

## The Just War

Some time ago Sir Michael Quinlan and I co-authored a short book: "The Just War". With Iraq and Afghanistan raging, it was a topical subject and many around the world felt that the Iraq war, in particular, could never be called "just".

But we did not write the book just because of Iraq or Afghanistan, but because we felt the Tradition of The Just War – which has been developed over hundreds of years – needed revisiting. Had it stood the test of time? And was the world so different now that it was no longer relevant? Was there a danger of us lowering – what we judged to be – civilised standards? Could there ever be a moral equivalence between our Forces and terrorists? Could a war ever be called Just.

In armed conflict, some of the normal ethical rules have to be over-ridden; rules such as not killing other people. War is ghastly and it is inevitable that in war terrible things happen; things which in any other context would be utterly intolerable. But this cannot mean that anything goes. From the earliest time, almost every society has had to face up to the reality of war and at the same time has had some accompanying notion, however incomplete or crude it may seem, to modern eyes of moral limitations applying to war. In the ancient world there was a recognition that even in the fiercest struggles, there were some things that absolutely ought not to be done, such as poisoning water supplies. In ancient Greece, cutting down the other side's olive trees rarely happened (because they would take so long to grow again), and executing disarmed prisoners and putting women and children to the sword.

Although these things did still, from time to time, happen they were recognised as being wrong for most of the time by most of the people. But even civilised nations unfortunately lapse and on occasions commit atrocities.

All the great religions and rationalist humanists have contributed to setting limits. Thinking has been developed over hundreds of years on moral values, rules, and understanding to govern and restrain the use of Military force. For example, both the Islamic and Judean faiths have substantial concepts in this field. But it is really Christian thinkers who have written most about the Just War Tradition even though I am afraid the historical record of Christians in observing it faithfully is far from unblemished.

The Jewish thinking is less developed, probably because for nearly 2000 years there was no Jewish state. There is certainly no concept of a Holy War in Judaism. The Mishna around 200 AD, The Talmud and Maimonides identified two kinds of war: the Necessary and the Discretionary. In discretionary war Israelites are:

- a) prohibited from attacking forces who are prepared to sue for peace;
- b) they are prohibited from engaging in wanton rape, even from destroying the fruit trees of conquered lands;
- c) certain people were exempt from fighting in a war;
- d) and Israelites have to give the enemy an opportunity for peace of surrender.

Islam is more complicated. There is an emphasis on the primacy of peace within the Muslim community. War is evil but laws regulate it rather than forbid it. It can be justified to prevent the triumph of greater evils. There have been Islamic voices more recently which justify and legitimise violence but these voices are far from being the majority in Islam. Islam appears to me to be less structured than other religions and that this means there are more and varied interpretations of what Just War is. Imams and Mullahs interpret the Prophet's words in very different ways.

Elements of the Just War Tradition underlie much of the international laws of war accepted by all the member states of the United Nations.

Many historians believe that early Christians, a minority in the Roman Empire, were predominantly pacifists, but when the Emperor Constantine came to power in the fourth century adopting Christianity himself, Christians had to face up to and work out the tough awkward practical responsibilities of running a state and protecting its citizens.

Many famous figures – St Augustine of Hippo in the fifth century, Thomas Aquinas in the thirteenth, gave their minds to these problems. What should be done in the face of armed aggression and oppression in human affairs? What should be done about Attila and his Huns invading Europe from the East in the fifth century? Or the Moors spreading Islam by the sword through the Mediterranean and up across Spain into France in the seventh and eighth centuries. The very idea that Attila was approaching your gate was a fact. He was there. His record was all too well known. Everybody in his path would die. Christians had to decide

what to do about him and the Christian Just War theorists believed that it simply could not be right to lay down as an absolute moral rule that armed resistance to Attila or his like was forbidden.

Just War is not a doctrine decreed from on high or a law, but it is a tradition. It recognises that while war can never be positively good it is not always the worst thing. Ethnic cleansing, genocide, and wholesale slaughter is, almost certainly, worse.

