

After Iraq: Is Sovereignty Dead?

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GEORGE Bush, Tony Blair and John Howard have provided many reasons for supporting military action against Iraq. One of those reasons has become known as the 'humanitarian' justification. Put simply, the 'humanitarian' justification for the US-led invasion of Iraq is that such action is necessary to free the Iraqi people from their totalitarian dictator.

Such an argument is attractive to those who believe that there are some fundamental human rights that all individuals possess regardless of where and how they live. What serves as the source of those rights has been the subject of debate for centuries. One of the pre-eminent statements on the subject was made by John Locke who, in *The Second Treatise of Government*, wrote that mankind was 'equal and independent' and that 'no-one ought to harm another in his life, health, liberty, or possessions'.

Saddam Hussein's mass murder, torture, and terror are reasonably clear breaches of human rights. Therefore, some would ask why there should be opposition to the United States and its allies taking whatever measures might be necessary to topple the Iraqi regime. Surely the same standard of behaviour that applies to individuals applies also to nation states? If an individual walking in the street witnessed a rape occurring, wouldn't that individual be entitled to do everything in his power to stop the crime and assist the victim?

The point is, of course, that international law and convention do

not allow nation states to act in the same way as individuals. Countries cannot simply 'take the law into their own hands'. To restrain 'vigilante states' (who might be acting from either 'good' or 'bad' motives) a number of legal and political theories have been developed. One of these is the doctrine of 'sovereignty', which provides that states should not intervene in the domestic affairs of other states.

In relation to Iraq, the 'sovereignty' question is perhaps the strongest argument against the US-led Coalition. Most of the other criticisms of 'humanitarian' intervention in Iraq are either grounded in simple anti-Americanism or are fallacious. For example, there is the claim that because some of the countries in the Coalition have previously ignored Hussein's cruelties, therefore it is illegitimate to take action now. Such a view has been expressed by a Melbourne international relations academic:

While there is no disputing the brutal nature of Saddam Hussein's regime, the case for intervention made by those in Canberra, London and Washington is weakened by the fact that at the peak of Saddam's crimes in the late 1980s, they were either directly supporting him with weapons, technology and intelligence or were entirely indifferent to his behaviour. Even if they have belatedly recognised the error of their ways, how seriously can we take their concerns about weapons of mass destruction now, given they were his suppliers then?¹

On the basis of this argument it could be said that Britain's (and Australia's) case for intervening to assist Poland upon the German invasion in 1939 was 'weakened' because Britain had previously acquiesced to Germany's rearmament, the remilitarization of the Rhineland, and the annexation of both Austria and parts of Czechoslovakia. Few people who chanted 'Freedom for East Timor' said that the Howard Government should not act, because a quarter of a century before the Whitlam Government had been 'indifferent' to Indonesia's occupation of the island.

There is also the claim that although Hussein is bad, he is not the worst dictator in the world and that it is hypocritical for the Americans to attack only Iraq. This is an astounding proposition. It attempts to apply to the United States a standard of behaviour that is impossible to satisfy. Should the police not attempt to solve any crimes because they can't solve all crimes? If a crime is committed by two people and the police arrest one perpetrator, unless the other is also caught must the first perpetrator be released? When individuals donate money for famine relief in Africa, very few believe that their donation is pointless because it might prevent the starvation of only one person rather than thousands. Christian ethics sets down no requirement that we should help no-one unless we can help everyone.

The issue about state sovereignty, however, is one that deserves to be taken seriously. Regardless of one's opinions on the extent and limits of state sovereignty, it is true that our

international relations system is built upon the principle and to modify or overturn it is a matter of some consequence.

Even those who are generally supportive of the United States and their allies see the problem. As it was put by a leading commentator when analysing the Australian Prime Minister's 'humanitarian' justification for war:

Finally, Howard's argument against Hussein on human rights is correct. So is his moral case for wanting to liberate the Iraqi people from their torment. The problem, however, is that you can't trip around the world wanting to overthrow regimes because of human rights.²

Some would ask—'why not?' Because to do so would overthrow the United Nations Charter, comes the rejoinder. And, in turn, the response to that might be—'good!'

If it's a choice between the maintenance of the UN Charter and freedom from tyranny, freedom wins every time (although an international lawyer sitting in Sydney might have a different view on this question from that of a political prisoner manacled in a Baghdad jail cell).

When the interests of 'international law' are more important than the life and liberty of individuals, it could be concluded that 'the Emperor has no clothes'. Would international law have sanctioned intervention to stop the Holocaust had Hitler not waged war and proceeded with his methods entirely within the confines of the German territorial state?

Many who argue that 'humanitarian' intervention in Iraq is not justified because it infringes on that country's 'sovereignty' would happily have other countries cede their political sovereignty to supra-national bodies. Certain features of the International Criminal Court override the principles of sovereignty, but that did not stop a phalanx of international law experts urging sovereign governments to join it so as to en-

able the prosecution of war criminals. But when it comes to actually stopping war crimes, not simply prosecuting them, that phalanx is largely silent.

Without the doctrine of state sovereignty and without an arbiter for determining when interference with the principle is justified (the role claimed by the United Nations and its Security Council) it is said that states would be free to impose their own will and intervene in other

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countries whose standards did not meet their own. (In *The Second Treatise of Government*, Locke argued that a characteristic of a 'state of war' between individuals was the absence of a superior authority to adjudicate disputes and prevent individuals from administering justice themselves.)

Iraq might be claimed as a reasonably clear-cut case for intervention, but other situations are not likely to be as simple. In *Culture and Equality*, first published in 2001, Brian Barry explored a 'liberal' perspective on this question:

The liberal position is clear. Nobody, anywhere in the world, should be denied liberal protections against injustice and oppression. However, in exactly the same way as liberals are pragmatic about what liberalism means in terms of boundaries, so here the move from principle to intervention has to be mediated by practical considerations...

[L]iberals are not so simple-minded as to imagine that the answer to all violations of liberal rights is to send in the Marines, or even a United Nations force. As in any just war theory there must be some doctrine of 'proportionality'... [S]carcely anybody would be in favour of the western powers invading Saudi Arabia so as to sort out the way in which it 'unjustly denies political rights to women or non-Muslims'—according to their liberal idea of justice'.³

The question remains—after Iraq, what remains of 'state sovereignty'? Should the doctrine apply only to 'liberal, democratic' states? Such a solution might be attractive to some 'liberals', but it doesn't avoid the problem of what, exactly, a 'liberal, democratic' state is.

One irony arising from the arguments about the war in Iraq is that many of those who have urged a strict application of 'state sovereignty' principles in the past have generally supported the US-led intervention, while those who have been willing to abridge or even abandon the doctrine have had to rely on it to counter the 'humanitarian' justification for war.

There are not many certainties about the nature of the world after the war in Iraq, but it can be said with some assurance that one definite outcome is going to be a more vigorous debate about state sovereignty.

NOTES

1. Scott Burchill, 'The humanitarian arguments for this war are spurious', *The Age*, 21 March 2003.
2. Paul Kelly, 'The hapless persuader', *The Australian*, 15–16 March 2003.
3. Brian Barry, *Culture and Equality: An egalitarian critique of multiculturalism*, Harvard University Press, page 138.

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