KANTIAN THINKING ABOUT MILITARY ETHICS

J. CARL FICARROTTA

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KANTIAN THINKING ABOUT MILITARY ETHICS

Military and Defence Ethics

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Preface

Those of a certain age will remember Bertrand Russell's *Unpopular Essays*, a delightful collection first published in 1950. In collecting my own work I was sorely tempted to riff on that title, but not because I think my essays are as good or as interesting as Russell's (they are not). Nor are they on the same general topics (his are wide-ranging, while mine are meditations narrowly focused on military policy). Rather, I was thinking I might try to pay homage to an important public philosopher, whose writing I admire a great deal and count among my earliest philosophical influences and inspirations. Besides, Russell said in his preface that his essays were written "at various times over the last fifteen years"—as I write this in 2009, mine too.

But here is the bit from Russell's preface that most attracted me to the title. In an earlier book (*Human Knowledge*) Russell claimed he was not writing just for professional philosophers, because he thought philosophy properly dealt "with matters of interest to the general educated public."

> Reviewers took me to task, saying they found parts of the book difficult, and implying that my words were such as to mislead purchasers. I do not wish to expose myself again to this charge; I will therefore confess that there are several sentences in the present volume which some unusually stupid children of ten might find a little puzzling. On this ground I do not claim that the essays are popular; and if not popular, then "unpopular" (Russell, v).

I judge this to be both hilarious and a laudable way to settle on a title. I too am confident that the arguments in my own essays will require no special training in philosophy to follow—mostly I take myself to be engaging in garden-variety, easily accessible moral argumentation. Wherever I feel the need to appeal to philosophical notions or theoretical concepts, I have done my best to explain them in terms that anyone who holds membership in the "general educated public" should be able to grasp. But since I too might mislead a potential purchaser of this collection who has no patience for arguments, and since as it turns out most of my conclusions run contrary to generally accepted opinion on the questions I address, I thought I might follow Russell's good example and call the collection *Unpopular Essays in Military Ethics*.

The wise editors at Ashgate convinced me of the marketing hazards associated with characterizing these essays on the book's cover as "unpopular," so we settled on the present title: *Kantian Thinking About Military Ethics*. It describes the content more straightforwardly and I take it to be reasonably informative. But some qualification is appropriate here. This is not a book about Kant's moral theory or a closely argued set of claims about exactly what Kant said or would have said about the problems I examined (though the quotations I supply at the beginning of each chapter are some evidence that I am at least *close* to what Kant thought or might have thought). The essays are rather "Kantian-inspired" discussions. While I do not believe there is simplistic or direct relationship between *any* moral theory and the "lower-level" practice of moral judgment (see Chapter 5), I do think that one's commitments at the theoretical level can and often do cast a shadow into the formation and application of principles, policies, and character traits at the practical level. In other words, the theory one holds *matters* in the real world of making moral choices. These essays are for me the result of trying to take deeper-level Kantian commitments seriously. They are what happened as I worked on these practical problems, happily situated under the inspiring influence of that Kantian shadow.

Earlier versions of these chapters have appeared or been presented elsewhere:

Chapter 1: "Are Military Professionals Bound by a Higher Moral Standard?" in *Armed Forces and Society* Volume 24, Number 1 (Fall 1997) and in *Air Chronicles*, on-line journal of Air University (http://www.cdsar.af.mil), 1996; revised as "A Higher Moral Standard for the Military" in G. Lucas, editor, *Ethics for Military Leaders*, Fourth Edition, Pearson Publishing, 2001.

Chapter 2: "Discrimination by Generality" in *Public Affairs Quarterly* Volume 10, Number 3, July 1996.

Chapter 3: “Careerism: A Moral Analysis” in J. Galston and J. Hietala, editors, *Ethics and National Defense: The Timeless Issues*, National Defense University Press, Washington, DC, 1993.

Chapter 4: “An Open Letter to Episcopalians on the Issue of Homosexuality and the Church,” in *Anglican Pages: Do Justice*, on-line pages hosted by Rutgers University, http://www.rci.rutgers.edu/~lcrew/dojustice/dojustice.html, 2003, originally in *Anglicans Online*, *What’s New This Week: Worth Noting* (no longer available on-line).

Chapter 5: “How to Teach a Bad Ethics Course” in *Teaching Philosophy*, March 2009 and “How to Teach a Bad Ethics Course” to the philosophy departments of Colorado College and US Air Force Academy, CO, 2008.

Chapter 6: “A Case for Selective Conscientious Objection” plenary lecture to the International Society for Military Ethics, University of San Diego, San Diego, CA, 2008 and “Should Members of the Military Refuse to Fight in Immoral Wars?” to Colorado College (J. Glenn Gray Memorial Lecture Series) and US Air Force Academy, CO, 2007.

Chapter 7: “Does the Doctrine of Double Effect Justify Collateral Damage?” to Colorado College and the US Air Force Academy, CO, 2007 and “Toward A More Restrictive Approach to Using the Principle of Double Effect in the Context of Military Targeting” University of Nevada, Las Vegas, NV, 2006.

Chapter 8: “Just War Theory: A Deflationary Account” to the Department of Philosophy, US Air Force Academy, Colorado Springs, CO, 2002; as an introduction to just war thinking on several occasions to the Canadian Forces College in Toronto, Canada; in something close to its present form to the Colorado College Department of Philosophy, Colorado Springs, CO, 2008; and to the University of Central Oklahoma and the University of Missouri in 2009.

Too many people over the years have helped me with these essays (you know who you are) to list even some of them without imposing on the reader. But I simply must single out my long-suffering and long-neglected family: Summer, the love of my life and wife of 30 years, my children

(Lorraine, Tony and Sarah), and my mother, who had the earliest and most important impact on my moral sensibilities. I hereby render them all a big public thanks for their support, patience and understanding.

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Chapter 1

Are Military Professionals Bound by a Higher Moral Standard? Functionalism and Its Limits

> Morals began with the noblest attribute of human nature, the development and cultivation of which promised the greatest utility, and it ended in—fanaticism
>
> (Kant 1788, 170).

> [Some] philosophers … have instituted moral fanaticism instead of a sober but wise moral discipline. … [T]he moral teaching of the Gospel … through the purity of its moral principle and at the same time through the suitability of its principle to the limitations of finite beings, … does not permit [man] to indulge in fancies of moral perfections; and … it sets limits of humility on self-conceit
>
> (Kant 1788, 89–90).

It is commonly believed that, in some sense, military professionals are bound by a higher moral standard. This belief is especially prevalent inside the military. Even though there are occasional (perhaps inevitable) moral failures, there are nevertheless numerous internally promulgated codes and public espousals that enunciate such a belief.[1] Many commanders exhort their troops to moral goodness and chastise them when they fall short.[2] Military education frequently includes courses on the demands of professional ethics.[3] Indeed, from the top down, part of the background noise of professional military life are these higher expectations, and a belief that somehow, this line of work is one with a special moral status, special moral problems, and special moral demands.

In this chapter, I want critically to address, at least generally, what this higher moral standard might amount to. I want briefly to offer a more concrete interpretation of what we might mean by a higher standard. I will then explore what reasons there might be for believing military professionals are bound by one. While my posture is a skeptical one, I still think there are arguments that make a partial case for some unique and especially strict military obligations. But I do not think we will be able fully to justify a more robust (and I think more commonly held) conception of higher demands on military behavior and character.

What Might We Mean by a Higher Moral Standard?

There are at least two ways we might elucidate the idea of a higher moral standard for the military. First, we could mean there are *unique* moral obligations for military professionals that most other people simply do not have. For example, we might think military professionals (but not people in general) are morally obligated to follow the orders of their superiors or be courageous in the face of physical danger. Call this the “uniqueness” interpretation. Second, we could mean military people have good reasons for being bound *more strictly* to the moral standards that apply to everyone. Here, we would ask military professionals more insistently to be moral, and would find them more blameworthy should they fail. Along these lines, we might say honesty is something we want from everyone, but that it is especially important for military people to be honest. Call this the “strictness” interpretation.

Having offered these two meanings for consideration, a few preliminary remarks are in order to head off possible confusion. First, these two meanings are not mutually exclusive (so we might mean some combination of both), nor am I claiming them to be exhaustive of the possibilities (so there might be other meanings of the phrase I am not addressing). Second, I think these two meanings might apply just as well either to what counts as moral *behavior* or what counts as a morally good *character*. Obviously, character and behavior are tightly interrelated, but moral theorists sometimes disagree about the place and role each of these properly occupies in the structure of our moral thinking. It is a disagreement I think we can fruitfully bracket for my purposes: higher standards, if we find them, might bind in terms of either behavior or character or both. And as it turns out, the arguments for higher standards I will be examining move freely (without suffering) between these two objects of moral evaluation. Last, keep in mind that I will be addressing *moral* standards for the military professional as opposed to standards of some other type (e.g., legal standards, standards of etiquette, standards of prudence, etc.).[4]

There are several lines of argument that might lend some support to claims that military professionals are bound by one or both of these understandings (uniqueness and strictness) of a higher moral standard: arguments that start with unique military situations, arguments that pay attention to the military function as such, and arguments that concentrate on the role of the military and its relationship to the larger society. These lines of argument, while distinct, share a good deal in common and overlap somewhat in both their approaches and their conclusions.

Unique Situations, Contexts and Problems

This much seems to me uncontroversial. The military profession, and the conducting of military operations, puts people in unique situations and contexts that pose unique and particularly pressing moral problems. Anyone taking the moral point of view will immediately notice them. To varying degrees, this is true of many—maybe even most—lines of work. Doctors, lawyers, clergy, businesswomen, whatever, find themselves faced with unique situations and contexts that create moral problems which simply would not come up very often in other endeavors.

Keeping this in mind gives us one possible way to make sense of how and why the military professional is bound by a higher moral standard. We could examine all the special situations, contexts and problems we encounter in the military, and try to puzzle out the right way, morally speaking, to think about them. For instance, in a military operation, we no doubt judge it a moral obligation to do whatever we can to avoid hurting innocents. Or we might judge that because military officers have extraordinary authority over their subordinates, they ought to take extraordinary care in looking out for their subordinates' welfare when issuing orders. This way of thinking lends some support to the "uniqueness" interpretation, and could lead us to suppose that the higher moral standard is merely an enumeration of the unique moral demands placed on military professionals because of the unique situations, contexts and moral problems they face in their work.

Importantly, on this view the unique moral demands would bind *anyone* who happened to be similarly situated. Of course, military professionals are far more likely than other people actually to find themselves in these contexts. But on this account, the reason the military professional is morally required to do this or that is not primarily because of who or what he *is*. Rather, it is primarily *the situations or the contexts* in which the military professional finds himself that generate the moral requirements. This or that would be required of any person in the same situation. Likewise, we could make similar arguments for unique and hence higher moral standards in almost any job. A doctor, for example, might be bound by a higher standard of helping the sick. Of course it is plausible that anyone who happens to be able to help a sick person has some (perhaps) limited moral obligation to do so, but the doctor is uniquely situated in that she is most often in a position to help. She is, in this sense we are considering, bound by a higher standard.

So this is one way we could understand and justify a higher moral standard for the military professional. The approach will generate a long list of (general and specific) morally appropriate responses to situations military professionals are likely to face. To follow orders of appropriately appointed superiors, not to kill or injure non-combatants, to attend conscientiously to one's military duties and the like, would all be part of what binds the military professional more or less uniquely and would hence collectively constitute the higher moral standard.

At least as far as it goes, what this approach establishes must be right. There *are* unique situations, contexts and problems, and these do generate unique moral demands. Still, this is rather a thin construal of a higher moral standard for military professionals, and is as notable for it what it *does not* establish as for what it does. To begin, one might be inclined to think that invoking a higher standard for someone means (in *some* sense anyway) that a person is bound to do *more* than any similarly situated person would be bound to do. This thin approach—as I have developed it so far—does not establish such a requirement; and this may point up an inadequacy for this way of understanding a higher standard, depending on how important we think the requirement is. But more importantly, a higher moral standard so thinly construed says nothing directly about what the military professional may or may not do *outside of the military context*. If a military professional fails to pay his taxes, cheats on his wife, lies to his friend, whatever, I may be as disappointed in him as anyone else (for he was bound by the same moral standards that apply to us all). But I may not be *especially* disappointed in light of the higher standard (so construed and justified), because this standard was generated from and applies only to situations and contexts that are unique to the military.

Maybe, using this general unique situations approach, we could also say something about a higher standard understood in terms of the “strictness” interpretation. We have seen that, at the very least, a military professional is obligated by the *same* moral standards as everyone else. Morality, in general, always makes its special and insistent claims on each of us, simply in virtue of the fact that we are human beings. But given the morally tough situations that come up in the military, maybe military professionals ought to attend *more* carefully to these common moral standards, and indeed not succumb to the temptation to comport their behavior and character in accordance with *lower* standards. Anscombe was exactly right to warn us about the dangers of commonplace “pride, malice and cruelty” and to point out how quickly warfare can become injustice, how easily the military life can become a bad life (Anscombe 1962, 286).

So when we consider the moral dangers and temptations of military service, and survey the extraordinarily bad things that can happen when the military professional is not strict and courageous in upholding moral standards, we may rightly worry. If we are concerned to minimize the immorality that can be, and too often is, found in war, we will see good reasons to be on guard. The military professional, then, ought to be especially strict and morally steadfast, and not yield to the extraordinary stresses that might easily lead him to violate the moral principles that bind us all. Hence we might have a rough argument for binding the military professional in accordance with the “strictness” interpretation of a higher standard.

This way of thinking about things seems to avoid the first difficulty we noticed with the thinner approach (which concentrated only on the “uniqueness” interpretation). That is, it seems to leave room for us to demand *more* of the military professional than we would of someone else similarly situated. Specifically, since military professionals know well the moral danger they might face, we might think they are bound—on this view—to be stronger, more disciplined, and have more moral courage in facing the temptations to do wrong in wartime. However, none of this addresses the second worry we noticed. Because these demands of strictness come from the special moral dangers present in military situations and contexts, we still are not in a position to say anything directly about the military professional’s conduct and character *outside of the military context*.

In spite of these worries, I think by starting with the unique situations, contexts and problems faced by the military professional, we get a nice start in sharpening our understanding and justification of being bound by a higher moral standard, for both the “uniqueness” and the “strictness” interpretations. Still, I am sure this way of understanding a higher moral standard for the military fails to capture all, or even most, of what many people are thinking when they invoke such a standard. If we hope to establish more, we must turn to some other ways of approaching the question, ways that might establish a thicker, more demanding version of the standard.

The Functional Line

Hackett has claimed that a bad person “cannot be … a good soldier, or sailor, or airman” (1986, 119). Wakin and others seem to agree with this claim (1986, 191, 208, *passim*). These thinkers base their conclusion on an argument I will call the functional line. They acknowledge the unique moral situations and demands placed on the military professional, which we just explored. But they furthermore think that there are certain rather *general* demands on the character and behavior of military professionals, mostly of the strictness variety, that flow directly from the military function itself.[5] For example, military units cannot function well, especially in combat environments, if the members of the unit are not scrupulously honest with each other. Also, military folk simply will not be able to do their jobs if they are not, to a certain degree, selfless. Otherwise, they would not be willing to tolerate even the ordinary hardships of military life, much less be willing to risk their lives. Similar arguments can be made for the virtues of courage, obedience, loyalty, and conscientiousness. Hence if one thinks (for whatever reason) that it is important to have a military that functions as well as it can, one also is committed for these same reasons to thinking military professionals are more strictly bound to exhibiting these virtues and behaviors.

Notice that the functional line might be applied in some measure to any enterprise, especially cooperative ones. To the degree that any undertaking is important, then we at once have special reasons for more strictly binding those engaged in the enterprise to general moral standards that are necessary for its success. And cooperative enterprises typically depend very heavily on observing a number of moral standards. For instance, commerce would likely fail if the honesty of the participants dropped below a certain level. Hence insofar as, and to the degree that, commerce is important, we have reasons to be strict about honesty in a commercial setting. Identical arguments can be run for a large number of other enterprises (for example, fire fighting or police work). In each of these cases, we could argue for varying degrees of higher moral standards appropriate to participants in the enterprises.

But the application of the functional argument to the military is particularly apt, and establishes particularly strict and broad versions of a higher moral standard, for several reasons. First, few undertakings require the level and intensity of cooperation that is demanded by the military function. So moral standards, the observance of which are needed for cooperation, become particularly important for the military professional. Second, there are other demands of the military function that, while not directly or primarily concerned with cooperation *per se*, are also facilitated by clearly moral standards. The needs for bravery, selflessness, and conscientiousness come to mind as examples. These functional requirements need not be related directly to cooperation (though they might be), yet they also generate special reasons for being strict with what amount to moral standards. So the military function seems to make broader moral demands than many other undertakings, in that the military function makes a greater number of these strict demands on behavior and character. Third, failure in the military context likely will issue in tremendously bad consequences, whether considered morally or otherwise. When the military person violates *functionally* grounded moral rules, there is potential for disaster we just do not see in many lines of work.

If all this is right, then we have found some good reasons to think that military professionals have not only some obligations not normally encountered by others (as we saw in the unique situations approach), but that there are special reasons to be *strict* in enforcing many general obligations that apply to us all. I think the main idea here is right. But I also think we should be careful not to conclude too much from the functional line. All this argument leads to is a sensible demand for higher standards *in the military context*. Military people must be scrupulously honest with each other when there is some military issue at hand. They must be selfless when it comes to the demands of military work. They must be courageous when there is some military task to be performed.

What the functional line does *not* establish is that the military professional has special reasons to be "good" through and through. The argument gives a soldier who would never even think about lying in his unit no *special* reason not to lie to his spouse or cheat on his income tax. The military function will be no worse off if a sailor always put the needs of the service above her own, but still gives nothing to charity. As long as a pilot is courageous in combat or in dealing with his fellow professionals, he might just as well be a coward with a burglar or his father or his wife. We might well be disappointed with these non-military moral failures, but the functional line does not give us *special* reasons to be strict outside the military context.

Now one might be inclined to think that what I am imagining is not possible. Either people are honest or they are not, selfless or not, brave or not. This kind of functionalist would think virtues or character traits are not something we can easily exercise in one context and then fail to exercise in another. Hence, if that is true, then for functionalist reasons, the military professional ought to be held to higher standards of honesty, selflessness, or courage in every context, through and through.[6] Otherwise, failures will invariably bleed through into military life. So when a military professional, say, cheats on his taxes, or lies to a salesman, I still have a special, functionally grounded reason for being particularly disappointed.

I do not think this works. Clearly, perfectly ordinary human beings are capable of forming extremely complicated, situation-sensitive dispositions. Do not almost all of us easily internalize habits of etiquette that alternately allow and prohibit us to do all sorts of things depending on the context?[7] Likewise, given a normal human psychology, I see no reason to think we cannot form complex, situation-sensitive moral dispositions. Indeed, it would be very surprising if there were *not* moral dispositions sensitive to contexts and that take account of what might be at stake. I take it as obvious that there is some sense in which there can be honor among thieves. And it is an ugly truth that history is full of examples of effective military professionals (who must have had the requisite functionally grounded moral qualities) who were—all things considered—very bad people indeed.[8]

Of course, whether or not (or to what extent) we have the moral-psychological capabilities I am postulating is an empirical matter. One functionalist thinker (Wakin) has conceded to me in conversation that we might well produce examples of people who are complex in the way I am suggesting. Still, he maintains that people of globally good character are far more *likely* to possess the functionally grounded military virtues. It is this likelihood he thinks, even though we occasionally see those of split personality, which justifies our functionally grounded desire that military professionals be good through and through. I am reluctant to do any more armchair psychology than I have already done and point to this question as an important area for further research by those competent to carry it out. But to the extent that people can and typically do form complex, context-sensitive moral dispositions, I think the functional line is weakened in its attempt to make more general demands on military behavior and character.

We might try another twist on this functional approach. If the military professional has the *appearance* of being moral through and through, the “more moral” image might contribute to military effectiveness in some way. Appearing more moral might make the military professional more effective in getting money and other kinds of support with those in the public who are morally minded. Indeed, garden-variety moral *failures* by military professionals might erode public trust of the military, which could in turn impact money and support. Also, morally upright troops might be more inclined to follow military leaders they believe are exceptionally moral. Perhaps this twist will give us the reasons we need for extra strictness outside the immediate military context.

I do not think this twist gets us very far. First, I am sure we were not exploring reasons military members have for merely *looking* good, but instead were trying to establish that they have special reasons for *being* moral. To make out the stronger conclusion using this argument we would have to add a further premise. Specifically, we would have to say one cannot *appear* good without actually *being* good. And I take that to be false. We could weaken the added premise (and also to a degree the strength of the conclusion), and claim that the best, easiest, or most reliable way of appearing good is to be good. But I take even the weaker premise to be dubious. Even though appearing good without being good requires a special skill in the settings we are considering, it is not a rare or difficult skill to acquire.

The argument also rests on a controversial empirical claim as to the relationship between one's willingness to follow and/or support military professionals and one's beliefs about their more general moral behavior and character. Here once again, the argument may turn in large part on the results of empirical studies of this relationship. Will beliefs about "extra" moral uprightness really result in more support? Will beliefs about specific moral failings actually lead to a more general lack of trust? Do beliefs about a leader's moral conduct *outside* the professional context have effects on the ability to lead? I think it is prudent, without the results of careful studies, to withhold judgment on these kinds of questions. And, even if we assume any of these to be the case, we would still need to finish the argument by showing that the *degree* of trust, support or confidence lost would be sufficient to impact the military function. That, finally, is where all functionalist arguments must bottom out.

Besides, if we base the strict adherence to moral obligations solely on what it takes to get or keep public support, or what it takes to get troops to follow leaders, it might turn out that the military professional has just as compelling reasons on occasion to be especially *bad*. A less than morally upright soldier might identify *more* readily with a leader who shares his vices, and be *less* inclined to follow a leader whom he views as "moralistic" or a "goody-two-shoes." Or, for example, a public caught in the grips of some nationalistic or imperialistic ideology might be less supportive of a military that was generally too tolerant or fair-minded or just. Such, I suspect, are the motivational psychologies of some troops and some segments of the public.

Overall the functional line gets us some special reasons to be morally strict with the military professional, but only in the military context. The argument does not get us a knight in shining armor. Indeed, the higher moral standards for the military professional established by the functional line are ones that even a Nazi could and would endorse.[9]

Demands of the Role

This next argument I will explore is a lot like the functional line. Call it the "role-based" argument for a higher moral standard. On this view it is not just that the military function—narrowly defined as fighting—demands more of the military professional. There is also a more or less well-defined *role* one occupies in the military structure and in society at large when one is a military professional. Perhaps the military role carries with it unique and stricter moral demands that include, but go beyond, what can be generated by functionalism alone.

Take as an illustration of this role-based idea the moral standards concerning the behavior of police officers. A police officer is morally bound to do something about a crime in progress, while ordinary citizens are not always expected to step in. The unique obligation flows immediately from the *role* the police officer is filling. A parent is bound to care for his or her children in ways others are not morally required to do. The obligations are attached to the roles. So if one assumes a role in society (rather than pretending to assume it), this frequently carries with it some very definite moral baggage. As long as you are not a charlatan or a con man, you take on either unique obligations or stricter obligations (or both) because you *agree* to them by assuming the role.[10] Indeed, these various expectations and understandings concerning one's behavior and character as an occupant of a role are part of what it is for something to *be* a role.

Now I do not want to claim that the only role-based moral obligations are those driven by the brute expectations of society. There may be other sorts of reasons for higher standards attaching to roles that I have not thought of or explored. Nor do I want to claim that society's brute expectations are always ones we should meet—they might, after all, be unreasonable expectations. My thought here is merely that if a society has certain expectations, and I voluntarily assume this publicly understood role, then I have at least *prima facie*, honesty-based reasons for meeting those expectations.

Now consider the military professional. If one voluntarily assumes that role,[11] then there are certain standards of behavior and character to which one at once agrees. What are they, exactly? As an easy starting point, certainly an obligation to attend honestly and conscientiously to everyday military duties comes with the package. A similar demand is made by almost every role. If called, doing one's best in combat seems an uncontroversial obligation attached to the role. We should also assume that the explicit oaths that demand obedience to superiors and loyalty to the constitution are part of the public understanding of the military professional's role-based obligations. There may be more. But when someone assumes the military role, unless he is a fraud, he at once assumes some moral obligations which are attached to the role (whatever those obligations turn out to be).

Of course, one might ask why the military professional should not be a fraud. Fair enough, and we might be able to conjure some special reasons military people have not to be frauds in regard to their role. But that is bigger game than I am stalking here. I am happy at this point to explore what kind of complex, role-based moral obligations we can deduce from a more simple moral obligation like not being a fraud. It is a *higher* standard that we are trying to establish.

So, if we assume the role as it is generally understood in the society, and couple it with a prohibition of fraud, I think we can establish the uncontroversial moral standards I have already mentioned. But have we found an argument for higher standards, particularly higher standards that go beyond the demands of functionalism? The obligations I have listed (attending to duty, fighting when called, obeying superiors, and being loyal) are not anywhere near exhaustive of the moral possibilities, do not ask more in degree or in kind than functionalism, and as stated, may be obligations we all have. How much more does the military role require? For this line of argument to do its work, something about the military role and our publicly shared understanding of it would need to point toward unique and stricter demands that go beyond functionalism, toward the strict obligation to be good through and through.

I am skeptical. Indeed, there are at least two worries about taking this any further. First, we can wonder straight away if role-based expectations for the military professional in our (or any) culture actually *do* go beyond the uncontroversial demands I have already listed. If they do not, then we would have no basis inside this role-based strategy to invoke any higher standards. It would be as if we told a doctor that she should not cheat on her spouse *because* she was a professional. I do not think this makes sense. Granted, a doctor has some special reasons not to lie to her patients about their medical conditions *precisely because* she is filling the role of a doctor, since this role carries with it a special component of trust in the doctor–patient relationship. But if it is wrong for her to cheat on her spouse, it is because infidelity would be wrong for anyone, not because she is a doctor. If there is no special expectation attached to the role, then there is no justifiable criticism based on such an expectation.

So does the military profession have special moral expectations attached to it as a role in society, expectations that should lead the military professional to be morally "better" than the narrow functionalist would require, maybe even good through and through, in virtue of her role? It is not easy for me to answer this question with certainty, but I would judge the answer is no. When a military person neglects his children, writes a bad check, cheats on his taxes, whatever, I object morally and legally. But I think the grounds of these objections are standards I would apply to anyone, and there is not a sense that the military person has let me down specifically in regard to his role. Once again, though, I would expect a more definitive answer to come from actual empirical investigation (perhaps a sociological study of exactly what constitutes our publicly shared understanding of these roles).

I suppose I might be wrong about the content of these role-based expectations. But that leads me to my second worry about taking this strategy any further. If the culture actually does expect the military professional to be more morally upright than others in many or most ways, and believes this is inherent in the role, *should* this be part of their expectations? Sure, reasonable expectations coupled with assuming the role generates obligations. But *is* it reasonable to expect as much from the military professional as we are supposing here? I think that if some people believe the role demands more than functionalism, their conception of the role is an unjustifiable one. I do not know of a better way to justify the reasonableness of our role-based expectations than grounding the expectations in the functions themselves. And indeed, the shapes these functions take are not arbitrary. The traditional professions, for example, are tethered to several important and perennial human needs (for health, justice, and defense) and the professional roles are conditioned by the function of best providing for those needs. Now we have already seen that the military function, even broadly understood, only makes certain limited demands in the moral sphere. So, I think, a functionally ungrounded claim that military professionals are bound by a higher moral standard is unreasonable, and should carry no weight as part of the foundation for this role-based strategy. Thus it makes the question of *actual* public expectations for the role an interesting empirical question but, without some supporting rationale, not of too much use for our purposes.

But why assume we need an argument in support of the expectations? Assume (controversially) that the public simply expects military professionals to meet a higher moral standard, and this has nothing to do with their thinking about the function or their legitimate understanding of the role. They are paying military salaries, so if this is what they want, however overly demanding, and for whatever reason, this is how the military should be. Given the brute expectation, the professional would be cheating the taxpayer if he took the job pretending to be especially morally upright, but not really taking the higher moral standard aspect of it seriously.

There is a great deal wrong with being willing to abandon the requirement for *reasonable* expectations. I will mention, but not explore, how arbitrary and unfair it would be to take this view. How could we consistently hold one group on the public payroll (the military) accountable for higher, non-functionally grounded, moral standards, but not all the others on the public payroll (various civil servants and politicians at almost every level)? And I will set aside wondering once again if there *is* such an expectation in the public at large. It is still by my lights doubtful that there is a brute demand in our culture for the military to be *more* moral than the rest of us in non-functionally grounded contexts.

Maybe worst of all for this idea is that, given we stipulated these were not reasonable, functionally grounded expectations, we leave ourselves open to a couple of disquieting possibilities. First of all, here we say the *only* reason military professionals have for being bound by some higher moral standard is that this is what the public expects in the job, and hence they agreed to these things when they took the job. What then would keep these higher standards from disappearing in the future? If we uncritically base the obligation on brute public sentiment, history teaches us that this sentiment can change, and not always for the better. Second, I fear this kind of thinking might lead too many military professionals to think (however wrongly) that brute public sentiment is the sole (or at least "trumping") source of *all* their moral obligations. Then, in another place or time, we might hear the specious moral argument that the public *wants* Jews killed, and they are paying military salaries, so the military professional is obligated to do it.[12] No, if there is a higher moral standard based on something beyond function or a functionally shaped role, we had better have a good reason for thinking so. And "just because the public says" is not, by itself, good enough.

Group Image

While I would not rest my case on the public's brute expectations for the military, the public image of the military is not morally irrelevant. To see this, consider a commander required to discipline some of her troops for writing bad checks to merchants off base. In addition to the appropriate punishments, the commander could correctly admonish such offenders for the bad effects their actions had on the image of the military with local merchants. Because the military constitutes a readily identifiable group, many kinds of misconduct by the few can lead to bad consequences for the many. Some people might form, however hastily, general opinions about how they should view all military professionals.

So the fact that it is easy to identify someone as a member of the military, together with the tendency of some people to form generalizations based on thin evidence, gives us yet another special reason for the military member to be moral.[13] One person's misconduct or lack of character hurts her fellow professionals. Maybe here we have a reason for a higher moral standard outside the military context.

There seems to be something to this. But as with our other arguments, I think we should be sensitive to its limitations. First, it insists directly only on good image and not on genuine goodness. To establish genuine moral strictness we would need to believe genuine moral goodness was causally necessary (weaker version: causally closely related) to good image. Insofar as this is true, the argument provides reasons for a higher standard; to the degree that it is false, the more we would be inclined to say that the argument establishes only a case for good appearance and that the real crime is getting caught. These issues parallel the ones we examined in the “mere appearance” twist on the functional line.

Also, even if the argument works, it only establishes higher moral standards the breach of which hurts other service members because of the resulting bad image. So to even get started, we would need to have enough people being caught to *create* the bad image. If only one soldier in 10 years, for example, commits murder and this has no appreciable effect on the image of soldiers in general, then this image argument does not give me a special reason to be disappointed in the soldier. Besides, even if such an image does take hold, a bad image does not always hurt the members of the affected group. Segments of the population might disapprove of what they perceive of as misconduct in a group without this doing serious, positive harm to the members of the group. Pretend it is commonly (even if mistakenly) believed that military professionals are heavy drinkers, have foul mouths, are sexually promiscuous, and do not have proper regard for their health. Are we sure this will cause harm to the group as a whole, harm sufficient to provide a special reason for all members of the military to refrain from these behaviors? If the harm does not result, then the argument fails. Moreover, the types of misconduct that would elicit this kind of societal response (a generalization that results in harm to the group) could and probably would vary from place to place and time to time. Hence what the higher standard requires would vary as well. So all in all, while group image considerations give us some reasoning in support of a higher standard, it is not what I would call a firm foundation—what it requires would be tentative and variable.

Last, it is also interesting to notice that the argument would apply to any readily identifiable group. If this line of thinking is correct, then doctors, lawyers, racial groups, women, men, members of any group really, also have special reasons under certain circumstances not to misbehave publicly. After all, the image problem can affect any of these groups as well. In fact, all of us belong to one or more of these readily identifiable groups. This being the case, I am not sure how we can make sense of the resulting standard being a higher one, particularly if we thought that meant it was a standard that bound just, or especially, the military professional.

Conclusion

I do not think there is any simple and single answer to the question of what should count as a higher moral standard and whether we have good reasons for thinking military professionals are bound by one. A number of different considerations point to a loose collection of unique military obligations and some special reasons for being strict with obligations that bind us all. But these obligations mostly are restricted to the military context. Even if we stretch what counts as relevant to military duties and responsibilities to the broadest extent plausible, the higher standards we can truly justify are not as extensive as may be commonly thought. We should conclude that military professionals are bound by *some* unique and/or especially strict moral standards, but they do not encompass all of morality. We ask an awful lot of military professionals, particularly in the moral sphere. But outside of functionally driven contexts, I claim we have little or no basis for asking them more insistently than others to be moral, or blaming them to a greater extent than we blame others for the same offenses. I do not think we can justifiably ask them to be saints.

