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**ABSTRACT**

Some liberal-cosmopolitan theorists have sought to justify preventive war by proposing new institutions meant to ensure the accurate evaluation of non-imminent threats, and also make any war against them proportionate. In the debate over these proposals there has been little consideration of the post-war conditions any preventive war will likely produce. This is a serious omission; many theorists emphasize the degree to which the ability to secure a just peace is crucial to whether a war is proportionate. This article begins to remedy this missing piece of the debate over what it calls 'cosmopolitan preventive war' (CPW). After reviewing the debate, it discusses preventive war in the context of theorizations of post-war justice, or *jus post bellum*. It then investigates CPW's ability to account for *jus post bellum* concerns through a counterfactual 2003 Iraq CPW. Showing that the proposed institutions do not do enough to account for the likely, and possibly immense, post-war harm wrought by preventive war, the article concludes with a negative evaluation of the CPW program and a brief statement on the ethics of preventive war in general.

In explicitly declaring the United States would 'act against … emerging threats before they are fully formed', the Bush administration's 2002 National Security Strategy (NSS) prompted a heated debate over the permissibility of preventive war. As opposed to the more widely accepted practice of preemptive war, where a first strike is taken in the face of an imminent threat, preventive war is widely viewed as both illegitimate and strategically unwise. That it involves striking first out of the belief a threat will manifest in the future, it is not readily plausible preventive war can be considered self-defensive – the most widely accepted just cause for war – and it is strategically risky given war's unpredictability (Gray 2007). And yet, surprisingly given the Bush administration's generally aggressive unilateralism, even some liberal-cosmopolitan theorists saw a kernel of truth in the NSS. Framed as seeking to avoid its overly permissive articulation, the most sophisticated proposals for what I will call cosmopolitan preventive war (CPW) – developed separately by Buchanan (with Buchanan and Keohane 2004; Buchanan 2006, 2007) and Doyle (2008) – sought to justify and map out a program for preventive war that was ethically attuned to the basic cosmopolitan concern for the equal moral worth of all humans, as

well as the more robust institutional structures usually prescribed to realize that equality.[1] Despite the industriousness of their work, this paper argues the CPW program does not do enough to address the likelihood of significant post-war harm.[2] With this acknowledged, additional weight is given to proportionality concerns. I raise serious doubts as to whether CPW, as presently construed, is a program that adequately grasps the nature of preventive war – however institutionally conditioned – and especially the peace that can be made possible through it.

The argument for CPW is unique amongst preventive war doctrines because, in operating from a 'cosmopolitan normative perspective' it primarily rests on the desire to secure the 'basic human rights of all persons' rather than national security (Buchanan and Keohone 2004, 1). This rights-focus sets a high bar. Current moral and legal conventions draw a line between preventive and preemptive war largely because military force is considered 'the least useful and most dangerous tool for the protection of human rights' (Sutch 2012, 173). Many fear that any legitimized form of preventive war would too often be 'subject to error and abuse' on when resorts to force are necessary (Buchanan 2007, 128), and would then by extension also generally degrade other existing constraints on the use of force (Janssen 2004, 115–116). In short, as a general rule it is thought to be a practice that is out of proportion to the threats the world faces; a cure worse than the disease. Beyond the logic of any argument for considering prevention a form of self-defense, then, much also hinges on whether CPW can be expected to actually benefit the general respect and protection of human rights globally. Buchanan and Doyle address this broad concern by proposing new institutional mechanisms meant to constrain when and how preventive war can be utilized.

I argue the effectiveness of these mechanisms still needs to be analyzed. This is so even though the Bush administration failed to secure the legitimacy of their actually existing preventive war in Iraq, and even though the CPW program came under significant criticism from otherwise sympathetic intellectual compatriots. To the latter development, especially convincing was the fact that much of what Buchanan and Doyle offered as examples of preventive war could fit within traditional understandings of humanitarian intervention, uses of force short of war, or preemption (Lee 2005, 105–106; Koh 2008, 108–109; Coady 2013, 198–201). But there remains a crucial test for the CPW program that Buchanan and Doyle continue to defend: the potentially most destructive yet 'traditional understanding' of preventive war as involving 'the goal of replacing the government of the target state ("regime change")' (Lee 2007, 121).

This most robust form is not only still up for debate, but the practical temptation of preventive war is still very much with us. While preventive war has long been a feature of the US foreign policy arsenal (Trachtenberg 2007), Crawford (2007a, 93; see also Dombrowski and Payne 2006) notes how even the 2004 report of the United Nations Secretary General's High-Level Panel 'advocates preventive war in some circumstances', and rests on the same 'security imaginary' – the complex of rogue states, WMD, and transnational terrorism – underlying the Bush administration's preventive war doctrine. More recently some argued up until and even after the signing of the 2015 Iranian nuclear deal that military force should be utilized to prevent Iran from ever gaining nuclear weapons (Kroenig 2014; Pollack 2014; Beutler 2015). The most articulate supporters of prevention in the Iran case attempted to circumscribe their plans to 'precision' strikes against nuclear facilities in order to avoid questions about regime change and occupation (Kroenig 2014, 80).

Most critics, though – and even some proponents (Fly and Schmitt 2012) – recognized that any successful preventive force against Iranian nuclear ambitions 'would be a messy and extraordinarily violent affair' (Kahl 2012, 167). As of the time of this writing preventive war is being discussed in the context of North Korea's nuclear saber-rattling, the major trepidation being the broad chaos any attack would unleash (Barno and Besahel 2017). Not only is there continued need to debate the ethics of preventive war, then, but it would seem that a concern germane to a globally oriented program like CPW is at the forefront, in that the broader post-war consequences of preventive force are especially pertinent to the current discourse.