The Tradition sets out a range of tests that must be satisfied if war is to be morally justified. The criteria fall into two groups. The Right to Fight, the Latin *jus ad bellum*, which concerns the morality of going to war at all. The second group *jus in bellum* concerns the morality of what is done in a war – how it is to be waged. There are six criteria in the first group *jus ad bellum* and they all have to be addressed. Four out of six is not a pass mark.

Firstly, you have to have a Just cause – a proper reason to go to war. It could be:

- a) To protect the innocent;
- b) To restore rights wrongfully denied;
- c) To re-establish Just Order; and of course
- d) Self-defence, indeed self preservation – such reasons as revenge, and a desire to punish or eliminate your enemy, are not Just Causes.

Can regime change be Just? This seems a topical subject and controversial as far as Iraq was concerned. Saddam Hussein was a bad

man running a bad regime but was it up to us to topple him? Was it really a Just cause? Iraq may not have been a benevolent regime but it was not a failed state.

Second, you must have proportionate cause. The case for going to war must be weighty enough to warrant the massive step of engaging in war. It is not good enough to go to war if we believed that one of our citizens had had his holiday house or a property confiscated or the Nation's Flag has been burnt by a mob or the Queen or the President of the United States or the Russian Federation have been insulted.

And we must have a reasonable expectation that the outcome will entail enough good to outweigh the inevitable pain and destruction of war. The war against Spain in 1739, the War of Jenkins' Ear, which was waged because a Captain Jenkins had had his ear cut off by Spanish coast guards, seems difficult to justify today.

Third, we must have the right intention. Our aim must be to create a better more Just and more lasting peace than there would have been had we not gone to war.

Fourth, the right authority must be someone with proper authority to go to war. Historically this has been a head of state, the ruler or government of a sovereign state. This is not so straightforward today. In 1945 the Charter of the United Nations laid down that countries have a right to take up arms in self defence but that external Military action going beyond that must be taken only with the authorisation of the Security Council; The failure of the UN has been due not only to the bad behaviour of particular countries, although over the past 60 years there

has been plenty of that, but because of the shortcomings inherent in the present composition and the power of veto within the five permanent members of the Security Council. Any one of the members can block a resolution.

I believe Rwanda and Kosovo and, many commentators would add perhaps Darfur, when widespread desires for more determined humanitarian intervention were held back by a perceived likelihood of veto by China, Russia or France in the Security Council, does show that a rigid, absolute insistence on the Security Council clearance could be incompatible with a proper recognition of the world's practical and moral realities.

The fifth criterion is that there must be a reasonable possibility of success. If a war's likely result is simply death and suffering without making things materially better, we should not take up arms. Death before dishonour is not right.

But like other criterion there are exceptions. In 1939 Finland took on the Soviet Union in a war they could never win, but they almost certainly obtained very much better terms when they capitulated after five months than they would have if they had not fought.

The sixth and final criterion is last resort. We must not take up arms unless we have tried or have good grounds for ruling out as likely to be ineffective every other way of securing our Just cause. We should be clear that this does not mean that war is not to be embarked upon until every other option, however unrealistic, has been tried. It would be unreasonable to demand that every conceivable non-Military instrument

must have been exhaustively tested irrespective of whether it is likely to work.

Dropping leaflets on an enemy who are just about to kill you and has a knife to your throat and asking him to desist is not wise. There comes a point when diplomats and politicians who are getting nowhere with negotiations, which are proving fruitless, with no prospect of success, must stop and Military action becomes paramount. I believe the tragedy of the Balkans was far worse than it needed have been if politicians had been prepared to take firm action earlier against the aggressor. Thousands of lives, perhaps 200,000, would have been saved.

If those six criteria should be taken into account before going to war then there are two criteria under *jus in bellum*. How one should behave during a war. First, discrimination. This means that in the conduct of war we must not deliberately attack the innocent. Innocent means those not involved in harming us or helping to harm us.

