Jus Ad Bellum, Natural Law and the 2003 Invasion of Iraq

by

Johnny B. Davis

Johnny B. Davis is a Constitutional and International law attorney, an Army National Guard JAG – with the rank of major, an adjunct instructor with the Liberty University Helms School of Government, and a writer for the Standing for Freedom Center at Liberty University. He holds an LLM in International Law Liberty University Law School, a MDiv in Church History from Liberty University Seminary, a JD from Cumberland Law School, and a BS in Government from Liberty University.

Introduction

The legality of the invasion of Iraq is a vital question that goes to the heart of international law. The proper legal authority for military force and the overthrow of a sovereign government is the single most important area of international law.[1] This paper will consider whether the invasion of Iraq complied with the original intent of the Founding Fathers for the Constitutional authority to wage war and satisfied the requirements for a Just War under natural law.

The Declaration of Independence founded the American Republic on natural law and the Constitution rests on the principles of the Declaration. Natural law requires that war must be both a Just War and it should conform to the standards of Jus ad Bellum. The Founding Fathers embraced the ideas of Just War and Jus ad Bellum.[2]

Imperial Presidential Power, the American Constitution, and International Law

The Bush administration adopted an expansive view of presidential power to justify the use of force based on only a resolution and not the Constitutional requirements for a declared war. Neither the Congressional Authorization for the Use of Force against Iraq nor United Nations Resolution 1441 authorization the overthrow of the government of Iraq and the occupation of Iraq. President Bush based his claim to have the authority to overthrow the government of Iraq and to occupy Iraq on the idea that Commander in Chief authority to use force was nearly unlimited.

The Bush administration claimed that a president is not bound by customary international law and that in military actions the president is not bound at all by international law. The Founding Fathers of America believed that Presidents must uphold treaties and customary international law. Three advisory attorney general opinions and thirty federal cases including fifteen Supreme Court cases held that Presidents are bound by customary law.[3]

The heart of the Bush administration argument was that Article 2 of the Constitution giving the President control of Executive power and making the President Commander in Chief of the military meant that the President had unlimited authority to initiate the use of force.[4] However, the Founding Fathers recognized a prerogative of *superintendence* for the President as Commander in Chief. The President retains military discretion while Congress had board

---

[1] Michael P. Scharf & Paul R. Williams, The Law of International Organizations: Problems and Materials, 542-548 (3rd ed. 2013)

[2] Presidential Power in an Age of Terrorism, at 46-58.

[3] Jordan J. Paust, Beyond the Law: The Bush Administration's Unlawful Responses in the "War" on Terror 20-21 (2007).

[4] United States Constitution. art. II, § 1, cls. 1 and § 2, cls. 1–2.

authority to regulate the military and the President's conduct of war.[5] Congress alone could take the nation to war through a Declaration of War[6]

The Constitution took away the power of Congress, under the Articles of Confederation, to appoint and remove the commander in chief of the military. Proponents of the Unitary Executive theory cite this in support of imperial presidential power. The Founding Fathers intended nothing of the kind. The designation of the civilian executive as the Commander of Chief was also designed to ensure the military operated under the rule of law and the authority of both the President and Congress.[7]

The Founding Fathers Intent for Presidential Authority

Presidential authority was largely shaped by the conduct of George Washington as Commander in Chief during the Revolutionary. The Presidency was created with the assumption that George Washington would be the first President. The remarkable restrain of Washington in the exercise of power created a trust in Washington which facilitated the creation of a Chief Executive office that might not have been able to be agreed upon otherwise.[8]

The term "Commander in Chief" derives from the English Civil War. Parliament appointed Sir Thomas Fairfax to be commander in chief of its forces, "subject to such orders and directions as he shall receive from Houses or from the Committee of both Kingdoms."[9] The commander in chief could not act against the will of the Parliament. He also was instructed, "to observe and obey such orders and directions as you shall from time to time receive from the Parliament."[10]

Washington was appointed Commander in Chief of the Continental Army unmistakably established as an agent of the Continental Congress. On June 17, 1775, the Continental Congress designated Washington both "General and Commander in chief, of the army of the United Colonies."[11] Continental Congress specifically required him to conform his conduct "in every respect by the rules and discipline of war," and directed him "punctually to observe and follow such orders and directions, from time to time, as you shall

---

[5] *See Loving v. United States*, 517 U.S. 748, 772. (1996).

