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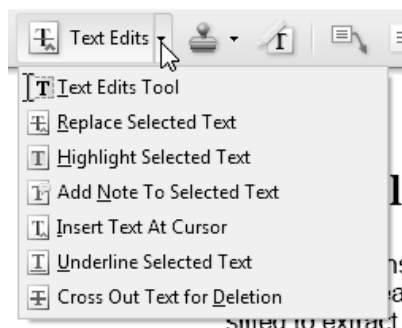
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INTENTIONS AND CONSEQUENCES IN MILITARY ETHICS

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Utilitarianism is the strand of moral philosophy that holds that judgment of whether an act is morally right or wrong, hence whether it ought to be done or not, is primarily based upon the foreseen consequences of the act in question. It has a bad reputation in military ethics because it would supposedly make military expedience override all other concerns. Given that the utilitarian credo of 'the greatest happiness for the greatest number' is in fact 'agent-neutral', meaning that the consequences to everyone should weigh equally, this critique of utilitarianism is not entirely fair. By focusing on some anomalies in both the 'principle of double effect' and in our tendency to give priority to the interests of those who are near and dear to us, this article argues that there is something to be said for a military ethic that attaches less weight to intentions, and more to the consequences.

KEY WORDS: double effect, intention, Just War Tradition, obligation, utilitarianism

Introduction

Although civilians form the majority of those killed in today's conflicts, their plight generally attracts less attention than losses experienced among Western military personnel. That their deaths seem to count for less – at least in the eyes of politicians, militaries, and most citizens – has at least two reasons: first of all, the victims are often geographically and psychologically faraway, and, second, their deaths were, although perhaps foreseen, certainly not intended – civilian casualties are an unhappy side-effect of otherwise good actions. One could say that the first reason (that nearness matters) is considered a fact of life that has to be accepted as such, while the second reason (the relevance of intention) seems to be a more principled one that is in line with basic moral intuitions shared by most people. Some, however, consider both reasons flawed instances of 'common-sense morality', and hold that it is mainly by the (foreseen) effects of an act that it should be decided whether it is morally right or wrong (and hence whether it ought to be done or not).

These critics of common-sense morality subscribe to a strand of moral philosophy called utilitarianism in its paradigmatic form (and consequentialism for more modern varieties), which, in military ethics at least, has not the best reputation, as it would supposedly make military expedience override all other concerns. As one author puts it, 'utilitarianism would lend itself to abuse in precisely those kinds of situations in which ethical safeguards are most needed, and should, for this reason, be stricken from the list of viable alternatives for the military' (Snow 2009: 560). Another author describes utilitarianism as 'the ethic of a highly educated rational calculator who is constantly considering

whether an action is harmful to the Army or not, and, inevitably, what he can get away with' (Deakin 2008: 24).[1] Although this position – utilitarianism is not bad per se, but prone to be misapplied in a self-serving way – is encountered quite often, the critique by some military ethicists is not entirely fair. In reality, utilitarians are not the champions of egotism they are sometimes made out to be.

Different from an ethic that advises people to maximize their own utility (or that of their group, organization, or people), utilitarianism holds that moral reasoning (and being moral) is all about placing ourselves, one way or another, in the position of someone else for a moment. If we do so, and act accordingly, we might contribute something to the utilitarian *summum bonum* of, as Francis Hutcheson phrased it, 'the greatest happiness for the greatest number' (*Treatise* II.III.viii). The revolutionary idea contained in this phrase is not that happiness (or utility) is put to the fore as the highest good, but that each person's happiness should weigh equally.[2] Although this idea that all should count for the same in turn has some resemblances with the age-old rule in ethics that one should treat the other, and not just the members of one's own group, as one wants to be treated one-self, this thought was a relatively new one to most people when reformulated in the eighteenth century. It was, in effect, meant as a plea for a more impartial morality, and at that time a welcome antidote to class justice and the like. By now, this notion has become common place to the extent that we do not even see the revolutionary character of it any longer. That is to say, as far as we are dealing with fellow countrymen – in our dealings with outsiders it is still rather novel.

Below it is argued, by focusing on the role of intentions and distance, especially in the *jus in bello* part of the just war tradition and in our own moral judgments, that there is something to be said for a larger role for utilitarianism (and its somewhat more sophisticated modern heirs that go under the banner of consequentialism) in military ethics. Not to the neglect of other ethical approaches that focus more on intentions, but as a complement to traditional views on just war, and widely shared moral intuitions, which have a bias in favour of the agent, and thus do not weigh the consequences to all parties equally.