Criticism of CPW along these lines has been lacking, with some even contending that because of the 'ingenious' institutional mechanisms proposed, CPW is at its best when addressing such consequentialist concerns (Lee 2005, 100–101). The first section details the CPW program while showing how a post-war line of inquiry is needed. The second section establishes the direction of this further investigation by showing how CPW implies a fairly robust commitment to post-war justice, or *jus post bellum*. This section also more firmly establishes the proportionality test in light of these post-war concerns, and shows how its complexity calls out for a more concrete and empirically oriented analysis of CPW. The third section undertakes such an analysis by posing the 2003 Iraq War – the very war that coincided with the development of CPW, though which featured a high degree of post-war harm – as a legitimate CPW in order to see if the changes needed to make it so also result in enough of a reduction in post-war harm to satisfy proportionality. Considering the nature of preventive war – a particularly virulent species of a phenomenon where reciprocal violence tends to generate increasing enmity on both sides of a conflict (Clausewitz 1984, 75–77) – this analysis shows it is dangerously unlikely the CPW program would induce proportionate wars. The paper concludes with an assessment of where, after more fully grasping the nature of war and the just peace at which it should aim, CPW stands and, more broadly, where preventive war should stand within the ethics of war.

## CPW and its critics

For the sake of argument I will accept that preventive war can fit within a conception of self-defense. Though I have misgivings, the argument is quite simple: the imminence standard that traditionally marks preemption as self-defensive involves too heavy a reliance on temporal considerations rather than evidence of 'unjust harm' (Buchanan 2007, 126; Brown 2013, 31–33). If it is acceptable to self-defensively preempt an attack that is thought will occur 'in the next moment', Buchanan (2007, 126) argues there is no prima facie reason to say one could not be on the right side of self-defense by preventing an attack 'that will occur further in the future'. And given WMD, so-called 'rogue states', and terrorist actors whose explicit strategy involves mass-casualty attacks on civilians, instances of 'unjust harm' at a further remove than 'in the next moment' are especially worrisome today (Buchanan and Keohone 2004, 17–25). Buchanan (2007, 8) contends such factors reveal a precise sense in which preventive war can be self-defensive, in that rather than aimed at easing the accomplishment of some gain – such as maintaining a preferable balance of power – it is an act against those 'wrongfully imposing a dire risk'.

All that is warranted in such situations is 'special caution' given the extended temporal horizon between the imposed harm and an actual attack (Buchanan 2007, 126).

Some mechanisms that promote caution are currently available in what Buchanan and Keohone (2004, 9) call the 'Legal Status Quo', which allows for preventive war if authorized by the United Nations Security Council (UNSC). But they, along with Doyle (2008, 62), argue this is in key ways both too restrictive and too permissive. Approval depends on the morally capricious avoidance of a permanent member veto, possibly resulting in the unjust avoidance of preventive war. And even if approved there are few 'provisions for holding the decision-makers who propose preventive force (and those members of the Council who must approve it) accountable for their actions' (Buchanan and Keohone 2004, 9). A 'superior alternative' is needed that contains interrelated substantive and procedural innovations (Buchanan and Keohone 2004, 9).

Substantively, Buchanan and Keohone (2004, 7) propose that in addition to other standard just war criteria we should consider whether a 'wrongful act' is being planned that would result in '*sudden*' and '*massive violations of human rights*'. More comprehensively, Doyle (2008, 63) offers a set of 'multiplicative' 'standards', where the greater degree of one or more may make up for a relative lack among others. He lists: 'lethality', or the 'amount of anticipated harm'; 'likelihood' as a function of 'announced threats and past aggressive behaviour, in addition to power, ideologies, and regime characteristics'; 'legitimacy' as defined by traditional just war criteria like proportionality; and 'legality', defined as the degree of past illegality on the part of the target state and steps by the preventive actor to work within international legal constraints (Doyle 2008, 47–62). This last standard involves procedural innovations that, as with Buchanan's proposal, are said to adequately guarantee that CPW meets the proportionality test.

In what Buchanan (2007, 132; Doyle 2008, 61–62) calls an 'accountability regime' within the UNSC, states seeking to make preventive war would submit to impartial and publicly presented pre and post-war evaluations of 'all the relevant issues and options'. '*Ex ante*' accountability procedures would serve to 'promote principled deliberation and reduce risks of strategic bluffing' (Buchanan 2007, 132). '*Ex post*' accountability, by being understood as an eventuality prior to war – and one that involves 'significant costs' attached to any 'negative' evaluation – would further disincentivize disingenuous justifications and disproportionate destruction (Buchanan and Keohone 2004, 14; Buchanan 2007, 133). Conversely, if the *ex post* report finds the intervening state(s) accurately assessed the risk of inaction and acted proportionately in addressing it they are deemed to have performed a 'public service for the world', such that those who did not 'shoulder the burden' of preventive war could be tapped to pay for reconstruction or even 'bear responsibility for peace enforcement' (Buchanan and Keohone 2004, 14).

This regime is said to be so powerful it will not only 'limit abuses of victory', but even make preventive 'war and territorial occupation' legitimate in scenarios where UNSC approval is not forthcoming (Buchanan and Keohone 2004, 16–20, 2005, 109; Buchanan 2007, 139; Doyle 2008, 62). The only crucial question is whether the institutional mechanisms proposed can 'help ensure that the just war requirement of proportionality is satisfied … [given] *the considerable risks that toppling a regime might engender*' (Buchanan and Keohone 2005, 109 emphasis added; Doyle 2008, 157). Two prominent lines of critique question whether this can be the case.

