

Refusing to serve in Iraq: the human rights dimension

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In any democracy, a war that is unpopular, unethical, unsuccessful and quite possibly also illegal is certain to have a damagingly corrosive effect. Such a conflict saps at a nation's moral confidence while seeming to offer nothing in the long term that makes all the killing worthwhile. So it is with Britain and the second Gulf War. The refusal of an SAS soldier to return to Iraq after an earlier three month tour of duty is an especially powerful example of the general point: Ben Griffin asserts (in an interview in the *Sunday Telegraph*) that he has witnessed illegal acts by his American coalition partners and that in any event the whole project is to his mind illegal. The latter point will also be made by a Royal Air Force doctor who is soon to be tried by court martial for refusing a third tour of duty in Iraq. Of course there have always been 'deserters' and conscientious objectors in every war. But what is interesting about these cases (and others like them) is the sympathetic response they receive not only from the general public but also from their erstwhile colleagues in the forces: more admiration for their courage than derision for their cowardice. (On his discharge, Griffin was described by his superiors as a 'balanced, honest, loyal and determined individual who possesses the strength of character to have the courage of his convictions.')

The infusion of a culture of legality and respect for human dignity into the UK armed forces may well prove to be one of the lasting achievements of the commitment to human rights protection that has been a great force for civilising good in the years since the enactment of the Human Rights Act. Already it has been human rights law that has insisted that the homosexuality of a member of the armed forces is no longer something that needs to be covered up. Strides have also been made in insisting (via the guarantee of fair play that is set out in Article 6 of the European Convention on Human Rights) that the courts-martial process be fair and impartial. The process is by no means complete: there are disturbingly regular reports of a deep culture of bullying in relation to new recruits and dreadful examples of abuse (involving torture, inhuman and degrading treatment and unlawful killing) have been alleged against British forces in southern Iraq. Even with both these examples, however, it is clear that the human rights assumption is taking a firm hold: there have been courts-martial when in the past there might not have been, and the English courts have been clear that in certain well-defined examples of military control, the requirements of human rights law bite even if the military power is being exercised thousands of miles from home. Of course the process of transition to a more humane military culture is bound to be painful: the Secretary of State for Defence Dr John Reid spoke for many last month when he anguished in public about the constraints under which his forces (as opposed to those of the enemy) are required to act. But the military will thank the human rights advocates in a few years time, just as they do already in relation to sexual identity and fairer courts-martial.

This change of atmosphere within the military makes the forces more critically engaged both with the morality of what they are required to do and with the way in which they are ordered to go about doing it: the human rights approach amounts to a kind of just war theory for the modern age. Whatever about its wider merits, however, this branch of the law does not have much of a protective embrace to extend to the conscientious objector. This might have been the case even if military service were obligatory in the UK and it is certainly true for personnel who have volunteered for duty. This restriction on the freedom of conscience of members of the armed forces is on a par with the limitations on free speech that have to be endured by clergy: having chosen to join the club, they cannot now be heard to dispute the rules. But if the objection is rooted not in conscience per se but in being required to carry out a criminal or otherwise unlawful order then a different branch of law, rooted in international criminal and humanitarian law may kick in to protect the required safeguards. There is an undeniable tension here between the old instrumentalist approach – the soldier exists to obey orders – and the new dispensation which sees him or her as a moral agent able to resist unlawful or abusive demands. It is the latter trend that is on the up, something which should give all of those of us who care about justice and right conduct cause to celebrate.

The US forces with which the British military in Iraq are inextricably connected appear to take a radically different approach. Ben Griffin's particular complaint, what appears to have driven him to refuse to serve, was his abhorrence at the way his US counterparts went about their military duties. Griffin spoke of their 'gung-ho and trigger happy mentality' and of his belief that many of the American soldiers regarded the Iraqi people as 'sub-human, *untermenschen*' who viewed the local people in the same way the Nazis had viewed Russians, Jews and eastern Europeans in the Second World War. Griffin had not, he said, joined 'the British Army to conduct American foreign policy'. The kindest way to put this would be to say that the US military are some way behind the British when it comes to approaching the exercise of military force with any semblance of a human-rights-based culture of respect for those on the receiving end of such 'shock and awe'.

It needs to be said that this blindness – or even contempt – towards the local people is not indigenous to the US forces. It is at odds with and destructive of the reputation for humanitarianism which American soldiers have enjoyed for generations. It is now becoming more and more apparent that many senior personnel in the US military have fought a long and so far losing battle against those elements in the Bush Administration – led by the President himself and with the Vice-President at his side – which have been intent on forcing through a shift in military culture, away from rules and restraint and towards a commitment to unilateral action inflamed by a strong sense of moral superiority. The lawyers by the Administration's side have been working diligently to open up the space for such unaccountable behaviour, both at home and abroad. So serious have matters become that a recently retired Reagan appointee to the US Supreme Court Sandra Day O'Connor has made the extraordinary claim that the US is in danger of edging towards dictatorship. It is time

to recognise that something is going on in the US that is different and more disturbing than normal politics. This is what Ben Griffin has spotted on his front line. It is a topic that I will return to in my next column.