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Publication Details

Beard, M. T. (2014). War rights and military virtues: A philosophical re-appraisal of Just War Theory (Doctor of Philosophy (PhD)). University of Notre Dame Australia. http://researchonline.nd.edu.au/theses/96

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War Rights and Military Virtues

A Philosophical Re-appraisal of Just War Theory

Doctoral Thesis

Prepared by Matthew T. Beard

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University of Notre Dame, Australia

Supervised by Christian Enemark and Hayden Ramsay

Supported by The Morris Research Scholarship

Declaration

I, Matthew Thomas Beard, declare that this PhD thesis, entitled War Rights and

Military Virtues: A Philosophical Re-appraisal of Just War Theory is no more than

100,000 words exclusive of title pages, table of contents, acknowledgements,

list of figures, reference list, and footnotes. The thesis is my own original work,

prepared for the specific and unique purposes of this academic degree and has

not been submitted in whole or part for the awarding of any other academic

degree at any institution. Where work is not my own original contribution, it

has been referenced appropriately.

Matthew Thomas Beard

30/5/14

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Abstract

The overwhelming majority of theorists addressing questions of the morality of war do so from within the moral framework provided by Just War Theory (JWT): a normative account of war that dates back over 1500 years in the Western Tradition. However, today's iterations of Just War Theory are markedly different from those of its intellectual ancestors. Specifically, today's accounts tend not to consider matters of moral virtue, personal excellence, moral psychology, or human flourishing – that is, aretaic matters – to be worthy subjects of discussion. Instead, they prefer to focus overtly on questions of law, justice, and human rights – deontological questions – as if they were the entire purview of a comprehensive morality of war.

I explore some of the major theorists in the history of Western JWT, showing that the ancestors of today's just war theories did consider aretaic matters – in particular the moral virtues – to be of central importance to the morality of war. I also show how and why it came to be that deontological and aretaic discussions became fragmented in contemporary JWT.

In order to demonstrate how this fragmentation is problematic, I consider deontological ethics' connection to aretaic ethics. I explain how contemporary JWT tends to conceptualise rights, emphasising the central place of intention in those theories. I show how aretaic ethics can enrich deontological appraisals of ongoing debates in military ethics.

Finally, I make a positive case for aretaic ethics by identifying *new* questions that aretaic ethics reveals to JWT, those being: the complexity of the identity of soldiers, how moral character and identity can help prevent moral transgressions, and the moral and psychological trauma suffered by many soldiers and veterans. I argue that aretaic modes of thinking help to explain moral transgressions of soldiers and the psychological difficulties that veterans can experience post-war.

Deontological and aretaic ethics also interact in the three professions most relevant to waging war: soldiers, commanders, and political leaders. I show how the virtues are necessary character traits in order to guarantee that warfighters and their political leaders can be relied on to fulfil their professional duties. Aretaic ethical analysis is also able to provide conceptual understanding of supererogatory actions.

Contemporary just war theorists would be wise to re-integrate aretaic ethics into their considerations of the morality of war. Aretaic ethics can be combined seamlessly and productively with deontological ethics, yielding more robust and intelligible responses to the most pressing controversies facing military ethics today. Rights and deontology present crucial elements of the ethics war, but they can be ably complemented by insights from aretaic ethics; specifically, matters of character and the moral development of the agent. Furthermore, incorporating aretaic ethics into JWT enables theorists to utilise that framework to consider matters currently outside of its purview, but which are of growing relevance to military practice.

Acknowledgements

This thesis has been three-and-a-half years in the making, and I am not the same man today that I was when it began. I am, however, all the better for having written it.

This thesis could not have been completed without the generous support of Mr. Karl Morris. Karl's generosity led to the creation of the Morris Scholarship for Ethics, of which I was the inaugural recipient. I am extremely grateful for Karl's financial support, but also for his interest in the progress of my thesis and the development of my ideas.

I offer my thanks to my supervisors, Christian Enemark and Hayden Ramsay. Christian accepted the role of supervisor at the beginning of 2013 when my thoughts were at their least coherent. That I completed a thesis at all – irrespective of quality – is testament to Christian's kindness, wisdom and professionalism. Thanks are also due for Christian's continual efforts to ground my philosophical hand-wavings in the empirical realities of war and military practice: this thesis is much more grounded for the expertise and advice provided in marathon meetings in Canberra and over Skype!

Hayden has been my mentor and friend since my philosophical studies began in 2008. He has been a source of constancy, stability and reason throughout the writing of this thesis. Most of all, his philosophical demeanour and spirit

have been sources of inspiration and example that I have (perhaps embarrassingly) sought to replicate.

To those who proof-read this thesis in part or in full, Elle Glynn, Nick Evans, and Jenn Edgar, thank you. My apologies if I was unable to make all the changes you recommended. My work is much stronger for your help.

Academic support is only a small part of what it takes to complete a thesis. Immense thanks are due to my parents, Mark and Jane, and siblings, Bec, Andrew, Nathan, Rachel and Emily, for their love, support, hilarity and distraction for the duration of this. Thanks also to my future in-laws, Garth, Sandra and Michelle for their interest, love and support. To my colleagues at the Centre for Faith, Ethics & Society, Sandra Lynch and Elle Glynn, thank you for tolerating my occasional madness, providing wonderful sounding-boards for my ideas, and allowing me to balance the demands of my employment and scholarship. Without you both, the last shred of my sanity would be long gone.

My life writing this thesis has been a paradox. Whilst my mind, readings and writings have been occupied with war, death and sorrow, I have enjoyed the most surreal peace I've ever known. To Jennifer Edgar – soon to be Jennifer Beard – who was a stranger when this thesis begun and will be my wife before it is awarded, I offer my deepest and most sincere thanks. You have been my Helen and my Andromache – my comfort and my compass, my motivation and my salvation, my peace and my joy – since the day I met you. Thank you for making this work the second most important project in my life, and

especially for helping me in the final week before submission, when I couldn't help myself.

In particular I acknowledge my late Grandfather, Leading Shipman Robert George McNamara, who served in the Royal Australian Navy from 1947-1970. Pop, like so many others, wore his duty with silent, stoic pride. The pride he took in his service and his country was matched only by the love he held for his family.

Finally, I acknowledge those for whom this thesis actually promises to be of some assistance: those for whom war is a practical reality and for whom peace is far rarer than it has been for me. I hope that, in some way, my work may be of service. At my grandfather's funeral, a member of the local RSL branch recited the following verses. The first speaks of peace, the second of safety. It seems to me that more can be done to provide both to soldiers, veterans, and all those responsible for decision-making in times of war.

O valiant hearts who to your glory came

Through dust of conflict and through battle flame;

Tranquil you lie, your knightly virtue proved,

Your memory hallowed in the land you loved.

- Oh Valiant Hearts

Eternal Father, strong to save,

Whose arm hath bound the restless

wave,

Who bidd'st the mighty ocean deep

Its own appointed limits keep;

Oh, hear us when we cry to Thee,

For those in peril on the sea!

- Eternal Father, Strong to Save

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Chapter One

Introduction

As a work of moral philosophy,¹ throughout this thesis I make use of particular language, concepts, and theories drawn from that discipline. Some of the concepts, like 'virtue' or 'character', are defined differently by different theorists or fields of study. It will therefore be important to clarify what I mean by particular terms, and how I utilise particular concepts. I begin by introducing and contrasting deontological, consequentialist, and aretaic ethics before moving to discussion of the general territory of military ethics; specifically, the debate between realism, pacifism, and Just War Theory (JWT).² In some cases, my discussions will allude to matters about which there are differing opinions and ongoing debates – at those times I acknowledge those debates, but delving into them deeply will do little to serve my purposes here. This opening chapter establishes two things: first, the operational meaning of key concepts employed throughout this thesis, and secondly, the

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¹ There is debate regarding the correct usage of 'ethics' and 'morality' in some spheres of academic philosophy. Bernard Williams, for instance, saw 'morality' as best represented by the work of Immanuel Kant, and closely connected to the concepts of obligation and blame. Ethics, by contrast, was sympathetic to the Aristotelian project of describing the good life broadly with respect to projects, emotions, virtues, and so on. See: Bernard Williams, *Ethics and the Limits of Philosophy*, (Oxon: Routedge, 2006), especially Chapter 10, 'Morality, the Peculiar Institution', 193-182. However, insofar as there is no consistent usage of the terms 'ethics' and 'morality' amongst the many theorists I discuss in this thesis, I do not take a position on this debate. Instead, I treat the terms morality and ethics as equivalent, and use them interchangeably throughout the work.

² Hereafter, I use 'JWT' to describe Just War Theory as a general set of principles that unify a large number of theorists. I use "just war theory" without capitals to describe the theory of a particular theorist; e.g. "Beard's just war theory.'

conceptual position of the thesis within the discipline of philosophical applied ethics (also known as moral philosophy).

Although at times I speculate about matters of significance to fields such as history, international relations, political science, literature, and psychology, I only do so when it has bearing upon the *moral* significance of the issue at hand. Moral philosophy, or ethics, is a sub-discipline of philosophy concerned with questions of right and wrong, the nature of happiness, and – most importantly for this thesis – questions of good or evil dispositions and choices made by people. It prompts us to ask questions such as: *how should I live; how should I act; how should other people be treated; which actions are morally good ones?*

Most relevant to this thesis is the sub-discipline of moral philosophy known as 'applied ethics.' This branch of ethics considers how our understanding of right and wrong underpins specific walks of life, such as business, medicine, sport, or the military. Thus the existence of applied fields like 'business ethics' and 'military ethics.' Sometimes actions which would be unjustifiable in everyday life are subject to different considerations because of the role a person is serving: thus, whilst almost everyone would agree that cheating in an exam is wrong, many will see cheating in a sports match (diving in football, for example) morally permissible (even if against the spirit of sportsmanship). This is a more specific manifestation of the question how should I behave? Specifically, it asks how should I behave in a particular practice/profession?

This thesis will focus largely on the specific applied field of military ethics, but it will also address questions regarding how one ought to live. It will explore what the good life consists of for those engaged in waging wars, and how the process of waging war might make living a good life more difficult. In the course of this exploration, some facts about war will become relevant, for instance the growing rates of Posttraumatic Stress Disorder³ (PTSD) in veterans. Large portions of this thesis will deal with the questions of how individual warfighters and political leaders should and should not behave, the reasons why certain acts should be performed and others not, and how to encourage people to do the right thing, even when it is hard. However, these questions will be undertaken in subsequent chapters. In this chapter, I focus on the basic theories most relevant to this thesis: deontological ethics, consequentialism, aretaic ethics, and military ethics.

1: Approaches to Moral Philosophy

1.1: Deontological and Consequentialist Ethics

Deontology, coming from the ancient Greek *deon*, meaning duty, is a moral system premised on the claim that morality consists in adhering to certain rules of behaviour. Most deontologists argue that "what makes a choice right

[.]

³ I use the term "disorder" in conformity with the most recent iteration of the *Diagnostic and Statistical Manual of Mental Health Disorders*' (DSM-5) description. I note, however, that this is a contested point, as some within the military seek to re-categorise PTSD as 'Post-Traumatic Stress *Injury*'. My use of the term disorder here is not intended to weigh into that debate in any way, although I consider it an important matter.

is its conformity with a moral norm. Such norms are to be simply obeyed by each moral agent."⁴ Typically associated with the Enlightenment philosopher Immanual Kant, deontology argues that moral agents (who are usually defined as rational beings) have absolute moral duties regarding the way that moral agents should be treated.

Kant's duties include prescriptions against any action which treats a person as a means (or instrument) to my own ends. These include (for example) forbidding murder, lying, and stealing because they treat people only as tools or obstacles on the way to achieving my own personal goals. Not only does deontology require a person to act (or not act) in certain ways, but it holds that people have a *duty* or *obligation* to act in those ways.⁵ Thus, what compels a person to do what is right is the fact that he⁶ is obligated to do so. These duties, furthermore, are a product of our reason: moral laws refer simply to acting as a rational, morally autonomous agent would act if he were always acting as such.

Although deontology is often associated with Kantian philosophy, it can also refer simply to any approach to morality which understands good actions to

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⁴ Larry Alexander & Michael Moore, 'Deontological Ethics', in *Stanford Encyclopedia of Philosophy*, 2012, http://plato.stanford.edu/entries/ethics-deontological/>.

⁵ Brian Orend, 'The Rules of War', *Ethics and International Affairs*, vol. 21, iss. 4, 2007, 471-476 at 473.

⁶ Throughout this thesis I use the masculine pronoun in cases such as this. My reasons for doing so are twofold: first, because repeatedly using "his or her" will prove clumsy and logistically problematic due to word restrictions, and secondly because although things are changing in the West, the overwhelming majority of military practitioners today still tend to be men. However, I recognise that this is not a perfect solution to a problem that is much contested within academic practice. I hope, however, that it will not be taken to be offensive by any reader.

be those which adhere to an unwavering set of rules. Thus, the set of moral requirements laid out by the Ten Commandments presents a set of deontological requirements. This is why many ethicists describe deontology as a "rule-based ethic." Also important is that deontology is not usually concerned with the consequences of an action; at least not enough for the consequences to justify acting against one's duty.8 It does not matter if killing one person allows me to save one hundred people, to kill one person would be to violate the duty (rule) against killing. It is therefore forbidden. An exception to this rule is the theory known as "threshold deontology": "A threshold deontologist holds that deontological norms govern up to a point despite adverse consequences; but when the consequences become so dire that they cross the stipulated threshold, consequentialism takes over."9 Threshold deontology has found sympathy amongst many military ethicists, evidenced by discussions of "supreme emergencies," which will be explored throughout this thesis. The centrality of rules in deontology has also found manifestation in the military in a specific form: the form of codified *laws* that regulate how states and individuals conduct themselves during war.

Threshold deontology is a manifestation of deontological ethics that makes concessions to a different moral theory known as consequentialism. Consequentialism argues that actions are judged as good or bad based solely

⁷ C.f. Maheran Zakaria & Norhaini Mat Lajis, 'Moral Philosophies Underlying Ethical Judgments', *International Journal of Marketing Studies*, vol. 4, no. 2, 2012, 103-110 at 103; Peter Olsthoorn & Rene Moelker, 'Virtue Ethics and Military Ethics', *Journal of Military Ethics*, vol. 6, no. 4, 2007, 257-258 at 257.

⁸ Alexander & Moore, op. cit.

⁹ Ibid.

on the outcomes they yield.¹⁰ This mode of thinking, is described by one of its early proponents, John-Stuart Mill, as:

The creed which accepts as the foundation of morals "utility" or the "greatest happiness principle" [and which] holds that actions are right in proportion as they tend to promote happiness; wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure and the absence of pain; by happiness, pain and the privation of pleasure [...] what things it includes in the ideas of pain and pleasure, and to what extent [...] is left an open question. But these supplementary explanations do not affect the theory of life on which this theory of morality is grounded.¹¹

Consequentialism (also called utilitarianism)¹² is commonly described by the catch-cry 'the greatest good for the greatest number.' When evaluating what one should do in a particular circumstance, a person ought to consider the various possible consequences on all the people involved, and choose the course of action that maximises the amount of happiness enjoyed. In the context of military ethics, consequentialism may justify, for instance, an air strike destroying a village housing both insurgents and large numbers of civilians. In this case, the deaths of the civilians are weighed against the benefits of killing the insurgents (including the civilians those insurgents are

¹⁰ Walter Sinnott-Armstrong, 'Consequentialism' in *Stanford Encyclopedia of Philosophy*, 2011, http://plato.stanford.edu/entries/consequentialism/>.

¹¹ John-Stuart Mill, *Utilitarianism* in Steven M. Cahn & Peter Markie (eds.), *Ethics: History, Theory, and Contemporary Issues* (3rd edition), (Oxford: Oxford University Press, 2006), 320.

¹² I am aware that using this terminology interchangeably is a vexed matter and that the differences are a matter of debate. However, insofar as (i) the outcome of that debate will have no impact on this work, and (ii) many of the theorists I treat throughout this thesis use the terms in different ways, I treat them as synonymous for the purposes of this discussion.

likely to kill in the future): the fact that the latter outweighs the former justifies the action.

Whilst consequentialism reveals that the outcomes of the deeds that we undertake are of relevance to moral evaluations of those deeds, in many ways JWT exists as a safeguard against unchecked consequentialism of the kind described above. Michael Walzer, perhaps the most influential just war theorist alive today, argued that:

[T]he limits of utility [...] don't explain the most critical of the judgements we make of soldiers and their generals. If they did, moral life in wartime would be a great deal easier than it is. [...] soldiers [are invited] to calculate costs and benefits only up to a point, and at that point it establishes a series of clearcut rules – moral fortifications, so to speak, that can only be stormed at great moral cost.¹³

Walzer acknowledges simultaneously the moral importance of consequences and the need to refrain from investing them with the sum total of moral value. And indeed, as we will come to see, JWT also holds consequences to be morally significant in both the political decision to go to war and in the waging of war. However, despite the moral status of consequences in JWT, I do not spend as much time discussing consequentialism as I do focussing on deontological and aretaic ethics. The reasons for this are twofold. First, I believe that politicians and warfighters who acted in accord with a coherent account of the deontological and aretaic ethics of war *will* consider

¹³ Michael Walzer, *Just and Unjust Wars* (4th edition), (New York: Basic Books, 2006), 130.

consequences appropriately; that is, JWT can adequately satisfy consequentialist concerns within aretaic and deontological frameworks.

Secondly, this thesis considers how JWT has fragmented over time and addresses problematic consequences of that fragmentation, none of which emanate directly from its interaction with consequentialist modes of thinking. Rather, I hold that it is problematic appraisals of deontological and aretaic matters that present as the most serious problems for contemporary just war theorists. Even where consequentialism *appears* to be part of the problem (as in, for instance, the growth of threshold deontology), it is a much smaller problem than the fundamental flaws in our considerations of aretaic and deontological concerns.

Military ethics has had a long and complex relationship with deontology that continues today. This is in part because some of the first military ethicists, at least in the Western tradition, were Christian moral theologians and proponents of the moral theory known as natural law. Natural law theory holds that all human beings inherently (and inevitably) tend toward certain goods, and that morality consists in achieving those goods (such as life, friendship, knowledge, leisure, and so on) in a manner that accords with reason. The existence of these basic goods as the goal (or *telos*) of human activity, and which are derived from and constitutive of human nature, form

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¹⁴ C.f. Mark Murphy, 'The Natural Law Tradition in Ethics', in *Stanford Encyclopedia of Philosophy*, 2011, http://plato.stanford.edu/entries/natural-law-ethics/; Germain Grisez, Joseph Boyle, and John Finnis, 'Practical Principles, Moral Truth & Ultimate Ends', *American Journal of Jurisprudence*, vol. 32, 1987,99-151; Robert George, 'Natural Law and Human Nature' in Robert George, (ed.), *Natural Law Theory: Contemporary Essays*, Oxford University Press, Oxford, 1994.

particular normative requirements regarding how one ought to behave (for instance, because life is a basic good, one ought not to intentionally destroy life). This is where the *law* component of natural law emerges.

This is important to explain because it is the concept of *law* that gives military ethics the strong relationship with deontology that it has today. As we will see in the following chapter, it was later natural law theorists who began the project of developing a codified Law of War. These laws represented absolute moral responsibilities for soldiers, political leaders, prisoners of war, priests, noncombatants, and others. Good conduct consisted in obedience to the law, whilst unethical conduct was understood as a breach in the law. In the modern period, these laws have come to be based in *rights*. The laws of war, which are now enshrined in positive international law, are designed to protect the rights of both states and individuals from being unjustly harmed during war.

As such, deontological ethics serves to explain (i) what duties are incumbent on those involved in war, and therefore what the laws of armed conflict should be; (ii) where those duties come from (in the case of modern JWT, as we will see in chapter three, duties are grounded in the moral rights of individuals); and (iii) whether a particular action serves to violate a duty or not. We will see in the third section of this chapter that in the most common formulation of JWT deontological norms manifest in the form of a variety of different principles of conduct: each of these principles is a moral duty that applies universally to those involved in waging war.

1.2: Aretaic Ethics

The second moral philosophical theory that will be relevant to this thesis is aretaic ethics. I use the term aretaic to refer to this area of moral philosophy after the Ancient Greek word *arete*, meaning virtue, or "the goodness or excellence of a thing." The term 'aretaic' is here understood broadly to include (to borrow from Martha Nussbaum) "concern for the role of motives and passions in good choice, a concern for character, and a concern for the whole course of an agent's life." William Frankena describes aretaic reasoning by distinguishing it from deontological reasoning:

In some of our moral judgments, we say that a certain action or kind of action is morally right, wrong, obligatory, a duty, or ought or ought not to be done. In others we talk, not about actions or kinds of action, but about persons, motives, intentions, traits of character, and the like, and we say of them that they are morally good, bad, virtuous, vicious, responsible, blameworthy, saintly, despicable, and so on. In these two kinds of judgment, the things talked about are different and what is said about them is different. [...] I shall call the former *judgments of moral obligation* or *deontic* judgments and the latter *judgments of moral value* or *aretaic* judgments.¹⁷

¹⁵ Simon Blackburn, 'Arete', in *Oxford Dictionary of Philosophy*, (Oxford: Oxford University Press, 2008), 22.

¹⁶ C.f. Martha Nussbaum, 'Virtue Ethics: A Misleading Category?', *The Journal of Ethics*, vol. 3, no. 3, 1999, 163-201 at 163.

¹⁷ William Frankena, Ethics (2nd edition), (New Jersey: Prentice-Hall, 1973), 9.

David L. Perry describes aretaic judgements as focussing "on motives and character traits rather than right or wrong actions." However, it is more accurate to describe aretaic judgments as being concerned with the *interaction* of motives and character traits with right or wrong actions. Aretaic ethics considers (i) how the motives, dispositions, feelings, and character of the person can influence the type of actions that person will perform; and (ii) the inverse: how actions serve to shape subsequent motives, dispositions, feelings, and character. These two matters are evaluated insofar as they support or undermine the project of living a morally good life.

For the ancient Greeks, in particular Aristotle, each thing in existence – humans included – possesses a function (*ergon*) which it is intended to perform. For instance, the function of an apple tree might be said to be the production of apples. This function is its purpose, or end (*telos*). *Arete*, or virtue, consists in those traits which assist in achieving one's *telos*. However, this means that *arete* differs with each different thing: virtue is not always the same. To understand what virtues are for human beings, we must understand what the *telos* of human beings is. This, Aristotle argues, is wellbeing: "activity of the soul [reason] in conformity with excellence [...] in a complete life." ¹⁹

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¹⁸ David L. Perry, *Partly Cloudy: Ethics in War, Espionage, Covert Action, and Interrogation,* (Lanham: The Scarecrow Press, 2009), 5.

¹⁹ Aristotle trans. Jonathan Barnes, *Nicomachean Ethics*, in Jonathan Barnes (ed.), *The Complete Works of Aristotle: Volume Two*, (New Jersey: Princeton University Press, 1995), Bk. 7, 1098a16-19. All references to Aristotle's works hereafter are from Barnes' two-volume translation. Aristotle in fact uses the word *eudaimonia*, but for reasons explained later in this section, I use the 'well-being' instead.

Wellbeing attempts to address the question that economists today call 'quality of life' – that is, the overall standard of a person's life, all things considered. For Aristotle, quality of life was determined by assessing how consistent a life had been with the activities that best typify human nature: activities in accord with the virtues. However, this is not the only way to assess quality of life, and wellbeing is, even amongst philosophers interested in aretaic ethics, a loaded and controversial concept. Rosalind Hursthouse explains why:

[W]ellbeing is, avowedly, a moralized, or "value-laden" concept of happiness, something like "true" or "real" happiness or "the sort of happiness worth seeking or having." It is thereby the sort of concept about which there can be substantial disagreement between people with different views about human life that cannot be resolved by appeal to some external standard on which, despite their different views, the parties to the disagreement concur.²⁰

Because wellbeing, in this context, relies on a specific account of human nature and the virtues that lead to human flourishing, it differs substantially from modern accounts. A person who is, by Aristotle's standards, mediocre or even vicious²¹ may still be considered happy under modern conceptions, which accept more subjective accounts of what constitutes happiness. Which account is the correct one is a question not directly relevant to this thesis. Instead, I use the concept of wellbeing to describe, literally, the process of living well. This is helpful because unlike happiness or flourishing, wellbeing is free of

²⁰ Rosalind Hursthouse, 'Virtue Ethics' in *Stanford Encyclopedia of Philosophy*, 2012, http://plato.stanford.edu/entries/ethics-virtue/#2.

²¹ Today, the word vicious is commonly taken to mean mean-spirited or spiteful. In this context, however, it is a description of acts that are characterised by a moral vice: i.e. bullying is vicious, but so is over-eating gluttonously during meals.

normative weight: for example, a person's psychological wellbeing is not necessarily a reflection on their moral character whereas their flourishing, at least by Aristotle's standards, is. Similarly, wellbeing is not so vague or fleeting a concept as happiness: a red light when running late or missing the first five minutes of a favourite TV show might be enough to make someone unhappy, but it is unlikely to threaten their wellbeing. Furthermore, wellbeing is, unlike happiness, something that can be assessed according to criteria. Whether or not a person feels happy is subjective; however, whether or not a person can be described as having wellbeing (or 'living well') can be assessed based on a number of criteria, some of which are subjective, but others that are objective. Some of the criteria of wellbeing that will be explored specifically in this thesis are: moral virtue, psychological stability, physical health, a sense of acceptance amongst one's peers and community, subjective experience of satisfaction at one's life, positive self-esteem, a certain level of cognitive ability, and harmony between the various things a person commits to in his life.

Aristotle argued that *arete*, or virtue, consists in those traits that enable a thing to behave in a way harmonious with their nature, thus leading to a state of wellbeing. Thus for the carpenter, whose purpose is to craft objects from wood, *arete* consists in the ability to seamlessly connect different pieces of wood, to have an artistic eye, a steady hand, and so on. The excellent human life, however, consists of excellences of a variety of different kinds. Wellbeing will consist in a person's possessing all of the excellences relevant to a person's life: physical health, skill in their crafts, and, particularly importantly for ethicists, virtue. The virtues, habits that direct a person toward excellence, define a person's character and make it easier for them to behave well.

Given that this is a thesis on military ethics, and is thus largely concerned with action, why not simply focus on the moral virtues? Why be concerned with aretaic judgements about wellbeing as opposed to simply discussing virtue ethics? After all, are virtues like courage, justice, benevolence, self-discipline, and loyalty not the most important aretaic factors when discussing the ethics of war? In part, this is true: much of this thesis will focus on the moral virtues and the virtuous character of military practitioners. However, to limit discussion *only* to those areas is to overlook the various ways in which the military life affects and shapes wellbeing. This is one way in which aretaic ethics is broader than virtue ethics, as MacIntyre explains:

Plato in both the *Gorgias* and the *Republic* looked back to Socrates and asserted that "it is better to suffer tortures on the rack than to have a soul burdened with the guilt of doing evil." Aristotle does not confront this position directly: he merely emphasizes that it is better still both to be free from having done evil *and* to be free from being tortured on the rack.²²

Similarly, although it is better that military practitioners possess moral virtues, it is better still that they possess *all* the necessary elements of wellbeing, and that the military life contribute positively to the wellbeing of military personnel. Thus, an aretaic approach to military ethics considers not only the basic questions of right and wrong present in deontological ethical theories, but the overall quality of a life, and what elements are necessary in order to have a life worth living. These, as I have said, are likely to include a certain level of physical health and fitness, psychological stability, a degree of

²² Alasdair MacIntyre, *A Short History of Ethics*, (Oxon: Routledge, 2002), 58, emphasis added.

intellectual prowess and curiosity, subjective feelings of happiness and contentment (albeit not all the time), and the cultivation of a noble and virtuous character.

It in is this final aspect – the cultivation of character – where aretaic ethics relies most heavily on the ethical tradition known as virtue ethics. Unlike deontological ethics, virtue ethics does not defer to external, universally-binding principles to determine how a person ought to act; rather, as Stephen Coleman explains:

Virtue Ethics focuses on the character of the moral agent. For a virtue theorist the intention of the moral agent will be important, but consequences, principles and duties may also be important depending on the situation. According to virtue ethics theories an action is right if, and only if, it is what a moral agent with a virtuous character would do in the circumstances.²³

Although this understanding of virtue ethics is correct, it can be misleading. Virtue ethicists will ponder what the virtuous person would do in given situations, but they will only do so after having contemplated the nature of the virtues themselves. Thus, what is first required is a description of what habits constitute the virtuous person. Aristotle held the virtues to be the mean state between excesses:²⁴ thus, if the extreme responses to fear are cowardice and recklessness, then courage is the rational mid-point between these two

²³ Stephen Coleman, *Military Ethics: An Introduction with Case Studies*, (Oxford: Oxford University Press, 2013), 24.

²⁴ Christopher Shields, Aristotle, (London: Routledge, 2007), 327.

excesses. Importantly though, determining what the mean state between excesses is must take into account the particularities of the individual and the circumstances.²⁵ This requires a person to exercise *phronesis* – practical reason or prudence – to determine what behaviour, in the particular situation, is an instantiation of virtue. This is why people who are experienced are more likely to practise the virtues than those who are not; for this reason Aristotle thought young men to be ill-suited to politics.²⁶

Finally, not all morally good acts are necessarily virtuous. Some people will do the right thing out of commitment to law, fear of punishment, or for personal gain. This does not mean they have done wrong, nor does it mean their action was virtuous; rather, as MacIntyre notes, the virtuous person "does what is virtuous *because* it is virtuous."²⁷ Acting virtuously over time forms dispositions of character such that acting virtuously becomes habitual. This is what it means to call a person virtuous, "a man is virtuous *if* he would behave in such and such a way *if* such and such a situation were to occur."²⁸ Thus,

[v]irtues are dispositions not only to act in particular ways, but also to feel in particular ways. To act virtuously is not [...] to act against inclination; it is to act from inclination formed by the cultivation of the virtues [through practice].²⁹

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²⁵ Aristotle, Nicomachean Ethics, 1106a36-b7.

²⁶ MacIntyre, A Short History of Ethics, op cit., 57.

²⁷ Alasdair MacIntyre, *After Virtue* (3rd edition), (Indiana: University of Notre Dame Press, 2007), 149.

²⁸ MacIntyre, A Short History of Ethics, op cit., 58.

²⁹ MacIntyre, After Virtue, op cit., 149.

The cultivation of moral virtues helps to ensure that agents are the type of people whose first inclination in a situation is to do what is right; they feel compelled to act virtuously because that is the type of person they are. The cultivation of this type of character, alongside a certain level of physical, intellectual, and psychological excellence and subjective feelings of satisfaction with one's life are the constitutive elements of wellbeing with which this thesis will be concerned.

2: Just War Theory

In this section I introduce JWT, the dominant framework through which war is morally evaluated. Rather than being unified by a particular set of truth claims (as many theories are), JWT is "a two-thousand year-old conversation about the legitimacy of war that has over time crystallized around several core principles and sub-traditions." Part of what unifies these theories is the basic claim that under certain conditions, war can be a morally justifiable practice and that virtuous people can be justified in being engaged in war. They are also, and perhaps more iconically unified by the division of the morality of war into different conditions and categories. The major categories are: *jus ad bellum* – when resorting to war is a morally legitimate option; *jus in bello* – the morally correct way in which wars should be fought; and the more recent *jus post bellum* – the morally appropriate way to end war and transition to peace. Although *jus post bellum* is a question of growing importance (and

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³⁰ Alex Bellamy, *Just Wars: From Cicero to Iraq*, (Cambridge: Polity Press, 2006), 2.

discussion),³¹ this thesis is concerned primarily with *ad bellum* and *in bello* matters, and so my discussion of JWT is limited to these two categories.

2.1: Jus ad Bellum

Jus ad bellum is concerned with those matters that are necessary in order for the decision to go to war to be a morally good or permissible one. For this reason, it has typically been considered the domain of political leaders.³² In order for a war to be permissible, it must satisfy a series of different conditions. Adherence to every condition is necessary for a war to be deemed just: failing to satisfy just one is sufficient to render a war unjust. As Fotion explains, these conditions "act as hurdles to be cleared before a nation can say that it has justice on its side when it enters a war."³³ The six conditions that populate jus ad bellum discussions are: just cause, right intention, legitimate authority, proportionality, probability of success, and last resort.

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³¹ C.f. Brian Orend, 'Jus Post Bellum #1: Justice after War' & 'Jus Post Bellum #2: Coercive Regime Change in *The Morality of War, op cit.* & 'Jus Post Bellum', *Journal of Social Philosophy*, vol. 31, no. 1, 2002, 117-137; Gary J. Bass, 'Jus Post Bellum', *Philosophy & Public Affairs*, vol. 32, no. 4, 2004, 384-412; Larry May & Elizabeth Edenburg (eds.), *Jus Post Bellum and Transitional Justice*, (Cambridge: Cambridge University Press, 2013); Larry May, *After War Ends: A Philosophical Perspective*, (Cambridge: Cambridge University Press, 2012).

³² In the modern era, this view has been challenged by a school of thought known as just war revisionism, especially in: Jeff McMahan, *Killing in War*, (Oxford: Clarendon Press, 2009); David Rodin, *War & Self-Defense*, (Oxford: Oxford University Press, 2002).

³³ Fotion, *op cit.*, 10.

2.1.1: Just Cause

Discussions of *jus ad bellum* usually begin with the "just cause" criterion, to which a great deal of attention is focussed; its usefulness lies in the granting of a *prima facie* license for political groups to wage war in response to particular wrongs *and only in response to those wrongs*.

In the modern climate, responding to "aggression" – a term that has both legal and moral definitions, but which generally describes the violation of the rights of one nation by another – is the almost-universally accepted standard of just cause. The origins of this view lie in the "theory of aggression" presented by Walzer, which restricts the legitimate use of war to responding to acts of aggression.³⁴

However, although responding to aggression is certainly a just cause, it may not be the *only* just cause.³⁵ What describes just cause is, in short, that a nation declaring war has a reason that amounts to a *justification*. Many reasons can be offered for war – national power, resources, racial superiority, religious aspirations, but none are sufficient to justify the horrors of war. The just cause condition emphasises that war's devastation can only be justified by the commission of very severe wrongs.

³⁴ C.f. Walzer, Just and Unjust Wars, op cit., 51-53.

³⁵ Charles Guthrie & Michael Quinlan describe several different reasons that have, at different times, constituted just cause. See: Guthrie & Quinlan, *Just War, The Just War Tradition: Ethics in Modern Warfare*, (New York: Walker & Company, 2007), 17-18.

2.1.2: Right Intention

The right intention criterion speaks directly to the state of mind of the agent when he makes his decision. St. Thomas Aquinas, a just war theorist from the 13th century, argued that war is only just if it is fought with the right intentions. The intention that political leaders require when resorting to war is, as Michael Quinlan puts it, "to create a much better, more just, subsequent peace than there would have been if we had not gone to war." There are several reasons for this: first, because wars fought from wrong intentions – even if they happen to produce good outcomes – are morally bad actions and, for this reason alone, ought to be avoided. Even if no civilians are killed, and nobody tortured, every death occurring in a wrongly-intended war is the product of the private – and wrongful – intentions of a certain group of people, and is therefore needless. Second, wars that are fought from evil intentions make evil actions such as torture and attacks on civilians more likely.³⁸

Intention is the positive commitment of mind to bring about a particular state of affairs. When a political leader decides to resort to war, he may do so because analysts have determined that it would increase his likelihood of being re-elected. However, it would be wrong to describe the political leader's *intention* as being to be re-elected: he was *motivated* by re-election, but the

³⁶ Thomas Aquinas trans. Fathers of the English Dominican Province, *Summa Theologica*, 1920, http://www.newadvent.org/summa/index.html. All references to the *Summa Theologica* hereafter will be from this version and will be cited in the following form: Aquinas, *ST*, Part #, Q. #, Art. #.

³⁷ Michael Quinlan, 'Justifying War', *Australian Journal of International Affairs*, vol. 58, iss. 1, 2004, 7-15 at 9.

³⁸ Darrell Cole, 'War and Intention', *Journal of Military Ethics*, vol. 10, iss. 3, 2011, 174-191 at 174; Orend, *The Morality of War, op cit.*, 47-48.

resort to war was still the direct object of his intention. Intention refers to precisely what I aim to do; motive refers to why I aim to do it, including the wishes, emotions, and interests that surround and explain my intention. This is important because although political leaders are required to have right intentions, they are not required to have good motivations: as Quinlan argues, "it is entirely possible to do the right thing amid imperfect motivations."³⁹ Thus, although a political leader may only declare war with the intention of bringing about a just state of peace, the reasons *why* he desires a just peace may vary.

Note that the political leader who seeks a boost in his polling numbers by authorising war is said to *intend* the war. This is because when we choose to perform an action *instrumentally* – that is, as a means to access some other good (for example, war being the means to achieve improved polling), we intend *both* the means and the ends of the action. Thus, right intention – properly understood – stipulates that political leaders authorise war in order to bring about peace and justice, but must intend peace and justice to be brought about through morally acceptable means.

2.1.3: Legitimate Authority

For a war to be just, it must be publicly declared by an authority that has legal and moral authority to do so. Typically, the right to declare war has been restricted to the political leaders of states, thus meaning that only states can

³⁹ Quinlan, 'Justifying War', op cit., 12.

fight just wars. However, this is a matter of some debate and contention: after all, surely a revolution that overthrows an unjust regime through civil war can be justified. Furthermore, for the last decade the United States has been engaged in a 'War on Al Qaeda' - a non-state actor; this has given rise to a new wave of examination surrounding legitimate authority and statehood: are states the only groups who can wage war? Brian Orend suggests that all wars are fought between "political communities," defined as states or groups with political interests or that aspire to be states. ⁴⁰ However, can non-state political communities fight *just* wars? This question of legitimate authority remains open, and is not one this thesis will address. However, what is noteworthy is that the primary concern here is with regard to the declarant's *legitimacy* rather than their *competency*; in the fifth chapter of this thesis I explore the ways in which the virtues can and should be seen as applicable to political leaders in their decisions to go to war.

2.1.4: Proportionality

Proportionality is a condition of both *jus ad bellum* and *jus in bello*. As an *ad bellum* condition, it is concerned with ensuring that the international community is left as a better place at the conclusion of war than it would be if war was not fought. Note that this condition *requires* political leaders to consider how their actions are likely to affect not only their own nation, but the interests of the entire international community: as Quinlan notes, "the better situation we seek to create should be one that is reckoned in terms of all

⁴⁰ Orend, *The Morality of War, op cit.,* 2.

those affected, not merely our own constituents."⁴¹ Michael Walzer considers one instantiation of the proportionality condition from the Korean War:

Consider those long months when the Korean negotiations were stalemated over the issue of the forcible repatriation of prisoners. The American negotiations insisted on the principle of free choice, lest the peace be as coercive as war itself, and accepted the continuation of the fighting rather than yield on that point. They were probably right, though it is difficult at this distance to weigh the values involved – and here the doctrine of proportionality is surely relevant.⁴²

Is the proliferation of free choice in the international community of great enough benefit to justify the harms inflicted (in terms of human lives, psychological damage, ongoing diplomatic tension, and possible economic costs) by continued war? This is the question considered by proportionality. However, it is important to note that insisting on proportionality as a condition of *jus ad bellum* does not render JWT an instantiation of consequentialism. This is because proportionality is not *sufficient* to justify war, it is merely necessary: satisfaction of the other conditions is also necessary in order to justify going to war. As was discussed above, one of the characteristics of JWT has been to recognise the practical realities of war (and thus recognise consequences as morally important), but never to concede to a pure consequentialist mode of reasoning.

⁴¹ Quinlan, 'Justifying War', op cit., 12.

⁴² Walzer, Just and Unjust Wars, op cit., 122-123.

2.1.5: Probability of Success

Probability of success is an extension of the proportionality criterion: if there is little to no probability of success, it is very unlikely that the war will be proportionate. The lives of soldiers and civilians will be lost in pursuit of an impossible cause. Victory need not be certain, but must be possible in order for war to be justified. This, however, begs the question: 'what is victory?' Does it mean military success? Or should victory be defined in terms of the proportionate benefits to the international community? Walzer, for instance, argues that "[i]n just war doctrine [...] the triumph of aggression is a greater evil [than appeasing a hostile nation]."43 He accepts that conceding to aggression may seem like the lesser evil in the short-term, but in the long-term, "appeasement would be, quite simply, a failure to resist evil in the world."44 By contrast, Gerald Vann argued that appearement should be preferred to war in most situations. 45 Answering this question requires a coherent sense of what constitutes victory, which requires that the objectives of war be clearly enunciated. The probability of success criterion then serves as a prudential check against pursuing morally good goals that are entirely unachievable. Thus, if a goal of war is to demonstrate that aggression will never be accepted without resistance, then resistance which has no hope of military victory may still satisfy this criterion.⁴⁶

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⁴³ Walzer, Just and Unjust Wars, op cit., 68.

⁴⁴ Ibid. 69.

⁴⁵ Gerald Vann, *Morality and War*, (London: Burns, Oates & Washbourne, 1939) in Michael Walzer, 'World War II: Why Was This War Different?', *Philosophy & Public Affairs*, vol. 1, 1971, pp. 3-21 at 6-7.

⁴⁶ For a more detailed discussion of the moral questions surrounding resistance in cases where victory is impossible, see: Walzer, *op cit*.

2.1.6: Last Resort

The last resort condition is perhaps misleadingly worded. It does not require that *every* possible option be exhausted (as a matter of fact) before war is declared. "It would be unreasonable," Guthrie and Quinlan note, "to demand that every conceivable non-military instrument must have been exhaustively tested irrespective of practical judgement about whether it is likely to work." Similarly, Orend notes that "[n]o matter how fearful a situation, there is always something else which can be tried." Last resort, if it is to meaningfully influence the conduct of political leaders, should be taken to mean "least to be preferred."

Under this understanding, last resort is a criterion that is closely linked to right intention: it does not require political leaders to tick off a checklist before war is justifiable. Rather, it requires them to consider all possible non-military options and, if they show some likelihood of being successful, prefer them to military options. If political leaders take seriously the requirement of last resort, they set a tone for the war – if it does occur – to be one that seeks to minimise damage and avoid unnecessary death. Indeed, it does not require that other options actually be tried: if, for instance, other options will prove unsuccessful, then they ought not to be bothered with. They must, however, be *considered*.

⁴⁷ Guthrie & Quinlan, op. cit., 33.

⁴⁸ Orend, *The Morality of War, op cit.*, 57.

⁴⁹ Guthrie & Quinlan, op. cit., 33.

2.2: Jus in Bello

Although political leaders may have some influence over *jus in bello* conduct, the primary responsibility for the manner in which wars are fought falls to military personnel. Most immediately, they apply to those military personnel who are responsible for fighting and killing the enemy, as well as those who command them to do so. Traditionally, two principles have been upheld as the central tenets of *jus in bello*: discrimination and proportionality. Both of these principles will guide action differently in the different arms of military service (Army, Air Force, and Navy), but they do apply equally to each. For example, it will be difficult for an individual midshipman aboard a warship to discriminate between enemy soldiers and the cook on board an enemy vessel, whilst for a special forces soldier, discriminating between individuals is much easier. For reasons of scope, thesis will focus primarily on the application of these principles to the Army, but the application of *in bello* principles to Air Force and Navy conduct is equally important.

2.2.1: Discrimination

War challenges the basic moral intuition that intentionally killing another human being is wrong by arguing that – as any number of philosophers have sought to show – killing may be justified under certain conditions.⁵⁰ What

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⁵⁰ Some prominent examples include Jeff McMahan, *Killing in War, op cit.*; David Rodin, *War and Self-Defense, op cit.*; Michael Walzer, *Just and Unjust Wars, op cit.*; and Elizabeth Anscombe, 'War and Murder' in G.E.M. Anscombe, in Richard A. Wasserstrom, *War and Morality*, (California: Wadsworth Publishing Co., 1970).

remains morally prohibited, however, is intentionally killing those who are innocent, or at least are not guilty of an offense serious enough to justify their being killed. This is enshrined in the principle of discrimination, sometimes called the doctrine of non-combatant immunity. This principle requires that soldiers only aim to kill those people who are legitimate targets of lethal force. For most, the only people who are legitimate targets of killing are those who are engaged in harming either me, my allies, or the innocent.

Importantly, the principle of discrimination prohibits the *intentional* killing of illegitimate targets. It does not (and most likely could not) prohibit *any* killing of noncombatants. One of the greatest tragedies of war is that even if it is conducted carefully, it is likely to cause the deaths of innocent people. However, where those deaths were inescapable side-effects of a military strike on *legitimate* targets, and measures were taken to attempt to avoid or minimise noncombatant fatalities, the principle of discrimination may not condemn those deaths as immoral. This notion alludes to the 'double-effect' principle, which states that foreseen but unintended side-effects (such as the deaths of civilians during a military strike) may be morally permissible under certain conditions. This idea will be explored closely in chapter three.

2.2.2: Proportionality

In bello proportionality requires that the force used by soldiers in achieving their military objectives not be excessive. If an army wishes, for instance, to use a particular town as a military base, keeping the base secure would justify

the use of regular armed patrols but not gathering all the residents into camps and destroying every home in the area. Proportionality of this nature assesses the manner in which military operations are conducted with reference to the *purpose* for which they are conducted. Thus, proportionality serves to rule out the unreasonable use of force. Fotion notes that the principle ought to "distinguish between excessive and overwhelming force." Overwhelming force, he contends, can sometimes be the most reasonable option. If, for example, the rapid deployment of a massive military force is likely to prompt the enemy into a quick surrender, such a response is more reasonable than deploying a smaller force that may end up being engaged in a drawn out, bloody conflict. Thus, overwhelming force may, on occasion, present itself as the most reasonable option.

Fotion notes that the proportionality principle suffers from a measurement problem: "[g]iven the fog of war, there are difficulties in calculating the benefits and costs [...] in advance of the battle." However, this is not a knockdown criticism because proportionality does not, unlike utilitarianism, determine the moral goodness of an act *solely* on the basis of its outcome. Thus, a commander who makes every effort to determine what a proportionate response might be, but who fails to account for some unknown variable, is not necessarily to be condemned for his actions. Rather, proportionality serves to mediate the desire to prefer *only* the most efficient means of overcoming one's enemy.

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⁵¹ Fotion, *op cit.*, 21.

⁵² Ibid.

2.3: Alternatives to JWT

JWT sits alongside two rival philosophical approaches to the morality of war: political realism and pacifism. There are, I believe, good reasons for rejecting both political realism and pacifism as morally serious approaches to military ethics – the main being that each in its own way 'ducks the question' of military ethics rather than responding to it. However, I do not make these objections in full here; they have been made elsewhere, and well.⁵³ Introducing them, and some of the major objections will, however, serve to situate JWT as an approach that mediates the extremities of political realism and pacifism, thus aiding in the understanding of the theory that sits at the centre of this thesis. The question that each of these theories seeks to answer, the question of military ethics, is *how can the horror and death of war be morally justified*?

Brian Orend contends that the belief that unifies all just war theories is that "sometimes, it is at least morally permissible for a political community to go to war."⁵⁴ Whether this is true is beside the point: it is certainly *one* belief that all just war theorists hold. Another is its logical corollary: sometimes it is *impermissible* for a political community to go to war. However, there are two major alternative positions that reject one of these two fundamental beliefs:

⁵³ For responses to political realism, see: Michael Walzer, 'Against Realism' in Michael Walzer, *Just and Unjust Wars, op cit.*, 3-20; Brian Orend, 'Evaluating the Realist Alternative' in *The Morality of War*, (Toronto: Broadview Press, 2006), 223-243, and Nicholas Fotion, *War and Ethics: a new just war theory*, (London: Continuum, 2007), 127-137. For responses to pacifism, see: Brian Orend, 'Evaluating the Pacifist Alternative' in *The Morality of War, op cit.*, 244-266; Jan Narveson, 'Pacifism: A Philosophical Analysis,' *Ethics*, vol. 75, 259-271; and Nigel Biggar, 'Against Christian Pacifism' in *In Defence of War*, (Oxford: Oxford University Press, 2013), 16-60.

⁵⁴ Orend, *The Morality of War, op cit.*, 31.

political realism and pacifism. Each will be introduced here and alluded to occasionally throughout the thesis. It is worth understanding these rival accounts as they help contextualise the intellectual and political space in which JWT is frequently discussed and invoked.

2.3.1: Political Realism

A realist argues that states should, or at least usually do, pursue activities which will maximise their own self-interest.⁵⁵ Orend distinguishes between "descriptive realism" and "prudential realism". The former describes the international realm as a state of nature and claims that, as a matter of fact, this is the way states *do* act; the latter, on the other hand, is normative, suggesting that given the international state of nature, states *ought to* maximise their own self-interest. Whether prudential or descriptive, the realist will deny the relevance of ethical norms to the international sphere. As Machiavelli wrote in *The Prince*: "[t]he fact is that a man who wants to act virtuously in every way necessarily comes to grief among so many who are not virtuous. Therefore if a prince wants to maintain his rule he must learn how not to be virtuous, and to make use of this or not according to need."⁵⁶

Although there are different forms of realism, all are unified in the claim that "the character of foreign policy can be ascertained only through the

http://plato.stanford.edu/entries/war/; Orend, *The Morality of War, op cit.*, 224-234.

⁵⁵ See: Brian Orend, 'War' in Stanford Encyclopedia of Philosopy, 2005,

⁵⁶ Niccolo Macchiavelli trans. George Bull, *The Prince*, (Victoria: Penguin Books, 1986), 91.

examination of the political acts performed and of the foreseeable consequences of those acts," measured through the lens of "interest defined in terms of power."⁵⁷ Thus, the substantive claim of realist political theory is that moral concepts like right and wrong are of no use or relevance in the international domain. From a realist perspective, ethics ought only to be championed, enforced, or adhered to by a political leader insofar as it serves the interest of that leader's nation.

Two objections to realism appear to me to be most telling. The first is that of Walzer, who notes that *moral* language is as synonymous with war as is *strategic* language. We may differ, Walzer notes, as to what constitutes a retreat, but we all accept that such a thing as retreat exists in the military lexicon. Similarly, terms like massacre, innocent, and cruel are terms that can be rightly used to describe military actions, *once we agree on the meaning of those terms*. However, if we are to explore, for instance, whether the atomic bombing of Japanese cities was a cruel massacre or not, "our sharpest disagreements are structured and organised by the underlying agreements that we share." Most of us agree that certain actions in war are justifiable under certain conditions, and others are not. Thus, the realist claim that the international sphere and war as an extension of that sphere are exempt from moral evaluations appears untrue.

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⁵⁷ Hans J. Morgenthau revised by Kenneth W. Thompson, *Politics Among Nations: the Struggle for Power and Peace*, (New York: McGraw-Hill, 1985), 4-5.

⁵⁸ Walzer, Just and Unjust Wars, op cit., 4.

⁵⁹ *Ibid.*, 19

A second objection is that even if the claim that moral laws are not inherent to the international sphere is true, it does not follow that moral laws will never be adhered to by states. As noted above, it may still be in the best interests of nations to develop, obey, and enforce a set of universal laws regarding what is and is not permissible regarding the use of force. Thus, the argument that morality is not inherent to nations is not sufficient to avoid the question of military ethics. If it could be shown that a set of universally applicable rules of conflict advanced the interests of every state (individually and equally), then the realist would be inclined to accept them. Thus prompting the question, what ought those rules to be?

2.3.1: Pacifism

Pacifism is a school of thought that argues against war ever being morally justifiable. Although there are domestic versions of pacifism (such as the non-violent movement for African-American rights in America during the 1950's and 60's), the international version refers to "the absolute refusal to participate in, or support in any way, the waging of war." The horrors of war, pacifism argues, are too great to ever be morally permissible. Typically, pacifism comes in two major forms: absolute pacifism, a moral opposition to violence or killing of any kind; and contingent pacifism, which holds that although *some* wars might be morally acceptable, the type of wars we fight today are not. Ultimately, contingent pacifism reduces to a kind of JWT in which war is acceptable if the correct conditions are met. As Biggar notes, "such a broad

⁶⁰ Peter Mayer (ed.), The Pacifist Conscience, (Victoria: Penguin Books, 1966), 11.

⁶¹ Andrew Fiala, 'Pacifism' in Stanford Encyclopedia of Philosophy, 2010,

http://plato.stanford.edu/entries/pacifism/#2.1.

definition embraces just war doctrine."⁶² Thus, I focus here on absolute pacifism: the summary rejection of war as a means of achieving *any* end.

The most pressing question that arises when examining pacifism is, simply, what should be done in lieu of violence when we're under attack? Interestingly, there doesn't seem to be a clear-cut response to this question, at least on a global scale. Although Mohandas Ghandi and Martin Luther King Jr. exercised non-violent protest effectively, this protest was on a domestic level. It is difficult to see how the same non-violence could today be effective in stopping another nation from militarily invading Australia, or how nonviolence could force them to leave once they arrived. A further question to consider is whether, even if effective, such non-violence could be justified if it meant letting innocent people suffer and die, or letting injustice go unresisted. The comment of US President Barack Obama in his (perhaps premature) Nobel Prize acceptance seem to ring true: "A non-violent movement could not have halted Hitler's armies. Negotiations cannot convince [A]l Qaeda's leaders to lay down their arms."63 President Obama highlighted the problem of pacifism as a national policy: even if small protest groups could achieve success by non-violence, a nation cannot.

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⁶² Nigel Biggar, In Defence of War, op cit., 16, n. 2.

⁶³ Barack Obama, 'A Just and Lasting Peace', Nobel Lecture, Oslo, 2009,

http://www.nobelprize.org/nobel_prizes/peace/laureates/2009/obama-lecture_en.html>.

3: Thesis Rationale, Content and Purpose

In his seminal book *After Virtue*, Alasdair MacIntyre tells the following story:

Imagine a world in which the natural sciences were to suffer the effects of a catastrophe. A series of environmental disasters are blamed by the general public on the scientists. Widespread riots occur, laboratories are burnt down, physicists are lynched, books and instruments are destroyed. Finally, a Know-Nothing political movement takes power and successfully abolishes science teaching in schools and universities, imprisoning and executing the remaining scientists. Later still there is a reaction against this destructing movement and enlightened people seek to revive science, although they have largely forgotten what it was. But all they possess are fragments [...] Nonetheless all these fragments are reembodied in a set of practices which go under the revived names of physics, chemistry and biology....

In such a culture men would use expressions such as 'neutrino', 'mass', 'specific gravity', 'atomic weight' in systematic and often interrelated ways which would resemble in lesser or greater degrees the ways in which such expressions had been used in earlier times before scientific knowledge had been so largely lost. But many of the beliefs presupposed by the use of these expressions would have been lost and there would appear to be an element of arbitrariness and even of choice in their application which would appear very surprising to us. What would appear to be rival and competing premises for which no further argument could be given would abound.64

64 MacIntyre, After Virtue), op. cit., 1-2.

MacIntyre tells this story to make a single, devastating claim against the practical of moral philosophy.

The hypothesis which I wish to advance is that in the actual world which we inhabit the language of morality is in the same state of grave disorder as the language of natural science in the imaginary world which I described. What we possess, if this view is true, are the fragments of a conceptual scheme, parts which now lack those contexts from which their significance derived. We possess indeed simulacra of morality, we continue to use many of the key expressions. But we have - very largely, if not entirely - lost our comprehension, both theoretical and practical, of morality.⁶⁵

Inspired by MacIntyre's diagnosis of the maladies of the state of moral philosophy in his time, my thesis will make similar arguments with regard to JWT: that thinking about military ethics has fragmented over time and is now in need of restoration. The hypothesis I advance herein is a similar claim, albeit not so wide-reaching as MacIntyre's broad criticism of the predominant moral thinking of his time. My claim is that prevailing thought in the area of military ethics is far removed from its ancestry, and bears little resemblance to the thoughts of previous thinkers, and is conceptually divorced from conceptual beliefs and understandings that justified and explained much of the morality of war.

⁶⁵ Ibid., 2.

More specifically, my view is that the majority of modern-day just war theories find their foundation exclusively in deontological ethics, manifested specifically in the concepts of positive law and human rights. However, the prevalence of deontology within these theories is not a product of serious intellectual reflection so much as it is a reflection of historical trends, the personal intellectual projects of particular theorists, and the intellectual flavour of the times. This is not to say that modern just war theories have nothing to offer to those interested in moral governance of warfare. It is however to say that they are in an important sense incomplete.

They are incomplete because traditionally, JWT was dually founded on both deontological and aretaic ethics; that is, on both rights and virtues. These cooperating and complementary concepts provide - and historically have provided - JWT with a robust and coherent understanding of deontological concepts like duty, law and human rights. Furthermore, if JWT lacks any aretaic foundation, it becomes difficult to make sense of the important place afforded to virtue and character in traditional wartime imagery and narrative: the importance of tales of sacrificial soldiers, noble politicians, shrewd, tactical, and amicable commanders, and so on are best explained with reference to aretaic ideas. There are two elements to my claim: first, that existing concepts within JWT (such as rights, obligations, law) find their fullest and most coherent explanation with reference to both deontological and aretaic ethics; and secondly, that the close association between military narratives and aretaic ideals – evidenced by, for instance, tombs dedicated to 'Unknown Soldiers' around the world are adorned with words like 'courage', 'honour', 'loyalty', or 'patriotism' – can be explained, enriched and made more robust through the incorporation of aretaic ethics into JWT.

I argue that virtue is fundamentally important for two main reasons. The first argument is historical: as a matter of fact, JWT did begin by seeing a close relationship between the morality of war and the moral character of soldiers and political leaders. Thus, in a real sense, virtue serves alongside deontology as a historical and philosophical foundation of just war theory. Secondly, the central role provided to the intentions of actors in both deontological and aretaic ethics provides a bridging point between the two different modes of ethics. Not only does intention allow the two modes of ethics to be connected, it requires them to be: deontological theory looks to intention in order to determine the rectitude of those actions it seeks to evaluate. Furthermore, an agent cannot form an intention in a vacuum; rather, intentions are formed by the habits, desires, dispositions, and character of the agent. Thus, to understand intentions, we must first understand aretaic ethics. Indeed, it will be shown that an understanding of aretaic ethics provides new and useful ways of answering questions that have been the subject of ongoing debate for deontological just war theorists in recent times.

The re-integration of aretaic ethics into JWT is also important because aretaic ethics *alone* cannot resolve all the challenges that war presents. Rights, law, duty, and responsibility are all important concepts that have to be included in any intelligent discussion of the ethics of war. Thus, the deontological focus of JWT can enrich aretaic discussions in the same way that aretaic ethics can enrich deontological insights. However, the single-minded focus on deontological ethics by many modern just war theorists can blinker us, preventing us from acknowledging or exploring fully crucial areas of military ethics such as the personal virtue of soldiers, the complex identity of the

warrior, and the psychological costs of fighting in war. This thesis will argue that aretaic ethics thus offers Just War Theory two academic benefits: first, it offers new ways to engage in ongoing debates within modern (deontological) military ethics; and second, it presents new (aretaic) questions for military ethicists to grapple with, and which can be best answered by reference to both deontological and aretaic ethics – that is, an enriched JWT position. I also argue that emphasis on the aretaic may be of practical benefit to those involved in the realities of waging war. Insights from aretaic ethics assist us in identifying: the best ways of assisting people in adhering to the deontological responsibilities of their professions, how to best manage difficult re-settlement issues for veterans returning from war, and ways of guarding against and treating the moral and psychological trauma that can be generated by war.

I make these arguments in various ways. In chapter two, I explore some of the major theorists in the history of the Western JWT tradition, showing that the ancestors of today's just war theories did consider aretaic matters – in particular the moral virtues – to be of central importance to the morality of war. I also show how and why it came to be that deontological and aretaic discussions became fragmented in contemporary JWT. This discussion will also serve as a literature review, introducing the thought of several of the most prominent thinkers within Western JWT to be compared and contrasted with one another.

Chapter three focuses on deontological ethics and the ways in which concepts like rights and obligations are necessarily connected to aretaic ethics. I explain how contemporary JWT tends to conceptualise rights – specifically the right

not to be killed and the right to kill one's enemies – and contrast that account with the much older approach of double-effect theory. I also identify the reasons why rights are an important and beneficial concept for JWT. Finally, having established the *necessary* connection between deontological and aretaic ethics, I show how the application of both modes of ethical reasoning in tandem can enrich the ways in which JWT can respond to contemporary deontological debates, those being torture and supreme emergencies.

In chapter four I focus on the *new* questions that aretaic ethics reveals to JWT, those being: the complexity of the identity of soldiers, how moral character and identity can help prevent moral transgressions, and the moral and psychological trauma suffered by many soldiers and veterans. In this section I combine insights from empirical psychological research with philosophical insights in order to understand PTSD, moral fragmentation, and the psyche of the modern soldier. Drawing on insights from Homer and Shakespeare, I argue that aretaic modes of thinking about character, identity, virtue, and wellbeing help to explain some of the supporting factors in the moral transgressions of soldiers and in the psychological difficulties that veterans can experience post-war.

In chapter five I show how deontological and aretaic ethics interact in the three professions most relevant to waging war: soldiers, commanders, and political leaders. I demonstrate how the virtues are necessary character traits in order to guarantee that warfighters and their political leaders can be relied on to fulfil their professional duties. Aretaic ethical analysis also provides conceptual understanding of why and how professionals sometimes act

"above and beyond the call of duty" – that is, perform deeds that exceed what their professional duties require of them. By considering these supererogatory actions, aretaic ethics is able to again enhance and broaden moral philosophical discussion of the morality of war by JWT.

4: Conclusion

This chapter has sought to introduce the central theories within the framework in which I present my thesis. The two central moral perspectives that will be considered in this thesis are the deontological and aretaic viewpoints, but consequentialist ethics will also be relevant and was therefore considered. JWT theory was presented alongside the alternative views of pacifism and political realism as the framework through with the ethics of war will be examined in this thesis.

However, although I argue from *within* a JWT framework, I also critically assess that framework. I contend that JWT as it is understood by most theorists today is too far divorced from aretaic ethics to be an effective moral appraisal of war. The prioritisation of deontological concepts at the expense of the aretaic threatens both to undermine those deontological concepts, which rely on aretaic ethics for their fullest explanation, and to diminish the breadth of JWT by undermining its ability to explore questions of virtue, character, psychology, and wellbeing.

I contend that both aretaic and deontological approaches are central to developing a sophisticated and complete morality of war. At varying point these accounts will support, enhance, and enrich one another; at other times they will appear to challenge each other. At all times, however, both moral perspectives will be jointly required if we are serious about appreciating fully the ethical nuances that manifest in military practice.

Chapter 2

Just War Theory: From Virtues to Rights

Throughout the history of philosophy, a variety of different theorists have engaged with the question of whether states might ever be justified in waging war. Those theorists who have suggested that under certain considerations war could be justified are known as just war theorists. However, although loosely connected under the JWT umbrella because of their agreement about the moral permissibility of war, these thinkers have not agreed on everything. In fact, although it makes sense to talk about JWT as a school of thought, there are a variety of differing – and sometimes contradictory – just war theories available. Unlike the empirical sciences, the history of JWT has not been one of constant improvement on past work; some of the earliest just war theorists are as influential as their contemporary equivalents. Articles will often discuss Thomas Aquinas' 13th century views on just war alongside Michael Walzer's 20th-21st century views.

Despite variance among individual just war theories, JWT has changed in various ways over time. Perhaps the most obvious area of change is regarding

¹ There are, as John Langan notes, a "wealth of resources" available to those interested in JWT but this wealth is a double-edged sword. "This wealth can be a resource for reflection or a cause of embarrassment, for it makes it very difficult to identify any particular formulation as simply the just war theory and it means that any presentation of or appeal to the just war tradition will have to be highly selective." See: John Langan, 'The Elements of St. Augustine's Just War Theory', *Journal of Religious Ethics*, vol. 12, no. 1, 1984, 19-38 at 19.

questions about the *character* of the actors who are involved in or affected by war. For many theorists of the past, the virtuous character of individual warriors and leaders was of central importance to the morality of war. In recent times, theorists have been more inclined toward a human rights oriented, rule-based approach to the topic.

By surveying the history of JWT this chapter reveals two things: first, that modern instantiations of JWT are generally focussed specifically on discussions of rights and related notions; and second, that historically, this was not the case – some of JWT's most influential theorists offered accounts that included rights (or some equivalent) amongst a much broader host of concerns. More specifically, in this chapter I advance the thesis that JWT entails two separate areas of concern, each of which is historically and philosophically foundational. The first is concerned with human rights and the absolute moral rules of war that emerge in light of those rights; that is, deontic notions of the morality of war. The second area is aretaic, referring to the virtues, moral character and wellbeing. Each of these two different modes of moral thinking is foundational to JWT, and both have, at various points in history, contributed helpfully to moral evaluations of war. In this chapter I argue that recent just war theories have emphasised the deontic at the expense of discussing the aretaic, which provides important insights without which a morality of war will be incomplete. Although human rights are an important part of JWT, aretaic notions pertaining to the moral excellence of individual agents are also worthy of attention.

Throughout this chapter I consider two dimensions: wars' beginnings (*ad bellum*), and combat regulations (*in bello*) as they are discussed by each theorist. In discussing these two dimensions as they manifest in different theories over time, it will become clear that the history of JWT has been to shift away from aretaic concerns in favour of more legalistic incarnations of the theory.

This historical survey will be divided into three sections: in the first section I examine the origins of Western JWT in the works of St. Augustine of Hippo (354-430) and St Thomas Aquinas (1225-1274). Here, I note specifically the interplay between deontological and aretaic influences in the writings of these two theologians.

In the second section, I consider two theorists who are representative of the shift away from aretaic ethics in JWT: Francisco di Vitoria (1483-1546) and Hugo Grotius (1583-1645). It is no coincidence that these two figures are often associated with the foundations of international law: as we will see, their desire to develop legal governance over war appears to have been at the heart of the declining interest in aretaic ethics.

Finally, in the third section I explore the state of JWT today, focussing especially on the work of Michael Walzer (1935-present), whose *Just and Unjust Wars* is widely credited with having revived JWT in the modern day, and was influential in determining the deontological framework within which contemporary JWT discussions take place.

1: The Origins of Western Just War Theory

1.1: St. Augustine of Hippo (354-430)

My story of the history of JWT begins with Augustine. Although Augustine was not the first to speak about the morality of war (the writings of Aristotle, Cicero, and Augustine's spiritual mentor, St. Ambrose, all feature such discussions), I begin with Augustine because he is by far the most influential of the early just war theorists, and because many of the ideas of these earlier theorists are captured in Augustine's writing.

At the time when Augustine began to write about war, most Christians practised pacifism: in Gethsemane, when Peter defended Jesus from arrest, Jesus rebuked him: "for all who take the sword will perish by the sword." Robert Holmes, speaking for early-Christian pacifism, notes that "[i]t is difficult to read the New Testament with its emphasis upon loving one's enemies and turning the other cheek without suspecting that Jesus was opposed to war." Augustine, however, recognised that if Christianity were to be seen as compatible with the political necessities of governance (and therefore be adopted by political leaders and states), it would need to accept war as a moral and practical reality. He thus set out to show how the

² Matthew 26:52, *The Holy Bible*, (New Revised Standard Version Catholic Edition), http://www.biblegateway.com/passage/?search=Matt+26:52&version=NRSVCE>.

³ Robert L. Holmes, War and Morality, (New Jersey: Princeton University Press, 1989), 116.

imperative to love one's neighbour could be consistent with occasionally warring with that neighbour.

To prove that "Christians could have the full slate of civic responsibilities to the state," Augustine offered a reinterpretation of the Christian imperative not to "resist an evil person. If someone strikes you on the right cheek, turn to him the other also." Instead, Augustine argued that "what is here required [in turning the other cheek] is not a bodily action, but an inward disposition. The sacred seat of virtue is the heart." For Augustine, nonviolence meant finding no pleasure in violence rather than abstaining from it altogether. If violence was ever necessary, Christians could be justified in going to war so long as their intentions were just.

By focussing morality on intentions rather than actions, Augustine was able to distinguish between killing and murder, noting that "not all homicide is murder." Exceptions came when killings were commanded by public individuals (e.g. judges, political leaders).8 However, Augustine did not believe that private citizens were permitted to kill one another, even in self-defence.9 The only time killing might be permissible was when done by an authority with power to do so; power which ultimately came from God. Because Augustine believed that because God was the source of all goodness,

⁴ Ibid., 117.

⁵ Matthew 5: 39, op cit.

⁶ Augustine trans. Richard Stothert, Contra Faustum, 1887, 22.76,

http://www.newadvent.org/fathers/140622.htm.

⁷ Augustine trans. Henry Bettenson, City of God, (Victoria: Penguin Books, 2003), 1.21

⁸ Ibid., 1.21.

