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Topic: Ethics of the Pre-emptive Strategy: A study on the sufficiency of the Just War Theory
in the context of America's War on Terror

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Declaration

I declare that this assignment is my own work and does not involve plagiarism or collusion. The sources of other people's work have been appropriately referenced, failing which I am willing to accept the necessary disciplinary action(s) to be taken against me.

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Introduction

1.1 Background

The Just War theory has influenced and framed the way nations and international agencies make moral decisions surrounding matters of armed conflict. The Just War Theory consists of a set of conditions that fall under the *Jus ad Bellum* and *Jus in Bello* conventions, which are used to determine whether the conflict is morally just. The rise of the Bush Doctrine, as the key foreign policy in the War on Terror, has called into question the relevance of the Just War Theory in our post 9/11 geopolitical landscape. The War on Terror differs greatly from a conventional conflict, as the enemies in the conflict are non-state actors. These non-state actors, which refer to terrorists, are elusive because they are not the armed forces. Additionally, their reason for war also differs from conventional reasons for war. It is based on a religious doctrine and the creation of an Islamic state that does not respect current territorial lines. This prompted the Bush administration to usher in the pre-emptive strategy as a response to the 9/11 attacks.

1.2 Rationale

The Bush Doctrine has attracted both supporters and critics alike, the former praising it for taking decisive action against terrorism, and the latter condemning it for violating Just War conditions. This new strategy is unique, as it has generously reinterpreted the definition of imminent threat, in order to allow itself to be implemented in various cases. These cases refer to the invasions of Afghanistan and Iraq. Given the growing group of powerful non-state actors, some war theorists such as Isaac Taylor, argues that the *jus ad bellum* principles require reinterpretation in order to sufficiently combat terrorism. Others such as Jeffery P. Whitman, believes that the Just War Theory is sufficient, and has already deemed the pre-emptive strategy as unjustifiable. Thus, the paper aims to explore the key terms of the pre-emptive strategy, while looking at the proposals brought forth from existing literature. This provides the paper with the basis for analysis, where it will then assess whether the pre-emptive strategy is morally permissible and necessary.

1.3 Research Questions

1. How has the pre-emptive strategy reinterpreted or reprioritised the traditional six jus ad bellum principles, and is it justifiable?
2. How do Kantian ethics undergird the traditional jus ad bellum principles, and how is it a more appealing and fair moral framework as compared to the Utilitarian calculus used to justify the pre-emptive strategy?

1.4 Thesis Statement

Due to the unjustified re-interpretation of imminent threat which bypasses traditional jus ad bellum considerations, it has couched an offensive war as a war of perpetual defence which only results in the unjustified deaths of innocent civilians caught in the crossfire. To respond to this, Kantian ethics should be used to undergird the traditional jus ad bellum considerations as it is a fairer moral framework that prioritises human rights and just cause over Utilitarian considerations.

1.5 Scope of Research

Since the paper is focusing on the justification for the pre-emptive strategy outside of a conflict, it will only make use of the jus ad bellum principles. Jus ad bellum refers to the need to consider whether the conflict that one is about to enter, is morally justified. This is done through jus ad bellum's 6 principles, which include: Just Cause, Right Intention, Proportionality, Chances of Success, Legitimate Authority and Last Resort. In addition, the paper will only look at the case studies of Afghanistan and Iraq, as these two conflicts employed the pre-emptive strategy against terrorist groups, hence making them relevant to this paper.

1.6 Significance of Research

In accordance with the thesis statement, this paper seeks to emphasise the notion that war should be avoided at all cost. By strengthening the arguments for the preservation of the original definitions of ad bellum principles, this paper attempts to clarify what defensive and offensive considerations are. This clarification made by the paper will then allow for the appropriate recommendations which will

prioritise human rights. Therefore, the recommendations and the clarification of definitions brought forth by the paper will hopefully serve as a more morally defensible and feasible strategy for maintaining regional peace without sacrificing the goal of combatting terrorism.

