

"Is there a duty to go down fighting? The morality of surrender"

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My objective in the lines which follow is not to make a new point, but to interpret, for the sake of its importance in the JSCOPE context, a classical moral conviction. As I shall soon indicate, the point in question was made clearly a good generation ago by the most authoritative moral theologians of our century. It has never been refuted, on the level on which they argued it. Nonetheless it runs counter to some standard themes of our pop culture. As I strip down the debate to the main point I shall first need to name and to set aside some related important issues.

The position I here describe is not my own. I am functioning here as historian, or perhaps as journalist, or as translator. I shall be interpreting a body of ideas from the mainstream legal and moral tradition which has (at least theoretically) dominated Western thought since the fourth century, namely the so-called "Just War Tradition."

The basic concept of limited hostilities

What that tradition says is that the moral validity of the waging of war is subject to measurement, by the application of several quite clear criteria. These are really criteria: that is to say that you can in fact measure with them. Morally, you must measure with them. If in a given case a particular cause for war, a particular strategy, a particular use of a particular weapon measures up, it is morally and legally valid to use it.

I have just referred here to the distinction between the legal and the moral. The "legal" is the level where we measure a policy, an act, or a decision by a given body of laws; the "moral" level is the one where we measure by the responsibility of the decider or the actor to respect principles which may or may not have been defined by legislation. It is not our present concern to pursue this distinction, nor to ask about how the rules on each level have varied from one culture, one time, one place, to another. "Just War" reasoning applies on both the moral and the legal levels. In western democracies, in the major bodies of religious moral thought, and in modern international relations the two levels tend to approximate one another, and reasonable moral persons want them to coincide. In the rest of this overview I shall be talking about both.

But what if a given war, or a given possible tactic in a particular setting, does not measure up? Then the answer is clear, according to the mainline tradition. That war must not be waged, that strategy must be renounced, that weapon must not be used. To override that rejection would be morally a sin, legally a crime.

If there is not a means, legitimate and probably successful, to achieve a just political goal by war, without recourse to that wrong means, then that war must be renounced. The right thing to do is to sue for peace.

The word "surrender", which the authorities use, may appear too strong to use here. There are various ways of not winning, when one cannot win morally and legally. There is a great difference between abandoning sovereignty over one's homeland and pulling back from an overseas adventure. There would be various levels of honorable and tolerable compromise available, well short of total destruction. Especially would such honorable non-victorious alternatives be available if strategic and political wisdom would discern well in advance the impossibility of victory, rather than hiding that hard truth under falsely optimistic rhetoric such as that used two decades ago about the light at the end of the tunnel in Viet Nam. "Surrender" does not mean rout: it means an honorable negotiation of the best possible terms for terminating a conflict which one cannot win without betraying the principles of legality or of morality that apply in the case. All that counts for present purposes is the principle of accepting, when that is the case, the impossibility of winning morally. The rest follows.

Moral Theological Leadership Three Decades Ago

The Jesuit moral theologian John Courtney Murray and the Methodist Princeton University professor Paul Ramsey, without question the two most respected thinkers of their age on this subject in their respective faith families, both made this point in the late 1950's, independently, with specific reference to all-out nuclear war. For both of them, the most evident case of an inadmissible war was the massive destruction of an urban population, because of the direct and intentional destruction of innocent lives. Both used the word "surrender" in the sober way being described here.

The present paper is not concerned to focus upon the nuclear threat as such, or upon its international policy context. It just happened that in the 1950's a massive counterpopulation nuclear attack was the first point where these thinkers had to face the concept of a war one cannot morally or legally win. The nuclear threshold is not only quantitative, in the unprecedented scale of the destruction; it is also qualitative in that the notion of a deterrent use of disproportionate threats makes the question of the immorality/illegality of the weapon reach back from when it is fired to when it is threatened. If however tomorrow some bacteriological or chemical weapon, or some hand-to-hand tactic, or some style of mopping-up in low-intensity warfare, were to be identified as illicit, the question would be the same.

"Surrender" in real life

Two real-life specimens, far enough in the past to be remembered somewhat objectively, may concretize the issue. The

first was referred to as a matter of (then) very recent memory by Murray in his 1958 paper. As his basic point, Murray was arguing:

"on grounds of the moral principle of proportion the [just war] doctrine supports the grave recommendation of the greatest theorist of war in modern times, von Clausewitz: 'We must ... familiarize ourselves with the thought of an honorable defeat.'"

Then, coming closer home, Murray added:

"Conversely, the doctrine condemns the hysteria that swept Washington in August when the Senate voted, eighty to two, to deny government funds to any person or institution who ever proposes or actually conducts any study regarding the 'surrender of the government of the US.'"