⁹ See: Holmes, *op cit.*, 120. Whether Augustine might have argued that self-defence that accidentally results in killing was permissible (as Aquinas did, see below), is unclear.

it would be impossible for any killing that he demanded to be evil.¹⁰ Public officials who had received their authority from God were therefore empowered to sanction killings to uphold the divine will.¹¹ Unlike political theorists today, Augustine was not concerned with how to *know* whether a public official had divine authority or not. If they did, God's will was done, if not, they would be punished in hell. Augustine's eschatological beliefs meant he was not concerned with enforcing morality – his project was simply to describe it. For Augustine, eternal law (God's law) was the ultimate and only justification for any type of killing, especially the widespread killing involved in war.

1.1.1: Ad Bellum

Augustine did not think that God's law would justify wars motivated by "worldly" desires. For the Neoplatonist Augustine, nothing temporary was of moral value, including life itself, for "if it can be taken, it is worthless." Augustine argued that the soul was the "seat of virtue", and that the only evil that a person can suffer is to sin. Thus, violence – including war – is not described as evil because of the pain or death that it causes, because to fear losing something that is "of the flesh" is to live in falsehood and sin. 13 War and

¹⁰ In fact, Augustine believed evil was simply the absence of God. C.f. Augustine trans. Albert H. Newman, *On the Nature of Good*, 1887,

http://www.newadvent.org/fathers/1407.htm> especially Ch. XI.

¹¹ Holmes, *op cit.*, 130.

¹² Augustine, *De Libero Arbitrio*, 1. 5.12 as cited in Holmes, *War and Morality*, 125. All references to *De Libero Arbitrio* hereafter are from Holmes' work.

¹³ Richard B. Miller, 'Just War, Civic Virtue and Democratic Social Criticism: Augustinian Reflections', *The Journal of Religion*, vol. 89, iss. 1, 2009, 1-30, at 9.

violence are evil, rather, because of the damage that the violent person does to his own soul, as Augustine explains:

What is the evil in war? Is it the death of some who will soon die in any case, that others may live in peaceful subjection? This is mere cowardly dislike, not any religious feeling. The real evils in war are love of violence, revengeful cruelty, fierce and implacable enmity, wild resistance, and the lust of power, and such like.¹⁴

For Augustine, when an emperor went to war in self-defence, he was able to justify his actions to his citizens with reference to the wrongful aggression of the enemy. In such a case, "the law permits the people that it governs to commit less wrongs to prevent the commission of greater," and thus the killing of aggressors could be justified. But Augustine did not believe this law was God's law; rather, it was a human law protecting earthly goods that ultimately ought not to be valued. Although self-defence was justifiable under human law, it was still a sin against God. Thus, Augustine wrote, "I do not see how these men, though blameless under the law, can be *altogether* blameless." ¹⁶

We can understand this thought by distinguishing between 'lower order' and 'higher order' justifications. For Augustine, wars that are justified only by human law possessed lower order justification, whilst those which are

¹⁴ Augustine, Contra Faustum, op cit., 22.74.

¹⁵ Augustine, Contra Faustum, op cit., 1. 5.11, 123.

¹⁶ *Ibid.*, 1. 5.12, p. 124, emphasis added.

sanctioned by the divine (moral) law were justified on the higher order. The only wars that were entirely blameless were those of the higher order: those moral laws which require humanity to live according to God's will. However, Augustine did not believe it to be sufficient that a person's actions coincide with God's will; rather, his mind must be directed to God in his decision to act in a particular way.¹⁷ As James Wetzel explains, "[t]o describe a virtue but not refer it in the requisite way to God is to describe a vice."18

Augustine explained similarly that:

[T]he virtues which the mind imagines it possesses, by means of which it rules the body and the vicious elements, are themselves vices rather than virtues, if the mind does not bring them into relation with God.¹⁹

This is especially true for political leaders, who ought to rule from love. Ideally, he will rule from love of God, who is the Supreme Good, but pagan rulers, Augustine notes, can still rule from love of their fellow human beings.²⁰ Note especially that it is *love* of God and his law that makes a good leader: leadership from *fear* or *obedience* of God's law is a lesser form of leadership. As Michael Northcott explains:

¹⁷ Augustine, City of God, op cit., 19.25.

¹⁸ James Wetzel, 'Splendid Vices and Secular Virtues: Variations on Milbank's Augustine', *The Journal of Religious Ethics*, vol. 32, no. 2, 2004, 271-300 at 272.

¹⁹ Augustine, City of God, op cit., 19.25.

²⁰ Michael Northcott, 'The 'War on Terror', the Liberalism of Fear, and the Love of Peace in St. Augustine's City of God, New Blackfriars, vol. 88, iss. 1017, 2007, 522-538 at 536.

Fear is politically weak because it does not direct those who love the right things to love them any better. Nor does it educate the misdirected desires of those who do not love the right things so that they love what is worthy of love.²¹

Here we come to see the interplay between deontic and aretaic ethics in Augustine. God's *laws*, which apply to all human beings whether they accept them or not, served as moral duties and restrictions which it is wrongful to violate. However, mere *adherence* to God's law was less laudable than the obedience that came from a genuine love for God. This is true not only because Augustine believed God to be an object to whom worship was due, but acting from love for moral goodness demonstrated an understanding of goodness that is not present when one acts out of fear.²² It is the *love* that motivated adherence to God's laws that is virtuous. Without the virtuous understanding that is entailed in the love of moral goodness, human deeds could never reach what Augustine considered to be the perfection of human activity, justified on the higher order discussed above.

So, for Augustine the just war was motivated by love of God and obedience to the divine will; viz. virtue. It is on this basis that Augustine justified Moses, who he also rebuked for killing an Egyptian,²³ for leading of a war against the Egyptian people.

²¹ *Ibid.*, 537.

²² For a discussion of the difference and interaction between love and fear, see: Augustine, *City of God, op cit.*, 14.9.

²³ Augustine, Contra Faustum, op cit., 22.70.

[T]he account of the wars of Moses [should] not excite surprise or abhorrence, for in wars carried on by divine command, he showed not ferocity but obedience; and God in giving the command, acted not in cruelty, but in righteous retribution, giving to all what they deserved, and warning those who needed warning.²⁴

However, in his commentary on Augustine, Robert L. Holmes argues that given the very likely possibility that very few political leaders will always act virtuously, "no state possesses true justice; force, violence, and suffering are inevitable [...] and, strictly, no one can know for certain who are the good and who are the wicked.²⁵ Holmes argues that we ought to abandon second order justifications and concern ourselves only with justifications in human law: "[i]f we cannot conform fully to God's law given our sinful nature, at least we can discern the traces of justice in our social life and [...] act accordingly."²⁶ At this point, Holmes focuses only on developing a just war theory according to the laws of societies, suggesting that "there may be just wars from a temporal or human perspective."²⁷

When a state has wronged another [...] one then has a just cause to punish that state, providing the decision emanates from a legitimate authority. This does not require that the ruler be a good man, for that cannot be known. Nor does it require that a state be truly just, for none is. The state need not even be nominally

24 Ibid., 22.74.

²⁵ Holmes, op cit., 131.

²⁶ *Ibid.*, 131.

²⁷ *Ibid.*, 132.

Christian; according to Augustine, the conditions of just cause and legitimate authority sometimes characterized the wars of pre-Christian Rome.²⁸

At this point, the theory Holmes presents is no longer Augustinian, although it is an accurate representation of Augustine's views about *lower order* justifications for war. Although, as I have said, the failure to refer one's activities to God is always vicious, wars that seek to "avenge injuries, when the nation or city against which warlike action is to be directed or to restore what has been unjustly taken by it"²⁹ are at least *consistent* with God's law and are therefore preferable to wars fought from selfish desires, hatred, or a desire for glory. However, lower order justifications do not amount to moral justifications: for Augustine, only actions performed from love of God and his divine law possess *true* (higher order) justification. In Augustine's mind, it was not possible to remove virtue from the equation – all just wars had to be in conformity with, and motivated by, the moral law which emanates from God.

1.1.2: In Bello

Given that Augustine held that all lower order wars contravene the divine law and are therefore sinful, it is worth asking whether he held the soldiers that fight in lower order (or worse, entirely unjust) wars blameworthy for their participation. Although above I quoted Augustine describing those soldiers as

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²⁸ Augustine, Seven Questions Concerning the Heptateuch, 6.10 in Holmes, op cit., 132

²⁹ *Ibid.*, 6.10.

"not entirely blameless," his writings indicate that soldiers who followed the commands of their leaders should not have been punished for doing so. The state – and by extension its leaders – are argued to be "the justest and most reasonable source of power" in the world. The leader of a state should act as a servant of God, in obedience to his law. Thus, the sovereign possessed divine authority to lead God's people on Earth. If citizens obeyed their sovereign out of pious respect for his divinely-sanctioned authority, they were free from punishment when obeying an unjust law or command. This is particularly true of soldiers, because Augustine held that "one who owes a duty of obedience to the giver of the command does not himself 'kill' - he is an instrument, a sword in its user's hand." As Langan notes, the soldier's role "makes obedience a duty."

In the previous section I noted that Augustine looked favourably on Moses' war with the Egyptians because Moses had declared war out of obedience to God's commands. However, Moses was not justified in waging that war barbarously (Augustine notes that he took no pleasure in it). If he had acted with barbarity he would have shown love of revenge or violence, not God. The moral law required that Moses fight only for righteous retribution (giving what is deserved). The motivation of the soldier should similarly demonstrate only adherence to God's law – anything else would be to place value in earthly goods. Only matters of the soul were morally significant for Augustine. This is why Augustine argued that the evil of war is in the vices. Wars must be fought with a sober disposition: a just inward disposition, with virtue, and

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³⁰ Augustine, The City of God, op cit., 1.21.

³¹ *Ibid*.

³² Ibid.

³³ Langan, op cit., 23.

motivated by love of God,³⁴ which is why Augustine described sin as the only true evil in war.

It is significant that JWT's historical and philosophical foundations rest in the dual premises of the justice of a particular cause determined by absolute moral laws (in this case, eternal law *vis-à-vis* God's will) and consideration of the internal dispositions required to justify soldiers' and political leaders' conduct. Although wars fought to restore some property or injury may be justified on the lower order, if they are fought without commitment to virtue, they will not be *morally* justified. Thus, the injustice of war comes from the corruption of men's souls through vicious actions common to war. Augustine's just war theory demonstrates a clear interaction between deontic and aretaic concepts. It is not sufficient that a war be justified by human law or the indiscretion of the enemy, it is equally (if not more) important that the leaders declaring wars and the soldiers fighting on their behalf be virtuous, and their souls be kept free from sin.

1.2: St. Thomas Aquinas (1225-1274)

In the thirteenth century another theologian, St. Thomas Aquinas, revived St. Augustine's just war thinking. When Aquinas discussed war, he situated the discussion within a broader discussion of the virtues, arguing it to be a vice against charity.³⁵ However, he held that where war aims to restore a peace that

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³⁴ Augustine, City of God, op cit., 19.7.

³⁵ Aguinas, *ST*, II-II, Q. 40, Art. 1.

is already broken, it may be just; on the other hand, where war acts *against* peace, it is unjust.³⁶ Aquinas suggested that some wars are actually peaceful because they were manifestations of the virtue of charity, the virtue of love between persons which is based in love of God.³⁷ However, charity is not just one of many virtues, but is what Thomas calls a "special virtue"³⁸ – it is a virtue that relates directly to a particular 'species' of love (Divine love), and therefore no true virtue is possible without charity.³⁹ This led Aquinas to call charity 'the form of the virtues' because it directs men and women to their *ultimate* end, God.⁴⁰ *Peace* is one of the 'special attitudes' of charity; Aquinas called it one of the effects of charity,⁴¹ and it entails two separate things: first, concord, the wills of various hearts agreeing together in consenting to the same thing; and second, what might be called inner peace, a harmony among one's own feelings, desires, and moral judgements.⁴²

1.2.1: *Ad Bellum*

Unjust wars are acts against both concord and inner peace and are therefore vicious.⁴³ However, Aquinas was careful to make clear that some wars are *not*

³⁷ Aquinas, *ST*, II-II, Q. 23, Art. 1.

³⁶ Ibid.

³⁸ *Ibid.*, II-II, Q. 23, Art. 4.

³⁹ *Ibid.*, II-II, Q. 23, Art. 7.

⁴⁰ *Ibid.*, II-II, Q. 23, Art. 8.

⁴¹ *Ibid.*, II-II, Q.29, Art. 3.

⁴² *Ibid.*, II-II, Q. 23, Art. 1.

⁴³ There is ongoing debate as to whether there is a "presumption against war" in Aquinas. See, for the supporting argument, Richard B. Miller, 'Aquinas and the Presumption against Killing and War', *The Journal of Religion*, vol. 82, no. 2, 2002, 173-204; for the negative argument, Gregory Reichberg, 'Aquinas' Moral Typology of Peace and War,' *The Review of Metaphysics*, vol. 64, 2011, 467-487, and Ryan R. Gorman, 'War and the Virtues in Aquinas' Ethical Thought', *The Journal for Military Ethics*, vol. 9, iss. 3, 245-261, esp. 249-252. For a

vicious,⁴⁴ which is why Aquinas is correctly labelled as a just war theorist. Just wars defend and promote peace as necessary traits of a person or community's wellbeing.⁴⁵ Here, peace is used as an umbrella term referring to both concord and inner peace, as Aquinas considered unjust wars to be an attack on both. The evil of war is not merely the physical damage it causes to individuals and communities, but the moral and psychological damage done to inner peace; that is, to a person's wellbeing. Aquinas described three necessary elements of just wars that have become known throughout the JWT tradition as the conditions of legitimate authority, just cause, and right intention.

First, the authority of the sovereign by whose command the war is to be waged [...] Secondly, a just cause is required, namely that those who are attacked, should be attacked because they deserve it on account of some fault [...] Thirdly, it is necessary that the belligerents should have a rightful intention, so that they intend the advancement of good, or the avoidance of evil.⁴⁶

Aquinas' moral reflections on the just declaration of war combine interests in the aretaic and deontic. The motivation for war is in defence of peace, which is ultimately connected to the virtue of charity. Communities go to war to

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modern analysis of the question, see: Eli S. McCarthy, 'The Virtue Ethic Difference in the Just War Discourse of James Turner Johnson and Catholic Social Teaching', *Political Theology*, vol. 2, iss. 2, 2011, 275-304. I find Gorman's argument, which sides with James T. Johnson's, the more compelling and consistent with Thomas' writings. The argument that Aquinas held a presumption against war is inconsistent with Aquinas' view that the practice of war could be compatible with virtue and flourishing. Aquinas did not seek to condemn war, but to outline the limited, but sometimes necessary place that it held in the moral life.

⁴⁴ Aquinas, *ST*, II-II, Q. 40, Art. 1.

⁴⁵ At this point, justice and charity become intertwined. For a discussion of the interaction of these two concepts in Aquinas, see: Jean Porter, *'De Ordine Caritatis*. Charity, Friendship and Justice in Thomas Aquinas' *Summa Theologica*', *The Thomist*, vol. 53, 1989, 197-214 199.

⁴⁶ Aquinas, *ST*, II-II, Q. 40, Art. 1.

defend the common good from both physical and moral harm. On Aquinas' account, wars that defend and pursue the common good are acts of love wherein members of a community see the common good as connected to their own personal wellbeing.⁴⁷ Indeed, many wars involve sacrificing one's own personal good for the common good, which is why Aquinas believed that charity "requires an active commitment to serving others and a willingness to sacrifice for the sake of the common good."⁴⁸ However, the desire for peace is not sufficient; Aquinas also required that war is prompted by some grave wrongdoing, and that war be declared by the leader of a community. In this way, Aquinas addressed deontological concerns by introducing absolute moral rules as checks and balances on the use of war as an instrument for spreading peace.

1.2.2: *In Bello*

Aquinas' theory of moral conduct in war was informed by his view of murder and intentional killing. Aquinas argued that intentional killing is absolutely forbidden under all circumstances.⁴⁹ However, by distinguishing between intended outcomes and side-effects, Aquinas believed that if my acts of self-defence cause the death of my assailant, I may not be guilty of wrongdoing. Thus, not all killing is *intentional* killing. This idea has become known in military ethics as "the doctrine of double-effect" (DDE).⁵⁰ Aquinas argued that

⁴⁷ *Ibid.*, II-II, Q. 27, Art. 2.

⁴⁸ Gorman, *op cit.*, 257.

⁴⁹ Aquinas, *ST*, II-II, Q.64, Art. 2.

⁵⁰ John Finnis, *Aquinas: Moral, Political and Legal Theory*, (Oxford: Oxford University Press, 1998), 277.

"[n]othing hinders one act from having two effects, only one of which is intended, while the other is beside the intention." Morality is concerned with what a person intends to do, not in what happens as a side-effect or accident. For example, if I notice a spider on my friend's head and slap it away and in doing so injure my friend, I may not be morally responsible for causing the injury, even if I knew that injuring my friend was a possibility. Similarly, in attempting to prevent being killed by an aggressor, I may defend myself even lethally - so long as my intention is to protect my life. I may not be culpable for any side-effects that I did not intend, even if those side-effects were foreseeable. Murder, like any intentional harm, is evil and always forbidden. However, if evil happens co-incidentally in the pursuit of good, the user of force may not be morally responsible under certain conditions. Aquinas argued that culpability for unintended outcomes is alleviated if the following conditions are met:

- 1. The act itself is not inherently evil;⁵²
- 2. The evil effect is not intended;⁵³
- 3. The evil effect is not the *means* to the production of the good effect;⁵⁴
- 4. The good achieved by the action must outweigh the evil consequence.⁵⁵

DDE also marks a synthesis of aretaic and deontological ideals. Whilst Aquinas condemned actions of a certain type (e.g. intentional killing) as absolutely forbidden, he understood that what defined an action was not

⁵³ Aquinas, *ST*, II-II, Q. 64, Art. 7.

⁵¹ Aquinas, *ST*, II-II, Q.64, Art. 7.

⁵² *Ibid.*, II-II, Q.64, Art. 2.

⁵⁴ This condition comes from Aquinas' writing on lying, see: *Ibid.*, II-II, Q. 110, Art. 3.

⁵⁵ *Ibid.*, II-II, Q. 64, Art. 7.

merely its outcome, but the goal the action aimed to achieve and the desires or feelings that motivated it. For this reason, he was sensitive to the fact that virtuous people are more likely to perform morally good actions. He therefore examined the type of virtues which will be most beneficial to those who fight just wars. This explicit focus on specific virtues demonstrates that, as Gregory Reichberg notes, "[Aquinas'] aim was to [...] situate lethal force in relation to the virtues that render it an acceptable practice in human life, and inversely, to indicate what vices are especially to be avoided."56 By bringing the practice of war under the realm of the virtues, Aquinas subjected those who fight in wars not only to deontological norms, but to beliefs and dispositions internal to the character of the individual; that is, questions of virtue and vice. Whilst virtuous commanders and soldiers will require a complete set of the virtues working co-operatively, Aquinas saw these practices as being specially disposed to particular virtues which Reichberg describes as "two dispositions assuring right conduct *in bello.*"57 The virtues that Aquinas believed were most directly applicable to military personnel were prudence and courage.

Prudence, Aquinas argued, is the special virtue of the cognitive faculty which allows man to decide between various paths of action.⁵⁸ Aquinas goes on to suggest that prudence does not apply only to the individual, but has political relevance too.⁵⁹ This includes a specific type of prudence directed to military judgements, which differs from political prudence in that each reflects a different part of nature. The ordering of the state corresponds to reason's

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⁵⁶ Gregory Reichberg, 'Thomas Aquinas on Military Prudence', *Journal of Military Ethics*, vol. 9, iss. 3, 2010, 262-275 at 263.

⁵⁷ Reichberg, 'Thomas Aquinas on Military Prudence', op cit., 264.

⁵⁸ Aguinas, ST, II-II, Q. 47, Art. 5. Also, ST, II-II, Q. 47, Art. 1.

⁵⁹ Aguinas, *ST*, II-II, Q. 47, Art. 10.

governance over a thing, and the military defence of the state to the withstanding of external assailants, which is also natural:

[I]n those things also which are in accordance with reason, there should be not only "political" prudence, which disposes in a suitable manner such things as belong to the common good, but also a "military" prudence, whereby hostile attacks are repelled.⁶⁰

Aquinas' introduction of prudence into moral reasoning about war represented a new development in JWT. Aquinas noted that prudential reasoning is not only inherent in the practice of warfare, but that participating in warfare can be—as a response to virtue—a constitutive aspect of the moral life generally; not just insofar as one fights for justice, but also insofar as one is good at fighting. Aquinas did not, however, suggest that prudence is the virtue which governs *all* military conduct; ordinary soldiers do not need military prudence to function well in their role. Aquinas explained the distinction between the soldier and the commander as one of virtue: issuing a command and bringing that command to fruition are very different things: "[t]he *execution* of military service belongs to fortitude, but the *direction*, especially in so far as it concerns the commander-in-chief, belongs to prudence."

⁶⁰ *Ibid.*, II-II, Q. 50, Art. 4.

⁶¹ Aquinas, ST, II-II, Q. 50, Art. 4, Emphasis added.

So, although the prudent man is best equipped for military command, it is the fortitudinous man who is best suited for soldiering. Fortitude (or courage) is the virtue which allows men and women to pursue what they know to be good despite the difficulties involved.⁶² In the context of the military life, fortitude usually comes in the form of doing what is right despite the prospect of dying in the process and, because death is perhaps the greatest *physical* evil one can suffer, courage in the face of death ranks as one of the purest instantiations of the virtue.

[F]ortitude of soul must be that which binds the will firmly to the good of reason in face of the greatest evils: because he that stands firm against great things, will in consequence stand firm against less things, but not conversely. Moreover it belongs to the notion of virtue that it should regard something extreme: and the most fearful of all bodily evils is death, since it does away all bodily goods.⁶³

Warfighters face, almost uniquely, the opportunity to practise fortitude in their endeavours, because although "the dangers of death arising out of sickness, storms at sea, attacks from robbers, and the like, do not seem to come on a man through his pursuing some good [...] the dangers of death which occur in battle come to man directly on account of some good, because, to wit, he is defending the common good by a just fight."⁶⁴

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⁶² Ibid., II-II, Q. 123, Art. 1.

⁶³ Aquinas, ST, II-II, Q. 123, Art. 4.

⁶⁴ *Ibid.*, II-II, Q. 123, Art. 5. Plato similarly saw a close connection between courage and the military life, as demonstrated by the heavy focus on war and combat in his most detailed discussion of courage, *Laches*. C.f. Plato trans. Rosamond Kent Sprague in John M. Cooper (ed.), *Plato: Complete Works*, (Indiana: Hackett Publishing Company, 1997).

Aquinas' just war theory represents a much more systematic approach to the topic than Augustine's. The former unites the deontic and aretaic together in the moral determinations of war by arguing that war is an act of charity aimed at enhancing the wellbeing of the community, and that the just war pursues peace in adherence to checks and balances which serve as absolute moral rules. By situating his discussion of war within his discussion of the virtues, Aquinas suggested a proper function for war in the pursuit of both individual and community wellbeing, and a close relationship between the rules of war and the virtues as dispositions that help individuals to adhere to those rules.

2: Just War Theory and the Birth of International Law

2.1: Francisco di Vitoria (1483-1546)

Almost three centuries after Aquinas, Francisco di Vitoria, sometimes credited (along with Hugo Grotius) as the 'father of international law,' returned to the question of the moral justifications for war. Vitoria's considerations of just war were prompted by Spanish expansion into the Americas, and he proposed a set of laws informed by those events and the debates surrounding them. The focus on the development of law marks a new chapter in the development of JWT, and the point at which deontological ethics began to dominate discussions on the subject. Vitoria's laws relied on his concept of the "law of

nations," a set of laws that are just for all people at all times, irrespective of community or belief.⁶⁵

2.1.1: *Ad Bellum*

Unlike Aquinas, Vitoria believed that prototypically immoral acts (e.g. theft or murder) could be made permissible in wartime. If one needed to kill or steal to successfully prosecute a just cause, then those things were morally permissible. For Vitoria, the moral laws of war were predicated on the justice of one's cause: if one's cause was just, whatever was necessary to see it succeed was permitted. Separating himself from Augustine and Aquinas, for whom the morality of war derived from their broader ethical beliefs, Vitoria argued that:

A prince may do everything in a just war which is necessary to secure peace and security from attack [...] The proof of this is that, as I have said above, the purpose of war is peace, and therefore those who wage just war may do everything necessary for security and peace.⁶⁶

This extract suggests that when a cause is just, whatever is necessary to uphold that cause is permissible. Vitoria justified this morality of necessity by

66 Francisco di Vitoria, *On the Law of War*, Anthony Pagden & Jeremy Lawrence (eds.), *Vitoria: Political Writings*, (Cambridge: Cambridge University Press, 1991), Q. 1, Art. 4, Sec. 18.

⁶⁵ Francisco di Vitoria, *On Civil Power* in Anthony Pagden & Jeremy Lawrence (eds.), *Vitoria: Political Writings*, (Cambridge: Cambridge University Press, 1991), Q. 3, Art. 4.

suggesting that the alternative, refusing to violate certain norms and therefore suffering defeat, would reward the immoral behaviour of one's enemy. He argued that "it would be the worst of all possible worlds [...] if tyrants and thieves and robbers were able to injure and oppress the good and the innocent without punishment, whereas the innocent were not allowed to teach the guilty a lesson in return." The consequence of this view is the reimposition of a form of consequentialism in the pursuit of a good end: so long as the 'good side' is triumphant, whatever was necessary to triumph must have been morally justified.

In an important sense this approach sets itself at odds with JWT, which aims to show how war is *consistent* with morality, not how it *alters* morality. Seeing the particular circumstances of war as altering the very nature of the morality that governs it (for instance, Vitoria's other moral writing is based in the natural law, but his writing on war is more akin to utilitarian thinking) indicates a form of relativism (a school of thought which holds (amongst other things) that what is morally right or wrong is developed by culture or society and may vary between them)⁶⁸ in Vitoria's thinking. War – Vitoria appears to argue – is so different in every respect to the rest of human life that even morality is changed.

Here it is worth noting the distance between this view and the theories of Augustine and Aquinas. For them, war was something that could be – if

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⁶⁷ *Ibid.*, Q. 1, Art. 1, Sec. 1.

⁶⁸ For an intelligent and thorough explanation of cultural relativism and the shortcomings of the theory, see Martha Nussbaum, 'Judging Other Cultures: the Case of Female Genital Mutiliation' in *Sex and Social Justice*, (Oxford: Oxford University Press, 1999).

practised virtuously – consistent with one's overall wellbeing. Here, the systematic account of the virtues presented by Augustine and Aquinas, whereby the virtues all co-operated in directing the person toward the ultimate good, is replaced with an entirely different account through which the virtues are determined by the environment in which they are practised. Under this new account, the virtues can no longer be perfective of human nature; rather, they are perfective only of the particular practice from which they derive. This is problematic if, for instance, the perfection of the soldier is seen as a proficient and brutal killer who does 'whatever it takes' to achieve victory. Unlike Augustine and Aquinas, for whom war was *subject* to morality, not constitutive of it, Vitoria's account of war sees the virtues as relative to the goals and purposes of the practice from which they derive. This is a particularly pressing point for those interesting in the influence of war on wellbeing. If war is a separate and independent moral domain, those involved in war will hardly be able to practise virtue with any consistency as they shift between different domains of morality. As we will see in chapter four, this inconsistency can undermine the moral and psychological wellbeing of soldiers.

However, this position is also of concern from within the deontological mode of thinking as well. Vitoria famously argued that there might be justice on *both* sides of a war. Because occasionally leaders may be mistaken about whether a cause is just, each side may possess a certain type of justification. The side that is mistaken possesses the justice of their conviction – that is, that they are acting in pursuit of what they genuinely believe to be right, whilst the side who is not mistaken is objectively justified in going to war. However, in either case, the belief that a cause is just in combination with the belief that whatever

is necessary may be done in pursuit of a just cause is a recipe for widespread violations of even the most basic standards of decency. Given that deontological just war theories hold that there are absolute moral laws that prohibit these types of behaviour, the relativist-consequentialist argument of Vitoria arises as a challenge to both fundamental tenets of JWT.

In fairness, Vitoria was not entirely ignorant of the dangers inherent in his belief that both sides of a war might possess different types of justification. He did not believe, for instance, that "it is enough for the just war that the prince should believe that his cause is just."⁶⁹ Rather, again emphasising that there is an important difference between what is *actually* right, and what a leader or nation *believes* to be right, Vitoria required (citing Aristotle) that the decision to go to war "be an opinion formed according to the judgement of a wise man."⁷¹ Because of the moral seriousness of war – particularly Vitoria's brand of war – it becomes imperative "to examine the justice and causes of war with great care, and also to listen to the arguments of the opponents, if they are prepared to negotiate genuinely and fairly."⁷²

⁶⁹ Vitoria, On the Law of War, op cit., Q. 2, Art. 1, Sec. 20.

⁷⁰ *Ibid.*, Q. 2, Art. 1, Sec. 20.

⁷¹ Vitoria, *On the Law of War, op cit.*, Q. 2, Art. 1, Sec. 20. The reference to Aristotle is from *Nicomachean Ethics*, Book II, Ch. VI, 1106b36-1107a2.

⁷² Vitoria, On the Law of War, op cit., Q. 2, Art. 1, Sec. 21.

2.1.2: In Bello

Further, because soldiers risk committing grave injustices by going to war at the behest of a fallible ruler, Vitoria instructed "that if their conscience tells subjects that the war is unjust, they must not go to war even if their conscience is wrong". Because it is difficult to be certain that the prince's judgement of justice be correct, if a soldier disagrees, he should not fight. This is justified by two arguments. First, because it is possible that the soldier's interpretation of justice, and not the prince's, is the correct one. Secondly, because for the soldier to go to war in a case where his conscience opposed it, he would be doing something that was believed to be wrong, meaning that he would necessarily be acting with bad intentions. It is worth noting, however, that although Vitoria allowed for conscientious objection where a soldier is convinced of the injustice of a war, he held no expectation that all soldiers should actually engage in reflection about just cause. In chapter five I return to the question of the obedience of soldiers, and explore what duties they have to examine the justice of the causes for which they fight.

Vitoria presented a scattered, unique, and at times problematic just war theory. His claim that when a state has just cause, necessity dictates what its

⁷³ *Ibid.*, Q. 2, Art. 2, Sec. 23. For a detailed exposition of when and how Vitoria determines whether a soldier is truly ignorant of the injustice of his cause, see Andrew Sola, 'The Enlightened Grunt: Invincible Ignorance in the Just War Tradition', *The Journal for Military Ethics*, vol. 8, iss. 1, 2009, 48-65

⁷⁴ This idea stems from St. Thomas Aquinas' view of conscience, which is best represented in *De Veritate*, Q. 17 in Aquinas trans. Ralph McInerny, *Selected Writings of St. Thomas Aquinas*, Penguin, London, 1998. For an explanation of *why* conscience receives this status, see: Luc Thomas Somme OP, 'The Infallibility, Impeccability and Indestructibility of Sydneresis', *Studies in Christian Ethics*, vol. 19, no. 3, 2006, 403-416.

⁷⁵ Vitoria, On the Law of War, op cit., Q. 2, Art. 2, Sec. 25.

soldiers may permissibly do in war contrasts with the approaches of Augustine and Aquinas. Vitoria's thesis that the moral climate of war is independent of everyday morality is a question that theorists still grapple with today. However, the consequences of positing entirely different moral laws for different circumstances may well have deleterious consequences on the virtue and wellbeing of soldiers and the civilians who are often innocent victims of war. However, it is important again to remember that Vitoria's primary concern was the formulation of law; thus, it is possible to interpret some of his claims as being about lower order permissions – that is, legal justifications – rather than higher order moral ones. This is the idea that Vitoria's successor, Hugo Grotius, would develop further in his comprehensive treatment of the law and morality of war.

2.2: Hugo Grotius (1583-1645)

Hugo Grotius offered perhaps the most comprehensive treatment of the ethics and law of war in the history of JWT. Like Vitoria, his project was in part aimed at developing a codified law of war that can be applied and enforced across nations. Indeed, he described his own project as being the development of a "jurisprudence" of war. Consequently, Grotius' chief concerns, like Vitoria's, were with deontological principles. However, Grotius did offer a systematic treatment of the virtues as well, but expressed his view that virtuous conduct in war is beyond the purview of the law. Acting in conformance to the law is all agents need to do to avoid being punished, even

⁷⁶ Gregory Reichberg, Henrik Syse & Endre Begby, *The Ethics of War: Classic and Contemporary Readings*, (Victoria: Blackwell Publishing, 2006), 386.

if we would hope for more. The view of virtue as being supererogatory or superlative to law is one that continues today, and will be a subject of ongoing debate throughout this thesis. As JWT has grown increasingly deontological in focus, moral virtues have come to be increasingly presented as being beyond the purview of JWT, which I challenge in this thesis. The origins of the contemporary absence of aretaic ethics in JWT lies, perhaps unintentionally, in Grotius' work.

2.2.1: *Ad Bellum*

Grotius' discussion of war began by noting that people generally approve of the use of force under certain circumstances. Societies do not reject all wars as immoral, "but only that use of force which is repugnant to society, that is, which infringes upon another's right."⁷⁷ Following Augustine and Vitoria, he claimed that "[n]o other just cause for undertaking war can there be except injury received."⁷⁸ He suggested that given all just wars are in response to an injury received, there are four types of just wars: "defence, recovery of property, and punishment [and] obtaining of what is owed to us."⁷⁹

Note that Grotius, interested in developing a Law of War that could be used to govern nations, included punishment amongst the just causes for war. Not only do sovereign rulers have authority over their own citizens, but insofar as

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⁷⁷ Hugo Grotius trans. A.C. Campbell, *The Rights of War and Peace*, (Kentucky: Cornell University Library, Kentucky, 2012), Bk. I, II.I.

⁷⁸ *Ibid.*, Bk. II, I.I.

⁷⁹ Grotius *The Rights of War and Peace, op cit., Bk. II, I.II.*

all nations are governed by the same laws, it falls to rules to enforce those laws.

The fact must also be recognized that kings, and those who possess rights on a par with kings [supreme power], have the right of demanding punishments not only on account of injuries committed against themselves or their subjects, but also on account of injuries which do not directly affect them but grossly violate the law of nature or nations.⁸⁰

Here Grotius indicated his belief that there are certain responsibilities that political leaders inherit that extend beyond national self-interest or protection of their own citizens. Rather, political leaders are duty-bound to uphold, protect, and regulate the adherence of other states to the law of nations. The question of whether, and to what extent political leaders are required to intervene in response to the violation of international law by other states is a matter of ongoing debate, but here – at the founding point of international law – Grotius staked his position. The law applies equally to all political leaders, but also relies equally on all political leaders to enforce it. Thus, it behoves political leaders to uphold and enforce international law, if necessary, with military force.

The final point regarding Grotius's views on *ad bellum* is the degree to which leaders and soldiers are morally responsible for the justice of their cause. Grotius argued that "we must distinguish between those who were

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⁸⁰ Ibid., Bk. II, XX.XL.

responsible for a war and those who *followed the leadership of others.*"81 Insofar as political leaders have the responsibility to declare war, they are also culpable for the justice of the cause. Soldiers, on the other hand, are duty-bound to obey commands of their leaders, and are therefore inculpable (at least with regard to cause).82 Notably, however, Grotius also argued that any soldier who freely enters a war (e.g. mercenaries, allies) also bear culpability for the justice of that war. Thus, not all soldiers are free – as Vitoria argued – from scrupulously evaluating the morality of their cause. Those who volunteer for the war must be confident of the justice of that war, or they will be tainted with the injustice of the cause.

2.2.2: In Bello

When Grotius examined the various moral obligations that soldiers face in war, he developed a novel dualism between legality and morality. Grotius distinguished between "what can be done without blame", and "what the honourable man would do." There are, Grotius contended, two meanings of "permitted" each pertaining to *in bello* discussions. The first definition concerns the moral rightness of the action, and the second concerns actions that are free from punishment.

⁸¹ Grotius, *The Rights of War and Peace, op cit.*, Bk. III. XI. V. (Emphasis added).

⁸² Although Grotius does note that the conscience of the subject must be obeyed: "[i]f those under the command of another are ordered to take the field [...] they should altogether refrain from doing so if it is clear to them that the cause of war is unjust." *Ibid.*, Bk. II, XXVI.III.

[S]ometimes that is said to be permissible which is right from every point of view and is free from reproach, even if there is something else which might more honourably be done [...] In another sense, however, something is said to be permissible, not because it can be done without prejudice to piety and rules of duty, but because among men it is not liable to punishment.⁸³

Beginning by considering the legally permissible (viz. that which is not liable to punishment), Grotius argued that that in war it is permitted to intentionally harm or kill one's enemies: "often killing is called the *right* of war." This deviates from Aquinas' view that intentional killing in war cannot be justified *per se*, though some killing may be justified in acts of self-defence. Instead, Grotius followed Vitoria in holding that war is a separate moral sphere, and that everyday moral requirements are not applicable in war. Perhaps the most significant factor in justifying the intentional killing of others was, for Grotius, the moral good of the end being aimed at by the war. Those killings which are necessary to bring about victory in the war can be morally justified whilse those which are unnecessary cannot. The same goes for other forms of harm that might occur in war, for instance, Grotius was forthcoming in his criticism of those who license rape as an acceptable practice in war.

Those who sanction rape have taken into account only the injury done to the person of another, and have judged that it is not inconsistent with the law of war [...] A better conclusion has been reached by others, who have taken into

83 Grotius The Rights of War and Peace, op cit., Bk. III, IV.II.

⁸⁴ Ibid., Bk. III, IV.V. Emphasis added.

⁸⁵ Ibid., Bk. II, IV.V.

consideration not only the injury but the unrestrained lust of the act; also, the fact that such acts do not contribute to safety or punishment.⁸⁶

Those who defended rape in the time of Grotius usually accepted that it harmed the victim. However, they also observed that war permits harm in a number of different forms (for example, killing, conquest, destruction of property). From this it followed, according to these proponents, that if other types of harm were morally tolerable, so too was rape.

Grotius rejected this view because the only types of killing, conquest and property destruction that are permissible are those necessary for victory. Rape does not further the just cause being pursued and therefore cannot be justified. However, Grotius believed this rebuttal failed to represent the entirety of what is evil about rape. Rape not only harms the victim, but because the rapist himself allows the vice of lust to control his actions, rape is demonstrative of vice. In this way, Grotius appears to echo Augustine, who argued that viciousness was the true evil in war.87 What is unclear, however, is how Grotius would have responded in a case where rape was argued to be necessary to pursuing the ends of an otherwise just war. Grotius claimed that the right to injure one's enemies derives ultimately from just cause. If a certain deed, then, was necessary to pursue a just cause, that deed must be permissible under Grotius' proposed system. So, having established that rape is a prima facie moral evil, Grotius appears to have committed himself to saying either (i) that moral evil is sometimes necessary, (ii) that what justifies the harms committed in war is something other than the justice of the cause, or finally (iii) that the 'necessary rapist' would not be liable to legal punishment

⁸⁶ Grotius The Rights of War and Peace, op cit., Bk. III, IV.XIX.

⁸⁷ See: Augusine, Contra Faustum, op cit., 22.74.

(because his action was necessary), even though he had committed a grave moral evil.

There is some evidence that Grotius' response would be along the lines of (iii), above, as he believed strongly in a distinction between what is legally permissible in war, and what morality would sanction as virtuous conduct. Thus, in Grotius we see clearly how deontological norms and aretaic virtues are separated: the law is the domain of moral duty, and the military is right to punish violations of moral duty, whilst virtue is optional – we praise soldiers who act virtuously, but there can be no obligation for them to do so.

I must retrace my steps, and must deprive those who wage war of nearly all that I may have seemed to grant, yet did not grant to them. For when I first set out to explain this part of the law of nations I bore witness that many things are said to be 'lawful' or 'permissible' for the reason that they are done with impunity [...] things which, nevertheless, either deviate from the rule of right [...] or at any rate may be omitted on higher grounds and with greater praise among good men.⁸⁸

Some of what the law allows could still violate deeper laws of morality, according to Grotius. He explained his view with reference to Seneca's *Trojan Women*, where Pyrhus claims that no law protects captives from injury, to which Agamemnon responds "[w]hat law permits, [a] sense of shame forbids." This "sense of shame" is what Grotius described as "internal justice" – the *moral* laws that govern warfare, and forbid some of what the law

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⁸⁸ Grotius, The Rights of War and Peace, op cit., Bk. III, X.I.

⁸⁹ *Ibid*.

of nations permits. The claims made by Grotius in this discussion show him utilising a different mode of moral reasoning to that employed in his treatment of law. This new approach – which is much closer to that of Augustine and Aquinas – is one in which the morality of war is described in terms of what the virtuous soldier or commander might do. For example, an "honourable" warrior would wage war out of a genuine desire to do good, show mercy where it is possible and prudent, show restraint where noncombatants are at risk, and not promote hateful vitriol and unnecessary violence against one's enemies.

This indicates that although Grotius separated deontology from aretaic ethics, he did not turn his back on aretaic ethics altogether. However, as we will see in the following section, the growing interest in law seems to have meant that only the legalistic aspects of Grotius' work have had continued influence today. Although the possession of moral virtues and good intentions is still desirable, the primary concern for just war theorists has been on deontological norms and violations of them. For this reason, Grotius (and Vitoria before him) can be credited with – perhaps unwittingly – beginning the modern uninterest in aretaic ethics within JWT.

Violations of absolute moral rules are much easier to discover and prosecute than are vicious actions. As such, deontology was more immediately relevant to Grotius, whose primary motivation was the writing of laws. Because Vitoria and Grotius sought the development of an international law of war, they

90 Ibid., Bk. III, XI.II.

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⁹¹ Grotius, The Rights of War and Peace, op cit., Bk. III, XI.II.

naturally emphasised deontology as the element of morality that is most like in form to the law. However, despite a sharp distinction between *arete* and moral obligation in Grotius, there remains a sense in which a just war theory without a discussion of the virtues would remain incomplete. Thus, Grotius notes that morality forces him to "deprive those who wage war of nearly all that I may have seemed to grant," because to do otherwise would be to present an incomplete moral description of war. For Grotius, even if deontic and aretaic ethics were separate questions for military ethics, his writings retain a sense that unless one is able to address *both* elements, one's understanding of the morality of war will remain incomplete.

3: Michael Walzer and Just War Theory's Modern Revival

Although in the 20th century several philosophers and theologians offered insights into JWT,⁹² the most substantial contribution to JWT was to be offered by Michael Walzer (1935-today). His treatment of the morality of war was not only responsible for a *revival* in just war thinking, but also provided a radically new way of discussing the topic. In fact, most of the major debates in JWT today are in response to the ideas found in Walzer's work. For this reason, this section moves between exegesis of Walzer's own views and those opposing him on a number of controversial subjects.

⁹² Most notably, Paul Ramsey and Elizabeth Anscombe.

Walzer's vital contribution was to invite just war theorists to discuss their ideas in terms of human rights. ⁹³ In moving the discussion toward human rights, ⁹⁴ Walzer aligned his work with the growing body of international law that was emerging at the time when his seminal work *Just and Unjust Wars* was published in 1977. Like international legal scholars, Walzer sought to develop a theory that could apply across different communities and cultures. Aware that many norms are culturally sensitive and unlikely to change, Walzer recognised that an effective, universal morality of war would have to be formulated in terms to which almost all communities would assent. ⁹⁵ The distinction between culturally sensitive norms and universal ones is described in terms of "thin" and "thick" moralities. If, Walzer contended, moral norms of war would be universally applicable, they would need to be based in "nothing more (nor less) than that core set of values we find reiterated in every substantive moral and political code." ⁹⁶ That is to say that JWT ought to be a "thin" moral system.

The requirements of Walzer's thin morality are "rudimentary and largely negative," ⁹⁷ and can generally be understood as being protective of basic human rights like life and liberty. ⁹⁸ "Thin morality, in short, consists of those

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⁹³ Michael Walzer, *Just and Unjust Wars* (4th edition), (New York: Basic Books, 2006), xxiii-xxiv.

⁹⁴ Although Walzer is quite vague on precisely what human rights are constituted by. See *Ibid.*, 54. "How these rights are themselves founded I cannot try to explain here. It is enough to say that they are somehow entailed by our sense of what it means to be a human being." ⁹⁵ Brian Orend, *Michael Walzer on War and Justice*, (Cardiff: University of Wales Press, 2000), 31.

⁹⁶ Ibid., 32.

⁹⁷ Ibid., 31.

⁹⁸ *Ibid.* Walzer notes that although human rights talk is not universal, "it is not a bad way of talking about injuries and wrongs that no one should have to endure, and I assume that it is translatable." See: Walzer, *Thick and Thin: Moral Arguments at Home and Abroad*, University of Notre Dame Press, Indiana, 1994, 10.

basic moral rules everyone believes in."99 These basic moral rules, Walzer contends, are best expressed in terms of human rights.

Walzer is also described as a "conventionalist": emphasising that morality lies in understanding what it is we already believe and do, Walzer situates morality within historical, cultural and political traditions. "Moral and political life is always experienced in particular places and times, through the medium of different concrete actions, institutions and languages."100 Being a conventionalist, Walzer assumes the status quo of international relations and focuses on JWT as being concerned with relationships between states: states being those institutions that protect the rights of individuals and the common life of communities.¹⁰¹ However, on this point he has been subject to some criticism, as Orend notes, non-state violence is growing in incidence. Consequently, Orend understands war as a relationship between "political communities" rather than states. 102 (Although, in Walzer's defence, even Orend's definition of political communities is state-centric: "those entities which either are states or intend to become states.")103 The rights of states are twofold for Walzer: "territorial integrity and political sovereignty," deriving "ultimately from the rights of individuals, and from them they take their force."104 Walzer's largest contribution has been the suggestion that JWT should be understood primarily through the lens of these two rights.

⁹⁹ Orend, Michael Walzer on War and Justice, op cit., 32.

¹⁰⁰ *Ibid.*, 14.

¹⁰¹ Douglas Lackey, 'A Modern Theory of War', Ethics, vol. 92, no. 3, 1982, 533-546 at 537.

¹⁰² Orend, *The Morality of War, op cit.*, 2.

¹⁰³ Ibid.

¹⁰⁴ Walzer, Just and Unjust Wars, op cit., 53.

The combination of Walzer's moral conventionalism and his support for a thin morality of war explains the further diminution of aretaic ethics within JWT today. Because Walzer aims to develop a universally applicable and accepted morality of war, his theory consists only in forbidding or prescribing practices which reflect existing standards of communities around the world. Contending that all communities enshrine basic human rights as morally valuable, Walzer uses rights as the basis for his theory. However, in discovering the *foundational* moral beliefs on which all communal moral systems are based, Walzer's theory is – as we will see – only able to describe JWT in negative terms: that is, the deontological norms which ought not to be violated. His theory echoes the legalistic elements of Grotius' account but, unlike Grotius, Walzer does not specify a separate aspect of JWT dedicated to aretaic questions. Instead, Walzer's pursuit of universal agreement comes at the expense of aretaic reasoning with JWT.

It is important to note that Walzer does not *explicitly* exclude aretaic ethics from discussion, and indeed at times discusses heroic sacrifice, courage, prudence, and other virtues. However, they are only discussed as supererogatory or unnecessary. Virtue becomes, in Walzer's work, a matter of the private morality of soldiers, commanders, and political leaders, not a matter of concern for discussions of universal morality. The exclusion of aretaic ethics from JWT in Walzer's work, and subsequently in the work of his contemporaries will become apparent through a more detailed exposition of his thought.

3.1: Ad Bellum

Walzer describes his theory of *jus ad bellum* in a section of *Just and Unjust Wars* entitled "The Theory of Aggression", which provides a clear idea of the focal point of his theory. Walzer opens with the claim that "[a]ggression is the name we give to the crime of war." War is a crime when it is imposed on people undeservingly, and demands that they defend what should not need to be defended, their rights. The crime itself is defined as "[e]very violation of the territorial integrity or political sovereignty of an independent state;" that is, any violation of the *rights* of another state. For Walzer, what makes aggression a crime is that "[a]ll aggressive acts have one thing in common: they justify forceful resistance." This leads to Orend's suggestion that "[f]or Walzer, the only just cause for resorting to war is to resist aggression." This includes aggression against my own nation, or aggression committed against a third-party nation.

An alternative to Walzer's limited view of just cause is provided by Nicholas Fotion, who suggests that there might be "multiple reasons" which all contribute to just cause, rather than requiring only one – admittedly powerful – reason (like aggression). "[I]t can be argued that several small reasons can, in theory, rise to the level of a single overriding reason. The whole might not be greater than the sum of the parts, but the parts may add up to a single

¹⁰⁵ Walzer, Just and Unjust Wars, op cit., 51.

¹⁰⁶ *Ibid.*, 51.

¹⁰⁷ *Ibid.*, 52.

¹⁰⁸ Ibid., 52.

¹⁰⁹ Orend, Michael Walzer on War and Justice, op cit., 88.

overriding reason."¹¹⁰ If it is the case that *only* aggression can be met with war, one's enemies can perform a multitude of antagonistic acts short of aggression from a position of relative safety (one thinks, for example, of North Korea's ongoing missile testing).¹¹¹ Although one might forgive one, or even a few such actions, at a certain point the aggregate harm begins to appear overwhelming. Walzer's claim that all aggressive acts justify forceful resistance challenges the "probability of success" criterion of *jus ad bellum*. However, as was said in chapter one, it is unclear what constitutes success. For Walzer, the resistance of unjust aggression can sometimes be justified even if there is no chance of success, as the alternative is simply "a failure to resist evil in the world." Note however, that Walzer also concedes that it might not be necessary to resist *every* evil one encounters in the world:

It can't be said, however, that I am bound by my commitment to attack the murderer myself if I cannot do so effectively or if the likely outcome is my own destruction or the death of other people for whom I am responsible.¹¹³

Here we see Walzer attempt to establish the deontological limits of the apparent duty to resist aggression: is the resistance of aggression ever a *duty*, or is it merely morally permissible? In this discussion Walzer once again

¹¹⁰ Nicholas Fotion, War and Ethics: a new just war theory, (London: Continuum, 2007), 73.

¹¹¹ See, for example, the 13th December 2012 testing, met with condemnation from the UN. AFP, 'North Koreans celebrate rocket launch as UN Security Council and China condemn move after emergency meeting', http://www.news.com.au/world/north-koreas-launched-rocket-flew-over-japan/story-fndir2ev-1226535265147.

¹¹² Walzer, Just and Unjust Wars, op cit., 69.

¹¹³ Walzer, 'World War II: Why Was This Different?', *Philosophy and Public Affairs*, vol. 1, no. 1, 1971, 3-21 at 9.

demonstrates his interest in discovering the relevant rights and duties of states and individuals as they apply to war, seeing them hard moral limits on action.

One instance in which Walzer demonstrates his understanding of morally permissible and impermissible acts in terms of rights and duties emerges in his discussion of an incident in 1943 where mercenaries fighting for the French in WWII were permitted to rape Italian women. He dismisses any argument that might justify the rape, instead arguing that rape is always outside the deontological limitations determined by universal morality.

Rape is a crime, in war as in peace, because it violates the rights of the woman who is attacked. To offer her as bait to a mercenary soldier is to treat her as if she were not a person at all but a mere object, a prize or trophy of war. It is the recognition of her personality that shapes our judgement.¹¹⁴

We can contrast Walzer's criticism of military rape to that of Grotius. Walzer notes the immorality of rape lies in the harm inflicted on an innocent victim, and the failure of the act to respect the humanity of the victim. However, this is precisely the account that Grotius believed did not go far enough in its condemnation. Forbidding rape solely on the basis of "the injury done to the person of another" was insufficient for Grotius; a large part of rape's illegality stemmed, for Grotius, from "not only the injury but the unrestrained lust of the act." ¹¹⁵

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¹¹⁴ Walzer, Just and Unjust Wars, op cit., 134.

¹¹⁵ Grotius, The Rights of War and Peace, op cit., Bk. III, IV.XIX.

However, because Walzer is concerned only with those moral beliefs that have universal traction, he formulates the immorality of rape in terms of human rights (it is an open question whether or not "unrestrained lust" might not be similarly viewed by cultures around the world). But, in describing rape's wrongfulness only in terms of the harm it does to others, one remains open to the possibility that lustful soldiers might be suitable figures to wage war, so long as they do not act on their lust. This view is anathema to that of Augustine and Aquinas, who held that the morally good soldier must also be a virtuous man. For Walzer, the morally good soldier is simply one who does not harm those who do not warrant being harmed.

Further demonstration of the diminished importance of internal dispositions and personal moral excellence can be found in Walzer's views on the right intention criterion of *jus ad bellum*. Walzer, again concerned with the ethical minimums that states and individuals ought to be expected to reach, does not require that political leaders declare war solely out of concern for the justice of their cause. Instead, he argues that "[t]here is no such thing as a pure will in political life." This concession to realism leads to Walzer's allowance of "mixed motives," whereby "right intention is present amongst the ordinary mix of motives which animates states behaviour." Here, again, Walzer's interest in deontological formulations of JWT is indicative: if it is the case that morality only needs to answer questions about right and wrong, then all Walzer needs to determine is whether a just war declared from mix motives constitutes a violation of deontological norms or not. By limiting war to the

¹¹⁶ Michael Walzer, Just and Unjust Wars (3rd ed.), Basic Books, New York, 2000, xiii.

¹¹⁷ Orend, Michael Walzer on War and Justice, op cit., 94.

deontological domain – a product of his belief that the morality of war should derive from universally held moral principles – Walzer's JWT is considerably narrower in focus than those of his predecessors. The trouble with this narrowness is identified by Orend:

Walzer refers quite breezily, almost off-handedly, to the content of minimal morality, presumably owing to his view that we all know more or less what he is referring to. But do we really? Is the 'more or less' enough to provide firm guidance in difficult situations, such as wartime?¹¹⁸

It is unclear whether Walzer's reliance on thin (in Orend's terms, minimal) morality actually lends sufficient content to intelligently discuss the ethics of war, or whether they "leave considerable space for different interpretations of the same phenomena."119 For instance, what counts as torture is frequently debated (and will be addressed in detail in chapter three): can we say that a thin morality that prohibits torture is sufficient if we lack consensus on the correct definition of torture? Aquinas argued that a large part of the description of an action emanated from aretaic factors like intention and motivation. If he was correct, achieving consensus about the description of morally contentious terms will be highly problematic for defenders of a thin moral system.

¹¹⁸ Orend, Michael Walzer on War and Justice, op cit., 34.

¹¹⁹ *Ibid*.

3.2: In Bello

Like his predecessors, Walzer argue that if one fails to "fight well", that is, fails to respect the laws of jus in bello, then a war that was previously just (adhering to the rules of jus ad bellum) is rendered unjust. 120 Walzer's doctrine of jus in bello consists of three rules which have emerged from the standard, ongoing practice of war as articulated by laws, norms, and cultural practices – what Walzer calls "the war convention." These rules generally correlate to the two principles described in chapter one: proportionality and discrimination, but Walzer adds a third one – "armies are not to employ methods which are intrinsically heinous; they may not commit actions which 'shock the moral conscience of mankind.'"122 This third addition makes sense given that Walzer views his work to be an interpretation of the existing moral beliefs of human societies (although, as I mentioned, the narrowness of Walzer's framework may make it difficult to define these intrinsically heinous deeds in advance). No society would approve of a deed heinous enough to shock the moral conscience of all of humanity. However, it is also true that many, if not all societies would prefer to have a heinous deed done than see their entire society destroyed. How these two moral preferences interact in Walzer's thought will be explored later in this section.

Walzer's view of the principle of discrimination focusses on who *can* be attacked, rather than who cannot (although he still holds noncombatant

¹²⁰ Walzer, *Just and Unjust Wars* (4th ed.), *op cit.*, 135. All references hereafter are to the 4th edition of Walzer's book.

¹²¹ Ibid., 44.

¹²² Orend, Michael Walzer on War and Justice, op cit., 111.

immunity to be of central importance). ¹²³ Walzer argues that those engaged directly in committing harms are legitimate targets in war. ¹²⁴ This view leads to Walzer's argument that soldiers forfeit their individual rights against being killed when they go to war. ¹²⁵ "Soldiers," Walzer observes, quoting Napoleon, "are made to be killed." ¹²⁶ However, although Walzer accepts this, he does not think that all soldiers can be killed all the time; only that it *can* (and mostly will) be permissible to kill enemy soldiers. ¹²⁷ On the basis that all soldiers have forfeited their right to life and are legitimate targets, Walzer upholds a doctrine that has come to be called "the moral equality of soldiers." ¹²⁸ Therefore, whether a soldier fights for a just or unjust war, he has equal rights to kill or be killed. Here Walzer finds an unusual ally in Augustine, who argued that soldiers were merely "a sword in the hand."

In response to this view, Jeff McMahan, argues "against the view that unjust combatants act permissibly when they fight within the constraints of *jus in bello.*" Rather, McMahan suggests, "it is morally wrong to fight in a war that is unjust because it lacks a just cause." McMahan's position is that for a solider to warrant being killed, he must have done something to make himself liable to be killed, but soldiers who defend a just cause have done nothing to make themselves so liable; they are in this respect "innocent". Therefore to kill soldiers *simply* for fighting for a just cause is impermissible.¹³¹ Even if,

¹²³ Walzer, Just and Unjust Wars, op cit., 137.

¹²⁴ Orend, Michael Walzer on War and Justice, op cit., 112.

¹²⁵ Walzer, Just and Unjust Wars, op cit., 136.

¹²⁶ *Ibid*

¹²⁷ *Ibid.*, 36. Walzer does note limitations, which appear to be when the soldier is no longer engaged in harming.

¹²⁸ For a detailed discussion of the idea, see: *Ibid.*, 34-41.

¹²⁹ Jeff McMahan, Killing in War, (Oxford: Clarendon Press, 2009), 6.

¹³⁰ Ibid., 6.

¹³¹ Ibid., 44-45.

McMahan argues, the soldier has good reasons for why he believes the war to be just, if he is mistaken, there is a clear difference in the moral status of a just combatant and the moral status of an unjust combatant.

The disharmony between McMahan and Walzer on this point appears to stem from two places: first, a view of soldiers as duty-bound (by either coercion or through freely volunteering) to obey commands. Were soldiers not to obey, military institutions would be unable to effectively co-ordinate the fighting of Just wars. This argument, which McMahan calls "The Duty to Sustain the Efficient Functioning of Just Institutions,"132 is predicated on the fact that "[m]ilitary institutions have to be able to react quickly and efficiently in moments of crisis," and therefore "individuals within the military must fulfil their assigned roles in a consistent and predictable manner."133 McMahan rejects this alleged duty for two reasons: first, because in conflicts between institutional duties and other duties "there can be no a priori guarantee that institutional duties will be overriding;"134 and second, because "that [institutional] duty is generated only within military institutions that are just."135 Obedience only becomes a duty if (a) the institution is just, and (b) even if the institution is just, there is no reason to believe that this duty takes priority over other duties (such as not to act unjustly). This is a real problem with Walzer's approach, and it is not clear on what basis Walzer justifies this claim save to say that it is part of the war convention.

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¹³² McMahan, Killing in War, op cit., 70.

¹³³ *Ibid.*, 71.

¹³⁴ Ibid., 72.

¹³⁵ Ibid., 73.

The second source of disagreement between McMahan and Walzer comes from the general manner in which they both view soldiers. Walzer famously describes soldiers as "human instruments" who are "not comrades-in-arms in the old style, members of the fellowship of warriors; [but] 'poor sods, just like me.'"¹³⁶ Understandably for someone writing in the wake of the Vietnam War and the controversies surround conscription policies in the US at the time, Walzer develops a view of soldiers as the *victims* of the will of political leaders. The condition of soldiers is one of shared victimhood: they may not fight for the same side, but they are allied in their shared experience of being pawns in a greater game. Because of this shared experience, soldiers are able to recognise that their enemies, though legitimate targets to kill, are "men who are not criminals,"¹³⁷ but are – like me – worthy of pity. It is this mutual understanding of the plight of soldiers that restrains them from going beyond the rules of war.

McMahan, by contrast, sees soldiers as *prima facie* morally autonomous agents whose decisions to go to war are ultimately their own. "Political leaders," he argues, "are utterly powerless to kill large numbers of people without the acquiescence and complicity of all those who rationalize, pay for, and perpetrate those killings." McMahan believes that although soldiers and commanders, as rational decision-makers, have a duty "to do whatever they have been ordered to do," unless there is evidence that obedience is *absolutely* required (and McMahan contends there is not) they nevertheless "have a moral choice to make when they receive an order." Having made their own,

¹³⁶ *Ibid.*, 36.

¹³⁷ Ibid.

¹³⁸ Ibid., viii.

¹³⁹ Ibid., 88.

individual decisions, soldiers "cannot plausibly deny their responsibility" 140 if they decide badly.

The question of soldiers' responsibility for the justice of their cause is one of the most hotly contested debates in the modern literature (and one that I address at length in chapter five). In fact, the question has given rise to a school of thought known as 'Just War Revisionism.' The fulcrum of debate regards whether the categories of jus ad bellum and jus in bello are, in Walzer's words, "logically independent," 142 or whether they are related. McMahan explains the significance of this: "The most important implication of the idea that jus in bello is independent of jus ad bellum is that it makes no difference to the permissibility of an unjust combatant's conduct in war that he fights without a just cause. Unjust combatants do not do wrong merely by participating in an unjust war."143

McMahan's view is not without criticism either though: Nancy Sherman suggests that it "seems too harsh and to miss too much about the practice of soldiering."144 Sherman notes that the soldier lifestyle "is not the optimal time for the deepest reflection and analysis of war's causes and rationales."145 However, Sherman is no ally to Walzer, rather claiming that we do blame

¹⁴⁰ *Ibid*.

¹⁴¹ See Graham Long, 'Disputes in just war theory and meta-theory', European Journal of Political Theory, vol. 11, no. 209, 2012, 209-225.

¹⁴² Walzer, Just and Unjust Wars, op cit., 21.

¹⁴³ Jeff McMahan, 'The Ethics of Killing in War', Ethics, vol. 114, no. 4, 2004, 693-733 at 693-694.

¹⁴⁴ Nancy Sherman, *The Untold War: Inside the Hearts and Minds of Our Soldiers*, (New York: W.W. Norton, 2010), 44.

¹⁴⁵ Sherman, The Untold War, op cit., 45.

soldiers for the wars they fight if we perceive them to be unjust, and that the soldiers themselves are concerned with this as well. There is a sense that the side on which a soldier fights says something about the moral character of that soldier. Thus, Sherman suggests that Walzer's claim that the separation of *jus ad bellum* and *jus in bello* is part of the war convention is false; rather, the way that people ordinarily understand war is to attribute some blame to soldiers who fight in an unjust war. Orend, for instance, suggests they are "like minor accomplices to a major crime." 147

Is it not only soldiers who forfeit their rights to life in wartime, but certain civilians as well. How do we distinguish between civilians who enjoy the right to life in wartime, and those who do not? Again, the question is whether the civilians are engaged in harming or not, although this determination is difficult.

It is harder to understand the extension of combatant status beyond the class of soldiers, though in modern war this has been common enough. The development of military technology, it might be said, has dictated it, for war today is as much an economic as a military activity. Vast numbers of workers must be mobilized before an army can even appear in the field; and so on. It is a great temptation then, to attack the enemy army behind its own lines, especially if the battle itself is not going well. But to attack behind the lines is to make war against people who are at least nominally citizens. How can this be justified?¹⁴⁸

¹⁴⁶ Sherman writes powerfully, through a number of interviews with soldiers, of these feelings in the chapter 'For Cause or Comrade' in *Ibid.*, especially at 45-46.

¹⁴⁷ Orend, Michael Walzer on War and Justice, op cit., 114.

¹⁴⁸ Walzer, Just and Unjust Wars, op cit., 145.

It is worth noting here that until this point, such actions had usually not been justified. Paul Ramsey, Elizabeth Anscombe, and John Ford – all of whom dealt with this issue – argued that *if* noncombatants were killed, it was only justifiable as a side-effect to pursuing some militarily significant and morally justifiable target; that is, it was justified with recourse to DDE. Ford, writing during WWII, was especially suspicious of whether the decision-makers involved with "obliteration bombing" genuinely do not intend the deaths of innocent civilians, particularly given the rhetoric of leaders included a desire to "break the morale of the people"¹⁴⁹ and discussions of revenge.¹⁵⁰

Following the war, Elizabeth Anscombe wrote a public response to a decision to award Harry Truman – the President who ordered the dropping of the atomic bombs – an honorary degree from Oxford University. Elizabeth Anscombe revisited double-effect and its relation to obliteration bombing (now on a nuclear scale).

For killing the innocent, even if you know as a matter of statistical certainty that the things you do involve it, is not necessarily murder. I mean that if you attack a lot of military targets, such as munitions factories and naval dockyards, as carefully as you can, you will be certain to kill a number of innocent people; but that is not murder. On the other hand, unscrupulousness in considering the possibilities turns it into murder.¹⁵¹

¹⁴⁹ John C. Ford, 'The Morality of Obliteration Bombing' in Richard A. Wasserstrom (ed.), *War and Morality*, (California: Wadsworth, 1970), 31.

¹⁵⁰ Ibid.

¹⁵¹ Elizabeth Anscome, 'Mr. Truman's Degree', Pamphlet published by author, Oxford, 1958, 4, http://www.pitt.edu/~mthompso/readings/truman.pdf.

Anscombe argued that Truman's bombings did not scrupulously consider the various options to minimize harm, seriously consider the moral status of civilians, or consider the possibility of a conditional surrender. Such imprudence in the face of the massive harm inflicted cannot be anything but evil. ¹⁵² By emphasising the role of prudence among the moral factors involved in DDE, Anscombe illuminated its relevance to both deontological and aretaic ethics. Deontology explains the basic principles which may not *ever* be intentionally violated, and the moral framework for determining when a side-effect may be foreseeably caused, but aretaic ethics is required to understand the nature of the prudent person who would be able to make such decisions wisely, discerning when side-effects were proportional and necessary. As Ford notes:

The principle of the double effect, though basic in scientific Catholic morality, is not, however, a mathematical formula, nor an analytical principle. It is a practical formula which synthesizes an immense amount of moral experience, and serves as an efficient guide in countless perplexing cases. [...] It is a truism among moralists that, though the principle is clear in itself, its application requires "sound moral judgement."¹⁵³

In *Just and Unjust Wars*, Walzer expressed scepticism at the seemingly inflexible approach of DDE,¹⁵⁴ which he suggested could be used to justify clearly immoral behaviour. Walzer's analysis of DDE begins with the story of

¹⁵² It helps to remember that Anscombe was at the forefront of a revival of virtue ethics in moral philosophy, so the virtuous conduct of the person and psychological factors such as intention, remorse and care were significant considerations. See, for example: Ancombe, 'Modern Moral Philosophy', *Philosophy*, vol. 33, no. 124, 1958, 1-19 at 1.

¹⁵³ Ford, op cit., 27.

¹⁵⁴ Ford, however, suggests that DDE *must* be flexible if it is to be successful. See: Ford, *op cit.*, 27

Frank Richards, a soldier in WWI. Richards was assigned to clearing out a village, which involved entering each house and ensuring no German soldiers were present. Protocol for clearing the cellars was to throw a grenade down and enter after it had exploded. Richards, being a genuinely concerned man, would yell two warnings into the cellar before throwing the grenade, to give civilians time to escape. If any civilians might have died, Richards suggests he would have become a (paradoxically) "innocent murderer." ¹⁵⁵ Walzer asks whether the warnings (which Richards believes made him innocent) were morally necessary, given that they might give German troops a chance to escape and attack. He suggests that Richards *was* required to issue warnings, ¹⁵⁶ but that DDE would not require him to, and it is therefore a bad principle. ¹⁵⁷

However, this claim fails to strike at the heart of DDE as it was developed by Anscombe, because Walzer's conception of DDE does not allude to the aretaic concerns that Anscombe and Ford were cognisant of. The deontological effects must be guided and governed by a prudent person of "sound moral judgement." This is to say that to interpret DDE through a purely deontic lens, assuming that it establishes absolutely binding principles for action, is a mistake. DDE can, and does, provide firm moral guidance in difficult situations, but it is also subject to the situational factors at hand, and therefore cannot amount to a deontological principle, which is the manner in which Walzer expects it to operate. Just because DDE can justify an action *vis-à-vis* proportionality and intention does not make it justifiable; it must also be an action that can be justifiably imposed on the person who is likely to suffer. For this reason, in Richards' case, throwing the bombs without warning would be

¹⁵⁵ Walzer, Just and Unjust Wars, op cit., 152.