1.7 Limitations

Due to the nature of the case studies, it is quite unfair to the supporters of the pre-emptive strategy, as both cases were failures due to poor information and decision making on the part of the leadership. Furthermore, although the aspect of technology and its influence on the pre-emptive strategy has been touched on, concrete examples of its use and influence on the strategy has not been explored in depth. Technology plays a significant role in redefining what constitutes imminent threat. Furthermore, technology presents us with a moral dilemma that comes with making decisions in the face of imperfect knowledge, which is an epistemic issue. Research into this aspect of the pre-emptive strategy is important to the discussion about the moral permissibility of the strategy. However, this topic needs to be discussed alone to be fully fleshed out, and not glossed over briefly in this paper.

2.0 Literature Review

2.1 Just War Theory

Conventional War and Jus ad bellum principles

Conventional Wars take place, when both military forces take up arms and engage in direct conflict, which can be a result of one side acting in self-defence or when both sides are struggling for control over territory. When applying the jus ad bellum principles, there are different criteria that must be met in order for a conflict to be considered justifiable. In this paper, we shall refer to the conventional understanding of the jus ad bellum principles (Internet Encyclopaedia of Philosophy). IEP highlights 6 main principles under jus ad bellum:

1. Just Cause
2. Right Intention
3. Chances of Success
4. Legitimate Authority

5. Proportionality

6. Last Resort (Necessity)

According to traditional Just War Theory, having a just cause is the most important principle (IEP). However, the problem tends to lie in determining what constitutes just cause. In this paper, we will use the conventional understanding of jus ad bellum principles.

2.1.1 Just Cause

The conventional understanding of just cause states that it is justifiable for a nation to defend oneself when it is attacked by another state. This means that wars for national defence (of one's own state or of an ally) is morally justifiable under the just cause principles. In the case of national defence, the United Kingdom coming to the aid of France in World War II is an example. As such, traditional Just War Theory generally recognises that wars of self-defence are undisputedly justified. Additionally, with the introduction of Responsibility to protect (RtOP), the United Nations Security Council considers wars on the grounds of humanitarian intervention justified, especially if it has the goal of eliminating an oppressive regime (genocides etc.). Under the doctrine of RtOP, the United Nations Security Council authorised the use of military force in Libya, as a response to the human rights violations committed by the then dictator, Muammar Gaddafi. During the Libyan Civil War (2011), Gaddafi stated on 17 March that he will show "no mercy" to fighters in the opposition stronghold of Benghazi (International Coalition for the Responsibility to Protect, 2010). In response to Gaddafi's actions in Libya, the UNSC implemented S/RES/1973 (2011) which meant that the use of military force is authorised, with the intention of protecting the Libyans from the violence perpetrated by their own government. We can see how the principle of just cause serves as the basis for the doctrine of RtOP, as humanitarian intervention is seen as a morally justified cause.

2.1.2 Right Intention

The principle of right intention serves to ensure that the intention of entering a conflict conforms to the cause. This principle is undoubtedly important in ensuring that wars are not waged on grounds of the immoral goal of seeking to benefit from war. Using the case study of Libya, a nation is deemed to

not have right intention when their intention for joining the war is to establish a puppet government that fits their political agenda. This goes against the just cause for conflict, which was originally to protect human rights. Therefore, right intention serves as an invaluable tenet of jus ad bellum principles, as it seeks to ensure that wars are only fought with morally justified reasons that conform to the cause.

2.1.3 Chances of success

Conventional jus ad bellum principle defines the principle of “chances of success” as a cost-benefit analysis of a situation, which would help a nation decide whether going to war is the most feasible option available. The main justification for the principle is for states to prioritise human life, especially when engaging in a conflict with a belligerent nation has no chance of success and would only result in utter destruction. This principle ensures that militarily weak nations do not engage in conflict that would only waste human lives and economic resources. When there is no chance of success, this principle encourages nations to opt for more feasible options such as calling for foreign intervention or achieving peace through diplomatic means.

