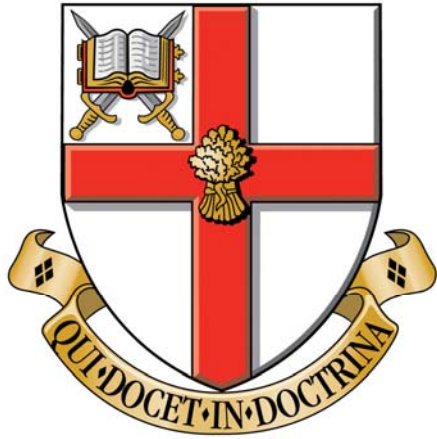


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On the Importance of a Drawn Sword: Christian Thinking about Preemptive War—and Its Modern Outworking

David Clough and Brian Stiltner

JUST WAR THINKERS, SUCH AS HUGO GROTIUS, RESISTED USING FEARS about the enemy's intentions as grounds for preemptive military action. This conservative rendering of what was permissible came under pressure in debates about the military responses to Iraq, Iran, and other nations seeking weapons. Those arguing for a more permissive category of preventive war maintain that a prudent leader must anticipate developing military threats and respond before an act of aggression is imminent. Though the just war tradition must respond to the changing nature of military threats, if the tradition is to remain viable as a moral framework, it is vital that it not be made more malleable in this area.

The just war tradition has long allowed preemptive attacks on the basis of self-defense but not preventive wars to preclude a future threat from emerging. In their discussion of when it is appropriate to pursue justice through going to war, the classic architects of the just war tradition were cautious in using fears about the enemy's intentions as grounds for preemptive military action. For Hugo Grotius (1583-1645), such action required "moral certainty" about both the enemy's power and intentions; he followed the Roman historian Livy (c. 59 BC-17 AD) in condemning preemptive killing "before a sword had been drawn." However, this conservative rendering of preemption has been put under intense pressure by advocates of an expanded approach to preemption as part of the so-called war on terror. The pressure toward expanded preemption was seen most clearly in the 2003 invasion of Iraq, but it had precursors before 2001, such as the Israeli missile attack on Iraq's Osirak nuclear reactor in 1981 and the U.S. bombings of Libya in 1986 and of Sudan in 1998. This pressure will continue for some time to come, because the problems of nuclear weapons proliferation and international terrorism are not going away any time soon. Those arguing for a more permissive category of preemption maintain that, under current conditions, a prudent leader must anticipate developing military threats and respond before an act of aggression is imminent. On

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the other side are those who argue that loosening the standards for preemption would be illegal under international law, unjust to foreign citizens, and dangerous to global stability.

Specifying criteria for legitimate preemptive attack has been a perennial challenge for just war theories and international lawyers. Yet both the just war tradition and international law have in place a workable understanding of preemption. Historically, that understanding has served reasonably well, but it was already being challenged by weapons proliferation and the rise of international terrorism in the decades before the 2000s, and recent developments have increased the urgency of taking a fresh look at the ethics of preemption. Most academics specializing in the ethics of war have raised very critical questions about expanding preemption, especially in the case of the Iraq War. A large majority of Christian leaders and ethicists likewise resist the move from preemptive to preventive war, especially in the case of Iraq.

Nonetheless, a convincing ethical case against the Iraq War does not provide a satisfactory conclusion to debates over preemption from the perspective of theological ethics, for two reasons. First, it is a fair and important question as to whether new forms of military threat do necessitate a reworking or redevelopment of the ethics of preemption. It may be that Iraq was a bad case for applying new ideas about preemption, but that other cases—such as Iran or North Korea—will be more compelling. This case will be claimed by some partisans of the so-called Bush Doctrine of preemption, so ethicists will need to clarify the criteria that would handle foreseeable threats and provocations. Second, we believe that there are key theological insights related to the discussion about expanding preemption that deserve a wider hearing.

In the face of widespread calls for making the just war tradition more permissive of anticipatory military action, we argue that it is crucial to maintain a *restrictive* definition of imminent threat as grounds for preemptive wars. In

dialogue with the tradition, we take up Grotius's challenge and ponder what constitutes a "drawn sword" today. Although it is certainly necessary for the just war tradition to respond to the changing nature of military threats, we maintain that if the tradition is to have moral standing as a framework of judgment standing over the interests even of the world's most powerful nations, it is vital that it not be made more malleable in this area.

We begin by noting the confusion that characterizes the current understanding of preemptive attack. The first challenge is definitional. Since the terrorist attacks of September 11, 2001, it has become increasingly common in ethical and theological discussions to distinguish the term *preemptive war* from *preventive war*, although the use is not universal. An example is when the Catholic bishops of Germany stated in January 2003, using a variant rendering of the word: "A security strategy, which professes to be based on the idea of a preventative war, contravenes Catholic teachings and international law." They said

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that a preventative war was an aggressive act and so could not be defined as an act of self-defense.² The differentiation of these terms is also found in Michael Walzer's modern classic *Just and Unjust Wars*, first published in 1977. The concept toward which the terminologies reach is actually centuries old, as we will see when we turn to Grotius. It seems best, in this context, simply to stipulate the following definitions of the broad category with two subcategories, which we base largely on Walzer's discussion.

