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Jus ad Bellum, Natural Law, and the Invasion of Iraq

Cover Page Footnote

Jus Ad Bellum, Natural Law, and the Invasion of Iraq by Johnny B. Davis

Introduction

The legality of the invasion of Iraq is a vital question that goes to the heart of international law and the rule of law in the American Republic. 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 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* and wanted those principles to guide and restrain the use of force to avoid the model of European Monarch's endless unnecessary wars.² The Founders understood that *jus ad bellum* principles were not a legal requirement by time-proven wisdom on the use of military force by nations.

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 authorized the overthrow of the government of Iraq and the occupation of Iraq.^{3,4} President Bush based his claim to have the authority to overthrow the government of Iraq and to occupy Iraq on the idea that the Commander in Chief authority to use force was nearly unlimited.⁵

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.⁶

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.⁷

The Bush Administration argued that Resolution 1441 authorized the invasion and occupation of Iraq. However, ultimately the United States operated on the legal basis of

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

² Michael A. Genovese, *Presidential Prerogative: Imperial Power in an Age of Terrorism*, (2011), 46-58.

³ Joint Authorization for the Use of Force Against Iraq, 2002, <https://www.congress.gov/bill/107th-congress/house-joint-resolution/114>.

⁴ Ushua Natarajan, "A Third World Approach to Debating the Legality of the Iraq War," *International Community Law Review* 9, (2007): 407-409.

⁵ Jordan J. Paust, *Beyond the Law: The Bush Administration's Unlawful Responses in the "War" on Terror*, (2007), 23-25.

⁶ *Ibid.*, 20-21.

⁷ Genovese, *Presidential Power in an Age of Terrorism*, 46-49.

preemptive self-defense to justify going beyond the limits of Resolution 1441 and overthrowing the regime of Iraq. The Bush administration justified military action on the basis that Iraq supported terrorism, violated United Nations resolutions banning its weapons of mass destruction program, and may have supported Al Qaeda the terrorist group responsible for the 11 September 2001 attack on the United States. The Bush administration made the case that the combination of these factors justified “preemptive self-defense” against Iraq.⁸

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.⁹ The United States-led coalition's overthrow of the sovereign government of Iraq and the occupation of Iraq exceeded the authority of Resolution 1441. The invasion itself violated international customary law, codified international law, the United States Constitution, and biblical principles of just war. The recognition of the illegality of the war is vital for restoring a sound legal international order and proper United States foreign policy.¹⁰

Resolutions 678, 687, 1441, and Article 2(4) of the United Nations Charter

President Bush sought authority from the United States Congress for the authority to overthrow the government of Iraq. However, he only received authority for limited war to remove the threat of weapons of mass destruction and no direct authority to occupy Iraq long term. In the international community, the Bush administration supported a U.N. Resolution 1441 which only authorized using military force to stop the weapons of mass destruction program and restore peace.¹¹

The United States sought to have the language “all necessary means” added to Resolution 1441 but this was rejected by the Security Council. Resolution 1441 condemned Iraq for four major breaches. Iraq’s regime was cited for failing to fully cooperate with United Nations inspectors, supporting terrorist organizations, repression of its population, and material breaches of previous United Nations resolutions. The Bush administration argued Resolution 1441 implicitly authorized the use of military force against Iraq.¹²

Resolution 1441 did not contain any language which triggered the authorization to use force if Iraq was found in material breach. Rather, the resolution implies that the Security Council would then address what actions to take under an additional resolution. Even a broad reading of Resolution 1441 cannot produce support for the overthrow of the government of Iraq and the occupation of Iraq.¹³

The Bush administration also sought to use Resolution 678 as authority for the invasion of Iraq. Resolution 678 authorized the use of force back in 1990 to expel Iraqi forces from Kuwait. However, it never included the authority to overthrow the government of Iraq nor occupy the nation of Iraq. Its objectives had been achieved and it no longer was in effect.

⁸ Sean D. Murphy, “Assessing the Legality of Invading Iraq, *Georgetown Law Journal* (2004): 174-177.

⁹ Scharf & Williams, *The Law of International Organizations*, 542-548.

