

JUST AND UNJUST WARS

A MORAL
ARGUMENT WITH
HISTORICAL
ILLUSTRATIONS

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many of the British soldiers who shipped to the continent with Marlborough ever returned? Did anyone bother to count?) But the point is an important one anyway, for it suggests why people have come to feel uneasy about preventive war. We don't want to fight until we are threatened, because only then can we rightly fight. It is a question of moral security. That is why Vattel's concluding remark about the War of the Spanish Succession, and Burke's general argument about the fruitlessness of such wars, is so worrying. It is inevitable, of course, that political calculations will sometimes go wrong; so will moral choices; there is no such thing as perfect security. But there is a great difference, nonetheless, between killing and being killed by soldiers who can plausibly be described as the present instruments of an aggressive intention, and killing and being killed by soldiers who may or may not represent a distant danger to our country. In the first case, we confront an army recognizably hostile, ready for war, fixed in a posture of attack. In the second, the hostility is prospective and imaginary, and it will always be a charge against us that we have made war upon soldiers who were themselves engaged in entirely legitimate (non-threatening) activities. Hence the moral necessity of rejecting any attack that is merely preventive in character, that does not wait upon and respond to the willful acts of an adversary.

Pre-emptive Strikes

Now, what acts are to count, what acts do count as threats sufficiently serious to justify war? It is not possible to put together a list, because state action, like human action generally, takes on significance from its context. But there are some negative points worth making. The boastful ranting to which political leaders are often prone isn't in itself threatening; injury must be "offered" in some material sense as well. Nor does the kind of military preparation that is a feature of the classic arms race count as a threat, unless it violates some formally or tacitly agreed-upon limit. What the lawyers call "hostile acts short of war," even if these involve violence, are not too quickly to be taken as signs of an intent to make war; they may represent an essay in restraint, an offer to

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quarrel within limits. Finally, provocations are not the same as threats. "Injury and provocation" are commonly linked by Scholastic writers as the two causes of just war. But the Schoolmen were too accepting of contemporary notions about the honor of states and, more importantly, of sovereigns.⁷ The moral significance of such ideas is dubious at best. Insults are not occasions for wars, any more than they are (these days) occasions for duels.

For the rest, military alliances, mobilizations, troop movements, border incursions, naval blockades—all these, with or without verbal menace, sometimes count and sometimes do not count as sufficient indications of hostile intent. But it is, at least, these sorts of actions with which we are concerned. We move along the anticipation spectrum in search, as it were, of enemies: not possible or potential enemies, not merely present ill-wishers, but states and nations that are already, to use a phrase I shall use again with reference to the distinction of combatants and noncombatants, *engaged in harming us* (and who have already harmed us, by their threats, even if they have not yet inflicted any physical injury). And this search, though it carries us beyond preventive war, clearly brings us up short of Webster's pre-emption. The line between legitimate and illegitimate first strikes is not going to be drawn at the point of imminent attack but at the point of sufficient threat. That phrase is necessarily vague. I mean it to cover three things: a manifest intent to injure, a degree of active preparation that makes that intent a positive danger, and a general situation in which waiting, or doing anything other than fighting, greatly magnifies the risk. The argument may be made more clear if I compare these criteria to Vattel's. Instead of previous signs of rapacity and ambition, current and particular signs are required; instead of an "augmentation of power," actual preparation for war; instead of the refusal of future securities, the intensification of present dangers. Preventive war looks to the past and future, Webster's reflex action to the immediate moment, while the idea of being under a threat focuses on what we had best call simply *the present*. I cannot specify a time span; it is a span within which one can still make choices, and within which it is possible to feel straitened.⁸

What such a time is like is best revealed concretely. We can study it in the three weeks that preceded the Six Day War of 1967. Here is a case as crucial for an understanding of anticipation in the twentieth century as the War of the Spanish Succession was for the eighteenth, and one suggesting that the shift from

dynastic to national politics, the costs of which have so often been stressed, has also brought some moral gains. For nations, especially democratic nations, are less likely to fight preventive wars than dynasties are.