[1] As for codes that require higher standards of ethical conduct, the most obvious example in the United States is found in the Uniform Code of Military Justice (UCMJ), especially Article 133. Charles R. Myers, in reviewing the history of such codes, has concluded that military professionals are held, under the law at least, “to unusually high ethical standards” (1994, 15). As for public espousals, take as a representative example the claim by former US Navy Secretary James H. Webb, Jr. that “there is no substitute for an insistence on ethics, loyalty, accountability and moral courage” (*Navy Times*, 1996). When failures occur, corrections often go beyond mere chastisement. The media regularly reports on military professionals that have been relieved and punished under the UCMJ for moral failures including lying, disobedience, sexual harassment, adultery, and theft.

[2] A former US Air Force Chief of Staff, General Ronald R. Fogleman, insisted that “our standards must be higher than those that prevail in society at large” and that members of the military must “always exhibit the utmost in principled behavior, off-duty as well as on” (from a letter released to the public early in 1996 though the Air Force News Service, Washington, DC).

[3] Examples include, but may not be limited to, the curriculums of all the service academies, various Reserve Officer Training Corps (ROTC) programs, officer training schools, and resident professional military education for non-commissioned officers, senior non-commissioned officers, and company grade, field grade, and senior grade officers.

[4] We might wonder at this point what makes a standard a moral one. This is a large question that would go beyond the scope and focus of this chapter, and I hope I can put that issue aside for another day. I think we can in this study rely on a pre-theoretical, common sense notion of what counts as a moral standard, even if that amounts to nothing more than an implicit list of standards we are disposed to characterize as moral. The focus here, as we shall see, is on whether we can find special reasons for binding the military professional to such standards we already recognize as moral ones.

[5] I understand “the military function” for these purposes very narrowly, to mean something like fighting battles and wars. We might also assume a more normatively loaded characterization of the function, so as to include things like “defending the innocent” or “fighting for the right.” This would probably make it easier to justify strictness in enforcing many moral standards, but I would rather assume less than more for now and see where that takes us.

[6] We could take this even farther, and believe that a person is either good or they are not. On this more radical view, reminiscent of a Platonic-style unity of the virtues, any moral failing whatever is reason to suspect other moral failings are forthcoming. We would be committed to thinking, for example, that a person who lies on their income taxes could not be relied on to be brave in battle.

[7] Do I really need to cite an example? Standards regulating belching and passing wind, among other things, fit the bill here.

[8] Nazi Germany provides many particularly well-known examples of these sorts of context-sensitive dispositions. Stories abound of concentration camp guards and doctors who, while brutal with prisoners, were tender with their families and otherwise more than decent human beings. And the attitude conveyed in this passage from a speech by Himmler is instructive: “… we must be honest, decent, loyal, and comradely to members of our own blood and to nobody else. … Whether 10,000 Russian females fall down from exhaustion while digging an anti-tank ditch interests me only in so far as the anti-tank ditch for Germany is finished” (Office of United States Chief of Counsel for Prosecution of Axis Criminality 1946, 559).

[9] Again, we can draw on Himmler as a source, for he extols the “virtues of the SS Man: Loyalty … Obedience … Bravery … [and] Truthfulness” (Office of United States Chief of Counsel for Prosecution of Axis Criminality 1946, 556–7).

[10] To be sure, there are both explicit and implicit elements to such agreements. Actually assuming the roles is most often (but not always) done explicitly. What the role requires is often part of an implicit, but no less clear, understanding.

[11] The voluntariness might not be essential, but the role-based case for unique or stricter moral obligation seems stronger to me when someone voluntarily undertakes the role. If this does not work to bind the military professional to a higher moral standard, the strategy would be hopeless for obligating a draftee.

[12] I would not bring up this incredible possibility if similar bad arguments were not so frequently made.

[13] As was the case with fraud in the role-based argument, we are here depending on deriving a complex set of obligations from a simple and presumably noncontroversial one (not hurting one's fellows). It is once again not a knock down argument, but I think it at least counts as a reason.

Chapter 2
Women in Combat: Discrimination by Generality

> [E]very member of the commonwealth must be entitled to reach any degree of rank which a subject can earn through his talent, his industry, and his good fortune
>
> (Kant 1793, 75).

We sometimes, in assigning the benefits and burdens of society, discriminate using a broad category (age, gender, race, etc.) we think correlates well with the possession of some *other* skill, qualification, or character trait (judgment, strength, intelligence, having suffered a wrong, etc.). At least one line of reasoning for excluding women from combat helps itself to this sort of discrimination. In this chapter, I suggest a method for determining when this kind of discrimination is morally permissible, and when it is not. I defend my sorting method against some potential criticisms, point out some exceptions to its application and reject the use of discrimination by generality as an appropriate way to exclude women from combat.

A Permissible Kind of Discrimination?

As a way into this problem space, I will begin with an example. In a 1993 *Firing Line* debate over whether we ought to allow women into combat, the late William F. Buckley was presented with the following challenge by Ira Glaser. Let us suppose (only for the sake of argument) that in most forms of military ground combat, most women would be unable to fight well enough. Now assume there are *some* women, however few, who would be reasonably effective. Indeed, suppose that in this effective group there are women who are better qualified than at least some of the men we are presently employing. If all this were true, would it nevertheless be all right to ban *all* women from combat, even though there are *some* that can make the grade?

Buckley seemed willing to accept that the premises are true, and still replied that it is all right to enforce the ban. We make all sorts of categorical decisions like this, and it is perfectly permissible to "talk about generalities" (*National Review*, 1993, 17). For instance, we might find a 13 year-old who is brighter than most 18 year-olds, but we still would not let her vote. Likewise our constitution requires a person to be 35 years old in order to be president, even though this would have excluded from eligibility, among others, the likes of Alexander the Great and Julius Caesar. All the same, we use what Buckley called generalities to discriminate between those we think are able to do jobs, exercise privileges, etc., and those we think cannot.

So here, I take it, is the form of the Buckley argument, which has many other potential applications beyond the question of whether to allow women into combat. We begin with some well developed and justified ideas about what it would take to do a certain job, fill a certain position, or exercise a certain privilege. We also see a strong statistical correlation between possessing (or not possessing) the skills needed to meet these requirements and some other easily identifiable feature of a person (for example, gender). We then find that in some cases it is much easier and more cost-effective to test for this other feature rather than the skills in question. Hence, here for reasons of efficiency, we find it morally permissible to simply test for the easily identifiable feature of the person, and include or exclude those persons who possess that feature. We take a short cut.

There are other cases Buckley might have cited as examples. Age limits for driving fit the bill. We know there are, say, 13 year-olds who are capable of driving safely, and 30 year-olds who are not. But we have a sense that most of the time we need not bother to test people for driving skills until they are 16 or so. Sure, by drawing the line where we do, we exclude some people who are able to drive safely, and include those who will ultimately demonstrate that they cannot. But we play the odds in order to avoid testing everyone, whatever their age. Setting a legal age limit for being allowed to consume alcoholic beverages appears to be another case where this sort of thinking provides the rationale, for perfectly analogous reasons. There are, no doubt, some people under the age of 21 who could use alcohol responsibly. But once again I use an easy-to-identify feature (age) to capture, however imperfectly, what I am really after: minimally acceptable judgment in the consumption of alcohol.

Maybe requiring a college education for certain positions is also like this. Of course, for many jobs, what one learns in a degree program is precisely what is needed to do the job. Medical training comes to mind as a bright-line case. But there are other sorts of jobs where the connections between the degree and the skills needed for doing the job are not so clear. We know perfectly well that some people without college degrees (sometimes called in these contexts the meaningless “piece of paper”) can do these jobs just as well as those who have degrees. And some people with degrees lack the needed talents. But we know, at least in the majority of cases, that having completed a degree correlates well with a person possessing discipline, intellectual ability, knowledge, etc. And it is much easier to just check for the degree than all those other hard-to-measure traits. Hence, we discriminate on the basis of generalities, and (goes the Buckley argument) there is nothing morally objectionable about this kind of discrimination.

Morally Troublesome Forms of the Practice

So was Buckley right? A troubling counter-example comes to mind. Imagine a world in which there is a certain racial group, the vast majority of whom do not possess the academic skills needed to succeed in college. *Some* of them do, mind you, but most do not. Does it seem morally appropriate to exclude the capable ones from even being considered because of the racial class to which they belong? It seems clear to me that it would *not* be right to discriminate in this case. We have a strong obligation in these circumstances to test each individual as directly as we are able for the skills we think truly relevant. So what is the difference between this case, and the cases above where it seemed permissible?

I would like to make a suggestion as to what constitutes the difference. Notice that in the cases where it seems all right to discriminate by age in the interest of efficiency, all the people excluded, in the normal course of events, eventually *do* become eligible for consideration. In the driving test example, they grow older, and then take their driving tests. So all we are asking of those excluded is to wait for a bit. And it does not seem morally objectionable to require people to be patient in the interest of social efficiency.[1]

A similar situation obtained in the college degree case. In our culture, with universally available higher education, capable people can *make* themselves a part of the eligible group by earning a degree. While not so easy as simply growing older, it still does not seem like too much to ask. The opportunity to earn a degree is available to almost everyone. Those who are *unable* to earn a degree for reasons of ability (as opposed to those who simply have not earned one) likely do not have the qualities prospective employers are looking for anyway. So this, I think, is a morally permissible way to discriminate by generality.

On the contrary, a person cannot change their race. Even though (in our "imaginary" case) I am stipulating that social utility would still be gained by discriminating via the easy short cut, the capable people in the group are excluded permanently from consideration. Here, I take it that the unfairness of being permanently excluded overrides whatever goods might be realized from increased efficiency. We are obligated to test directly for whatever it is we think is required for the position, in this case, the skills needed to succeed in college. If there are members of the group who can succeed, we must go to the trouble of identifying them, even if social utility is sacrificed.

So I am suggesting there are principled exceptions to Buckley's discrimination based on generalities. Specifically, if the short-cut characteristic used to identify some other skill, ability, qualification, etc., is something the person is unable to change, then it is wrong to use it as a short cut. In those cases where the short cut is unalterable, the practice loses its moral plausibility. Now to be sure, I only mean to apply this prohibition when we are considering whether to discriminate by *generality*, that is, when class membership is used as a short cut to identifying some *other* trait. But I will say more later about this restricted application.

I should also point out that I think prohibiting this short cut when the trait is unalterable makes sense in a variety of contexts. First, I think the prohibition applies whether we are justifying the use of group membership to afford opportunities and grant benefits or to deny opportunities and impose burdens. Most of my examples are aimed at certain kinds of cases where benefits and opportunities are wrongly denied. But I might just as well have conjured instances (or found real examples) where people are wrongly *imposed* upon in virtue of a group membership short cut. More, I suspect this kind of short cut is defective whether it is used in a public or a private context. In the public sphere, we tend (and I think ought) to make discriminations of this kind illegal. In private life, we tend to leave room (also rightly I think) for legal immorality. But if I am right, there is still something wrong with making judgments about a person based solely on beliefs (even true ones) about the class in general to which the person belongs.

Some more examples will help illustrate when I think the practice is impermissible. There have been attempts in the past to use minimum wealth as a way to establish competency to vote. The idea *might* have been that being poor was, by and large, a flag for incompetence in making political decisions. Let us assume (perhaps counterfactually) that this was the rationale. But even if it were true that poverty correlated in large part to incompetence, here is another case of an illegitimate discrimination by generality. Most poor people cannot easily change their poverty. Testing for competence more directly, even though it is more difficult, is the morally appropriate policy in this case. Notice that gender also is excluded as a basis for discrimination by generality. If I am right, Buckley should not have used this as a basis for excluding women from combat.[2] Identifying someone as being *too* old (as opposed to not old enough) should not be used as a short cut either. Say I have good reasons to believe that a majority of people over a certain age cannot drive safely anymore. Even so, it would be unfair to those who still can drive safely to prohibit everyone over that age from driving.[3] These short-cut traits (such as age, gender, race, etc.) are, I am assuming, unalterable and we are obligated to test instead for the things we are really looking for, even if it is more trouble.

A Somewhat Stricter Rule

I suspect there are other closely related defeating conditions for discrimination based on generalities. To illustrate: it does not seem reasonable to me to exclude someone from consideration for a job because of marital status. Even if, for the sake of argument, we postulate that married people *tend* to exhibit certain desirable traits, many single people would have these traits as well. Alternatively, single people might *generally* make better choices for other kinds of jobs. Maybe singles can work longer hours as a rule. But to ask that a person get married, get divorced, or remain single simply to become eligible for a job does not seem right.

Certain eligibility criteria for adopting a child could cross this same moral line. An agency might believe plausibly that few single people have the personal resources properly to rear a child. But then, even while knowing there are at least *some* single people who would be good parents, the agency might prohibit all singles from adopting. Being married is established as a pre-requisite for the privilege, even though in this example it is only a short-cut for identifying something else, namely, potential for good parenting.

Now in these examples, to become eligible people of course *could* change their marital status. It is not like race or gender or advanced age, which a person cannot change. But I believe requiring a change of marital status would be asking people to change something that is deep and essential about themselves. And my thought is that we ought not ask people to sacrifice these kinds of things except for the very weightiest of reasons. Certainly, merely some measurable gain in social efficiency would not be weighty enough.[4]

Discrimination by generality based on religion would be objectionable for the same kind of reason. Again only for the sake of argument, imagine that religious people were in the main possessed of some set of moral characteristics, and many or most agnostics and atheists were not. Imagine further that some of these moral traits (say trustworthiness and loyalty) were needed in a certain job. While we might be tempted to discriminate based on generalities here, I think it would be a moral mistake to yield to that temptation. Religious convictions seem too much a part of what a person *is* at bottom. Expecting a person to change their religious convictions (or lie about them) to become eligible for some social good would be wrong. We must find another way, a more direct way, to test the character of the eligible candidates.

Contrast this with a type of religious discrimination I am *not* prohibiting. Imagine we are hiring a nurse in a modern hospital. A religiously observant person whose religion prohibited all medical treatment besides prayer would not be a good candidate for the position. We will eliminate from consideration the class of people who maintain these religious views. But here we are not discriminating by generality. It is not as if we are excluding *some* people in the larger group who, while sincerely holding these beliefs, nonetheless could do the job required. Here all the people who maintain these views are unsuitable for the work. They must either forgo the work or forgo the convictions. So my method does not prohibit discrimination in cases like these.

Discrimination based on fatness presents an interesting issue along these lines. Some employers (the military, formerly the airlines, perhaps others) believe there is a link between a standard of weight and other qualifications they think are important and relevant for job performance. They see a statistical link between people over a certain weight and certain other factors directly related to the job, such as fitness, health, or professional appearance.[5] Some people can exceed these weight standards, and still be perfectly fit, perfectly healthy, or perhaps less often, present a perfectly "acceptable" image. But since most heavier folk do not pass muster on these other counts, we see the use of discrimination based on generalities.

Is this morally permissible in the fatness case? I suppose the issue turns on the two points I have already developed. First, is fatness something people can easily change? Of course, we do not "grow out of it" like we do childhood (oh, if it were only so easy!). But having done a lot of dieting myself, I suspect that losing weight is not too much harder than earning a college degree. Of course, if I am wrong about that, and fatness is something people really cannot help or change about themselves, then we would be obligated to refrain from discrimination by generality. We would be obligated instead to test directly for those things that the job required, assuming in this case we are looking for fitness, health, or an "acceptable" appearance. Second, we need to decide whether fatness, or perhaps the freedom to eat whatever one likes, is an essential and morally important part of what a person is. I would guess that this is *not* the kind of thing that is protected against considerations such as social utility, but I suppose I could be wrong about that. I will defer in that debate to fitness gurus and lovers of good food. I have no set of necessary and sufficient criteria for identifying what it is unreasonable to ask a person to change. These issues, when they are issues, will have to be addressed on a case-by-case basis. Of course, some cases will be easy ones and there will be widespread agreement about them. Others will not be so easy. I bracket the problem for another discussion.

Potential Problems for the Method

So to sum up my claims to this point, Buckley was partly right. There are times when we are justified in discriminating by generalities and using broad categories as a short cut to identifying other, more functionally relevant traits. But he was wrong to overlook some important exceptions to his principle. When a person cannot change the short-cut sorting trait, or it would be an unreasonable thing to ask a person to change about themselves, we most often ought not to discriminate in this way.[6] In these cases, the practice is not morally plausible. Even though it costs us more, we must roll up our sleeves and test more directly for the traits we are seeking. Having said all this, let me now anticipate some potential objections and misunderstandings.

Discrimination Based on Abilities

First, I want say again that this method for identifying morally unacceptable forms of discrimination has only a restricted range of application. I am addressing only those situations where broad categories are used as indirect, statistical flags for some other capability or trait. I am not claiming this prohibition will make sense where a class is created by the very capability for which we are searching. For example, if I am seeking a sighted person to do proofreading, I would naturally exclude blind people from consideration. Blindness is not something a person can change about themselves, but my method does not speak to this situation. We are *not* excluding the class of blind people because of some found statistical correlation between group membership and certain abilities. In this case, sight is required for the job and it is precisely the lack of sight which *creates* the class.

So I am not claiming that it is illegitimate to discriminate based on abilities. Anytime we establish criteria for performance, and develop a test that (we hope) reveals the ability to perform so, we delineate a class of folk who cannot pass the test. Say I need a person who can type accurately 60 words per minute. If I administer a typing test, there likely will be a group that cannot pass to that standard. And this lack of skill may well be something many of the applicants cannot change about themselves. But again I do not think this is objectionable, since the class created was marked off by just the ability I was looking for. In the kinds of cases I do think are objectionable, a whole class is being excluded when only some part of that class actually lacks the characteristics we seek.

Fair Accommodation

Of course, we can wonder if we ultimately are looking for the right characteristics, but that is another concern. A much discussed point in the literature on discrimination is whether we have been fair in establishing the requirements used in selecting for jobs, positions, privileges, etc. What counts as fair accommodation in designing jobs and in granting access to societal goods is an open and interesting question. But this is a question outside the scope of my method. *Before* we start the thinking about discrimination by generality, we assume the problem of fair accommodation in establishing requirements has been settled. While not an entirely separate issue, they are, I think, conceptually distinct.

Our History of Discrimination

I think the overarching argument I have mounted has an easily discernible structure. I found a case of discrimination by generality I expected *everyone* would agree is morally unacceptable (namely, a hypothetical exclusion from college by race). I then suggested more specifically what is morally objectionable in this easy case, and exported this principled objection to other cases where our intuitions might be less clear. Of course, given this structure, a great deal depends on whether I correctly assessed exactly what is wrong with the easy case.

So here is another potential worry for my position.[7] When it comes to race, we clearly have a shared and painful awareness of a recent history of arbitrary discrimination. To what extent is the power and plausibility of my pivotal example dependent on our awareness of this history? In other words, in my example I judged that non-arbitrary, statistically supportable discrimination based on race would be wrong; but could that judgment *really* just be a reaction to the arbitrary and morally repugnant discrimination that has been part of our cultural landscape? How strongly would we feel about using a reliable generalization based on group membership if we had no history of discrimination based on false or unreliable generalizations? Perhaps I have not correctly identified what is truly bothersome about the race case. And if I have not, then my argument carries considerably less force.

It would be easy to underestimate the trouble this worry could cause for my argument. There are few issues so morally and emotionally charged as race. Hence it would be very natural immediately and unreflectively to find *any* racial discrimination wrong, however non-arbitrary, and only then look for a rationale that supports this judgment. So my principled objection might turn out to be an ad hoc story that fails to capture what truly troubled us (on a merely psychological level) about the race discrimination. If this were all true, I suspect the principle would lose much of the normative bite I claim for it, either in the race case or any other form of discrimination by generality.

Fortunately for my argument, I do not think this is all true. I admit (without *too* much embarrassment for having employed the technique) that the race example carries tremendous rhetorical power, largely because of our ugly history. The race vehicle makes it extremely easy to introduce the principle I am touting because our moral sensibilities are especially heightened when it comes to race. But having admitted this, I do not think we should conclude that the morally objectionable element in this non-arbitrary discrimination by generality is not present.

Imagine some group that has not suffered a history of arbitrary discrimination. I might have started my story with children who come from rich families. Now let us imagine that in some hypothetical world, the rich kids do not do well in college (maybe they lack motivation, have been spoiled, whatever). Shall we discriminate by generality in this case? Shall we say that if your parents have a net worth above a certain amount, you need not bother to apply, whatever your actual qualifications? I am sure this would be wrong too, even if the illustration lacks the sizzling persuasive power of the race case. I think the principle holds, even when we reflect in a cool moment: we should not discriminate by generality when the victim of it cannot change, or it would be unreasonable to ask them to change, the trait by which we are discriminating.

A Test is a Test is a Test

Someone might object to what I have said so far along the following lines. We know that many of the tests we administer to identify skills are far from perfect. For example, we use SATs and GREs to predict success in degree programs, but we know full well these provide only the roughest indications of a student's potential. Many who do very well on the exams will not succeed and many who do poorly will excel. Few tests measure directly what it is we are looking for and fewer still identify what we are looking for 100% of the time. So, the objector will claim, when I find a statistical correlation between being a member of a group and possessing a certain skill, *this just is a test*. The objection will be that I have failed to make an adequate distinction between testing via class membership (which I think is morally objectionable in many cases) and the other kinds of testing I think are morally superior.

So why is not gender, say, a test for upper body strength? Assume there is a significant correlation between being a woman and being unable to lift a certain amount of weight. My critic will claim that identifying someone as a woman is also a reasonably accurate *test* of whether she can lift that certain amount of weight. Well, in one sense my critic must certainly be right. But I think there is a difference between this group membership, short-cut kind of testing and a more direct testing of abilities. And I think it is a morally relevant difference, one that goes to the heart of my thesis.

In making out this difference, we might be tempted as a first pass to say that there are more reliable available means for testing than merely determining group membership. In the problem of determining strength, we might as an alternative just ask people to actually do the lifting (which I imagine will deliver close to 100% reliability) rather than sorting by gender. Still, I do not want this (accuracy or reliability) to be the essential difference between a morally acceptable test and those indicators that rely questionably on group membership. Indeed, we might well find instances where the group membership criterion is *more* reliable for identifying some skill than any other available tests. But I still would not want us to use a group membership test. Reliability or lack of it is not the essential difference between group membership indicators and other kinds of tests. Nor is lack of reliability what I find essentially wrong about using group membership in these cases.

The difference, I think, goes back to what we noticed earlier, namely, that when I administer a test, I use it to discover as best I can characteristics of individuals, and these people, as individuals, are then sorted into classes *as a result of this test*. The sorting is not always perfect, but the point of the exercise is to identify those who actually possess the skills in question. We may exclude some who really have what we are looking for, or even include those who do not, but the mistakes here are a result of our inability to test more reliably.

In the objectionable kind of test, the group we start with is identified *before* we notice the correlation. More, there is no functional or causal relationship between the essential characteristics that sorted them into that group and the skills or other traits for which we are looking. Strength is not something I use to discover a person’s gender, academic talent is not what I use to discover a person’s ethnic group, work habits are not what I use to discover marital status, and so on. Also in most of these cases, the objectionable exclusions occur not because of our *inability* to test more reliably, but because we will not be bothered to check each individual. The capable but excluded people just happen to possess some functionally distant or unrelated trait they either cannot change or it would be unreasonable of us to ask them to change.

My claim is that all this (and not the reliability *per se*) points to the essential difference between the two types of test. In the circumstances I have outlined, refusing to test more directly when a more direct and individual test is available is simply unfair. This unfairness is at the root of what is wrong with the group tests. They are morally defective in roughly the same way certain types of group punishment are wrong. In the main, we find it morally (and legally) unacceptable to punish all members of a group for the misdeeds of some of the group’s membership. We think it morally necessary to attend to the virtues and shortcomings of individuals, and think it unfair to use the short cut of group membership for assigning punishment, blame, or moral responsibility.

Now I would guess prohibitions against this type of unfairness find their ultimate justification in a Kantian way of thinking. I think discrimination by generality, when wrong, is a manifestation of a failure to respect persons. But I do not think I need to develop a deep theoretical story to sustain the rhetorical force of the argument. Anyone who thinks there is something wrong with group punishment as I have described it, whatever his or her deeper theoretical commitments, can agree with my approach. This is because I think discrimination by generality in the cases I have delineated commits the same basic moral error as the group punishment: it is the failure to attend to the individual when respect for the person requires that we do so. So my *hope*, anyway, is that we can proceed agreeing only on a mid-level moral principle of fairness that would prohibit all these practices.

Harder Kinds of Cases

I suppose we could press this moral distinction between the types of tests on several counts. First, what would we say if we discovered in some case that 100% of a previously identified group either lacked or possessed a trait we are looking for? Would I still find it morally objectionable to use this fact as a short-cut test? In these kinds of cases, I would say no. If we did discover a correlation like that, I would strongly suspect some reliable common causal mechanisms were at work to create the correlation, forging a causal or functional link between the group and the trait in question. And if this were the case, then we would have the basis for what I take to be an acceptable test anyway. Applying such a test to each individual would yield the same results, i.e., would yield a class with the same extension.

But even if this did not turn out to be true, or we could not manage a test even if there were causal connections, there is a more important reason for not worrying about this possibility. If 100% of the group identified fails to possess the trait we require, who is it that we are leaving out unfairly? If we discover there are no children under the age of five that are able to drive a car, no one who *could* drive is being excluded by a policy that prohibits those younger than five from driving. Since no one is excluded by the short cut, the issue of fairness is moot.

There is a more interesting special case. What ought we to think about fairness when there is no other test available, when rolling up our sleeves and testing more directly just is not possible? Or when (as we suggested was possible earlier) the short-cut test is simply more reliable than the best more direct tests we can engineer? Let us reenter the imaginary world wherein most people in a certain racial group do not have the skills to succeed in college. Also imagine further (let us stipulate it for this challenge) that the other tests available, like SAT scores, grades in high school, letters of recommendation, etc., are rotten tests and do not predict success as well as simply identifying a person’s ethnic group. It would seem then that we should rely on the best test we have, even though I have identified it as immoral. Here then, we might be tempted to think, must be an exception to my general principle.

I do not think so. To begin with, I find it hard to believe that in the non-imaginary world, there are short-cut tests that are actually more reliable than the direct tests. I find it even less plausible that there might be no other test we can perform besides the short cut. After all, we always have at our disposal the most direct test one can ever administer: *we can just let people give it a try*. If there were no other way of predicting success in school, we might just allow more people to matriculate. Then everyone would be given a chance and people would pass or fail on their merits as individuals. How much would a policy like that cost in our imaginary world where no other test is available? What would it hurt, really? I grant that it might cost us a measure of social efficiency, but doing the right thing occasionally may be more expensive than unfairness. Indeed, we already do a similar thing in promoting managers. It is difficult to predict with certainty who will succeed in leadership positions, so we often find ourselves continuing to promote folks until they demonstrate clearly they cannot do the job. And if in fact we had no better tests for leadership, the Peter Principle might not be such a morally bad thing.

Overrideability

Of course, I just asked rhetorically what it could hurt to let everyone have a go, while knowing full well there may be cases where it could hurt a lot. I have been claiming that even when there is no other good test available, we are obliged to refrain from using the objectionable short cuts. But this I claimed on the assumption that the stakes were not too high. I will admit that if the stakes are high enough, this is an overrideable principle.

For example, in a war we do not check individually the good or bad intentions of every uniformed enemy who crosses our path. I may know that not each and every uniformed soldier would bring me harm. But the correlation between belonging to the class “uniformed enemy soldier” and having a predilection to bring me harm is quite high. It may not, depending on the situation, be reasonable for me to ask that the soldier martyr himself or desert his country in order not to wear a uniform, nor may it be practically possible for the soldier even if he wanted. Yet even then, I have no obligation to check more directly by first trusting the soldier’s good graces. The stakes are too high. So in cases like these where the consequences of being wrong are disastrous and no other test is available or practical, we may override my prohibition. Then discrimination by generality, even using the categories I have circumscribed, may be morally defensible.

Consider affirmative action policies in this regard. Now the best rationales in support of affirmative action are not simple ones. But for the sake of illustration, let us entertain a popular understanding of the programs: a compensatory benefit is bestowed on all members of a group when not all members of the group suffered from the harm which justifies the compensation. Group membership is being used indirectly to identify some other characteristic (here, being someone who has suffered an injustice), and a benefit is being assigned using this short cut. So my method would, it seems, prohibit this practice in favor of more direct investigations of who has been harmed.

Still, a proponent of the policies might argue that this is a case where the prohibition is properly overridden. They might point out that a more direct test of this condition (having suffered from some past injustice) would be extremely difficult to design, and may well be impossible to administer with reliable results. More, they may wish to establish (not without controversy I assume) that discontinuing affirmative action programs would have disastrous results. Huge numbers of people who deserve compensation would not receive it. Because our social climate (with lingering racism and sexism) does not present a level playing field, many capable people would not get opportunities they deserve. Perhaps worst of all, whole classes of people would remain in unjustly created social and economic castes that stubbornly resist eradication and require aggressive remedies like affirmative action if we are to have any long-term hope of establishing true equality of opportunity.

So no doubt the method I have developed would *prima facie* prohibit discrimination by generality for affirmative action. But if there are terrible social consequences of failing to discriminate in this way, and a practical alternative remedy is unavailable, the prohibition might be overridden. I do not know enough about the sociological facts to decide for certain on the ultimate merits of these arguments, but the issue provides an example of how I think properly overriding my prohibition should work.

Race, gender, age, religious beliefs, marital status and other categories like them to which I have been pointing, have a special status. When we use them to discriminate by generality, we do something unfair. But as I have tried to show in this section, having claimed that it would be *prima facie* unfair does not establish there is an absolute prohibition against ever using the categories in this way. If the situation is serious enough, we may judge rightly that the prohibition against fairness should be overridden. Yet we must keep in mind that the fairness issue sets up a very high wall in the context of moral justification, a fortress (to use again an overused analogy) that can be stormed with only the strongest of countervailing reasons.

Conclusion

It is sometimes permissible to discriminate using broad categories as a short cut to identifying other relevant traits of persons. But often, discrimination by generality is not morally permissible. When the short cut used is something a person cannot change, or it is something it would be unreasonable of us to ask a person to change, then there is a strong *prima facie* (but overrideable) obligation to test more directly for the traits we seek. Using discrimination by generality to exclude all women from direct participation in combat is not a morally permissible form of discrimination.

[1] I am assuming that narrowing the number of people we must test for certain kinds of jobs and privileges based on generalities is more efficient, and we all benefit from a more efficient system.

[2] Of course, there might be other rationales for excluding women from combat. I do not happen to buy any of the other arguments I have heard, but they are different arguments. Here, I am making a claim only about the discrimination-by-generality argument in favor of the ban.

[3] I have said it is all right to exclude young people from certain opportunities because they will, in the future, have a chance to exercise them. Then why is not it also all right to exclude older people from opportunities because they already had a chance to exercise them? At first blush, this seems plausible, but I think the two contexts have importantly different characters. At the very least, in the case of the youngster, she must wait a definite (usually not too long) period for an opportunity that in the normal course of events is definitely forthcoming. For the senior, we propose denying an opportunity in perpetuity, and we take away something already being enjoyed. There may be other differences. In any case, in one context doing without seems like not too much to ask. In the other, it does. Besides, the main normative thrust of the principle is not so much that people are asked to do without, but rather how those who must do without are selected; it most times becomes objectionable, on my view, when the selection trait cannot be changed.

[4] Well, ordinary amounts of social efficiency or utility anyway. For moral catastrophes, I introduce below the possibility of overriding the principle.

[5] This of course assumes that professional appearance is an unproblematic thing to require for a job. Whether this is a legitimate thing for an employer to ask for is controversial. I will not address that problem here.

[6] Notice that we might be inclined to collapse these two exceptions into one. Things that we cannot change are also things it would be unreasonable to ask a person to change. But it strikes me that this use of “unreasonable” is different from the other uses to which I put it. Asking the impossible is unreasonable in a strictly irrational way. The other prohibitions against unreasonableness (say, for example, asking one to forsake a religious conviction) point up violation of some deep moral principle of respect in human interaction. It seems more like Rawls’s use of “reasonable,” which is an elaboration of Kant’s. So I think it best to keep the types of exceptions separate.

[7] Well, to be more precise, what follows is an actual worry, not a potential one. I am indebted to an anonymous referee for *Public Affairs Quarterly* for this concern, which I take to be a very interesting one.

Chapter 3
Careerism in the Military Services: An Analysis of Its Nature, Why It Is Wrong and What Might Be Done about It

> We … feel, if the concept of duty means anything to us, a revulsion at the very idea of calculating the advantages we might gain through violating our duty
>
> (Kant, 1793, 71).

In trying to think about careerism, we are immediately faced with the problem of clarifying just what we take careerism to be, and as part of this same problem, deciding just what it is about the careerist that we find morally culpable. While I would not characterize this initial step as an overwhelmingly difficult one, it warrants a certain amount of care, for in our everyday discourse, the concept is more often than not muddled and ambiguous. If we hope to correct this problem for the military services, we must first overcome these conceptual and definitional difficulties. Only then can we start to explore the causes of the problem and look for ways to correct it.