Many fear the broad implications CPW's accountability regime would have for world order. In this rule-consequentialist vein, the most obvious concern is that, as Luban (2007, 172–173) argues, any 'general rule permitting states confronting distant or immature threats to launch preventive wars … would license too many wars'. For this not to be the case, scholars less inclined to a cosmopolitan reading of international affairs contend the accountability regime must come close to a 'world sovereign' (Tuck 2008, 127; Rengger 2013, 123). For even if what is being called for is 'a sort of global public authority of a rather diffuse kind, which might control particular states, and even the Security Council itself', unless it truly has sovereign authority it is doubtful it would 'have a binding or limiting force on the people who took part in the discussion' (Tuck 2008, 126; Rengger 2013, 124). Similarly, some fear CPW would mean a damaging 'rehierarchisation' of international order that trumps any short-lived benefits (Reus-Smit 2005, 72). Buchanan and Keohone (2004, 18), for instance, argue the 'most defensible' manifestation of the accountability regime would allow an option to bypass any UNSC veto by way of a 'coalition of reasonably democratic states'. Doyle (2008, 54) also makes a distinction between liberal and non-liberal regimes, discounting 'the potential threat of liberal regimes (to other liberals)'. Sutch (2012, 183) points out that such moves offer 'special governance rights' to some, and thus would fundamentally challenge international law's core 'equalitarian regime', the central purpose of which is limiting inter-state war.

The problem with this 'bad practice' objection is that in its spatial and temporal breadth it 'at best gives reason to be very cautious about engaging in preventive war, not conclusive reasons against its justifiability' (Buchanan 2007, 130). Indeed, being so dependent on foundational questions about the potentialities of world order, Doyle (2008, 151) simply responds that he relies 'more on Grotian international law than a Hobbesian would find advisable'. Buchanan (2007, 133; see also Shue 2007, 238) goes even further, asserting that the need for credibility and alliances gives 'potential wielders of preventive force … a strong incentive to submit to the constraints of the accountability regime', while the 'wish to restrain the action of powerful states' incentivizes non-wielders to participate as well. This may seem farcical (see Albin 2001; Welch 2014),[3] but for Buchanan (2007, 129; cf. Luban 2007, 199–200) it is no more speculative than the 'sweeping' generalizations involved in contending the CPW program will give rise to too many wars, or by extension to a negative shift in world order. Indeed, in the end Luban (2007, 201) says he agrees with the 'multilateralist and institutionalist' thrust of CPW, resting his critique mainly on the fact that such institutions 'do not exist … [and] may not for the foreseeable future'. Otherwise critical as well, Shue (2007, 237) expresses sympathy for the accountability regime, arguing it 'would contribute significantly to solving the problem of' the 'vicious circle of mutual fear of surprise attack' generated by the current rules on preventive war.

The second line of critique, what Buchanan (2007, 131) labels the 'irresponsible act' objection, questions whether the accountability regime can promote the accuracy needed to assess distant threats. As Rodin (2007, 148) points out, wars 'are events of enormous historical magnitude, and extreme unpredictability. Action in war is subject to a pervasive tendency toward escalation, that can make even the most careful and good-faith assessments of its projected costs wildly inaccurate'. And as Lister (2011, 7) writes in a review of Buchanan's work, it is expecially 'preventive war cases … where we can expect that the incentives will be such as to encourage states to get the answer wrong'. Koh (2008, 106) contends that for such distant threats it will be impossible to 'estimate

how big a force will be needed to intervene, and to map out a long-term strategy for putting an end to conflict'. Instead, if

> you think someone is going to swing at you and perhaps kill you, you have no incentive to calibrate a proportional response. Indeed, if you are sure they plan to kill you, your best bet is to … use maximum force to generate 'shock and awe', so that the would-be attacker will quickly capitulate. (Koh 2008, 107)

Buchanan (2007, 131–133) responds to such criticisms by simply arguing that critics seem to be operating from assumptions relating to the current paradigm, and that the accountability regime might be able to adequately bend the incentive structures of preventive war. Likewise, Doyle (2008, 157, 159) points to the likely improvement upon the status quo, noting that 'in order to protect the sanctity of the rules' our present situation involves a 'radical incapacity to act' outside UNSC approval, which results in preventive wars enacted 'only reflexively, instinctively'. At the very least an accountability regime would involve acting more 'deliberately, in accordance with standards and with the expectation of review in order to encourage more responsible action' (Doyle 2008, 159).

Such responses reflect a debate stalemate, where proponents can plausibly maintain their positions in the current absence of the institutions they propose. As Shue (2007, 237) admits, 'the likely empirical effects of the mechanism deserve much more discussion'. What should further discussion involve?

Following Koh's comment on the difficulty of developing a 'long-term strategy for putting an end to conflict', it is notable how little attention Buchanan and Doyle pay to issues inherent to such a task, even while acknowledging that regime change will often be the end made necessary by a CPW's just cause. Most concretely there is the issue of how a defeated population is likely to react to a CPW. As Luban (2007, 193) points out, the 'targets of a preventive war cannot know that once they are conquered their basic rights will be honored. Their assailant may assure the world that its war aims go no further than removing an emerging threat, but why should the people under attack believe them?' Indeed, Crawford (2007a, 121) singles out preventive war as special in this regard, in that it 'creates justified resentment' amongst a target society because they will perceive themselves as innocent noncombatants threatened merely for their 'aspirations, grievances, and conduct'. Neither Buchanan nor Doyle addresses these concerns. Doyle (2008, 61) merely requires 'decisions should engage both the citizens of the state proposing to prevent and the international community more broadly'. Buchanan (2007, 139–142) only discusses the target state in terms of possible 'innocent obstacles', whom he says are liable to either an attack, in the case of soldiers, or the indirect effects of preventive war in the case of civilians.

