

**“Honor in the Military and the Possible Implication for the Traditional Separation of Jus Ad Bellum and Jus In Bello”. *Pre-print. Applied Ethics Series (Center for Applied Ethics Hokkaido Univ. 2011.***

**Introduction:**

Traditional just war theory maintains that the two types of rules that govern justice in times of war, jus ad bellum (justice of war) and jus in bello (justice in war), are logically independent of one another. Call this the independence thesis. According to this thesis, a war that satisfies the ad bellum rules does not guarantee that the in bello rules will be satisfied; and a war that violates the ad bellum rules does not guarantee that the in bello rules will be violated. A controversial implication of this is that it's possible for soldiers to undergo acts that are instrumental in bringing about victory in an unjust war and yet do nothing morally wrong. Some authors -- call them purists -- claim that this cannot be correct. Participating in an unjust war is by itself morally wrong. Yitzhak Benbaji has given what is to my mind the strongest defense of the independence thesis. In this paper I critically examine Benbaji's argument and conclude that it is not persuasive. My argument against Benbaji incorporates the concept of honor in the military. I seek to show, in part, that if the recent literature is correct concerning both the nature of honor and the importance of instilling it in soldiers, then Benbaji hasn't given the purist a compelling reason to give up her view.

In the first part of the paper I discuss some of the recent literature (where there is a fair amount of consensus) on the concept of honor and the importance of instilling it in

soldiers. I then discuss in more detail the independence thesis and the main arguments against it. Next I discuss Benbaji's Argument from the Moral Division of Labor and argue that it fails to make its case, especially if we are to think of soldiers as honorable men and women.

### **Honor in the Military:**

Recently, a number of authors have endorsed a return to instilling honor in soldiers as a means of motivating them to act rightly on the battlefield. Paul Robinson, for example, has given insight into the nature of honor. Most conceptions of honor have both an internal and external aspect. Internal honor or integrity is acting in accordance with one's beliefs about what's right because to do otherwise will undermine one's own sense of self worth. External honor is the praise one receives from others -- in particular one's honor group-- as a result of one's virtuous conduct. An honor group is basically a group that holds certain virtues in high esteem and thus praises those who exhibit those virtues and denigrate those who don't. According to Robinson, most people have more than one honor group but there's typically one that dominates. A person will be loyal to that dominant group and be motivated to exhibit the virtues it emphasizes (Robinson 2007).

For Robinson, integrity and the utilization of honor groups can spur soldiers to exhibit other important military virtues. For example, it's thought that soldiers with integrity will show restraint towards enemy civilians and prisoners, even when no one is looking, or even in the midst of peer pressure not to. The utilization of honor groups can motivate soldiers to display courage and heroism on the battlefield. Exhibiting physical

courage brings praise from the members of the honor group, which typically consists of fellow comrades. Likewise to be deemed cowardly is to be looked down upon. The same can be said for internal honor. A soldier can be motivated to exhibit courage for doing otherwise can bring a loss of self-respect (Robinson 2007).

But Robinson points out how the typical soldier's honor group only deems the "somewhat old fashioned" virtues of strength, courage, and loyalty to comrades as the most important to be exhibited. While this has the effect of motivating soldiers to stand and fight, it can also encourage them to either turn a blind eye to or participate in wrongdoing. Soldiers, for example, out of fear of disappointing their comrades or appearing weak in front of them, may be prone to engage in harmful actions towards enemy civilians or prisoners (e.g. massacres or torture). The idea is seemingly that the typical soldiers honor group is such that it undermines the implementation and exhibition of integrity in soldiers. While many soldiers may have a belief that it's wrong to harm innocents, when they are faced with a conflict between harming innocents on the one hand and being loyal to their comrades on the other, they cave under the peer pressure (it's too strong) to be loyal (Robinson 2007).

