

Unjust War and a Soldier's Moral Dilemma

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Abstract

This paper explores the central question of why soldiers in democratic societies might decide to fight in wars they may have reason to believe are objectively or questionably unjust. First, I provide a framework for understanding the dilemma caused by an unjust war and a soldier's competing moral obligations; namely the obligations to self and state. Next, I address a few traditional key thoughts concerning soldiers and *jus ad bellum*. This is followed by an exploration of the unique and contradicting moral problems that confront modern soldiers and their officers. I argue that although traditional positions such as invincible ignorance provide a rather dangerous 'head-in-the-sand' mentality, soldiers serving a democratic government are nonetheless very limited in their legal and moral ability to interpret what is a justifiable war. However, a very few select senior officers are in positions to make such legal and moral decisions concerning *jus ad bellum*.

Key Words: just war theory, moral dilemma, professional military ethic, *jus ad bellum*, invincible ignorance and moral equality

For if war is fought not under the aegis of necessity but, most often, of freedom, then soldiers and statesmen have to make choices that are sometimes moral choices.

-Michael Walzer¹

Introduction

A soldier in a democratic society who is given an order to fight in a war that he or she believes to be an unjust war is confronted with a moral dilemma. On one side of this conflict, a soldier has the duty to follow his or her conscience. I make the claim that in a free and democratic society it is not acceptable to fight in an unjust war much in the same manner it is not acceptable to fight a war unjustly, i.e. commit war crimes. Thus, one should not fight in an unjust war. On the other side, a soldier serving a democratically elected government has a duty to obey

lawful orders given to him or her by that government. When a soldier is given orders to fight in a war that he or she believes to be unjust, these duties collide creating a moral dilemma.

In the following, I will explore the moral and legal obligations of soldiers serving democratically elected governments, including the legal and moral limitations which constrain their choices. I will use the US military as an example, primarily based upon my experience and knowledge of that institution. I present no empirical evidence for any specific unjust wars fought by the United States nor do I make the claim that this dilemma is unique to the US military; rather, I use the US military as an example to lay the moral and legal groundwork for understanding why soldiers, and specifically officers serving democratic governments, might serve in a war they may have reason to believe objectively or questionably unjust.

Framing the dilemma and the role of conscience

A moral dilemma, in simplest terms, is a situation in which a person feels he or she ought to do action *A*. At the same time, this person feels equally obligated to do action *B*, however, it is not possible to do both (McConnell 1996: 36). In such a situation there are moral reasons for doing both actions, but it is not possible to do both because to do one of the actions would violate the other. Here the verb ‘*ought*’ implies a persuasive feeling for wanting to do one or both of the actions. This feeling stems from our conscience, that inner voice that tells us what right and wrong is, and Friedrich Nietzsche characterized it as a *Gefühl des Müßens*, loosely translating to mean ‘a feeling of obligation’ (Nietzsche 1880: 47). To recognize this feeling of obligation from our so-called ‘inner voice’ is to acknowledge that it carries authority (Velleman 1999: 58).

Likewise, when one speaks of conscience and feeling obligated to do an action, one speaks of a duty². I argue that if a person feels obliged to do a certain action it is, in fact, equivalent to being his or her duty to fulfill that action. Not to do what one feels they ought to do, in this sense, is morally blameworthy. In short, it is your duty to follow your conscience (Brandt 1958: 35-37). Such obligations arise from promises, social groups, from certain positions of trust, as well as legal obligations we have bound ourselves to through contract (Hart 1958: 83). It is the latter form that is of greatest interest to this dilemma, primarily, the legal and moral obligations a soldier incurs by taking an oath of service to his or her government.

What is particularly complex about the dilemma I will explore in this paper is that the reasons for doing *A* and *B* are not mutually exclusive. Meaning, the two actions equally seek to guide one’s conduct, but the moral imperative of the rejected action is not rendered false and will continue to make itself felt as regret (Foot 1983: 381). As a consequence, when two duties come into conflict with each other a moral dilemma exists. For the purpose of this paper, I define ‘moral dilemma’ as a conflict of obligations in which an agent must choose one of two equally

imperative duties, but to choose one duty is to violate the other. Such a conflict is most readily identified by a feeling of regret for not following one's conscience.

