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An Interview with Lt. Gen. Bernard Trainor '51



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On March 31, Donald N.S. Unger sat down with Gen. Trainor to discuss the just war argument and how it applied to the war in Iraq.

HCM: Thank you so much for taking the time to meet with us, General. I want to begin by asking if you could give us an overview of just war theory. In its earliest incarnation, if I understand correctly, this goes back to St. Augustine.

Lt. Gen. Bernard Trainor: Yes, Augustine was the Bishop of Hippo, part of the Roman Empire, about 1600 years ago. The Roman Empire was falling apart. The barbarians were moving in. And Augustine carried on a correspondence with a Roman military officer on the subject of the defense of the realm. Augustine, as you know, wrote *The City of God*. In *The City of God*, he tells us that the only city of perfection was God's city, the hereafter, heaven. We live in an imperfect world, as a result of the fall from grace caused by Adam and Eve. Therefore, argues Augustine, there is no moral legitimacy to the Roman realm. (I use that term, "the realm," because there was no nation-state at the time.) The realm was collapsing in the face of the "barbarians." Augustine made the argument—which is the root of the just war argument—that even in an imperfect world, it is the responsibility of those in legitimate authority to protect those who answer to authority. That this was a moral obligation, to protect the people from something worse.

As you know, there was friction between the burgeoning Catholic Church and the Roman state. Augustine saw a responsibility to defend that imperfect

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Is war just?

state because of what would follow—basically, barbarian chaos—if they did not. Therefore, Augustine determined that service on behalf of an evil Rome was noble, and the soldiers were actually peacemakers. So that was the genesis. And, of course, over time, from these roots, grew the idea of the just war theory.

HCM: So it's in these Augustinian tenets that the just war theory is formed?

BT: Correct. But then the Roman Empire collapsed, and we had the medieval period. And, of course, we had the Crusades, the great strife and battling within the Holy Roman Empire—which, as you know, was neither Holy, Roman, nor Empire. Violence was rationalized, but it hardly met the just war requirements as we know them today. The period culminated with the religious wars, the Thirty Years War, where people were slaughtering one another on the basis of religion. Exhaustion of both Protestant and Catholic princes ultimately led to compromise and the Treaty of Westphalia in 1648.

The Treaty of Westphalia, in essence, agreed that a prince, within his realm, territorially described, is sovereign. He has absolute sovereignty within accepted territorial borders. Interference with that right or violating his borders violates the Treaty. Westphalia brought about stability at the cost of humanity because it meant that a Protestant prince could kill the Catholics within his realm with impunity. Likewise, a Catholic prince could kill Protestants within his realm. But the Treaty of Westphalia is known more for the emergence of the nation-state as we know it today. The generally acceptable justification for war was in defense of sovereignty and territory.

Over time, two central concepts emerged. The concept of *jus ad bellum*—going to war. And *jus in bello*—conduct in war.

HCM: So this is the difference between the cause for going to war and your conduct in the war?

BT: Yes, this is what has come down to us. Out of Augustine grow the elements that are familiar to most people today as the conditions that should be met for just war: a just cause, e.g. defense of the homeland. The legitimacy of the authority making war provided it is with a good intention, with limited goals and a reasonable chance of success. It also provided for the protection of the innocent and the punishment of evil. Proportionality—that you're not going to do something that creates a greater evil. Discrimination—you don't kill noncombatants. Philosophically, the precept is that war is intrinsically evil and can only be pursued in response to a greater evil when other remedies are found wanting.



Dan Vallincourt

HCM: I think, for civilians, it may be difficult to understand the contradiction. To my understanding, there is a universal code of military behavior. But there appears to be a contradiction inherent in that code—you must obey orders from a superior. But it's also true, across the military, that you cannot obey an illegal order.

continued on Page 64

continued from Page 19

BT: That's correct. According to the roots of the just war argument and the moral and ethical basis for warfare, you have the obligation to serve the state, to stave off chaos, if you will. And you make the assumption that legitimate authority is, in fact, acting in a legitimate way. That's a legitimate assumption upon the part of the military and the reason why, if called upon, you have to serve. However, responsibility is an individual matter as well as a state matter. In other words, the state must be acting legitimately, in accordance with the just war dictates. But the individual is responsible also, morally and ethically and legally for his conduct in war. Not only can a soldier *not* obey an order that is manifestly illegal, but as a general rule, he is required to disobey that order.