Anticipatory attack or war is the overarching category; these are military actions justified largely on the basis of the other party's expected and probable behavior, and they therefore inevitably depend on speculative judgments about the other party's intentions that could be accurate or inaccurate. *Preemption* is a military attack or war launched in anticipation of a serious military threat that can be reasonably construed as an imminent attack. It is a form of self-defense, or in some cases, defense of a third party, but it is illegitimate if it does not satisfy the other just war criteria. Preemption need not mean merely a reflex response with no opportunity for planning.³ *Preventive* attack or war, in Walzer's words, "responds to a distant danger; [it is] a matter of foresight and free choice."⁴ This is forward-looking military action that aims to forestall a threat from developing to the point that it will become imminent and intolerable. As Walzer indicates in his classic discussion, we can imagine a spectrum running from reflex action (hitting just as you notice someone is about to hit you in a context when virtually no deliberation is possible, which is imaginable only on the interpersonal—"domestic"—level) to the most speculative of preventive wars. Preventive war is assumed to be unethical because the threat is, as stipulated, speculative; thus many alternative options for pursuing justice are available. The question for Walzer is: If we move in our minds from the extreme of speculative war toward the extreme of reflexive self-defense, at what point do we reach the realm of justified preemption?

The concern that motivates us to write is that the current geopolitical context makes it appear advantageous for the United States and its allies to stretch the definition of preemption in the tradition to allow attacks that would previously have been judged illegitimate. In his June 1, 2002, speech at the U.S. Military Academy at West Point, President George W. Bush laid out principles that have become known as the "Bush Doctrine." One of the three prongs of this doctrine—alongside regime change and assertive American leadership—is the intention to engage in preemptive attacks. As Bush put it, the United States will "take the battle to the enemy, disrupt his plans, and confront the worst threats before they emerge."⁵ Following this speech, the Bush administration was at pains to claim that this doctrine of preemption fell within the parameters set out by traditional laws of war. According to the National Security Strategy of 2002:

For centuries, international law recognized that nations need not suffer an attack before they can lawfully take action to defend themselves against forces

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that present an imminent danger of attack. Legal scholars and international jurists often conditioned the legitimacy of preemption on the existence of an imminent threat—most often a visible mobilization of armies, navies, and air forces preparing to attack. We must adapt the concept of imminent threat to the capabilities and objectives of today's adversaries. Rogue states and terrorists do not seek to attack us using conventional means. They know such attacks would fail. Instead, they rely on acts of terror and, potentially, the use of weapons of mass destruction—weapons that can be easily concealed, delivered covertly, and used without warning.⁶

Yet Bush himself emphasized the novelty of his position, stating in his 2003 State of the Union Address, "Some have said we must not act until the threat is imminent. Since when have terrorists and tyrants announced their intentions, politely putting us on notice before they strike? If this threat is permitted to fully and suddenly emerge, all actions, all words, and all recriminations would come too late." Former U.S. secretary of state George P. Schultz gave his support to this innovation, blurring the categories of preemption and prevention: "President Bush has given us the concepts we need. This is a war, not a matter of law enforcement. States that support terror are as guilty as the terrorists. Our goal is not primarily to punish and retaliate but to prevent acts of terror through intelligence that enables us to preempt and ultimately to eliminate the source. . . . We reserve, within the framework of our right to self-defense, the right to preempt terrorist threats within a state's borders. Not just hot pursuit: hot preemption."⁸ Having so far cited politicians, we could be tempted to regard these developments as the ways of realpolitik but not as a theoretical challenge. Yet, of course, some political theorists, theologians, and ethicists have been making arguments for expanded preemption in general or for engagement in Iraq or other countries that bear the marks of preventive war. Within Christian discourse, it is hard to locate ethicists or theologians who openly affirm preventive war, but many have argued for more permissive accounts of preemption. Jean Bethke Elshtain, who supported the invasion of Iraq and has not changed her mind since the failure to discover weapons of mass destruction (WMD), believes that there was enough evidence of imminent threat combined with a need to punish Saddam Hussein for human rights abuses. She notes that the nature of the regime matters: "Any state in breach of peace terms and believed to possess WMD will trigger a more negative assessment than a relatively transparent democratic state not similarly in breach and in defiance. Or, for that matter, a very nasty regime that has, up to this point, stood down from terrorizing its own population systematically or actually using WMD. Regime change in Iraq cannot be severed from these, and other, considerations."⁹ George Weigel argued in an interview that "the nature of certain regimes makes their mere pos-

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session of weapons of mass destruction (or their attempt to acquire such weapons and the means to launch them) an imminent danger toward which a military response is not only possible but morally imperative."¹⁰

Even bolder is the theologian Stephen Strehle, who supported what he called a preemptive attack on Iraq on the combined basis of the WMD threat, Saddam's tyranny, and the risk of Saddam cooperating with terrorists: "It is more than likely that Saddam possesses and produces at present biological and chemical agents. It is more than obvious that Osama bin Laden would like to obtain these weapons, judging from his sudden change of heart about the Iraqi regime and his condemnation of America's invasion of that nation. No one should have an imminent threat like this hanging over them. Just the mere possibility represents a clear and present danger that needs to be eliminated and efminated now."¹¹

What is notable in all these quotations are assertions that "mere" threats, possible risks, and attempts by a regime to acquire weapons suddenly become a *causus belli*. This is novel in the just war tradition, despite the claims of these writers to stand within that tradition. Whether this is the way that the just war tradition should be "stretched or developed to meet new realities," as Weigel puts it,¹² is at issue in this essay.

We therefore stand at a moment when the United States is conducting foreign policy in a way that questions the classic concept of preemption and pushes it in the direction of preventive war. Is this shift necessary in light of new realities, or is it a dangerous blurring of principle? To orient ourselves in this strange new world, we now turn back to one of the cornerstones of the just war tradition, Grotius. Our hope is that attending to his reflections will be fruitful in reminding ourselves why the tradition has considered it important to make preemption a narrow category that cannot be exploited to justify any war aimed at reducing the threat of a neighboring nation. Once we have revisited his thought in this area, we will discuss its significance for the current debate.

