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Preventive War—What Is It Good For?

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After the horrific terrorist attack on September 11, 2001, US President George W. Bush announced a policy of preventive war. True to his word, Bush soon implemented his policy.¹

The first war occurred in Afghanistan. This war was aimed partly at punishing al-Qaeda terrorists and partly at helping the people of Afghanistan by liberating them from the Taliban and creating a democracy with greater freedom and prosperity. Hence, this war was not purely preventive. Still, one of its goals was to prevent attacks on the United States and its allies by terrorists from training camps in Afghanistan, and Bush admitted that no attacks by Afghanistan were imminent. To that extent the war in Afghanistan was preventive.²

Bush's next war was in Iraq. The Iraq War had several announced aims, including the enforcement of UN resolutions and international law as well as helping the people in Iraq partly by removing Saddam Hussein and introducing democracy. Of course, critics charged that Bush's real aims were to control Iraq's oil, to help his cronies make money, and to avenge or surpass his father, who had failed to subdue Iraq in 1991. In any case, both sides agreed that one of the main announced goals of the Iraq War was to prevent or reduce distant future terrorist attacks on the United States and its allies, especially attacks with WMD. If this announced goal really was Bush's goal, which has been questioned, then to that extent the Iraq War was a preventive war. That is how I will view the Iraq War here.³

Many opponents of the Iraq War responded by denying that any preventive war is ever justified. This reaction goes too far in my opinion. Bush's preventive war in Iraq is morally wrong, and his policy is too broad, but some exceptional preventive wars can still be morally justified.

To see which and why, we need to explore the general moral theories behind these opposing stances. Most of Bush's arguments for his policy and the Iraq War

¹ I will often refer to Bush as shorthand for his administration or troops carrying out his plans.

² Some commentators suggest that whether an attack is preventive depends not on the attacker's goal but only on the nature of the capability, threat, or attack to which the attack responds. However, an attack does not respond in the relevant sense to a threat if the attacker's goal is not even partly to prevent that threat. The attacker's goal, thus, determines what it is that the attacker responds to.

³ When a war has several purposes, we can ask whether a particular reason is good enough by itself to justify the war. That is my question here. It is fair, because most defenders of the war claim that the Iraq War's role as a preventive war is enough to justify it apart from any other reasons for the war.

are about consequences. Bush usually emphasized consequences for the United States, but sometimes he adds consequences for others, including allies in the coalition and Iraqis and others in the Middle East. Either way, Bush dwells on consequences. As his National Security Strategy announces, ‘We will always proceed deliberately, weighing the consequences of our actions.’⁴ In contrast, Bush’s critics often argue that the Iraq War violates absolute rules against certain general kinds of acts that are defined independently of consequences. The most often-cited rule is a prohibition on preventive war. In their view, preventive wars are always morally wrong by their very nature, regardless of their consequences.

This practical debate mirrors a deep divide in philosophical moral theory. Consequentialists hold that what we morally ought to do depends on consequences alone. Nothing else counts, except insofar as it affects consequences. Deontologists claim that what we morally ought to do also depends on other factors (such as the agent’s intention or the kind of action) that are independent of consequences. Some deontologists allow consequences to matter as well, but they still think that other factors sometimes make something morally wrong even when it has better consequences.

Although Bush’s arguments recall the consequentialist approach, Bush is not a consistent consequentialist. He freely cites deontological rules against some actions he opposes, such as abortion and stem cell research. Even in the case of war, Bush alludes to a right to national defense, which can conflict with consequentialism. Nonetheless, it might seem that consequentialists would support Bush’s war and policy if they agreed with him about the consequences of his war and policy, whereas deontologists could still oppose the war and policy on nonconsequentialist grounds.

This appearance might lead Bush’s critics away from consequentialism so that they would have something left to say against Bush if they reached an impasse in arguing about the consequences of the Iraq War. That retreat would be a mistake. The strongest arguments against Bush’s war and policy are consequentialist, not deontological. To show why, I will develop and defend a version of consequentialism about war. Then I will criticize the relevant part of the most common deontological alternative, just war theory. Finally, I will apply all of this theory to preventive war in general and Bush’s war and policy in particular.

8.1. DEEP MORALITY *VERSUS* PUBLIC RULES

My argument will hinge on a certain characterization of the issue. I will assume that both consequentialist and deontological theories are about objective moral wrongness. The question they address is whether certain wars really are morally wrong, not whether people think that they are morally wrong or even whether

⁴ United States, White House, National Security Council, *National Security Strategy of the United States of America* (September 2002), 16. <<http://www.whitehouse.gov/nsc/nss/2002/nss.pdf>>.

it is reasonable to think that they are morally wrong. Moreover, these competing theories concern what McMahan calls the deep morality of war.⁵ These theories try to specify conditions that must be met for war not to be morally wrong. They do not claim that their conditions should be written directly into public laws of war that are or should be accepted by international groups or enforced by international courts.

Such public laws might need to be formulated differently from deep morality in order to be useful in practice. For example, as McMahan argues, many combatants are innocent and nonthreatening, whereas many noncombatants are guilty and threatening, so the deep morality of war should not distinguish combatants from noncombatants. It still might be too difficult in practice to tell who is innocent or threatening, so the public laws of war might need to forbid attacks on noncombatants but not combatants. In such ways, practical public laws of war can come apart from the deep morality of war. I will then be concerned mainly with the deep morality of war.⁶

A consequentialist theory of the deep morality of war can admit that public rules of war should be formulated in deontological terms. Such public rules might have better consequences because actual agents would make too many mistakes in applying public rules formulated directly in terms of consequences. Even if so, the deep morality of war still might be consequentialist because the public rules are justified only by their consequences. Thus, theorists who claim only that deontological rules should be publicly accepted and enforced do not deny what is claimed by a consequentialist theory of the deep morality of war. To disagree with consequentialism on that topic, deontologists need to argue that some factor independent of consequences determines which wars are really morally wrong.⁷

Some just war theorists might not make any such claim. They might talk only about public rules and not consider deep morality at all. If so, consequentialists have no quarrel with them. That kind of just war theory is simply beside the point here. However, many other just war theorists and deontologists do claim that their rules determine which wars are morally wrong, and they deny that consequences alone determine moral wrongness. Those are the just war theorists whom consequentialists oppose and whom I will discuss here.