2.1.4 Legitimate authority

Another principle under conventional just war theory, is the principle of legitimate authority. Conventional jus ad bellum principles recognise that an accountable government possesses legitimate authority, while a corrupt and unjust government loses its claim to justifiable political sovereignty (Internet Encyclopaedia of Philosophy). Additionally, conventional jus ad bellum principles seem to suggest that once a government becomes tyrannical and unjust, it is morally permissible for the international community to intervene as this errant government has lost its right to maintain its sovereignty. In the context of the War on Terror, terrorists such as the Islamic State of Syria and Iraq, which created a caliphate in the region, cannot be considered to be a political group that possesses legitimate authority or possess statehood. This is due to the fact that ISIS was founded on extreme religious doctrine, which encourages violence and conflict. Due to the nature of ISIS, the international

community does not recognise it as an organisation that possesses statehood or legitimate authority despite occupying land.

2.1.5 Proportionality

The condition of proportionality is another consideration under conventional jus ad bellum principles. Jus ad bellum proportionality is not to be confused with jus in bello proportionality, as it addresses the idea that the desired ends should be proportional to the means used. For example, if the reason for engaging in conflict is to drive out an invading enemy, then it would be morally unjustifiable to decide to continue the war with the intention of exacting vengeance on the other nation. This is especially the case when the chances of success in starting a counter-offensive are low, which means that the desired end of revenge is no longer proportional to the means used as it would prolong the conflict and waste more soldiers and economic resources (IEP).

However, in the case of World War 2, the Nazi invasion of other European nations is by no means a “small border dispute”. The conventional understanding of proportionality would allow a counter-attack that will not only reclaim land, but to also invade Nazi Germany. This is because allowing the Nazi state to survive will not result in lasting peace. Therefore, the goal of ending Hitler’s rule is a goal that is proportional to the means, as more lives would be saved in the long-run if he is removed from power.

2.1.6 Last Resort

Traditional jus ad bellum principles states that war should always be the last resort. The repercussions of War can last decades, especially on the economy, which makes it difficult for nations to recover. It is in the best interest of nations to not actively seek conflict, as history has shown us the devastating consequences of war. War should only be considered when war is the only plausible way to protect oneself or to protect human rights. However, if a diplomatic alternative that is less harmful than going to war exists, war is not a last resort. Such alternative strategies refer to the doctrine of containment, or deterrence, where trade embargoes or tough economic sanctions are put in place to punish a state that has flouted international law. The Democratic People’s Republic of Korea (DPRK) suffered

heavy economic sanctions from many countries and international bodies, due to their nuclear testing, which posed a severe imminent threat to countries in the region. While the economic sanctions have not neutralised the hostility DPRK has towards its counterpart (South Korea), it still managed to significantly slow their progress in developing a nuclear weapon. Therefore, in accordance with the condition of Last Resort, countries involved in the matter did not need to militarily intervene in the situation, as taking the diplomatic alternative to reducing the imminent threat was a much more sensible choice.

2.2.1 US Pre-emptive Strategy

The Bush Doctrine signalled a shift from a liberal to neoconservative foreign policy, where the strategy of pre-emption is favoured over deterrence or containment (Gupta, 2008). According to Jervis (2003), he describes the doctrine as one that is vigorous and aggressive foreign policy which strongly suggests a willingness to act unilaterally to wipe out any perceived threats. In the War on Terror, the United States is embroiled in a state of perpetual war against terrorist groups. The enemy is not a state with traditional armed forces, but an organisation based on extremist religious doctrine that does not respect international law and traditional territorial lines. In Bush's Cincinnati speech, he pointed out that "prior to September 11, we were discussing smart sanctions", but "After September 11, the doctrine of containment does not hold any water... My vision shifted dramatically after September 11, because I now realised the stakes, I realised that the world has changed". (Jervis, 2003) The then Secretary of Defence Donald Rumsfeld explained that they invaded Iraq because they interpreted the possibility of Iraq possessing WMDs "through the prism of our experience of 9/11". He further argues that we are unable to simply cast aside possibilities of WMDs, as 9/11 was also unforeseeable or unprecedented. Despite the reasons presented by the Bush administration for the invasions of Afghanistan and Iraq, this paper seeks to question the generous interpretations of what constitutes imminent threat under the pre-emptive strategy.