¹⁵⁶ Ibid., 154.

¹⁵⁷ Ibid., 154.

impermissible. Walzer argues for the addition of a new condition to DDE: "that the foreseeable evil be reduced as far as possible." However, a closer analysis of DDE would reveal that this requirement is already entailed in what it requires. The failure to correctly interpret DDE stems from Walzer's attempt to interpret it through a deontological lens. DDE is not a deontological principle, it is a method of decision-making that utilises the moral and psychological dispositions of the actor as a means to determining the moral character of the act itself. Thus, it cannot be applied indiscriminately in the way Walzer describes.

Let us turn now to acts that do intentionally risk, or worse, target civilians. These are a species of actions that "shock the moral conscience of mankind." ¹⁵⁹ Nevertheless, Walzer suggests that these acts may be done in cases of "supreme emergency." "A supreme emergency exists when our deepest values and our collective survival are in imminent danger ¹⁶⁰ However, Walzer's argument here is an instance of threshold deontology, as described in chapter one. In cases where the stakes are morally severe, deontology loses its binding force and "a certain kind of utilitarianism reimposes itself." ¹⁶¹ However, it is not pure utilitarianism, which holds that one ought to do whatever leads to the best outcomes; rather, it is an ethic of necessity. One does what is required despite the fact that what is required is morally wrong. Paradoxically, in supreme emergencies, the morally necessary action is one that is morally forbidden. ¹⁶²

¹⁵⁸ *Ibid.*, 155.

¹⁵⁹ Ibid., 107.

¹⁶⁰ Michael Walzer, Arguing About War, (London: Yale University Press, 2004), 33.

¹⁶¹ *Ibid.*, 40.

¹⁶² Martin L. Cook, 'Michael Walzer's Concept of Supreme Emergency', *Journal of Military Ethics*, vol. 6, no. 2, 2007, 138-151 at 144.

[T]here are moments when the rules can be and perhaps have to be overridden. They have to be overridden precisely because [as opposed to, for example, *habeas corpus*] they have not been suspended. And overriding the rules leaves guilt behind, as a recognition of the enormity of what we have done and a commitment not to make our actions into an easy precedent for the future.¹⁶³

What situations can be called supreme emergencies? Here, Walzer's claim betrays his conventionalist (state-centric) view of international relations, defining the ultimate emergency as the threat of the destruction of an entire community. According to Walzer, in situations like these the absolutist who cries "justice though the heavens fall!" demonstrates "a refusal to think about what it means for the heavens to fall."

Walzer is not explicit about the type of actions supreme emergency permits but which are prohibited at other times, save noting that even those that shock the moral conscience of mankind will be permitted. In 'Emergency Ethics' he calls these things "forbidden things, taboos, proscriptions..." ¹⁶⁶ It seems that there is nothing which might *not* fall onto this list were the need great enough. Thus, supreme emergency does not rule out, for example, the knowing and indiscriminate bombing of one's own civilians. "How can we, the opponents of murder, fail to resist the practice of mass murder - even if resistance requires

¹⁶³ Walzer, Arguing About War, op cit., 34.

¹⁶⁴ Ibid., 43.

¹⁶⁵ Ibid., 37.

¹⁶⁶ Ibid., 36.

us, as the phrase goes, to get our hands dirty?"¹⁶⁷ How can we fail to stop the massacre of our own civilians, even if the stopping requires us to do a little massacring of them ourselves? I cannot see a possible response to this charge from Walzer, so the remaining question is whether the permissibility of friendly civilian-killing undermines the entire project of the supreme emergency.

Walzer dedicates no time to discussing the effect that destroying so many lives might have on an individual's moral and psychological wellbeing. To perform such morally heinous deeds even under knowledge of necessity is, unless one is altogether lacking in empathy, to subject oneself to crippling guilt, suffering, and feelings of turpitude. In the HBO documentary *Wartorn*, executive producer James Gandolfini asks two military psychiatrists about the psychological toll of conflict on soldiers.

James Gandolfini: Is there anyone who you can honestly say, who was in a great deal of intense combat situations and comes back completely fine?

Col. Charles C. Engel: I'd say those folks are pretty rare.

Col. John Bradley: There's the pathology of the warrior that says that the only thing you should feel when you shoot an insurgent is recoil [...] but I would say that no-one is really unscathed. Unless you have really no compassion for human life. If you have a total disregard, maybe the only thing you feel is recoil. Everybody else carries something with them.¹⁶⁸

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¹⁶⁷ *Ibid*,, 37.

¹⁶⁸ HBO Documentary Films & Attaboy Films, *Wartorn 1861-2010*, 2010, Executive Producers James Gandolfini & Sheila Nevins.

If there is a psychological cost absorbed by soldiers when they kill the enemy, imagine how much greater the cost when one kills innocent civilians on a large scale. Can one perform an action like this and still remain a good person? Before answering this question one first has to address the antiheroic notion that the virtuous man is the one that *will* do these things. For instance, in his defence of US President Truman's authorisation of the dropping of atomic bombs on Hiroshima and Nagasaki, Wilson D. Miscamble opines that:

As future anniversaries of the dropping of the atomic bombs on Hiroshima and Nagasaki occur, one might hope for less moralizing condemnation of Truman's decision until the critics specify at least a less immoral and yet still feasible course of action to end the terrible war. Perhaps there might even be some empathy for the man who felt required to make the decision and who carried the burden of it. Harry Truman [...] was hardly some moral monster who now needs to be placed retrospectively on trial for war crimes. Those who from the safe distance of sixty-five years criticize his decision would do well to place themselves in their shoes and ask what they might have done in the circumstances [...] [P]erhaps they might pray, if they be so inclined, that leaders in our own time and in the future are never forced by horrible circumstances to make such decisions.¹⁶⁹

Miscamble's moralistic defense of Truman's strength of character in doing what was "necessary" indicates again, and perhaps especially, the extent to which modern thinking about the morality of war has become removed from aretaic ethics. Whether the moral cost to one's own character in performing heinous deeds might be enough to outlaw them altogether is paid no mind by

¹⁶⁹ Wilson D. Miscamble, *The Most Controversial Decision: Truman, the Atomic Bombs, and the Defeat of Japan,* (Cambridge: Cambridge University Press, 2011), 124

Miscamble, or Walzer in his case of supreme emergencies. This is indicative of the extent to which modern JWT is concerned exclusively with evaluating the morality of actions independently of the actual people performing those deeds. Whether or not these factors affect our moral evaluation of the moral legitimacy of the action, these are important questions to be considered; if for no other reason than because the harm an action does ought to be weighed as a factor for the purposes of proportionality.

There has, however, been some discussion of the moral-psychological consequences of performing highly morally dubious or impermissible acts from *outside* JWT. For instance, Nancy Sherman and Laurie Calhoun have both argued that the effects of war on those that operate in morally ambiguous realms have detrimental effects on the character of those who perform them. In *The Untold War*, Sherman looks at the moral space occupied by an interrogator, William Quinn.

In Quinn's case, deception and betrayal, manipulation and exploitation, tools morally questionable in ordinary transactions, had become standard tools of his specialised trade. And this did not sit perfectly well [...] To interrogate is to occupy a complex moral space. True, all soldiers occupy a moral space that is hard to reconcile at times with civilian life; this is a recurrent theme in the stories soldiers tell. But the space the interrogator inhabits has its own special moral demands. And with it comes a distinct set of moral and psychological vulnerabilities.¹⁷⁰

¹⁷⁰ Sherman, The Untold War, op cit., 115-116.

Similarly, Laurie Calhoun considers the "pilots" of unmanned air vehicles (UAVs), who operate lethal machinery from thousands of kilometres away.

Indeed, there is a very real sense in which soldiers who kill virtually have entered into the surreal and frightening realm of assassins who do not register the suffering of their victims—because it is not real at all from the killers' own perspective. The people who agree to be a part of this enterprise may have no qualms about destroying their fellow human beings, but even if they do initially, those who continue on surely become inured to what they do, as a matter of psychological self-defence.¹⁷¹

However, this psychological inurement cannot last forever; at some stage, the chickens will come home to roost. As Dave Grossman notes in his pre-eminent study on the psychology of killing in the military, "conditioning is astoundingly effective, but there is a psychological price to pay."¹⁷² Precisely what the costs are will be explored closely in chapter four. For now, however, it is important to emphasise that these kind of discussions are taking place in literature *outside* that of JWT. In the modern day, the initial co-operation of deontological and aretaic ethics utilised by Augustine and Aquinas has been completely separated to the point where aretaic concerns no longer appear as questions that serious just war theorists need to consider. JWT has become, for the most part, exactly as Walzer foresaw it: a thin description of the minimum

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¹⁷¹ Laurie Calhoun, *op cit.*, 382. Calhoun's point has recently been confirmed; drone operators have been reporting levels of PTSD equal with armed combatants. See: James Dao, 'Drone Pilots Are Found to Get Stress Disorders Much as Those in Combat Do', *New York Times*, 22/2/13, .">http://www.nytimes.com/2013/02/23/us/drone-pilots-found-to-get-stress-disorders-much-as-those-in-combat-do.html?smid=fb-share&_r=0>.

¹⁷² Lt. Col. Dave Grossman, On Killing: the Psychological Cost of Learning to Kill in War and Society (revised and updated edition), (New York: Black Bay Books, 2009), 327.

moral standards that must be reached in order for a war to be described as just. No longer as it once was: a comprehensive analysis of the ethics of war, but instead is a deontological analysis of how the moral limitations prescribed by human rights can be morally navigated in times of war.

4: Conclusion

The contribution of Walzer marks the point at which consideration of the aretaic has disappeared from JWT. Instead, JWT takes deontology – in the form of international law and Walzer's thin conception of justice – as its foundation. My thesis at the beginning of this chapter was that for the greater part of the history of JWT, the theory was founded in the broader moral system of aretaic ethics, and that there were good philosophical reasons for this. In fact, the move toward deontic conceptions of JWT is a relatively new one, and it is testament to Walzer's influence that it has become so widespread. However, it is, I believe to the detriment of JWT; no longer are concepts like rights and duties informed by deeper conceptions of virtue, wellbeing, and character. JWT requires - to quote Anscombe - "an adequate philosophy of psychology, in which [it is] conspicuously lacking." ¹⁷³

When Augustine began to discuss the morality of war, he addressed two separate elements: the absolute moral law, and the virtues of the individuals who are forced to fight in war. Thus, JWT began by acknowledging both

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¹⁷³ G.E.M. Anscombe, 'Modern Moral Philosophy', op cit., 1.

aretaic and deontic concerns. Adherence to absolute moral law (divine law) ought to be motivated by love of God and not be fear of his wrath. The love of moral goodness was preferred to mere obedience because the former demonstrates understanding of the moral laws to which one commits. Thus, for Augustine, the perfection of morally good action lay in the virtues. Later, Aquinas developed a just war theory which assigned absolute moral law to a natural law ethic distinct from the divine law of Aquinas in the sense that believers and non-believers alike could be expected to know and understand it. Furthermore, he suggested that war could be participated in with virtue and in a manner consistent with living a morally good life. Prudence and courage in particular are virtues inherent to the practices of commanding and soldiering respectively.

Following Aquinas, Francisco di Vitoria argued that war is a separate moral domain, independent of everyday morality. In this way, he paved the way for the separation of the deontic and aretaic; in war, soldiers could be permitted to perform even atrocities so long as their cause was just. Later, Hugo Grotius strongly advocated deontology by arguing that virtue is supererogatory.

Finally, Michael Walzer developed a just war theory explicitly focussed on human rights. In so doing, Walzer chooses deontology as the sole method of moral reasoning about war. As was seen in a discussion of supreme emergencies, failing to consider the aretaic means failing to consider the various ways in which the deeds performed by soldiers can affect their moral character and ongoing flourishing as these concerns are no longer considered to be within the remit of JWT. Only an approach that considers both aretaic

and deontological concerns will lead to a full appreciation of the various constitutive elements of the morality of war.

Chapter Three

Rights, Deon and Arete

In the previous chapter, I argued that the growing role of international law and human rights in contemporary discussions reflects the overwhelmingly deontological focus of JWT today. This, I suggested, has coincided with a dwindling interest in aretaic ethics, which was, at other stages in JWTs history, recognised to capture important elements of the morality of war. In this chapter I argue that one reason aretaic moral reasoning is important is because it enriches purely deontological approaches. Although these can be logically coherent, they can at times fail to treat the morality of war in its full breadth. Incorporating aretaic ethics into the discussion enables JWT to deal more satisfactorily with the moral challenges that arise in war.

It will be important to discern what kind of rights are of interest to just war theorists. In section one I suggest that most implicitly follow Joel Feinberg's view of rights as "valid claims" that form side-constraints on the actions of others. Although I have a good deal of sympathy for this view, rights as side constraints do little to explain the content of rights-respecting acts. Modern rights-based theories tend to understand rights-respecting actions as "not

¹ Joel Feinberg, 'The Nature and Value of Rights' in Steven M. Cahn & Peter Markie (eds.), *Ethics: History, Theory, and Contemporary Issues* (3rd edition), (Oxford: Oxford University Press, 2006).

wrongs." That is, right action refers to any action that does not violate any deontologically-prescribed duty. I argue that this description is sufficient to describe actions that are not *prima facie* wrongs, but does not present a theory of morally laudable or virtuous action. The shortcoming of this approach is that it fails to recognise sufficiently the moral importance of intentions in the moral evaluation of actions. To demonstrate the importance of intention, I contrast the rights-based justification for the types of killings soldiers perform during war with an account based in the doctrine of double-effect (DDE).

The exploration of rights and intentions in section one will set the intellectual context and debate which I address in the following sections. In section two I outline what I consider to be strong arguments in favour of incorporating rights into the morality of war. This section constitutes a defence for the place of rights within JWT, and explain why I do not endorse a purely aretaic approach. In summary, my reason are because few (if any) moral concepts provide the same sort of defence for the absolute moral value of individuals as do human rights (and we are right to hold individuals to be of absolute moral value). Second, because the virtue of the various people who participate in war is not assured. Third, because the deontological nature of rights is well-suited to form a framework under which a universal law of war can be (and has been) developed.

Having developed an understanding of (i) how contemporary just war theorists tend to conceptualise rights and (ii) why rights are an important concept in JWT, I consider some of the shortcomings of developing a just war theory *exclusively* from a rights framework. In section three I outline two areas

in which an exclusively deontological approach unnecessarily limits moral understanding of particular phenomenon to a simple transaction of rights. As I indicated in the last chapter, both aretaic and deontological frameworks cover important aspects of the morality of war. Just war theories based solely on human rights will be shown to be inadequate because at times they diverge from war's ultimate aim, being peace, and because they tend to defy popular common-sense notions about war.² The two illustrations seek to demonstrate this with regard to matters of both *ad bellum* and *in bello*, the examples being (i) torture as an example of circumstances in which rights can be upheld in a manner that is vicious and immoral, and (ii) the "lesser evil" problem invoked famously in Walzer's supreme emergency. In response to these challenges, I show how a just war theory that incorporates both deontological and aretaic ideas provides a more all-encompassing explanation in these two cases.

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² I do not take common-sense moral intuitions to be entirely authoritative, but when a philosophical theory presents conclusions that contradict ordinary moral intuitions, I believe the onus is on the theory to explain what is wrong with those intuitions. The usefulness of common beliefs is noted by Aristotle in what has become known as the "doctrine of the wisdom of the multitude." "For each individual among the many has a share of excellence and practical wisdom, and when they meet together, just as they become in a manner one man, who has many feet, and hands, and sense, so too with regard to their character and thought." See: Aristotle trans. Jonathan Barnes, *Politics*, Bk. III, Ch. 11, 1281b3-6 in Barnes, Jonathan, (ed.), *The Complete Works of Aristotle: Volume Two*, (Princeton: Princeton University Press, 1995) . Aristotle is likewise aware that common-sense intuitions are insightful, but not necessarily authoritative (Ch. 11, 1281b15-16). For an analysis of Aristotle on this subject, see: Jeremy Waldron, 'The Wisdom of the Multitude: Some Reflections on Book 3, Chapter 11 of Aristotle's Politics', *Political Theory*, vol. 23, no. 4, 1995, 563-584.

1: Rights

1.1: Which Rights?

Modern theorists (from around the time of the Walzerian revival onward) have made a substantial place for rights within their theories, and they have had good reason for doing so. However, before presenting what I believe to be the compelling reasons for finding a place for rights within JWT, it will be worth outlining what is meant by the term 'rights' in this context.

Most theorists divide rights into a number of different types: legal philosopher Rex Martin speaks of "claims, valid claims, entitlements [and] established ways of acting," whilst another jurist, W.N. Hohfeld, divided rights into claims, duties, privileges [liberties] and "no rights." To which type of rights (if any) do modern just war theorists subscribe? In the following discussion I distinguish between 'basic rights', those being valid claims to those things necessary as foundations of human survival and wellbeing,⁵ and other rights. Whilst basic rights are usually conceived of as claims, some war rights – rights

³ Rex Martin, A System of Rights, Oxford Scholarship Online, 1997, 1.

⁴ Thomas D. Perry, 'A Paradigm of Philosophy: Hohfeld on Legal Rights', *American Philosophical Quarterly*, vol. 14, no. 1, 1977, 41-50 at 42. In today's discourse, privileges are usually called liberties.

⁵ Loren E. Lomasky describes basic rights as "rights whose scope of application is maximally broad, that are not the product of explicitly conventional design but antecedent to it, and that are morally regulative in the highest degree." C.f. Loren E. Lomasky, *Persons, Rights, Persons and the Moral Community*, (Oxford: Oxford University Press, 1987), 101

that are *particular* to the environment of war, such as a soldier's right to kill – are best understood as liberties.

Although discussion of the logical structure of rights is helpful, I argue that JWT is a moral theory concerned primarily with *morally just and unjust actions*. It is a normative theory, not a meta-ethical one. Thus, the pertinent questions relate to particular human actions: is an invasion an act of aggression or not? Did a bombing run violate the principle of proportionality or not? It is therefore important to shift toward a consideration of the *intentions* of human actors with regard to the rights their actions affect. Whether a person intended to respect, undermine, deny, or violate rights can and should bear on our moral evaluation of the action. In this section I argue that determining whether an act is just or not provides insufficient evidence on which to condemn or laud either the act or the agent performing it. If just war theorists want a theory that is able to praise or condemn, reward or punish, they needs to consider the moral traits, intentions, and dispositions of the agents involved in making just war decisions. At present, deontological just war theories do consider intention to be a morally significant concept, and rightly so. However, they have not as yet recognised the connection between intention and aretaic ethics more broadly. If such a connection were made and aretaic considerations we brought to bear on the deontic, a more sophisticated account of military ethics would be possible.

1.1.1: JWT and the Right to Kill in War

Much of the moral distaste for war stems from the fact that during wars, innocent people often have basic rights (such as life, shelter, and liberty) destroyed. Ironically, however, much of the work of moral philosophy has been to show how the violation of basic rights *can* sometimes be justifiable. This is most obvious in discussions of what justifies soldiers in killing their enemies. In this section, I explore how some of the major rights-based just war theorists alive today – Michael Walzer, Jeff McMahan, and David Rodin – justify the right to kill in war. Although these thinkers are usually considered to offer differing accounts of what justifies killing during war, I argue that they share a basic underlying belief that is symptomatic of the modern prevalence of deontology in military ethics. Namely, the belief that the right to kill is derivative of the moral *status* of either the victim, the killer, or both: a status which is determined independently of the intention of the individual soldier.

For Rodin, the right to kill in wartime derives from the right to self-defence.⁶ How does this right, which involves depriving another person of his life (to which he has a claim), fit into the Hohfeldian schema? Rodin explains that self-defence is a kind of "exculpation," whereby an agent can be excused of an action for which he should seemingly be punished.⁷ Specifically, self-defence is a *justification* for homicide. Justifications do not hold *only* that an agent should not be punished for what he has done, but that agent has in fact done nothing wrong.⁸ Finally, Rodin concludes, the logical structure of justifications

⁶ David Rodin, War & Self-Defense, (Oxford: Clarendon Press, 2002), 1-2.

⁷ Ibid., 26.

⁸ Ibid., 28.

leads us to conclude that they are liberty-rights. The specific structure of the liberty-right to self-defence is as follows:

- 1. Person *A* performs an action that intends to harm Person *B*.
- 2. *A* is not justified in harming *B*, and is culpable for his attack.
- 3. *B* has a claim-right to life, and *A* a duty not to violate that claim.
- 4. Therefore, *B* would be wronged if *A* was to kill him.
- 5. However, if *B* were to kill *A* in order to prevent his being killed, *A* would not have been wronged.
- 6. Therefore, *A* must have had no claim (a "no-right") against *B*'s acting in self-defence.
- 7. Therefore, *B* was at liberty to act in self-defence.

Rodin sees self-defensive killing as one example of a species of actions he describes as "morally and legally justified defensive actions." Defensive actions are justified when the defender, D, possesses either a right to or a duty of care toward a particular good, G, and when an assailant, A, presents a threat to G. However, D is not entitled to do *just anything* to A in defence of G; rather, A is limited by three moral conditions: necessity, imminence, and proportionality. In short, defensive actions must do no more harm than is required to protect G, must only be undertaken when we are *certain* that G is under threat from A, and that the harm to A is proportionate to the moral value of defending G. Note that in this case, the defensive right is predicated on (i)

¹⁰ *Ibid.*, 35.

⁹ Ibid., 31.

¹¹ *Ibid.*, 36.

¹² *Ibid.*, 40.

the moral value of G; (ii) D's moral status as either entitled to or custodian of G; and (iii) A's status as a threat to G.

What though, Rodin asks, of A's rights? Although the moral relationship between D and G appears to justify D acting in defence of G, can it justify D doing harm to A – "a person whom we can assume has interests and rights of his or her own"?¹³ It can if and only if (i) A's threat to G is unjustified and (ii) that A is morally responsible for the threat he poses to G. There must be "a sufficiently substantive normative connection between the unjustified threat and the person against who one uses defensive force."¹⁴ From this we can understand fully Rodin's description of self-defensive killing as follows:

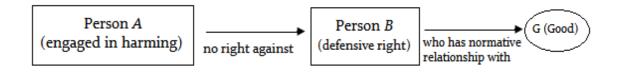


Figure 1 – Rodin's Model of Self-defence

When G is the right to life of B, the value of G stems from "the legitimate interest a person has in their own continued survival and bodily integrity." This value is great enough to make self-defensive killing proportionate. Furthermore, A's intentional effort to destroy G – a good to which B has a moral relationship – makes A responsible in a manner that justifies using

¹⁴ Ibid., 89.

¹³ Ibid., 49.

¹⁵ *Ibid.*, 30.

defensive force against him. In short, it is the fact that A is intentionally engaged in harming G in an unjustified manner that renders A vulnerable to defensive action. In times of war, G may vary between innocent civilians, national territory, the life of a soldier or his squad, or some other good. In all cases, what makes defensive action justifiable is that the assailant both is unjustified and responsible in attacking G and that D has some right to G or, more relevantly, a duty to defend G. In this account, the morally relevant factors are (i) G's status as morally valuable; (ii) D's morally privileged relationship to G; (iii) A's injurious relationship to G; and (iv) the lack of justification for A's relationship to G. Thus, the right to defensive action is predicated on the status of two parties relative to a particular good which is held to have objective moral value.

Similarly, McMahan believes that intentional killing is justified in war because certain people's rights not to be killed are lost – as if they had been *waived*. When a right is waived, the right-holder has no-right where he once had a claim. As McMahan notes, "[a] right is waived when the possessor of the right consents to allow another person or persons to do what he has a right that they not do." In cases of war, however, soldiers do not necessarily consent to being killed, but their right is lost nevertheless. For McMahan, this loss is explained because the soldiers' actions cause their right to be *forfeited* (in his terms, they are "liable"). However, it is only *unjust* behaviour that leads to a right being forfeited. Those soldiers whose attacks are unjustified (because of the injustice of cause, the innocence of their victim, or some other factor) forfeit their right against being killed. Similarly, for Rodin, the soldier who is

¹⁶ McMahan, Killing in War, (Oxford: Clarendon Press, 2009), 9.

¹⁷ *Ibid*.

¹⁸ *Ibid*.

defending *G* is of a higher moral status than the soldier who attacks *G*. Only the defensive soldier has the right to use force against the other. Thus, only soldiers whose war is *justified* possess defensive rights.

McMahan's argument is that only "just combatants" have a right to kill because their attacks are justified and they are therefore not culpable for them. By contrast, unjust combatants (those being combatants fighting for an unjust cause) are not permitted to attack because no moral fact justifies their actions. Even killing in self-defence becomes morally difficult in the case of the unjust combatant because, to borrow from Rodin, no person has the right to prevent someone from defending themselves against unjust attack. Thus, McMahan argues, self-defence is no more justified for unjust combatants than it would be if a bank robber (who is like in form to the unjust combatant *vis-à-vis* war) killed a policeman (like in form to the just combatant) in self-defence. The logical structure is as follows:

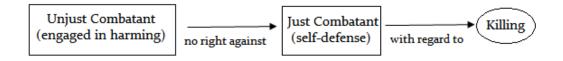


Figure 2 – McMahan's Model of Unjust Combatants

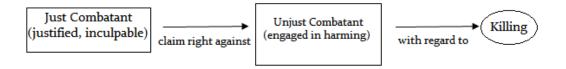


Figure 3 – McMahan's Model of Just Combatants

Rodin and McMahan's accounts can be contrasted with that of Walzer, who argues that all soldiers, regardless of which side they fight on, have the right to kill other soldiers. This thesis, "the moral equality of combatants," was discussed in the previous chapter. He begins by arguing that all soldiers are victims – "poor sods" – and that shared victimhood makes soldiers moral equals who "choose each other as enemies." Walzer argues that the equality of combatants is precisely with regard to their right to kill each other: "[t]hey can try to kill me, and I can try to kill them..." In addition, when soldiers are not poor sods it is because they have volunteered for war and thus consent to being targets of attack. This is to say that either soldiers are – under Rodin's account – not morally responsible in the relevant sense for their status as aggressor, or that they have chosen to participate in the war freely and have thus consented to being attacked by enemy soldiers.

Walzer does not emphasise the consensual justification, preferring to conceptualise soldiers through the lens of shared victimhood. This is to the benefit of Walzer's argument, as the consensual justification appears to conflate 'consent' and 'acceptance': soldiers might *accept* that their profession entails the possibility of being attacked by their enemies, but it seems unlikely that they would consent to that attack any more than the policeman in McMahan's example has consented to being attacked by the bank robber. Thus, one could make a convincing case that soldiers do not, in fact, consent to being attacked by their enemies at all. However, this possible objection aside, Walzer's underlying contention is that soldiers who fight for an unjust

¹⁹ Walzer, Just and Unjust Wars, op cit., 36-37.

²⁰ *Ibid.*, 36.

cause are equally entitled to kill their enemies as are soldiers fighting for a just cause.

Walzer believes war to be (at least in part) a contractual relationship; a product of "formal and informal bargaining between belligerent powers."²¹ In his view, soldiers are permitted to kill each other because the states they serve have collectively accepted that killing each other's soldiers is an acceptable practice within the "social creation"²² of war. War rights emerge, according to Walzer, from these agreed-upon conventions (the "war convention"),²³ not directly from moral principles.²⁴ Therefore, because states accept soldiers to be victims (often of the states' own making), they are afforded the right to kill one another. Although Walzer sees states as "permitting" their soldiers to kill each other, they would have been justified in doing so even without that permission because of Walzer's insistence that those "engaged in harming" can be justifiably killed. Either a war in which soldiers fight is a just one and therefore not a crime, or it is not *their* crime.²⁵

Here we see Walzer echoing the Vitorian spirit in which war exists as a world apart from common morality: although *prima facie*, self-defence may operate in the way Rodin describes, killing in war is something altogether different. In times of war, killing is 'business as usual' whilst in ordinary society it is an exceptional circumstance. What justifies killing in times of war is the status of

²¹ *Ibid.*, 43.

²² Ibid.

²³ *Ibid.*, 44.

²⁴ *Ibid.*, 43.

²⁵ *Ibid.*, 37.

the person who is killed: if he is a soldier or is engaged in harming (and therefore a participant in the war), he can be killed. If not, the person is not a legitimate target.

This view insists on a strict separation between *jus ad bellum* and *jus in bello*. Because soldiers have little influence or insight into the factors considered when their political leaders decide to go to war, they ought not to be held morally responsible for those decisions. Although this is, in itself, a reasonable position with a long history in JWT, Walzer's use of *rights* as the means for freeing soldiers from moral responsibility appears more problematic. For one thing, Walzer's bases for the rights of soldiers are contradictory: either soldiers are free and consenting, or they are not; either way, they have the right to kill other soldiers. However, this can only be true in cases where both sides are free *or* both sides are fighting under duress. As Walzer notes, "[i]n both cases, military conduct is governed by rules [...] in the first the rules rest on mutuality and consent, in the second on a shared servitude."²⁶ But soldiers who freely choose to fight and kill soldiers who are fighting under duress cannot be justified by mutual consent *or* shared servitude. How then can we think about their moral responsibility or status?²⁷

Part of the difficulty inherent in Walzer's approach is the view that the only (or at least, the best) way to exculpate the soldier from the injustice of cause is

²⁶ Ibid., 37.

²⁷ One alternative is not to consider the intentional threat of combatants, but their likelihood to cause collateral damage to civilians. For this argument, see: Uwe Steinhoff, 'Rights, Liability, and the Moral Equality of Combatants', *The Journal of Ethics*, vol. 16, no. 4, 2012, 339-366.

to provide *every* soldier with the right to kill other soldiers. Thus, unjust combatants do no wrong in killing just combatants because no combatant, just or unjust, has the right not to be killed. Here, morality is seen as existing in a straight-line relationship between the deed of the perpetrator and the person(s) his actions affect: inculpability and morality become synonymous. Walzer's concern appears to be that if soldiers' moral status is predicated on the justice of the war that they fight in, then it follows that any action a soldier performs in defence of an unjust cause will be wrong. This, it is worth noting, is only true if moral status is the *only* determinant of moral responsibility.

In reality, this is not the case. As we saw in Rodin's discussion, a crucial element in allocating responsibility is that a person *intentionally* commits to act in a particular way. If a person *accidentally* or *inculpably* acts in a way that causes harm to another, it appears that the victim is wronged, but that the actor was not the person who wronged him. Those who wrong another without acting wrongfully are described by Jeff McMahan as "innocent attackers," "whose threatening action is morally unjustified but nevertheless excused or nonculpable." His action is, according to McMahan, unjustified because the victim has done nothing to make himself liable to being harmed, yet is harmed nevertheless. Despite this, the attacker is morally innocent and free of responsibility because moral status and intention can *both* play a role in allocating moral responsibility under the status-based framework.

²⁸ Jeff McMahan, 'Self-Defense and the Problem of the Innocent Attacker', *Ethics*, vol. 104, no. 2, 1994, 252-290 at 263.

In fact, moral status is largely irrelevant in the allocation of moral responsibility. Rather, intention is overwhelmingly the most important consideration in determining the guilt or innocence of an individual soldier. The reason for this is because, *pace* McMahan, a person who is killed by an innocent attacker is not wronged unless some human failing contributed to the killing: to be wronged entails that there be a *wrongdoer*, who, in the case of innocent attackers, is notably absent. Because the innocent attacker is – in the manner in which he "attacks" – not operating as a moral agent, he cannot be said to have done anything wrong.

Rodin contrasts a falling boulder that threatens to land on me with a falling fat man. Although the fat man is a moral subject, "qua falling object he is just like the stone, neither the subject of a liberty to fall on you, nor of a duty not to fall." However, cases vary: were the fat man to have chosen to jump at a time where he was likely to land on me, had he been acting foolishly near a ledge knowing that he risked falling and landing on someone, or had he fallen as a product of faulty engineering whilst standing on a platform, any injury I suffered would be wrongful because it would be the product of a human failing. The wrong comes not because of the man's physical act of falling, but because of some other antecedent during which a moral agent was acting intentionally: for instance, the negligence of either the fat man or engineer. Soldiers may not be innocent to the same extent as the falling fat man, but they are certainly not culpable to the same extent as the political leader who, in possession of all the relevant facts and knowledge, makes a decision to go to war. Soldiers are responsible to the extent that they are human agents in

²⁹ Rodin, War and Self-Defense, op cit., 86.

control of their own actions; that is, amongst other things, when they are acting intentionally.

The primacy of intention gives cause to question the status-centred framework for justifying soldiers' killing of enemy soldiers during war. However, there are other reasons for looking for another model for justifying at least some of the deaths caused by soldiers in war. For this thesis, which aims to reintroduce aretaic ethics into discussions of JWT, the moral relevance of the psychological states that precede and co-incide with the actions a person undertakes are worthy of serious discussion.

The current infatuation with deontological ethics in JWT has reduced the ethics of killing almost entirely to a discussion of who may be killed and when; that is, to questions of moral status. However, an equally – if not more – important question regards not whether a victim is wronged when he is killed in a particular circumstance, but whether the person who caused the victim to die acted morally well in causing him to die. In the following section I focus on how a particular interpretation of the doctrine of double-effect (DDE) – namely that associated with John Finnis, Germain Grisez and others – formulates acts of self-defensive killing and killing in war. This approach, like all interpretations of double-effect, is concerned with the intentions of the agent who performs the deed rather than the harms suffered by the victim or the comparative status of the killer and killed persons. This interpretation of DDE is also an approach worthy of consideration from *within* deontological ethics because it explains how killing in war is possible without ever violating the right of another person not to be killed. Regardless of whether a person's

status is that of a just or unjust combatant, they can engage justifiably in warfare without violating any other person's right against being intentionally killed. Thus, this approach may serve to resolve the conflict between the moral equality of combatants doctrine and the position of just war revisionists like Rodin and McMahan.

1.1.2: The Doctrine of Double-Effect

DDE has fallen out of favour in contemporary military ethics, at least as a moral framework through which to justify the types of killing required of soldiers in war. In modern reckonings, DDE tends to be restricted to justifying military actions which are likely to cause the deaths of noncombatants.³⁰ However, this need not be so: for many Catholic moral theorists, including Aquinas, John Ford, and Elizabeth Anscombe, DDE was a framework that was equally helpful in discussing interpersonal killing or killing in large-scale military operations. What made DDE specifically helpful was that it explained how one could justifiably cause the death of another person without intentionally killing them, and thereby preserve the absolute inviolability of another person's right not to be intentionally killed whilst simultaneously defending JWT.

³⁰ See, for example: James Turner Johnson, *Morality and Contemporary Warfare*, (New Haven: Yale University Press, 1999), 140-141; Fotion, *op cit.*, 92; and Orend, *The Morality of War, op cit.*, 115-116.

DDE, having its basis in Catholic moral theology, has been closely associated with the view that any and all intentional killing is morally wrong. Whilst the prima facie implausibility of this claim's applicability to warfare may be why it has fallen out of favour with contemporary military ethicists, there are still those that see no contradiction between defending JWT and maintaining an absolute prohibition on intentional killing.³¹ For these theorists – most notably John Finnis, German Grisez, and others - there is no right, or license, to intentionally kill (I will call this interpretation of DDE "the absolutist interpretation"). Many other theorists, by contrast, tend to limit wrongful killing to the intentional killing of noncombatants. Surely, the modern theorist might argue, we cannot both hold JWT to be true and that intentionally killing is always wrong – what are soldiers for if not to kill? After all, for those who defend a status-based approach to justifiable killing (such as the theorists discussed above), the right not to be killed is one that can be forfeited, overridden, or both.32 In so doing, this approach exonerates those who kill legitimate targets as having done nothing wrong because either (i) they did not violate any rights; or (ii) the person(s) who they killed was of a lower moral status than the person(s) or goods who were saved.

However, the status-based approach leaves military ethics and individual soldiers alike bogged down in morally serious questions regarding which military killings are justified and which are not that may not be readily answerable. If the moral status of one's target is what legitimates his being killed, then it seems that one must possess knowledge of the target's moral

³¹ C.f. John Finnis, 'The Power of the Sword' in *Aquinas: Moral, Political and Legal Theory*, (Oxford: Oxford University Press, 1998), 275-293.

³² See especially McMahan, *Killing in War, op cit.*, 9; and Walzer, *Just and Unjust Wars, op cit.*, 145.

status. Given the confusion and complexity of war, the question of the moral status of a particular target may be at many times epistemically unresolvable: we simply cannot *know* whether a target is legitimate or not. If what legitimates a target is either (i) the injustice of his cause and the threat it poses to a good that I am duty-bound to defend, or (ii) his engagement in unjust harming, then soldiers require a host of oftentimes unavailable knowledge in order to ensure the legitimacy of their killings. For this reason, DDE, an approach prioritises *what* actions one performs and *how* they are performed over *who* an act is performed on, becomes preferable because it liberates soldiers of much of the epistemic burden that threatens to cripple them under the status-based approach.

Part of the motivation for this view may be (although I will not defend this view closely, and very little turns on its being true) that talking about intentional killings in terms of legitimate and illegitimate targets makes training soldiers to act within the Laws of Armed Conflict a considerably easier project, as it provides a simple binary: either the person I am able to kill is a legitimate target, or not. However, the language of legitimacy used here demonstrates how far removed today's military ethical framework is from that of JWT's founders. For those founders – in particular, Aquinas – the right not to be intentionally killed is absolute because (i) life is intrinsically good and valuable to each human being, and therefore (ii) any human who intentionally and deliberately attacks life acts immorally. Here, what renders an action immoral is not the status of the victim but the intention of the agent.

Under this approach, the moral status of killings³³ is derived from the conduct of the one who causes the death, not the status of the person who dies.

DDE offers an alternative framework for evaluating morally justifiable killing in war. It extrapolates a doctrine of legitimate killing in war from the idea of morally justifiable self-defence and more broadly from the notion of morally acceptable side-effects. By contrast, Walzer extrapolates his approach from the conventional notion that when soldiers are killing each other in a fair fight, they do not act wrongly, whilst revisionists like Rodin and McMahan develop their view of intentional killing from the moral status of the assailant. For these theorists, soldiers are afforded the right to kill members of the opposing military because, consecutively, they are either "engaged in harming" ³⁴ in the broad sense of being directly involved in a harmful war, or because their enemy is directly engaged in wrongful harming (of civilians, for instance). In either case, a person who previously possessed a right not to be intentionally attacked is now a legitimate target of attack due to some particular behaviour he has undertaken.

By contrast, the absolutist interpretation holds that no person can ever be a legitimate target of intentional lethal attack, with the key notion being that of intention. As we saw in chapter two, DDE originated in the thought of Aquinas, who argued that "[n]othing hinders one act from having two effects,

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³³ In the context of DDE, the word 'killing' is used to imply strictly causal responsibility for the death of another absent of any intention or disposition to do so. In this sense, if a person is electrocuted to death having been struck by lightning, it is intelligible to say that they were "killed" by the lightning, despite the obvious absence of any intention on the part of the lightning.

³⁴ Orend, The Morality of War, op cit., 110.

only one of which is intended, while the other is beside the intention [...] moral acts take their species according to what is intended, and not according to what is beside the intention, since this is accidental."35 Thus, if in doing something good, something bad happens as a consequence (in the paradigmatic case, killing someone as a side-effect of defending oneself), one may not be responsible for those side-effects.³⁶ However, it is a matter of debate whether Aquinas in fact intended to develop a moral principle at all: Charles Forster and his co-authors argue that "Aquinas [was] concerned with the nature of intention as a way to know God better; he [was] not primarily interested in developing mechanisms of moral assessment that might derive from a fuller understanding of intention."37 Similarly, Eric Rovie notes that "it has been argued both by theologians and historians that [Aquinas'] view was far less nuanced than the standard view is understood to be,"38 and Gregory Reichberg rejects the notion that Aquinas would have endorsed the DDE framework at all.39 As such, my discussion will focus on modern and developments on Aquinas' original discussion; commentaries specifically, that which responds to the status-based approach to rights by advancing an absolute rejection of intentional killing: the absolutist interpretation.

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³⁵ Aquinas, *ST*, II-II, Q. 64, Art. 7.

³⁶ The caveat "may not" stems from the fact that side-effects must not only be unintended, but proportionate to the good being done; as Aquinas stipulates that "though proceeding from a good intention, an act may be rendered unlawful, if it be out of proportion to the end." C.f. Aquinas, *ST*, II-II, Q. 64, Art. 7.

³⁷ Charles Foster, Jonathan Herring, Karen Melham, et. al., 'The Double Effect Effect', *Cambridge Quarterly of Healthcare Ethics*, vol. 20, iss. 1, 2011, 56-72 at 57.

³⁸ Eric Rovie, 'Reevaluating the Historical Evolution of Double Effect: Anscombe, Aquinas, and the Principle of Side-Effects', *Studies in the History of Ethics*, vol. 2, 2006, 1-34 at 2.

³⁹ Gregory Reichberg, 'Aquinas on Defensive Killing: A Case of Double-Effect?', *The Thomist*, vol. 69, 2005, 341-370.

The "standard view" that Rovie refers to is one that has emerged from more recent discussions in philosophy and moral theology. Today, DDE is usually considered to consist of four conditions that emerge from Thomistic thinking on intentions and side effects, as Joseph Mangan explains:

A person may licitly perform an action that he foresees will produce a good and bad effect provided that four conditions are verified at one and the same time:

- 1) That the action in itself from its very object be good or at least indifferent;
- 2) That the good effect and not the evil effect be intended;
- 3) That the good effect be not produced by means of the evil effect;
- 4) That there be a proportionately grave reason for permitting the evil effect.⁴⁰

An example will help to demonstrate this point. Brian Orend uses a nation's resort to war as a case study for DDE, and I will use the same here. When a nation decides to use force against another nation, it can be justified according to DDE only if: (i) the act of going to war (or, more generally, war itself) is not intrinsically wrongful; (ii) the peaceful state that war promises to bring about is intended and the harms that war tends to cause are not; (iii) the harms caused by war are not necessary means by which to bring about peace; and (iv) the precipitating factors for the resort to war are sufficiently grave as to justify the war's prospective harms. Here, there are two points that may render war difficult to justify under a DDE framework. First, it is unclear how

⁴⁰ Joseph T. Mangan, 'An Historical Analysis of the Principle of Double-Effect', *Theological Studies*, vol. 10, no. 1, 1949, 41-61 at 43.

⁴¹ Brian Orend, *The Morality of War, op cit.*, 260.

(iii) could ever truly be fulfilled so that "the good effect [is] produced directly by the action, not by the bad effect." Secondly, and to my mind more importantly, war is not an action: it is a huge collection of different acts by different actors all of whom are working together toward a common goal. An action, in the sense DDE is concerned, is far more limited in length of time, complexity of psychological processes, and breadth; specifically, for the interests of DDE, an action is performed by a single agent.

This is why self-defence is the paradigmatic example of DDE thinking: the decision to act in self-defence is a decision to perform a single action. The basic cognitive process could be described as follows:

- 1. I am under attack;
- 2. My being under attack is bad;
- 3. Therefore, it would be good to return to a state in which I was no longer being attacked;
- 4. Person Y is attacking me;
- 5. Using force against Person Y will stop his attack;
- 6. Therefore, I will use force against Person Y.

Actions, in the sense described by DDE, are basic: they begin with a motive (stop being attacked), proceed to an intention (protect myself by using force

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⁴² F. J. Connell, 'Principle of Double-Effect' in *New Catholic Encyclopedia* (Volume 4), (New York: McGraw-Hill, 1967), 1020–1022 at 1021 in Alison MacIntyre, 'Doctrine of Double-Effect' in *Stanford Encyclopedia of Philosophy*, 2011 http://plato.stanford.edu/entries/double-

against Y), and culminate in an action (self-defence). DDE stipulates that one's intention plays an important role in determining whether or not a person is responsible for the harms they performed. Unintended harms are, all things being equal, beyond the responsibility of the agent. Here it is important to note that deontologically-aligned concepts like moral status and rights are largely inapplicable. This is because DDE insists on any wrongful occurrences of an action being unintended. Were a person to think "I am justified in killing this person because this person's actions have lowered his moral status relative to mine," he would instantly be morally culpable for violating an absolute moral prohibition against intentionally killing another person. Thus, in a way that is not possible for the status-based approach above, DDE is able to preserve the absolute deontological limitations of human rights whilst simultaneously awarding intention the conceptual significance it deserves.

Furthermore, this approach to self-defence does not rely on knowledge of one's assailant's moral status as, for instance, just, unjust, liable, or innocent. Consider Rodin's falling fat man from a DDE perspective. If my intention were to protect either myself or another from harm, I would be justified in taking potentially harmful action against the fat man even though is not engaged in wrongful behaviour by falling on me or another. This is true so long as my intention is to protect either myself or another from harm, and is permissible just as it would be permitted to take action against a falling boulder in similar circumstances. It is not the falling man's liability to attack that makes defensive action justified but my good intention to protect innocent lives. Consider a real-world example provided in an article by Paul Berghaus and Nathan Cartagena concerning the actions of two soldiers: Sergeant Taylor and Corporal Sanchez:

Sanchez was providing security for the traffic control point by manning the machine gun from the turret of his vehicle. His squad leader, Sergeant Taylor, was in charge of the checkpoint and made sure that all the proper control measures were in place so that motorists stopped their vehicles at a designated point for an identification card check.

During the first hour of their mission, a car approached the traffic control point. It was moving at a normal pace, but the driver was not heeding the warning signs that Taylor's squad posted, and continued to approach the checkpoint. When the car passed the warning signs, Taylor gave verbal commands in Arabic as well as hand and arm signals to tell the driver to stop. The car kept moving closer to the checkpoint. As the car passed the traffic cones, Taylor fired a warning shot with his rifle. The car still continued to move. Even after driving over the spike strips that the squad placed as a final control measure, the car stayed on course. It seemed to Taylor that the driver may have been intent on getting close enough to the checkpoint where the blast radius of a car bomb could inflict the most damage. Taylor ordered Sanchez to fire his machine gun at the car. Sanchez did so and hit the car. The car quickly came to a stop. The driver exited the car, and fell to the ground. After searching the driver and the vehicle, Sanchez's squad found no weapons or explosive devices on the vehicle. Yet the passenger, who was the driver's fourteen year old son, was dead from multiple gunshot wounds.43

How might we describe the actions of Taylor and Sanchez? Under a statusbased approach, we would seem obligated to say that, at best, we were

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⁴³ Paul T. Bergaus & Nathan L. Cartagena, 'Developing Good Soldiers: the Problem of Fragmentation within the Army', *Journal of Military Ethics*, vol. 12, iss. 4, 2013, 287-303 at 290-291

uncertain of the victims' moral status. Taylor and Sanchez may have had reason to suspect that they were under threat, but they lacked sufficient evidence to be certain. How, for instance, could they be sure that these actions were not a product of the driver's fear or distrust of U.S. soldiers? The information that a status-based approach to killing requires appears unavailable in this case, meaning that either it would not be justified, or perhaps that the soldiers would be excused on the basis of having good intentions (again revealing intention as the morally central concept). Yet I suspect few would be ready to describe Sanchez or Taylor as lacking moral justification, and indeed they were cleared of any wrongdoing in a review of the incident.44 DDE provides a clear explanation of why soldiers involved in these types of incidents (which are likely not uncommon). Sanchez and Taylor's actions intended to prevent the possible destruction of the roadblock (which would have entailed their own deaths) by firing on the vehicle posing the threat. Despite being aware of the possible risk to the driver and the possibility that the driver was a civilian, Sanchez and Taylor were justified in their action because their intention was good, the side-effects were unintended, and the action was not intrinsically evil.

Above I have outlined a basic cognitive process for self-defence, demonstrated by the case of Taylor and Sanchez. However, what if the driver had been identified as a known insurgent who was actively planning hostile action against US military personnel? In that case instead of firing on the car, might Taylor have ordered Sanchez to fire on the driver? Although status-based approaches would justify the killing in that case, the absolutist interpretation of DDE would not. The reason for this is not, as some explain, that killing

⁴⁴ Ibid., 291

becomes the means by which one has defended oneself, and thus it failed the "no means" condition,⁴⁵ as this could be said equally of injuring another person in a case of nonlethal defence. Rather, this interpretation, having its basis within Catholic moral theology, stipulates that all intentional killing is wrong. Thus, the immorality is not in the makeup of the act *vis-à-vis* meansends relationships, proportionality, or desired side-effects, the immorality is in the thought "I will kill Person Y;" that is, with the intention itself. Thus, even if the moral status of the driver *was* knowable, intentionally killing him would be prohibited. This is why DDE is a suitable framework for intentional killing only for those who hold that rights are absolute and inviolable: it will not be a suitable framework for those who, like the threshold deontologists above, see rights only as one morally serious consideration. Given that, as I argue later, there are other very good reasons for adopting an absolutist account of human rights, coupled with DDE's freedom from epistemic burdens, it is worth exploring this absolutist interpretation of DDE.

Some perceive an uneasiness between proponents of DDE arguing that intentional killing in self-defence is immoral whilst simultaneously maintaining that "to strike in self-defence against an aggressor is permissible, even if one foresees that the blow by which one defends oneself will be fatal."⁴⁶ Here, the difference lies in whether the side-effect (even death) is intended or not. If a person, X, is being attacked by an aggressor, Y, then X is entitled to use whatever force is necessary to repel the attack, even lethal force, so long as his sole intention is to repel the attack, and the other conditions listed above

⁴⁵ C.f. Susan Uniacke, 'The Doctrine of Double-Effect', *The Thomist*, vol. 48, 1984, 188-218 at 210-211; Germain Grisez, 'Toward a Consistent Natural-Law Ethics of Killing', *American Journal of Jurisprudence*, vol. 16, 1970, 64-96 at 79.

⁴⁶ MacIntyre, 'Doctrine of Double-Effect,' op cit.

(such as proportionality) are met. In this instance, the fact that Y is killed by X's self-defensive action is a side-effect of X's legitimate practice of self-defence. By contrast, if X recognises Y's aggression and takes actions intended to *kill* Y, his defensive killing is unjustified (assuming that intentional killing is morally wrong). The relevant difference between these cases concerns what John Finnis, Joseph Boyle, and Germain Grisez call "senses of 'doing'."⁴⁷ "There are," they claim, "at least three ways in which one's actions have [...] moral significance:"⁴⁸ (i) when one acts for the intrinsic value of the thing acted for (i.e. acting out of friendship simply because friendship is good); (ii) when one chooses something as a means to some further goal (i.e. working to obtain money); and (iii) when one voluntarily accepts the side-effects of an action.⁴⁹ When one voluntarily accepts side-effects, they are not of the agent's choosing, they are accepted corollaries of what the agent has chosen to do.

If, for example, a commander ordered the bombing of an enemy munitions factory, a side-effect would be that some factory workers may be killed, and all workers will lose their employment. However, it would be false to describe these side-effects as being *chosen* by the commanders; were it possible to destroy the munitions factory without destroying lives or jobs, they would (hopefully) do so. In this sense, voluntary acceptance of side-effects is not *entirely* voluntary – it is coercive to the extent that it is an unavoidable and undesirable outcome of a morally good action. By contrast, if the commanders

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⁴⁷ John Finnis, Joseph Boyle, & Germain Grisez, Nuclear Deterrence, Morality & Realism, (Oxford: Clarendon Press, 1987), 289.

⁴⁸ Ibid.

⁴⁹ Finnis, Boyle & Grisez, *op cit.*, Note that unpredicted side-effects are not included here – presumably either unpredicted side effects do not have moral significance vis-à-vis the choices an agent makes to act in a particular way, or they do hold moral significance, but only insofar as one voluntarily accepts as a side-effect that some unpredicted side-effect may emerge from an action.

bombed the munitions factory with the intention not only of destroying the factory, but robbing the enemy of skilled workers able to work in other factories and denting the enemy economy by destroying jobs, then the commanders would have *chosen* to bring these consequences about, and become morally responsible for them.

The same principle governs individual acts of killing and, indeed, any action in which undesirable side-effects occur. (The case of self-defence is a morally serious example, but not modally different from other voluntarily accepted side-effects.) If, in defending himself, X recognises that only a lethal blow will stop Y's assault on X's life, then X accepts Y's death as a side-effect of his legitimate self-defence. X does not desire or intend Y's death, but neither does he see any other means of defending himself. As Rovie explains:

[T]he act of defending oneself from an assailant (call that act A) can lead to the consequence B (killing one's assailant) and/or consequence C (successfully defending oneself from the assailant). Obviously, if one can achieve only C as a result of act A, this would be the best scenario: the assailant flees or is incapacitated, or apologizes, or something of the sort. However, if one can ONLY achieve C because B and C come together as a package deal (the assailant will only stop if killed), C can still be permitted with B as an unfortunate side-effect.⁵⁰

Here it is worth correcting a common confusion about DDE and self-defensive killing: the difference between a side-effect and an accident. DDE does not

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⁵⁰ Rovie, *op cit.*, 6.

claim that deaths which occur as side-effects are accidental – a view Elizabeth Anscombe ridiculed in her essay 'War and Murder.'51 Rather, it claims that the fact that a particular action causes undesirable and/or harmful side-effects is a product of circumstance, not choice. The 'so happening' that I referred to above is precisely of this kind – circumstances being as they are, it so happens that the only way X can successfully defend himself against Y is with the use of lethal force. X will not be surprised that his defensive action kills Y because he foresaw and accepted the side-effect. This is starkly different from an accident like, for example, the widely publicised death of Brandon Lee, when a blank cartridge used on a movie set was poorly prepared, leaving a bullet in the chamber which hit Lee in the chest, killing him. This outcome is not one which could have been foreseen by any reasonable person (although those responsible for preparing the guns may be culpable for negligence). Lee's death was genuinely an accident. It has been to the detriment of DDE's place in moral philosophy that few theorists have taken the time to outline in detail the decision-making processes that underpin DDE. The process begins when one realises that in doing something good, it appears that evil will also occur.

This framework explains how soldiers can be justified in fighting in wars whilst simultaneously refraining from any act of intentional killing. However, it remains to be seen whether this framework is sensitive to the realities of war where, it seems, soldiers' express purpose is to kill the enemy. We must consider whether an ethically and practically salient way to apply the moral prohibition on intentional killing to war exists. Finnis, Boyle, and Grisez argue that there is, suggesting that the structure of military use of lethal force "can

⁵¹ Elizabeth Anscombe, 'War and Murder' in G.E.M. Anscombe, 'War and Murder', in Richard A. Wasserstrom, *War and Morality*, (California: Wadsworth Publishing Co., 1970).

be the same as that of individuals' acts of self-defence."⁵² They note that "military action must be directed toward stopping the enemy's unjust use of force, not toward killing those who are bringing that force to bear."⁵³A possible model of this approach is described by Christian Brugger, a student of Finnis, Boyle, and Grisez:

Adapting Aquinas' paradigm of self-defence as a model for violence in war, we can say that in the deliberation and choosing of suitable means for realizing particular limited purposes in war, measures of violence must be selected that are proportionate to (i.e., not in excess of what is necessary for) realizing the limited military objectives, such as destroying munitions factories and proposals arising from deliberation must not include *at any level* the deaths per se of the enemy [...] Chosen proposals may include measures which one foresees are likely or even certain to cause death, but such deaths are not what the measures are designed to bring about, whether to satisfy feelings or to achieve military objectives. They will be the unintended results of otherwise intended acts of collective defense. In other words, if success could be achieved without causing deaths, all the better.⁵⁴

Brugger's approach, which mirrors that proposed by his absolutist predecessors, invokes DDE as the central justifying principle of killing in war. It is, however, more restrictive than the status-based approach to intentional killing. In specifying "that the death of an enemy soldier be brought about

⁵² Finnis, Boyle, & Grisez, op cit., 313.

⁵³ *Ibid.*, 315.

⁵⁴ E. Christian Brugger, *Capital Punishment and the Roman Catholic Moral Tradition*, (Indiana: University of Notre Dame Press, 2003), 186-187.

only as a side-effect of a military act having a *different object*,"⁵⁵ DDE requires all military action to be dedicated toward a morally good end such as justice, peace, or charity. The destruction of the enemy's military force is not a sufficiently good intention. Thus, "military action must be directed [only] toward stopping those who are bringing [unjust] force to bear."⁵⁶

Here an important question arises that warrants a more focussed discussion: is DDE too demanding of soldiers' decision-making processes to be practicable in an actual firefight? Making the kind of judgements DDE requires in the heat of battle demand a high level of moral sensitivity even amongst entry-level soldiers. Further, insofar as these judgements are cognitively demanding (and therefore take time), they may cause soldiers to refrain from firing at times when an immediate response is strategically – or morally – necessary. As Euripides' *Heraclidæ* observes, "bitterly doth Ares loathe loiterers." Whether or not the hesitant soldier is hated by the gods is unclear, but he is certainly more likely to meet his gods than the soldier who shoots without question. Thus, at first sight it seems that the absolutist interpretation presents a serious challenge to the efficacy of operations and the physical safety of frontline soldiers. Given this, is the absolutist interpretation a suitable framework for military personnel?

The answer is a qualified "yes." Applying an absolutist interpretation of DDE as a moral decision-making framework can be made consistent with the

⁵⁵ *Ibid.*, Emphasis added.

⁵⁶ *Ibid*.

⁵⁷ Euripides trans. E.P Coleridge, *Heraclidæ*, line 722,

http://classics.mit.edu/Euripides/heracleidae.html.

military requirement to train soldiers to pre-judge situations to ensure they act effectively, expediently, and minimise risk in incredibly dangerous environments. In fact, pre-judgement is exactly what happens in the more common application of DDE: strategic airstrikes that risk civilian casualties. In those cases, pilots are (or ought to be) briefed in advance about (a) the various steps that have been taken to protect noncombatants from harm, and (b) the foreseeable possibility that, despite these steps, some noncombatants may be killed in the attack. In the event that something unforeseen occurs (for example, a school bus full of children unexpectedly appears in the strike vicinity), the pilot should still be permitted to abort the mission, but should not (and will not) be required to fly past each building to ensure they are empty, or that the amount of civilians within them is proportionate; he relies on previously collected intelligence for that.

It is possible to introduce analogous measures for ground troops conducting missions. Their briefing should consist in informing them of how many non-combatants are anticipated to be in an area, the anticipated level of risk, and the advised manner of response. If soldiers are entering 'hot' zones, populated by enemies, with little to no anticipated noncombatant presence, then it is reasonable that they be able to pre-judge (using a DDE framework) how they will respond to perceived threats during the mission. These pre-judgements would be unlikely to amount to a decision to 'shoot to kill' or 'fire on anything that moves', but they may, for example, lead a soldier to presume any non-friendly personnel in an area to be hostile. In such a case, soldiers aware of the foreseeable possibility that an anomalous civilian may be mistaken for a hostile soldier and be fired upon may still be justified in acting forcefully against all people in the area so long as their intentions were defensive and

aimed toward enemy combatants. Thus, if pre-judgement processes that help soldiers to determine in advance the appropriate way to respond to any potential threats they come across are implemented, then successful military practice is not at odds with the absolutist approach to the morality of killing.

It is important to note that although DDE is a useful moral principle, it does not represent the sum total of moral reasoning required in situations where harmful side-effects might be caused. Just because an action fulfils the conditions of DDE does not necessarily make it a morally good action; there may be some other factor which makes the agent culpable. For example, a soldier who attempted to break up rioting civilians by firing blank cartridges from his weapon, but, through negligence had left a live round in the barrel after switching his magazine to blanks, would be responsible for the death he caused despite his intended action being justifiable under DDE.

In this section I have shown the internal consistency of arguments that seek to advance an absolutist interpretation of DDE, including its relevance to individual self-defence and individual killing in war. Furthermore, I have shown how DDE decision-making manifests itself on a cognitive level including the ability for one to pre-judge a situation whilst utilising the DDE framework. This fact makes a case for the re-introduction of DDE-based reasoning – even the controversial absolutist interpretation – into military ethics as a potential justification of killing in war. More compelling is the possibility within DDE to protect soldiers from being on one hand unfairly burdened with moral responsibility for epistemic uncertainties, and on the other impractically prohibited from acting in cases where such uncertainty is rife. This was demonstrated with the example of Taylor and Sanchez, and will be explored in more detail in the following section.

Furthermore, it is particularly appealing because the DDE framework is not

unique to war; it applies to every aspect of morality. As such, teaching soldiers

to employ it in times of war may be less jarring than trying to re-train soldiers

against the fundamental moral belief that killing another human being is

wrong, a point I return to in the next chapter. DDE reveals clearly the moral

significance of a person's intentions when determining whether there is moral

justification for their action.

Finally, if DDE is the framework through which deaths caused by soldiers can

be morally justified, the debate regarding the moral statuses of just and unjust

combatants is largely dissolved. Whether or not a soldier is defending a just

cause, the immediate intention of his action must be to do some good; usually,

to protect human life. If an unjust combatant unintentionally causes the death

of a just combatant, his conduct can be explained as morally justified by

reference to the good intentions of his actions. Of course, there is still a broader

question of whether his actions can ever be proportionately justified if he is

fighting for an unjust cause, but understanding the moral role of intention

reveals how soldiers can and often do act morally well regardless of which

side of a conflict they fight for.

1.1.3: Intention: Bridging Deon and Arete

In the previous sections I presented two competing accounts that attempt to

explain the morality of intentional killing; namely, status- and intention-based

justifications. However, I have simultaneously been presenting two different

descriptions of a morally just action. These two approaches describe just actions as either (A) one that does not violate the claim or liberty –rights of an individual, with exceptions emerging when either (i) an individual does something that alters his status and eliminates his right (for example, attacking me), or (ii) in cases of extreme moral gravity on a wide scale; or (B) an action in which no person's right is intentionally violated. The central difference between the two is that whilst (B) understands unjust actions not only as objective states of affairs, but as including subjective factors concerning an agent's intentions, (A) sees unjust actions as objective: either a person was a legitimate target of killing, having forfeited their right to life, or they were not. According to (A), just actions could actually be performed with the most corrupt of intentions (so long as they were directed toward those who had forfeited their rights). Rodin expresses a similar concern, arguing that "having a right to do *X* and being in the right in doing *X* are not logical equivalents." ⁵⁸

Viewing these questions through an aretaic lens – that is, through a framework that considers the moral character, virtue, and psychology of individual agents as being worthy of moral consideration – means we can add to Rodin's observation that doing the right thing and doing something rightly are not logical equivalents. An overt focus on deontology means emphasising what is done and to whom it is done at the expense of the manner in which and by whom it is done. However, as the above sections have demonstrated with regard to killing in war, the primary moral questions appear to be centred on the intentions of those whose actions cause the deaths of other people. The victims who are killed, their moral status and rights, are only peripheral concerns. However, I do not wish to present DDE and intention as 'the aretaic approach'

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⁵⁸ Rodin, War & Self-Defense, op cit., 24.

to killing to be contrasted with 'the deontic approach' focussed on rights and status. Rather, I want to show how the conceptual importance of intention suggests that deontic and aretaic ethics are inescapably linked, and are best understood when used co-operatively to describe the morality of killing in war.

Let us begin by considering whether it is possible to perform a just action viciously, or an unjust action virtuously. In 2011, WikiLeaks released footage of a 2007 Apache helicopter strike by U.S. military personnel in Baghdad.⁵⁹ The video, provocatively⁶⁰ entitled "Collateral Murder" depicts an air strike on a group of men who appear to be carrying weapons. It was later revealed that although there were several armed insurgents present, two of the men were Reuters reporters, and what had appeared to be rocket-propelled grenade launchers were in fact film cameras. Under the status-based justification, it would appear as though the Reuters journalists had been wrongfully killed, although the US personnel would likely be excused from any wrongdoing because of the reasonable assumption that unidentified people carrying weapons-like equipment were hostile. Thus, all those killed were either legitimate targets or were assumed to be such, and the US forces could be argued either to have been justified in opening fire, or at best to have been acting from inculpable ignorance. The killings then, were either not

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⁵⁹ The footage is available at: WikiLeaks, 'Collateral Murder,' 2010,

http://www.collateralmurder.com/>.

⁶⁰ On an interview with Stephen Colbert, Wikileaks founder Julian Assange admitted that the title was designed to "try and get the maximum possible political impact for the material." See: *The Colbert Report*, Comedy Central, 12/4/2010,

http://www.colbertnation.com/the-colbert-report-videos/270712/april-12-2010/julian-assange.

unjust at all, or the injustice was not one for which the Apache personnel were responsible.

Whether the status-based interpretation is correct or not is an open question. However, for my purposes the outcome is not particularly relevant. Let us assume, for the sake of a more important discussion, that the killings were morally justifiable. In the recording of the attack, the helicopter crew can be overheard laughing, berating the targets, relishing in the destruction they cause, and conducting themselves in a manner that might generously be described as distasteful. Particularly troubling moments include their hoping for a wounded man to reach for a weapon so that they can open fire on him again, impatiently awaiting permission to fire on a van which arrives to help the wounded man, and revelling in seeing the "dead bastards" after the attack.61 The callous and brutish manner in which the attack was conducted (perhaps best demonstrated by their reaction to learning that a child had been severely wounded in the attack – "well it's their fault for bringing their kids into a battle"62) suggests that the soldiers' intentions were not merely to incapacitate the targets qua military threats (even if it results in the death of those targets as a side-effect); rather, they appear to be enjoying the fact that they are intentionally killing other human beings.

Recalling the double-effect requirement that any bad side-effects be unintended (and thus, undesired), taking pleasure in those side-effects will

⁶¹ Bumiller, Elisabeth, 'Video Shows U.S. Killing of Reuters Employees', New York Times,

^{5/4/2010, &}lt;a href="http://www.nytimes.com/2010/04/06/world/middleeast/06baghdad.html?_r=0">http://www.nytimes.com/2010/04/06/world/middleeast/06baghdad.html?_r=0>.

⁶² WikiLeaks, 'Collateral Murder - Transcript,' 2010,

http://www.collateralmurder.com/en/transcript.html>.

render any deed vicious. For instance, although the soldiers may withhold from shooting an unarmed man until he reaches for a weapon and thus not violate the no-right requirement, in willing the injured man to reach for a gun so that they can kill him, they demonstrate a genuine assent to the side-effects of their actions. In short, even if licensed under a status-based account, when one considers the character with which the action is performed, one sees that status-based justification is insufficient to determine the genuine moral nature of the event. Indeed, as Rosalind Hursthouse argues, "in exercising a moral right (for example, the right to kill) I can do something cruel, or callous, or selfish, light-minded, self-righteous, stupid, inconsiderate, disloyal, dishonest – that is, act viciously."⁶³ It seems then that those who wish to defend status-based justifications must either accept that a just action may involve a person wilfully – even gleefully – murdering another, or concede that one's intentions when performing an action bear significantly on the moral acceptability of that action.

It is likely that the defender of a status-based approach will opt for the latter route, perhaps suggesting that although good intentions may be helpful in ensuring a person's actions are just, because intentions do not *in themselves* affect other people in the way that failing to respect the moral status of another person does, intentions are only instrumentally significant. If a deed respects the rights of those whose rights ought to be respected then, good or bad intentions aside, the act can be described as a just act. Acts ought to be measured, so the argument would go, on whether a person's moral status has been respected or not: if a person's moral status means he ought not to be

⁶³ Rosalind Hursthouse, 'Virtue Theory and Abortion', *Philosophy and Public Affairs*, vol. 20, no. 3, 1991, 223-246 at 235. Parentheses added.

attacked and he is attacked, that is sufficient to classify an action as unjust (although not, as we saw above, necessarily to allocate *blame* to the wrongdoer). This claim is worth testing with a case study.

On December 21, 2012, United Nations helicopter flight 544 was mistakenly shot down by members of the Sudanese People's Liberation Army (SPLA). The SPLA claim to have believed the helicopter to be supplying the insurgent Yau Yau rebel group, and to have checked with UNMISS (United Nations Mission in the Republic of South Sudan), and received confirmation of no scheduled flights that day.⁶⁴ All those aboard UN 544 were killed. These civilians had done nothing which could be said to forfeit their claim not to be attacked, and thus ought not to have been attacked. In this sense, even if their claims are true, the SPLA unintentionally failed the no-right justification. However, *if* the intention of the shooters was to destroy a legitimate target, and this was genuinely a tragic case of mistaken identity, ⁶⁵ could this act truly be described as unjust? As in the previously discussed case of Sergeant Taylor and Corporal Sanchez, I believe not, as the shooters are free from any moral responsibility. Such acts are tragedies, and oftentimes the actors cannot be held morally responsible.⁶⁶

⁶⁴ Reuters, 'South Sudan admits it downed U.N. helicopter, killing four', *Reuters*, 22nd December, 2012, http://www.reuters.com/article/2012/12/22/us-southsudan-unidUSBRE8BK0V720121222U.

