

Moral autonomy in Australian legislation and military doctrine

Richard Adams*

Centre for Defence Leadership and Ethics, The Australian Defence College, Canberra, Australia

Abstract

Australian legislation and military doctrine stipulate that soldiers ‘subjugate their will’ to government, and fight in any war the government declares. Neither legislation nor doctrine enables the conscience of soldiers. Together, provisions of legislation and doctrine seem to take soldiers for granted. And, rather than strengthening the military instrument, the convention of legislation and doctrine seems to weaken the democratic foundations upon which the military may be shaped as a force for justice. Denied liberty of their conscience, soldiers are denied the foundational right of democratic citizenship and construed as utensils of the State. This article critiques the idea of moral agency in Australian legislation and military doctrine and is concerned with the obligation of the State to safeguard the moral integrity of individual soldiers, so soldiers might serve with a fully formed moral assurance to advance justice in the world. Beyond its explicit focus on the convention of Australian thought, this article raises questions of far-reaching relevance. The provisos of Australian legislation and doctrine are an analogue of western thinking. Thus, this discussion challenges many assumptions concerning military duty and effectiveness. Discussion will additionally provoke some reassessment of the expectations democratic societies hold of their soldiers.

Keywords: *conscience; democracy; Kampala Review Conference; military service; Rawls; soldiers’ moral responsibility; Stoicism*

This article addresses the issue of moral autonomy in Australian legislation and military doctrine and illuminates the obligation of soldiers to resign rather than to participate in operations they consider unjust. This obligation is not considered by Australian legislation, or by Australian doctrine. Examining the moral responsibility of soldiers and the obligations set out in legislation and doctrine, this article will inform enquiry likely to follow from the Kampala Review Conference concerning the

*Correspondence to: Richard Adams, Centre for Defence Leadership and Ethics, The Australian Defence College, Canberra, Australia. Email: rjpadams@gmail.com

‘Soldiers’ is gender-neutral, referencing those who serve, regardless of rank, in each of the armed services.

©2013 R. Adams. This is an Open Access article distributed under the terms of the Creative Commons Attribution-Noncommercial 3.0 Unported License (<http://creativecommons.org/licenses/by-nc/3.0/>), permitting all non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Citation: Ethics & Global Politics, Vol. 6, No. 3, 2013, pp. 135–154. <http://dx.doi.org/10.3402/egp.v6i3.20019>

Rome Statute and the crime of aggression. Most prominently, this article contributes to discussion about the expectations democratic society may rightly impose upon citizens who chose to serve in uniform.

This article asserts that, in legislation and doctrine, allowance ought to be made for soldiers to observe the calls of their conscience. Such allowance should enable soldiers to conscientiously refuse service in operations to which they harbour moral objection.

The study recalls the Stoic ideas of virtue, which find profound expression in the philosophy of Epictetus. Noted for his dictum, ‘bear and forbear’, Epictetus articulates a philosophy which resonates with the profession of arms.¹

He argues that:

There are two vices which are far more severe and more atrocious than all the others, want of endurance and want of self-control, when we do not endure or bear the wrongs which we have to bear, or do not abstain from, or forbear, those matters and pleasures which we ought to forbear.²

This position dovetails with Nancy Sherman, inaugural Distinguished Professor of Ethics at the United States Naval Academy, Annapolis. Recalling her tenure at the Naval Academy, Professor Sherman observes that:

Most military men and women do not think of themselves in Epictetan terms. Yet, they do think of themselves, or at least they have idealized notions of military character, as stoic in the vernacular sense of the term. The traits that go with that stoicism are familiar: control, discipline, endurance, a sense of ‘can-do’ agency, and a stiff upper lip, as the Brits would say.³

Similarly, Michael Evans from the Australian Defence College argues that:

Stoicism may seem redundant; yet to believe this is an illusion . . . Stoic philosophy has much to offer today’s Western military professionals. Nowhere is this truer than in the Stoic teaching that courage is endurance of the human spirit based on a resilience and steadfastness in which individuality is embedded within a larger community of comradeship that upholds a balance between the principles of public duty and private excellence.⁴

But, the nucleus of Epictetan argument is that ‘no man is free who is not master of himself’.⁵ Epictetus thus reveals Stoicism to be far richer than clichéd ideas of “sucking it up”, (and) being stoic’.⁶ The real value of Epictetan Stoicism lies in hard-nosed ideas of integrity or independent moral agency. In this way, Epictetus presents a philosophy, which resonates with military ideals whilst challenging doctrinal argument that soldiers are ‘required to subjugate their will’ even to the degree of fighting in a cause to which they have a moral objection.⁷

Epictetus would understand that soldiers might not control the government’s decision to go to war. But, at the same time he would assert that soldiers control ‘*how* they are subordinate’.⁸ Ultimately, soldiers control their commitment to serve or to resign honourably.

Where doctrine stipulates (and legislation presumes) submission, Epictetus argues for unfaltering self-control. For Epictetus, vice is found only in the failure of individual character, and virtue only in its flourishing. In address ‘to those who fail to achieve their purposes’, Epictetus holds ‘... it is a contest for good and happiness itself. What follows? Why here, even if we give in for the time being, no one prevents us from struggling again ...’⁹

Epictetus finds resonance in the argument of Mark Osiel, who has advanced virtue ethics as a position upon which the conduct of military members might be critiqued. Noting virtue to be ‘a property of our character, not our relation to others’,¹⁰ Osiel observes that:

The duties we owe to those we have detained as terror suspects should best be understood ... as an inference from the duties we owe our fellow citizens to behave honourably, consistent with our identity as a people constitutively committed to the rule of law.¹¹

Osiel’s argument accords with concepts resonant in professional militaries around the world. Often tacit, the power and credence of the appeal to high-mindedness is made explicit in United States Army and Marine Corps counterinsurgency doctrine, which argues ‘lose moral legitimacy, lose the war’.¹²

No soldier can act for justice yet commit to action he or she considers evil. And, no just society can expect the soldiers who defend its ideals to turn a blind eye. Volunteering military service, soldiers pledge—or at least they should pledge—to act conscientiously to advance just causes by just means. Soldiers, therefore, face a challenge in Australian legislation and doctrine, which is insufficiently attentive to soldiers’ moral concerns, failing in particular to consider the dilemma of soldiers who are commanded to participate in operations they consider unjust.

Though, as Adam Smith observes, the idea of ‘right’ or ‘justice’ is equivocal and interpreted in several relevant ways,¹³ the concept is foundational to the democratic ideal. *Magna Carta* offers celebrated expression holding, at Chapter 40, that ‘to no one will we sell, to no one deny or delay right or justice’. Thus, in a democratic society, legislation and doctrine should operate to secure the background conditions within which the military can function well, as a just instrument and for justice. This is not to suggest that legislation or doctrine can be perfectly just. There is no chance of agreement on what such instruments would be like. Yet, manifest injustice—such as the asphyxiation of soldiers’ conscience—can be redressed, and if it cannot be removed, at the very least such clear injustice can be minimised.

