it right, hence no way, other than through arbitrary decision, to be sure one is carrying out the dictates of a particular religion, let alone to justify military action based on religious insight. Third, there is also no rational way to distinguish between actions which religion in general, as opposed to a specific religion, approves or disapproves. For instance, a distinction cannot be rationally drawn between the Bush administration's wars in Afghanistan and Iraq and the *jihad* (or "just war") launched by Osama Bin Laden and his Muslim associates, each of whom appeals to a primitive, intuitive concept of just war to justify its actions.

War is a form of social action in which some individuals try to inflict grievous bodily harm on others in the course of furthering their ends. A moral approach to the justification of military action

differs from Platonism, which insists on knowing the real, in abandoning any claim to know the mind-independent world as it really is and from just war theories in relying on reason as opposed to religious faith as its guide. A moral approach to war relies on the mere force of argument to legitimate military action. It seeks to determine what it is right to do in a given situation in formulating arguments an impartial observer might find convincing.

If morality requires us to treat each individual as an end and not as a means, then it is moral, hence justified, to defend those who are attacked; but it is immoral, hence unjustified, to attack others, to attempt to take lives through military action, when one has not been attacked in a way which puts one's life in danger. It follows that defensive, or preemptive, war, war intended to respond to a clear and present danger, including an ongoing or clearly looming attack is moral, hence licit, or justified. But what the Bush administration calls "preemptive" war, that is widely regarded as preventive, or offensive, war, designed for a situation when an attack is not clearly in the offing, when it may not ever take place, is immoral, hence illicit, or unjustified.

If war must be moral, then it cannot be offensive and can only be defensive. This rules out the very idea of justifying war in general. It seems obvious that in the case of the wars in Afghanistan and Iraq, this test was not met. No one pretends that Afghanistan attacked the US. At most, it is claimed that one or more terrorist organizations operating from within Afghanistan carried out an attack on the US, which does not morally justify attacking and destroying Afghanistan in response.

If the punishment must fit the crime, then the military response in a case of aggression must be proportional to, hence cannot exceed, the nature of the harm inflicted. A proposed war of self-defense of legitimate interests becomes illegitimate if the means employed do not take into account and respect the limits of the particular situation.

A religious approach, which regards life as intrinsically sacred, as an ultimate value, cannot permit the taking of life ("Thou shalt not kill") even for the supposed purpose of realizing God's will.<sup>16</sup> To be consistent, religious thinkers should forbid war of any kind in adopting pacifism as the only justified stance in response to aggression. Yet from the moral point of view, it is legitimate to take the lives of human beings understood as ends in themselves and never as means to an end in the course of defending the lives of other human beings.

#### MILITARY ACTION WITHOUT JUSTIFICATION (OR MIGHT MAKES RIGHT)

So far I have assumed that war requires an adequate justification and, as concerns the new NSS 2002, which authorizes preventive warfare under the heading of "preemptive" warfare, none can be given. This is unlikely to trouble the Bush administration and their foreign policy friends since the idea that

scholarly or even informal justification is required before they turn to military action is not an important concern. But suppose we take the line that none needs to be given since international relations is a field that has nothing at all to do with morality, which has no role to play in the international arena?

The central foreign policy theme of the present Bush administration can be summed up as the claim that a powerful nation like the United States does not need to pay attention to what others want since it can do as it pleases. This suggests that the might of the US, the world's only remaining superpower, is itself a sufficient justification for whatever it wants to do. The only limit on U.S. action lies in its power as a nation, which entitles it to do as it pleases. The idea that might makes right suggests that we can somehow get beyond the need to justify what we do.

Garry Wills refers to Bill Clinton's summary of his approach to foreign policy as cooperating whenever possible and going alone only when we must, and to George Bush's view as going it alone whenever possible and cooperating only when we must.<sup>17</sup> This insight sums up the Bush view that there are no limits on its foreign policy, hence none as concerns military actions. Since 11 September 2001, under the transparent guise of responding to terrorism, which is legitimate, the U.S. has illegitimately waged war against, as well as substantially destroyed, and occupied Afghanistan and Iraq. It has further restricted civil liberties in an important way within the U.S. and undertaken to intern so-called enemy combatants in a kind of legal limbo in defiance of international conventions and even U.S. law at Guantanamo Bay for an indefinite period.<sup>18</sup>

The idea that military actions do not require moral justification since might makes right, which apparently inspires the Bush Administration in its conduct of foreign policy, is almost as old as Western philosophy. In the first book of the *Republic*, written some two and a half millennia ago, Socrates draws attention to a distinction between what is consistent with the prevailing set of laws, hence is legal, and what, though not necessarily legal, is advantageous, or useful to at least some individuals. He has in mind the idea that the rulers of the state may be wrong about where their advantage lies. In countering Socrates, Thrasymachus, who has often been seen as presenting a cynical form of realism, argues that "right" has no natural meaning, and merely means whatever the strongest elements of the state decree it to mean, pointing to the idea often abbreviated as the claim that might makes right. This view has been influential in later political theory as well as in political practice. It is the view that Thucydides attributes to the Athenians in their unsuccessful negotiations with the Melians, and that Machiavelli later restates in his view that the true statesman must not acknowledge any moral limits on his effort to garner power.

