

Chapter 21

Grenada: The Spirit and the Letter of the Law*

Captain William T. DeCamp, US Marine Corps

During the predawn hours of 25 October, 1983, a multinational force from the United States and six Caribbean island nations launched "Operation Urgent Fury," the invasion of the island of Grenada in the eastern Caribbean Sea. President Reagan subsequently gave three reasons for the use of military force on Grenada. "First, and of overriding importance, to protect innocent lives, including up to 1000 Americans whose personal safety is, of course, my paramount concern. Second, to forestall further chaos, and third, to assist in the restoration of conditions of law and of governmental institutions to the island of Grenada."¹

Since the time of the invasion, there has been considerable discussion among the friends and foes of the United States, and among political factions within America, the focus of which has frequently been the international legality of the action. The purpose of this paper is to address, not only the legality of the rescue mission, but also the morality of the mission in the broader context of realpolitik.

Grotius identified the first just cause of war as, "an injury, which even though not actually committed, threatens our persons or our property. . . . The danger must be immediate, and as it were, at the point of happening. If my assailant seizes a weapon with the obvious intention of killing me, I admit too that I have a right to prevent the crime."²

On 27 October 1983, the Reagan Administration announced that evidence including "documents that were found at a Cuban military installation in the village of Frequente [indicated] that serious consideration was being given to seizing Americans as hostages. . . . It appears we got there just in time to prevent a tragedy."³

There were eleven hundred Americans on Grenada at the time of the invasion, eight hundred of whom were students at St. George's Medical School, which operated two campuses on the island. U.S. diplomats returning to Washington, D.C. from Grenada on 23 October reported to the Administration that there was high anxiety among many of the St. George's medical students. Bill Riffley, a medical student living off campus, surely received a dose of high anxiety when

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322 Readings on International Law

thirty Grenadians armed with Soviet AK-47 rifles kicked in the door of his house and held him and other students against their wills for three hours. Jeff Geller, another St. George's student, said, "We thought we could be potential hostages. We just wanted to get out, if we could."⁴ Charles Modica, the Chancellor of St. George's Medical School, indicated on 25 October that he did not believe the students were in danger. Modica was in New York at the time of his assessment. He later rescinded his statement after a briefing at the State Department. Why? Had he seen the so-called "hostage plan," or had he made a deal with the State Department to change his tune in exchange for future security on his Caribbean investment?

Those critics who would have us believe that the Americans on Grenada were never in danger, or that Americans on the island were endangered because of the invasion, should review the history of Grenada from 1979, paying particular attention to events immediately preceding the invasion. Of special interest is the first decree of the Austin Regime, which took power on 13 October and six days later brutally executed the former Prime Minister, Maurice Bishop, and members of his cabinet, along with numerous innocent civilians. Austin imposed a 24-hour curfew and announced over the island's radio that violators would be shot on sight. Americans on the island of Grenada were in grave and imminent danger, whether they knew it or not. In response to this situation, Gerhard von Glahn makes the point, "If the citizens of a state are mistreated in another state, the former, it has been asserted, possesses a lawful right to intervene on behalf of its citizens after all available peaceful remedies have been exhausted. Despite much opposing argument by certain writers, the practice of states supports this right as yet."⁵

The United States, its citizens being threatened and mistreated, and facing the challenge of "internal subversion and indirect aggression, with few [and no reliable] means short of force to counter such activities,"⁶ invaded Grenada and rescued the Americans on the island. There was no legitimate government to speak of or to speak to.

The second justification that President Reagan gave for the invasion of Grenada was "to forestall further chaos." Granted, "law cannot create order in international relations, but a minimum degree of order can greatly increase the effectiveness of international law."⁷ Once the United States and her Caribbean partners established order in Grenada, they could "assist in the restoration of the conditions of law and of governmental institutions to the island"—President Reagan's third reason for invading Grenada.