¹⁰ Olivia Ambler & Shirley V. Scott, “Does Legality Really Matter? Accounting for the Decline in US Foreign Policy Legitimacy Following the 2003 Invasion of Iraq,” *European Journal of International Relations* 13, no. # (2007): 69-79.

¹¹ Michael N. Schmitt, “The Legality of Operation Iraqi Freedom under International Law,” *Journal of Military Ethics* 3, (2004): 84-89.

¹² *Ibid*, 84-85.

¹³ Natarajan, “A Third World Approach,” 407-409.

Resolution 687 was the authority that was in place. Resolution 687 imposed sanctions on Iraq after the war for its' failure to comply with United Nation resolution 686 which required Iraq to its weapons of mass destruction program, cooperate with United Nations Weapons inspectors, and that the Iraqi stop its human rights abuses of its citizens. Therefore, there was no United Nations' resolution that authorized an invasion of Iraq, the overthrow of its government, nor the occupation of Iraq.¹⁴

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.¹⁵

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.¹⁶

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 center on protecting the people rather than serving the interests of the leaders. The central motive for war must be to restore and protect the peace. Political agendas carried out by war would all be unjust.¹⁷

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.¹⁸

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.¹⁹

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

¹⁴ Murphy, "Assessing the Legality," 187-193.

¹⁵ E.T. Akins and R.J. Dodaro, *Augustine Political Writings*, (2001), 28-35.

¹⁶ Darrell Code, "Thomas Aquinas on Virtuous War Fare," *Journal of Religious Ethics* 58, (1999): 65-69.

¹⁷ *Ibid*, 68-72.

¹⁸ James F. Childress, "Just War Theories: The Bases, Interrelations, Priorities, and Functions of Their Criteria," *Theological Studies* 39, (1978): 434-436.

¹⁹ David Smock, "Would an Invasion of Iraq be a "Just War"?" *United States Institute of Peace* 98, (2003): 2-4.

through a personal will is unjust. A republic must follow its laws and procedures. The war should be congressionally declared.²⁰

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 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.²¹

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. Augustine recognized that war was always a costly and ugly venture which cost lives. Therefore, the moral and burden must be weighed in favor of peace. War should be the last resort carried out for compelling just purposes.²²

The final factor is proportionality, which is that the positive gain which can be expected from war outweighs the great costs of war. Many times there are actions that could start a war but simply are not worth the costs. Such a small military unit crossing over a border one time and leaving quickly. Responding by going to war would not be worth it unless other factors were in play. World War I is another example where the great costs made joining the war unjust for each nation involved.²³

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 resort but rather the Bush Administration was determined to invade Iraq.²⁴ 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 in error. The Bush administration did not establish any urgent need to attack at that moment. The evidence offered was only evidence of a possible program not of any imminent attack.²⁵

The Bush administration argued that the Iraqi regime was continuing a weapon of mass destruction program in violation of the United Nations sanctions. However, other nations like North Korea were at this very time openly engaged in illegal weapons of mass destruction programs. Yet the Bush administration still targeted the Iraq government over those greater and more established threats. Thus, the compelling necessity for an assault at that time was not present and the motive highly questionable.²⁶

Further, the Bush administration did not go back to the United Nations nor the Congress to get actual authority to overthrow the Iraqi regime and to occupy Iraq which was the intention of the Bush administration. The administration never intended limited strikes to interfere with and deter a weapons of mass destruction program.²⁷ The failure to seek such authority calls into

²⁰ J.H.H. Weiler and Abby Deshman, "Far Be It from Thee to Slay the Righteous with the Wicked: An Historical and Hisoriographical Sketch of the Bellicose Debate Concerning the Distinction Between *Jus ad Bellum* and *Jus in Bello*," *The European Journal of International Law* 24, (2013): 33-38.

²¹ Smock, "Would an Invasion of Iraq be a "Just War?," 2-4.

²² Childress, "Just War Theories," 456-58.

²³ Weiler and Deshman, "Far Be it From Thee," 46-49.

²⁴ Ibid.

²⁵ Schmitt, "The Legality of Operation," 87-89.