The main difference in the present situation is that, because of intervening technological advances, the situation is now unlike anything Plato or even Machiavelli ever contemplated. For the world's only remaining superpower as well as a number of other countries (e.g. Russia, probably France and the UK, possibly Israel and China, and potentially India, Pakistan, and perhaps Iran), and indeed any

other nation in possession of a sufficient number of nuclear weapons with reliable delivery vehicles and the willingness to use them are in a position to destroy the world. Yet in other respects, Socrates' rejoinder remains appropriate. While it is true that a strong country, such as the US, the strongest country the world has ever seen, can, within constantly changing limits, do virtually as it wishes, in the Bush version of foreign policy that is mainly unconcerned to justify its actions either publicly or privately, the U.S. often acts in ways that for an independent observer might seem to run contrary to its deeper interests. Thus the invasion of Iraq, which is contrary to international law, including the Charter of the United Nations, weakens rather than strengthens the legal ties binding the various nations together, hence encourages other violations of international law in what is deemed national interest. This invasion can only be counterproductive in failing to reach its objective if the establishment of democracy as the end in view, since meaningful forms of democracy cannot be imposed by force from above but must rather emerge from below as it were. Further, the failure to respect even the most elementary form of human rights in dealing with enemy combatants, as symbolized by the scandal at Abu Ghraib, which, like My Lai for the war in Vietnam, will forever be the symbol of the invasion and occupation of Iraq, simply destroys whatever good will might have accrued to the U.S. as a result of the idea of liberating Iraq from Saddam Hussein.

#### CONCLUSION: PREEMPTIVE WAR, PREVENTIVE WAR, AND MORALITY

NSS 2002 authorizes offensive, first-strike, preventive, or in its revised use of terminology, "preemptive" military action, as opposed to a defensive reaction to a prior or ongoing attack. The intentions of the Bush government seem clear: in pursuit of its purposes, it has announced its intention to wage war against literally any country without restraint of any kind, undeterred by international law, multilateral or bilateral treaties, or international organizations in what looks very much like an effort to attain and maintain global hegemony.<sup>19</sup>

In ordinary scholarly usage, preemption relates to defense as prevention relates to aggression. Preemptive military action suggests by definition that the country contemplating it has already been or shortly will be attacked. Preventive military action, what the NSS 2002 calls "preemptive" military action suggests the country contemplating it has not so far and perhaps might never be attacked, but is justified in going to war. Advocates of the new view of justified "preemptive" military action, who presumably invoke a widened concept of defense (e. g. the best defense is a good offence) see the very possibility of a future attack as warranting such a response in advance.

The practice of preventive warfare is not new. There have always been countries which attacked other countries without being attacked on the grounds of legitimate self-defense. Prevention is sometimes conflated with "anticipatory self-defense," which recognized by Article 51 of the UN Charter.

Anticipatory self-defense is not aggressive, thus not preventive, but defensive, hence preemptive. It is often suggested that when Israel launched a military strike on Egypt in 1967 in opening the Six Day War at a time when Egypt's forces were massively deployed in the Sinai, this was an instance of anticipatory self-defense. Since in this case, a clear and present danger was identifiable as imminent by all observers, one can say that anticipatory self-defense, as illustrated at the outset of that war, constituted a variation on the theme of legitimate self-defense against aggression.

Partisans of the Bush doctrine of "preemptive" military strikes like former National Security Adviser Condoleezza Rice present it as merely old wine in new bottles.<sup>20</sup> In part this is correct, since U.S. history is littered with preventive strikes, often on weak, virtually defenseless targets, for instance the unprovoked attack on Grenada. Yet in another sense, this doctrine is genuinely new, a clear break with past U.S. practice, which has long been based on a defensive posture. As a veteran Sovietologist, Rice should know that the U.S. policy throughout the cold war period was based on mutual *détente* for defensive purposes, not preemptive aggression.

But, one can ask: if we knew that a particular country harbored aggressive intentions toward another country, intentions which were likely or even possibly might later lead to aggression, would that be sufficient to justify preemptive military action? For instance, it might be argued that rather the sign a treaty with Nazi Germany in 1938, the allies would have been well advised to launch a preemptive war against Nazi Germany.

This question raises a problem that is not easily answered in an imperfect world, where the future cannot simply be deduced from even the most thorough knowledge of the past. In a perfect world, we would be able to forecast with certainty what will necessarily later occur. Yet no one suggests this is currently the case, and the information currently at our disposal in the field of foreign affairs appears woefully inadequate as a moral basis to justify killing other people.

If one knew with certainty that a situation posing a clear and present danger would surely later develop, it would be difficult not to have recourse to military action as a legitimate response when the lives of one's citizens would clearly later be in danger. But since no one knows the future, it is self-serving to claim that the possession of unconventional weapons and the putative intention to acquire them are really one and the same. At most we know that at this time there is no reason to think that Iraq possessed nuclear, biological or chemical weapons, hence there was in fact no clear and present danger justifying a preventive war and occupation of a sovereign country. And since we do not know that Iraq was certain to have unconventional weaponry at a future time, it was also unjustified to wage a preemptive war against Iraq.