President Reagan did not choose to defend his decision to invade Grenada by applying the often used principles of invitational or humanitarian intervention. He might easily have claimed either of these justifications, and there are those who defend Reagan's decision based upon Scoon's invitation to the U.S.—transmitted through the Organization of Eastern Caribbean States by way of the Prime

Minister of Dominica—to intervene. After all, Scoon, not Austin, became the lawful authority in Grenada on Bishop's death. "Under generally accepted rules of international law, outside assistance cannot be requested by a government faced by a purely domestic civil war in which the outcome is in doubt, for such a government cannot truly speak for its country. But if a civil war is aided and promoted from the outside, by agencies of another state—if, in other words, subversive intervention has occurred—then the target government has a legal right to ask for assistance in its struggle to maintain itself. . . .

"Under the conditions described—that is, a civil war supported, on the rebel side, from the outside—third parties may assist the incumbent government regardless of a possible diminution of the control exercised by it over its national territory."⁸

In the case of Grenada, Scoon, the Governor-General, had a legal right to ask for intervention and the United States had a legal right to respond. The Soviet/Cuban actions in Grenada, it can be argued, amounted to "subversive intervention." Edmund Burke in his *Thoughts on the Cause of Present Discontents* said, "When bad men combine, the good must associate; else they will fall, one by one, an unpitied sacrifice in a contemptible struggle." President Reagan did not disclose Scoon's invitation initially for fear of Scoon's personal safety—Scoon being in Grenada at the time of his request for U.S. intervention.

But, claim Reagan critics, the Soviets were invited into Afghanistan in 1979. What, they ask, is the difference between the Soviet invasion of Afghanistan and the U.S. invasion of Grenada? For a clue one can examine Soviet actions after their invasion of Afghanistan. First, they promptly engineered a coup in which their "host," President Hafizullah Amin, and members of his family were brutally executed. Next, they then installed a new government led by Babrak Karmal, and they continue to wage war against the Afghani people five years later.

In the writer's view, there is a reasonable and strong case for humanitarian intervention. "If certain practices or actions, revolting when judged by generally accepted standards of morality and decency, continue to take place in a given state despite protests and objections by its neighbors, then humanitarian considerations outweigh the prohibition on intervention and justify a decision to interfere.

"If a moral consensus can be shown to exist, if the conscience of mankind is outraged by a repetition of repulsive practices within a state, then conceivably a moral justification may exist for intervention on the part of other states. The question remaining would of course, be the old one: Does the end justify the means? In this instance, justification might be admitted in favor of interference, provided an absence of selfish aims could be demonstrated."⁹

These justifications for the use of military force in Grenada have legal merit; however, if the Americans on the island were in danger, then no other justification was necessary. For the sake of discussion here, considerations will be

324 Readings on International Law

limited to the initial concerns for intervention. Nevertheless, it is easy to understand why those defending the Administrations's decision to invade Grenada felt compelled to give other justifications. Americans these days tend to ask not "Was that the right thing to do?" but rather, "Did we have a right to do that?"¹⁰ Traditionally, US citizens, arguing about wars, justified their Nation's conduct and judged the conduct of others. During the post-Vietnam era, Americans have tended to judge the conduct of their own government and justify the conduct of others.¹¹ The results of these trends are disturbing because, "they shape, and . . . are sometimes intentionally used to shape, the political climate: they promote national flinching."¹² Even more disturbing is the elevation of legality above morality by those who judge their nation. Was the use of force in Grenada moral? This is an important question. Put another way, did the United States, by invading Grenada, act in accordance with established international standards of good behavior?

There are those who seek to follow the letter of the law which can bring death and slavery, and there are those who follow the spirit of the law which leads to freedom—freedom for life, liberty and the pursuit of happiness. The Americans who judged our invasion of Grenada to be illegal opted to follow the letter of the law. Their answers to the questions posed above regarding the morality of America's use of force in Grenada are predicated on their answer to the age-old question: "Does the end justify the means?" Antagonists of the Administration fail to take into account the motive behind the use of the means. Therefore, let us look at several different approaches to the question of ends and means and address the critical question of motive as it pertains to the invasion of Grenada.