Grotius

Hugo Grotius's 1625 work *De Jure Belli ac Pads* (On the Right of War and Peace) is often seen both as the beginning of international law and as the moment at which the law of nations could be thought about apart from theology for the first time. If the latter is true, it was no part of Grotius's intention; for him, God's ordering of the universe meant that whatever right reason dictates should be understood as commanded or forbidden by God (1.1.10.1¹³). Grotius was known as an apologist for Christianity, and in this work he is concerned to give a properly theological basis for judgments Christian leaders had to make.¹⁴ His work was motivated by concern about the warring habits of Christians:

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"Throughout the Christian world I observed a lack of restraint in relation to war, such as even barbarous races should be ashamed of; I observed that men rush to arms for slight causes, or no cause at all, and that when arms have once been taken up there is no longer any respect for law, divine or human; it is as if, in accordance with a general decree, frenzy had openly been let loose for the committing of all crimes."¹⁵ To the disorder of seventeenth-century Europe, with religious wars largely fought by undisciplined mercenaries on behalf of similarly matched nations, he sought to bring order based on right reason.¹⁶

Despite this concern for order, Grotius was no dove. He came to the conclusion that the only way to avoid a Dutch civil war was to support an effective military coup, and he was imprisoned when this effort failed.¹⁷ While writing *De Jure Belli ac Pads*, he was still an adviser to his former employer, the East India Company, and he argued that private parties such as the company could make war as if it were a state.¹⁸ Against many contemporaries, he insisted that wars could be fought not just to redress an injury done but also to punish nations that breached the law of nature (2.20.40.4). He believed that European settlers in America had the right to make war against the indigenous populations if this was the only way they could avoid the disruption of their agriculture (2.2.17). As we shall see, he also believes that preemptive war can be justified in some circumstances. He writes, therefore, as one who believes war to be on occasion morally legitimate or even morally demanded but who seeks to restrict both the incidence and destructiveness of war through the codification of norms on which Christian nations can agree.

Grotius begins his consideration of the right of war with definitions. He follows Cicero in defining war as any dispute involving the use of force (1.1.2.1) and intends his discussion to apply to violent disputes between individuals as well as to conflicts between nations. By the right of war, he means those things that can be done without injustice to one's enemy (1.1.3.1). He follows Aristotle in distinguishing between natural and voluntary justice, and he identifies natural law with the dictate of right reason (1.1.10.1), which is unalterable, even for God (1.1.10.5). Voluntary law can be human or divine; divine voluntary law was given to humankind after creation, after the flood, and in the Gospel of Christ, and it is binding on everyone as soon as they are sufficiently made known to them (1.1.15). In relation to the law of nature, Grotius considers that war is justified from the instinct of self-preservation (1.2.1.1). This instinct can be seen in all animals; right reason does not therefore prohibit all violence but only that violence that "is in conflict with society," which he explains as violence that "attempts to take away the rights of another" (1.2.1.5). He cites evidence in support of the legitimacy of war from the Old Testament and from "wise" nations in history (1.2.3.1). He recognizes that arguments against war on the basis of the New Testament are more plausible, but he offers twelve arguments in favor of war from the New Testament (1.2.7) before turning to a critique of biblical

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arguments against war (1.2.8). He then defends the legitimacy of private wars even in the context of public authorities (1.3) and, while arguing against a general right of subjects to make war on superiors, specifies a range of exceptions to this rule, including when a king shows himself to be an enemy of the whole people (1.4.11).

In considering justifiable causes for war, Grotius begins with a clear statement that initially seems to rule out any kind of preemptive war: "No other just cause for undertaking war can there be excepting injury received" (2.1.1.4). In elucidating his position with reference to Greek, Roman, and church authorities, however, it soon becomes clear that he considers that war could be justified before an injury has been committed, because actions provoking war may be of two kinds: "An action lies for a wrong not yet committed in cases where a guarantee is sought against a threatened wrong, or security against an anticipated injury, or an interdict of a different sort against the use of violence. An action for a wrong committed lies where a reparation for injury, or the punishment of a wrong-doer, is sought" (2.1.2.1). He therefore concludes that the first justifiable cause of war "is an injury not yet inflicted, which menaces either person or property" (2.1.2.3).

Once Grotius has acknowledged the legitimacy of preemptive action, he is concerned to ensure that this permission is not interpreted too broadly. In reflecting on the legitimacy of defending against attacks on life, he cites with approval Thomas Aquinas's judgment that lethal self-defense is permissible if the killing is not intentional and there is no nonlethal alternative (2.1.4.2).¹⁹ But this defense is only permissible when the danger is immediate and cannot justify killing on the basis of fear: "The danger, again, must be immediate and imminent in point of time. I admit, to be sure, that if the assailant seizes weapons in such a way that his intent to kill is manifest the crime can be forestalled; for in morals as in material things a point is not to be found which does not have a certain breadth. But

those who accept fear of any sort as justifying anticipatory slaying are themselves greatly deceived, and deceive others" (2.1.5.1).

In support of this point, Grotius cites a string of authorities in the remainder of this section. He notes Cicero's observation that "most wrongs have their origin in fear, since he who plans to do wrong to another fears that, if he does not accomplish his purpose, he may himself suffer harm" (2.1.5.1) and his question: "Who has ever established this principle, or to whom without the gravest danger to all men can it be granted, that he shall have the right to kill a man by whom he says he fears that he himself later may be killed?" (2.1.5.1). From Xenophon, he cites Clearchus's speech: "I have known men who, becoming afraid of one another, in consequence of calumny or suspicion, and purposing to inflict injury before receiving injury, have done the most dreadful wrongs to those who had had no such intention, and had not even thought of doing such a thing" (2.1.5.1). He notes the rhetorical question in Cato's speech to the

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Rhodians: "Shall we be first to do what we say they wished to do?" (2.1.5.1). From Gellius, he notes the disanalogy with the situation of the gladiator: "When a gladiator is equipped for fighting, the alternatives offered by combat are these, either to kill, if he shall have made the first decisive stroke, or to fall, if he shall have failed. But the life of men generally is not hedged about by necessity so unfair and unrelentless that you are obliged to strike the first blow, and may suffer if you have failed to be first to strike" (2.1.5.1).