⁶⁵ UN Secretary Ban Ki Moon disputed this claim, alleging that the vessel was "clearly marked." AAP, 'Punish those who shot the UN chopper: Russia', *The Australian*, 23rd December, 2012, http://www.theaustralian.com.au/news/breaking-news/punish-those-who-shot-un-chopper-russia/story-fn3dxix6-1226542488032>.

⁶⁶ I say oftentimes, because an agent may be mistaken, but be morally culpable for their mistake (for instance, if a soldier neglects to properly service his weapon, and this leads to the killing of his comrade, he is culpable for the consequences of his neglect).

The question of moral *responsibility* – attributing praise or blame for a just or unjust action to a particular individual – requires us to examine the moral state of the agent in performing a particular action. As Nancy Sherman notes, "determining responsibility depends upon a more rather than less complete rendering of the circumstances of action".⁶⁷ Sherman notes that judgements of responsibility must consider first the intentions of the actor, and second "the pattern of actions of an agent;"⁶⁸ that is, the virtue of the actor.

Consider the intentions of the SPLA on December 21, 2012: not knowing that the UN were sending aircraft into Sudanese airspace, and operating in a state of war, they fired on the vessel. The intention of the soldiers was, it seems, to destroy a legitimate target in what they believed to be a just war. Thus, their intentions were in conformance with both the Laws of Armed Conflict and with generally accepted principles of combat. Therefore, if the events occurred as the SPLA claim that they did, it seems that although those on board UN 544 were wronged in the sense that they were undeservingly deprived of their lives, those who performed the action were blameless and the civilian deaths a tragedy. The status-based advocate rightly identifies that the moral status of these civilians meant that they did not deserve to die, but it does not follow that their death was an injustice. Although all people are obliged not to intentionally kill them, there can be no obligation against accidentally killing another person; one cannot have a duty to do (or not do) something over which one has no control (although, obviously one ought to take all reasonable steps to ascertain whether one's target is legitimate or not; if such precautions are not taken, one is culpable to at least some extent). No person has a right

⁶⁷ Nancy Sherman, *The Fabric of Character: Aristotle's Theory of Virtue*, (Oxford: Clarendon Press, 1989), 19.

⁶⁸ Ibid., 19-20.

not to die *simpliciter*, for there could be no possible obligation to correspond to such a right.

Here we introduce a new concept alongside intention, *motive*. The two concepts are, although related, distinct in important ways that bear on our understanding of the connection between virtuous character and moral responsibility.⁶⁹ As Anscombe notes, "'motive for action' has a rather wider and more diverse application than 'intention with which the action was done'."⁷⁰ Intentions are simply "meant to inform us of the goal at which an action is aimed;"⁷¹ by contrast, Burleigh Wilkins posits three different senses of motive: "(1) to mark the presence of a reason for acting, (2) to mark the presence of a reason for acting, and (3) to mark the presence of a disposition in an agent for acting in a certain way under certain kinds of circumstances."⁷² In short, motives explain *why* an agent forms his intention. The SPLA soldiers seem to have intended merely to shoot down the helicopter. However, such a description is obviously insufficient for morally evaluating their actions. What is required is a further description of *why* the helicopter was shot down.

We can see all three of Wilkins' senses of motive in operation through the SPLA example. In the sense that the SPLA were fighting a war over territory,

⁶⁹ C.f. chapter one, 21-22 where intention and motive are discussed in relation to right intention.

⁷⁰ G.E.M. Anscombe, *Intention* (2nd edition), (Oxford: Oxford University Press, 1963), 19.

⁷¹ John J. Jenkins, 'Motive and Intention', *The Philosophical Quarterly*, vol. 15, no. 59, 1965, 155-164 at 155

⁷² Burleigh T. Wilkins, 'Concerning 'Motive' and 'Intention'', *Analysis*, vol. 31, no. 4, 1971, 139-142 at 140.

and thus had an interest in maintaining coercive authority over movements within territory they controlled, they had motive in shooting down the helicopter which was, to their knowledge, undermining that authority. Furthermore, soldiers have an understandable desire not to see their enemies well-supplied: suspecting the helicopter of being a supply craft, this desire could easily have motivated the attack. Thus, in the sense of (1), the SPLA "had motive" to shoot down the helicopter. Describing the host of *possible* reasons for action is less important than understanding the *actual* motive held by SPLA soldiers – in this case, sense (2) described above. Were the soldiers motivated by, say, a genuine desire not to see the enemy re-supplied and a belief that UN544 was an enemy helicopter? Or were they motivated by a more basic desire to kill, brought on in part by boredom or undue aggression? Was the motivation to deny aid a motivation to end the war more quickly, or to see Yau Yau rebels suffer through a denial of humanitarian aid?

Answering which *possible* motive served as the *actual* motivator in this circumstance is vital in allocating moral responsibility. However, although good motives are morally significant, especially in cases of ignorance, they are not an infallible excuse. For instance, if the SPLA were acting from good motives (such as denying munitions aid to more quickly end the war) but, because in a state of panic, failed to take appropriate measures to identify the helicopter, they would be culpable for their panic as explained by Wilkins' third sense of motive above: dispositions for acting in certain ways in certain circumstances. If an agent forms dispositions so that, for instance, in high pressure situations he becomes panicky and responds rashly, he can be described as being *motivated by* that panic; similarly, an agent who responds

to tense situations in anger and aggression becomes motivated by his anger as much as by any rational condition.

This third sense demonstrates the importance of considerations of character in the determination of responsibility. As Sherman notes, Aristotle suggests that to fully understand the extent of someone's responsibility for an action, his character must be considered. Aristotle did not believe that an agent's actions began with intentions, but with character. Any situation a person finds himself in must be interpreted⁷³ – the first stage of practical wisdom is "perception:" considering whether there is any moral requirement to act.74 However, differences between agents lead to different interpretations of events: a person's character shapes his perception. Perception, Sherman notes, "is informed by ethical considerations expressive of the agent's virtue."⁷⁵ All this is to say that a person's intentions do not appear *ex nihilo*, they are reflections of the person's character. Insofar as (i) intentions are born of motives; (ii) a person's motives are a means by which his actions are evaluated; and (iii) his motives are, at least in one sense, born of character, any theory for which intentions and motives are to play a central moral role will need to consider aretaic concepts such as character and virtue. The Greek term *prohairesis* refers directly to the choices born of one's character - that is, motives of Wilkins' third sense – and, as Sherman rightly observes, "prohairesis assesses particular actions relative to some arrangement of overall ends (goals). But these ends can be good or bad, and the character whose ends they are, a good or bad character."⁷⁶ Thus, attributing moral responsibility via motive requires some

⁷³ Sherman, *The Fabric of Character*, op cit., 29.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid., 107.

consideration of aretaic concerns insofar as *prohairetic* responsibility is born of character traits and dispositions.

I argue that status-based justifications, derived from a purely rights-based concern for acts independent of their actors, is an ineffective framework from which to determine just or unjust acts. Better, I suggest, is to focus primarily on intentions and on the traits and dispositions of those who commit particular actions. Focussing on the conceptual centrality of intention helps to bridge the gap between the deontic and aretaic. Fully understanding intention requires not merely that a person's motives be identified, but that one understands the character from which *prohairetic* intentions emerge.

Intention is the concept that gives an act much of its normative content. When we describe an act as being immoral, we do not *only* mean that it has caused harm to someone who did not deserve to be harmed (if we did, then we could sensibly describe cancer as immoral); rather, what we mean is that some human agent acted wrongly be doing what he did. However, insofar as a crucial defining aspect of any action is the intention from which it was done, describing an action as moral or immoral requires an appraisal of the state of mind of the person before he acted. The framework through which these psychological considerations is best understood is an aretaic one, which reveals the intimate connection between specific intentions and the more general motives, dispositions, and character of the person. To determine whether an act was right or wrong, we need to determine what was intended by that action, and what is intended is born in part from the character of the individual. Thus, a full description of the morality of an action moves from a

person's character and dispositions to his intentions before ever describing the actual content or consequences of his action.

For these reasons, I have argued that the DDE framework is a more robust account of the morality of killing in war than the status-based conception advanced by many modern just war theorists. This account fails to consider appropriately the moral significance of intentions by contrast to the moral status of different parties to an action. In reality, a proper understanding of intentions reveals the limited relevance of moral status in determining the morality of particular actions. Furthermore, DDE is a framework for wartime killing that preserves the *absolute* protection of human rights argued for by the Universal Declaration of Human Rights.

However, despite the fact that a sufficient understanding of intention limits the influence of deontological appraisals of rights in JWT, it does not eradicate them. Rights still serve as a crucial way to identify the deontological limits of actions, restricting what may be done in pursuit of good motives and intentions. In the following section, I explore several reasons why we ought to preserve a place for rights within JWT.

2: Why Rights?

The previous section demonstrated how many contemporary just war theorists conceptualise rights within their theories, and secondly why the type of conceptualisation those theorists undertake needs to consider aretaic ethics more so than it currently does. However, what has not yet been made fully clear is what reasons there might be for the overwhelmingly rights-oriented flavour of JWT today. In this section, I explore several advantageous elements of rights discourse, and argue that those advantages are best utilised within an absolutist rights framework.

Brian Orend argues that the impetus for the shift toward rights in JWT occurred in response to the Universal Declaration of Human Rights (1945). At that moment, "theorists saw that the new moral basis for the age was destined to be human rights." However, what is left unexplained is *why* theorists decided the Universal Declaration would form the moral basis for the postwar age. Its legal force aside, there must have been something that appealed to theorists. Here I suggest three factors which might have led to the recharacterisation of JWT in terms of human rights. I should note that these are *my* reasons for arguing that rights be preserved in some form within JWT. They may not necessarily be the reasons that motivated other theorists' use of rights. Nevertheless, I believe that these reasons make a strong case for preserving some account of rights within JWT.

2.1: Individualism

Why have modern just war theorists taken such an interest in rights? In part, I believe Orend's thesis is right: modern theorists began to take as their

⁷⁷ Orend, *The Morality of War, op cit.*, 23.

inspiration the Universal Declaration of Human Rights. However, the Declaration itself is representative of a perceived need for absolute protections against certain types of treatment. After all, the world was living in a century which saw some of the gravest human rights violations in history; the majority occurring during war. "A century that has witnessed the Holocaust and the Gulag is not one which can aptly be characterized as paying too much heed to basic rights," writes Loren E. Lomasky. Orend, whose just war theory is based on rights, argues similarly:

Human rights, perhaps alone amongst political concepts, genuinely acknowledges the worth of each individual human life and the importance of that life's value being protected against all the other people, forces and institutions who might otherwise plot to use that life as a mere prop in their own projects.⁷⁹

Furthermore, rights discourse gives JWT a strong response to the challenges it faces from political realists. 80 Insisting on the centrality of rights to the ethics of war rebuffs the pure consequentialist thinking at the heart of political realism. As Walzer notes, "[c]onsiderations of utility play into the structure [of JWT] at many points, but they cannot account for it as a whole."81 The challenge that rights poses to political realism, and its in-war equivalent (military realism) is in refusing to accept outcome-based assessments of morality. What one can do in war is limited by the fact that many of those

⁷⁸ Lomasky, *op cit.*, 14.

⁷⁹ Brian Orend, *The Morality of War, op cit.*, 52-53.

⁸⁰ For political realism, see chapter one, 32-34.

⁸¹ Walzer, Just and Unjust Wars, op cit., xxiv. Brackets added.

people affected have infinite moral value, and as such their value cannot intelligibly be weighed against other interests. Even if one does not hold rights to be infinitely valuable, but only extraordinarily so, rights still place a check on expediency-oriented reasoning in war by emphasising the immense value of human rights-holders.⁸²

Note, though, that the ability of rights to uphold the moral value of every individual human being and thereby respond to consequentialist modes of thinking is undermined if rights are seen as a moral threshold that is not inviolable, but only of serious moral consideration. Above, Orend describes how rights protect individuals from being used as "mere props," but the threshold deontologist will be forced to say that if the stakes are high enough, an individual may indeed by reduced to prop-like status. The moral force of human rights discourse comes from unapologetically stating the absolute value of each individual human person. However, in subjecting the value of human persons to the value of, in Walzer's supreme emergencies for instance, the community, individualism is eroded in favour of communitarianism.

However, some may respond that it is the moral value of individuals that in fact *justifies* threshold deontology. For, if each individual is absolutely valuable as a moral agent, then the death or suffering of a huge number of those individuals must be more morally serious than the death or suffering of one individual. It is the *sheer mass* of valuable human beings that justifies the violation of the rights of one or some in dire cases. This is a compelling

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⁸² Exactly who counts as a rights-holder (and on what basis) is a matter of some debate: this will be addressed in the next section.

argument, but it must be noted that the argument relies on the ability to *quantify* the moral value of each individual.

Furthermore, if each individual is *infinitely* valuable, then adding to the infinite cannot make it larger. Thus, the threshold deontologist cannot hold individual human beings as being of absolute moral value, but only of great value. Then, the question arises why it is only in *dire* cases that utilitarianism reimposes itself. Why, if forced to choose between the lives of three people and five people, can one not kill three to save five? If the only recourse is the quantifiable moral value of individuals, there appears to be no reason to enforce rights in any situation where the majority seek to render individuals to be "mere props" and therefore provide the same protection to individuals as absolute rights.

2.2: Moral Security and Legislative Strength

It is a matter of some debate whether rights would exist in a world of perfect virtue, ⁸³ however the outcome of this debate has little bearing on my discussion here. The world that we inhabit is *not* a world of perfect virtue. Most people will make moral exceptions for themselves on occasion: "I am a good soldier, but this particular civilian is getting under my skin. *Just this once*, I'm going to butt him with my rifle." Here, the vicious behaviour can be dismissed as "not me," because it is inconsistent with the way I usually act; viz. my character. If we cannot be assured of virtuous behaviour, then we ought not to rely on it exclusively as a means of governing action.

⁸³ C.f. Feinberg, op cit., 618.

The language of rights (and the corresponding language of wrongs) provides a powerful impetus against wrongdoing. When I strike a civilian with the butt of my rifle it is not just a case of me not furthering my own project of moral self-improvement (as a pure virtue ethicist may argue), it is also the case that I wrong another human being by violating his intellectual property rights, rights to compensation for work, and so on. Rights-talk forces the moral agent to think about his actions in terms of other people. Even if I have a duty to be virtuous, it seems (as Augustine contended) that if I fail to do so, the person who suffers most for it is me. This frees the agent from a certain amount of guilt, because he has harmed nobody but himself.⁸⁴ Rights make that psychological process more difficult: if my wrongdoing is a violation of the claim of another person, it is not me that is harmed, but the other.

Rights therefore provide psychological incentives against wrongdoing. There are two potentially negative outcomes of this position. First, if rights-talk is used exclusively, it becomes difficult to see actions that do *not* directly harm another or violate their rights as wrongful. Second, it is important to acknowledge that when I act wrongly, I do some harm to myself as well as to the other. This is why recognition of both virtue and deontology is important for a complete moral theory of war.

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⁸⁴ Psychological support for this suggestion can be found in Rajenda A. Morey & Jessica D. Nasser, 'Neural systems for guilt from actions affecting self versus others', *Neurolmage*, vol. 60, iss. 1, 2012, 683-692. One possible explanation is that intrapersonal (self) harm causes regret, whist interpersonal (other) harm causes guilt. See: Marcel Zelenberg & Seger M. Breugelmans, 'The role of interpersonal harm in distinguishing regret from guilt', *Emotion*, vol. 8, no. 5, 2008, 589-596.

Rights-talk is also practically appealing in that it allows for the easy implementation of legal enforcement mechanisms that protect against rights-violations. It is comparably easier to prosecute war crimes if they are understood as (for example) violating a person's right to life, rather than if they are understood as acting with vengeance, cruelty, hatred, or power mongering. The former are much more easily demonstrable than the latter.

In the previous chapter I suggested that the codification project embarked on by Vitoria and Grotius led to a diminishing emphasis on virtue within their respective theories.85 Part of the reason for the de-emphasis is the simple fact that viciousness by itself is hard to prove in a court of law. By contrast, Aquinas believed the law of the New Testament, "love one another as I have loved you" to be an internal law written in the hearts of men, rather than a "written law" that might carry legislative force.86 The written law should not be concerned with what goes on in people's minds until such a time as some harmful (or potentially harmful) action is taken. This is where rights, focussing on actions and outcomes rather than intentions and dispositions, show their value. Given the limited number of human rights, it becomes relatively easy to determine whether an action has violated one of those rights or not. For example, murder will always violate the right to life, theft the right to property, and so on. This makes determining wrongdoing, and subsequently punishing the wrongdoer and making restoration to the victim a substantially easier project than proving the presence of vice.87

⁸⁵ C.f. chapter two, 68-69 & 75-76.

⁸⁶ Aquinas, *ST*, I-II, Q. 106, Art. 1.

⁸⁷ It is worth noting that this will only be true for just legal systems with fair and reasonable standards of evidence.

The comparative ease of evidencing rights-violations rather than vicious behaviour can be made clear by returning to the 2007 Apache helicopter attack in Baghdad. Assuming again that the laws of war were not violated here, the soldiers nevertheless appear excited by their roles as killers and eager to obtain permission to (re-)engage. The cavalier approach to violence and killing suggests a love of violence here that is clearly contrary to what Augustine would expect of the virtuous soldier who is sober and reluctant in his approach to violence. In such a case, demonstrating the viciousness of an action is relatively easy (particularly when, following Wikileaks' release of the video, veterans of the incident issued an apology to the Iraqi people). However, there is often much less evidence of viciousness: transcripts are not always readily available, missions are not always recorded and soldiers do not always verbalise their thoughts.

Although determining whether a war crime has been committed still requires proof of intention and motive (in the legal sense of *mens rea*), the framework provided by rights at least provides some objective standard of evidence for a trial to seek. Either the people on the ground were noncombatants and therefore their rights were violated, or they were combatants and therefore legitimate targets. If virtue were the only measure of legally punishable action and viciousness were provable, every soldier who had furiously and vengefully shot out at the enemy soldier who shot his comrade would be liable to prosecution. Rights provides an objective measure by which to prosecute.

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⁸⁸ Cf. chapter two, 55-56.

⁸⁹ Josh Stieber & Ethan McCord, 'An Open Letter of Reconciliation & Responsibility to the Iraqi People', April 17th 2010 http://www.michaelmoore.com/words/mike-friends-blog/open-letter-reconciliation-and-responsibility-iraqi-people.

To simply act viciously, where the vice does not contribute to the harm inflicted on another person, is not a crime. However, it is important to note that although rights theory makes prosecution easier, it by no means makes it easy; even in the example used here the soldiers involved in the Apache helicopter attack were found innocent of any wrongdoing.⁹⁰

Note again that the legal force of rights theory presumes that rights are absolute deontological limits which may never be permissibly violated. If, instead of absolute prohibitions of behaviour rights were only strong moral barriers which only extreme situations could overcome, legal enforcement would become equally if not more difficult than if one were to prosecute on intentions alone. The reason is because in order to punish a rights violation a court would have to be convinced that the violation was not performed in order to prevent a substantively graver violation which may have occurred. This introduces another level of speculation, and therefore ambiguity, to the process. Furthermore, determining whether or not the action did – as a matter of fact – prevent a greater catastrophe is not sufficient because even if there was no supreme emergency, the court would have to consider whether the defendant could reasonably have known that the situation did not constitute a dire enough emergency to justify rights violations. Again, we see that the benefits provided by rights theory are best provided when the rights in question are considered absolute and inviolable.

⁹⁰ Author classified, 'Legal Review, AR 15-6 Investigation, Finding and Recommendations of the Conditions Surrounding the Possible Death of Two Reuters Reporters during an Engagement on 12 July 2007 by Crazyhorse 18 and 19, 1st Battalion, 227th Aviation Regiment, in the New Baghdad District of Baghdad, Iraq (Zone 30)', 20th July 2007, https://www2.centcom.mil/sites/foia/rr/CENTCOM%20Regulation%20CCR%2025210/Death%20of%20Reuters%20Journalists/5--1st%20Air%20Cavalry%20Brigade%20AR%2015-6%20Investigation.pdf.

2.3: Universality

Following from the legislative appeal of rights discourse is its third characteristic, universal application. By explaining JWT through the lens of human rights, theorists are able to validate the claim that the laws of war apply equally to every nation and every person (insofar as every person shares in the same human rights). Under this approach, the moral laws of war are not limited to particular societies, nor are they grounded in politically or culturally variable norms; rather, they are founded in the nature of humanity itself. As H.L.A. Hart says, they are rights "which all men have [...] *qua* men and not only if they are members of some society or stand in some special relation to one another [they are] not created or conferred by men's voluntary action."⁹¹

The universality of human rights such as the rights to life and bodily integrity is appealing for just war theorists because it justifies universal applicability. The values that rights-based just war theories uphold are ones that communities all around the world should affirm. Some have suggested that the best attempt at outlining and enumerating a set of human rights – the Universal Declaration of Human Rights – is anglocentric and does not actually represent values held universally. However, even if this criticism holds true, the rights theorist's claim that *some* set of universal values could be upheld via human rights is not necessarily defeated. The legal appeal of human rights is

⁹¹ H.L.A. Hart, 'Are There Any Natural Rights?', *The Philosophical Review*, vol. 64, no. 2, 1955, 175-191 at 175.

⁹² American Anthropological Association, 'Statement on Human Rights', *American Anthropologist*, vol. 49, no. 4, 1947, 539-543.

not only that they are applied to communities around the world, but also that they can *govern and prescribe* moral conduct across the borders of different communities and cultures. It matters not if the offender is American, Rwandan, Bosnian, or German, the laws of war, such as the principle of discrimination, will apply equally. The International Criminal Court (ICC), for example, claims jurisdiction over "serious crimes of concern to the international community as a whole;" specifically, it deals with war crimes, crimes against humanity, and genocide – wherever they occur. So, although the international society "is pluralist in that different moral values are enacted within each political community," there are some basic moral values, human rights, which apply universally – to the global community.

I concede that the universal application of rights theory is in no way affected by whether those rights are formulated as absolute or not. Despite this, the fact that two of the three major reasons why rights are appealing to military ethicists are undermined by threshold deontological approaches to rights should be of concern to contemporary just war theorists who formulate their views of rights in that manner.

However, even with the benefits that rights theory offers, there are shortcomings to limiting one's discussion to rights alone. For instance, as we saw in the discussion of the 2007 Apache attack, rights theory's ability to criticise or condemn vicious (but not unjust) behaviour is limited. Thus, a

⁹³ Rome Statute of the International Criminal Court, 1998, Article 5.1,

http://untreaty.un.org/cod/icc/statute/romefra.htm.

⁹⁴ Jamie Gaskarth, 'The Virtues in International Society', *European Journal of International Relations*, vol. 18, no. 3, 2011, 431-453 at 443.

more all-encompassing morality of war must look beyond rights for a fuller discussion of morality.

3: Beyond Rights: Just War Theory and Virtue

Having established what modern just war theories mean by rights, and why it is that rights discourse is beneficial for JWT, I now suggest two areas in which rights theory can be helpfully enriched through integrating aretaic ethics into the discussion. The two cases speak to two different areas of military ethics: the first concerns operatives "on the ground" (*in bello*), and the second regards political decisions and military strategy (*ad bellum*). I suggest that whilst rights-based just war theories can provide a coherent account in each case, important questions as to the motivations of the actors, the development of virtues, the wellbeing of the moral actors, and the common good can be more comprehensively and satisfactorily addressed with the inclusion of insights from aretaic ethics.

This is not to say that there is nothing to be gained from deontological interpretations of the morality of war; rather, it is to say that those accounts will be more complete representations of war in all its moral complexity if they have incorporated aretaic concepts into them. I should also note that I do not consider the two areas to be explored – torture and so-called "lesser evil" scenarios – to be the only areas in which aretaic notions can enrich deontological ones. I do, however, consider them to be representative of the

complementarity of the two moral frameworks, and to be pressing moral questions in contemporary debate among just war theorists.

3.1: Intentions and Vices: The case of torture

A crucial way in which aretaic notions can enrich deontological just war theories is by explaining how agents can adhere to deontological rules in a way that detracts from their good moral character. One example of this is advanced interrogation employed in times of war; that is, treatments that either are, or border on, torture. 95 In this section I argue that just war theories that fail to adequately condemn (or worse condone) acts that degrade, mock, traumatise, or objectify other human beings (as torture does) as outside of the body of morally acceptable actions are problematic from within an aretaic framework. The problem arises primarily from the fact that such actions facilitate soldiers becoming the kind of people who do not make good citizens when they return home from war. One of the difficulties facing those who have denied the legitimacy of torture is that they have usually attempted to do so from within a rights-based framework. However, as many commentators have argued, this is not easy to do. A critique of torture may be enhanced by drawing on aretaic notions concerning the degradation of the moral character of the torturer.

⁹⁵ Michael Gross, Moral Dilemmas of Modern War: Torture, Assassination and Blackmail in an Age of Asymmetric Conflict, (Cambridge: Cambridge University Press, 2010), 123.

The United Nations 'Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment' defines torture as:

[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.⁹⁷

This is a helpful starting point, but it is not without its shortcomings. For example, as Michael Davis observes, "an illegal organization, such as the mafia, is, without official 'consent or acquiescence' as capable of torture as any government."98 Even though Mafiosi or gang thugs will never be brought before the International Criminal Court for their actions, they are still capable of torture. The crime of torture is not determined by *who* performs the action, but qualities inherent to the action itself. Thus, we must enquire as to *which* qualities of the action will constitute torture.

[%] The convention is in fact only effective as a convention against torture because other cruel, inhuman, or degrading treatments" occur only in the title of the document, and are never defined.

⁹⁷ United Nations, 'Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment', No. 24841, 1987, Article 1. 1,

http://treaties.un.org/doc/Publication/UNTS/Volume%201465/volume-1465-I-24841-English.pdf>.

⁹⁸ Michael Davis, 'Justifying Torture as an Act of War', 189 in Larry May (ed.), *War: Essays in Political Philosophy*, (Cambridge: Cambridge University Press, 2008).

The UN definition suggests that what constitutes torture is the *severity* of the pain or suffering that is inflicted in combination with the reasons for which the pain is inflicted; reasons which may include intelligence gathering, punishment, intimidation and coercion, or "any reason based on discrimination." However, not *all* pain or suffering for these purposes can constitute torture. After all, criminals suffer loss of their freedom when they are imprisoned as punishment for their crimes, but criminal imprisonment should not be considered torture. The amount, or intensity of the pain and suffering must meet a certain threshold before the label of torture can be applied.

So emerges a deeper difficulty with the UN definition: the fact that by identifying torture as the intentional infliction of *severe* pain or suffering, one implicitly condones inflictions of *less than severe* pain or suffering. Here we enter a realm stifled by ambiguity. For example, how serious is the suffering inflicted on a prisoner who is forced to sleep naked on the cold floor? The treatment, although inhumane and painful, may not fit the legal definition of torture and therefore may not violate an individual's 'right not to be tortured.'

How should "severe pain and suffering" be understood? Two possibilities emerge: either (i) the *degree* of suffering inflicted, or (ii) the *quantity* of pain one endures. If (i), certain types of suffering will always constitute torture; regardless of how long and short they go on for. This approach will see torture as a line in the sand which delineates a set of actions that are so severe in the level pain and suffering they inflict as to constitute torture. (ii) is more flexible

as to the manner in which pain and suffering are meted out, but is more interested in quantifying how much a person has suffered over time. For instance, waterboarding may be considered a type of suffering severe enough to constitute torture, but a particular detainee might prefer fifteen minutes of waterboarding to a fortnight of sleep deprivation (were they given the choice). Under the first conception, sleep deprivation may be a sufficiently moderate form of suffering to fall below the torture threshold; under the latter, even tickling a person for an indefinite period of time may constitute torture – the longer it goes on, the more torturous it becomes.

Michael Gross argues that it is important to distinguish between "moderate physical pressure or "torture light" [sic.] and cruel or vicious torture."⁹⁹ Gross rejects torture on the grounds that it is ineffective, but also holds that "there is no overwhelming evidence that the costs of torture in a democracy are intolerable."¹⁰⁰ By torture, Gross means "moderate physical pressures" such as extreme temperature exposure, sleep deprivation, minor assault (slapping, pushing), and waterboarding.¹⁰¹ These are distinguished from more brutal measures (i.e. rape) because the extremity of the suffering is lower, and its duration shorter than other measures.¹⁰² The short duration and comparably diminished amount of pain suggest that these kinds of pressures do qualify as torture (or perhaps "torture-light"), but are not "cruel or vicious torture." However, as I suggested above, moderate pressures do not remain moderate forever. An analogy here can be drawn from the sufferers of medical symptoms: pins and needles that last for 5-10 minutes can be irritating, or even

⁹⁹ Gross, op cit., 123.

¹⁰⁰ Ibid., 146.

¹⁰¹ Ibid., 127-128.

¹⁰² Ibid., 128.

amusing to some, but if those symptoms did not subside for years, the suffering inflicted would be severe indeed. In fact, one of the most famous methods of torture, Chinese Water Torture, rests on this exact premise. It takes something minorly irritating, a drip on the forehead, and repeats it over an indefinite period of time, where the person has no ability to stop it. The success of the torture in this case relies on the denial of freedom, the powerlessness to stop the discomfort, and the uncertainty as to when, or if, it might end.

A better definition of torture is offered by Patrick Lee, who focusses not on the acts or outcomes of torture, but on the intention behind it. Lee defines torture as "acts of mutilation or acts that attempt to reduce the detainee to a subhuman, dis-integrated state, for the ulterior purpose either of interrogation, deterrence, revenge, punishment, or sadistic pleasure."103 This definition identifies the "type of choice and execution of choice" that is involved in torture; specifically, the reduction of a human detainee to something less than human. Thus, placing soiled female underwear on the faces on detainees with strict sexual sensitivities, as occurred at Abu Ghraib prison, is likely to constitute torture. It also explains why the UN Convention's distinction between torture, cruel treatment and degrading treatment is mistaken: any kind of treatment which aims to disintegrate a person's psyche is torturous. Under this framework, torture is better understood as an adjective; particular kinds of treatment are torturous when it has the aim of undermining integrated personhood. For Lee, torture is not an act, but an intention. This explains how, in the above cases, tickling, pins and needles, or water dripping on one's forehead can constitute torture, as much as can sleep

¹⁰³ Patrick Lee, 'Interrogational Torture', *The American Journal of Jurisprudence*, vol. 51, 2006, 131-148 at 132.

¹⁰⁴ Ibid., 132.

deprivation, waterboarding, or de-nailing. Torture does not require the *experience* of extreme pain or suffering by victims, merely that such an experience be intended.

Lee's account also helps us to make the important distinction between torture and interrogation. Torture, as Lee explains, is defined by (a) the objective, which can be punishment, intelligence, or even sadistic gratification; and (b) the means of bringing about the objective, that being the dis-integration of a human being, resulting in his becoming sub-human. Interrogation, by contrast, is always aimed at obtaining intelligence (and is thus more narrowly aimed than torture), but more importantly, is distinguished in the means employed to obtain information. Interrogation uses a host of different methods, many of which are unpleasant: exploitation of close relationships, manipulation of facts, or more coercive measures such as blackmail. However, these methods all aim at having the detainee choose to offer the information he possesses. By contrast, torture forces the information out by destroying a person's ability to resist. The distinction lies in the interrogator/torturer's attitude to his victim, and whether he is willing to accept the possibility that his victim will not volunteer information. Interrogators will accept that possibility, torturers will not.

Thus far, we have seen theorists try to distinguish torture from interrogation, torture-lite (a softer version), and cruel or vicious torture (a more extreme form). We can also distinguish between different types of torture based on the purpose of the torture – interrogational torture should be distinguished from punitive or sadistic torture, at least for the sake of discussion. Indeed, it is

interrogational torture that is most relevant to those within the military and intelligence communities, and which therefore deserves (and receives) most of the focus. Following Lee, we can define interrogational torture as interrogation whose methods for soliciting the truth from an individual by aiming to dis-integrate the victim, or reduce him to a sub-human state. This is what Hollywood scriptwriters have in mind when they describe torture as attempts to "break people." They envision a point at which a person's psychic and bodily integrity are so diminished that any willpower they had to retain information disappears, and the truth flows from them like a stream. The question, many argue, is what could justify "breaking" a person in such a way, if anything? And are there certain types of treatment which break a person beyond repair, and should therefore never be performed? Put another way, when and to what extent can degrading a person to sub-human levels be justified?

Amongst a host of various answers is the pragmatist who responds "never," not because of anything intrinsic to the act of torture itself, but because it is, as a matter of consequence, ineffective. Former F.B.I. interrogator Ali Soufan has been a public opponent of torture on the grounds that it is ineffective, although conceding the possibility that if it *was* effective, he might accept it as legitimate practice.¹⁰⁵ But, he has argued in several op-eds, the reality is that it does not provide accurate information.¹⁰⁶ Empirical debates regarding the

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¹⁰⁵ Duncan Gardham, 'Torture is not wrong, it just doesn't work, says former interrogator', *The Telegraph*, Oct. 28, 2011, http://www.telegraph.co.uk/comment/8833108/Torture-is-not-wrong-it-just-doesnt-work-says-former-interrogator.html>.

¹⁰⁶ C.f. Ali Soufan, 'Torture, Lies, and Hollywood', The New York Times, Feb. 22, 2013,

http://www.nytimes.com/2013/02/24/opinion/sunday/torture-lies-and-hollywood.html; 'My Tortured Decision', *The New York Times*, April 22, 2009,

http://www.nytimes.com/2009/04/23/opinion/23soufan.html?_r=0">; 'What Torture Never

efficacy of torture are ongoing,¹⁰⁷ but to rest the outcomes of the debate on empirical findings regarding torture's efficacy would be unimaginative. The torture question is much broader than mere effectiveness: even if these questions were resolved and torture were shown to be ineffective, we would still face debate as to whether "torture-lite" was morally acceptable. To this debate, Michael Davis responds that:

[t]o debate whether a certain way of treating a person "amounts to torture" is to admit the treatment in question is well within the domain of the inhumane and therefore prima facie among the most serious of moral wrongs.¹⁰⁸

Discussions of whether various forms of coercive interrogation can be justified dwell in a moral shadowland: simply being there may be enough to be lost in the dark. In what follows, I argue that when it comes to the effects of coercive interrogation on the character of the interrogator, the distinction between torture and torture-lite is unimportant: the moral costs in either case are devastating.

In what follows I show how aretaic concepts broaden the torture debate beyond definitional debates regarding how to distinguish torture from torture-lite. An interest in *arete* and wellbeing prompts the question: is the

http://www.nytimes.com/2009/09/06/opinion/06soufan.html.

Told Us', The New York Times, Sept. 5, 2009,

¹⁰⁷ Jean Maria Arrigo offers a summary of much of the empirical debate, arguing that the outcomes of torture interrogations make it unjustifiable. See: Jean Maria Arrigo, 'A Utilitarian Argument Against Torture Interrogation of Terrorists', *Science and Engineering Ethics*, Vol. 10, 543-572.

¹⁰⁸ Davis, op cit., 197.

character of the interrogator who performs "torture-lite" affected any differently than the more brutal torturer? This question has been touched on by Jessica Wolfendale, who notes that "[t]he distinction between the methods referred to as torture lite and so-called real torture serves a further aim: it is sometimes used to distinguish not only between types of torture methods but also between the moral character of torturers and their motivations." 109

To borrow from Lee's approach, the difference between torture and torture-lite is claimed to be (at least in part) that the latter does not intend to disintegrate personhood in the same way as the former. This is obviously a contentious claim, as for Lee, torture is concerned with the intention, not the act itself, and it seems that torture and torture-lite differ only in the *quality* of suffering they aim to inflict, but both intend to inflict suffering. Whilst non-anaesthetised surgery to save a life might perform the same kind of acts as certain forms of brutal torture without being torturous, there seems to be less distinction between waterboarding and de-nailing.

Wolfendale begins an aretaic mode of thinking by questioning whether torture-lite actions *demonstrate* a corrupt moral character (in the way that torture does), but it is worth continuing that line of questioning and considering whether they can *create* one. This, I believe, is a more important line of questioning given that most interrogators will not take any pleasure in what they are required to do, even where what they do does not amount to the legal definition of torture. However, we would do well to ask whether,

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¹⁰⁹ Jessica Wolfendale, 'The Myth of "Torture-Lite", *Ethics & International Affairs*, vol. 23, iss. 1, 2009, 47-61 at 49.

over time, those same people may either come to enjoy what they do, whether their interrogation methods are likely to escalate, or if the actions they are required to can be detrimental to the character of interrogators in other ways. I begin with the following case from Brian Orend in his discussion of torture in *The Morality of War*.

[At Abu Ghraib] the world saw some shocking photos of American troop conduct [...] Some of it – like deliberate, prolonged sleep deprivation, and using dogs to attack or threaten already prone and naked people – clearly violated the Geneva Conventions. Others might have been visually disturbing but do not obviously count as human rights violations, such as forcing the prisoners to wear dog collars, or having American women ridicule their private parts, or putting female panties on their faces temporarily.¹¹⁰

Orend disapproves of both clear violations (torture) and less obvious cases (torture-lite) as "a violation of both the letter and the spirit of the principle of benevolent quarantine."111 However, he is not willing to completely condemn torture-lite: "I suppose we might condone efforts at psychological pressure [...] when the goal is getting information which might save innocent lives."112 Orend's approval is unusual given that he simultaneously holds that "[t]orture hardens the heart and corrupts the character of the torturer." This aretaic sentiment is an important one, but Orend may be overreaching: the torturer who interrogates reluctantly, and out of a genuine belief that this is

¹¹⁰ Orend, The Morality of War, op cit., 111.

¹¹¹ *Ibid*.

¹¹² *Ibid*.

¹¹³ *Ibid.*, 112

necessary to achieve the goals of war, or to save a vast number of lives, may not find his heart hardened or his character corrupted.

However, *routine* torture of the kind that might emerge if torture became institutionalised as a matter of official military policy is likely to harden the heart. But it is not clear that Orend's concerns are exclusive to the torturer; the interrogator (or "torturer-lite"), if willing to mock, insult, lie and threaten surely cannot expect to leave with a pristine character – cannot this alone serve as a basis to condemn the behaviour? Nancy Sherman's aretaic work on the moral psychology of warriors is informative here:

The nearly exclusive focus on torture has silenced a more general debate about the moral shadowland in which the interrogator dwells, even when he does not practice torture [...] [T]he space the interrogator inhabits has its own special moral demands. And with it comes a distinct set of moral and psychological vulnerabilities.¹¹⁴

Sherman suggests that even "interrogation-short-of-torture" (Sherman uses the term "exploitation")¹¹⁵ entails aretaic difficulties for the interrogator. The detainee's vulnerability, loyalty and trust is exploited by the interrogator for specific ends, and the skills requisite to do so are not compatible with the overall flourishing of a life. In cases such as torture, then, employing deontological reasoning to determine whether a person's right not to be

¹¹⁴ Sherman, *The Untold War: Inside the Hearts and Minds of Our Soldiers*, (New York: W.W. Norton, 2010), 117.

¹¹⁵ Ibid., 118.

tortured has been violated or not is insufficient to appreciate the full moral scope of the situation; a more robust account of the morality of torture will explore the effects that performing such deeds will have on the protagonist's character. For example, occasionally soldiers will kill one of their own in training mishaps, technological malfunctions or simple human error, most of the time being free from moral or legal fault for their actions. 116 In such situations those who are responsible are usually only causally so; often no moral or legal culpability can be attributed, such as in the SPLA case discussed earlier. But aretaic concepts can help demonstrate the moral difficulties a soldier who accidentally kills a comrade may face down the track. Although guilt, shame, regret and so forth are psychological conditions, each has longreaching and profound moral consequences for the wellbeing of veterans, as I show in chapter four. JWT – if it is to be a complete morality of war – must accommodate the aretaic into such situations, appreciating that the deeds soldiers perform in war infiltrate their character and shape their flourishing by way of memories, trauma, changed character traits, or psychological scars.

The same is true of the interrogator: it is not sufficient to determine the justice or injustice of his deeds; JWT must take the further step of explaining how his actions can be reconciled with his life as a moral agent and with his overall wellbeing. Indeed, if it were ever possible to show that a terrorist really *did* forfeit his right not to be tortured (as the no-right justification discussed earlier might hold), it may nevertheless be wrong for any individual to commit torture if doing so would foster character traits that are contrary to his ability

¹¹⁶ Sherman tells the story of one man, responsible for providing security for a position in Iraq who authorised a replacement battery for a Bradley gun. The replacement battery, as it turned out, had different amperage, and the gun fired, killing a US Private. See: *Ibid.*, 96-97.

to be a good citizen, or live a fulfilling life. Pope Paul VI demonstrated an understanding of this in the Pastoral Constitution *Gaudium et Spes*.

[W]hatever is opposed to life itself, such as any type of murder, genocide, abortion, euthanasia or wilful self-destruction, whatever violates the integrity of the human person, such as mutilation, torments inflicted on body or mind, attempts to coerce the will itself; whatever insults human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution, the selling of women and children; as well as disgraceful working conditions, where men are treated as mere tools for profit, rather than as free and responsible persons; all these things and others of their like are infamies indeed. They poison human society, but they do more harm to those who practice them than those who suffer from the injury.¹¹⁷

Throughout this chapter I have suggested that to discuss just and unjust actions solely through the lens of deontology is too narrow. Also required is an appreciation of aretaic ideas. An account that includes such discussion will be able to represent the various moral categories explained earlier more richly. Torture provides a good case analysis of this. Even if deontological theories were unable to demonstrate if and how rights theory leads to an absolute prohibition on torture, aretaic notions can provide insights that suggest why no person ought ever to commit an act of torture. For example, because of the trauma inflicted or the disharmony it may generate when the person returns home from war. Furthermore, awareness of aretaic concepts helps to inform us of the moral difficulties that may be faced by those interrogators who,

¹¹⁷ Pope Paul VI, Gaudium et Spes, 1965,

http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vatii_cons_19651207_gaudium-et-spes_en.html.

although only performing just actions, are still developing particular character traits (such as the manipulation of relationships and desensitisation from forming close personal bonds), which may be difficult to reconcile with civil society.

3.2: Lesser Evils

In his discussion of torture, Fritz Allhoff notes that "there can be cases involving rights conflicts where one right has to be violated in order to prevent further rights from being violated." Allhoff, focussing on the torturing of those who we reasonably believe to be terrorists with valuable (and pressing) information divides torture into three kinds: "physical, psychological, and other-directed", and whilst arguing against other-directed torture, believes that "both physical and psychological torture, in all their forms, should be allowed [although] only the minimum necessary to extract the information is allowed. Torture in such circumstances is justified by the moral status argument: the terrorist has done something which lowers his moral status relative to others who are innocent. Even if he has not forfeited his right, the terrorist's rights are diminished by comparison to the rights of innocent people (if, say, he has hidden a bomb and refuses to disclose the location).

However, there are also cases in which preventing the violation of a great many innocent people's rights may require violating an *innocent* person or

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¹¹⁸ Fritz Allhoff, 'Terrorism and Torture', *International Journal of Applied Philosophy*, Vol. 17, Iss. 1, 2003, 105-118 at 113.

¹¹⁹ Ibid., 109.

persons' rights. Such cases are usually referred to as "lesser evil" scenarios: those in which the only way to prevent a morally catastrophic outcome is by doing something evil. In such cases it is held that the proportional costs of not acting are so extreme that to hold (as an absolutist does) that one must never intentionally violate another's rights is to succumb to a kind of "rights fetishism." ¹²⁰ As Walzer argues, the absolutist catch-cry "do justice though the heavens fall!" involves "a refusal to think about what it means for the heavens to fall." ¹²¹

In one sense, lesser evil scenarios are remarkably similar to the case of torture already discussed. However, it is worth exploring them in detail for several reasons: first, because unlike torture and torture-lite, there is no claim that the victims here are liable to attack or injury; even defenders of the so-called "dirty hands problem" acknowledge that it requires one to do what appears to be evil. Secondly, these cases apply more directly to political leaders, who must give the orders for such things, than they do to military operators such as interrogators or soldiers. Thus, these cases allow the exploration that previously took place regarding *in bello* to be applied to *ad bellum* responsibilities.

¹²⁰ Allhoff, op cit., 113.

¹²¹ Walzer, Arguing About War, op cit., 37.

¹²² C.f. C.J. Coady, 'Dirty Hands, *Stanford Encyclopedia of Philosophy*, 2009, http://plato.stanford.edu/entries/dirty-hands/.

3.2.1: Just Cause and Morally Justifiable Cause

Jeff McMahan contends that there can be morally justifiable wars fought by nations who do not have just cause. He describes the following scenario:

Suppose that country A is about to be unjustly invaded by a ruthless and more powerful country, B, A's only hope of successful defense is to station forces in the territory of a smaller, weaker, neighboring country, C, in order to be able to attack B's forces from prepared positions as they approach A along the border between B and C, A's government requests permission from the government of C to deploy its forces on C's territory for this purpose, but C's government, foreseeing that allowing A to use its territory in this way would result in considerable destruction, denies the request. Suppose that C is within its rights to deny A the use of its territory but that, all things considered, it is nonetheless justifiable for A to avoid an otherwise inevitable defeat at the hands of B by going to war against C in order to be able to deploy troops there [...] Given that C is not morally required to sacrifice its territory for the sake of A, it seems that C does nothing to make itself liable to attack by A. On the account I have offered, therefore, A does not have a just cause for war against C. Yet if A is nevertheless morally justified in going to war against C, it must be possible for there to be wars that are morally justified yet unjust.123

A deontic reading of McMahan's contention that there might be morally justifiable yet unjust wars would require that the rights of states against

¹²³ Jeff McMahan, 'Just Cause for War', *Ethics & International Affairs*, vol. 19, Iss. 3, 2006, 1-21 at 15

unjustified invasion not be absolute. As a threshold deontologist, McMahan makes it clear that the circumstances that would justify this event would be unlikely, because "for the war to be proportionate [...] its good effects would have to be weighed against the intentional killing of just combatants in [nation] C, who are innocent in the generic sense." The difficulty here is that a host of different rights have come into conflict: state A's right to self-defence, state C's right to territorial integrity, A's citizens' rights not to be subjected to unjust war, and C's citizens' rights not to be subjected to unjust war. An absolutist reading would state simply that the right to self-defence does not afford a nation the liberty to violate the territorial integrity of others, but McMahan does not follow this line of argument. Instead he argues that the only way to determine between them is with recourse to "the greater good." The rule would be this: where two fundamental rights come into conflict with one another, the one which best contributes to the greater good will be upheld.

Recalling that deontological ethics is concerned primarily with developing moral principles that serve as rules to guide action in particular cases, we can see how this principle would be an appropriate formulation with regard to resolving the problem of lesser evils within a deontological framework. However, McMahan does not believe the principle to be a sufficient explanation of the morality of lesser evil cases (and nor do I). In cases where rights can be permissibly violated, the justification emerges not only from proportionate calculations, but from intention. 126

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¹²⁴ McMahan, Killing in War, op cit., 28.

¹²⁵ Ibid., 29.

¹²⁶ Ibid., 28-29.

If an act would cause harm to the innocent as a foreseeable side effect, it may nevertheless be permissible if it is intended to achieve good effects that exceed the bad by a certain margin. It may not, however, be permissible to cause the same amount of harm to the innocent as an intended means of achieving the same good effects. Yet if causing that amount of harm to the innocent could be the means of achieving much *greater* good effects, it might be permissible to cause it – though only if the agent acts with an acceptable intention, such as the intention to achieve the greater good.¹²⁷

However, despite invoking insights typical of DDE (such as side-effect based reasoning), McMahan's specified intention – "achieve the greater good" – represents a very different account of intention to those we have seen earlier. The desire to achieve the greater good is much closer to a motive than an intention: when one intends to achieve the greater good, he must intend to do it in specific ways. These ways are, as a matter of fact, the things the person intends, not "achieve the greater good." DDE and other absolutist modes of reasoning hold that in intending a specific end, such as the greater good, one also intends the means to achieve that end; in this case, violating rights. So, one cannot merely avoid the lesser evil problem by invoking good intentions, especially when conceived so broadly. Indeed, unless restricted by a specific understanding of what the greater good is constituted by, it would be hard to find any historical instance of someone *not* acting to achieve the greater good.

What needs to be shown, rather, is either that it is sometimes permissible to violate absolute moral proscriptions or that the right to territorial integrity is

¹²⁷ McMahan, Killing in War, op cit., 29.

not absolute, and can therefore be violated in some cases. Although I believe the latter argument to be the more salient, I will not make that case here. Rather, I wish to point out how in either case, deontological ethics will be noticeably enhanced through incorporating aretaic ethics. In two important ways, aretaic ethics can lend further depth of insight to the lesser evil calculations that McMahan is here concerned with.

First, aretaic ethics - focussed on human wellbeing, including the internal moral excellences of the individual (virtues), intentions and motives of actors, character, and moral psychology as each contributes to wellbeing - can explain what traits will be necessary in order for individuals to be able to determine *when* a situation is a "lesser evil" case, and when it is a case n which basic deontological principles ought to be applied. One major shortcoming in McMahan's discussion is that is presumes that individuals will know when they are faced with a moral dilemma that requires them to choose the lesser evil. However, it is not immediately clear that any and every individual will be readily able to identify the morally salient features of a particular situation. So, if we take a threshold deontological approach, how do individual actors determine when the threshold has been reached?¹²⁸ Furthermore, if the right to territorial integrity is not absolute, how do we determine when it can be proportionate to violate a nation's right? In this instance, a virtue such as prudence would help to identify the morally relevant features of a situation and determine between different possibilities.

¹²⁸ This question can also be posed against Michael Walzer's cases of supreme emergencies. See: Berry Tholen, 'Dirty Hands or Political Virtue? Walzer's and MacIntyre's Answers to Machiavelli's Challenge', *Public Integrity*, vol. 15, no. 2, 2013, 187-202 at 190-191.

Daniel Jacobson, for instance, argues that possession of moral virtues allows a person to identify the right thing to do in a situation, even without an ability to voice the moral principles demanding that particular action: "the virtuous person has a reliable ability to do the right thing in the situations confronting her, even if she may be unable to articulate how, or even what, it is that she knows." This is particularly poignant because McMahan argues that the relevant intention in lesser evil cases is merely to serve the common good. In such a broad case, it may be almost impossible to identify a particular principle that oversees each particular case.

The process of prudent decision-making is described by Charles Henry as follows:

To reach a solution [...] one needs to inspect all the known variables, even apparently nonessential ones, covering the [...] social, spiritual, ethical, psychological, legal, and familial aspects, respecting the context and the individuals involved, and any circumstance that would at all be of influence in arriving at the final decision.¹³⁰

Henry, speaking in a medical context, lists variables that might not be especially relevant in the military. For instance, we might substitute "familial" for "international politics" and add factors like "strategy," but the general

¹²⁹ Daniel Jacobson, 'Seeing by Feeling: Virtues, Skills, and Moral Perception', *Ethical Theory and Moral Practice*, vol. 8, no. 4, 2005, 387-409 at 389.

¹³⁰ Charles W. Henry, 'The Place of Prudence in Medical Decision Making', *Journal of Religion and Health*, vol. 32, no. 1, 1993, 27-37 at 28.

process is still the same. Prudential reasoning of this kind is particularly helpful in cases where there are "simply too many variable to consider." A central element of the virtue of prudence is concerned with the ability to discern the right way of acting when there are a wide range of variables; in particular, variables whose outcomes are uncertain. In cases such as these, it appears highly unlikely that the application of a rule to various cases will resolve the apparent tension: what is required are individuals who possess particular decision-making skills and who can readily determine the morally salient factors on the basis of the particular case in question.

Note that Henry insists that even nonessential factors be considered in a prudential judgement. The reason for this is because some factors that appear nonessential can, in fact, be critical in making a morally good decision. This leads to the second way in which aretaic ethics can usefully enhance the deontological conception offered by McMahan: by offering new moral factors to add into measures of proportionality. Aretaic ethics concerns itself with the way in which particular actions can shape a person's character, and subsequently affect his wellbeing. In cases where one violates rights, even in a case of necessity, the fact that he violates rights is morally relevant not merely to the victim, but to the perpetrator as well. Even if such actions are justifiable under some moral framework, the fact that they influence and shape character in particular ways ought to be treated as a serious moral concern in making judgements of proportionality.¹³²

¹³¹ *Ibid.*, 27

¹³² David Rodin makes a similar argument concerning self-defensive killing in *War and Self-Defence, op cit.,* 66.

3.2.2: Supreme Emergencies

In the previous chapter I introduced Michael Walzer's concept of supreme emergencies. This species of the lesser evil cases described above is a more specific formulation worthy of dedicated discussion because of its popularity in the literature. Whilst McMahan sees his lesser evil example as a case of "morally permissible injustice" (meaning that an innocent party is wronged, but the transgression is free of moral culpability), Walzer holds that supreme emergencies are paradoxical examples of unjust behaviour in which "the immorality [...] is simultaneously, morally defensible."133 That is, an agent is morally required to do evil and is held morally responsible for doing it. Typically, supreme emergency is understood to justify (in this paradoxical sense) the intentional targeting of civilians – bearers of the right not to be killed – in war, however it need not be limited to requiring violations of noncombatant immunity. Walzer explains that "[w]hen our deepest values are at risk, the constraints [of absolute morality] lose their grip, and a certain kind of utilitarianism reimposes itself again."134 Thus, so long as the conditions of supreme emergency are met, literally anything is justifiable in the interests of preserving the community. Here the main question is whether communities are of sufficient moral value to justify the use of immorality in its defence.

In my earlier discussion on Walzer and supreme emergencies in chapter two, I speculated as to whether a supreme emergency might justify a state targeting its own civilians as well as those of the enemy. I concluded that there was

¹³³ Walzer, Arguing About War, op cit., 35.

¹³⁴ *Ibid.*, 40.

nothing in the logic of supreme emergencies to forbid such action should the circumstances require it. Ultimately, supreme emergencies are justified by the central role of the political community in people's lives: "its replacement would require either the elimination of the people or the coercive transformation of their way of life." Neither of these is morally acceptable for Walzer. These outcomes are also morally unacceptable in a way that individual deaths are not in light of the immense value of the political community.

[The supreme emergency] argument doesn't work unless we add to it an argument about the value of the community. It isn't only individuals who are represented, but also the collective entity – religious, political or cultural – that the individuals compose and from which they derive some portion of their character, practices and beliefs.¹³⁶

Because of the immense value invested in the political community by all or most individuals within it, Walzer believes that defending it through immoral actions (to use Walzer's own term) is required despite the fact that individuals may not defend themselves through such means. If all individuals breached the laws of morality, the law would cease to function. Thus, "when we tell an individual soldier that he can't [act immorally for self-preservation] we are telling him that he must risk death and even die within the moral limits so that his children [...] can hope to live within them." By contrast, a supreme emergency threatens the very ongoingness of the moral limits: the principles

135 Walzer, Arguing About War, op cit., 49.

¹³⁶ Ibid., 42.

¹³⁷ *Ibid.*, 43.

and practices the soldier values will cease to be. In such cases, there is no motivation for adhering to principles. If "sticking to my guns" meant that I would no longer have any guns, then my sticking to them would be completely unreasonable.

However, Walzer's argument relies on the claim that a community's values and principles die when the community does: that is, that the community is the source of our moral values.¹³⁸ He argues that "[m]oral and political life is always experienced in particular places and times, through the medium of different concrete actions, institutions and languages."¹³⁹ If, however, we reject Walzer's metaethical position about the origin of morality,¹⁴⁰ then his argument about the immense value-difference between individuals and communities loses some of its lustre. If the origins of morality are based in, say, reason or human nature, one has less to fear from the destruction of a political community.

Consider, for example, a moral framework that identifies the source of morality with human reason, and a life lived in harmony with that reason – a virtuous or flourishing life. Virtues, as habitual dispositions are excellences¹⁴¹ derived from the idea of the flourishing or ideal person. As such, the

¹³⁸ Brian Orend, Michael Walzer on War and Justice, op cit., 17.

¹³⁹ *Ibid.*, 14.

¹⁴⁰ I do not have time to embark on such a rejection here. However, I find Dworkin's argument that Walzer himself appears to invent, rather than interpret, communal understandings of morality compelling. C.f. Dworkin, Ronald, & Walzer, Michael, 'Spheres of Justice: An Exchange', *The New York Review of Books*, April 14, 1983, http://www.nybooks.com/articles/archives/1983/jul/21/spheres-of-justice-anexchange/?pagination=false>.

¹⁴¹ Rosalind Hursthouse, 'Virtue Ethics, *Stanford Encyclopedia of Philosophy*, 2012, http://plato.stanford.edu/entries/ethics-virtue/#4.

elimination of a community places these moral values under no threat. If killing innocent civilians is barbaric, then one ought not to do things which are barbaric. No amount of destruction could be so devastating as to remove the ability to evaluate and condemn barbarism. Even barbarism to prevent the destruction of reason itself (although impossible) would not be justifiable because reason reveals barbarism, or any act of intentional wrongdoing to be inherently unjust. This is because virtues stem from reason and have to do with the way that persons relate to themselves. Therefore such a moral framework could not require a person to act immorally; virtue-based duties are, at least in part, duties to oneself. And this is precisely how supreme emergencies are described, as being a moral *duty* to "get one's hands dirty" on behalf of the community. Of course, part of the duty might be a sacrifice of one's own good moral standing for the benefit of all.

Defending supreme emergencies means defending a controversial principle: "if the very perpetuity of the community is at threat, one must do whatever is necessary in its defence." Thus, what is justified by supreme emergency is unspecified. Although Walzer tends to focus on the targeting of enemy civilians, C.J. Coady points out that torture would also seem immediately justifiable (and remember, we have already eliminated the possibility of the practice of torture being virtuous). Would, for instance, the targeting of one's own civilians, the use of chemical or biological weaponry or – as was practised in the Roman Empire – the appointment of a political dictatorship be justifiable if the circumstances were dire? None of these appear to be consistent with the overall goal of war: peace. Particularly unreasonable is the argument that in order to defend my community, justice might require me to

¹⁴² "[T]he dirty hands choice is always dictated as the "necessary" course." C.f. Coady, op cit.

kill a large number of innocent members within it. As Aquinas says in his discussion of murder and justice, "the life of righteous men preserves and forwards the common good, since they are the chief part of the community. Therefore it is in no way lawful to slay the innocent."¹⁴³

In one sense, supreme emergencies are situations that require political leaders to sacrifice their own moral goodness for the good of the community. Paradoxically, they are duty-bound to do what is wrong. In this sense, supreme emergencies ask leaders to be 'martyrs' who condemn themselves to hell. Rather than becoming this kind of 'damned martyr,' one could elect to become an ordinary martyr, who would rather die than sacrifice what he knows to be good.

This relies initially on the claim that one's own moral character is, at least from one's own subjective perspective, the most important moral value such that its destruction for the pursuit of other goods will be unreasonable. 144 Secondly, it requires a kind of Augustinian Stoicism whereby we recognise death in itself to be no threat to our moral goodness or human flourishing. Such a commitment is especially important because it may be that political leaders, in refusing to sacrifice their souls, sacrifice their communities instead. Were the unlikely event of a supreme emergency to come to fruition, it seems that both deontic and aretaic values would require this kind of communal

¹⁴³ Aquinas, ST, II-II, Q. 64, Art. 6.

¹⁴⁴ This controversial view is likely to clash with arguments from ethical pluralism, which hold there to be multiple concepts of fundamental moral value of which one's own moral wellbeing is only one. C.f. Elinor Mason, 'Value Pluralism', *Stanford Encyclopedia of Philosophy*, 2011, http://plato.stanford.edu/entries/value-pluralism/>. However, addressing this debate is beyond the scope of my work here.

martyrdom. It is only the type of utilitarianism imposed by threshold deontology that can defend supreme emergencies or lesser evil cases more broadly. Furthermore, it is a specific kind of utilitarianism that is biased toward the interests of *my* political community over the interests of innocent noncombatants from other communities; this is especially true in Walzer's paradigmatic case, the obliteration bombing campaign that England undertook against Germany in WWII. There is nothing within either deontic or aretaic frameworks that can justify supreme emergencies. However, in this case, aretaic concepts can enrich a deontological rejection of supreme emergencies by explaining that if political leaders and their communities were ever faced with such a situation, it would – at least – provide an opportunity for the perfection of charity through martyrdom; not the type of "damned martyrdom" that supreme emergency requires, but the genuine martyrdom that comes from being willing to die rather than violate absolute moral laws.

4: Conclusion

Deontologically-focused, rights-based just war theories can be enriched by including considerations of aretaic notions. I began by identifying what rights-based theories understand war rights to be. They consist largely in basic rights (viz valid claims to those things necessary as foundations of human survival and wellbeing) and in liberty-rights to defend basic rights. Importantly, they also include obligations not to violate those rights when they are held by

¹⁴⁵ For a sophisticated and comprehensive rejection of Walzer's concept of supreme emergencies, see: Alex J. Bellamy, 'Supreme emergencies and the protection of noncombatants in war', *International Affairs*, vol. 80, iss. 5, 2004, 829-850.

others. I compared three of the major rights-based just war theorists alive today: Rodin, McMahan, and Walzer as they approach the topic of the 'right' of soldiers to kill their enemies during wartime. I argued that, despite differences between their approaches, each was unified in considering moral status to be the most important moral concept. By contrast, I argued that intention is far more significant in the moral discussion of killing than moral status. Indeed, a sophisticated and coherent understanding of intention dissolves many of the disagreements between these status-based approaches.

For this reason, I defended an intention-based approach based in DDE. That view contends that one may never intentionally violate the rights of another, but if another person loses something integral to their flourishing (say, life) as a side-effect of my just action (practicing my liberty-right to self-defence), such an action may be just. After determining precisely what rights-based theorists understood war rights to be, I identified three reasons for the appeal of rights to JWT: (i) they offer a powerful defence of the absolute value of individuals; (ii) they are an effective means from which to develop an enforceable law of war; and, (iii) they are easily applied universally.

The subsequent section focused on two cases (torture, and lesser evil cases) within military ethics where a strictly deontic approach, although not incoherent, presents a very narrow reading of those phenomena. The section advanced the thesis that incorporating aretaic notions allows JWT to recognise a much broader range of morally significant factors in those cases, including considerations of psychological wellbeing, the virtue of the agent, how his character can be changed by his deeds, and supererogatory actions. *Arete* can

exist helpfully alongside a deontological moral framework, and in fact, *must* be considered because of the importance of intention to deontology, and the subsequent importance of virtue, character and moral psychology to intention.

Arete captures ideas which go beyond the purview of rights-based concerns and can help to explain the functions of character, motive, intention, and supererogation within military ethics. Furthermore, insofar as these notions explain the connection between moral judgements and identity (which will be addressed in more detail in the following chapter), they can prove useful role models for people to aspire to when contemplating their futures in their chosen professions.

Chapter Four

War and Excellence

In the previous chapter I established some ways in which aretaic notions could enrich and expand deontological responses to particular issues in military ethics. The general focus was on how sensitivity to moral virtue and character could enhance deontological, rights-based explanations of torture and "lesser evil" scenarios. I further argued that *arete* and *deon* are most useful when discussed as complementary, bridged by the concept of intention. Whereas the last chapter concerned virtue and character, in this chapter I explore war's relation to moral and psychological wellbeing, concepts that – rather than enhancing existing discussions in military ethics – actually extend the breadth of the subject to include areas that are not traditional avenues of inquiry. Not only are these areas relatively untouched by deontological just war theories, but they are areas in which reaching an adequate moral understanding enhances the good that military ethics is able to do for all its stakeholders: political leaders, warriors, military families, and noncombatants alike.

In this chapter I focus on two new and beneficial insights into the morality of war provided by discussion of wellbeing. The first will deal with how virtues of character can help reduce the temptation for soldiers to commit atrocities in war such as the killing of noncombatants or the inhumane treatment of enemy combatants. Not only is preventing atrocities a matter of justice, but

insofar as perpetrators tend to suffer psychologically for their crimes, it is a matter of aretaic importance that such crimes are prevented. In the second section I explore the various challenges the psychological trauma inflicted by war pose to wellbeing, especially as they have manifested in military personnel from Australia and the United States. This includes not only Posttraumatic Stress Disorder (PTSD), but also feelings of guilt, regret, shame, displacement, fragmentation, and so on – what some theorists call "moral injuries." Although I focus on wellbeing in soldiers, this is not to suggest that these issues apply to soldiers exclusively. There is necessary work to be done exploring how the flourishing of civilians, political leaders, and military commanders can be affected by war. However, this is beyond the scope of this chapter.

1: Honour and Warrior Identity

In the first section of this chapter I explore the question of preventing moral transgressions, here understood as violations of deontological limitations of the ethics of war outlined by rights-discourse. At the same time I critically explore two of the major figures in aretaic military ethics today. This new and growing field is largely interested in how best to assist soldiers in reconciling their professional roles with the idea of living a morally good life. That is, how to assist soldiers in shielding their humanity whilst traversing the moral (and sometimes literal) minefield of war. Christopher Toner calls this the "shield

¹ Nancy Sherman & Philip Adams, 'The untold costs of moral injury in war', *ABC Late Night Live*, 24th April, 2013, http://www.abc.net.au/radionational/programs/latenightlive/anzacday/4648634.

approach,"² to be contrasted with the "sword approach." Whilst the sword approach is concerned with how soldiers can justifiably kill in times of war (thus serving as an *offensive* application of military ethics, of which the deontological theories discussed in the last chapter are instances), the shield approach aims to protect soldiers' characters from the killings that they are required to perform and prevent those killings from escalating to the level of atrocity.

Two prominent examples of this approach are those of Nancy Sherman and Shannon E. French. Sherman argues that the inculcation of empathy within soldiers – empathy for the plight and humanity of noncombatants, enemy soldiers, and colleagues – is the best way for soldiers to guard themselves against committing atrocities. However, empathy will only be helpful in contexts in which the potential atrocity victim is the type of person with whom it is possible to empathise, meaning it will not always be an appropriate means of guarding against atrocity.

French, on the other hand, argues that appealing to an internally developed and regulated "warrior code" of honour provides soldiers with an internalised set of beliefs about the type of things that soldiers should and should not do. I believe that both arguments capture different elements of how an aretaic approach can help prevent atrocities. I argue, *pace* French, that a code of

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² Christopher Toner, 'Military Service as a Practice: Integrating the Sword and Shield Approaches to Military Ethics', *Journal of Military Ethics*, vol. 5, no. 3, 2006, 183-200. Toner in turn borrows the term from Shannon E. French, who firsts uses the term "shield" to describe her approach to military ethics. C.f. Shannon E. French, *The Code of the Warrior*, (Lanham: Rowman & Littlefield, 2003), 242.

honour internal to a warrior culture³ can be problematic, and can sometimes *facilitate* the committing of atrocities.

A better approach is one that encourages warriors to act in ways informed by the same virtues (including Sherman's "empathy") that inform them when they are at home. Thus, a soldier could conceivably restrain himself from intentionally killing noncombatants by seeing those actions as contributing to his character in a way that would be detrimental not only to being an excellent warrior⁴ (as French argues is the case), but also to being an excellent father, son, teacher, friend, and so on. In developing this approach I draw on examples from the history of warfare and fictional literature. I do not pretend that my approach will necessarily be easy to implement, or that every soldier will implement it. I do, however, argue that this approach, which synthesises French's and Sherman's views, would be more effective at reducing the commission of atrocities.

1.1: Nancy Sherman's Neo-Stoicism

When Nancy Sherman began teaching future midshipmen at the United States Naval Academy, Annapolis, she found that of all the philosophical systems

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used, it should be taken to include within it the notion of the professional soldier.

³ French does not define the term "warrior culture." I take her to mean the set of collective values, history, and identity which the military community develop amongst themselves. ⁴ In this discussion I use the terms 'soldier' and 'warrior.' I will use warrior when referring to either (i) warfighters in an age before the existence of professional militaries, or (ii) the archetypal image of a warfighter as imagined by French's warrior code. I will use the term 'soldier' to describe members of a professional military force. When the term 'warrior' is

presented to the students in her ethics classes, including Kant, Mill, and Aristotle, it was the Stoicism of Epictetus that most resonated with military men and women.⁵ "[W]hatever is good," the Stoics held, "must benefit its possessor under all circumstances."⁶ Goodness cannot be subject to luck of circumstance, or be external to the agent. Therefore, the Stoics held, only "characteristic excellences or virtues of human beings"⁷ qualify as genuine goods. From this flows the Stoic claim that emotional responses – joy, sorrow, fear, anger, jealousy, pride – to external things (for instance, the behaviour of others, random acts of nature, or unforeseen consequences) are merely false judgements about good and evil. If I feel anger because my enemy acts unjustly, then I have falsely believed that his actions somehow affect me in some morally significant way. In reality, the Stoics claim, only my own choices – be they virtuous or vicious – can be of moral significance to me. The person who recognises this and frees himself from emotional attachment attains a sage-like "indifference" to external factors.⁸

The Stoic claim that the sage should free himself of moral and emotional attachment to those things over which he has no control provides warriors with the assurance that, though the fog of war is often thick, their moral commitments extend only as far as their autonomy, as Sherman explains in the following passage:

⁵ Nancy Sherman, *Stoic Warriors: The Ancient Philosophy Behind the Military Mind*, (Oxford: Oxford University Press, 2005), 2.