What Careerism Is

Producing examples of careerism, or finding individuals we are willing to disparage with the careerist label, is a woefully simple matter. Still, when pressed for an underlying principle, we encounter difficulty. Two approaches might at first blush seem plausible, but are ultimately unsatisfying. In the first approach, still more examples of careerism are produced in hope that, even though a precise definition is not being offered, enough exposure to the transgression will sharpen our intuitive grasp of it. Reminiscent of a claim sometimes made in the debate over the nature of pornography, this position has it that, while we might not be able to say exactly what careerism is, we can surely know it when we see it. Unfortunately, our senses of recognition are never quite unanimous in the verdicts they render. Even if they were, we would still be left with the more important work of determining just what it was that ticket punching, boot licking (and other less flattering military colloquialisms for the same sort of activity), back stabbing, certain types of job hunting, or even in the extreme sending troops to unnecessary death for the sake of good appearances all have in common. All of these disparate types of behavior seem to be examples of careerism, but no common or underlying characteristic is immediately obvious.

The second approach goes a little further, and asserts that careerism is the attitude and activity that places career above everything else, where everything else is usually couched in terms of responsibilities to others in particular or the profession in general. While better than the first, this approach still lacks completeness. I want to develop a definition that will still account for the notions we have been entertaining, yet provides a better conceptual framework for determining what ultimately does and does not count as careerism.

As a starting point, we should notice that ambition is not, in itself, a moral defect. Indeed, a desire to develop professionally and assume as much responsibility as talents will allow is usually taken to be normal, healthy, or even virtuous. Long hours and hard work, taking on tough assignments, and a dedication to work that even excludes much free time and recreation can all plausibly be viewed as admirable qualities, even if promotion and other rewards are hoped for or expected as an indirect result. Plainly, we can place our careers and the concomitant promotions above a great many things and not commit the moral error that is normally called careerism. In fact, I propose there is only one thing that will make us guilty of careerism: *the compromising of some moral principle or principles* in order to advance one’s career goals.

While this is certainly not a profound revelation, keeping it in mind helps to bring out some points that might otherwise be obscured. First, we do not find the pursuit of career goals in itself a problem, but instead, it is the immoral *means* employed in that pursuit that we find distasteful, insofar as those means compromise or totally dispense with some moral principle or principles. Second, seen in this way, it becomes clear that careerism is a varied collection of moral transgressions, united only in that they are committed in the service of career advancement. Lying, cheating, being disingenuous in personal relationships, causing needless death or suffering, violating special trusts and the like are all wrong, regardless of why they are perpetrated. It is when a moral transgression is committed in pursuit of career goals that we call it careerism. This being the case, it is always pertinent to ask just what particular moral rule a person has broken that justifies applying the careerist label. Simply referring to the general category of careerism will not give a complete picture of what is wrong, for once again, taking care of a career is not a moral defect *per se*.

From what has been said, it should be clear that careerism is closely related to the moral shortcoming of selfishness, and comparing the two might improve our grasp of both. Self-interested motivations, in and of themselves, are not blameworthy. Only when we ignore the interests of others *when we ought not to* are we guilty of selfishness. In fact, if we think of career ambitions as a type of self-interest, we might even view careerism as a subset of selfishness. Selfishness and careerism also seem amenable to comparison in terms of the moral violations which characterize them. Just as we saw with careerism, the collection of moral rules, the breaking of which turns self-interestedness into selfishness, is very large and diverse. Lying, neglecting the duty of charity, ignoring the rights or legitimate distributive justice claims of others, breaking promises, or nearly any other moral transgression will do—if performed in the pursuit of self-interest, it appears to qualify as selfish behavior. Likewise for careerism: there are almost as many types of careerism as there are moral rules to be broken (even if, for various reasons, some types are more common than others).

Common Types of Careerism

We can begin exploring the various common types of careerism by pointing to what I will call some easy cases of careerism. In these, the activity engaged in is plainly immoral, and could never be morally justified as a means of furthering a career. Moreover, in these easy cases, the moral principle being violated is a simple matter to ascertain.

Needlessly risking (or even spending) the very lives and safety of those under one’s command merely for the sake of career progression would be an example of such an easy case. I shall assume here that leading soldiers into battle is not, in and of itself, blameworthy. Nor is it morally suspect for us to promote leaders based in part on their performance in combat. The offensive element in this scenario is the fact that lives and safety are disregarded in a cavalier manner, which ought to be renounced in any context. Intentionally bringing about death and injury, without some powerful, overriding justification, is a grievous offense. Beyond this, in the military environment (as it might be in other environments as well, such as the law enforcement or medical professions), such a disregard for life and safety is exacerbated by the fact that those led invest a special trust in their leaders to take the best care possible of their lives and safety, and that trust is being breached.

A number of other easy cases come to mind, but I will assume that the process of teasing out the particular moral rule being broken would be as simple and obvious as in the case cited above. Blatant lying and cover-up activity, where only career is at issue, is another easy case. So are many illegal contracting practices, such as unfairly passing sensitive information to favored bidders, taking bribes and kick-backs, and a host of other related criminal activities; I am sure an expert background in all the subtleties of the government procurement process would be needed to understand and appreciate fully all the ways a person can be a careerist in this way (that is, when these activities go beyond simple thievery and are meant to advance the culprit's military or post-military career). Actively sabotaging another's work or reputation for self-serving career motives is another plainly reprehensible undertaking, and would be wrong irrespective of the circumstances.

I hope, perhaps naively, that the particularly nasty collection of easy cases outlined above is not commonplace. I would like to believe the activity typical of our easy cases, in that the moral transgressions are so blatant and severe, are relatively uncommon. Unhappily, another group of career-advancing practices, characterized by less blatant and less severe violations of moral rules, are all too easily found.

Cultivating disingenuous personal relationships of various types in order to advance one's career is an extremely widespread phenomenon and is such a fixture of professional life that it is often engaged in by the offender without any conscious calculation. General Halftrack's boot-licking Lieutenant Fuzz (from the cartoon strip "Beetle Bailey") is a comical caricature, but the real life manifestations of this type of careerism are shameless and depressing displays. Often cloaked in or confused with respect for a superior, this practice fails to make the distinction between the military virtue of paying the respect due to a superior's rank or position and ingratiating behavior toward the superior *qua* individual in hopes of currying favor. It seems incredible that any superior would ever fall for this sort of manipulation, especially when we consider how often we can observe, as disinterested spectators, the boot-licker at work. But the practice is nonetheless all too common, made possible I suppose by a correspondingly common foible of human nature: most of us are quite vulnerable to flattery.

However widespread this boot-licking phenomenon might be, it is still blameworthy, and is careerism when it is employed to advance a career. The relevant moral transgression here is using our fellow man for our own ends without consent, through deceit, trickery, and manipulation. The con artist or the flimflam man is guilty of the same kind of immoral conduct toward different ends, as is any other purely self-serving manipulator of others, whatever the context. I also think that in the military environment, violation of the special trust we hope to build between military superiors and subordinates aggravates the severity of this moral shortcoming.

Another extremely widespread practice generally regarded as careerism is often called ticket punching. A service member knows that certain schools, jobs, assignments, and so forth, more often than not significantly enhance her chances for promotion. Consequently, she pursues these apparent prerequisites for promotion with single-minded vigor, often to the neglect of her primary duties, genuine professional development in her specialty, or the real and pressing needs of the service. The moral rule being violated in this case is less clear. Indeed, one might even argue that it requires some moral courage to resist this form of careerism. After all, the service itself seems to encourage and reward the behavior and in some sense punish those who decline to participate, even if to its own detriment.

What then is the moral transgression of the ticket puncher? I would not go so far as to liken this to taking advantage of a mental defective, but I do find something analogous in not returning an overpayment, or in not pointing out an oversight in say, a telephone bill. In contracting for phone service, all the administrative trappings of the billing process are designed to facilitate fair compensation for service rendered. Should something go awry due to one party or another's error, systematic or otherwise, it would seem a duty to point out this deviation from the fair and equitable relationship that was presupposed by both parties. Likewise, any relationship between an employer and an employee makes tacit assumptions of good faith between them, whether positive in the form of conscientiousness or negative in the form of prohibitions of dishonesty through omissions.

In the military, much more than a simple contractual relationship is in place (in spite of common sentiments to the contrary), which makes ticket punching that much worse. Military professionals take a solemn oath of office which binds them even more firmly in this duty to discharge their responsibilities in good faith. Even if the military wishes or needs its members would behave one way, but rewards them when they act differently, it is incumbent upon them with at least some force to recognize ticket punching in the promotion process for the problem it is.

I should point out that not all of what we often call ticket punching is necessarily blameworthy. In an ideal military, the services will outline career development paths, with the concomitant schools, assignments, etc., that actually develop the professional capacity of the officers in ways that make them better able to serve. If this development is then used by the services as criteria for promotion, then it would seem that both the service and the potential careerist would be happy with the results.

But even in this ideal situation, I think the primary object of the officer's intentions is critical. If the officer is truly concerned with what I roughly refer to as genuine career development, she will not be easily swayed from the pursuit of it. On the other hand, if she is concerned merely with making herself more competitive for promotion, she will pursue whatever she believes to be instrumental to that end. Should the service misguidedly start asking for less than helpful career development, the ticket puncher (in the pejorative sense) will immediately abandon her previous goals to do whatever is necessary to ensure her advancement. Even if the interests of the military and the careerist coincidentally match up by some stroke of luck or master planning, it may not remain intact for any length of time. When the carrot of career progression leads the officer in another direction, there she will go. The careerist does not have her genuine development or the interest of the service in her heart at all, but cares only about her promotion.

What then ought we to do when faced with this sort of dilemma between genuine career development and promotion? Because this particular transgression is one of the more innocuous in our careerist collection, most will leave resignation, or more slowly but just as surely, the consequences of non-selection for promotion, to the more heroic among us. Regardless, we can still very easily point out the problems inherent in ticket punching to decision makers as clearly and emphatically as we are able. Additionally, we certainly should do whatever we can short of “abandoning ship” to minimize the impact of these problems on fulfilling what would surely be the enlightened interests of our “employer” in a good faith arrangement.

To be fair, we should assume the services are *trying* to encourage and reward the actions and career progressions that best serve the needs of the service and the nation. If successful, the resultant arrangement will approach the ideal we just imagined and doing the right thing will not require officers to forgo promotion. Of course, changing the character of the potential careerist in ways that would help in less than ideal arrangements would be a more challenging undertaking.

No doubt we could list other types of careerist behaviors and carry out a similar analysis of the relevant moral principles being violated. Yet even with this short exposition of the various stripes of careerism in mind, I hope the claim I made initially is clearer: to repeat, careerism is not a particular moral defect, but rather a collection of transgressions united only in the fact that they are being committed in the service of career advancement. Careerist acts come in various types and severities, and we might, in a more detailed investigation, observe more thoroughly how they pan out into categories.

This way of understanding careerism makes it possible to make helpful distinctions that would normally be neglected or remain ambiguous.

Careerism might involve lying, disingenuous personal relationships, playing along in an easy way with a defective system, failing to fulfill the legitimate expectations of others created by our role in society, or any number of other moral failures. Whenever we use the term, we would do well to be precise about the failure, for the various types of careerism involve different moral breaches, and consequently call for different sorts of responses.

What Might Be Done?

The notion that an opportunity for promotion is a right for every hardworking and/or competent service member seems to infect the services at every level. It has fallen below the level of conscious deliberation. Bubbling just below the surface of the military's "collective unconscious" is the certainty that promotion is success. Failure to be promoted is failure, and failure of the worst kind. It is an ethos that places promotion above all other forms of development and success. Clearly, "be all that you can be" (an old US Army recruiting slogan) might just have easily come to mean in the minds of many "get promoted as high as you can." Following moral rules may or may not be expedient to this end, and so the result is too often careerism.

Why has this happened? Are there some identifiable causes of this apparent departure from traditional military values (or explanations as to why this attitude has come to be included in the more traditional set)? Are there any steps we might take to solve this problem, or at least avoid aggravating it? I hope fervently that there is something, or some combination of things, that we can do, for this willingness to compromise or dispense with morality in order to enhance promotion opportunities would be, I think, very aptly described as a cancer. In the following discussion I will direct my remarks to policies of the US military, but they may well be relevant to any services carrying out similar or even identical practices.

To begin, I have so far neglected to discuss an extremely important feature of the military promotion system: the consequences, at various points in a career, of not being promoted. Essentially, failure to be promoted results in loss of one's job. Failure to reach captain or major results in close to immediate dismissal, and failure to reach higher rank shortens the number of years one may remain on active duty before being compelled to retire (for a fine summary of the “up or out” promotion system see Rostker, B., et al., 1993). These consequences, no doubt, bring a sense of urgency to the promotion process that it would never have without them.

For example, for passed over entry-level junior officers (grades 0-1 and 0-2) as many as four years of their lives have become a detour, and the stigma of being fired follows them as they leave the service. For passed over officers in grade 0-3 it is worse: they are forced out to start a new career after ten or more years, without the financial (as well as psychological) buffer of a pension. To make matters worse for all of them, the unique duties held in the military often do not provide any experience for civilian employment of comparable quality or compensation.

Failure to be promoted to 0-5, 0-6 or 0-7 can be just as distressing. Being forced to retire at an age when most civilian counterparts consider themselves in the prime of their careers is extremely frustrating. All the more frustrating is the fact that the officer’s *age* is not the reason for the de facto dismissal—plainly those who are promoted seem to get along just fine in spite of their “advanced” age and the presumably more demanding responsibilities presented by the higher rank. It is rather the failure to be promoted in itself. Passovers at these points costs the officers years of doing what had become their life’s work and forces them to start a new career (or often, merely a job) at a time when they might be attending to their most important achievements.

Even during the years that non-selectees to the senior ranks are permitted to remain, we see frustration and what amounts to punishment as a result of their non-selection. Too often only the less desirable, less challenging or “dead end” assignments come their way. The failure to be promoted is a stone around the neck, even at levels that the services themselves ostensively regard as a moderately successful career. There is plainly different treatment for passed over 0-4s and 0-5s and dichotomous “fast-track” and “pre-retirement” possibilities available to 0-6s.

Of course, some passed over officers are people we would just as soon see move along anyway. Even so, many more perfectly competent and dedicated officers are forced to leave the service not because they are ineffective in their present duties, but rather because the services do not judge that they show the potential for *higher* rank (or as *much* potential as the officers selected). Worse, this judgment of potential is mostly based on the too-often questionable criteria embraced by the ticket puncher.

Together, these unhappy retention and retirement policies create a practical pressure to get promoted, a pressure which might derive some moral force from other considerations. More precisely, I think most of us would agree that people do have a duty to take a certain amount of care and responsibility for their own welfare. This translates into a duty to find and hold a job. It is this duty which creates culpability, when there is any, for being unemployed. I am sure the up or out approach as practiced in the military contributes heavily to the formation in many people of deeply ingrained, even if for the most part unexamined, feelings that we have a moral duty to get promoted.

What sort of weight might this real or perceived duty to get promoted bring into a situation with the potential for careerism? It could bring claims into moral conflict, and create a justification for violating other moral rules or duties in the pursuit of career goals. After all, it is conceivable that someone with a hungry family might justly violate some less pressing moral rules to improve his desperate situation (even though it is not plausible to sanction moral shortcoming to procure luxury). Perhaps the threat of losing a job could bring moral, in addition to practical and psychological, pressures to bear on the potential careerist.

I believe that an officer’s obligations to country, service, and fellow would always outweigh whatever duties to self-promotion she might have. Hence, I believe it would be very difficult to produce an example of what might be called justifiable careerism. I suspect attempts to morally justify careerism along these lines would more often amount to a form of rationalization than sincere reason-giving. Still, I will not argue for this claim here, for it not necessary to my larger point. More important is the weaker claim that many people do take it that their careers are of moral importance, and use that perceived importance as justification for careerist behavior when they should not. The up or out policy is a primary motivator for much careerist thinking, and is, because of this, pernicious.

We should note that some egoistic tendencies surely come with the new service member via Western culture. Insofar as this is true, it is a problem much larger than military leaders alone could ever hope to address. We can do next to nothing about the “hard-core” careerist, who lusts pathologically after promotion to the exclusion of observing moral rules. All we can do in these cases is be vigilant, and do our best to avoid rewarding those who choose the immoral path, as we would in any endeavor. No change in the present system would significantly discourage this type of careerist in the formation of his designs. But the up or out promotion system exacerbates tendencies we *all* might have to pursue promotion through morally defective means. It pressures the *ordinary* moral agent who must now pass through promotion points to keep his very job.

One possible objection to reform would have us believe that the fierce competition created by the present system makes for better overall performance. Without it, we would find people who reached a certain rank, failed to move higher, and tended to be mediocre in quality. Yet even if this were the case, the services need not be hesitant to remove officers for poor or declining performance, regardless of present rank or pending promotion. There always ought to be effective mechanisms in place to relieve promptly those who fail to maintain appropriate proficiency and motivation in their present duties. It is a mistake to use customary promotion points as a sifter for this sort of failing, rather than a sifter for those who desire and are capable of more responsibility.

Another objection to reform points to the need for a young and vigorous military force and how up or out policies facilitate this. Of course, if we assume that a youthful and vigorous force is important, it will be necessary to consider the age and vigor of our officers in making retention decisions. It would, however, be a mistake to assert that we cannot implement such a policy independent of promotion (or even that the present promotion system is effectively maintaining a youthful and vigorous force).

Another commonly cited advantage of the present system aims at providing “reasonable” promotion opportunities for newer members of the services. This position assumes it is clearly undesirable for an officer to rise with some certainty to a relatively low rank (perhaps O-3?), and then wait much longer for, or never get, another chance at being promoted. For many service members, this is a patently unwarranted assumption. My own personal experience in the military revealed a significant number of officers completely delighted to have reached their present positions and satisfied to remain in them. The attitude is not rare and I would offer that this satisfaction is not evidence of an unhealthy lack of ambition. For example, there are many military pilots who would be more than happy to remain in the rank of O-3, provided they would be allowed to remain in the cockpit rather than serve years in staff tours, supervisory jobs or command billets.

Even if there are significant numbers who find “reasonable” promotion opportunity very important, in an effort to provide better than even chances of promotion at predetermined phases, we have produced a macabre bit of bureaucratic irony. In order to give opportunity to newcomers, we divest ourselves of those with more tenure, merely because they have more tenure! There must be ways to move talented officers up the ranks in an orderly way without dismissing competent people merely for not moving up.

I will not attempt here a complete discussion of whether the usual defenses of the up or out system are well founded. The important point for my present purposes concerns the moral and practical dilemmas the system forces on almost every member of the officer corps and the overall bad effect it is having insofar as it encourages careerism. Putting people in these dilemmas is simply not necessary. There must be other ways of providing the same benefits (if there are any) as up or out. Enlisted promotion systems in all the services, the specialist program in the Army, and some features of the Canadian or old Soviet personnel system could all serve as starting points for a serious study of reform.

Besides the up or out promotion system, another curious notion that I am sure has made some contribution to careerist behavior is the idea that the services somehow owe their people promotion opportunities and predictable career (that is promotion) paths in return for a job well done. While this is related to the up or out problem, it is distinct from it. The officer knows how important promotion is and operates under the assumption that meeting certain milestones guarantees at least a reasonable promotion opportunity.

In fact, this general idea is typically *encouraged* in subtle (and not so subtle) ways by the military services. As an example, we may consider the career (once again, in the minds of many, a poorly disguised euphemism for promotion) planning encouraged by the personnel systems of each service. There are official publications that amount to detailed ticket punching plans. Promotion opportunities are promised with what passes for mathematical precision in many recruiting, retention, and motivational briefings and pamphlets. This resulting ethos, created in large part by the services themselves, focuses unduly on promotion and brings attention to the process it would not receive otherwise. Indeed, this attention approaches a mania, and the intense emphasis cannot help but contribute to careerist tendencies by blowing the importance of promotion out of proportion.

This warped view of promotion is rooted in a fundamental misunderstanding of the promotion system and its purposes. In point of fact, the needs of the services are (well, ought to be) the engine that drives the promotion system; this has always been the truth of the matter. By misleading (more than likely, unintentionally) the officer corps into believing that promotion is intrinsically valuable or some sort of entitlement contingent on a job well done, the services have created an idol. If the idol has contributed to careerist attitudes, it has done far more harm than any good that might have come of it in the form of morale or motivation.

Given the expectations these widespread attitudes about promotion encourage, it should come as no surprise that when better promotion opportunities turn out to be tied to certain specialties, resentment is often the result in those corners with less favorable advancement rates. Of course, when we hold in mind the real purpose of the promotion system, we can see why some specialties enjoy higher promotion rates than others. That is because certain specialties provide a better background for what we need in our senior leaders. But failure to occupy a job in one of these specialties (and hence to be privy to the more favorable promotion opportunities) should not be taken as a mark of inadequacy or limitation. More, I would think that we cannot allow this wrong-headed view to take hold or remain in place—a military needs motivated and talented officers in every specialty. But a misguided measure of success and accomplishment for the military that is concerned primarily with promotion encourages these attitudes. It is difficult to overcome this widespread misconception that promotion is everything and owed to everyone for a job well done. And as we might expect, the careerist will scurry blindly for the “blessed” career fields without any regard for his interests, talents, or the needs of the service.

Rectifying this problem will be more challenging than reforming the up or out system. It is not a single policy amenable to scrutiny and reform, but a widespread attitude, a nebulous collection of actions by the services, that put an unhealthy emphasis on the importance of being promoted. The difficulty notwithstanding, we should do whatever we can to remove institutionally encouraged attitudes that see promotion as the ultimate end of any career and the most important reward for a service member’s contribution to the mission.

Conclusion

Careerism is a vice that involves compromising some moral rule or rules in the pursuit of career advancement, and it is this compromise that we find blameworthy, not the career-pursuing context in which it occurs. On this view, it is clear that careerism is a collection of moral shortcomings tied together only by this career-advancing context. There are almost as many different types of careerism as there are moral rules to be broken. Further, these various types of careerism carry with them varying degrees of culpability, from barely blameworthy to heinous.

I also pointed out what I see as two major causes of careerism, namely the up or out promotion system and the related willingness of the services to portray the purposes and importance of promotion in ways that are misguided and counterproductive. They help cause careerism by setting up *institutionally and culturally sanctioned* temptations to violate moral rules. We must reform our promotion and retention policies and rethink our methods of motivating the officer corps in ways that put much less emphasis on promotion. The damage careerism does to the officer corps far outweighs any advantages we might be realizing under the status quo.

Chapter 4
Homosexuality and Military Service: A Case for Abandoning “Don’t Ask, Don’t Tell”

> A prince who … considers it his duty, in religious matters, not to prescribe anything to his people, but to allow them complete freedom, a prince who thus even declines to accept the presumptuous title of tolerant, is himself enlightened
>
> (Kant 1784, 58).

Most Western democracies are not in the business of regulating military service based on sexual orientation. The United States, however, is. What should we make of this? What accounts for the fact that the world’s most powerful military force is out of step on this issue? Is it a case of leadership in upholding important moral standards? Or something else? A professor I knew many years ago (Donald Philip Verene of Emory University) convinced me that more than half the work in doing any careful thinking involves getting the *question* right. So I think starting out well requires that I say with precision just what I take the central question on this general topic to be: *we need to discover whether homosexuality is sinful*. I think this is the central question to ask because (a) the central reason the US military bars homosexuals from serving openly is that many believe homosexuality is immoral, and (b) the great majority of people who believe homosexuality is immoral believe so for religious reasons (which in part explains why this is still a controversial issue in the US in particular—religious arguments figure more prominently here in the public square). If the theological case cannot be made, I am of the opinion there are no other plausible arguments available for this kind of discrimination. Of course, even if the theological case *could* be made, we might still have all sorts of reasons for avoiding the discrimination. But in the absence of the theological case, the rest of those reasons and the arguments they support would become irrelevant. For this reason, in what follows I will recklessly neglect important distinctions between the moral, the legal, and the theologically forbidden—if the theological case is undermined, the most important *motivation* for a ban (or a clumsy “Don’t Ask, Don’t Tell” compromise between a ban and open service) disappears. I will also recklessly charge ahead in the use of a basically *Christian* theological framework, since this is the one used by most defenders of present US policy (although I think most of the following discussions could be run, *mutatis mutandis*, for other religious frameworks as well).

Let me say at the outset that I will *not* be suggesting that the military be in the business of lowering its moral standards. To cite an analogous worry from debates about homosexuality in the Christian church, one conservative Anglican pastor (a Father Donald Armstrong) was quoted in the Colorado Springs *Gazette* (Wednesday, 30 July 2003) as saying this:

> What we will be left with after this convention is a form of postmodern worship that says you can't have sin. There's no more judgment, there's no more right and wrong, there are no more absolute truths, and there's no need for redemption. As a matter of fact, there's no reason to go to church at all.

I do not know for sure if this is just what Father Armstrong said, or if he was fairly represented by the paper, given the full context of his remarks. But I have heard similar sorts of things from many corners. So I will react to the remark as quoted, and let it stand in for anyone who thinks this is the right way to look at the question of homosexuality. I think this is an unfair way to characterize the situation and does not help us focus our attention on the real issue. Even if after careful thought we conclude homosexuality is not for theological reasons immoral, there will still be *plenty* that we all will rightfully and unambiguously condemn as sinful. No one in these theological debates is suggesting, even indirectly, that we do away with the notion of sin and redemption. No one is suggesting, and it does not follow that, if homosexuality is not wrong, then nothing is wrong. It will still clearly be wrong for priests to have sex with young boys. It will still clearly be wrong to be unfaithful to one's spouse. It will still clearly be wrong to rape. It will still clearly be wrong to deliberately and directly bring about the deaths of innocent people. A very long list in the same vein would be lamentably easy to produce, for human beings are collectively prone to all sorts of wrongdoing, wrongdoing that we should name for what it is: sin. None of that would change just because we changed our minds about the sinfulness of homosexuality.

No, we must not give ourselves over to this kind of “all or nothing” thinking. I propose rather to focus on the issue of homosexuality alone, and leave the rest of the wide world of sin pretty much as it is. I will try to present, by considering Scripture, church tradition, and reason, the best arguments I am aware of for thinking homosexuality is sinful. At the same time, I will do my best to say why I am not convinced by these arguments. So rather than suggesting that the military lower its moral standards, I want to suggest that a stand against homosexuality was never a morally or theologically correct one to begin with.

What Evidence do we Find in Scripture?

Let us start with the Old Testament. In Judges 19:1–30, we read of a man, who rather than surrender a male guest to a wicked band of rapists, was more willing to give up his virgin daughter and a female guest. Again, in Genesis 19:1–12, we read of Lot, who rather than surrender two men (who are in fact the angels come to destroy the city) to the predatory men of Sodom, offers instead to give up his daughters to the crowd. Some take this as evidence that according to Scripture homosexual rape is worse or more shameful than man-on-woman rape. I suppose one could further assert these passages at least imply that homosexuality, more generally, is wrong (though the passage do not say this explicitly).

Yet arguably, the thing being condemned here is the rape. What these passages have to teach about consensual homosexual and heterosexual relations, and which is better or which is worse, is not clear. Besides, just because this is what Lot and the old man in Judges were reported to have thought and done does not establish the interpretation that this is God’s will, or that we should understand Scripture as portraying these judgments in a favorable light. After all, a few lines later, we read the report of Lot’s daughters becoming pregnant by their father; not, I would assume, something we approve of, just because it is reported in the Bible as having happened. So these particular passages do not convince me there is a clear scriptural condemnation of homosexuality.

But these are not the only relevant passages. In Leviticus 18:22, there *is* a crystal clear condemnation of at least one kind of homosexuality. God tells Moses to tell the Israelites of that time “Do not lie with a man as one lies with a woman; that is detestable.” We see the condemnation again in Leviticus 20:13. “If a man lies with a man as one lies with a woman, both of them have done what is detestable. They must be put to death; their blood will be on their own heads.” Notice that this does not condemn lesbianism. And given the thoroughness of the list of prohibitions, and the fact that lesbianism is not mentioned, we should be led to judge woman-with-woman sex *is* permitted. But the condemnation, by God, of man-with-man sex, is clear.

For some Christians, this settles the issue. God said it through Scripture, and there is nothing else to talk about. But for many Christians, there is in fact *much* more to talk about. A complete survey of Scripture leaves us not with many things settled, but instead many problems of interpretation. Throughout the Old Testament, God tells his prophets to tell the Israelites not to do things we now judge rightly are *not* sinful; and in some other cases, tells the Israelites to do certain things we now judge rightly *would* be sinful. Examples are easy to come by:

1. Right after one statement of the Ten Commandments, God tells Moses (Exodus 20:24) to tell the Israelites: “Make an altar of earth for me and sacrifice on it your burnt offerings and fellowship offerings, your sheep and goats and your cattle” and “If you make an altar of stones for me, do not build it with dressed stones, for you will defile it if you use a tool on it.”
2. God tells Moses (Exodus 21:2–7) to tell the Israelites some rules for regulating *slavery*: “If you buy a Hebrew servant, he is to serve you for six years. But in the seventh year, he shall go free, without paying anything” and “If a man sells his daughter as a servant, she is not to go free as menservants do.”
3. God tells Moses (Exodus 20:24) to tell the Israelites: “If a man seduces a virgin who is not pledged to be married and sleeps with her, he must pay the bride-price, and she shall be his wife.”
4. God tells Moses (Exodus 20:24) to tell the Israelites: “You must give me the firstborn of your sons. Do the same with your cattle and your sheep. Let them stay with their mothers for seven days, but give them to me on the eighth day.”

5. God tells Moses (Deuteronomy13:6–9) to tell the Israelites, in the passages following yet another documentation of the Ten Commandments: “If your very own brother, or your son or daughter, or the wife you love, or your closest friend secretly entices you, saying, ‘Let us go and worship other gods’ (gods that neither you nor your fathers have known, gods of the peoples around you, whether near or far, from one end of the land to the other), do not yield to him or listen to him. Show him no pity. Do not spare him or shield him. You must certainly put him to death.”
6. God tells Moses (Leviticus 20:10) to tell the Israelites: “If a man commits adultery with another man’s wife—with the wife of his neighbor—both the adulterer and the adulteress must be put to death.”
7. God tells Moses (Deuteronomy 14:8) to tell the Israelites: “The pig is also unclean; although it has a split hoof, it does not chew the cud. You are not to eat their meat or touch their carcasses.”
8. God tells Moses (Deuteronomy 22:1) to tell the Israelites: “Do not wear clothes of wool and linen woven together.”

A similar and parallel state of affairs can be found in the New Testament. Of course, the only one casting stones directly at homosexuals in the New Testament is Paul. But his disapproval is clear enough. In 1 Corinthians 6:9–11, he lists male prostitutes and homosexual offenders among the wicked. In Romans 1:27-28, he characterizes homosexuality as a “shameful lust” and homosexual acts as “indecent.”

But as we saw in the Old Testament, there are also clear prohibitions in the Pauline letters against things we now judge rightly are *not* sinful; and in some cases demands of us to do things we now judge rightly *would* be sinful. This is the same Paul who writes in Corinthians 14:34 that “As in all the congregations of the saints, women should remain silent in the churches. They are not allowed to speak, but must be in submission, as the Law says.” In Corinthians 11:5–6 he writes:

> And every woman who prays or prophesies with her head uncovered dishonors her head—it is just as though her head were shaved. If a woman does not cover her head, she should have her hair cut off; and if it is a disgrace for a woman to have her hair cut or shaved off, she should cover her head.

In Corinthians 11:14–16 we are asked:

> Does not the very nature of things teach you that if a man has long hair, it is a disgrace to him, but that if a woman has long hair, it is her glory? For long hair is given to her as a covering. If anyone wants to be contentious about this, we have no other practice—nor do the churches of God.

Nobody these days is outraged about eating pork or that we do not follow Paul's counsel on women and hair length. The Church is not facing schism over these issues. This is because what is said, even clearly, in the Old Testament or what Paul writes in his letters does not *settle* whether something is a sin. Disagreeing with what God told Moses to tell the Israelites of that time or what Paul wrote on this or that issue does not mean we cannot be Christians, much less mean that we are wicked and incapable of making any moral judgments at all. The living Word of the Bible must be filtered through the lenses of evolving tradition and reason. The biblical literalism and "proof-texting" appealed to by the conservative position against homosexuality is simply not possible to maintain if we read the Bible as a whole.

Mind you, my claim is not that Scripture alone clearly supports the *opposite* conclusion, that homosexuality is permissible, but rather that pointing to passages of Scripture just is not how we ought to decide the issue at all. We need further evidence, beyond simply pointing to or counting up passages of Scripture, to understand what is sinful, and what is not. In fact, whenever we consult Scripture, I think it should be in the light of our reason. Faith must always seek and be conditioned by our understanding, and we should have confidence that properly understood revelation will never conflict with right reason. The two go hand in hand. Far from asserting dogmatically that acceptance of homosexuality betrays the central tenets of the Christian faith, and the clear messages of Scripture to us, we should be using reason to check and revise our understanding of Scripture. We have done this with many other moral issues, and we can do this with homosexuality as well.

Finally, I mention only briefly another set of Scripture-based arguments I have heard and read in support of the conservative position. We may stipulate as obvious that Scripture and Christian tradition make a special and sacred thing of marriage, defined as the union of a man and a woman.

