

‘Where have all the conscientious objectors gone?’

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A war against Iraq would be aggressive, destructive, unnecessary, protracted, illegal, and evil. These were some of the public assessments made early in 2003 about the proposed multinational campaign to disarm Iraq of Weapons of Mass Destruction (WMDs). The subsequent conflict, commencing on 20 March with Australian naval, ground and air forces joining a United States-led ‘Coalition of the Willing’ in a short operation that ended the rule of Saddam Hussein, was the most controversial military operation involving this country since the Vietnam War. But there was a crucial difference between public reactions to Vietnam and Iraq; Vietnam was principally the subject of conscientious objection; Iraq was largely a focus for political dissent. To many, the Vietnam War was morally wrong whereas the Iraq conflict was simply a bad idea. In this address, I want to consider the question of the difficulty of distinguishing conscientious objection from political dissent in relation to armed conflict, and how each ought to be regarded.

This is a relatively new question. Until 1965, the Australian public solidly supported practically every engagement, conflict and war to which successive Commonwealth governments committed Australian service personnel. From the South African war in 1899 through to Confrontation in 1964, neither the press nor the people expressed serious objection to the government’s publicly stated reasons for declaring war nor the manner in which those wars were conducted. There were a few voices of dissent during the Maori wars in the 1860s and some unease during the campaign avenging the death of General Charles Gordon in 1885. A small peace movement emerged before the Great War of 1914-18. But the mood of the nation was solidly behind every military action until April 1965 when the Menzies Government decided to commit Australian ground forces to the conflict in South Vietnam. National Service was reintroduced in November 1964 and from late 1966, national servicemen were eligible for duty in South Vietnam. Two points need to be made.

First, the *Defence Act 1903* recognised pacifism as grounds for exemption from obligatory military service. Second, national servicemen could not be compelled to undertake duty beyond Australia. Although initially popular in the electorate, the majority of Australians had changed their mind about Vietnam by the time the first national servicemen, Errol Noack, died in Vietnam during 1967. The people were now increasingly opposed to the war and to national service.

The Kensington campus of the newly created UNSW was an epicentre for debate, dissent and protest. Students from this University lay down on the road in October 1966 to prevent the passage of President Johnson's motorcade into the city centre. Lectures and tutorials were suspended to allow staff and students to discuss the morality of the conflict. War was no longer a political matter. It had become a moral issue. And while parliamentary debate and the ballot box were the accepted means for influencing policy and changing government, many argued that disputes between nations had to be ended by other means and concessions given to those whose convictions forbid them to fight. Could there, should there, be a means of exempting some people from military service on the grounds of individual conscience when the government was indifferent to individual conscience on all other matters?

For the next four years, the nation was divided over two issues: whether Australia had any business being involved in South Vietnam, and whether the government had a right to conscript young Australian men to fight in its defence. They were not separate issues as the famous case of William White would show. In 1968, White's date of birth was drawn from the 'death lottery'. He was 'called up' for national service – compulsory military training with the possibility of service in South Vietnam. White refused to register and was imprisoned. In subsequent legal action, he declared that he was neither a pacifist nor against all war. But he was opposed to the Vietnam war because, in his opinion, neither Australia nor its national interests were threatened by North Vietnam or the Viet Cong. The case went all the way to the High Court. It ruled that a right of *selective* conscientious objection did not exist under the provisions of either the *Defence Act* or the *National Service Act*. The case was dismissed and White remained in prison.

While White's case was being heard, a United States Presidential Commission considered selective conscientious objection and found that neither the parliaments nor the courts could adequately determine or separate conscientious objection (which should be recognised as legitimate grounds for exemption from military service) from political dissent (which should not). But the crucial question had been asked: how is the moral character of war determined? Given the likelihood that different approaches to this question would yield different answers, and that Government's ought to respect the moral integrity of its citizens especially in a matter of such seriousness, the demand for some recognition of selective objection remained.

Although Australian forces were withdrawn from South Vietnam and conscription was terminated in later 1972, a movement gathered momentum to alter the *Defence Act* to recognise selective objection. When Tasmanian Senator Michael Tate became Justice Minister in the Hawke Labor Government, he drafted a bill to amend the Defence Act in relation to conscientious objection. It was referred to the Senate Standing Committee on Legal and Constitutional Affairs on 31 May 1983. The most controversial aspect of the draft bill was the proposal to recognise selective objection. In its submission to the Standing Committee's inquiry, the Defence Department was totally opposed to altering any legislation relating to conscription. It was not fear of civil disobedience among conscripts or the difficulty of determining the validity of selective objection that prompted its concerns. The critical issue was the effect such legislation would have on the volunteer force and the conduct of operations. A confidential Defence Department internal minute noted:

If the proposed changes to eligibility for exemption on conscientious grounds are adopted *they should logically be available during service, whether compulsory or voluntary*. In this context, should regular [volunteer] members of the Defence Force gain exemption and thus not be available to perform the duties for which they have been trained, any national investment which has been made in their training will have been wasted. Further, operational capabilities that are essential components of an effective national defence force could be rendered inoperative if specially trained personnel manning critical functions were granted exemption.