Intentions

Some might argue that a mission should not be carried out if civilian casualties are among the foreseen (or foreseeable) consequences – this is in effect the position taken by most contingent (or conditional) pacifists who, although not rejecting war under all circum-stances, hold that the killing of innocent people in war is never pardonable. In modern warfare there are always innocent casualties, hence their conclusion that under present conditions wars should not be fought (Fiala 2010). As it basically rules out war altogether, this position is in effect similar to absolute pacifism, which opposes war altogether. According to many, contingent pacifism is therefore still too strict, especially since it has the undesirable outcome that it forbids wars of self-defence and, more generally, does not allow war even in cases where *not* fighting a war seems the immoral thing to do. One could say that pacifism, also in its less than absolute varieties, is a highly principled and therefore inevitably also very private stance. It is unsuited for, say, politicians and policy-makers who (in keeping with Weber's distinction, in *Politik als Beruf*, between 'Gesinnungsethik' and 'Verantwortungsethik,' i.e., between an ethic that is about maintaining purity of intention vs. an ethic that also considers the foreseeable results of an action) have to take the

outcomes of their decisions into account too. They for that reason tend to take a more realistic approach, and in so far as they do so without actually falling into the extreme of realism (holding that in war there is no room for moral considerations) they can find guidance in the just war tradition, which attempts to offer an alternative for pacifism and realism alike.

To address the unavoidable taking of innocent life, which is the main objection to war in the eyes of many contingent pacifists (absolute pacifists are not going to be reconciled with war anyway), just war theorists have put forward the principle of double effect. That principle is formulated differently by different authors, but basically states that acts that have evil consequences are nonetheless permitted if four conditions are met:

(1)   The act is not bad in itself (such as, for instance, is the case with bombing of residential areas).
(2)   The direct effect is good (for instance the destruction of military infrastructure), and the un-intended effect is not a means to the end (civilian deaths resulting from bombing military infrastructure do not make the enemy capitulate).
(3)   The intention is good (the destruction of the military infrastructure is intended, the civilian deaths are not)

and finally,

(4)   the intended good effects (the destruction of the military infrastructure) outweigh the un-intended bad effects (civilian deaths), namely, the chosen means should be proportional (see for instance Anscombe 1961; Walzer 1977: 153).

Although the principle of double effect (similar to the just war tradition as a whole) consists of a mixture of consequentialist (the proportionality condition) and non-consequentialist elements (the emphasis on right intention), most authors will agree that the third proviso, about intention, is central to the principle (Michael Walzer calls it 'the burden of the argument' [ibid.]). Underlying that clause is 'the claim that there is a stronger presumption against action that has harm to the innocent as an intended effect than there is against otherwise comparable action that causes the same amount of harm to the innocent as a foreseen but unintended effect' (McMahan 1994). One could abbreviate this as the 'relevance of intention to permissibility' (McMahan 2009). Behind this idea is the even more basic distinction between 'what one does to people and what merely happens to them as a result of what one does' (Nagel 1972: 131), for example between killing and letting someone die.

Thus, the principle of double effect attaches a great weight to the right intention: one is not to kill an innocent person intentionally, yet a foreseen but un-intended death is morally a somewhat different matter. As a consequence, terrorism is considered morally wrong since it involves the intentional killings of civilians, whereas (for instance) air strikes that un-intentionally kill civilians are, as long as the conditions of double effect are met, allowed. As said, the underlying assumption is that it is far worse to kill someone than to bring about his or her death un-intentionally (see also McMahan 2009), even if this death is in fact both foreseeable and foreseen. No doubt, there is a great amount of truth in that, although it is not easy to say exactly why. Possibly, it is because murdering goes directly against the goals you want to further (Nagel 1986: 182), and is intrinsically bad on top of that (ibid.: 183), as for instance terrorism certainly is. Abandoning the distinction between

intended and un-intended deaths would bring military personnel involved in un-intentional killing on the same level as terrorists – not a conclusion many people will want to accept (see for an exception McPherson 2007). In theory, not differentiating between intended and un-intended civilian casualties, and thus not allowing the principle of double effect, might bring us even back to pacifism, 'since almost all contemporary warfare involves the killing of innocent bystanders in large numbers' (McMahan 2009). In practice, however, doing without this distinction is in fact likely to lead to less restrained warfare because, given that non-combatant casualties are in almost every situation a foreseeable consequence, it would turn the immunity of civilians into a dead letter fairly rapidly (see also Coady 2008: 142). It is for these reasons that we cannot do without the principle of double effect.

However, adhering to this principle has important downsides too. On a theoretical level: although the idea that intentions matter is a widely shared moral intuition, at the same time most people will think it somewhat of an anomaly that the same action A (for instance, bombing a munitions factory) with the same adverse effects B (a number of civilian casualties) can be permissible if undertaken with intention X (destroying the factory), though not if the intention is Y (killing civilians by bombing a nearby munitions factory). The authority whose permission is needed should make sure to ask the bomber pilot (or the planner of the mission?) what exactly his intentions are, and the granting of permission should depend on that answer. Inevitably, holding intentions relevant to permissibility in such a way cannot but lead to 'double-think about double effect'. That latter phrase is from the philosopher Gertrude Anscombe, who pointed to the possibility of misuse of the principle: if intention is 'an interior act of the mind' that can be 'produced at will', then you only have to direct your intention' in a suitable way. In practice, this means making a little speech to yourself: 'What I mean to be doing is...' (1961: 58).