These conservative arguments conclude that because of the special and sacred status of marriage, homosexuality and certainly homosexual unions are not permissible. I do not understand these arguments. Being *for* a certain thing (say marriage between a man and a woman) does not mean we must be *against* everything else one might choose (say singleness, or unions of other sorts). So long as the other options do not interfere with the practice of what one commends as especially good, then it does not make sense to say the other options are wrong *because the commended thing is good*. For instance, we might think it is very good, and consistent with Scripture, to give 10 percent of our wealth to the Church—this does not mean we cannot give another part of our wealth to another otherwise good cause. Closer in form to our present problem, we think it is very good that some feel called to the priesthood, and take sacred vows of service—this does not mean that those who do not feel so called are sinful. So analogously, Scripture makes out marriage to be special and sacred—I do not see why this should mean other kinds of choices relating to sexuality and unions automatically are to be deemed sinful.

What about Tradition?

I am sympathetic to the idea that unless we have reason to think otherwise, traditions are deserving of our respect. They provide us important connections to our past, promote much-needed stability in our conceptual schemes, and can carry an accumulated wisdom of the ages, hard won through centuries of trial and error. But of course, traditions can also carry some of the folly of the ages, and often have. Shedding error as it is discovered, or changing our minds when what once worked no longer does or is no longer relevant, keeps a body of tradition strong and alive. Traditions evolve. Old elements fall out and new elements are added. None of this need be a sign of decay or degradation. Indeed, Christianity, with all its denominations, is a story of both continuity and change. This is what I would suppose most people mean when they refer to a living and growing tradition. So in my view, that we have traditionally condemned homosexuality as sinful cannot, *by itself*, trump other arguments (which I will list in the next section) that might point toward morally permitting homosexuality.

I must emphasize that not all changes in our traditions have been just an "accommodation" of sin, as some conservatives seem to think. Indeed, some changes in our traditions plainly have been for the better. Think of all the discarded traditional practices in Christianity we are better off without. I am assuming that most Christians would not welcome the return of burning heretics at the stake, inquisitions, crusades, a belief in a flat Earth, the state controlled by the church, approval of slavery, prohibition of interracial marriage, single priests, only male priests, or the excommunication of divorced people. And other traditions do not seem to have much to do with sin at all. Changes in the prayer book, or the hymnal, or where we put the altar, and changes like them, do not address what is sinful and what is not. Naturally, a change to tradition *could* represent a slacking off or a corruption, an "accommodation" of sin. But most of the time, I think the conscientiously made changes throughout the history of the Christianity have been harmless, or represent thoughtful, moral improvements; we should be open to the possibility that a change might be part of a gradual triangulation on the truth, rather than simply assuming it is a symptom of groundless relativism.

Of course, not *everything* is up for grabs. There will be central tenets of Christianity that are essential to the faith. I will defer to trained theologians to enumerate them with authority, but I can take some guesses as to what we might find as non-negotiable. We can confidently start with the core messages of Christ (who by the way, near as I can tell, says nothing about homosexuality). The Decalogue comes to mind as another essential part of Christian doctrine. Perhaps the Nicene Creed is part of the center that must hold, lest it be hard to tell who is a Christian and who is not. But there surely are things in our doctrines, rites and traditions that are, frankly, peripheral to our core identity as Christians. As with Scripture, we must always live our traditions in a mutually conditioning partnership with reason. And I think only careful *reasoning* about those traditions can help us tell the difference between what must stay and what might go.

I myself am an Episcopalian and I make these claims with full awareness of how my own denomination typically reacts to changes. Episcopalians as a lot are reputed, fairly or not, to hate changing *anything*. One of my favorite jokes asks how many Episcopalians it takes to changes a light bulb.[1] The answer of course is the whole congregation: one to change the light bulb and the rest of them to stand around and talk about how nice the old one was. I suspect in this regard most Christian denominations are not much different. But we should take heart and have courage. Maybe the reasoned arguments should move us away from the conservative position, or maybe they should not; but however we decide, it should not be based *solely* on things staying the same as they have always been. I think that as Christians, given that isolated bits of Scripture and or long-standing traditions are not conclusive, if the best reasons lead us to change our minds about the sinfulness of homosexuality, then this is where we as members of a living, Christian tradition should follow. So where the reasons lead us is crucial.

What Does Reason Demand?

By my lights, thinking about the sinfulness of homosexuality must start with the strong and most often cited argument for permitting it: *in the absence of some countervailing reason*, we should judge private, intimate expression and action between consenting adults as morally permissible and none of our business. I believe that unless and until we are able to produce such a countervailing reason, we are rationally compelled to judge that homosexuality is not sinful. Indeed, when we properly judge *any* activity or way of being as sinful, it is for good reasons, and not arbitrary. And as a general default, we should not judge self-regarding behavior, and behavior between consenting adults, as sinful *unless we can produce good reasons to think that it is*.

I do not mean to be overly restrictive about what might count as a good reason. Among other things, that something is harmful (to one's self or to others), that something fails properly to respect human dignity, or that something is blasphemous or profane would all be good reasons to refrain. Let me give some examples of things that might count as good reasons, ones that come from thinking about other kinds of sexual immorality. For instance, I am sure we can make a strong case against incest, even between adults who are fully aware of what they are doing. Should contraception fail or not be used at all, the genetic risks to the potential offspring are enormous. We should also worry about the possible psychological harm to be done by mixing the emotional dynamics of families and lovers. Adultery, even between consenting adults, violates a solemn promise and harms the one cheated on. Also, there are plausible arguments against fornication, defined as sex between a man and a woman outside of marriage. Without the commitment to marriage, there are reasonable concerns about the welfare of the children that might come along. There are plenty of good reasons to eschew promiscuity, even though this activity is between consenting adults. At the very least, it cheapens sex, has emotional costs, and will invariably involve fornication or adultery. Prostitution is normally not a fully consensual activity, since most who find themselves in the sex trade are pressured by drug addiction, fear of pimps, desperate poverty and other factors—but even in the rare cases where it might be fully consensual, it makes a commodity of our sexual selves in a way that is morally objectionable. Maybe not all of the reasons I lay out here would be decisive, but I take it they count as reasons, ones that are not always trumped by the fact of mutual consent. (In all these examples, if the incomplete reasons, which I have only gestured towards, are not part of an obvious case for the reader, then I will in the interest of brevity wait for another essay to lay them out in more detail).

So this default position is not a radically permissive one to take—good reasons to condemn many practices are often not hard to find. But where we find *no good reasons* to refrain or condemn, we rightly judge the conduct or the character trait to be morally permissible. Let us consider the best reasons those in the conservative camp have produced against homosexuality, and see if they are compelling.

Some Preliminaries

First, we must keep clear the difference between finding something odd, or even disturbing, and judging a person *sinful* for not sharing our reaction to it. Homosexuals are indeed “queer,” in the original sense of that word—their sexual orientation is unusual and different from the majority of us, maybe even (depending on which studies are correct) the vast majority of us. But the issue here is whether or not the variation is morally wrong, that is, sinful. I for one find eating liver disgusting, and cannot understand what it would be like to be a person (like my wife) who finds it delicious. But I do not and should not judge the liver-lover to be sinful. Unusual body piercing seems to me another example of this same sort of thing. To judge homosexuality sinful, we will need to find reasons that go beyond its perceived oddness or our reaction to that oddness.

Second, we must take care not to conflate (the way Father Armstrong in my quote above seems to do) homosexuality *per se* with other things like pedophilia, promiscuity, immodesty, and other issues we rightly judge to be sinful. This sort of conflation would not help us answer the question at hand. Some sexual practices and proclivities are sinful, and some are not. Arguments which lump all these things thought sinful into one set, then conclude the sinfulness of one establishes the sinfulness of them all, are unsound. Or perhaps instead of an honest logical mistake what we have is a purposeful and disingenuous bit of *rhetoric* designed to convince us about the sinfulness of homosexuality by illegitimately identifying it with other things that clearly and uncontroversially *are* sinful. But if we conclude that homosexuality (while different and hard for many of us to understand) is not immoral, this would *not* be the same thing as concluding rape, sex with children, sex with animals, and other sorts of wicked sexual practices are all OK too.

Some Arguments

So, assuming that we avoid the non-starters I mentioned in the preliminaries, what other countervailing reasons should we consider? What arguments go beyond simply pointing to the “queerness” of homosexuality? Is there a consideration that might have the power to override the default position of leaving people alone to live their lives? Why should we think homosexuality, in itself, is sinful? Here I will enumerate some candidate arguments.

First, if we could show that homosexuality is unavoidably bad for the health of those who engage in it, or is an inextricable part of a larger public health problem that affects us all, then that could certainly count as a reason for calling it sinful. I have heard some conservatives make the argument that homosexuality is bad because it passes or “causes” AIDS. Indeed, some have proclaimed that AIDS is God’s punishment for homosexuality. Still, we know better than to think this disease is a sign of God’s displeasure with homosexuals, any more than it is a sign of God’s displeasure with some poor soul who went in for surgery and received contaminated blood, or

God's displeasure with an emergency room doctor who is infected while treating a bleeding accident victim, or God's displeasure with an innocent child who is born with it. After all, these too are ways of getting or spreading AIDS. But God's alleged displeasure aside, could homosexuality be something that inevitably results in a natural evil, and hence something we should avoid? I do not think so. Homosexuality *in itself* is not harmful to anyone. One kind of homosexual act, unprotected anal intercourse, is only one of the many things that can *spread* AIDS. Yet we do not say eating in general is harmful when eating food that has gone bad makes us sick. Rather, we find out how to prevent and treat food poisoning. Likewise, AIDS, along with all other diseases, needs to be treated and prevented—identifying those infected, educating people about how it is spread, taking care with blood, discouraging promiscuity (straight and gay), etc., are the right responses. We would have a better case for condemning cigarette smoking as immoral, since the harm issues directly and unavoidably from the activity. So the AIDS-based argument against homosexuality is misguided. As an aside: even if these considerations do not convince the conservative, surely he would have to agree that this AIDS argument does not weigh at all against lesbianism, and hence even if it worked would only make one kind of homosexuality a sin.

Second, I take it the argument from AIDS is a weak one, but there is another set of arguments that are more interesting and difficult to be sure about. They revolve around the question of whether homosexuality is "unnatural." For many Christians who are committed to the idea of a natural law, this might be an important reason to judge homosexuality as sinful.

One of the things that make this line of argument difficult is that the concept of "natural" is fraught with ambiguity. It is hard to know, even on reflection, just what we mean by "natural" as it pertains to sinfulness. To begin, we should notice that this is *not* essentially about whether homosexuals are born this way, are helplessly socialized, have freely chosen the life, or some combination of these. Many who focus on this question have the idea that, somehow, if people are born or helplessly socialized to be homosexual rather than choosing to be this way, then we should not consider them sinful. I think this focus misses the target. Consider that we do not and should not care whether someone is born to, is socialized into or chooses, say, a life of murder or pedophilia when pondering whether *murder* or *pedophilia* is sinful. These interesting questions are not completely irrelevant, but they seem more to the point if you have already decided homosexuality is sinful, and you wish to know how best to respond to the sin—then the voluntariness of the “condition” seems to matter. But the answers to these questions, and the sense of “naturalness” to which they are appealing (“born that way” or “cannot help it”), do not seem that important for determining the sinfulness of the practice in the first place. That something comes to pass by birth, socialization or choice does not determine whether it is good or bad. We are not born to use a toilet, but doing so is good. We are born to sickness and death, and these are evils that we try to avoid or put off. Goodness and badness must be judged on other grounds.

Might we retreat from the “born that way” sense of “natural” and appeal instead to “natural” in the sense of “statistically normal?” Perhaps those human tendencies that fall under the fat part of the statistical bell curve are somehow more appropriate than others. This approach seems even less promising. Some things that are “natural” in this sense of being very common in human beings are terrible, in both practical and moral ways. Eating as much fat, salt and sugar that we all tend to want seems like a problem (gluttony is, I think, the proper Church label for one form of this problem). So do the “natural” tendency to occasional violence, the “natural” tendency to reason poorly in many contexts, and the “natural” tendency to infidelity. We are fallen creatures, and our “nature” can and often does lead us astray. And along the same lines we noticed before, some things that are “unnatural” in this sense are very, very good. Loving your neighbor is sometimes bloody hard work and not all that common. There are not that many of us who are fine concert pianists or top marathon runners, but we do not condemn those who are for being outside the norm. So again, there must be another sense of “natural” that would do the work in this argument for the sinfulness of the “unnatural.”

I think the best way to understand “natural” in this context is one that harkens back to the ideas of some of the ancient Greeks. Aristotle proposed that living things, including human beings, have a natural *telos*, that is, something like a built-in blueprint that we use to determine if an organism is flourishing.[2] When things go well, we are unfolding those natural potentials; but things might also go badly, which we should take pains to avoid. Some people are born or develop into states that depart from this "program," and we can rightly call their conditions defects. It is even possible that a majority of any given population might be "natural" in the sense of conforming to the statistically most common but "unnatural" in the sense that they are not flourishing, or doing well, given the kind of creatures that they are. Christians who take up these ideas identify the *telos* with what God intends for us. Here "natural" means something like "in accordance with God's purposes." Very plausibly, God intends for mankind to procreate, and the conservative concludes homosexuality runs contrary to this important divine purpose.

This argument, and the sense of "natural" it employs, could also be made outside the Christian context: "God's purpose" could be replaced by a normative "biological imperative" or "principle of reproduction and natural selection," and the gist would remain much the same. Indeed, if we were all to become homosexuals, there would be a danger that within a generation, there would be no more human race (unless, fantastically, all reproduction then took place via some kind of new *in vitro* technology). And I assume we could all agree that extinction would be a great evil. Is this a persuasive reason to condemn homosexuality as sinful? I do not expect that, in the absence of a moral prohibition, we would all become homosexuals. I think I am safe in assuming that those who happen to find homosexuality appealing are already that way, and those who do not find it appealing would not be likely to change orientation in large numbers. And if God's purpose, what it is "natural" for mankind to do, is to procreate, then all that is really required is that sufficient numbers of us have children. Biologists have for some years realized that members of species, especially species that normally are found in groups, are not best examined and understood one at a time. Advantages and disadvantages, success and failure, purposes and what runs counter to those purposes, all must be reckoned over the whole population. So again, all we really need is that a *sufficient number* of us reproduce, and until that stops happening, we will not have a problem.

For this basic argument from the need for procreation to work, it would have to be bolstered in one of two ways. First, it could add the additional premise that *none* of us ought to do something if there would be bad consequences if all of us were to do it. Then failure to reproduce by any one of us could be condemned because if we all failed to reproduce, it would run counter to God’s purpose. But this general formula is not a reliable way to deduce what someone ought and ought not to do. It is certainly all right under most circumstances for me to walk out of a crowded room, even though a stampede would result if everyone else chose to do so at the same time.[3] Second, we might insist that it is not God’s purpose that the *species* reproduce, but rather that God wishes each and every one of us reproduce. But if this criticism of homosexuality really worked, it would at the same time condemn single people (even Catholic clergy), married couples who choose not to have children, and anyone else who does not procreate, as sinful (and it would let any practicing homosexual, as long as he or she also had children, “off the hook”). This strikes me as a *reductio ad absurdum* (a reduction to absurdity).

No, it is not plausible to think that God intends for each and every one of us to have children; and it seems that within the human family, given the large number of people that already do reproduce, we are collectively doing a splendid job of fulfilling this more plausible understanding of God’s procreative intentions for us. We might even be on the brink of overdoing a good thing. Consider that some social scientists have suggested homosexuality is a perfectly “natural” and programmed response to overcrowding and overpopulation.[4] So in all, even this interesting argument from a “natural law” for procreation of the species does not convince me that reason demands we judge homosexuality is a sin.

The only way I can see to make this basic argument more persuasive is to restrict our understanding of God’s purpose yet again. Perhaps God’s purpose is not merely that the human race (or each and every one of us) should procreate. Perhaps God also intends that part of the mechanism by which we normally reproduce, namely sex, should be used for *no other purpose* than procreation. (My rough understanding of Catholic thought along these lines is that sex has both a procreative and a unitive function; but in their doctrine these functions may not be delinked, and any other use of sex is unnatural and hence, with only a few exceptions, wrong.) This “single-function” or “restricted-function” view of our sexuality would condemn homosexuality as “unnatural,” but it would also condemn masturbation, contraception and indeed all sexual activity, even between married couples, that did not carry the intention to procreate. I do not understand *why* God would want us to so restrict our enjoyment of the gift of sexuality and know of no persuasive evidence that this is His intention. We have appetites for food so that we might be nourished, but may rightfully enjoy eating for its own sake, as long as we do not harm ourselves. We have eyes and hands that may rightfully be used for an almost infinite variety of purposes, provided we otherwise commit no sins. I cannot follow the thinking that asserts sex is somehow different and radically more restricted by the natural law. Rather, I believe sexual impulses may rightly be satisfied in ways that do not lead to reproduction.

Do not misunderstand my rejection of the present “unnaturalness” argument for a more sweeping rejection of the whole notion of a natural law. There may well be a natural law, in which we discern God’s purposes for human beings—here I am taking no position on that issue. What I am making a point of dispute is what the *content* of that law might, or must, be. Even assuming that God’s will is known to us in the form of a natural law, I am nevertheless unable to accept that this law is a complex and pharisaical set of prescriptions and prohibitions. Much more plausible to me are a small set of broad human purposes, inside of which we may all express and live our lives in a variety of permissible ways. If while living those many different kinds of human lives, we are sure to love God and our neighbors as ourselves, I am willing to wager God’s purposes for us will be fulfilled.

Conclusion

Given all the foregoing, I judge that homosexuality is not a sin. I offer that if homosexuality is not sinful, then we certainly lose the primary motivation to ban homosexuals from openly serving in the military. But even if you disagree with me on the sinfulness of homosexuality, acknowledge this much: there are perfectly plausible reasons a good Christian might have for thinking homosexuality is not sinful. This chapter rehearses several such arguments. So this is at least something we should be willing to talk to one another about. And if the talking should cease, and there remains reasoned disagreement, then it should be disagreement that Christians (and fellow citizens!) should accept. It strikes me there are only a few things one *must* believe to be a Christian in general. To be a Christian one is not compelled to take a stand one way or another on the abortion issue, one is not compelled to think in one way or another about many issues of war and peace, one is not compelled to condemn or condone (some cases of) divorce, one is not compelled to approve in one’s heart of married clergy or ordaining women—rather, Christians have long tolerated in each other deep disagreement, and brooked serious differences of opinion, under the umbrella of an all-important unity of the Church in the love of Christ. Even when there is controversy over an official Church position or policy, we have been at our best when we have agreed to disagree, at our worst when we bludgeon one another with the force of law, or even extra-legal violence. Indeed, when reasonable people disagree on difficult issues, making others out to be stupid, immoral or deserving of punishment is a positively un-Christian stance to take. The US military has found a way to function quite well while tolerating a lack of consensus on all sorts of issues. It can do better on the issue of homosexuality than sweeping the discussion under the rug and forcing a whole class of people to hide who they are.

[1] I owe this joke to Lawrence Wall of Chapel Hill, North Carolina.

[2] See any decent translation of his Nicomachean Ethics.

[3] Good Kantian philosophers will have already figured out why this counterexample, while an effective rebuttal of the present reasoning, does not work as a good critique of the Categorical Imperative—but that would be the topic of yet another essay, one that I expect has already been written by Thomas Hill.

[4] See, e.g., (Morris 1967, 99).

Chapter 5
How to Teach a Bad Military Ethics Course

> To be sure, these [moral] laws require, furthermore, a power of judgment sharpened by experience
>
> (Kant 1785, 3).

I intend what follows as a cautionary tale, for those teaching ethics anywhere, but particularly for those trying to teach ethics in the military setting. I hope that at our best, most of us, most of the time, will avoid the pitfalls I plan to mark off, but I have seen enough in my over 20 years of teaching ethics in the military to think that at least in a few quarters, there is cause for concern. A line from the work of Bernard Williams comes to mind:

> Writing about moral philosophy should be a hazardous business … [since] one could run the risk, if one were taken seriously, of misleading people about matters of importance. … [V]ery many writers have avoided the [hazard] … either by making it impossible to take them seriously, or by refusing to write about anything of importance, or both (1972, *xvii*).

If, after reading the chapter, you feel satisfied you did not need the instruction, do the business of moral education a favor and sound the alarm with someone else you think *might* benefit from thinking carefully about these issues. And perhaps you might want to make certain that none of your *students* are suffering from any of the misunderstandings I am hoping to clear up.

Part of my aim is to state and/or argue for the obvious. Well, some of the claims I am going to make about moral philosophy and the practice of moral judgment seem obvious enough to me. Nevertheless, I believe that a contrary and I am sure mistaken understanding of the relationship of moral theory to the practice of moral judgment infects many approaches to ethics education, especially a very commonly used construction of the introductory ethics course. If I am right, it is apparently very easy to slip into this mistake, which in its extreme forms, flirts with absurdity. Indeed, in the worst-case scenarios, our students will take our mistake seriously, then go on to make ridiculously bad moral decisions—all because (as Williams warns above) we have misled them “about matters of importance.”

Background Assumptions

I want to begin with two background assumptions about the nature of philosophy in general and moral philosophy in particular. I hope these brief and rudimentary observations will fall under the umbrella of “the obvious.” They are general enough in character for me to anticipate widespread agreement. Of course, one of the problems that occupy philosophers is the nature of philosophy itself, so it would be overly optimistic of me to expect *all* philosophers to start with me here. Still, if you find what follows in this section even somewhat congenial, then I think the rest of what I have to say should be on reflection compelling.

First, whatever else we might think philosophy is, I would like to assume that philosophy is in a way “parasitic” on other disciplines. It is not a particular subject matter, but instead a way of approaching a wide variety of subjects. Jay Rosenberg characterized it as a rational study of rational practices, “a sort of ‘second-order’ discipline, one which has as its objects of study the ‘first-order’ activities of the scientist, the artist, the theologian, the mathematician, [etc.]” (Rosenberg 1986, 6). And so there is a philosophy of science, a philosophy of art, a philosophy of religion, a philosophy of mathematics, a philosophy of language, a philosophy of almost *any* ongoing human enterprise. More, the philosophy of any particular subject often runs together at the edges with the subject proper. Rosenberg explained:

> Philosophy and the special sciences grade off into one another at the speculative margins. The theoretical physicist and the philosopher of physics, the political theorist and the political philosopher, the linguist and the philosopher of language, the theoretical psychologist and the philosopher of mind—all these practitioners share their problems. … [T]his should not be surprising. For it is precisely on the frontiers of any discipline that the characteristically philosophical concerns of sense (What does it mean?) and justification (How could we tell?) arise with special force and immediacy (Rosenberg 1984, 9).

Second, I would like to assume that moral philosophy, or as it is labeled in the academic context, *ethics*, is a philosophical reflection on our ubiquitous moral experience. Moral philosophy can helpfully be understood to proceed on one of two levels of abstraction. At the highest level, often called meta-ethics, philosophers are trying to answer questions about the very meanings of our most basic moral claims and vocabulary, questions such as “Is morality objective or relative?” “What *is* a right?” or “What do we mean by ‘good’?” Another somewhat less abstract level in moral philosophy is often called normative ethics. At this level there is, among other things, an attempt to systematize, relate, prioritize and otherwise make sense of our everyday moral judgments. Philosophers investigate the underlying principles and concepts of possible ethical systems, and try to determine whether they are coherent, both internally and with our lived moral experience. The deliverances of the various normative ethical theories (such as virtue ethics, utilitarianism, contract thinking, and Kantian deontology), while somewhat different, are not radically incompatible. Indeed, every complete moral philosophy will have an account of such things as consequences, duties, rights, virtues, the good of the individual, and our pre-theoretical moral intuitions about the rules (even if the various theories place different emphases on their candidate fundamental principles or ideas, and give them a different place in the overall scheme).

I do not expect universal and unqualified agreement with these two modest background assumptions (philosophy in general is a reflection on our experiences/ activities and moral philosophy is a reflection on moral experience). Nevertheless, I hope most philosophers will accept my suggestions about what moral philosophy (or ethics) basically *is*, and thereby grant me the premise I will need eventually to further suggest (I hope persuasively) what the activity is *not*.

Moral Practice

The moral life which is the *target* of philosophical reflection is a messy and complex activity. Making good moral judgments, while sometimes simple enough, is often a very difficult matter. More, the character traits needed to effectively negotiate a good life are not simplistic and one-dimensional, and often demand a mix of sophistication, subtlety and deep experience. The overall skill set required for moral competence is large and varied: we need, among many other things, a kind of "vision" or sensitivity that lets us notice there is a morally significant problem before us; a command of informal logic; an open mind; an ability to put ourselves in the shoes of others; a willingness and ability to pursue the relevant facts (even when they are complex); a skill for telling which facts are *relevant* to our moral problems; an explicit and implicit knowledge of a wide range of moral rules and principles; an understanding of why and how those rules are generated; a skill for telling which rules fit into what situations; a knack for understanding the way the rules normally fit together and are prioritized; a settled disposition to do what is right once it is manifest; an autonomously directed *commitment* to the values and rules; etc. I have no doubt left out a lot. Mastering all this is no less complicated, perhaps even more complicated than, for example, our mastery of grammar or an expert's mastery of painting. We grow in this body of moral knowledge and skill through training and the normal cognitive development that takes place over our complete lifetimes. There may be more things I could say about the complexity of our moral experience and the moral judgments we make, but I hope the point is clear enough—the moral life is not a straightforward or easy thing to lead, even if our familiarity with it often masks this fact. In all but the simplest cases, moral judgment will be more of an art than a science—there will be no algorithm that "cranks out" a single and reliably correct answer (which is not to say that there are *no* standards of correctness or quality, just as there are still standards of quality for artistic expression, even though this activity is also complex). What we need is moral *judgment*, tutored by long experience and bolstered by good moral character.

Doing One (Philosophy) Is Not Doing the Same as Doing the Other (Moralizing)

While the philosopher purports to be a lover of wisdom, the moral philosopher certainly has no corner on the market of making mature and sophisticated moral judgments. Nor has she too much special to say, *as a philosopher*, about how effectively to employ the rules, principles, values, and character traits that constitute our pre-existing, pre-theoretical, common moral life—mostly she steps into this imbroglio only to make adjustments and clarifications. Remember, it is at the most *abstract* levels of the moral enterprise, meta-ethics and normative ethics, that the *philosopher* of morality plies her particular trade. Doing a philosophy of art or music is not the same thing as making art or music; indeed, seriously engaging in the philosophy of art is not always or obviously a prerequisite for becoming a practicing painter or musician. Similar things could be said of the apparent relation between philosophy of science and science, philosophy of law and law, philosophy of sex/love and sex/love, and … well, presumably, you get the idea. But whatever the relation between the philosophy and the target practice, it is not one of identity. We ought not to think that, in general, the relationship between philosophy of morality (meta-ethics and normative ethics) and the moral life (often quite misleadingly called *applied ethics*, at least when the word 'ethics' means moral philosophy), should be any different. Aristotle noticed that you *first* need life experiences with morals and politics before you can be a competent student of *philosophical reflection* on morals and politics (Aristotle, 3 at 1095a). Conversely, and to press Aristotle into service again, knowing generally after philosophical reflection what target you are aiming at (2 at 1094a:24) is not the same thing as having the archer's skill to hit it.[1] So-called moral casuists and moral particularists have considered these and similar issues and concluded there are *no* overarching moral principles (see e.g., Jonsen and Toumlin 1988, 30 *passim*, 279–303 for a nice discussion of the theory/practice distinction; and a fine collection by Hook and Little 2003). But we need not go that far to recognize that the high-level moral principles delivered by moral philosophy are not equivalent to simple moral decision procedures and do not replace the complex activity that is going on where "the rubber meets the road" (and for another excellent discussion of the distinctive roles played by ethical theory and practice, see Callahan 1980, 61–80).

Perhaps what I am claiming here is not completely uncontroversial. Some might be tempted to think that the point of moral philosophy *just is* to replace the vagaries of our common moral judgments with the crystal clarity of a simple algorithm, a direct application of what we have discovered through our reflection is the single and highest good. If this does not seem patently mistaken to you, I would invite you to reread the full canon of philosophical ethics with my claim in mind, from ancient times on, and decide for yourself whether or not these philosophers were essentially addressing problems in meta- and normative ethics, or were instead offering a replacement for the business of actual moral judgment. It seems to me that in this long history only Bentham and the crude act utilitarians who followed him have understood themselves in this way—and it also seems to me there is widespread consensus that crude act utilitarianism of this sort is a tremendous philosophical *mistake*, one that entails an overwhelming number of problems and counterintuitive results. If you are not initially persuaded that most moral philosophers were consciously doing the one thing (moral *theorizing* or philosophical reflection) as opposed to the other (providing an easy replacement method for moral *practice*), let me cite a few representative examples from the history of ethics.[2]

I will start with J.S. Mill. Nietzsche snidely observed that "Man does *not* strive for pleasure. Only the Englishman does that" (Nietzsche 1889, 468). If Nietzsche was referring (which I think he was) to an unworkable, crude act-utilitarian moral philosophy, he might have done better to pick out Bentham by name, and left the many other British moral philosophers, including Mill, out of his attack—Mill and the others had not thought to *replace* the complex decision making characteristics of the moral life with the results of their philosophical reflection. Mill clearly was seeking the most basic "principles which are to serve as the premises" of moral science and, if possible, "one first principle, or common ground of obligation" (Mill 1871, 139). In Mill's scheme, identifying the first principle does not provide us at once with "any particular way of applying it" (144, note 1). Even if knowing the *most* fundamental principle of morality will help the moral agent resolve conflicts of principles, it does not *replace* those principles—indeed, he says explicitly that *only* "in cases of conflict between secondary principles is it requisite that first principles should be appealed to" (166). He went to great pains throughout Chapter 5 of *Utilitarianism* (185–211) to show that for utilitarians, notions of justice and rights are preserved more or less as we found them, since the principle of utility generates intermediate *rules* (like the rules of justice and rights), as opposed to providing a simple and direct decision procedure. The problems of applying rules properly and resolving moral conflicts "are overcome practically with greater or less success according to the intellect and virtue of the individual" (166), not by a direct and formulaic application of the principle of utility. R.M. Hare (1981), a modern utilitarian, maintains a similar (though not identical) distinction between different “levels” of moral thinking.

Hume was just as aware of the distance between the most fundamental moral principles and the actual practice of moral judgment. Famously, he thought that the foundation of morals rested on our own feelings of approbation and disapprobation:

> [W]hen you pronounce any action or character to be vicious, you mean nothing, but that from the constitution of your nature you have a feeling or sentiment of blame from the contemplation of it. Vice and virtue, therefore, may be compar’d to sounds, colours, heat and cold, which … are not qualities in the objects, but perceptions in the mind (1739, 468–69).

But of course, as any student of Hume also knows, not just any sentiment will do. Only the sophomoric believe that morality is equivalent to mere, untutored feelings (although the wise kernel on the lips of the moron is that the moral finds its roots *in us*). Indeed, more or less elaborate stage setting must be undertaken before the deliverances of our sentiments are properly taken to be constituent of the moral and immoral. First, the feeling must be one that arises when we take a general and impartial point of view (1739, 472). Moreover, from that general point of view, many skills are required to “pave the way” for proper moral discernment: “[W]e find, that much reasoning should precede, that nice distinctions be made, just conclusions drawn, distant comparisons formed, complicated relations examined, and general facts fixed and ascertained” (1751, 173).

Beyond all this, as is the case in all sensible moral theories, Hume then goes on to work out an elaborate system of rules and character traits (virtues and vices)—and working with *these* is what most often constitutes the moral life. There simply is no way to understand Hume as replacing the complexities of morality with a simple system that directly consults our moral feelings.

Aristotle presents the most obvious and explicit case for separating moral theory and moral practice. His well-known and influential teleological, virtue-theoretic system provides a *framework* for understanding morality and living the moral life. But when it comes to even the fine details of the virtues, much less how decisions are to be made in individual cases, Aristotle is completely clear about the limitations of his theory. The *Nicomachean Ethics* does not deliver a decision procedure, and instead points beyond the theory to the yet-unspecified judgments of the "prudent person" (Aristotle, 25 at 1107a, 29 at 1109b15).

I would guess that Kant is often misunderstood to be offering, with his Categorical Imperative, a simple decision procedure for individual actions. But the Categorical Imperative is a device for generating general moral *principles*, not individual decisions. And the application of those principles is not, for Kant (as we see in the epigraph to this chapter), a simple matter requiring no skill or judgment: "To be sure, these laws require, furthermore, a power of judgment sharpened by experience, partly in order to distinguish in what cases they are applicable, and partly to gain for them access to the human will" (1785, 3). The supreme principle of morality generates principles, and the effective use of these principles requires further and essentially the use of complex, non-rule-governed judgment, what Kant also called "mother wit"(1787, 177)—we must "avoid the error of a crude and unpracticed judgment" (1788, 170). In his *Grounding of the Metaphysics of Morals* and *Critique of Practical Reason* he explored primarily what we are calling meta-ethics; in the *Metaphysics of Morals* he worked out principles at the level we are calling normative ethics, and occasionally asked (but did not answer) what he called "casuistical" questions; but in very few and only scattered places did Kant presume to teach us anything about moral judgment proper or moral development (for a similar point see also Ellington's introduction to Kant 1785, *v–vi*). A modern philosopher who inherited much from the work of Kant, John Rawls, has been similarly misunderstood. The device of his imaginary "original position" has been abused as a way of making decisions in particular cases, when Rawls himself never intended it to be used as anything more than a way to justify the *basic structure of society* (Rawls 1971, 11).

I believe the examples I have given to this point are representative and make my case reasonably well: with only a few exceptions, moral philosophers have been clear themselves on the difference between moral philosophy and everyday moral judgment. Our own failure to be similarly clear will likely result in us badly misreading this history.

