

THE IRAQ WAR, THE NEXT WAR, AND THE FUTURE OF THE FAT MAN

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When the last American combat troops departed Iraq in December, they left behind a disordered democracy that may not survive, along with a great deal of ethical confusion. The invasion of Iraq in 2003 represented the apotheosis of “anticipatory” self-defense—the theory that the use of armed force can be justified to prevent an attack that “is neither occurring nor imminent, but nevertheless likely to occur in the foreseeable future.”¹ According to the war’s critics, the failure to discover weapons of mass destruction illustrates the poverty of the theory and its heavy reliance on accurate intelligence. If this is so, then we are in for trouble, because the Obama Administration’s emphasis on targeted killing of terror suspects—what President Obama has called eliminating our enemies²—is also a form of anticipatory self-defense. Indeed, as the administration continues to ratchet up its use of remote drone attacks, we really would seem to have entered what one observer has called the new age of preventive war.³

Preemptive warfare is a form of self-defense that occurs when your adversary has the tanks massed on your border, ready to attack. Preventive warfare is aimed at keeping your adversary from gaining the means to attack you. Both

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1. This definition is from NILS MELZER, *TARGETED KILLINGS IN INTERNATIONAL LAW* 53 (2008).

2. See STEPHEN L. CARTER, *THE VIOLENCE OF PEACE: AMERICA’S WARS IN THE AGE OF OBAMA 1* (2011).

3. See, for example, THOMAS M. NICHOLS, *EVE OF DESTRUCTION: THE COMING AGE OF PREVENTIVE WAR* (2008). In fairness, Nichols only proposes that preventive wars will be more frequent, both in the battle against terror and in the effort to keep governments from slaughtering their own citizens. The Libya War might meet the second description, at least if we take at face value the Obama Administration’s justification of the Libya War as protecting the people of that nation from a government assault that had not yet occurred.

the law and the ethics of self-defense have tended to frown on preventive warfare, not least because it has no logical stopping point. But America's recent wars have all been, in one way or another, preventive—aimed less at foiling current plans than at stopping future ones.

Iraq was aimed at disrupting Saddam Hussein's supposed efforts to create and deploy weapons of mass destruction that might eventually have been used against America or its allies. Afghanistan was aimed at dismantling the al-Qaeda network, rendering it unable to perpetrate whatever attacks it might next be plotting. True, the evidence of intention in Iraq was significantly more attenuated than the evidence of intention in Afghanistan. What nevertheless links the two, along with the various fronts of the Terror War, is a shared belief in the military aspect of the Bush Doctrine—that is, the determination to fight America's enemies overseas rather than at home.

Iraq was war under the beta version of the Bush Doctrine. The newer model is represented by the slaying of Anwar al-Awlaki, an American citizen deemed a terror threat. The Obama Administration has ratcheted the use of remote drone attacks to unprecedented levels—the Bush Doctrine honed to rapier sharpness. The interesting question about the new model is one of ethics more than legality. Let us assume the principal ethical argument pressed in favor of drone warfare—to wit, that the reduction in civilian casualties and destruction of property means that the drone attack comports better than most other methods with the principle of discrimination. If this is so, then we might conclude that a just cause alone is sufficient to justify the attacks.

The most straightforward way of understanding the attacks on the leaders of terror groups is an effort to reduce the demand for terrorists. The supply side of terror is relatively stable: there are always people willing to die for a cause. But they need missions. By affecting the incentives of the leaders who plan the missions—and who must now factor in the not insignificant possibility of being blown to bits—the drone strategy seeks to affect the demand side.⁴ If the demand side is indeed the one that matters more, then the targeting of the leadership is entirely rational.

But is what we are doing truly self-defense? Consider one of the most famous hypotheticals on the subject of self-defense: the Fat Man puzzle. In Fat Man, you find yourself in a small boat at the bottom of a chasm. Although there are many versions,⁵ what they have in common is that an enormously fat individual is hurtling down from the cliff. You have no idea why he is falling—whether, say, he jumped or was pushed. All you know for sure is that if he hits you, you die. You have no space to maneuver, and no time to escape. Fortu-

4. This analysis proceeds from an influential paper by Laurence R. Iannacone. See Laurence R. Iannacone, *The Market for Martyrs*, 2 INTERDISC. J. RES. ON RELIGION, no. 4, 2006.

5. Still the most detailed and thoughtful analysis of the Fat Man problem is by Judith Thomson. See Judith Thomson, *Self-Defense*, 20 PHIL. & PUB. AFF., no. 4, 1991, at 283-310.

nately, you are armed with your trusty Fat Man gun. You can pull the trigger and vaporize him, thereby saving yourself.⁶

Theorists of self-defense usually posit that killing another to protect the self must be based either on the status of the attacker (e.g., enemy soldier in war) or what the attacker is doing (e.g., actively shooting at you). The Fat Man problem usefully divorces the justification for violent self-defense from the motive of the assailant. Robert Nozick's original version of the problem stipulated that Fat Man has been pushed, and is therefore morally innocent; thus theories of self-defense that depend on what the attacker is doing (e.g., is he engaged in aggression?) cannot justify the use of the vaporizer.⁷

And yet the Fat Man problem is in other ways too easy. Augustine, to take an example, would surely have rejected the use of the vaporizer gun, on the ground that your life is not intrinsically more valuable than the Fat Man's. Liberalism's refusal to weigh lives against each other also makes calculation difficult. Yet I find that my students have little difficulty with the problem, answering as Nozick intended: they are by and large perfectly willing to blow Fat Man to smithereens to save themselves.