⁶ Dirk Baltzly'Stoicism', Stanford Encyclopedia of Philosophy, 2010

http://plato.stanford.edu/entries/stoicism/#Eth.

⁷ Ibid.

⁸ Sherman, Stoic Warriors, op cit., 3.

A Marine may be killed in friendly fire that he had no way of avoiding; a sailor may be deserving of decoration and promotion, though she is overlooked because of gender prejudice that she alone can't change; an adoring parent or wife may receive a knock on a door from uniformed Marines, who begin, "We regret to inform you..." The circumstances may be beyond our control, but ultimately what affects us for good or ill are only our own judgements about them.9

Stoicism, as the passage above suggests, provides soldiers with psychological armour from the potential cruelties of fate and chance by helping them see that luck and circumstance contribute nothing to the soldier's own moral wellbeing. Although Sherman understands the appeal of Stoicism to her students, and sees a great deal of benefit in much of its teaching, she herself recommends a modified form of Stoicism, one that avoids the pitfall of "minimiz[ing] human vulnerability." Sherman suggests that the military requires a Stoicism that validates people's emotional reactions to morally serious events. For instance, Sherman argues that experiencing grief is a legitimate expression of the fact that I have lost someone I love despite the loss being outside of my control. (Indeed, as Sherman notes, not to grieve in such situations may indicate something deficient in one's moral character.) Her point is that feelings of love, camaraderie, loyalty, and friendship are not merely pathological attachments, but morally good and virtuous experiences. For instance, it is right that soldiers feel a certain kind of righteous anger in

⁹ Ibid.

¹⁰ *Ibid.*, 2.

¹¹ Sherman, Stoic Warriors, op cit., 133.

response to injustice, grief in response to the loss of a comrade, and so forth. 12 Sherman opines that:

[W]e can learn from Stoicism without embracing its strict letter. We can learn that in the midst of our grieving, we still have a home in the world, connected to others whose fellowship and empathy supports us, that we have inner resources that allow us to stand again after we have fallen. This is the human side of Stoicism that can toughen us without robbing us of our humanity.¹³

Although Sherman deviates from Stoicism at many points, it is in her approach to empathy that Sherman draws most upon the classical theory. The Stoics emphasised the importance of showing respect for fellow human beings because each possesses the faculty of reason, which echoes the divine reason (*logos*). The only way to foster that respect, according to both the Stoics and Sherman, is by generating genuine empathy for other human beings "through exercises in imagination: to heighten empathy by becoming others for a moment, to trade places and become the victim." Not only does empathy serve to develop the respect that is owed to all people, it serves to temper other emotions like anger and vengeance by fostering respect for those at whom one is angry. Furthermore, kinship, camaraderie and loyalty are central concepts in the military ethos, and all of them require concern for more than one's own soul; that is, an empathetic connection with others. For Sherman, empathy is

¹² See: *Ibid.*, 71-73 on anger; on grief, see 136-149.

¹³ Nancy Sherman, 'Educating the Stoic Warrior, Whitehall Papers, vol. 61, iss. 1, 2004, 105-126 at 109-110

¹⁴ Sherman, *Stoic Warriors*, *op cit.*, 169; C.f. Marcus Aurelius trans. Maxwell Staniforth, *Meditations*, (Victoria: Penguin Books, 2004), Book V, Para. 27.

¹⁵ *Ibid.*, 177; C.f. 'Educating the Stoic Warrior', op cit., 111-112.

¹⁶ Sherman, Stoic Warriors, op cit., 171.

the key to "loosening the Stoic armour."¹⁷ Empathy and respect allow us to gauge whether our outwardly-directed emotions are accurate representations of events or false beliefs; whether our grief is legitimate, our anger righteous, or our loyalty justified.

Empathy also informs Sherman's approach to military ethics education. Given that empathy (i) allows soldiers to distinguish between legitimate and illegitimate emotions; (ii) underpins the respect owed to others; and, (iii) checks against the irrational employment of base human desires (for example, wrath against those who have killed a comrade), the fostering of empathy is a priority for military educators. This is noted in Sherman's appraisal of the atrocities committed in 2004 at Abu Ghraib prison, Iraq. A case in which US soldiers, who subjected detainees to cruel and degrading treatment such as forced nudity, sexual assault, and sleep deprivation, demonstrated a clear failure to be empathetic.

Military leaders, bound by the humanitarian laws of the Geneva Conventions, have a moral mandate to try to make [the Conventions] serviceable. Indeed, all soldiers, in swearing to uphold the Geneva Conventions, have indirect moral duties to cultivate the imaginative skills that underlie a capacity for the empathy necessary for dignitary respect [the respect generated through empathy]. ¹⁸

¹⁷ C.f. Nancy Sherman, *The Untold War: Inside the Hearts, Minds, and Souls of Our Soldiers,* W.W. Norton, New York, 2010, 171-193.

¹⁸ Ibid., 177.

Sherman's focus on empathy as a means of generating respect is compelling as a means of preventing atrocities committed against noncombatants. Empathy – imagining what it would be like to be another person - reveals to us the fundamental humanity of other people. Sherman argues that "we must imagine what it is like to be another with her distinctive temperaments and talents, in her situation and circumstances, living her life with her life choices."19 One can see how this would be an effective means of preventing atrocities from being committed against the innocent, but what happens when our imaginative experiment reveals a thoroughly corrupt, abusive character who has committed serious crimes against us? That is, will empathy serve as an effective deterrent from wrath and violence against one's genuine enemies? In Homer's epic, the *Iliad*, Achilles' wrath against Hector is such that empathy seems impossible to him. Against Hector's (reasonable) request that the victor of their combat return the slain body to his people, Achilles reveals his inability to empathise with the man who has done the "unforgiveable" in killing his dear friend, Patroclus.

Hector, stop!

You unforgiveable, you... don't talk to me of pacts.

There are no binding oaths between men and lions –

Wolves and lambs can enjoy no meeting of the minds –

They are bent on hating each other to the death.²⁰

¹⁹ Sherman, 'Educating the Stoic Warrior', op cit., 112-113.

²⁰ Homer, trans. Robert Fagles, *The Iliad*, Penguin Books, Victoria, 1998, Book 22, lines 308-312.

After successfully killing Hector, Achilles allows the Greek army to stab at his body before lacing his corpse to a chariot and dragging it around the city of Troy as Hector's family look on. Not only does Achilles reject Hector's request, but he does the exact opposite.

Perhaps Achilles is a good example of what might happen when we fail to encourage soldiers to empathise with their enemies prior to going to war. If Achilles' training had been directed toward empathy and respect, perhaps he would have returned Hector's body to Priam. After all, "to whom we show [...] respect is a matter of cultivated habit as well as calculated decision."²¹ Thus, it might be argued that the development of empathy serves as a check against the wrathful fury seen in Achilles.

Here we are reminded of the continuing interaction between aretaic and deontological concepts within the morality of war. Although there existed strong deontological prohibitions on dishonourable conduct such as the desecration of corpses, the existence of these laws does not prove sufficient to restrain Achilles when his emotions run hot. In these moments, Sherman contends, what may serve to stay Achilles' hand is something *intrinsic* to Achilles himself. That is, a disposition of character which might retain its relevance even when external norms and rules are disregarded. Thus, the morally upstanding soldier will require a set of particular traits of character that will inspire morally upstanding conduct even when it is difficult or unlikely. Exactly what traits those are will be discussed in chapter five, but it is important to note here that adhering to morally binding norms in

²¹ Sherman, Stoic Warriors, op cit., 177.

extraneous circumstances will require virtuous character traits such as, for Sherman, empathy.

Despite the arguments in favour of empathy, Sherman's desire to allow soldiers to express emotions and vulnerability whilst simultaneously retaining self-control and empathy is not without difficulties. Aristotle argued that virtue was always the mean between two vices²² – in the case of anger, 'righteous anger' might be described as the mean state between rage (or wrath, the emotion Homer attributes to Achilles at the beginning of the *Iliad*), and apathy. For Aristotle, anger can be a virtuous state, and indeed, it is this moderated approach that Sherman advocates, ²³ suggesting that soldiers might rightly feel angry at the death of a comrade. Achilles, this line of argument would suggest, exceeds the mean, allowing his anger to turn to rage, wrath and vengefulness. Thus, he subjects his character to vice. Soldiers are expected (perhaps encouraged) to feel "righteous anger" toward injustices, and at the same time empathy toward those who committed the injustices; to feel angry, but not too angry; empathetic enough to recognise the seriousness of their killing, but not so empathetic as to make such killing impossible. However, to have anger and empathy co-exist harmoniously in the psyche is psychologically demanding. In the context of a limited period of military training before soldiers are deployed, forming characters capable of such emotional complexity may not be practically possible.

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²² Aristotle, Nicomachean Ethics, Bk. II, Ch. 6, 1106b8-23.

²³ Sherman, Stoic Warriors, op. cit., 71-73.

Furthermore, not all enemies are as honourable as Hector. Some soldiers, such as Amon Goeth, commandant of the Krakow-Plaszow concentration camp — who enjoyed shooting camp detainees for sport (as depicted by Ralph Fiennes in *Schindler's List*) — or Sergeant Bob Barnes from *Platoon* (1986) — who kills a fellow Sergeant with whom he disagrees, orders the killing of Vietnamese civilians, and tortures subordinates who question his authority — appear increasingly barbaric the more deeply one understands their character. Empathetic imagination of a corrupt character may not reveal a human whose rights should never be violated, but rather a defective character who, in the eyes of the viewer, deserves to be destroyed. Sherman is correct in arguing that empathy is a powerful shield against committing atrocities against noncombatants, but it may struggle to be as effective in preventing their commission against enemy combatants, particularly those who one knows or has judged to be genuinely dishonourable and vicious, and therefore undeserving of empathy.

Sherman's Stoic account argues that empathy develops the type of respect that should be afforded unconditionally. However, if empathy reveals a person who appears to deserve death, rather than one who demands respect, it seems unlikely to guarantee the same assurances against moral transgression as it does against noncombatants (who are, presumably, unlikely to appear so morally bankrupt as to deserve to be killed). Thus, we need to look further for effective shields against the commission of atrocities to supplement empathy in times when it becomes elusive.

1.2: Shannon E. French's Warrior Code of Honour

The other major contribution to the shield approach can be found in Shannon E. French's book *The Code of the Warrior*. French, also writing whilst training future midshipmen at Annapolis, argues that warrior cultures, scattered historically and geographically, have developed "codes of honour" or "warrior codes:" commonly held standards of what the ideal warrior does and does not do that bears normatively on each warrior within the culture.²⁴ These normative bearings go well beyond the deontic requirements of the Law of Armed Conflict; rather, they entail *what it is to be a warrior*. Warrior codes, French contends, ensure that morally upstanding and honourable conduct is intertwined with the warrior's identity.

In HBO's feudalistic fantasy series *Game of Thrones*, Jaime Lannister, one of the finest swordsmen in the land, describes memories of when he first watched his mentor, Barristan Selmy, the greatest warrior in the kingdom, fight in battle: "He was a painter. A painter who only used red. I couldn't imagine being able to fight like that. Not back then."²⁵

Jaime awards Sir Barristan esteem on the basis of his being a graceful and efficient killer. However, Barristan is also an anointed knight and the Commander of the Kingsguard. He is a man who is seen as honourable and

²⁴ French, *The Code of the Warrior, op cit.,* 3.

²⁵ HBO, *Game of Thrones*, 'A Man Without Honour', Season 2, Episode 7, Directed by David Nutter, written by George R.R. Martin, D.B. Weiss & David Benioff.

upstanding throughout the fictional kingdom of Westeros; at one point he is told before the King's full court that "no man here could ever question your honour." That Jaime awards him esteem only on the basis of his swordsmanship speaks volumes about what Jaime honours in a warrior, and subsequently of Jaime's own character as a person and honour as a knight. Barristan's nobility lies not only in his skill as a killer, but in his virtue.

Modern-day warriors (soldiers) are also expected to be more than just proficient killers, they are expected to be morally upstanding, virtuous people. Such figures represent the ideal to which every budding soldier should aspire. Jaime Lannister, by contrast, is seen as a man bereft of honour. Also a member of the Kingsguard, he killed the King he was sworn to defend during a revolution, and for this he is shunned. Knights – especially Kingsguard – simply do not breach their vows. In killing the King, Jaime betrays his own identity as a knight, and, in undermining the code of chivalry itself, betrays all his fellow knights as well. It is no matter that Jaime's motivation for killing the King was to save the population of a city he threatened to burn down; even if the King needed to die, the chivalric code stipulates that it should not have been Jaime that killed him. Knights, the chivalric code suggests, swear oaths of fealty, and good knights follow such oaths to the death.

At one point, Jaime laments the number of vows he is forced to take, and the fact that they occasionally contradict each other: "So many vows. They make you swear and swear. Defend the King, obey the King, obey your father,

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²⁶ HBO, *Game of Thrones*, 'You Win or You Die', Season 1, Episode 7, Directed by Daniel Winahan, written by D.B. Weiss & David Benioff.

protect the innocent, defend the weak. But what if your father despises the King? What if the King massacres the innocent?"²⁷ What Jaime forgets is that the vows a knight makes are not only to specific ways on conducting oneself, but are reflective of more deeply-seated virtues: courage, loyalty, benevolence, justice, empathy and so on. The moral commitments of a knight extend far beyond the specific deontic regulations he vows to adhere to, the commitments extend to *being a particular type of person*. In a word, chivalrous. French contends that the modern day soldier is also governed by a code to which all warriors, professional or not, are expected to hold faithful to. In *The Code of the Warrior*, she refers to an incident in which a Marine refrains from killing a noncombatant after receiving the simple rebuke, "Marines don't do that."

"Marines don't do that" is not merely shorthand for "Marines don't shoot unarmed civilians; Marines don't rape women; Marines don't leave Marines behind; Marines don't despoil corpses," even though those firm injunctions and many others are part of what we might call the Marines' Code. What Marines internalize when they are indoctrinated into the culture of the Corps is an amalgam of specific regulations, general concepts (e.g. honour, courage, commitment, discipline, loyalty, teamwork), history and tradition that adds up to a coherent sense of *what it is to be a Marine*.²⁸

The warrior code ensures that honourable, chivalrous, and virtuous conduct is an intrinsic aspect of what it means to be a warrior. French opens her book

²⁷ HBO, 'A Man Without Honour', op cit.

²⁸ French, *The Code of the Warrior, op cit.,* 15. French's story comes from Mark Osiel, *Obeying Orders: Atrocity, Military Discipline, and the Law of War,* (New Jersey: Transaction Publishers, 1999), 25. Original emphasis.

by tracing her students' distinctions between warriors, murderers, killers, fighters, victors and conquerors. What divides them, her students contend, is the explicitly moral focus of the warrior.²⁹ This distinction is a central one for anybody interested in military ethics. If "war is hell," and it so often is, soldiers are asked to walk through hell without becoming demons. This requires warriors to be able to distinguish themselves from murderers, killers, and other pejorative labels that threaten to undermine the moral justifications for their deeds. To remain so distinguished, French contends that warriors "must learn to take only certain lives in certain ways, at certain times, and for certain reasons. Otherwise, they become murderers and will find themselves condemned by the very societies they were created to serve."30 A central part of the warrior code – perhaps the primary purpose of that code – is to prevent warriors from becoming mere murderers. French observes the fall from soldier to murderer in the *Iliad*, when Achilles surrenders to his rage in desecrating the body of Hector and, in another instance, kills prisoners when previously he would have accepted ransom in exchange for their lives.³¹ Achilles is now a shell of a man, bent on revenge; in dragging Hector's dead body around Troy he offends not only Trojans but the gods. Once Greece's greatest warrior Achilles becomes little more than an animal, as Apollo explains to the other gods.

That man without a shred of decency in his heart...

his temper can never bend and change – like some lion

²⁹ French, *The Code of the Warrior, op cit.*, 1-2.

³¹ Jonathan Shay, *Achilles in Vietnam: Combat Trauma and the Ruin of Character*, (New York: Scribner, 1994), 29-30.

going his own barbaric way, giving in to his power,

his brute force and wild pride, as down he swoops

on the flocks of men to size his savage feast.

Achilles has lost all pity! No shame in the man.³²

French's interest in the warrior code is focused largely on the prevention of atrocities; not only because they entail horrific abuses of the innocent, but also because in committing them, soldiers begin to erode their own humanity. "A warrior's humanity is most obviously at risk when he participates in an atrocity. Vile actions such as rape, the intentional slaughter of civilians, or the torture of prisoners of war dehumanize the victims and degrade the perpetrators." Here, again, the potential interaction of deontological and aretaic ethics is revealed. The commission of moral transgressions is undesirable for two reasons. First, because of the intrinsic wrongness of the act *vis-à-vis* the harm it does to the victim, and secondly, because of the detrimental effects on the perpetrator's moral and psychological wellbeing.

Understanding how the warrior code serves to restrain soldiers against morally transgressing requires understanding a key point of French's conception of the warrior code: that the code itself is determined by warriors from within the warrior culture, and therefore atrocities are prevented by fear of being shamed before one's fellow warriors. She argues that "[t]he code is

³² Homer, *The Iliad, op cit.*, Book 24, 47-52. For French's analysis, see: French, *The Code of the Warrior, op cit.*, 48-52; and 'Sergeant Davis' Stern Charge: The Obligation of Officers to Preserve the Humanity of Their Troops', *Journal of Military Ethics*, vol. 8, iss. 2, 2009, 116-126

³³ French, *The Code of the Warrior, op cit.*, 121-122.

not imposed from the outside. The warriors themselves police strict adherence to these standards, with violators being shamed, ostracized, or even killed by their peers."34 The reason for warrior codes (there are many different codes, as French's work shows) being developed by the warriors themselves is because an internally developed code assented to by peers has a more powerful binding force than externally imposed rules. Thus, the warrior code echoes the sentiments of Bernard Williams' essay, 'Internal and External Reasons.'

[N]o external reason statement could by itself offer an explanation of anyone's action [...] The whole point of external reason statements is that they can be true independently of the agent's motivations. But nothing can explain an agent's (intentional) actions except something that motivates him so to act. Something else is needed besides the truth of the external reason statement to explain action, some psychological link.35

The warrior code provides a framework through which soldiers internalise the norms that govern their conduct. Military education should seek to help soldiers "internalize an appropriate warriors' code that will inspire [them] to recognize and reject a criminal direction from [their] officer,"36 such as an order to commit an atrocity, violate Laws of Armed Conflict, or betray their identity as soldiers.

³⁴ *Ibid.*, 3.

³⁵ Bernard Williams, 'Internal and External Reasons' in Moral Luck: Philosophical Papers 1973-1980, (Cambridge: Cambridge University Press, 1981), 107.

³⁶ French, The Code of the Warrior, op cit., 14.

In *A Few Good Men* (1992), two US Marines are commanded to carry out a "code red:" an extrajudicial punishment of a fellow Marine, who is killed in the process. Although they are found innocent because they were ordered to do so, they are still dishonourably discharged for "conduct unbecoming a United States Marine." However, one could reasonably expect a more coherent sense of "what it means to be a Marine," one which incorporated virtues like Sherman's empathy, to have empowered these soldiers to reject the code red order to begin with.

The warrior code French is concerned with is centrally focussed on the motivating power of honour. Honour, Whitley Kaufman notes, is concerned with two things: esteem by one's peers, and the traits which warrant that esteem.

[T]he term "honour" has long been recognized as having *two* distinct senses, one external and one internal. In the "external" sense, honour refers to the esteem, approval, or rewards bestowed by society on an individual. But a prior and arguably more fundamental meaning of honour is the "internal" standards of behaviour that merit such approval or esteem.³⁸

This is to say that soldiers who are genuinely concerned with honour are not merely pursuing popularity via the appearance of excellence from their peers;

³⁷ Castle Rock Entertainment, *A Few Good Men*, 1992, Directed by Rob Reiner, Written by Aaron Sorkin.

³⁸ Whitley Kaufman, 'Understanding Honour: Beyond the Guilt/Shame Dichotomy', *Social Theory and Practice*, vol. 37, no. 4, 2011, 557-573 at 559.

rather, they are concerned with becoming the type of person who their peers consider to be morally praiseworthy and laudable. Similarly, Daniel Putnam explains the Aristotelian view that "[s]omeone who tried to look good without genuine achievement in action was not virtuous," adding that "[t]his is equally true today."³⁹ Thus, the focus on honour is a focus on encouraging soldiers to become – and to *desire* to become – characters of a particular sort. The project of honour is for a community to instil and propagate as desirable a particular way of living, being, and acting in the world which is morally laudable.

However, French's approach places a huge burden on the capacities of those within a warrior culture to be morally reflective and intuitive. Internal development, regulation and enforcement of a warrior code risks the development of a breed of soldier whose only concern is becoming the type of person who his *peers* will esteem. Although this may be effective when those peers are aware and possessive of genuine moral virtues which they impose on fellow soldiers, a different peer group may have values that differ from those "imposed [...] by some external source (such as a fearful civilian population)." ⁴⁰ In a conflict between the warrior code and externally imposed laws, which should trump the other?

In the final chapter of *The Code of the Warrior*, French asks whether modernday terrorists are warriors. Noting a swathe of possible justifications (or rationalisations) of which these terror organisations might avail themselves,

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³⁹ Daniel Putnam, 'In Defense of Aristotelian Honour', *Philosophy*, vol. 70, no. 272, 1995, 286-288 at 288

⁴⁰ French, *The Code of the Warrior, op cit.*, 13.

French suggests, despite these, that "[h]owever they may justify their actions to themselves, if they refuse to accept any rules of war, they forfeit the right to be regarded as warriors by the rest of the world." This suggests that the laws of war should trump internally developed honour codes, but it is important to ask why, if the warrior code is concerned with how one's peers will evaluate an action, it should matter whether the rest of the world considers me an honourable warrior? It can only matter if the determination of what it means to be a warrior is made with input not merely from the warrior class, but from the community at large – including those with no experience of or familiarity with military matters, but whom the military do claim to serve and represent.

Recall that Achilles, our archetypal perpetrator of atrocity, is described by Apollo as having "no shame." Jonathan Shay describes Achilles as experiencing a "shrinking of the social moral and horizon," which Shay argues was also a contributing factor in the serious moral transgressions during the Vietnam War.⁴² Achilles' horizon shrinks so drastically that nobody is able to shame him out of killing prisoners or desecrating Hector's body. Achilles enters what Shay calls the "berserk state in which abuse after abuse is committed."⁴³ In the berserk state, soldiers feel a god-like sense of invincibility coinciding with bestial desires for revenge and violence.⁴⁴ Importantly, the berserker is "cut off from all human community."⁴⁵ In such a scenario, warrior shame seems ineffective as a preventive measure. Notably, the causes of the berserk state are varied: Shay lists "betrayal, insult, or humiliation by a leader; death of a friend-in-arms; being wounded; being overrun, surrounded, or

⁴¹ Ibid., 238.

⁴² See: Shay, *Achilles in Vietnam*, op cit., 23-38, especially 31-38.

⁴³ *Ibid.,* 77.

⁴⁴ Ibid., 82-86.

⁴⁵ Ibid., 86.

trapped; seeing dead comrades who have been mutilated by the enemy; and unexpected deliverance from certain death."⁴⁶ Given the broad spectrum of potential catalysts of the berserk state, it seems likely that many soldiers will be at risk of 'berserking' at some stage in their time at war. Significantly, there appears to be nothing that warrior peers can do to restrain or prevent the berserk state. Shay observes five instances of the berserk state in the *Iliad*, none of which are checked by interventions from fellow warriors. Three are checked by self-preservation (Agamemnon, Hector, and Patroclus), whilst another two (Diomedes and Achilles) are checked by interventions by non-warriors, and it is to these latter two examples that I now turn.

Shay suggests that the soldier in the berserk state experiences a profound shrinking of the moral and social horizon. However, he does not seem cut off from *all* human community; deep-seated relationships appear to remain, particularly those which connect soldiers to their families and homes. Diomedes, one of the Greeks' greatest heroes, is snapped out of his berserk state when he meets Glaucus, a Trojan warrior who challenges him to combat. Glaucus tells Diomedes of his ancestry, at which point Diomedes realises that his grandfather and Glaucus' grandfather were friends, and thus declares them "sworn friends from our fathers' days till now."⁴⁷ Achilles too is snapped from his berserk states by thoughts of home. When Priam visits him to beg for the body of Hector to be returned, he implores Achilles, "remember your own father! I deserve more pity... I have endured what no one on earth has ever done before – I put to my lips the hands of the man who killed my son."⁴⁸ This pitiful act and imploration "stir[s] within Achilles a deep desire to grieve for

⁴⁶ *Ibid.*, 80.

⁴⁷ Homer, *Iliad*, op cit., Bk. 6, 277.

⁴⁸ Ibid., Bk. 24, 588-591.

his own father",⁴⁹ and he weeps. Not for Patroclus, not for his soul or for Hector, but for the shame of having chosen the warrior life, and thus giving "no care" to his father in his old age.⁵⁰ These scenarios present a compelling argument for consistent reminders of home during war: they appear to be an effective preventive from the commission of atrocities and the breaking of the berserk state within which so many atrocities are committed.

1.3: Remembering the Home Front

By profession, I am a soldier and take pride in that fact.

But I am prouder, infinitely prouder, to be a father.⁵¹

If there is a problem in French's approach to warrior codes, it is only a potential problem, not an *a priori* one. French, teaching at Annapolis when she wrote *The Code of the Warrior*, had good reason to expect that the warrior code (or codes, as, for instance, the air force will have a different code to the navy or army) of US soldiers had been developed and maintained by soldiers (or, at least, officers) with a high level of ethical training and awareness. In such an environment, there is a good chance that the warrior code in question will reflect deeper moral truths. However, it is prudent to ask whether the warrior class is *always* a morally competent cohort from which to think that a morally acceptable warrior code might emerge. That is, whether *a priori* we would be

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⁴⁹ *Ibid.,.*, Bk. 24, 592-593.

⁵⁰ *Ibid.*, Bk. 24, 631.

⁵¹ This is an unsourced quote widely attributed to General Douglas MacArthur.

wise to trust warrior communities to develop internally their own codes of honour.

For example, in discussing the Samurai code known as Bushido, French touches on the controversial self-disembowelment practice known as *seppuku*. The Bushido code allows Samurai to perform the ritualistic suicide in order to restore honour in the face of some disgrace (which may be, as French notes, "anything from an overt act of cowardice in combat to a trivial [...] breach of etiquette at a formal dinner.")⁵² She concedes that "there is at least a pragmatic flaw in a system that could lead a warrior culture's most courageous and committed members to make the ultimate sacrifice to save, not land or lives, but face."⁵³

The flaw deepens when it is realised that samurai would often be pressured to perform the rite to atone for dishonour. One famous example comes at the end of the Japanese epic *Forty-Seven Ronin*, when the "villain," Kira, refuses to perform the rite and is thus labelled a coward.⁵⁴ In the shaming of those who do not "opt in" to the commission of *seppuku*, we see that *seppuku*'s availability as an honourable practice renders it the expected course of action. What is honourable becomes normatively prescriptive. One need not (although I believe there are good reasons for doing so) condemn the practice of *seppuku* to question a culture in which people can be pressured into performing the rite. Note that, unlike previous examples used in this thesis, Samurai is a

⁵² French, *The Code of the Warrior, op cit.,* 221.

⁵³ Ibid., 224.

⁵⁴ Ruth Benedict, *The Chrysanthemum and the Sword: Patterns of Japanese Culture*, (Boston: Houghton Mifflin Company, 1974), 204.

decidedly non-Western warrior culture. Indeed, it is precisely the Asian context of the Samurai code that explains why suicide as a form of atonement, although extreme from a Western perspective, is justifiable and laudable.⁵⁵ However, the tension between what a warrior culture expects as a matter of honour and what morality demands a soldier to do is a problem which transcends cultural barriers.

The example of *seppuku* can be used to emphasise a point which I believe to be pivotal to explorations of honour in the military. When warriors (soldiers included) are concerned only with achieving the type of esteem valued by their peers, the ability of the broader society to influence military practice is undermined. For instance, when Okudaira Tadamasa (a 17th century samurai) died, one of his vassals followed him in junshi - an extension of seppuku whereby vassals of a samurai would follow him into death by committing seppuku out of fealty - which was outlawed at the time. In response, the vassal's children were executed and his remaining family exiled.⁵⁶ This vassal clearly felt that his commitments to the military and the warrior code greatly outweighed his commitments to his family (whom, we must assume, he knew would be punished). It seems as though some warrior codes can become insensitive to morally significant factors outside of the warrior culture. Although the Samurai culture was concerned with the preservation of "face", or reputation, it appears that warrior codes, including the Samurai, tend only to be interested in face *vis-à-vis* their warrior peers, not to society as a whole. As Paul Robinson notes: The four virtues of prowess, courage, loyalty, and truthfulness form the unchanging core of military honour [...] Many societies create

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⁵⁵ C.f. Ruth Benedict's discussion of Japanese views of heroism. *Ibid.*, 198-199.

⁵⁶ Sir George Bailey Sansom, *A History of Japan: 1615-1867*, (California: Stanford University Press, 1963), 92.

formal codes of behaviour which prescribe how to display the approved virtues. Unfortunately, in yet another complication, this means that honour can derive from rigid obedience of the code even when it is unhelpful or even clearly wrong.⁵⁷

This, to my mind, is the flaw of internally developed warrior codes; in reality, one's status, commitments, and normative demands as a soldier do not outweigh one's moral obligations as a father, husband, mother, or wife. For example, a father may go to war and serve as a soldier with all the duties and moral responsibilities this entails whilst seeing his soldiering as simply being an extension of fathering: defending his children from harm. This concept is captured by the remark attributed to General Douglas MacArthur at the beginning of this section. Thus, warrior codes would be well-served by expanding their standards to incorporate what would be considered shameful in other walks of life, not only in a military context.

Indeed, in an article surveying a number of different examples of military honour, Ted Westhusing finds only one to be a true representation of honour. The rest, he argues, are "false philosophy." The model of honour that Westhusing sees as the truest representation of genuine military honour is that of General Lee at Gettysburg. What motivated Lee at Gettysburg was not only his warrior pride and peers, but his identity as a Virginian and his relationship with the land on which he fought. It was as much Lee's closeness with his

 $^{^{57}}$ Paul Robinson, $\it Military\, Honour\, and\, the\, Conduct\, of\, War,\, (New York: Routledge, 2006),\, 3.$

⁵⁸ Ted Westhusing, 'A Beguiling Military Virtue: Honour', *Journal of Military Ethics*, vol. 2, iss. 3, 2003, 195-212 at 201.

home, his family, and his heritage that motivated his conduct and sense of honour as any military tradition.

Because the beliefs that animated his sense of honour were congruent with those

of his fellow Virginians, his military honour was Virginian honour. When such

congruency obtains between the beliefs animating the common life to be

defended by the warrior and the beliefs that inform the warrior's own conception

of honour, 'warrior honour' appears to achieve its truest and most powerful

form.59

A similar, but perhaps more powerful demonstration of the power of non-

military sources of honour, esteem, and virtue can be found in Shakespeare's

play, Coriolanus. In the play, Caius Marcius, a great Roman general is awarded

the title 'Coriolanus' for his military exploits against Rome's enemies, the

Volsci, in taking the city of Corioles. His mother, Volumnia, with whom

Coriolanus is very close, encourages him to stand for election as consul.

Although initially successful, eventually Coriolanus' disdain for the mob and

scepticism about the merits of democracy loses him the support of the people

and he is exiled from Rome. He joins with his mortal enemy Aufidius, the

Volscian general, and swears revenge against Rome. Together, Coriolanus and

Aufidius lay siege to Rome, which looks certain to fall. Coriolanus ignores the

pleas of Roman senators to lift the siege, seeking only vengeance, saying:

Wife, mother, child, I know not. My affairs

⁵⁹ *Ibid.*, 202.

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Are servanted to others. Though I owe

My revent properly, my remission lies

In Volscian breasts.60

The pleas of the Senate having fallen on deaf ears, Coriolanus is visited by those he "knows not," his wife, mother, and son. His mother implores him to consider what effect "making the mother, wife, and child [...] see the son, the husband and the father tearing his country's bowels out"⁶¹ might have on them. Coriolanus' destruction of Rome would mean the death of his honour as a Roman citizen, and his legacy "would be dogged with [...] curses."⁶² When such implorations are unsuccessful, Volumnia appeals beyond Corolianus' sense of warrior pride, which demands vengeance. She shows how bartering a peace agreement between Rome and the Volsci will not only uphold his honour as a soldier, but as a Roman, a son, a husband, and a father. Finally, mother, wife and son all kneel before Coriolanus, and "shame him with their knees."⁶³ Volumnia offers one final barb before turning to leave, suggesting that the warrior Coriolanus has forgotten the commitments he held to his mother as Caius Marcius.

Come, let us go.

This fellow had a Volscian to his mother.

⁶⁰ William Shakespeare, *Coriolanus*, Act 5, Scene 2, 82-85 in John Jowett, William Montgomery, Gary Taylor & Stanley Wells (eds.), *The Oxford Shakespeare: The Complete Works*

^{(2&}lt;sup>nd</sup> edition), (Oxford: Clarendon Press, 2005).

⁶¹ *Ibid.*, Act 5, Scene 3, 102-104.

⁶² *Ibid.*, Act 5, Scene 3, 145.

⁶³ *Ibid.*, Act 5, Scene 3, 170.

His wife is in Corioles, and this child [his son]

Like him by chance.64

Here, Coriolanus, like Achilles before Priam, breaks into tears, noting that "it

is no little thing to make mine eyes to sweat compassion."65 He concedes,

agreeing to broker a peace between Rome and the Volsci, but not before

ensuring that doing so will be accepted by his fellow warriors. He turns to

Aufidius and asks "were you in my stead would you have heard a mother

less, or granted less?"66

Although Coriolanus is swayed from vengeance by his mother, he also seeks

the validation of his martial peers. What he seeks is a route through which he

can fulfil what it means to be a good soldier alongside what it means to be a

good son, husband, father, and Roman. Being one at the cost of the other is –

as his mother shows him – insufficient. It is also worth remembering that

Volumnia is not ignorant of the pressing claims of the warrior code; indeed, it

was she who first sent Caius to war, "considering how honour would become

such a person."67 Despite this, she recognises that what it means to be an

honourable man involves obligations to one's family which cannot be

betrayed.

64 *Ibid.*, Act 5, Scene 3, 179-181.

65 *Ibid.*, Act 5, Scene 3, 196-197.

66 *Ibid.*, Act 5, Scene 3, 192-193.

⁶⁷ *Ibid.*, Act 1, Scene 3, 9-10.

What Coriolanus senses, and his mother confirms, is that, as Sir John Hackett argued, "[w]hat the bad man cannot be is a good sailor, or soldier, or airman." When Coriolanus first lays eyes on his wife when he returns to Rome at the head of the Volsci army, he informs her that "these eyes are not the same I wore in Rome." He loving eyes of Caius Marcius have been replaced by the vengeful gaze of Coriolanus. But Coriolanus and Caius are the same man. Whilst he tries to forget who he was before his vengeance, his identity is bound up as much in his family as it is in the warrior code. The Marine who abstained from killing a noncombatant on the basis that "Marines don't do that" was sharply reminded of what it is to be a Marine, however, he may equally have been persuaded by the rebuke "what would your children think?" Warrior often take their wars home with them, but they also take their homes to war. Civilian identities can do as much to remind a warrior of what is honourable as can any warrior code.

The above goes to show how a warrior's non-warring (civilian) identity can play a role in regulating his conduct by affecting his personal motivation for performing, or not performing, a particular type of action. A warrior's motivation may not stem from a belief about what it means to be a soldier, but what it means to be (for example) a parent. Thus, it becomes vitally important that soldiers be encouraged to remember what they've left behind whilst at war, that they not give themselves completely to the warrior identity.

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⁶⁸ Sir John Hackett, 'The Military in Service of the State' in M. Wakin (ed.), War, Morality, and the Military Profession, (Colorado: Westview Press, 1979), 124-125.

⁶⁹ William Shakespeare, *Coriolanus*, op cit., Act 5, Scene 3, 37.

Kwame Anthony Appiah argues that those concerned with honour dwell within an "honour world," and seek only the respect of those who live in the same world. Thus, soldiers are only concerned with the opinions of other soldiers. Perhaps this would be true if they lived only in one world. However, most warriors seek the respect, honour and love of at least some people away from the battlefield. They live in more than one honour world, and wish to be respected in all of them. Paris, whose love for Helen sets in action the events of the *Iliad*, flees the battlefield and hides in his room. His brother Hector returns to berate him, but finds Paris already preparing to return to the fight, persuaded not by a code of honour, but by Helen, whose "winning words urge him back to battle."

The code of the warrior is a code of honour, and the desire for honour, as the *Iliad* shows clearly, is not so far from pride and hubris.⁷² In some situations, it may be that honour is the *cause* for soldiers to commit atrocities, not a guard against it. This, Sherman suggests, is what occurred when 24 civilians were murdered by US troops in Haditha, Iraq, 2005, in response to one US soldier being killed and two injured by a roadside improvised explosive device (IED). Sherman argues that we should "see the events of Haditha through the lens of traditional revenge and honour. The Haditha rampage took the form of a reprisal raid, inspired by the US brigade experiencing the killing of one of their own."⁷³ Honour can restrain, but it can also tempt. Thus, recalling that my identity is larger than my role as a warrior – that I am my parents' son, my

⁷⁰ Kwame Anthony Appiah, *The Honour Code: How Moral Revolutions Happen*, (New York: W.W. Norton, 2010), 20. A similar approach is offered by Christopher Toner, who interprets the world inhabited by the soldier as a MacIntyrean practice. See: Christopher Toner, 'The Sword and Shield Approaches', *op cit*.

⁷¹ Homer, Iliad, op cit., Book 6, 400.

⁷² French, *The Code of the Warrior, op cit.*, 41.

⁷³ Sherman, *The Untold War, op cit.*, 76.

siblings' brother, and so on – honour can also help moderate the passions evoked by war. If I want to ensure my children are not raised by a murderer, then I ought to avoid committing murder even in cases where my fellow soldiers might forgive me for it.

To help prevent shame- or honour-inspired killings, two possibilities arise. The first is to suggest that warrior codes become less segregated from the community at large, and that they accept input from the rest of society on what it means to be a virtuous soldier. In this sense, warrior codes would become more transparent and avail themselves of evaluation by external groups who would help determine whether or what benefit they offer society. If a code facilitates character traits that are incompatible with that society, or is so dominating on a person's identity that soldiers are no longer able to serve other social roles when not at war, external groups should be able to pressure the military to stop condoning that code. Opening the military culture to external scrutiny is appealing because of its transparency and responsiveness to community demands, but it is problematic in that the military is not a unitary organism that can quickly and univocally jettison a cultural identity like the warrior code.

A second option is preferable because it maintains the internal development of warrior codes, whilst also making such development sensitive to broader social values. Warrior codes could introduce as archetypal role models not only excellent warriors, but also morally upstanding citizens from various walks of life. Further, those responsible for the education and training of soldiers could begin to emphasise to students not only their warring identities,

but their broader identities as citizens, friends, and family members. Such an approach would valourise those virtues held in esteem by society more broadly (even if not clearly relevant to military efficacy, such as Sherman's empathy, Aquinas' charity, mercy, prudence, and so on), encouraging and instilling those virtues in soldiers. In years to come it might be that such an approach leads to a closer convergence between the person society deems excellent and the person the military deems excellent. In later sections I will show how this model of aretaic ethics helps to overcome some of the more pressing moral-psychological challenges of the modern day military. This exploration also shows how other aretaic models such as Sherman's empathy and French's honour contribute to much-improved outcomes for those involved in military practice.

The *Iliad* and *Coriolanus* are set in times when the soldier's family was much more closely connected to the honour world of the warrior than is common today. Recall Coriolanus' mother Volumnia, who sent him off to war once she recognised the honour he might win there. Today, at least in the West, the distance between soldiers and their families is much greater; wars are fought a long way from home, and civilians live in relative safety. By contrast, the soldier's life is one of danger and discipline. His mindset is not one the civilian immediately understands any more. This is particularly difficult with certain military values, and certain types of soldiers, for whom excellence and honour *qua* soldier requires developing traits that are frowned upon in the context of their other honour worlds. Sherman explores this difficulty with reference to an interrogator, William Quinn, whose role requires him to acquire traits such as deceit and exploitation of close relationships; traits that can undermine wellbeing in civilian contexts.

"Border passing" – that is, moving between civilian roles and the roles required in uniform and in war – is neither morally nor psychologically simple. The passage can subject both psychologically strong and morally good persons to feelings of shame and remorse, as well as to traumatic symptoms. In Quinn's case, deception and betrayal, manipulation and exploitation, tools morally questionable in ordinary transactions, had become standard tools of his specialized trade. And this did not sit perfectly well.74

Not all struggles to adjust are so basic, but all represent the gaping difference in civilian and military mindsets. Shay, for instance, describes the difficulties soldiers have in participating in the democratic process at all, since it relies on the idea of a passionate, safe struggle, "conducted within rules of safety and fairness [which] simply doesn't make sense to them or seems a hollow charade."75

One solution, which Sherman advocates, is that civilians become better informed of the warrior ethos and psyche.⁷⁶ However, another side of that solution might be to encourage soldiers to remember, as best possible, the person that they were before they went to war. It might also mean modifying warrior codes to include civilian values and identities, or at least be consistent with them. For example, recent sexual assault scandals amongst the military

⁷⁴ *Ibid.*, 115.

⁷⁵ Shay, Achilles in Vietnam, op cit., 180.

⁷⁶ Sherman, The Untold War, op cit., 4.

in the United States⁷⁷ and Australia⁷⁸ have led to a renewed interest in civilian involvement in military culture. It might be that the increasing documentation of re-entry difficulties soldiers face when returning to civilian life and the increasing attention being paid to PTSD and suicide rates amongst veterans warrants a similar interest, and it is to this topic that I now turn.

2: The Mind of the Warrior: Psychological Scars of Battle

Much has been made in both the United States and Australia of late regarding the overwhelming damage done to soldiers by PTSD. For instance, in 2010 the US Department of Veterans Affairs named June "PTSD Awareness Month," and the US Congress allocated June 27th as "PTSD Awareness Day;" in 2009 the Australian Department of Veterans' Affairs commissioned an independent study into suicide and mental healthcare in the military; and, in 2011 the

⁷⁷ C.f. Chris Lawrence, 'Official: Army suspends 55 sex assault counselors, recruiters', *CNN*, August 3, 2013, http://edition.cnn.com/2013/08/02/justice/soldiers-suspended; Lisa Millar, 'US Military confronts epidemic of sexual assaults', 7:30, Australian Broadcasting Corporation, 18/7/13, http://www.abc.net.au/news/2013-07-17/us-military-confronts-epidemic-of-sexual-assaults/4826924.

⁷⁸ Hayden Cooper, "Worse than Skype Scandal" – Army admits new sexual controversy", 7:30, Australian Broadcasting Corporation, 13/6/13,

http://www.abc.net.au/7.30/content/2013/s3781410.htm; Dan Box & Joe Kelly, 'Defense scandal predates Skype affair', *The Australian*, June 15, 2013,

http://www.theaustralian.com.au/national-affairs/defence-scandal-predates-skype-affair/story-fn59niix-1226664116725.

⁷⁹ National Centre for PTSD, 'What is PTSD Awareness Month?', 2013,

http://www.ptsd.va.gov/about/ptsd-awareness/what_is_awareness_month.asp.

⁸⁰ David Dunt, 'Review of Mental Health Care in the ADF and Transition through Discharge', Dunt Health Evaluation Services, 2009,

http://www.dva.gov.au/health_and_wellbeing/research/Documents/ReviewofMentalHealth1May2009.pdf; David Dunt, 'Independent Study into Suicide in the Ex-Service Community', Dunt Health Evaluation Services, 2009,

http://www.dva.gov.au/health_and_wellbeing/research/Documents/Dunt%20Suicide%20Study%20Jan%202009.pdf.

Australian Centre for Military & Veterans' Health completed its first research report on PTSD.⁸¹

Many ethicists have argued that, as a matter of justice, governments should be doing more to help veterans suffering from the ongoing damage caused by the psychological scarring left by war. Joelle M. Abi-Rached, for example, argues that reparation for psychological harms should be included in the postwar duties described in jus post bellum discussions.82 Further, a recent study indicates that the children of Australian Vietnam War veterans face highly elevated risk of committing suicide, 83 and other studies indicate elevated risks of suicide by veterans themselves, although the evidence is not yet conclusive.84 Although this discussion, which aims at using empirical data to demonstrate to governments why they are duty-bound to lend financial and political assistance to suffering veterans and their families is helpful, it misses what I believe to be a more pressing concern surround PTSD and combat trauma. Specifically, understanding the moral significance of the trauma inflicted in terms of moral wellbeing and the overall flourishing lives of veterans, and how such harms can be prevented. That is, not to focus on the psychological or empirical fallout that results as a consequence of the scarring caused by war, but to more closely explore and understand the suffering itself.

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⁸¹ Annabel McGuire, Katrina Bredhauer, Renee Anderson, Peter Warfe, 'Review of PTSD Group Treatment Programs: Final Report', Centre for Military & Veteran's Health, 2011, http://www.dva.gov.au/health_and_wellbeing/research/Documents/20111018-Final-Report.pdf>.

⁸² Joelle M. Abi-Rached, 'Post-war Mental Health, Wealth, and Justice', *Traumatology*, vol. 15, no. 4, 2009, 55-64.

⁸³ C.f. Australian Institute of Health and Welfare, 'Morbidity of Vietnam veterans: Suicide in Vietnam veterans' children. Supplementary report no. 1', Canberra, 2000, AIHW category number PHE 25,

http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=6442459289>.

⁸⁴ Dunt, 'Independent Study into Suicide in the Ex-Service Community' op cit.,, 10.

Specifically, this section aims to answer the question of how and why war can shape and alter the character of soldiers in ways that have long-term consequences for their wellbeing.

At first sight, this might seem like a task for psychologists, not ethicists. However, examination of the 2013 *Diagnostic and Statistical Manual of Mental Health Disorders*' (DSM-5) explanation of PTSD reveals elements of the condition which appear to be moral rather than psychological. Specifically, Criterion D – "negative alterations in cognitions and mood" – lists as symptoms of PTSD: "[p]ersistent distorted blame of self or others for causing the traumatic event or for resulting consequences;" "[p]ersistent negative trauma-related emotions (e.g., fear, horror, anger, guilt or shame);" and "[f]eeling alienated from others (e.g., detachment or estrangement)."⁸⁵

These symptoms are not necessarily limited to psychological causes, nor are their treatments necessarily psychological. For example, misattributed guilt can be a product of a misunderstanding of the difference between causal and moral responsibility equally as much as it can be a product of atypical cognitive or behavioural processing. Guilt and shame can be genuinely accurate emotional evaluations of what one has done, and alienation may not only be felt, but be genuine – soldiers are often alienated from their communities after returning home. These are not false judgements or inappropriate emotions, but real and accurate experiences of a difficult phenomenon; that is to say that these experiences can be the normal responses

⁸⁵ American Psychiatric Association, *Diagnostic and statistical manual of mental disorders*, (5th ed.), Washington D.C., 2013,

http://www.ptsd.va.gov/professional/pages/dsm5_criteria_ptsd.asp>.

⁸⁶ A powerful account of these kind of judgements, and of the alienation returned veterans often experience is Olivier Morel's documentary, *On the Bridge*, Zadig Productions & Artes France, 2011.

of psychologically typical people. Treating such ailments may require a combination of psychological and moral therapy, especially where the causative factors include moral judgements. Furthermore, there is an aretaic interest in describing this trauma as a setback to wellbeing. As Jonathan Shay explains, "[a] person "broken" by combat has lost the capacity for [...] happiness."⁸⁷

The moral dimension of combat trauma is being increasingly recognised within psychological and philosophical literature. Indeed, there is a growing movement to distinguish between PTSD and "moral injury." By moral injury, these theorists refer to what Shay describes as "the soul wound inflicted by doing something that violates one's own ethics, ideals, or attachments." This type of injury is not, according to Shay, captured by the diagnosis of PTSD. The growing interest in moral injury opens the door for philosophers to explore and explain how moral concepts can contribute to understanding, treatment and prevention of combat trauma-related psychological injuries. In this section I endeavour to do so and argue that, for the most part, the relevant philosophical concepts are aretaic in nature.

2.1: Moral Injury and PTSD: Diagnostic Differences

It will be helpful to begin by distinguishing PTSD from moral injury. This section is informed by diagnostic differences between these two proposed

⁸⁷ Shay, Achilles in Vietnam, op cit., 174-175.

⁸⁸ Jonathan Shay, 'Moral Injury', *Intertexts*, vol. 16, no. 1, 2012, 57-66 at 58.

forms of combat trauma. I use the word 'proposed' to reflect the fact that the existence of moral injury as a diagnosis is not widely accepted; in fact, the DSM-5 rejected the notion of including the term "injury" altogether in its definition of PTSD). 89 Whether or not PTSD and moral injury differ in terms of diagnosis (and I believe they do), I explore how they differ phenomenologically: they differ *vis-à-vis* the experience of the person suffering from them. But first, it is worth exploring the diagnostic differences.

The DSM-5 lists eight separate criteria for a diagnosis of PTSD, divided into the following categories.⁹⁰

- A. Stressor (one required): Direct exposure to, directly witnessing, indirectly learning of a loved one's suffering of, or repeated/extreme exposure to the aversive details of: death, threatened death, actual or threatened serious injury, or actual or threatened sexual violence; directly witnessing
- B. **Intrusion Symptoms (two required):** Event is persistently re-experienced through: recurrent, involuntary, intrusive memories; traumatic nightmares; dissociative reactions (flashbacks); intense or prolonged distress after exposure to trauma-related reminders; or physiological reaction to trauma-related stimuli.
- C. **Avoidance (one required):** Persistent avoidance of trauma-related reminders or stimuli.
- D. **Negative alterations in cognitions and moods (two required):** Inability to recall features of event; persistent negative beliefs about the self or the world;

⁸⁹ C.f. American Psychological Association, 'Posttraumatic Stress Disorder', *American Psychiatric Publishing*, 2013,

http://www.dsm5.org/Documents/PTSD%20Fact%20Sheet.pdf.

⁹⁰ Adapted from U.S. Department of Veteran Affairs, 'DSM-5 Criteria for PTSD', 2013,

http://www.ptsd.va.gov/PTSD/professional/PTSD-overview/dsm5_criteria_ptsd.asp>.

persistent distortion of blame on self or others for the event; persistent negative trauma-related emotions; diminished interest in significant activities; feelings of alienation; or inability to experience positive emotions

- E. **Alternations in arousal and reactivity (two required):** Irritable and aggressive behaviour; self-destructive or reckless behaviour; hypervigilance; exaggerated startle response; concentration problems; or sleep disturbance.
- F. **Duration:** Symptoms A-E persist for more than one month.
- G. Functional Significance: Symptoms cause functional impairment
- H. **Attribution:** Symptoms are not a product of substance abuse, medication or some other illness.

There are important reasons for listing these in detail. First, to distinguish them from the symptoms experienced by those who suffer moral injury; and second, to provide a language through which to discuss the various experiences of these conditions. PTSD essentially involves a traumatic event which triggers judgements by the victim about one's continuing safety. As Shay notes, "no place is familiar enough to completely shed combat vigilance." Following the stressor, one is reasonably "on guard" for a period, thus leading to a temporary state of hyperarousal. However, if a person is unable to reconcile his experience with his other judgements and experiences, this dissonance can lead to intrusions. Coincidentally, a continued state of hyperarousal can generate judgements that the world is no longer a safe place, and that one is continually at threat. This, in turn, leads to avoidance strategies, feelings of helplessness, fear and alienation, and persistent hyperarousal. At this point, one's judgements about the safety of one's surroundings are disordered. The basic process is as follows:

⁹¹ Shay, Achilles in Vietnam, op cit., 174.

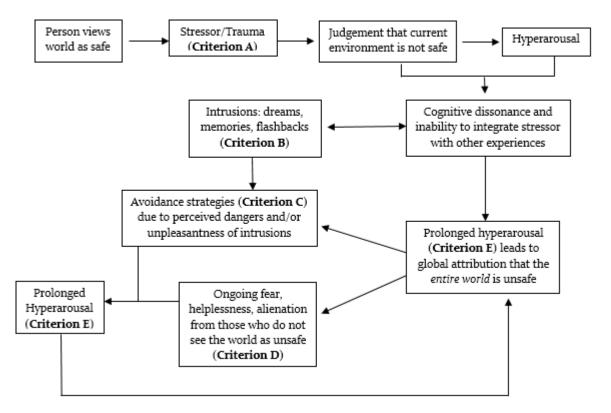


Figure 4 – Causal framework of PTSD

There are a number of similarities between PTSD and moral injury, such as initial stressors, changed evaluations, and dissonance. What is different is the way in which these manifest. It begins with a difference in the stressor: whilst PTSD begins with experience or threatened experience of a violation of the safety of myself or someone I love, moral injury begins with what Shay describes as "betrayal of what's right." According to Brett T. Litz and his coauthors, who recently conducted a quantitative study into moral injury, moral injury is created through "[p]erpetrating, bearing witness to, or learning about acts that transgress deeply held moral beliefs and expectations." Similarly,

92 Shay, Achilles in Vietnam, op cit., 5; 'Moral Injury', op cit., 59.

⁹³ Brett T. Litz, Nathan Stein, Eilenn Delaney et. al., 'Moral injury and moral repair in war veterans: A preliminary model and intervention strategy', *Clinical Psychology Review*, vol. 29, 2009, 695-706 at 700.

Shay suggests that morally injurious events are ones that entail "(1) Betrayal of what's right; (2) by someone who holds legitimate authority [...] (3) in a high stakes situation."94 These accounts, which notably do not require the individual himself to be the perpetrator, echo the kind of experience Nancy Sherman describes in an interview with Reservist Dereck Vines, during which he talks about soldiers feeling "suckered."

What Dereck Vines means by being suckered is that he feels duped, deceived, toyed with by those in charge, to whom he has sworn fidelity and for whom he has put his life on the line [...] what fractures is the sense of betrayal, the feeling of being abandoned, misled, unsupported, manipulated by those who have put you in danger's way.95

Shay suggests that a similar kind of betrayal occurs when certain groups of soldiers are forced to take on more risk than others. He retells a story of a Commanding Officer who "played favourites" when it came to the allotment of dangerous missions.

Many aspects of the *themis* [concept of rightness] of the American soldiers cluster around fairness. When they perceived that distributions of risk was unjust, they became filled with indignant rage, just as Achilles was filled with menis, indignant rage [at Agamemnon's unjust taking of Briseis, a woman granted to Achilles as a prize for having fought courageously in battle]. 96

⁹⁴ Shay, 'Moral Injury', op cit., 59.

⁹⁵ Sherman, The Untold War, op cit., 54-55.

⁹⁶ Shay, Achilles in Vietnam, op cit., 12.

The description of moral injury is – we see – closely connected to a person's response to a transgression of a morally serious deontological norm. However, what is noteworthy is not the fact of a moral transgression having occurred, but that such a transgression may yield consequences on the character and future wellbeing of transgressors and witnesses alike. That is, explaining what constitutes immoral conduct – an enterprise deontological ethical theories are very good at – is not enough to capture the important aretaic consequences *of* that transgression. It is of moral importance vis-a-vis human wellbeing how people are able to respond to their experiences committing, witnessing, or being victim to moral transgression.

Whilst accepting Shay's account of morally injurious events, I think it is also necessary to add, (as the DSM-5 does) a criterion stipulating a certain proximity to the event. I can witness betrayals of what is right by authorities regarding matters I consider to be "high stakes" by reading them in the news, watching them on the internet, or hearing about them in conversation. None of these is likely to trigger the type of moral injury being described here unless I have a particular interest or stake in what has occurred. This interest may take the form of a personal relationship with a person involved, financial or political stakes which may be affected by the decision, strong religious or philosophical beliefs that are challenged by the betrayal, or some degree of complicity in the betrayal itself. Without these factors (or something like them), I am unlikely to suffer any psychological or moral damage from the betrayal.

So, moral injuries begin with a person's direct experience of a betrayal of "what's right" by a legitimate authority. The betrayal "severely and abruptly contradicts an individual's personal or shared expectation about the rules," a contradiction of which the individual is aware, and thus causes the individual inner conflict.⁹⁷ From here, the individual begins to make attributions about the nature of the world at large. If they are personally responsible for the transgression, they may experience guilt and shame which alter their selfperceptions, causing "[m]aladaptive interpretations about stability ("this event will forever define me) [...] and severe self-condemnation ("I am evil," "I am worthless," "I can never forgive myself")."98 These lead to ongoing feelings of guilt and shame, feelings which the person seeks to escape by avoiding reminders of the guilty or shameful event.99 Guilt and shame are compounded by a lack of self-forgiveness (which is in part brought on by withdrawal from opportunities to discuss the event with peers, therapists, priests, etc.), eventually leading to intrusions (dreams, memories) and selfharm/self-punishment. Litz, Stein, Delaney et. al. provide the following causal framework for moral injury:

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⁹⁷ Litz, Stein, Delaney et. al, op cit., 700.

⁹⁸ *Ibid.*, 703.

⁹⁹ Ibid., 698.

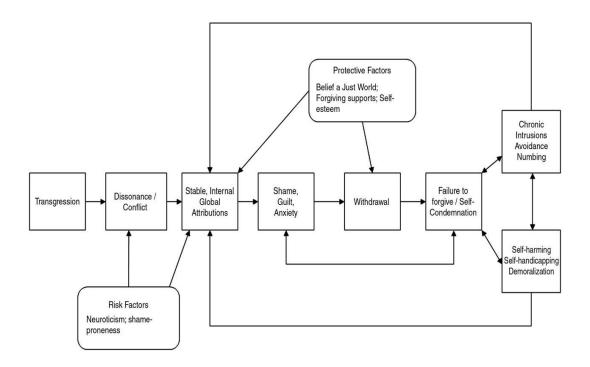


Figure 5 – Causal Framework for moral injury¹⁰⁰

Note that Category E criteria (hyperarousal and reactivity), which featured in Figure 4, are *not* symptomatic of moral injury.¹⁰¹ This reflects the fact that whilst what is lost in PTSD victims is their sense of safety, "moral injury destroy[s] the capacity for *trust*."¹⁰² The type of judgement made here concerns the moral nature of the world around me, and my own character. Whilst PTSD victims see the world as unsafe, moral injury victims see it as untrustworthy, capricious, amoral, or evil. Even worse, they can come to see themselves as somehow bad, corrupt, or evil as a consequence of what they have done. This kind of attribution error is radically different from that of PTSD, and therefore

¹⁰⁰ Litz, Stein, Delaney et. al, op cit., 700.

¹⁰¹ *Ibid.*, 697.

¹⁰² Shay, 'Moral Injury', op cit., 60.

moral injury theorists present a compelling case as to why it should be treated differently in a diagnostic sense.

2.2: Moral Injury and PTSD: Phenomenological Differences

What is it like to have PTSD, or moral injury? The primary difference lies with the victim understands himself. In this section I explore the difference between the PTSD "self as victim" experience, and the moral injury "self as judge" experience.

Recall that PTSD is primarily a concern about one's safety. It is a misjudgement that assumes one's environment is always a threatening place. For soldiers, the war zone never ends, the enemy could be just around the corner, and they must be ready to defend themselves. The experience of PTSD, therefore, is an experience of perpetual victimhood (or potential victimhood). It is a state of ongoing vulnerability to unseen others. This is why Shay argues that PTSD tends to be typified by emotions like fear, horror and helplessness, 103 with fear being primary among them. The soldier is now unable to lay down arms – he is continually prepared for combat to spontaneously erupt. This explains why veterans will involuntarily drop to the floor upon hearing a loud noise, 104 refuse to drive the speed limit for fear of being easy targets, 105 and refuse to plan ahead for fear of becoming

¹⁰⁴ Shay, Achilles in Vietnam, op cit., 174.

¹⁰³ Shay, 'Moral Injury', op cit., 59.

¹⁰⁵ Sherman, The Untold War, op cit., 225.

predictable.¹⁰⁶ In Olivier Morel's documentary *On the Bridge*, one veteran tells the story of being stuck on a bridge in what he describes as "a perfect ambush position." Suddenly, he is back in a convoy in Iraq and is desperate to escape the situation lest insurgents take advantage of his vulnerability.¹⁰⁷ These feelings of constant danger make it difficult for veterans to sleep for fear of night attacks and it also makes surprising them a terribly unwise thing to do: "co-workers of Vietnam combat veterans have learned that it is most unsafe to approach these men unannounced from behind."¹⁰⁸

However, at the same time, veterans know that what they are experiencing is atypical. Most non-veterans do not live in constant fear, and spontaneous battle never breaks out. Thus, on top of this ongoing fear come feelings of displacement and alienation. These feelings undermine belief in one's own sanity, until finally the victim either breaks down, or (hopefully) seeks help – often unable to describe what he is going through in any more detail than "I ain't right." Feelings of dissonance continue. Because the soldier's experiences confirm that the world as he knows it is unsafe, he must be vigilant, but hypervigilance will also destroy his relationships, and eventually his sanity. Over time, what began as judgements about the world begin to shift into judgements about one's own suitability to live in the world. It is no surprise then that many veterans' thoughts turn to suicide, not only as a release, but as a "bottom line of human freedom" over which one retains some control.

¹⁰⁶ Shay, Achilles in Vietnam, op cit., 177-178.

¹⁰⁷ Olivier Morel, *On the Bridge, op cit.*

¹⁰⁸ Shay, Achilles in Vietnam, op cit., 174.

¹⁰⁹ Ibid., 170.

¹¹⁰ Ibid., 179.

By contrast, the victim of moral injury sees himself as judge: judge of his world, of his actions, and of his character. This form of judgement usually (but not always) surrounds feeling morally responsible for a betrayal of "what's right." On other occasions, where it is genuinely a case of one having simply witnessed, without any involvement, such a betrayal (for instance, one objects to an order to kill a noncombatant, but it is carried out by somebody else), one may be morally injured in coming to see the world as untrustworthy. Whilst all forms of moral injury can be devastating to a person's wellbeing, this latter form involves a loss of trust in other people which can hopefully be overcome through the victim directly experiencing instances during which people act kindly, reliably, and honestly in their interactions with him (this may be another of the "protective factors" identified in Figure 5).

More serious, to my mind, are those injuries that "deteriorate [...] character [and by which] ideals, ambitions, and attachments begin to change and shrink."¹¹¹ These seem to occur primarily in cases where one passes judgement on oneself. It should also be noted that the judgements that soldiers make in these cases are false. They commit misattribution error by taking one immoral event (admittedly, a very serious one) as defining permanently the moral character of oneself and the world, as though forgiveness or redemption were wholly impossible. Thus, *witnessing* transgression, and therefore not having perpetrated any moral offense, is less morally perilous than when one has violated a deontological norm; again suggesting a close interaction between what a person *does* and how his character and identity can transform as a result.

¹¹¹ Shay, 'Moral Injury', op cit., 59.

One way in which the soldier's identity can be dramatically altered is when those to whom he is morally attached seem to betray his trust. Shay describes the relationship between fellow soldiers as an instance of philia – an ancient Greek word signifying "the very strongest affective relationships that human beings form."112 When these strongly affective commitments are betrayed, the betrayed party is at risk of severe character injury by way of what Shay describes as a "wrecked thumos." 113 Thumos – "spiritedness" or "honourable character" - is often seen as a dated notion concerned with archaic models of honour. However, Shay argues that thumos is actually constituted by three things: (i) ideals, ambitions, and attachments, (ii) the intensity with which these are energised, and (iii) the emotions aroused by seeing those ideals manifest in the real world.¹¹⁴ Understood in this way, thumos is intimately connected with the aretaic notion of character: it concerns what one values, morally speaking, the vigour with which one's values motivate one's actions, and how one feels when a project that one values is successful.¹¹⁵ If transgressions of deontological principles can indeed wreck thumos then we ought to understand how it is wrecked, and whether it might be reconstructed.

Shay describes the symptoms of a damaged *thumos* as including cognitive and emotional states like "self-loathing, a sense of unworthiness" and "loss of self-respect and initiative,"¹¹⁶ two symptoms that correlate clearly with the global misattribution that occurs when an agent judges the whole world to be unjust

¹¹² Shay, Achilles in Vietnam, op cit., 41.

¹¹³ Jonathan Shay, *Odysseus in America: Combat Trauma and the Trials of Homecoming*, (Sydney: Scribner, 2002), 158.

¹¹⁴ Ibid., 157.

¹¹⁵ In a similar manner, Robert Gay argues that *thumos* is an affective reinforcement of a person's virtuous inclination to act courageously. C.f. Robert Gay, 'Courage and Thumos', *Philosophy*, vol. 63, no. 244, 1988, 255-265 at 257-259.

¹¹⁶ Shay, Odysseus in America, op cit., 160.

based on the evidence of a single event. Interestingly, however, damaged *thumos* can also result in "grandiosity and entitlement," "coercive demands for respect, honour, [and] acknowledgement," and "claims to having been [a] player in the single most important event in human history."¹¹⁷ *Thumos*, when damaged, can either be inflated or deflated in response to damage. One's character, being so altered by the shift in *thumos*, perceives morality differently. What may have previously been understood as a once-off – but still morally serious – deontological violation becomes either justified because of the moral importance of the actor, or, in the reverse, comes to define the perpetrators character from that point onward.

What purpose can inflated or deflated *thumos* serve? Deflated *thumos*, it seems, is a way of integrating what one has done with his broader experiences. Someone who mistakenly kills a civilian can integrate that killing into his identity by persisting in his identity as evil. This way, perhaps, the dissonance will stop. In this sense, deflated *thumos* appears to be a defensive mechanism through which one seeks to avoid fully processing what has happened. Similarly, an inflated *thumos* – often mistakenly dismissed as narcissism by mental health professionals¹¹⁸ – seeks to justify what one has done by the significance of those events. Inflated *thumos* aims to deny the judgemental element of moral injury by putting oneself above moral judgement. Both inflation and deflation of *thumos* ultimately seek the same thing: avoidance of the difficulties associated with integrating one's status as perpetrator (or perceived perpetrator) with one's lived experiences by denying those experiences. Adding to the complexity, *thumos* can fluctuate between states of

¹¹⁷ *Ibid.*, 160-161.

¹¹⁸ *Ibid.*, 161.

inflation and deflation within the one individual, "giving the appearance, descriptively, of bipolar disorder."¹¹⁹ Subconsciously, the character attempts to protect itself from the painful process of self-forgiveness.

Compounding the problems associated with subconscious avoidance of self-forgiveness is the fact that other forms of forgiveness are not readily available. This is largely due to the growing distance between civilians and the military (which has always existed, but was exacerbated after the Vietnam War, when some within the military attributed the US failure to a lack of support from civilian leadership). As Shay notes, "[a]cts of war generate a profound gulf between the combatant and the community he left behind." As such, it is difficult for returning soldiers – especially those with PTSD or moral injury for whom aversion and alienation are real possibilities – to find people willing to even listen to what they have to say, let alone forgive them for it. A key element in the redemptive framework for those suffering from self-judgemental moral injury will therefore be the provision of an environment in which interpersonal (and subsequently self-) forgiveness is possible.

3: Guilt, Shame, and the Ruin of Character

Although I think that the distinction between PTSD and moral injury is an important one conceptually, both are worthy of exploration in a discussion of

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¹¹⁹ *Ibid*.

¹²⁰ Ole R. Hosti, 'A Widening Gap between the U.S. Military and Civilian Society?: Some Evidence, 1976-96', *International Security*, vol. 23, no. 3, 1998-1999, 5-42 at 6.