Considering ideas of social justice, the present article is informed by the ideas of John Rawls who advanced the notion of justice as fairness, and whose basal concern was for the equal liberty of conscience: ‘one of the fixed points in [a] considered judgment of justice’.¹⁴ Rawls recognized that a just society will take the moral convictions of citizens seriously, and enable individuals to examine and to act upon these deeply held beliefs. In *Justice as Fairness: A Restatement*, Rawls described the equal liberty of conscience as a primary good and constitutional essential.¹⁵ He advanced a view of people as morally responsible and equally free to exercise

moral judgment. The moral independence of soldiers is suppressed by Australian legislation and doctrine, which advance an argument typical amongst modern western militaries.

Exploring the arguments of Australian legislation and doctrine, which together operate to curtail the rights of soldiers, this article accepts that just institutions, which advance individual liberty and fairness, are essential to just societies, which in turn are critical to global justice. The article's importance derives from the fact Geoffrey Robertson observes, that 'at the beginning of the twenty-first century, the dominant motive in world affairs is the quest—almost the thirst—for justice. [This thirst is] replacing even the objective of regional security as the trigger for international action'.¹⁶

The article is focused on provisions of the Australian Defence Act, and on argument advanced in military doctrine 'pitched at the philosophical and high application level'.¹⁷ Doctrine, which is subordinate to legislation, 'states the ADF's philosophical military approach to the operating environment'.¹⁸ Taken together, ideas set down in legislation and doctrine, are critically important as part of what Walzer called the *war convention*: the 'norms, customs, professional codes, legal precepts, religious and philosophical principles and reciprocal arrangements that shape our judgments of military conduct'.¹⁹

Though focused on the 'conventions' of Australian thought, this article identifies and critiques a thematic approach to military service, typical of many western powers, and deserving academic scrutiny.

DILEMMA

Soldiers may, in some situations, be faced with dilemma: should they abide by command or personal moral conviction? Rhetoric suggests soldiers should act with independent conscience and disregard morally abhorrent orders to advance unjust operations. Yet, the convention of Australian legislation and doctrine suggests otherwise.

At odds with military ideals and democratic principles, the Australian convention demands the *subjugation* of soldiers.²⁰ But even if this word were not used—and it is used in doctrine—the effect of the convention would be the same. Obsessively realist, neither legislation nor doctrine is sufficiently attentive to the obligations of *jus in exercitu*, the responsibility of the democracy to ensure 'right in the army'. Appreciating the claims of soldiers to justice, this idea underpins the contract between the democratic state and the citizens who volunteer in its defence. But realist to the core, the Australian convention construes soldiers as instruments and neglects to secure background conditions which safeguard their individual rights and interests. In this way, legislation and doctrine form the basis for prodigious consequential wrong. Disregarding the inalienable rights of soldiers, the legislative-doctrinal convention undermines the democratic foundations of the military instrument.

The effect is to compromise the military as an instrument of justice. Most evidently, this is because soldiers denied the liberty of their conscience and compelled to prosecute action in a cause to which there is conscientious objection may, in the words of Jonathan Shay, be morally ‘ruined’.²¹ To take such advantage of citizens is *malum in se*. On the parallel plane of *jus in bello*, soldiers denied the liberty of their conscience and conditioned to obey without question, may commit crimes of obedience: acts ‘performed in response to orders from authority that [are] considered illegal or immoral by the larger community’.²²

Opposed to realism, the present article looks to the ‘logic of appropriateness’ posited by the constructivist school of international relations. Investigating ideas of security ethics, Mura Sucharov explains that the logic of appropriateness ‘stresses the role of actors’ own identities, and the rules and norms that permeate the given system, in shaping decision outcomes’.²³ Tending to correspond with a more ethically responsive and informed military, the ‘logic of appropriateness’ connects to Stoic ideas of moral autonomy and to Rawlsian ideas of individual responsibility and social justice. A compelling counter to realism, the constructivist logic of appropriateness is echoed by Robert Bolt who, in his play *A Man for all Seasons*, has Sir Thomas More say: ‘when statesmen forsake their own private conscience for the sake of their public duties . . . they lead their country by a short route to chaos’.²⁴

MORAL AUTONOMY

For the Stoic, the decisive characteristic of virtue was the absolute resolve and autonomy of the individual will.²⁵ The Stoics—like Kant some centuries later²⁶—understood man to be a moral agent and recognised that the ‘achievement of good character call(ed) for the most arduous efforts’.²⁷

For the Stoic, only virtue had intrinsic worth,²⁸ and a virtuous life was directed deliberately toward the perfection of an individual’s nature.²⁹ This position accepted that people were obliged to fulfil certain socially derived duties,³⁰ in which regard, Stoicism recognised the social and political obligations Cynicism rejected.³¹ But the Stoic did not argue that the individual needed to subjugate himself or surrender moral choice in the way that Australian doctrine and legislation command.

These ideas are typical of Epictetus, whose philosophy of self-mastery is amplified and complemented by awareness of civic duties and responsibilities. So, Epictetus does not profess a self-obsessed philosophy, but holds that we should acknowledge duties because:

I ought not to be unfeeling like a statue, but should maintain my relations both natural and acquired, as a religious man, as a son, a brother, a father, a citizen.³²

Recognising public duties, Epictetan Stoicism acknowledges the ‘domain of the appropriate’³³ to be more than a narrow philosophy of endurance without hope. But still, the case-hardened influence of Socrates and Diogenes the Cynic³⁴ is tangible in powerful emblematic ideas of moral autonomy, integrity or self-control.

'In our power' claims Epictetus, 'are moral character and all its functions'.³⁵ Famously, he writes that people must be responsible for themselves 'even in dreams, or drunkenness (in) melancholy (or) madness'.³⁶ Emphasising ideas of integrity and self-discipline, the thinking resonates with military ideals and the philosophy that:

The ethical man must above all remain the agent of his own fate. (As a soldier, such a man) must bring to bear his own reasoning powers, and he must shoulder ethical responsibility for what he chooses to do in given circumstances.³⁷

These ideas of individual moral autonomy and responsibility are essential as well to democratic society which, Locke argued, rests upon the premise:

Men being . . . by nature, all free, equal and independent, no one can be put out of this estate, and subjected to the political power of another, without his own consent.³⁸

Locke explained how individuals are free and equal by nature. He argued that people have inalienable rights independent of the laws of any particular social order. For Locke, political society entailed a contract by which people devolved some of their independence to the government, so as to assure their enjoyment of liberty and property. But he was mindful that this devolution was conditional, and did not entail the impoverishment of individuals, or the surrender of inalienable individual freedoms.