[6] David J. Barron and Martin S. Lederman, *The Commander in Chief at the Lowest Ebb – Framing the Problem, Doctrine, and Original Understanding*, 121 Harvard Law Review, 767-768 (January 2008)

[7] *The Commander in Chief at the Lowest* Ebb, at 767-768.

[8] Richard Brookhiser, Founding Father: Rediscovering George Washington, 47-57(1996).

[9] Francis D. Wormuth, *The Nixon Theory of the War Power: A Critique*, 60 Cal. Law Review, 623, 630 (1972).

[10] *The Commander in Chief at the Lowest Ebb*, at 772-774.

[11] 2 Journals of the Continental Congress, 1774–1789. Available at http://memory.loc.gov/ammem/amlaw/lwjclink.html. (accessed 21 February 2017).

receive from this, or a future Congress of these United Colonies, or committee of Congress."[12]

The text does not specifically enumerate the Commander in Chief's powers. In contrast, the text of Article I contains several express references to the congressional role concerning the army, navy, and militia, including specific war powers.[13] A statutory directive or limitation is in and of itself a "command" to the armed forces.[14] Thus, the Commander in Chief Clause cannot properly be construed to give the President unlimited power to take the nation to war. The Founding Fathers built in a conflict between the authority of the President and Congress to guard against the abuse of power.[15]

By the time of the Constitutional Convention in 1787, the title "Commander in Chief" had become identified with the de facto authority possessed by Washington in later stages of the war.[16] Washington's authority was primarily delegated to him rather than being "inherent" war powers of the Commander in Chief.[17] Hamilton wrote that the Commander in Chief's authority "would be nominally the same with that of the king of Great Britain" but that authority would be in substance much inferior to it. 'It would amount to nothing more than the supreme command and direction of the military and naval forces, as first general and admiral of the Confederacy; while that of the British King extends to the *declaring* of war and to the *raising* and *regulating* of fleets and armies all which would subject to the regulation of the legislature.'[18]

Further, during the Constitutional Convention was no recorded discussion or debate suggesting any change in the authority the President would hold versus that George Washington held as Commander in Chief.[19] Hamilton explained that, at most, the Commander in Chief would have those powers enjoyed by the governors of Massachusetts and New Hampshire. Hamilton thought, "it may well be a question" whether the constitutions of those states

---

[12] Ibid.

[13] U.S. Constitution art. I, § 2, cls. 1–2.

[14] Richard A. Posner, Not a Suicide Pact: The Constitution in a Time of National Emergency, 67-68 (2006).

[15] Julian P. Boyd, The Papers of Thomas Jefferson Volume 15 397 (1958).

[16] 7 Journals of the Continental Congress, 196–197. Available at: http://memory.loc.gov/ammem/amlaw/lwjclink.html (Accessed on 24 February 2017).

[17] John C. Fitzpatrick, *Volume 4 The Writings of George Washington*, 365, 367 (1930) (Letter from George Washington to Joseph Reed on March 3, 1776 "I am not fond of stretching my powers; and if the Congress will say, 'Thus far and no farther you shall go,' I will promise not to offend whilst I continue in their service.").

[18] Alexander Hamilton, John Jay, and James Madison, The Federalist Papers. 310-313 (1788). (See Federalist 69).

[19] 2 The Records of the Federal Convention of 1787. Available at: http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=1785, Accessed 23 February 2017.02.23

"confer[red] larger powers").[20] The state constitutions mandated that the commander in chief's powers were "to be exercised agreeably to the rules and regulations of the constitution, and the laws of the land…."[21]

Defenders of a strong preclusive executive prerogative over the conduct of military operations often augment their claims with passages from Hamilton's *Federalist essays* in which he discusses the need for energy in the Executive, including 69 and 74.[22] Hamilton discussed the prosecution of war: "Of all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand."[23]