On one side of the dilemma is a person's duty to follow his or her conscience and the moral code that governs his or her actions. On the other side is a soldier's obligation to fulfill the duties incurred by an oath of service, such as following the orders of a democratically-elected civilian government that commands the military. In the case at hand, soldiers are obligated to fight in wars their government deems just. It is when a soldier is told to fight in a war that he or she believes to be unjust that we find the true nature of this dilemma. If the soldier follows his or her moral code and refuses to fight, this will subsequently violate an obligation to their profession and the state. Conversely, if the soldier serves in the war he or she will violate a personal moral code. Either way, only one of the duties can be fulfilled.

Just war theory

Two primary focal points have traditionally defined the debate of morality and warfare: the justice of war and the justice in war³. As Michael Walzer points out, a grammatical distinction separates these two aspects. The first is adjectival in nature, *jus ad bellum*. One asks if a war is just. The second is adverbial in nature, *jus in bello*. Here one asks if the war is fought justly (Walzer 2000: 21). The moral dilemma that is presented in this paper is clearly within *jus ad bellum* aspects, but in order to understand a soldier's *jus ad bellum* obligations one must also understand the legal and moral *jus in bello* obligations of a soldier.

Jus in bello

In the shadow of the Second World War, British Field Marshal Bernard Montgomery summarized what many argue is the key duty of a soldier:

It must be made clear that an army is not a collection of individuals, but a fighting weapon, shaped by discipline and controlled by leaders. The essence of democracy is freedom, the essence of the army - discipline! It has nothing to say about how intelligent the soldier is. The army would let the nation down, if it were not accustomed to obeying orders instantly. It is the duty of the soldier to obey all commands without question that the Army, that means the nation, gives him! (Latenser 1950: 42).

Obedience to orders is a fundamental part of the military profession and arguably an army without obedience is worse than useless (Taylor 1980: 14). In order for a military to perform its function, every stage of the chain of command must expect and demand obedience to orders. Accordingly, loyalty and obedience are to be regarded as the uppermost values of the military profession (Huntington 1957: 73). This duty to obey orders sets the foundations for a potential collision of obligations as described above: the duty to obey orders and the duty to follow one's

conscience. What is a soldier to do if he or she receives an order he or she believes to be immoral? Is there a limit to a soldier's obedience when confronted with a *jus in bello* conflict of obligations?

The military tribunals in Nuremberg established that there is in fact a very clear limit to a soldier's obligation to follow orders. A key principle established by the ruling was that soldiers cannot claim immunity when executing orders prescribing immoral acts (Christopher 1994: 155). A key argument used in Nuremberg by many Nazi leaders to defend their actions was that they were only following orders. 'I am not guilty because I was following superior legal orders.' The decisions by the court ruled that a soldier cannot claim immunity in the name of a state's authority when committing war crimes. There are two core aspects of this argument.

Firstly is the act of making a decision. Whether a person's decision is objectively right or wrong is actually irrelevant to the act of decision-making. What is important is that when a person decides that a certain action is the correct one, they make that decision freely. The single thing that a person can answer to is their conscientious decision and anyone who acts against their conscience acts irresponsibly (Ricken 2003: 265). Here the idea of freedom of conscience and self-determination play a major role, specifically a person's moral agency. The term moral agency means that a person carries a sense of self-condemnation when they breach their own moral standards and thus they refrain from behaving in ways that violate their own principles (Osofsky et. al 2005: 371).

A soldier who chooses to execute an immoral order is guilty because he or she has made the conscientious decision to do so. Moreover, a person can never abrogate his or her moral agency. That is, if a soldier is given an order that he or she knows to be illegal or immoral there is no defense arguing that it is one's duty to execute that order. As the early American philosophical theologian Jonathan Edwards (1703 – 1758) described it, 'When a thing is from a man, in the sense that it is from his will or choice, he is to blame for it because his will is in it. So far as the will is in it, blame is in it' (1973: 427). Soldiers in war may have little influence on their surroundings, but the decisions they make, although limited, are theirs to make and thusly, they remain responsible for their actions. When faced with a situational motivation to behave immorally or inhumanely a soldier can still choose to act otherwise by exerting self-influence (Bandura 2002: 102).

This responsibility to act according to conscience is not limited to the lowest private on the battlefield. It also applies across all levels of the military hierarchy. The staff officer far removed from the chaos of combat can also be held accountable when executing illegal orders. Even if the staff officer does not commit the act, he or she can still be held responsible for putting that idea in the form of a military order. It is a conscious decision to send orders through

organizational channels to units where those orders become effective (Davidson 2001: 3). Again, it is not enough to simply say that one was following superior orders. If the staff officer knows that the act he or she orders or facilitates subordinates to commit is illegal, that staff officer remains responsible because he or she made the decision to carry out such orders.