These ideas are prominent in the work of John Rawls, who explained the obligation of social institutions to impose nothing more than the obligations to which people would assent voluntarily. Illuminating justice as critical to human activity, Rawls argued, 'laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust'.³⁹ He maintained that each person:

Possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by a greater good shared by others. [Justice] does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advancement shared by many.⁴⁰

In a just society, Rawls argued that individual moral freedom is paramount.⁴¹ This idea resonates within modern democracy which, in the words of Robin Williams, is more than a system of government and might be understood as 'a culturally standardised way of thought and evaluation, a tendency to think of rights [and] a deep aversion to acceptance of obviously coercive restraint'.⁴²

Jus in exercitu

These ideas are significant, because the character of western arms should reflect the character and aspiration of western ideals. Serving to protect the democratic liberties of individual conscience, justice, to restate Rawls, should be the first virtue of the military institution. This is regrettably not the case.

Neither Australian legislation nor doctrine is sufficiently attentive to fundamental democratic ideals and dignities, the ideas of *jus in exercitu*, or ‘right in the army’. The legislative and doctrinal convention is unrealistically realist, and blind to the actuality that when people fight under duress they are denied the opportunity to commit or to assume an obligation voluntarily and thus, ‘their battles are no longer theirs’.⁴³

Even in the non-ideal world, certain minimal ideas of justice can be acknowledged and advanced. As a minimum, legislation and doctrine should enable soldiers to conscientiously refuse. As it is, soldiers are expected to ‘subjugate (their) will to that of the Government’⁴⁴ and fight in operations against which they may hold deep moral objections. Neither society, nor the military instrument, is well-served by this logic which perpetuates, as Wilfred Owen would have it, ‘that same old lie’⁴⁵ for those who ‘die like cattle’.⁴⁶

LEGISLATION AND DOCTRINE

‘Australia’s Defence Act of 1903 was the first national legislation to grant total exemption from military service on the grounds of conscientious belief’.⁴⁷ Under Section 61A (1A) of the Australian legislation, persons conscripted to the Australian Defence Force may be exempt from service on the basis of either a universal, or a specific, conscientious objection. But, according to section 61C (c) of the Defence Act, citizens who have volunteered to serve in the Defence Force and who come to acquire a conscientious objection, are not able to exercise the entitlement of conscientious refusal either to service in general or to service in a specific operation.

Australian Defence Force doctrine maintains the argument of legislation to which it is subordinate. Thus, doctrine does not address the question of citizens who, having volunteered for military service, develop moral concerns about participation in conflict.

This article asserts that there ought to be both a legislative and a doctrinal allowance for soldiers to abide by the calls of their conscience. Such allowance ought to enable soldiers to refuse service in operations to which they harbour conscientious objection. In some circumstances, the reasonable course of action may be that soldiers are enabled to resign honourably when their conscience precludes their committed service.

Taken together, ideas set down in legislation and doctrine, are critically important as part of what Walzer called the war convention. The phrase acknowledges how ideas become established and predictable within the collective order of military thought. But beneath the amalgamated sense of a ‘convention’, the interconnection between legislation and military doctrine is subtle and significant.

Where national or government policy states, ‘what is to be done’, military doctrine articulates ‘how military operations should be directed, mounted, commanded, conducted, sustained and delivered’.⁴⁸ Military doctrine both establishes and reflects philosophical principles by which military forces guide their actions in support of national objectives.

But military doctrine is richer than mere ‘officially sanctioned, formalised and written expression of institutionally accepted principles and guidance about what armed forces do and how they do it’.⁴⁹ Though doctrine reflects legislative provisions to which it is subordinate, in many ways doctrine is a richer instrument, with a cultural presence and influence the legislative arrangements do not have.

Taught within a group as its ‘corporate beliefs, principles or faith’,⁵⁰ doctrine expresses ideas which are foundational to the military ethos and codes of conduct.⁵¹ Doctrine is powerfully intrinsic to military culture. As a deep-rooted part of the military psyche, doctrine is ‘imparted by corporate ambience as much as by explicit teaching’.⁵² This means that ideas can be doctrinal without being written down. But, when ideas are written down, there is reciprocity between formally articulated argument, and unstated belief. Beyond the provisions of legislation, doctrine gives expression to tacit cultural motifs whilst, at the same time, informing these unspoken shared ideas. Doctrine shapes—and is in turn shaped by—a Kuhnian cultural gestalt⁵³ within which distinctive bodies of belief derive from and epitomise characteristic and predictable patterns of action. This means that doctrinal argument is metaphorically and meaningfully entwined within the fabric of cultural practice and belief. Doctrine reinforces routines and, as part of the collective institutional order, exerts a broad and significant practical effect.

JUST CAUSE, JUST ACTS

The Just War tradition provokes critical questions concerning the justice of war. The justice of war is considered in the combination of two parts: when it is right to go to war—*jus ad bellum*—and what may be considered a right act within the situation of war—*jus in bello*. Under the umbrella of *jus ad bellum*, questions are asked regarding the justice of the cause. The modern *jus ad bellum* discourse continues to be richly informed by Thomas Aquinas (1225–1274 AD). In *Summa Theologica*, Part II, II, at Question 40, Aquinas advances the argument that only a sovereign authority might identify a just cause and declare war legitimately.

This is the basis upon which the present article engages with just war thinking. The present article does not debate the elements that make war just or not just, but calls into question the idea that only a sovereign or State might determine the justice of conflict. The present article makes the claim that soldiers have relevant and important ideas about just cause. Soldiers enlist in order to advance the cause of justice by just means. They deserve the chance to fight, and perhaps to die, with the fully formed moral assurance that their cause is just. If soldiers come to the moral conclusion that a cause is not just, then legislation and doctrine should acknowledge their right of conscientious refusal.

Though mindful of positivist legitimacy, the convention of Australian legislation and doctrine is largely indifferent to the justice or *rightness* of military action. Neither instrument is sufficiently attentive to the obligation of the military to advance and to harbour justice in the army or, more broadly, in the world. Recognising a singular

unidealistic premise that military success is the triumph of the strong over the weak, legislation and doctrine each build an instrumentalist reasoning, which misses the deep human significance of military service and conflict. Unrealistically indifferent to the sacrifice of human life and the abdication of human ideals, neither legislation nor doctrine is satisfactorily alert to the issue of moral conviction. In consequence, the legislative and doctrinal argument minifies the concept of military service and dehumanises conflict more generally. In legislation and doctrine, soldiers are construed impersonally as military implements, their purpose to serve political strategy costumed in the language of national interest.