Gordon A. Craig and Alexander L. George, in their book, *Force and Statecraft*, discuss the problem of ethical and moral constraints on the use of force in foreign policy, and identify three schools of thought on whether and how moral principles apply in foreign policy. Each school of thought takes a different position on the question, "does the end justify the means?" The *amoralists* apply questions of morality to the ends only, not to the means to achieve those ends. The *perfectionists* argue that no matter how moral the ends, they never justify means that violate moral standards. A good example of a perfectionist is a pacifist who excludes the use of military force in all circumstances. Another type of perfectionist is the moralizer who dispenses with the question of the costs—to others as well as to himself—should his moralistic views on foreign policy actually be adopted. Some perfectionists espouse the idea that nations should behave according to the moral standards of individuals. The *nonperfectionists* reformulate the question so it reads: "Under what conditions do which ends justify what means?" This might be considered the realists' approach to the question; it is the

most difficult to apply in practice because chiefs of State can be guided only by very general principles in making decisions. For example:

- “The objective of a foreign policy action must be genuinely constructive and praiseworthy if the decision maker is even to consider choosing morally dubious methods on its behalf.
- “Morally dubious means should not be employed when less dubious means that may achieve the same objective are available.
- “A statesman should choose that course of action which, in the given circumstances, promises to cause the least destruction of things of value.
- “The statesman should be constrained in the choice of means by the ‘principle of proportionality.’”¹³

This paradigm can be helpful in analyzing the morality and legality of the Grenadian rescue mission.¹⁴

Reagan critics comparing the Grenadian action to the Soviet invasion of Afghanistan would certainly link the President with the amoral school described above. Those who make the Afghan analogy disparage means without addressing motive. They do not consider morality of intent.

“All the Grenadian operation has in common with recent Soviet enforcements of the Brezhnev Doctrine, so-called, is the unpleasant use of military force. If force per se is to be condemned [as it is by the perfectionists], if the legitimacy of its use under international law has nothing to do with intent or result, then it is anarchy merely disguised as law.”¹⁵ The Grenadians freely chose the type of government that they wished. Law and order was restored to the island and to the region, and the balance of power in the Caribbean basin was maintained. Legal arguments covered in the presence of a higher good, but few will argue that it would have been better to have had the pretense of law than the reality of moral victory.¹⁶

International law is a double-edged sword, providing protection for the innocent and judgment for the wrongdoer. Men who act illegally and immorally by international legal standards, are subject to judgment under the law. If international law provides protection for such men, its very purpose is subverted. General Austin, Mr. Coard, and others involved in the murder of Prime Minister Bishop, members of his cabinet, and innocent civilians in St. George’s should have been subject to the doubled edge of the sword of international law—*judgment*. “People who initiate massacres lose their right to participate in the normal (even in the normally violent) processes of domestic self-determination. Their military defeat is morally necessary.”¹⁷

General Austin had run amuck and was intent on murdering his political opposition. “Against the enslavement or massacre of political opponents . . . there may well be no help unless help comes from outside.”¹⁸ When, as in the case of Grenada, help does come from outside, the reaction of the indigenous population is a genuine gauge of the morality of the action. The

Grenadian people overwhelmingly supported the invasion, and their gratitude was evident to American servicemen, congressmen, and journalists who were on the island during and after the invasion. The Grenadian's only fears were that Americans would leave the island and the Cubans and Soviets would return. The Soviet reception in Afghanistan has not been that cordial.

If President Reagan were an amoralist, unconcerned with the morality of the means, would he have sent a delegation of State Department officials to Grenada at the eleventh hour in an attempt to arrange for the evacuation of Americans? It was only after those officials returned from Grenada on 23 October, indicating that conditions on the island were near anarchy and their efforts had been obstructed at every turn, that the President made the final decision to use force to rescue Americans on the island.

The perfectionists and the moralizers among the critics of the invasion based their criticism on the belief that the United States' action violated the Charter of the United Nations, the Treaty of the Organization of American States and other conventions whose articles outlaw war. It is in these articles that the ideal is found. They ignored the articles in those conventions that attempt to limit war, and it is in those articles that legal justification for the Grenadian rescue mission can be found. "The U.N. Charter was supposed to be the constitution of a new world, but for reasons that have often been discussed, things have turned out differently. To dwell at length on the precise meaning of the Charter is today a kind of utopian quibbling. And because the U.N. sometimes pretends that it already is what it has barely begun to be, its decrees do not command intellectual or moral respect, except among the positivist lawyers whose business it is to interpret them. The lawyers have constructed a paper world, which fails at crucial points to correspond to the world the rest of us live in."¹⁹