This is a serious omission, and a ready next step in further considering the viability of CPW, especially as relates its ability to make preventive war a likely-enough proportionate exercise. Indeed, for many theorists proportionality is also an issue of how just a post-war condition any proposed war is likely able to secure. The next section argues CPW implies a commitment to a robust version of this *jus post bellum*, and then establishes how this might affect the proportionality standard the program needs to meet.

## *Jus post bellum*, preventive war, and proportionality

The *jus ad bellum* proportionality criterion that Buchanan and Doyle admit is so crucial to CPW is notoriously difficult to assess. Hurka (2005, 35) contends it mandates that 'the

destructiveness of war must not be out of proportion to the relevant good the war will do', which leaves open questions on which types of goods and harms count, how they should connect to war, and how to weigh them against one another. For the purposes of posing as sympathetic an internal critique of CPW as possible, I will adopt some fairly lenient proportionality standards, as well as means of assessing them. What is less lenient here is that I will also make the argument that a 'maximalist' version of *jus post bellum* is pertinent to determining the proportionality of CPW, forcing our weighing of goods and harms to take account of the fact that, as one of the foremost theorists of *jus post bellum* puts it, wars 'have profound rippling effects, through both time and space, into the future and into other countries and regions' (Orend 2007, 575).

There is no firm agreement on the key criteria of *jus post bellum* and, more importantly, on the broad conceptual implications of its addition to just war theory. In what Bellamy (2008) describes as a 'minimalist' approach to *jus post bellum*, some emphasize the degree to which the *jus ad bellum* criteria of right intention and reasonable chance of success contain implicit post-war rights and duties. Johnson (2012, 32) worries a generalized set of *jus post bellum* criteria would only 'get in the way' of efforts to draw out the 'moral and political considerations' such *ad bellum* criteria prompt in each specific conflict. And Walzer (2012, 37), while subscribing to the notion that we need to think more explicitly about *jus post bellum*, contends it may be dangerous to move too far away from the 'classic view of a just ending' defined as a return to the status quo ante; 'peace itself is a value at which we can justly aim and sometimes live with, even if it is unjust'.[4]

Even here, though, Walzer (2012, 38) admits that in cases where 'the act of aggression is inherent in the nature of the regime … military occupation and regime change … [are] made … into defensible versions of *jus post bellum*'. It is this dynamic, where there is a strong connection between the nature of a particular just cause and the way peace should be considered, that prompts many *jus post bellum* theorists to break with Walzer's (2012, 44) insistence that '*post bellum* justice is independent of *ad bellum* and *in bello* justice'.

In a more 'maximalist' version of *jus post bellum*, theorists contend that

> victors have a moral and legal obligation to … remove the seeds of potential future war by punishing those guilty of initiating aggressive war and positively assisting the civilian population in the building of legitimate and peaceful government institutions and in the rebuilding of the domestic economy. (Bellamy 2008, 618)

This, of course, ups the moral ante for just war, so that 'a war that is fought without a considered view to bringing about a legitimate peace has a morally defective rationale that taints its legitimate beginnings and its ongoing processes' (Coady 2011, 50). Conceptually, this shifts just war theorizing from a linear exercise into a 'circle of temporal considerations' (Lucas 2012, 49, 60). *Jus post bellum* requires

> the fusing of the three phases of war into a logical chain of mutual implication. Contemplating a just peace before war alters the calculations of cause and means, and the success of those phases influences one's ability to enact a just peace. (Banta 2011, 295)

The implications of this fusing will be dependent on the nature of the war being contemplated, and of course the specific criteria one thinks *jus post bellum* should contain. The

latter is, as mentioned, far from settled. At the very least, though, and flowing from the very idea of mutually implicative phases of war, maximalists emphasize that one's cause and means should be judged by their ability to bring about 'a more perfect peace – that is, a peace that is more stable, more widespread, and more just than the peace that was interrupted by war' (Williams 2012, 81). For most maximalist theorists, this 'more perfect peace' is at least in consonance with 'cosmopolitan ambitions' (May 2012, 125). Orend (2013, 293) explicitly emphasizes the fact that for him very idea of *jus post bellum* was 'motivated by pacifism's insistences that we shouldn't take war for granted and that we must do something to make the international system more peaceful, such as pro-rights post-war transformation and the evolution of better global governance'.

In addition to the fact that maximalist *jus post bellum* dovetails with the normative orientation of CPW, preventive war especially, as a particular species of war, calls out for explicit considerations on how the nature of its cause and means might affect the peace. It is certainly theoretically possible that, as Walzer (2012, 44) contends, 'an unjust war can lead to a just outcome, and a just war can lead to an unjust outcome'. There may be so tenuous a connection between the enactment of a CPW and the form that eventual peace takes that considerations relating to the latter should not generally impinge on our opinion of the former. There may be no time for robust considerations of post-war justice. However, note that it is recent regime-change 'conflicts such as Afghanistan and Iraq … as well as asymmetric warfare and nonstate actors [that] have given our sense of *jus post bellum* consideration greater urgency' (Royal 2012, 68). And as in Afghanistan and Iraq, the need to reform entire states after war is especially pertinent to CPW, where, as Doyle explicitly contends, the character of a regime will usually play heavily into assessments of such far-off threats. Additionally, the likely asymmetry between preventer and target, and the temporal distance of the threat, affords the means and time for robust post-war considerations. In this way whether one subscribes generally to *jus post bellum* minimalism or maximalism, CPW is a case that demands consideration within the latter (Bellamy 2008, 619).