Advocates of Presidential Prerogative cite Hamilton's discussion of a "single hand." Hamilton was arguing that Congress could not regulate the Commander in Chief nor was he referencing the authority to take the nation to. Hamilton was explaining why the move for a plural executive had been rejected. A three-man executive along the lines of the Trivium of the Roman Republic had been proposed and rejected. Hamilton was defending the Constitution against Anti-Federalists who opposed a single executive.[24]

The Founding Fathers of America were intentionally rejecting the British model of executive prerogative. They saw President as Commander in Chief who lacked the power to take the nation to war. Only Congress could take the nation to war and even then Congress needed to declare war and accept responsibility for taking the nation to war.[25]

The international norms of immediate self-defense allow a President to act to protect against an attack. The Founding Fathers intended that both the President and Congress should act in good faith toward treaty obligations and comply with international norms unless they conflicted with American values or natural law. Natural Law as the expression of God's law was seen as the ultimate governing light.[26]

The Founding Fathers of America were repulsed by the endless wars of European monarchs and wanted to prevent a President from waging war against the will of the people. Thus, an originalist view of the Constitution requires a President to receive authority from Congress either

---

[20] The Federalist Papers, at 312-313 (See Federalist 69).

[21] Massachusetts Constitution of 1780, pt. 2, ch. 2, § 1, art. VII; New Hampshire Constitution. of 1784, pt. 2.

[22] The Federalist Papers, at 574-576 (See Federalist 74).

[23] John Yoo, War By Other Means; An Insider's Account of the War on the Terror 120 (2006). (citing this passage from Hamilton as support for President Bush's disregard of FISA's restrictions).

[24] Charles C. Thach, The Creation of the Presidency 28-32 (1923).

[25] Michael A. Genovese, Presidential Prerogative Imperial Power in the Age of Terrorism. 38-50 (2011).

[26] Id, at 67-82.

directly or indirectly through a self-executing treaty like the NATO or immediate national self-defense to use military force.

Just War and the Iraq Invasion

In the fifth century, Saint Augustine of Hippo created the term "Just War" in his book the *City of God.* Augustine argued the general position of Christians is to advocate peace and to only go to war as last resort. Augustine was focused on self-defense and the defense of others. Also, Augustine argued that the war must be initiated by proper authority. Further, believers should humbly remember they are men and to seek the will of God and sure the war is just before going to war.[27]

In the 13th century, Thomas Aquinas further developed Augustine's Just War idea by codifying the standards for Just War. First, the war had to be waged by proper authority and that authority had to lawfully enact the decision to go to war. Second, the war had to be waged for a just and good purpose and not for selfish gain. Aquinas rejected mere national interest or to wield power.[28]

The just purpose has to be such as to regain lost land, protect the people, and correct an evil done. However, war should only be conducted if there is no alternative peaceful solution. Thus, the purpose of the war should certain on protecting the people rather than serving the interests of the leaders. Third, the central motive for war must be to restore and protect the peace. Political agendas carried out by war would all be unjust.[29]

The Iraq War fails the Just War requirements of Augustine and Aquinas. The invasion of Iraq was not conducted in immediate self-defense or defense of others. The war was not conducted as the last restore but rather the Bush Administration was determined to invade Iraq.[30] Further, the purpose of the Iraq War is questionable. If the war was truly fought over weapons of mass destruction then it was unjust because the factual basis was an error. The real motive was a hidden political agenda then the war falls completely out of all just war bounds.[31]

Aquinas added that the war must not just by a proper authority but that authority must declare the war and reach that declaration through the proper deliberations. These additional factors add additional problems with the justness of the Iraq invasion. The Bush Administration did not follow the constitutional requirement of a Declaration of War.[32]

---

[27] E. T. Akins and R.J. Dodaro, Augustine Political Writings, 28-35 (2001).

[28] Darrell Code, *Thomas Aquinas on Virtuous War Fare*, 58 Journal of Religious Ethics, 65-69 (1999).

[29] Id, at 68-72.

[30] Id.

[31] Alia Brahimi, Jihad and Just War in the War on Terror, 43-48, (2011).

[32] Id, at 49-51.