In Thucydides, Grotius finds further support for concern about anticipatory action: "The future is still uncertain, and no one, influenced by that thought, should arouse enmities which are not future but certain" (2.1.5.1). Finally, from Livy, he notes the worry that "in the effort to guard against fear men cause themselves to be feared, and we inflict upon others the injury which has been warded off from ourselves, as if it were necessary either to do or to suffer wrong" (2.1.5.1).

Grotius next considers the appropriate response to a person who is planning a plot or to corrupt judicial procedure: "I maintain that he cannot lawfully be killed, either if the danger can in any other way be avoided, or if it is not altogether certain that the danger cannot be otherwise avoided. Generally, in fact, the delay that will intervene affords opportunity to apply many remedies, to take advantage of many accidental occurrences; as the proverb runs, 'There's many a slip 'twixt cup and lip'" (2.1.5.2). He recognizes that other theologians and jurists are more permissive, but he calls his opinion "better and safer," as well as being supported by the authorities he has cited.

Grotius then argues that killing is justifiable where it is the only option to prevent the loss of a limb or one's chastity, and that killing in defense of property is justifiable under the law of nature but not according to the Gospel. He then turns to larger questions of public war, and he quickly rejects the position that wars may be fought to weaken a neighboring power: "Quite untenable is the position, which has been maintained by some, that according to the law of nations it is right to take up arms in order to weaken a growing power which, if it become too great, may be a source of danger" (2.1.17). In this context, he does concede that this consideration may enter into judgments on the basis of expediency, if a war is justifiable for other reasons. He sees it as crucial, however, to recognize that preventing threats cannot become a justification for resorting to war: "But that the possibility of being attacked confers the right to attack is abhorrent to every principle of equity. Human life exists under such conditions that complete security is never guaranteed to us. For protection against uncertain fears we must rely on Divine Providence, and on a wariness free from reproach, not on force" (2.1.17).

Grotius returns to the theme in a later chapter when addressing possible unjust causes of war. The first unjust cause of war he treats is the fear of something uncertain: "We have said above that fear with respect to a neighbouring power

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is not a sufficient cause. For in order that a self-defence may be lawful it must be necessary; and it is not necessary unless we are certain, not only regarding the power of our neighbour, but also regarding his intention; the degree of certainty required is that which is accepted in morals" (2.22.5.1).

Obviously, this leaves us with the question of what degree of uncertainty is required in "morals," but in the following paragraph Grotius provides examples of unjust causes: "We can in no wise approve the view of those who declare that it is a just cause of war when a neighbour who is restrained by no agreement builds a fortress on his own soil, or some other fortification which may some day cause us harm. Against the fears which arise from such actions we must resort to counter-fortifications on our own land and other similar remedies, but not to force of arms"

(2.22.5.2). He is also keen to state clearly that military advantage apart from necessity cannot substitute for necessary self-defense as a justifiable motive: "Advantage does not confer the same right as necessity" (2.22.6).

One final relevant text from Grotius is the passage in book 3 *of DeJure Belli ac Pactis*, where he discusses the importance of declarations of war. He cites Livy's critique of Menippus, who killed some Romans when war had not been declared and hostilities had not begun. Livy argues that the drawing of swords or the shedding of blood would have justified the attack, but that as neither had taken place, the killings were unjustified (3.3.6).

For Grotius, therefore, war may be justified on the basis of "an injury not yet inflicted, which menaces either person or property." Once he has allowed this, however, his entire concern is to avoid the permission being interpreted too widely. The danger must be "immediate and imminent in point of time." The example he gives is of an assailant who "seizes a weapon in such a way that his intent to kill is manifest" (2.1.5.1). Lawful self-defense must be necessary, which means that one is morally certain that the enemy has both the power and intention to attack. Any wider permission risks chaos; allowing persons or nations to kill on the basis of fear of being killed would be dangerous in the extreme and would result in attacking those who had no aggressive intention. We are generally not in the situation of the gladiator where we have to choose between killing or being killed, and we should not cause certain enmity in response to an uncertain future event. Otherwise, we guard ourselves against fear only by causing ourselves to be feared. It is therefore unjustifiable to wage war in order to prevent a neighbor becoming a threat; if a neighbor builds a fortification, we may want to build our own, but we are not justified in going to war. We should recognize that delaying an attack "affords opportunity to apply many remedies, to take advantage of many accidental occurrences" that would otherwise be closed to us. At all costs, we must guard against allowing that "the possibility of being attacked confers the right to attack." The human situation means that complete security is never guaranteed, and we must rely on God's providence and wariness, rather than the use of force.²⁰

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Appraisal

Although Grotius's text is four centuries old, and frequently relies on sources considerably older, it is hard to dispute the pertinence of his observations and conclusions for today's debates. He saw the need both to justify preemptive war and to emphasize the need to place strict limits on when war could be legitimately employed. Given its significance in the tradition, it is unsurprising that key aspects of his thought in this area are obviously present in modern accounts that determine when preemptive war could be justified. William Galston summarizes a brief discussion of preemption as applied to the Iraq war under four criteria: the severity of the threat, the degree of probability of the threat, the imminence of the threat, and the cost of delay.²¹ Galston does not hold out WMD as a special type of imminent threat; rather, the nature of a threat from other nations' weapons programs can be judged by each of the four criteria. Iraq's possible possession of transferable nuclear weapons would pose an especially high risk, but Galston claims that in 2002-3, the United States was able to judge that the probability of this possession was unlikely, that the threat of Iraq's use of any WMD was "not imminent by any definition of imminence," and, therefore, that there was no severe cost in pursuing other methods of responding to the risk.²²

We can see Galston's first three factors as attempts to specify Grotius's insistence on "moral certainty" about the power and intention of the aggressor, though they suggest scales rather than following Grotius in trying to establish a clear threshold for preemptive war. The fourth factor looks more dubious according to Grotius's categories, given that he rejects protecting military advantage and weakening a neighbor as just causes of war. From Grotius's perspective, such a consideration could open the way to preemptive war to address threats that are neither severe nor imminent, if only the perceived cost of delay is sufficient.

