

THE RIGHT TO KILL, BUT NOT TO QUESTION: THE ETHICS
OF MILITARY OBEDIENCE

By DaN McKee

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In October 2006, head of the British Army, General Sir Richard Dannatt, created much controversy, when he put forward the opinion that his troops, serving in Iraq, should “get ourselves out sometime soon”; claiming that instead of helping the Iraqi people, their military presence in the region only “exacerbates the security problems” there.¹

The ensuing controversy stemmed not just from the fact that the Army head held a position in clear opposition to the democratically elected government, whose orders he is dutifully committed to carry out; but that he dared *state such an opinion in public*, directly contradicting the claims of the British government, and drawing their official position on the war in Iraq into serious public question.

“A serving general should not publicly criticize the policy of the government he serves”, said the *Financial Times*², whilst similarly *The Sun* held that although Dannatt “had his troops’ interests in mind...he should not have spoken on the public stage”³; a stance repeated by *The Guardian*, who asked “even if the argument is right, is the General the right man to make it in public...surely it should properly fall to the politicians to provide the straight talk.”⁴

Coming just under a month since an equally controversial US National Intelligence Estimate reported that “the Iraq war has made the overall terrorism problem worse”⁵ (despite ostensible government claims to the contrary); the Dannatt issue raised a fundamental question about free-speech in a democratic military: is it acceptable, *morally* speaking, to recognize the currently held political protocols that forbid a soldier, of any rank, to question their orders and speak out publicly on matters of policy?

It is my belief that as a community we have a remarkable dissonance in our expectations when it comes to the military. On the one hand, we give them the greatest responsibility given to any servant of the state; not simply the defence of a nation, but the responsibility of holding *the legal right to kill* as a means to such

defence. At the same time, however, we demand of our soldiers that they do not question their orders, and that they obey their superiors at all times, no matter what. In other words, we give them the greatest responsibility of all, but deny them full rational and critical power to use that responsibility *responsibly*.

The following paper will analyze the ethics behind this dissonance; looking at both why we give our military the legal right to kill, and why we expect them to carry out all orders without question. By its end, I hope to have shown that this dissonance is a genuine moral problem, and that the underlying ethical argument used to justify a soldier's legal right to kill, must also demand a concurrent soldier's duty to critically assess and rationally refuse orders, for it to be morally legitimate.

So first then: the legal right to kill. Soldiers are given the legal right to kill, just like any other citizen, only when killing in defence. If it came to the general public's attention that a regiment of their nation's army were not only engaging in justified military conflicts, but were also committing a series of brutal, unprovoked murders, either in their own country or abroad, and were not facing any criminal prosecution for their actions, there would be outrage,

panic over public safety, and calls for such killers to be brought to justice. Indeed, even in times of war where the aforementioned *killing in defence* is expected and accepted, stories of extra-curricular violence (aggressions hard to justify as obvious incidents of “defence”) are met with disgust and shock, be it the infamous torture and abuse seen at Abu Ghraib, or the bombing of Dresden, to name but a few uneasy historical moments.

Whilst all citizens hold a right to self-defence, for soldiers this right is logically extended to incorporate the nature of their job and to include instances of *national-defence*. The law accepts the necessarily bloody demands of military actions, and grants soldiers more freedoms to justifiably end lives and commit violent acts, than is afforded to individual members of a society. Soldiers have the same basic right of self-defence as everyone else has; only one accompanied with the acknowledgement that they will be required to utilize that right much more frequently than most; indeed, that they are in effect utilizing each individual citizen’s own *individual* right to self-defence *by proxy*, protecting *them* from danger, before their lives are directly threatened.

A soldier has the legal right to kill, in defence, but not the legal right to murder.

This universal right to self-defence, in which the legal right to kill granted to soldiers is grounded, is *intuitively* supported by anyone who has ever felt threatened and been forced to respond. Indeed, it is an instinct witnessed across nature, that when in danger we do all that we can to get out of it, and it is also a notion firmly entrenched within international law. Article 51 of the United Nations Charter accepts the “inherent right of individual or collective self-defence if an armed attack occurs”⁶.