The second aspect is knowledge. If a soldier can be held responsible for his or her personal actions in war, it is paramount that a soldier understands what is considered immoral and illegal. The US Army's Law of Land Warfare Field Manual, in part, summarizes what is considered illegal⁴. A few examples for soldiers at the tactical level of operations include: refusal of quarter to surrendering soldiers, rape or pillage (FM 27-10, Ch 3). Moreover, soldiers are often issued a so-called Rules of Engagement Card (ROE). The ROE is a commander's tool that ensures that soldiers understand what kind of force they may use, when they may use it, and against whom they may use it.

The Nuremberg Trials clearly set the example that legal considerations are subordinate to moral ones concerning a soldier's actions. FM 27-10, however, states that 'obedience to lawful military orders is the duty of every member of the armed forces.' A lawful order, in this sense, is an order that is both legal *and* moral. The order must come from a commander who has legal authority to issue such an order and the order itself must be moral. That is to say, it must not command an act that is illegal (Christopher 1994: 142). This establishes a very clear limit to blind obedience when following orders. If a soldier's commanding officer, who has the legal authority to issue him or her orders, commands that soldier to commit an act which the soldier knows to be illegal then the soldier must disobey the order. If the soldier obeys the illegal order then he or she consents to the illegal act. 'Soldiers are only bound to obey orders that are lawful' (FM 27-10, 509 b).

Moreover, the legal precedents established at Nuremberg constitute international law, and are as such, part of US Law. Hence, under the constitution of the United States, treaties constitute part of the supreme law of the land and 'because the United States is party to most of the major multilateral conventions' such as the Hague Conventions, Geneva Conventions and the United Nations Charter, these 'laws of warfare constitute US law and are enforceable in American courts' (D'Amato et. al 1969: 1058).

Still, obedience remains a paramount virtue of the military profession and without it an army would fail to function properly. However, a soldier's duty to be obedient is limited to lawful orders which means soldiers have a very clear moral obligation to disobey orders that are illegal or immoral. Of course, in a combat environment many factors such as fear influence a soldier's ability to make sound decisions. Likewise, the personal challenge of disobeying orders leaves many open questions, particularly, the consequences of disobeying orders. In the end though, the

military tribunals in Nuremberg set the precedence that it is a soldier's duty to side with his or her moral code and disobey what he or she knows to be an unlawful order.

Jus ad bellum

If soldiers are obligated to follow their conscience and disobey unlawful orders in the conduct of actual warfare, should they not likewise be obligated to disobey illegal commands sending them to war? In the name of consistency one could argue that the rules that govern a soldier's *jus in bello* decisions should also apply to *jus ad bellum* as well. The argument of moral consistency says that similar or like cases should be governed by the same rules of law or morality (Coons 1987: 60). Thus, if a soldier ought to disobey an order he or she believes to be immoral in the conduct of war then based on moral consistency that soldier ought likewise to disobey an order sending him or her to a war they have reason to believe is immoral.

Paul Christopher argues not to quickly extend conclusions of a soldier's *jus in bello* obligations into the realm of *jus ad bellum*. Although moral consistency may prescribe like treatment for both aspects of moral reasoning concerning war, the nature of *jus ad bellum* and the limited influence a soldier has, is rather complex. Indeed, the legal and moral characteristics of a soldier's *jus ad bellum* obligations are much more difficult to define than *jus in bello*. As observed by Christopher, the process for determining when a nation ought to use force is not only a difficult matter involving human judgment; it is above all a complex political process (Christopher 1994: 157).

Invincible Ignorance

One of the oldest arguments limiting a soldier's moral decision regarding *jus ad bellum* is the concept of invincible ignorance. This principle is rather straightforward: if a person commits an objectively wrongful act but he or she does not have the means to overcome their ignorance of that wrongful act, that person remains innocent (Sola 2009: 49). This argument starts from the premises that soldiers are subjects of the state and that they do not have access to all the information that a state leader has. Thus, they remain ignorant of the reasons for war. Because a soldier does not have access to the information needed to make a reasonable judgment concerning the justice of a war, it is not possible for a soldier to be certain that his or her government is conducting a just war. Nor can a soldier ever be sure that all non-military means have been exhausted before the nation's leaders have committed themselves to using military force (Ceulemans 2007: 106). Additionally, the absence of a conclusive means to identify a possibly unjust war leaves a soldier little choice but to assume that the war in question is just and that his or her government has made the right decision (Taylor 1980: 13). The ignorance argument further insists that a soldier is not only ignorant of the reason for a war, but his or her

ignorance is invincible, meaning there is no way to overcome the ignorance. As a result, he or she cannot be held responsible if the war is unjust.

