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Unjust War and Moral Obligation: What Should Officers Do?

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Robert McNamara's recent injudicious remarks concerning the US war with Vietnam, released in hardback on the 20th anniversary of our withdrawal from Saigon, raise a number of questions concerning what, if any, obligation professional soldiers have to serve in wars they believe to be unjust. According to McNamara, who was the Secretary of Defense during the early years of the ground war in Vietnam (1961-1968), he was convinced--fully seven years before the war ended--both that it was unwinnable and that the United States should withdraw. Had the US government acted at that time on McNamara's assessment (which he kept from the public), close to 50,000 US soldiers and many, many more Vietnamese soldiers and civilians who died in the war could still be alive today.

What does this mean for the US military profession? Are professional soldiers culpable in some way for fighting in a war that the Secretary of Defense believed was unwinnable and thereby unjust? Should those of us who were military leaders at the time have resigned our commissions--assuming that we, like the Secretary of Defense, believed the war to be an unjust one? Should we have undertaken some form of civil disobedience? What should we do in the future if similar instances arise?

Until recently the answers to these questions seemed obvious: our long-standing tradition of civilian control of the military meant that soldiers go where and when they are told to go, provided that the telling is done by legally elected officials imbued with the power to make such decisions. This is the view to which we in the military have long given our adherence and our lives. After publishing a text on military ethics, however, where I mention this view only in passing,[1] I have spoken with a number of colleagues who have taken issue with this position. They suggest that although this position may be true from a legal perspective, it is not the case from a moral one. Some have argued that no person can ever abrogate his or her moral agency, and that just as military officers should refuse to obey immoral orders from their superiors when they are fighting *in war*, so they must do so when they are ordered *to war*.

Such arguments perhaps require us to rethink the notion of whether soldiers are morally obligated to fight in wars they believe to be unjust. The appearance of McNamara's book sharpens the point. Having rethought the proposition thoroughly, I believe that our long-held position on this topic is dead right. The purpose of this article is to explain why.

Political Responsibility and Military Responsibility

In Shakespeare's dramatic account of the Battle of Agincourt, Henry V, in an effort to assess the morale of his forces, disguises himself as a common soldier and visits some of his troops in the British encampment on the evening before the battle. When he encounters three infantrymen who wish that they were safely back in England (rather than France where the battle occurs), the King, still in disguise, responds, "Methinks I could not die anywhere so contented as in the king's company, his cause being just and his quarrel honorable."

"That's more than we know," one of the infantrymen replies. A second soldier adds: "Ay, or more than we should seek after, for we know enough if we know we are the king's subjects. If his cause be wrong, our obedience to the king wipes the crime of it out of us." Thus does Shakespeare teach his 17th-century British audience about the just war distinction between political and military responsibility regarding warfare.

The notion that soldiers are praised or blamed only for how they fight in a war--for military virtues such as courage, honor, and loyalty--rather than for the justness of the war itself is not an idea that begins with Shakespeare. Since antiquity, civilized nations have recognized a logical separation between *jus ad bellum* (the justice of wars) and *jus in bello* (justice in wars). According to the just war tradition, decisions regarding whether or not force should be used to

achieve political objectives are always political decisions, while decisions concerning *how* that force is employed--the actual conduct of war--are the responsibility of the professional soldier. It is the former concept, that of *jus ad bellum* or decisions concerning going to war, that is of primary concern to the question at hand.

Fundamental to the US political system is the concept of civilian control of the military. Army Field Manual 100-5 identifies "proper subordination to political authority" as one of the core values that makes up our Army's identity. What does this mean? Does it mean that civilians such as the Secretary of Defense or the Chairman of the Senate Armed Services Committee can tell the military how to train, how to fight, how to interrogate prisoners, how to treat civilian refugees in a war zone, and how much ammunition to carry? No. These are issues that only members of the military profession are competent to decide.

The reason we maintain armed forces led by a highly trained, technically proficient, and well-compensated group of professionals is because as a nation we recognize that warfighting is an incredibly difficult, challenging endeavor that requires considerable specialized expertise. It would be ludicrous to permit persons from outside the profession to make technical decisions regarding how force should be managed in training or on the battlefield. Deciding about the conduct of war falls under *jus in bello*, justice in war, and such decisions are the responsibility of military professionals.

Subordination of the military to political authority means that the responsibility and the authority for going to war rests with the political leadership. Notice that this limits the military in a number of ways. On one hand, the guardians of the state (the soldiers) cannot make decisions regarding either going to war or negotiating for peace without the authority of their political constituency. Such actions would be morally and legally wrong. Thus Plato, for example, writing 2500 years ago, subscribed to the idea that generals who either go to war or negotiate peace without the approval of the political establishment should be executed.

On the other hand, subordination to properly constituted civil authority means that military professionals can't refuse to go when the political establishment orders them to do so. Again, such actions are morally and legally wrong.

In many countries, this separation between political and military decisionmaking is considered so important that soldiers are not even allowed to vote. In this country, military personnel on active duty can vote--they are considered *citizen* soldiers--but they are prohibited by law from being politically active.