I come now to my conclusion. The Hobbesian mindset of the Bush Administration reflects a kind of bunker mentality in which the US, understood to be under attack from all quarters, is mightily

defending itself against real or imagined enemies everywhere. According to this model, a responsible form of national defense must on occasion be preventive, or what in the new lingo is now called “preemptive” war in order to defend American democracy. Yet “preemptive” war, as NSS 2002 understands it, and which is in fact a form of preventive war, is not the most adequate way to defend U.S. democracy, is never morally justified and, for this reason, should never be allowed to occur.

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<sup>1</sup> For further discussion, see Robert Holmes, *On War and Morality* (Princeton, Princeton University Press, 1989); Jenny Teichman, *Pacifism and the Just War* (Oxford: Oxford University Press, 1986); and Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977).

<sup>2</sup> United States, White House Office of Homeland Security, "The National Security Strategy of the United States of America," September 2002, <<http://www.whitehouse.gov/nsc/nss.html>>.

<sup>3</sup> See Arthur Schlesinger Jr., "Eyeless in Iraq," *The New York Review of Books*, 23 October 2003; Charles Knight, "First Strike Guidelines: the case of Iraq," Project on Defense Alternatives Briefing Memo #25 16 September 16 2002, revised and updated 10 March 2003; Neta Crawford, "The Best Defense: The Problem with Bush's 'Preemptive' War Doctrine," *Boston Review* (February/March 2003); and Charles Knight, "Essential Elements Missing in the National Security Strategy of 2002," Commonwealth Institute Project on Defense Alternatives Commentary (November 2002), <<http://www.comw.org/qdr/0210knight.html>>.

<sup>4</sup> See Noam Chomsky, "Preventive War: 'The Supreme Crime,'" *ZNet*, 11 August 2003.

<sup>5</sup> Noam Chomsky, *Hegemony or Survival* (New York: Metropolitan Books, 2003): 12.

<sup>6</sup> See Volker Kröning, "Prevention or Preemption? – Towards a Clarification of Terminology," Commonwealth Institute Project on Defense Alternatives Guest Commentary (March 2003), <<http://www.comw.org/pda/0303kroening.html>>.

<sup>7</sup> See Lawrence Freedman, "Prevention, Not Preemption," *The Washington Quarterly* (Spring 2003): 105-114.

<sup>8</sup> U.S. White House, "National Security Strategy."

<sup>9</sup> Cited in Richard A Clarke, *Against All Enemies: Inside America's War on Terror* (New York: Free Press, 2004), 266.

<sup>10</sup> Clarke, *Against All Enemies*, 266.

<sup>11</sup> George W. Bush, "President Says Saddam Hussein Must Leave Iraq Within 48 Hours," Address to the Nation, 17 March 2003, <<http://www.whitehouse.gov/news/releases/2003/03/20030317-7.html>>.

<sup>12</sup> This idea is specifically supported by Clarke in *Against All Enemies*.

<sup>13</sup> See Ivo Daalder, James Lindsay and James Steinberg, "The Bush National Security Strategy: An Evaluation," Brookings Policy Brief #109 (October 2002), <<http://www.brookings.edu/comm/policybriefs/pb109.htm>>.

<sup>14</sup> According to Jürgen Habermas, the idea of mutual understanding rooted in language provides for the consensus about democratic will formation and law that undergird the modern state. See Jürgen Habermas, "Wahrheitstheorien," in *Wirklichkeit und Reflexion: Festschrift für Walter Schulz*, (Pfullingen: Neske, 1973); see also Jürgen Habermas, *Theory of Communicative Action*, Vol. II, trans. Thomas McCarthy (Boston: Beacon Press, 1984): 96; and Jürgen Habermas, *Philosophical Discourse of Modernity: Twelve Lectures* (Cambridge, Mass.: MIT Press, 1987): 344-345.

<sup>15</sup> See Noam Chomsky, "After Pinkville," *The New York Review of Books*, 1 January 1970.

<sup>16</sup> For the view that Christianity and war are compatible, not incompatible, since just war theory expresses the Christian view of moral and political responsibility, see Paul Ramsey, *The Just War: Force and Political Responsibility* (New York: Scribner's, 1968).

<sup>17</sup> See Garry Wills, "The Tragedy of Bill Clinton," *The New York Review of Books*, 12 August 2004, 64.

<sup>18</sup> This practice was rejected by the U.S. Supreme Court. See Ronald Dworkin, "What the Court Really Said," *The New York Review of Books*, 12 August 2004, 26-29.

<sup>19</sup> See Chomsky, *Hegemony or Survival*.

<sup>20</sup> Condoleezza Rice, "A Balance of Power that Favors Freedom," *U.S. Foreign Policy Agenda* (December 2002), <<http://usinfo.state.gov/journals/itps/1202/ijpe/ijpe1202.pdfsid14901231>>.