Probably the most quoted author concerning soldiers and invincible ignorance was the Spanish theologian, Francisco de Vitoria (c. 1492 – 1546). He argued that not only are soldiers ignorant of the reasons for fighting a war, but those who decide why a nation should go to war are not necessarily obligated to give soldiers a justification for their participation. ‘A prince is not able and ought not always to render reasons for the war to his subjects and if the subjects cannot serve in the war except after they are first satisfied of its justice, the state would fall into grave peril’ (Walzer 2000: 39).

It is important to note, however, that Vitoria did not argue that soldiers are invincibly ignorant simply by their virtue of being soldiers and subjects of the state. He did in fact state rather clearly that ‘if the injustice of a war is clear to a subject, he ought not to serve in it, even on the command of his prince’ (Walters 1973: 207). In very general terms invincible ignorance argues that *jus ad bellum* remains the province of a state’s leaders and soldiers must only concern themselves with their own actions in war. However, as Vitoria further argued, if the injustice of war is clear to a soldier then there would be no excuse to serve in the war. How one defines ‘clear injustice’ is open to debate, and I explore that issue later in this paper.

Moral equality of soldiers

Another significant feature here is that ignorance sets the condition for the moral equality of soldiers. Moral equality builds onto the argument that if a soldier cannot know if the reasons for going to war are just, the soldier then has no other option but to place a significant amount of trust in the state and assume its cause to be just. A soldier cannot be held accountable for following orders sending him or her to an unjust war. If a soldier may have reason to believe that the war is unjust a general suspicion that a war might be unjust is not significant reason enough to hold individual soldiers accountable for an unjust war (Ceulemans 2007: 107).

This argument applies equally to soldiers from both sides of a conflict. Even if their leaders have lied to them, soldiers are justified in fighting a war because it is assumed that soldiers on both sides have been told and believe they have justice on their side (Sola 2009: 51). Soldiers are morally equal in nature because they are subjects of the state and, as Walzer pointed out, in executing their orders given to them by the state soldiers have a license within the confines of *jus in bello* to kill one another (Walzer 2000: 36). This argument is a sort of immunity clause given to those who have the horribly dirty work of fighting a war. Those individual soldiers who were subject to the political will of the losing state cannot be held responsible for decisions that the state made concerning going to war. In the end, moral equality claims that both sides have been told that their side has just cause, and that there is no way to know with certainty the justice of

either position because there are no means to verify the reasons given as justification for each side's cause. Soldiers have no choice but to believe the justice of their side.

The moral equality of soldiers begins with the fact that those who give the orders somehow have the legitimacy to give them, and through that legitimacy they bear the burden of responsibility. An important distinction is that in Vitoria's argument, soldiers served monarchies or dictatorships where citizens submitted to governments out of fear or religious faith. In this paper, I explore the moral dilemma of an unjust war for soldiers who serve democratic governments in which leaders are voluntarily elected to represent society. The sociologist Max Weber remarked that legitimacy is generated by a majority of citizens' willingness to submit to an order. It is this voluntary agreement that generates legitimacy and grants authority (1980: 19). Under democratic governments, legitimacy is derived from the consent of the governed, and therefore one can argue that a modern democracy possesses legitimacy not from fear but from a willingness to submit to an elected government.

Because in democracies legitimacy is based upon consent from citizens, state rulers are in most cases bound by law, as well as popular opinion, to maintain legitimacy for their actions, such as informing citizens about the reasons for a war. Here one would hope citizens demand to know what their governments are doing, particularly when it comes to fighting a war. After all, it is the citizens of a democracy that fight and die in wars, not those few elected leaders in power.

Objective and formal justice

Paul Christopher argues that even though leaders of democratic governments give reasons for waging wars, soldiers still remain ignorant, not contingently as in Vitoria's time but objectively ignorant because, as Christopher states, one can 'never know objectively and with any degree of certainty which side in a war is just, even in retrospect' (Christopher 1995). This is a significant claim and he gives an analogy to describe that objective and formal justice is similar to procedures used in a court of law. According to agreed upon rules, evidence is presented by both sides from those within the governmental system, a formal debate takes place, and afterward those with proper authority reach a verdict. The decision of the court is formally just. It is as close as we can get to objective justice. As citizens we are bound by law to follow the court's decision.

