

DR. BRIAN OREND



Brian Orend is the Director of International Studies and Professor of Philosophy at the University of Waterloo in Canada. He has degrees in history and philosophy, with a Ph.D. from Columbia University in New York City.

Orend is the author of four books: three on war and peace, as well as a fourth on human rights.

His human rights book is a required textbook at more than 50 universities in nine different countries around the world. His most recent book is *The Morality of War* (Broadview, 2006); Penn State University Press will publish another book in 2008. He has won four writing prizes and pens articles for the popular press, such as *New York Newsday* and the *Los Angeles Times*. He appears on radio and TV, commenting on current affairs, especially the wars in Afghanistan and Iraq.

Orend lectures around the world, particularly on the ethics of war and peace and the integration of human rights into post-war reconstruction plans. He has lectured to audiences in England, France, Germany, Greece, and Holland, as well as all over Canada and the United States. He has lectured at both West Point and the U.S. Air Force Academy.

POST-WAR JUSTICE IN AFGHANISTAN AND IRAQ

Welcome and Introduction
Vice Admiral Michael D. Haskins, USN (Ret.)
Dean, VADM James B. Stockdale Center
for Ethical Leadership



Lecture
Dr. Brian Orend



Questions and Answers



Interview With Dr. Brian Orend

This evening was supported through the generosity of
William and Carolyn Stutt.

This is an edited, abridged version of the original lecture transcript.

WELCOME AND INTRODUCTION

Admiral Haskins

Good evening, ladies and gentlemen. It's great to have you here tonight. I'm Vice Admiral Michael Haskins, the Dean of the Vice Admiral Stockdale Center for Ethical Leadership here at the Naval Academy. I want to welcome you on behalf of the Center, on behalf of the Naval Academy, and in particular, this great class of '09.

For your information, the Vice Admiral Stockdale Center hosts two premier ethical presentations in the year, one in the fall and one in the spring. In the fall, we cover a topic of moral courage and then in the spring, as part of the Stutt Lecture Series, we present another ethics topic. Our past speakers in this series have been Vice Admiral Stockdale, General Zinni, Michael Walzer, and Michael Ignatieff. You may recognize some of these names, and tonight we are very privileged and fortunate to have somebody of that same caliber speaking here.

For our midshipmen, listen carefully. The message that our speaker has for you tonight is directly applicable to you, to you and to your profession, because what is being stated tonight can spell the difference between success and failure in war.

Our speaker is the Director of International Studies and Professor of Philosophy at the University of Waterloo in Canada. That is a very appropriate name—Waterloo—for somebody who deals in war and peace. He is widely acknowledged as being one of the foremost experts in Just War theory today. He is also the principal contemporary architect of the third dimension of Just War theory, which is morality and justice after the war is concluded. He has authored four books, three of them on war and peace, and a fourth on human rights. The book on human rights is a required textbook in more than 50 universities—five-zero universities in nine countries throughout the world. His latest is titled *The Morality of War*, and that one is particularly applicable to you, because it has taken classical Just War theories and brought them up to date, in terms of the wars that we are encountering today and the kind of wars that you are going to be fighting. He has lectured throughout Europe, Canada, and the United States, and it is my

distinct pleasure to welcome him here to our United States
Naval Academy.

Ladies and gentlemen, please welcome **Professor Brian Orend**.

LECTURE

Dr. Orend

Thank you, Admiral, for that extremely kind introduction. Thank you so much to all of you for giving me the incredible privilege of addressing you this evening, especially as I understand it is the first Monday back from March break, and you all have to be here, so I appreciate you coming to hear me, and I'll strive to make it worth your while. But before I start, I want to just say a very special thank-you to Dr. George Lucas, who is essentially responsible for bringing me here. I am deeply grateful, and I just want to extend a special thank-you to him in that regard.

You heard that I am a Just War theorist, and I understand that you are all taking a course on ethics, and some of you have already been exposed to Just War theory. Others are just about to be exposed to Just War theory. So who is a Just War theorist? What kind of creature is this? What do we believe? What do we do, and what do I specialize in? What am I going to talk about tonight?

Well, a Just War theorist, as I see it, is someone who occupies a middle ground between the realists and the pacifists. There are three fundamental attitudes about the ethics of war and peace. The pacifist, of course, says that war ought never to be resorted to. War is not morally permissible. The realist, on the other hand, is essentially a moral skeptic who says, "Look, ethics and war don't go together. War has nothing to do with ethics. It's just a clash of national self-interests, and taking care of self-interests and national security are the overriding norms during wartime."

The Just War theorist strives to occupy the middle ground, saying: "No, there are moral values at stake in war and peace, but [contrary to] the pacifist, there can be some times where it's morally permissible to fight a war." Essentially, the rest of Just War theory is devoted to explaining those values and the circumstances when it might be morally permissible to resort to armed force.

Now my special focus in Just War theory is justice after war or *jus post bellum*. I'm sure you have heard some of these Latin terms already. The traditional division in Just War theory is between the

justice of resorting to war—you know, what are some of the principles and values and concerns that we have to take into account when we are going to resort to armed force—on the one hand, and then the principles of justice governing conduct in war, after a war has begun, or *jus in bello*, on the other.