²⁶ Ambler & Scott, "Does Legality," 73-77.

²⁷ Thomas E. Ricks, *Fiasco and the American Military Invasion of Iraq*, (2006), 49-55.

question the administration's respect for the limits on presidential authority and the need to carefully weigh just war factors before using military force.²⁸

In 1973, Congress had passed the War Powers Act in reaction to abuses of Command in Chief power by President Nixon in the Vietnam War.²⁹ The Vietnam War caused a conflict between President Nixon and Congress over the limits of CIC authority in the ongoing war. In 1971, Congress forbade Nixon from carrying out military operations in Cambodia. Nixon defied Congress and bombed Cambodia. Congress responded by cutting off funds for United States ground operations in Cambodia.³⁰

However, the War Powers Act was weak and has had little effect. Its main provision if a president deployed American forces to a combat zone he had to seek Congressional approval before leaving them in a combat zone for more than ninety days.³¹ Even then a President could veto a resolution against the use of force and it would a supermajority to stop a Presidential use of force. But it inherently was permitting the deployment of forces as Presidential will before the ninety days which does not comply with the requirements of either the Constitution or those of Just War.³²

The President could use force at his discretion for 90 days even without a self-defense argument.³³ Congress was inherently abandoning its duty to restrain Presidents. The Bush administration's arguments harken back to the arguments of the Nixon administration. Nixon argued for strong executive authority as Commander in Chief and argued the restraints were unconstitutional. Congress had at least rejected Nixon's claims that he had an unlimited authority to use force.³⁴ The War Powers Act ultimately was so weak it has no real impact on the debate surrounding the invasion of Iraq.

Aquinas required war to be waged by proper authority. By this, he not only meant that a lawful government must wage the war but that the authority must declare the war and reach that declaration through the proper legal deliberations.³⁵ The government must follow its own rules in going to war. Therefore, the United States government must respect the Constitution's requirements and limitations for the use of force. 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.³⁶ Further, the Congressional Authorization it received did not authorize the overthrow of the regime and occupation of Iraq but only the use of force to hinder and deter the alleged weapons of mass destruction program.³⁷

The Bush Administration realized it had little hope of getting a declaration of war and the Bush administration did not want to concede that Congress was the branch of government that 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

²⁸ Alia Brahimi, *Jihad and Just War in the War on Terror*, (2011), 43-48.

²⁹ War Powers Resolution of 1973 (50 U.S.S. 1541-48).

³⁰ Francis D. Wormuth, "The Nixon Theory of the War Power: A Critique," *California Law Review* 60, no. 623 (1972): 633-640.

³¹ War Powers Resolution of 1973 (U.S.S. 1541-48).

³² Wormuth, "The Nixon Theory," *supra* note 95, 642-645.

³³ War Powers Resolution of 1973 (U.S.S. 1541-48).

³⁴ Wormuth, "The Nixon Theory," *supra* note 95, 642-645.

³⁵ Akins and Dodaro, *Augustine Political Writings*, 28-32.

³⁶ Brahimi, *Jihad and Just War*, 49-51.

³⁷ Joint Authorization for the Use of Force Against Iraq (2 Oct. 2002), <https://www.congress.gov/bill/107th-congress/house-joint-resolution/114>.

government of Iraq and occupy the nation. The Bush administration proceeded with its plans to overthrow the Iraqi government with no regard for the limits of the authorization.³⁸

The Bush Administration's intention to both overthrow the Iraq government and to occupy Iraq was publicly stated. Congress joined with the Bush Administration in going around the Constitution by passing resolutions rather than the required declaration of war. Further, Congress sought to avoid responsibility but only approving limited military action. However, Congress understood the Bush Administration's intentions and is equally culpable in waging an unjust war.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 image. Each nation must be allowed to find its 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 evidence presented by the Administration if believed was that Iraqi had a weapons of mass destruction program and might be working on an atomic bomb. No evidence was presented that Iraq might soon use a nuclear weapon.⁴¹

The Bush administration was not looking for a military strike to simply prevent weapons of mass destruction attacks but rather the overthrow of a regime, occupation of Iraq, and remaking of Iraq into a democracy. The idea of remaking Iraq into a democracy was an ideological concept based on a misunderstanding of ordered liberty. The Founding Fathers understood you needed the right culture and healthy intermediate institutions for liberty to flourish. Those were lacking in Iraq. Ideology is not a sound basis for going to war.⁴²

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.⁴³

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.⁴⁴

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 nation-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.⁴⁵

³⁸ Joint Authorization for the Use of Force Against Iraq (2 Oct. 2002), <https://www.congress.gov/bill/107th-congress/house-joint-resolution/114>.