This has significant impact on how we should view the proportionality of the crucial regime-change cases of CPW. Doyle (2008, 60) admits that 'proportionality should be more strictly applied in preventive actions', but only because of the greater 'uncertainty' in the process of identifying a non-imminent threat. Uncertainty should also extend to the likely conditions in the aftermath of a CPW, with the goods and harms caused there weighed as part of the proportionality calculation. Indeed, Hurka (2005, 46) argues that the relevant goods and harms weighed in wars by 'third party interveners' not subject to the existential rigors of an imminent attack are 'not to be restricted by their remoteness from a war or act either in time or causally', which at least implies that for a program like CPW post-war goods and harms will be incredibly important. With this more expansive purview, though, the calculation of proportionality become even more difficult, and conceptual precision even more important.

Following Hurka (2005, 39–44) – who along with others has charted a cogent course between the most lenient and the strictest versions of proportionality available (see Hurka 2014; Kamm 2014; McMahan 2014) – because we do not want to encourage too many wars, the goods counted must flow from an initial 'sufficient' just cause, and can only then include goods connected to any 'contributing' causes. For CPW a sufficient just cause of eliminating a non-imminent threat thought able to cause sudden and

massive human rights violations would allow us to count the protection of those rights as a good, and it is likely there would be 'contributing' goods on the table like future deterrence, general respect for human rights, and improved multilateral solidarity. In the same war-discouraging vein, though, Hurka (2005, 46) argues that a war's proportionality calculation should count 'evils of all the kinds it will cause, with no limits on their content'. With the goal of a rights-oriented 'more perfect peace' as a standard for adjudicating the balance *before* a CPW, relevant evils easily move beyond what McMahan (2009, 20–32) refers to as 'narrow' proportionality considerations – essentially the harm that will fall on the direct combatants liable to attack – and into 'wide' proportionality concerns, or the broader harm done to innocents by the war, wherever located and at any temporal distance from it. Fortunately for CPW, even if these broader harms go beyond what was predicted, a war may still be proportionate if what Hurka (2005, 38) calls the 'objective' or backward-looking assessment of goods and harms is superior to what Mellow (2006a, 439–454) calls a 'counterfactual baseline', or the balance of goods and harms that would have occurred with some other course of action.[5] It may be, for instance, that a war produces more harm than good, but if all other available courses of action would have produced an even more damaging ratio we have little ground to say the war was disproportionate.

To gain the necessary clarity on these issues for an as-yet unrealized CPW program, in what follows I will conduct a brief case study of the 2003 Iraq War, counterfactually imagined as a legitimate CPW. In it I will try to account for major mitigating factors, such as the degree to which 'others' wrongful choices can reduce our responsibility for bad outcomes', in order to be as generous to CPW as possible (Hurka 2005, 49). Likewise, I will operate from the least demanding counterfactual baseline identified by Mellow (2006a, 445): 'that course of action the leaders would undertake if they neither engaged in action that immorally furthered the harms or injustices that underlie the sufficient just causes nor undertook action that was directed at achieving the sufficient just causes'.

## A 2003 Iraq CPW

The Bush administration's justification for the 2003 Iraq War may have echoed the very conditions Buchanan and Doyle cite as precipitating their reconsideration of the ethics of preventive war, but both authors place it outside the justificatory purview of CPW. This is understandable given the chaos and widespread harm the war gave rise to after President Bush declared an end to major combat operations on 1 May 2003. To name only the most direct harms, there were an estimated half-million Iraqi deaths attributable mostly to the war's aftermath (Hagopian et al. 2013), increases in rogue-state incentives to acquire WMD, and new footholds opened for radical Islamist terrorism (Wester 2005, 36; Barak 2007, 469). I think it is fair to say that given this post-war harm, even if there had been confirmation of WMD acquisition programs and connections to transnational terrorist groups after the immediate overthrow of the Hussein regime the war would still be considered by most as, in hindsight, one that fell on the wrong side of proportionality (cf. Mellow 2006b). As Walzer might formulate, a just war, perhaps, that devolved into an unjust peace. *Jus post bellum* maximalists would of course not completely separate these two periods, and would want us to ask whether the seeds for this unjust peace were sown with certain features of the cause and / or means.

CPW proponents avoid such a discussion by noting, quite reasonably, that there was too much suspicion over 'congruent interests' the US had in Iraq, a lack of firm evidence on Iraqi WMD, and an absence of any *ex post* procedures to hold the US accountable afterward (Buchanan 2006, 16–19; Doyle 2008, 90–91). From here, though, we might assume that had these conditions been altered in certain ways Buchanan and Doyle might have considered the Iraq War a just CPW. But given the reality of post-war-generated disproportionality noted above, we must assume that a version of the war fitting CPW requirements would also go some way toward significantly decreasing the amount of overall post-war harm. Put more precisely, in a version of the Iraq War that fit the CPW program, it should be plausible that CPW mechanisms could have decreased said harm enough that the Iraq War would have met the 'more perfect peace' standard discussed above. If not, at the very least we would hope it could have improved the balance of goods and harms above that of the appropriate non-war 'counterfactual baseline'. The following attempts to determine whether that is the case.