This is how the tradition was set up. When, if ever, is it just to go to war? How ought we to conduct ourselves in the midst of war? And then nothing. I think this is a problem. Why is this a problem—this two-track, twofold approach? Well, it's a problem because, as I like to say—and you have to follow me really carefully here; this is a really complex point—war has three phases: beginning, middle, and end. The overwhelming amount of attention in Just War theory and in international law, which develops out of Just War theory, has to do with the justice of resorting to war, the justice of conduct in war, and then there is next to nothing about justice after war.

Yet it's obviously a relevant issue both for practical politics and for justice. The issue that I want to talk about tonight is this: You are the President of the United States. You have just put your military in motion, and because it is the most powerful and efficient military in the world, it has just knocked over some regime and won the war. Question: What do you do now? This is the central issue of justice after war. So I submit that Just War theory needs completion. We need justice of war, justice in war, and justice after war.

The task shouldn't just be moral, completing the moral theory of Just War. I submit to you that what we need is a further piece of international law, and I want to go on the record saying this. We should have another Geneva Convention devoted exclusively to the principles that should bind the victors in the post-war situation. There should be a new Geneva Convention devoted to justice after war.

Now I made this proposal about a month and a half ago at the Hague in front of a bunch of international lawyers, and they laughed and laughed and laughed at me, because of course, to the winner go the spoils of war. There is no way that a victor is going to accept any restraint on his/her conduct in the post-war situation. What could be more absurd than thinking that victors are going to

agree to the terms of a brand-new international treaty regulating *jus post bellum* or justice after war?

That doesn't deter me. The ridicule of lawyers doesn't deter me, and I even take perverse pleasure in it. Because essentially, they were saying it is never going to happen. It's impossible. There is no way any state would possibly agree to that. I actually don't see how it is NOT going to happen. I actually don't see how there is NOT going to be a Geneva Convention, and in fact, maybe one day—it's not going to happen tomorrow, but maybe 25 years from now—some of you in this room will be on the negotiating team representing the government of the United States, negotiating your country's position on the terms of such a treaty. All right, that's something to think about.

We need such a treaty. Why? For completion about the ethics of war and peace and the regulation of war. It's just a huge mistake to regulate the start of war, conduct in war, but yet do nothing at the end. Why? Because winners of war have been known to exact terms of the peace that are too harsh and that, in fact, pave the way for future wars, sow the seeds of future wars, if I can mix my metaphors.

The classic example of this, of course, is the Treaty of Versailles. Would the Second World War have happened if the Treaty of Versailles had not been so punitive, had it not hurt the German people to the degree that it did? It gave Hitler political oxygen to say, "Well, the solution is to rip up the treaty and go ahead re-arming ourselves."

There is another war going on right now in Iraq, and I put this question to you. Would the second war in Iraq have been necessary at all had the first war been ended differently, more progressively, with deeper thought about the longer-term ramifications? When wars are ended badly, they sow the seeds of future wars, and I can't think of a better reason to regulate the endings of wars than that.

Moreover, the notion that winners are not going to accept constraints on their conduct during the post-war phase I think is clearly wrong. When people were talking about all of the *in bello*

treaties, for example, all the treaties banning or regulating weapons, they said the exact same thing. States will never agree to restraints on the kinds of tactics they can use. States will never agree on restrictions of the kinds of weaponry that they can deploy. Not in their interests. They will never do it. They always want their options open.

But it turns out that, in international life as in domestic life, it often is in your interests to conduct yourself with restraint. Moreover, especially given the messy post-war situations that are currently going on or have recently been going on in Bosnia, Yugoslavia, Afghanistan, and Iraq, it seems to me that both the losers and the winners would desperately want and appreciate guidance—guidance on how to wrap up a conflict decently, and that's what *jus post bellum* can do.

Now within *jus post bellum*, I specialize in issues of forcing regime change, of coercive occupation, and the question of how and in what way we ought to rebuild post-conflict societies. This is my main topic tonight with reference to Afghanistan and Iraq. Since things are going so poorly, with such degree of difficulty in Afghanistan but especially in Iraq, one of my big fears right now is that we are losing our way in terms of what we are trying to achieve post-war. I want to talk about that, because of the question I put to you at the start. You have knocked over this regime. What do you do?

Well, you need two things, don't you? You need a plan, right? You need a goal. What am I going to do with this society? And then you need the means to achieve it. Tonight I want to talk to you about what I think the nature of the goal should be both in Afghanistan and in Iraq, and then I want to quickly take a look at how well we are doing *vis-à-vis* those goals in Afghanistan and Iraq, because my country is involved with Afghanistan as well.

What should be the goal of America's post-war reconstruction activities in Afghanistan and Iraq? Well, we know the answer of the realists. The answer of the realists is that the goal should be to augment the national security of the United States. Weren't these wars all kicked off by 9/11 and that act of aggression? The major goal should be to enhance the national security of the United

States. This is the realist attitude. It often gets derided as a selfish attitude.

In contrast to this might be what we could call the idealist attitude, which is: No, America should be up to more than that, more than just augmenting its own national security. It should be trying to improve these societies, leaving these societies better off than what existed prior to the war. All right, so this is the time-honored clash in international affairs between realists and idealists. Whose ideals ought to prevail?

In this instance, I don't see why there has to be a clash, and I don't see why these two values can't go together. In fact, I submit to you that they have to go together. Why? I put to you the following claim: The national security of the United States will only be enhanced if, in Afghanistan and Iraq, only a certain kind of regime gets constructed there, a morally better kind. Okay, let me say that again. The national security of the United States will only be strengthened if a certain kind of regime comes into being in Afghanistan and Iraq.