This is similar to a police officer analogy. If a law-making body formally decides, for example, that the legal age for drinking and purchasing alcohol is twenty-one, a police officer must trust the system of which he or she is a part and enforce the law. Even if the police officer's personal beliefs hold that the law is morally unjust, we do not accuse the police officer of being unjust or blame him or her for enforcing the law (Zupan 2006).

War is a much more serious endeavor than enforcing under-age drinking, but the soldier is bound by the same duty to obey legitimate authority as is a police officer. We cannot hold the soldier guilty for fighting in an unjust war any more than we can blame the police officer for enforcing the law. War is a public act, Christopher writes, and the decisions made to use military force are political, not military. Any decision concerning state violence can only be legitimate when it is made by those political leaders ‘who speak with the political will of their constituents’ (1994: 157). As agents of a legitimate governing body, soldiers remain objectively ignorant and, as such, can only hope that their cause is formally just. In the end, they remain ignorant, and as Vitoria argued, immune from the guilt of an unjust war.

Counter argument

For many soldiers, this is where any potential moral conflict between their conscience and duty to the state ends. In essence the decision of what is just or unjust is made for them. On one side of this argument soldiers are protected because they cannot be held accountable as individual soldiers for the justice of a war. However, on the other side, I find this argument hardly reason enough to simply close one’s eyes and start marching off to war, if in fact one has reason to believe the war at hand is unjust. An important distinction arises here that Jeff McMahan is keen to point out:

The doctrine of moral equality of combatants doesn’t hold that participation in an unjust war can be permissible provided that one reasonably believes that the war is unjust; it holds, rather, that combatants aren’t responsible for whether their war is just (McMahan 2006: 390).

As I mentioned before, ignorance and moral equality establish a sort of immunity - but they do not necessarily establish permission. If one takes the stance that it does, then in essence it reduces a soldier and his or her moral responsibilities to nothing more than a non-autonomous agent of the military; a simple machine. This is akin to the argument presented by German Field Marshal Leeb at Nuremberg after the Second World War, arguing that German *Wehrmacht* officers had no right to citizenship or even a right to vote, and as such, ‘every activity on every policy area domestic and foreign was refused to us. Therefore, none of us defendants can take or took influence in ... domestic or foreign policy governance’ (Latenser 1950: 337).

I find the invincible ignorance argument rather troublesome in a democracy for the same reasons Richard Shoonhoven argues, specifically because it creates a sort of ‘head-in-the-sand’ mentality. Returning to the US military as an example, soldiers in the United States military are citizens of a democratic society first and then soldiers. As such, they are both citizens granting legitimate power to a government and at the same time servants of that government, but they do not surrender their right to citizenship by wearing a uniform. No doubt, in times of conflict

patriotic fever intensifies propaganda, and impartially can be sacrificed along party lines. Politicians are not often urged to defend the enemy's cause when debating the need for military action, and such acts could easily be interpreted as treason (Ceulemans 2007: 108). Unfortunately, majority rule does not always equate justice.

Nevertheless, if we argue, as Christopher does, that soldiers, who are also citizens, can never objectively know for sure that their country's war is just then it is difficult to see how ordinary citizens should be better suited to know (Schoonhoven 2003). Propaganda and political agendas can cloud a citizen's ability to find truth. To accept the argument of ignorance, I would argue, is similar to surrendering one's moral autonomy to the state, which is as Miller states, 'tantamount to an admission that a democracy cannot ever formally justify war' (Miller 2004: 465). Once we surrender our ability to question such things of major importance like going to war, this then seems like the first steps towards tyranny. If we argue that a government is just in that it reflects the shared values of the majority of its citizens and as such soldiers have no reason to question its legitimacy (ultimately meaning they bear no *jus ad bellum* responsibility), then it's not too difficult to draw a very disturbing parallel to Leeb's closing remarks at Nuremberg. That is something frighteningly closer to home than I feel most citizens of a democracy would find comfortable.

Invincible ignorance, as Miller, Schoonhoven, and McMahan argued, has its flaws in a democracy. Nonetheless, it still establishes a sort of immunity for fighting in a war that may in fact be unjust. What if, however, a soldier of a democratic government is not ignorant, at least not invincibly so, and believes the war in question is unjust. Is the soldier still required to fight? As Vitoria argued earlier, if the injustice of a war is clear to a soldier then the answer is no. If a soldier has accurate reasons to believe it would be immoral to fight in a specific war, Mark Navin argues, then the state cannot compel that soldier to fight because in essence, it is 'morally wrong to compel a person to act immorally' (Navin 2013: 111-128). However, Paul Christopher continues to argue yes, stating that it is 'morally reprehensible for professional soldiers to refuse to fight on behalf of their nation when ordered to do so by their legitimate political body' (1994: 158).