The United Nations attempted to condemn the United States for the Grenadian invasion. The fact that they were unable to do so points out the inherent flaws in the Charter. "Only he can judge of matters great and wise whose soul is likewise," said Montaigne. "In the United Nations' short history there have been many hundred uses of force by members for territorial aggrandizement or religious, ideological, or ethnic advantage. If the United Nations, which condemned Zionism as racism, and would not condemn the Korean Airlines massacre, condemns the United States, it should be told that the world needs more uses of force such as the Grenadian invasion. . . ."²⁰

The moralizers must be forced to deal with the costs of the adoption of their views in the real world. The potential costs far outweigh the benefits in practice. "Does an absolute condemnation of all warfare not put peace-loving nations at the mercy of those animated by an ideology of domination?"²¹ Should the people of Grenada have been dominated by armed thugs against whom they were defenseless? Implicit in these questions is the Manichaean division of the world, and for this there can be no apology, because twentieth century history and

political philosophy detail the aggressive nature of Marxism-Leninism. On the other hand, "domination of other peoples, as we have seen, has always created an uneasy feeling in Americans; they naturally look towards establishing the institutions of freedom wherever they go."²² Americans do not resort to the use of force simply to establish these institutions. American forces remained in Grenada after the operation for humanitarian and strategic reasons, and to insure the Grenadians' rights to choose their own form of government. If the perfectionists or the moralizers had had their way, the immediate costs might have been the loss of that right to choose and the loss of other rights which we Americans often take for granted.

"The morality of foreign policy can be questioned not only when a state takes actions that conflict with ethical principles, but also when it fails to take actions to further a moral objective."²³ President Reagan had a good objective, and yet the moralizers demanded passivity. They talked about the law—how humanitarian, invitational intervention violated this treaty or that treaty. They talked about the "moral high ground" and how America would lose it by using force in Grenada. And they talked about Article 2 of the UN Charter, as the ideal. They should have taken note of American democratic ideals and the strong influence they exert upon American foreign policy. They should have studied ethics where they would have found that "it is in the extension of the notion of solidarity with others that the first evolution of ethics is to be seen. . . . In the history of man, this idea of responsibility toward others has been wholly or partially formulated in various cultures at various times."²⁴ It is a morality based on action. Altruism does not call for resignation, but rather, enhanced activity on behalf of humanity. "Slogans about nonintervention, and solemn disavowals of force, might allow Americans to seize the rhetorical high ground. The Soviet Union would continue to occupy more and more real ground,"²⁵ and neither one would ever reach the moral high ground, which is our primary objective. Alexander Solzhenitsyn said that to speak about high values and then never defend them is impotence.

Alexis de Tocqueville recognized idealistic, abstract, but moral goals such as justice, dignity of the individual, freedom and equality. He also recognized the duality of our natures, and he spoke of a pragmatic sphere in which we assess what works too. He took a contextualist approach to the question of whether the ends justify the means, just as the nonperfectionists do. President Reagan approached the crisis in Grenada in a nonperfectionist way, taking into account all the circumstances of the situation. He was guided by general principles in his decision. His objective was "genuinely constructive and praiseworthy." He exhausted "less dubious means" to achieve his objective. The President chose a course of action which caused "the least destruction of things of value," if we are to consider de Tocqueville's intangibles as things of value. Finally, he was "constrained in the choice of means by the principle of proportionality." Critics

of Reagan's use of force in Grenada are particularly fond of zeroing in on the numbers of American fighting men that landed on Grenada to evict a few hundred Cuban "construction workers." "People who only ask how much is enough, or how few we can barely get by with, tend to develop an instinct for the capillaries. That is not the instinct it is wisest to cultivate if you want to win real—not bureaucratic—battles."²⁶

"The facts of war are often in total opposition to the facts of peace The efficient commander does not seek to use just enough means, but an excess of means. A military force that is just strong enough to take a position will suffer heavy casualties in doing so; a force vastly superior to the enemy's will do the job without serious loss of men."²⁷

President Reagan, in his decision to use force in Grenada, balanced morality, legality, and reality; nevertheless, like Melville's Billy Budd, he was lauded by the people but hung legally for doing what was morally right.