But this universal right to self-defence rests upon a coherent ethical argument to justify it. Because we *value* life so much, when life is threatened, we will do anything within our means to defend it, and if circumstances dictate that we have no choice but to kill or be killed in order to do that, then, guided by the underlying intention to *preserve* the life which is under attack, such killing can be regrettably justified as necessary.

However it is not just life alone that we value. Pure *existence* is not the full story of the worth we put on life. There is also the

necessity for some sort of *quality of life*, without which, life would no longer be worth living. In cases of national defence, not only does our military fight to protect their citizens and their own *physical lives* from enemy attack, but also to protect from aggression, the things which gives them and their citizens the *quality of life* which they enjoy.

The threat which invasion or attack brings to a country is not just a threat of possible death to its citizens (although the threat of physical harm is obviously a major concern) but it brings also a threat to that nation's *way of life*. Even if you yourself do not get *killed* in the attack, the loss of your homeland and culture becomes a death of sorts – a death of your identity. Similarly, the mass murder of friends and loved ones could be just as bad as dying yourself, if such tragic loss makes your own life not worth living anymore.

What we ask our military to defend then, is not simply themselves on the battlefield, nor simply our own lives from attack; but also a defence of what life means to us as a nation, and the sort of life we are accustomed to living. And so it is paradoxically, that precisely because of the *value* we put on life, the argument for self-defence

can allow for the taking of it, when, and only when, that life is attacked, and there is no other choice.

Legitimate defensive killing must be a last resort, utilized only when all other means of defence have been exhausted; but if there is no other way that one can defend their life but by ending the life of their attacker, then such defence is grimly accepted, and the legal right to kill is bestowed.

There is also a sacrificial element which justifies *the military's* legal protection when killing in national defence: we value life so much, that in order to preserve as much of it as possible within our community, we have deemed it permissible to allow a small number of soldiers to kill-or-be-killed, in order to protect the many civilians at risk. It is ultimately a utilitarian argument: in order to ensure the protection of the lives of the *majority* of citizens, a brave minority of soldiers willingly sacrifice their own right to protection, by putting themselves in great danger so that others don't have to.

The legal rights that democratic countries give their soldiers to kill are not arbitrary assertions of power. They logically stem from the universal right of self-defence and the underlying moral argument

which maintains it. The same right that each individual has on an inter-personal level, is extended to the international level to protect an entire *state* from attack, and along with that right comes the same responsibility each individual has: although we are permitted to kill, if necessary, in extreme circumstances of kill-or-be-killed self-defence, we are *not* permitted to commit *murder*.

But once a civilian decides that they are willing to put themselves in harm's way and risk sacrifice in order to protect the majority of their fellow citizens; alongside the legal right to kill granted to them in virtue of their joining the army, they are then legally bound to have every capability for rational, critical and analytical thought that would allow them to utilize that right with proper ethical judgement, trained out of them, and replaced with a demand for unquestioning obedience to the orders of their superiors.

Armies are run via a hierarchical structure of rank, discipline and deference; a chain of command codified in military law. As the British Army explains, "The principal object of military law is to maintain order and discipline amongst members of the Army...It does so by creating a special disciplinary code and procedure that supplants the ordinary criminal law of England."⁷

This disciplinary code and procedure has its legal foundation in the Army Act of 1955, with more recent legislation and regulations supplementing it, most notably, the Queen's Regulations of 1975, which stresses the point, stating that it is "essential that every soldier should be brought to understand not only the importance, but the purpose of discipline".⁸

Such extreme measures of discipline have their purpose in ensuring what is called "operational effectiveness"⁹ or "operational efficiency"¹⁰ (defined by Army General Administrative Instruction 67 as "the ability of a unit or formation to function as a cohesive team to perform the operations, missions or actions for which it is organised or designed."¹¹) and "it is for this reason" goes the law, "that acts or omissions which in civil life may amount to no more than breaches of contract (like failing to attend work) or, indeed, mere incivility (like being offensive to a superior) become in the context of army life punishable offences."¹² Discipline, so it is claimed, is essential for an army to work effectively at the life or death tasks for which it is designed. "Indiscipline", the law continues, "has no place in the Army...in war it may have serious effects or even lead to disaster", therefore all officers "are to

maintain discipline over officers and soldiers of lower rank than themselves.”¹³

Without such strict observance of discipline, the belief is that operational effectiveness will be adversely affected and the life-threateningly dangerous situations soldiers find themselves in will become even *more* life-threateningly dangerous.