The Bush Administration realized it had little hope of getting declaration of war and the Bush administration did not want to concede that Congress was the branch of government which takes the nation to war. Instead, by a simple majority vote, a limited authorization to use force was passed. However, even then the authorization did not give authority to overthrow the government of Iraq and occupy the nation. The Bush administration proceeded on with its plans to overthrow the Iraqi government with no regard for the limits of the authorization.[33]

The Bush Administration's intention to both overthrow the Iraq government and to occupy Iraq was publicly stated. Congressional joined with the Bush Administration to work around the constitution with a resolution. Congress sought to avoid responsibility but only approving limited military action. However, Congress understood the Bush Administration's intentions and is equally culpable of waging an unjust war.[34]

Just War developed over the last few centuries and produced a general consensus among Christians emerged called "Jus ad bellum." Jus ad bellum became the standard customary law for waging just war among Western nations and this has become the general international customary law. Jus ad bellum sets forth seven basic factors to determine if war is justified.[35]

The first factor is that the war must be waged for a just cause. The war must not for selfish gain or even to restore a wrong or punish evil. The war must be in defense of the nation or others and must be necessary to protect life. The second factor is comparative justice is served by war. The presumption must be against war. The basis for the war must be great enough to offset the suffering which will be caused by the war.[36]

The third factor is that only a competent public authority can wage a war. Not only must it be a government or international body but there must be a system of law in place which allows for a proper determination of the justness of the war. Thus, dictators taking their nations to war through a personal will is unjust. A republic must follow its own laws and procedures. The war should be congressionally declared.[37]

The fourth factor is right intention. Right intention goes to motivation for the war. The just cause must not just be a pretext but the real reason for the war. The fifth factor is probably of success. The war must not a senseless fight that can only harm such as the Jewish rebellion

---

[33] Id, at 51-53.

[34] Id.

[35] James F. Childress, *Just War Theories: The Bases, Interrelations, Priorities, and Functions of Their Criteria*, 39 Theological Studies, 434-436 (1978).

[36] David Smock, *Would an Invasion of Iraq be a "Just War?*, 98 United States Institute of Peace, 2-4 (2003).

[37] J. H. H. Weiler and Abby Deshman, *Far Be It from Thee to Slay the Righteous with the Wicked: An Historical and Historiographical Sketch of the Bellicose Debate Concerning the Distinction between* Jus ad Bellum *and Jus in Bello*, 24 The European Journal of International Law 33-38 (2013).

against the Romans in the first century. The war brought about the destruction of Jerusalem and devastation to the Jewish community and never had a real chance of success.[38]

The sixth factor is last resort, which harkens back to Augustine's standard that peace is the normative stance. All reasonable alternatives to war must be pursued and must fail before seeking war. The final factor is proportionality, which is that the positive gain which can be expected from war outweighs the great costs of war. World War I would be an example where the great costs made joining the war unjust.[39]

The Iraq invasion was not truly done for a just cause. The invasion was not in defense of any nation but rather with the intent of "nation-building" by turning Iraq into a democracy. Such a motive gives the appearance of a just cause. No nation has the right to "nation-build" another country to shape that nation in its own image. Each nation must be allowed to find its own way as long as it does not harm other nations.[40]

Comparative justice was not served by the invasion. There was no urgent need for the invasion of Iraq. Iraq's military was weak and did not pose a real threat. The invasion resulted in the deaths of hundreds of thousands of Iraqis during the invasion and the occupation. Iraq was plunged into instability which may continue for decades. It was foreseeable that the harm from the invasion would be great.[41]

The right intention cannot be fully judged at this point in history. The record is unclear if the publicly announced reasons for war, Iraq's weapons of mass destruction program, terrorism, and the Iraq government's abuse of its people, were the real reasons for the war. The Bush administration appeared to be determined to invade no matter what the evidence indicated and regardless of any legal limits. Thus, the intentions of the Bush administration are suspect.[42]

The invasion of Iraq was waged with a high probability of successfully defeating the Iraqi military and overthrowing the government. The military outcome was never in doubt. However, the national building aspirations of the Bush administration were dubious at best. The Bush administration entirely failed to recognize that Iraq lacked the social, cultural, and legal foundations for a functional democracy.[43]

---

[38] *Would an Invasion of Iraq be a "Just War?*" at 2-4.