Now what kind of regime? One that I call a minimally just regime, a legitimate political regime. Okay, now how exactly will that augment the national security of the United States? Well, here I follow some kind of version of what you may have heard described as the democratic peace thesis. I don't endorse it entirely. If you are interested in the democratic peace thesis, the work of Michael Doyle is probably the most prominent contemporary source, but the idea goes back all the way to one of my favorite philosophers, a German philosopher from the Enlightenment, Immanuel Kant. You may know him as the author of the "Categorical Imperative."

Kant's notion is this: Rights-respecting regimes, decent regimes, minimally just regimes, don't attack each other, because there is a commonality of world view. There is a shared sense of value, and there is a shared sense of respect that the other regime shares your values. Now this gets referred to in slightly different ways by the democratic peace thesis, but that's not important for my purposes tonight. So my notion is, if we are able to construct in Afghanistan and Iraq regimes which respect human rights and which are minimally just, they will not attack the United States,

and as a result, the national security of the United States will be enhanced.

So this brings me to my next task, namely defining what is a minimally just, legitimate political regime. I submit that it is one that fulfills three conditions, three principles, three criteria. First, such a regime doesn't attack others. Such a regime does not itself commit international aggression. Second, this society is seen as legitimate both by its domestic population and by the international population. Finally, this minimally just regime does everything it reasonably can to satisfy the human rights of its own citizens.

Okay, so I've got three criteria, and what I want to do now is take a quick look at applying these criteria against the case studies of Afghanistan and Iraq and say, "Okay, how well are we doing thus far in constructing that kind of society, a society that doesn't egress, a society that is legitimate in the eyes of its own people and in the international community, and a society that respects human rights both in Afghanistan and in Iraq? How well are we doing in that regard?"

To ensure the regime you are targeting for regime change and post-war reconstruction won't attack others, the standard in the post-war literature is that you have to disarm the regime. You demilitarize it, and that's how you ensure it won't attack, and it won't pose a danger. You defang the regime. Now by and large, this has been done in Afghanistan and in Iraq in terms of the regimes, but as you may know, there are still ongoing security problems, serious security problems that I want to return to. What I want to submit to you right now is if you take apart a regime and you defang it, this implies a duty on your part to step in and provide security for that society because essentially that society is now defenseless. This is the task that is proving to be one of the most difficult both in Afghanistan and in Iraq.

Now let me focus on Afghanistan. Kabul, the capital, is more or less secure. The same cannot be said of the rural parts of Afghanistan, and in fact, arguably there is still a hot war, a serious war going on in the rural parts of Afghanistan and the southeastern portion near the border with Pakistan, which is where most people think Osama Bin Laden is hiding. There is also the issue of the warlords. Now who are these people? We only use the term

warlords in connection with Afghanistan. Afghanistan is a profoundly tribal, clan-based society. It is not a sophisticated political community. It is based on extended families, and essentially the warlords are heads of clans who take responsibility for their own family's turf. They have their own private family militias governing their family's turf.

They are also quite often heavily involved in the drug trade. As I'm sure you know, Afghanistan is the world's biggest single producer of poppies, and you will be thrilled to know that actually this year was the biggest bumper crop of poppies ever. These guys profit hugely off of the drug trade in this regard.

So is Afghanistan secure? Kabul is, but the rest isn't.

What about Iraq? Have we defanged Iraq? Have we prevented it from being able to attack others? I think, in the short term, that's true. Immediately after the regime fell in May '03, Secretary Rumsfeld disbanded the Iraqi Army in June and sent those 400,000 people home, often with their weapons, at least their hand-held weapons.

But has America been successful in providing security to the Iraqi people? Well, we all know, unfortunately, that is not the case. There is a full-on insurgency, and you may even want to describe it as a civil war, so obviously there has been a failure to achieve security for the bulk of the Iraqi people.

Now will the troops surge change this? I want to come back to that at the very end. I hope it does, but I think there are issues that we can raise.

Okay, so the first issue with the minimally just regime—it won't attack others. In the post-war situation, you want to disarm the aggressor that you have defeated, but that act of disarmament implies a duty on your part to provide security. Many of you in this room are going to find yourself involved precisely with that task, providing security to some of these political communities. It's incumbent upon you to think about what will constitute success in that regard.

The second criteria for a minimally just regime is that the regime gets recognized as being legitimate in the eyes of its own people and in the eyes of the international community. How does the international community offer recognition of the legitimacy of a community? Well, it does things like send ambassadors, open embassies, but above all, it welcomes that country and that society into international institutions, especially the United Nations.

And here, in connection with this second criterion of legitimacy, we can talk a lot, I think, about success. I said success in connection with Afghanistan and in Iraq. There have been remarkable successes at gaining international recognition for the new governments in Afghanistan and in Iraq. They are both members of the U.N. again. Embassies are widely open both in Baghdad and in Kabul. The international community is donating money, which is a sign of confidence in the new regime. The clearest way of showing domestic legitimacy obviously is that you win power in a free and fair election, and there have been free and fair elections in both of these countries, two in fact in both of them. These are in societies which never had elections before.

So I have to say for all of the kind of pessimism that I am going to articulate tonight about the security situation and about the economic situation, I don't want this to take away from the real achievements of the United States in connection with the fulfillment of the second rule, of helping these societies develop legitimate political structures, endorsed in free and fair elections by their people.