The realities of geopolitics, national policies, economics, and military strategy may all have been considered by the Reagan Administration prior to the President's decision to invade the island. Nevertheless, ideas and ideals, based on definite moral preoccupations, were a very important factor in the President's decision-making process, and led him to conduct American foreign policy as he did in Grenada. "The judgments we make are best accounted for if we regard life and liberty as something like absolute values and then try to understand the moral and political processes through which these values are challenged and defended."²⁸

The United States' action to protect the lives of Americans and Grenadians by conducting an invasion of the island of Grenada secured the real and moral high ground for America. The temporary occupation of the island—a source of irritation to Reagan critics—insured for the Grenadians, life, liberty, choice and security against the forces that threatened them in the first place. "The world of war is not a fully comprehensible, let alone a morally satisfactory place. And yet it cannot be escaped, short of a universal order in which the existence of nations and peoples could never be threatened. There is every reason to work for such an order. The difficulty is that we sometimes have no choice but to fight for it."²⁹

It is important for us, during this critical time in our history, to recall the words of John Stuart Mill: "War is an ugly thing, but not the ugliest of things. The ugliest is that man who thinks nothing is worth fight or dying for." In Grenada, American soldiers, sailors, and marines fought so that others might enjoy life and liberty and the ideals that de Tocqueville so eloquently elaborated over a century ago. We mourn for those who died on Grenada, but celebrate in the knowledge that the United States of America is still willing to defend those ideals when challenged. America's moral courage is equal to the physical courage of her

warriors. The cost of American action in Grenada was great, but the cost of inaction might have been far greater. The Spirit lives.

Captain DeCamp was serving as the Commanding Officer H&S Company, 3rd Battalion, 8th Marines at the time this article was first published.

Notes

1. *Text of Briefing at the White House*, The Boston Globe, 26 October 1983, p. 2.
2. GROTIUS, *THE LAW OF WAR AND PEACE* 73 (Kelsey trans. 1925).
3. Philip Taubman, *U.S. Reports Evidence of Island Hostage Plan*, The New York Times, 28 October 1983, p. A14.
4. *Why the Surprise Move in Grenada—And What Next?* U.S. News and World Report 33 (7 November 1983).
5. VON GLAHN, *LAW AMONG NATIONS* 161 (1976).
6. *Weighing the Proper Role*, Time 49 (7 November 1983).
7. FAWCETT, *LAW AND POWER IN INTERNATIONAL RELATIONS* (1982).
8. *Supra* n. 5 at 163-164.
9. *Id.* at 165-166.
10. Will, *The Price of Power*, Newsweek 142 (7 November 1983).
11. WALZER, *JUST AND UNJUST WARS* xiii (1977).
12. *Supra* n. 10 at 142.
13. CRAIG & GEORGE, *FORCE AND STATECRAFT* 275-276 (1983).
14. *Id.*, chap. 19.
15. Yoder, *Military Action and the Lawyers' Quibbles*, The Boston Globe, 29 October 1983, p. 15.
16. *Supra* n. 15 at 15.
17. *Supra* n. 11 at 106.
18. *Id.* at 101.
19. *Id.* at xiii.
20. *Supra* n. 10 at 142.
21. *French Bishops Face Up to Nuclear Peril*, The Wall Street Journal, 29 November 1983.
22. PERKINS, *THE AMERICAN APPROACH TO FOREIGN POLICY* 72 (1962).
23. *Supra* n. 13 at 270.
24. SCHWEITZER, *THE EVOLUTION OF ETHICS*, *Unified English Composition* 241.
25. *Supra* n. 10 at 142.
26. Woolsey, *Military Options: Backward March*, The Washington Post, 25 February 1980, p. A22.
27. WATSON, *CHIEF OF STAFF: PRE-WAR PLANS AND PREPARATIONS (U.S. ARMY IN WORLD WAR II)* 12 (1950).
28. *Supra* n. 11 at xvi.
29. *Id.* at 327.