¹²¹ Shay, Odysseus in America, op cit., 152.

war's ability to shatter the moral and psychological wellbeing – that is, happiness – of an individual. In this section I focus on both conditions' ability to wreck a person's wellbeing through fostering feelings of guilt and shame (from which there is often no release). Some of this shame derives from the warrior code discussed earlier. Other elements derive from misplaced senses of moral responsibility, the (perceived) perpetration of wrongdoing, and – significantly – incongruence between what a solider believes to be right and virtuous *vis-à-vis* soldiering, and what he believes to be just *vis-à-vis* other aspects of his life. Importantly, not all judgements that lead to PTSD are mistaken ones: at times misattribution may occur, but at other times a soldier's feelings of guilt and/or shame may be entirely appropriate. However, there is no necessary connection between a violation of deontological norms and the experience of 'aretaic' trauma – that is, trauma that affects one's character, psychological, or moral wellbeing. We cannot explain all experiences of moral trauma through a deontological framework.

First, it will be worth exploring the differences between guilt and shame. Sherman, fittingly (given its prominence in the experience of soldiers) focuses on shame.

What exactly is shame? One conventional place to begin is by distinguishing it from guilt. Guilt is the bite of self-punishment we feel when we wrong another; it often comes with a desire to make reparations [...] Real shame requires, in addition, social discrediting – an affront to a person's status or dignity.¹²²

122 Sherman, The Untold War, op cit., 180.

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Shame is the feeling associated with knowing that other people have judged me to be a person that I do not believe myself to be, or wish for myself to be known as. By contrast, guilt is an internal feeling of disharmony between one's self-perception and the act one has performed: "remorse or self-reproach caused by feeling that one is responsible for a wrong or offence". 123

Gabriele Taylor argues that "guilt, unlike shame, is a legal concept [...] to feel guilty [is to] accept not only that [a person] has done something which is forbidden, he must accept also that it is forbidden, and thereby accept the authority of whoever or whatever forbids it."124 By contrast, Taylor suggests that shame (in the sense we are discussing it here) occurs "when [a person] is judged by the group of which he is a member to have failed to comply with some categoric command. He shares the point of view of the group, and so [...] has failed in his own eyes."125 In short, Taylor contends, shame requires an audience whilst guilt requires an authority. 126 In the case of military personnel, audience and authority are blurred. One's soldier peers are both the enforcers and adherents of the warrior code. One is both a member of one's community and feels rightly subject to its moral judgement, and the soldier himself witnesses the things he has done, and judges himself for them. This latter sense, we will see, is especially important: the moral and psychological trauma of war can often lead to soldiers playing the roles of judge, jury, and executioner for themselves.

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¹²³ 'Guilt', in Collins English Dictionary - Complete & Unabridged 10th Edition,

http://dictionary.reference.com/browse/guilt>.

¹²⁴ Gabriele Taylor, *Pride, Shame, and Guilt: Emotions of self-assessment,* (Oxford: Clarendon Press, 1985), 85.

¹²⁵ Ibid., 56.

¹²⁶ Ibid., 57; 86.

However, guilt and shame themselves are not judgements, but the emotions that accompany particular judgements. If a person judges that he has failed to live up to (i) the moral necessities of a situation, or (ii) the expected behavioural standards of his group, he will then feel guilt or shame respectively (he may, in some cases, feel both). Both guilt and shame, however, like all emotions, are bad indicators of morality. Oftentimes – as with *seppuku* where men were shamed for refusing to commit suicide – one can feel guilty or ashamed when no wrongdoing has actually been committed. This point suggests that deontological explanations of the wrongfulness of a particular action may (although useful in various situations) not be morally relevant in all cases. Sometimes guilt and psychological trauma are not a response to wrongdoing, but to some other factor. Furthermore, they assume that the judge(s) (either the authority or audience) are the type of person(s) who can infallibly dictate on matters of morality, and that the mind of the judge is knowable to them. In reality, none of these factors are assuredly true. Even if these were true and guilt and/or shame were appropriate emotional responses, at some point the feelings must cease in order for the agent to have any chance at rehabilitation.

3.1: Misplaced Guilt and Responsibility

Psychological and moral trauma as a consequence of misattribution is morally tragic; we witness a diminution in flourishing of a person who has done nothing wrong. Consider, for example, those Vietnam conscripts who served honourably despite not having freely chosen to fight, only to return home to find themselves stigmatised by the war itself. Here again, moral trauma and a

diminution of wellbeing occurs not as a consequence of a moral transgression, but in response to a perception that one's character has been irrevocably altered by the events one has participated in.

Bob Steck, one of Nancy Sherman's interviewees, was opposed to the Vietnam war when he was conscripted, but could ill afford to go to jail because his father had recently died, leaving his mother alone. Steck is, Sherman remarks, "a man of strong moral sensibilities; he is well read, knowledgeable and an activist." However, despite knowing there was little he could have done differently, "he can't psychologically or morally fully separate himself from the war he fought."127 Steck still sees himself as a participant in injustice, and feels "a sense of taint." 128 This taint is not something he is responsible for, in fact, Bob is aware that "the taint comes from outside in. [...] Yet it sticks." 129 Bob came home to crowds who jeered and called him "murderer" and "babykiller" despite his having done neither. 130 He is an outspoken activist who has regularly criticised the policies that led to Vietnam;¹³¹ and works with soldiers still suffering from the psychological scars of that war, 132 but even still, "[t]here will be that felt lack of confidence about his moral position for agreeing to fight [in an unjust war]."133 As Sherman surmises, "[h]is assessment of himself, and how he views others assessing him, are wrapped up in moral luck and a coerced choice."134 Ultimately, Steck's taint comes because, from his

¹²⁷ Sherman, *The Untold War, op cit.*, 51.

¹²⁸ *Ibid*.

¹²⁹ Ibid., 52.

¹³⁰ *Ibid.*, 50.

¹³¹ *Ibid*.

¹³² *Ibid.*, 51.

¹³³ *Ibid.*, 53.

¹³⁴ *Ibid*.

perspective, "cleansing and purification seem impossible." ¹³⁵ I return to the idea of purification later in this section.

A second kind of misattribution is perhaps more familiar to casual readers of war literature: survivor guilt. Again, this experience is not unique to the military, but it is typical of it. Survivor guilt arises when chance allots that a soldier's comrade(s) should die whilst he survives. Perhaps he was on leave at the time, or had switched places temporarily with one of the dead. However it occurs, the soldier is left with the sense that "it should have been me." In Les Misérables, the revolutionary-cum-romantic Marius literally begs for his dead friends' forgiveness "that I am here and you are gone." Shay, who observes similar emotions in Achilles' response to Patroclus' death, argues that this kind of guilt is symptomatic of "the powerful bond that arises between men in combat."137 In some cases this bond – and grief – is so powerful that soldiers feel driven to suicide after the death of a special comrade.138

Part of this guilt, Shay suggests, is an "inner process of bringing the dead into the present,"139 by continuing to feel pain in the absence of a lost comrade, warriors maintain some connection to the loved one they have lost. Interestingly, finding ways of reducing the intensity of "brother-in-arms" type relationships may help stymie suicidal survivor guilt. The Roman philosopher

¹³⁵ *Ibid.*, 52.

¹³⁶ Boublil, Alain & Natel, Jean-Marc trans. Herbert Kretzmer, Les Misérables, 1985, produced by Mackintosh, Cameron, adapted from Hugo, Victor, Les Misérables, 1862.

¹³⁷ Shay, Achilles in Vietnam, op cit., 69-70.

¹³⁸ *Ibid.*, 70.

¹³⁹ *Ibid.*, 71.

Cicero wrote about therapeutic interventions for grieving, advocating a form of Stoic distance from loved ones. It is helpful, he suggests, to reach a frame of mind so that when trauma occurs, one sees the trauma as "nothing contrary to expectation." The Stoic Epictetus thus suggests that (in Sherman's words) "through daily prerehearsal, we are to remind ourselves of the mortality of loved ones, kissing them each morning as if it might be the last time." This reminder may help to prevent the type of crippling grief that is seen in cases of suicidal survivor guilt.

How can the type of character damage inflicted by such losses be healed? A large part entails – as alluded to in the previous section – listening. Shay describes this process as "personal narrative reconstruction," the idea being that misattribution can only be corrected if the mistaken facts are corrected. It is not sufficient for the soldier to be *told* that he has done nothing wrong; his guilt is subjective and partly subconscious. What is required is a "fully realised narrative that brings together the shattered knowledge of what happened, the emotions that were aroused by the meanings of the events, and the bodily sensations that the physical events created." When this is allowed to occur, "the survivor pieces back together the fragmentation of consciousness that trauma has caused." This narrative approach, Sherman observes, mirrors aspects of the cognitive behavioural therapy used in psychological interventions, whereby "the patient revisits [...] relives and, most important, reintegrates the traumatic experience into her life." 145

¹⁴⁰ Cicero, Tusculan Disputations, 3.75-76 as cited in Sherman, Stoic Warriors, op cit., 144.

¹⁴¹ Sherman, Stoic Warriors, op cit., 145.

¹⁴² Shay, Achilles in Vietnam, op cit., 187-188.

¹⁴³ Ibid., 188.

¹⁴⁴ Ibid.

¹⁴⁵ Sherman, Stoic Warriors, op cit., 128.

Crucially, this process requires an audience capable of listening in the correct manner. It requires the perfect combination of distance, belief, and compassion. "Listeners must be strong enough to hear the story without injury," to listen without judging the speaker, and for the audience "to experience some of the terror, grief, and rage that the victim did." In short, listeners must possess certain "therapeutic virtues" in order for narrative rehabilitation to be successful. In speaking, the veteran's isolation shatters: his experiences are felt, validated and shared. Finally, the perceived guilt or shame is shared, false cognitions are dismantled and the warrior can reconcile his past, present, and future. This, perhaps, is a reason for providing the families of soldiers with training in basic therapeutic virtues.

However, the audience must also hold the respect of the warrior. They be seen as having sufficient insight, relevance and gravitas to justify the soldier spilling his soul. Otherwise, to use Taylor's terms, the audience will lack moral authority. Shay emphasises the need of the listener to respect the veteran, ¹⁴⁷ but my argument suggests that the opposite is also true. Veterans are unlikely to engage in conversation with someone they think has no way of understanding or helping them, no matter how well-intentioned and compassionate the listener is. Thus, there is also important cultural change to be carried out in the military. A cultural shift that encourages soldiers to talk is required. One that esteems the spouses, chaplains, and therapists of soldiers as people who understand the warrior code – "honorary warriors" – who value and know the code in a way that enables them to listen without being injured by what is heard, or judging the soldier for what is said.

¹⁴⁶ Shay, Achilles in Vietnam, op cit, 188-189.

¹⁴⁷ Ibid., 189.

The story is slightly different for those who are genuinely responsible for having committed an injustice. Although there is no doubt that narrative rehabilitation will still play a role, soldiers who have genuinely done wrong do not need to have their perception of the events corrected – they correctly feel guilty and ashamed for having done the wrong thing. What these soldiers require, more than anything else, is forgiveness for indiscretions they have committed, or believe themselves to have committed. However, remember that the phenomenology, at least of moral injury (which perpetrators are most likely to suffer) is of the self as *self-judge*. Thus, any forgiveness that is granted must be granted in a way that the warrior himself would accept. It must not, therefore, be platitudinous.

Shay discusses the various "purification rituals" that have dotted warrior cultures throughout history. In other times and cultures, when soldiers returned from war, they underwent a process of moral purging that enabled them to feel forgiven for any evil they may have done. For example, in the medieval period any Christian who shed blood during war, just or not, had to do penance afterward. Modern Western societies have no equivalent to these practices, and this means soldiers – as we saw in Bob Steck's case – can spend years unsure as to whether or not they deserve to be living "ordinary" lives, or whether they are in fact deserving of some punishment that was never meted out. Installing a ritual, that enters into the warrior code as a significant and revered process undertaken by soldiers would provide a mechanism through which soldiers could forgive themselves for the things they have or believe themselves to have done. This may be difficult to implement in a society increasingly sceptical of religious practices – rituals among them – but

¹⁴⁸ Shay, Odysseus in America, op cit., 154-155.

the introduction of some form of authoritative, public, formalised, and communal forgiveness and acceptance process seems likely to dismantle the type of self-judgements that perpetuate moral injuries.

I noted above that the forgiveness must not be platitudinous. No good will be done by automatically forgiving those who have acted unjustly; forgiveness must feel deserved. Even soldiers who have not done wrong come home feeling powerful guilt for which they need to be forgiven, and those who have knowingly and intentionally violated their own codes of ethics will feel that guilt all the more sharply. There is a temptation to forgive soldiers for atrocities, explaining it as "duress" or the "stress of war." However, this type of generous forgiveness does little to allow soldiers to forgive themselves and redeem themselves; they know themselves to have done wrong and to be deserving of punishment. If they feel that this punishment is not meted out, it is possible that any forgiveness will be seen as undeserved; indeed, it may well be seen as patronising. Immanuel Kant, for example, believed that any wrongdoing that was freely chosen had to be punished in order to respect the autonomous decision of the wrongdoer.¹⁴⁹ Likewise, soldiers will enforce their own punishment – usually moral or psychological punishment in the form of self-evaluation, in extreme cases self-harm or suicide – if they feel that they have not been able to redeem themselves for the guilt that they feel. What is required is a framework that abdicates soldiers of the burden of judging themselves: submitting them to external judgement by the community.

¹⁴⁹ Immanuel Kant, trans. Mary Gregor (ed.), *The Metaphysics of Morals*, (Cambridge: Cambridge University Press, 1996), 6:355.

This approach will help empower soldiers to forgive themselves for any wrongs they have, or believe themselves to have, committed. Better still, however, would be to prevent wrongs from being committed at all (an idea that was explored in the first section). This is not only a matter of justice *vis-à-vis* the rights of those who are innocent, but a pressing aretaic concern given what we have learned about moral injury, guilt, shame, and their crushing effects on wellbeing. Kant believed in a kind of "natural punishment [...] in which vice punishes itself," ¹⁵⁰ and this idea appears to be at work in what Shay describes so accurately as "the ruin of character." Thus it is not only for the sake of the victim that atrocities must be reduced, but also for the sake of the perpetrator.

I have already discussed character traits and virtues that can help prevent warriors from choosing to commit atrocities. In this section I focus on preventing "betrayals of what's right" that come from military commanders and leaders. Although soldiers are obligated to disobey an illegal order, this obligation rests on the epistemic possibility of recognising an order as unjust at the time of their being given. At times – as occurs in a story Shay describes – soldiers are ordered to carry out missions and only learn afterward who the targets were. The soldier Shay describes conducted a night raid in which he later learned he had massacred fishermen and children. The targets held no strategic value, and the wrongdoing was ignored by the superiors who had given the command. In fact, this particular soldier was given the highly esteemed Combat Infantry Badge for killing children. Situations such as this demonstrate the profound disconnect between those giving commands and

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¹⁵⁰ Kant, The Metaphysics of Morals, op cit., 6: 331.

¹⁵¹ Shay, Achilles in Vietnam, op cit., 3-4.

those receiving them. In this case, a colonel told the troop that he would "take care of it," and not to worry. Such insensitivity to the fact that he had commanded his men to kill innocent, vulnerable civilians demonstrates a view of soldiers as mere instruments rather than complex human beings with characters, virtues, and consciences of their own.

Those entrusted with the command of soldiers must be particularly cautious that the commands they give are just ones, not only because it is evil to give an unjust order, but because in doing so one can jeopardise the wellbeing of one's men. Commanders, therefore, must be aware of the psychological seriousness of killing, particularly non-defensive killing, on the psyche of individuals. Politicians, too, need to be aware of the differences in psychological wellbeing between soldiers who believe themselves to be fighting for a just cause, and soldiers who are unsure whether their war is just. Of course, at times the fog of war is thick, and errors of judgement are made with the best of intentions, but even in these cases, commanders *must* be sensitive to the aretaic seriousness of a person feeling that they have "betrayed what's right," and take full moral and legal responsibility for those commands, as well as steps to engage with the moral and psychological trauma that soldiers might subsequently experience.

By extension, soldiers need to be afforded more power to question commands, disobey orders, and conscientiously object to wars they believe are unjust. This extends beyond obviously unjust orders, but to circumstances in which a soldier believes that what is at stake in obeying is his very soul. This question is discussed at length in the next chapter, but for now it is important to note

that conscientious objection is not a value that enjoys pride of place in the modern military ethos. As McMahan notes, "[s]uccess or failure, which can make the difference between life and death for a great many people, may depend on whether those lower in the chain immediately and unhesitatingly obey the orders they receive from above." Thus, obedience and trust are vital in the military structure, and are enshrined as virtues in the warrior code. I am unsure whether the argument from military efficacy is sufficient to liberate low-ranking military personnel from the burden of conscientious evaluation of each particular mission (in fact I suspect that it is not) but even if it were, this would simply emphasise the need for commanders to ensure that they had the best possible intelligence before proceeding, and that they opt against acting in cases of ambiguous evidence.

Better still is a soldier who conceives "what it means to be a warrior" as meaning he should never betray his beliefs about doing what is right: a soldier who acknowledges his moral authority as judge not only *after* the commission of a crime, but beforehand as well. French argues for a "military culture with role models who remained true to their codes of honour even in the face of nearly overwhelming challenges or temptations." At the moment, there is very little in modern military culture to support "remaining true" and refusing orders unless they are *prima facie* illegal (and even then, I have some doubt as to whether rejecting those orders would be seen as laudable). Sometimes the illegality is not clear; sometimes the intelligence is shaky and soldiers may have genuine doubts, in such cases, "[a] code that encompasses all of what it is to be a particular kind of warrior may help the warrior who

¹⁵² Jeff McMahan, Killing in War, Oxford University Press, London, 2009, 71.

¹⁵³ French, *The Code of the Warrior, op cit.*, 14.

has internalized it determine the proper course of action in a situation the rule writes could never have foreseen."¹⁵⁴

Change to military culture is necessary to expand the legal, moral, and psychological ability of soldiers to refuse unjust orders, abstain from unjust wars, or give voice to unjust practices. This last point is particularly pertinent given ongoing testimonies of reprisals against military whistleblowers. ¹⁵⁵ If commanders can be made aware of how unjust commands affect their soldiers, and the warrior culture is able to actively encourage dissent against commands that betray a soldier's own conception of what is right, then there is a chance of reducing the amount of psychological trauma caused by betrayals of right.

3.2: The Moral Gap Between War and Peace: a Critique of Role Morality

Another chief catalyst in the ruin of character is what occurs when soldiers return to home find that the people they have become are an ill fit with the society they have defended. In the first section I argued that recognising the integration of civic and military virtues may help to guard against serious moral transgressions like the targeting of noncombatants. In this section I argue that the same integration can help prevent the ruin of character, and

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¹⁵⁴ *Ibid.*, 15.

¹⁵⁵ Nick Schwellenbach, 'Why Military Whistleblowers Fear Reprisal', *Time*, 20/10/2012, http://nation.time.com/2011/10/20/why-military-whistleblowers-fear-reprisal/.

further, that failing to do so contributes to ruinous character. This section also includes a critique of what I take to be a particularly culpable contribution to the ruin of character, the approach to military ethics known as "role morality." ¹⁵⁶

Earlier I advocated a holistic approach to military ethics focussed on aretaic notions of virtue, character and wellbeing. The good soldier, on this account, will be a person who habitually chooses actions that promote the good in a particular situation. For both Sherman and French, the virtuous soldier will be one who fears doing evil more than he fears dying and will courageously pursue the good even in the face of severe physical risk. The virtuous soldier is one who understands that his deeds as a soldier form part of his identity and need to be integrated with his life as a whole. Soldiering is a way of life that can either assist in the achievement of human flourishing or be detrimental to it, but it is not separate from the rest of my life; the way I soldier will affect the way I act when I am at home. Thus, my identity as a soldier is a key element of my flourishing, and therefore must make a positive contribution to my wellbeing. John Courtney Murray spoke condemningly of a "false antinomy between war and morality," with his focus being a view of war as a morally separate domain to the rest of our moral endeavours.

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¹⁵⁶ My discussion in this section will be focussed specifically on the psychological consequences of teaching role morality, and how these might be deleterious to a person's psychological wellbeing. I take no position on whether or not role morality is a good, useful, or valid framework for professional ethics, and indeed my observations are not affected by the validity of role morality as a normative system.

¹⁵⁷ John Courtney Murray S.J., 'Remarks on the Moral Problem of War', *Theological Studies*, vol. 20, 1959, 40-61 at 54.

I am not sure that one should talk today in these categories, "war and/or peace," leaving unexamined the question just what their validity is as moral and political categories. The basic fallacy is to suppose that "war" and "peace" are two discontinuous and incommensurable worlds of existence and universes of discourse, each with its own autonomous set of rules, "peace" being the world of "morality" and "war" being the world of "evil," in such wise (sic) that there is no evil as long as there is peace and no morality as soon as there is war. 158

Although few just war theories would argue that the moral disconnect between war and peace is as strong as Murray's characterisation, there is still a sense amongst a number of just war theorists that the deeds soldiers perform are at best a "necessary evil." However, a necessary evil is still an evil, and it may not be possible to reconcile one's identity as evil-doer with the endeavour to live a morally excellent (happy) life. An aretaic approach to JWT which takes an interest in the wellbeing of soldiers will dismiss arguments that my conduct as a soldier will not affect my conduct as a father and vice versa as misguided. Rather, military ethics *must* take an interest in the moral character of the soldier as well as their actions, and do what it can to protect or enhance that moral character, because doing otherwise may well be detrimental to the overall quality of the soldier's moral life. It is on this basis that Nancy Sherman takes issue with Jeff McMahan's view of unjust combatants as both morally inferior status to just combatants, and morally responsible for the injustice of

158 Ibid., 57.

their cause:¹⁵⁹ it "seems too harsh and to miss too much about the practice of soldiering."¹⁶⁰

McMahan's "harshness" is mitigated by the fact that he suggests three excusing conditions for unjust combatants: duress, which "include[s] threats to an agent that exert varying degrees of pressure against his will to resist"; epistemic limitations, where "[a] person's knowledge of relevant maters may be limited or defective to varying degrees"; and diminished responsibility, whether or not a particular person has the "capacity for rational moral agency". However, two further important ideas can be revealed by enriching this account with aretaic notions.

First, that soldiers, regardless of the justice of the cause for which they fight, can conduct themselves virtuously, honourably, and in conformance with every normative requirement of highest warrior code. Such combatants surely do nothing that detracts from their moral excellence in such fighting, unless it be that they were culpably ignorant of the injustice of the cause. However, even if ignorant, it does not necessarily follow that everything they do is evil;

¹⁵⁹ In *Just and Unjust Wars*, Walzer suggests that soldiers fighting on either side of a war are moral equals insofar as every soldier, regardless of cause, is afforded the right to kill his enemies: "they can try to kill me, and I can try to kill them." Walzer, *Just and Unjust Wars* (4th edition), (New York: Basic Books, 2006), 36. The moral equality of combatants (MEC) famously rejected by Jeff McMahan in *Killing in War*, *op cit.* who compellingly argues that there is no philosophically coherent reason for why just combatants might have forfeited their right not to be killed. "It is hard to see how just combatants could become legitimate targets simply by offering violent resistance to unjust attacks." (16).

¹⁶⁰ Nancy Sherman, The Untold War, op cit., 44.

¹⁶¹ McMahan, Killing in War, op cit., 116-117.

if they fight with good intentions and violate no rights, it seems possible that one's status as an unjust combatant is not compatible with virtue.

The second, more telling insight would be in observing whether declaring that unjust combatants are, all other things being equal, morally responsible for the injustice of their cause might lead to significant doubts about the justification of a soldier's profession, or the particular war a soldier found himself in. If a soldier learns after a war in which he fought nobly that the war was unjust, he becomes a criminal in his own and in society's eyes. How such a man is able to live a flourishing life, when such a large part of his identity suddenly becomes associated with immorality, is difficult to imagine. It does, however, give cause for a more nuanced, sensitive approach to discussions of the distinction between just and unjust combatants.

The aretaic, holistic approach I have been suggesting here can be contrasted with an approach which sees the various roles of a person's life as unconnected, each with its own set of moral norms and values. This approach is highly compatible with an insular, internally-developed warrior code. It holds that what a person does at war has no bearing or relevance to their moral conduct in other spheres of life. Thus, the virtues of a soldier will be different to the virtues of a friend, which will be different to the virtues of a parent or teacher. (As opposed to each of these being governed by the same virtues applied in different ways).

This view is typical of a growing school within applied ethics known as "role morality," which suggests that we wear multiple "moral hats" — one for work and one for everywhere else." Earlier I quoted Paul Robinson, who lists prowess, courage, loyalty, and truthfulness as the four key virtues related to military honour. It is interesting that there is no mention of prudence, autonomy, conscience, or empathy amongst the important character traits of the honourable soldier, meaning that the soldier's role as a free-thinking, autonomous agent (as he is in his life outside the military) is undermined. Under such an approach, the virtuous soldier is paradoxically required to separate himself from fundamental human characteristics. This is a growing problem for military personnel today as the competing identities inhabited by military personnel – broadly, their civilian and military identities – conflict with one another in ways that inhibit the personal flourishing of individuals. This problem is described by Paul Berghaus and Nathan Cartagena as "fragmentation."

As social creatures, human beings possess a number of identities [...] Many people struggle to see themselves as a unified person, because they believe that each identity requires them to be a distinctly different person. Throughout a given day, they transition from being one person to another as they move to each new social context.¹⁶³

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¹⁶² Kevin Gibson, 'Contrasting Role Morality and Professional Morality: Implications for Practice', *Journal of Applied Philosophy*, vol. 20, no. 1, 2003, 17-29 at 18.

¹⁶³ Paul T. Bergaus & Nathan L. Cartagena, 'Developing Good Soldiers: the Problem of Fragmentation within the Army', *Journal of Military Ethics*, vol. 12, iss. 4, 2013, 287-303 at 287.

Whilst fragmentation is not a problem that is limited to military personnel, they do seem especially vulnerable to it for at least two reasons. First, because the difference between the military and civilian life is particularly sharp by comparison to, for instance, the difference between a teacher's professional and private life. The difference between professional and private life is particularly severe for military personnel, and for this reason, so too is their transition between personal and professional lives.

Second, military personnel are especially vulnerable to fragmentation because "it is often the case that they identify *predominantly* with their professional moral self." ¹⁶⁴ Thus, instead of seeing himself as, for example, both a parent and a soldier, the soldiering identity may be seen to take priority over one's civilian identities. At worst, this threatens to rupture the individual from his identity as a parent; at best, the two identities pull in different directions. If wellbeing is, in some sense, the univocal end of human behaviour toward which all activity is oriented, we see how fragmentation – which pulls a person in different directions by dividing them into separate, and sometimes contradictory identities – undermines the project of seeking the achievement of a single ultimate end for one's activities.

The virtuous soldier will therefore be one who understands that his deeds help form his identity, and therefore he needs to integrate the military identity with various others in a harmonious manner. Soldiering is a way of life that can either assist in the achievement of human flourishing or be detrimental to it, but it is not separate from the rest of life; the way I soldier will affect the

¹⁶⁴ Berghaus & Cartagena, op cit., 289.

way I act when I am at home. Thus, soldiers ought to understand their conduct at war not only as reflecting their excellence as a soldier, but their moral excellence as a human being.

Susan Martinelli-Fernandez, who argues that a Kantian approach to moral education might be beneficial in the military, argues similarly that "[t]he goal of moral education [...] is not merely to get the agent to follow rules. It is the cultivation of moral agency, an agency that involves one's becoming an independent, right thinking and right acting person." ¹⁶⁵ It is also worth noting that any approach which prioritises codes of conduct in its approach to ethics will interpret the virtues in such a way as favours the code; it will never be virtuous to disobey. This type of approach, which in some ways is necessary for the military to function at the same time undermines the capacity of the soldier to act in "good faith" when faced with serious moral dilemmas. At the same time, however, there is a concern that this approach asks too much of the soldier and ignores the practical reality insofar as not everything that a person does at war is (or can be) compatible with one's home life.

Thus, there is an ongoing debate regarding which of these approaches should be taught to soldiers during their military training. Should they be taught the virtues that will make them good citizens, parents, friends and soldiers?¹⁶⁶ Or

¹⁶⁵ Susan Martinelli-Fernandez, 'Educating Honourable Warriors', *Journal of Military Ethics*, vol. 5, iss. 1, 55-66 at 57.

¹⁶⁶ Although I do not believe it undermines the argument, it is important to note that such an approach may actually make military institutions *less* efficient. As Alexander Mosely notes: "to raise the individual soldier up from an uncritical level to the philosophical realm [...] can lead to a rejection, at any time, of the armed forces demands, commands, and even contract." C.f. Alexander Mosely, 'The Ethical Warrior: A Classical Liberal Approach' in

should they be taught a more restricted approach which emphasises only those virtues necessary to make effective soldiers who adhere to the laws of war? Paul Robinson explores this debate in the introduction to the collected volume *Ethics Education in the Military*.

[F]or some ethics is synonymous with 'morality'. The aim of ethics education, therefore, is seen as being what many refer to as 'character development', in other words the creation of morally upright persons through the instillation of certain key qualities or dispositions of character (commonly known as virtues). Others, however, disagree, and consider ethics to be somewhat distinct from general morality. Instead, ethics are more properly seen as being related to a given profession and its requirements. The focus of ethics education therefore shifts from character development to creating an understanding of the purpose and methods of the profession and the values which underpin it.¹⁶⁷

These two contrasting approaches suggest different approaches to military ethics: the latter limits it to a set of clearly defined and codified rules, where adherence to the rules counts as ethical conduct; whilst the former takes a more holistic approach, apparently believing that moral conduct in the military is synonymous with 'what the virtuous soldier would do,' where it is assumed that a virtuous person will also be a virtuous soldier. Although both these approaches are commonly seen in ethics education, it is clear that one is waxing and the other waning, as Robinson notes, "the predominant principle which most military ethics education programmes have adopted is that of

Paul Robinson, Nigel De Lee & Don Carrick (eds.), *Ethics Education in the Military*, (Cornwall: Ashgate, 2008), 184-185.

¹⁶⁷ Paul Robinson, 'Ethics Education in the Military: Introduction', in Robinson, De Lee & Carrick (eds.), *Ethics Education in the Military, op cit.*, 1.

virtue ethics."¹⁶⁸ However, in the same volume, Don Carrick is sceptical of the practical viability of a virtue ethics approach to military ethics serving as an appropriate normative guide for soldiers. "If the educators want to bring virtue ethics, care ethics and so on in to the pedagogic equation, then they run a serious risk of taking the soldier outside his role and into situations where he does no longer have a reliable moral compass to guide him; he can find himself having to deal with people 'simply' on the basis of common humanity, fellow-feeling and a universal morality."¹⁶⁹

Carrick's fear is that relying on universal, "everyday morality" to govern warfare will generate a kind of 'moral schizophrenia' because soldiering involves deeds that defy everyday morality, such as intentional killing.¹⁷⁰ As such, it is preferable to educate soldiers so that they see the practice of soldiering as a separate moral realm from that of everyday life. As such, Carrick advocates "ring-fencing soldiering within the notion of professional role morality."¹⁷¹

There are serious aretaic concerns regarding Carrick's profession-centric approach to virtue. As Berghaus and Cartagena note, focussing only "on the development of character traits within the professional domain of soldiers' lives [...] fails to help soldiers develop in a holistic manner," and may, in fact, "further the problem of fragmentation."¹⁷² The moral seriousness of

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¹⁶⁸ Robinson, 'Ethics Education in the Military: Introduction', op cit., 5.

¹⁶⁹ Don Carrick, 'The Future of Ethics Education in the Military', in Paul Robinson, Nigel De Lee & Don Carrick (eds.), *Ethics Education in the Military, op cit.*, 197.

¹⁷⁰ Carrick, *op cit.*, 195-196.

¹⁷¹ Ibid., 196.

¹⁷² Berghaus & Cartagena, op cit., 293.

soldiering, which involves committing "the ultimate wrong"¹⁷³ – killing, demands substantial psychological protection for soldiers who are asked to kill.¹⁷⁴ Carrick claims that to avoid this kind of slippage, one must insulate what a soldier does from the rest of his moral life by referencing his professional role; that is, embracing a kind of role morality whereby the virtues are derived entirely from the deontological norms of the profession. This claim sits in direct contrast to Sherman's view that moral schizophrenia is almost inescapable for the modern soldier in large part due to the huge gulf between 'peacetime' and 'wartime' morality, as seen in the earlier discussion of William Quinn.

Carrick's suggestion is that if soldiers are only informed by "everyday morality", and have to "deal with people 'simply' on the basis of common humanity, fellow-feeling and a universal morality," they will be less able to make decisions vital to the successful fulfilment of their role as soldiers. Sherman, realising that what a person *does* actually affects the type of person he is, highlights the reverse: if soldiers are encouraged to think of "soldiering" as entirely separate from other walks of life, there will be inevitable "seepage" where aspects of their soldiering are habituated, or haunt them in the form of guilt in so small part because of the stark difference between the now-separate moral realms of civilian and soldier life.

¹⁷³ Carrick, 'The Future of Ethics Education in the Military, op cit., 195.

¹⁷⁴ By far the finest discussion of the psychological resistance that humans have toward killing and the psychological steps that the military takes to overcome that is Lt. Col. Dave Grossman, *On Killing: the Psychological Cost of Learning to Kill in War and Society* (revised and updated edition), (New York: Black Bay Books, 2009).

It is worth asking on what basis Carrick justifies his claim that if soldiers were to make decisions solely on the basis of a common morality that they would be unable to perform their roles as soldiers well. The argument is as follows:

My concerns can [be] encapsulated in a simple imperative; one fundamental objective of any ethics education programme must be to protect the soldier against the sort of moral schizophrenia that can affect anyone who is brought up on a diet of unqualified moral rules (do not lie, Do not break other people's things, Do not harm, Do not *kill*) but who is then told that he is entirely justified in going out and doing the exact opposite, namely undertaking as much breaking, harming and killing as possible.¹⁷⁵

Besides taking issue with the straw-man claim that soldiers are told to break, harm and kill "as much as possible," we should question why it is the case that developing two distinct sets of rules for two distinct contexts is the ideal way to protect against moral schizophrenia, particularly when Sherman's empirical research suggests otherwise. Might it not be more fruitful to explain to soldiers that, as the classical just war theorists believed, what is morally important is not merely protecting the rights of the innocent, but acting virtuously in war – with charity, courage, prudence, loyalty, etc. – and thus fostering virtues that are equally welcome in home life and war time? This is why Aquinas chose to situate his discussion of war within the virtues rather than within discussions of justice, 176 because he believed that ethical conduct

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¹⁷⁵ Carrick, op cit., 197.

¹⁷⁶ Gregory Reichberg highlights the importance of recognising this to a proper understanding of Aquinas' JWT. See: Gregory M. Reichberg, 'Aquinas' Moral Typology of Peace and War', *The Review of Metaphysics*, vol. 64, 2011, 467-487.

in war requires the same character traits as does ethical conduct in other walks of life.

Martin Cook and Henrik Syse, argue that "[f]irstly and most importantly, military ethics is a species of the genus 'professional ethics'. That is to say, it exists to be of service to professionals who are not themselves specialists in ethics but who have to carry out the tasks entrusted to the profession as honourably and correctly as possible."177 However, Syse and Cook's standard of professional ethics is different from Carrick's role morality model. "The test is fairly simple here: is what's going on [...] the sort of thing that might be helpful in providing real-world guidance for policy-makers, military commanders and leaders, or operational decision-making?" In fact, Cook and Syse at no point suggest that military ethics is reducible to a set of laws, that right conduct in warfare consists only in rule adherence or that soldiers' morality is different from that of the everyday. What they note is simply that military ethics is first and foremost about training ethical practitioners of warfare; any academic endeavour that is not directed to this end "are more marginal, ancillary, or perhaps essentially irrelevant."179 In fact, they speak somewhat disparagingly of military lawyers rehearsing the Laws of Armed Conflict to fulfil their annual training requirements, suggesting that ethical training requires much more than rote-learning the rules. 180

¹⁷⁷ Martin L. Cook & Henrik Syse, 'What Should We Mean By Military Ethics?', *The Journal of Military Ethics*, vol. 9, no. 2, 2010, 119-122 at 119.

¹⁷⁸ Cook & Syse, op cit., 120.

¹⁷⁹ *Ibid*.

¹⁸⁰ Ibid., 119.

Ethical training requires, I suggest (and will argue in much greater depth in the following chapter), the development of virtuous habits within those who will find themselves a part of the theatre of war. Further, it requires that the normative theory by which we evaluate actions conducted in war, JWT, hold a special, central place for virtue so that soldiers, politicians, officers and educators alike recognise that questions of virtue, character and moral psychology are not peripheral issues to military ethics, but sit at the heart of the field. Once this is recognised, it becomes clear that a holistic model of ethical education is required. Accounts that are modelled on mere ruleadherence will be an ethical non-starter, as the entire system is entirely dependent on the rules themselves being morally good ones that can be easily applied across all situations and boundaries. If this is not the case – and given the contingencies of war it is likely not to be – then defining morally good conduct only in association with obeying particular rules or fulfilling particular duties is setting soldiers up for moral failure. Thus, it seems that equipping the soldier with skills or character traits that will allow him or her to adapt morally to the demands of particular situations requires a more comprehensive understanding of ethics than a strictly deontological formulation is able to provide.

Even the further step of aiming to instil *professional* virtues is problematic for the same reason: professional virtues, if they are divorced from a more holistic account of the good life (such as that present in Aquinas' writing), threaten to require a professional to perform actions that he cannot reconcile with his identity, conceived more broadly. As Berghaus & Cartagena note, "[b]y limiting moral aspiration to a context-specific good, professionalism, [professional virtue approaches] actually further the problem of

fragmentation."¹⁸¹ The only model of education that really and seriously deals with the psychological and moral trauma that war threatens to inflict on soldiers is an education that aims to instil virtues and identity that is concurrent between lives at home and at war.

3.3: Shame: Failing to Adhere to the Warrior Ethos

I have already alluded to the fact that an internally developed shame culture¹⁸² such as the warrior culture might be a double-edged sword. In effect, shame systems operate by threatening ostracism to members who fail to conform to standards set by the group. The desire for social acceptance (honour) is a powerful motivator for adherence. However, as I noted earlier, moral philosophers who appeal to honour operate under the premise that the community is more or less correct in its moral evaluations. Thus, it presumes that the "social conscience" of the warrior culture is suitably well-developed to shame things that are morally wrong, and honour things that are morally right.

I have already explored this problem, but a similar problem is that some of that which is honoured or shamed has less to do with showing *moral* approbation/disapprobation, and more to do with expressing affective judgements on a person's character and identity. For example, Australians use

¹⁸¹ Berghaus & Cartagena, op cit., 293.

¹⁸² For an insightful discussion of what constitutes a shame culture, explored through a discussion of Homeric Greece, see E.R. Dodds, 'From Shame-Culture to Guilt-Culture' in *The Greeks and the Irrational*, (Berkeley: University of California Press, 1951).

the pejorative "un-Australian" to refer to anything from ordering low-alcoholic beer, working on a Saturday instead of watching the cricket, refusing to help a friend move house, to parking in a handicapped space without a disability. Not all of these, obviously, are violations of any deep moral principles or reflections of any grave vice. In fact, some (such as ordering low-alcoholic beer) may actually be demonstrations of virtue. The trapping of culture is that it conflates moral judgements with ideas about identity: what it means to be an Australian. The judgement regarding low-alcoholic beer is a product of a gradual misattribution where something non-essential but correlational to identity as something essential: real Australian men drink full-strength beer.

A similar process can take place in the military when contingent, non-essential traits (such as gender) are confused with essential traits (such as courage). The historical fact that most warriors have been male has led to the development of a warrior code that esteems machismo and bravado as aspects of the warrior identity, or perhaps worse, sees only men as capable of achieving military virtues like courage. This is particularly problematic when these socially-inherited beliefs lead to character judgements based not only on non-essential characteristics, but also on factual confusion. Indeed, Amelie Rorty expresses this precise concern regarding overly-martial conceptions of the virtue of courage generally. We have inherited, Rorty argues, a history of the transformations of courage across various ages and different manifestations, and have not fully separated the virtue itself from the contexts in which it is often witnessed, described, or practised (such as war). Similarly, I argue that

¹⁸³ Amelie Rorty, 'The Two Faces of Courage', *Philosophy*, vol. 61, no. 236, 1986, 151-171.

we risk inheriting views on which *deeds* or *people* tend to demonstrate courage rather than focussing on the virtue itself.

For instance, Clark C. Barrett explains how in combat situations, the amygdala takes control of the brain and "complex motor skills diminish. Tunnel vision, loss of depth perception, and restricted hearing follow. Loss of bowel and bladder control is inevitable". 184 It is important that all soldiers be made aware of what will happen in combat to avoid misattribution of cowardice or incompetence when the symptoms arise.

Most soldiers are unaware of what will occur to them, physiologically, in combat. The autonomic nervous system is in control, and unprepared soldiers have no ability to change their reaction. In pop culture, there is a connection between cowardice and losing bowel or bladder control; but of course, there is no such real connection in combat. 185

Thus, soldiers experiencing a perfectly natural response to combat can be stigmatised by a mistaken attribution of cowardice. Colloquial expressions of fear like "I shat myself," or "I pissed my pants" actually reflect real experiences in combat and ought not to be treated as reflective of a person's character, personal courage, or suitability as a soldier. Soldiers, Barrett argues, "need to understand that everyone reacts differently to the stress of close

¹⁸⁵ *Ibid*.

¹⁸⁴ Clark C. Barrett, 'Unarmed and Dangerous: The Holistic Preparation of Soldiers for Combat', Ethical Human Psychology and Psychiatry, vol. 13, no. 2, 2011, 95-114 at 100.

combat,"¹⁸⁶ or else they risk stigmatising natural reactions to events, resulting in warriors who struggle to identify themselves as such – 'I wet my pants in battle, but only cowards do that; warriors are not cowardly, so I must not be suited to being a warrior.' Shame and stigma can fracture a warrior's identity as such, especially if that warrior is new to combat (and, given that "trained soldiers […] cope better with physiological changes,"¹⁸⁷ new warriors are more likely to lose control of the autonomic system). 'Warrior identity' is a concept that is difficult to pin down, and is subject to the particular values of the majority over time. The use of shame and honour in warrior communities, therefore, can be utilised to achieve great things, but can also be used to monopolise identity in a way that is unproductive.

I do believe, however, that the warrior code can be a source of motivation for moral conduct if that code limits itself to stipulating what is essential to being a *virtuous* soldier. If what is honoured are acts of courage, charity, justice, and so forth, then the warrior code can utilise the individual soldier's desire for honour for just ends. However, there is also reason for caution in identifying precisely who should be held to this standard, and who should not. Are all members of the military soldiers, or only front line personnel? This debate is of growing relevance given the increasingly common use of non-traditional military personnel, such as drone pilots, who experience no real risk in carrying out their wars, and are thus distanced in several ways from the realities of combat. This is a growing question for military ethics as interest and pressure grows to reduce the physical risk of soldiers during war by increasing the use of drones, developing cyber-weapons to allow war to be

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¹⁸⁶ *Ibid*.

¹⁸⁷ Ibid., 120

fought by cyber-warriors, and eventually making use of autonomous robots to fight wars instead of physical soldiers.

Should such "non-risk soldiers" be considered soldiers governed by the warrior code? To answer this question, I consider the case of drone pilots – about which the most scholarly literature has been developed – in the hope that many of my findings will be representative of all non-risk warfare Mark Coeckelbergh opines that "there seems to be something cowardly and unfair about remote killing." Cowardice seems to be the central aretaic question regarding non-risk, distance fighting and the morality of those professions. Thus, we begin by asking whether, given that there is no risk involved, drone pilots can be considered soldiers?

I believe not. Warriors undertake risk not only because of courage, but because being an excellent warrior entails nonmoral virtues of excellence, which means proving one's excellence as a warrior requires testing one's skills against the enemy. As Christian Enemark notes, "war necessarily involves some kind of contest." Enemark suggests that the very legitimacy of killing relies on the presence of a contest: "opposing combatants' equal right to kill in war is founded on the assumption of mutual risk." That is, killing which is no contest cannot avail itself to the justifications available to traditional soldiers (nor, I would add, can it be an instantiation of martial excellence).

¹⁸⁸ Mark Coeckelberg, 'Drones, information technology, and distance: mapping the moral epistemology of remote fighting', *Ethics and Information Technology*, vol. 15, 2013, 87-98 at 92. ¹⁸⁹ Christian Enemark, *Armed Drones and the Ethics of War: Military virtue in a post-heroic age*, (Landam Boutledge, 2014), 77.

⁽London: Routledge, 2014), 77.

¹⁹⁰ *Ibid*.

However, the view that what gives enemy combatants' the right to kill each other is mutual risk is a different one to that which I defended in the last chapter; namely, that what makes any action unjust, killing included, is the intentional violation of rights. War is not a contractual relationship of equality, it is the rightful defense of those who the virtues of justice and charity demand be defended. Thus, the question is, does non-contested war intentionally violate any rights?

G.E.M. Anscombe argued that "[t]he present-day conception of "aggression," like so many strongly influential conceptions, is a bad one. Why *must* it be wrong to strike the first blow in a struggle? The only question is, who is in the right." ¹⁹¹ If the ultimate question concerns the justice of war then it seems to matter little whether or not the war is a contest or not. Wars on which one side possesses overwhelming military superiority (what David Rodin calls "unequal wars") ¹⁹² are not, *a priori*, problematic, so long as the more powerful side are restrained by the principles of just war, and do no more than is necessary. What is problematic about non-contested war is that it provides no opportunity to practise the moral virtues, or the nonmoral excellences of the soldier. (There are also contingent questions regarding drone warfare such as whether it violates prohibitions on intentional killing, but these are a matter for another work.)

¹⁹¹ Elizabeth Anscombe, 'War and Murder', in G.E.M. Anscombe, 'War and Murder', in Richard A. Wasserstrom, *War and Morality*, (California: Wadsworth Publishing Co., 1970), 43-44.

¹⁹² David Rodin, 'The Ethics of Asymmetric War', in Richard Sorabji & David Rodin (eds.), The Ethics of War: Shared Problems in Different Traditions, (Aldershot: Ashgate, 2006), 155.

It is clear that drone pilots engage in risk-free killing, and for this reason Enemark suggests that their profession "challenges traditional notions [...] of what it means to be a combatant or 'warrior' within the military profession."193 Enemark describes drone pilots as "disembodied warriors," 194 with the focus on disembodiment, not warrior status. Disembodiment entails an inability to fear for one's own personal safety; an inability to practise what Enemark describes as "physical courage" (courage when one's life is at risk). 195 Thus, disembodied warriors are never able to practise or prove their physical excellences in life-or-death situations; in fact, given that their targets are vetted in advance and their superior officers able to directly monitor their exact conduct during missions, there is very little opportunity for drone pilots to demonstrate any autonomy at all. They are, to return to Augustine's fourth century notion, "an instrument, a sword in [their] user's hand." ¹⁹⁶ In this sense, the idea that drone pilots are soldiers, who kill and risk being killed with a sense of justice, charity, and courage vanishes: drone pilots are not acting as soldiers; in fact, they are hardly acting as autonomous moral agents. Given this, it is difficult to see how the drone pilot could achieve any moral excellence, let alone the excellences of the soldier, for whom excellence

¹⁹³ Enemark, Armed Drones and the Ethics of War, op cit., 77.

¹⁹⁴ *Ibid.*, 86.

¹⁹⁵ *Ibid.*, 80. I am unconvinced as to whether this is actually a different species of courage to what Enemark calls "moral courage." Physical courage is exercised against physical risk, whilst moral courage, it seems, is practised where one's physical security is not at stake, for example, "having the courage to speak out against perceived injustice." (80) However, all physical courage is surely moral in that one accepts the risk of physical injury *because* of a perceived injustice. What is perhaps different is that to practise physical courage one has to overcome physical impulses (such as the autonomic system described earlier). However, I do not think this constitutes a difference in species as Enemark suggests. Aquinas argues that "it belongs to the virtue of fortitude to remove any obstacle that withdraws the will from following the reason." (*ST*, II-II, Q. 123, Art. 3). It seems not to matter what the obstacle is, although, of course, the larger the obstacle, the more courage is required, which means physical courage might be a more perfect instantiation of courage (thus Aquinas says that fortitude is ultimately concerned with fear of death (II-II, Q. 123, Art. 4)), but this is a question of differing degrees, not species.

¹⁹⁶ Augustine trans. Henry Bettenson, City of God, (Victoria: Penguin Books, 2003), 1.21.

involves both moral virtues and nonmoral skills practised in contested environments.

The tragedy is that although they are treated as such, drone pilots are *not* merely instruments in the hands of their superiors. They are people. As such, the moral gravity of killing bears on their consciences, they feel acutely the seriousness of what it is that they are doing, but without having the same validation available to warriors. At the very least, regardless of the justice of his mission or war, when a soldier kills an enemy, he can reconcile his action through the framework of self-defence. This psychological assurance is not available to the drone pilot. He is no warrior. He lives within the military culture, but not within the warrior code. Although there is good reason to expect drones owned and flown by the military to be used on the battlefield during a live fight, those drones run by intelligence groups are more often used for covert and isolated strikes in which drone pilots are also not able to justify killing through defending fellow soldiers.

It is unsurprising, then, that despite undertaking no risk, drone pilots report the same rates of PTSD (or perhaps, more accurately, moral injury, given PTSD is a fear for one's safety) as pilots of manned aircraft. ¹⁹⁷ Drone pilots not only kill their targets, but they observe them for weeks beforehand, coming to know their targets habits, families, and communities. That is, *they are able to see their targets as persons*. As Coeckelbergh notes, "[p]ilots may recall images of the people they killed [...] of the person who first played with his children and was then killed." ¹⁹⁸ Drone pilots appear to consider themselves morally

¹⁹⁷ C.f. Jean L. Otto & Bryant J. Webber, 'Mental Health Diagnoses and Counseling Among Pilots of Remotely Piloted Aircraft in the United States Air Force', Medical Surveillance Monthly Reports, vol. 20, no. 3, 2013, 3-8.

¹⁹⁸ Coeckelberg, op cit., 96.

responsible – at least in a sense – for those who they kill. Despite being an instrument in the hands of superiors, it is the *pilot* who does the killing.

Here, there is a double-think about responsibility. Either drone pilots are responsible, in which case they need to be afforded autonomy in the way in which they carry out their professions, or they are not, in which case they are not the ones who kill. If drone-based killing is to be justified, drone pilots need to be made aware that the justifications for it are manifestly different to those available to front-line soldiers. Just because drone pilots serve the military does not make them soldiers, and does not avail them to the kind of justifications for killing that soldiers possess. A new moral framework is necessary to explain how (if at all) unmanned, risk-free killing can be justifiable, lest more drone pilots become wracked with the guilt of unjustified killings. Much of this guilt may stem from misidentifying drone pilots as warriors. They are not. Better would be the emergence of a new honour code available to "disembodied warriors" (such as drone pilots and "cyber warriors") which emphasises different moral virtues and nonmoral excellences, and, in the case of drone pilots, explains how their killings can be justified. If this cannot be done, the practice of armed drones should be abandoned altogether.

Earlier I explored the way in which soldiers ought to be informed by, and see themselves as part of, the variety of different honour worlds in which they inhabit. The distance between the honour worlds of war and peace, for example, seems extremely problematic for the wellbeing of soldiers, as well as for their conduct in war. Drone pilots, however, are a species of warfighter who can be off at war in the morning, and home in time for dinner. They are part of the military establishment with all its disciplines, regulations, history, traditions and codes, but are at the same time something altogether different to the frontline soldier. Enemark explores this dilemma, suggesting that the mixture of the military and home worlds is confusing, paradoxical, "and potentially damaging to the military profession of which they are supposedly a part.¹⁹⁹

It could also, I would add, be damaging to the pilots themselves. It is not beyond imagining a drone pilot performing a strike that kills a major terrorist leader, and hours later be mowing the lawn, washing the dishes or helping his children with their maths homework. The traditional warrior code clearly does not apply to these people. Enemark suggests describing them as disembodied warriors, but in our more cynical moments, we might also call them "bureaucratic warriors" for whom no real virtue is required. Regardless of whether or not this is the case, drone pilots are suffering psychologically for the killings they commit. Although he accepts no physical risk, the drone pilot appears to be at even greater risk of fragmentation than does the conventional soldier. Perhaps part of this is that drone pilots do not fit into either honour world: peace or war. Because they never fully leave either world, they do not encounter "re-entry" issues, so to speak, but still their military and home lives are an ill fit. They are perfect candidates for the moral schizophrenia I explored in the last section. Whether or not their practice is just, drone pilots'

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¹⁹⁹ Christian Enemark, 'The end of courage? How drones are undermining military virtue', *ABC Religion and Ethics*, 24th April, 2013,

http://www.abc.net.au/religion/articles/2013/04/24/3744693.htm.

involvement in war makes them vulnerable to the kind of psychological scarring that can shatter wellbeing.

4: Conclusion

This chapter focussed on the aretaic notion of wellbeing – flourishing – and the ways in which war can be detrimental to that project. Importantly, it is not possible to fully separate flourishing from virtue, as the flourishing life is, in part, a life of virtue. I began by considering two different aretaic models of military ethics, Nancy Sherman's neo-Stoicism and Shannon E. French's warrior code, with regard to preventing the commission of atrocities. Whilst both capture important elements of this project, an approach that seeks to integrate the honour worlds of "everyday morality" and the military world of honour promises to foster virtue and guard against moral transgression in a more comprehensive manner than either of the above approaches. Offering mechanisms for reducing the rate and likelihood of moral transgression is vitally important because of the huge psychological damage caused by PTSD and moral injury.

Moral injury and PTSD appear to be, at least phenomenologically, separate conditions. The former is the experience of oneself as self-judge, whilst the latter is an experience of victimhood and vulnerability. From an aretaic perspective, I believe that moral injury can be more devastating, particularly when it results from viewing oneself as perpetrator, because it involves a changed perception of self as undeserving of happiness. As such, treatments

and preventive methods are vital and, insofar as moral injury is a partly *moral* problem, the intervention will be in part moral too. Borrowing from Jonathan Shay, I argued that the "trauma narrative" is a vital way to help soldiers reconcile their experiences with their non-warrior identities, but that such narrative requires specific "therapeutic virtues" on the part of the audience of such narrative. In the case of those who have perceived themselves to have committed some wrong during their time at war, this must be complimented by a kind of purification ritual. Importantly, both these processes must gain the esteem of the warrior culture in order to have traction and ensure soldiers actually participate in them genuinely. In the case of those who have genuinely committed an atrocity, it is vital for the wellbeing of the warrior that he be punished for his crime – even if the punishment is very minor - otherwise, he will punish himself in ways that will be much more detrimental.

I took time to specifically refute the approach to military ethics known as role morality. This approach undermines the integration of different honour worlds that I sought in the first section. It suggests that what soldiers do in one role is morally incompatible with other social roles soldiers inhabit. As such, it threatens to undermine the kind of integration of one's actions that trauma narratives seek. Ironically, although role morality is framed as a way of preventing "moral schizophrenia," it seems a perfect candidate for generating exactly that.

Finally, I returned to the notion of shame which is so central to honour systems like the warrior code, arguing that it can be a double-edged sword. First, because it is possible for warriors to be shamed for personality traits that are

non-essential to the task of soldiering, or for misattributions that emerge over time (such as overtly masculine traits, bravado, or control over one's autonomic system). Where shame is useful is in encouraging adherence to strictly moral behaviours: the virtues. It is also important to identify exactly who is part of the warrior culture and who is not, for in the case of drone pilots, who I argue exist outside the moral community, it can be extremely harmful for them to seek justification for their killings from the warrior code, given that it does not apply to drone pilots because they fight in a risk-free manner. Better would be the development of a new code of honour for "disembodied warriors" to which those pilots could turn for a sense of honour and meaning for their profession.

Bringing civilian values and roles to bear on the development and enforcement of warrior codes is one way of ensuring that warriors are able to maintain their commitments in the various honour worlds in which they abide. This is especially pertinent in cases where the "warriors" – such as drone pilots – are no longer fighting in a theatre of war, but might traverse the honour worlds of warrior and family member in the same day. In these cases, empathy – which Sherman prizes so highly - becomes one of *many* values that traverses different honour worlds. Fathers and soldiers both need to be empathetic, and one is honoured for being empathetic. However, one is also honoured for issuing punishment where necessary, on one's children or the enemy; on obeying laws that bear on them, whether road traffic laws or laws of armed conflict; for being slow to anger, but showing anger when appropriate, and so on. This approach emphasises the moral *virtues* instead of focusing on particular *values* which might be limited to a particular honour world.

Chapter Five

Virtue in Waging War

My thesis has advanced three claims. The first is the historical claim that, although JWT originally considered both deontic and aretaic notions as within its scope, it came to emphasise the deontological aspects above the aretaic as it became increasingly concerned with the legal governance of war and international relations. Secondly, that there is a logical connection between deontological and aretaic values within moral philosophy via the concepts of motive and intention, and that incorporating the aretaic allows for a more robust account of wartime ethics. Thirdly, that re-introducing aretaic notions to JWT allows the theory to encompass a broader range of different moral issues, such as the growing distance between soldiers' roles at home and at war, PTSD, and moral injury.

The previous chapter in particular focussed on showing how, if just war theorists were to take an interest in the aretaic (especially aretaic consequences of deontological transgressions), problems of moral psychology and the normative identity of the soldier could be more easily addressed from within JWT. In what follows, I illustrate how interest in the moral virtues can be brought to bear on more traditional questions of JWT such as when there may be a resort to war, how soldiers ought to act, what strategies are morally permissible, and so on. In this chapter I show why the presence of virtues

within just war decision-makers yields desirable results for the military. First, the virtues assist in *adherence*. The presence of virtues within individuals makes it more likely that they will adhere to the responsibilities that their professional duties impose – the minimum standards of their profession. Secondly, the virtues offer the possibility of professional *excellence*. People of virtue are more likely to characterise the ideal standards of excellence for their professions, acting well not only when it is professionally necessary, but whenever they determine it right to do so.

In making this argument, I also demonstrate the interplay between deontological and aretaic norms within military ethics. It is my position that deontological norms determine the minimum requirements of justice which must be met in order for a particular action to be morally good. Thus, the professional duties and responsibilities of military practitioners are deontologically formulated. However, for individuals to act in accord with those professional responsibilities may at times require particular dispositions of character: virtues. This, we saw in the previous chapter, is especially true in times when situational factors make adherence to moral principles difficult. The virtues will therefore be necessary to compel individuals to actually conform to the deontological standards they are bound to when it appears most difficult to do so.

¹ The importance of situational factors in aretaic ethics is discussed by Robert F. Card, who notes how findings from social psychology reveal that character is not the sole determinant in a person's (un)ethical conduct. See: Robert F. Card, 'Pure Aretaic Ethics and Character', *The Journal of Value Inquiry*, vol. 38, 2004, 473-484.

However, the virtues go beyond assisting in adherence; they also encourage individuals to do more than what their professional duties require of them. A person who has characterised the virtues will not only act well when it is necessary or required of him, he will act well because *acting well is who he is*. The virtues, then, enable military practitioners to go 'above and beyond the call of duty,' that is, to perform deeds that are supererogatory. So, although all morally good professionals require the virtues, the *degree* to which they possess them will determine how likely they are to do more than what their professional duties stipulate.

In this chapter I consider the three central wartime professions: (i) the soldier who fights the war; (ii) the military commander who oversees the manner in which the war is fought; and (iii) the political leader who declares war and determines the overall purposes for which the war is fought. In each section I identify particular professional duties and demonstrate how particular virtues are necessary in order for a person to conform to those duties. Where appropriate, I go further, showing how a fuller characterisation of the virtue could compel an individual toward morally excellent, supererogatory behaviour.

1: Soldiers

The word "professionalism" has become popular amongst discussions of the ethical values and conduct of soldiers.² Asa Kasher argues that professionalism implies a commitment to five different components of a profession: knowledge, skill, improvement, understanding, and ethics,³ but it is the fifth, ethics, which is most often the focus in discussions of professionalism, as evidenced by the inclusion of "professionalism" as a chief value of several military forces around the world.⁴ In this sense, professionalism involves adherence to the "rules of proper behaviour of a professional as such, according to the values of the professional field."⁵ Importantly, Kasher adds, "[a] correct understanding of the essence of the profession is the basic content of professional ethics."⁶ This means that however a profession is defined will dramatically influence the manner in which professional ethics are conceived.

² Some examples include: Martin Cook, 'The Normative Dimensions of Military Professionalism' in *Moral Warrior: Ethics and Service in the US Military*, (New York: State University of New York Press, 2004), 55-78; Stephen Coleman, 'Professional Ethics, Duties, and Obligations' in *Military Ethics: An Introduction with Case Studies*, (Oxford: Oxford University Press, 2013), 32-58; Asa Kasher, 'Teaching and Training Military Ethics: An Israeli Approach' in Paul Robinson, Nigel De Lee and Don Carrick (eds.), *Ethics Education in the Military*, (Cornwall: Ashgate, 2008), 133-145 and 'Public Trust in a Military Force', *Journal of Military Ethics*, vol. 2, iss. 1, 2003, 20-45; Rebecca J. Johnson, 'Maintaining Discipline in Detainee Operations: Avoiding the Slippery Slope to Abuse', *Journal of Military Ethics*, vol. 11, iss. 4, 2012, 360-362.

³ Asa Kasher, 'Public Trust in a Military Force,' op cit., 23-24.

⁴ Paul Robinson, 'Introduction: Ethics Education in the Military', Paul Robinson, Nigel De Lee and Don Carrick (eds.), *Ethics Education in the Military*, (Cornwall: Ashgate, 2008), 7.

⁵ Asa Kasher, 'Public Trust in a Military Force', op cit., 24.

⁶ Ibid.

However a profession is defined, a constitutive element of that profession will inevitably be the duties and responsibilities that a professional commits to when he joins the profession. Some are likely to see these duties as the defining attributes of the profession, and the limits of their responsibilities as professionals: "if the duties of soldiering are *X*, *Y*, and *Z*, then the definition of a soldier is someone who does *X*, *Y*, and *Z*." Another way of defining professionalism would be to consider the *purpose* for which the profession exists, and professional duties as necessary aspects of fulfilling that purpose. This latter account, however, is likely to commit to professional duties only insofar as they advance the ultimate purpose of the profession, and is therefore more likely to advance the purpose of the profession even where there exists no professional responsibility to do so. In this section, I argue that this latter account of professionalism is the one that tends to characterise excellent professionals, whilst professionals who see their duties as definitive of their profession are likely to be competent, but unlikely to excel.

Serving either one's professional duties or the purpose of one's profession requires the habituation of particular character traits in order to be able to do what is morally required. In the case of soldiering, the virtues that are most important in order to adhere to one's duties, or to excel them, are (i) prudence – the ability to choose well between the moral claims of competing paths of action, and (ii) courage – the ability to do what is right despite the difficulties that might present.

1.1: Prudence

In a letter to his troops regarding the US military's position against the use of torture, former US General David Petraeus urged his soldiers to avoid the illegal practice. Petraeus' letter was written in part out of a perceived need to "retain [the military's] integrity," and his tone suggests a concern about the very character of the military, speaking of the "values and standards that make us who we are." However, his letter was also aimed at explaining to his troops that torture is both illegal and ineffective. He encourages soldiers to remember that new evidence indicates that humane methods of collecting human intelligence have proved effective. There is, therefore, no need to torture. Petraeus' choice of words, categorising torture as illegal rather than, for example, inhumane, immoral, or wrongful, is significant here. It indicates a belief that soldiers are required to obey the laws set out before them: if something is illegal, this should be sufficient for a soldier to restrain from doing it. They do not need to be told why, it is sufficient that they are told. Professional soldiers obey orders.

In his reflections on his experiences in World War II, American philosopher J. Glenn Gray described the way in which fellow soldiers deferred to superior orders and shirked responsibility for their actions as being "like escaping one's own shadow." Unquestioning, unreflecting obedience of this nature was,

⁷ David H. Patreus letter dated 10th May, 2007, APO AE 09342-1400,

 $<\!\!\!\text{http://www.washingtonpost.com/wp-srv/nation/documents/petraeus_values_051007.pdf}\!\!>\!.$

⁹ J. Glenn Gray, *The Warriors: Reflections on Men in Battle*, (Lincoln: University of Nebraska Press, 1970) 181.

Gray contends, a denial of the reality that every person is autonomous and able to choose his own path of action. In light of this, there appears to be a tension between the contention that soldiers have a duty to obey and the belief that prudence – the virtue that helps people perfect their habits of moral determination – is a desirable trait in soldiers, which I and other theorists have contended. How can soldiers who are expected to defer their decision-making to others simultaneously act prudently in making decisions? This discussion will show that it is *only* the prudent soldier who is able to be obedient in the manner that his professional duty requires because it is prudence that enables a soldier to determine *when* and *whether* he should defer his responsibility for moral decision-making to another.

1.1.1: The Prudent Soldier and the Cause for War

In one of the early exhortations on the duty of soldiers to obey orders, di Vitoria argued that "if the war seems patently unjust to the subject, he must not fight, even if he is ordered to do so by the prince." However, Vitoria is quick to note, "lesser subjects who are not invited to be heard in the councils of the prince nor in public council are not required to examine the causes of war, but may lawfully go to war trusting the judgement of their superiors." In a modern context, this argument can be taken to imply that if a soldier,

¹⁰ C.f. Gregory Reichberg, 'Thomas Aquinas on Military Prudence', *Journal of Military Ethics*, vol. 9, iss. 3, 2010, 262-275; Henry Hude, 'Reshaping the Ethical Training of Future French Commissioned Officers' in Robinson, de Lee & Carrick, *Ethics Education in the Military*, op. cit., 118.

¹¹ Francisco di Vitoria, *On the Law of War* in Anthony Pagden and Jeremy Lawrance (eds.), *Vitoria: Political Writings*, (Cambridge: Cambridge University Press, 1991), Q. 2, Sec. 22. ¹² *Ibid.*, Q. 2, Sec. 25.

through some unique information or conscientious judgement genuinely believes a cause to be unjust, he may not permissibly fight in the war. However, he is not obligated to undertake such conscientious reflection unless prompted by his conscience, special information he possesses, or something else. This is to say that it is not a basic duty of soldiers to reflect on the justice of their cause. As Bates, an ordinary soldier in Shakespeare's *Henry V* notes, "we know enough if we know we are the King's subjects. If his cause be wrong, our obedience to the King wipes the crime of it out of us."¹³

In response, McMahan argues that soldiers could only have a duty to "defer to the epistemic authority of the government," ¹⁴ saying that "there must be good reason for them to believe that the government, or the relevant governmental institutions, are actually fulfilling the task of scrupulously evaluating potential wars as just or unjust." ¹⁵ If such reasons were available, McMahan contends, a "division of moral labour" which liberated soldiers from moral evaluation of cause would be justifiable. ¹⁶ This is, however, not the case – at least in the United States – according to McMahan: "[t]here are no institutional or procedural mechanisms that ensure that moral considerations are even taken into account, much less taken seriously, in decisions concerning resort to war." ¹⁷ The reality of modern day political institutions lends no faith, McMahan contends, to soldiers who would seek to outsource some of their moral and cognitive burdens to others. Were the government suitably well-disposed, "it would be rational and perhaps morally required for soldiers to

¹³ William Shakespeare, *Henry V*, Act 4, Scene 1, 129-132 in John Jowett, William Montgomery, Gary Taylor and Stanley Wells (eds.), *The Oxford Shakespeare: The Complete Works* (2nd ed.), (Oxford: Clarendon Press, 2005).

¹⁴ Jeff McMahan, Killing in War, (Oxford: Clarendon Press, 2009), 66.

¹⁵ *Ibid.*, 67.

¹⁶ Ibid., 68-70.

¹⁷ Ibid., 69.

subordinate their own moral judgement to that of the government [...] But there are no countries of this sort now."¹⁸

Here we are faced with two competing accounts of whether the prudent soldier will defer his moral decision-making to the political leadership and simply obey his leaders' determination regarding the war. However, I believe the two accounts (which I take as representative of a more general distinction in the academic literature) are less disparate than is contended. Vitoria, for instance, stipulated that "there may nevertheless be arguments and proofs of the injustice of war so powerful, that even citizens and subjects of the lower class may not use ignorance as an excuse." One argument that might be sufficiently powerful would be evidence that the government has no interest in seriously considering the justice of the wars they fight. David Estlund explores this question in relation to Nazi Germany; specifically, in response to Michael Walzer's exoneration of Ernst Rommel on the basis that he did not violate *in bello* principles:20

In Nazi Germany I would hold at least some soldiers responsible for their abdication of a responsibility to ask whether justice is being duly looked after. They knew, or should have known, that Hitler's aggression was without justification. Insofar as they had an acceptable alternative they should have refused to fight and done what they could to obstruct the German effort. Soldiers lower down in the chain of command also have a responsibility to ask themselves whether justice is being looked after, but it will sometimes be much harder for

¹⁸ *Ibid.*, 70.