The third condition is that these societies make every reasonable effort to satisfy the human rights of their own people. Why? Well, there is a huge international consensus following the Second World War, as I'm sure you know, that the basic condition of political legitimacy for any society, for any government, is to do what it can helping to realize the human rights of its people. In many ways, this is the point of government. The point of being in a society at all is that it can help you to realize your human rights, which is to say, your most vital needs as a person. This is nothing new. This goes back to the founding fathers in America, who drew on John Locke, for example. There is no reason to obey a government that doesn't help you realize your human rights.

There isn't sufficient reason for you to sign onto the social contract. So respect for human rights is the baseline of political legitimacy, and there is an enormous international consensus behind that kind of view.

Now what are human rights? They are things that we vitally need and things that we can reasonably provide to each other at reasonable costs. I have written [that] we have human rights to five basic things, which I call the foundational five, and this phrase has gone over like a lead balloon. My strategy is just to keep on repeating it and hope I make a dent. Okay, so I think we've got rights to five things, and I want to say, "How well are we doing in Afghanistan and Iraq providing those five things to the Iraqi and Afghani people?" [The] five things [are]: personal security, first and foremost; basic personal freedoms; material subsistence, the material resources of life; social recognition as a person and a rights holder; and something I call elemental equality. I mean a very thin sense of equality by that, essentially the absence of discrimination. Whatever rights we have, everyone gets them.

Okay, so those are the foundational five human rights. How well are we doing satisfying those human rights in Afghanistan and Iraq? In Afghanistan, personal security—yes in Kabul, no in the rural parts of the country. We have to keep in mind that these warlord-guided militias can spring to life at any moment, and there is this famous threatened spring offensive, although it's a very odd belligerent who lets you know when he is going to launch an offensive. I think a lot of that is media hype, but we'll see if this spring offensive actually ever materializes. So security [is] good in the capital, bad in the rest of the country.

How well are we providing freedoms to the Afghani people? Here, I think [there is] a lot of success. Freedom of religion in Afghanistan [is] so much better now than under the Taliban, with their extremely strict views about religion. Political participation—yes. The right to vote, right to run for office—absolutely. But the deeper aspects of freedom and what ensures freedom, in particular the rule of law, these are things that take decades to take root, and it's unclear that we're achieving too much in terms of those longer-term assurances, institutional assurances of personal freedom.

What about equality? In Afghanistan, there have been great strides, especially in terms of girls and women. Girls and women are so much better off now. Things aren't perfect, but girls and women are so much better off in Afghanistan than they were under the Taliban. My country, for example, is deeply involved in constructing schools exclusively for the education of girls and women. Now it's not perfect. These schools, as you may have heard, are being attacked. Some of the teachers who teach at these schools are being roughed up, but clearly progress in terms of equality is being made.

Social recognition, I think, is quite good, except for that one potential struggle with getting full recognition for women. It's subsistence that is the real problem in Afghanistan. The two real problems in Afghanistan are securing the countryside and providing subsistence. Afghanistan is one of the poorest societies on earth. It has been scarred by almost constant warfare since the Soviets invaded in 1979. Life expectancy in Afghanistan is 46. You are middle-aged at 23. The literacy rate in Afghanistan is 36 percent, and most of those who are literate learned how to read at the Islamic equivalent of Sunday school. Imagine how that would shape your life if the first place you learned how to read was in Sunday school.

How to grow a war-torn, drug-soaked economy? The problem is this: Let's say you are now an Afghani farmer. (Okay, you once were the President of the United States, and you did a bad job, and you have been demoted! Now you are a farmer in Afghanistan.) Here are the choices that you confront. There's no birth control over there, so you've got seven kids. You've got seven kids and a wife to feed. What crop are you going to grow? You are illiterate. Are you going to grow potatoes and get 100 bucks U.S. a crop, or are you going to grow poppies and get 3,000 bucks a crop?

The huge problem confronting the international force in Afghanistan is how to grow the legitimate economy and undermine the drug trade. The drug trade is an incredibly insidious thing. Why? We know from Colombia and South America that societies that become infested with drugs become infested with criminal cartels, and the whole process feeds on itself. The economy becomes soaked with violence and drugs, and it is incredibly hard to break that cycle.

How about Iraq? Obviously, we haven't succeeded in providing security to the average Iraqi. There's a full-on insurgency and perhaps a civil war between the three groups. I just read this morning, the fourth anniversary of the start of the war, [that there are] 3,200 U.S. service casualties and 60,000 Iraqi casualties. That's one of the most conservative estimates. Security is absolutely a necessary condition for the success of any post-war reconstruction, because how are you going to build a school or a hospital or rebuild a road that has been blown apart by war, if you think you might get shot that day or blown up by a suicide bomber? The task of providing security to Iraq is actually going to fall, unfortunately, on many of you, and it is absolutely a necessary condition for successful post-war reconstruction.

What about the freedom front? Well, here there has been progress, just like in Afghanistan: political participation, free elections, [the] right to run for office. But no rule of law again—a dodgier thing, a more difficult thing. We saw this in the way that Saddam got executed. That didn't exactly look like a nice, legal, measured execution. Whether you think he deserved it or not, the actual execution did not look like the rule of law in action. [It] looked like the rule of something else.