This is the same logic of unquestioning obedience which General Sir Richard Dannatt was accused of breaking when he chose to criticize the British government’s policy in Iraq. For the same reasons of operational efficiency that affects working practice *within* the army, proper command protocol dictates that the military must always follow the orders given to it by the elected government.

“Operational efficiency” seems a perfectly reasonable justification for obedience, until one realizes that there is a flaw in the theory which casts doubts on its ability to fully justify its conclusions. Whilst most would happily accept that in matters of life and death, “operational efficiency” seems crucial, and failure to act quickly and correctly could indeed cost unnecessary lives; to describe the

tasks and expectations of a democratic military solely in *strategic* terms like this, is to leave out an important factor: it makes unsubstantiated assumptions about the ethical legitimacy of the *operations themselves* for which effectiveness is required.

Obedience from their subordinates to unquestioningly follow orders would also help a *mafia boss* in their “operational efficiency”, as hired hands gun down whoever they are told to gun down without having to be told twice, but due to the nature of the operation being carried out efficiently here, we can see that such obedience would be morally illegitimate. Murder is still murder, even when done efficiently.

The demand for disciplined obedience within the military to ensure their own “operational efficiency” works only on the assumption that all operations for which soldiers must be efficient, are themselves legitimate; an assumption which the empirical record of history could certainly draw into question and which falsely relieves the army itself, and the individual soldiers within it, of any moral responsibility for the acts which they are ordered to carry out, despite the Nuremberg Charter clearly stating “the fact that a person acted pursuant to order of his Government or of a

superior does not relieve him from responsibility under international law, *provided a moral choice was in fact possible to him*”¹⁴

What I find worrying about this commitment to unqualified “operational efficiency” and strictly disciplined subservience in British military law, is that it seems we are purposefully training this possibility of genuine moral choice *out* of our soldiers.

As we can see from the controversy over the current war in Iraq, or indeed any other contentious military conflict from history, the self-evidence of a military operation’s *justness* is not always so obvious, and sometimes, it is fair to say, the decisions of governments, no matter how democratically elected they may be, have the potential to be misguided, mistaken, or just plain *wrong*. Indeed, acceptance of this truism is why the tradition of “checks and balances” has always been a necessary feature of democracies – with our elected leaders *not* being Plato’s infallible philosopher kings, it is explicitly understood that we can have no guarantees that all, or even *any*, of their decisions will be the “right” ones, and so have in place a distribution of power than

ensures mistakes can be identified and rectified before misguided tyranny prevails.

The military, however, remains a democratic institution *without* such checks and balances; where soldiers on the frontlines with doubts about what they have been ordered to do, are simply told, on threat of reprimand, to shut up and obey by their superiors; and where their superiors, like General Sir Dannatt, with similar doubts, are *themselves* told to shut up and obey by their leaders in government, all in the name of a questionable doctrine of “operational efficiency”.

Now, the evaluative means used by war-planners to determine the legitimacy of a proposed military action, alongside the conventions of international law, is *just war theory*, an intellectual tool traditionally broken up into two ethical questions: the question of justice in going *to* war, and, once *at* war, the question of how that war is fought justly. On this view, it is conventionally accepted, that “the two sorts of judgement are logically independent”, making it, in the words of Michael Walzer, “perfectly possible for a just war to be fought unjustly and for an unjust war to be fought in strict accordance with the rules.”¹⁵

