

Morality versus legality: when is war justified?

"The League of Nations is supposed to be based on the principle of the recognition of the rights of nationalities and the right of self-determination."

Viscount Bryce, addressing the House of Lords, 1919

We are on the brink of the centenary of the First World War. For many, this will mean remembrance. Others will focus their attentions on education. For everyone, however, the occasion should demand a reflection on the legacy of the Great War and how it continues to affect us today.

One aspect of that legacy was the establishment of an international body to promote peace and cooperation. In 1919 it was the League of Nations. As Viscount Bryce articulated, the League's central tenet was the desirability and sovereignty of nation-states. The same principle continues to drive the League's successor, the United Nations. Whilst the legacy of international cooperation has been indispensable, this failure to reassess the significance of nation-states' sovereignty has resulted in, amongst other things, a method of justifying war that is incoherent and unsustainable.

Legality and morality

Behind the establishment of an international body was the idea that it alone would possess the power to legally sanction foreign military intervention. The United Nations Charter has safeguarded this legality principle, with Chapter VII ensuring that aggression against a foreign state may be permitted only in self-defence or with the approval of the UN Security Council. Foreign military intervention is otherwise illegal: Articles 2(4) and (7) of the Charter prohibit both the use of force against any state and intervention in the domestic concerns of any state.

Events of preceding decades, however, have demonstrated that the legality concept is not always enough to prevent war. When events abroad have proved to be morally unpalatable, Britain has on occasion flexed its military muscle without the approval of the United Nations: notably in Kosovo in 1999, Afghanistan in 2001 and Iraq in 2003. These interventions have shown that where there is no legal basis for justifying war, we turn instead to justification on moral grounds.

How do we decide when war is justified?

Making a moral assessment of whether we should intervene, however, is far from simple. For a start, we make not one evaluation but two: one before the intervention and one afterwards. The initial assessment is based on whether the available facts will justify intervention and whether intervention is likely to help. The post-intervention assessment, by contrast, has the benefit of hindsight: in light of subsequent events and knowledge, was war justified?

The initial assessment sidesteps the question of legality because the purpose is to determine whether the situation is so morally abhorrent that it requires illegal intervention. The issue is less straightforward in the post-intervention assessment.

Then, the importance of the illegality of the action depends on the outcome of the intervention. If a war has achieved some moral success, the legality issue will be seen as relatively insignificant. Following NATO's military intervention in Kosovo, for example, the Independent International Committee on Kosovo concluded that the intervention had been 'illegal but legitimate' because 'the intervention had the effect of liberating the majority population of Kosovo from a long period of oppression'. If a war fails in its objectives, however, the legality issue becomes central: the fact that no weapons of mass destruction were ever found in Iraq following the Second Gulf War brought the illegality of the intervention to the fore.

This observation is not a mere academic nicety. Our post-intervention assessment of a war's justifiability has a central impact on our initial assessment of the next possible intervention. The Commons debate on possible intervention in Syria in August 2013, for example, was littered with references to the damaging effect of the recent war in Iraq and its lack of justification. The fact that the Syrian situation was differed significantly from the Iraqi one appeared to go mostly unnoticed. There is clearly a level of moral abhorrence that a situation must meet in order to justify ignoring the legal requirements, but this level appears to fluctuate according to our previous post-war assessments. Subsequently, it is impossible to say objectively when war is justified because our moral parameters are constantly in flux.

Setting consistent parameters

Set in sharp relief, this situation is nothing short of bizarre. Whether circumstances morally merit intervention in another state's affairs will rarely be an easy judgement. This difficulty, however, should not result in standards that are inconsistent.

These are not standards that countries can set individually. If that were done, a country that has set its moral standard lower than another might be justifiably outraged when subjected to foreign military intervention. Instead, we need an international body willing to set the moral bar and hold it steady. We need a body that is prepared to draw a line and agree that, when that line is crossed, military intervention is both legal and justified.

The preamble to the UN Charter proclaims to defend 'fundamental human rights'. Generally, the UN Security Council has tended to prioritise Article 2 and the sovereignty of nation-states over this preamble. Yet if we are to have an acceptable system for assessing when war is justified, the UN needs to reform its priorities radically so that the legality of action is not merely a hurdle to overcome but bound up with standards of morality.

Conclusion

The sovereignty of the nation-state was fundamental in a world reeling from the shock of the Great War and desperate to prevent a recurrence. As we contemplate the upcoming centenary, however, perhaps it is time to appreciate that we are now living in a very different world. This is not to lessen the importance and relevance of 1914-1918. Yet it is to recognise that one hundred years on our concerns should have shifted. Our present purpose should not be to avoid war at all costs and thus withhold any recognition of its legality but to recognise that war is justified where fundamental human rights are violated.

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