Each Level of Thinking is Useful

I have *not* claimed that these three levels (the two levels of philosophical reflection, meta-ethics and normative ethics, and the third, ordinary moral life/ morality/“applied ethics”) are completely insulated from one another. On the contrary, as we grow as moral agents, each level will be brought into coherence with every other in an interpenetrating way, moving toward what Rawls has called “reflective equilibrium” (Rawls 1971, 48). It is just that in the main, we should still distinguish roughly between what sorts of activity we are undertaking and at what level. Different questions are being addressed (for instance, “What is the fundamental principle of morality?” as opposed to say “What should I do about the crime I just witnessed?”), with differences in point and focus. Answers to or mastery of one set of questions would not provide, in any *direct* way, answers to or facility in the other sets.

Of course, engaging in philosophical reflection on an activity is not pointless or unrelated to the activity—I will venture that we would not do it otherwise. What *does* the discipline of philosophy offer, particularly in its reflection on morality? To start, we no doubt deepen our understanding of the first-order activity and might find that working with the philosophical questions is gratifying in its own right. Moreover, philosophical reflection on any activity, moralizing included, seeks in part to justify the shape and conduct of the practices: it can and has led people to modify the rules of an activity (and *occasionally* might lead us to the radical move of abandoning the activity or replacing it with something else). Philosophical ethics might tell us, for example, what we think makes something wrong in the first place—we can then articulate where the buck stops in our chains of justification. Making this explicit might help us determine when *exceptions* to the general rules will make sense, or (as Mill pointed out) give us some additional guidance in puzzling out what to do when rules or values conflict. Moral philosophy can teach us what kinds of reasons ought to count in moral arguments and which are morally irrelevant. What to make of *new* moral problems and what policies should be put in place to cope with them can also be indirectly informed by the results of moral theorizing. So again, moral philosophy does not replace ordinary moral thinking, but rather provides a framework and reaches into the moral life from the *outside*, in ways that can and often do improve our practice of moral judgment.

Hence we should recognize that the questions asked by moral philosophers are hugely important; but at the same time we should insist that the point of their questions has most often *not* been to provide a simple decision-making algorithm for addressing our moral problems. Offering a deep-level understanding of our moral experience (that all experts in moral judgment will properly seek) is *not the same thing* as providing the *entire* suite of skills and traits that are needed to be a good person—nor does it guarantee the practiced excellence in *using* those skills and traits once they are acquired.[3]

Likewise, habituating people to certain kinds of good thoughts and behavior, having them memorize certain lists of rules, engaging them motivationally on the side of the good, having them practice and model moral decision making, etc., do not provide the kind of larger reflective framework that is offered by moral philosophy. And insofar as having such a framework is helpful, then it is good to tackle the philosophy. Indeed, the conscientious and expert practitioner is often enough *forced* to the level of philosophical thinking before she can proceed. As Kant has observed, anyone who has thought that something may be “true in theory but not in practice” simply has not done enough theorizing, or does not understand the proper role that theory plays (1793, 61). But the difference between theorizing and those things about which we theorize ought to be clear enough.

How Bad Ethics Courses Fail to Appreciate the Differences

My thesis about the complex and multi-leveled nature of moral thinking (to include at least meta-ethics, normative ethics, and ordinary moral judgment/experience) has concrete consequences for the prosecution of moral education. Any workable effort to educate for expert moral judgment should attend to noticing and then developing *all* the necessary skills and knowledge. Some of the requisite knowledge is best imparted through the careful reflection characteristic of the philosophy of morality (ethics); other sorts of knowledge and most of the skills required must be brought to fruition in long practice or in the affective, motivational realm. And we must not fall into the confusion that, in doing work at one level, we are at the same time doing work at the other levels (as when philosophers encourage students to tell them what “Kant would say” or “Mill would say” about a particular moral problem, or when a military commander or corporate leader with no patience for the requisite finer points, bellows to his subordinates to simply “do the right thing”). We must be mindful of the fact that there ought to be a division of labor here, or at least recognition that there are different kinds of tasks to be done, regardless of who does them.

Plainly, doing everything required for full moral education could not easily be done in a single course, or even a sequence of courses. A more promising approach would use a “full court press,” with motivational experiences, lots of practice with judgment, and, at the right times, philosophical reflection; all of this should be woven into a seamless whole and come to a student from a variety of directions over a long period. As long as the teachers (*and the students*) have a rough idea of what they are working on in any given episode, I see no reason to think confusion would be a necessary result. The problems come when only *partial* attempts are made or the work being done at any given time is not clearly identified. I would like to suggest there are at least three common ways to fall into this trap: the short course, the case method, and the apply-the-theory approach.

The Short Course

I cynically suspect that short and infrequent (one or two hours per year) motivational talks given in many corporate and government settings are not sincere attempts at moral education at all, but rather public relations or marketing stunts, or poster programs designed to meet some legal requirement. Granted, knowing exactly what the law or your boss at the moment demands is worth knowing, and some corporate and government “ethics” courses are designed merely to meet these reasonable and modest goals. Indeed, many companies are making a respectable living by providing this kind of information-based ethics training.[4] But if we aim at full moral education, such courses would need to be properly integrated into a much larger and more sustained effort. Travesty follows on the mistaken belief that these sorts of things *by themselves* could count as complete "ethics training."

The Case Method

Another approach to moral education, often found in professional schools of business, law, medicine and the like, has students working exclusively through case studies or using the so-called "case method," minus any supporting theoretical work. In student groups that are mature and already appropriately motivated (most students of the professions are), and that have already been exposed to the basics of moral philosophy, this approach can make a vital, perhaps essential contribution to developing moral judgment. But outside those groups (say with young undergraduates, taking a forced core course, with no prior work in philosophical ethics), a practice-judgment-only approach can be disastrous—the discussions easily devolve into sophomoric "food fights" and may cause students falsely to believe that moral judgment is mere opinion mongering. The sense for what kinds of discourse count as real moral argument and an appreciation for the objective or quasi-objective nature of moral reasons/conclusions are missing. Philosophy, maturity or some combination of both are required to frame the case work and the judgment being sharpened there.

The Apply-the-Theory Approach

I have left the last sort of failure for last. It is the one in which we mistakenly take the results of moral theorizing to be a substitute for moral judgment. This sort of mistake will happen almost exclusively in the philosophy classroom. Consider the following fictional exam answer, a nightmarish collage of my worst experiences as an educator:

> Should I cheat on the test? Hobbes would say yes, you have to do what you have to do. Morals are about whatever is in your interest and cheating provides what's in it for me. Mill would say do what provides the most utility. Again, as long as I don't get caught, then I should cheat. It makes me happy and makes all the people I will help with my degree happy. The teacher will be happy if she doesn't find out. Kant would say no, since we should do the right thing (by the categorical imperative) no matter what. Two out of three say to cheat, so majority rules. I should cheat.

Perhaps I am the only one who has ever seen anything bearing a resemblance to this answer, but I doubt it. I am guessing there are plenty of teachers out there, from graduate students to old hands, who have read exam answers a lot like this one. Put aside the "two out of three" problem and the central error that remains is the focus of my concern in this section: *the direct and clumsy application of a fundamental, philosophical moral principle to a complex moral problem, a problem that calls instead for some garden-variety moral reasoning (through multiple layers and levels) and the resources of moral character*.

Why would students write such an answer? As I and many of my colleagues have learned from behavioral scientist David Porter, every system is perfectly designed to produce just the outcomes that it does. The most likely reason students would write an answer like this *is because we asked them to*. Also possible: we did not deliberately or explicitly ask students to make this kind of mistake, but we failed to make sure they did not *think* we wanted them to. After all, the student might reason, we have been studying all these philosophers, and now we are working on an actual moral problem, and the syllabus and course description say we are going to *apply* the theories … how else am I to show the teacher how smart I am? It is my contention that most of us have, at some point in our academic lives, sat through a course, or know of someone who taught one, or taught one ourselves that talked about "applying theory." Lest anyone think I am imagining this problem, let me point to a representative range of publically available on line course descriptions, which would lead any reasonable student to suspect this "apply-the-theory" approach was forthcoming:

a. From the Air Force Academy: "Ethics … A critical study of several *major moral theories and their application* [my emphasis] to contemporary moral problems with special emphasis on the moral problems of the profession of arms." (US Air Force Academy)

b. From the University of Colorado, Boulder: "ETHICS … an introductory study of major philosophies on the nature of the good for humanity, principles of evaluation, and moral choice. *The emphasis is on seeing how various moral perspectives can be brought to bear on specific moral problems*. [my emphasis] … Is euthanasia wrong, or suicide, or abortion?" (University of Colorado)

c. Not one, but two, from Harvard: First, “Moral Reasoning 22: Justice … A critical analysis of selected classical and contemporary theories of justice, with discussion of *present-day practical applications*. Topics include affirmative action, income distribution, surrogate motherhood, free speech vs. hate speech, debates about rights (human rights and property rights), arguments for and against equality, debates about political obligation and the claims of community. Readings include Aristotle, Locke, Kant, Mill, and Rawls.” Second, “Moral Reasoning 52. Property Rights: Morals and Law … Examines legal controversies—concerning landlord-tenant disputes, environmental regulation, disputes between spouses and domestic partners, Indian land claims, and rights of the homeless to shelter—*in light of readings from Aristotle, Locke, Hume, Kant, Bentham, Hegel, Marx,* [my emphasis] American progressives, and contemporary commentators.” (Harvard University)

d. From Notre Dame: “Ethics … will closely examine some of the foundational texts in ethical theory with of goal of discovering and evaluating the answers questions such as: What is happiness? Is happiness part of the ethical life? What is virtue? Do we have moral obligations to other people? What is the source of the authority of morality’s demands? *How does ethical theory relate to concrete moral issues?* [my emphasis] This final question will be explicitly addressed in the final third of the semester when we turn to the consideration of one or two ‘real-life’ moral problems. The problems to be discussed will be decided in consultation with the class. Options will likely include the problem of poverty and the distribution of wealth, the morality of abortion, and the morality of affirmative action policies. Required Texts: Aristotle’s *Nicomachean Ethics*; Kant’s *Groundwork of the Metaphysics of Morals*; Mill’s *Utilitarianism*.” (University of Notre Dame)

e. From Pittsburgh: “Introduction to Ethics … Moral philosophy is the attempt to explore systematically a number of questions. … We may ask, for example: What is it for a principle to be a moral principle? Is there one uniquely correct moral code, or is morality a matter of personal preference? What candidates for moral principles can be defended? Why should I be moral? The course will examine several of these questions and the answers suggested by classic moral philosophers such as Kant and Mill. We will also consider discussions of these issues by contemporary philosophers, *as well as a concrete moral problem such as abortion* [my emphasis].” (University of Pittsburgh)

f. From Arizona: “Introduction to Moral and Social Philosophy … moral and political theory, and problems of *practical ethics* [my emphasis]. Readings from representative moral and social philosophers.” (University of Arizona)

I might have produced many more examples. In any event, whether we explicitly ask the students or merely set them up for the misunderstanding with our own course descriptions, the damage is done. The students typically know this is not how they should or will make real moral decisions, and they conclude that philosophy is ridiculous. Worse yet, as I say in my introduction, some students might embrace the mistake and go on to make tragically bad moral decisions (like, say, deciding to drop nuclear bombs on innocent civilians, for purely and badly thought-out act utilitarian reasons, then not losing a single night’s sleep over the whole affair).

Lectures, discussions, assignments and tests should be undertaken in ways that keep straight which level of moral experience is being engaged. If we want to test a student on what Kant or Mill would say about the nature of morality or its most fundamental principle, then we should *ask them that*, and not what Kant would say or Mill would say about whether we ought to cheat. Cheating is wrong and presumably no sensible moral philosopher (including the classic figures we study) would recommend that anyone do it, except perhaps in the most unusual and compelling of circumstances. In fact, most moral philosophers are in perfect agreement about most of the mid-level moral principles that ought to guide our daily lives. Perhaps we might more profitably ask a student to compare and contrast *why* each of the philosophers they have studied would think cheating is wrong, since that sort of question does not muddle the levels of inquiry. When, on the other hand, we want to sharpen the moral judgment of students, we should give them a hard problem to work on, one that requires working out the facts, struggling with concepts, identifying the relevant principles, seeing things from the viewpoint of others, and all the other skills I pointed to in the section above on moral practice. In such an exercise of ordinary judgment, we must not allow (or *expect*) students to ham-handedly insert unmotivated references to moral theory or moral philosophers. Only in those special cases where differences of commitment about moral theory *actually do* cast a shadow into the space of reasons at hand, and make a difference in how a decision should be taken (cases which, by the way, philosophers relish), will it be sensible to invoke what Kant or Mill or Aristotle would say.

Back to Philosophers

I have claimed so far that philosophers properly contribute to the philosophical portion of moral education, but that they have nothing direct to contribute to the motivational component or the honing of mature moral judgment. Still, it is obvious that as a matter of fact moral philosophers contribute a disproportionate amount of the work to instruction in so-called "applied ethics" courses. The majority of these courses, both in undergraduate classrooms and professional schools, are taught by philosophers inside of philosophy departments. Even in schools where moral reasoning is taught *outside* philosophy departments (Harvard comes to mind—there are others), philosophers still do an awful lot of the teaching. Hospital ethics committees, as just one representative example of "applied ethics" in the professions and public life, more often than not rely on philosophers to contribute to these decidedly first-order moral decision making bodies. Is this a mistake, a sociological accident that gives philosophers undeserved, special cachet in moral matters, based on the very confusion I have attacked in this chapter?

Some philosophers might think that philosophers just happen to be especially smart and of especially high moral character (perhaps due to the extraordinary personal qualities required to succeed in such a difficult discipline!). But I am quite skeptical of that idea. Are there other, better reasons for supposing that philosophers should more often lead courses in "applied ethics" or that they might be better at moral reasoning in general? I will admit that philosophers (with their professional hats off and their ordinary moral judgment engaged) have, in my experience, been at least as good or better than average practitioners of “applied ethics,” though I am just not sure why. Perhaps there is something about training in philosophy that equips people with portable skills, ones that confer an advantage when it comes to ordinary moral reasoning.[5] Or perhaps there is something unique about morality itself, so that even if most branches of philosophy do not often contribute in a direct way to the target activity (again, in the way that philosophy of art is not usually necessary for us to become artists), perhaps in the case of morality, surprisingly it *does*. Perhaps moral philosophy must be done at some point in order for the activity to be undertaken at its highest levels. If this were somehow the case, the philosopher would naturally bring to the table better preparation in this prerequisite reflection. But I mention all this as speculation, speculation on something for which I have made only an anecdotal case (that philosophers might turn out to be better than the average person at making moral judgments). None of this is incompatible with my main thesis: that there are various *levels* of abstraction and concreteness in moral thinking and that those of us trying to educate for morality must keep this clearly in mind while doing our work. Failure to do so, at any level, will almost certainly result in a bad ethics course.

Conclusion

I have made the claim that moral experience is complex and multi-layered. Because of this, educating for morality will necessarily be a lengthy and involved process. Bad ethics education might fail to account for this in one of several ways. First, fans of the short and only occasional motivational or informational talk fail to see that much more is required. Second, fans of relying exclusively on case discussions might not recognize that the student groups with the appropriate background and motivational level are limited in number—it will not work in many settings, including the typical undergraduate classroom. And last, potential for the worst kind of mistake happens in the philosophy classroom. Here, the philosopher thinks that philosophical reflection, rather than just *improving* moral competence, instead provides a replacement for the target activity. Philosophers must not allow themselves to slip into that error, or frame lectures or assignments in such a way that their students understandably make the same mistake.

[1] This might be why Harvard and a number of other schools teach moral judgment as a course outside the philosophy department, with a separate faculty.

[2] What will go undeveloped in this section: the philosophically substantive point as to why I and so many others think Bentham and his ilk are wrong. Why should we not, as a result of our philosophical reflection, simply replace the existing layers and structures of our moral life with direct and case-by-case decisions based on whatever we determine the supreme moral principle or value to be? I must leave this extended discussion for another essay, but I suspect the answer to this question will have something to do with (a) the way human minds work (with essential reliance on habits and heuristics), this making it impossible reliably to go straight "from the top to the bottom" and (b) a common preference for a generally conservative bent in philosophical reflection, one that leaves, to the extent possible, activities as we find them. As for now, I will be satisfied to make it plausible that the history is mostly on my side of the debate.

[3] To cite just one small example, in confronting a serious moral dilemma concerning the initiation of submarine warfare in WWII, Jonathan Bennett points out that "Philosophy does not help with this problem" (in Woodward 2001, 87).

[4] For just one example, see Kaplan Eduneering (http://www.kaplaneduneering.com). They provide a wide assortment of these kinds of courses.

[5] In the case of hospital ethics boards and other institutionally chartered groups like them, "part of the point … is to create a public and transparent mode of reasoning among its members" (I quote here a referee for *Teaching Philosophy*)—and to furthering this purpose philosophical training could most certainly contribute.

Chapter 6

Should Members of the Military Fight in Immoral Wars? A Case for Selective Conscientious Objection

> Every man has a conscience and finds himself observed, threatened, and in general, kept in awe … by an internal judge. … It follows him like his shadow when he plans his escape
>
> (Kant 1797, 233).

> For no legal transaction on [a subject's] part or on that of anyone else can make him cease to be his own master
>
> (Kant 1793, 76).

Traditional thinking about morality and war would have us employ something we might call a moral division of labor. According to this way of thinking, governments are morally responsible for the decisions to start and stop wars and members of the military are morally responsible for how the wars are fought. It is supposed to follow from this that it is morally permissible, perhaps even a duty, for members of the military to fight in their nation's wars even when those wars are immoral (or illegal according to international law). In 1970 Michael Walzer, in his influential *Just and Unjust Wars*, presented only the latest version of this venerable view. But in recent years, a number of thinkers, including David Rodin, Brian Orend, Jeff McMahan and many others, have expressed skepticism over this moral division of labor. I want to add my own voice to this growing chorus. I judge the collective force of these many critiques and qualifications to be decisive and conclude that the traditional moral division of labor is not a *consistent* way to think: the rank and file of the military *are* morally responsible for their own participation in immoral wars for the same sorts of reasons they are responsible if they follow immoral or illegal orders in combat or participate in other immoral or illegal state policies or directives. In the last half of this chapter I suggest a policy change that might better accommodate this proper assignment of responsibility—the call for reform is aimed presently and directly at the policies of the United States, but I think it might make sense for any Western democracy that has not yet instituted the reform, and may well make sense for any nation at all that takes an interest in the moral high road.

The Traditional View

Walzer speaks clearly for the tradition. Soldiers are not morally responsible for *jus ad bellum* decisions—they simply should not be held to account for the "overall justice of the wars they fight" (Walzer 1977, 304). Walzer cites as a bright-line case of this view a commonly held attitude towards Hitler's formidable field marshal, Erwin Rommel—though Rommel fought for an uncontroversially bad cause, because he observed the rules of war in the fighting, he was not deemed a criminal (38). The sins of his leaders were not his. Of course, this is not a universally held opinion of Rommel and those like him. In the immediate wake of WWII, the chief British prosecutor at the Nuremberg trials claimed that "where a war is illegal … there is nothing to justify the killing and these murders are not to be distinguished from those of any other lawless robber bands" (38). But again, Walzer insists that we should "draw a line between the war itself, for which soldiers are not responsible, and conduct in war, for which they are responsible" (38). This is not to be confused with a more trivial point: of course the individual soldier *does not make the decision* to start a war and hence cannot be responsible for that decision. Over and above this trivial point the traditional view maintains that, once a decision for war (for better or worse) is taken, the soldier is not, and cannot be, responsible *for his participation*.

Notice that the poor military professional, besides having lost his moral autonomy in the *jus ad bellum* decision, is *also* stuck with strict obedience once the fighting is underway. Not only must the soldier fight in her nation's wars, but she must also obey orders (especially under fire) even when they are ill-advised. From members of the military, we demand obedience. But as for obedience *in the fighting*, Walzer points out one very important exception. If ordered to engage in activity that is patently illegal or immoral, we expect the military professional to refuse. If one violates the rules of war, superior orders provide no defense. Any atrocities a soldier commits "are his own [even if] the war is not" (39).

It is important to note that the assignment of moral and legal responsibility for conduct in the fighting holds in spite of the fact that soldiers are subject to horrendous pressures. Richard Wasserstrom, for example, notices that “war can be extraordinarily corruptive of the capacity to act morally”—war has “the very strong tendency to make a kind of psychopathic view of matters appear reasonable” (1980, 185). Telford Taylor claims there is a markedly “corrosive effect of mortal combat on the participants” (1970, 377), an effect that is particularly “corrosive of moral personality” (a way of putting it that I owe to philosopher and combat veteran William Gibson). Fighting too long under what Walzer calls this “special strain” might justify making allowances in how harshly we judge a soldier’s bad conduct. But pressure notwithstanding, soldiers should not be viewed as mere instruments without any moral responsibility for what they do.

This is also not a universally held opinion. We again see the contrary affirmed in the Nuremberg trials, but this time by the defendants—they were just following orders. To be fair, Walzer does not believe a defense of superior orders is completely baseless. There are two arguments that plausibly *could* be made on behalf of a superior orders defense: a defense of ignorance or a defense of duress (Walzer 1977, 312). But again speaking for the tradition, he finally rejects both of those arguments. We may grant that ignorance “is the common lot of the common soldier” (312). He often does not and cannot know the full moral implications of what is happening in the combat. Nor is he often in the position to find out, for combat “is not a research assignment” (312). But even granting that common state of ignorance, as a justification for bad conduct “ignorance has its limits”—when what we are ordered to do is obviously, to anyone of normal understanding, illegal or immoral, we must disobey (313).

What of duress? Duress of the sort that threatens summary execution for refusal might well lead us to suspend judgment of those who are so threatened. But short of that most direct and serious kind of threat, Walzer thinks duress provides little or no excuse: “Soldiers are [often] conscripted and forced to fight, but conscription by itself does not force them to kill innocent people. … Only a man with a gun to his head is not [fully] responsible” (314). Faced with an immoral order under duress, there are many ways to respond besides obeying: “postponement, evasion, deliberate misunderstanding, loose construction, overly literal construction, and so on.” We might ignore an immoral command, answer it with questions or protests, or even overtly refuse it in a way that “invites reprimand, demotion, or detention.” Unless there is risk of immediate, lethal retribution, decent people will find these possibilities to refuse and “seize upon them” (314). No one is excused for, say, the murder of innocents by a “threat of demotion” (315). And we might add this to Walzer’s discussion: surely we would praise anyone who accepted execution rather than immorally killing another—such a soldier does not make a *mistake*, but rather comports herself to an exceptionally high standard, one we might hope for, if not expect, others to emulate.

In addition to direct threats, there is another, less obvious form of duress, a powerful social force that will also pressure soldiers to obey immoral orders. When a soldier disobeys, even for the right reasons, he “acts alone, with no assurance that his comrades will support him.” In disobeying, he breaches an elemental accord between those who face a common enemy and endure a common discipline. One who refuses by appeal to moral principles in situations like these risks “a profound and morally disturbing isolation.” Of course this is “not to say that one can join in a massacre for the sake of togetherness” (315). Even the especially strong peer pressure present in bands of fighters does not, for Walzer and the tradition, provide an excuse for serious misconduct.[1]

Trying to Justify the Traditional View

So, Walzer and the traditional view for which he speaks hold soldiers morally and legally responsible for *how* they fight, but they are not to be evaluated for the fact *that* they fight—the proper object of evaluation for that decision is the government alone. But *why* should a soldier be blamed for participation in immoral or illegal activity in the fighting, but not be held responsible overall for participating in a war that we are stipulating is in itself illegal or immoral?[2] The purported justifications typically given for this moral division of labor fall into three categories (two of which should look familiar, as they are invoked above): arguments from ignorance, arguments from coercion, and arguments that allege a special, morally trumping status of decisions made by a state.

I will first entertain the argument from ignorance, which keep in mind, the tradition does *not* endorse when it comes to excusing misconduct in the fighting. Walzer thinks knowledge about the justice or injustice of a war is for a soldier “hard to come by.” The state gives us reasons to justify its wars and it “takes courage to doubt these reasons.” Indeed, unless the reasons given are patently unsupportive of the cause, most soldiers will rightly be convinced to fight (Walzer, 39). And if we are merely not sure about the justice of the war (which Walzer apparently thinks is a fairly common frame of mind) we should, as a default, be willing to fight.[3] Typical soldiers trust their states, do not have serious doubts, and because of this are not criminals (Walzer, 127). In spite of the fact that “the basis of that belief is not necessarily rational inquiry but, more often, a kind of unquestioning acceptance of official propaganda,” the soldier is not to be blamed for believing what his leadership tells him. Indeed, soldiers are often “so terribly young” when the state imposes on them these decisions to go war “they can hardly be said to make a moral decision at all” (40).

The argument from ignorance as Walzer presents it simply does not support the strongest version of the traditional view: it leaves open the possibility for times when there *is no doubt*. Dan Zupan (someone who in the main is another defender of the tradition) concedes that in those cases where there is no doubt as to the immorality or illegality of a war, a soldier should not continue to serve. Moreover, says Zupan, “at that point he should feel morally justified, perhaps required, to condemn his former colleagues as being morally obtuse or morally corrupt, or both” (Zupan 2007, 47). Walzer himself writes that in general the excuse from ignorance has severe limits: “In moral life generally, one makes allowances for false beliefs, misinformation and honest mistakes. But there comes a time in any tale of aggression and atrocity when such allowances can no longer be made” (303). Is the soldier less well-positioned than the average person to see when this line is crossed? Brian Orend makes a similar point. He grants that soldiers for many reasons are likely to believe their wars are just, but as he so eloquently puts it, “so what? That in itself is no justification” (Orend 2006, 108). I should add that these excuses, *even if acceptable*, hardly rise to the level of plausibility in many modern societies, those which have, relatively speaking, generally high levels of education and a free press. If there ever was a time in history when leaders knew best and exclusively about whom to kill and why, it is clearly not so for those living in Western democracies in the 21st century.

Perhaps we should charitably assume that the tradition means to set a strict policy of not passing judgment on the individual to cover the circumstances *most* soldiers face *most*, if not all, of the time. But then we must undertake the empirical work to determine just how often it is fair to say that the ordinary person just cannot know enough. For my own part, it is hard to understand why the tradition should not evolve and simply take cases on this problem: when it is hard or impossible to know if a war is just, the soldier's responsibility for participating is mitigated, excused or absolved (though not fully justified); when a person of ordinary understanding can or should know in the context that the war is unjust, then a soldier is blameworthy for joining in.

Simply assuming one's own country is always or mostly right will not work. Indeed, as Rodin suggests, given that in war at least one side has to be in the wrong, and maybe even both sides, a soldier "can know with certainty that there is at least a 50 percent chance that he is fighting on the unjust side" (170). McMahan makes the same point: "Everyone knows that there are unjust wars—indeed, that in virtually all wars at least one side fights unjustly—and that most of those who fight in unjust wars mistakenly believe their cause is just" (2007, 58). So a presumption that one's own country is most likely just when it goes to war, without carefully examining the reasons behind such an important undertaking, is unwarranted. The argument from ignorance cannot be salvaged by such a rash assumption.

Nozick was also impatient with the claim that average soldiers are in principle too ignorant to be responsible for their participation in an unjust war.

> It's a soldier's responsibility to determine if his side's cause is just; if he finds the issue tangled, unclear, or confusing, he may not shift the responsibility to his leaders, who will certainly tell him their cause is just. … [There are] some bucks [that] stop with each of us; and we [should] reject the morally elitist view that some soldiers cannot be expected to think for themselves (1974, 100).

Indeed, such an elitist view, resting on an argument from ignorance, if taken seriously would at the same time force us to conclude that average citizens are too stupid or uninformed to be allowed to vote—it is an argument that, if it were sound, would attack the very foundations of democracy.

I will next consider an argument from coercion. The presence of coercion also might lead us to think soldiers are not responsible for their participation in unjust wars. The state commands and there are consequences for refusing to obey. Soldiers are often drafted. For soldiers already in uniform, whether they have been drafted or were volunteers, a refusal to participate in any given war will most often result in criminal prosecution. In addition to the obvious coercion of the law, there are other, more subtle powers at work. The prospect of moral isolation we noticed when soldiers disobey orders in combat will also be present in this *jus ad bellum* context. Moreover, those who refuse to fight in a particular war must also face the possibility of being publicly branded as cowards. There is also in many people a general respect for and trust in authority figures, to include the government. Along these same lines, there is a common simple form of patriotism that tends to exert a psychologically coercive influence and provides "a partial explanation" of why soldiers feel pressure to participate come what may (Walzer 1977, 35). For most soldiers, the collective coercive effects of fear, respect for authority and patriotism are real and strong.

We must not underestimate the power of these kinds of pressures. These are not like the simple peer pressure that manipulates the adolescent (or those of us arrested in that stage of development); rather, as the famous Milgram studies and others like them have shown, there is a strong and automatic response to authority figures that we all carry to some degree. Most human beings have the *capacity* to choose contrary to these pressures, but dispositions to comply are ubiquitous and forceful. Recognizing and controlling the tendency to obey even when we should not is out of the ordinary. Indeed, as Bill Rhodes has suggested to me in conversation, it may be that the sort of person it takes reliably to resist authority figures would not generally be suitable for service in the military in the first place.

Rodin acknowledges all this, yet stops short of acknowledging that these concerns relieve the soldier of responsibility: he thinks the coercive forces "are neither singly nor conjointly sufficient to override the duty not to participate in wrongful killing" (171). Orend agrees: soldiers usually will fight because of their habits of obeying law, fear, patriotism and moral investment in the state—“but [again] so what? This does not mean they are justified in fighting if the cause is not just” (108). Even the traditionalist Walzer seems to admit in the end that very few soldiers find themselves directly coerced in ways that would justify their participation in inflicting a grave injustice, and most of the time even in the most authoritarian regimes, they have alternatives: “at the very least, people can resign, withdraw, flee” (298).

I think straight-line traditional thinking has been grossly inconsistent on this point. How can traditionalists take the hard line against atrocities in combat, insisting that soldiers not give in to all the pressures in that context (where they are even more direct and powerful), yet allow those same kinds of pressure, away from the terror of combat, to have a completely exonerating effect? No, a coherent form of just war thinking would require that we not let soldiers completely off the hook because of coercion *in either case*. We can and should acknowledge what coercion can lead us to do and ought to consider it, again, as a mitigating factor. But coercion cannot make a wrong thing right, even when resistance would be difficult or even tragic. And unfortunately, there are some occasional and unhappy circumstances in which merely decent people are compelled to do extraordinary and courageous things just to remain decent.

Last, I will consider arguments from the status of the state. I shall assume that the legitimate state, especially a democratic one, may rightly make very many demands on us. In a democracy, for example, once a collective decision is taken, we are expected to comply with its terms, even when those terms are not to our liking or benefit, even if we disagree with the reasoning (if there is any to be had) that led to them, even if we find them contrary to our moral convictions. Those who would not comply with the final deliverances of their government can only take the very risky option of breaking the law, either surreptitiously or in the public view *via* civil disobedience—in either case the non-compliant will properly expect punishment if caught. Roger Wertheimer points out that even in matters of conscience “no legal system can coherently recognize its subjects’ having a general right to disobey or be exempt from a law whenever compliance would compromise their conscience, for that would reduce all legal imperatives to mere advice” (2007, 68). Such a general right would mark the end of respect for the rule of law and enshrine a contempt for the binding democratic processes enjoyed by so many—the result would be chaos. So certainly as a default, if our legitimate state commands, we ought to obey. There *is* a special relationship between a state and its citizens, or a state and its officers, which requires obedience and a certain surrendering of one's full, unrestricted autonomy.

And so it goes, for the tradition, in regards to warfare. Of course, those who vote for war, and even more so, those who cooperate in planning, initiating, and sustaining war, must all share some degree of responsibility. But the "soldiers who do the actual fighting are *not responsible as soldiers*" even if "as citizens, they are" (Walzer 1977, 299). This is because "*they vote as individuals, each one deciding for himself, but they fight as members of the political community, the collective decision having been made* [my emphasis]" (note on 299–300). The collective nature of the decision, the special relationship of us all to our sovereign power, takes the final responsibility away from the official of the state, and brings it to rest on the state itself. In fact, on this way of understanding things, participation for those tasked to fight is not just permissible, but is a political duty—be the war immoral or not, the decision having been made, the military professional must then perform the role assigned to him by the state.

Of course, we might expect that not all citizen-soldiers share this two-hatted self-understanding of their relation to the body politic. Ruth Linn claims that occasional discussions of refusal in Israel have blurred this sharp line. In contrast to the claims made by Walzer and the tradition, Israeli soldiers have a tendency to think "a soldier's morality is tested" by both how they fight *and* their overall participation in a conflict. "Because reservists are only civilians in uniform, they see themselves as obliged and free to concern themselves with the moral value not only of the conduct of the war but also its overall goal" (Linn, 73).