⁵ Jeff(erson) McMahan, 'The Ethics of Killing in War', *Ethics*, 114: 4 (2004), 693–733; also compare his 'The Law of War and the Morality of War', in D. Rodin and H. Shue (eds.), *Just and Unjust Warriors: Moral Equality on the Battlefield* (Oxford: Oxford University Press, forthcoming).

⁶ McMahan's phrase 'deep morality' does not refer to fundamental as opposed to derived principles. Instead, the point is that public rules need to use easily accessible markers in place of obscure factors that really determine what is morally wrong. The depth of deep morality is more like the depth of chemistry (which looks at the deep structure of chemicals instead of their superficial perceivable properties) than like the depth of axioms as opposed to theorems.

⁷ A bit of terminology might solidify this distinction. We could say that an act is morally wrong when it violates deep morality, not morally permitted when it violates public rules that are actually accepted, and not morally permissible when it violates ideal public rules. Consequentialism about what is morally wrong is then compatible with deontology about what is morally permitted or permissible. I will use this terminology but not depend or insist on it.

Some critics might deny that deep morality is distinct from public rules, because established public rules of war affect what is morally wrong according to deep morality. Such connections can, however, be granted and explained by consequentialists. If certain rules are publicly accepted and enforced, then anyone who violates those rules should consider how such violations might undermine the system in place. Sometimes the dangers of going against the standing system will be enough to make acts wrong when they would not otherwise have been wrong. Stability and predictability are important. Nonetheless, they are only some considerations among others. When the benefits of going against standing public rules are great enough, then it is not morally wrong to break even the best public rules. This possibility is enough to show that the public rules and the deep morality of war remain distinct topics.

Other critics might respond that deep morality does not matter if it is not written into public laws of war. Suppose a consequentialist agrees that governments should sign and enforce treaties that prohibit all preventive wars. Why should anyone then care whether deep morality allows some preventive wars? For one thing, the rationale for the public prohibition might not apply in certain cases. Imagine a government that knows its intelligence is much better than the intelligence of most other countries. This government might favor an exceptionless public rule against all preventive wars, because, if any preventive wars were publicly allowed, then countries with inadequate intelligence would likely make mistakes and engage in preventive war when war was not really necessary. Nonetheless, on the basis of its superior intelligence, this country might be justified in believing that it is not morally wrong for it to start a preventive war in a certain situation, despite the risks of violating existing public rules. It appeals to the deep morality of war while endorsing contrary public rules because the reason for endorsing the public rules is to prevent mistakes of a kind it knows it is not making.

Now imagine that this country goes ahead and engages in a preventive war against a potential attacker. Then a third party needs to decide what to do about it. If the attack violated accepted and justified public rules, but this third party still believes that the preventive war was allowed by the deep morality of war, then this third party might justifiably denounce the war (in order to support the public rules) but neither defend the country during the attack nor punish the attacker later. If such third party reactions are allowed but not required by the public rules of war, then deep morality might determine when such reactions are or are not morally wrong.

Furthermore, morality is not only for governments. It is also for individuals. If individuals believe that the preventive war violates justified public rules but is nonetheless not morally wrong according to the deep morality of war, then they will be less inclined to condemn politicians and friends who support the war as well as soldiers who return from the war. Governments ought to endorse certain public rules because of the consequences of such endorsements in the practical public international context in which governments operate. Individuals do not normally operate in this public context, so individuals can justifiably form their own moral beliefs without reference to the context that restricts governments.

Finally, even if theories of deep morality did not affect practice for either governments or individuals, some of us would still want to understand deep morality. We want to know which wars really are morally wrong, not just which wars governments ought to publicly denounce. We also want to know not just which public rules governments ought to endorse but also why governments should endorse those rules instead of others. The answers lie in theories of deep morality. Such theoretical questions need not have clear or direct practical relevance right now in order to be significant.

8.2. CONSEQUENTIALIST MORAL THEORY

My consequentialist theory of the deep morality of war is an application of a more general approach to morality.⁸ Consequentialism as a general moral theory claims that the moral status of an act depends only on consequences. I favor act consequentialism which claims that an agent morally ought not to do an act if and only if that act has significantly worse consequences than any available alternative.⁹ Consequences are worse when they contain more death, pain, disability (including lack of freedom), and possibly injustice and rights violations, considering everyone equally.

This act consequentialism contrasts with the rule consequentialism adopted by other contributors to this volume, including David Luban.¹⁰ Rule consequentialism is the claim that whether a particular act is morally wrong depends on whether that act violates a general rule that is justified by its own consequences. Rule consequentialism is indirect in the sense that the moral status of one thing (an act) depends on the consequences of a different thing (a rule). In contrast, act consequentialism is direct insofar as it morally judges one thing by the consequences of that thing itself.

The first problem for rule utilitarianism is its indirectness. Why should the moral status of one thing depend on the consequences of something else? More specifically, since a rule as an abstract entity cannot have consequences, what are called the consequences of the rule are really consequences of most or

⁸ On consequentialism in general, see Walter Sinnott-Armstrong, 'Consequentialism,' in E. N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (2003). <http://plato.stanford.edu/entries/consequentialism/>. Consequentialist views of war have also been defended by Richard Brandt, 'Utilitarianism and the Rules of War,' *Philosophy & Public Affairs*, 1: 2 (1971), 145–65; and Douglas Lackey, *The Ethics of War and Peace* (Englewood Cliffs, NJ: Prentice-Hall, 1989).

⁹ Some self-styled act consequentialists claim that rules, character traits, and motives should be assessed in terms of associated acts. That is not my view. As will become evident, I think rules (as well as character traits and motives) should be judged by their consequences, not by the consequences of acts that obey or violate those rules. What I mean by act consequentialism is, thus, what others might call global direct consequentialism—Philip Pettit and Michael Smith, 'Global Consequentialism,' in B. Hooker, E. Mason, and D. E. Miller (eds.), *Morality, Rules, and Consequences* (Edinburgh: Edinburgh University Press, 2000).

¹⁰ David Luban, 'Preventive War,' *Philosophy & Public Affairs*, 32: 3 (2004), 207–48.

all people in a certain group endorsing, teaching, following, and/or enforcing that rule. Rule consequentialism, thus, makes the moral status of one particular act by one particular agent in one particular set of circumstances depend on consequences of separate acts by separate agents in separate circumstances. I see no adequate reason for such indirection.