HCM: Which is why the "Nuremberg defense" (the plea that "I was just following orders") is not a valid defense.

BT: Exactly. Nuremberg is a reflection of that, although the Nuremberg trials focused on acts of aggression. A soldier is held personally responsible for violating that and for having his subordinates violate it. And this has been codified in the rules of war. So it's not only an ethical and moral element. It is a legal element today within the U.S. military and most western industrial militaries.

But let me make one other point. You can have a soldier adhering to *jus in bello* in a war that's illegal. Like the common German soldiers in World War II were considered innocent even though the Nazi war was one of aggression. On the other hand, it works the other way as well. You can have a just war and have a soldier found guilty if he acts unjustly and unethically within what can be argued is a just war. The My Lai massacre in Vietnam is an example.

HCM: If I have the advantage in a war, why shouldn't I press that advantage to the maximum?



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BT: It's an interesting question. Understand, not everybody accepts the just war position. The "intrinsicists" say that a just war is a contradiction in terms and that war is never legitimate. Dyed in the wool pacifists fall into that category. And then there are the utilitarians who say that all is fair in love and war. And usually their mantra is military necessity—that you can do anything you want during wartime.

HCM: So that if Hitler is bombing London, I will firebomb Dresden.

BT: In World War II, the argument was that everybody on the other side was enemy and, therefore, fair game. Even though they're not in uniform. Even though they're not working in a war industry. Even if they're farmers or merchants, they are still fair game because each side was trying to break the enemy's will, to bring the war to a successful conclusion. Terror bombing, it was argued, would save lives because it would shorten the war. Sherman used the same argument when he laid waste to Georgia in the Civil War.

This is based on the double-effect argument that the lesser evil is acceptable. Our firebombing of Japan was based on that. The use of a nuclear weapon against Hiroshima was based on the same principle. And it's an arguable justification. That's one of the things about the just war tradition and its legal manifestations—there is *always* a judgment call involved. It's not a checklist that you work your way down. *Jus ad bellum* provides basic principles. Then you argue over the application of those principles. You can see that in the current debate. Men of good will who subscribe to the just war tradition come to different conclusions when it comes to Iraq. This includes notable clergy such as the Pope.

HCM: Are we getting better at the argument and the implementation?

BT: Oh, yes! We've come a long, long way from World War II, no question. The World War II rationale for bombing civilians is rejected today.

HCM: You would mark World War II as the low point?



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Dan Vallencourt

It is not granted to the innocent to kill

Students and peace activists protested Gen. Trainor's lecture on campus.

BT: Yes, in another sense that would be the peak of what you would call total war. And, of course, if we had gone to war with the Soviet Union, it would have been a nuclear exchange. That would have been the ultimate peak.

But that's another interesting thing—the argument regarding the legitimacy of deterrence was that it *threatened* evil in order to prevent a greater evil.

HCM: *This is the concept of MAD—Mutually Assured Destruction? The idea that nuclear terror serves a peaceful purpose?*

BT: Yes, and that while it's morally repulsive to advocate an evil, from a practical standpoint, it's acceptable in an imperfect world if it prevents a greater evil.

But getting back to proportionality and discrimination—you don't kill noncombatants, you don't destroy religious or cultural treasures. If these things happen, it cannot be because it was intentional because good intention is one of the elements of the just war position. It can only be an undesirable and unintended side-effect of whatever it is that you are doing, which in and of itself is a moral good. This is where you get the term "collateral damage"—the unintended consequences of a legitimate act.