Walzer concludes that preemptive war is justified when a nation faces a "sufficient threat" of an offensive attack that is "imminent," which he glosses as meaning a manifest intent to injure, a degree of active preparation that makes intent a positive danger, and a general situation in which doing anything other than fighting greatly magnifies the risk.²³ Similarly to Galston, Walzer thinks that all types of risk, including the risk of being attacked with WMD, could be assessed by the same calculus.²⁴ Likewise, in a similar way to Galston, Walzer's first two categories could be interpreted as explications of Grotius's criterion of moral certainty about power and intention, but the third criterion of acting to avoid the growth of a risk that is not imminent or sufficient seems similar to the case Grotius rejects of a war in response to an enemy's erection of fortifications.

A third example of a modern attempt to set out criteria for preemptive war is that outlined by Neta Crawford. She identifies four criteria: the threat must be

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to the party itself, rather than its interests; there must be strong evidence that war was inevitable and likely in the near future; preemption should be likely to succeed in reducing the threat; and military action must be necessary, with no alternative course of action likely to work.²⁵ Somewhat more than Galston and Walzer, she suggests that the possibility of WMD possessed by a rogue state or a terrorist group presents a new risk that may change the urgency with which other nations must respond. But she also argues that it can be dangerous and counterproductive to lower the threshold for preemptive action.²⁶ Her first criterion limits what can be appropriately viewed as national self-defense and echoes Grotius's concern that preemptive wars must be confined to those confronting an urgent imminent threat to a nation. She cites the definition of national interests in the U. S. Quadrennial Defense Review of 2001, which include the "vitality and productivity of the global economy," "access to key markets and strategic resources," and maintaining the "pre-eminence" of the U.S. military. Though Grotius would not be surprised that a nation desired these ends, he clearly judged that such motivations were not legitimate justifications for war. Crawford quotes Richard Betts, who makes a point very similar to Grotius's concern that complete security is not part of the human condition: "When security is defined in terms broader than protecting the near-term integrity of national sovereignty and borders, the distinction between offense and defense blurs hopelessly Security can be as insatiable an appetite as acquisitiveness—there may never be enough buffers."²⁷

These modern distillations of criteria for preemptive war have substantial common ground with Grotius, but they also move beyond him in a permissive direction in the cases of Galston and Walzer. This commonality masks a very significant contrast between the positions of European nations in the early seventeenth century and the position of the United States and its allies at the beginning of the twenty-first. In Grotius's day, nations with similar resources were vying with one another for military advantage. In this context, he could make the case that restricting the legitimate grounds for preemptive war would be to the mutual advantage of all nations, in avoiding continual warring between parties that was destructive and ultimately futile. Four hundred years later, the relevant context is global and very different. The United States currently has a substantial military advantage over its closest rivals, and it maintains this position through spending as much on its military as the rest of the world put together.²⁸ Though the September 11, 2001, terrorist attacks and the lack of success in military responses to them have weakened the sense that the United States can merely do as it chooses around the world, it is less clear than it would have been to Grotius's interlocutors why it would not be to the advantage of the United States to go to war to prevent the emergence of threats to its interests wherever they arise. It is therefore not surprising that there is pressure to modify the judgments of Grotius and the Christian just war tradition that

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followed him so as to make it more permissive of preempting threats where there is not moral certainty about the intention of an enemy to launch an imminent attack.

A second key difference between the context in which Grotius was writing and our own is the astonishing scale of threat presented by nuclear weaponry, and the potential for chemical, biological, and conventional weapons to be deployed on a scale unthinkable for Grotius and his contemporaries. One response to this change would be to argue that the just war tradition needs to be revised in relation to preemption to deal with these large-scale and rapidly déployable threats, as Weigel proposed in the interview cited above but has not yet outlined systematically. It is our view that the framework Grotius sets out can accommodate these new and much more destructive weapons without making it more permissive of preemptive war. The appropriate criteria for assessing threats should remain unchanged: Preemptive attack in self-defense is justified when there is solid reason to believe that an enemy is capable of and intends to make an imminent attack. The scale of destructive power potentially wielded by an enemy will change many factors in deciding on an appropriate policy; it will have an impact on the arms nations consider adequate for their defense, it will increase the motivation to establish and maintain good relations with neighboring nations, it should encourage states to engage in discussions about arms limitation, and it will have implications for the planning of military strategies. However, in a situation where international law is applied equally to all, it does not alter Grotius's judgment that war should not be used to prevent other nations from becoming a threat. In the context of nuclear, biological, chemical, and large-scale conventional weapons, it remains the case that making war permissible in the absence of a viable and imminent threat would make all nation-states much more vulnerable to attack based on the fears of their enemies.

It is worth noting two contexts in which this judgment that the magnitude of weapons threat is irrelevant to the norms governing preemptive war would need modification. The first is if an authoritative and credible international institution were tasked to enforce agreements on arms limitation. Provided that international agreements were

policed equitably, the question of when to intervene to prevent the development of new weapons systems would then be a matter of decision for the international community, which could decide it was appropriate to intervene before threats became imminent. The key difference between this case and that in which there is no international authority is that where there is a properly functioning international body authorizing intervention, the risk of individual nations engaging in war merely to improve their strategic position in relation to other states is avoided.