Moreover, any particular act falls under many general rules. A war, for example, might violate a rule against preventive war while also being the only way to avoid violating another rule that requires protecting citizens. I see no nonarbitrary way to determine which rules are the ones whose consequences matter for judging an act that is distinct from all of those rules.

Rules are also used in many ways in many contexts. Rules might be used to teach children or to award damages in international courts. Different rules might be justified in different circumstances, often because of varying dangers of misuse.¹¹ Act consequentialists can recognize this variety and say that it is morally right to use one rule for teaching children and a different rule for international courts. Rule consequentialists, however, need to pick one rule for rules as the one and only central rule that determines whether a particular act is or is not morally wrong. I see no good reason why one rule would be decisive for all moral judgments, so rule consequentialists again cannot avoid arbitrariness.

Admittedly, moral theorists must allow some roles for rules, but act consequentialists can do so. Just as they assess acts directly by consequences of those acts, so they assess rules directly by consequences of using those rules. Act consequentialists can (and usually do) also admit that people normally ought to decide what to do not by calculating consequences but, instead, by consulting rules. This move does not turn act consequentialism into rule consequentialism, because act consequentialists can still insist that an act is morally wrong even when its agent used the best rules as a guide or decision procedure if the particular act fails their standard or criterion of the right, because it causes more harm than some alternative.¹²

8.3. PROBLEMS FOR CONSEQUENTIALISM

Critics propose a slew of counterexamples to act consequentialism. A popular case involves transplanting organs from one healthy person to save five other people. This and most other alleged counterexamples, however, depend on secrecy. It would not make the world better if people knew it was going on. Thus, such

¹¹ Compare Frederick Schauer, *Playing by the Rules* (Oxford: Clarendon Press, 1991); and Allen Buchanan, 'Institutionalizing the Just War', *Philosophy & Public Affairs*, 34: 1 (Winter 2006), 2–38.

¹² On the distinction between decision procedures and criteria of the right, see R. E. Bales, 'Act-Utilitarianism: Account of Right-Making Characteristics or Decision-Making Procedures?', *American Philosophical Quarterly*, 8 (1971), 257–65.

counterexamples do not apply to consequentialism about war, since wars are hard to keep secret.¹³

Other critics of consequentialism cite commonsense principles that are supposed to be obvious and exceptionless, such as the claim that it is always morally wrong to intentionally kill an innocent person. However, wars are filled with emergencies that create exceptions. In the Vietnam War, the Vietcong sometimes tied explosives to the back of a young child and told the child that a certain group of American soldiers had candy. The child ran to the soldiers to get the candy. The soldiers sometimes had no way to save their lives except to shoot the child before the child got too close. They were killing (or at least harming) the child as a means to save their own and others' lives, even though they knew the child was totally innocent. Soldiers usually felt horrible about such acts, and their feelings are understandable, but their acts were not morally wrong. Thus, the commonsense principle is not exceptionless after all, and it cannot be used to refute consequentialism about war.

More generally, such principles and counterexamples depend on moral intuitions. Moral intuitions in contexts of war are particularly unreliable, because they are notoriously subject to disagreement as well as distortion by partiality, culture, and strong emotions, such as fear.¹⁴ Our moral intuitions evolved to fit situations in everyday life that are very different from war. Hence, any objections that depend on such moral intuitions lose their force when applied to consequentialism about war.¹⁵

Critics might respond that our moral intuitions are reliable and run counter to consequentialism outside war. I would be happy to defend consequentialism in general on another occasion. For now it is enough if consequentialism can be defended as a criterion of what is right in war.

The most serious remaining objection to consequentialism about war is epistemological. This objection arises elsewhere, but it is particularly pressing in war, because wars are so unpredictable.¹⁶ It is hard to predict in advance how many people will die on either side of a war. This problem would not be serious if the point were only that we often cannot be sure that a war is justified on consequentialist terms. Everyone should agree that there are many cases where we do not know what is morally right.

Rodin thinks the point goes deeper, because consequentialism is 'useless' even in 'clear' cases. The Allies' war against Nazi Germany is often presented as the

¹³ Isolated strikes can be kept secret, at least in some cases, but isolated strikes by themselves do not make a war.

¹⁴ See Walter Sinnott-Armstrong, 'Moral Intuitionism Meets Empirical Psychology,' in T. Horgan and M. Timmons (eds.), *Metaethics After Moore* (New York: Oxford University Press, 2005).

¹⁵ Similarly, the common charge that consequentialism is too demanding because it interferes with personal projects has little or no force in war, because many personal projects have to be sacrificed in wartime.

¹⁶ See Walter Sinnott-Armstrong, 'Gert Contra Consequentialism,' in W. Sinnott-Armstrong and R. Audi (eds.), *Rationality, Rules, and Ideals: Critical Essays on Bernard Gert's Moral Theory* (Lanham, MD: Rowman and Littlefield, 2002).

clearest example of a justified war. Rodin argues, however, that it is not clear whether even that war minimized bad consequences:

The Nazi regime was brutal and aggressive: it systematically murdered approximately 6 million innocent people, and subjected many millions more to a regime of extraordinary moral repugnance. But the war itself cost somewhere in the region of 55 million lives. In addition it made 40 million persons homeless, caused incalculable destruction to the world's cultural and material wealth, and had the after-effect of initiating the Soviet Union's brutal half-century dominion over Eastern Europe. This was a horrific price to pay for stopping Nazi Germany. It is certainly not obvious on strict consequentialist grounds it was a price worth paying.¹⁷

The challenge seems simple: The war against the Nazis is clearly morally justified, but it would not be clearly morally justified if consequentialism were correct, so consequentialism is not correct.