[39] *Far Be It from Thee to Slay the Righteous with the Wicked: An Historical and Historiographical Sketch of the Bellicose Debate Concerning the Distinction between* Jus ad Bellum *and Jus in Bello,* at 46-49.

[40] Herbert W. Titus, God, Man, and Law: The Biblical Principles, 108-115 (1994).

[41] Fiasco the America Military Invasion of Iraq, at 38-43.

[42] *The Legality of Operations Iraqi Freedom under International Law*, at 89-94.

[43] Fiasco the America Military Invasion of Iraq, at 152-162.

The Iraq invasion fails the test of exhausting reasonable alternatives to war. The Bush administration was determined to invade Iraq and resisted efforts to resume United Nations weapon inspections. No real effort was made for a peaceful solution by the Bush administration desperately searched for excuses to attack Iraq and used alternating and inconsistent legal justifications.[44]

The invasion of Iraq also strongly fails the test of proportionality. The invasion was motivated by the 9-11 attack and the menace of terrorism and radical Islam. The government of Iraq was repressive but it was a secular regime. The focus of the civilized world needed to be on combating the rise of radical Islam. Saddam Hussein harshly repressive radical Islamists within Iraq. The very idea of overthrowing any secular regime in the Islamic world is a foolish response to the rise of radical Islam.[45]

The invasion of Iraq fueled the rise of radicals both within Iraq and around the Islamic world. It should have been no surprise that a Western lead invasion and overthrow of a secular Muslim government in the Middle East would destabilize the region and fuel the rise of radical Islam. The invasion and continual conflict to this day have resulted in the deaths of hundreds of thousands of civilians. The American military warned the civilian leadership that the civilian causalities could be great and was ignored.[46]

The Bush administration ignored the clear and present dangers of the invasion of Iraq. The rest of the coalition went along failing to seriously continue the merits and perils of the invasion. The Bush administration sold the war with suggestions that the war would for itself, that the war would be clean thanks to modern high teach weapons resulting in few civilian causalities. Likewise, the coalition deaths would small not the thousands who died in reality. The Bush administration even promised a functional democracy for Iraq. No serious evaluation of the climate of Iraq would have supported such claims.[47]

The invasion of Iraq fails the test of the Jus ad bellum factors. The war was not just and improperly conducted without a Declaration of War. The mere fact that the Iraq government was repressive was not a justification for the war. Many nations across the globe are repressive and the United States nor the United Nations cannot reasonably invade and overthrow their government. The war is a lesson that peace should be the normative standard. Military force should only be used within the original Constitutional and natural law just war limits.

Legal Legacy of the Iraq Invasion

The high cost in money and lives and lack of concert successes turned American public

---

[44] The Invasion of Iraq, at 105-115.

[45] America's Destruction of Iraq, at 45-55.

[46] Id, at 58-63.

[47] The Invasion of Iraq, 153-162.

opinion against the Iraq War. President Obama made opposition to the Iraq Invasion and Bush's Imperial Presidency claims centerpieces of his Presidential campaign. However, upon taking office Obama quickly built on the legacy of Bush and made even broader claims of Presidential authority.[48]

In March 2011, Obama made the dramatic claim to having authority to use military force in Libya with no congressional authorization and no claim of self-defense nor treaty obligation. No American President had ever claimed such broad authority to take the nation to war. Obama was in effect claiming to have the same authority as that of King George. Obama justified his actions on the basis that he had the constitutional authority to "reasonably determine that the use of military force in the national interest and no congressional approval was required for limited military operations.[49]

On 17 March 2011, the United Nations Security Council passed Resolution 1973 which authorized enforcement of a "no-fly zone" over large parts of Libya to protect the refugees of the civil war. The resolution did not authorize the overthrow of the Libyan regime nor active military intervention on any side in the civil war. However, the Obama administration's intentions were openly to remove the government of Libya.[50]

The United Nations articles did not authorize the United Nations to intervene in an internal conflict to overthrow the government. However, President Obama openly treated Resolution 1973 as an authorized limited military to overthrow the Libya government to protect civilians. Like President Bush, Obama was going beyond any authority he had received and had no regard for international law or constitutional restrictions on his authority to use military force.[51]