¹⁹ Francisco di Vitoria, On the Law of War, op cit., Q. 2, Sec. 26.

²⁰ C.f. Michael Walzer, *Just and Unjust Wars* (4th edition), (New York: Basic Books, 2006), 37-41.

them to make this determination. Moreover, they are more likely than generals to be without an acceptable alternative to obeying. How much blame is reasonable in their case is, for these reasons, often less clear. This does not mean that they are not to blame; I believe that they often are when they know or should know that the war is without justification, fought on a pretext, or based entirely on lies.²¹

What is important to note here is that the point of conjecture is not, in fact, whether or not soldiers can justifiably fight in *any* war, regardless of how evident the (in)justice of the cause, but whether as a matter of empirical fact current soldiers would be prudent to trust in politicians to be making moral decisions about the wars they are fighting in. There is consensus that soldiers ought not to fight in wars that they *know* to be unjust, and that they ought only to trust governments that have demonstrated a commitment to justice. What is contested is whether or not today's governments tend to fulfil their obligations to deliberate the justice of their causes. However, given that the soldier is, in many senses a representative of the government and its people, it does not seem reasonable for soldiers to be duty-bound to doubt their government's commitment to justice. Thus, we can also assume that soldiers' professional duties of obedience include requiring them to give governments a "presumption of good moral character" that must be *dis*proved before a soldier becomes professionally bound to question commands to go to war.

Note, however, that the professional duties to (i) refuse patently unjust orders and (ii) defer to the moral authority of the government except in cases where

²¹ David Estlund, 'On Following Orders in an Unjust War', *Journal of Political Philosophy*, vol. 15, iss. 2, 2007, 213-234 at 226.

the government has eroded its own moral authority each require that soldiers possess a level of moral awareness and evaluative prowess. If soldiers are unable to analyse the actions of their government – in particular, unpopular or widely criticised actions – for themselves to determine whether this government is one worth obeying, they cannot know what to do with the next order they receive. Thus, to fulfil their professional duties, soldiers must be able to prudently evaluate the state of affairs to determine whether to trust a government or not.

In the case of obedience, I do not believe it makes sense to describe a supererogatory level of prudence for the following reason. If, as I have contended, excellent professionals are in part characterised by a commitment to the *purposes* of their profession, then excellent soldiers will be committed to the efficient running of the military. As di Vitoria noted, it would be "inexpedient" for every soldier to make decisions for himself regarding which orders to obey, and which not to. The military chain of command is meant, in principle, to allow the most qualified people to make decisions with regard to operations. For subordinates to question those orders is not merely a challenge to the order itself, but to the expertise of the person giving the order. More importantly, however, it threatens to undermine the efficient functioning of the military.

Obedience in the military is of instrumental value. It serves to expedite the process of mobilising soldiers and waging war, and it is morally important

²² Francisco di Vitoria, On the Law of War, op cit., Q. 2, Sec. 25.

that the military be efficient because its task, the defence of the state, the innocent, and the common good, is morally serious. As McMahan notes:

Military institutions have to be able to react quickly and efficiently in moments of crisis. Because of this, they are organized hierarchically with a rigid chain of command, Success or failure, which can make the difference between life and death for a great many people, may depend on whether those lower in the chain immediately and unhesitatingly obey the orders they receive from above.²³

Thus, morally excellent soldiers are unlikely to embark on any more evaluation than professionally competent soldiers. As Ward Thomas notes, soldiers are "quite justifiably, likely to place more weight upon those principles and values that go to the essence of their vocation, including deference to political authorities and the virtue of obeying those authorities." What is required, as a matter of professional duty, is that soldiers be prudent and self-aware in their delegation of moral decision-making to their political leaders. The deference to the judgement of others must be an exercise in reflection, not in (to borrow from Gray) escaping one's own shadow. For this reason, it is acceptable that occasionally soldiers are obedient in cases where the cause was unjust. Because their commitment to other goods, such as the efficient functioning of the military, coupled with the lack of compelling reasons not to trust the government, their misplaced trust is still morally justifiable and consistent with prudence. As Estlund argues:

²³ Jeff McMahan, Killing in War, op cit., 71.

²⁴ Ward Thomas, 'Unjust War and the Catholic Soldier', *Journal of Religious Ethics*, vol. 35, no. 3, 2007, 509- 525 at 518.

If an order to go to war or an order to fight in a certain way is *not even close* to what would be just if the facts were as the authority states them to be, or if the stated view of the justifying facts is not even close to a reasonable conclusion based on the appropriate materials, the soldier is not obligated (and probably not permitted) to carry out the order.²⁵

In this section I established that the professional duty of soldiers does not require them to be blindly obedient to the political leadership. Rather, it requires that they be obedient insofar as that obedience serves the goals of the military profession, which include only fighting in just wars. Thus, as a matter of professional duty, soldiers require the virtue of prudence in order to avoid being involved in patently unjust wars. However, this is not the end of prudence's value to soldiers. Even in just wars, soldiers require prudence in order to evaluate the commands issued to them by their military commanders, and it is to this question that I now turn.

1.1.2: The Prudent Soldier and the Conduct of War

As was also the case in *ad bellum* evaluations, although soldiers have a duty to obey reasonable commands, they also have a duty not to afford trust where it has been proved to be unwarranted. Similarly, it would be a violation of a soldier's professional duty were he to continue to unquestioningly obey a commander who had repeatedly issued orders to fire on noncombatants, for instance. In the case of the cause for war I argued that even if, on occasion, a

²⁵ David Estlund, op. cit., 230. Emphasis added.

soldier's obedience meant that he fought in an unjust war, this would not be inconsistent with either prudence or his professional duties. However, it remains to be seen if the same can be said for obedience to *in bello* commands. If a soldier obeys an order from his commander which, as it turns out, results in his killing noncombatants, is he similarly free from moral responsibility?

Of course, like in *ad bellum* cases, soldiers are duty-bound to refuse any obviously immoral order. If a soldier knows an order to be a violation of deontological norms, duties of professionalism stipulate that he ought to refuse that order. However, this has not always been the case. Throughout history there have been instances in which unwavering and unquestioning obedience was seen as a professional duty of soldiers, in particular during the Elizabethan era²⁶ and amongst the Southern States of America during the Civil War. Paul Robinson cites a letter written by Confederate soldier John Hooper, who states that "the good soldier never stops to inquire whether [an] order is right or wrong."²⁷ However, from what was established with regard to *ad bellum*, it seems that soldiers *must* inquire at the very least into the rightfulness of seemingly illegal or immoral commands, especially if they are given by a commander of ill repute.

However, there are noteworthy differences between a soldier's ability to refuse to go to war and a soldier's ability to refuse an order within war. On the one hand, it appears clear that *in bello* commands will require a much more

²⁶ Paul Robinson, Military Honour and the Conduct of War: From Ancient Greece to Iraq, (New York: Routledge, 2006), 87-88.

²⁷ Southern Historical Collection, John Hooper Letters, Letter dated 28th May 1864 in Paul Robinson, *Military Honour and the Conduct of War: From Ancient Greece to Iraq*, 115.

immediate response, and relevant information may be much less readily available than in *ad bellum* matters regarding cause, indicating that soldiers ought to be more trusting. On the other hand, because soldiers are on the ground, they are able to witness first-hand the realities of what they are being ordered to do, and evaluate the evidence in the moment. For instance, in a premission briefing a soldier might be told that a particular sector contains only insurgents who are legitimate targets, but if he gets to the sector and sees groups of children, he has cause to question the order. As Walzer notes, "[s]oldiers can never be transformed into mere instruments of war [...] Trained to obey "without hesitation," they remain nevertheless capable of hesitating." Thus, it appears that soldiers may be both better and worse equipped to refuse an order *in bello* than they are *ad bellum*. The question for us to explore is what the professional duties of the soldier are in these cases, and whether prudence is necessary to assist in adhering to those duties.

It is easier to answer the second question first. One argument for the necessity of prudence is that illegal or immoral orders in war may not be phrased in a way that makes their illegality/immorality readily apparent. Mark Osiel describes the use of ambiguous orders as a source of either "atrocity by bureaucracy," "atrocity by connivance," or some combination of the two.²⁹ He notes that "a key problem with requiring that an order be manifestly criminal on its face, in order to hold subordinates liable for obeying it, is that this approach easily permits the superior officer who desires atrocity to formulate his orders in ways that ensure that soldiers obeying them are excused from

²⁸ Walzer, Just and Unjust Wars, op cit., 311.

²⁹ Mark Osiel, 'Obeying Orders: Atrocity, Military Discipline, and the Law of War', *California Law Review*, vol. 86, no. 5, 1998, 939-941 + 943-1129 at 1099.

criminal liability."³⁰ Because commanders are to be afforded, like political leaders, a presumption of morality, commanders who *intend* to command illegal or immoral action need only word their command in language that is sufficiently vague as to avoid being an explicitly wrongful order. If soldiers lack the prudence to press their commander for more specific details on vague commands, they risk having their obedience abused.

Some may argue that prudence is not necessary here. If a commander chooses to use vague language in issuing commands, that is his business – even if his order is immoral, it is *he* who is acting wrongly, not the soldiers who obey him. To paraphrase Walzer, when soldiers obey just commanders their actions are not crimes, when they obey unjust commands, their actions are not *their* crimes.³¹ I have some sympathy for this view, however I believe its applications are limited. Oftentimes an initially ambiguous order will later be revealed to be unquestionably immoral. At that point, soldiers must refrain from completing the order or they will rightly be held complicit in the crime. As Walzer noted above, soldiers remain capable of hesitating until the very last moment.

Consider the infamous My Lai massacre during the Vietnam War. Walzer, in his analysis of the events, notes that Captain Medina, the company commander had ordered his troops to kill any enemies in the area, giving the following definition of enemy: "anybody that was running from us, hiding

³⁰ *Ibid.*, 1100.

³¹ Walzer uses similar wording to describe the moral equality of combatants, c.f. Walzer, *Just and Unjust Wars, op cit.*, 39.

from us, or appeared to us to be an enemy."³² The ambiguity in a definition like this, which ignores the extreme likelihood that noncombatants would flee from an imminent fire zone, appears to have been complicit in the slaughter of noncombatants that followed. Soldiers who saw themselves as duty-bound to obey exercised no prudence in questioning the morality or legality of the order, perhaps believing their moral responsibility to have been absorbed by their commanding officer.

In his defence testimony following the My Lai Masscare, Lt. William Calley – who testified to having killed noncombatants that day – was asked what he understood his responsibilities to be when he had doubts about an order. His response was that [i]f I had - questioned an order, I was supposed to carry the order out and then come back and make my complaint later."³³ Calley explicitly notes that he "was never told that [he] had the choice"³⁴ to refuse an order. To say that prudence – the virtue that governs and assists us in making choices – was not at work here is an understatement. Not only the refusal to make a choice, but the belief that the *capacity* to choose was denied, demonstrates the extent to which obedience can undermine soldiers' ability to question or refuse illegal orders. Calley testified as follows:

I was ordered to go in there and destroy the enemy. That was my job on that day. That was the mission I was given. I did not sit down and think in terms of men,

³² *Ibid.*, 310.

³³ UKMC Law School, 'Defense Testimony of Lt. William Calley', 1970,

http://law2.umkc.edu/faculty/projects/ftrials/mylai/myl_Calltest.html.

³⁴ Ibid.

women, and children. They were all classified the same, and that was the classification that we dealt with.³⁵

Calley's refusal to discriminate or hesitate at the prospect of killing noncombatants is the antithesis of what one would expect of the prudent soldier. Unlike Tennyson's heroic cavalryman in 'The Charge of the Light Bridgade,' whose duty was "not to reason why [...] but to do and die," professional soldiers ought to reason why, especially in cases where their commands seem contrary to the professional duties and purposes of soldiering.

The professional duty of the soldier with regard to obeying his commander's orders during a war is in most ways analogous to his duties with regard to *ad bellum* commands. He owes his commander the presumption of morality unless the order reveals itself to be immoral or unconscionable. A danger for soldiers is that the presumption of morality could be abused by commanders, allowing them to issue orders that are sufficiently vague so as to avoid being clearly wrongful. Prudence may assist soldiers in recognising ambiguous commands and seeking further clarification to avoid potentially compromising situations. In *in bello* cases, the revelation of immorality may occur very late in the piece, even during the operation itself. For this reason, prudence is an essential virtue because it helps to determine the limits on obedience, and thus helps guard against atrocities of the nature seen at My

³⁵ Defense Testimony of Lt. William Calley, op cit.

³⁶ Alfred Lord Tennyson, 'The Charge of the Light Brigade', 1870,

http://poetry.eserver.org/light-brigade.html.

Lai. Of course, refusing orders in situations like this also requires courage, to which we now turn.

1.2: Courage, Risk, and Sacrifice

Courage is the virtue most frequently associated with soldiers. It is regularly listed as a core value of military associations – Paul Robinson notes its inclusion in the US Army, British Army, and Canadian Army,³⁷ and it is also included amongst both the Australian and New Zealand Army Core Values.³⁸ Further, Plato, Aristotle, and Aquinas all believed that military combat was the arena in which courage was most readily applied.³⁹ Why do soldiers need to be courageous? The simply answer is because soldiering is a physically, psychologically, and morally difficult endeavour in which a person is asked to risk his life, his mental wellbeing, and his soul. Soldiers are frequently asked to do that which is difficult, and courage is the virtue that assists in doing what is right despite the difficulties involved.⁴⁰ In a recent report from the Australian Defence Force, military personnel are described as "Servants of the State," who are required "to be prepared to risk injury or death in pursuit of

³⁷ Paul Robinson, Military Honour and the Conduct of War: From Ancient Greece to Iraq, op cit., 166-167

³⁸ For the Australian Army, see: Australian Army, 'Army Traditions',

http://www.defencejobs.gov.au/army/about-the-army/army-traditions/; For New Zealand, courage is featured on the title header of the regular newsletter 'Army News', iss. 428, 2012, http://www.army.mil.nz/downloads/pdf/army-news/armynews428.pdf.

³⁹ Plato trans. Rosamond Kent Sprague, *Laches*, in John M. Cooper (ed.), *Plato: Complete Works*, (Indiana: Hackett Publishing Company, 1997); Aristotle, *Nicomachean Ethics*, Book III, 1115a25-34; Aquinas, *ST*, II-II, Q. 123, Art. 5.

⁴⁰ Aquinas, ST, II-II, Q. 123, Art. 1.

State-directed missions."⁴¹ Thus, every professional soldier who is ready and willing to undertake missions that not only his life but his moral and psychological wellbeing must, as a matter of necessity, possess a certain degree of courage in order to fulfil his professional duty.

However, not all tales of courage, risk, and sacrifice by soldiers are performed in the pursuit of State-directed missions: sometimes a soldier will dive on a grenade to save his troop or volunteer to be the first man over the top or serve as a decoy to attract enemy fire. These appear to be extraordinary cases of courage, which go above and beyond a soldier's professional duties.

Consider, for instance, Bombadier Robert Key: a miner and British solider in WWII who was recorded as having been killed "showing off" with a hand grenade. Recent reports have discovered that, in fact, Key died after noticing a group of children crowded around a live grenade in a field. He rushed into the group, snatched the grenade from one child, smothered it in his jacket and ran as far away as he could.⁴² Key, who at the time was patrolling the village in which he was stationed, could not have been blamed if he had stood back and, regretfully, done nothing – his action clearly went beyond the mission directives of an ordinary patrol. Thus, it appears that alongside the ethical

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⁴¹ Maj. Gen. C.W. Orme, 'Beyond Compliance: Professionalism, Trust, and Capability in the Australian Profession of Arms', Report prepared for the Australian Defence Force, 2011, 63, http://www.defence.gov.au/pathwaytochange/docs/personalconductpersonnel/Review%20 of%20Personal%20Conduct%20of%20ADF%20Personnel_full%20report.pdf>.

⁴² Andrew Hough, 'Hero British soldier 'honoured 65 years after saving child's life from live grenade', *The Telegraph*, 12/12/2009, http://www.telegraph.co.uk/history/world-wartwo/6788101/Dead-British-soldier-to-be-honoured-65-years-after-saving-childs-life-from-live-grenade.html.

duty to be courageous is a level of sacrifice that goes beyond professional duty and is genuinely supererogatory.⁴³

How we distinguish between these two different levels of courage is an important question for the purpose of demarcating a soldier's professional *duty* from what is a matter of professional excellence. In this section I explore the level of risk a soldier is duty-bound to accept, and how to distinguish that risk from the type of supererogatory courage displayed by Bombadier Key. In short, I argue that soldiers are duty-bound to accept the level of risk necessary for them to complete State-directed missions. Any risk that is undertaken not for those purposes is a matter of either personal virtue or professional excellence. However, whichever level of risk and sacrifice a soldiers strives for, it appears clear that courage will be necessary to assist him in complying with standards of either professional duty or professional excellence.

Consider the following hypothetical case study:

A group of insurgents are holed-up in an apartment block filled with civilians and a platoon has been ordered to neutralise them. The building is over ten stories high, filled with individual apartments, each of which would need to be searched and cleared. The amount of corners, blind spots, and ambush points make the possibility of casualties amongst the squad a distinct possibility. The sergeant contemplates calling in a drone strike on the building to avoid the possibility of losing men for whom he is responsible. However, his NCO reminds

⁴³ For a discussion of the integration of courage and martyrdom in Aquinas, see: Gregory Reichberg, 'Aquinas on Battlefield Courage', *The Thomist*, vol. 74, 2010, 337-368.

him that the apartment is also inhabited by large numbers of civilians. The soldiers themselves as torn. Some consider it a matter of professional honour and duty to breach the building and clear it themselves, whilst others see no point taking such an unnecessary risk.

Are the soldiers duty-bound to physically enter the building? If the duty of soldiers to undertake personal risk is limited to when they are in pursuit of State-directed missions, then it appears as though they are. Presuming that missions do not order or sanction immoral or illegal conduct (and if they do, they ought to be refused), *every* mission includes the responsibility to respect and uphold the deontological norms of discrimination and proportionality. To call a drone strike on the apartment would be a clear violation of the principle of discrimination, as can be seen by applying DDE to the case. In order to kill the insurgents by way of drone strike, one must kill *all* the inhabitants of the building – including the innocent – in the same action. In such a case, the deaths of civilians are no more a side-effect than the deaths of the insurgents. As G.E.M. Anscombe wrote, "[i]t is nonsense to pretend that you do not intend to do what is the means you take to your chosen end."⁴⁴

Were it to occur that in storming the building with soldiers, a grenade tossed into a room happened to trigger a structural collapse due to poor building or prior damage, killing all those inside, this action clearly lies outside the soldiers' intentions in a way that bombing the building does not. In bombing, the *means* of destroying the soldiers is by destroying everyone. The brute fact

⁴⁴ G.E.M. Anscombe, 'War and Murder', in Richard A. Wasserstrom, *War and Morality*, (California: Wadsworth Publishing Co., 1970), 51.

is this: in bombing the building one's act is the targeted killing of enemy combatants for the means chosen are not discriminate enough to target the insurgents specifically.

A similar suggestion is made by Thomas Nagel: perhaps the bomber could argue that what was intended was only that the *building* in which the bombers were hiding was destroyed, and any *people* killed were unintended side-effects.⁴⁵ However, if one genuinely wishes to mount that argument, then one has to somehow justify accepting the deaths of human beings for the mere purpose of destroying a building, which is an obvious failure of the proportionality condition of *jus in bello*. The reality is that an accurate description of the bombing would be targeting the building and *all* its inhabitants, and therefore accepting the killing of noncombatants as a means to killing the soldiers. Therefore, it seems clear in such cases that the soldier is morally required *not* to bomb the building. Self-sacrifice for the sake of protecting the lives on noncombatants in the form of riskily storming the building is morally necessary.

Because soldiers – at least in Western nations – volunteer to join the military, they consent to a host of professional duties: the duty to obey the civilian leadership of the military in deployments, the obligation to obey commanding officers (excluding, as discussed earlier, cases where the orders are patently unjust or untrustworthy), and the duties to uphold the principles of JWT, including to avoid intentionally harming noncombatants. The professional

⁴⁵ Thomas Nagel, 'War and Massacre' in Thomas Nagel (ed.), *Mortal Questions*, (Cambridge: Cambridge University Press, 1979) 61.

duty of soldiers is to accept the risks to life, mind, and soul that are necessary in order to complete a stipulated mission. These include risks necessary in order to make the mission morally consistent with the other professional duties of soldiers, for instance, the principles of discrimination and proportionality. Thus, as a matter of professional duty, the soldiers must storm the building.

A similar view is proposed by Michael Walzer, who argues that "when it is our action that puts innocent people at risk, even if the action is justified, we are bound to do what we can to reduce those risks, even if this involves risks to our own soldiers." However, Walzer's requirement actually requires more than the model of professional duty above. As a matter of duty, soldiers must avoid *intentionally* killing noncombatants, or *disproportionately* causing the deaths of non-combatants as side-effects in the pursuit of their missions, and must accept personal risk where necessary to fulfil these goals. However, tweaking the above case study slightly will demonstrate how Walzer's proposal requires a greater level of risk commitment than professional duty requires:

Imagine if the apartment block was uninhabited as the town had been evacuated some weeks ago. Thus, when the sergeant contemplated calling in a drone strike, he did not have to factor in noncombatant lives. It would, therefore, seem imprudent for him to order his men to storm the building given the risks. However, before calling the strike, the sergeant's NCO observes what he believes to be two children peering out at them from one of the windows. It would not be

⁴⁶ Walzer, Arguing About War, (London: Yale University Press, 2004), 17.

the first time the platoon had found children living in an evacuated area and so the NCO tells his sergeant what he saw. The sergeant is now faced with the choice between risking the lives of his men, or potentially causing the deaths of two children by ordering the strike. Although a few soldiers express their willingness to clear the building themselves, the platoon are largely in favour of a strike.

In this case, DDE will not prohibit the bombing of the building. First, the action is proportionate: the deaths of a group of insurgents weighed against the lives of two children. Second, the NCO cannot be certain about the presence of the children, nor whether they would have stayed in the building or not. Thus, it would be justifiable to order the drone strike, hoping that the two children were not caught in the explosion, but accepting the likelihood that they will be. However, Walzer's principle would prohibit such a bombing and require that the soldiers enter the building themselves to prevent the possible deaths of the two children, even if the anticipated deaths of soldiers would be higher than that.

Walzer's requirement demands risks that go beyond those of the professional duties of soldiers, and soldiers therefore ought not to be duty-bound to accept risks in cases like this. Those soldiers who did express willingness to accept that level of risk demonstrate the same kind of supererogatory courage as Bombadier Key in the case discussed earlier. The reasons that this level of courage is not professionally required is because it is not mission critical: neither the success of the state-directed mission, nor the upholding of other duties to which soldiers are professionally committed hinges on the physical

storming of the building. Thus, any risk undertaken in this regard is not deontologically demanded.

However, that does not mean that accepting this kind of risk is necessarily reckless or foolhardy. Rather, Walzer's principle can be seen as an accurate representation of the type of courage and sacrifice that embodies professional excellence in soldiering. The description of professional excellence I offered at the beginning of this chapter spoke of individuals who would be willing to advance the purposes of their profession even when there exists no duty to do so. If one of the purposes of soldiering is the protection of the innocent, then one can see how a willingness to risk one's life to spare two children is a continuation of those purposes. In cases of supererogatory courage such as this, soldiers' decisions are informed without recourse to any kind of self-interest. They are not only ready to die when necessary to complete the mission, but they are ready to die when necessary to advance the overall moral purposes of their profession. Sacrifice such as this represents the instantiation of the highest levels of courage in an individual, and although it is not morally necessary, it is morally excellent and laudable.

Some may ask whether soldiers in fact *require* courage in order to accept risks and sacrifices of the type I have described here. Is it not possible for a soldier to think carefully about his actions, determine what level of risk is missionnecessary, and accept that risk in completing his mission without ever needing to possess the virtue of courage – that is, the habitual disposition against

letting obstacles overcome doing what is believed to be right? That is, why do we need *courageous* soldiers rather than risk-accepting soldiers?⁴⁷

I believe there are three responses to this challenge. First, today's militaries are increasingly expecting their soldiers not only to be competent in the performance of their duties, but to be excellent; the Australian Defence Force, for instance, lists its foundational value as "Professionalism – striving for excellence in everything we do." Military personnel who are only willing or equipped to reach the minimum standards of professionalism are beginning to be expected to strive further, and that means extending beyond the basic duties that they are able to identify through rational inquiry and training. What is required is an attitude which strives toward embodying the values and purposes of the military; that is, to embody the virtues.

Secondly, if a soldier was to regularly determine how best to act in order to fulfil his professional duty of risk acceptance and act on those determinations, he would eventually come to characterise the virtue anyway – at least to the extent necessary for compliance with duty. Aristotle argued that the way in which a person came to develop a virtue was to practise it repeatedly, exactly in the way described above. ⁴⁹ So, even if the virtues are not necessary, they are inevitable in the conscientious soldier.

⁴⁷ Indeed, a similar objection could be made regarding any of the virtues: i.e. why do we need *prudently* obedient soldiers rather than soldiers who are committed (from duty, fear or punishment, or some other motivating factor) to the deontological norms of war, and will refuse to ever violate them. Why do they need to characterise the virtue of prudence in order to be obedient in the appropriate manner? I take my response here to be applicable to this objection as formulated against any virtue or profession.

⁴⁸ Maj. Gen. C.W. Orme, 'Beyond Compliance', op cit., 61.

⁴⁹ Aristotle, Nicomachean Ethics, 1103a26-1103b2.

Thirdly, the virtues are indeed necessary for military practitioners, and the reason for this is because, as has been mentioned several times in this chapter, war is an environment in which decisions must be made quickly and under great pressure. Furthermore, it is a domain in which the right thing to do is not always obvious. Thus, soldiers ought not to trust only in their skills of inquiry and determination, but strive to be able to do what is right as a matter of habit. Not only is it more likely that the virtuous person will make the right decision under pressure in a difficult situation, but his ability to make the decision quickly might be the difference between life or death for himself, his comrades, or innocent civilians.

1.3: Prudence and Courage Combined

Although professionally excellent soldiers will be prepared to sacrifice themselves in situations where duty does not require them to, this does not mean that in every situation where the death of a soldier might serve the general purposes of the army, that excellent soldiers will readily allow themselves to die. If every excellent soldier was as readily sacrificial as I have described above, we would quickly run out of excellent soldiers. However, professional excellence also requires soldiers to be prudent; that is to balance their disposition toward courageous self-sacrifice against the variety of other competing goods and paths of action.

For instance, on October 3, 2009, the men of Bravo Troop, 3rd Squadron, 61st Cavalry Regiment, 4th Brigade Combat Team, 4th Infantry Division of the US

Army in Afghanistan were stationed at Combat Outpost Keating when they were set upon by a Taliban force that heavily outnumbered them. Although they successfully repelled the much larger force, the attack resulted in 8 casualties and over 25 wounded. One of the dead was Spc. Stephan Mace, who had been injured early in the battle. Eventually, Mace was saved by Spc. Ty Carter, whose heroics earned him the Medal of Honour, but by then Mace's injuries had gone untreated for too long and he died soon after. According to reports:

Carter watched in horror and anger and shame as Mace tried to crawl toward the Humvee, begging for help, but at first enemy fire was far too intense to attempt a rescue. At grave risk to himself, Carter did eventually get Mace to safety [...] but Mace's injuries were too severe.⁵⁰

There are several points worth discussing in this case, including Carter's recovery from PTSD (and possibly undiagnosed moral injury) as a consequence of not being able to save Mace, and blaming himself for it.⁵¹ However, what is worth noting in this case is that Carter's belief that he "had failed [his] troop and [his] family because [he] couldn't save him [Mace]"⁵² appears to have emanated in part from his inability to respond as immediately to Mace's need as he would have like due to enemy fire. Now, it is true that Carter could still have run to Mace's aid despite the heavy fire, and that such an action would have represented the type of sacrifice I discussed above, but

⁵⁰ Elizabeth M. Collins, 'In aftermath of Keating: MOH nominee Carter gets help for PTSD', *Soldiers Live*, August 21, 2013,

http://www.army.mil/article/109617/In_aftermath_of_Keating_MOH_nominee_Carter_gets_help_for_PTSD/.

⁵¹ *Ibid*.

⁵² Ibid.

it would have been incredibly foolish nonetheless. The likelihood of such action actually being able to save Mace is incredibly low; more likely is that Carter himself would have been injured or killed in the process, thus not only failing to assist Mace, but also meaning he could be of no help to his other comrades under fire. Although a possible factor in his PTSD, Carter's hesitation in this case is demonstration of the governing role of prudence over one's courageous dispositions. Excellent soldiers will always be ready to die to advance the purposes of the military, but will always check those dispositions against the other duties, values, and commitments that the military is sworn to.

2: Military Commanders

Professionally excellent soldiers, even if ready to die in commitment to the purposes and values of the Army, are unlikely to do so where that sacrifice appears wasteful, or when it will undermine the success of the mission. Excellent soldiers still adhere to their duties, one of which is ensuring the success of State-directed missions. Thus, they are required to balance their dispositions toward supererogatory deeds against their duty to ensure that missions are completed efficiently. However, as concerned as individual soldiers might be with the efficiency and effectiveness of military operations, the primary concern for these rests with the military commander.

Common views of military commanders associate them most strongly with military *strategy*, defined by Carl von Clausewitz as "the employment of battle

to gain the end of the war."⁵³ Clausewitz argues that "[a] prince or general who knows exactly how to organise his war according to his object and means [...] gives by that the greatest proof of his genius."⁵⁴ Here Clausewitz appears to suggest that the primary concern of the military commander is *strategy*: professional excellence for the military commander entails strategic excellence.

This speaks to what professional excellence entails, but what are the professional duties of commanders? I argue that they are twofold: first, commanders are bound by the same deontological limitations on in bello conduct as are individual soldiers, and may not devise strategies that violate those principles. Secondly, commanders have a professional duty toward, as Clausewitz identifies, the *end* of the war. In this context, end refers to *telos*: the purpose, or goal of the war. Commanders are duty-bound to organise their strategy according to the purposes for the war as determined by the political leadership. Once these goals are determined, the military commander is bound to strive to bring them to fruition through military strategy. However, commanders cannot see the goals of war as their only function, they too are bound by moral restrictions. This means that a tension can emerge between the duties of the military commander: on the one hand, aiming to bring about the political goals of war efficiently and effectively, and on the other, accepting moral limitations on what strategies can be used in bringing about those goals. This tension is one that Michael Gross describes as being "at the root of our conflicting intuitions about the conduct of war" - namely, "[t]he tension

⁵³ Carl von Clausewitz trans. J.J. Graham, *On War*, (Hertfordshire: Wordsworth, 1997), Book III, Ch. I.

⁵⁴ Collins, 'In aftermath of Keating', op cit.

between the means required to get the job done [...] and the human urge to limit the carnage."55

In this section I argue that the virtue that bears most strongly on the military commanders ability to fulfil his duties is prudence. Here I recall Aquinas' claim that "[t]he *execution* of military service belongs to fortitude, but the *direction*, especially in so far as it concerns the commander-in-chief, belongs to prudence.' Prudence, being the virtue that enables good choices between different possibilities, appears best suited to balancing the deontological requirements of justice and the duty to be efficient in the pursuit of politically stipulated ends. I describe to what extent military commanders are bound, as matters of professional duty, to the conditions of *jus in bello*, conducting strategy in a way that is both effective and efficient, and to the *ad bellum* goals of the war as set by political leaders. The virtue that best allows military commanders to fulfil and balance these duties is prudence.

It is also worth focussing specifically on the fact that the ends that military commanders pursue are politically stipulated, as military commanders are not only the issuers of commands, they also receive their orders in turn from superiors, and ultimately from the political leaders who declare wars in the first place. Here, another tension emerges between the military commander's authority and expertise with regard to strategy and the right of political leaders to determine (in part) the course of the war he is required to command. Thus, military commanders must navigate their professional duty to *run* their

⁵⁵ Michael Gross, *Moral Dilemmas of Modern War: Torture, Assassination, and Blackmail in an Age of Asymmetric Conflict,* (Cambridge: Cambridge University Press, 2010), 21.

⁵⁶ Aquinas, ST, II-II, Q. 50, Art. 4. Emphasis added.

war as best as they can without intervention whilst simultaneously receiving instruction on the general direction and objectives of the war. This requires both that military commanders be humble enough to receive instruction on matters of the direction of a war, and be courageous enough to refuse commands when political leaders issue directions with regard to the *strategy* and not the *objectives* of the war.

2.1: Prudence and the Tension between Strategy and Morality

The primary roles of the military commander are twofold. First, it is the responsibility of the military commander to win the war. Secondly, the commander must ensure that the war is won *well*; that is, without violating deontological norms in order to attain victory. However, in light of a number of drawn-out conflicts across the world many are beginning to question whether winning well is possible in cases where one's enemy refuses to abide by deontological restrictions on conduct. As Steven P. Lee argues:

[I]f one side seeks military advantage by attacking civilians or using them as shields, should the other side be allowed to relax the protection it allows for enemy civilians? If one side abandons the principles, it may seem only fair that the other side may do so as well. Otherwise the other side would be fighting with "one hand tied behind its back."⁵⁷

⁵⁷ Steven P. Lee, *Ethics and War: an Introduction*, (Cambridge: Cambridge University Press, 2012), 158.

Military commanders who understand strategy will recognise that their professional duty to uphold the laws of war can represent a strategic weakness that may be exploited by one's enemies. For instance, the use of "human shields" – keeping civilians in close proximity as a means of preventing an enemy from returning fire or initiating attack - exploits an army's commitment to the principle of discrimination to obtain strategic advantage. If used successfully, as in Gaza 2006 when an Israeli air strike on a rocket cell hidden amongst civilian homes was called off when Palestinian civilians refused to evacuate, how is a commander to respond? After the raid was cancelled Palestinian spokesman, Abu Mujahed, proclaimed that "From now on we will form human chains around every house that is threatened with demolition."58 In light of this, one Israeli officer explained simply that "[i]f we can't get to the target by air due to the human shields, we will reach it by ground and the Palestinians will pay a heavy price."59 Need the commanders of the Israeli military need have exposed their soldiers to such risk? Might they have been justified in continuing the air strikes anyway? Why, some may ask, should the enemy's unjust conduct force a military to fight with one arm tied behind its back? In short, when faced with a choice between doing what is right and doing what will bring about victory, how ought a commander to choose?

Joseph L. Allen describes several characteristics that the military ethicist and strategist have in common; that is, where the strategic and moral duties of the military commander coincide. So, although there are times when strategy and

⁵⁸ Abraham Rabinovich, 'Human shields stump Israel', *The Australian*, Nov. 21, 2006 http://www.theaustralian.com.au/news/world/human-shields-stump-israel/story-e6frg6so-111112557676>.

⁵⁹ Ibid.

morality generate tension, Allen's list (below) demonstrates how the professional duties of morality and strategy do also seek similar ends.

- 1. Both military strategist and moralist must recommend *limited military action* that contributes to some creaturely wellbeing;
- Both strategist and moralist will be guided by the principle of the *economy of force*. That principle prescribes that the available forces shall be used in the most effective way possible;
- 3. Both good strategy and a creature-respecting morality will seek *to avoid destruction beyond need*.⁶⁰

Thus, Allen notes that although strategy "may require destruction and certainly tempts one to perform the immoral," it "does not *require* immoral acts." Thus, "[m]oral inadequacies in strategy are matters for which the human actors are responsible." Put another way, if strategy appears to require the violation of professional duties toward morality, it is a failure of the strategist to (i) have sufficiently prowess in strategy to devise another possibility; or (ii) to avoid, by strategy, situations in which violations of morality will be strategically necessary.

The image of the military commander as duty-bound to both morality and strategy appears further complicated when one considers the moral importance of victory. If the commander has – or at least believes himself to

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⁶⁰ Joseph L. Allen, 'The Relationship of Strategy and Morality', *Ethics*, vol. 73, no. 3, 1963, 167-178 at 174.

⁶¹ Ibid., 176.

have – just cause, winning becomes a morally significant enterprise. This was the position of utilitarian philosopher Henry Sidgewick who, in Walzer's words believed that "it would be difficult to condemn soldiers for anything they did in the course of a battle or a war that they honestly believed, and had good reason to believe, was necessary, or important, or simply useful in determining the outcome." Sidgewick's contention was that although if faced with the choice between winning and winning well, all commanders should choose to win well, when the choice is between winning badly or losing, it becomes much less clear that deontological norms should limit what is strategically permissible.

Military commanders faced with decisions like this will rightly ask which of their duties – to victory, or to morality – trumps in cases of apparent tension. Sidgewick's utilitarian reasoning will appear compelling to the commander. The value of victory, weighed against the costs of violating particular deontological norms in war, is still likely to be the more beneficial to the common good. However, the flaw in this reasoning is that it *assumes* that victory, with all its moral benefits, will actually come about. Even in the most asymmetrical conflict victory cannot ever be guaranteed. Thus, when considering the adoption of a particular strategy – especially one that violates *in bello* principles – one must consider how much *worse* the situation would be if such tactics were adopted and one were still to lose. Even if it were better to win badly than lose well, it is better to lose well than to lose badly, and winning badly can rarely be assured. For this reason, the adoption of immoral strategies for utilitarian reasons is always a gamble which will only pay off

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⁶² Walzer, Just and Unjust Wars, op cit., 129.

(even on its own terms) if the strategy is ultimately successful in winning the war.

Acknowledging the existence of uncertainties, with victory being one of them, is a habit of great benefit to the military commander. A further uncertainty is with regard to whether the cause for which a commander is fighting is indeed a just one. Commanders, like soldiers, are entitled to obey trustingly the commands of just governments unless they appear patently unjust. However, they must always be aware that some crucial information regarding the war's justice may be unknown to them; indeed, it may be unknown to their political leaders. Thus, the military commander must also be aware that fallibility means the justice of the cause is also – to some extent – uncertain. Thus, there are several levels of uncertainty that must be applied to Sidgewick's utilitarian calculation regarding the justification of immoral strategies to achieve victory in war which make it far less obvious that morality can be foregone in the interests of achieving overall victory.

Given this, should we not simply admit the commander's moral duties trump his duties to achieving victory and leave it at that? Why do commanders need to be virtuous in order to adhere to this requirement, now that we have revealed which duty takes priority? After all, it does not require a particularly prudent person to have him obey a rule once the reasonableness of that rule has been explained to him and he has understood it. The first answer is to say that it although it is true that the person need not be *particularly* prudent he

does need to be, in the words of David Kaspar, "minimally prudent." ⁶³ Thus, the military commander does require at least partial disposition toward evaluation of options, consideration of consequences, and the ability to determine between options well.

Furthermore, as ordinary experiences reveal, the existence of a rule, even one that is understood, does not necessarily preclude the violation of that rule: "sometimes we end up resorting to lying or breaking a promise to get out of a trap we laid for ourselves. So being minimally prudent isn't enough for us to be fully moral."⁶⁴ This is likely to be particularly true in situations where the reason for breaking the rule is because of another duty that one is committed to, such as victory. Thus, military commanders in particular require particular acumen in evaluating the respective moral strength of different paths of action in order to determine between them rightly and avoid being overly drawn toward the perceived good of victory.⁶⁵ This is where prudence comes to the fore. As Aquinas argued, quoting St. Isodore of Sevilla, the prudent person is able to see "as it were from afar, for his sight is keen, and he foresees the event of uncertainties."⁶⁶

⁶³ David Kaspar, 'Can Morality Do Without Prudence?', *Philosophia*, vol. 39, 2011, 311-326 at 315.

⁶⁴ Ibid.

⁶⁵ Another reason why prudence is a necessary virtue for military commanders is if there are in fact times when it becomes necessary to violate deontological principles in the pursuit of some greater good. I note again, as I did in the discussion of supreme emergencies in chapter three, that I do not believe this is the case. However, as this is still a contested point in the literature, it is of benefit to show how the virtues could be brought to bear on the matter of supreme emergencies.

⁶⁶ Aquinas, ST, II-II, Q. 47, Art. 1.

Prudence is also of central importance for professionally *excellent* military commanders who, in Clausewitzian language, demonstrate their "genius" through strategy. Aquinas is again informative. In Question 50 of the typology of virtue in *Summa Theologica II-II*, Aquinas designates a special mode of prudence: "military prudence." Aquinas argued that "he who reasons well for the realization of a particular end, such as victory, is said to be prudent, not absolutely, but in a particular genus, namely warfare." Recall that prudence is directed toward the rational consideration of practical matters regarding how one should act; in this sense, prudence is a purely *intellectual* virtue.

As a *moral* virtue, prudence includes in those practical considerations the various moral factors at stake, including the ability to foresee likely consequences. Prudence, therefore, requires one to know the good and include it as a factor in one's decision-making. It is this latter concern that gives prudence its specifically moral designation. Reichberg makes the same point in explaining why Aquinas sees military strategy as a matter of prudence, and not an art. "Art, Thomas defines as 'right reason about things to be *made*' and prudence as 'right reason about things to be *done*' [...] it is choice – the inner act by which the will selects among alternative goods – that prudence is especially meant to guide." ⁶⁹ The choice between moral goods as opposed to transitive goods (such as which materials one might use to make a sculpture) is what distinguishes military prudence from art.

⁶⁷ Reichberg, 'Thomas Aquinas on Military Prudence', op cit., 264.

⁶⁸ Aquinas, ST, II-II, Q. 47, Art. 2.

⁶⁹ Reichberg, 'Thomas Aquinas on Military Prudence', op cit., 266.

[H]ad [Aquinas] categorized [military] leadership under the heading of *art*, morality would have applied to it in an extrinsic manner only. A general who ordered the commission of atrocities, or who waged war for a manifestly evil purpose, could still be deemed a habile commander if he successfully led his troops to victory, even though, on moral grounds, he must be deemed a bad man. But to assert that military command is indeed an instance of *prudence* is for Aquinas equivalent to saying that morality is intrinsic to this practice, such that any willful misconduct – by direct intention or negligence – on the part of the general would evince a faulty command. In such a case not only is he to be rightly condemned *qua* man, but more to the point, his competence *qua* commander would be called into question.⁷⁰

Aquinas concedes that military strategy is an art and – as Clausewitz described it above, a "genius."⁷¹ However, being a strategic genius is not sufficient to fulfil ones professional duties as a commander; one must also be committed to upholding the moral commitments of the military profession. In both regards, the virtue of prudence will serve to further the successful adherence of military commanders to their professional duties *and* to the achievement of strategic excellence.

⁷⁰ *Ibid.*, 267-268.

⁷¹ Aquinas, *ST*, II-II, Q. 50, Art. 4. "Military prudence may be an art, in so far as it has certain rules for the right use of certain external things, such as arms and horses, but in so far as it is directed to the common good, it belongs rather to prudence."

2.2: Courage, Humility, and the Tension between Political Leaders and Commanders

As has been noted throughout this discussion, military commanders are duty-bound to the ends of the war as determined by the political leadership. However, they are also experts and leaders in their own right, and thus tension may emerge between pursuing their own professional opinions on what ought to be done and the political commands that they receive and are expected to obey. The project of waging a war must – at the macro level – be one of collaboration between political leaders who determine the objectives of the war, and commanders who determine the best way of achieving those goals.

The reasons for this are twofold. First, because the political leader is the one who will be held answerable for the objectives of the war, and the military commander for the strategies adopted; secondly, because (ideally) each profession is chiefly responsible for the matter about which they possess the relevant experience and expertise.

However, at times conflict is likely to emerge between high-level commanders and political leaders regarding decisions that bear on the military and political significance of particular decisions. Mlitary commanders, like ordinary soldiers, have a moral duty to refuse an obviously illegal or immoral order (because the moral duty to obey one's conscience is prior to any professional obligation one has to obey commands). However, in many cases a commander

may disagree with an order on the basis of its efficacy, likelihood of success, or some other professional consideration not serious enough to justify refusing the order. In these cases, how is the military commander to respond, and what virtues are required in order for him to do so?

In the first case, let us consider what a commander ought to do when he disagrees with the commands of the political leadership regarding political decisions that have substantial strategic implications for achieving the goals of war. On June 1, 2011, General David Petraeus met with President Barack Obama and a host of other senior members of government (including the Vice President, Defence and State Secretaries) to discuss withdrawal plans for Afghanistan. It was agreed that 10,000 troops would be withdrawn by the end of 2011, but discussion continued over how long the remaining 23,000 personnel should remain. According to reports:

Petraeus had recommended that they stay in Afghanistan through November 2012, which marked the end of the annual fighting season [whilst] Obama began the discussion by explaining that he wanted the 23,000 forces out of Afghanistan by July 2012, five months sooner than Petraeus had recommended.⁷²

Ongoing discussion saw opposition to the hastiness of Obama's proposed withdrawal, the President "voiced a willingness to consider splitting the difference and leaving the troops in Afghanistan through the end of the

⁷² Paula Broadwell, Vernon Loeb, 'Gen. David Petraeus: "The troops can't quit"', *Washington Post*, January 24, 2012, http://www.washingtonpost.com/lifestyle/style/gen-david-petraeus-the-troops-cant-quit/2012/01/19/gIQALYlmKQ_story.html?hpid=z4>.

summer, but he was against waiting until the end of 2012."⁷³ Many, including Defence Secretary Robert Gates, State Secretary Hillary Clinton and Chairman of the Joint Chiefs of Staff Admiral Mike Mullen, were willing to accept an end of summer withdrawal. General Petraeus, however, was not so easily persuaded.

Petraeus again made it clear that he remained in favor of keeping the troops in Afghanistan until the end of the year in order to achieve the President's objectives. The mission in Afghanistan, he said, was not transition to Afghan forces; it was achieving conditions that allowed for successful transition. Obama asked whether those three extra months would make that much difference; Petraeus said he thought they would.⁷⁴

Here it is important to emphasise the courage required in expressing a minority opinion against the person one is sworn to serve and then, in the face of disagreement, to maintain that position. This is what the professional military commander is required to do, advise his leaders in good faith what consequences their decisions will have on his ability to win the war. Therefore, it seems that military commanders require courage if they are to successfully fulfil their advisory duties to the political leadership. They must be willing to tell political leaders when a decision goes against the objectives of winning the war, and not fold to pressure if and when the advice given is contrary to what political leaders want to hear.

74 Ibid.

⁷³ *Ibid*.

However, there is not always a direct correlation between the giving of sound advice and the heeding of that advice, a fact Petraeus was especially sensitive to; his doctoral dissertation was in the area of civil-military relations during and post-Vietnam, and included a discussion of how political goals were preferred to sound military strategy during Vietnam.⁷⁵ As well as his doctoral research, Petraeus witnessed this fact first hand when, "the president made his decision: 10,000 forces would leave Afghanistan by the end of the year, and the remaining 23,000 surge troops would be out by the end of summer 2012."⁷⁶ This decision, made on the basis of several factors including a desire "to signal to the American, Afghan and international communities that the coming year would be one of transition"⁷⁷ was, in Petraeus' opinion, contrary to the objectives of the war and his ability to bring those objectives about fruitfully. Having spoken his mind and given his advice, what is a commander to do if political leaders hamstring his ability to do his job?

It seems that the military commander now has three options: dissent, obedience, or resignation. Is he, however, morally obligated to any one of those paths? Dissent can come in several forms. The first is outright disobedience. When a military commander receives an order from political leaders, there may be occasions when it is within his power to simply refuse the order. However, such an action amounts to insubordination, and is likely to see the commander not only relieved of command, but also court martialled. More likely is dissent through the media and public statements. Indeed, this was the path chosen by General Douglas MacArthur when he

⁷⁵ David H. Petraeus, 'The American military and the lessons of Vietnam: A study of military influence and the use of force in the post-Vietnam era', doctoral thesis submitted to Princeton University, 1987, 122-127.

⁷⁶ Paula Broadwell, Vernon Loeb, op cit.

⁷⁷ Ibid.

described President Harry Truman's involvement in the Korean War as "an enormous handicap, unprecedented in military history."⁷⁸ This was the first of several publicly dissentious statements by MacArthur, which included a letter to Congress critical of the President's policies, and the scuppering of a possible ceasefire agreement with China, which led ultimately to his dismissal by the President.

MacArthur was rightly dismissed for having failed to uphold his professional duties. He failed to accept that his responsibilities were limited to strategy and not to policy decisions regarding whether a war should be continued, whether a new war should be allowed to break out (in this case, with China), or whether the military should be permitted to breach the sovereignty of another state. The failure to recognise the limitations of one's own authority, influence, and power is a failure to exercise the virtue of humility. Humility, G. Alex Sinha explains, "relates [...] to keeping one's ego in check." The virtue, he notes "is premised on the idea that ego is objectionable to the extent that it leads us to forget or ignore other duties." In the case of MacArthur, his own expertise and experience appears to have made him incapable of recognising his duty of obedience and his limited responsibility for strategy. Further, MacArthur's actions and public statements expressed no belief that his opinion might be wrong, or that the President and the Joint Chief's viewpoints may have also had some merit.

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⁷⁸ Michael D. Pearlman, *Truman and MacArthur: Policy, Politics, and the Hunger for Honour and Renown*, (Indiana: Indiana University Press, 2008), 170.

⁷⁹ G. Alex Sinha, 'Modernizing the Virtue of Humility', *Australasian Journal of Philosophy*, vol. 90, no. 2, 2012, 259-274 at 260.

⁸⁰ Ibid.

MacArthur's failure to be humble caused him to forget duties that are expressly *his* as a military commander; namely, to further the politically determined objectives of the war by way of strategy. By publicly expressing doubt for the policies and strategies adopted by his political leaders, MacArthur's criticisms shot his own objectives in the foot. Not only does morale suffer as soldiers find themselves confused regarding whose commands they ought to follow or whether the major decision-makers have any clear plan for the war, but publicly-aired disputes such as these give hope and resolve to one's enemies, who see disunity and a lack of unified commitment to shared goals as signs of weakness. Thus, in two ways these actions threatened to undermine MacArthur's own strategic goals.

A better decision for MacArthur would have been to privately express his concerns for the chosen policies insofar as they bore on his military strategies (as he did), and if they were not heeded and the policies pursued were so grossly contrary to his desired strategy to have offered his resignation. This would have allowed MacArthur to demonstrate clearly his refusal to be involved with or support strategies with which he so strongly disagreed without violating any of his other professional duties. In fact, if pride prohibited MacArthur from accepting any opinion on policy or strategy that was not his own, then he ought to have retired.

However, not all matters of disagreement need end in resignation. As J. Patrick Dobel notes, the purpose of resigning from a position is to maintain

one's integrity.⁸¹ Thus, only commands that would, if obeyed, compromise one's integrity need be cause for resignation. It seems that there would be a number of policy or political decisions whose strategic implications would not be severe enough to warrant resignation on the basis of the compromised integrity of the military commander.

Indeed, Petraeus, after hearing Obama's decision "assured the president that he would faithfully support and execute his decision, but he noted that he would have to say, if asked at his [CIA Director] confirmation hearing in two days, that the timeline was more aggressive than he had recommended."82 Instead of resigning, Petraeus demonstrated his belief that "military leaders should provide advice that is informed by important nonmilitary and military factors beyond their strict purview, but is driven by the situation on the ground and military considerations"83 by offering his full support to the President's plan, instructing his subordinates to do the same, and at his CIA confirmation hearing openly rebufing suggestions that his disagreement with the President should prompt his resignation.84 In doing so, Petraeus demonstrated sufficient humility to recognise the extent of his expertise, responsibilities, and authority as a moral and military decision-maker. These virtues, in complement to his courage in expressing an unpopular opinion, make Petraeus' conduct in this instance an excellent demonstration in how the virtues are necessary for military commanders to successfully negotiate their relationship with political leaders, as MacArthur was so famously unable to do.

⁸¹ J. Patrick Dobel, 'The Ethics of Resigning', *Journal of Policy Analysis and Management*, vol. 18, no. 2, 1999, 245-263.

⁸² Paula Broadwell, Vernon Loeb, op cit.

⁸³ Ibid.

⁸⁴ Ibid.

Having discussed both General Petraeus and the matter of resignation, it would be inattentive of me not to speak briefly about that General's public disgrace and subsequent downfall. In November 2012, General Petraeus resigned as Director of the CIA after it was revealed that he had been involved in an ongoing extramarital affair with his biographer, Paula Broadwell. Petraeus admitted to having exercised "extremely poor judgment" that was "unacceptable, both as a husband and as [a] leader."85 Petraeus rightly identified his moral failing as being one not only of spousal loyalty, but of judgement – that is, prudence. However, Petraeus' apparent desire to continue his marriage and his admission that he "screwed up royally"86 suggests that another moral failing was his inability to uphold his own moral beliefs when it was undesirable or difficult to do so, a vice that is an absolute anathema to professional soldiering or military command. Although it may be true that Petraeus' failing was out of character and that he is – and most reports suggest this is the case – an honourable and virtuous man, Petraeus' resignation sends a clear message to the military regarding the moral importance of selfdiscipline and prudent moral judgement in all areas of one's life.

Furthermore, the decision to resign in the light of a private moral failing demonstrates again, in a different but no less important way, the intimate connection between the personal and professional identities of military personnel discussed in the previous chapter. If, as Dobel notes, the purpose of

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⁸⁵ John Rogers & Shaya Tayefe Mohajer, 'David Petraeus, Former CIA Director, Apologizes For Conduct That Led To Resignation', Huffington Post, 27th March, 2013, http://www.huffingtonpost.com/2013/03/27/david-petraeus-sorry-for-

affair_n_2960513.html>.

86 Daniel Bates, 'EXCLUSIVE: 'I screwed up royally': The extraordinarily frank letter disgraced CIA boss Gen David Petraeus sent to one of his closest friends', *Mail Online*, September 29th, 2012, http://www.dailymail.co.uk/news/article-2240006/David-Petraeus-scandal-The-extraordinarily-frank-letter-disgraced-CIA-boss-sent-closest-friends.html>.

resignation is to maintain one's integrity, then it is reasonable to assume that Petraeus' recognition of his own failings as a husband and as a man of virtue and the public besmirching of his reputation that accompanied it necessitated his resignation. This was the only possible means of preserving both his own personal integrity and the integrity of the organisations he served throughout his career.

3: Political Leaders

All wars are begun by political leaders. As Brian Orend notes, war is a conflict only possible between political communities: "fisticuffs between individual persons do not count as war, nor does a gang fight, nor does a feud on the order of the Hatfields versus the McCoys." There are a number of reasons why this is the case, but one must be that individuals, gang leaders, or family patriarchs (or matriarchs) lack the authority to exercise legitimate force. Each of Orend's three examples are governed by a higher authority (i.e. the legal system of the state) to whom they can take recourse to resolve disputes, and to whom they are answerable for wrongdoing.

Political leaders, by contrast, are the highest authority in their land, and as such, cannot take recourse to a higher authority. Thus, under severe circumstances (such as in response to aggression), they are entitled to declare to war in defence of the common good. In Aquinas' words, the authority

⁸⁷ Brian Orend, The Morality of War, (Toronto: Broadview Press, 2006), 3.

"belongs to him alone who has charge of the community's welfare." 88 However, although being in charge of a community's welfare is sufficient to be considered a political authority, but it is not sufficient to constitute a *legitimate* political authority. This further step requires not only that leaders have charge of the community's welfare, but also that they govern with the intention of upholding and advancing that common good. Legitimate political authorities should only declare war for the common good, a judgement which should ideally be made by leaders possessing moral virtues who will have greater sensitivity for, and awareness of, the common good.

The obligation to go to war in the interests of the *common* good is complex given the common assertion that "statesmen think and act in terms of [national] interest,"⁸⁹ and are right to do so. In what follows, I first explore the moral responsibilities, necessary skills and virtues of a political leader who believes his primary obligation to be the defence and advancement of national interest, before contrasting this with the attitudes of a political leader who embodies the virtues of justice, charity, and prudence. As Reichberg notes, "it must be recognized that a fuller […] approach to just war would require […] teaching on the political virtues to decision-making about resort to war."⁹⁰ Such a project is undertaken here.

⁸⁸ Aquinas, *ST*, II-II, Q. 64, Art. 3.

⁸⁹ Hans J. Morgenthau rev. Kenneth W. Thompson, *Politics Among Nations: the Struggle for Power and Peace*, (New York: McGraw-Hill, 1985), 5.

⁹⁰ Gregory Reichberg, 'Thomas Aquinas on Military Prudence', op cit., 262-275 at 262.

3.1: Justice & Political Leadership

In one sense it should not be surprising that one of the chief duties and virtues with which political leaders and just war theorists ought to be concerned is justice. However, exactly what this means requires some exploration as justice has several meanings in different contexts. In one sense, justice is chiefly a state of affairs where all individuals and nations enjoy a moral parity in which all persons enjoy all the goods, freedoms, and privileges to which they have some normative claim. ⁹¹ By this account, the moral requirements of justice are duties to bring about that state of affairs. In another sense, justice is a reason for acting: one is motivated by a desire to do "just" deeds. By contrast, an aretaic approach sees justice chiefly as a virtue. Justice is, according to Aquinas (and Aristotle before him) the "habit whereby a man renders to each one his due by a constant and perpetual will."⁹²

In one respect, there is no real difference between these different senses. All are important aspects of justice, and absent of any, justice would be unintelligible. However, focussing on justice as a habit may help political leaders to view justice not only as a professional duty, but also as a reflection of character. One way of explaining this difference is to return to the distinction between internal and external motivations explored in the previous chapter. Making justice a virtue means that the practise of justice is a reflection of one's own character, and thus acting with justice is – literally – a force of habit. Under this approach one is much more assured of political

⁹¹ C.f. Walzer's description of the "Legalist Paradigm" in *Just and Unjust Wars, op cit.,* 58-63.

⁹² Aguinas, ST, II-II, Q. 58, Art. 1.

leader's adherence to professional duties than if those duties were seen as externally imposed, and at times in competition with other duties. Nicholas Rengger notes that human societies are often "torn between conflicting demands, moral and practical." ⁹³ It is possible – indeed likely, then – that the moral duties of respecting, upholding, and perhaps defending the rights of other states will be impractical or contrary to national self-interest. In such situations, only political leaders with internally compelling reasons for acting morally well – that is, who have cultivated justice as a habit – are likely to do so.

The reason this is important is because political leaders *do* have a commitment to advancing national interests: Stephanie Newbold argues that one of the defining functions of the statesman is "ensuring the preservation of the [...] state."94 Newbold argues that it is possible for statesmen to do the right thing even if that means violating their own personal principles so long as it is for "for the good of the state, its institutions, and its citizenry."95 However, Newbold's argument is with regard to a case in which a President chose to violate domestic law for the sake of his own people: thus, he sacrificed his own morality for the national interest. That is one thing. It is another altogether to argue that political leaders should act unjustly, or permit injustice, in the international arena with regard to *war*, as this implies that the political leader is willing to let the citizens of other nations suffer injustice to advance the interests of his own nation. The duty to advance self-interest, if held as the sole duty of the political leader, appears to require causing or allowing innocent

⁹³ Nicholas Rengger, *Just War and International Order: the Uncivil Condition in World Politics*, (Cambridge: Cambridge University Press, 2013), 132.

⁹⁴ Stephanie P. Newbold, 'Statesmanship and Ethics: The Case of Thomas Jefferson's Dirty Hands', *Public Administration Review*, vol. 65, no. 6, 2005, 669-677 at 669.

⁹⁵ Newbold, 'Statesmanship and Ethics', op cit., 674.

people to suffer on the mere accident that they were born or live in a different country. However, responsible statesmen in the international arena have professional duties beyond self-interest. They are duty-bound to the principles stipulated by *jus ad bellum*: notably that war may only be pursued in response to a sufficiently grave injustice, and that correcting this injustice must be the motivating factor for the political leader.

The duty to be motivated by justice is expounded in the right intention condition of *jus ad bellum* which is of continued relevance in contemporary just war theories, although many afford the criterion a less central role. Right intention emphasises the importance not only of a just state of affairs being reached, but of political leaders actually being motivated by justice. Commitment to the professional duty to only fight just wars is crucial because, as theorists such as Orend⁹⁶ and Darrell Cole argue, leaders who act with unjust intentions tend to betray those intentions through the commission of war crimes: "right intention is determined by observing a belligerent's acts during and after a conflict." Notably, what Orend and Cole require is not merely that a political leader act in compliance with his professional duties, but that he is personally motivated by that which his duty aims to serve: justice. This, I argue, is what it means to have a right intention.

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⁹⁶ C.f. Orend, *The Morality of War, op cit.*, 47-48: "Intentions can be, and ought to be, discerned through a reasoned examination of publicly accessible evidence, relying on behaviour, consideration of incentives and explicit avowals of intent [...] Dark motivations produce distinctive and noticeable results, such as torture, massacres, mass rapes, and large-scale displacements."

⁹⁷ Darrell Cole, 'War and Intention', *Journal of Military Ethics*, vol. 10, iss. 3, 2011, 174-191 at 174.

Most just war theorists understand a right intention to be an intention which corresponds to an objectively just cause. Orend notes that "it is not enough to have an *objectively* just cause in going to war [...] you must also have the proper subjective intention, or state of mind, for your act to be moral."98 However, if we are to describe right intention in a way that is helpful to political leaders faced with having to make just war decisions, we will need to add some more content to this description.

James Turner Johnson notes that right intention "has both negative and positive meanings. Negatively, it means the avoidance of bad intentions or motivations. [...] Positively, it means the intention of *serving the goods of proper political life.*" If we are to fully understand right intention in a way that informs the function of justice as a virtue of moral decision-making, we must therefore understand what it means to "serve the goods of proper political life:" that is, we must understand what a just cause is, a question I come to in the later discussion of charity.

To answer this question I must say more about justice and right intention, particularly with regard to political leaders. Importantly, the demand of justice to render *what* is due to *whom* it is due is not limited to tangible or physical goods. Rather, as Johnson notes, it extends to all the goods of proper political life. Primary amongst these goods, especially in a liberal democracy, is truth. Justice therefore demands that political leaders be honest and transparent in their military decision-making. Just leaders will conduct their

⁹⁸ Orend, The Morality of War, op cit., 46.

⁹⁹ James Turner Johnson, *Morality and Contemporary Warfare*, (New Haven: Yale University Press, 1999), 32-33. Emphasis added.

business honestly, recognising the importance of allowing the citizenry to hold leaders accountable for their decisions. Importantly, in military matters it would be imprudent to be *overly* transparent: to publish military plans in the newspaper prior to invasion would be irresponsible, and goes beyond what justice requires, because citizens do not *need* to know or evaluate the intricacies of a particular military strategy. By contrast, citizens need to know and evaluate broader *ad bellum* concerns in order to properly hold the political leadership to account for the wars they involve the nation in, as well as some *in bello* matters, such as whether the military will be using unmanned drones, torture of detainees, or widely destructive weaponry.

Justice appears to present a challenge to the important concept of 'state secrecy.' Imagine a government, *A*, discovers that an unstable, 'rogue' nation, *B*, has succeeded in weaponising the smallpox virus and intends to deploy the weapon. *A* has the power and means to go to war and potentially prevent this from happening, but the dissemination of evidence would jeopardize the safety of intelligence officers still in the field, allow *B* the time to successfully hide or destroy weapons caches and evidence, or expedite the use of the weapon. How should the political leadership of *A* act in relation to the revelation of information to their people? Should they release the information in the interests of truthfulness, or protect the national interest by keeping the evidence classified?

In fact, a very similar scenario occurred in 2003 when US President George W. Bush revealed evidence of an allegedly illegal biological weapons program in Iraq. The conditions that allowed him to feel justified in releasing that

information are unclear, but a significant part of it may have been that the evidence was gathered by satellite, not by personnel on the ground. Furthermore, unlike the scenario described above, the evidence presented pointed to the development of a weapons program, but showed no intention of any weapons actually being deployed. Thus, there appeared to be no pressingly compelling reasons to withhold the evidence.

Although the risks for Bush in 2003 were low, a question presents itself here: should political leaders be professionally required to reveal any and all evidence prior to engaging in war in the interests of transparency, even when the costs are dramatically higher? This may be the path chosen by some well-intentioned but imprudent political leaders, but justice allows for other courses of action whilst still complying with duty. Noting that the reason that citizens are entitled to assess evidence is to hold leaders *accountable* for their decisions (rather than, say, making the decision themselves by voting, as Kant required).¹⁰⁰

Thus, citizens are entitled to the evidence, but they are not entitled to the evidence at any particular time. The just and prudent political leader would reveal the evidence to the public at a time when that revelation would not be advantageous to the enemy; as Lucas Swaine notes, "leaders need to be mindful of moral requirements to provide justification to those affected significantly by government policy." 101 A political leader only violates his

¹⁰⁰ Immanuel Kant trans. Mary Gregor, *Groundwork of the Metaphysics of Morals*, (Cambridge: Cambridge University Press, 1997), 6:345-346.

¹⁰¹ Lucas Swaine, 'Moral Character for Political Leaders: A Normative Account', *Res Publica*, vol. 19, 2013, 317-333 at 325. Emphasis added.

professional duties if he denies information in a way that will significantly affect those who are entitled to the information (thus, if he withheld that information until after an election, he would be guilty of an injustice). Understanding this enables us to say that, in the case of weaponised smallpox above, A would be justified in taking military action against B without needing to disclose the specific reasons prior to engagement. However, A's government would be required to, at a later date, disclose their reasons for the war and the evidence which justified the military action. The citizens of A are entitled to take this information under consideration when they next vote, but this entitlement does not require the disclosure of information prior to the use of force.

Note that the process of decision-making required to adhere to duty entails that judgements be made with regard to the particulars of the situation. Specifically, it requires (i) close knowledge of the facts regarding rights-violations and the cause of the war in question, and (ii) requires a judgement to be made on the whether the proportionality condition – which stipulates that wars are only just if the war will be of benefit to the *common* good (not merely the good of particular states¹⁰² – will be met. Thus, as James H. Toner notes, "the just decision flows from wisdom or prudence."¹⁰³

¹⁰² Orend, *The Morality of War, op cit,* 59-60.

¹⁰³ James H. Toner, *Morals Under the Gun: the Cardinal Virtues, Military Ethics, and American Society*, (Ketucky: University Press of Kentucky, 2005), 81.

3.2: Prudent Political Leaders

As the virtue that guides and perfects moral decision-making, prudence is a virtue all political leaders should possess. This is particularly true with regard to war, where uncertainty is rife. Of course, it does not fall only to political leaders to be prudent: we expect soldiers, commanders, citizens, and indeed every person to be prudent to some degree. However, prudence is especially important to political leaders because "ruling and governing belong properly to the reason; and therefore it is proper to a man to reason and be prudent in so far as he has a share in ruling and governing." Indeed, Aristotle's discussion of prudence frequently deviates to the political, with "Pericles and men like him" being the personification of the virtue of practical wisdom. 105

Prudence, or practical reason, is the application of reason to the moral demands of a particular situation in light of the available facts, and is especially important in those areas of moral decision-making that involve calculation or prediction. In short, prudence is simply the exercise of reasoning *well* about what one should do in a particular situation. Aquinas argued that it consists in three separate acts:

The first is "to take counsel," which belongs to discovery, for counsel is an act of inquiry, as stated above. The second act is "to judge of what one has discovered," and this is an act of the speculative reason. But the practical reason, which is

¹⁰⁴ Aquinas, ST, II-II, Q. 47, Art. 12.

¹⁰⁵ Aristotle, *Nicomachean Ethics*, Book VI, 1140b8-9.

directed to action, goes further, and its third act is "to command," which act consists in applying to action the things counselled and judged.¹⁰⁶

The prudent person, when forced to make a decision regarding how best to act in a particular situation, begins by taking counsel. He does not, importantly, make the decision without consulting others. This is especially true of political leaders whose decisions affect a vast number of people. Vitoria argued that leaders only declare war "according to the judgement of a wise man." ¹⁰⁷ The judgement of a wise man, for Vitoria, is one made in counsel with those presenting both supporting and dissenting opinions. It is a duty of political leaders to seek out advice regarding war from a number of trusted and well-informed advisors. Importantly, the political leader must have counsel on *all* relevant factors to making his decision: thus, he should surround himself with lawyers, military strategists and experts, ethicists, diplomats, any whose voice might lend helpful insight as to the best cause of action.

For example, two *jus ad bellum* conditions that pertain strongly to prudence are proportionality and probability of success (to a lesser extent, prudence also plays an important role in last resort judgements). In determining whether the proportionality condition were met, one would need help predicting the extent and likelihood of various harms likely to be generated by the war. These will include noncombatant deaths and physical damage to infrastructure, but may also extend to political fallout that undermines the common good,

¹⁰⁶ Aquinas, *ST*, II-II, Q. 47, Art. 8.