That suggests that the principle of double effect is as prone to be misapplied in a self-serving way as utilitarianism is suspected of, and some might wonder if militaries occasionally invoke the principle of double effect a bit too easily also. Even the terror bomber can, with some double-think, hide between the principle, since all he 'requires for his purpose, and therefore all he needs to intend, is that the civilians should *appear* to be dead long enough for the government to be intimidated into surrendering' (McMahan 1994, emphasis in original; see also Quinn 1989). That making civilians appear dead long enough involves actually killing them is an un-intended side-effect, the terror bomber could argue (ibid.).

That seems all rather odd and unsatisfying, and it is for that reason that the moral and political philosopher Thomas Scanlon has put forward the view that intentions are not relevant to permissibility in the way adherents of the principle of double effect think they are; although significant, they primarily tell us something about the agent's reasoning (2008: 28; see also McIntyre 2009; see for an alternative way out Quinn 1989). In this view, the permissibility of bombing the munitions factory is decided by, for instance, weighing the military advantage against the amount of civilian casualties, while the bomber's (and the planner's) intention determines how we evaluate his or her moral judgment.

However, accepting this account leaves another, more practical matter unresolved: the principle of double effect is, in its traditional formulation, much too lenient. 'Simply not to intend the death of civilians is too easy', writes Walzer (1977: 155; see also Lee 2004: 235; Plaw 2010: 6). It was already mentioned in the introduction that non-combatants form the majority of those killed in modern warfare, and as a rule their deaths are, although

foreseen, not intended. Although the intentional killing of a non-combatant is evidently
evil, it is not so that un-intentional deaths do not amount to a bad thing that should be
avoided, if at all possible. The double effect principle in its traditional understanding,
however, does not require much effort on the part of the military to minimize civilian
casualties; as long as the latter are an un-intended (and proportional) side-effect of
legitimate attacks on military targets, these attacks are within the principle's limits.

It is especially because of the principle's lenience that Walzer in *Just and Unjust Wars*
famously restated it, holding that soldiers have a further 'obligation to attend to the rights
of civilians' (1977: 155), and that 'due care' should be taken. However, it is not enough to
make efforts to avoid civilian casualties as much as possible; a soldier has to do this
'accepting costs to himself' (ibid.). This adds up to what Walzer calls the idea of double
intention, with the first intention being that it is the intention to hit the target and not
something else, while the second intention consists of two rather separate aspects: (1)
efforts should be made to reduce the number of civilian casualties; (2) when needed, at
increased risk to oneself.[3] It is of course the second aspect that is rather demanding (more
on that in the next section), and it is precisely because it is demanding that we want to see
it: we tend to 'look for a sign of a positive commitment to save civilian lives' that says that
'if saving civilian lives means risking soldiers' lives, the risk must be accepted' (1977: 156).[4]
This reformulation of the principle is generally received as a sensible one, as it raises the
bar in cases that civilian deaths are, although not intended, foreseen. The 'due care'
provision, although phrased in the language of rights, at first sight boils down to a
somewhat more consequentialist approach that has not much to do with expediency, and
a lot with taking the consequences to all parties concerned seriously; Walzer himself seems
to concede in a footnote that utilitarian arguments and rights arguments are not
completely dissimilar (1977: 156; see also Orend 2000: 120; Lee 2004: 247).

Yet, it is not without significance that it is a double *intention* Walzer speaks of, and
that it is 'we' that must look for 'a sign of positive commitment' also suggests that it is still
intentions perceived by *us*, not consequences suffered by *others*, that matter most. That in
a later essay, Walzer writes that the acceptance of risk is the best way to measure 'the
seriousness of the intention to avoid harming civilians' (2004: 137) also points in that
direction. So, although Walzer's notion of a double intention addresses the principle of
double effect's main practical drawback (its leniency), it stops short of actually putting the
consequences to civilians to the fore; ultimately a sincere effort to avoid civilian casualties
is deemed more important than whether or not that effort is, in fact, successful.[5] What's
more, it leaves the more fundamental question unanswered: why it is that in a military
context the intention should matter *that much* is still far from self-evident.