Okay, equality and recognition. The big problem in Iraq is the three groups recognizing each other as equals and as legitimate partners in the reconstruction process. There are the Kurds in the north, the Shiites in the south, who tend to be more religiously conservative, and the Sunnis in the middle. The Sunnis are used to holding power in Iraq. They are a minority, but they are used to holding power.

Getting these three groups to get along is an incredibly difficult challenge. The path that the United States has taken so far has been very sensible path. Essentially, the notion is this: These groups will only stay together if we don't force them to be together too closely. So let's have a loose federal structure and hope that this is sufficient to keep them together. It's too early to tell whether that's sufficient to keep them together or whether the divisions over ethnicity and religion and the division of oil revenue are so deep that Iraq has to be partitioned into different countries. That would be an incredibly dangerous process though, because its

neighbors—Turkey, Iran—would want to have a say in that. Incredibly dangerous, but that’s the issue: Can these three groups get along?

What about subsistence? Here too there are problems, although Iraq is much better off than Afghanistan. Why? It has oil. It has a valuable natural resource, unlike Afghanistan. It has a more educated and sophisticated population than Afghanistan. But just like Afghanistan, this is a society scarred by almost constant warfare. It has huge accumulated infrastructure rebuilding needs, and the infrastructure won’t get rebuilt until the security is provided.

Okay, the post-war reconstruction literature boils down to this, and I would highly recommend an author named James Dobbins, who has done two excellent studies on post-war reconstruction. You can download stuff for free from “ram.org” on his research, and he comes up with the following maxim for the success of post-war reconstruction. The average person, both in Afghanistan and in Iraq, has to feel he is concretely better off within seven years of the regime falling, and by concretely better off, he means more wealthy and more secure. If that is not achieved, the post-war reconstruction will be a botch, and it will degenerate into war once more.

So the two key things, both in Afghanistan and in Iraq, [are] the achievement of security and more economic growth. In Iraq, [there is] the third problem of whether these three groups can get along to hold one country together at all.

So in conclusion, by this standard of what counts as a minimally just regime, a regime worth reconstructing in the post-war moment, it’s deeply unclear whether post-war reconstruction in Afghanistan and Iraq is succeeding. There have been some real achievements, and I don’t deny that, and I think it’s terrific, but those achievements have largely been on some of the things that Americans do best: constitution building [and] the achievement of various personal freedoms. But on these other two fronts of the achievement of security and the growth of the economy, there is incredible, huge obstacles. It can be done. The reconstruction of Germany and Japan after the Second World War shows that successful post-war reconstruction can be done, and it can be done brilliantly, even by

the United States acting on its own. America should take incredible pride in its achievements in Germany and Japan.

It can be done, but will it be done in these particular cases? I think it all depends on the following question. Do the U.S. voter and the U.S. soldier and the U.S. sailor have the patience and the willingness and the generosity to see such reconstruction projects through to conclusion?

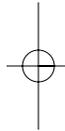
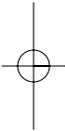
The final thought I want to share with you is this. “Okay,” you might ask, “what the heck is in it for me as a midshipman? What’s the relevance of all this to me? This high-fallutin’ talk [about] constitution building and international relations?” I want to give you three reasons why you should care about *post bellum*, why it matters to you, why you should think intensively about it, [and] why my speech hopefully hasn’t been a complete waste of time for you.

First, I submit to you that your future careers are going to be heavily involved in post-conflict nation building. The course of your future careers [and] your chances of promotion are going to be heavily tied to this kind of messy, post-conflict nation building, so you have to think it through.

Second, your conduct as soldiers and sailors on the ground [or] in the water can completely botch post-war reconstruction. Why? Think here of Abu Ghraib. What happened at Abu Ghraib? You have a handful of bad eggs. Not a few good men, but a few bad men, a few bad women, maybe encouraged by vague policy, doing some nasty things. The result [was] a total undermining of the Iraqi perception of American intentions and the legitimacy of the American occupation, because of the conduct of a few bad American service people. Your conduct can have a huge influence on whether post-war reconstruction succeeds or fails.

Finally, you ought to be very concerned about the values and the goals that your country is pursuing in post-conflict rebuilding, and you should do everything you can, everything you reasonably can, to persuade your country to stick to the right set of values, the most appropriate set of values, to probe human rights values that I have articulated tonight, and you ought to resist and refuse if you see your country straying from these values.

Thank you so much for the incredible privilege of addressing you tonight. Thank you for your time, and I think we have time for a few questions.



QUESTIONS AND ANSWERS

Question

Sir, you painted a picture for us of how we could create an ideal regime and revitalize the economy in Iraq and Afghanistan, but I believe for this to happen the insurgency must be destroyed first. What do you propose that we do to destroy an insurgency that fights us by nonconventional means?

Dr. Orend

Million-dollar question, right? Now I guess if I for sure had the answer, I would be a more useful person.

What I will say is this: It's an extraordinarily difficult issue. It's very easy for someone like me to say, "Well, we've failed so far in this way, but we have succeeded in other ways," and I want to clearly convey that I really do feel for the people whose responsibility it is to make these kinds of decisions. What's the strength of the insurgency? What is the best way to keep it down or to try to defeat it? We are totally in agreement, you and I, about the need for security to make the rest of post-war reconstruction a success.

Let me comment on the things that I think might help. I think that the troops surge may well help. It certainly won't hurt. I think their thinking with the troops surge is this: Let's do what we have done so far in Afghanistan, which is [to] create one area, preferably the capital area, which is secure. It will serve as an oasis; we can achieve security somewhere in your country, and so there are grounds to believe that we can do it elsewhere in your country.