Considering this case provokes the obvious empirical question of whether the existing United Nations, and the Security Council in particular, satisfies the criterion of an authoritative and credible international institution. Here we

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must recognize that the permanent members of the Security Council anachronistically represent a post-World War II settlement that has little relevance to international relationships at the beginning of the twenty-first century. For it to become the credible international authority necessary to function in this judicial mode, the Security Council is in urgent need of reform to make it globally representative, and its permanent members must enable this transition without regard for their narrow short-term interests.

So great is the need for this international authority, however, that we suggest that, given the lack of alternatives, even in its current unreformed state the UN Security Council is the appropriate locus for decisions about when it is appropriate to counter weapons threats. To perform this role credibly, its members must act with restraint and a commitment to the good of the community of nations. The veto power of individual permanent members means that some interventions will be rejected for bad reasons. But for nations to pursue preventive wars without Security Council approval, such as was done in Iraq in 2003, is a grave threat to world peace and at odds with the just war tradition as informed by the thought of Grotius.

The second context in which our judgment would need revision—that the power of weapons systems is irrelevant for the framework of decisions about preemptive war—is very different. We have noted the overwhelming military dominance of the United States at the beginning of the twenty-first century. If a nation-state in this dominant position decided that the defense of its interests was more important than the maintenance of norms applicable equitably to all nations, the development of new highly destructive and rapidly deployable weapons systems would obviously be of relevance in deciding when preemptive action is necessary. The greater the size of the developing threat, the greater the imperative to act to contain and eliminate it. In such a case, action might even be justified to maintain military dominance globally or regionally. It should be clear from all that we have said that such unilateral action in the absence of serious and imminent attacks on a nation is at odds with the Grotian tradition of just war thinking. We refer to it here because we see this as the clearest point of moral choice for the world's current military hyperpower; the United States can decide to pursue its interests in this mode, but it cannot do so without departing wholly from the limitations on preemptive war that Grotius set out and the just war tradition took up.

Proposal

Having examined debates concerning preemptive war in dialogue with Grotius, we close with five interlocking conclusions about the propriety and limits of preemptive war. First, Grotius appropriately reminds us that complete security

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is impossible for both individuals and nations. The point is one that Christians should have no problem recognizing as a true statement of the human condition. Our creaturely status means that we live with limitation, uncertainty, and dependence. The course of our lives is not fully in our hands. Some basic ways we sin are by trying to deny this reality of insecurity, by trying to take security fully into our hands, or by transgressing what is morally permissible for reasonable safety. To fear the world around us inappropriately can disclose weakness of faith and lack of trust in God. To that extent, fear may be sinful.²⁹ Although fear is a neutral passion that is not wrong in itself, as Scott Bader-Saye cogently presents, Aquinas sees two ways of going wrong in our fear: We may fear *what* we should not or *as* we should not.³⁰

Under the first heading, we might misinterpret either the imminence or magnitude of a threat. Grotius's and Aquinas's warnings line up nicely here. Aquinas also says that we may fear a wrong object if we are inordinately attached to a worldly good. In this regard, it is proper to question whether the motives that drive a foreign policy of

preventive war include fears of a loss of global military dominance, of admitting past mistakes, and of relinquishing the ability to act unilaterally. We think such improper fears have guided the Bush Doctrine and its supporters.

Under the second heading, Bader-Saye describes the negative consequence of fearing in a way that is improper: "We cannot allow our fear of evil to overwhelm our ability to seek the goods we should be seeking."³¹ As applied to the "war on terror," it is illuminating how the United States and allied nations have spent tremendous resources to prevent terrorist attacks with comparatively little attention to long-term investments that would erode the sources of anger and despair that fuel terrorism. As is well known about the Iraq war, the coalition nations responded massively to the purported immediate threat and planned very poorly for the aftermath. Such could be the results of acting on the basis of fear.

Bader-Saye's theological analysis leads us to conclude that it is an improper aim of foreign policy to try to make one's nation completely secure from all threats and that fears based on insecurity are inadequate grounds for war. To rely on fear as a justification for military attack before a threat has matured to a state of objective and imminent threat is unjust and destabilizing; few nations could not find justification to attack a neighbor on this basis. This is not to say, of course, that a developing risk should be ignored; rather, it is to say, with Grotius, that the more restrictive tradition is the "better and safer" course (2.1.5.2). We also note that this caution against improper reliance on fear has deep roots in the just war tradition. J. Warren Smith interprets Augustine on this point: "'Freedom from fear' cannot for Augustine be the goal of foreign policy. Instead, he reminds us that in this age we must live with the uneasy knowledge of the fragile and transitory nature of our existence. For only by living in the fearful reality of our vulnerability and our ultimate impotence to

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ensure the security of our lives can we be free from the self-complacency or will to power that themselves are the very cause of our mortality and fear."³²

This theological understanding of fear will not have as obvious a place in foreign policy deliberation, but it is crucial for religiously minded citizens and leaders to challenge policymakers who seek to create a culture of fear to win support for their proposals. As Christian citizens deliberate among themselves and speak in the public square, they could serve a valuable role by challenging false hopes for perfect security, criticizing the misguided actions that can emerge from a posture of fear, and witnessing to a more hopeful avenues of engaging one's adversaries.