The Six Day War

Actual fighting between Israel and Egypt began on June 5, 1967, with an Israeli first strike. In the early hours of the war, the Israelis did not acknowledge that they had sought the advantages of surprise, but the deception was not maintained. In fact, they believed themselves justified in attacking first by the dramatic events of the previous weeks. So we must focus on those events and their moral significance. It would be possible, of course, to look further back still, to the whole course of the Arab-Jewish conflict in the Middle East. Wars undoubtedly have long political and moral pre-histories. But anticipation needs to be understood within a narrower frame. The Egyptians believed that the founding of Israel in 1948 had been unjust, that the state had no rightful existence, and hence that it could be attacked at any time. It follows from this that Israel had no right of anticipation since it had no right of self-defense. But self-defense seems the primary and indisputable right of any political community, merely because it is *there* and whatever the circumstances under which it achieved statehood.* Perhaps this is why the Egyptians fell back in their more formal arguments upon the claim that a state of war already existed between Egypt and Israel and that this condition justified the military moves they undertook in May 1967.⁹ But the same condition would justify Israel's first strike. It is best to assume, I think, that the existing cease-fire between the two countries was at least a near-peace and that the outbreak of the war requires a moral explanation—the burden falling on the Israelis, who began the fighting.

The crisis apparently had its origins in reports, circulated by Soviet officials in mid-May, that Israel was massing its forces on the Syrian border. The falsity of these reports was almost immediately vouched for by United Nations observers on the scene. Nevertheless, on May 14, the Egyptian government put its armed forces on "maximum alert" and began a major buildup of its troops

* The only limitation on this right has to do with internal, not external legitimacy: a state (or government) established against the will of its own people, ruling violently, may well forfeit its right to defend itself even against a foreign invasion. I will take up some of the issues raised by this possibility in the next chapter.

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in the Sinai. Four days later, Egypt expelled the United Nations Emergency Force from the Sinai and the Gaza Strip; its withdrawal began immediately, though I do not think that its title had been intended to suggest that it would depart so quickly in event of emergency. The Egyptian military buildup continued, and on May 22, President Nasser announced that the Straits of Tiran would henceforth be closed to Israeli shipping.

In the aftermath of the Suez War of 1956, the Straits had been recognized by the world community as an international waterway. That meant that their closing would constitute a *casus belli*, and the Israelis had stated at that time, and on many occasions since, that they would so regard it. The war might then be dated from May 22, and the Israeli attack of June 5 described simply as its first military incident: wars often begin before the fighting of them does. But the fact is that after May 22, the Israeli cabinet was still debating whether or not to go to war. And, in any case, the actual initiation of violence is a crucial moral event. If it can sometimes be justified by reference to previous events, it nevertheless has to be justified. In a major speech on May 29, Nasser made that justification much easier by announcing that if war came the Egyptian goal would be nothing less than the destruction of Israel. On May 30, King Hussein of Jordan flew to Cairo to sign a treaty placing the Jordanian army under Egyptian command in event of war, thus associating himself with the Egyptian purpose. Syria already had agreed to such an arrangement, and several days later Iraq joined the alliance. The Israelis struck on the day after the Iraqi announcement.

For all the excitement and fear that their actions generated, it is unlikely that the Egyptians intended to begin the war themselves. After the fighting was over, Israel published documents, captured in its course, that included plans for an invasion of the Negev; but these were probably plans for a counter-attack, once an Israeli offensive had spent itself in the Sinai, or for a first strike at some later time. Nasser would almost certainly have regarded it as a great victory if he could have closed the Straits and maintained his army on Israel's borders without war. Indeed, it would have been a great victory, not only because of the economic blockade it would have established, but also because of the strain it would have placed on the Israeli defense system. "There was a basic asymmetry in the structure of forces: the Egyptians could deploy . . . their large army of long-term regulars on the Israeli border and keep it there indefinitely; the Israelis could only counter their