This restriction on political decisionmaking concerning war was the basis for President Harry Truman's relief of General Douglas MacArthur during the Korean War. MacArthur had made public pronouncements concerning the war's political objectives. This same conceptual dichotomy concerning war caused difficulties for General H. Norman Schwarzkopf when he made ill-advised comments to the news media lamenting the US/UN decision not to invade Iraq. Recall that he later publicly retracted his statements. During the same war, Air Force General Mike Dugan was not so lucky. When he made public statements without the approval of our political leaders about US political objectives that he had established for his forces, he was relieved as the Air Force Chief of Staff and had to retire from military service.

To take this principle one step further, suppose that the President and Congress have decided that force is not called for, but that many military leaders believe that it is warranted. Surely we would not want military leaders to embark on offensive operations without political approval, even if the operations included only such relatively "passive" actions as mining foreign harbors.

Military leaders may privately make recommendations to the national leadership when they are asked for them, but they are prohibited from establishing or publicly influencing political objectives. Even the notion of resignation on principle seems circumscribed where decisions on the use of military forces are at issue. A military officer's resignation when called to arms, especially that of a senior officer, would constitute a public statement about that officer's assessment of the political objectives. Just as officers ought not to fight when the President decides against the use of force, they ought not to refuse to fight when the President orders them to.

"If his cause be wrong . . . "

A second consideration for understanding this issue is the legal stipulation that soldiers be immune from the crime of war at the policy level. Soldiers are, as the legal philosopher Vitoria tells us, considered to be imbued with invincible ignorance as far as the justice of a war is concerned. Thus soldiers who fight in an unjust war are protected from prosecution when the war is over. So, when the International Tribunal at Nuremberg charged German leaders with crimes against peace, only a few very senior military leaders who were actively involved in political decisionmaking regarding acts of aggression were prosecuted for that crime.

The fact is that we often never know objectively and with any degree of certainty which side in a war is just, even in retrospect. In domestic society we agree to abide by a system of formal justice, recognizing that ideal or objective justice is often impossible to achieve; so must it be regarding political decisions in international society. This system of accepting formal justice in domestic society is well established and accepted in our country, and the concept should apply similarly to professional soldiers and their approach to war. Perhaps an example will be helpful here.

Consider a highly publicized murder trial, for example: After the evidence is presented by both sides in accordance with accepted rules, a judge or jury will deliberate and reach a verdict of guilt or innocence. In many cases, we will never know for certain whether the accused did it or not, but our society accepts the verdict of the jury as long as the proper formal procedures were followed because we believe that this method is the one most likely to give justice. We regard adherence to the formal process of justice to be so sacrosanct that when proper formal procedures are not followed, even in cases of obvious guilt, charges are dismissed and convictions overturned.

Analogously, when the American people enter a national debate regarding the use of force, and when the President and Congress, following proper constitutional procedures, either decide to use force to achieve some political objective or decide to refrain from doing so, that decision is formally just. It is as close to objective justice as we know how to get. Our elected leaders in this case are the judge and jury, and we in the armed forces agree to abide by the decision of the court.

Moreover, it is profoundly arrogant for officers to take the view, as some do, that after the national debate takes place, and after the President and Congress have decided to act, then the officer should have the latitude to follow his or her own conscience, either acceding to or declining to follow the orders of the President. And of course, if such an individual assessment is to be morally permissible for officers, then it must be morally permissible for soldiers of all ranks. Accepting this position inevitably leads to one of two unsatisfactory conclusions. One is that we permit soldiers to legally leave military service whenever they don't agree with a political decision. The other option is to acknowledge that requiring soldiers to go to war against their will is immoral, but to make such a political decision legally binding on them anyway. The first alternative would make a mockery of the very notion of having a standing army, and the second one would make a mockery of our legal system.

When the American people hire, train, equip, and support a professional officer corps, they expect those officers to be responsive to elected authority regarding when they should do the job for which they have been hired, trained and equipped.

First Principles

Military officership is a profession, not simply a vocation. Part of what it means to be a member of a profession is having a deep commitment to a set of abstract values and principles that define the profession. This means that members of a profession accept certain values that are specific to their profession as being more fundamental than other values. For example, the Hippocratic Oath, written in 429 B.C., states in part: "I will apply medicinal measures for the benefit of the sick according to my ability and judgment. I will keep them from harm and injustice. I will not give a deadly drug to anybody if asked for it, nor will I make a suggestion to this effect."

Military officership, too, entails commitment to a set of principles. When one takes the oath of office in the profession of arms, he or she swears to "support and defend the Constitution of the United States against all enemies, foreign and domestic." This constitutes an agreement to abide by political authority for all *jus ad bellum* decisions: we pledge to fight in wars that are formally just, and also to fight them according to the just war tradition and warrior ethos that defines the professional military ethic. A refusal to go when called upon constitutes an abandonment of the oath of office, of the profession of arms, and of the soldiers who depend on their officers for competent leadership. It is a

betrayal of the national trust.

NOTE

1. Paul Christopher, *The Ethics of War & Peace: An Introduction to Moral and Legal Issues* (Englewood Cliffs, N.J.: Prentice Hall, 1984), p. 90.

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Reviewed 25 November 1996. Please send comments or corrections to carl_Parameters@conus.army.mil.