As in the actual war a CPW-coincident Iraqi threat, where WMD possession and ties to transnational terrorism are widely confirmed, would at least require the removal of the Hussein regime – the character of the regime being so closely linked to the nature of the threat – and its replacement in such a way that the overall threat of rogue-state aggression, WMD acquisition, and transnational terrorism would be somewhat lessened. Iraqi WMD and connections to terrorist organizations may, in this historical fiction, represent clear if non-imminent dangers, but certainly worse than taking the risk of living with them would be generating the tendency, over and above what living with them involved, for terrorist groups to proliferate and align themselves with other increasingly motivated rogue states who see them as a force multiplier.[6] As part of this, and especially with contributing causes of alleviating the oppression of the Iraqi people, supporting human rights generally, and strengthening multilateral institutions, the *jus post bellum* perspective above would emphasize the importance of securing the target population and winning them over to the assisted reconstruction of their state (Orend 2013, ch. 7). As such any peace must not only be stable but avoid the perception of imperial conquest, otherwise there is the likelihood of increases in local resistance and the broader anti-West discourse crucial to the threat on offer, as well as an imperiled 'accountability regime' and general degradation of multilateralism (Mann 2003).

This leaves us with the need for a relatively light-handed occupation focused on the organic generation of self-governance – at the very most a form of what Purdy (2003, 35–36) calls 'weak liberal imperialism', where the fault is found with the governing leadership and not the people writ large. Furthermore, whatever form this self-governance takes it must at the very least be less inclined toward aggression than the previous one. And so while liberal democracy may not be a required outcome the regime must have a degree of 'local legitimacy' so as to avoid the tendency toward dictatorial isolation and unpredictability (Walzer 2002), or even the outsized 'impetus to external war' for states in a period of stalled democratic transition (Mansfield and Snyder 2002, 334).

With an eye toward these minimal goals, let me now briefly describe the *ad bellum* dynamics for this counterfactual CPW against Iraq. Remember, neither Doyle nor Buchanan require UNSC approval for a CPW as long as *ex ante* and *ex post* accountability are met. I doubt even with firmer *ex ante* evidence of Iraqi WMD and connections to terrorists such approval would have occurred, given that along with stalwart UNSC opponents of

Western interventionism such as Russia and China, even France vehemently opposed the actual war. But we might assume that with a high enough *ex ante* evidentiary level the US and their junior partners could be seen by much of the world as a legitimate 'coalition of reasonably democratic states'. Let us also assume, partly as an effect of this better level of evidence, most did not suspect the Bush administration of having 'congruent interests' in Iraq. Finally, let us assume the Bush administration committed, before the war, to the findings and dictates of an impartial UN-sanctioned *ex post* review.

Though grist for compelling arguments that *jus in bello* constraints need to be toughened (Crawford 2007b, 187–212), beyond the limited use of cluster bombs and some relatively disproportionate attacks on 'leadership' targets (Amnesty International 2003; Human Rights Watch 2003), the actual initial military overthrow of the regime was given relatively high *jus in bello* marks by many analysts (Heinze 2006, 28; Kahl 2007). Given, then, the same 'shock and awe' of the invasion and what we can assume would be a positive *ex post* report, for reasons of strategic command the US would likely still choose the option of control over the occupation – though possibly now with more logistical support from those who did not participate in the war.

Would this be enough to avoid the initial Sunni-led insurgency that transformed into a civil war with Shiite militias? The resultant instantiation of a weak and corrupt Iraqi government that demanded the US leave the country by 2011? A more belligerent Iran aligned with Iraq's majority Shiite population? An al Qaeda branch newly established in Iraq and eventually morphing into an 'Islamic State' organization that for a time took over a third of both Iraq and Syria? To ask these questions is to ask whether one or both of the major co-constitutive forces in these developments – Iraqi attitudes and actions toward the occupation, and the US approach to occupation – would be in some positive ways altered by the counterfactuals detailed above.

The limited polling of Iraqis in the year after the initial invasion shows a majority of the populace glad Hussein was out of power, but highly skeptical of US intentions (Burkholder 2004). I doubt this would have changed much in our counterfactual scenario, given the alterations are largely external to the everyday experience of Iraqi citizens, and to how they would have experienced the initial invasion. Thus we can assume any significant improvement in securing the peace would, if possible, be in US hands.

In Keegan's (2005, 209) assessment of US strategy in Iraq, the 'Americans … sought an immediate transformation of Iraq from a tyranny to a functioning democracy'. As part of this 'immediate transformation' strategy, the US decided only 'a short, light-handed occupation' was needed (Ottaway 2003, 56). The first major US policy mistake during the occupation, a failure to stop widespread looting, was both the result and the first major complication of that strategy. It was a result because as part of the light footprint martial law was not initially established – as would have been legal under various inputs to the 'law of occupation' (Clarke 2005) – and many US soldiers thought they would be leaving Iraq in months and so were commanded not to stop looting (Ferguson 2007). Without military authority firmly established too many of the Iraqi people concluded 'the United States [was] not in charge' (Feldman 2006, 77). Eventually the looting left 'virtually no industrial plant, government ministry, or cultural institution … intact. Over the course of the following months, a spasm of car-jackings, kidnappings, and murders emerged that added to the sense of a society under siege' (Hendrickson and Tucker 2005, 5).

Unfortunately, it is doubtful that even if the Iraq War was a CPW the US would have been able to prevent this siege mentality from taking hold. As Orend (2013, 227) writes, the 'nation-building research shows you need about 20 soldiers per 1,000 residents to stabilize and secure post-war populations'. By this measure Iraq's estimated pre-war population of 25,175,000 called for over 500,000 troops. The US never reached even 200,000 troops in country at one time. To justify the eventuality of 500,000 troops before the war would have necessarily activated a suspicion that rather than a war simply aimed at the 'removal of a wrongfully imposed risk of a dire harm' the goal also involved, in the most charitable assessment, a more demanding 'Forcible Democratization Justification' (Buchanan 2006, 29). Buchanan (2006, 22, 26–27) discusses this as a separate 'challenge to the traditional norm' on when war is justified, and worries it can too easily involve 'unwarranted paternalism toward or failure to show proper respect for the intended beneficiaries'. Buchanan, of course, is theorizing this justification as a sufficient just cause, whereas here it is only a contributing cause made especially important by *jus post bellum* duties. Regardless, a version of the same reasons Buchanan is skeptical of this cause applies here, in that interveners would have to fear that the Iraqi population would read the announcement of a 500,000 troop war-plan as a paternalistic war of conquest. To avoid this dynamic means either additional institutional constraints – which Buchanan (2006, 28–31) is considerably more skeptical would work or could ever be developed – or avoidance of the concrete steps *before the war* needed to heighten the likelihood of post-war stability. This leaves us with at least an *initial* 'light-handed occupation'.