So I think the troops surge can help, but it's vital that the troops surge situation not mimic what happened in Vietnam, which was you had a troops surge [that] didn't work. Another troops surge didn't work. Another troops surge didn't work. Soon we've got half a million U.S. soldiers in Vietnam, and it still doesn't work. This may be one last temporary troops surge to secure the Baghdad area, trying to mimic the success in Afghanistan and providing an oasis of security in the capital, to show that success can happen. Once they see success, they're going to want to build on it.

Now let's say that doesn't work. Let's say the insurgency proves incredibly stubborn. I think the worst-case scenario is you have got to fight them to a peace of exhaustion. You won't be able to beat them. You won't be able to crush them. It will be a much longer-term project where you fight them to a peace of exhaustion, just like the British did in Northern Ireland. Once they're exhausted, they're willing to participate in the political process. What they found in places like Northern Ireland is, once they participate in the political process, they moderate their views, because moderate political views are the most salable politically.

So ideally, I do think there is reason to believe that the current course might pan out some success in the security front. Failing that, I would advocate fighting them to a peace of exhaustion, and then you politicize the process.

Question

I had a question regarding the third set of Geneva Conventions that you mentioned. As far as I know, the United States has really been the only country in the recorded history of the world to actually conquer and then rebuild nation states, and so I was wondering whether the rest of the international community, which does not hold our same cultural ideals, would be willing to consider ratifying a set of agreements that govern post-war reconstruction when most of them don't see a conquered nation as one to be rebuilt.

Dr. Orend

Terrific question. Thanks for that question.

It's actually not the case that America is the only one to have engaged in post-war reconstruction. This is actually quite a common agenda in war, to overthrow a regime and take control of its former territory and control it either directly or indirectly. It may be true that the most recent successful cases of post-war reconstruction were done by the United States in Germany and Japan, and we have to learn from them, but there are other countries—Britain, let's say—who have engaged in post-war reconstruction and have been quite successful at it.

There is a really good book called *Empire* by Niall Ferguson that talks about how the British Empire engaged in regime change in a successful way.

Now the second part of the question, the million-dollar question, is: Are human rights values truly universal? If they aren't, then isn't that imperialism to inflict our human rights values on societies we've defeated in war, if they are not from the same cultural grouping? Now I reject the notion that human rights are just western. They are western in their origins; the idea first comes out of the west, but from that, it does not follow that the idea is only applicable to western societies. I believe that human rights are generally universal values, that every individual has every self-interested reason to claim security, subsistence, freedom, equality, [and] social recognition, so reconstruction on the basis of those values is not an act of imperialism but rather an act of genuinely improving those societies.

But we have to make that case. Any intervenor or regime overthrower has to make that persuasive case to those people and work with those people to install the kinds of institutions that respect human rights. What we tend to find, even in those societies which seem very alien to western culture—like Afghanistan—well, lo and behold, we find lots of people who are interested in constructing a human-rights-respecting regime in their own country, and I think that's good evidence that these are genuinely global values.

Question

Sir, based on the after-war justice that you have described, do you feel that it would be immoral for the United States to withdraw from Iraq in 2008 as the House and Senate Democrats are pushing for, and if so, at what point is it moral to accept the difficult situation and leave the country?

Dr. Orend

I do not think a withdrawal as early as 2008 is either politically wise or morally permitted. I believe in the Pottery Barn rule. Having broken the regime and being the one with the preponderance of power in that society, the one with the greatest ability to reconstruct that society, America owes it to the people of

Iraq to engage in meaningful post-war reconstruction and to give it its best shot. I don't think it has yet given its best shot. It's incredibly difficult.

Now maybe down the road, we can envision a civil war breaking out, a situation where it genuinely becomes impossible for the United States to do more than it has done. Maybe. I don't have an algorithm for determining when that date might be, but I don't think we are there yet, and there are all kinds of constructive things that the United States should do. I just mentioned some of them, the temporary troops surge [and] creation of a Baghdad oasis. I also think you all should be paying more of your tax dollars to help grow the economy in Iraq, as harsh as that might sound to your wallet. Better your dollars going over there than you guys coming back in body bags.

So I think that the United States still can do very meaningful things to try to give reconstruction a good shot in Iraq, and certainly giving up by 2008 is way too soon and morally irresponsible in my view.

INTERVIEW WITH DR. BRIAN OREND

Midshipman second-class Tyson Meadors interviewed Dr. Orend on behalf of the Vice Admiral James B. Stockdale Center for Ethical Leadership.

Midshipman Meadors

In your book, you commend the United States for developing precision-guided weapons and investing heavily in further developing those types of weapons. What about the use and development of non-lethal weapons?

Dr. Orend

Reflection on the nature of weaponry has been part of the ethics of war and peace right from the start. I guess my own view is that it is probably better. What you really want is a discriminate weapon that it is non-lethal but also disarming. The problem with what I know of the current development of non-lethal weapons is that they don't seem to be as discriminate as, say, a laser-guided missile.

Midshipman Meadors

What about situations with crowds? When, given the few moments to react to a hostile crowd situation, isn't the less discriminate use of a non-lethal weapon preferable to shooting into a crowd with lethal weapons?

