

ANZSIL Conference

The Just War Theory and Humanitarian Intervention

I first want to thank Professor Rothwell for his invitation to participate in this conference, and to you all, for being prepared to tolerate the ignorance of a non-lawyer with a keen personal interest in your discipline. This derives from having visited Australian servicemen and women overseas as part of my pastoral duties and a first-hand experience of the complex legal problems and subtle ethical dilemmas they face. While being mindful of the need to stay within the confines of my own expertise, when I am asked to give moral guidance or spiritual counsel on issues relating to intervention and peacekeeping the perennial questions - it might be legal but is it right? And conversely it might be illegal but is it wrong? - are never far away. Let me begin with some comments on the just war tradition before applying it to humanitarian interventions.

The 'Just War' tradition claims to offer a moral and prudent choice over the two allegedly unacceptable alternatives of pacifism and militarism, and holds that they are both equally misguided if not wrong. Accordingly, the just war tradition is a sustained and disciplined intellectual attempt to relate the morally legitimate use of proportionate and discriminate military force to morally worthy political and social ends. As a 'tradition' of moral discourse dependent upon Christian theology, it is more of an evolving analytical method that is cognisant of developments in international relations and technological advances than a general ethical theory with clear procedures and a discernable structure that can be directly applied to a range of political or diplomatic situations.

The just war tradition is manifestly a creature of its time. It has evolved continuously since the time of St Augustine and St Thomas Aquinas and become more elaborate as the nature of armed conflict has changed and the military hardware and operational tactics have developed. That this tradition 'lives' in our cultural memory is demonstrated by the fact that Australians have, almost instinctively, been debating recent resorts to force in Afghanistan and Iraq, and the continuing war on terrorism in classic just war terms. I detect more talk of morality than law although they are related. But curiously, it has not been applied as rigorously or at all with respect to so-called humanitarian interventions. This is because its title – the just *war* tradition - is misleading and perhaps unhelpful in a world in which the thesaurus is used to find every word but 'war' to describe resorts to force.

In its modern application, the tradition consists of seven criteria that can be readily summarised. First, the authority resorting to force must be legitimate. Second, the cause being fought must be just. Third, the motivation must not include hatred and malice but strive for justice and peace. Fourth, the use of force must be the last resort. Fifth, success must be probable rather than likely. Sixth, the means employed must be absolutely necessary to achieve the end.

Seventh, the means must be proportionate and discriminating. And I believe in common usage there is emerging an eighth criterion: the means and the ends must respect and reflect the provisions of international law. This is an important development.

But from my observation there are two widespread misunderstandings or misconceptions of the tradition's point and purpose. First, that it contains a clear presumption against the use of force. Second, that it was formulated and now exists to prevent armed conflict. Both are wrong. As a tradition of morally serious statecraft, it begins with the moral obligation of legitimate authorities to defend the security of those for whom they have assumed responsibility. Real just war thinking continues with defining the morally appropriate political ends to be sought in a given situation, such as self-defence or border protection. Real just war thinking gets to questions of means – can this be done through diplomacy or negotiation? Can this be done only by the use of discriminate armed force? – afterwards. Thus, in the just war tradition, means get related to ends in a morally serious way. There are, of course, some demonstrable shortcomings in both the tradition's content and application. The recent Iraq conflict revealed the need for greater clarity about, first, what is meant by 'a legitimate authority', second, what differentiates military aggression and pre-emptive strikes from justifiable self-defence, and third, whether moral equivalence arguments are valid in justifying intervention. Clearly, more work needs to be done if the tradition is to retain coherence and utility.

Let me now come to humanitarian intervention. There is, of course, no such thing as a purely 'humanitarian' intervention. Each and every resort to force reflects an amalgam of political interests and moral obligations, some are laudable while others are lamentable. Australian participation in recent international missions in Somalia, Rwanda, Cambodia, Bougainville, East Timor and the Solomon Islands have all had a humanitarian component in that there was a genuine regard for honouring human rights and sincere concern for the dignity of human beings. In each case there was broad community support in evidence for these particular operations. But why we decided to become involved in these missions and not a host of others reflects a general lack of consensus on when and where a humanitarian intervention is justified and where and when Australia ought to participate – and this remains a concern.