2.2.2 Case of Iraq

In the case of the Iraq War, the US accused Iraq of possessing Weapons of Mass Destruction (WMDs) and that Saddam's regime was supporting Al Qaeda. Former President George W. Bush described Saddam's regime as "a grave and gathering danger" (Knowlton, 2002), which highlights the US's belief that Iraq posed an imminent threat. Under the UN charter, a nation's use of force can only be authorised under article 51. Article 51 states that: Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security (United Nations Charter). Although the US is unable to justify its invasion using Article 51, as Saddam's regime has not directly attacked the US, they claimed that Saddam's government contributed to the 9/11 attacks by supporting Al Qaeda, thus implicating Saddam as a culprit. Furthermore, Iraq's supposed possession of WMDs was an issue that the US used as evidence of imminent threat from Saddam, which in turn was used to justify the invasion of Iraq.

The intelligence Vice President Dick Cheney relied upon gave him grounds to push the claim that Saddam Hussein was collaborating with Al-Qaeda, and that Iraq possessed WMDs. However, it was later revealed that both the 9/11 commission report and U.S intelligence services found no evidence linking Saddam's regime and Al-Qaeda (Glenn Kessler, 2019). Furthermore, after the invasion, no WMDs were found in Iraq's possession. According to U.S personnel, J.D Maddox, who was in Iraq investigating the presence of WMDs, he found no conclusive evidence of WMDs in Iraq (Maddox, 2020). His suspicions were confirmed when the Iraq Survey Group's interim progress report in October 2003 concluded that there was no conclusive evidence to suggest recent WMD activity. Maddox proceeded to state that: I had been taught throughout my childhood and my military training that America conducts wars based on just cause, but the reality emerging from Iraq was that we had been compelled by deception. (Maddox, 2020)

2.2.3 Case of Afghanistan

In the aftermath of the 9/11 terrorist attacks, President Bush ordered US troops to invade Afghanistan on 7 October 2001. The US justified their invasion by citing self-defence, and claiming that the

Taliban refused to cooperate in handing over terrorists that allegedly sought refuge in Afghanistan. Former President George W. Bush aggressively accused the Taliban of playing a significant role alongside Al Qaeda in the 9/11 strike. As a result, the US cited Article 51, which pertains to self-defence, when justifying their military invasion (Operation Enduring Freedom) of Afghanistan (Khan, 2013).

Similar to the situation in Iraq, the Bush Administration had little evidence to show links between both Al Qaeda and the Taliban. In fact, the chief spokesperson of the Taliban at the time of the attacks, Wakeel Ahmed Mutawakel denounced the 9/11 attacks, saying that “Mullah Omar (Supreme leader of the Taliban) condemns this act” (Bearak, 2001). Despite the Taliban insisting that they are not involved in the attacks, the US continued pressing their claim that the Taliban played a significant role in 9/11.

2.2.4 Imminent threat in Iraq and Afghanistan

It is rather peculiar that despite the US having some of the most advanced intelligence networks in the world, they are still able to come to the wrong conclusion about Iraq’s possession, and the Taliban’s involvement in 9/11. Even if their postulations about Iraq were correct, that they did possess WMDs, what the intelligence networks would have gotten was the fact (That they did possess WMDs) but not their intention to use them. This is where the strategy of pre-emption deviates from traditional jus ad bellum principles, as they have generously reinterpreted them to justify their attack.

3.0 Discussion and Analysis

3.1 Reinterpretation of imminent threat

By examining the cases in which the United States has used the pre-emptive strategy, we can see that unlike how conventional conflicts adhere to jus ad bellum, the pre-emptive strategy used by the US has reinterpreted the conditions set in the 6 principles of jus ad bellum in order to justify wars thousands of kilometres away. The pre-emptive strategy is made possible by technological

developments, such as lethal autonomous weapons, which enabled a higher level of surveillance and intelligence, as well as weapons for remote attacks.