The Australian Defence Force (ADF) was in no doubt that such a provision would influence the whole nature of operational planning. In future, military planning staff would need to ensure that particular operations were palatable to the prevailing moral climate within the ADF. Senator Tate's bill was still in draft form when Iraq invaded Kuwait on 2 August 1990. Prompted by the possibility of hostilities with Iraq and the unlawful abstention on allegedly conscientious grounds of Leading Seaman Terence Jones from HMAS *Adelaide* which was bound for the Gulf of Oman to enforce UN sanctions against Iraq, Independent Senator for Western Australian, Jo Vallentine, introduced a private bill into the Senate for *An Act relating to conscientious objection to certain Defence service*. It never even came close to becoming law as Tate's bill was still being considered. The *Defence Legislation Amendment Bill*, as it was by then known, was finally introduced into the House of Representatives on 26 February 1992.

In his speech at the second reading of the bill, the Minister for Defence Science and Personnel, Gordon Bilney, stated that the Government had been persuaded that 'in some cases, an individual's sense of personal integrity could be violated by compulsion to participate in a particular military conflict but not in other conflicts'. The Federal Coalition parties opposed the recognition of selective objection. To them, it was an unworkable provision. In response, the Minister for Defence, Senator Robert Ray, stated that selective objection would not include military service required in the event of invasion of the Australian mainland. The Australian Democrats moved an amendment to the Bill in the Senate that would give volunteer ADF members the right to object to service in specific conflicts. The Government rejected this outright.

Greg Pemberton, writing in the *Sydney Morning Herald*, regarded the introduction of the Bill as a continuation 'of this country's little-known 90-year old record as a world leader in terms of liberal laws covering the obligation of citizens to fight'. He commented that the new Bill upheld a strong tradition in 'British liberal political theory dating from Thomas Hobbes which suggests that the issue of war is so destructive ... the State does not have the right to commit a person to war against his or her will'. The Senate finally passed the Bill on 23 June 1992.

It generated very little publicity despite the turbulent reception that had greeted any change to conscription legislation during the Vietnam War. Australia became the first and remains the only nation to recognize legislatively a right of selective objection.

But these provisions raised many questions. On the one hand, the recognition of a right of selective objection ought to have extended beyond an objection to a Government's decision to go to war to include objection to the manner in which the war was being fought. There was a logical and obvious connection reflecting both aspects of ethical theory: the need for the war to be just and the means by which it was fought to be fair and humane. On the other hand, the new objection provisions made no mention of the ways in which individuals would or could determine, and then demonstrate, that a conflict or the conduct of a particular operation was ethically unacceptable. By conceding that there might be just and unjust wars, the amended *Defence Act* effectively embraced the just war tradition of ethical reflection - its strengths and shortcomings. Principal among the latter is the intertwining (and potential confusion) of conscientious conviction and political opinion.

The practical difficulties of implementing the selective objection provisions in the Act were legion. By way of example: how would the Government determine whether an objection was ultimately conscientious or political? Given the absence of a State Religion and the virtual guarantee of religious plurality by virtue of section 116 of the Australian Constitution, on what basis would judgments be made about the ethical character or quality of one set of religious or philosophical propositions and beliefs over and above another? And how could an areligious state deem one set of religious beliefs to be merely political? And what would happen when a conscript was inducted into the armed forces when a certain strategic environment that was not conscientiously unacceptable prevailed later found that an unforeseen scenario developed to which a conscientious objection did arise? Would a continuing right of objection be recognised?

Although effected without fanfare, these amendments to the *Defence Act* have essentially transformed the way in which all Australians can regard military service. The objection provisions in the Act allow, and even promote in my view, individual judgment to be made on the moral standing of any war against an increasingly more diverse and more demanding range of criteria within the evolving just war tradition.

In acknowledging the possibility of an unjust war, the Government has tacitly accepted that the population will in future be much more critical of explanations for Australian involvement in any deployment. Being mindful of the complex and covert environments in which modern operations are conducted, one is justified in doubting that any future conflict in which Australia could be involved would be completely free from objection on the grounds that it failed to comply with the seven criterion of the just war tradition. In other words, will it be possible *not* to have some form of selective objection?