I draw this distinction into question however, by reminding us of the fact that while soldiers are given the legal right to *kill* they are not permitted to commit *murder*. Whilst that fact ties in completely with the idea that a just war could be fought unjustly (for example, a genuine war of defence against an enemy aggressor should not permit unnecessary acts of extra-curricular violence, such as the needless bombing of schools and hospitals), a legitimately justified killing, militarily speaking, can only be one committed in the quest for either national or self *defence*. If, despite the claims a government and its military might make to the contrary, an army invaded a country illegitimately, not in defence but in aggression *masquerading* as defence, they may well fight “in strict accordance to the rules”, ensuring that they only kill uniformed enemy soldiers and commit no unnecessary violence to civilians; but as the initial invasion is *itself unjustified*, it follows that the conditions necessary for legitimate killing are not in place and therefore, regardless of any rules being followed, there can be no serious legitimacy to even *one* subsequent killing or violent act committed under such auspices.

What this means, therefore, is that it is *essential* that a military operation be legitimately justified *before it is fought* or else *any killings or other consequences, no matter how limited, would be illegitimate*. That this essential moral judgment is left entirely up to policy makers in government is problematic. If such judgments were to be made duplicitously, to support some other ideological objectives, it would be precisely these governments, whose wider geo-political or economic policy aims, could appear sufficient justification to them to wage illegitimate wars under the pretence of legitimacy.

Taking the current controversial war in Iraq as a perfect example, the government who might want to invade Iraq for a variety of non-defensive and thus arguably morally illegitimate strategic, economic and political reasons, will *of course* determine when self-assessing its own goals, that such an invasion *is* just, because they are essentially left to judge *themselves* on the matter, without check or balance. Further still, they will also have the ideological capabilities to frame it as such to the general public and military. As governments have a dominance over mass communications, they can produce a compelling picture to convincingly support a distorted position, assuring people that an armed response is the

only possible and right action, regardless of the objective facts of the matter, and, through propaganda, manipulate a perception of reality which leads obedient soldiers, unable to question their leader's judgments, into an unjust conflict under the misguided pretence of moral legitimacy.

Of course this would be to accuse such governments of some disingenuousness, if not outright deceit, but we need only remember the nonexistent Iraqi weapons of mass destruction and the British government's fabricated "dossier", to know that such wilful dishonesty sometimes happens; and as I have already mentioned, the accusation that a democratic government has the potential to mislead or manipulate its own citizens, is not only uncontroversial, but is *enshrined* in the very system of checks and balances which accompany most other aspects of democracy.

If the government commanding an army is deceitfully making the case for unjust war, and abusing its privileged position as dominant communicator on matters of national security, then there must be some extra level of analysis, of checks and balance, to ensure that a proposed conflict is legitimate, outside of it merely being *said to be so* by the very institutional body which stands to

gain from an illegitimate war. Once the decisions have been made, it is not members of *government* who will be on the battlefields facing potential death or committing acts of illegitimate murder, but their obedient and trusting soldiers, following orders without question, just as they have been trained to do; and as such, it seems only reasonable to suggest that those soldiers, bravely willing to put themselves in harm's way if necessary for national defence, are also allowed to speak out against and *refuse* to participate in any military actions that they find ethically questionable.

It's been over four years now since obedient and unquestioning coalition soldiers were sent to Iraq on a wild goose chase for weapons of mass destruction that never existed. They are still there now. All except for the **3,803** of them who have been reported killed in the conflict as of yesterday.¹⁶

If we are to consider what I said earlier about the impossibility of fighting an unjust war justly and the illegitimacy of *any* military act committed without the legitimate justification of necessary defence, then as well as those **3,803** *military* deaths being a needless tragedy, one would also have to consider the estimated reported

death-toll of between **65,411 and 71,665** innocent civilians killed in the Iraq war thus far, a disgracefully high body count for what can only be called officially sanctioned and pre-meditated mass murder.¹⁷

When all of this is taken into account, the idea that a soldier like General Sir Dannatt might dare cross a line of accepted protocol and finally criticize the illegitimate orders of their government nearly four years after they were first given, shouldn't be controversial at all. The real controversy should come from the fact that due to having their critical and analytic capabilities trained out of them, it took soldiers like General Sir Dannatt, over three and a half years to finally build courage enough to state the obvious, and that now, starting our fifth year of this war, soldiers remain incapable of refusing to follow orders which are so clearly in violation of their legitimate obligation to national defence, leaving them ensnared in the illegitimate occupation of a foreign territory and forced to deal with the violent consequences.