The ignorance argument, despite its flaws, may hold ground under certain circumstances, but as Miller points out, an 18 year-old private fresh out of high school is not held accountable in the same way that a battalion commander might be held (Miller 2004: 483). Here Miller does not deny accountability to the private, but he is trying to get at a distinction that should be made concerning the moral responsibilities of enlisted soldiers and officers. Likewise, Christopher also seeks to make a distinction when he says 'professional soldiers' and not just 'soldier' meaning there is a difference between a conscripted soldier who is forced to fight and a professional

soldiers who volunteers. Both of these philosophers, despite their opposing views, are hinting at a distinction which departs from the default argument of invincible ignorance and returns us to moral obligations. This distinction is very important because it defines what a soldier's obligations are, and not all soldiers have the same kind of obligations.

Of morals and ethics

Instead of trying to hide or divert a soldier's moral dilemma with an ignorance argument, I want to explore the source of the conflict in detail. I will now turn to the US military as a specific example to explain why soldiers in democratic nations might serve in wars that they may believe to be objectively unjust. As I outlined above, an obligation stems from something we feel we ought to do. It tells us what we should do in a certain situations and social contexts. The term moral dilemma is used and it is important to briefly discuss what is meant by 'moral'. The bases of our morals are ethics; the philosophical discipline that questions the basis of a moral, and reflects on its meaning (Ricken 2003: 17-18).

While there are no universally accepted social ethics which define American liberal democracy there are, however, generally accepted values based on individual human rights and characterized by personal freedoms, equality and debate (Brewer 2001: 45). In conflict with these values for the soldier, as a free independent moral agent, is the military ethic defined by, among others, obedience, discipline, and selfless service. On this side of the conflict it is not enough simply to say soldiers are duty-bound to obey orders or to say they are objectively ignorant and thus must obey. I want to explore the underlying ethics which create the duty to obey orders that conflict with our social values.

Alexis de Tocqueville (1805 – 1859) wrote that democracy and armies have opposite tendencies that are troublesome to a democratic community, if not outright dangerous (1976: 758-759). This view, the fear of a large standing army removed from society as a whole which has no loyalty to the society or the nation, is particularly prevalent in the United States from its early history. An army that is not loyal to the government is a threat to that government and the citizenry it represents. In a democracy, 'The legitimacy and credibility of any military system rests with its links to society and the reflection of basic social values' (Sarkesian 1981: 290). This is particularly difficult because basic social values, such as personal freedoms and equality, do not mix well with the military, but for an army to function within and as part of a democracy there must be some overlap between what Samuel Huntington described as the social imperative and the military's functional imperative (Huntington 1957: 2). A military cannot pursue its responsibilities to the state in isolation.

In order for a democracy to function properly, it must not only depend on social relations but also on an institutional relationship based on constitutional order (Whittington 1998: 22). For

the military to properly serve the state it must also be a part of this social and institutional relationship. It is not to say that all social imperatives can or should be integrated into the military, but there must be a connection between society as a whole and the military tasked to defend it. The US military has, to varying degrees, continually adapted itself to the demands of American society. Examples include the official de-segregation of army units in the 1950's and the opening of the service academies to women in the 1970's. However, I argue that the primary military ethic that defines the relationship between society, its representative government, and the military is subordination.

The professional military ethic

Samuel Huntington argued that the American military ethic accepts the state as the highest political form of government and the military exists only because of threats to the state's security. The military does not exist as an agent for its own purpose; rather it is a servant to its creator, the state. Thus, as Huntington argued, the security of the state is the primary goal of the military, and as such the 'moral aims and ideological ends' of the military should not be 'pursued at the expense of that security' (Huntington 1957: 65-79). Because the military exists only because the state has created it to defend itself, society cannot be served by a military that does not subordinate its interests to the greater national interest (Ulrich 2002: 259).

This is much like a guard dog analogy in which the state is a family and their dog is the military. The dog's purpose is to deter a potential robber from breaking into their house. Should someone actually break into the house then the dog must defend the family in the house, i.e. bark and if needed bite the intruder. For the dog to serve its purpose it must remain subordinate to its master's commands and only bite certain people under very specific conditions that the master decides, meaning, only those people who put the household's security in danger. A dog that bites friends and supportive neighbors at will does not serve its purpose, and certainly not if it bites a family member.