Might, though, the greater logistical support for the occupation and reconstruction mean significant reinforcements deployed reactively to stem the effects of initial disruptions? Unfortunately, as Hendrickson and Tucker (2005, 17) contend, even

> a war plan keyed to the problem of post-war disorder would itself have inevitably confronted a substantial gap in time between the disintegration of the state and the arrival of forces of sufficient size to establish order, creating a window of opportunity for looting that even a far-sighted plan could not have closed … In large measure, this consequence flowed directly from the breakage of the Iraqi state.

From the looting in the aftermath of this 'breakage', large numbers of Iraqis began to turn to charismatic sectarian leaders, the most notorious being the Shiite cleric Muqtada al Sadr, who began to form militias to consolidate power prior to the re-formation of the Iraqi state.

Even here, though, the kind of far-reaching post-war harm that most definitively put proportionality in question did not lock-in until the bombing of one of the most sacred Shiite holy sites in February 2006, which resulted in an explosion of sectarian violence (Worth 2006). This event was the culmination of Sunni resistance to the occupation and antipathy toward Shiite militias, resistance that was especially enabled by two decisions made by L. Paul Bremer, the acting executive of Iraq from May 2003 to June 2004. The first decision, de-Ba'athification, increased the ranks of disgruntled Sunnis because it cut so deep into the former ruling party of Iraq, leaving thousands unemployed simply because they had joined the party to survive during Saddam's reign (Barak 2007, 460). The second decision, the disbanding of the Iraqi Army, put some 400,000 soldiers out of work (Barak 2007, 461). Certainly the insurgency might have been dampened had these decisions not been made.

Unfortunately, there is nothing in the nature of Iraq as a CPW that would prevent such mistakes in judgment, and much inherent to the 'fog of war' that makes something like them probable (May 2012, ch. 12). For instance, Hussein released an estimated 100,000 prisoners from Iraqi jails before the invasion, and positioned many of his military units to avoid the fight with the US so they could dissolve and go underground (Hendrickson and Tucker 2005, 13–15). The insurgency was likely accelerated by Bremer's decisions, but would not have been prevented by their avoidance. Iraqi angst was widespread because of the sheer fact of their broken state and the mere presence of an occupation (Dodge 2007); 'most insurgents were probably motivated by a nationalistic or religious revulsion against the invader or feelings of revenge for a wrong done a kinsman' (Hendrickson and Tucker 2005, 17).

In the end, the story of this US occupation, like the actual one, is likely a halting slide into 'strong liberal imperialism', where the society itself is seen as in need of reorientation (Purdy 2003, 36). Though this showed signs of working during the 2007 troop 'surge', such an approach necessarily brings with it harms both local and systemic. The occupier needs to control the situation so aggressively and for so long – as revealed when the post-'surge' drawdown left the opening that ranks of fully radicalized Sunnis were waiting for – that the specter of a crusading neo-colonialism becomes very real, with all the attendant consequences for the US and international order. Things may have been slightly better had certain decisions been made differently. But even the most logical alternative paths, like being more conciliatory toward Iraq's Sunni population and cracking down harder on Shiite militias, brought with them other risks that might have resulted in a still unacceptable level of post-war harm (Hendrickson and Tucker 2005, 23). Crucially, though, whatever superior decisions we might imagine for the post-war period are not induced by CPW mechanisms, nor do these mechanisms dampen the way that preventive war incentivizes local chaos and insurgency.

It is clear that an Iraq CPW does not stack up against the aimed for proportionality calculation of a 'more perfect peace'. Most unfortunately, it is probably not even a better state of affairs than the worst case scenario derived from the counterfactual baseline. Where the US and international community both do nothing to make worse Iraqi WMD acquisition and connections to global terrorism, yet also do not take actions short of war to alleviate these wrongs, the worst case scenario is probably that Iraqi WMD are eventually used by terrorist actors against the US,[7] resulting in a mass casualty event that then precipitates a self-defensive war against a somewhat stronger Iraqi regime than existed in 2003. While this scenario obviously involves quite a bit of harm, it contains a number of goods as well. The defensive war in response would surely be more likely to secure the same contributing goods hoped for in the CPW scenario. And from an ostensibly cosmopolitan perspective that draws no distinctions between the moral worth of each global citizen, it is likely that by avoiding many of the wide proportionality harms detailed above, the loss of life in this more classical aggression-to-self-defensive war scenario would not reach the level of harm brought about by a CPW against Iraq.