The realist argument of the Australian legislative–doctrinal convention does not appreciate that soldiers fight as citizens committed to high ideals. Soldiers are presumed to serve without moral agility, without a mind to justice or human dignity, as morally mute instruments in *any* cause.

The peril of this approach was put in a nutshell by General George Marshall. Serving as Secretary of State in 1948, Marshall argued before the General Assembly of the United Nations that ‘[g]overnments which systematically disregarded the rights of their own people were not likely to respect the rights of other nations and other people, and were likely to seek their objectives by coercion and force in the international field’.⁵⁴

Australian soldiers are expected to be concerned with ‘the ethical pursuit of missions’.⁵⁵ But they are expected to close their minds to *jus ad bellum* thinking, which contextualises individual martial acts and informs the moral commitment of soldiers to serve at all. The upshot is that so long as Australian soldiers abide by positivist rules of engagement, they shall be presumed to have done enough. This position is difficult because it presumes that any fight is the same and that soldiers will take life and risk their own lives just because they are told to.

The philosophical quandary is illustrated by Shakespeare [*King Henry V*, Act iv, scene 1] when he has King Henry V going secretly amongst his soldiers on the eve of Agincourt.

King Henry V [in disguise]: Methinks I could not die anywhere so content as in the King’s company, his cause being just and his quarrel honourable.

Michael Williams [a soldier]: That’s more than we know.

John Bates [a soldier]: Ay, or more than we should seek after; for we know enough if we know we are the King’s subjects, if his cause be wrong, our obedience to the king wipes the crime of it out of us.

But the Australian convention forgets the caution of Michael Williams, who reminds Bates: ‘Tis certain, every man that dies ill, the ill upon his own head, the King is not to answer for it’. The moral sensitivity of this Shakespearean soldier resonates in the modern democratic state, where citizens who bear arms accept the obligation to bear arms justly *and* for justice.

Absorbed by legalist ideas of justice *in* war, the Australian convention articulates only a partial moral reasoning, failing to contemplate the justice *of* war.

Australian soldiers are presumed to be uninterested in the justice of acts, which are contextualised by the rightness of the cause. Both the legislation and the doctrine deny the tragedy and reality of contemporary military operations, which have been impaired by political deceit and dissembling. Expecting soldiers to obey government direction without demurrals, both instruments establish conditions, which enable the military to be mired in political cupidity and seduced away from ideas of justice. Even worse, the doctrine enables soldiers to be taken for granted, and denied proper expression of their conscience.

The line of reasoning followed by the legislative and doctrinal instruments would be enriched by the fusion of logically distinct *ad bellum* and *in bello* perspectives. Understood together, these separate yet connected perspectives frame what the Australian-born British General, Sir John Winthrop Hackett, called the ‘unlimited liability’ of the profession of arms.⁵⁶ *Pace* Osiel, this is more than a soldier’s commitment to ‘risk death for his country’,⁵⁷ and more than ‘the individual commitment to almost unlimited service’.⁵⁸ Hackett identifies the unlimited *moral* liability, to which Australian legislation and doctrine is indifferent. Hackett understands soldiers must be principled, and resolve to advance just causes by just means. He expects soldiers to be unwaveringly responsible and argues: ‘What the bad man cannot be is a good sailor, or soldier or airman’.⁵⁹

Hackett expects soldiers to be high-minded and upstanding. His reasoning coincides with the *Crito* [47b–48b] where Socrates asserts the importance of a rational conscience, arguing one ought to do what is morally right or ‘just’ and seek to avoid that which is wrong, ‘unjust’ or ‘shameful’.

Both Socrates and Hackett would agree that soldiers are very far from unvoiced machines without capacity for responsible decision. Soldiers are not heedless sheep; they are citizens who choose to serve. Connected to assumptions of personal excellence and moral responsibility, military service is saturated with stoic notions of integrity: ‘more or less on the same plane as conscience, [which] presupposes moral autonomy’.⁶⁰

But these ideas are muffled by conventional argument that soldiers be unmindful of the cause and merely do as they are told. The logic of the Australian legislative–doctrinal convention coincides with the argument of Walzer who argues:

The moral reality of war is divided into two parts. War is always judged twice; first with reference to the reasons states have for fighting, secondly with reference to the means they adopt The two sorts of judgement are logically independent. It is perfectly possible for just war to be fought unjustly and for unjust war to be fought in strict accordance with the rules. But, this independence, though our views of particular wars often conform to its terms is nevertheless puzzling.⁶¹

But more than puzzling, the technical separation of *jus ad bellum* reasoning from *jus in bello* thinking is deceiving, operating to emphasise the idea of the State and to understate the moral responsibility of citizens who choose to serve as soldiers.

As a political entity, *the State* affords an expedient excuse. *The State* is a device that somehow justifies passive acceptance among soldiers who see no realistic prospect

that they might exert constructive moral influence upon policies they enact. Walzer himself refers to reasons *States* have for fighting and the means *they* adopt. His anonymous phrasing obscures people and the moral obligations of individuals and underlines the artificial separation of states from soldiers, as he puts it: 'the protagonists of war, and of combat, its central experience'.⁶²

The moral reality of war must take in the theoretical wholeness which informs soldiers' moral decisions. Acknowledging this theoretical unity, Rawls argued that justice of the cause affects the means with which war can be prosecuted.⁶³ Similarly, Walzer argues that, in cases of supreme emergency, utilitarian calculation can sustain the escalation of force, though some principles are inviolable.⁶⁴ Ideals of justice and gallantry, central to the profession of arms and the decisions soldiers make, bridge the separation between *jus ad bellum* and *jus in bello* thinking which is unduly conspicuous in the arguments of Australian legislation and doctrine.

Operating in precarious and ambiguous situations, soldiers do best when empowered to determine and apply intricate standards of proportionality. Sometimes definable, these standards are typically indeterminate and understood as matters of honour intrinsic to the profession. They are standards which concern proportionality and *rightness*, and they are linked unavoidably to the cause beyond the immediacy of the fight. Soldiers appreciate this; they are not morally inert. Yet the Australian convention denies soldiers must make moral judgements framed by the justice of the cause; ultimately declining to fight when holding conscientious belief the cause is unjust.⁶⁵

Choosing to serve, volunteer soldiers freely embrace martial ideals and social obligations. But volunteers retain citizenship and the rights of citizens. Volunteers are not indentured in military servitude, their lives are not nationalised. Soldiers do not surrender the right to refuse service in a cause they find unjust, and they retain the right to decline morally insufferable orders. Soldiers volunteer [or at least they should volunteer] to advance the cause of justice, *justly*.