This ethic of subordination helps guide soldiers to understand the military's position in the greater social and institutional relationship with society as a whole, and ultimately how it can best serve its functional purpose without becoming a risk to that society. Subordination is not the singular defining aspect of the American military ethic, but it is arguably one of the most important. Thus, Christopher argues that the American people rightly expect the military to be responsive to the government they elect, and do the job for which society has hired, trained and equipped them to do (Christopher 1995). 'The will of the people is sovereign and no refusal to accept its expression through the institutions specifically established by it – whether in the determination of policies or in the interpretations the constitution – can be legitimate' (Hackett 1986: ch 7).

I doubt many in a democracy would not argue that subordination is absolutely necessary to maintain a healthy relationship between the military and society. Again though, we find ourselves creeping dangerously close to Leeb's remarks when we say that to refuse the will of the people cannot be legitimate. The will of the people is sovereign, but that does not mean it is always just. Jim Crow laws in the southern United States, that segregated people based on the color of their skin, can in no way be argued as legitimate, even though the majority of elected officials in the South supported them at the time. To refuse such an unjust expression of the people's will, I argue, is very much legitimate.

Here we begin to enter very difficult territory. On the one hand, society demands that its soldiers obey the commands of a freely elected government which is a reflection of a sovereign people's will. On the other hand, society also somehow expects them not to obey in extreme cases that society may put them in. This is exactly what Miller was hinting at when he remarked that an 18 year-old private is not accountable in the same way a battalion commander is accountable.

A soldier's oath

All American soldiers swear an oath to protect and defend the Constitution of the United States upon entering the military. This is a means to ensure loyalty is to the United States and the American society and not to a single person or administration that is in power at any given period. The difference begins where enlisted soldiers swear to further obey the orders of the President and officers appointed over them in accordance with the military's code of justice. However, officers do not swear to obey orders, rather they swear to bear true faith and allegiance, and faithfully discharge the duties of the office they enter. 'Officers are bound by the same code of military justice as enlisted soldiers to obey orders, but by their oath they are not morally bound. Officers are trusted by the American people, including enlisted soldiers, with the enormous moral responsibility of knowing when not to obey' (Bonn 1999: 5).

For both enlisted soldier and officer, this oath is an acceptance of a duty to protect not the people of the United States in the aggregate, but to defend the ideals embodied in the Constitution, protecting the American way of life as envisioned in the Constitution and US laws. Simply put, it is the protection of American ideals and all 'those beliefs and practices that make human flourishing and morality possible' (Mattox 2002: 300). Officers are given the moral responsibility by nature of their commission of knowing when an order is in conflict with what the Constitution represents or when it breaks a law. This is an enormous responsibility, but it does not necessarily mean officers are free to interpret the Constitution and US law based on their political views or ideological grounds. However, in rare and extreme cases, a few officers may be in a position to justify not following orders concerning *jus ad bellum*. '[e]ven the order of

the President does not relieve the officer of those obligations to obey the law as interpreted by the courts' (Swain 2007: 8).

Concluding thoughts on ignorance, obligations, and ethics

At the crossroads of ignorance, ethics, and those obligations they generate we begin to find answers to our soldier's dilemma. For the vast majority of the military, enlisted soldier and officer alike, the decision to fight in a war they believe may be unjust falls partly within the ignorance argument, and partly within the obligations incurred by their oath and the ethics that define military service. I return again to Miller's point for an explanation. Even if an 18 year-old private had all the same information available as the President and his advisors, would the young private still be able to make a decision concerning what is just or unjust? Do we entrust 18 year-olds with matters of national security? Despite access to the required information, it could be argued that the young soldier still remains somehow ignorant because he or she lacks the experience and the education of say, a 50 year-old General.

It is not enough to simply make the claim that soldiers really have no choice but to trust in the government their society has elected. They are also bound by an ethic that society demands of them as soldiers, tasked to defend their way of life. As with the example of the US military, this is reflected in the oath American soldiers take and the duties they bear as soldiers. In the absence of moral certainty they must follow orders. I feel this would also apply to a Battalion Commander, although he or she is an officer who bears the burden of knowing when to not follow orders, a Lieutenant Colonel still lacks the same required conditions as the private to reach moral certainty. This argument is, of course, subject to duty position and the specificity of each situation⁵. Thus, there is little room for him or her to interpret such orders as illegal or immoral: however, 'at least some officers have the means to overcome their ignorance, because they have both the formal education and access to privileged information about a war that would lead them to moral certainty' (Sola 2009: 60). It is most often only those very senior officers in the military which have this combination of education and access to privileged information.