The explanation probably lies in the principle's background, already hinted at in the
introduction: one of the purposes of the double effect doctrine was to reconcile
Christianity's rejection of violence, which on first sight leaves no other option than
pacifism (and in fact there have been relatively many Christians among pacifists), with the
fact that in war people are killed due to acts of Christian soldiers (Anscombe 1961). Now,
acknowledging that in war the intentional killing of combatants is permitted,[6] there are still
the civilian deaths that pose a moral problem, and it is of course particularly in these cases
that intent is considered relevant. Yet, it seems that intentions are mainly deemed relevant
here because of the effect on the soldier's moral standing: if he or she kills a non-
combatant un-intentionally instead of intentionally, we hold him or her a better person for
it (as also Scanlon suggested). Ultimately the principle of double effect is more about the

actor, the maintaining of his morals, his ability to look himself in the mirror, his self-image (not being a murderer), and, even (in keeping with the principle's Christian background), the saving of his soul, than about those at the receiving end. The principle is primarily agent-centred, in a situation where an outcome-centred approach might be more in place; in general, we value intentions in the private sphere, while consequences count for more in the public sphere, which is of course the military's realm.[7]

One could even say that the emphasis on intention once more brings into the public sphere something that belongs to the private sphere where, as we noted earlier, principled stances like pacifism can exist – something the just war tradition wanted to be an alternative for. To what extent intentions matter depends on the context, and in the context the military functions within, it often hardly does. For those who stand to gain or lose by the restraint exercised by Western militaries, today to be found in places such as Afghanistan, the intention makes not much difference (for those who remain behind, it probably does), the consequences do. And it is the consequences to people far away which bring us to that other pillar of consequentialism, equally at odds with everyday morality: that the consequences to all parties should weigh equally.

Distance

Not surprisingly, consequentialists claim that one human being has far-reaching obliga-tions to unknown others. If one holds that intentions are not all that important, as consequentialists do, this leads more or less naturally to another important yet counter-intuitive tenet of consequentialism: that permitting harm to be done is as objectionable as doing harm (see also McMahan 2009), and thus that letting die is as bad as killing. What is more, consequentialists also argue that distance should play no role here: we have no *moral* reason to give priority to the interests of those close to us, including that of our children, and even ourselves, over the interests of others. That most people are more inclined to help their nearest and dearest than unknown persons in faraway countries, even when the latter's predicament is much greater, is, although perhaps natural, certainly not moral (Parfit 1987: 98). It is a form of what a consequentialist would call common-sense morality that is morally flawed because it cannot be consistently held that we have special obligations to those close to us that override our obligations to strangers. Moreover, such common-sense morality is self-defeating too because if everyone would give priority to the interests of special others above those of strangers, we would all end up less fortunate (ibid.: 95–108, 444).

The utilitarian philosopher Peter Singer, for instance, has along that line influentially argued that we have a moral duty to prevent the suffering of others, provided that we are in a situation that allows us to do so 'without thereby sacrificing anything of comparable moral importance' (1972). The fact that some catastrophe is happening far away does not exempt us in any way from our moral duty to act (ibid.; see also Parfit 1987).[8] If, for example, Westerners are in a position to somewhat lessen suffering in poor countries by opting for a more sober lifestyle, and donating what they thus save to those who need it so much more, they have a moral duty to do so. Clearly, it is here that he and other consequentialists are harking back to the utilitarian dogma, mentioned in the introduction, that everyone's life and happiness is of equal weight. At first sight, it appears to follow from this standpoint that possible adverse consequences to the local population should count for a lot more than they do at present.

On the other hand, it is not that clear to what degree (if any) there is a moral obligation on the part of military personnel to risk their lives protecting outsiders. Soldiers are not confronted with the choice between one's own wish to lead a luxurious life and the right to life of those starving in faraway countries, but between one's own right to life and that of their colleagues on the one hand, and that of a stranger on the other. In their case, giving priority to the safety of the stranger is doing considerably more than what Singer asks for when he states that we are to help strangers if that can be done 'without thereby sacrificing anything of comparable moral importance'. From this point of view (which already demands a lot more than most of us are willing to give) soldiers probably do not have to accept these costs to themselves, which are so clearly of 'moral importance'.

Some, therefore, are not so convinced that we really have far-reaching obligations to strangers in times of war. It has, for instance, been a topic of debate in this journal whether or not soldiers can be subjected to higher risks with the purpose of lowering the risks for foreign civilians (Kasher & Yadlin 2005; Plaw 2010; see also Kasher & Yadlin 2009; Walzer & Margalit 2009). It seems, indeed, somewhat presumptuous to expect military personnel to run risks on behalf of strangers, while most of us do not feel an obligation to donate most of our surplus money to, say, hunger or malaria fighting organizations. And regularly we do not. Likewise, most military personnel are not primarily in the business of promoting the greatest happiness to the greatest numbers irrespective of whom those numbers are made up of, and are not impartial as to whose lives they are risking or saving. They are, generally speaking, above all concerned about the safety of their colleagues, which they (similar to politicians and the public) rate higher than that of the local population. They act, to use the jargon, from agent-relative reasons and not from agent-neutral reasons, meaning that the relationship in which the subject (stranger or colleague) stands to them matters (Parfit 1987: 27).