Second, we argued that the massive increase in the destructive power of weapons between the seventeenth and twenty-first centuries does not necessitate or justify revising the just war tradition to make it permissive of wars fought to prevent threats from developing. The existence of nuclear weapons—often unhelpfully grouped with chemical and biological weapons presenting a much lower degree of threat under the heading "weapons of mass destruction"—is a serious threat to the security of all nations, but unilateral action by one nuclear weapons state to prevent another nation from developing nuclear weapons also presents a serious threat to world peace. The unacceptability of unilateral preventative war in these circumstances should focus attention on seeking reforms so that the UN Security Council can become the credible international judicial authority capable of making wise decisions about how to counter such threats.

Third, we have questioned the attempt to specify the conditions for legitimate preemption in the just war tradition with a criterion of costly delay. Though the reasoning behind the criterion that is explicated by Galston and Walzer can be appreciated as their attempt to combine the concepts of imminence, last resort, and proportionality, the danger of this approach is that we can imagine developments that lie far ahead of an imminent attack that a nation might identify as a costly acceleration of risk. We have seen that Grotius provides the example of an enemy building a fortress on its own soil to illustrate illegitimate preemption. Yet such an action could be interpreted as too costly to tolerate under the criteria of Galston and Walzer. This was Israel's thinking regarding Iraq's Osirak nuclear reactor in 1981. Although its worry about Iraq developing a nuclear weapon was understandable and certainly demanded a many-faceted international response, it is instructive that the UN Security Council and the United States condemned the attack as a breach of international law.

Another telling example of when a criterion of costly delay could have been misused was just after World War II, when the United States possessed atomic bombs and the Soviet Union did not. It was clear the Soviet Union had an atomic weapons program and would soon develop the bomb, which was a very costly development for the United States and the global community. Plans were drawn up in the United States for an "atomic blitz" to preempt this danger.³³

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Clearly, Galston and Walzer would not support such an action, but the introduction of cost of delay threatens to overwhelm other criteria pointing to restraint in this and other cases. Taking account of Grotius on this point would mean not admitting the cost of delay criterion except where an enemy attack is already established as viable and imminent; the cost of delay should not be used to avoid satisfying the criterion of imminence.

Our fourth conclusion is that comparison of this early twenty-first-century moment with Grotius's early-modern context helpfully reminds us that we should not adapt the just war tradition to suit our own national interests. Pragmatic self-interest, as well as concern for international peace, encourages us to recognize that we might find ourselves before too long in a situation more like Grotius's, in which nations are rivals for military and economic preeminence. Indeed, recent events show that even a hyperpower cannot afford to act in ways that disaffect significant groups of nations. As Galston nicely puts it: "It cannot be in either America's national interest or in the world's interest to develop principles that grant every nation an unfettered right of preemption against its own definition of threats to its security.... How can we announce a new doctrine of preemption as the centerpiece of our foreign policy while insisting that it applies to us alone and insisting that it should not become, and must not become, the centerpiece of foreign policy systems and practices everywhere else on Earth?"³ «

A world in which the possibility of being attacked confers the right to attack is a world where chaos has overtaken international order, and where the only limitations on the outbreak of war are estimations of relative military strength. Grotius's delimitation of preemption was intended to forestall just such a reality and therefore should not be lightly set aside.

Fifth and finally, we should recognize that there is much that can be done when we embrace the space that Grotius opens for diplomacy and other options. As he notes, we are rarely if ever placed in the situation of the gladiator in which our options are either to kill or be killed. In any but these exceptional circumstances, we can exercise a choice to take advantage of every opportunity to resolve a conflict short of war. It is therefore insufficient merely to argue against being more permissive of war to preempt external threats, as if the choice were to go to war or do nothing. Once we have recognized that war is an illegitimate option to respond to most threats to a nation's security, we need to attend to the wide range of peacemaking and conflict resolution practices that receive inadequate attention in reflection on the ethics of war. One valuable contribution in this context is Glen Stassen's "Just Peacemaking" project, in which he and his colleagues propose practices with the potential to contribute to peace in local, national, and global contexts, including supporting nonviolent direct action, cooperative conflict resolution, seeking to advance democracy and human rights, fostering just and sustainable development, strengthening international

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institutions, and reducing weapons stockpiles and trade in arms.³⁵ Such efforts are often successful in resolving acute crises without resort to arms. More significantly, such efforts are effective "deep prevention" strategies: avoiding the need to preempt many threats to national security by avoiding the conditions that cause and exacerbate them. Therefore, to follow the counsel of Grotius is to affirm the permissibility of preemptive self-defense under narrow criteria and to redirect the energies of nations toward the tasks of just peacemaking. Arguments for preventive war, whether in name or in any of its deceptive guises, should be rejected as incompatible with the just war tradition.

Notes

1. Examples of the broad agreement among Christian leaders are the Catholic bishops of Germany, discussed below in this essay; Bishop Wilton D. Gregory, "Statement on Iraq," February 23, 2003, www.usccb.org/sdwp/international/iraqstatement0203.htm; and "Disarm Iraq without War: A Statement from Religious Leaders in the US and UK," October 11, 2002, www.unitedforpeace.org/article.php?id=2837. Examples of theologians and Christian ethicists challenging preventive war are George Hunsinger, "Iraq: Don't Go There," *Christian Century*, August 14-27, 2002, 10; and Thomas J. Massaro and Thomas A. Shannon, *Catholic Perspectives on Peace and War* (Lanham, Md.: Rowman & Littlefield, 2003), 94. Also telling is that Christian thinkers and just war theorists who supported the Iraq War, at first and/or subsequently, felt obliged to make the case that the war could fit within the traditional just war category of legitimate preemption. It is quite difficult to find a Christian just war thinker who openly supports "preventive war" in contrast to preemptive war. We will discuss a few near-examples below.
2. "German Bishops Warn Iraq War Would Violate International Law," Agence France-Presse, January 21, 2003.
3. "There is often plenty of time for deliberation, agonizing hours, days, even weeks of deliberation, when one doubts that war can be avoided and wonders whether to strike first." Michael Walzer, *Just and Unjust Wars*, 3rd ed. (New York: Basic Books, 2000), 75.
4. Walzer, *Just and Unjust Wars*, 75.
5. George W. Bush, "President Bush Delivers Graduation Speech at West Point," White House, June 1, 2000, www.whitehouse.gov/news/releases/2002/06/20020601-3.html.
6. White House, *The National Security Strategy of the United States of America*, September 17, 2002, www.whitehouse.gov/nsc/nss.pdf.
7. George W. Bush, "President Delivers 'State of the Union,'" White House, January 28,