The government of Libya was overthrown by insurgents with the active military intervention of the United States military and some of its NATO allies. Obama's arguments built on the legacy of Bush's invasion of Iraq. Obama like Bush focused on the evil nature of the regime and the need to aid the civilian population suffering from dictatorship. Obama actually went further in the humanitarian intervention because unlike Bush, he did not claim that the national security of the United States was in danger. Bush sought at least partial Congressional authorization while Obama sought no Congressional authorization.[52]

Congress protested but did nothing. Therefore, the precedent is in place which allows for military intervention in another nation solely on the authority of the President to protect the civilian population. Obama set the precedent that even the overthrow of another nation's

---

[48] Presidential Prerogative Imperial Power in the Age of Terrorism, at 159-161.

[49] Mariah Zeisberg, War Power: The Politics of Constitutional Authority, 1-5, 33, 250-255 (2013).

[50] Pierre Thielborger, *The Status and Future of International Law after the Libyan Intervention*, 4 Goettingen Journal of International Law, 21-28 (2012)

[51] Id.

[52] Id, at 37-45.

government was permitted. The Founding Fathers, customary law, the United Nations Charter, natural war, and Just War doctrine all oppose such a broad authority to wage war.

The true justification for the Imperial Presidential use of force by Presidents Bush and Obama is found in the 19th-century German school of Philosophy. George Hegel wrote that the state was a metaphysical reality not subject to objective outside restrains such as natural law. Rather, the state had the right to choose between following or disrespecting a law. Thus, a President could take the nation to war because the President deems it necessary regardless of any legal restrains.[53]

Traditional Jus ad Bellum Provides the Best Guidance

The rejection of jus ad bellum has been a complete failure on all fronts and contributed to the United States' misguided foreign policy. The invasion of Iraq cost many lives and tremendous amounts of money and did not make the United States or the World safer and Iraq remains unstable and troubled. Jus Ad Bellum would have guided America to not go forward with the invasion. Time-tested jus ad bellum would help restore a lawful national security policy for the United States and set a positive standard for the world to follow.

Jus ad bellum would halt the impulsive military actions and restore a responsible use of force. Presidents would no longer launch military strikes unless required by immediate self-defense or authorized by Congress or by Treaty obligation. The use of force would after careful consideration of all factors and exhausting all alternatives.[54]

The application of jus ad bellum would have prevented the reckless American lead invasion of Iraq which was carried out without exhausting alternatives, in the absence of self-defense, and lacking a truly just cause. A secular regime would have remained in place preventing the spread of radical Islam to Iraq. The military intervention into Libya would likewise have been avoided since no self-defense requirement was involved and the intervention lacked proper authority. The drone strikes, airstrikes, and special-forces operations would be conducted only with congressional authorization and either with a declaration of war or permission by the local government. Such guidance would contribute to clear military objectives and strategic planning.[55]

Jus ad bellum provides the authority for a rapid response to immunity threat or a cyber-attack. A truly imminent attack can be dealt with through self-defense authority. Such self-defense authority should not be twisted so that hypothetical dangers as used as a pretext for the overthrow of a government and the occupation of a nation. The modern threats do not call for abandoning jus ad bellum. Rather a careful application of the principles of jus ad bellum needs

---

[53] J. G. Starke, *Monism and Dualism in the Theory of International Law*, 17 Year Book of International Law 68 (1936).

[54] E. T. Akins and R.J. Dodaro, Augustine Political Writings, 31-36 (2001).

[55] Michael N. Schmitt, *Supra* note 24, 32-37 (2008).

to be made to modern threats.[56]

Jus ad bellum principles reflect the collective wisdom of centuries and served as the proper guide for modern problems. Policymakers have recklessly disregarded this guidance from history and the deep thought of countless scholars. The use of force must be guided and controlled by a standard that enables necessary military force but restrains the abuse of power and unjust force.[57]

The restoration of jus ad bellum aids in restoring the sound rule of law to the struggle against terrorism and other modern threats. One of the greatest casualties of the departure from jus ad bellum has been the deterioration of compliance with the rule of law in the name of fighting terrorism. Such a decline is unnecessary and does make the world safer. Jus ad bellum principles can make the world safer.[58]

Conclusion

The invasion and occupation of Iraq violated the principles of Just War. The Bush administration had no regard for the principles of Just War nor the Constitutional limits of Presidential power to use military force. Jus ad bellum has come into disfavor and disuse. However, western governments have generally dismissed jus ad bellum principles without a serious policy or legal debate. Jus ad bellum is still relevant to the modern era and the war on global terrorism. A proper application of the principles is required to obtain the proper legal and policy guidance. The principles of jus ad bellum are vital for putting American foreign and national security policy on a sound course.