This might be unavoidable to some extent. According to those who have pointed to the importance of 'thick' moralities, it is more than a matter of fact that nearness matters in these cases. These authors, and Walzer is one of them, hold that 'thick' moralities are not only stronger than, but also prior to, forms of 'thin morality' such as justice.[9] The latter are much feebler. To be just towards people outside one's own group is therefore more difficult than it is to be loyal to a (small) group of people we can identify with.[10] If true, this view implies that the extent of a soldier's moral duties to members of the local population depends on to what degree he or she sees them as insiders. In an all-out war, for instance, we cannot but expect to see little willingness to take the consequences to all parties into account equally; Walzer has pointed out, in his critique on utilitarianism, that the valuing of 'each and every person' in the same way will not work when 'solidarity collapses'. And precisely that is what happens in war, when 'cost/benefit analysis has always been highly particularistic and endlessly permissive for each particular. Commonly, what we are calculating is our benefit (which we exaggerate) and their cost (which we minimize or disregard entirely).' In the end, 'no "enemy life" has any positive value; we can attack anyone; even infant deaths bring pain and sorrow to adults and so undermine the enemy's resolve' (Walzer 2004: 39).

The decision to drop atomic bombs on Hiroshima and Nagasaki is a famous instance of the use of such a tilted utilitarian calculation that should have been 'stopped short by the rules of war and the rights they are designed to protect', writes Walzer (1977: 263–268). That the calculation was biased would, incidentally, make that the calculation was not really a utilitarian one to begin with.

Yet, even if we could be brought to acknowledge that our obligations to strangers go further than common-sense morality holds, the problem remains that most of us would probably prove unwilling to act upon those obligations.[11] At first sight, consequentialism wrongly assumes that explaining to people what is the good thing to do will be sufficient enough to motivate them to actually do what is good. While in actual fact there is, as political philosopher Brian Barry put it, 'a gap between acknowledging that some rule, universally adhered to, would advance one's conception of the good and having a motive (based on nothing but the pursuit of one's conception of the good) for adhering to the rule' (1995: 45). It therefore seems that the conscientious utilitarian 'may well be required by utilitarianism to do more than psychologically he can bring himself to do' (Goodin 1995: 67).[12]

One could even say that it is this altruism and universalism required by consequentialism – asking too much, not too little – that makes it in effect problematic for the military and, for that matter, most of us.[13] That would be, in light of the universalistic ambitions behind many of today's military interventions, a rather disappointing conclusion.

One could alternatively argue, however, that especially in today's missions commanders and politicians should perhaps be able to come a bit closer to the solidarity utilitarianism asks for. Although a truly impartial view may be expecting too much in a regular war in defense of one's own country, in many of today's operations (which are generally of a rather different character), most military personnel are probably able to do so somewhat more easily, at least to some extent. Notwithstanding his (later) views about the strength of thick moralities, Walzer for one thinks soldiers ought to have a readiness to run risks on behalf of others who are un-related to them, save for the rather thin tie of a shared humanity. This is not as inconsistent as it might seem since, to Walzer, just war theory lies firmly within the domain of thin morality (Orend 2000: 32). It should be noted that Walzer's earlier mentioned pessimism about the 'endlessly permissive' logic in war is at odds with his own 'accepting cost to oneself' stipulation that (although for Walzer primarily needed as a proof of good intention) suggests he thinks that military personnel are able to rise above their own position.[14]

Although taking a completely objective, detached view is impossible (yet if attained it would probably make war a thing of the past), it seems likely that moral progress entails a shift towards a more unbiased morality. Such an impartial morality is not something completely imposed from outside, writes Thomas Nagel (by his own account not a consequentialist) in his famous The View from Nowhere (1986), but 'answer[s] to something very important in us' and reflects 'our disposition to view ourselves, and our need to accept ourselves, from outside' (ibid.: 198, emphasis in original). It is therefore quite possible, Nagel thinks, to harmonize our own projects and actions with universal requirements that are just as well part of us (ibid.). If true, this means that weighing consequences to all concerned more equally is not the psychological impossibility it appeared to be at the outset. If we, however, for whatever reason do not agree with the belief that every individual counts as much as another, also in our dealings with strangers, it is up to us to answer the question of what the ratio should be like.