Some broad agreement does seem to be emerging – albeit slowly. British Prime Minister Tony Blair argued that the NATO campaign on behalf of the Kosovars in 1999 had shifted the balance between human rights and state sovereignty. In his speech at Chatham House on 28 January 2000, the then British Foreign Secretary Robin Cook said intervention in the affairs of a sovereign state was justified '... when faced with an overwhelming humanitarian catastrophe and a government that has demonstrated itself unwilling or unable to halt and prevent it, the international community should act'. On 20 September 1999 as East Timor was collapsing into civil chaos, the UN Secretary General Kofi Annan spoke of the need to 'forge unity behind the principle that massive and systematic violations of human rights – wherever they take place – should never be allowed to stand'.

In terms of pressing need, I would propose seven general grounds for intervention: serious violations of humanitarian law; systematic violation of civil liberties; absence of the rule of law; lack of administrative institutions; famine and drought; failure of a de facto government to comply with its agreements; and, failure of a party to a conflict to negotiate in good faith. To which some have also added: deliberate mass deportation of 'unwanted people' and failure of a state to demonstrate its renunciation of terrorism. In my view, military coups, election rigging and political disenfranchisement of themselves would not justify intervention and certainly not on 'humanitarian' grounds.

How is the just war tradition relevant here? Interventions which do not have universal consent or which are resisted actively, ought, like wars, to be evaluated in the light of just war criteria. There is a requirement that all other alternatives be first exhausted (the last resort clause). Like wars, armed interventions must have a reasonable hope of success (the anti-futility clause) while there must be a proportional benefit from resorting to force (the anti-militarism provision). The intervention must be limited to specific objectives and be brief to forestall possible colonisation. Once commenced, the intervening force must protect civil infrastructure, protect refugees and displaced persons, provide a secure environment in which humanitarian aid can be distributed; maintain local law and order; and, facilitate the exchange of prisoners or return of the dead.

Inasmuch as the just war tradition has been described as a theological rather than a legal construct, let me offer a religious imperative for humanitarian intervention drawn from Christianity's sacred texts. Of all the stories told by Jesus, the 'Parable of the Good Samaritan' is the best known. In the tenth chapter of St Luke's Gospel in response to a question about righteousness, Jesus tells the story of a man who is attacked, beaten and robbed on the lonely road between Jerusalem and Jericho. He is shunned until a Samaritan, someone not of his ethnic nor possibly of his religious group, displays compassion and generosity. He takes responsibility for the man and contributes materially to his recovery. The story closes with a connected set of moral imperatives. A person in need becomes a neighbour. A capacity to assist creates a duty to do so. It is morally wrong to ignore a neighbour in need. This establishes a line of moral reasoning and creates a clear religious imperative.

Armed humanitarian interventions are not merely permissible within the just war tradition undergirded by a religious imperative, they are the very circumstances for which the tradition was developed and has since evolved. It was designed to prompt action more than to prevent it. As the American Protestant theologian Reinhold Niebuhr has argued: 'if a season of violence can establish a just social system and create the possibilities of its preservation, there is no purely ethical ground upon which violence and retribution can be ruled out'. A 'responsible relationship' to the political order, therefore, makes 'an unqualified disavowal of violence impossible' because there will always be crises in which 'the cause of justice will have to be defended against those who will attempt its violent destruction'. Christian moral support for intervention is based on the unity of humanity drawn from the one-ness of a creating God – which establishes a principle; the Good Samaritan story – which I have outlined

provides its imperative; and Jesus statement that 'whenever you served the least of these, you served me' – which is one expression of its application. But the question I cannot answer is how you turn these convictions into a compelling and coherent body of international law or how such law might be implemented and upheld. I do not underestimate the difficulty or complexity of these tasks. But there might be merit in a closer relationship between theologians and international lawyers.

While the debate over whether the extension of charity is voluntary or compulsory is an ancient one, there is no impediment within the just war tradition to action and every encouragement against inaction. Regrettably, too little is often done far too late by those with a capacity to assist and, I would contend, a duty to do so.

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