Dr. Orend

It's very important who we're attacking. In the case of a guerrilla war, where there's a blending between civilian and soldier and it's hard to determine which is which, the case for using those weapons goes up considerably. I think using some sort of stun weapon in this situation is perfectly fine.

Midshipman Meadors

So non-lethal weapons are best used when discrimination is difficult?

Dr. Orend

Yes.

Midshipman Meadors

In your book, you also write at length about Japan and Germany as successful regime-changing operations. What has changed so much in the world that makes it difficult to repeat those past successes?

Dr. Orend

With Japan, you have one of the most homogenous societies in the world. Automatically, there's a big disanalogy between Iraq and even Afghanistan, with their clan-based society. So that made it easier for an occupation to succeed in Japan. Another big thing is the perception of the legitimacy of the operation. I've talked to a lot of people in both Germany and Japan who went through the occupation. They said, "Everyone looked up to the Americans," and "These people clearly had something to offer us that our regimes in the 1930s did not." They looked up to the occupier and saw what he had to offer.

If you ask the average Afghani or the average Iraqi: "Do you think this has something to offer you?"—you won't get that same kind of endorsement. Religious differences come into it. Ethnic differences come into it. Resentment of American power comes into it; in other words, how can a country that powerful also be good?

Midshipman Meadors

So we're a victim of our own success? The amount of power we've amassed since World War II is working against us?

Dr. Orend

Yes, definitely. There's a David-and-Goliath mentality, and who doesn't want to root for David?

Midshipman Meadors

What can a superpower do? When we go into another nation-building exercise, what can we do to make it work?

Dr. Orend

Far better advanced planning about what will happen when the regime falls. This includes dissidents from that society—if we pick off this government, what's going to be the replacement

government? Are those [dissident] groups going to get along? What are their hidden agendas? Can we pull off a stable constitutional structure?

You build their confidence immediately, and you clearly communicate good intentions. You do that first by showing that you have a plan and then deploying a sufficient amount of force to realize it. The plan has to look like more than a piece of philosophy, a wish list. It requires communicating sincere, good intentions through actual actions.

In an immediate postwar environment, a people's confidence in their future is utterly shattered. They're thinking: "What the hell is going to happen to us? We're being occupied by a foreign power; we're not sure of their real intentions; we're poor; our homes have just been blown apart; and we have guys with guns running all over the place" It's all about building confidence, and it has to be done immediately. There is no room for lag between the collapse of a regime and the implementation of the post-war plan.

Midshipman Meadors

In your book, you talk a good deal about "minimally-just states" and the moral obligation to intervene in the affairs of states that are no longer minimally just. Looking around the world today, if you had to say where, on a moral level, other countries should intervene, where would we be morally obligated to go?

Dr. Orend

Well, some regimes are extremely dangerous, and something has to be done with them—they have to go. But that doesn't mean they necessarily should be overthrown by force. Like, say, Iran. Countries like that should be undermined and contained, but not necessarily by force. They should be essentially dealt with the way the United States dealt with the Soviet Union. It's just too dangerous and requires too many resources to confront them directly with force. Also, because of population density, civilian casualties would be enormous in Iran.

Iran is a radical, dangerous, destabilized regime, and it is clearly opposed to reasonable secular values. It's a revolutionary regime and believes in spreading its revolutionary values. It wants to

spread Islamic theocracy around the Middle East. It has lots of oil and nuclear resources—very dangerous. It's clearly implicit in supporting insurgents in Iraq and terrorist groups.

That said, a fully articulated containment strategy, not immediate military action, needs to be considered.

Midshipman Meadors

Any other countries that need to be addressed?

Dr. Orend

It might surprise you, but it blows my mind that everyone forgets about Russia. People talk about China a lot—and China has problems—but I think China is oversold. A far more dangerous country—but not because it intends to be dangerous—is Russia. It is still a nuclear power, a military superpower. It is an incredibly unstable society with huge increases in inequity in wealth and power and social structure. It is a society that is horribly governed and has been so since the dawn of Russia.

Now, I don't have any particular ax to grind against Russia, but all of this together—even without the intent to confront the West like there was during the Cold War—the possibility for something unintentional but very bad coming out of Russia is very much there. Russia is very much a dangerous country.

Midshipman Meadors

And you argue for containment there, too?

Dr. Orend

Yes.

Midshipman Meadors

Then, asking from a military point of view, where are places that do or might necessarily need armed intervention in the near future? What about North Korea or Sudan?

Dr. Orend

Well, these are certainly dangerous spots. [North] Korea is a horrible regime, but it has nuclear capabilities. From a proportionality point of view, attacking a nuclear regime is an

entirely different kettle of fish. In terms of just cause, it's a ruthless regime that is openly complicit in helping terrorists and increasing instability all around the world.

Yet the West also has tools of containment, along with its powerful neighbors Japan, Russia, China, which all get nervous about North Korea. There are a lot more international consensus and resources to bring to bear to contain North Korea. Whereas, in the Middle East, it's essentially the United States on its own.

In Sudan, if the attacks truly rise to the level of genocide, then we do have a case where we can talk about going in with force. Again, we have to be mindful of the consequences, especially in that part of the world. The ethnically Arab government or Arab militias with the government's consent are attacking black Christians. If we go in and pick off this regime, we have to be aware how this will be perceived by the rest of the Arab, Islamic world.

Midshipman Meadors

In your book, you agree with Michael Walzer, who states that genocide is a situation where all nations are morally obligated to intervene, by force if necessary.