In order to counter-act this, Robinson recommends that more effort be made to teach soldiers that they are part of a larger honor group that includes civilian society. Doing this will help more soldiers be more motivated to exhibit the virtues expected of them by civilian society, like restraint against innocents. Likewise, soldiers should be explicitly taught that along with courage, loyalty and the like, a 'respect for human life' should be held as a primary virtue to be exhibited. If soldiers are taught that an

essential feature of being a good soldier is to have a respect for human dignity, then presumably the number of incidents where soldiers are pressured to harm innocents will be reduced. And in those situations where they are faced with a conflict between being loyal to comrades and not harming innocents, more soldiers will choose the latter. For when soldiers are made to see that the right thing for them to do *qua soldiers* is to respect human life, they'll be more prone to show restraint in the midst of peer pressure not to, that peer pressure being not so great (Robinson 2007).

Peter Olsthoorn has recently discussed the importance of instilling moral courage in soldiers. For Olsthoorn, the concept of moral courage is similar to Robinson's concept of integrity. Olsthoorn endorses the following definition of moral courage: "the capacity to overcome the fear of shame and humiliation in order to admit one's mistakes, to confess a wrong, to reject evil conformity, to denounce injustice, and to defy immoral or imprudent orders" (Miller 2000, 254). Simply put, for Olsthoorn, moral courage is standing up for your beliefs in what's right even when one's reputation and status is put in harms way (Olsthoorn 2007).

Like Robinson, Olsthoorn sees the possession of moral courage as a necessity to keep soldiers from harming innocents in war. Likewise, moral courage is "important to the military because it needs people who will blow the whistle if necessary, but also because it needs...soldiers who are willing to correct a colleague when they think him wrong, or even report him if necessary" (Olsthoorn 2007, 275).

Similar to what we saw with Robinson, Olsthoorn thinks many soldiers lack moral courage primarily because of the method most militaries use to instill physical courage,

which is social cohesion. Social cohesion is basically the conditioning of soldiers to view one another as members of a tight knit family, and as such soldiers are to protect and to be loyal to one another. (Robinson would presumably define social cohesion as something like the process by which militaries form honor groups for their soldiers). The problem is that there's clear evidence that social cohesion breeds peer pressure to engage in wrongdoing or cover-up the wrongdoing of fellow soldiers. The idea is seemingly that social cohesion breeds peer pressure that is so strong that many soldiers will fail to act on their moral convictions concerning the wrongness of harming innocents. In light of this, Olsthoorn calls for less emphasis to be placed on social cohesion, especially since the evidence is less than conclusive that social cohesion is a primary impetus for physical courage. Soldiers need to be taught that they can dissent from the opinions of their peers (their opinion are not what is of utmost importance); this can pave the way for an increase in moral courage on the battlefield in that the degree of peer pressure one faces will be reduced (Olsthoorn, 2007).

Larry May's recent discussion of honor also bears some affinities to Robinson's conception of internal honor (i.e. integrity). For May, instilling honor in soldiers "is the chief way that soldiers are motivated to restrain themselves according to the rules of war" (May 2007, 30). A soldier's honor, for May, is an "...enhanced scrupulousness to moral prohibitions..." (May 2007, 31). And a soldier who acts from a sense of honor acts from an "enhanced desire to do what is right..." (May 2007, 31). Furthermore, for May, a soldier's honor also consists in acting humanely, which means he exhibits on the battlefield the virtues of mercy and compassion. Importantly, according to May, a

soldier's sense of self-worth is dependent on his honor. So if he doesn't act humanely and thereby violates the rules of war, self-respect will give way to shame. Again, this desire to keep one's sense of self-worth intact is a primary motivation to adhere to the rules of war (May 2007).

Those engaged in war, according to May, experience great stress, tremendous concern for their own and others safety, and even hatred towards the enemy. When you couple this with the fact that soldiers are trained to kill people, something must keep soldiers from going too far on the battlefield. Conditioning soldiers to think and act in terms of honor is what is going to prevent them from harming innocent people (e.g. POWs, enemy soldiers who have surrendered) when the "emotions and violence" of war erupts (May 2007,11). When soldiers are so prevented, they are enabled to see themselves as more than mere killers (May 2007).

### **The Independence Thesis and the Argument against it:**

I will return to the notion of honor in the military and how it factors into a rebuttal of Benbaji's defense of the independence thesis. For now I describe this thesis in a bit more detail as well as why it's thought by some to be incorrect. Proponents of the independence thesis claim that ad bellum rules apply only to military and political officials while in bello rules apply only to soldiers. Furthermore, both just and unjust soldiers can equally satisfy the in bello rules, which are commonly thought to be: (1) a soldier is morally permitted to employ military force (e.g. directly harm enemy soldiers) provided that the military force is both necessary and proportionate, (2) harmless

civilians are immune from direct attack, (3) a soldier has immunity from attack upon surrender, and (4) a soldier is not to be harmed if captured as a POW.