But it is not easy to define innocence. In 1991, when I was in Iraq, I think it was legitimate to target the reluctant Iraqi conscripts facing the United Nations' forces. The relevant fact was that they were there to help do us harm and kill us. But are civilians innocent who provide logistic support to the Armed Forces? Are workers in armament factories? All these seem plainly "involved". Are the broadcasters putting out a hostile regime's propaganda? Is an old lady knitting socks for her grandson serving in the front line? Surely not. Disarmed captives? Almost certainly not. But they could be if the captives outnumber their captors and begin lynching their guards. But there is much to debate if, as now happens increasingly often, the situation is not a tidy one of state versus

state war. But involves countering guerrilla-like or clandestine opponents. Terrorists rarely wear uniforms and look like the innocent civilians they are amongst and perhaps using as a shield. In Gaza, Palestinian policemen took off their uniforms and fought alongside Hamas. Tidy rules are impossible but honest very difficult judgements have to be made. General attack on a nation's population in order to weaken a nation's resolve surely is wrong. Increasingly we look back at the bombing of Dresden as wrong and other raids towards the end of World War II when the final outcome was already clear. Some suggest the bombing of Caen may have been a war crime.

The second criterion is proportionality. We must not do things – however legitimate in themselves – if in our honest and considered opinion the good they achieve is likely to be outweighed by the harm inflicted on those who ought not to be harmed. It is entirely legitimate to knock out an enemy tank but if the enemy tank is hiding in a large hospital complex or school, it is not permissible to flatten everything to ensure the tank is destroyed. As an aside, one thing I have noticed particularly over campaigns such as Kosovo is that there is a desire by many to see fair play. In Kosovo from high altitude well out of reach of the Serbs we attacked targets on the ground. Some viewed this as unfair and almost unsporting; but war is not like cricket when it is eleven a side and you play on the same pitch. I viewed my duty to get the war over as quickly as we could. But again, one can debate the way one does this.

One of the great problems about war is that of unforeseen consequences. The outcome is difficult to predict. The post bellum phase (what happens after the war is over and post conflict resolution) in my experience is usually far more difficult than the conflict itself?

Conflict is dangerous and frightening, but what happens afterwards is usually more complicated, goes on for far longer and ends up being even more expensive than the war itself. Iraq and Afghanistan are excellent examples. Post conflict resolution is very difficult. One wonders what the final outcome will be in Gaza and the region. I suspect it is too early to make a sensible judgement on Israel's actions.

The Roman writer Tacitus talks of the victorious creating a desert and calling it a peace. That cannot be right. One must strive to create a better situation.

What one must avoid is creating a vacuum after hostilities are over. If one fails to do this there is a danger of this void being filled by the ill-intentioned as happened in Iraq. The post-conflict phase needs judges, lawyers, policemen, prison officers, trained interpreters, diplomats, doctors, aid workers, civil engineers and economists.

Soldiers are not well trained to do these tasks. But too often they are likely to be the only people around to do them at the end of a war. Perhaps the greatest failure of Iraq and Afghanistan is the lack of policy and coordination of effort once the real fighting was over. Military aid, foreign and political police have to be coordinated and, quite honestly, it is not happening at the national or international levels in Afghanistan. I fear for Afghanistan where still many are living in conditions and distress which they did not suffer from before 9/11. Neither our own national effort nor the international effort, as a whole, have been well coordinated. But recently I like to think we are beginning to make progress and coordination is better.

In conclusion, the tradition of the Just War does not yield a tidy and unambiguous answer to every question. Terrible problems and dilemmas have to be faced and our leaders are faced with horrific decisions – sometimes based on sparse evidence and which have to be taken very quickly. The Just War continually calls for judgement, often contestable in good faith, on matters lying well beyond the expertise of moral philosophers. It is I think simply a systematic reminder of moral questions we ought to think about when we consider embarking upon armed conflict or when we engage in it. I would like to think politicians would understand the tradition before launching into battle. One recognises not everybody will consider moral questions. But it is surely beyond argument that some framework and analysis of war is desirable. Those who reject the Just War approach, and there will be those who will continue to do so, have to face and answer the question of what other ethical road map they propose to put in its place or should they accept that in the 21<sup>st</sup> century anything goes. Conflict has changed, weapons are more terrible. But I believe the Tradition of the Just War is still relevant and we abandon it and the moral and ethical issues at our peril.