Consequentialists can respond in several ways. One possibility is to deny that the war against the Nazis is 'an easy case'. Any act that causes so much death and destruction is at least questionable. Indeed, it was questioned by many opponents of US entry into the war and by many pacifists during World War II. And even if it does seem easy to assess this war, consequentialism might show us that it is not as easy as it seems. The fact that consequentialism raises serious doubts about cases that previously seemed easy might show how illuminating consequentialism is. That is a virtue, not a vice, of consequentialism.¹⁸

Consequentialists can add that, compared to other wars, it is relatively clear that war against the Nazis minimized bad consequences. The Nazis did not merely kill six million Jews. They also killed millions of non-Jews. They had aggressive plans to continue occupying more and more territory. Resistance was inevitable and would lead to more killing. If the Nazis took over Europe, then there would also be loss not only of life but also of freedom and other values. Europeans would have lived in constant fear of arbitrary execution or imprisonment. Their 'regime of extraordinary moral repugnance' would have continued for much longer than the war.¹⁹ Moreover, if the Nazis had been allowed to rule Europe without opposition, they could have built up strength and continued their expansion. The larger wave of fascism that accompanied the rise of the Nazis would likely have spread elsewhere, leading to more wars. When all these bad consequences are considered together, it seems relatively clear (or at least reasonable to conclude) that refusing to fight the Nazis would probably have cost far more than fifty-five million lives over the long run.

Consider also the perspective of a single country. The United States, for example, did not have a choice between war and no war. There was going to be a war as

¹⁷ David Rodin, *War and Self-Defense* (Oxford: Clarendon Press, 2002), 11; compare his chapter in this volume.

¹⁸ I grant Rodin's methodological point that moral theories should explain not only what is immoral and why but also why certain cases seem obvious and others do not. My point is only that this consideration is only one among others and can be overridden in some cases, including this one.

¹⁹ Rodin, *War and Self-Defense*, 11.

soon as Hitler invaded his neighbors. The only options for the United States were (a) a war between the Nazis and the Allies without the United States or (b) a war between the Nazis and the Allies with the United States. Option (a) had a higher probability of Hitler taking over Europe, including Britain, and then continuing to expand the Third Reich. Option (b) reduced that probability even though it increased the chances of US losses. I see little reason to doubt that option (b) has less bad consequences overall than option (a). That comparison is all that is needed for consequentialists to conclude that the United States was morally justified in entering the war. Similar comparisons for other countries could show why each of the Allies was justified in joining up.

We also need to ask why the costs of the war against the Nazis were so high. Many historians argue that part of the reason is that the United States took too long to get involved.²⁰ If so, consequentialists can say that for the United States to join the war in 1941 was better than not joining the war ever or until later, but joining the war in 1941 was also not as good as joining the war sooner. This example might then suggest consequentialist reasons for preventive war, contrary to any blanket deontological prohibition.

Of course, we cannot be certain about any of this. It is possible that the war against the Nazis did more harm than good. However, that is unlikely, and we have to live with probabilities here as elsewhere. Consequentialists need to admit that they are often unsure about the right thing to do, especially with regard to war. Is this a problem? No, because we often are and should be unsure whether to enter into war.

This admission is not enough, according to Rodin, because it is 'unclear what evidence would be' for any conclusion that a war minimizes bad consequences.²¹ However, the evidence is clear. Every bit of pain, death, and disability in a war is a bit of evidence for the moral wrongness of that war. Of course, every bit of pain, death, and disability that is prevented by a war is a bit of evidence against the moral wrongness of the war. The problem is not in finding evidence but in weighing all of the evidence together. It is not clear how to do that, but many people seem to focus on one or a small number of reasons that strike them as more important and likely, to discount possibilities that are unlikely or balanced by opposite possibilities, and to remain open to new considerations. The process is hardly mechanical, but it is still based on evidence. Anyway, however they do it, many people do somehow succeed in making decisions by weighing together many and varied long-term consequences (or, at least, by using defeasible heuristics). Military planners do it. So do everyday people who choose careers, get married, or decide to have children. Since we make such choices reasonably in everyday life, it is not clear why we cannot also make such choices reasonably in war.

Admittedly, as Rodin says, 'Consequentialism is frequently a deeply disappointing guide.'²² Still, this does not make consequentialism 'useless'. Even if we could not weigh the consequences of any war as costly as the war against the Nazis,

²⁰ See the chapter by Trachtenberg in this volume.

²¹ Chapter by Rodin in this volume.

²² Rodin, *War and Self-Defense*, 10.

we still might be justified in believing that other less costly wars are not morally wrong. And even if we were never justified in believing that any war has good consequences overall, we still might be justified in believing that certain wars *are* morally wrong. We can know, for example, that it was morally wrong for Nazi Germany to invade Poland. Such negative judgments provide guidance insofar as they tell us what not to do. These suppositions might lead to the conclusion that we are never justified in believing that any war is morally right, but we can still be justified in believing that some wars are morally wrong. If so, consequentialism leads to an epistemic variation on pacifism. That conclusion is not obviously implausible, if the suppositions are granted.

Still, I am not as pessimistic about our epistemic abilities as Rodin is. It strikes me as reasonable to believe that the war against the Nazis prevented more harm than it caused. I admit uncertainty, but that need not force me to give up my belief or even my meta-belief that my belief is reasonable and justified. Admittedly, consequentialists still need some way to make decisions in the face of uncertainty. Mill suggests one possibility when he says that utilitarians should follow common rules of morality unless they have especially strong arguments.²³ Another possibility would deploy some technical rule for decision-making under uncertainty, such as a maximin principle,²⁴ a disaster avoidance principle,²⁵ a moral certainty principle,²⁶ or Lockhart's theory.²⁷ Possibilities abound. It is not clear to me which of these options is most promising. I wish I could be more definitive, but I can only admit that I, along with all other moral philosophers (deontologists as well as consequentialists), need to develop better ways of dealing with the crucial and pervasive issue of uncertainty. Luckily, since my act consequentialism provides a criterion of the right instead of a decision procedure, I can set this issue of uncertainty aside for now.

Other consequentialists might try to avoid problems of uncertainty by claiming that moral wrongness depends not on actual consequences but, instead, on foreseen or reasonably foreseeable consequences. If so, consequentialists do not have to argue that the war against the Nazis actually did minimize bad consequences. All they have to claim is that the Allies believed or had reason to believe that this war would prevent more harm than it would cause. If they could not have expected, for example, the Soviet domination of Eastern Europe after World War II, then those bad consequences could not show that the war was morally wrong on their view.

However, consequentialists who count only expected or expectable consequences run into problems of their own. Such consequentialists have trouble

²³ John Stuart Mill, *Utilitarianism* (1861).