³⁹ Ibid.

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

⁴¹ Akins and Dodaro, *Augustine Political Writings*, 42-45.

⁴² Ricks, *Fiasco*, 49-55.

⁴³ Ibid., 38-43.

⁴⁴ Schmitt, "The Legality of Operation," 89-94.

⁴⁵ Ricks, *Fiasco*, 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.⁴⁶

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.⁴⁷

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-led 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 casualties could be great and was ignored.⁴⁸

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 tech weapons resulting in few civilian casualties. 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.⁴⁹

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. The *jus ad bellum* principles were not given due serious consideration by advocates of the war.⁵⁰ 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 reminder of Aquinas's teaching that peace should be the normative standard and therefore the burden must be on those advocating for war to establish that force is justified by the standards of just war especially in an elective war.⁵¹

Legal Legacy of the Iraq Invasion

The high cost of money and lives and lack of concert successes turned American public 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.⁵²

⁴⁶ John Keegan, *The Invasion of Iraq*, 2005, 105-115.

⁴⁷ Michael M. O'Brien, *America's Destruction of Iraq*, (2015), 45-55.

⁴⁸ *Ibid.*, 58-63.

⁴⁹ Keegan, *The Invasion of Iraq*, 153-162.

⁵⁰ Schmitt, "The Legality of Operation," 89-94.

⁵¹ Childress, "Just War Theories," 413-415.

⁵² Genovese, *Presidential Prerogative*, 159-161.

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.”⁵³

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.⁵⁴

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 Libyan 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.⁵⁵

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 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.⁵⁶

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 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 restraints 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 restraints.⁵⁷

⁵³ Mariah Zeisberg, *War Power: The Politics of Constitutional Authority*, (2013), 1-5, 33, 250-255.

⁵⁴ Pierre Thielborger, The Status and Future of International Law after the Libyan Intervention, *Goettingen Journal of International Law* 4, (2012): 21-28.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*, 37-45.

⁵⁷ J.G. Starke, “Monism and Dualism in the Theory of International Law,” *Year Book of international Law* 17, no. 68 (1936).

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.⁵⁸

The application of *jus ad bellum* would have prevented the reckless American-led 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.⁵⁹

Jus ad bellum provides the authority for a rapid response to an imminent 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 to be made to modern threats.⁶⁰

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.⁶¹

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 not make the world safer. *Jus ad bellum* principles can make the world safer.⁶²

⁵⁸ Akins and Dodaro, *Augustine Political Writings*, 31-36.

⁵⁹ Schmitt, *Supra* note, 32-37.

⁶⁰ William K. Lietzau, *Old Law New Wars: Jus ad Bellum in an Age of Terrorism*, (Max Planck Institute: Yearbook of United Nations Law, 2004), 383, 446-449.

⁶¹ *Ibid*, 451-453.

⁶² *Ibid*, 452-455.

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. *Jus ad bellum* principles' application is not always clear but offers time-proven wisdom that applies to all ages. *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, overthrow of its internationally recognized regime, and occupation of Iraq violated international law. The United States violated norms governing the use of force and the 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 by using force not in self-defense nor with a Declaration of War which meant it could have not possibly complied with international law when its actions violated its 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.

Jus ad bellum guidance needs to be properly applied to the use of military force especially in light of the numerous challenges arising from the War on Terrorism. Strong regard for *Jus ad bellum* principles will aid in making the nation as those principles are not just legal requirements but guiding wisdom on the use of military force. The disregard for traditional *jus ad bellum* has left American foreign policy adrift and fighting wars without 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.

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