Let me consider a recent example. When it came to the proposed campaign in Iraq, on what grounds could a conscientious objection be claimed if one did not profess to be a pacifist who was opposed to all resorts to force? Whether consciously or otherwise, the majority made their assessment of the war's moral character in classic just war categories expressed in terms of conscientious beliefs *and* political opinions. This made for some very muddled and unhelpful critiques. An example was the Fourth Manning Clark Annual Lecture delivered by actress Judy Davis entitled 'Fear: the Politics of Submission in Australian History'. She spoke at the Australian National University three weeks before hostilities commenced in Iraq. Ms Davis address was well attended and widely reported. It embodied a fuller expression of ideas only hinted at by others and captured much of the disquiet being expressed publicly about the prospect of war.

In her remarks, Ms Davis alleged that Australia 'appears unable to find the courage, or the belief in itself, to be independent, to stand alone if necessary, when matters of exceptional moral gravity arise'. This was predominantly a political statement although curiously she believes that nation's, like people, can respond collectively to moral imperatives. Ms Davis then stated that 'Iraq presents no imminent threat' because 'its military arsenal is an estimated 10% of what it was prior to the 1991 Gulf War'. This was, of course, a rather bold strategic assessment based on a snippet of military intelligence of relative rather than absolute importance. She then shifted to a 'moral equivalence' argument with a polemic twist in alleging that Iraq was, in any event, no worse than the United States which 'has an arsenal of over 10,000 nuclear warheads [and] used about 20 million gallons of the dioxin Agent Orange in the invasion of Vietnam [and] rejected an international accord to enforce the 1972 treaty banning germ warfare'.

In any event, Ms Davis was convinced that the prospect of war in Iraq was 'about oil and American economic dominance'. She then presented an ethical consequentialist assessment of Western security policy: a war on terror would not work because 'every bomb will create more chaos, more terror and more recruits to terrorism' although she was 'horrified' by the events of September 11 which had 'profoundly changed my understanding of the world'.

In terms of material cost-benefit analysis, she asserted that in supporting the United States in Iraq, Australia was 'paying a high price for so little in return. We're revealed as opportunists – scavengers on the world stage' before stressing a deontological principle: 'there is nothing more serious than the killing of innocent people'. Ms Davis claimed that the West is 'impatient, intolerant of the complexities that have made the process of modernisation so difficult for the Middle East' but regarded the long-running, non-violent trade sanctions against Iraq in the wake of the 1991 Gulf war as '12 years of unrelenting warfare'.

My purpose in quoting from this address is simply to highlight the intertwining (and I would argue confusing) of political ideology with moral principle, and the poor grasp that many have of the just war tradition enlisted to oppose a military campaign against Iraq. Ms Davis raised some moral issues of genuinely first order importance such as the morality of pre-emptive strikes, respect for non-combatant immunity and the tendency towards self-interest over justice. But she then obscured and disfigured these critical issues with political ideology. Three other general observations can be made of Ms Davis' remarks.

First, although commenting that 'history has proved the necessity of 'the just war'', she does not comprehend its architecture nor understand its application. The tradition draws on specific theological and philosophical bases which Ms Davis seems to reject. In fact, she fails to outline any underlying set of moral convictions with consistency or coherence. Although she mentions that earlier in her life she 'sought refuge with the Catholics', she avoids any hint of religious affiliation in her embrace of what historian George Shaw has referred to as 'sentimental secular humanism'. She eschews all doctrines but professes strident beliefs but neither their origins nor imperatives are anywhere made clear.

We do not know what is morally important to her (other than not killing 'innocents') nor why, or whether her convictions can and ought to be held by other people and what standing they have (and ought to have) in a post-modern, religious plural Australia.

Second, in a civilised and human society, a priority concern must be the loss of human life as a consequence of armed conflict, especially among non-combatants, and particularly when the basis for resorting to force is contested. To imply, as many commentators have done, that material considerations can either compete with or ameliorate the seriousness of violating non-combatant immunity, for instance, is to stray into a dangerous utilitarianism. Ms Davis seems to argue that it is always and everywhere wrong for non-combatants to be killed, whether deliberately or accidentally. But she then confesses that 'I've never claimed to be a pacifist'. When, then, is it right to resort to arms? What are the threshold conditions or the compelling issues that justify the use of force? This crucial question is never answered.

Third, like many critiques of the Iraq deployment, Ms Davis' address regrettably does not go beyond lament and protest. If a clear moral principle can be identified and is at stake, a moral imperative is created. Ms Davis ought to have recommended a course of action ensuring the applicable moral principles were honoured by individuals and respected by government. If, for instance, the lives of Iraqi women and children were indefensibly and unjustifiably threatened by the 'Coalition of the Willing', military action should not have proceeded and some other strategy for disarming Iraq proposed. [I am conscious that WMDs, to my mind the crucial element in the case presented for war, have yet to be found in Iraq. I have written of their continuing moral importance in an article published in *The Australian* on 16 June 2003]. And if the United States is guilty of applying a double standard to the possession of WMDs, as Ms Davis alleges, should it be obliged to destroy its arsenal of WMDs even as it disarmed Iraq of the same weapons? Is this apparent double standard political or moral? Does it matter? None of this is made clear.