²⁴ John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), 152–6.

²⁵ Gregory Kavka, *Moral Paradoxes of Nuclear Deterrence* (New York: Cambridge University Press, 1987), 65–70; and Jeff(erson) McMahan, 'Nuclear Deterrence and Future Generations,' in Avner Cohen and Stephen Lee (eds.), *Nuclear Weapons and the Future of Humanity* (Totowa, NJ: Rowman and Allanheld, 1986).

²⁶ Robert Goodin, 'Nuclear Disarmament as a Moral Certainty,' *Ethics*, 95: 3 (1985), 267–84.

²⁷ Ted Lockhart, *Moral Uncertainty and its Consequences* (New York: Oxford University Press, 2000).

answering, ‘Foreseen or foreseeable *by whom?*’ If an observer foresees horrific consequences that the agent cannot foresee, the observer should not say that the agent ought to do the act with horrific consequences.²⁸ Moreover, in a collective action, such as a war, different people would be able to foresee different consequences. Hence, if moral wrongness depended on foreseeable consequences, it would make no sense to ask whether the war was morally wrong without qualification. Finally, it is hard to understand why the true moral status of an act would depend on its agent’s false beliefs, even if reasonable. When an act has overall bad consequences that its agent could not have reasonably foreseen, the agent should not be blamed or criticized morally as an agent, but the act itself can still be morally wrong. Every moral theory needs to distinguish agents and acts, and the most natural way to recognize this distinction is to let foreseeable consequences determine whether the agent is blameworthy and actual consequences determine whether the act ought to be done.

For such reasons, I am inclined to think that the moral rightness of wars depends on their actual consequences, including counterfactual consequences or what have happened if a different act had been actual. However, if I had to give up that position and count foreseeable consequences instead, I would not be terribly upset.²⁹ What is important is that the moral status of a war depends only on consequences of that war rather than on any rule or factor that is independent of consequences.

8.4. JUST WAR THEORY

Despite its virtues, consequentialism is not as popular as its main rival, just war theory. It is difficult to discuss just war theory as a whole because it contains so many parts and comes in so many versions. As Rodin says, ‘The Just War Theory is, in reality, many theories.’³⁰

Some just war theories propose only public rules of war. These versions might seem to conflict with consequentialism, because their public rules refer to deontological factors other than consequences. However, as I said, consequentialists can accept such public rules and even justify them by their consequences. Hence, just war theories that are only about public rules do not conflict with consequentialism. I am interested in versions of just war theory that challenge consequentialism. Thus, although just war theories about public rules might be correct and important, they are simply not my topic here.

²⁸ Sinnott-Armstrong, ‘Gert Contra Consequentialism’, 152–3.

²⁹ Another possibility is to stipulate that actual consequences determine whether an act is morally good, foreseeable consequences determine whether an act morally ought to be done, and consequences of applying sanctions determine whether an act is morally required. Such stipulations do not capture all common usage, but they might mark the distinctions needed to locate an act in moral space.

³⁰ Rodin, *War and Self-Defense*, 103.

Just war theories conflict with consequentialism only when they make claims about the deep morality of war. Just war theories of deep morality specify conditions that must be met for a war to be not merely just but morally justified overall. These conditions are normally divided into three parts: *jus ad bellum*, *jus in bello*, and *jus post bellum*.³¹ What concerns us here is *jus ad bellum*—when it is or is not morally wrong to go to war. Within that subdivision, the condition that is most relevant to preventive war is just cause.

8.4.1. Just Cause

The condition of just cause says that it is morally wrong for anyone to wage war without a just cause. But that cannot be all there is to it. Even consequentialists grant that wars need some just cause in order to be morally justified, since wars have bad consequences, so they cannot make the world better overall unless they have compensating benefits. Consequentialists and just war theorists also agree that the just cause must be important enough to overcome the strong presumption against war. The conflict between consequentialism and just war theory arises only when just war theorists specify exactly which causes can justify war.

Which causes are just causes? Wars have been fought for many reasons: defense of self or allies or others against external attack, enforcement of international law or punishment for past aggression, to stop internal atrocities or defend human rights, to spread a religion or form of government, for economic gain or glory, out of hatred of the enemy or love of battle, and so on. Just war theorists need to specify which of these candidates are just causes and, hence, adequate to justify war given the other conditions in their theory. They also need to say why these candidates are just causes and why the others are not. This task will not be easy. Many of these candidates are controversial. Emotions, partiality, and culture are likely to distort intuitions. And just war theorists cannot specify just causes by reference to consequences without, in effect, giving in to consequentialism. So it is not clear how just war theorists can justify their claims.

Some just war theorists might think that they can avoid these problems by limiting their claims to the clearest case: self-defense.³² However, even if everyone agreed that self-defense is sufficient to justify war given other conditions, its sufficiency would not show that it is necessary. Other causes might also be sufficient. Hence, just war theorists who talk only about self-defense cannot argue that any war lacks a just cause or that consequentialism justifies wars without just causes. To reach such a negative conclusion, just war theorists need to explain why self-defense is the only just cause and nothing else on the above list is a just cause. It is hard to imagine any good argument for that claim.

Some just war theorists (such as Uniacke in this volume) seem to suggest an argument like this: Until you have been wronged, you have no good enough reason

³¹ Brian Orend, 'War', in E. N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (2003).

³² Neta Crawford, 'The Justice of Preemption and Preventive War Doctrines', in Mark Evans (ed.), *Just War Theory Revisited* (Edinburgh: University of Edinburgh Press, 2005).

to use force. However, the reason for a preventive war is to prevent harmful attacks. That sure looks like a good reason. It simply begs the question to assume that this good reason is not good enough, at least when the prevented harms are much greater than the harms inflicted by the preventive war.

Just war theorists, including Crawford, might respond that too many countries will start wars if we tell them that wars might sometimes be permitted for humanitarian purposes, to enforce international law, or to spread democracy. This is far from obvious if other conditions limit such wars to clear and extreme cases, such as the rare cases where humanitarian wars meet consequentialist criteria. Moreover, even if publicly permitting such wars would lead to too much war, that is a reason not to build such permission into public rules of war. It shows nothing about the deep morality of war or about moral wrongness. That leaves no good reason to assume that self-defense is the only just cause that is adequate to justify war given other conditions.