## Conclusion

It might be argued this outcome is particular to a CPW against Iraq, and that the broader CPW program should not be maligned simply because its application in a country mired

with pre-war sectarian divisions would not have prevented those divisions from exploding into sectarian warfare. As Byman (2008, 602) observes in his assessment of the balance between the structural and policy causes contributing to the 'Iraq debacle', there were 'unavoidable conditions that coalition forces encountered in Iraq – a divided society devastated by years of war, sanctions, and misrule – … [that made] successful policy execution difficult'. But he also argues the policy failures sketched above were crucial in that they 'exacerbated rather than ameliorated the various structural problems' (Byman 2008, 602). And as Glaser (2010, 296 emphasis added) contends, a 'lack of sympathy for Arabs among the American political elite – worse than that, a *willful* incomprehension of Arab society and the Arab case – predisposed the US to underestimate the strength of the anti-American sentiment in Iraq'. In speculating to a degree of willful incomprehension, Glaser is perhaps drawing from the notion that in all wars there is a natural tendency to want to feel assured the outcome will be worth the immense cost. This is of course even more tempting, and dangerous, when a threat is less than certain. Indeed, for Iraq key US post-war policy actors were more apt to prepare by reading accounts of the successful, yet very different, cases of post-war reconstruction in Germany and Japan than the State Department's voluminous 'Future of Iraq Project', which detailed before the war many of the specific difficulties the occupation would face (Feldman 2006, 1–2).

Despite Buchanan and Doyle's innovations, there is little to dissuade analysts and leaders from such tendencies. As long as the contended threat is eventually confirmed the *ex post* review leaves the warring state with the option of controlling, for the most part, the post-war situation. To do more really would mean calling for something akin to a 'world sovereign'. And so we are left with a particularly vicious combination lurking within the CPW program. There is both the relatively high likelihood that target populations will perceive war as an instigation to resistance, and the incentive, whatever the makeup of the target society, for interveners to downplay that possibility. The result will be a tendency to not plan adequately for the post-war period.

In principle, I suppose, the possibility remains that cases might exist in which this vicious combination is so much less prevalent that post-preventive war chaos can be avoided. Are these cases likely to be numerous enough to justify and / or motivate the institutional changes proposed by the CPW program? Buchanan touches on this issue in attempting to develop criteria and institutional reforms for 'Forcible Democratization'. He offers a tentative list of 'counting principles' in the mode of Doyle's multiplicative set of standards (Buchanan 2006, 33). To guide *ex ante* judgments on when forcible democratization is most likely to be successful he identifies four criteria: whether a targeted regime is somehow 'foreign' to the people it leads; whether there is past history of democracy; whether there is a 'total defeat caused by its own aggression'; and whether the prospects for economic development and literacy are high (Buchanan 2006, 34). Buchanan is surely on the right track, but from these criteria he also admits forcible democratization sets an extremely high bar for the choice of target, and thus represents a practice unlikely to motivate the institutional reforms meant to guide it. Unfortunately for the prospects of CPW, these forcible democratization criteria are to some degree made necessary for it to grapple with difficulties highlighted by attention to *jus post bellum*.[8] With this overlap between issues of forcible democratization and preventive war it is unlikely states could find the will to build the requisite institutional architecture to realize the CPW program for the rare cases that fit its parameters. And if only the present version is in place it

will surely too often enable wars like the counterfactual detailed above. That the world is still feeling the negative effects of the disaster that was the Iraq War, a program that legitimated even one like it every generation is probably not worth the effort.

Cases for potentially proportionate preventive war may still exist in the absence of CPW. Some non-imminent threat may be 'near-apocalyptic in magnitude … [so that] after being discounted for uncertainty, [it would] *substantially* outweigh the extensive and certain harms that would be caused by a preventive war' (McMahan 2013, 125). But with this the only circumstance left for proportionate preventive war we should follow Jean Bethke Elshtain (2013, 24; Brown 2013, 37), who, in likening preventive war to Walzer's concept of 'supreme emergency', maintains that as a 'category' it should not be 'a stipulated normative rule but, rather, a temporary exception to that rule'. Preventive war simply involves features that, contra Buchanan, are too resistant to institutional constraints to justify altering the standard moral opprobrium identified with the practice. As Colonomos (2013, 184) formulates, following Thomas Nagel, preventive war is too dependent on 'moral … good luck'.[9] For the CPW program, Hendrickson and Tucker's (2005, vii) advice is salient: 'there are certain limits to what military power can accomplish … [such that] rather than "do it better next time", a better lesson is "don't do it at all"'.

## Notes

1. Notably, it is a spare cosmopolitanism that simply foregrounds human rights and the need for slightly more robust supranational authority structures. This piece is meant to be a sympathetic internal critique, though, and so any in-depth discussion of how and whether CPW is truly cosmopolitan is outside its scope.
2. Some have touched on preventive war and the problems relating to the peace to be won, but none in the way I am articulating here (see May 2013; Nathanson 2013; Chatterjee 2015).
3. Thanks to Mark Raymond for pointing to these works.
4. It should be noted that such concerns need not reflect any sort of rote traditionalism. Indeed, some cutting edge work on the ethics of war's end takes an even more pessimistic view toward the moral salience of robust forms of peace, contending that we would often do well to be satisfied with truces guided by 'a straightforward moral principle: economizing on the costs of war' (Eisikovits 2016, 29; for pertinent commentary see Breen 2017; Eisikovits 2017; Metz 2017).
5. My thanks to an anonymous reviewer for pressing me on this issue.
6. The risk of 'living with them' could be quite low. Realists generally contended that even a confirmed WMD-seeking and terrorist-connected Iraq could be contained (Mearsheimer and Walt 2003).
7. Mearsheimer and Walt (2003, 56–59) argue convincingly that Saddam Hussein was rational enough to not use WMD against the US himself, though for the sake of argument I am parting with them here in positing he would somehow materially support their use by terrorists.
8. Indeed, Buchanan (2006) uses the Iraq War as an example of what not to do for both preventive war and forcible democratization.
9. Nagel (2013, 323) defines moral luck as a situation where 'a significant aspect of what someone does depends on factors beyond his control, yet we continue to treat him in that respect as an object of moral judgment'.

## Disclosure statement

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