"Surrender" in the Senate

"Hysteria" is the word for what dominated the US Senate in the second week of August 1958. A retired brigadier general had written in the St Louis Post Dispatch that three scientific research institutions were studying, on behalf of the Department of Defense, whether the US could continue fighting after a massive Soviet nuclear attack. A headline writer translated this into "Whether the United States Should Surrender". Missouri's Senator Symington read this article into the Congressional Record for August 8th, 1958, where President Eisenhower first read it and, as some journalists later said, was angrier than he had ever been.³

The Senate did not seriously get to the bottom of the issue. Senator Symington was using the matter to press his political case against the Eisenhower government, under attack just then for not increasing the arms budget adequately and for having sent the Marines into Lebanon.

Georgia's Senator Richard Russell could have had the matter checked out through the investigative authority of his Armed Services Committee, but instead he chose a flamboyant action, not dependent on fact-finding, to silence the debate. He attached to a pending appropriations bill an amendment forbidding the use of any public funds to support any studies of the possibility of surrender. Russell argued that since the Constitution does not say who can surrender on behalf of the nation, no-one can. The Senate passed the amendment by a vote of 88 to 2.

I'll have to leave to the lawyers to ask whether this 1958 Senate action is still legally binding, or whether it even survived the House/Senate conference process which is normal for an appropriations bill, and whether in fact all the contingency scenario projecting done by all military educators and strategists counts only on victory.

Some of the background to the flurry was a study that had just been done for the Rand Corporation, on the strategic lessons to be learned from the surrenders of France, Italy, Germany, and

Japan in World War II. That study cast some doubt on the practical wisdom - to say nothing of the morality or the legality - of the stated American war aim which as we know had been the demand for "unconditional surrender"5. Thereby the Rand study supported John Courtney Murray's polemic against "all or nothing" rhetoric. Yet that Rand study had said nothing about the United States surrendering, and nothing about the nuclear threat. The four cases studied had by no means dealt with settings where the country in question could have prevailed by resort to illegal or immoral action, so that the imperative of suing for peace would have resulted from the impossibility of winning legally and morally. In all four, winning had become impossible tactically and strategically. So the subject is not the same as Murray's. Yet the motivation for being afraid honestly to think about surrender might be the same.

The story of that hectic week in August would be worth recounting for other reasons, but for our purposes it suffices to have seen it demonstrated in our highest legislature that the very mention of the word "surrender" puts an end to serious contingency thinking about costs and benefits.

"Surrender" on the high seas

On 23 January 1968, just ten days after leaving port on his and his ship's first investigative mission, Commander Lloyd J. Bucher found himself surrounded by six North Korean warships summoning him to follow them into the port of Wonsan. Bucher did not formally surrender, but he apparently thought of no alternatives to letting his ship be boarded and commandeered. The Pueblo was not equipped in such a way that either scuttling her or destroying the security-sensitive material was possible. Those were the futile alternatives Bucher was thinking about when boarded.

After the fact, many argued that even though pitifully outgunned (since the spy ship pose included claiming to be an unarmed scientific research vessel) Bucher and his men should have resisted capture, and if need be should have gone down fighting, rather than accept the pain and the shame of capture and of their ordeal as prisoners. His instructions from the Pentagon had made no provision for any such eventuality. The mistake of thinking that such a North Korean aggression could not arise was not his.

The Pueblo story is full of lessons about how not to run a spy operation, or how not to run a navy, but again that is not our concern. What it demonstrates is that the setting where surrender of one kind or another is an option is by no means hypothetical, and that a strong and sincere field commander may very well find himself unprepared to face it.

Practical Conclusions in Military Education

There will be several right answers, according to cases, to the question on what level of decision responsibility the duty to

sue for peace is located. What Murray and Ramsey had in mind was a decision on the national level, because the unacceptable means needing to be renounced was an intercontinental nuclear second strike. Therefore the decision to sue for peace was also the duty of the national Commander in Chief. National policy is also the level on which the continuing national dialogue on the nuclear agenda must go on, which the nation's Roman Catholic bishops in 1983 and the Methodist bishops in 1986 called for⁶.

In other possible cases the weighing of the stakes, the probability of success, and the illegitimacy of some specific means, and then by consequence the duty to cease hostilities might need to be located on a battlefield level. Commander Bucher had neither the opportunity nor the obligation to check with Washington about how to respond. In any case, battlefield or national or between, the moral and legal issue is the same.

The issue which arises for the instructional duties of JSCOPE members applies to both levels, the national and the tactical, in different ways. In the case where a decision to terminate hostilities would need to be made locally⁷, it is the military educator who can and should provide to the person destined to make future difficult command decisions the wherewithall for deciding rightly.

In the national case, where the decision to cease hostilities should properly be made higher on the chain of command, it will be of the utmost importance that subordinate bearers of command responsibility be ready to support and interpret that decision of their superiors, if it should be made in favor of discipline, for it is sure not to be popular at those many other points, at home and in the armed forces, where the hopelessness or the wrongness of the enterprise would not yet have become clear.