deployment by mobilizing reserve formations, and reservists could not be kept in uniform for very long . . . Egypt could therefore stay on the defensive while Israel would have to attack unless the crisis was defused diplomatically."¹⁰ *Would have to attack*: the necessity cannot be called instant and overwhelming; nor, however, would an Israeli decision to allow Nasser his victory have meant nothing more than a shift in the balance of power posing possible dangers at some future time. It would have opened Israel to attack at any time. It would have represented a drastic erosion of Israeli security such as only a determined enemy would hope to bring about.

The initial Israeli response was not similarly determined but, for domestic political reasons having to do in part with the democratic character of the state, hesitant and confused. Israel's leaders sought a political resolution of the crisis—the opening of the Straits and a demobilization of forces on both sides—which they did not have the political strength or support to effect. A flurry of diplomatic activity ensued, serving only to reveal what might have been predicted in advance: the unwillingness of the Western powers to pressure or coerce the Egyptians. One always wants to see diplomacy tried before the resort to war, so that we are sure that war is the last resort. But it would be difficult in this case to make an argument for its necessity. Day by day, diplomatic efforts seemed only to intensify Israel's isolation.

Meanwhile, "an intense fear spread in the country." The extraordinary Israeli triumph, once fighting began, makes it difficult to recall the preceding weeks of anxiety. Egypt was in the grip of a war fever, familiar enough from European history, a celebration in advance of expected victories. The Israeli mood was very different, suggesting what it means to live under threat: rumors of coming disasters were endlessly repeated; frightened men and women raided food shops, buying up their entire stock, despite government announcements that there were ample reserves; thousands of graves were dug in the military cemeteries; Israel's political and military leaders lived on the edge of nervous exhaustion.¹¹ I have already argued that fear by itself establishes no right of anticipation. But Israeli anxiety during those weeks seems an almost classical example of "just fear"—first, because Israel really was in danger (as foreign observers readily agreed), and second, because it was Nasser's intention to put it in danger. He said this often enough, but it is also and more importantly true that his military moves served no other, more limited goal.

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The Israeli first strike is, I think, a clear case of legitimate anticipation. To say that, however, is to suggest a major revision of the legalist paradigm. For it means that aggression can be made out not only in the absence of a military attack or invasion but in the (probable) absence of any immediate intention to launch such an attack or invasion. The general formula must go something like this: states may use military force in the face of threats of war, whenever the failure to do so would seriously risk their territorial integrity or political independence. Under such circumstances it can fairly be said that they have been forced to fight and that they are the victims of aggression. Since there are no police upon whom they can call, the moment at which states are forced to fight probably comes sooner than it would for individuals in a settled domestic society. But if we imagine an unstable society, like the "wild west" of American fiction, the analogy can be restated: a state under threat is like an individual hunted by an enemy who has announced his intention of killing or injuring him. Surely such a person may surprise his hunter, if he is able to do so.

The formula is permissive, but it implies restrictions that can usefully be unpacked only with reference to particular cases. It is obvious, for example, that measures short of war are preferable to war itself whenever they hold out the hope of similar or nearly similar effectiveness. But what those measures might be, or how long they must be tried, cannot be a matter of *a priori* stipulation. In the case of the Six Day War, the "asymmetry in the structure of forces" set a time limit on diplomatic efforts that would have no relevance to conflicts involving other sorts of states and armies. A general rule containing words like "seriously" opens a broad path for human judgment—which it is, no doubt, the purpose of the legalist paradigm to narrow or block altogether. But it is a fact of our moral life that political leaders make such judgments, and that once they are made the rest of us do not uniformly condemn them. Rather, we weigh and evaluate their actions on the basis of criteria like those I have tried to describe. When we do that we are acknowledging that there are threats with which no nation can be expected to live. And that acknowledgment is an important part of our understanding of aggression.