Conclusion

Undiluted adherence to one school of moral philosophy might be common in academia, in real life most people, often without giving much thought to it, tend to attach value to a good intention, yet are also inclined to take the consequences of a course of action into

consideration when judging it. Although some might consider this confused, they are probably quite right in doing so, and there might be something to be said for a military ethics that does not focus too much on the intention, but attaches more weight to the consequences to all parties concerned instead. Without taking that to the extreme of endorsing versions of consequentialism that, for instance, would allow the killing of civilians to rescue a greater number of others. In fact, although utilitarianism is sometimes portrayed as a threat to individual rights (Bentham gave some reason to do so when he called natural rights 'nonsense upon stilts'), one could equally argue that the utilitarian credo that the consequences to all persons should weigh equally would, if taken seriously, have the favourable outcome of effectively distributing the right to life somewhat more evenly. So, although most authors are 'in agreement that utilitarian ethics don't work well in the military setting' (Bonadonna 1994: 18), and despite Walzer's rather ferocious critique of the doctrine (1977: 129–133, 2004: 37–40), we might have to conclude that it has been brushed aside a bit hastily in military ethics on the mistaken assumption that it condones calculative behaviour.

Shifting the focus at least partly from intentions to consequences would probably mean shifting 'the burden of the argument' from the third to the fourth clause of the principle of double effect, that is., to proportionality rather than intention. Critics of the principle of double effect have suggested that in reality it has always been proportionality, not intention, that explains why we sometimes deem acts that have bad effects permissible nonetheless (McIntyre 2009). If true, this means that the acceptability of civilian casualties does not depend on whether they were intended or not, but on the importance of the end; it all depends on the stakes. Interestingly enough, Walzer's much debated claim that the bombing of residential areas can be permissible in the case of a 'supreme emergency' (1977: 251–262) points in that direction too, and in general those who, emphasizing the importance of rights, hold that it is not permitted to kill one person to save five others, would take a different position if it was necessary to kill one to save a million. However, as said, the position taken in this article is that the weight attached to un-intended killings, as real as intended ones, should be higher, not that it can be permissible intentionally to kill civilians – the absolute prohibition on murder can operate as a limitation on consequentialist reasoning (see also Nagel 1972; Heinze 2005: 179).

If we want to combine deontology and consequentialism in some workable way, and it seems that we have to because both strands lead to perverse outcomes in their undiluted form, such a 'limited consequentialism' seems a more viable option than the 'threshold deontology' of Walzer and some other deontologists; they are posed with the problem that they have to answer at what point exactly (presumably located somewhere between five saved lives and a million) consequentialist arguments take over (see also Alexander & Moore 2008).

On a more practical plane, we see that consequences to those at the receiving end already play a large role in military decision-making, but also that more often than not there is an expediency based (and thus not consequentialist) argument behind that extra caution: reducing civilian deaths is seen as a precondition for maintaining the support of the local population, which should result in more cooperation from the local population, and thus, in the end, increased security for the troops.[15] That these rationales are self-serving suggests that consequences to the local population would count for less if the expediency argument would no longer hold. That seems a rather unsatisfactory conclusion, and it is likely that taking un-intended deaths seriously as such (i.e. as something to be

avoided independently of what is in it for us), would make the proportionality criterion harder to meet, and would possibly result in the postponement or cancellation of particular missions in even more cases than the aforementioned reasons of expedience at present already lead to (see for instance Dadkhah 2008).

Now, in its common interpretation proportionality is a 'darkly permissive principle' (Walzer 2009), and some might fear that under the guise of military necessity the idea of civilian immunity can be reduced to 'a useless garment' (Slim 2007: 174). Necessity is a matter of interpretation, and that inherent ambiguity is something with 'enormous consequences for civilians' (ibid.). Evidently, taking a more consequentialist approach is not going to change that, and is not going to bring the objective principle some might want to see (that would amount to reviving the much criticised idea of the utilitarian calculus). Nonetheless, although pacifists might insist that civilian deaths are never 'proportional', taking these 'enormous consequences for civilians' into account without differentiating too much between intended and un-intended casualties, is bound to improve things at least to some extent. In *What We Owe To Each Other* Thomas Scanlon described thinking about right and wrong as 'thinking about what could be justified to others on grounds that they, if appropriately motivated, could not reasonably reject' (1998: 5). Mere distance and the absence of intention certainly do not seem to be such grounds.

NOTES

1. Somewhat likewise, another author writes that 'an outcome-centered approach may lead all too easily to military expedience as the sole guide to actions in war' (Bonadonna 1994: 18).

2. Though Hutcheson still held that 'the dignity, or moral importance of persons, maycompensate numbers' (ibid.).

3. As Walzer puts it elsewhere, the standard version of the doctrine of double effect 'makes things too easy for the attackers; all they have to do is "not intend" to harm the civilians, even though they know they will cause injury or death. Instead, there must be a second intention to match the second, collateral effect. First, the soldiers carrying out the attack must intend to hit the target; and second, they must not intend to kill civilians. It is this second intention that must be manifest in the planning and conduct of the attack; the attacking force is morally required to take positive measures to avoid or minimize injury to civilians in the target area' (2009: 49).