There is a morally questionable side to these ideas, as David Kennedy has addressed in his book *The Dark Sides of Virtue: Reassessing International Humanitarianism*. Kennedy's thesis is that the idea of just cause may be distorted to demonise the adversary and his cause. Additionally, the humanist discourse confronts the pragmatic analysis, which has shaped the vocabulary of international affairs since the end of the Second War. These issues, however, are rather beside the point of the present article, which reasons, in the words of Michael Walzer, that 'democratic states suffer whenever conscience is coerced'.⁶⁶

Taking this point, the present article reasons that the espalier of Australian legislation and military doctrine would be enriched by consideration of *jus ad bellum* issues. The present article contends that the rights of citizenship are not surrendered by the assumption of military obligation. Citizens do not surrender the liberty of their conscience upon enlistment. This is not to suggest that soldiers should be utterly autonomous, faux-mercenaries who decide for themselves what they would prefer to do, and what not. Volunteer soldiers accept that the discipline of the State will—and must—be imposed. But State authority can only go so far. The State's obligation to

maintain order does not mean the State has licence to do whatever it wants. As Cesare Beccaria argued in his 1764 *Essay on Crimes and Punishments*, the protection of public security does justify some measure of imposition, but ‘every act of authority of one man over another for which there is not an absolute necessity, is tyrannical’.⁶⁷ Thus the smallest encroachment beyond that which is strictly necessary is ‘abuse, not justice’.⁶⁸

DEMOCRACY AND THE LEGISLATIVE-DOCTRINAL CONVENTION

The convention of Australian legislation and doctrine construes the soldier as a utensil standing to the army as his weapon does to him. This position is unsafe, because soldiers must make morally significant decisions, applying complex criteria of proportionality and necessity. Du Picq argues famously:

It often happens that those who discuss war, taking the weapon for their starting point, assume unhesitatingly that the man called to serve it will always use it as contemplated and ordered by the regulations. But such a being, throwing off his variable nature to become an impassive pawn, an abstract unit in the combinations of battle, is a creature born of the musings of the library, and not a real man.⁶⁹

Du Picq acknowledges that soldiers are not impassive creatures of the military bureaucracy. Soldiers are soldiers, but also people who retain absolute responsibility for what they do. Military enlistment does not confer an excuse, but rather an obligation to act deliberately for justice. Underlining this idea, McMahan asks rhetorically:

How can certain people’s establishment of political relations among themselves confer on them a right to harm others, when the harming or killing would be impermissible in the absence of [those] relations? How could it be that merely acting collectively for political goals, people can shed the moral constraints that bind them when they act merely as individuals ...⁷⁰

Australian legislation and doctrine takes for granted that democracy’s public legitimacy increases the State’s coercive influence. The argument presumes *jus ad bellum* concerns are purely political, and that soldiers do well enough if they obey orders and comply with *jus in bello* protocols. Emphasising the coercive power of the State, the Australian legislation and doctrine ignore the complex moral narrative which informs western democracy and the western military tradition. The Australian convention chokes the moral agency of individual soldiers, and neglects the obligation of democratic government to protect the liberty of citizens’ conscience.

The legislation and military doctrine of a democracy ought to preserve the equal liberty of conscience. In debate concerning the Vietnam War, Dr. Cairns advanced this logic in the Australian Parliament:

There must be room in a free and civilized community for an individual to decide for himself what’s right and wrong ... If conscience is to amount to anything, the individual whether he happens to be wrong or right according to my standards or

those of the Government ... should have his right to exercise his conscience protected. If conscience is to mean anything, it must be based upon the right of the individual to say what he believes is right and wrong ...⁷¹

In the Senate 15 years later, Senator Tate argued similarly that:

As legislators we ought to be reinforcing the individual conscience – an activity which culturally marks us as a free society where the common good cannot be relentlessly pursued by means which destroy the individual's personality.⁷²

Similarly, in 1985, the Report of the Australian Senate Standing Committee on Constitutional and Legal Affairs held, regarding conscientious objection, that:

Australia, as a democracy, even when engaged in armed conflict [should recognise] conscientious belief in order to protect the integrity of the individual against the coercive power of the State.⁷³

Following the 2010 Review Conference of the Rome Statute, which was held in Kampala, Uganda, these ideas have an additional piquancy. The Kampala Review Conference has paved the way for the International Criminal Court to exercise its presently dormant jurisdiction over the crime of aggression. Acknowledged by Article 5 (d) of the Rome Statute, the crime of aggression has been defined in Kampala as:

The planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.⁷⁴

The Kampala provisions will be translated into the domestic legislation of States Party to the Rome Statute—including Australia. Conspicuously, the provisions underline the issue of criminal liability. But at a deeper level, the Review Conference acknowledges ideas of individual merit and moral responsibility, highlighting that no soldier can act for justice yet commit to action he or she considers evil.

Volunteering military service, soldiers promise—or at least they should—to act conscientiously to advance just causes by just means. They must resist the coercive power of the State, which would turn them into mere instruments, and remember that military success is not Melian triumph of the strong over the weak. Military accomplishment depends upon moral legitimacy, and relies upon soldiers whose idea of service is informed by commitment to societies, to their protection and to their ideals. The soldier who achieves success will recall the Stoic ideal, and associate ideas of duty and service with concepts of justice, civic obligation, and individual excellence. Thus, it is crucially important that the legislation enables, and the doctrine encourages, individual soldiers to exercise moral sensitivity and responsiveness.

But the Australian convention vitiates soldiers' conscientious decision and right to fight with a fully formed moral assurance. The Australian instruments thus impair

the military as an instrument of justice. At the institutional level, senior commanders acculturated to obey government direction without question, enable and conduct morally dubious operations. Retired Australian Major General, John Cantwell, illustrates this point.

The commander of Australian forces in Afghanistan in 2010, General Cantwell was quoted in *The Age* newspaper of 17 April 2012. He said: ‘at the human level [operations in Afghanistan] were not worth it’. Rejecting ‘the dirty ugly world of international relationships, where ‘it’s you scratch my back, I’ll scratch yours . . . [where] lives become less important’, the General said it was wrong to forfeit the life of any soldier for ill-conceived political purpose.⁷⁵ But this is exactly the *realpolitik* of the legislative–doctrinal convention, which holds that soldiers, insensible to the cause, must subjugate themselves to Government bidding.