I do not propose to pursue critically either of these events. It would be illuminating to do so. What education had Bucher received in the laws of war? Why did President Eisenhower respond so angrily to the notion of contingency planning for undesirable cases, or to the possibility that after a successful Soviet first strike against the US there could be little point to the notion of going on to win? But this is not the place for such studies. I have cited the two cases here only to document the relevance of my subject; it is not a merely speculative intellectual enterprise.

I have here described the challenge in terms of a war which could not be won legally and morally, i.e. within the conditions of the just war tradition, because this is a meeting on ethics. Yet it would be a distortion to think that only the moralist raises such questions. The "realist" does not believe either in continuing hopeless combat. Remember Murray's quote from Clausewitz. There has always been such a notion as "honorable defeat". To sue for peace has always been a possible concrete strategic necessity. Most people who surrender are not pacifists; they are combatants who know their cause is lost at a particular time.

We now move from the introductory survey of the terrain to the basic educational question. What should a student of military ethics, preparing for service in a position of potential combat command responsibility, know about the limits of war's justification? What are the concepts, the mental tools which would enable a decisionmaker under pressure to resist critically the pop macho slogans of "winning at all costs" or of never giving up? I suggest that what is needed includes five levels.

Curriculum Components?

The most general level is that of the basic moral concepts. Do we intend to teach, as a matter of principle, that the moral justification of war has limits? That the slogan "victory at any cost" is immoral? Do we understand that limitedness of the value of concrete military objectives not as disloyalty, nor as doubt, but as part of the integrity of what we are fighting for? Do we honor restraint as a trait of a leader's character?

The second level is that of the specific restraints pertinent to the mode and level of conflict we are concerned with. Do we effectively teach the content of the treaties and customs to which the United States is formally committed? Do we understand and interpret them not merely as phrases but as expressing a deep and binding moral logic?⁸

A third level would be that of operational guidelines. Do there exist policy directives within the civilian government or within the jurisdiction of the Department of Defense, defining who is responsible, and when, to assess the morality and legality of a policy or of a procedure? What is the right procedure with which to respond if one receives an unjust order?⁹ What is the procedure whereby to make and report a costly decision when one discovers that the facts of the case do not correspond to the assumptions made in one's orders? What protection is there against the ordinary temptations of passing the buck upward and of covering for one's subordinates? Where in the standard officer training curricula are these things taught?

A fourth level would be effective and credible monitoring of compliance, and the prosecution of non-compliance. The breakdown on this level, in the My Lai case, both the initial cover-up and the series of decisions not to prosecute after the facts were out, is perhaps a worse indictment than the fact that the original atrocity occurred¹⁰.

A fifth level would be that of public support for "just war" restraints, both in civilian government and in the population at large. A morally responsible national citizenry should wish its representatives in government and in the armed forces to respect the rule of law, including the wrongfulness of continuing hostilities beyond the point of possible victory by legitimate means. The flurry in the Senate in 1958 and the widespread condemnation of Bucher in 1968 indicate that that is far from

"instead in the worst case.

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The 1957 Code of Conduct for Members of the Armed Forces (Navy General Order No 4 of March 18, 1957, presidential Executive order 10631 of August 17, 1955) says: "If in command I will never surrender my men while they still have the means to resist". For that promise to correspond to legality and morality we must assume that it means: "...while they have the means to resist with some chance of success and within the limits of the provisions of international law."

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Donald Wells, War Crimes and Laws of War, University Press, 1984, pp 106-7 and 118, quotes the Dellums Committee report, The Citizens' Commission of Inquiry, Random House, New York, 1972, pp 10-12, to the effect that pre-Vietnam officer training did not adequately include instruction about the limits of obedience, even though all the rules were there on paper (Cf. also Lt Gen W. R. Peers, The My Lai Inquiry Norton, New York, 1979, pp. 229ff., "Factors Contributing to the Tragedy") Changes implemented since the late 1970's have brought about significant improvement here. It would be reassuring to the citizenry if the facts to that effect were more publicly available.

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"This brings us to one of the most serious overall problems in dealing with the tragedy of My Lai, and that is the subject of illegal orders. Very little was said on this subject in regulations and training manuals, and what was said was couched in terms that only a lawyer could understand. On the one hand, a soldier was told not to obey an order that was manifestly illegal, but was provided with only very limited guidance as to what he was to do in such a case. On the other hand: he was instructed that if he disobeyed (or refused to obey) an order it was at his own risk, and he could be subject to disciplinary action if he did so. This left the soldier in a dilemma....To whom should a soldier report a war crime when his immediate commander was personally involved in the conduct of the crime? Obviously, the entire approach to the problem of illegal orders needed review, clarification, and improvement." Peers, op. cit., p.33.

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Peers, op. cit. 225ff. and 253ff. reminds us that the breakdown of discipline was not limited to the armed forces. It reached as high as the White House. For this reason General Peers did not advocate that the duty to monitor war crimes be simply civilianized.