Whilst it is true that in matters of life or death, strict obedience to commands can save lives and ensure more success than an undisciplined free-for-all; a truly responsible army would be one

disciplined enough to know not only *when* to obey, but also *when not* to obey; recognizing that one can still be aware of the importance of strict obedience on a legitimate battlefield, whilst at the same time being fully capable of analysing and critically assessing the initial orders that take them there. There is no conflict of purpose in expecting a nation's military to have swift and obedient "operational effectiveness" when engaged in matters of genuine national defence, but also to have intellectual effectiveness at "operational analysis" before putting themselves in harm's way in the first place; to ensure *before* over four years and a massive death toll have passed, that the operation they have been ordered into is ethically valid, legitimate and just.

As we find ourselves nearing the sixth year of a controversial "war on terror" proclaimed to have no end in sight; a war that has already caused the deaths of a *minimum* estimated **65,411** people in Iraq alone, created over **3.3** million refugees across Afghanistan and Iraq, cost over **4.5** billion pounds of British taxpayers money,¹⁸ "made the overall terrorism problem worse" according to consecutive National Security Estimates and, in the words of General Sir Dannatt, exacerbated the security problems of the region – not to mention the recently projected cost of *2.5 trillion*

dollars, overall, the Iraq war alone will cost the *American* taxpayer when we include the price of looking after the 23,000-50,000 severely *wounded* but living, U.S. soldiers to the war-chest;¹⁹ the dissonance between what the democratic social contract demands of its armed forces, and the conflicting culture of unquestioning obedience into which those forces are trained, is one of the more pressing moral problems of our time.

Until we allow our soldiers the right to critically assess and disobey illegitimate orders, and freely speak out against objectionable government policy, indeed, until we give the military and its authorities the same checks and balances found in all other aspects of democratic practice; this dissonance will remain, and many more will be illegitimately killed, whilst any question of just war theory and genuine moral accountability in matters of armed conflict will remain, sadly, missing in action.

¹ *Daily Mail*, Friday October 13th, 2006, p12

² *Financial Times*, Saturday October 14th, 2006, Leader, p10

³ *The Sun*, Saturday October 14th, 2006, “Sun Says” Leader

⁴ *The Guardian*, Saturday October 14th, 2006, Leader, p32

⁵ Quoted by “one American intelligence official” in *The New York Times*, Sunday September 24th, 2006, p1

⁶ Chapter VII, Article 51, Charter of the United Nations, <http://www.un.org/aboutun/charter/>

⁷ http://www.army.mod.uk/servingsoldier/termsofserv/discmillaw/intro/ss_hrpers_disc_intro_w.html

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http://www.army.mod.uk/linked_files/ag/servingsoldier/termssofserv/discmillaw/files/Queens_Regulations_Incl_A27.doc

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http://www.army.mod.uk/linkedfiles/servingsoldier/termssofserv/discmillaw/agai_67_main_bdy_edition_2__amdt_3__jan_06.doc, p10

¹⁰ Ibid, p7

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http://www.army.mod.uk/linkedfiles/servingsoldier/termssofserv/discmillaw/agai_67_main_bdy_edition_2__amdt_3__jan_06.doc

¹²http://www.army.mod.uk/linked_files/ag/servingsoldier/termssofserv/discmillaw/files/Queens_Regulations_Incl_A27.doc

¹³ Ibid

¹⁴ Ibid, emphasis added

¹⁵ Walzer, M: *Just and Unjust Wars*, Basic Books, New York, 2000, p21

¹⁶ Iraq Coalition Casualties: <http://icasualties.org/oif/>, accessed 18/6/07

¹⁷ Iraq Body Count: <http://www.iraqbodycount.net/>, accessed 18/6/07. It should be noted that in the eight months since I wrote the first draft of this piece, this number has risen by well over 15,000.

¹⁸ *Independent on Sunday*, Sunday September 10th, 2006, p19

¹⁹ *New Statesman*, 12th March, 2007, pp26-29