Equally insensible to moral responsibility, and acculturated to obey without demurrals, Defence ministry officials squander public treasure. Citing Australian National Audit Office reports, and the Australian Senate Foreign Affairs, Defence and Trade References Committee, David Ellery explained, in the *Canberra Times* newspaper, how a ‘compulsory culture of consensus’ has been instrumental in the dissipated frittering of billions in mismanaged Defence procurement projects.⁷⁶

DEMOCRACY AND THE DUTY TO OBEY

Presuming individually responsible judgment, and the ultimate right of conscientious refusal,⁷⁷ Rawls did not hold that people should be wanton or heedless of civic obligations, but that people should be properly mindful of moral responsibilities. He maintained that individuals are ‘always accountable for their deeds’, and unable to divest themselves of responsibility and transfer the burden of blame to others.⁷⁸ In this way, Rawls coincides with the ideas of Stoic self-sufficiency and Kantian duty. Rawls acknowledged the importance of self-respect and personal virtue, and the importance of acting so as to avoid moral shame.⁷⁹ To refuse an unjust law would, for Rawls, be justified only in order to advance the greater cause of justice and to avoid moral shame; not for hedonistic or egotistical reasons.

These notions, which informed Rawls’s ideal theory, also inform our understanding of the obligation to obey. Conflating ideas of ethical rightness and legal compliance, the Australian convention presumes soldiers will do well enough if they do as they are told. Harking to outworn and ethically constricted ideas of military service, neither Australian legislation nor doctrine acknowledges the obligation of the State to safeguard the moral integrity of individual soldiers. And, neither instrument addresses the foundational obligation of soldiers to act *conscientiously* to advance the cause of justice in the world. This model must be reformed.

No longer may States presume that soldiers ought trust their superiors uncritically and obey them unthinkingly. Doctrinal argument must respond to the proclivity of officials and politicians to use moral language whilst avoiding the burden of moral responsibility. As Pogge writes, in modern politics:

Moral language is all around us—praising and condemning as good or evil, right or wrong, just or unjust, virtuous or vicious. In all too many cases, however, such language is used only to advance personal or group interests. The speaker expresses the narrowest judgment that allows her to score her point while avoiding any further normative commitments that might encumber herself now or in the future.⁸⁰

Amplifying this point, the infamous 2002 September dossier demonstrates the sort of deliberate deceit, which makes it difficult for soldiers to place unquestioning confidence in the political–military establishment. This report revealed that intelligence agencies are adept in the fabrication of crooked evidence, whilst senior authorities are not above calculated deception.

Doctrinal argument must enable the responsibility of soldiers to ensure that their important decisions can be morally justified. Doctrine must recognise that when public officials habitually demonstrate moral insolvency, the burden upon soldiers to be morally responsible is increased. Doctrine must reflect the moral obligations that accompany military service in the modern age.

IN PRACTICE

Doctrinal argument should enable soldiers to conscientiously refuse service in morally dubious causes. Citizens who volunteer military service are likely to respect this autonomy, and unlikely to shirk duties. In *Political Liberalism*, Rawls argues in support of this point, that:

Citizens have a reasonable moral psychology ... [and a] ... conception of the good [and] a capacity to acquire conceptions of justice and fairness and a desire to act as these conceptions require when they believe that institutions or social practices are just ...⁸¹

Enlisting with their eyes open, citizens expect to fulfil onerous and complex duties. But they do not expect to serve an unjust cause.

Presently, doctrine restricts the frontier of soldiers' moral thinking artificially and unduly. Much as Mary Wollstonecraft lamented the disadvantages borne by women, denied access to education and condemned in consequence to a deferential life, soldiers are infantilised by doctrine, which ordains *jus ad bellum* concerns to be beyond their moral interest. Wollstonecraft writes:

Standing armies can never consist of resolute, robust men; they may be well-disciplined machines, but they will seldom contain men under the influence of strong passions, or with very vigorous faculties.⁸²

Wollstonecraft does not anticipate that soldiers will be much more than obedient and dutiful. She does not expect ethical resolution or integrity sufficiently robust to conscientiously refuse service in an unjust cause. Legislation and doctrine must expect more of soldiers. The legislative–doctrinal convention must acknowledge that no soldier can act as a force for justice, and commit to action, which he or she considers evil. Soldiers, who have enlisted to advance justice by just means have a

moral duty to decline service in causes they consider villainous. Thus the Australian convention ought to recognise that when a soldier comes to the conclusion that a course of action is unjust, that it is wrong to participate. In some circumstances an additional conclusion may be that resignation is the honourable course.

CONCLUSION

This article argued against the provisions of Australian legislation and doctrine that soldiers subjugate their will to Government. Denying soldiers access to their conscience, the Australian convention was seen to be unworkable and wrong. The example of Commodore Richard Menhinick RAN, cited in *The Age* newspaper of 12 July 2012, illustrates the unsafe nature of the Australian position.

The newspaper describes how, when commanding officer of HMAS *Warramunga* in 2001, the then Commander Menhinick defied direction to abandon asylum seekers at sea. Finding his orders neither ‘sensible nor ethically prudent’, Commodore Menhinick declined to follow legal command. Refusing to be subjugated, the Commodore is quoted as understanding ‘the importance of acting with integrity and in good conscience’.⁸³ This principled officer reveals the absurdity of legislative and doctrinal provisions that assume military service entails soldiers’ moral quiescence, and demonstrates what Walzer calls the ‘long tradition’ of officers who ‘protest commands of their civilian superiors that would require them to violate the rules of war and turn them into mere instruments’.⁸⁴ Acting deliberately as an agent of justice, the Commodore demonstrated the critical importance of conscience to the profession of arms, and the impossibility of the inelastic provisions within Australian legislation and doctrine.

Australian legislation and doctrine presumes that no-one can cavil, no matter how iniquitous the pretext for action. Reinforcing the coercive power of military institutions, the legislative-doctrinal convention is oblivious to the fact that atrocities soldiers commit are their own.

Crafted to uphold *jus in exercitu* obligations, the convention should abandon the fable of unquestioning obedience. Debunked by the Nuremburg tribunal, this myth was made infamous by Himmler at Posen on 4 October 1943. On this occasion, in a speech to Nazi police fuehrers, Himmler argued that obedience to orders—no matter how ghastly—was a mark of honour.⁸⁵ The Nuremburg testimony of SS Gruppenfuehrer Otto Ohlendorf illustrates how this impossible dogma was accepted. Formerly leader of the Einsatzkommandos, Ohlendorf admitted calmly to the murder of 90,000 Jews. Despite confessing to pangs of scruple, he said, ‘it was inconceivable that a subordinate leader should not carry out orders given by the leaders of the State’.⁸⁶

We need to think differently so as we might apply military power more wisely. Legislation and military doctrine need to acknowledge that soldiers who believe orders to be *immoral*, not merely illegal, have a duty to refuse. Alastair McIntosh writes:

For the first time in history we have at our fingertips utter destructive power, but matched to it, all the possibilities for greater understanding opened up by globalised communications. Now is the time to press the reset button at many levels of depth.⁸⁷

This is not the time to be comfortably complacent, to assume familiar ideas will serve into the future. A new position must be endorsed, and with it, a new way of understanding military service, military ideals and military functions. No longer must the legislation or the doctrine perpetuate notions of subjugation, which dehumanise soldiers and degrade the democratic foundations of the military instrument. These ideas place the world in peril of crimes of obedience, committed by morally repressed soldiers unable to discern an alternative.