4. Within due limits, of course (Walzer 1977: 156; for a critique regarding the due limits clause see Shaw 2005: 135).

5. Although the use of low and slow flying Unmanned Aerial Vehicles (UAV s) can be seen as an effort to avoid civilian casualties since their use might be safer for the local population than other ways of delivering firepower by air (see for instance Lin, Bekey, and Abney 2008: 52–53), it falls short in the risk acceptance aspect. The use of ground troops or low flying manned aircraft would amount to a sufficient indication of the acceptance of costs to oneself, and thus of a good intention, but if that would in fact pose a greater risk to the local population than the use of UAVs, one might ask what the point is, as it would boil down to accepting higher risks to oneself *and* the local population just to prove your good intention. Walzer's emphasis on 'accepting cost to oneself,' stemming from his wish to see proof of a good intention, does not allow for the possibility of reducing risks to the local population *without* increasing the risk to Western military personnel.

6. Since combatants are a legitimate target, in that case it is not the presence or absence of intent per se that matters, but the correctness of the intention. Revenge and hatred, for example, are not legitimate motivations, while securing peace and punishing evil-doers are, as expressed by both Augustine and Aquinas (see for instance Aquinas, *Summa*, II-II, Q. 40, art. 1).

7. To give a common example: people want their partner to be faithful out of a pure intention, and not because cheating causes such a fuss when discovered. The relationship between military personnel and members of the local population is evidently an entirely different one.

8. Singer's example is that of the people in East Bengal, dying, at the time (November 1971), 'from lack of food, shelter, and medical care' caused by 'constant poverty, a cyclone, and a civil war'.

9. Thin concepts such as justice are derived from thick, particularistic loyalties, Walzer claims in his political philosophy, not the other way around. Thin moralities do not serve someone's particular interest, and bear no mark of their particular origin (1994: 7).

10. In difficult circumstances, this is all the more so, wrote Richard Rorty: 'The tougher things get, the more ties of loyalty to those near at hand tighten and those to everyone else slacken' (1997: 139).

11. One of the precursors of utilitarianism, David Hume, already wrote that 'a man naturally loves his children better than his nephews, his nephews better than his cousins, his cousins better than strangers, where every thing else is equal' (*Treatise* III.ii.ii), and he is not able to cure 'that narrowness of soul' (ibid. III.ii.vii).

12. It is not only a psychological impossibility, though; it is also a sociological one: John Dewey wrote, in defense of an ethic with a consequentialist side, that 'theoretical approvals that run counter to strong social tendencies tend to become purely nominal' (1989: 259).

13. Although Singer inspired many people to lead a more 'consequentialist life, Robert E. Goodin writes, in his defense of utilitarianism as a *public* philosophy, that 'in earlier times it was much more of a commonplace to suggest that utilitarianism constitutes a solution to public rather than personal moral problems, to defend it as a public philosophy rather than as a personal moral code' (1995: 11–12).

14. And it is probably incidental that Walzer's examples of double intention are both about military personnel reducing the risks to their own occupied populations in World War II (1977: 157).

15. Similarly, it is not only the argument for lifting the ban on torture that is based on expediency, but the defence of it is also often based on a fairly pragmatic argumentation. In support of the prohibition of torture it has, for instance, been argued that torture yields information of questionable quality; its use would alienate the local population, the public at home, and one's allies; and has the effect of strengthening the resistance to one's cause. Although such argumentation seems utilitarian, it in fact does not represent what utilitarianism is really about. The just-mentioned rationales for the ban on torture are as self-serving as those put forward by the defenders of torture, and therefore do not really amount to a moral argument.

REFERENCES

Alexander, L. and M. Moore(2008) Deontological Ethics, in Edward N. Zalta (Ed.) *The Stanford Encyclopedia of Philosophy* (Fall 2010 Edition), accessed September 2010, available at: http://plato.stanford.edu/archives/fall2008/entries/ethics-deontological/; Internet.

Anscombe, G. E. M. (1961) War and Murder, in: W. Stein (Ed.) *Nuclear Weapons: A Catholic Response* (London: Burns & Oates), pp. 43–62.

Aquinas, Thomas (2006) *Summa Theologiae, Questions on God* (Cambridge: Cambridge University Press).

Barry, Brian (1995) *Justice as Impartiality* (Oxford: Clarendon Press).

Bonadonna, Reed R. (1994) Above and Beyond: Marines and Virtue Ethics, *Marine Corps Gazette*, 78(1), pp. 18–20.

Coady, C. A. J. (2008) *Morality and Political Violence* (Cambridge: Cambridge University Press).