In addition, the condition of self-defense needs to be interpreted carefully. Crawford, for example, claims that: 'A conception of the self that justifies legitimate preemption in self-defense must be narrowly confined to immediate risks to life and health within borders or to the life and health of citizens abroad.'³³

A broader definition of the self might count war as self-defense when it is waged for the sake of 'economic well-being' and 'access to key markets and strategic resources.'³⁴ The Bush administration takes such a broad view of self-defense for the United States.

I grant that increasing the economic well-being of already prosperous nations, including the United States, is not true self-defense and could not justify war in any realistic scenario. However, if 'economic well-being' includes maintaining minimal economies for severely deprived people, then protecting economic well-being might count as self-defense. Perhaps such minimal economic well-being fits under 'life and health', but that just shows how economic well-being sometimes might be important enough to justify war.

It is also not clear why war could never be justified to protect 'strategic resources.' Strategic positions are ones that give an advantage, but resources are usually called strategic only when they are needed to be able to defend life and freedom. If we could not start a war to defend resources that are strategic in this narrower sense, then opponents who want to invade our country could cut off our strategic resources so as to make us unable to defend ourselves by the time they invade.

By limiting self-defense to 'life and health', Crawford also implies that anticipatory war is never justified to protect our freedom at home or abroad. However, if it were morally wrong to start a war to defend our freedom, then it would be

³³ Neta Crawford, 'The Slippery Slope to Preventive War', *Ethics and International Affairs*, 17: 1 (2003), 30–6.

³⁴ See the chapter by Crawford in this volume, quoting US government documents, and compare Crawford, 'The Justice of Preemption and Preventive War Doctrines'.

morally wrong to stop invaders who promised to keep us alive and healthy while taking over our government.

My most basic disagreement with Crawford and just war theory concerns method. Crawford announces that certain general kinds of values (life and health) are adequate and others (such as economic well-being) are not. However, particular instances of such general kinds vary along continua and are affected by circumstances. Freedom, health, and economic well-being come in endless degrees. The risk of attack can also vary from no chance to certainty. Whether a war is morally wrong depends on exactly where it falls along such continua. Most people's intuitions are not fine-grained enough for such complex questions. Hence, I see no reasonable alternative to the consequentialist position that whether a war is morally wrong depends on balance of probabilities of various values and disvalues among its consequences.

8.4.2. Imminence

Even if self-defense is a just cause, we still need to ask whether prevention of future aggression is a just cause in the absence of any actual aggression at present. The traditional answer is that the future aggression must be imminent. This is the imminence condition. If the threat is imminent, the war is called preemptive. If it is not imminent, the war is called preventive. Traditional just war theory then forbids all preventive wars but not all preemptive wars.

A classic example of a preemptive war is Israel's Six Day War of 1967. Egypt was building up forces on its border with Israel, so it was credible that they would attack Israel very soon. Israel beat them to the punch by bombing Egyptian airfields while their planes were on the ground. Israel's attack was preemptive rather than preventive, because Egypt's attack was imminent. In contrast, a classic example of a preventive strike occurred when Israel bombed Iraq's Osirak nuclear reactor in 1981. The threatened attack was not imminent, because it would have been years before the reactor produced material for nuclear weapons.³⁵

When does an attack count as imminent? Some just war theorists specify a time period. Crawford, for example, answers that an attack is imminent when and only when it 'can be made manifest within hours or weeks.'³⁶ How many hours or weeks? Presumably, 'hours or weeks' must be shorter than a month. Crawford's formulation then implies that Israel's bombing of Egyptian airfields at the start of the Six Day War met the condition of imminence, so it was not morally wrong, if the other conditions were met; but Israel's bombing of the Osirak reactor failed the condition of imminence, so it was morally wrong.

³⁵ As Luban points out, this quick attack was not a war—David Luban, 'Preventive War', *Philosophy & Public Affairs*, 32: 3 (2004), 207–48. Still, it was an act of war, so it should be subject to the same conditions within just war theory—cf. Crawford, 'The Justice of Preemption and Preventive War Doctrines', 4–5; and Buchanan's Missile Attack example in this volume.

³⁶ See chapter by Crawford in this volume.

This condition makes moral wrongness depend on timing, but why does time matter? Several answers are common. First, by waiting until Egypt's attack was imminent, Israel gave Egypt an opportunity to forswear aggression. It might seem unfair to remove that chance to improve. Second, by waiting until Egypt's attack was imminent, Israel also waited until the probability of attack was high. Countries sometimes threaten aggression when they do not really mean it or at least will not really do it when push comes to shove. As time goes by, non-aggressive possibilities disappear and the preemptor gains more and stronger evidence (which increases the epistemic probability) of the feared attack. For such reasons, time is correlated with probability: When the attack is imminent, the probability of attack is usually higher than before it became imminent.

Consequentialists agree that probability can affect what is morally wrong, but usually they deny that time itself affects what is morally wrong. A test case would occur if time did not change probability (or did not change it enough to make a difference). Imagine that Israel had attacked Egypt in the same way as it did in 1967, but a month earlier. In this imaginary scenario, Israelis were just as certain about the impending attack by Egypt, and waiting a few weeks until the attack was imminent would not have made Israel more certain. Still, waiting would have made Israel's defense less likely to succeed and more costly in both Israeli and Egyptian lives. The imminence condition implies that this earlier anticipatory attack would have been morally wrong, because the threatened attack was not imminent. I find this position hard to believe. If the level of certainty is high enough a week in advance, the same probability should be high enough a month in advance. If waiting will not decrease the probability of aggression and will increase the costs to both sides (in innocent Israeli as well as Egyptian lives), then I see no reason to wait. Time itself provides no reason. Temporal imminence is not necessary for guilt, since Egypt was conspiring to attack Israel more than a month in advance.³⁷ It might seem unfair not to grant Egypt a last chance to mend its ways, but Egypt would have had many such opportunities long before Israel's attack, even if that attack had come a month earlier. If every last opportunity had to be provided, then Israel would not have been justified in bombing even one minute before the Egyptian planes took off (or entered Israeli airspace). Even just war theorists do not believe that. Hence, temporal imminence cannot really be necessary for an anticipatory war to avoid being morally wrong.