Ignorance is culpable, particularly when one chooses not to know or fails to act on information given to them. Officers who are in a position to know *with certainty* that an order given to them commands them to commit an act that is unlawful, whether *jus in bello* or *jus ad bellum*, are morally obligated by the commission they hold to disobey that order. 'By freely choosing obedience over conscience in an unjust war they have actually renounced the invincible character of their ignorance' (Sola 2009: 60). I would argue this makes them morally culpable.

There is a very narrow *jus ad bellum* window that is open to an even narrower group of very senior officers. Not to follow one's conscience in such a position when there is moral certainty is to act immorally. American officers in such a position are still bound by their

obligation to the Constitution and all it represents, meaning they have a moral responsibility to acknowledge the unjust war. However, the options available to them are very limited: voice their concern to those in power and either accept their orders or resign from duty. I believe many would argue that such a moral failure is indistinguishable from abandoning one's post under fire. 'The soldier should be prepared not only to die for his country, but to be fired for it' (Rehberg 2000). This is no doubt very controversial ground, and for a general officer to voice dissent or resign is no matter to be taken lightly. Such actions have political as well as military consequences, but a General is, by the nature of his or her office, in such a position to make those decisions.

Unfortunately, there are examples where officers in the US military have been confronted by such *jus ad bellum* dilemmas. One notable case is H. R. McMaster's work *Dereliction of Duty* which critiques the civilian and principle military leaderships during the Vietnam War. McMaster argues that senior military leadership 'engaged in a mutually deceitful relationship, in that they did not question a strategy that they knew to be fundamentally flawed and instead went along with the game' (McMaster 1998). Former General Harold K. Johnson who served as Army Chief of Staff during the war remarked years later, summing up the painful reality a moral dilemma creates for many soldiers:

I remember the day I was ready to go over to the Oval Office and give my four stars to the President and tell him, 'You have refused to tell the country they cannot fight a war without mobilization; you have required me to send men into battle with little hope of their ultimate victory; and you have forced us in the military to violate almost every one of the principles of war in Vietnam. Therefore, I resign and will hold a press conference after I walk out of your door.'

General Johnson did not resign or voice his dissent and, as he himself later remarked, 'I am now going to my grave with that lapse in moral courage on my back' (Sorely 1998).

A soldier, of any democratic government, confronted with the moral dilemma of a war he or she may believe to be unjust, must make a decision to either serve or refuse service. Either way that decision will bring moral and possibly legal consequences. All soldiers bear a significant responsibility to execute their duties within the legal and moral framework set by society. Depending on a soldier's rank and position that responsibility to society can be interpreted differently.

In the end, I think former Colonel Robert Carroll summed up what is most likely the best option for a soldier confronted with such a moral dilemma: 'When a soldier is faced with a conflict between his conscience and an order, he must resolve the issue and for his own

psychological health and moral well-being the decision should be in favor of his conscience' (Carroll 1974). This does not mean the soldier is free to disobey lawful orders, rather the social values and ethics which define a soldier's and particularly an officer's conscience must be in alignment with those of the military ethic. When a mis-alignment of ethics, or a conflict of obligations occurs, soldiers must be prepared to choose the harder right, accepting the legal and moral consequences, whatever they might be.

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Notes

¹ Walzer (2000: 287).

² I use the expressions duty and obligation interchangeably and let each simply designate an act a person feels they ought to perform.

³ A third aspect of the just war theory is *jus post bellum*; the justice after war, but it is not relevant to the moral dilemma explored in this paper. See Bass (2004) for an explanation and discussion.

⁴ As I mentioned earlier, I use the US military as an example due to my familiarity with that institution, but the concepts pertaining to *jus in bello* are by no means limited to soldiers in the US military.

⁵ A Battalion Commander, the rank of Lt. Colonel in the US military, is many echelons removed from senior strategic positions where access to information that could create moral certainty is available. However, a Lt. Colonel could still be put in such a position where key information is available. A notable example is Lt. Colonel Oliver North. As a staff member on President Reagan's National Security Council, North was a central figure in the 1985-86 Iran-Contra affair. North was convicted of selling arms to Iran, despite an arms embargo, and funnelling the funds to Contra rebels in Nicaragua, despite the Boland Amendment which prohibited the federal government from funding Contra rebels. See Hamilton (1987) for Congressional Report.