Dadkhah, Lara M. (2008) Close Air Support and Civilian Casualties in Afghanistan, *Small Wars Journal*, accessed September 2010, available at: http://smallwarsjournal.com/blog/journal/docs-temp/160-dadkhah.pdf; Internet.

Deakin, Stephen (2008) Education in an Ethos at the Royal Military Academy Sandhurst, in: Paul Robinson, Nigel de Lee, and Don Carrick (Eds) *Ethics Education in the Military*, pp. 15–30 (Aldershot: Ashgate).

Dewey, John (1989) *The Later Works*, Vol. 7 (Carbondale and Edwardsville: Southern Illinois University Press).

Fiala, Andrew (2010) Pacifism, in: Edward N. Zalta (Ed.) *The Stanford Encyclopedia of Philosophy* (Fall 2010 Edition), accessed September 2010, available: http://plato.stanford.edu/archives/fall2010/entries/pacifism/; Internet.

Goodin, Robert E. (1995) *Utilitarianism as a Public Philosophy* (Cambridge: Cambridge University Press)).

Heinze, Eric A. (2005) Commonsense Morality and the Consequentialist Ethics of Humanitarian Intervention, *Journal of Military Ethics*, 4(3), pp. 168–182.

Hume, David (1969) *A Treatise of Human Nature* (London: Penguin Books).

Hutcheson, Francis (1994) *Philosophical Writings* (London: Everyman).

Kasher, Asa & Yadlin, Amos (2005) Military Ethics of Fighting Terror: An Israeli Perspective, *Journal of Military Ethics*, 4(1), pp. 3–32.

Kasher, Asa, and Yadlin, Amos, (2009) Israel and the Rules of War: An Exchange, *The New York Review of Books*, 56(10).

Lee, Steven (2004) Double effect, double intention, and asymmetric warfare, *Journal of Military Ethics*, 3(3), pp. 233–251.

Lin, Patrick, George, Bekey & Keith, Abney (2008) *Autonomous Military Robotics: Risk, Ethics, and Design* (San Luis Obispo: California Polytechnic State University).

McIntyre, Alison (2009) Doctrine of Double Effect, *The Stanford Encyclopedia of Philosophy* (Fall 2009 Edition), accessed September 2010, available at: http://plato.stanford.edu/archives/fall2009/entries/double-effect/; Internet.

McMahan, Jeff (1994) Revising the Doctrine of Double Effect, *Journal of Applied Philosophy''*, 11(2), pp. 201–212.

McMahan, Jeff (2009) Intention, Permissibility, Terrorism, and War, *Philosophical Perspectives*, 23(1), pp. 345–72.

McPherson, Lionel K. (2007) Is Terrorism Distinctively Wrong? *Ethics*, 117(3), pp. 524–546.

Nagel, Thomas (1972) War and Massacre, *Philosophy and Public Affairs*, 1(2), pp. 123–144.

Nagel, Thomas (1986) *The View from Nowhere* (New York: Oxford University Press).

Orend, Brian (2000) *Michael Walzer on War and Justice* (Cardiff: University of Wales Press).

Parfit, Derek (1987) *Reasons and Persons* (Oxford: Oxford University Press).

Plaw, Avery (2010) Upholding the Principle of Distinction in Counter-Terrorist Operations: A Dialogue, *Journal of Military Ethics*, 9(1), pp. 3–22.

Quinn, Warren (1989) Actions, Intentions, and Consequences: The Doctrine of Double Effect, *Philosophy and Public Affairs*, 18(4), pp. 334–351.

Rorty, Richard (1997) Justice as a Larger Loyalty, *Ethical Perspectives*, 4(3), pp. 139–151.

Scanlon, T. M. (1998) *What We Owe to Each Other* (Cambridge, MA: Belknap Press of Harvard University Press).

Scanlon, T. M. (2008) *Moral Dimensions: Permissibility, Meaning, Blame* (Cambridge, MA: Harvard University Press).

Shaw, Martin (2005) *The New Western Way of War* (Cambridge: Polity Press).

Singer, Peter (1972) Famine, Affluence, and Morality, *Philosophy and Public Affairs*, 1(1), pp. 229–43.

Slim, Hugo (2007) *Killing Civilians: Method, Madness and Morality in War* (London: Hurst).

Snow, Nancy E. (2009) How Ethical Theory Can Improve Practice: Lessons from Abu Ghraib, *Ethical Theory & Moral Practice*, 12(5), pp. 555–568.

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

Walzer, Michael (1994) *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame: Notre Dame Press).

Walzer, Michael (2004) *Arguing about War* (New Haven, CT: Yale University Press).

Walzer, Michael (2009) Responsibility and Proportionality in State and Nonstate Wars, *Parameters: US Army War College Quarterly*, 39(1).

Walzer, Michael and Margalit, Avishai (2009) Israel: Civilians and Combatants, *The New York Review of Books*, 56 (8).

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