The United States and Coalition Partners' invasion of Iraq, overthrown of its internationally recognized regime, and occupation of Iraq violated international law. The United States violated norms governing the use of force and overthrow of a sovereign state. Resolution 1441 was passed with weak factual support. The United States and partner nations' overthrow of the Iraq government and occupation of Iraq was not authorized by Resolution 1441.

The United States' actions violated its own Constitution which meant it could have not possibly complied with international law when its actions violated its own law. The actions of the United States government violated international law and were injurious to the Rule of Law. The greatest harm from the illegal invasion of Iraq is that undermined the American Republic and set a dangerous precedent that America has yet to address.

Just War principles have been challenged as archaic in a world troubled by global terrorism and cyber warfare. Neo-Conservatives and other foreign policy establishment types argue that

---

[56] William K. Lietzau, Old Law New Wars: Jus ad Bellum in an Age of Terrorism, 8 Max Planck Institute Yearbook of United Nations Law 383, 446-449 (2004).

[57] Id, 451-453.

[58] Id, 452-455.

jus ad bellum principles must be abandoned to save civilization from terrorism. The ideology of both the Democrat and Republican establishments holds that global terrorism requires the ability to strike anywhere in the world regardless of whether the sovereign nation has permitted for the use of military force.

Jus ad bellum guidance needs to be properly applied to the use of military force in general and in particular the war on terrorism. The disregard for jus ad bellum has undermined jus ad bello principles. The disregard for traditional Jus ad bellum has left American foreign policy adrift and fighting wars without even a plan for victory. A proper application of jus ad bellum would help restore a sound legal and policy footing for fighting terrorism and the modern threat. Also, it would aid in upholding jus ad bellum along with jus post bellum principles.

Bibliography

Dean Acheson, Present at the Creation, (1969).

E. T. Akins and R.J. Dodaro, Augustine Political Writings, (2001).

Richard Brookhiser, Founding Father: Rediscovering George Washington, (1996).

Bruce Ackerman & Oona Hathaway, *Limited War, and the Constitution: Iraq and the Crisis of Presidential Legality*, 109 Michigan Law Review, 447-517 (February 2011).

Olivia Ambler & Shirley V. Scott, *Does Legality Really Matter? Accounting for the Decline in US Foreign Policy Legitimacy Following the 2003 Invasion of Iraq*, 13 European Journal of International Relations, 67-84 (2007).

David J. Barron and Lederman, Martin S. Lederman, *The Commander in Chief at the Lowest Ebb – Framing the Problem, Doctrine, and Original Understanding*, 121 Harvard Law Review, 692-800 (January 2008).

Alex J. Bellamy, *International Law and the War with Iraq*, 4 Melbourne Journal of International Law, 497-519 (2003).

Julian P. Boyd, The Papers of Thomas Jefferson Volume 15 **(**1958).

Curtis A. Bradley, *Our Dualists Constitution, and the International Conception*, 51 Stanford Law Review 529-568 (1999).

Alia Brahimi, Jihad and Just War in the War on Terror, (2011).

Burrus M. Carnhan, *Lincoln, Lieber, and the Laws of War: The Origins and Limits of the Principle of Military Necessity*, 92 American Journal of International Law, 213-231 (1998).

James F. Childress, *Just War Theories: The Bases, Interrelations, Priorities, and Functions of Their Criteria*, 39 Theological Studies, 427-436 (1978).

Darrell Code, *Thomas Aquinas on Virtuous War Fare*, 58 Journal of Religious Ethics, 57-80 (1999).

John C. Fitzpatrick, Volume 4 The Writings of George Washington (1930).