Dr. Orend

There's just cause—which I can concede here—but also a number of other things you have to satisfy with *jus ad bellum*. I think a lot of these other conditions—not proportionality because it is genocide and responding with force is proportional—but it's more about the likelihood of success and how success is conceived. And this is always vaguely defined in Just War theory. What sort of success are we after? What will happen as a result of the war? And will what follows as a result of the war be a clear improvement from what went on before?

If it's stopping the genocide, then there's definitely a huge benefit. But if the regime is going to topple, and this is going to bring out broader, regional differences between Christians and Arabs—I'm not saying this a reason to avoid it, but it's something we need to consider.

Midshipman Meadors

And if we consider all these things, and we're still willing to go in, then are we justified?

Dr. Orend

Yes. And I want to be clear on this: It's justified even if the United Nations does not get on board, because I think there are problems with requiring international authorization. Here we have a power that is willing to be morally sensitive in order to stop a humanitarian emergency, and I think that entitlement flows from justice.

Midshipman Meadors

On a different topic, why is the version of Just War theory that you present in your book morally appealing?

Dr. Orend

All we can do is to use the best information we've got at this point in our history—the best set of values that we can come up with. This is what Just War theory, with its linkage to human rights, do together. Just war theory has to be welded to human rights in order to be morally viable.

Midshipman Meadors

How important is Just War thought to future military leaders?

Dr. Orend

It's vitally important. This is what military leaders are going to do in their lives, and they should be concerned with whether what they do with the rest of their lives is morally good or not. Whether it's going to improve the world or not. Whether it's based on a defensible set of values or not. Whether they are going to be able to sleep at night. Will they actually believe in the value of what they are doing or not?

Sometimes it's hard for young people just at the start of their careers to see this. People who are mid-career just naturally ask: "What is the meaning of my work? What is the meaning of what I've done?" And, man, what a brutal experience would it be to just wake up one day and be like, "Wow, I've been involved in things that I think are ethically wrong"—for the past 10, 20, or 30 years.

What a horrifying moment that would be. You really don't want to go through that.

Right from the start, you should be thinking: "I'm going to be a professional military officer. I'm going to be in command situations. What can I do in my work, in command, to make the world a better place?" As soon as you admit that, you have to talk about values and justice—and Just War theory is the single richest source of reflection on the nature of war's justice that's out there.

Midshipman Meadors

This sounds like it's important to more than just military leaders?

Dr. Orend

Everyone is interested in war. It affects everyone's life. War and technology are the generators of historical change—for better and for worse. Even for people like me, who have never had any firsthand experience with war, it has still had a huge impact on my life. I mean, why do I speak English? Why do I think in English? I speak English because 200 years ago, there was a big war between England and France, and England won. The very way I think was affected by a war that happened 200 years ago!

Midshipman Meadors

So war is something no one can ignore?

Dr. Orend

Absolutely. No rational, reasonable person can be unconcerned with war.

Midshipman Meadors

When young adults make the decision to participate in a war, how often should they reevaluate that decision?

Dr. Orend

In the run-up to every serious military engagement they are involved in. Moreover, that would happen naturally—it's not as if we would have to program that into a curriculum. When I've talked to people who have had real combat experience, you just scratch them, and they'll talk your ear off about the nature of their experience, about the ethics of it. Combat is obviously an

incredibly intense experience, and I think that anytime you're ramping up for something like that—I can't imagine being in that situation and not reflecting: "What am I doing here? Am I here for a purpose? What is the likelihood of achieving that purpose?"

Midshipman Meadors

You're an academic by trade, with no time spent in military service.

Dr. Orend

Right.

Midshipman Meadors

A lot of critics would say you don't have a right to be talking about this sort of thing. Why should you talk about the morality of war if you haven't experienced war firsthand for yourself?

Dr. Orend

I get this question all the time. My favorite analogy to answer it is: just because I haven't had firsthand experience doesn't mean that I don't know a lot about war and that I can't say meaningful things about it. That's like saying: "You're a historian of the French Revolution, but you were never there, so what do you know about the French revolution!?"

There are all sorts of different ways of knowing different things about different subjects like war. I don't pretend to know everything about war, and there are certain aspects of war that I know nothing about—and I'll freely admit it. All I can hope to do is contribute to certain aspects of the discussion, and that's my job. I try to make my theories as empirically informed with firsthand accounts as I reasonably can. Sometimes I disagree with those accounts, though, because I think first-person experience can bias your judgment about what can happen.

I like to think that I have an advantage in some situations. The other analogy I use is: "Doctors shouldn't treat themselves." Again, personal involvement gives you more information, but it can also generate bias and undermine your judgment. So, there's a role to be played by people who don't have the personal experience, but strive to get informed and try to be objective.

Midshipman Meadors

When you speak to the Naval Academy community, what are the most important things you hope midshipmen take away?

Dr. Orend

First, reflection on the justice of what they do as soldiers and sailors is vital. It is vital and inescapable. Realizing that there is an ethical dimension to what they do and that the business of war is so profound and so serious that they have to think about the ethical nature of what they are doing.

The second thing is that Just War theory is the best tool they have for their personal reflections.

Thirdly, I hope they remember that the most difficult problems that they are going to confront in their career, in my prediction, are going to be these messy, post-conflict situations where regimes have been overthrown and it's a task of nation-building. It's going to be a question of "What do we do now that we've taken down this unjust regime?"