And, of course, ever since World War II and, more importantly, since Vietnam, we have been rigorous in pursuing this. And you can see it right now in Iraq.

We're breaking our backs not to hit anything but legitimate military targets. Saddam Hussein is taking advantage of that by dressing his soldiers in civilian clothing, using human shields, and hiding his forces in mosques and hospitals.

It's important to note that the Geneva Convention says a belligerent cannot make use of civilians or innocent institutions as part of his conduct of war. And if he does, it is a war crime. In other words, to dress in civilian clothes, to have a tank in a mosque or something like that, lifts the responsibility from the co-belligerent in whatever action he takes.

The way the United States deals with this is to apply that principle of proportionality. Now, what does this come down to, in simple terms, for a field commander? If there's a sniper firing out of a mosque, is it legitimate to open fire and blow up the mosque in the process? The concept of proportionality must kick in, and the commander must ask, "Is it worth it?" In other words, is what that sniper is doing so critical to his operation that he can't tolerate it? If the commander makes that judgment, then he can fire into the mosque. If it is not critical, then he really should not.

HCM: *This is a good transition to talking about Iraq. I wonder whether or not, when we make these judgments, the judgment isn't in some way dependent on how we think about the group that we're looking at. In looking at Iraqi warfare, I've been thinking about the American Revolution in some ways—and I'm sure some people would find this an odious comparison—but in looking at the American Revolution, my memory of what I recall from elementary school is that, in part, we won the war because the colonists fought as guerrillas, in effect, and the British marched in columns in red uniforms. And the response of the British was that the Americans were not fighting the way you were "supposed" to fight.*

BT: Yes, one man's terrorism is another man's patriotism. The explanation of that is a difficult one. How do you identify a noncombatant and how do you identify a combatant? The laws of war require that a combatant wear some sort of identification like a uniform or arm band and carry arms openly. But that is very difficult—particularly in guerrilla warfare. I think the general consensus of people who deal with this all the time is that the distinction is made on the basis of the function of the individual. That is, if it's his job to bushwhack you—whether or not he is in civilian clothes or has a weapon in his hands—then he is a combatant.

HCM: *In looking at what's happening in Iraq right now, do you feel that we have satisfied the prerequisites of just war doctrine in going in at this time?*

BT: First of all, people have said this is a preemptive war, but legally and technically, it is not. It is a continuation of the war that began, legitimately, in 1991.



HCM: *You feel we should have finished our business during the first Gulf War?*

BT: Well, that's a political opinion. But from a legal standpoint—and a moral standpoint, you could argue—we went into war with legal justification, with United Nations' approval. That action met the just war prescriptions. Now, that war did not end. There was a cease-fire. And the cease-fire set conditions, under UN resolution 687. Since 687, there have been continuous material breaches of the cease-fire. Therefore, the cease-fire no longer applies. This war can be argued is a continuation of the just war that began over a decade ago.

But, your query raises the question: *Is preemptive war legitimate?* The just war tradition argues that it can be. Because the obligation of the legitimate authority under which just war is conducted has the responsibility to protect his community against a worse situation. What Augustine pointed out was the chaos to follow the fall of the realm, the fall of civilization. So this can justify preemptive war. The Catholic Catechism talks about this. There's nothing wrong with preemptive war if it meets the standards of the just war precepts.

HCM: *I'm surprised by that.*

BT: Think of this logically. The notion of a "last resort" could be extended *ad infinitum*. There's *always* something else.

Let me go back to Preemption. Think of a situation where you have somebody who is a known psychopath, who has killed lots of people in your neighborhood. And he is walking around with a gun. He's not pointing it at you, but he's staring at you. Now, as the father of a family of three—which constitutes you as the legitimate authority—do you have a right to take action against that individual? You have an *obligation* to your children to be proactive. This is your responsibility.

HCM: *The question I have is how that responsibility plays out. Is it my responsibility to kill the psychopath? To tackle him?*

BT: Well, it comes back to the idea of proportionality, discrimination and another of the just war precepts, that of "limited goals and means." You should be preempting only the evil itself. And using only that much force necessary to prevent the evil and no more.