[Just soldiers or combatants carry out a just war, one that has a just cause and is both necessary and proportionate. Unjust soldiers carry out an unjust war, one that fails to be necessary, proportionate or have a just cause].

Perhaps the most controversial aspect of the independence thesis is its implication that it's possible for soldiers to permissibly undergo acts that are instrumental in bringing about victory in an unjust war. Fighting in an unjust war (e.g. killing just soldiers) is not sufficient to make the acts of the unjust combatant morally impermissible (McMahan, 2006).

Purists, again, deny the independence thesis. If a soldier fights in an unjust war, then that by itself makes it so he is doing something wrong. For, by killing just soldiers he is killing innocent persons, those that have done nothing to lose their rights. The just soldier is merely defending his homeland or in some cases defending those who have their basic human rights threatened. Thus the just soldier is analogous to either a victim using force to fend off his aggressor or to someone defending a victim from a third-party. In the domestic realm, we normally think that a person engaged in self or other defense is permitted to use force, but the attacker is not. Furthermore, since it's impermissible to kill innocents in order to bring about a just state of affairs, how can it be permissible to kill innocents in order to realize an unjust state of affairs? Even if an unjust soldier is not harming just soldiers, his participation in the war is instrumental in bringing about an unjust state of affairs and thus prima facie wrong (McMahan 2006).

If it is immoral for a soldier to participate in an unjust war, then contrary to what many people hold, soldiers are obligated to refuse to obey orders to participate in a war they know (or justifiably believe) is unjust. What seemingly follows from this is the obligation of soldiers to do what they can to decipher the morality of the war they are ordered to fight (when they are agnostic about or doubt the justice of the war) with an eye of not participating if they cannot arrive at a justified belief that the war is just (Benbaji 2009). What is more, in order to lessen the soldier's burden of complying with the demands of morality, militaries should lessen the severity of punishment for conscientious refusal, though the punishment for such refusal should be kept significant in order to deter malingerers (McMahan 2006).

#### **Argument from the Moral Division of Labor:**

Benbaji's Argument from the Moral Division of Labor is a response to the above purist line of thought. Benbaji claims that morality is divisional so that when we engage in moral deliberation, we're not always required to consider all of the morally relevant considerations for or against an action. We are sometimes permitted to lack knowledge concerning the unjust effects of our actions. For example, according to Rawls, we all have a political obligation to work towards a just tax regime. However, when it comes to our individual choices in the market place, we are not obligated to consider how our actions will affect social justice. We are permitted to acquire wealth and possessions even if that results in others unjustly having considerably less than we do. If we know that our acquisitive behavior is unfair to others, we can ignore that fact. If we wonder or have never considered whether our personal behavior is fair to others, we are permitted



to either stop wondering or not investigate the matter. The best way to realize social justice is not to pursue it at the personal level but rather at the political (Benbaji 2009).

Even if our actions consist in killing innocent people, morality doesn't always require that we consider this fact. The executioner, for example, is entitled to put a convicted prisoner to death without investigating the facts concerning his innocence. Even if the executioner knows the prisoner is innocent, he is entitled to ignore this fact and carry out his duty to execute. Why is this? The convention which governs the society's coercive aspect only obligates the courts to determine the innocence of prisoners and hence to concern themselves with the morality of killing the prisoner. The convention is fair and beneficial to all of society, and thus nearly universally consented to. Presumably, permitting the executioner to ignore matters of guilt and innocence and leaving such matters to the courts is what is best for society as a whole for such a moral division of labor is what best ensures that the guilty will be punished while the innocent are not. The executioner, who has tacitly consented to the convention, is entitled to disregard any belief he has regarding the justness of the execution. Likewise, the prisoner has also tacitly accepted the convention. Thus his claim is against the state, and not the executioner, that he not be wrongly put to the death (Benbaji 2009).