The war convention must recognise the moral justification for disobedience afforded by the conscience. Legislative and doctrinal instruments must acknowledge that the duty to obey is not absolute, and that the moral obligation to disobey may be prompted by more than manifest illegality.

ACKNOWLEDGEMENTS

The author would like to acknowledge the Global Justice Program at Yale University, particularly Prof. Thomas Pogge and Matt Lindauer. The author is deeply indebted to the assistance offered by the Australian-American Fulbright Commission. The valuable insights and constructive comments afforded by the anonymous reviewers for this journal are also acknowledged most gratefully.

NOTES

1. James Stockdale, *Thoughts of a Philosophical Fighter Pilot* (Stanford, CA: Hoover Institution Press, 1995), 21; James Stockdale, 'Courage under Fire: Testing Epictetus's Doctrines in a Laboratory of Human Behavior', in *Hoover Essays 6* (Stanford, CA: Hoover Institution on War, Revolution and Peace, 1993), 3, 6.
2. Epictetus, 'Fragments', in *The Discourses as Reported by Arrian, Fragments, and the Encheiridion*, (two volumes) trans. W. A. Oldfather (Cambridge, MA: Harvard University Press, 1998), 10.5–6.
3. Nancy Sherman, *Stoic Warriors: The Ancient Philosophy Behind the Military Mind* (Oxford: Oxford University Press, 2005), 1.
4. Michael Evans, 'Stoic Philosophy and the Profession of Arms', *Quadrant* 54 (January–February, 2010): 46–55.
5. Epictetus, *Fragments*, 35.
6. Sherman, *Stoic Warriors*, ix.
7. Australian Defence Doctrine Publication 00.6, *Leadership in the Australian Defence Force* (Canberra: Australian Defence Headquarters, 22 March, 2007), paragraph 2.7.
8. Sherman, *Stoic Warriors*, 8. My emphasis.
9. Epictetus, 'Discourses', in *The Discourses as Reported by Arrian, Fragments, and the Encheiridion* (two volumes) trans. W. A. Oldfather (Cambridge, MA: Harvard University Press, 1998), 3.25.4.
10. Dale Stephens, 'The Age of Lawfare, International Law and the Changing Character of War', in *U.S. Naval War College International Law Studies Series*, ed. Raul "Pete" Pedrozo and

- Daria P. Wollschlaeger (Newport, Rhode Island: United States Naval War College, 2011), 348.
11. Cited in Stephens, *The Age of Lawfare*, 348.
 12. *The United States Army and Marine Corps Counterinsurgency Field Manual: US Field Manual 3–24* also published as Marine Corps Warfighting Publication 3–33.5 (Chicago: University of Chicago Press, 2007) paragraph 7.44. The example of the French counterinsurgency in Algeria is provided as an example. In this campaign, the French condoned the use of torture against insurgents. This was seen to undermine the moral legitimacy of the French campaign, and to empower the insurgent campaign, which became associated with ideas of just cause and seen as a defensive action against oppression.
 13. Adam Smith, *The Theory of Moral Sentiments*, ed. David D. Raphael and Alec L. Macfie (Oxford: Clarendon Press, 1976), 269.
 14. John Rawls, *A Theory of Justice* (Cambridge, MA: The Belknap Press of Harvard University Press, 1999), 181.
 15. John Rawls, *Justice as Fairness: A Restatement* (Cambridge, MA: The Belknap Press of Harvard University Press, 2001), 28, 58.
 16. Geoffrey Robertson, *Crimes against Humanity: The Struggle for Global Justice* (England: Penguin, 2006), xxxiii.
 17. Australian Defence Doctrine Publication-D, *Foundations of Australian Military Doctrine* (Canberra: Australian Defence Headquarters, July 2012), iii.
 18. ADDP-D, *Foundations*, iii.
 19. Michael Walzer, *Just and Unjust Wars: A Moral Argument* (New York: Basic Books, 2000), 44.
 20. ADDP 00.6, *Leadership*, paragraph 2.7.
 21. Jonathan Shay, *Achilles in Vietnam: Combat Trauma and the Undoing of Character* (New York: Scribner, 2003), 197.
 22. Herbert C. Kelman and V. Lee Hamilton, *Crimes of Obedience* (New Haven: Yale University Press, 1989), 46.
 23. Mura Sucharov, 'Security Ethics and the Modern Military: The Case of the Israel Defense Forces', *Armed Forces & Society* 31 (2005): 169–171.
 24. Robert Bolt, *A Man For All Seasons* (New York: Vintage Books, 1990), 22.
 25. Anthony A. Long and David N. Sedley, *The Hellenistic Philosophers* (Cambridge: Cambridge University Press, 1995), 385; Adolf Friedrich Bonhoffer, *The Ethics of the Stoic Epictetus*, trans. W. O. Stephens (New York: Peter Lang, 2000), 19.
 26. Michael Gass, 'Kant's Causal Conception of Autonomy', *History of Philosophy Quarterly* 11, no. 1 (1994): 53.
 27. Anthony A. Long, *Hellenistic Philosophy* (New York: Charles Scribner's Sons, 1974), 182.
 28. Ian G. Kidd, 'The Relation of Stoic Intermediates to the Summum Bonum, with Reference to Change in the Stoa', *The Classical Quarterly (New Series)* 5, no. 3 (1955): 181.
 29. Anthony A. Long, *Epictetus: A Stoic and Socratic Guide to Life* (Oxford: Clarendon Press, 2004), 146.
 30. Long, *Hellenistic Philosophy*, 183, 184.
 31. Malcolm Schofield, 'Epictetus on Cynicism', in *The Philosophy of Epictetus*, ed. T. Scaltsas and Andrew S. Mason (Oxford: Oxford University Press, 2007), 83.
 32. Epictetus, 'Discourses', 3.2.4.
 33. Long, *Epictetus: A Stoic and Socratic Guide to Life*, 115.
 34. Long, *Epictetus: A Stoic and Socratic Guide to Life*, 98; Long, *Hellenistic Philosophy*, 234; Christopher Gill, 'The School in the Roman Imperial Period', in *The Stoics*, ed. B. Inwood (New York: Cambridge University Press, 2006), 47.
 35. Sherman, *Stoic Warriors*, 27.
 36. Epictetus, 'Discourses', 3.2.5, 3.2.12.
 37. Richard A. Gabriel, *To Serve With Honor: A Treatise on Military Ethics and the Way of the Soldier* (Connecticut: Greenwood Press, 1982): 27.