Paul Eicester Ford, The Works of Thomas Jefferson. (1905).

James D. Fry, *Remaining Valid; Security Council Resolutions, Textualism, and the Invasion of Iraq*, 15 Tulane Journal of International and Comparative Law, 610-658 (2007).

Jack Goldsmith, The Terror Presidency Law and Judgement Inside the Bush Administration (2007).

2 Journals of the Continental Congress, 1774–1789. Available at *http://memory.loc.gov/ammem/amlaw/lwjclink.html.* (accessed 21 February 2017).

Michael A. Genovese, Presidential Prerogative Imperial Power in an Age of Terrorism (2011).

Alexander Hamilton, John Jay, and James Madison, 310-12, 313 The Federalist Papers. (1788)

Patrick Thaddeus Jackson, *Foregrounding Ontology*: *Dualism, Monism, and IR Theory*, 34 Review of International Studies 129-153 (2008).

John Keegan, The Invasion of Iraq, (2005).

Ronald C. Kramer and Raymond J. Michalowski, *War, Aggression and State Crime: A Criminological Analysis of the Invasion and Occupation of Iraq*, 45 British Journal of Criminology, 446-469, 2005.

Jane Mayer, The Dark Side: The Inside Story of How the War on Terror Turned into a War on American Ideals (2008)

Sean D. Murphy, *Assessing the Legality of Invading Iraq*, 92 The Georgetown Law Journal, 173-257 (2004).

Usha Natarajan, *A Third World Approach to Debating the Legality of the Iraq War*, 9 International Community Law Review, 405-426 (2007).

Michael M O'Brien, America's Destruction of Iraq, (2015).

Jordan J. Paust, Beyond the Law: The Bush Administration's Unlawful Responses in the "War" on Terror (2007).

James P. Pfiffner, Power Play the Bush Presidency and the Constitution (2008).

Richard M. Pious, *Prerogative Power in the Obama Administration: Continuity and Change in the War on Terrorism*, 41 Presidential Studies Quarterly 263-290 (June 2011).

Richard A. Posner, Not a Suicide Pact: The Constitution in a Time of National Emergency, (2006).

Thomas E. Ricks, Fiasco the America Military Invasion of Iraq, (2006).

Michael P. Scharf & Paul R. Williams, The Law of International Organizations: Problems and Materials (3rd ed. 2013).

Michael N Schmitt, *The Legality of Operation Iraqi Freedom under International Law*, 3 Journal of Military Ethics, 82-104 (2004).

David Smock, *Would an Invasion of Iraq be a "Just War?*, 98 United States Institute of Peace, 1-16 (2003).

G. Ferreira and A Ferreira-Snyman, *The Incorporation of Public International Law into Municipal Law and Regional Law against the Background of the Dichotomy Between Monism, and Dualism*, 17 Potchefstroom Electronic Law Journal 1-27 (2014).

J. G. Starke, *Monism and Dualism in the Theory of International Law*, 17 Year Book of International Law 66-81 (1936).

D.A. Jeremy Telman, *A Monist Supremecy Clause and a Dualistic Supreme Court: The Status of Treaty Law as U.S. Law*, 13 Valpo Scholar, 1-27 (2013).

Charles C. Thach, The Creation of the Presidency (1923).

Pierre Thielborger, *The Status and Future of International Law after the Libyan Intervention*, 4 Goettingen Journal of International Law, 11-48 (2012).

Herbert W. Titus, God, Man, and Law: The Biblical Principles, (1994).

Nigel D. White, Libya and Lessons from Iraq; International and the Use of Force by the United Kingdom 2011.

J. H. H. Weiler and Abby Deshman, *Far Be It from Thee to Slay the Righteous with the Wicked: A Historical and Historiographical Sketch of the Bellicose Debate Concerning the Distinction between* Jus ad Bellum *and Jus in Bello*, 24 The European Journal of International Law 25-61 (2013).

Francis D. Wormuth, *The Nixon Theory of the War Power: A Critique*, 60 Cal. Law Review, 623-704 (1972).

John Yoo, War By Other Means; An Insider's Account of the War on the Terror (2006).

Mariah Zeisberg, War Power: The Politics of Constitutional Authority (2013).