As mentioned earlier, conventional jus ad bellum only recognises self-defence as the only morally permissible reason for war. World War 2 is an apt example that can help elucidate how the declaration of war on the part of the United Kingdom and France is morally justifiable based on conventional just war theory. Prior to the invasion of Poland, Nazi Germany was building up massive stockpiles of weapons. This alone would not have justified war under conventional jus ad bellum definition of threat, as they have only shown capability. However, when Hitler began pushing his expansionist and aggressive foreign policies which did not respect territorial lines, it was a clear sign that he had no intention for diplomacy. Unfortunately, the policy of appeasement adopted by the then Prime Minister of the UK, Neville Chamberlain, gave in to Hitler's unjustified claims on territory. The straw that broke the camel's back came when Hitler violated the territorial integrity of Poland, which under conventional jus ad bellum principles, morally permitted France and the UK to come to the aid of their ally.

It is now made rather poignant, that there are key differences between the justifications for declaring war on Nazi Germany, and the wars in Iraq and Afghanistan. Hitler consistently demanded territorial concessions which were unjustifiable. In addition, his aggressive rhetoric already suggested his intention to continue Germany's territorial expansion. Therefore, even a conservative reading of ad bellum principles would have deemed Hitler as an imminent threat. Both regimes in Iraq and Afghanistan did nothing of the sort, as they did not appear to pursue any aggressive foreign policy. Furthermore, the conventional definition of just cause does not equate capability to intention. Strictly speaking, the principle only mentions that self-defence is permissible when a belligerent nation directly attacks you. However, even traditional jus ad bellum would have permitted a declaration of war on Germany prior to the Polish invasion. This is because Hitler has deployed a suspiciously high number of troops and weapons along their borders, was already violating the human rights of his people and was aggressively claiming territory, thus flouting international law. Now, under the US

pre-emptive strategy, possession of WMDs or being possibly involved in an attack is enough to constitute an imminent threat. This strongly suggests how imminent threat is now being defined as a nation's capability to strike, and equating that to them having the intention to harm. By construing threat in such a generous manner, it allows the US to cite self-defence, which is supposed to be justified under the principle of just cause. Furthermore, this allows them to put up a façade of having the right intention to defend their people from future attacks. However, this supposed right intention is undermined as there is no need for self-defence given that the accused aggressors did not even use their weapons or acted in a way which would have suggested any intention to attack.

3.2 Utilitarianism and the pre-emptive strategy

Theorists like Taylor argues for a “consequentialist justification” (Taylor, 2017) and contends that some dominant interpretations of Just War principles require adjusting when used to access the use of armed forces against terrorist groups. Since consequentialism is defined as a moral framework that believes that actions should be taken to achieve the correct overall consequences (Internet Encyclopaedia of Philosophy, Consequentialism), Taylor's arguments can be linked to Utilitarianism since both moral frameworks place especial importance on consequences.

Taylor contends that conventional just cause for war against terrorist groups may be expanded to include prevention and pre-emption (Taylor, 2017). Taylor argues that: “Because these groups are generally not affiliated with states, we may be able to predict future behaviour on the basis of their current actions to a greater extent than we can predict the future actions of states” (Taylor, 2017). Due to this certainty, Taylor believes that we should not be conservative or cautious about the use of force against terrorists as we are better informed about the overall cost and benefits of a pre-emptive attack (Taylor, 2017). Taylor does not ignore conventional just war principles, but rather, suggests that we reinterpret just cause to permit the pre-emptive strategy. However, I interpret Taylor's arguments as not only adjusting the definitions, but also reprioritising the jus ad bellum principles. This was done when Taylor's reinterpretation allowed for the prioritisation of cost and benefits. This results in the

principles of chances of success and most especially, the principle of proportionality becoming the most important principles.