38. John Locke, *Two Treatises of Government*, ed. M. Goldie (London: Everyman, J. M. Dent, 1995), 163.
39. Rawls, *A Theory of Justice*, 3.
40. *Ibid.*, 3.
41. *Ibid.*, 181–183.
42. Robin M. Williams, *American Society: A Sociological Interpretation* (New York: Alfred K. Knopf, 1960), 446.
43. Walzer, *Just and Unjust Wars*, 29.
44. ADDP 00.6, *Leadership*, paragraph 2.7.
45. From *Dulce est Decorum Est*.
46. From *Anthem for Doomed Youth*.
47. Hugh Smith, 'Conscience, Law and the State: Australia's Approach to Conscientious Objection Since 1901', *Australian Journal of Politics and History* 35, no. 1 (1989): 13.
48. ADDP-D, *Foundations*, paragraphs 3.6, 3.8.
49. ADDP-D, *Foundations*, paragraph 3.2.
50. Wayne P. Hughes, 'The Power in Doctrine', *United States Naval War College Review* 48, no. 3 (1995): 14.
51. Don M. Snider, 'An Uninformed Debate on Military Culture', *Orbis* 43, no. 1 (1999): 16.
52. Andrew Gordon, *The Rules of the Game* (London: John Murray, 1997), 580.
53. Thomas S. Kuhn, *The Structure of Scientific Revolutions* (Chicago: University of Chicago Press, 1970), 114, 150, 151.
54. Cited in Eric Stein, 'International Law in Internal Law: Toward Internationalization of Central-European Constitutions?', *The American Journal of International Law* 88, no. 3 (1994): 427.
55. ADDP 00.6, *Leadership*, paragraph 1.8.
56. Lt. Gen. Sir. John W. Hackett, *The Profession of Arms: The 1962 Lees Knowles Lectures Given at Trinity College Cambridge* (London: Times Publishing, 1962), 63.
57. Mark J. Osiel, *Obeying Orders: Atrocity, Military Discipline and the Law of War* (New Brunswick: Transaction, 2002), 65.
58. Nicholas Keijzer, *Military Obedience* (Alphen aan den Rijn, The Netherlands: Sijthoff & Noordhoff, 1978), 32.
59. General Sir. John W. Hackett Hackett, 'The 1970 Harmon Memorial Lecture: The Military in the Service of the State', in *The Harmon Memorial Lectures in Military History: A Collection of the First Thirty Harmon Lectures Given at the United States Air Force Academy*, ed. H. R. Borowski (Washington, DC: Office of Air Force History, 1988), 523.
60. Peter Olsthoorn, 'Honor as a Motive for Making Sacrifices', *Journal of Military Ethics* 4, no. 3 (2005): 184.
61. Walzer, *Just and Unjust Wars*, 21.
62. *Ibid.*, 22.
63. Rawls, *A Theory of Justice*, 332.
64. Walzer, *Just and Unjust Wars*, 229, 253, 268.
65. Rawls, *A Theory of Justice*, 333, 334, 335; Robert Nozick, *Anarchy, State and Utopia* (Oxford: Basil Blackwell, 1974), 100; Brian Orend, *The Morality of War* (Canada: Broadview Press, 2006), 109.
66. Michael Walzer, *Obligations: Essays on Disobedience, War and Citizenship* (Cambridge, MA: Harvard University Press, 1970), 141.
67. Cesare, Marchese di. Beccaria, *An Essay on Crimes and Punishments: with a commentary by M. de Voltaire* (Philadelphia: William Young, 1793), 19.
68. Beccaria, *Crimes and Punishments*, 20.
69. Col. Ardant Du Picq, *Battle Studies: Ancient and Modern*, trans. J. N. Greely and R. C. Cotton (Milton Keynes: Bibliobazaar, 2006), 53.

70. Jeff McMahan, 'Collectivist Defenses of the Moral Equality of Combatants', *Journal of Military Ethics* 6, no. 1 (2007): 53.
71. Dr. Jim F. Cairns, *Member for Yarra, House of Representatives Official Hansard*, No. 22, 28 May 1968, 1618.
72. Senator Michael Tate, *Senate Hansard*, 31 May 1983, 1027.
73. Report by the Senate Standing Committee on Constitutional and Legal Affairs, *Conscientious Objection to Conscripted Military Service* (Canberra: Australian Government Publishing Service, 1985), x, 30.
74. Annex I, Article 8 bis, Amendments to the Rome Statute of the International Criminal Court on the crime of aggression: RC/Res.6.
75. Michelle Grattan, 'Most Troops Home by Next Year's End', *The Age*, April 17, 2012, Melbourne edition, 4.
76. David Ellery, 'Call to Avoid More Defence Bungles', *The Canberra Times*, September 17, 2012, Canberra edition, 2. Ellery identifies the Super Seasprite helicopter project, landing craft for defunct LPAs, the Wedgetail early warning radar and air control system, the Tiger armed reconnaissance helicopter, the Adelaide class FFG upgrade, the KC30 Multi-role tanker aircraft procurement, the multi-role helicopter [MRH] project, the lightweight torpedo project, the air warfare destroyer project, the APC upgrade and the Collins class submarine sustainment project.
77. Rawls, *A Theory of Justice*, 336.
78. *Ibid.*, 341.
79. *Ibid.*, 390.
80. Thomas Pogge, 'Making War on Terrorists – Reflections on Harming the Innocent', *The Journal of Political Philosophy* 16, no. 1, (2008): 11.
81. John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 86.
82. Mary Wollstonecraft, *A Vindication of the Rights of Woman and the Wrongs of Woman, or Maria*, ed. Mellor, A. and Chao, N. (New York: Pearson Longman, 2007), 41.
83. Daniel Flitton, 'Captain Defied Order on Boat', *The Age*, July 12, 2012, Melbourne edition, 1.
84. Walzer, *Just and Unjust Wars*, 45.
85. Gerald Reitlinger, *The S. S: Alibi of a Nation 1922–1945* (Melbourne: Heinemann, 1956), 278.
86. Michael Berenbaum, *Witness to the Holocaust* (New York: HarperCollins, 1997), 135.
87. Alastair McIntosh, 'A Nonviolent Challenge to Conflict', in *Ethics Law and Military Operations*, ed. David Whetham (Basingstoke: Palgrave Macmillan, 2010), 49.