This point also applies to Israel's attack on the Osirak reactor. Israel argued that, if they had waited, the reactor would probably have been used to make nuclear weapons. If they had waited to bomb it when it was active, then very many people in Iraq would have been killed by the explosion and nuclear fallout, whereas only a few people were killed when they bombed the reactor before it was active. The same reasoning might also apply to Bush's attack on Iraq. Imagine that Bush had allowed Saddam Hussein to develop more chemical and biological weapons and

³⁷ See the chapter by Luban in this volume.

then to begin loading them into missiles while expressing the intention to shoot those missiles at the United States or our allies, such as Israel. If we had bombed their missiles at that later time, then the chemical and biological agents might have spread widely throughout Iraq and neighboring countries. This would have caused even more devastation to innocent civilians than the current war. I am not claiming and do not believe that these facts are accurate or that this scenario motivated Bush. My point is only that certain types of weapons—nuclear as well as biological and chemical—change the equation. (cf. Buchanan's Lethal Virus example in this volume.) When threatened with weapons of these sorts, waiting can sometimes be much more dangerous for innocent people on both sides. I will argue later that this affects what our public policies should be. For now the point is that it also affects whether preventive war can be morally justified.

My conclusion is that countries ought to wait when it is not too dangerous to wait, but sometimes waiting is too dangerous, and then preventive war might not be morally wrong. If so, time in itself makes no difference. What really matter are the likely benefits and costs of acting at one time as opposed to another, just as consequentialism suggests.

In most real cases, the time frame will not be clear. The Israeli cases are relatively clear because Egypt was amassing its forces right on the border, and they could not afford to keep them mobilized for long. Similarly, it was also clear that the Osirak reactor would not be used for a long time, since it was still under construction. In most real cases, however, the time frame is less determinate. Suppose that Saddam Hussein really had been manufacturing chemical and biological weapons of mass destruction. How long would it be before he used them? Nobody knows, not even Saddam Hussein himself. It would depend on intervening events, as well as his mood. We might be able to say that it was more likely than not that he would not use the weapons in a month but would use the weapons in some way within, say, ten years. More precision than that could not be justified. Our best basis for decision is only speculation about ranges of probabilities within an indeterminate time. That leaves little, if any, role for a requirement of imminence. Is there a credible fear of imminent attack if our best guess is that there is a 0–20 percent chance of some kind of attack within one week, a 10–40 percent chance of some kind of attack within one month, a 20–60 percent chance of some kind of attack within one year, and so on? In realistic situations, imminence is usually indeterminate, so it should not be part of the deep morality of war.³⁸

Of course, defenders of the imminence requirement can respond by picking a time, like Crawford's 'hours or weeks'. The problem is that any specific answer will be arbitrary. I see no reasonable way to draw a line except by reference to consequences in particular circumstances. What looks like an anti-consequentialist condition must get transformed into a consequentialist condition in order to avoid arbitrariness and implausibility.

³⁸ My point about imminence resembles what McMahan says about combatants in 'The Ethics of Killing in War'. We need simple notions like imminence and combatant in public rules of war, because they are easy to apply, but they are too imprecise for the deep morality of war.

8.5. A CONSEQUENTIALIST VIEW OF PREVENTIVE WAR

To determine whether preventive war is morally justified, just war theorists ask whether prevention of nonimminent aggression is a just cause. The answer is far from clear, partly because the question lumps together so many different circumstances. In contrast, consequentialism enables a more nuanced and insightful view of preventive war.

Because of its sensitivity to circumstances, consequentialism clearly implies that it is at least logically and physically possible for some preventive war to be morally justified. Examples include Buchanan's Lethal Virus and Missile Attack cases in this volume. A general rule against preventive war cannot hold in all possible cases if the moral wrongness of such wars depends on their consequences and the consequences of the available alternatives in the particular circumstances.

Preventive war still might never be justified in any actual case, according to consequentialism. However, we already saw a plausible example: Israel's preventive bombing of the Osirak reactor. Assuming that international negotiation and pressure would probably have failed, if Israel had waited for the reactor to start up, then they probably would have had to attack either an active reactor or a plant for building nuclear bombs. Either alternative would likely have spread nuclear radiation over a large area and harmed many more innocent people than the actual preventive bombing. On these facts, then, consequentialism implies that this attack was morally justified.

The United Nations Security Council condemned Israel for bombing the Osirak reactor. However, that condemnation does not reveal any consensus that the bombing was immoral. It does not even show that the Security Council members shared that belief. They might have thought it useful to make such a public condemnation even though Israel's attack was justified. After all, the Security Council did nothing beyond making a statement. If they had really believed that the attack was morally wrong, then they should have done more than talk. Anyway, consequentialists can explain how public condemnation of Israel could be morally justified by the consequences of that public speech act, even if Israel's bombing was not morally wrong because of the beneficial consequences of that separate action.

I know of no actual case where a preventive war seems justified as defense against conventional weapons. An early preventive campaign against Hitler would have been a likely candidate, but Hitler had already attacked and was occupying several countries, so an early attack (say, in 1938) could have been justified as law enforcement or on humanitarian grounds rather than as prevention. That leaves no justified preventive war against conventional weapons. Why? Maybe because the cost of waiting until an attack is imminent is never actually too high with conventional weapons. It is possible that an early attack would prevent scattering of enemy weapons that would make a later attack less effective and more costly to both sides, and that these costs would outweigh the benefits of waiting; but this seems unlikely. The absence of actual cases supports this guess.

What about Bush's attack on Iraq? According to consequentialism, Bush's attack was morally wrong if any available alternative would have had better consequences overall for the world. The crucial question is not whether the attack was better than doing nothing at all to reduce terrorism. The critical question, instead, is whether any available alternative would have been better. One multipronged nonmilitary alternative has been proposed and supported forcefully by Bart Gruzalski:

Breaking up terrorist cells, arresting terrorists, putting terrorists on trial in a world court, negotiating with the Taliban, no longer propping up tyrannical Arab regimes, pulling U.S. troops out of Saudi Arabia, and even-handedly dealing with the Palestinian-Israeli conflict would have been a successful strategy both to protect Americans and to stop the spread of anti-American insurgents.³⁹

More particularly,

Instead of invading Iraq, one alternative approach would have let Hans Blitz and the U.N. inspectors finish their job... In addition..., the U.S. could have insisted on overflights with high altitude surveillance planes to check for weapons and military activity... Since there was no military threat from Iraq [under such circumstances], the U.S. and the rest of the world could have lifted sanctions against Iraq and brought Iraq into the world trading community... Instead of turning Iraq into a recruitment poster for al-Qaeda, the nonmilitary approach would foreseeably undermine the support for terrorism in the Islamic world.⁴⁰

If this alternative is better overall than Bush's attack on Iraq, as I believe, then Bush's war was morally wrong according to consequentialism.