In the example we just used, you don't necessarily have the responsibility to kill the psychopath. You would only kill him if it was absolutely necessary to prevent him from killing your family and yourself. You only take as much action as is necessary to avoid the evil.

HCM: *To get back to Iraq, you have what's turning into an irregular war. And the U.S. is faced with trying to win the war and hold the moral high-ground. Both in the service of winning the war and winning the peace. I don't think there's any question that we have the military power to win the war. After the war, we could pave Iraq over, but that doesn't win the peace. It doesn't help us.*

BT: It also violates proportionality and discrimination. This puts us at a distinct disadvantage. *This* is Saddam's game plan, his strategy.

HCM: *And this is something which would be familiar to you. You served two terms in Vietnam.*

BT: And I served in Korea, too.

HCM: *Saddam is clearly reading from the Vietnam playbook.*



BT: Yes, he has watched us. And his strategy is to inflict heavy casualties upon the United States. And he also wants to see heavy casualties and damage to the Iraqi people and the Iraq nation.

HCM: Specifically, he is putting U.S. forces into a position where they have civilians coming toward our troops in taxicabs that they then explode.

BT: That's his tactic. He's using human shields. He's firing from hospitals. He understands that because we're reluctant to fire upon noncombatants, we are going to take casualties. He thinks that if we take high enough casualties, the American public will turn against the war. Secondly, when we respond, and to the degree that we respond, mosques are destroyed and innocent people are killed. This adds to his political game of creating outrage in the international community over the Americans being barbarians and blowing up mosques and killing the people.

Now, how do you deal with that? It's very, very difficult. The presumption under the just war doctrine is that a noncombatant is protected and it is your responsibility not to kill noncombatants. But you also have a legitimate right, even as a soldier, to defend your own life. As noted earlier, the Geneva Convention is clear on this.

We also come to "right intention." If you shoot at the man who's using the noncombatants as a shield, and the innocent are killed in the process, your intention was not to kill the innocents. You have to make a value judgment regarding the necessity of doing so. If it isn't absolutely critical to your well-being, then you shouldn't do it. This has to be a judgment call.

HCM: The "Powell Doctrine" has been described in many ways—"You don't go into a war zone without an exit strategy." "You don't go in without sufficient support." "You don't go in without a clear mission."

BT: Yes, "clear objective," "public support."

HCM: What would the "Trainor Doctrine" be?

BT: Well, let me tell you, it's very interesting you raise that. Because I was the operations deputy for the Marine Corps when that policy was formulated by Casper Weinberger initially, though his name is not attached to it as much today as Powell's. Powell added a corollary, which was simply the exit strategy. But the rest of it was Weinberger. It was vetted with the services. It came over to the Marine Corps, and I read it, which was part of my job as the operations deputy. I read the policy and I went to the commandant, and I said, "You know, we can't sign off on this. If you look at this thing as it stands, there are too many restrictions on it. A crisis is a dynamic thing. It changes all the time. It just doesn't make any sense. There are instances where you can't go in with overwhelming force, but still, you feel you've got to act. Like we did in Korea. So we can't accept this."

I went over to talk to Weinberger's staff and was told, it's a guideline, and it's not to be taken literally. I said, there have to be caveats from a Marine Corps standpoint before we can sign on to it. We never got those caveats. But the Marine Corps was the only service that challenged how it was outlined. Because it appeared to be useful only as an ideal, a set of rules for the deployment of military forces. Not to be taken literally. Today, Powell agrees with that. But at the time, many officers were so bitten by Vietnam that they were pretty strict in their interpretation of it.

HCM: So as far as you're concerned, the Powell Doctrine –

BT: – Raises factors for consideration before committing American troops and nothing more than that. You're never, never going to tie the hands of the president of the United States with a checklist of arbitrary "commandments."

HCM: Thank you, General Trainor, for speaking with us today.