The Utilitarian Calculus is able to show how Taylor has prioritised chances of success and proportionality on the grounds of Utilitarian appeals:

1. Intensity: How strong is the pleasure or pain?
2. Duration: Is this a long-term or short-term benefit or pain?
3. Certainty or uncertainty: How likely will the pain occur?
4. Propinquity or remoteness: How soon will the pain occur?
5. Fecundity: How likely will the action bring about more benefits?
6. Purity: How likely will the action bring about more pains?
7. Extent: How many people will the pain or pleasure affect?

We can apply the felicific calculus to explain the motivation behind reprioritising the jus ad bellum principles. According to the arguments for the pre-emptive strategy, they mostly address the problem of certainty and propinquity. By the principle of proportionality, the US should strike back to vindicate the rights of its people, which were violated by the terrorists. Given the nature of terrorism, it is difficult to predict when an attack may occur, and as such, the pre-emptive strategy serves to eliminate this concern. By striking early, the need to predict an attack is no longer needed. Furthermore, extinguishing the threat posed by terrorists is deemed as the “right intention” given that they are certain to attack (Taylor, 2017).

Since the condition of certainty is met, the decision to pre-emptively attack the terrorist now seems to be the correct decision as eliminating this threat will be the action that brings about the most benefits. This line of reasoning falls under the condition of fecundity. Fecundity and the principle of ad bellum proportionality both echo similar concerns. Both conditions emphasise the idea that more good must be produced as a result of the action. Therefore, in the context of the War of Iraq and Afghanistan, it

would seem that pre-emptively attacking both nations to eliminate the terrorists would produce more good, as it would not only vindicate the rights of its citizens due to 9/11, but also prevent future attacks from terrorists.

Taylor makes a fair point that shows how the certainty that terrorists will attack warrants not only the reinterpretation of just cause, but the reprioritisation of ad bellum principles on the basis that it is now easier to gauge cost and benefit. However, I contend that by being less conservative about the use of force will undermine the importance of just cause. Furthermore, I believe that this ignores the reality on the ground. The terrorists that Taylor aims to destroy are non-state actors (Taylor, 2017), but are stationed within states with political sovereignty. In order to eliminate them, I argue that the invasions have deliberately and wrongly attached blame to the state that hosted or seemingly supported the terrorists. This is done to achieve proportionality, and makes the justification for war based on proportionality seem retaliatory in nature, rather than being based on morally justified reasons.

Furthermore, with their superior military capabilities, the US is able to minimise their own losses and cost while increasing their chance of success. In doing so, the pre-emptive strategy has led to the loss of innocent lives. For example, due to the increased destructive power of drone strikes, civilians are more likely to get caught in the crossfire. Based on estimates from June 2004 to April 2007, drone strikes killed 1,435-2,283 people and 80-95% of these are militants (Whitman, 2013). Unfortunately, this statistic may not accurately reflect the number of non-combatant deaths, as accurate data regarding non-combatant deaths is kept under wraps by Washington (Whitman, 2013). While the strikes may have eliminated a significant number of militants, I argue that the means to obtain the desirable ends are not entirely justified, after considering the loss of innocent lives. For example, current estimates since 2015 suggest that 300-909 civilians and 66-184 children were killed as a result of the excessive number of drone strikes in Afghanistan (Investigative Bureau of Investigative Journalism, 2015). By permitting the use of pre-emptive strikes against terrorists, the utilitarian method of calculating cost and benefit suggests that the rights and lives of US citizens are prioritised over Afghan and Iraqi lives. In addition, the less conservative use of highly destructive modern weaponry only serves to make peace and stability more fragile. The indiscriminate use of these weapons only serves to push citizens who have felt that they have been wronged, to sympathise with

the terrorists. While most evidence that suggests that recruitment numbers were boosted by the drone strikes are rather anecdotal (Aqil Shah, 2018), we should not dismiss its significance. It has the potential to rile up terrorists, and cause them to plan yet another more harmful retaliatory strike, resulting in a cycle of attacks from the US and terrorist groups.