- 2003, www.whitehouse.gov/news/releases/2003/01/print/20030128-19.html.
8. George P. Schultz, "Terrorism: Hot Preemption," *Hoover Digest*, 2002, no. 3, www.hoover.org/publications/digest/4484486.html.
 9. Jean Bethke Elshtain, "Jean Bethke Elshtain Responds," *Dissent*, Summer 2006, 110.
 10. George Weigel, "George Weigel on Just-War Principles: Pre-Emptive Military Action against Terrorists Is Morally Legitimate," interview, ZENIT News Service, October 13, 2001, www.zenit.org/english/war/visualizza.phtmlPsid=11136.
 11. Stephen Strehle, "Saddam Hussein, Islam, and Just War Theory: The Case For a Pre-Emptive Strike," *Political Theology* 5, no. 1 (January 2004): 95.

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12. Weigel, ZENIT interview.
13. Citations from *De Jure Belli Ac Pactis* are from Hugo Grotius, *De Jure Belli Ac Pactis*, Classics of International Law No. 3, trans. John Damen Maguire (Washington, D.C.: Carnegie Institute, 1913) and given numerically in the form: book number, chapter number, section number, paragraph number (where applicable). For example, "1.1.10.1" refers to book 1, chap. 1, sec. 10, para. 1.
14. On this point, see Oliver and Joan Lockwood O'Donovan, "Hugo Grotius," in *From Irenaeus to Grotius: A Sourcebook in Christian Political Thought 100-162S* (Grand Rapids: William B. Eerdmans, 1999), 787-92.
15. Grotius, *De Jure Belli ac Pactis*, book 1, Prologomena, sec. 28.
16. For more details on the historical context of Grotius's writings, see Onuma Yasuaki, ed., *A Normative Approach to War: Peace, War and Justice in Hugo Grotius* (Oxford: Clarendon Press, 1993), 113 ff.
17. See Richard Tuck, "Introduction," in *The Rights of War and Peace* by Hugo Grotius (Indianapolis: Liberty Fund, 2005), xiv-xv.
18. See Tuck, "Introduction," xxvii; and R. W. Lee, *Hugo Grotius* (London: Humphrey Milford Amen House, 1930), 9.
19. Citing Thomas Aquinas, *Summa theologiae* II-II, 64, 1.
20. In a fuller study, it would be helpful to situate this discussion of Grotius alongside other key figures in the development of the just war tradition in this period, such as Francisco de Vitoria (c. 1486-1546), Francisco Suarez (1548-1617), and Alberigo Gentili (1552-1608). Gentili, for example, is much more permissive than Grotius, suggesting that one should "strike at the root of a growing plant and check the attempts of an adversary who is meditating evil" (Gentili, "The Advantages of Preventive War" in *The Ethics of War: Classic and Contemporary Readings*, ed. Gregory M. Reichberg, Henrik Syse, and Endre Begby [Oxford: Blackwell, 2006], 376). It is instructive that Grotius's more conservative view was the one preferred in the later just war tradition.
21. William A. Galston, with David Blankenhorn, Gerard Bradley, John Kelsay, and Michael Walzer, "Iraq and Just War: A Symposium," Pew Forum on Religion and Public Life, September 30, 2002, <http://pewforum.org/events/index.phprEventID=36>.
22. Galston, "Iraq and Just War."
23. Walzer, *Just and Unjust Wars*, 81.
24. For Walzer's approach to WMD and imminence in the case of Iraq, see *Arguing about War* (New Haven, Conn.: Yale University Press, 2004), 143-57.
25. Neta C. Crawford, "The Slippery Slope to Preventive War," *Ethics and International Affairs* 17, no. 1(2003): 31.
26. Crawford, "Slippery Slope," 33.
27. Richard Betts, *Surprise Attack: Lessons for Defense Planning* (Washington, D.C.: Brookings Institution Press, 1982), 14-43, cited in Crawford, "Slippery Slope," 32.
28. According to the *SIPRI2006 Yearbook* (Oxford: Oxford University Press, 2006), the United States accounted for 48 percent of global military expenditures in 2005.
29. See Thomas Aquinas, *Summa theologiae*, 5 vols., trans. Fathers of the English Dominican Province (Notre Dame, Ind.: Ave Maria Press, 1981), II-II, ques. 125.
30. Scott Bader-Saye, "Thomas Aquinas and the Culture of Fear," *Journal of the Society of Christian Ethics* 25, no. 2 (2005): 95-108.
31. Bader-Saye, "Thomas Aquinas," 105.

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32. J. Warren Smith, "Augustine and the Limits of Pre-emptive War," *Journal of Religious Ethics* 35, no. 1 (2007): 160.
33. See Lawrence Freedman, *The Evolution of Nuclear Strategy* (Basingstoke, U.K.: Macmillan: 1989), chap. 4.
34. Galston, "Iraq and Just War."
35. Glen H. Stassen, ed. *Just Peacemaking: Ten Practices for Abolishing War*, 2nd ed. (Cleveland: Pilgrim Press, 2004).