Bush's defenders might respond that Gruzalski's proposal would not have reduced terrorism. After all, many members and leaders of al-Qaeda have been rounded up since the war began. That, however, is no reason to assume that they would not have been rounded up without the war. Even before the attack on Afghanistan, many countries were already taking significant steps to break up terrorist cells and arrest terrorists.⁴¹ These steps would likely have produced many arrests of al-Qaeda members without any attack on Iraq. Indeed, the US attack on Iraq (as well as treatment of terrorists in Guantanamo) squandered good will after September 11, led to less international cooperation, and thereby hurt the previous efforts to round up terrorists. The attack on Iraq also increased hatred of the United States among Arabs and seemed to confirm Bin Laden's claim that he is defending Islam against US aggression. For these reasons, instead of decreasing terrorism, Bush's Iraq War seems likely to increase terrorism against the United States and its allies in the long run.

This point applies even if one appeals to a US right to self-defense or if one gives up impartiality and appeals to interests of the United States in particular. Neither

³⁹ Bart Gruzalski, 'Some Implications of Utilitarianism for Practical Ethics: The Case Against the Military Response to Terrorism', in Henry West (ed.), *Blackwell's Guide to Mill's Utilitarianism* (Oxford: Blackwell, 2005), pp. 249–69.

⁴⁰ Ibid. ⁴¹ Ibid.

of these justifications works if Gruzalski and I are correct, because Bush's Iraq War does not help to defend the United States or serve US interests. This point becomes even clearer when the costs of the war on the US economy and on US civil rights also count.

Bush still might justify his Iraq attack as the only way to maintain US preeminence. Preeminence by itself is never enough for a consequentialist. Still, if US preeminence is the best means to achieve or maintain peace, then the best means to United States preeminence might be justified. However, many people (and I among them) doubt that US preeminence is the best means to peace.⁴² Then Bush's attack cannot be justified as a means to US preeminence.

Finally, Bush might defend his war as a way to bring to justice those responsible for the terrorist attacks on September 11. Then the war was not preventive. It was also not justified. al-Qaeda had already been attacked in Afghanistan, and there were no clear connections between al-Qaeda and Iraq (or at least none have been found yet). Other proposed justifications, such as to spread democracy or to enforce international law, also fail, because there were better ways to achieve those goals, as Gruzalski argues.

My conclusion is that Bush's war in Iraq is morally wrong on consequentialist grounds. Of course, I am not certain. However, given such uncertainty, there is at least no adequate reason to believe that Bush's war was morally justified.⁴³ This lack of any adequate reason plus the presumption against war based on long and painful experience together support my conclusion that it was morally wrong to go to war in Iraq.

What about Bush's general policy of preventive war? Bush announced that the United States will engage in preventive war whenever it sees that step as necessary to defend itself. I doubt that such an unfettered policy is defensible. Politicians in the heat of the moment are too likely to err.⁴⁴ Still, as I argued, some preventive wars might not be morally wrong, although the only realistic cases are preventive wars against nuclear, chemical, biological, and possibly other unconventional threats. I also agree with Luban (2004) that the only realistic examples are rogue states. If that is correct, then we might benefit by acknowledging it. The United States could publicly renounce any preventive war against conventional threats but still reserve the right to use preventive attacks against threats by rogue states with unconventional WMD, though only when there is strong enough evidence that no other option will be less costly overall.

This policy could even be written into some enforceable international law. It would be very tricky to specify details, such as which states are rogue states, which weapons are conventional, when destruction is mass destruction, and when the evidence is strong enough. But partial solutions can be developed. The problem of inadequate evidence, for example, could be reduced (though not removed)

⁴² Compare Luban, 'Preventive War', 243–8.

⁴³ The way in which the war was conducted was also morally wrong in many ways. The initial strategy of Shock and Awe, e.g., violated just war theory and, more importantly, produced unnecessary bad effects.

⁴⁴ For more detail, see Luban, 'Preventive War'.

if countries agreed not to engage in preventive war unless an impartial body agrees (unanimously or by a supermajority) that the evidence that the attacked country both has weapons of mass destruction and also is a rogue state are strong enough to justify preventive war. Reluctance to invoke the permission and engage in preventive war could be induced by agreeing to impose penalties (such as forced reparations) on countries that engage in preventive wars on the basis of evidence that is later discovered to be faulty, such as when it turns out that there were no weapons of mass destruction.⁴⁵ Countries that want to start a preventive war will then have to decide whether they really believe that their evidence is strong enough for them to take the chance that they will be forced to pay reparations later.

This plan is admittedly idealistic, because many countries will be unwilling to accept or enforce such international laws. There are also bound to be significant disagreements about which policy would be best if adopted. Still, if some such policy could be worked out (and written into international law, applied by impartial courts, and enforced by some group of nations), then it might help to slow the spread of unconventional WMD and also deter the acts that get countries classified as rogue states. This kind of policy might then satisfy some of the Bush administration's legitimate concerns without being as dangerous as the current Bush policy.⁴⁶

⁴⁵ Compare Buchanan, 'Institutionalizing the Just War', and his chapter in this volume.

⁴⁶ For helpful discussion and comments on drafts, I thank Sue Uniacke, David Rodin, Henry Shue, Frances Kamm, Jeff McMahan, Bart Gruzalski, Peter Singer, Bernard Gert, Julia Driver, Nir Eyal, Anne Eaton, John Oberdick, Philip Pettit, Nan Keohane, Kim Scheppele, Steve Macedo, and others in audiences at the University of Oxford, the International Society of Utilitarian Studies, and the Princeton Center for Human Values. I would also like to thank the Oxford Leverhulme Program on the Changing Character of War and the Princeton University Center for Human Values for financial support while writing this chapter.