3.3 Principle of last resort in Afghanistan and Iraq

In both invasions of Iraq and Afghanistan, I believe that the Last Resort principle was violated the most, as the United States made little attempt at other alternatives before deciding to attack. In fact, the Taliban was willing to cooperate with the United States to extradite Osama Bin Laden, with the condition of handing him over to a neutral 3rd party and to get sufficient evidence to suggest Osama's direct involvement in the attacks. Furthermore, the timeframe given to the Taliban to extradite Osama and other terrorist operatives was a meagre 2 weeks (Khan, 2013). Furthermore, no other forms of negotiations were explored, so not all that could be done to prevent war was undertaken by the US and other states that subsequently invaded Afghanistan (Khan, 2013). Unfortunately, the United States was unwilling to engage in diplomacy, and instead, began pre-emptive air strikes on Afghanistan, before any truly meaningful exchange between the governments began. According to the Last Resort Principle, all diplomatic options should be explored and maximised to the fullest extent in order to achieve the objective without the need for bloodshed. This principle was ignored, when the Americans started to bomb Afghanistan, which indiscriminately killed hundreds of civilians.

3.4 Legality of the war in Afghanistan and Iraq

Under international law, the invasions of Afghanistan and Iraq were both unjustified. In both cases, the US did not manage to present sufficient just cause, and neither did they show substantial evidence to suggest that both the Taliban and Saddam posed an imminent threat. According to UK parliamentary papers, 'the initial invasion of Afghanistan in October 2001 was therefore not conducted with the authorisation of a specific UN Security Council Resolution' (Smith and Thorp, 2010). In Khan's paper which discusses the legality of the invasion of Afghanistan, she notes that: 'International law must be clearly distinguished from the use of force for revenge or punishment;

states, like persons, must not act as vigilantes.’ (Khan, 2013) The pre-emptive strategy, which has prioritised proportionality and chances of success, deems it necessary to gain the desired ends of not only righting the wrong done by terrorists, but also to pre-empt future attacks. Unfortunately, this comes at the expense of the people of Afghanistan, Iraq and other nations that were subject to the pre-emptive strategy as a result of their nation holding terrorist groups. Furthermore, as discussed earlier, the invasion can be interpreted as an act of vengeance, which was suggested by President Bush’s rhetoric, when he proclaimed that they will “tear” their terrorist network “piece by piece” (BBC, 2001).

In the case of Iraq, the United Nations Security Council implemented S/RES/1441 (8 Nov 2002), which demanded Iraq to comply with investigations with regard to their possession of WMDs. Despite this, the US did not give Iraq sufficient time to comply with the resolution, and went ahead to invade without Security Council authorisation. Since international law dictates that the need to inflict proportional pain as retaliation against terrorists is not justifiable for an invasion of a sovereign nation, the invasions of Afghanistan and Iraq were not only illegal, but unjustified.

3.5 Recommendation: Kantian Understanding of the Just War Theory

The cases of Afghanistan and Iraq have shed light upon the issues with generously reinterpreting jus ad bellum principles. Instead of reinterpreting jus ad bellum principles, I argue that we should preserve the original definitions, especially in this post 9/11 geopolitical landscape. By preserving them, just cause and right intention remain the top priority, and thus ensure that wars are not fought on the grounds of vengeance as a result of the desire to achieve proportionality. I believe that Kantian ethics will help emphasise the importance of preserving jus ad bellum principles due to its universalisation of human dignity, which undoubtedly should be the just cause and right intention for every conflict. Furthermore, Kantian ethics help emphasise why just cause and right intention should remain as the key considerations when deciding to engage in a conflict.