Similarly, for Benbaji, there is convention or contract that governs warfare. It's an implicit pre-war contract that all decent societies enter into (or would enter into). The contract basically consists in the set of *in bello* and *ad bellum* rules plus the fact that the two sets are logically independent of each other. For Benbaji, this contract is (ex ante) fair and beneficial for all the states that enter into it and thus nearly universally

consented to. Why? The contract is what best ensures that when war does break out violence will be kept to a minimum; and, it is what best maintains the obedience of soldiers which is essential if a state is to militarily defend its just claims. To take one example, say a pilot fighting in a just war is ordered to bomb a camp containing enemy soldiers, yet he is unsure of the justice of his country's cause. If we stipulate that unjust soldiers are not permitted to harm just soldiers, the pilot will likely disobey his orders thus stifling his country's just war efforts. Thus we need to maintain that unjust soldiers are permitted to directly harm just soldiers (Benbaji 2009).

Soldiers (both just and unjust) as well as civilians who find themselves in the midst of war have tacitly consented to this war convention or contract. The war convention, of course, only obligates military and political leaders to concern themselves with the justice of a particular war. Soldiers are to only concern themselves with their orders in conjunction with the in bello rules, which entitles them to not entertain thoughts concerning the morality of the war they're asked to fight. This moral division of labor is consistent with the fact that morality takes into account our cognitive limitations. It's asking too much of soldiers to consider ad bellum matters, these should be left to military and government superiors, who have the necessary time, capacity, and access to information to make informed decisions (Benbaji 2009).

By consenting to the convention, just soldiers and citizens waive their right not to be directly and collaterally harmed by unjust soldiers. And because ordinary citizens have also consented (they authorize states to act on their behalf), unjust soldiers don't violate their rights by bringing about an unjust state of affairs. If, for example, a nation

has its political sovereignty violated, it's the leadership, not the soldiers of the aggressive nation that wrongs those citizens. Thus while it would be heroic for a soldier to refuse to participate in an unjust war, he's permitted to do his part to carry one out (Benbaji 2009).

### **Responding to the Argument from the Moral Division of Labor:**

What's not clear to me is why states and hence soldiers and citizens wouldn't consent to a war convention that purists think should be adopted. Such a convention, it seems, would be at the least, just as fair and beneficial for all those that enter into it. The purist could justify the rules that stipulate that POWs and soldiers who have surrendered are not to be harmed. These soldiers are not doing anything that makes them forfeit their right to life; they have regained their right to life. Furthermore, and importantly, the instilling of honor in soldiers is what can motivate them to follow these rules.

Such a convention of course would stipulate that unjust soldiers are not permitted to employ military force i.e. harm just soldiers, though in some circumstances unjust soldiers may be excused for doing so. It would also entail that soldiers are required to *do what was in their power* to investigate the morality of the war they're asked to fight with an eye to refuse participation unless the war reasonably looked to be just. But I fail to see why this would be a problem. The just mentioned requirement on soldiers is seemingly not excessively high-minded. The purist admits that political and military leaders are the primary *determiners* of whether a war has a just cause, is necessary

and proportionate, etc. But this does not mean that soldiers can't (or shouldn't) do what they can to attend to ad bellum matters and settle in their own mind the morality of the war in question. What the purist requires soldiers to attend to is not beyond their ability. For example, as Jeff McMahan points out, soldiers can determine with relative ease whether the country they've been asked to fight has or hasn't invaded another country. If it hasn't, then the war in question could very well lack a just cause. Soldiers are also able to determine whether opposing soldiers live in the territory where the fighting is occurring; and whether the opposing soldiers find shelter and support from the territory's civilian population. The war could be unjust if these conditions obtain (McMahan 2006).

For the purist, while soldiers have a strong institutional obligation to carry out orders, this obligation is not absolute. It seems that the obligation to not kill and maim the innocent overrides any institutional commitment one may have (McMahan 2006). Thus the executioner (if we make the controversial assumption that killing is a just form of punishment) as well should refuse to kill someone he knows is innocent. If he doesn't have such knowledge, he should do what is in his power to determine for himself the innocence or guilt of the prisoner. If the justice system within which he operates is on the whole reliable, the pronouncement of guilt from the court minus obvious signs that the prisoner is innocent is probably sufficient to determine for himself the guilt of the prisoner. With soldiers though, it's not clear that a pronouncement of a just war from higher up the chain of command carries a lot of weight. Experience shows us that military and political officials -- even democratically elected ones -- on the whole aren't trustworthy when it comes to adhering to ad bellum rules (McMahan 2006).