Assuming Linn is right about the existence of this attitude among at least some Israeli soldiers, I would like to offer that they are on to something. Respect for the rule of law and the authority of a legitimate state notwithstanding, an individual's lack of moral responsibility for being part of a collectively inspired and perpetrated injustice cannot be as simple as Walzer and the tradition claim. I must admit that failure to comply with state authority on “merely” moral grounds comes with great legal risk and liability. And I must also admit that general intolerance for disobedience is, as we just saw, plausibly the only way great varieties of moral opinion can be managed inside a legal system. So the soldier who refuses to fight when his state demands it will, as things stand in most places, need to break the law.[4] Yet to conclude from this observation that a *legal* obligation makes one in-principle not responsible *morally* is to confuse or mistakenly conflate the legal and the moral. The phrase “unjust law” is not an oxymoron or a group of words without meaning. I think we would be better served by investigating not *whether* we have moral responsibilities *vis a vis* our relationship to the state and its directives, but rather *what* those moral responsibilities are.

In taking this same basic line, Nozick does not see “why the political realm is special.” Why would one be absolved of moral responsibility for actions just because they “are performed jointly with others for political motives under the direction or orders of political leaders” (100)? Rodin sees a similar connection between individual and state responsibility, one he thinks is already present in our practice and attitudes toward enemy soldiers. Why, he asks, is it morally permissible to kill an aggressor soldier? Rodin suggests it “is because they *share responsibility* [my emphasis] for the wrongness of the aggressive war” (166). When a soldier does not disobey his ruler’s command to kill in war, the reason he legitimately may be killed in turn is found in his own partial responsibility for the aggression.

Another moral foothold for assigning *jus ad bellum* responsibility to the individual soldier might be found in a military member’s status as a *professional*. If military members are professionals in the classic sense (and they frequently say they understand themselves in these terms), then what defines them goes far beyond mere expert employment of violence. Military professionals, like doctors, lawyers, educators, etc., are professionals in part because they provide for some essential public good. For the military, this good includes at a minimum defense of the client society against aggression, but it is often suggested that the good also includes a universal protection of the innocent (e.g., Davenport, 181). This is clearly the case in combat, and is in addition often used to justify the use of military forces in humanitarian operations that do not serve the direct national interests of the soldier’s state. So why should this concern for the innocent not inform what sorts of wars in which a soldier, *qua* professional, is willing to fight? Thought about in this way, a military member who engages in an unjust war, the aims of which run contrary to the good his profession serves, would be like a Nazi doctor who harms and experiments on patients or a teacher who indoctrinates students with a false party line. While we can appreciate the pressures that lead many professionals to engage in such conduct, we should not fail to appreciate that those who cave in to that kind of wrongdoing are, at some level, traitors to their profession.

We can admit that in general the state makes rightful legal demands upon us. And a general habit of obedience is a mark of essential civic virtue. If my candidate loses in a presidential election, the winner is still my president. I must obey the laws that are passed domestically and honor the treaties made internationally, even when I do not agree with those laws or treaties. If the state group to which I belong borrows money I did not want to borrow, I must still join in to pay it back. If the group does something wrong, even over my objections, so long as I remain part of the group, I must help to make amends, especially if I somehow benefited—membership has both privileges and burdens. But at some point there will be a hard-to-make-out line, beyond which we ought not to go. When an injustice is serious enough, and my own participation direct enough, then moral concerns must trump other kinds of concerns, even less weighty moral ones. I do not offer a fully worked out theoretical story about when the general duty to obey should be overridden. But even in the absence of a full theoretical story, it seems clear enough that if the course before me is both patently and seriously immoral, I must find a way to resist and refuse participation. In the 19th century, Nathaniel Hall made this general point with compelling eloquence. To laws, he writes:

> … which violate no sense of obligation to moral law, we are to be obedient. We may deem its enactments unwise or inexpedient, but may not, for that reason, disobey them. … We may feel its enactments oppressive and injurious,—they may abridge our comforts, and may waste our fortunes, they may restrain us in the exercise of natural rights and civil privileges; but we may not, for this reason, disobey and resist them. The authority of government is a rightful one, even in its abuse. … So much we may concede. But when government, by its enactments, demands of us the doing of an *unrighteous* and *inhuman* act; … the case is widely different. … It has, in so doing, … assumed a right which it was never given. … [In these cases] *disobedience* is the sacred obligation. Government may sin against me, at will, … but it may not compel *me* to sin. … It may inflict injury upon me, … but it may not compel me to inflict injury upon another, whom God is telling me

> to befriend. … It has no right to do this; and I have no right to obey it. … It is not left to my choice. … I have a soul to save and give account of (Hall 1851, 117–18).

Selective Conscientious Objection

Wherever and whenever people have lived, they have nursed the aspiration that their nations would be at least morally decent, and that they would not undertake immoral war—yet sober reflection on the sorry state of human history forces us to conclude that such misadventures are not only possible, but are in fact likely. Of course the soldier is not directly responsible for the state's decision to go to war (and cannot as an individual stop the war from going forward), but I claim she *is* morally responsible for her own participation. And while there are most often mitigating factors that might lead us to excuse or forgive a mistaken judgment to participate, there is also an ever-present responsibility for one's own actions and the correlative duty to refuse to participate if a war is unjust. Unfortunately, acting in accordance with this duty to refuse, when it calls us, is most often very costly for the soldier, in many ways.

We should wish that it was not so costly for soldiers to act from conscience in these decisions to participate in the killing of war. As it stands now in many places, it requires extraordinary courage to refuse participation. Two things which make it so difficult to refuse come to mind immediately. First, we impose legal sanctions for refusing to fight. Second, we socially and legally *legitimate* soldiers' participation in unjust wars *via* the tradition and its moral and legal immunities, making it easy to succumb to all the pressures wrongly to fight we have already noticed—this "illegitimate legitimation" gives us a lifeline for coping with cognitive dissonance, a way to relieve the discomfort of the symptoms of a deeper moral disease. Corresponding reforms that would provide at least a partial solution to these problems seem obvious to me. First, we should stop promulgating this false doctrine of moral blamelessness. Second, we should institute legal mechanisms for fair and effective selective conscientious objection (SCO). If military professionals were *expected* to refuse to participate in immoral wars (as they are already expected to refuse immoral and illegal orders in the fighting) and there were legal principles and procedures available for the soldier to invoke, refusal would be far less difficult and hence far less morally extraordinary.

Many morally enlightened governments already allow for *global* conscientious objection. For example, the United States permits objectors to present evidence of a deeply held moral or religiously grounded conviction that all lethal violence is wrong—should the objector convince the proper authorities of her sincerity, she may be granted legal permission to refuse participation in military service. Clearly the government believes this conviction is mistaken (since it will maintain that some or even all of its wars are indeed moral), but it still tolerates dissenting opinions in the citizenry. Deciding whether to kill in war is a serious, difficult and poignant decision for any thoughtful person to make. The government respects those who decide they will not kill, realizes that such people would not be any good in combat anyway, and has decided that making legal allowance for their absence will not keep it from waging its wars. Likewise, morally enlightened governments (again including the United States) have also stopped conscripting members of the military. These governments respect the free choices of their citizens in such important matters, realize that non-volunteers often make lousy soldiers anyway, and have discovered that working only with volunteers does not keep them from waging their wars (indeed, it may well be that all-volunteer militaries are for many reasons *more* effective).

Perhaps good things come in threes. I am proposing that any morally enlightened government should also endorse *selective* (in addition to *global*) conscientious objection, for the same reasons. Where there is conscription or compulsory registration in place, citizens should be able to make their case that they have deep moral or religious objections to a *particular* war. And whether the military is conscripted or volunteer, those who are already members of the military should have the same opportunity to opt out.

Of course, there will be those who think implementing a mechanism for SCO would result in multiple, intractable and catastrophic problems. I will now examine some of those potential problems with SCO and try to show that they would not be serious enough to recommend against moving forward with the policy. To begin, might it be that SCO would encourage cowardice or give cowards a previously unavailable way out of doing their duty? I do not think cowardice will cause important numbers of people to seek disingenuously selective objector status. Where there is conscription or mandatory registration for potential conscription, we may assume cowards are already feigning a *global* objection to war. Where there are volunteer militaries, we find almost no full-bodied cowards anyway. Take the US military as a strong counterexample to the worry about cowards in volunteer militaries: in our volunteer military, in a difficult, dangerous and morally controversial war in Iraq, in a time when deserters typically are merely discharged from the military (rather than shot or imprisoned), the number of military professionals who flee the military as deserters is miniscule. And the small number we already have most certainly includes cowards *and* those who left on principle, making the "coward count" even smaller. In all, I am sure SCO would function not as a revolving door for cowards, but rather as a rarely used escape hatch for thoughtful and morally sensitive military professionals.

Here is another objection. Perhaps if the military or its membership were allowed to decide they will *not* fight, independent of the pronouncements of their political leadership, this might make them more inclined *to* fight even when their political leadership says they should not. If military people are allowed to decide when not to fight, they might be tempted to think they know better about when to fight, or even in the extreme whether they should take over the government. If this worry has merit, it seems to encourage, or at least make too much room for, the likes of Oliver North, Douglas MacArthur, societies unduly influenced by the military branch, or even military dictatorships. But this proposal for SCO is a suggestion *only* for a legal, openly exercised option for the individual soldier, not for the military as an institution. And concerns about political control over the military have always and properly been about whether the military would exert unchecked power as a larger institution, not whether individuals would on grounds of conscience *fail* to participate in wars or insurrections. It is clearly intended to present a legal option *not* to fight, rather than a permission to take more liberties in the opposite direction. And I think there is no reason to believe the one (a way to opt out) will lead to the other (a tendency to take over).

Another objection, a traditional one voiced from Vitoria (1539, 2.2 §22 and §25) onward, claims that if soldiers were allowed to pick and choose the wars in which they fought, it would weaken their military and put their nation's security at grave risk. This worry about insufficient numbers of reliably available troops runs exactly counter to all the social forces we have already discussed—the strong tendency is to fight anyway. As we just noticed, even in unpopular and difficult wars, desertion rates in volunteer militaries are remarkably low. Only the *patent* injustice of a conflict could ever hope to overcome the strong tendencies there are in the ordinary person to fight anyway. Sadly, I suspect even in patently unjust wars there would still be plenty of people available to fight. Should the war be so unjust or ill-advised that we see mass refusals, I say we should welcome any government's frustration.

In countering this worry about military strength, we also find an unlikely bedfellow in Walzer, who in his fine discussion against conscription introduces a distinction between mere citizens and officers of the state. When the state commands, it does two things. First, it requires its citizens to obey. But second, it also appoints people to *enforce* the law. Refusal to obey laws or policies is something the state finally cannot tolerate. But the state need *not* require a particular person to carry out or enforce state decisions: a refusal to become a state servant, official or soldier "does not prevent the state from carrying out its policies. The state can always find other servants" (1970, 136). The state can easily tolerate or grant refusals of service and not collapse or cease to perform its essential functions, including its military functions. Laws could be enforced and wars fought by citizens who are in favor of, indifferent toward or weakly opposed to the laws and/or wars (1970, 137). "The state can survive and flourish without a conscript army (as it does without a conscript bureaucracy)" (1970, 145).

Indeed, rather than reducing a nation's military strength, the availability of SCO might actually have some benefits. First, more people might be inclined to join a military in which they were not required irrevocably to surrender their consciences.[5] Second, a military in any given war comprised of only volunteers who *also* had no moral compunctions about the conflict might well have higher morale and be more effective in that war.

Perhaps SCO would be a bad idea because it would almost certainly, in our own day, be administered inequitably. This worry has it that in the case of an unjust war, only the better educated members of society, those already privileged in so many ways, would be likely to realize that the war is unjust and ask for SCO status. Hence, mostly people with poor educations, tending to come from the lower socio-economic classes, would be doing the fighting. I am not sure the outcome predicted by this objection would obtain. But if inequity is the result of otherwise free choices, the fix for the problem would be to raise the general level of education (which is so essential to the proper functioning of any democracy), not to require people to fight and kill in violation of their consciences. The coercion, I claim, is morally worse than the possibility of inequity while we wait to improve general education.

Some might worry that SCO will have an untended effect of making it too easy for adventurous governments to wage immoral wars. If no one is drafted, no one is forced to serve generally, and no one is forced to serve in any particular war, then part of a citizenry and their families lose their strongest motivation for protesting an unjust war: they are no longer in the same boat with those who will mistakenly die or be hurt for a bad cause. This might make it easier politically to fight an immoral war. I do not think this would come to pass. Of course, those who have lots at stake personally will protest an injustice more quickly and more vigorously than those who do not. But the history of states, especially functioning democracies, plainly shows there are also sufficient numbers of citizens who will fight evil being done in their name, even when they are not directly harmed or benefited. And again, even if I am wrong, and the free choices to opt out make it a perhaps a *little* easier to wage unjust wars, I think being coerced to fight and kill contrary to one’s conscience would be morally worse.

Conclusion

In GILLETTE v. UNITED STATES, the US Supreme Court found in 1971 that simultaneously allowing *general* conscientious objection and still prohibiting *selective* conscientious objection did not run afoul of the Constitution. They wrote that it was “supportable for Congress to have decided that the objector to all war … has a claim that is distinct enough and intense enough to justify special status, while the objector to a particular war" might not. But they made a critical nod to the legal possibility of what we should endorse as an even better policy. On this they wrote: "Of course, we do not suggest that Congress would have acted irrationally or unreasonably had it decided to [also] exempt those who object to particular wars" (401, U.S. 437). It is in the United States legislatively up to us. Indeed, we should pursue this not irrational or unreasonable policy at once. If a soldier is in fact morally responsible for her decision to participate in a war, we ought not to criminalize her acting on that responsibility. And even if a large part of this chapter is dead wrong, and the tradition is correct in claiming the military professional has no responsibility for his own participation, there is still a compelling argument (albeit a somewhat weaker one) in support of SCO. I suggest that a morally reluctant soldier ought to be treated no differently than, say, a physician who cannot in good conscience perform an abortion—we should not legally compel people to act contrary to their most deeply held convictions on such important matters of life and death, even if we disagree with them. We already, for this very same reason, allow general conscientious objection and do not use conscription. We should, as soon as we can, also make as much legal space as possible for selective conscientious objection.

[1] For more on the responsibility of soldiers for their own misconduct in the fighting, see a fine collection by French (1972) and a thorough law review article by Osiel (1998).

[2] As David Rodin (2002, 166–67) puts it, “[T]he Just War Theory is committed to the seemingly paradoxical position that [even when] the war taken as a whole is a crime … each of the individual acts which together constitute the war are entirely lawful. Such a war … is both just and unjust at the same time.”

[3] Compare also to Vitoria’s claim that if soldiers have only doubts, rather than certainty, about the justice of the war, they must as a default fight anyway (found in Rodin, 169).

[4] In fact, US military law (here somewhat out of step with traditional just war thinking) does not grant soldiers even *in the fighting* a special moral right to disobey legal orders. The US system assumes optimistically that a fairly well-ordered legal system coupled with the good character of those operating it will prevent the soldier from receiving an immoral order that is not illegal as well. But should such an unhappy circumstance in the fighting come to pass, the US soldier would need to break the law to do what is by his own lights the right thing.

[5] This is a point I owe to Rick Furtak of Colorado College.

Chapter 7

Does the Doctrine of Double Effect Justify Collateral Damage? A Case for More Restrictive Targeting Policies

> [T]reat humanity … always … as an end in itself and never simply as a means
>
> (Kant 1785, 36).

The grievous harm caused by military attacks often spreads beyond what is targeted: non-military property is damaged or destroyed and innocent people are hurt or killed. Such tragic harm is typically (and I think euphemistically) referred to as collateral damage. While it is widely accepted that *targeting* innocents and their property is immoral, there is also broad consensus that foreseen yet unintended collateral damage is in some circumstances morally permissible. A common way of defending the permissibility of collateral damage is to analyze the harm in terms of the Doctrine of Double Effect (DDE).

In this chapter, I will first briefly outline the DDE and rehearse a few examples of its application, the conclusions of which I take to be at least morally plausible. Then I will introduce the classic use of the DDE for defending military collateral damage, which in due course I will argue is often morally problematic. My criticism of the defense grows out of my own understanding of what, at a deeper level, must *justify* parts of the DDE in the first place. To anticipate, I believe that the DDE, especially its third criterion (that is, the restriction that the bad effect may not be used as a means to produce the good effect), relies for its force on a certain Kantian conception of the person. Importantly, accepting this same conception of the person will then force the would-be user of the DDE also to accept radical revision or rejection of the doctrine and how it may be applied, particularly when trying to justify military collateral damage.

The Doctrine

The DDE will be familiar to most students of moral philosophy. It is constituted by four criteria for evaluating the moral permissibility of certain acts, specifically those acts that issue in both good and bad effects. A survey of the literature reveals many different ways of expressing the doctrine,[1] but the composite version I present here captures the common content and will serve my purposes well enough:

1. The act itself, considered independently from the bad effect(s) at issue, must be morally good or morally neutral
2. The bad effect(s) will be foreseen, but must not be intended
3. The bad effect(s) must not be the means to the intended good effect(s), but rather a concomitant side- or after-effect
4. There must be a favorable proportionality between the bad and good effects

There are a number of widely used test cases that provide a common coin for DDE enthusiasts. They show the distinctions that the doctrine is supposed to make and appeal to purportedly attractive moral intuitions. The cases come in pairs, which illustrate the difference between the kinds of actions that are permissible and impermissible under the DDE. Here I will present three representative test cases.

In one pair of cases, patients are suffering terrible pain at the end of life. In the first instance, a physician gives the patient just enough morphine to make her comfortable, but the dosage also happens to be high enough to result in her death. This way of proceeding is, under the DDE, permissible. The act itself, pain relief, is morally good or at least morally neutral; the bad effect of the patient’s premature death is foreseen, but not intended (much more needs to be, and has been, said about this slippery distinction—let it suffice for now to press into service an “action-tracking in a counter-factual context” sense of intention: if the pain was relieved, but the patient unexpectedly *did not* die, the physician *would not* continue to increase the dosage to bring about death—see Davis, 116–17); the bad effect of her death is not a means to the good effect; and presumably, there is some kind of favorable proportionality between the pain relief and the shortened life, at least in the patient’s judgment. In the second instance, a physician gives the patient enough morphine to kill her, so that she thereby might be put out of her misery. This way of proceeding is, under the DDE, not permissible. It is at least arguable that killing one's patient, even in these circumstances, is not a morally good or neutral thing for a physician to do; but whatever we decide about the first criterion in this case, we fail plainly to meet the second (since the death is both foreseen *and* intended—the physician would, if the planned amount of morphine did not do the trick, continue to increase the dosage until she died) and the third (the physician kills the patient *in order to* relieve her pain); and in light of the previous failures, the fourth criterion is moot.

In another pair of cases, two women are pregnant, both of whom are committed to the moral status of the fetuses they carry and very much want to bring them to term. In the first instance the woman needs a life-saving heart operation that will result in the death of the fetus.[2] Again, this way of proceeding is, under the DDE, permissible. The act of repairing a bad heart is morally good or morally neutral; the death of the fetus is foreseen but not intended—indeed, the parents in this first instance hope very much, in spite of what is foreseen, that the fetus might miraculously survive; the death of the fetus is not used as a means to repair the heart; and presumably, there is in the family's judgment some kind of slim favorable proportionality between the life of the mother and the death of the fetus. In the second instance, the fetus is aborted to relieve strain on the woman's heart, thereby saving her life. This way of proceeding is, under the DDE, not permissible. Aborting the fetus, given the moral commitments of the woman, will be judged immoral in itself; and once again, whatever we think about the first criterion here, we plainly fail to meet the second (the death of the fetus is foreseen *and* intended) and the third (the death of the fetus is indeed the *means* to saving the woman's life); and in light of the previous failures, the fourth criterion is again moot.

Last (and precisely on point for the issue of collateral damage), there are two pilots dropping bombs in wartime. In the first instance the pilot aims at and drops his bombs on a vital military target and he regretfully expects that a few innocent civilians will be hurt or killed as a result of his raid. Once more, this way of proceeding is, under the DDE, permissible. The act of attacking a military target in time of war is plausibly judged to be morally good, or at least morally neutral; the harm to the innocent civilians is foreseen but not intended; the harm to the civilians is not being employed as a means to destroy the target; and we shall stipulate that in this example of collateral damage more lives will be saved by destroying the target than are foreseen to be killed. In the second instance, the pilot aims at and drops his bombs directly on innocent civilians, with the intention to terrorize the population and bring the war to an earlier end. This way of proceeding is, under the DDE, not permissible. The act of killing innocents is not morally good or neutral; the deaths of the innocents are foreseen *and* intended; the deaths of the innocents are being used as a *means* to bringing the war to an end; and the proportionality, in light of the previous failures, is once again irrelevant, but it is worth noting that the DDE would prohibit the terror bombing *even if* there was favorable proportionality.

A Kantian Justification?

The examples so far provided might create the mistaken impression that understanding and using the DDE is straightforward and unproblematic. But literature critical of the doctrine is not hard to find—the worries over precisely what the various elements of the DDE mean and just how they should work in practice are legion.[3] The collective force of all these worries is formidable and ought to leave us with a healthy skepticism about the viability of the doctrine. But in what follows I will, to the extent possible for my discussion, put most of these concerns of meaning and usage aside. Instead, I will explore a hypothesis about what *justifies* the DDE and see what might follow from taking seriously that hypothesis about its justification.

The first and second criteria of the DDE prohibit us from directly doing or intending what would otherwise be wrong even if it produces a good result; the third criterion insists that the bad effect(s) must not be the means to the intended good effect. Together, these first three criteria serve as a limit on the application of the fourth (the one that seeks only a favorable proportionality between good and bad effects). But *why* should we be so limited? *Justifying* these restrictions seems vital to accepting the DDE. In Romans 3:8, the Apostle Paul spoke against doing evil that good may come. And this Biblical injunction alone might explain how the criteria came to be part of the DDE, gestated, born and developed as it was in Catholic theology (Bennett, 200). But what is the reasoning behind the Pauline injunction? Faced with this question, Nagel offered that the direct intending of evil, which must be done if we are to make it our means, is and should be repulsive to us: “from the point of view of the agent, this produces the acute sense of doing something awful” (Nagel 133; see also Anscombe 1962, 292–94). Still, if one is in a position to make the world a better place overall by directly undertaking a lesser evil, then some might see such revulsion as amounting to nothing more than a kind of moral squeamishness.

But of course morality is not just about producing the best states of affairs or the best consequences.[4] I hope I may stipulate the truth of this assertion and introduce it as a widely shared premise. If not, let it be enough for now to point out that anyone committed to using the DDE is *already* committed to this idea in some shape or form—otherwise, we would not use the DDE and would instead use only its fourth criterion. The issue in this problem space is not whether we should be constrained in this way, but explaining *why*.

So let us proceed under the assumption that the DDE certainly has this much right: from the moral point of view the production of overall good consequences is always properly constrained by some more fundamental or trumping duties. What remains is identifying what sort of background moral theory could make sense out of these principle-level restrictions. This leads to my particular hypothesis about the point and justification of the DDE: I want to suggest that it relies for its force on a conception of persons that gives us special status beyond being mere receptacles of good and bad consequences, a status that prohibits our being used as non-consenting, mere means to the projects of others. And of course, this conception is a basically Kantian one.[5]

This hypothesis is most strongly suggested by the third criterion of the DDE. Obviously, a Kantian underpinning for the third criterion does not follow as a strictly conceptual matter. Not using bad effects is not quite the same as not using persons and I am not supposing we could logically *derive* a prohibition of the latter from a prohibition of the former. Still, the ideas seem to me closely related, and I think invoking the Kantian idea holds out great promise for trying to make overall sense of the DDE—it has what we might call “Kantian echoes” (Quinn, 135). Indeed, I am not sure there is another way to give the third criterion a justification, but I will explore that possibility below. Presently, we should notice that *if* we understand the third criterion as a Kantian-style prohibition against using people as a mere means this would also require that we at the same time *treat people as ends in themselves*. As Kant saw in formulating his Categorical Imperative, these two ideas are tightly connected, conceptual mirror-images: treating persons as ends in themselves would require that we not use them without proper consent; and we should refrain from using persons as mere means precisely because they have status as ends in themselves.

As an aside, we might pause to wonder how a doctrine that began developing so long before the life of Kant might include, as part of its justification, Kantian notions. Clearly early versions of the DDE evolved well before Kant did his work, but Kantian-style ideas about the basis of our moral duties have harbingers in writings at least as early as the New Testament. For example, while not logically equivalent, the commands "As ye would that men should do to you, do ye also to them likewise" (Luke 6:31) and "Love your neighbor as yourself" (Mark 12:31) are interestingly similar to the first two formulations of Kant's Categorical Imperative. Indeed, given the similarity, is it any wonder that Nietzsche derided Kant as "an under-handed Christian" (484)? So it does not seem at all implausible that early versions of the DDE, developed in fits and starts from Aquinas forward, could appeal to conceptions of the person that were later clarified and moved to the fore by Kant. Besides, modern and more developed versions of the doctrine (ones that resemble most closely the version we are here considering) first appear only in the 1800s (Bennett, 200), late enough for direct Kantian influences to have informed its shape.[6] Last, there seems to me no bar in principle to theoretical "back-filling," that is, providing a rationale where previously there was none, or replacing an inchoate or problematic rationale with a better one.

In any event, if we want to employ the Kantian understanding, we must take full account of the status of persons when testing cases with the DDE. Beyond a simple and mechanical application of the doctrine's plain language (no bad effects as means to our ends), the Kantian twist should also lead us to recognize that bad effects *might* be used as a means if the persons affected consent in the right way (since in those cases, we would not use persons as a *mere* means).[7] Moreover, no bad effects may be inflicted on persons who do not, or could not consent, *even if* this is merely foreseen, but not strictly intended, and *even if* there is favorable proportionality (since in those cases, we would fail to treat people as ends in themselves).

Even without a perfect idea about what it is to use persons as a mere means or to fail to treat them as ends in themselves, we can see in general how pursuing this hypothesis would help to make sense of some cases that would otherwise be quite puzzling for the DDE. Consider first firefighters struggling with a dangerous wild fire. Presumably the bad effect we hope to avoid is the destruction of forest. But if that is true, then the DDE would prohibit using controlled burns to create fire breaks, since destruction of some forest would be used as a means to prevent the destruction of more forest. This odd prohibition can be avoided if we have a Kantian understanding of the DDE, particularly the third criterion. It is permissible to "use" portions of forests in this way, for they are not persons. The DDE does not apply here.

Consider some other problematic test cases for the DDE: causing pain/nausea to a patient as a means to cure a smoking addiction (Martin, 60) or the probing by a dentist (does it hurt here?) to locate problems with the teeth or gums (McIntyre 2006). Pain is presumably a bad effect. Therefore, a straightforward application of the DDE would make the actions in these cases impermissible, because the bad effects are being used as a means to the good of the treatment. Martin noticed that this "is a peculiar moral result, since, I should think, most of us have the intuitions that the infliction of pain is justified [as a means in medical cures] (since we assume that it is necessary to the cure, the cure is worth it, *the patient wants the cure*, and so on [my emphasis])" (Martin, 60). But the actions in these cases will not result in violating a Kantian-style third criterion, since in inflicting the pain we are not using the patient as a *mere* means. We have his consent. A similar pattern can be found in cases of self-sacrifice to save others: falling on a hand grenade in a crowded foxhole is *heroic,* not impermissible, even though the hero uses his own death as a means to the good end. But a DDE understood in Kantian terms would not condemn it (on any of its criteria), since the hero acts voluntarily.

There is a story in my own family about Sicilian immigrants, early in the 1900s, building and operating a pasta factory. The factory employed many people and provided many more with pasta. However, being in a rural area, the factory owners required an extremely loud generator for electricity, and the noise was intolerable for a few of their neighbors. The DDE seems to condone this disregard for a small number of neighbors, since (1) creating jobs and pasta is good, (2) the disturbance was foreseen but not intended, (3) the disturbance was not a means to the good effects, and (4) the good was favorably proportional to the bad. A lawsuit was filed, and fortunately for the neighbors, the courts did not use crude DDE reasoning. In ruling for the neighbors, perhaps the judge relied on a Kantian conception of the person—a mechanical application of the DDE without a Kantian "softening" would fail to treat the neighbors as ends in themselves, who were entitled to a certain kind of respect and consideration that trumped the other concerns. Although the neighbors and the bad effects they suffered were not used as a means, disturbing them was nonetheless impermissible.

Other Suggestions Concerning a Kantian Justification

Several other writers have noticed the possibility of infusing the DDE with a Kantian upshot. Some of them attempted to make use of the Kantian justification, but *without* making significant changes to how the doctrine should be applied. Others found stark contrasts between what a Kantian interpretation would require and how the DDE is supposed to work in the classic test cases—for these authors, the contrasts served as a strong reason to reject the Kantian hypothesis. In this section, I will briefly review that literature.

One influential attempt to incorporate a Kantian justification was made by Quinn. He focused on the second criterion (bad effects foreseen, but not intended) and distinguishing between what he called direct and indirect agency, but the suggestions he made have import for the whole of the doctrine.

> DDE might therefore seem to rest on special duties of respect for persons, duties over and above any duty not to harm or to prevent harm. … The agent of direct harm … has something in mind for his victims—he proposes to involve them in some circumstance that will be useful to him precisely because it involves them. He sees them as material to be strategically shaped or framed by his agency. … He must treat them as if they were then and there *for* his purposes. … So the DDE rests on the strong moral presumption that those who can be usefully involved in the promotion of a goal only at the cost of something protected by their independent moral rights (such as their life, their bodily

> integrity, or their freedom) ought, prima facie, to serve the goal only voluntarily. … [And so] the doctrine reflects a Kantian ideal of human community and interaction. Each person is to be treated, so far as possible, as existing for purposes that he can share (348–50).

Interestingly, in the classic terminal sedation case, Quinn was willing to modify the traditional use of the DDE to accommodate what he took to be the Kantian line. If we kill the patient, *with his consent*, to relieve his pain

> we cannot see ourselves as infringing … [on] any of his moral rights. For this reason I see these cases as really quite different from the others, in which there is a conflict between the moral claims of different people. Indeed, I think that the doctrine is misapplied in nonconflict cases. I see, for example, no difference between amputating someone's leg to save him and proceeding with some life-saving treatment that, as a side effect, results in the loss of the limb. And by parity of reasoning it seems to me that if stopping pain is urgent enough from the patient's perspective to make death acceptable as a side effect, it ought to make death acceptable as a means (343, note 17).

No doubt, Quinn supposed (*contra* Kant) that in these kinds of cases there is no sense in which we can *use* ourselves.

But more than this, Quinn thought that so long as the persons involved are not *directly* used, but only indirectly harmed, the harm without consent is not prohibited. "A strategic bomber who ought to have refrained from destroying a rather unimportant target because of likely civilian casualties has failed to treat his victims with the consideration that they and their interests deserve" (348). This failure *might* turn out to be immoral on grounds of proportionality; but for Quinn this sort of disregard, aside from the proportionality concern, apparently does not rise to the level of "a shocking failure of respect for the persons who are harmed," one that should have required us to seek their consent. He admitted that in this way, his view is "not Kantian." When we inflict collateral damage we do not treat "victims as ends in themselves" and he realized "Kant might disagree [with the permissibility of this disregard], focused as he as on the alleged status of people as ends in themselves" (350, note 25).

Quinn thought that the DDE "thus gives each person *some* veto power over a certain kind of attempt to make the world a better place at his expense [my emphasis]" (351). He took the Kantian line, but only so far: hook, line, but not sinker. Yet why should that veto power not extend to serious, not-consented-to harm, even when it is brought about indirectly?

The idea that we ought to refrain from using people as a means is not obviously separable from the idea that people ought to be treated as ends in themselves, and Quinn gave us no convincing reason as to why we should separate them. And harming people without consent certainly seems to count as a failure to treat people as ends.

Bennett has also remarked on the possibility that a Kantian conception of the person justifies at least parts of the DDE, but did not agree with Quinn's way of working it out:

> [If] there is a morally binding 'end, not means' principle, it presumably forbids us to treat a person *just* as means, affecting her interests without care for what they are. That is a good principle, but it applies equally where the effect on the person's interests is one's means and where it is a by-product of them, and thus yields no moral difference between those two. … If there is one, it must not only clear the tactical bomber of using the civilians as a means, but must imply that he is treating them as ends. Tell that to the civilians! What a tactical bomber does to civilians, indeed, is in a way worse than treating them as means. He is treating them as nothing; they play no part in his plan; he is not *even* treating them as means (218).

And so Bennett chastised Quinn for stopping where he did in imposing the Kantian restrictions: "it is not clear that there is more to the ideal than that each person is, so far as possible, to be treated in ways he can agree to; but that again applies all across our 'harmful agency' domain, and is not confined to the kind Quinn calls 'direct'" (221). Bennett concluded that this Kantian justification (among several other candidates he investigated) of the third criterion *fails*, since it does not capture the distinctions the DDE has traditionally purported to make in practice. Given the failure, how Bennett wanted us to understand the DDE is not clear—he did not say.

Marquis made a similar critique of Quinn's attempt to use a Kantian basis for explaining the DDE.

> [If harming an intentional object is wrong because we use a person as a mere means,] then that wrongness is understood as failing to treat the object of harm as an end in itself. This notion of wrongness is both generally accepted and clearly Kantian. However, one fails to treat *both* an intentional object of harm and an object who is willfully, but unintentionally, harmed as an end in itself if one harms them without their consent (539).