Immanuel Kant formulated the categorical imperative, which acts as a universal law which we should follow. In the context of jus ad bellum, regardless of the state, the law is unconditional and holds universally. In order to act morally, one should adhere to a universal principle of action that is based on an intention that is morally justifiable or acceptable to all (Internet Encyclopaedia of Philosophy). In the context of the jus ad bellum principles, Kant's categorical imperative tells us that our actions must serve to protect the rights and dignity of every rational person. This leads on to Kant's second formulation, which addresses the material side of moral law. With the pre-emptive strategy, it has allowed the US to make an exception for itself, which is morally impermissible according to the Categorical Imperative. Furthermore, it has allowed the US to treat civilians as collateral damage, which disregards the human rights of Afghans and Iraqis caught in the crossfire. Kant's second formulation contends this notion, as he states: "So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means" (Internet Encyclopaedia of Philosophy). I believe that Kant's Categorical Imperative serves as a much more appealing and fair moral framework that supports the jus ad bellum principles through the prioritisation of just cause and right intention, by making human rights as the morally justified end goal. Furthermore, it serves as a much more viable strategy as opposed to the less conservative use of military force. By prioritising human rights, every diplomatic option will be explored to extradite the key linchpins, and when the need arises, limited and appropriate use of drone weapons can be used to eliminate dangerous operatives that evade capture. This reduces the need for the excessive use of drone strikes and military force which would kill many civilians. This not only minimises the loss of life on both sides, but also allows nations to achieve the desired end of eliminating key operatives. Additionally, through limiting the use of force, Kantian ethics is questioning the efficacy of using excessive military force to counter violence. I contend that we need to consider that terrorists build their support by vilifying a target. If the US uses their military force conservatively, terrorist operatives will be unable to justify or gain support to attack as they have less grounds to justify the politics of holy (Gan and Toh, 2015). This is especially important, as the pre-emptive attacks only served to push more Afghans to sympathise with Al-Qaeda in their fight against the unjustified US

invasion. Therefore, a Kantian reading of conventional jus ad bellum principles could work as a more viable strategy in truly eliminating terrorism.

4.0 Conclusion

Just War Theory and its various tenets, aims to prevent unjustified wars by defining what offensive and defensive considerations are. Therefore, this paper's thesis is as follows: Due to the unjustified re-interpretation of imminent threat which bypasses traditional jus ad bellum considerations, it has couched an offensive war as a war of perpetual defence which only results in the unjustified deaths of innocent civilians caught in the crossfire. To respond to this, Kantian ethics should be used to undergird the traditional jus ad bellum considerations as it is a fairer moral framework that prioritises human rights and just cause over Utilitarian considerations.

This paper has proven the thesis, as it has shown how upholding the pre-emptive strategy will only justify more aggression, and would destabilise international order. As shown through the cases of Iraq and Afghanistan, the invasions which sought to eliminate terrorist operatives could prove counter-intuitive. Based on statistics presented by the Bureau of Investigative Journalism, the 419 US drone strikes in Pakistan's FATAs (starting in 2004) killed between 2,467 and 3,976 civilians (Bureau of Investigative Journalism, 2015). The killing of innocent civilians allows terrorists to vilify the US, and put up increased resistance and encourage them to attack the US. Instead of dealing with terrorism, the pre-emptive strategy can conversely add fuel to the fire. Furthermore, this goes to show that exercising restraint in our use of modern weaponry is important, as their increased destructive capabilities have made peace more fragile.

By adhering to conventional jus ad bellum principles, it forces nations to uphold the dignity of human rights. A Kantian reading can support conventional jus ad bellum, by prioritising just cause in the same way as jus ad bellum intended by undergirding these considerations with the universalization of human dignity. Furthermore, adhering to conventional jus ad bellum presents us with a possibly more viable option that minimises loss of life, while potentially gaining the desired ends.

In conclusion, I argue that due to its devastating consequences, war should never be made more permissible and thus, the pre-emptive strategy is unjustified. Instead of generously reinterpreting the principles, limiting conflict through conventional jus ad bellum principles will allow nations to appropriately deal with these non-state actors, without having to sacrifice the rights of innocent civilians. Conflict should never be triggered by vengeance; rather, it should always be motivated by the universal ideal of maintaining human dignity and international peace.

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