¹⁰⁷ Francisco di Vitoria, *On the Law of War, op cit.*, Q. 2, Art. 1, Sec. 20, pp. 306-307. The reference to Aristotle is from *Nicomachean Ethics*, Book II, Ch. VI, 1106b36-1107a2.

whether any dangerous precedent will be set in international law by the action, the likelihood of military action to generate further hostility toward my nation, and a number of other variables. Only those with sufficient experience in the relevant fields will a leader be able to identify the possible consequences of war and predict both their likelihood and quantify the harms. The prudent political leader, therefore, would gather as many experts as possible to help inform his decision.

A demonstration of the harms resulting from a political leader's failure to take due counsel from experts can be seen in the tumultuous civil-military relations of the Johnson White House during the Vietnam War. In his biography of General Harold K. Johnson, a member of the Joint Chiefs of Staff during the Vietnam War, Lewis Sorely documents the minimal influence of military advice on President Lyndon Johnson, suggesting that "there were at most thirteen occasions when General Johnson had an opportunity to talk about the war with his Commander-in-Chief." ¹⁰⁸

The greatest point of contention during this period regarded differing approaches to the method of winning the Vietnam War. Despite military advice that the best chance of victory in Vietnam would be to invest heavily in the war, including calling up Reserves to strike quickly and decidedly, President Johnson continually favoured budgetary levels that were, in the opinion of General Johnson, inadequate. However, rather than consulting closely the advice of his generals, President Johnson and Defence Secretary

¹⁰⁸ Lewis Sorely, *Honorable Warior: General Harold K. Johnson and the Ethics of Command*, (Kansas: University Press of Kansas, 1998), 226.

¹⁰⁹ Ibid., 212.

Robert McNamara "confronted their military counterparts with an admixture of arrogance and disdain." Being ill-equipped or informed of military concerns on their own, this hubristic ignorance of advice by Johnson and McNamara demonstrate an abject failure to exercise prudent and responsible decision-making as a Commander-in-Chief.

The second act of prudence involves judging what one has discovered. One cannot seek counsel forever. As James H. Toner notes, ""paralysis by analysis" is not an option."111 At this point the leader must judge an appropriate course of action from the various different facts and predictions that have been presented by his expert counsel. Here, as was discussed in the previous section in the case study on Petraeus' and Obama's disagreement on the Afghanistan withdrawal, the political leader must make decisions regarding how to balance the moral value of his cause against other morally compelling factors (including national interest, the common good, and so on). Ultimately, this judgement must be made by the political leader, who alone has legitimate authority in such matters. Here, ultimately, the political leader must make a decision from his conscience¹¹² about what is the right moral course of action. For this reason too, it is not sufficient (although it is necessary) that the political leader be prudent. He must also be just, possessing a well-formed conscience. For instance, if a political leader must conscionably judge whether his war is proportionate, he must have a keen sense of the likelihood of harm to noncombatants, and the moral seriousness of those harms. Justice is also

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¹¹⁰ Ibid., 221.

¹¹¹ Toner, Morals Under the Gun, op cit., 81.

¹¹² Conscience here does not refer to a "gut feeling" about right or wrong, but the last and best judgement one reaches after following the process of practical reason to its end. For an explanation of this approach to conscience, see: Matthew Beard, 'Two Views of Conscience for the Australian People', *Solidarity: the Journal for Catholic Social Thought and Secular Ethics*, vol. 1, iss. 1, 2011

brought to bear in recognising absolutely inviolable duties that will never be violated, no matter how effective they might seem.

The interplay between inviolable duties and prudential reasoning can be complex and problematic, as was seen in 2013 when compelling evidence emerged that the Syrian government, led by Bashar Al-Assad, had employed the use of chemical weapons against its own people during a bloody (and ongoing) civil war. In response, Barack Obama declared his intention to undertake a strategic military strike using long-range ballistic missiles, aiming "to deter Assad from using chemical weapons, to degrade his regime's ability to use them, and to make clear to the world that we will not tolerate their use." 113

For Obama, responding to the use of chemical weapons represented an inviolable duty. Thus, responding immediately and severely appeared morally (as well as strategically, due to Obama's ongoing dispute regarding the Iranian nuclear program) necessary. However, the proposal was poorly received amongst large sections of the international community for a variety of reasons; not least that it was not sanctioned by the UN Security Council and would therefore violate international law.¹¹⁴

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¹¹³ Washington Post Staff, 'FULL TRANSCRIPT: President Obama's Sept. 10 Speech on Syria', *Washington Post*, Sept. 10, 2013, http://articles.washingtonpost.com/2013-09-10/politics/41939044_1_chemical-weapons-poison-gas-sarin-gas.

¹¹⁴ Paul Campos, 'Striking Syria is Completely Illegal', *Time Ideas*, Sept 5, 2013, http://ideas.time.com/2013/09/05/obamas-plan-for-intervention-in-syria-is-illegal/.

However, the strike never occurred. Russian and Syrian representatives met for diplomatic talks in Geneva, and Syria agreed to surrender their chemical weapons cache to international control to be immediately dismantled. This allowed a military strike, with the related potential for escalation and civilian casualties to be avoided, with "sanctions short of the use of force" to be meted out according to evidence discovered by the UN Security Council. 116

Just war theorists would be right to determine from the evidence above that any military attack on Syria that occurred after an inspections deal had been reached but before it had been implemented would have been imprudent, and likely have failed the *jus ad bellum* condition of last resort. However, what has been less commonly noted is the fact that last resort (and similarly, proportionality) are conditions that require decision-makers to possess particular skills and traits to be adhered to adequately because of the sensitivity of these conditions to particular circumstances. Even Brian Orend, who expresses scepticism toward more literal interpretations of last resort, concedes that "[t]he key question this criterion demands to always be asked, and then answered in the affirmative, is this: is the proposed use of force reasonable, given the situation and the nature of the aggression."117 In one way, this merely pushes the central question back a step: what is reasonable will be determined by whether and if there are less harmful means of resolving the conflict, but in another way, Orend's imploration demonstrates the importance of situational considerations in one's reasoning.

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¹¹⁵ Conal Urquhart, 'Syria crisis: US and Russia agree to chemical weapons deal', *The Guardian*, 14 Sept., 2013, http://www.theguardian.com/world/2013/sep/14/syris-crisis-usrussia-chemical-weapons-deal.

¹¹⁶ *Ibid*.

¹¹⁷ Brian Orend, *The Morality of War, op cit.*, 58.

Prudential reckoning of the particularities of a situation may even lead decision-makers to challenge commonly-assumed deontological limitations of justice. For instance, Nicholas Fotion argues that the account of just cause presented by the theory of aggression can be overly-restrictive in that it tends to entail a singular-reason approach to justifying war; as Walzer notes, aggression "is the only crime that states can commit against other states: everything else is [...] a misdemeanour." This, for Fotion, is a shortcoming of just cause. He notes that "several small reasons [misdemeanours, in Walzer's language] can, in theory, rise to the level of a single overriding reason. The whole might not be greater than the sum of the parts, but the parts may add up to a single overriding reason." As such, Fotion advocates a "multiple reasons approach" to just cause, in which political leaders make judgements about the justice of a cause being informed by a multitude of different reasons for and against waging war, rather than one single reason. 121

This approach seems consistent with the Thomistic argument that wars are fought for the common good. The manner in which the common good is harmed (e.g. aggression) will therefore matter less than the severity of the harm inflicted on the common good. If political leaders were to take such an approach, the need for practical reasoning skills in political leaders would be even greater as just cause would no longer be a matter of simply determining whether or not political sovereignty or territorial integrity have been violated, but also working out whether a series of minor offences amount to a serious

¹¹⁸ Nicholas Fotion, War and Ethics: a new just war theory, (London: Continuum, 2007), 72.

¹¹⁹ Walzer, Just and Unjust Wars, op cit, 51.

¹²⁰ Fotion, op cit., 73.

¹²¹ *Ibid.*, 78.

¹²² Daniel M. Bell Jr., *Just War as Christian Discipleship; Recentering the Tradition in the Church rather than the State*, (Michigan: Brazos Press, 2009), 47.

harm to the common good. However, this entails political leaders being concerned with the *common* good, rather than simply concerning themselves with the goods of their particular state. Such concern is the domain of the virtue of charity to which I now turn.

3.3: Charitable Political Leaders

All political leaders need to possess the virtues of prudence and justice as each is necessary to fulfil the *jus ad bellum* conditions of JWT. However, the perfection of the virtues of the political leaders lies in the virtue of charity. Unlike justice and prudence, the political leader's charity is supererogatory: morally laudable and excellent, but not necessary for a just action. Thus, discussion of charity is warranted not to understand the professional duties of political leaders, but what it means to excel in the profession.

Perhaps the most obvious instantiation of charity is in the Augustinian claim that war can be a morally acceptable way of loving one's enemies. Augustine exhorted those involved in war to be peacemakers "even in war so that by conquering [enemies] you bring the benefit of peace even to those you defeat." For Augustine, wars were declared in part as an exercise of fraternal correction for the moral indiscretions of another. Were it impossible, Augustine claimed, to stop an enemy from sinning through non-violent means, it would be better to stop him with the use of force, even lethally, than

¹²³ E. M. Atkins and R. J. Dodaro (eds.), *Augustine: Political Writings*, (Cambridge: Cambridge University Press, 2001), 217.

to allow him to keep sinning, because by sinning the enemy sacrifices his very soul. On this account, war becomes perhaps the grandest manifestation of 'tough love.' In Aquinas, this approach changes so that war is always aimed at bringing about peace, understood both as a state of concord between communities, and a state of harmony in the souls of individuals. In a world where the international community is pluralistic, it is this latter sense of charity which political leaders must be equipped with.

Charity, in this latter sense, is a commitment to the advancement of the common good; the flourishing of all people and communities. As Daniel M. Bell notes, "this common good [...] is concerned with the welfare of all, such that all may prosper in harmony with their neighbours." For Bell, it is also concerned ultimately with love of God and a "theological vision of political life." Bell combines the conceptions of Augustine and Aquinas, seeing war as concerned with the common good, but at the same time forbidding self-defensive wars in the Augustinian spirit, leaving the victim of violence "in the hands of God's providential care." A different view is presented by Lucas Swaine, who argues that:

[P]olitical leaders have responsibilities that ordinary citizens do not [...] political leaders [do not] have a prerogative to yield rights of self-defence for their

¹²⁴ Bell, op cit., 134.

¹²⁶ C.f. chapter two, 31.

¹²⁵ Ibid., 134.

¹²⁷ Bell, op cit., 134-135.

respective polities, whereas it appears that ordinary citizens may permissibly decide to be killed rather than to kill.¹²⁸

Swaine's argument coincides more neatly with the duties of the modern-day democratically-elected political leader than Bell's. Swaine understands the leader's duties as being directed primarily to his citizens whilst Bell sees them primarily directed to God. For Bell, all just wars must be motivated by the Christian prerogative to serve one's neighbours, including "by defending them against unjust aggression." Thus, it is charity that determines whether a cause is just or not. Here it will be worth returning to the question asked earlier: what should virtuous political leaders understand just cause and the "goods proper to political life" to be?

As we have already noted, deontological just war theories have, since Walzer, identified the goods proper to political life as the two state rights of political sovereignty and territorial integrity. These have led to the formulation of several duties in order to protect these two rights. The collection of these duties is commonly known as the "theory of aggression" first presented in *Just and Unjust Wars*.¹³⁰

This theory understands aggression as the only just cause for war. There are, as Orend notes, two kinds of just cause with relation to aggression – "self-

¹²⁸ Swaine, *op cit.*, 325.

¹²⁹ Bell, op cit., 135.

¹³⁰ Walzer, Just and Unjust Wars, op cit., 51-53.

defence" and "other-defence." ¹³¹ They share between them a common interest in defending the rights of states when they are wrongly violated. Perhaps one limitation of the theory of aggression which an aretaic approach, informed by charity, might enhance is the view that just cause grants states a *license* to go to war. Just cause has not traditionally been formulated as a duty to go to war, but as a liberty: states are *entitled* to go to war when the condition of just cause has been fulfilled, but are not obliged to. Thus, unless political leaders are motivated by charity, they appear likely to go to war only when it serves their interests. Bell describes the modern conception of just cause:

The justice in modern just war is a matter of refereeing the interaction of nations as each pursues its own interests and values. As the account of just cause [makes] clear, a nation has just cause for what when its right to territorial integrity and political sovereignty, its values, or its interests are attacked. Justice is first and foremost about securing a nation's *individual* good.¹³²

Bell's critique overreaches somewhat. In fact, there is a growing move in international law and relations toward a doctrine of "Responsibility to Protect," (R2P) which states that:

Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state is unwilling or unable to halt

¹³¹ Orend, The Morality of War, op cit., 32.

¹³² Bell, op cit., 132.

or avert it, the principle of non-intervention yields to the international responsibility to protect.¹³³

Thus, it might be said that the state of just cause in modern JWT is somewhere in between a self-interested approach and what Bell sees as a "justice for *all*" approach. However, R2P is controversial in the literature precisely *because* it is formulated as a moral duty of states. Political leaders, it is argued, are morally required to defend the victims of aggression where it is possible and necessary. This may be true, but because the international sphere has, until this point, largely been governed by the language of rights which, Bain notes, "prefigure a permissive mode of action, mediated by contingent motives and interests, which does not always make contact with victims who are in need of rescue." Because of this, the introduction of *duties* to intervene, as opposed to an account when intervention is *justified*, will take some time.

Perhaps eventually such duties will be popularly acknowledged and be enforced, but until then, interventions are likely to continue to take place in a voluntaristic manner. So, although Bell is perhaps overzealous in his description of the state of modern international relations, it is true in situations where (i) there is no risk to their own political sovereignty or territorial

¹³³ Gareth Evans, Mohamed Sahnoun (Co-Chairs), *The Responsibility to Protect*, Report of the International Commission on Intervention and State Sovereignty, International Development Research Centre, Ottawa, 2001, XI,

http://www.un.org/en/ga/search/view_doc.asp?symbol=A/57/303>.

¹³⁴ Bell, op cit., 133.

¹³⁵ For a thoughtful discussion of the interplay between R2P and obligation, see: William Bain, 'Responsibility and Obligation in the 'Responsibility to Protect', *Review of International Studies*, vol. 36, Supplement S1, 25-46.

¹³⁶ Bain, op cit., 28.

integrity, and (ii) there are no national interests at stake, political leaders will feel less compelled to defend just causes. Bell's solution to the "interested approach" (which he describes as consistent with a model of just war as a "public policy checklist" is to remodel JWT on Christian moral virtues such as charity and justice. Such an approach "is more amenable to the possibility of humanitarian intervention." The political leader, if he has genuinely cultivated the virtues of justice and (more importantly) charity, will not be the type of person who stands indifferent to injustices simply because his interests are not served by intervening. He will, in short, not require any duty to tell him to help the innocent. As Swaine explains:

[M]oral character [...] can move people to action, and this is another way in which it proves relevant to a normative treatment of democratic leadership. Strength of character [here understood as possessing the virtue of charity] can induce individuals to press forward with difficult efforts even when beleaguered or frustrated.¹⁴⁰

¹³⁷ Bell, *op cit.*, 74. The checklist, for Bell, is "an instrument of public policy, a checklist of criteria that aspires to guide politicians, rulers, and military leadership in times of war." ¹³⁸ *Ibid.*, 73-74. In many ways, this approach is consistent with mine, but I believe Bell goes too far in theologising his argument (for instance, suggesting that just as self-defence does not justify intentional killing, state self-defence cannot constitute just cause for war (134-135) – an approach in which Bell seems to overlook the legitimate use of force which is not intentionally lethal, but which is willing to be lethal if necessary, just as occurs in individual self-defence under DDE. Elsewhere Bell defends punishment as a just cause for war (136), an approach which is deeply unsettling and at odds with much of what I have argued here: most significantly because it is indiscriminate in its punishment of wrongdoers and noncombatants alike.

¹³⁹ Ibid., 135.

¹⁴⁰ Swaine, op cit., 324.

These beleaguerers and frustrations can and are likely to include a lack of politically compelling reasons to assist those in need when doing so carries great national expense and little benefit. The virtue of charity (alongside other moral virtues Swaine includes in his description of good moral character) compels leaders to find motivations outside of political interests. An aretaic approach to just cause, therefore, is less likely to take a license-based approach. All things being equal, if injustice is being done, and it is within the power of the charitable individual to correct that injustice, the charitable individual will act. Further, his actions will be motivated by a desire to correct the injustice itself.

Alex J. Bellamy has argued that "[a] state may launch a humanitarian intervention for self-interested reasons (motives) but its *intention* may still be humanitarian [...] The Just War tradition requires that those embarking on humanitarian intervention have a primarily humanitarian *intent*."¹⁴¹ However, if humanitarian intervention is to be genuinely motivated by charity, political leaders will not possess, as Bellamy and Orend allow, "mixed motives," in which just motivations are present alongside self-interested ones.¹⁴² Rather, charitable political leaders will rationalise the decision to act in defence of others by asking (i) is there injustice occurring here? and (ii) am I in a position to correct that injustice without causing greater injustice? They would, in Johnson's words, "serve the goods of proper political life" wherever it were possible for them to do so.

¹⁴¹ Alex J. Bellamy, Just Wars: From Cicero to Iraq, (Cambridge: Polity Press, 2006), 211.

¹⁴² C.f. *Ibid.*, 211; Orend, *The Morality of War, op cit.*, 46-47. Note that Bellamy requires the moral intention of the political to be primary amongst the variety of different intentions and motives available.

Serving the goods proper to political life requires a nuanced understanding of that political life, including the relevant facts, historical trends, and personalities involved. Thus, political leaders who aim to serve the goods of political life are required to possess a keen awareness of the current and past circumstances of international relations. Prudence, as we have seen, is the ability to apply one's reason to determine the correct course of action against a variety of alternatives, including, as Aquinas notes, the ability "to obtain knowledge of the future from knowledge of the present or past." This is to say that prudence will serve political leaders in determining the best path of action using not only evidence from current events, but from past circumstances as well.

Political prudence concerns a political leader's awareness of the historical, political, and cultural facts that are relevant to a particular situation, and his ability to apply those facts to the situation in a reasonable manner. The reasonableness of this application includes, for the prudential reasoning to be virtuous in character, concern for justice and charity. Not only must this be applied to matters of just cause, but also the means by which the war is fought and how closely they align to the goals of war as stipulated by *ad bellum* reasoning. In this regard, both political leaders and military commanders are required to possess charitable prudence; however, I include it in the discussion of political leadership because the political leader usually possesses sufficient authority to influence the means by which commanders fight their wars.

¹⁴³ Aquinas, ST, II-II, Q. 47, Art. 1.

Carl von Clausewitz argued that "the aim [of] the whole military action [...] must be in accordance with the object of the war."¹⁴⁴ Indeed, he goes so far as to say that "[a] prince or general who knows exactly how to organise his war according to his object and means [...] gives by that the greatest proof of his genius."¹⁴⁵ The central importance of unifying the means by which a war is fought with the goals of that war requires a unification of moral and strategic values by political leaders. After all, it makes no sense to, as one Vietnam veteran put it, "rationalize destroying villages in order to save them."¹⁴⁶

Unifying goals and means in wartime requires two things of political leaders: (i) awareness of practical and logistical matters to an extent sufficient to make well-informed decisions as to the *efficacy* of a particular decision with regard to the *specific* goals of the war (i.e. rout the enemies northern flank, or capture a prominent terrorist leader); and relatedly (and more importantly), (ii) the ability to connect practical matters with the *ad bellum* moral justifications for war (i.e. does this advance the cause of peace in a morally good way?). In this sense, a political leader must be sufficiently proficient in the ways of war as to be able to connect short-term battle tactics to broader military goals that are in the national interest, but are also moral concerns of the just and charitable political leader.

The importance of unifying goals and means can be demonstrated by returning to President Obama's intention to conduct a long-range missile

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¹⁴⁴ von Clausewitz, On War, op cit., Book III, Ch. I.

¹⁴⁵ *Ibid*

¹⁴⁶ John Kerry, 'Testimony Before the Senate Foreign Relations Committee', April 22, 1971, http://www.wintersoldier.com/index.php?topic=Testimony.

attack on the Assad regime in response to evidence of the use of chemical weapons. In questioning whether the decision was prudent (and leaving aside the variety of other important questions provoked by this strategy), ¹⁴⁷ we must ask whether the strategy would be effective in serving the particular goals it set out to achieve. In this case, the goals were (in no particular order) punishment, deterrence, and incapacitating Syrian chemical weapons capabilities. In terms of these specific goals, it appears as if a limited, ranged, missile strike might possibly have served the specific goals designated by the strategy in question.

However, problems arise in a second respect: do the proposed military strategies of a particular action align with the broader purposes of the war stipulated by *jus ad bellum*, to which a political leader is committed? The aim of the strike was, at best, to protect the innocent by punishing, incapacitating, and deterring the Assad regime. Given the vulnerability of civilians and the limited likelihood of their being protected by such a strike, this policy draws analogy to the Vietnam War's rationalization of "destroying villages in order to save them." It is unclear that such an approach coincides with charity's dictum that all wars ultimately aim at bringing about a just peace and benefit the common good. In one sense, this could rightly be seen as a *moral* failure by the political leadership, however, in another important sense it represents a failure to appreciate military strategy and history. For instance, learning from the NATO intervention in Bosnia, when distance strikes only led to a speed-up in the killings occurring on the ground. Thus, appreciation of political and

¹⁴⁷ Elsewhere I have spent more time focussing on some of the moral shortcomings of Obama's proposed response. See: Matthew Beard, 'War as Punishment: President Obama's Syrian Solution', *ABC Religion and Ethics*, 2nd September 2013, http://www.abc.net.au/religion/articles/2013/09/02/3838927.htm.

historical factors at play in a situation can be an important virtue for political leaders to possess. Although it does not – in itself – demonstrate anything profound about the moral character of the person in question, its absence can carry serious moral implications.

4: Conclusion

This chapter offers a new way of understanding the individuals obligated to make moral decisions with regard to JWT. I argue that soldiering, military command, and political leadership all require the virtues for adherence to political duty and to achieve professional excellence. The interplay between deontological duties and moral virtues was explored in two different ways. First, as 'compliance multipliers' that assist individuals in recognising and acting in consistency with their professional duties. Secondly, virtues are tools for professional excellence. They aid individuals in achieving more than the minimum standard of acceptable behaviour, but drive them toward the supererogatory.

Soldiers are required to risk their own lives in defence of what is good. For this reason, they are especially called to the virtue of courage, by which they are prepared to be subject to unjust aggression in order to defend and uphold the common good. Courage of this form is the duty of soldiers, but soldiers who seek to achieve excellence in their vocation may also strive for a higher level of courage, one Aquinas understood as martyrdom. Such figures can

serve as role models and examples to inspire courage and virtue in other soldiers.

Insofar as every moral agent is autonomous, they are expected to determine for themselves how best to act in particular situations; that is, to practise prudence. However, soldiers have a moral duty to obey orders, making it unclear how prudence can be practised in the military. The prudent soldier, however, ought to question those orders which jar with his conscience, or which have been issued by commanders who have not demonstrated a prior commitment to justice. However, absent of these conditions, prudent and just soldiers will obey orders without needing to undergo deep reflection as swift obedience serves the efficacy of the military, which serves a morally important role.

Commanders too, require moral virtues, not least because such virtues will empower their soldiers to be more readily obedient. Most importantly, commanders require prudence of a specific kind: military prudence. As a moral virtue, prudence requires commanders to consider not only what will be most effective with regard to achieving victory, but what will best uphold the moral commitments of JWT. Effectiveness cannot be allowed to outweigh the requirements of morality.

Although military commanders' primary concerns are for strategy and the proficient use of military resources to bring about the ends of war, the virtuous commander must also recognise that victory alone is not sufficient: it is necessary to win *well*. Thus, the virtuous commander will place moral considerations alongside strategic ones and take an approach that conforms to

each of these domains. Joseph Allen notes that "no inherent conflict exists between the theory of strategy and a morality of respect for beings that seeks the best action possible under the circumstances." Given the lack of conflict, a middle ground approach is both possible and preferable to pursuing strategy over morality, as the merely proficient commander may be tempted to.

Finally, political leaders require moral virtues relating to making decisions that conform to *jus ad bellum* principles. Specifically, political leaders serve the goods particular to political life, which include states' rights of territorial integrity and political sovereignty, but are not limited to them. Most importantly, political leaders must serve the common good. This requirement, which dates back at least as far as Aquinas, sits in contrast to modern conceptions of JWT, which see just cause as a *license* to go to war, and thus in reality see war practised only on those occasions when they serve the national interest.

The charitable and just political leader, by contrast, will feel obligated to go to war wherever it advances the common good – meaning that virtuous political leaders will be more likely to engage in exercises of humanitarian intervention than will those committed only to deontological conceptions of just war theory. However, the virtuous political leader will approach every decision with prudence, seeking consultation from experts in various fields before reaching a final decision. Prudent decision-makers also require nonmoral skills in order to practise their vocation with excellence: specifically, they must

¹⁴⁸ Joseph L. Allen, 'The Relation of Strategy and Morality', op cit., 176.

be experienced in the relationships between states by way of diplomacy. Further, they must possess the ability to understand military matters enough to determine the efficacy of proposed operations, and to understand whether a proposed strategy will advance the *ad bellum* causes under which war was commenced in the first place.

In this chapter I paint a (necessarily limited) picture of how the military professions manifest when practitioners concern themselves with more than mere proficiency, and rather strive to practise their professions with virtue. I limit my discussion to a few central virtues, but others will also be important for virtuous conduct. Part of the importance of incorporating aretaic concerns into JWT is to allow the theory to become more sensitive to situational concerns, and as the situations in war and politics vary, so too will the manner in which the relevant virtues manifest. Thus, we must develop professionals who treat the aretaic project of living a virtuous life seriously.

Chapter Six

Conclusion

This thesis argues that just war theorists would do good service both to JWT and to military practitioners by using aretaic moral reasoning to complement the deontological elements of military ethics. Each chapter has made this argument in a different way, but all have been unified in emphasising the complementarity of aretaic and deontological ethics. In this final chapter, I return to the discussions of each of the preceding chapters, summarising the basic arguments and highlighting areas of key thought in this thesis. Following this summary of what has been argued throughout, I briefly suggest some of the practical applications of what has been argued, as well as avenues for future academic research. Some of this has already been addressed, but I return to these matters again to identify critical questions that this thesis may assist in addressing.

1: Summary of Arguments and Key Thoughts

This thesis consists of four main chapters. Chapter one is introductory, and explored the central concepts of the thesis: aretaic ethics, deontological ethics, and JWT. Chapters two to five built an argument as to why JWTs current

emphasis on deontology is problematic and warrants revisiting. Chapter two chronicles *how* JWT came to emphasise deontology so heavily; chapter three explains how the concept of intention serves to bridge the gap between deontological and aretaic ethics, and explained some ways in which aretaic thinking about pertinent questions of military ethics can enrich the answers provided by deontological theories; chapter four explores how aretaic thinking provides new insights into the ethical aspects of PTSD, moral injury, and military identity; and finally, chapter five reveals the ways in which *particular* virtues are necessary for political leaders, military commanders, and soldiers to readily identify what morality demands in particular situations. Each of these arguments will be explored in more detail below.

In this section I also make special mention of the key thoughts of this thesis that mark original contributions to the military ethics literature. The chief original contribution of this thesis is demonstrating the complementarity of deontological and aretaic ethics within JWT. I argue – particularly in the exploration of Walzer, Rodin, and McMahan's ideas in chapter three – that most just war theorists do not consider aretaic ethics to warrant significant consideration in discussions of the morality of war. There are, by contrast, some theorists who do consider aretaic questions to be worthy of consideration for educational reasons, because they enhance performance, or protect soldiers from moral harm. Each of these positions makes a substantial

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¹ C.f. Paul Robinson, Nigel De Lee & Don Carrick (eds.), *Ethics Education in the Military*, (Cornwall: Ashgate, 2008).

² C.f. Peter Olsthoorn, 'Courage in the Military: Physical and Moral', *Journal of Military Ethics*, vol. 6, iss. 4, 2007, 270-279; J. Carl Ficarrotta, 'Are Military Professionals Bound by a Higher Moral Standard?', *Armed Forces & Society*, vol. 24, no. 59, 1997, 59-75.

³ C.f. Shannon E. French, *The Code of the Warrior*, (Lanham: Rowman & Littlefield, 2003); Nancy Sherman, *The Untold War: Inside the Hearts and Minds of Our Soldiers*, (New York: W.W. Norton, 2010).

contribution to the debate on aretaic ethics and the military, but none demonstrate the ways in which virtue can be conceptually integrated into existing JWT. That is, none of them mount substantial aretaic arguments whilst simultaneously engaging with the deontological strands of military ethics. My thesis addresses this absence in the literature by showing how the two different approaches can enrich each other; in particular, how aretaic ethics can enhance deontological formulations of JWT.

In mounting this argument, a number of lesser, yet original, contributions to the literature are made. All of these contribute to the overall argument of the thesis, but each also contributes to other aspects of the military ethics literature. Insights from these chapters can be brought to bears on debates that are ongoing within the literature. These original contributions occur in chapters three, four, and five.

1.1: Historical Shifts in JWT

Chapter two explores how JWT emerged in the Western tradition beginning with St. Augustine. The just war, for Augustine, must be one that accords with the divine moral law. For Augustine, the injustices of war did not chiefly include the wide array of *physical* damages – loss of life, destruction of property, or loss of political autonomy – rather, war's injustice was the corruption of human souls. War threatens to turn human hearts to hatred, love of violence, anger, and vengeance, and the sin of war is when people act with

intentions formed from those emotions. Only service of God's will would count as an intention from which one could justifiably go to war.

Developing Augustine's views, Thomas Aquinas situated his discussion of war within the context of his work on the supernatural virtue of charity. Thus, Aquinas expressed his view that just wars must be in the service of the *common* good, not only the good of the nation or leader who declares them. All wars, Aquinas stipulated, must ultimately aim at a specific type of peace: concord between all persons. Aquinas also explored the virtues that best characterise the practices of military command and soldiering. It is noteworthy that Aquinas kept these discussions separate from his exploration of *jus ad bellum*. This seems to reflect a similar belief to that present in Augustine; namely, that the objective justice of cause is a separate matter to whether individual people have acted virtuously in waging war.

Aquinas suggested that the moral virtues of prudence and fortitude bear most immediately on military affairs. Prudence refers to the special virtue of the cognitive faculty which allows man to decide between various paths of action, whilst fortitude (more commonly called courage) is the virtue which allows man to pursue what he knows to be good despite the difficulties involved. Prudence pertains to military command, whilst fortitude regards the carrying out of orders: "[t]he *execution* of military service belongs to fortitude, but the *direction*, especially insofar as it concerns the commander-in-chief, belongs to prudence." By aligning different military practices with particular moral virtues, and – crucially – remembering that Aquinas saw the virtues as

⁴ Aquinas, ST, II-II, Q. 50, Art. 4.

character traits that direct an individual toward happiness,⁵ Aquinas demonstrated how the act of soldiering can be a constitutive element of the good life as well as being a morally just practice. Thus, Aquinas' model of war does service to both deontological and aretaic aspects of JWT.

Later, Francisco di Vitoria sought to formulate a positive *law* of war. In doing so, he argued that war is a separate moral domain, independent of everyday morality in which political leaders with just causes could do "everything necessary for security and peace." By determining moral justifications solely with reference to the justice of one's cause, Vitoria advanced a kind of consequentialism that is at odds with his other moral writings, which are grounded in natural law. This seems to indicate that Vitoria saw war as an entirely separate moral domain from everyday life, with its own unique set of rights and duties. Thus, new and specifically tailored laws are required to govern this separate moral domain. In this way, Vitoria's project deviated from those of his predecessors, who had attempted to apply existing laws of morality to war, rather than develop an entirely new moral system.

Vitoria's successor, Hugo Grotius, preferred deontological to aretaic ethics, arguing that virtue is supererogatory. Following Vitoria's view that war is a morally separate domain, Grotius described soldiers as being governed only by the rights and duties of war. However, he also believed that the soldier who continues to adhere to 'everyday morality' were morally superior to soldiers

⁵ *Ibid.*, I-II, Q. 1, Art. 8; I-II, Q. 4, Art. 7.

⁶ Francisco di Vitoria, *On the Law of War* in Anthony Pagden & Jeremy Lawrence (eds.), *Vitoria: Political Writings*, (Cambridge: Cambridge University Press, 1991), Q. 1, Art. 4, Sec. 18.

who only obeys the laws of war. Here, Grotius acknowledged the influence of aretaic morality: although we may only punish soldiers who violate deontologically-prohibited norms, we should hope that soldiers be "honourable." In some ways this acknowledgement continued the legacy of Augustine and Aquinas by making a place for aretaic ethics in JWT. However, construing the virtues as unnecessary for moral conduct dramatically undermined the authority of aretaic ethics in moral evaluations of war.

The undermining of aretaic ethics in modernity continued with the publication of Walzer's *Just and Unjust Wars* in 1977. Walzer's work focusses explicitly on understanding the morality of war through the lens of human rights and their violations. Although there are multiple reasons for this, a central one is Walzer's belief that universal morality must necessarily be "thin" and comprise only of the most basic moral norms. Thus, Walzer's just war theory is similarly "thin," focussing on what basic principles of conflict all nations agree to in their conduct of war.

However, perhaps alone of the just war theorists discussed in this section, Walzer is acutely aware of and concerned about the practical realities of war. Grounded in countless historical examples, *Just and Unjust Wars* (and, indeed, all of Walzer's work since that book) attempts to reconcile military ethics with the practical necessities and realities of military practice.

⁷ Hugo Grotius, *The Rights of War and Peace*, in Gregory M. Reichberg, Henrik Syse & Endre Begby, *The Ethics of War: Classic and Contemporary Readings*, (Victoria: Blackwell Publishing, 2006), Bk. III, IV.II.

This led, for instance, to (i) Walzer's justifying the commission of war crimes and moral atrocities in times of grave necessity; (ii) his belief that all soldiers, regardless of the justice of their cause, share mutual rights to kill each other; and, perhaps most tellingly for this thesis, (iii) that the cultivation of the virtues in soldiers or political leaders is supererogatory or heroic, and goes beyond the basic requirements of morality. It is this last view that perhaps most typifies contemporary JWT: focussed only on rights as the minimum standard of moral excellence and the moral necessity to which all actions must reach in order to avoid being *prima facie* wrongs. And it is to this account that my discussion turns to in chapter three.

1.2: Intention: Connecting Rights and Virtues

Chapter three begins with a philosophical exploration of the concept of rights as used by several of today's prominent just war theorists. I argue that the theories of Walzer, Rodin, and McMahan – although different in a variety of ways – share a basic understanding of rights. For these theorists, their use of the term rights refers to (i) basic rights; (ii) liberty-rights to defend those basic rights; and (iii) obligations not to violate the rights of others. Focussing on the case of the alleged right of soldiers to kill their enemies during war, I find that this approach, focussing on the moral *status* of both the perpetrator and the victim, fails to give adequate focus to the concept of intention as it bears on the morality of killing in war.

I therefore contrast the status-based approach to rights and intentional killing with that provided by DDE. This approach, today popular in discussions of collateral damage, can also be used to show how an absolute prohibition on intentionally killing might be consistent with forcefully taking another person's life. I presented the absolutist interpretation of DDE as both practicable in military settings and as being preferable in its consistency with common morality. Further, by introducing an absolute ban on intentional killing under all circumstances, the absolutist interpretation DDE can be said to defend the absolute value of persons in a way that a non-absolutist account of human rights does not. In making this argument, I reveal the ability of intentions and motives to bridge the deontological and aretaic aspects of military ethics.

After exploring how modern just war theories tend to conceptualise rights, I identify three reasons *why* the framework provided by rights might appear as a desirable one for just war theorists. The first reason is one that I have already identified: the defence of the immense value of each individual human life. This emphasis provides a response to pure utilitarian modes of thinking in which moral value is determined with reference to the overall benefit to all persons, but where each individual is of comparably little moral value. Rights language is also a powerful disincentive against wrongdoing because it provides a framework through which legislation can be developed to prohibit and punish wrongdoing. Thus, for just war theorists, rights discourse appeals because it can assist in – as di Vitoria and Grotius sought – the development of morally binding and enforceable laws of armed conflict. The usefulness of binding laws is contingent on their being applicable to all people who are engaged in wars. In this way, rights theory is also a useful framework for

military ethics as it claims to be universally applicable. By appealing to values that are universally-applicable to and ostensibly held by all members of the global community, rights discourse further empowers military ethics to be able to govern the conduct of all soldiers from all parts of the world for all times.

In the final section of chapter three, I explore two different problems – torture, and lesser evil scenarios – and the ways in which deontological just war theories explain and respond to those problems. I emphasise the way in which each of these problems could be greater illuminated by supplementing the deontological reply with insights from aretaic ethics.

I explore various conceptions of torture, advocating that of Patrick Lee, whose definition of torture derives from what the act aims to achieve, rather than which methods are used. Torture, under this definition, consists in "acts of mutilation or acts that attempt to reduce the detainee to a subhuman, disintegrated state, for the ulterior purpose either of interrogation, deterrence, revenge, punishment, or sadistic pleasure." It is noteworthy that the best definition of torture is one that is related to the intentions and motivations of the torturer – thus allowing for the interplay between aretaic and deontological norms. I suggest that insights from aretaic ethics might be helpful in adding further moral depth to discussions of torture. Torturers are asked to perform acts that degrade, mock, traumatise or objectify other human beings. It is therefore reasonable to ask whether institutions that employ

⁸ Patrick Lee, 'Interrogational Torture', *The American Journal of Jurisprudence*, vol. 51, 2006, 131-148 at 132.

torture are facilitating those operatives becoming the kind of people who do not make good citizens. That is, whether the deeds torturers perform come to form character vices such as insensitivity to the suffering of others, manipulative attitudes toward relationships, or reluctance to believe what one is told at face value. Further, it is worth understanding whether, even if torturers are able to retain virtue during torture, what harm is done to their ability to flourish as human beings. I concluded by arguing that the moral costs of torture *on the torturer himself* are too severe to ever morally justify the practice.

The case of lesser evil scenarios, which are only revealed as a real dilemma if one takes a threshold deontological approach to rights, is explored with regard to aretaic elements. I argued that supreme emergency and lesser eviltype arguments tend to demonstrate a failure to render the morality of war as subject to the common good. It is only for instance, by preferring the good of *my* nation over the good of other nations that I can justify invading a neutral country in my own defence (as explored in Jeff McMahan's case). However, I show how even if one were to consider lesser evil problems to be morally difficult cases, their sensitivity to a huge range of situational variables and the lack of a deontological principle to guide actions in these cases suggest that the only person who we could reasonably trust to resolve a lesser evil problem well would be a person of virtue.

The case of Walzer's supreme emergencies is also considered from an aretaic perspective, from which it was revealed that insofar as the virtues are concerned not only with how one relates to other people, but also how one relates to oneself, they will *never* justify violations of morality, regardless of the consequences. Aretaic ethics can also provide a framework to substitute the 'damned martyrdom' of supreme emergencies – whereby political leaders sacrifice their *souls* in defence of their communities – with a more literal kind of martyrdom, where leaders sacrifice themselves and their communities in defence of what is right. Although this appears dramatic and perhaps unlikely, it is worth noting that it is a response to a scenario (supreme emergency) which is itself dramatic and unlikely. As such, it should be unsurprising that in the entirety of human history, no such instance of communal martyrdom has ever taken place. However, it is important that political leaders be of a character that is prepared to sacrifice the community rather than betray deontological norms because, as was discussed in chapter four, the psychological fallout from betrayals of moral norms can be catastrophic.

1.3: War Crimes & Psychological Scarring

In the first section of chapter four, I turn my attention to aspects of military ethics in which an aretaic approach offers not only new insights, but new questions. Aretaic ethics, I argued, provides unique and important insights into the moral-psychological effects of warfare, specifically, of unjust conduct and moral transgression. I explore two different frameworks that aim to reduce instances of moral transgression by soldiers – those of Nancy Sherman and Shannon French – before offering my own account. Sherman argues that the inculcation of empathy within soldiers; empathy for the plight and humanity of noncombatants, enemy soldiers, and colleagues, is the best way

for soldiers to guard themselves against committing atrocities. French, on the other hand, argues that appealing to a warrior code of honour provides soldiers with an internalised set of beliefs about the type of things that soldiers should and should not do.

In response, I argue that Sherman's approach, whilst effective in preventing the killing of noncombatants, does little to restrain soldiers' passions when the target of those passions is culpable for some wrongdoing (i.e. killing a member of the troop). Whilst French's approach, on the other hand, relies on a soldier seeing himself primarily as a warrior (and thus being governed by the warrior code). The difficulty here is that the soldier's conduct is governed by what the rest of his peers (fellow warriors) see as laudable or blameworthy. Both approaches are therefore – I suggested – of limited usefulness. In overlooking the significance of the fact that most warriors hold moral commitments in a variety of different moral domains, most pertinently in this case, at war and at home, French and Sherman both miss a crucial piece in the psychological puzzle of the soldier. I argue that what it means to be a soldier must be consistent with what it means to be a father, brother, mother, sister, and so on, for honour to be given the best opportunity to prevent atrocities.

A better approach, I believe, is revealed by Shakespeare in *Coriolanus* when the protagonist, Caius Marcius, is persuaded against destroying Rome by the exhortations of his mother. Coriolanus is swayed by the prospect of shame not by fellow soldiers, but by society generally. Coriolanus' eyes are brought to "sweat compassion" out of love for his mother, and his memories of home. In a similar vein, the wrath of Achilles abated in response to memories of his

father. Drawing on these, I argue for a military culture that encouraged holistic moral identities and virtues rather than the cultivation of warrior-specific virtues and identities. If soldiers are able to identify simultaneously as good soldiers, fathers, mothers, sons, sisters, and citizens, they are less likely to engage in behaviour that deviates sharply from basic, everyday moral norms and virtues. This approach is also appealing in that it can be applied more easily to the growing number of military operators who do not fit the warrior archetype, such as drone operators. Thus, soldiers will do well to remember their moral commitments on the "home front," as well as the expectations of fellow soldiers.

This novel approach is consistent with emerging literature on the "fragmentation problem" in soldiers, which identifies the psychological trauma suffered by veterans because of the severe disconnect between their military and civilian lives, and makes an original contribution to that literature by showing consistency between literary cases and contemporary examples. Further, I connect the question of warrior identity to the changing roles of military personnel. New "warriors" – including drone pilots and cyber warriors – no longer engage in physical combat, but still go to war and then return home at the end of the day. In these cases, problems of fragmentation will only be exacerbated by the immediacy and regularity of the civilian-military transitions. Thus, more than ever, Western militaries face a pressing need to re-shape soldier identity.

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⁹ See Paul T. Berghaus & Nathan L. Cartagena, 'Developing Good Soldiers: the Problem of Fragmentation within the Army', *Journal of Military Ethics*, vol. 12, iss. 4, 2013, 287-303.

In the second section of the chapter, I focus specifically on the experiences of PTSD and moral injury as they occur in soldiers. I distinguish the two through a phenomenological framework that revealed moral injury as an experience of oneself as self-judge, and PTSD as an experience of ongoing victimhood and vulnerability. Although both have severe consequences for the veterans who suffer them, I contend that it is moral injury which was the more severe because it involves erroneous judgements about the self and the world that are less easily challenged or corrected. However, I suggest that certain moral interventions, including trauma narratives and purification rituals might lead a veteran to the self-forgiveness that is critical to successful recovery from a damaged thumos. This conceptual exposition helps to add further depth to our understanding of moral injury, a condition about which Litz et. al. note, "existing evidence-based strategies fail to provide sufficient guidance" 10 to clinicians attempting to treat it. Thus, further information regarding moral injury is necessary in order for victims to receive the care they require to heal. Furthermore, adopting a phenomenology that understands what the experience of moral injury (or PTSD for that matter) is like provides useful insights to the kind of narrative therapies that prominent theorists in the literature have advocated.¹¹

My earlier argument regarding the inclusion of soldiers' civilian identities in their warrior identities is relevant again here. The segregation of these two different identities is morally problematic and is likely a contributor to moral injury. For this reason, I reject the approach to military ethics known as "role morality," whereby one sees morality as being defined by the role in which

¹⁰ *Ibid.,, op cit.,* 696

¹¹ *Ibid.*, 702-703; Jonathan Shay, *Achilles in Vietnam: Combat Trauma and the Ruin of Character*, (New York: Scribner, 1994, 188-189.

one serves. Defenders of role morality argue that this approach is far simpler for soldiers to apply, and makes it much easier for soldiers to understand why, for example, killing is justified in war. However, as the earlier sections of the chapter reveal, seeing oneself as governed by different rules in different contexts generates as many, if not more, moral problems than does applying the same set of moral rules in radically different circumstances. The most immediate and obvious of these problems is the one described as "fragmentation," whereby soldiers are unable to see their military identities as being morally consistent or copasetic with their other moral identities. For this reason, I advocate a military culture based in cultivating the moral virtues, which traverse different traditions and cultures whilst also serving to guide conduct appropriately.

Finally, I focus on the experience of shame, which, although pivotal to the warrior code of honour, also appears to be a powerful factor in moral injury. Shame can be problematic when it is used to try to homogenise members of a group, so that members are shamed for possessing characteristics that do not hold moral significance (such as one's sex). Shame is, however, helpful in eliciting virtuous conduct from individuals who fear besmirching their honour in front of their peers. The notion of peers emerges as pivotal when one considers new categories of soldiers, such as drone pilots, as well as for soldiers who do not immediately fit cultural archetypes of the warrior, such as women, homosexuals, or those who experience nervous reactions to combat. Unless a new warrior code emerges for these new warriors, they too risk being shamed unnecessarily for failing to possess characteristics that are entirely irrelevant to their professional responsibilities.

1.4: Just War Decision-Makers and Moral Character

In the penultimate chapter of the thesis, I apply my arguments regarding the complementarity of aretaic and deontological ethics as well as the value of incorporating aretaic viewpoints into JWT to the people who are chiefly responsible for making decisions in war. The reason for this inquiry serves two purposes. First, it demonstrates how virtues and rights can co-operate to assist the military and civilian personnel who actually need to make decisions about the morality of war. Secondly it shows that a collaboration of deontological and aretaic ethics is not merely an effective evaluative moral framework to be applied retrospectively by academics, lawyers, or historians, it is also a useful approach to ethical thinking for those who are actually obligated to make these decisions. However, having said this, the framework I suggest does also serve as a comprehensive descriptive account of moral actions in war, allowing observers to distinguish between just actions, the virtues that make them possible, supererogatory actions, and the virtues that enable these. This chapter demonstrates both the descriptive and practical value of a combined deontological/aretaic framework, focussing specifically on the three major decision-making groups and the virtues necessary to ensure ethical conduct in those roles: soldiers, military commanders, and political leaders.

The central virtues assisting in the ethical conduct of soldiers' duties are prudence and courage. In each case (and these are only exemplar cases – there are other virtues which apply to soldiers and for which a similar distinction exists), the operation of the virtues can be seen as operating on two different

levels. First, on the level of ensuring a soldier, commander, or political leader adheres to his basic and minimal deontological duties; and secondly on the supererogatory level of perfecting the virtue of individual actors such that their conduct becomes a model instantiation of the moral excellence of their profession. Thus, the soldier who is willing to risk his life in the performance of his ordinary and stipulated duties (for instance, the carrying out of an ordinary mission) is indeed courageous, but the soldier who is willing to sacrifice his life in conditions where his professional responsibilities do not demand it demonstrates a greater level of courage. The former type of courage I describe as readiness-to-die, and the latter as martyrdom. For example, if any soldier who went 'over the top' during the trench warfare of WWI was courageous, he was at least equally so with all others who went over. However, if a soldier volunteered to go over in the first wave, knowing that casualty rates would be highest, he could perhaps be described as more courageous – particularly if he had volunteered. Going over the top was a necessary duty of the soldiers, and courage was necessary to fulfil that duty, but volunteering to be in the first wave is not necessary, and to do so requires more courage given the elevated likelihood of death. This latter case is an instance of martyrdom, whereas simply obeying one's command to go over the top is an example of readiness-to-die.

Some may contend, however, that any decision to go over the top is not courageous but foolish: the likelihood of success is so low, and the casualty rates are so high. If this were true, would it follow that soldiers should have refused to engage in trench warfare at all? Deciding which orders to obey and when is an operation of *prudence*, the virtue of practical reason which allows a person to choose what ought to be done in a particular situation. In military

scenarios, prudence is particularly important as soldiers not only have to consider the strategic validity of an order and its morality, but must balance those against their duty to obey commands and contribute to the efficient functioning of the military. Prudence bears on soldiers in determining whether they ought to fight in a particular war at all, as well as determining whether a particular order ought to be obeyed. The soldier who is prudent will, I argue, presume that any order is a just one except in those cases where the commander (or political leader in the case of commanding a soldier to go to war) has previously evidenced unethical behaviour. In those cases, soldiers are duty-bound to evaluate each command received because they are unable to justify trusting commands from that source. Prudence will assist soldiers in determining when trust should be awarded and when it has been eroded and will prevent them from shirking all personal moral responsibility for acts they are commanded to do.

Given that the prudent soldier's obedience is predicated on the extent to which he can trust his commander, the moral virtues of the military commander are directly relevant to efficient military functioning. The primary virtue with which military commanders must be concerned is prudence. However, unlike soldiers, whose prudential considerations are generally limited to their own behaviour, military commanders must be prudent on a macro scale: balancing the stipulated objectives of a mission to the objectives of the war, comparing them to anticipated costs of operations, and – crucially – to the moral requirements that prohibit certain types of behaviour. Any effective commander is required to be prudent insofar as prudence is the skill that allows balancing between options.

However, the commander whose only interest is military effectiveness risks jettisoning morality when it threatens to undermine mission effectiveness. The virtuous commander, therefore, will be prudent in a way that not only allows him to evaluate alternatives to determine the most effective way of proceeding, but in a way that allows him to prioritise the various demands according to their moral significance. Thus, the proper practice e of prudence will not prefer strategy to morality, but recognise that the moral limitations on war may at times make victory more difficult. However, it is only by adhering to the moral parameters of war that victory becomes worthwhile.

The political leader is often posited as being duty-bound to defend the interests of the nation. Although in some senses this is true, good political leaders ought not to prefer their own nation's interests to the interests of the whole community. The virtuous political leader, therefore, will be concerned not only with the nation's good, but with the global common good. Defending and upholding the common good requires political leaders to possess at least three moral virtues: justice, prudence, and charity. Justice serves to assist political leaders in adhering to the right intention criterion of *jus ad bellum*. First, it encourages political leaders not to abuse their powers but only to go to war when it is right for them to do so. However, having right intention is one thing, but political leaders (at least democratically elected ones) are representatives of the communities to whom they are subject, and therefore ought to demonstrate their right intention to their people. Thus, just political leaders will also be as transparent as is possible in demonstrating what their reasons for going to war are, in order to generate trust from the population, and to guarantee accountability and reasonable debate about the justice of the cause.

However, political leaders must exercise prudent discretion in determining when, and to what extent, they must disclose information to their people. The virtuous political leader must be experienced and capable in making practical decisions about how to manage his own affairs and those of the nation. With regard to engaging in war, prudence entails three steps: (i) taking counsel with experts to ensure an informed decision is made; (ii) determining between the various opinions, evidence, and moral requirements; and (iii) mobilising the decision in the most efficient and just manner. Thus, prudential reasoning flows through all of the *jus ad bellum* criteria, and helps to ensure that each of the requirements is weighed and the costs are seriously considered before a decision is made.

Finally, the virtue of charity assists political leaders in two ways. First, it assists leaders in avoiding the temptation only to serve their own nation's interests and focus on the common good. Charitable leaders are less likely to engage in nationalistic wars, instead seeing war only as a means of restoring justice. Further, charity allows leaders not only to fulfil their negative duties against violating the rights of other states, but to fulfil positive duties to protect other nations against aggression in cases where intervention does not necessarily serve national interests. The virtue of charity serves to motivate leaders to at least consider assisting other nations who are the victims of unjust aggression even when it might be costly for the intervening nation. Of course, the decision to intervene, like all other decisions, must be governed by prudence lest a political leader overcommit to too many noble causes at the cost of vital national resources.

On this final point, the virtue of charity to debates around intervention and the so-called "Responsibility to Protect" (R2P), this thesis offers a new contribution to the literature. By suggesting that R2P be appraised through the lens of aretaic ethics and the personal virtue of political leaders, I challenge the popular conceptualisation of the ethics of intervention in legal and deontological terms. In fact, emphasising the virtue of charity means challenges the entire framework in which R2P exists by arguing that the protection of the innocent is not chiefly a matter of responsibility, but of virtue. Under a charitable framework, the relevant question in R2P is not whether (i) the victim state has a right to be defended, and (ii) other states have a duty to positively uphold that right. Charitable political leaders will not be concerned with whether morality demands them to lend assistance; rather, they will lend assistance when that assistance prudently and charitably serves the common good. Nations may not have the right to demand intervention on their behalf, but even if that were true, it would not forbid political leaders from intervening; it would simply make such intervention supererogatory. Thus, the complementarity of aretaic and deontological ethics can once again be brought to bear on an ongoing debate in the literature.

2: Further Research

Each of the points of originality highlighted above would serve as a fruitful area of further inquiry in its own right, but my ability to explore these questions in full has been restricted by the demands of writing a thesis. In this section I suggest two pressing questions that arise directly as a result of what has been established here.

The first question would have, in a longer work, been explored in a chapter immediately following chapter five. That is, having established that the virtues are a necessary component in ensuring morally upstanding conduct in war, the subsequent question is how educational and military institutions could develop those virtues in military personnel. Having established that the virtues are important for moral conduct and why they are important – what remains is to explore *how* to implement the changes I have recommended. Although there is a growing literature on training soldiers in the virtues,¹² most of this work fails to take the holistic approach to moral development called for in chapter four. Instead, many virtue training programs are focussed on the development of professional virtues. Thus, these education systems risk being complicit in the development of fragmentation and psychological scarring. More work needs to be done exploring how to make military training in the virtues consistent with a universal morality rather than a professioncentric system. What consequences this may have for military training, how to implement this most effectively, and where such an education should be housed are all important questions to be answered by further research.

The second question that appears to emerge from this research is more directly connected to the psychological experience of political leaders, commanders, and soldiers. If, as insights from aretaic ethics have revealed, the moral and psychological wellbeing of individuals can be dramatically affected by what they choose to do in war and the way they think about their actions, there

¹² C.f. Berghaus & Cartagena, op cit.; Peter Olsthoorn, Military Ethics and Virtues: An Interdisciplinary Approach for the 21st Century, (London: Routledge, 2011); Dean-Peter Baker, 'Making Good Better: A Proposal for Teaching Ethics at the Service Academies', Journal of Military Ethics, vol. 11, iss. 3, 2012, 208-222.

appear to be good reasons for further research into the correlation between the moral frameworks military personnel utilise when thinking about ethics, and the psychological toll of what they are required to do. If, as some evidence indicates, there is a correlation between PTSD symptoms, intentional killing, and the killer's beliefs about whether his victim *deserved* to die, ¹³ then it follows that a soldier's beliefs about the morality of intentional killing will bear on his experience of PTSD. It is worth investigating whether this is true in practice, and if so, which framework for explaining intentional killing is most effective in guarding against moral and psychological trauma. Of course, the effective approaches must then be examined vis-a-vis the objective morality of that approach (for instance, racist propaganda may protect against psychological trauma, but that alone will not justify it), but the insights provided by this kind of empirical research will provide vital insights into how best to train and inoculate soldiers especially, but also political leaders and military commanders, from the darker sides of their vocation.

3: Final Reflections

This thesis argues, generally speaking, that the incorporation of aretaic ethics within JWT will be of benefit to two separate groups: military ethicists whose work relies on JWT to explain the morality of war, and military practitioners who are required to fight the wars that ethicists study. Aretaic ethics, I argue, will be of benefit to those two different fields in different ways. To the military

¹³ Nicola S. Gray, Nicole G. Carman, Paul Rogers et. al., 'Post-traumatic stress disorder caused in mentally disordered offenders by the committing of serious sexual or violent crimes', *Journal of Forensic Psychiatry and Psychology*, vol. 14, iss. 1, 2003, 27-43 at 40.

ethicist aretaic ethics offers a new framework through which to address controversial issues within military ethics, as well as availing theorists to new questions which have previously not been considered within the purview of JWT. To the military practitioner, aretaic ethics offers three things. First, a new way of understanding the professions responsible for just war decisions. Second, supporting mechanisms to enhance ethical compliance with deontological norms. Finally, third, a coherent way of appreciating both the rule-compliant and supererogatory aspects of professionalism, and distinguishing them from one another. Whilst these arguments are made throughout the thesis, their originality and benefit to academics and practitioners alike warrants reiterating them succinctly here.

3.1: Academic Benefits

A large part of my argument in this thesis is to emphasise the conceptual complementarity and connection between deontological and aretaic aspects of military ethics, and thus the applicability of aretaic ethics to hotly-contested questions in the military ethics literature (such as, at various points in the thesis, torture, sacrifice, intervention, and supreme emergency). Although my primary motivation for this is to ensure that any recommendations for just war decision-makers were founded in logically coherent philosophical analysis, an additional benefit of this path of argument has been to demonstrate to academic military ethicists the availability of aretaic ethics as an alternative and, for the most part, novel framework for considering traditional and topical ethical issues in the military.

As I argue in chapter two, contemporary JWT is dominated by deontological, rights-based reasoning and is closely connected to discussions of the international law of war. Just war theorists adopting this framework usually understand moral questions about war as being concerned with either conflicting rights or rights violations. Almost invariably, moral debates under deontological formulations of JWT can be reduced to debates between absolute and threshold deontology – i.e. "rights may never be intentionally violated" versus "rights may occasionally be intentionally violated if the stakes are high enough." Examples of this type of thinking that I explore in this thesis include debates regarding torture and supreme emergencies. The question for most contemporary just war theorists is not *whether* torture violates the basic rights of persons, but if and when those rights violations are morally justifiable through reference to some greater good that is brought about or greater evil that is avoided through the commission of acts of torture.

Those questions which are not reducible to a debate between threshold and absolute deontology are usually reducible to a debate between obligation and privilege. In these cases, proponents argue that a particular individual or group possesses certain basic rights that form obligations not to violate them: for instance, a person's right not to be unjustly attacked forms an obligation not to attack that person. However, whether rights entail *positive* duties on others alongside the negative duties described above is unclear. Does a person's right not to be unjustly attacked constitute an obligation for all people to protect the unjust from attack? Debates of this nature lie at the heart of another group of contemporary debates in military ethics: humanitarian intervention, risk minimisation in warfare, and Responsibility to Protect.

The inclusion of aretaic ethics within the discussion provides new factors to consider in addressing topical issues like intervention and torture. The incorporation of aretaic concerns into military ethics debates does not only provide fresh perspectives through which to explore ethical questions, but overcomes the risk of reducing complex moral questions to basic philosophical disputes regarding the categorisation of particular actions as, for instance, 'rights-violating' or 'rights-respecting.' Instead, aretaic ethics encourages consideration of factors that are grounded in the character, dispositions, and motivations of the agent, as well as what the moral consequences of performing particular deeds are on the agent. By supplementing deontological readings with aretaic thinking, just war theorists are able to describe more accurately and completely the nature of moral and immoral conduct in war, which is the chief subject of inquiry.

As well as providing fresh methods for describing the morality of war, aretaic ethics provides new means of *evaluating* the morality of particular military decisions. For instance, we might ask whether, even if there could ever be such a thing as a supreme emergency, would the saving of a community be worth the moral devastation on the character of the political leader who sanctioned such severe moral transgressions? Or, for military personnel, even if a person can be proved to have forfeited his right not to be tortured, what would the consequences of making oneself a torturer be? Could the vice necessary to commit allegedly morally justifiable deeds render them immoral?

Aretaic frameworks challenges the traditional methods of determining whether an act is morally justifiable, and in so doing, re-centres JWT on the people who are responsible for making military decisions, not the actions those people decide to undertake. In focussing on the people responsible for moral conduct, aretaic ethics also provides ethicists with a means by which to bridge moral and psychological questions. As military institutions begin to show increasing concern for the psychological effects of war on soldiers, philosophers need to recognise the important role they are able to play in explaining and understanding the psychological injuries that soldiers have been reporting. Aretaic ethics provides a lens through which to subject apparently psychological data to ethical analysis. Thus, a combined approach to military ethics that incorporates both deontological and aretaic ethics is able to (i) include psychological concerns, findings, and data within its analysis on war and therefore expand its explanative power; and (ii) make military ethics more relevant and applicable to clinical psychological treatments for soldiers and veterans. The possibilities for inter-disciplinary solutions to some of the pressing problems of the contemporary military is one particularly promising outcome of the synthesis of different aspects of morality in JWT.

These two benefits – new frameworks to evaluate old questions and the availability of entirely new topics of analysis – are the benefits of incorporating aretaic ethics into JWT. However, before I move on I must address one possible criticism to what I have argued thus far: namely, why do these new frameworks and questions need to be considered *within* JWT? There are military ethicists who are not just war theorists and who are not deontologists; why not simply leave them to explore the aretaic aspects of military ethics rather than forcing JWT to make room for it?

There are several answers to this question. The first is to say that although there are military ethicists who do not describe themselves as just war theorists, they are few and far between. JWT is overwhelmingly the predominant framework for evaluating the ethical conditions under which war can be justified. As such, the adoption of aretaic ethics by just war theorists demonstrates the seriousness of aretaic matters to military ethics. It is not my desire to see aretaic considerations as a niche sub-discipline of military ethics; rather, aretaic matters should permeate every aspect of ethical reasoning in the military. The second response is that, as I argue throughout this thesis, a satisfactory theory of the morality of war must incorporate both deontological and aretaic concerns. JWT is, and is likely to remain, the dominant representation of deontological thinking (in both its moral and legal forms) within war, and as such, is the theory within which the best deontological thinking and theorists reside. For this reason, the incorporation of aretaic ethics into JWT represents the best chance of developing a comprehensive morality of war that addresses both aretaic and deontological concerns.

3.2: Benefits to Decision-Makers

The incorporation of aretaic ethics into JWT is also of great benefit to those individuals for whom military ethics discussions are not merely academic questions, but real decisions they will have to make. In the case of professionals who have to make just war decisions, the incorporation of aretaic ethics *specifically* into JWT (as opposed to as an independent theory or field of study) is somewhat less important than it is for academics. However,

it is still important for two reasons. First, because the inclusion of aretaic ethics into JWT ensures that aretaic questions will interact with deontological ones – both of which are centrally important for military practitioner. And secondly, if JWT was to adopt aretaic ethics as part of its purview, it would effectively ensure that all those trained in ethics by Western militaries would enjoy familiarity with aretaic thinking as JWT enjoys a central place in the ethical training of military personnel. It is important that aretaic ethics be part of the ethical training of military personnel because of the benefits I outline in this section.

Perhaps the most beneficial outcome of this thesis for just war decision-makers is the development of a coherent, ethically-sensitive account of professionalism. Although soldiers, commanders, and (to a lesser extent, perhaps ironically) political leaders are expected to conduct themselves with professionalism, the term is used so interchangeably and varyingly that the precise meaning of the concept risks being lost. What does it mean, ethically speaking, to be a professional? Adopting the findings of this thesis explains to military professionals that being a professional entails several commitments on behalf of the individual, including:

- Commitments to acting in particular ways (fulfilling one's duties) whilst functioning as a professional;
- Accepting the values of the profession as one's own values, seeking to instantiate, characterise, and uphold those values wherever possible;

- Submitting oneself to having one's conduct, proficiency, and professionalism evaluated according to adherence to these duties and values;
- Personalising externally-determined standards of excellence for the profession and striving to achieve them wherever possible;
- Commitments to particular ways of *being* that is, accepting a particular role as being in some way constitutive of one's identity.

Understanding professionalism in this way allows those who commit to the professions of political leadership, military command, or soldiering to fully understand what it is they are subjecting themselves to. For instance, if a soldier refused a particularly risky mission on the basis that "for me, this is just a job, and I'm not dying for my job," it could be pointed out to him that soldiering is not, in fact, a job, but a profession, and that he knew this from the start and chose to join the profession anyway. More clearly explaining what it means to be a professional and how professional duties and virtues interact is one area where this thesis offers a great deal to military practitioners.

Developing the idea of professionalism, this thesis – specifically, the aretaic elements of this thesis – offers just war practitioners a comprehensive account of the complex and influential role that one's identity and beliefs about one's identity can have on the moral and psychological wellbeing of an individual. Recognising the moral significance of psychological factors in military practitioners includes recognising how beliefs about one's profession can affect the way in which individuals see themselves. If they see their profession

as being consistent with other values and identities they hold to be morally good or valuable, then it is easy for them to see their profession as equally valuable. However, if the duties and values of their profession require them to act in ways that seem at odds with their lives outside of the profession, individuals are likely to struggle to reconcile these different aspects of their lives, leading to possible psychological fragmentations that threaten moral and psychological wellbeing. For military practitioners, the provision of a comprehensive explanation of the moral and psychological power of identity and beliefs about identity gives impetus to consider seriously whether institutional, cultural, and privately held beliefs about what professional identity means are consistent with the ethical values of society in general. That is, are just war decision-makers' beliefs about what it means to be a good soldier, political leader, or military commander consistent with their views of what it means to be a good human being? If not, the findings of this thesis indicate that we should expect disharmonious beliefs about different identities to manifest in moral and psychological trauma.

As well as providing means of anticipating, predicting, and preventing moral and psychological trauma, this thesis may provide just war decision-makers with something all military personnel desire: a sympathetic citizenry. In giving voice to the psychological and moral trauma that military professionals undertake in order to perform their roles – roles that are ultimately designed to protect citizens and defend the common good that citizens benefit from most – this thesis and publications proceeding from it may provide citizens with deeper insight and understanding into trauma than is currently available. In so doing, this thesis might provide some insight into the enormity of moral labour and virtuous character that is required to conduct oneself well

in matters of war and morality and, in so doing, develop some sympathy for the difficulty involved. This benefit is one that is particularly indebted to the introduction of aretaic thinking into the thesis. Aretaic ethics concerns itself primarily with the agent, it is able to understand the multitude of different factors that can affect, undermine, or support a person's ability to do the right thing. Because of this, aretaic ethics is able to describe unethical behaviour in a way that does not excuse it, but does identify the various possible reasons for the behaviour. In so doing, this thesis may provide military practitioners with a sense that although their actions will be judged, they will be judged with sensitivity and empathy to the immense moral and psychological difficulty of the environment just war decision-makers face, and the complexity of the decisions they have to make.

Further, as Western militaries continue to insist that their personnel not only comply with professional duty but strive for professional excellence, the distinction between professional duties and professional excellence will become increasingly relevant. Aretaic ethics, as I interpret it in this thesis, offers not only a description of what professional excellence might consist in for soldiers, military commanders, and political leaders, but a guide to understanding professional excellence from a moral standpoint. I describe excellence in military professions as consisting in in the performance of supererogatory deeds which further the basic moral purposes of military or political institutions. Although they are often described as going "above and beyond the call of duty," it might be more accurate to describe acts of professional excellence as acts done (i) by a professional, (ii) for the advancement of the moral purposes of the profession, (iii) when no duty could compel him to do so.

Finally, this thesis – in particular its aretaic focus – justifies Western militaries' interest in the virtues as means of ensuring moral conduct. This thesis shows how moral duties will typically fail to provide individuals with sufficient motivation to comply if the individual is completely lacking in certain virtues. It is therefore necessary both to teach moral duties and inculcate the virtues into those on whom those duties bear. If educators do not take the time to develop the virtues of professionals during their training, they risk higher rates of moral transgression because individuals will feel no personal motivation to do what is right when it becomes difficult, inexpedient, or self-damaging to do so.

Thinking seriously about the moral dimensions of military practice means accepting that there are serious moral questions beyond those that describe actions as right or wrong. The moral life is, we know, far further reaching than a right/wrong dichotomy could possibly encapsulate. Absolute moral principles matter; so too does deontology. However, it is not all that there is. Ethics is, or at least can be, a science dedicated to the perfection of humans in their fullest nature. That involves a full recognition of humanity as mental, moral, communal, and spiritual – in a word, *bigger* – than deontological ethics alone is able to describe. If we are willing and ready to see soldiers, commanders, and political leaders as human beings first and professionals second, then we must first see the morality of war as being primarily concerned with humanity proper. The breadth, richness, and complexity with which we conceive military ethics is the breadth, richness, and complexity with which we understand humanity itself.

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