So again, uncovering the Kantian justification requires that we prohibit more than the DDE traditionally marks off. Marquis (like Bennett) then noted that because of this, the Kantian idea cannot be the rationale for the doctrine. “Quinn’s attempted Kantian justification of the distinction [between intended and merely foreseen] does not do the job; indeed, various ways of applying that Kantian rationale tend to support the similarity of the intended and the merely foreseen” (541). The failure of this Kantian version of DDE (along with three other versions of the doctrine that he ably and with devastating effect criticized) left Marquis less than sanguine about the prospects for making sense of the DDE at all. He was not optimistic that other, more defensible versions can be formulated; so it would appear an outright rejection of the DDE was his preference, though he did not explicitly make so strong a claim (541–42).

Fisher, Ravizza and Copp were also skeptical of Quinn’s dodge:

> Kantian considerations—appeals to voluntariness, consent, respect, nonexploitation—seem to apply to all the cases [those containing both intended and merely foreseen bad effects] symmetrically and thus cannot be used to discriminate [between them]. … [C]ases of harmful indirect agency that do involve exploitation and lack of respect should be viewed as morally on a par with cases of harmful direct agency. … [T]here are Kantian objections of precisely the same kinds to instances of both direct and indirect agency. … The Kantian rationale tracks features of agents’ motivations—such as whether they treat others with respect, or whether they use or exploit others, or whether they treat others as ends in themselves, and not merely as means—that are simply not reflected in the DDE. … Kantian considerations clearly cannot provide the rationale for the DDE (Fisher et al. 723–25).

So these authors too gave good reasons to reject Kantian ideals as the rationale for the doctrine, *at least as it is traditionally understood*. Taken together, all of the foregoing arguments certainly cast doubt on whether we can follow the Kantian hypothesis (about the second *or* third criterion) and at the same time keep a DDE that still retains its original contours.

Thomas Cavanaugh also endorsed the idea of a Kantian underpinning, but recognized all these problems presented in the literature. “Bennett [along with the others I have cited] reads the ends-not-means principle conjunctively as requiring that one *both* not treat others as just a means *and* that one treat them as ends by benefiting them.” And “while tactical bombing does not use the civilians as means, it not only fails to benefit them, it harms them” (148). So the critique is, once again, that if we hope to make out a distinction between tactical and terror bombing on *these* grounds, so much the worse for tactical bombing and so much the worse for the DDE.

But Cavanaugh tried mightily to rescue unmodified second and third criteria, ones that make the traditional distinctions while still retaining the promising and attractive Kantian justification. Here is the centerpiece of his attempt:

> I propose that the end-not-means principle be read disjunctively as laying it down that one is *either* (ideally) to benefit others (while, of course, not treating them as mere means) *or* (as a default from the ideal and as a bare minimum for ethically permissible conduct) one must not treat others as mere means. That an act lives up to the ideal recommends it; that it meets the default does not rule it out (148–49).

And so, even though tactical bombing that takes no account of the civilians killed other than as numbers in a proportionality calculation "entirely falls short of the ideal of benefiting the noncombatants," it nonetheless "does not violate the default (the ethically acceptable minimum requirement). For it does not use the civilians" (152). So for Cavanaugh there are better and worse choices on the right side of acceptable behavior, and bringing about the death of civilians who have not consented is apparently, on his view of treating persons as ends in themselves, still minimally acceptable. He thinks Kant's Categorical Imperative prohibits two *different* things and doing one is worse than doing the other. This disjunctive understanding gave Cavanaugh the basis to think that the DDE can have a Kantian point and still make the distinctions its proponents normally claim for it.

It strikes me that this move makes two mistakes. First, I think Cavanaugh's interpretation of this basic moral principle is not only an *unusual* way to cash out what is required by the Categorical Imperative, but is simply in error. The more conventional interpretation is a much better way of rendering the plain language of Kant's text: we should understand the Categorical Imperative conjunctively as simultaneously prohibiting both use *and* disregard for ends-in-themselves, since these are two aspects of the same concern. The issue of textual interpretation aside, it strikes me that Cavanaugh's conceptual separation of the one idea into two seems otherwise unmotivated and *ad hoc*, having only his rescue of the DDE to recommend it. Of course, the traditional understanding of the Categorical Imperative still allows us to make what is often called the perfect/imperfect duty distinction. This distinction takes into account what it is possible for us to do in practice. To elaborate, it is obviously possible always to abstain from directly harming or using someone—hence the strict and “perfect” duty to refrain. It is not possible to contribute to everyone’s ends all the time—hence there is some “free play” afforded in executing the latter duty, which will require only that “we sometimes, to some extent … promote the happiness of others” (Hill, 151). But on this view it is *also* possible to abstain from *indirectly* harming someone, so a duty rooted in the Categorical Imperative against indirect harm also will be strict, that is, “perfect.” It is easy to see why Cavanaugh cannot use the conventional interpretation in his own project.

Here is the second mistake: *even if* we accept Cavanaugh’s unusual disjunctive reading, this will not do the work he hoped it would. He contrasted the impermissible *use* of others with the Kantian requirement that we sometimes *benefit* others. That seems right and as we just saw, Kant himself and others inspired by him thought we have latitude in fulfilling some of our imperfect duties to help others (1797, 194). So if that was the end of the story, it would not require too large a step to conclude that it would be less than ideal, yet still acceptable, to neglect another’s ends on some particular occasion. But surely, “indirectly” harming others is distinct in important ways from failing to benefit them. And just as surely, bringing about “indirect” harm is an even more serious failure to treat people as ends in themselves than neglecting to provide charity.[8] Against Cavanaugh, we should be willing to draw the line of permissible failures to treat persons as ends in themselves only at the point of not always benefiting others, but *not* so as to include their foreseeable harming. Cavanaugh’s attempt is not convincing: his arguments do not demonstrate a consistency between the Kantian insight and an unrevised, traditional DDE.

Is it Possible to Revise the DDE to Accommodate the Kantian Hypothesis?

Where does all this leave us? Our options are limited. We must either (1) try to modify the DDE and its application to accommodate the Kantian understanding, (2) continue using it with *no* deeper-level theoretical justification, (3) develop a workable, alternative way to justify the doctrine, or (4) reject the doctrine altogether. Let us first explore option (1), as if the

Kantian understanding is the right one, and see how the doctrine would have to be reshaped in order to accommodate it.

Reshape the Doctrine?

First criterion: anyone using the DDE must have a way of fleshing out the requirement that an act be morally good or morally neutral. For a Kantian, if the first criterion is met, then the act in question is permissible using principles that pass muster with the Categorical Imperative (it does not use persons as a mere means and treats them as ends in themselves). If not, then the action is not good or permissible. So in using a Kantian-style DDE, a proper understanding of what is being asked for in the first criterion results in simply replacing the first criterion with the restrictions of the Categorical Imperative. It adds nothing extra to what is already present in a Kantian understanding of permissible action. What the Kantian should make of the bad consequences, which give rise to the motivation for a DDE analysis in the first place, we will see below (criterion four).

Second criterion: the foreseen-but-not-intended criterion is not by Kantian lights very useful. If we are in compliance with the Categorical Imperative, specifically in those cases where the persons harmed are not used and properly consent, then the harm is permitted even when it is both foreseen *and* intended. If we are not in compliance with the Categorical Imperative, then even those harms that are *merely* foreseen are still prohibited. The distinction made by the second criterion does no work in determining what is permissible and so should be replaced with the restrictions of the Categorical Imperative.

Third criterion: because not using persons as mere means at once requires that we also treat them as ends in themselves, the doctrine is incomplete. We again must simply substitute the old third criterion with the restrictions imposed by the Categorical Imperative.

Fourth criterion: though we have not up to now discussed it, the proportionality criterion is also on the ropes. Indeed, Kantian thinking about persons is famous for placing moral restrictions on how one may be treated regardless of otherwise good or bad consequences. Of course, consequences might be important if they in part *instantiate* a failure to treat people with the respect demanded by the Categorical Imperative. But by themselves, without a connection to the ends of persons, they carry no weight. If the action we are proposing is not in compliance with the Categorical Imperative, the proportionality is irrelevant (except, but only perhaps, in the most fantastic imaginable cases of disproportion). If we are in compliance with the Categorical Imperative, then we can morally accept an unfavorable proportion of good and bad effects, since all concerned (by the fact of compliance) are assumed to have consented in some way. Think, for example, of a group of many rescue workers deciding to take great risk or even certain harm on to themselves to save just one child—this is not immoral.

Perhaps a DDE conservative would protest that in this exercise, the implications of embracing a Kantian justification should be considered *only* for the third criterion. But this will not do. We cannot, not in a coherent doctrine anyway, appeal to a certain conception of the person in one area of the doctrine, and set it aside or contravene it in another. So surprisingly, *if* the Kantian hypothesis about the deeper point of the doctrine is correct, the DDE does quite a shoddy job of making that point in practice, leaving us Kantian commitments alone to guide us through the complexities of our moral decision-making. This first option for proceeding leads us straight to option (4), that is, reject and replace the doctrine altogether.

Doing Without a Justification?

Next, we might try option (2), that is, continue to use the DDE with *no* deeper-level theoretical justification. But proceeding without *any* justification is highly undesirable and should be our last choice—the idea that I could affirm the appropriateness of the DDE and insist I have no good reason to do so is absurd. Such an attitude *might* be cogently entertained at the level of first principles (though I doubt it), but it is out of the question for mid-level principles and doctrines like the DDE. Also, as I suggested when considering the history of the doctrine, Pauline and other Christian proclamations might explain how as a matter of historical fact the third criterion appeared, but as an ersatz justification, “the Bible tells me so” does not provide us the *reason* the Bible says what it does. So by my lights (and I would assume, the lights of many religious thinkers, including St Thomas), being satisfied with only a bit of Scripture, without a more complete story of what is behind the DDE, would be unhappily equivalent to no justification.

Some might agree that *no* justification is unacceptable, but still think that what we can do without is a *deeper* explanation of the DDE. Maybe the DDE works not because it can be explained by more general moral principles, but rather because it does a dandy job of systematizing our preexisting moral intuitions. After all, many well-known surveys of peoples' reactions to the famous trolley problems show that most of us embrace something like the doctrine in our ordinary moral thinking. But this will not do. The DDE cannot simply be a codification of our surface-level intuitions, because our intuitions are *not consistent* across the range of cases. The three odd cases cited in this chapter (forest fires, painful medical care, noisy pasta factories) only scratch the surface of the counterintuitive cases that can be produced when thinking about the DDE. These odd results are exactly the kinds of things that cry out for moral-theoretical refinement. The thinking about thinking that moral theory undertakes is meant to *improve* our pre-theoretical tendencies (like thinking about thinking does in many other contexts in which we tend naturally to reason badly).

Are There Promising Alternatives to a Kantian Justification?

Of course, like several of the authors I considered above, we might simply reject the Kantian line. But then we would be obliged to undertake option (3): attempt to develop a workable, alternative way to justify the doctrine. If we leave aside the Kantian approach, there are only so many remaining, plausible moral theories to which a would-be justifier of the DDE might help himself. What follows obviously does not constitute a thorough examination of the alternatives, but I do think these brief considerations give us sufficient reason to be quite skeptical about the prospects for a non-Kantian justification.

Utilitarianism is out (cf. Woodward 1997, 151). So-called act utilitarianism (which considers the rightness or wrongness of acts *one at a time* by doing proportionality calculations) would only endorse criterion four of the doctrine, but would reject the other three. Indeed, the DDE serves as a barrier to crude, act utilitarian thinking. Rule utilitarianism (which selects systems of rules by doing long-term, systemic evaluations of favorable proportionality) *might* work to explain the first three criteria, but plainly would not allow us to apply criterion four—it is, after all, *rule* utilitarianism. The rule approach is another nonstarter. Other variations on utilitarian thinking will stumble on one or the other of these two problems.

A contract approach (which sees morality as a system of rules designed for our mutual advantage, especially for our security) *might*, with some fancy footwork, provide an account of criteria one, three and four, but attempting the job is not worth the effort. This is because there is no way the contract approach to morality could accept general rules the application of which would permit others to engage in conduct that would result in my injury or death. The *essence* of this contract approach (think of the great contract thinker, Thomas Hobbes) insists on security—should it fail to provide *that*, we have a sufficient reason to reject the whole system altogether. Besides, in most cases where we would use the DDE in an attempt to address a problem of collateral damage, we will not be together with the victims inside an ongoing, cooperative scheme for mutual security. We will be at war. I offer that there would *be* no DDE in a world in which we contracted for the content of morality and its doctrines.

It seems all we have left to try is some variation of virtue ethics. I belong to the camp that is skeptical *any* version of virtue theory can stand alone as a complete account of morality, but some thinkers believe a proper account of the virtues can do the heavy lifting a moral theory must do.[9] Perhaps my imagination is not sufficiently lively to explore this alternative, but even if we grant the viability of virtue theory, it seems abjectly without resources for the task of justifying the DDE. Which virtue would issue in policies and choices that knowingly brought about the deaths or injury of innocents to further one's interests (or even the interests of the majority)? Would it be kindness? Generosity? Thoughtfulness? Selflessness? Alternatively, the virtue theorist may think of the DDE as essentially *restrictive*, since allowing the direct intending of something evil reveals or promotes a corruption of the character, a corruption that intends and thereby endorses evil. But in DDE cases, the intending of evil is not for its own sake, but rather to bring about some greater good. No action permitted by the DDE involves the agent in a perverse preference for more evil in the world. The *overarching* DDE intention serves as a corrective and keeps us off the road to perdition. Naturally, my lack of imagination is no proof that this approach is not workable, but I will not be expecting a rescue of the traditional DDE to come from this virtue-ethics corner.

Reject the Doctrine

So the first (Kantian) option dismantles the DDE, supplants it with principles consistent with the Categorical Imperative and leads us straight to the fourth option (reject the DDE). The second option (no justification) is no way at all and must be avoided. The third option (looking for an alternative justification) bears no obvious fruit and does not look promising—it seems that every available justification that prohibits use would also prohibit the knowing production of harm (and every available justification that permits the knowing production of harm would also permit use for a good outcome). Hence we are left with no reasonable option but to reject the DDE as a guide to our moral decision making. The DDE has always been correct to put brakes on unrestricted calculations of proportionality and may well have been an attempt (albeit it a confused one) to make operational a basically Kantian way of imposing that restriction. But if the DDE was an expression of a Kantian idea, it was an imperfect expression—we should replace it with some other doctrine, one that is at least consistent with *some* theoretical backdrop or other at a deeper level. For all sorts of reasons which I will not explore in this chapter, I am strongly attracted to principles that are shaped more directly and coherently by the Categorical Imperative. What follows explores where that kind of commitment might take us.

The Requirement for Some Kind of Consent

To replace the DDE with roughly Kantian thinking about indirect harms, then as we have seen we must articulate substitutes for the second criterion (since we may fail in our duties to not harm others without their consent, even when the bad effects are foreseen but not intended), the third criterion (since the prohibited use is not of the bad effects *per se*, but of persons without their consent) and the fourth criterion (since no one may properly be sacrificed to a proportionality calculation without some sort of consent being given). Now, understanding the requirement for *some sort of consent* presents very large difficulties; nevertheless, these are not difficulties that are avoidable for anyone—they are in fact present in much of our ordinary moral thinking, not just the development and application of a substitute for the DDE. In this section I will only summarize a few of those difficulties and how they might be addressed in practice. A full treatment of them is properly the topic of a separate and very lengthy investigation.

Right away, the consent of those on whose heads the bad effects will fall must not be thought of as simply their actual consent to the abuse (though actual consent might be a great start). There are precious few times, especially in the military targeting that motivates this inquiry, when such consent could be obtained. Besides, it seems plain that people sometimes actually consent to things they should not and refuse to actually consent to things they should (see also Boyle 1991, 485). Instead, the consent we are considering must be a hypothetical/idealized consent. More, this consent may also have to be determined by proxy, as we sometimes are forced to do in other contexts (for example, for small children, or when a person is incapacitated, or not available to consult). So for these purposes it must be the case that someone *would* consent, or would consent if fully informed, or would consent if fully informed and an ideally moral and rational being, or … some more elaborate variation on that same theme. Sometimes, when information is scarce, we reasonably believe someone would consent to an action if she or important groups to which she belongs were to materially benefit from it—this might serve as a useful heuristic, but is not foolproof. It also might be that consent in an individual case is not the only or most important thing to consider; maybe we should also explore what kinds of general rules or policies hypothetical rational deliberators would or could accept. Thomas Hill and others have done important and helpful work along these lines, that is, exploring how a Kantian might think about constructing a system of moral duties rooted in hypothetical consent.[10]

So, all things considered, it will be quite daunting (but we should hope not impossible) to work out just what comprises morally significant consent. But whatever this kind of consent turns out to be in all the relevant cases, it requires *something* more to enter our deliberation about actions and policies than (1) a simple refraining from direct use and (2) a proportionality calculation. We cannot, behind the shield of an unmodified DDE, say to the recipient of the harm: “It’s not your day.” Some concern for the victims as ends in themselves, *some* way of approaching what they could properly consent to, is needed. I will be satisfied if I have made a persuasive argument for only that much.

Collateral Damage without the DDE

What might this requirement for consent and the Kantian restrictions it imposes amount to in the context of military targeting? Well, naturally, directly targeting innocents would still be strictly prohibited, almost always out of the question, unless one were in a rare and strange case wherein the innocents permissibly wanted to be targeted to serve some strong moral interest of their own, one that was more important than their desire to avoid injury or death. But also prohibited would be any *collateral* damage that could not be consented to in some way by the victims.

Would this prohibit all collateral damage? Clearly it would not. Perhaps a bomber is helping to liberate the unintended victims from a terrible regime, and they would welcome the risks or even certainty of harms in hopes of freeing their people from the oppression. Walzer provides an interesting historical example along these lines: the French, while occupied by the Germans in World War II, presumably were willing to take the risks of harm during air attacks against the invaders, and some French were indeed killed in those raids (1977, 157–59). Also during World War II, American planners considered bombing the Nazi concentration camp at Auschwitz—the decision was eventually taken to refrain from the raid, but very plausibly the bombing could have been consented to by the doomed internees (Gilbert, 65–75). Perhaps the stakes of a proposed attack are so high that no decent person could refuse to give consent—in rare and desperate cases like these we might judge that ideally moral and rational agents would give up their own security or lives to prevent a catastrophe.

Perhaps consent of the right sort can be somehow collective in nature. For instance, if a collective to which we belong takes actions like attacking another collective, we may share in a distributed way some of the responsibility for the retaliatory danger we are in and may have in some sense consented to it.[11] Naturally, attackers would not normally give actual consent to your lethal self-defense, but idealized deliberators might consent to a system of duties that would permit directly or indirectly harming those partially responsible for your predicament. One way of understanding Kant's theory of punishment relies on these same kinds of ideas: in committing aggression or breaking law, one in some way consents to retaliation or punishment (Kant 1797, 143–44). Of course, this kind of collective responsibility or consent cannot be imputed to the *victims* of an attack, or for that matter, to those members of an attacking collective who could share *no* responsibility at all for the wrongdoing, like small children, the incapacitated, those who have actively resisted the wrongful attack, members of our own collective caught up in the defense, etc. But there could be something to the idea that those members of a collective who share some responsibility for an attack have autonomously made themselves liable for a defensive response, and may in some idealized way consented to being put in danger.

There are no guarantees, for a Kantian approach or any other, that real life will not present poignant conflicts. Circumstances may arise in which no matter how we decide to act, someone's ends will be sacrificed or someone will be used or abused in some way. Consider the fact that even in killing an unjust aggressor who imminently threatens your life, you at the same time cause grief to his family.[12] Conceivably, it would be impossible for that family to place your concerns over theirs (though they might if they were sufficiently impartial). In cases like these, we are stuck with the difficult work of moral casuistry. We must struggle to find, as Kant obscurely suggested, "the *stronger ground of obligation*" (1797, 50). What the person taking the Kantian approach cannot do, which the DDE seems to permit, is to *fail fully to consider* those indirectly harmed.

The proposals I make here do not exhaust the possibilities for how a victim of collateral damage might consent to harm and a great deal of detail would need to be supplied in order to make full sense of this basic idea. But in any event, the idea that people are ends in themselves and must consent in *some* way will nevertheless radically restrict the range of permissible collateral damage. In modern times, as the weapons of war have become more precise, it has become possible to inflict less collateral damage. Proponents of the DDE no doubt view this as moral progress, but as progress from the acceptable to the more acceptable. Through a Kantian lens, this is also progress, but in most cases best understood as moving from bad to somewhat less bad.

Conclusion

I started this investigation by explaining a common way of justifying military collateral damage: the DDE. I considered, along with several other authors, a plausible Kantian way of trying to *justify* the restrictions of the DDE. Indeed, we have good reasons to think this Kantian way of understanding and applying the DDE makes sense of several otherwise puzzling cases. But I also argued that attempting fully to incorporate this hypothesis into the doctrine results in a conceptual dismantling of the traditional DDE—the broadly Kantian understanding does all the necessary work by itself and with less chance for us to be misled or confused over the full range of cases. Unfortunately for those committed to the DDE, there is no obvious alternative way to proceed that leaves the DDE intact but still justified and coherent. Mapel comes in a somewhat different way to a similar point and concludes “there may be little reason to keep trying to revise the doctrine” (270).

So we should not use the DDE as a way to think about military targeting because we should not use the DDE as a reliable way to think about moral problems in *any* context. But embracing this Kantian understanding would be far more restrictive than the classic, DDE approach to considering collateral damage. Military planners would often need to give a trumping weight to the moral status of victims as ends in themselves, unless there were convincing reasons to think the victim would render hypothetical/idealized consent to being harmed (a consent that is not considered at all in the traditional uses of the DDE).

At the beginning of this chapter, I chose to leave aside the many *other* difficulties with the DDE that have been discussed in the literature. But in closing I should remark that a number of other writers, because of troublesome, counterintuitive cases and the many problems with the foreseen/intended distinction, have finally expressed their own misgivings about continuing to use the DDE. Donagan, after considering these problems (and other general ideas about rights), proclaimed that “double effect is superfluous” (163). Foot, for similar reasons, also seemed ready to “reject the doctrine of double effect” and find better ways to cope with these kinds of cases (1978, 30). Hull, along the same lines, was also confident that we “can dispense with the doctrine of double effect” and recommended “that we abandon [it]” (195, 206). Alison McIntyre claimed that “the various intuitions that have led people to accept DE should lead one in the end to favor doing away with it” (2001, 255). It was not my aim here to evaluate all these and other criticisms of the doctrine, but indeed any one or more of these other arguments for rejecting the DDE may well be conclusive in their own right. If so, then I hope we can charitably consider my added justification-based, Kantian critique as something like pounding a nail into the doctrine’s coffin (rather than beating a dead horse).

[1] For just a few examples see (Bennett 1995, 196–97; Boyle 1980, 527–38, 528, 532; Cavanaugh 2006, 22, 25, 26, 36; Davis 1984, 108; Marquis 1991, 516; Martin 1980, 57–58; and Walzer 1977, 153).

[2] I owe this particular variation of the famous DDE abortion cases to Malham Wakin.

[3] Here is an abridged list of the problems: (1) how to make sense of the idea that we can determine whether the "act itself" is good or neutral without reference to the good and evil consequences we are weighing (consult with any committed utilitarian to understand what might be strange about this—moreover, a deontological thinker might also take a minute to worry over marking off the "act itself" without reference to what it results in (Anscombe 1982, 22, *passim*; Donagan 1977, 160); (2) what it means to be foreseen but not intended (Cavanaugh, 74–117; Davis, 117) and why that has anything to do with the moral responsibility or permissibility of the act (Anscombe 1962, 292–94; Cavanaugh, 134–163); (3) how to make clear the distinction between our ends and the means we take to them, especially when the two are causally or conceptually "close together" (Davis 115; Bennett, 203–08; Fisher et al. 708, *passim*); (4) how we properly go about the business of calculating the proportionality of good and bad (for example, is it pleasures and pains? preferences? are rights allowed into the reckoning?); (5) how the availability of alternative courses of action might affect judgment under the DDE: What if I can accomplish the same goal with different, less harmful means, perhaps at some risk to myself? How does this weigh in our DDE decisions and should the DDE be amended to accommodate this kind of consideration? (Walzer 1977, 155–56; Cavanaugh 34–36; Lee 246); (6) whether passing muster under the DDE implies that the act in question is thereby permissible, or whether it might be wrong for some other reason (Anscombe 1982, 21, *passim*; Davis 122, note 8; Boyle 529–30); (7) whether or not the second and third criteria are redundant (Boyle 532; Marquis 520; Cavanaugh, 29); (8) whether changing the probability of the harms is relevant to the DDE (Bennett, 115); (9) whether *any* interpretation of the DDE avoids producing morally counterintuitive results in many test cases (Davis 119–20; Mapel 269–70); and (10) *many others*, including variations of the ones listed.

[4] To cite one obvious and influential source for this idea, it is a major theme of Kant's *Grounding for the Metaphysics of Morals*; for just two of many, many more recent claims along these same lines, see also (Foot 35–36 and Quinn 351).

[5] Here is Kant's famous statement of this fundamental moral principle: "Act in such a way that you treat humanity, whether in your own person or the person of another, always at the same time as an end and never simply as a means" (Kant 1785, 36).

[6] For much more on the history of the DDE, see (Cavanaugh 1–37).

[7] See also (McMahan 1994, 211 and Mapel 266–67).

[8] Cf. (Foot 1978, 29 and Boyle 1991, 484).

[9] Here is why I am of a mind that virtue theory in ethics cannot work as a "stand alone" center of a justifying scheme of morals: virtues and vices are dispositions, and it seems unavoidable that some independent principle of the good or right for human beings must be employed to sort them as virtues and vices. Every moral theory must contain an account of virtue, but virtue without a more complete theory has no grounding.

[10] For just two representative examples, see (Hill 2002, 61–96 and Milo 1995, 181–204).

[11] I owe this interesting suggestion to A. James Carey.

[12] Yet another interesting suggestion from A. James Carey.

Chapter 8

Just War Theory: Triumphant … and Doing More Harm than Good

> Nowhere does human nature appear less admirable than in the relationships which exist between peoples
>
> (Kant 1793, 91).

> [M]orally practical reason pronounces in us its irresistible veto: There is to be no war
>
> (Kant 1797, 160).

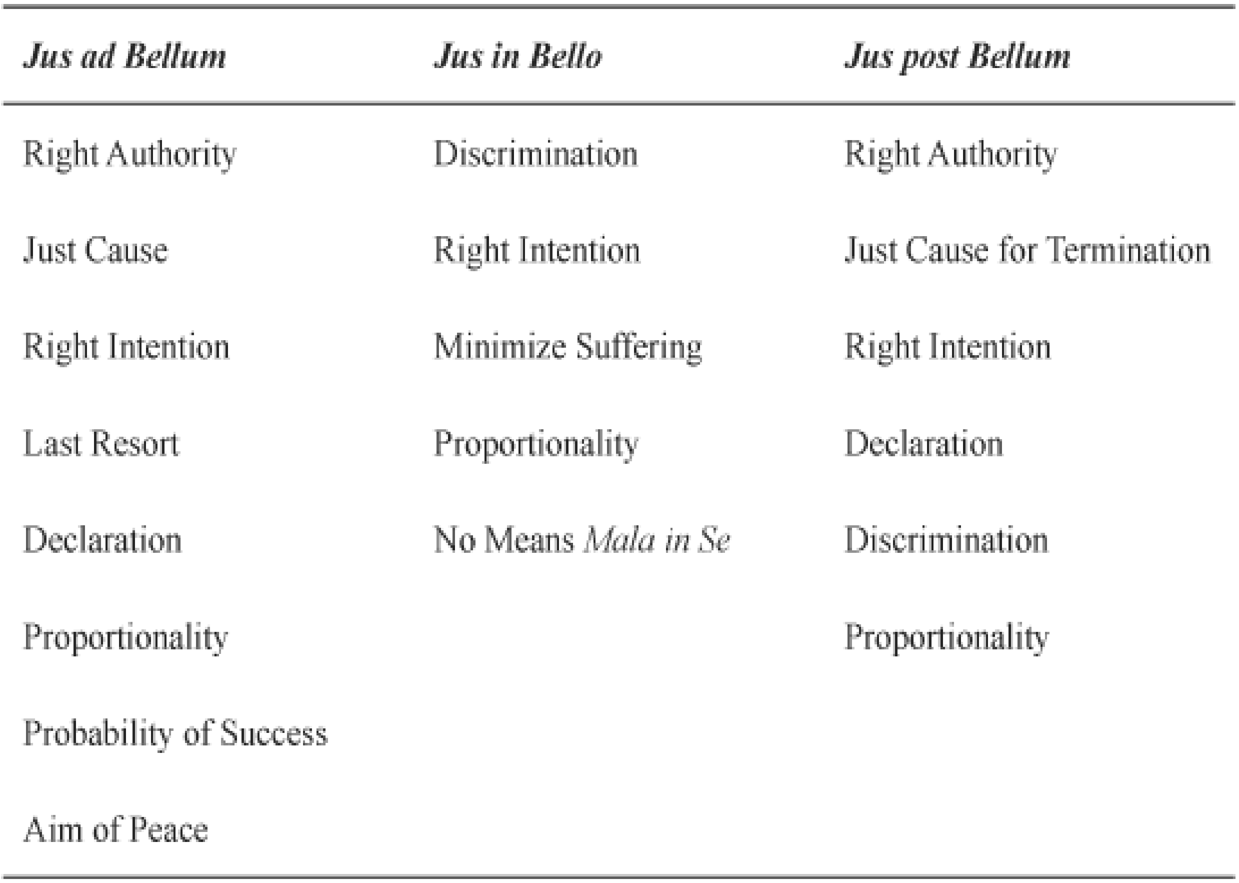
> [We must eventually] take the step that reason could have suggested … even without so many sad experiences—that of abandoning a lawless state of savagery and entering a federation of peoples in which every state, even the smallest, could expect to derive its security and rights not from its own power or its own legal judgment, but solely from this great federation, from a united power and the law-governed decisions of a united will
>
> (Kant 1784, 47).

Alasdair MacIntyre began his important book, *After Virtue*, with what he called "a disquieting suggestion" (1984, 1). I too would like to make such a suggestion. Mine will not be so sweeping as MacIntyre's: it concerns not the very idea of virtue (which was MacIntyre's target), but rather the more focused but almost as venerable collection of ideas we often call the just war theory. Michael Walzer has claimed that in the battle of ideas about military violence, at the dawn of the 21st century the just war theory has triumphed (2005, 3). Working with and teaching this so-called theory (which I much prefer to call a framework, so as to avoid conferring on it a theoretical coherence I think it simply fails to deliver) for more than 20 years has revealed to me many difficulties and ambiguities in its use. Indeed, the cumulative number and character of these difficulties and ambiguities finally have become for me "disquieting." In this chapter, I will (1) briefly review just war framework, (2) make some observations about the bits I am finding most troubling, (3) present a rough and informal argument about how it is used and what we should conclude as a result, and lastly (4) discuss how we ought to proceed in light of all this.

A Review of the Framework

There are many fine expositions of the just war framework (though not all of them agree exactly on what constitutes it). It is not my purpose here to provide yet another full exposition, so I will merely list the elements as I have found them—the table below provides an amalgamation of criteria that can be found in the literature and presents a fairly typical understanding of it.[1] Those wedded to this tradition think that these criteria, when applied to the context of war, somehow provide a guide for right conduct before, during and after war. Students of military ethics should find this baroque list familiar.

Table 8.1 The Just War Theory



Jus ad Bellum	*Jus in Bello*	*Jus post Bellum*
Right Authority	Discrimination	Right Authority
Just Cause	Right Intention	Just Cause for Termination
Right Intention	Minimize Suffering	Right Intention
Last Resort	Proportionality	Declaration
Declaration	No Means *Mala in Se*	Discrimination
Proportionality		Proportionality
Probability of Success		
Aim of Peace		

Some Observations

In this section I will make seven observations, which I think taken by themselves are relatively uncontroversial.

1. The first one has to do with the list of criteria. The earliest lists, from antiquity, are quite short. It has experienced an amazing evolution of sorts. Surveying the literature of today (again, summarized in Table 8.1), we see a much larger and more elaborate structure. While modern writers' understandings of what the list contains share a lot in common, there is no clear consensus on *everything* that belongs. More, the apparently neat distinctions between the three categories (*jus ad bellum, jus in bello, jus post bellum*) are not neat. There are duplications of criteria across categories. Many criteria appear twice, and the proportionality criterion is found in all three. We might wonder why there are not more duplications. For example, why is right authority not found in *jus in bello*? Or a concern for minimization of suffering not listed under *jus post bellum*? Indeed, Nicholas Fotion has suggested that in order to respond to the problems of dealing with violent non-state actors, we should develop *another* just war framework, concocted especially for those purposes (2006). Surveying the totality of the framework might create a reasonable suspicion that it has a somewhat *ad hoc* character, something like an old city, having experienced a lot of growth over a long period, without the benefit of rational urban planning or renewal.