In an article published in the *Australian* on 11 February 2003, I concluded that the Government had made out a moral case for a campaign against Iraq based on what were genuine political assessments and accurate military intelligence.

In an article appearing in the same newspaper on 16 June, I expressed disquiet about the apparent absence of WMDs in Iraq. My critique of the case for war was based on the assessment that Iraq posed it a threat to international peace: it possessed WMDs and was likely to use them. Means and motive. If it is established that the weapons did not exist and the Coalition did or should have known this, the war will not have been justified and must be deemed immoral. A case for war against Iraq based solely on 'regime change' would have been inadequate and I would have been obliged to share this conclusion with those for whom I have a pastoral responsibility. As you can imagine, the personal cost would have been considerable. But matters of conscience are always of first-order importance. Let me conclude with five points.

The first responsibility of government is the safety of persons and the security of property. We all enjoy the security provided by the state. This creates an obligation to contribute to its maintenance. While this contribution might be made voluntary, the government is entitled to oblige citizens to perform military service. There is a need for an alternative to military service to be provided for those unable through conscience to participate.

Governments have privileged information that citizens do not possess. In relation to national security, citizens are usually unable to determine whether all avenues have been realistically exhausted in avoiding conflict or whether a neighbouring state poses a credible threat to persons and property. There must be a level of trust in government and some confidence in its capacity to act in a morally responsibly manner. If the government proves unworthy, citizens are at liberty to change the government by democratic means.

It is said that peace and stability are indivisible. How indirect does a threat to the security of a state or the stability of a region need to be before governments respond directly? Australia is a member of the United Nations and a number of other international bodies.

Australia is committed to upholding the rule of law and the resolution of disputes by arbitration. Australia is an international trading nation with ships and cargoes traversing the world's shipping routes. There are likely to be more perceptible threats to the interests of a nation such as Australia rather than less. Australia is obliged to contribute to the maintenance of the regional and international stability its people enjoys.

Australia is a highly organised and regulated society. Government participation in public affairs through regulation and control is extensive. Few areas of public life are without Government intervention. Consequently, Australians are not completely free from an element of complicity in the conduct of armed conflict. At the very least through payment of taxes, Australians contribute to the nation's capacity to use force in the resolution of conflicts within (by the Police) and without (through the ADF). Other than through direct participation in Defence industry or military service, Australians are not held to be individually responsible and therefore morally accountable for the actions of their government beyond the actions at the ballot box.

Through numerous laws and conventions, our society has left the individual to determine whether or not he or she can perform military service. A heavy burden is, therefore, placed on each of us to examine our social, political, philosophical and religious outlook. This examination will lead us to find that some of our beliefs involve conscience and conviction; others involve preference and ideology. Some of our beliefs touch on core values and virtues. They combine to hint at a vision of the kind of people who ought to be, individually and collectively, and form the basis of our attitude towards armed conflict. But we will also recognise that what we do about these beliefs unavoidably leads us into the realm of politics. In the end, there is no clear division or separation between our conscience and our politics. They are inevitably joined if not fused. Some beliefs are purely conscientious; others are plainly political. Most are a combination or a conglomeration; few are thoroughly thought out. As a society we must recognise conscience whereas we need only respect politics.

Perhaps this is why we have such difficulty in discussing armed conflict from a moral perspective. It is for this reason that we have walked away from obligatory national service and embraced volunteer recruitment. I believe the whole project of trying to recognise conscientious objection, and selective objection in particular, is administratively flawed and morally impossible. Sticking with voluntarism is the easy way out. It avoids many difficulties. This is no bad thing. But there may be a downside. Voluntarism allows us to sidestep debates we ought to have about matters we should not avoid.

The emphasis of my remarks today and much of the debate on conscientious objection throughout history has to do with wars whose initiation and conduct is contested. A different set of considerations might apply if conscription was limited to peacetime service for purely deterrent purposes or for peacekeeping missions where the moral imperative for doing something might be greater than the ethical consequences of doing nothing. Over the last 15 years, a number of ADF operations have made a substantial contribution to the maintenance of regional stability and the alleviation of human misery in instances where Australia does not, and will not, gain a pecuniary benefit. Namibia, Rwanda, Somalia, Cambodia, East Timor, Bougainville and the Solomon Islands come to mind. Indeed, our extant defence and security policy might even be accused of having an altruistic component. Wars are not what they used to be and military service has assumed a different moral character. In my lecture tonight, I want to explain why and when there can be a moral obligation for armed intervention in the affairs of a sovereign nation.