Most people think that if the adoption of a purist war convention causes more soldiers to investigate ad bellum matters, a genuinely just war will still be recognized as such and fought. There's no evidence to suggest that a culture of 'investigation and refusal' amongst soldiers will undermine the worthy goals of a military; again, just wars will still be fought (McMahan 2006). Sure there may be a few just soldiers that doubt the justice of their cause and fail to carry out their mission; but a few such soldiers can't significantly undermine the effectiveness of the military to which they belong. There will probably be more soldiers refusing to fight unjust wars; but this is of course a good thing. Furthermore, I suggest that even if a culture of questioning and refusal were to cause less just wars to be fought (and fought effectively), this may not be a bad thing given the horror of war. Better to have less just and unjust wars than the current rate of wars being fought.

Benbaji admits that the traditional "war convention promotes injustice, since it permits (and thus legitimizes) killing innocent people for no good reason" (Benbaji 2009, 16). Furthermore, Benbaji admits that as more soldiers refuse to fight in unjust wars (as would likely take place if a purist war convention were adopted), the number of unjust wars would likely be decreased especially as conscientious refusal becomes more entrenched and accepted. Benbaji insists, however, that morality is not so stringent that it would require soldiers to refuse participation in unjust wars. Creating such a big social change, one where the number of unjust wars is reduced, is not the duty of ordinary people like soldiers (Benbaji 2009).

In response, it is plausible to suppose that ordinary people are not obligated (though it would be heroic of them) to struggle to bring about radical social change. But the claim of the purist is not merely that soldiers are required to do their part to bring about big social change. By not doing their part to bring about big social change, unjust soldiers are killing and maiming innocent people for the purpose of bringing about an unjust state of affairs. Surely all ordinary people are required to refrain from doing this.

In addition, let's return to the issue of honor discussed at the outset. If the arguments of Robison, May, and Olsthoorn are plausible, then it's not clear that soldiers are the kind of people that are ordinary. The honorable soldier is zealous to do what is right, knowing that his self-respect will be lost if he doesn't. Doing what is right, in large part, consists in respecting human persons and human dignity. Since unjust wars result in human suffering and injustice, the honorable soldier is not the kind of person that can ignore the fact that his war is unjust; nor is he the type of person that can, if he doubts the justice of his war, defer to the judgment of his superiors, given their general unreliability. Furthermore, honor as describing up (esp. integrity) by its nature cannot be said to be relevant in one area of life but not relevant in another area; thus it cannot be compartmentalized to only in bello matters.

Likewise, the honorable soldier, who has been trained to value a bit less the opinions of his colleagues and value more the opinions of civilian society, is capable of dissenting from his fellow soldiers as well as superiors (c.f. the honorable soldier who refuses orders to partake in a massacre). Thus there's no reason to think that it's

asking too much of soldiers to refuse orders to carry out an unjust war on account that the pressure to fit in is too great.

Citizens seemingly have an obligation to do what's in their power to ensure their country doesn't fight unjust wars (Benbaji, 2009). If we take seriously Robinson's suggestion that a soldier's honor group is to be expanded to include civilian society, then citizens can, at least in part, discharge this obligation by both encouraging soldiers to attend to ad bellum matters and pressuring the military to lessen the burden soldiers have to face for conscientious refusal.

The honorable soldier, as described by May, is supposed to be morally a 'cut above' the average person, this is what enables him to respect innocent human life in the midst of various and great pressures not to. But the very things that enable a soldier to act rightly on the battlefield are the very things that make him especially equipped and eager to refuse orders to carry out an unjust war. I thus fail to see why soldiers wouldn't be required by morality to so refuse. But even if we insist that it would good of soldiers to refuse participation in an unjust war, though not required of them, it seems that we should have higher expectations of soldiers. That is, we should expect more soldiers, and they should expect themselves, because of their honor, to go above and beyond the call of duty and refuse participation in an unjust war.

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