2. There is no consensus on how each criterion by itself is to be understood. Take for example just cause. Some writers say that only self-defense (or some variation of it) may count as a just cause. But what counts as self-defense when we are thinking about a nation? Its borders? Its population? Shall we include a concern for cultural integrity, political systems, vital interests, any old interests, or perhaps sacred honor? However we finally make out what counts as self-defense, others might want to include under the rubric of just cause things such as punishment, righting international injustice, or carrying out the will of God. Take as another example last resort. There is an extremely fluid three-way relationship between how we understand the cause at stake, the available courses of action and the costs associated with refraining from war. Given this, how do we uncover, in any particular case, what counts as the last resort? Against a certain

kind of enemy in a certain kind of situation, the last resort may be the first and only resort. More ambiguity: is the location of right authority with the heads of nation-states or in the international community? Could a revolutionary leader count as one with right authority? Yet another terrible difficulty is found in the notorious problem of marking off who is innocent in war and who is not, so that we might apply the criterion of discrimination. The gist of my observation is that these kinds of ambiguity are present in *every one* of the criteria—I will leave it as a somewhat disturbing exercise for the reader to confirm this. Some might think of the ambiguity and the flexibility it allows in using the framework as strengths.[2] I do not, as will become clearer in what follows.

3. Different moral theorists have importantly different understandings of the just war framework and its use. At some point, we must ask whose just war framework we want to talk about or deploy. Is it one justified by the natural law version of the medieval writers and the Catholics, by the utilitarian approach (e.g., early Fotion), by a Rossian system of *prima facie* duties (Childress), or by an elaboration of Kantian theory (Orend)? There will be, it seems, a somewhat different just war framework for every wider justifying moral theory we care to consider.

4. Even if we agreed on what the criteria were and what they demanded (which we do not), there is no simple or obvious way to determine with confidence if any one of them has been "satisfied" in a real case. The reality we confront in these contexts is quite messy. The difficulty of determining with any precision whether or not we are at the last resort provides just one example. Trying to be sure our responses are proportional is another obvious place where we will encounter difficulty. Maybe this worry is something we will find in the application of any normative rules, but it seems to me worse in the case of the just war framework.

5. There is no consensus on the number of the criteria that must be met before we can be said to have a complete moral justification. In deciding when to go to war, must we meet all the criteria, merely most

of them, or just the most important ones (which is itself not a settled issue)?

6. It is not clear that the criteria as they stand exhaust all the moral worries one could have about war. There may be problems presented by modern warfare that are not easily addressable inside the traditional just war framework. Who, these days, is a combatant? How about the military's proper role in domestic affairs? Are there problems created by the differences between state and non-state actors? Combating terrorists applies all sorts of pressure on the just war framework. Information warfare is another recent development that is hard to fit into the criteria of the just war framework, and there may be many other problems. Moreover, there may be topics that exercised the traditional just war thinker that seem anachronistic to us (formal declaration might be a candidate).

7. It is plausible to think of the just war framework as a specific case of a general theory of moral exceptions, one that tells us when it is permissible to do something that would normally not be permissible (although we might while on this point gesture toward yet another interesting problem—why is there no part of just war framework that tells us when we *must* go to war?). If this were so, similar frameworks could be helpful in sorting out problems in lots of other contexts. But there is no list of recognized criteria quite like the just war framework in other areas of practical ethics. Why in medical ethics do we find no working "just surgery theory?" Or in business ethics no "just business transaction theory"? I suspect the issues I have already uncovered would make it unusable in most other contexts (and might in truth make it dysfunctional even when trying to think morally about war).

The Argument

Here, in light of the forgoing observations, is my central argument. If sound, it should leave us with a less than sanguine outlook on the prospects for the just war framework.

1. The causes of war are ubiquitous, multifaceted and (like the cause of pregnancy) astonishingly effective and hard to control. We need not settle precisely the complex question of what combination of brute biology, social reality and anarchic inter- and trans-national interaction gives rise to this persistent human scourge—indeed, that very puzzle is the topic of much lively debate in the social science literature.[3] It is enough for this argument to introduce the general claim that war is brought about by many powerful social and biological forces (whatever they turn out to be in their exact contours and combinations) and because of this will persist in more or less its present form (or worse) if nothing is done to counter those forces. War "breaks out," like a disease that spreads and then becomes a pandemic. Tolstoy notices how this collection of forces seems to take over the will of individual actors, and unable to fill in the details, calls it simply "it":

> 'There it is! … *It* again!' said Pierre to himself, and an involuntary shudder ran down his spine. In the corporal's changed face, in the sound of his voice, in the stirring and deafening noise of the drums, he recognized that mysterious, callous force which compelled people against their will to kill their fellow-men—that force the effect of which he had witnessed during the executions. … The captain was also in marching dress, and on his cold face appeared the same *it* which Pierre had recognized in the corporal (Tolstoy 1869, Vol. 3, Bk. XIII, Chap. XIII, 261–62).

2. International reality is and always has been what political scientists call anarchic, that is, lacking any central authority. As a result there has been no effective legal or practical framework for successfully checking violence between states and, increasingly, non-state or multistate actors. The just war theory is held to be triumphant (over the usual-suspect alternatives of realism or pacifism) in part for the supposed role that it plays in ameliorating the horrors of war in an anarchic world, in terms of both how often it will be fought and how it will be carried out.

3. Global actors in the modern world, as Westphalian sovereign states or non-state actors that answer to no higher authority, apply the just war framework to themselves and serve as judges in their own cases. It is the same here as it is in every anarchic state, where there is no law, or at least no law enforcement, from the Wild West to the open sea of years gone by.

4. Human beings, whether acting as individuals or in collectives, have an incredible yet common capacity for self-justification. The social science on this point is clear and goes well beyond simple *post hoc* rationalizations: the psychic mechanisms of self-justification profoundly affect self-understanding, ability to think logically, emotional reactions, perceptions, risk assessment, memory and many other psychological and social processes,[4] most notably *moral judgment*.

5. The just war framework is extraordinarily flexible in what it can seem to justify. In light of the observations I have made above, it becomes obvious that the framework and its language are particularly amenable to abuse. It will easily find use (or misuse) in rationalizing self-interested agendas, all sorts of good old-fashioned propaganda and perhaps most importantly in the subtle processes of self-justification (which are most often not consciously present to us while they do their work).

6. Taking all these things together, it should be shocking if the just war framework was most often used for its intended purpose as a genuine moral inhibitor of military violence; rather, it is far more likely to be misused as a way of re-describing to ourselves and others serious mischief already committed to or undertaken. If we were to take the restrictive underpinning of the just war framework *seriously*, and use its criteria fairly and objectively, then the number of wars we should call just would be radically restricted. Indeed, are there *any* actors in *any* of the wars in human history, soberly reflected upon and impartially considered from start to finish, who actually pass muster with the just war framework, to include what they aimed at, how they fought, and how their wars were concluded? I suggest that if we survey carefully the conflicts we know about in the history of humanity, there has not been even one *wholly* just war. Were we capable of using the framework properly, it would give us not just a potential tool for justification, but also a lengthy indictment sheet for our past misconduct. In any event, I think the sorry state of the globe's collective history is some evidence that I am right and that in fact the framework is doomed to failure in use—the forces that cause war

coupled with ubiquitous capacities of self-justification make the framework unworkable.

7. So while the just war framework, in the hands of different kinds of beings, Martians perhaps, might have the effect of reducing the number and ferocity of wars, in the hands of *human* beings it has actually provided instead a handy tool for making us feel better about our moral catastrophes. And in this way, it does not so much reduce the incidence of war but likely makes it *more* common and moreover seemingly morally acceptable (even noble) to its participants. Richard Posner thinks all moral theories and principles are prone to abuse, and that "moral theory has little to do with moral practice" (1999, 70). He observes that mostly it is easy for ordinary people "to rationalize their commonplace cruelties, prejudices, meanness, and cowardice" (53). In the real world outside academic moral discussions, the best a moralist might be able to do is provide "a vocabulary with which to refine and articulate your preexisting moral views" (32). But what I am pointing to is not just one more example of Posner's worry. Combine (1) a defectively plastic doctrine for controlling this kind of violence, (2) a human nature in a social reality that is bent strongly toward abusing the doctrine, and (3) the incredibly bad consequences (war) that issue from that abuse, and we have on our hands a serious problem—it is this deadly combination that makes the situation so much worse than garden variety misuses of other moral principles, doctrines or theories.

   Lemma: the various forms of realism and pacifism are even less workable or justifiable as moral approaches for coping with anarchic, international military violence. This may further explain the ready and widespread embrace of the just war framework.

8. I conclude that the just war framework, employed inside the present form of international affairs, does more harm than good. We should not accept the current "triumph" of the just war framework. Indeed, what really seems to have triumphed is a sort of two-pronged realism: the unembarrassed realist gets a language in which he can frame his propaganda, and more disturbingly, the actor with a settled disposition to be morally conscientious has an incredibly elastic framework with which to self-justify when he gives in to the forces that cause war. Bad guys do the wrong they have always embraced, and more, good guys

> do wrong as well, cognitively aided and abetted by the balm of the just war framework. So insofar as it has given already wicked people, or merely corruptible human beings, ways to rationalize their obscenity, it has done more harm than good. To mangle a bit of Shakespeare, I come to bury the just war framework, not to praise it.

How Should We Proceed?

So, to quote a bit of conversation with my colleague Martin Cook, “what is the alternative?” I see two. First, we might go on in the same way, foolishly hope for the best and most certainly get the worst (and as the technology of destruction improves and the fanaticism of the actors heats up, the worst will most certainly be very bad). Second, we might change the rules of the game. In this second suggestion I follow Kant. The argument in outline which I will so shamelessly appropriate is found in its complete form in his famous essay, “Perpetual Peace” (1795, 93–130). Kant’s proposal in response to these problems is completely clear and can be found in many more places throughout the corpus of his work than just “Perpetual Peace.”[5] Instead of clinging stubbornly to a world order that conceives of states as sovereign actors in all possible modes of interaction, especially in the use of military forces, and further yet serving as judges in their own case with no external checks, we should … we should what?

Kant suggests *limited international cooperation*: “Only in a universal *association of states* … can rights come to hold *conclusively* and a true *condition of peace* come about” (1785, 102). In our own day, Craig (2008) has discussed what he calls the resurgent idea of world government. From many corners there is a growing group of thinkers who in light of nuclear proliferation, terrorist threats, climate change, human rights atrocities and other problems of global span, believe that establishing a world government is the only way to manage these issues and may well be inevitable. But Kant dismisses the idea of a world state as too far to go, too quickly, from our present arrangements and moreover, plausibly dangerous or undesirable in its own right. While we might be tempted to think what he calls a “*cosmopolitan* constitution” would be preferable to constant war, such a world state might be “in turn even more dangerous to freedom, for it may lead to the most fearful despotism (as has indeed occurred more than once with states which have grown too large)" (1793, 90; see also 1795, 105). Rather, he gestures toward international agreements of global reach that *criminalize* military violence in all its forms and a global federation for the limited purpose of *enforcing* that body of law. "[D]istress must force men to form a state which is not a cosmopolitan commonwealth under a single rule, but a lawful *federation* under a commonly accepted *international right*" (1795, 104). Rather than simply constructing a torturous and impossible to implement set of moral rules for the conduct of war (as so many modern-day military ethicists who claim they are Kantian are wont to do), Kant himself was committed to the additional and more radical goal of *banning war altogether*.

Violence, even organized military violence, will no doubt be necessary to pursue enforcement of such a ban. But Kant thinks (and I agree) that this shift in our basic understanding would be seismic. First, against the backdrop of international criminalization, no one will be able easily to see the unilateral initiation of violence as legitimate—to start the fight, the aggressors would simply have to bite the bullet with themselves, their people, and their peers in the international community. Second, reaction to criminal military threats and aggression will be tempered by collective judgment, a sanity check on the extent and ferocity of the collective, law-enforcing response. And third, even large scale military operations against an aggressor will take on a different *character*, one that should temper tendencies toward mission creep and the losses of control that stoke atrocities in combat: understanding oneself as enforcing law in a larger community takes on a very different, more restrained feel than the exercise of a basic moral right to mortal combat in an anarchic, "Wild West" setting. Criminalizing war would not stop violence or injustice in international affairs, any more than criminalizing all sorts of activity at the domestic level puts a complete stop to what is criminalized. But *failure* to criminalize tends to *legitimate*. In the case of war, the present status quo gives us an elaborately worked-out set of conventions, a veritable *institution* of warfare, like we once had for slavery.

Would the implementation of such a Kantian pacific federation be difficult to realize? Undoubtedly. Would it be impossible? I think manifestly that it would not be. There is *already* a great deal of legally regulated interaction on the world stage, interaction on a large number of issues that serve justice and the collective interests of all. Moreover, there is *already* (an admittedly feckless) institution that ostensively serves *this very purpose*: the UN Security Council (see the Appendix for the pertinent section of the UN Charter). Of course, the UN would require drastic reform or replacement by a successor organization before it could be even minimally effective in the role of promulgating and enforcing laws against war; but the already endorsed global rhetoric and the *aspirations* the present institution embodies give us a blueprint we might grasp for constructing some future reality. To my mind, the most serious impediment to an effective Security Council or some possible successor organization is the lack of support it would now receive from strong and rising states; we would need at the very least more than just lip service from hegemonic powers. Besides the resistance from the first world, we might expect some from the third world as well. For as Hobbes astutely observes: “[N]eedy men, and hearty, not contented with their present condition … are inclined to continue the causes of war and to stir up trouble and sedition: for there is no … such hope to mend an ill game as by causing a new shuffle” (81). But for now all states, weak or strong, failing to see the long-term strategic advantage of the Kantian proposal, cling like the proverbial monkey to the banana outside the cage, unable to take up the key to the lock.

Paraphrasing Hume, Kant writes:

> When I now see the nations engaged in war … it is as if I witnessed two drunken wretches bludgeoning each other in a china-shop. For it is not just that the injuries they inflict on each other will be long in healing; they will also have to pay for all the damages they have caused (1798, 190).

Or to again quote Tolstoy on the preposterous character of what we seem stuck with: “Clouds gathered, and drops of rain began to fall on the dead and wounded, on the frightened, exhausted, and hesitating men, as if to say: ‘Enough, men! Enough! Cease … bethink yourselves! What are you doing?” (Vol. 2, Bk. X, Chap. XXXIV, p. 543).

War is indisputably a great evil, to be avoided. Soldiers who have survived combat know this as certainly as the civilians who have been caught in the way—only barricaded leaders and safely-positioned demagogues (the “chicken hawks” of media propaganda) have the luxury to believe otherwise. Perhaps the only greater evil than war in general is *losing* a war to a malevolent enemy. And so in light of that terrible possibility, all rational actors assiduously make preparations for wars of self-defense, intentions to fight are legitimized on all sides by the just war tradition, and the persistence of warfare is the all but inevitable result. So for now the alternatives to pursuing Kant's vision are ones in which we either acquiesce to injustice or find ourselves locked in a perpetual cycle of grievances and massively violent attempts at redress. To say that this macabre problem is as old as civilization is not to get things just right: instead, we should realize that for as long as humankind has aspired to civilization, war has been one of the major impediments to its full manifestation.

In light of (or we should say, in the shadow of) the alternatives, before giving up on the criminalization of warfare, I would need to hear some very strong arguments that taking steps toward Kant's suggestion is overly idealistic or hopeless. In the absence of such arguments, what practical reason commands is possible. And as Kant has taught us, where the moral is possible, it must be attempted with ardor, ingenuity and determination.

Of course, we must not underestimate how thorny the way forward would be. To outlaw war effectively, we must also give nations and peoples a way to redress the real injustices that often lead to war in the anarchy we now endure; and to do that, we must have institutional structures in place to solve the problems *without* resort to war. But then notice how difficult it will be to implement such structures without sliding irreversibly toward a world state, which we have stipulated with Kant is not a good idea. Still, without veering into a simplistic, head-in-the-clouds idealism, or minimizing the enormity of the problems left in making this work, we can nonetheless undertake the initial paradigm shift that makes war into a criminal activity, and the violent responses to those criminals into law enforcement.

Precise details of the way forward are not provided by Kant and even the broad suggestions he makes in "Perpetual Peace" might be misguided. It is the moral-philosophical contribution that he (or anyone else with the philosopher's hat on) makes that should be compelling, the conclusion that a pacific federation of some sort is morally and rationally preferable to a world without one. But a full plan for the way forward must come from the methods of political *science*. Careful study of past and present amalgamations for mutual security should reveal to us successful strategies. How, for instance, did the states of Europe move from the misery of World

War I to the helpful and stable relationships we now see inside the European Union? Historically, what general sets of conditions have allowed any group of sovereign states to move from a state of nature to an arrangement that does, among other things, provide for the mutual security of its membership? There are no more important questions than these for political science to pursue.

Epilogue

In yet another confirmation of the old saw that "great minds think alike," Nietzsche had some eloquent observations on these same problems, found in *The Wanderer and His Shadow*, published 76 years after Kant's death. It is remarkable to see these two important thinkers, in profound disagreement about so many things, in such accord on the problem of war:

> No government admits anymore that it keeps an army to satisfy occasionally the desire for conquest. Rather the army is supposed to serve for defense, and one invokes the morality that approves of defense. But this implies one's own morality and the neighbor's immorality; for the neighbor must be thought of as eager to attack and conquer if our state must think of means of self-defense. Moreover, the reasons we give for requiring an army imply that our neighbor, who denies the desire for conquest just as much as does our own state, and who, for his part, also keeps an army only for reasons of self-defense, is a hypocrite and a cunning criminal who would like nothing better than to overpower a harmless and awkward victim without any fight. Thus all states are now ranged against each other: they presuppose their neighbor's bad disposition and their own good disposition. This presupposition, however, is *inhumane,* as bad as war and worse. At bottom, indeed, it is itself the challenge and cause of wars, because, as I have said, it attributes immorality to the neighbor and thus provokes a hostile disposition and act. We must abjure the doctrine of the army as a means of self-defense just as completely as the desire for conquests.
>
> And perhaps the great day will come when a people, distinguished by wars and victories and by the highest development of a military order … will exclaim of its own free will, 'We break the sword,' and will smash its entire military establishment down to its lowest foundations. *Rendering oneself unarmed when one had been the best-armed* … that is the means to real peace, which must always rest on a peace of mind; whereas the so-called armed peace, as it now exists … is the absence of peace of mind. One trusts neither oneself nor one's neighbor and, half from hatred, half from fear, does not lay down arms. Rather perish than hate and fear, and *twice rather perish than make oneself hated and feared*—this must someday become the highest maxim for every single commonwealth (1880, 71–72).

In the long history of humanity, serious attempts to outlaw warfare and use the military forces of the world to actually *keep* the peace are barely 100 years old. That these attempts have not yet succeeded, given the short historical spans involved, should not lead us to give up. Trying to cope with the additional problems presented by terrorism, genocide, weapons of mass destructions and all the other horrors deeded to us by the 20th century should remove all doubt as to the inadequacy of our traditional moral and political structures for dealing with international violence. While the requisite changes may not happen in my lifetime, they may well come to pass on the watch of our children or grandchildren. We should watch for them, work for them, and hope the human race might finally civilize itself on this last frontier as quickly as possible.

[1] For those not familiar with just war thinking, I will mention just a few of the many available summaries of this general approach: (Johnson 1981; Ramsey 1961; Fotion 1990; or Cook 2004).

[2] Personal correspondence with Nicholas Fotion of Emory University.

[3] For a report on just one fascinating recent addition to this literature, see (Diamon 2008, 74–87).

[4] For a well-done but popularly accessible summary of the social science research (Tarvis and Aronson 2007).

[5] The ubiquitous character of this theme provides quite a contrast to the difficult position Kant seems to take on the impossibility of justified lies, which stands alone, an exegetical difficulty and unhappy embarrassment for proponents and defenders of Kant's general approach (and which may well have been merely the result of the crankiness attendant to his old age!).

Appendix to Chapter 8

Chapter VII of the UN Charter Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression

Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Article 43

All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

1. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

2. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

Article 44

When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfilment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member’s armed forces.

Article 45

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

Article 46

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

Article 47

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council’s military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.

2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee’s responsibilities requires the participation of that Member in its work.

3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.

4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional sub-committees.

Article 48

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

Article 49

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

Article 50

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

References

Anscombe, G.E.M. (1962), "War and Murder," in Wakin (ed.).

Anscombe, G.E.M. (1982), "Medalist's Address: Action, Intention and 'Double Effect'," *Proceedings of the American Catholic Philosophical Association* 56.

Aristotle, *Nicomachean Ethics*, Irwin, T. (trans.) (1999), 2nd Edition. (Indianapolis: Hackett Publishing Company, Inc.).

Batton, M. and Mayo, D. (eds) (1980), *Suicide: The Philosophical Issues* (New York: St. Martin's Press).

Bennett, J. (1995), *The Act Itself* (New York: Oxford University Press).

Boyle, J.M. (1980), "Toward Understanding the Principle of Double Effect," *Ethics* 90.

Boyle, J.M. (1991), "Who Is Entitled to Double Effect?" *The Journal of Medicine and Philosophy* 16.

Callahan, D. (1980), "Goals in the Teaching of Ethics," in Callahan and Bok (eds).

Callahan, D. and Bok, S. (eds) (1980), *Ethics Teaching in Higher Education* (New York: Plenum Press).

Cavanaugh, T. (2006), *Double Effect Reasoning: Doing Good and Avoiding Evil* (Oxford: Oxford University Press).

Cook. M. (2004), *The Moral Warrior* (Albany: State University of New York Press).

Craig, C. (2008), "The Resurgent Idea of World Government," *Ethics & International Affairs* 22:2.

Davenport, M. (2000), *The Fellowship of Violence* (Acton, Massachusetts: Copley Publishing Group).

Davis, N. (1984), "The Doctrine of Double Effect: Problems of Interpretation," *Pacific Philosophical Quarterly* 65.

Diamon, J. (2008), "Vengeance is Ours," *The New Yorker*, 21 April 2008.

Donagan, A. (1977), *The Theory of Morality* (Chicago: University of Chicago Press).

Fisher, J., Ravizza, M. and Copp, D. (1993), "Quinn on Double Effect: The Problem of 'Closeness'," *Ethics* 103.

Foot, P. (1978), "The Problem of Abortion and the Doctrine of Double Effect," in her *Virtues and Vices and Other Essays in Moral Philosophy* (Berkeley: University of California Press).

Foot, P. (1985), "Morality, Action and Outcome," in Honderich (ed.).

Fotion, N. (1990), *Military Ethics: Looking Toward the Future* (Hoover Institution Press).

Fotion, N. (2006), "Two Theories of Just War," *Philosophia* 34:53–64.

French, P.A. (ed.) (1972), *Individual and Collective Responsibility: Massacre at My Lai* (Cambridge, Massachusetts: Schenkman).

Gilbert, M. (2000), "The Contemporary Case for the Feasibility of Bombing Auschwitz," in Neufeld and Berenbaum (eds).

Hackett, Sir J.W. (1986), "The Military in the Service of the State," in Wakin (ed.).

Hall, N. (1851), *The Limits of Civil Obedience*, in Weber (ed.).

Hare, R.M. (1981), *Moral Thinking: It's Levels, Method and Point* (Oxford: Oxford University Press).

Harvard University, On-Line Course Descriptions, http://webdocs.registrar.fas.harvard.edu/courses/1999_2000/core/MoralReasoning.html.

Hill, T. (1992), "Imperfect Duty and Supererogation," in his *Dignity and Practical Reason in Kant's Moral Theory* (Ithaca, New York: Cornell University Press).

Hill, T. (2002), "Hypothetical Consent in Kantian Constructivism," in his *Human Welfare and Moral Worth* (Oxford: Oxford University Press).

Hobbes, T. (1651), *Leviathan*, Oakeshott, M. (ed.) (1962), (New York: MacMillan Publishing Company).

Honderich, T. (ed.) (1985), *Morality and Objectivity: A Tribute to J.L. Mackie* (London and Boston: Routledge & Kegan Paul).

Hook, B. and Little, M. (eds) (2003), *Moral Particularism* (Oxford: Oxford University Press).

Hull, R. (2000), "Deconstructing the Doctrine of Double Effect," *Ethical Theory and Moral Practice* 3.

Hume, D. (1739), *Treatise of Human Nature*, in Selby-Bigge, L.A. and Nidditch, P.H. (eds) (1978), 2nd Edition. (Oxford: Oxford University Press).

Hume, D. (1751), *Enquiries Concerning Human Understanding and Concerning the Principles of Morals*, in Selby-Bigge, L.A. and Nidditch, P.H. (eds) (1975), 3rd Edition. (Oxford: Oxford University Press).

Johnson, J.T. (1981), *Just War Tradition and the Restraint of War: A Moral and Historical Inquiry* (Princeton, NJ: Princeton University Press).

Jonsen, A.R. and Toumlin, S. (1988), *The Abuse of Casuistry: A History of Moral Reasoning* (Berkeley and Los Angeles: University of California Press).

Kant, I. (1784), "An Answer to the Question: What is Enlightenment?" in Reiss (ed.).

Kant, I. (1784), "Idea for a Universal History with a Cosmopolitan Purpose," in Reiss (ed.).

Kant, I. (1785), *Grounding of the Metaphysics of Morals*, Ellington, J.W. (trans.) (1993), 3rd Edition (Indianapolis: Hackett Publishing, Inc.).

Kant, I. (1787), *Critique of Pure Reason*, Smith, N.K. (trans.) (1929), (London: Macmillan).

Kant, I. (1788), *Critique of Practical Reason*, Beck, L.W. (trans.) (1993), 3rd Edition (New York: Macmillan Publishing).

Kant, I. (1793), "On the Common Saying: 'This May be True in Theory, but it does not Apply in Practice'," in Reiss (ed.).

Kant, I. (1795), "Perpetual Peace," in Reiss (ed.).

Kant, I. (1797), *Metaphysics of Morals*, Gregor, M. (trans.) (1991), (Cambridge: Cambridge University Press).

Kant, I. (1798), "The Contest of the Faculties," in Reiss (ed.).

Kaufman, W. (ed. and trans.) (1976), *The Portable Nietzsche* (New York: Penguin Books).

Lee, S. (2004), "Double Effect, Double Intention, and Asymmetric Warfare," *Journal of Military Ethics* 3.

Linn, R. (2002), "Soldiers with Conscience Never Die—They are Just Ignored by their Society: Moral Disobedience in the Israeli Defense Forces," *Journal of Military Ethics* 1:2.

McMahan, J. (1994), “Revising the Doctrine of Double Effect,” *Journal of Applied Philosophy* 11.

McMahan, J. (2007), “Collectivist Defenses of the Moral Equality of Combatants,” *Journal of Military Ethics* 6:1.

Mapel, D.P. (2001), “Revising the Doctrine of Double Effect,” *Journal of Applied Philosophy* 18.

Marquis, D. (1991), “Four Versions of Double Effect,” *The Journal of Medicine and Philosophy* 16.

Martin, R.M. (1980), “Suicide and Self-Sacrifice,” in Batton and Mayo (eds).

May, L. and Hoffman, S. (eds) (1991), *Collective Responsibility: Five Decades of Debate in Theoretical and Applied Ethics* (Lanham, Maryland: Rowan & Littlefield).

McIntyre, A. (2001), “Doing Away with Double Effect,” *Ethics* 111.

McIntyre, A. (2006), “Doctrine of Double Effect,” in Zalta (ed.).

MacIntyre, A.C. (1984), *After Virtue: A Study in Moral Theory*, 2nd Edition (Notre Dame: Notre Dame University Press).

Mill, J.S. (1871), *Utilitarianism* in *On Liberty and Utilitarianism*, Dershowitz, A.M. (author of intro.)(1993), (New York: Bantam Classic Books).

Milo, R. (1995), “Contractarian Constructivism,” *The Journal of Philosophy* 92.

Morris, D. (1967), *The Naked Ape* (London: Jonathan Cape).

Myers, C. (1994), *USAFA Journal of Legal Studies* 5.

Nagel, T. (1980), “The Limits of Objectivity,” *The Tanner Lectures on Human Values* (Salt Lake City: University of Utah Press).

Navy Times (1996), “Webb Raps ‘Self-Serving’ Navy Leadership,” 6 May 1996.

National Review (1993), *A Firing Line Debate. Resolved: Women in the Military Should Be Excluded From Combat*. The debate was videotaped at George Washington University in Washington, DC on 22 March 1993 and telecast later on public television stations. The quotation from the debate is taken from a transcript published by Producers Incorporated for Television, 2700 Cypress Street, Columbia, South Carolina, 29205, USA.

Nietzsche, F. (1880), *The Wanderer and His Shadow*, in Kaufman (ed.).

Nietzsche, F. (1889), *Twilight of the Idols*, in Kaufman (ed.).

Nozick, R. (1974), *Anarchy, State and Utopia* (New York: Basic Books).

Neufeld, M.J. and Berenbaum, M. (eds) (2000), *The Bombing of Auschwitz: Should the Allies Have Attempted It?* (New York: St. Martin's Press).

Office of United States Chief of Counsel for Prosecution of Axis Criminality (1946), *Nazi Conspiracy and Aggression*, Volume 4 (Washington, DC: US Government Printing Office).

Orend, B. (2006), *The Morality of War* (Peterborough, Ontario: Broadview Press).

Osiel, M.J. (1998), "Obeying Orders: Atrocity, Military Discipline, and the Law of War," *California Law Review* 86:5, 939–1129.

Padgen, A. and Lawrence, J. (eds) (1991), *Vitoria: Political Writings* (Cambridge: Cambridge University Press).

Posner, R.A. (1999), *The Problematics of Moral and Legal Theory* (Belknap Press: Cambridge, Mass.).

Quinn, W.S. (1989), "Actions, Intentions and Consequences: The Doctrine of Double Effect," *Philosophy & Public Affairs* 18.

Ramsey, P. (1961), *War and the Christian Conscience: How Shall Modern War Be Conducted Justly?* (Durham, NC: Duke University Press).

Rawls, J. (1971), *A Theory of Justice* (Boston: Harvard University Press).

Reiss, H. (ed.) (1991), *Kant: Political Writings*, 2nd Enlarged Edition (Cambridge: Cambridge University Press).

Rodin, D. (2002), *War and Self-Defense* (Oxford: Oxford University Press). Rosenberg, J. (1984), *The Practice of Philosophy*, 2nd Edition (Englewood Cliffs, NJ: Prentice Hall, Inc.).

Rostker, B., Thie, H.J., Lacy, J.L., J.H., Kawata, J.H., and Purnell, S.W. (1993), "The Defense Officer Personnel Management Act of 1980: A Retrospective Assessment," a RAND Corporation report, http://www.rand.org/pubs/reports/R4246.

Russell, B. (1950), *Unpopular Essays* (New York: Simon and Shuster, Inc.).

Taylor, T. (1970), "War Crimes" in Wakin (ed.).

Tarvis, C. and Aronson, E. (2007), *Mistakes Were Made (But Not by Me): Why We Justify Foolish Beliefs, Bad Decisions, and Hurtful Acts* (San Diego: Harcourt, Inc.).

Tolstoy, L. (1869), *War and Peace*, Maude, L. and Maude, A. (trans) (1954), (Oxford: Oxford University Press).

University of Arizona, On-Line Course Descriptions, http://catalog.arizona.edu/2006-07/courses/071/PHIL.html.

University of Colorado, On-Line Course Descriptions, http://www.colorado.edu/philosophy/courses_descriptions.html.

University of Notre Dame, On-Line Course Descriptions, http://philosophy.nd.edu/courses/undergrad.

University of Pittsburgh, On-Line Course Descriptions, http://www.courses.as.pitt.edu/show-subj.asp?TERM=2081&SUBJ=PHIL.

US Air Force Academy, On-Line Course Descriptions, http://www.usafa.edu/df/dfpy/electives.cfm.

US Supreme Court (1971), *Gillette v. U.S.* (401, U.S. 437).

Vitoria, Francisco De (1539), *On the Law of War* in Padgen and Lawrence (eds).

Wakin, M.M. (1986), "The Ethics of Leadership: I" and "The Ethics of Leadership: II," in Wakin (ed.).

Wakin, M.M. (ed.) (1986), *War, Morality, and the Military Profession,* 2nd Edition (Boulder: Westview Press).

Walzer, M. (1970), *Obligations* (Cambridge, Massachusetts: Harvard University Press).

Walzer, M. (1977), *Just and Unjust Wars* (New York: Basic Books).

Walzer, M. (2005), "The Triumph of Just War Theory (And the Dangers of Success)," in his *Arguing About War* (New Haven: Yale University Press).

Wasserstrom, R. (1980), "Conduct and Responsibility in War" in May and Hoffman (eds).

Weber, D.R (ed.) (1978), *Civil Disobedience in America: A Documentary History* (Ithica: Cornell University Press).

Wertheimer, R. (2007), "Reconnoitering Combat Moral Equality," *Journal of Military Ethics* 6:1.

Williams, B. (1972), *Morality* (Cambridge: Cambridge University Press).

Woodward, P.A. (1997), "The Importance of the Proportionality Condition to the Doctrine of Double Effect: A Response to Fisher, Ravizza and Copp," *The Journal of Social Philosophy* 28.

Woodward, P.A. (ed.) (2001), *The Doctrine of Double Effect: Philosophers Debate a Controversial Moral Principle* (Notre Dame, Indiana: Notre

Dame University Press).

Zalta, E.N. (ed.), *The Stanford Encyclopedia of Philosophy (Summer 2006 Edition)*, http://plato.stanford.edu/archives/sum2006/entries/double-effect.

Zupan, D. (2007), "The Logic of Community, Ignorance, and the Presumption of Moral Equality: A Soldier's Story," *Journal of Military Ethics* 6:1.

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