The problem my students find harder is what I like to call Thin Man. Thin Man is too skinny to do us harm unless he chooses to, but he comes hurtling down off the cliff nevertheless. If he hits us, we die. But he is so thin that the odds are he will land nowhere near. We know that Thin Man means us ill. He fully intends to do us harm. We just don't know when. It might be now—that might be why he is falling—or it might be next year. Or he might change his mind.

If we do nothing, chances are he will miss us (he is thin), fall into the water, and be washed away by the current. Later, he will fetch up on shore and can go back to plotting. We could try to pull him from the water, but we would probably fall in. Thus the present opportunity to vaporize him with our Thin Man gun might be our only shot at him. On the other hand, I believe I mentioned that we do not know his current intention. He might just be going for a swim.

Iraq was Thin Man on a massive scale: a precautionary invasion, a war just in case. The drone war is not on the same scale, but, fought by remote control, does raise similar concerns. Presumed terror leaders are blown up wherever they appear. The Obama Administration, like the Bush Administration before it, has decided to use its vaporizer gun any time Thin Man shows his face. With

6. Another version of Fat Man is Innocent Baby: now your attacker is approaching you, meaning to shoot you dead, and is using a baby as a shield. The only way to stop him is to shoot him through the baby.

7. Note that, for similar reasons, theories that rest on moral culpability would not justify shooting down an airliner carrying 100 innocent passengers and 3 hijackers, when the hijackers intend to fly into a building, killing everyone on board, and hundreds or thousands more on the ground. This is not to say that shooting the airline down cannot be justified; the calculus relies on a combination of consequentialist body-counting and double effect.

the two political parties in agreement, one assumes that we will be pursuing the assassination strategy for some years to come. But the Thin Man problem helps illustrate the moral complexity of this form of warfare. We fire the missile because intelligence tells us that there is probability p that the man we are targeting is the man we are looking for; and other intelligence tells us that there is probability q that the man we are looking for does indeed hold the suspected position in the terror network; and other intelligence tells us that there is probability r that the network is indeed planning a particular operation that will cause some expected level of harm. Note that whatever the harm we are trying to prevent, the product of $p * q * r$ still likely represents a significant discounting of the expected value of our own anticipatory attack.

When all is said and done, choosing to vaporize Thin Man places enormous reliance on accurate intelligence, and, as public attention fades, we are placing enormous trust in our leaders. But as the war in Iraq demonstrated, the fact that political leaders act in good faith reliance on a particular interpretation of intelligence does not make the intelligence accurate.

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The Obama Administration has chosen a different route to justify its attacks on terror leaders. In time of war, the administration points out, the enemy's leaders are legitimate targets. The attacks, then, may be justified as part of the larger war—much as the United States was justified, during World War II, in shooting down the aircraft carrying Admiral Yamamoto, the architect of Pearl Harbor.

But even putting aside the remarkable breadth of the claim to be fighting a defensive war in a theater effectively worldwide, there is a more important distinction between what happened to Admiral Yamamoto and what is happening to the accused leaders of the terror network. Yamamoto was killed as part of a single operation that was part of a far wider war. The operation may have targeted Yamamoto alone, but the war was of the traditional sort, one country against another—and the United States was fully mobilized. This matters because, whether or not the public was aware of the plan to assassinate Yamamoto, it was keenly aware of the larger war, and of its course. The war itself was front-page news.

Susan Neiman counts it as a significant advance in human consciousness that we can scarcely bear to read about things that our ancestors brought their children to witness.⁸ Maybe so. But the reflexive turn from horror that characterizes our time has a significant cost. The policy of using remote attacks to eliminate our enemies is one to which the public pays less and less attention.

8. See SUSAN NEIMAN, *EVIL IN MODERN THOUGHT: AN ALTERNATIVE HISTORY OF PHILOSOPHY* (Princeton Univ. Press 2002).

It is one thing to rely on remote drone attacks to meet a present emergency. It is something else altogether to turn them into the principal means of making war. My colleague Bruce Ackerman reminds us that the American Constitution “expresses a profound opposition to the normalization of emergency powers.”⁹ Similarly, a reasonable public ethic would not allow the normalization of targeted killing. What is normal becomes the background of everyday life—no longer worth paying attention to.

I am not suggesting that America has no enemies in the post-Iraq world, or that killing enemy leaders can never be justified. My ethical worry is more practical: if the drone war slips from our consciousness, we will never get around to deciding whether to oppose it.

9. BRUCE ACKERMAN, *BEFORE THE NEXT ATTACK: PRESERVING CIVIL LIBERTIES IN AN AGE OF TERRORISM* 141 (2006).