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Introduction

The Kind of Question Involved in Moral Military Action

Should a soldier ever disobey a direct military order? Are there restrictions on how we fight a war? What is “military honor,” and does it really affect the contemporary soldier? These questions lead to a number of ethical problems, including the odd but basic one: Is human dignity possible under battlefield conditions? This book considers views on several sides of these matters, analyzes the “laws of warfare,” and concludes that the answer is “yes” to each of the above questions. Military honor matters, morality restricts military choices, and human dignity can be won or lost.

If military honor and “laws” of war do exist, what acts do they forbid, if any? Here are a few of the problems: Can a prisoner of war be threatened with torture or death in order to get information that can save the lives of one’s comrades? Can the enemy’s water supply be poisoned? Can the enemy be told that its country has surrendered, when this is not true? Can an enemy soldier be assassinated, shot by a soldier who is out of uniform and dressed as a local native? If the enemy is found to have tortured captives, may the other side do the same to its captives? Can ammunition be stored in a church? These are some of the questions that arise during war. They are ethical questions because each of these actions certainly can be carried out, but it is far from clear that they should be permitted. These are examples of the issues that are part

of the subject of moral military activity—the part dealing with choices about *how to conduct warfare*.

The individual soldier is not left to exercise personal whims when moral questions arise. He or she must consider both written and unwritten codes of military conduct. Military honor and the laws of warfare partly express the present stage of civilized man's morality. These codes do not answer every possible question that a battlefield can raise, but they go an impressive distance toward the answers.

Soldiers make and act on decisions *during war*. Such decisions are at the center of this study. We will not consider the classical question of the justification of war or of particular wars, although this is certainly a prior and basic matter. The decision to go to war is political; Decisions on the conduct of war are military. This distinction between the political and the military is crude, because no question is purely one or the other. Political choices depend on the military power to enforce them, and military choices presuppose the political will to sustain them. However, our subject matter is the moral reasoning called for in a wide variety of situations in which persons in military uniform may find themselves. They may involve life or death in actions ranging from the display of loyalty and honor to the most inhumane kinds of cruelty and unnecessary suffering. Some of these decisions resemble those that are common among employees and executives in large institutions, civilian as well as military, although most are unique to the military. Such moral questions as stealing from an institution, false reporting, careerism, and whistle-blowing will not be considered here. Our concern is with the essential military mission—protecting the nation by force—and that leads us to moral questions that arise before, during, and after combat.

The object of this study is to establish the basic modern framework for moral military action. A secondary object is to assist military personnel in the analysis of their own professional ethic. It takes courage as well as knowledge to remain within the bounds of morality—and courage, we all suspect, cannot be poured out of a book.

Must Every Order Be Obeyed?

To say that soldiers make decisions means that they do not automatically carry out orders. One essential moral problem for each of those below the rank of commander-in-chief is this: "Should I obey or disobey the order that I was given?" Although the individual U.S. soldier, when inducted into the armed forces, swears to uphold the Constitution of the United States and to obey the orders of the commander-in-chief and subordinates, this does not mean that every order must be obeyed. The Department of the Army's Field Manual (FM) 27-10, *The Law of Land Warfare*, has a significant section titled "Defenses Not Available." At a court-martial of a soldier accused of committing a war crime, the fact that the act in question was carried out under "an order of

a superior authority, whether military or civil, does not deprive the act in question of its character of a war crime, nor does it constitute a defense in the trial of an accused individual.”¹ Clearly, a soldier does not give up all personal responsibility for what he or she does. One may *not* carry out an order to do something that is a war crime and then claim in defense that the order had to be obeyed. The Army Field Manual dictates that “members of the armed forces are bound to obey only lawful orders.”² Of course, if the individual did not know, and could not reasonably have been expected to know, that the act ordered was unlawful, he or she may use that ignorance as a defense.³

Because members of the armed forces are held responsible if they commit war crimes, they must be provided with the clearest possible understanding of what these crimes might be. To make the laws of warfare govern the actual practice as closely as possible, the laws must be well known. Therefore, the governments that signed the Geneva Conventions agreed “to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and if possible civil instruction, so that the principles thereof may become known to the entire population.”⁴ Each government publishes a manual on the Conventions to be used in training its own armed forces. What is of most concern is how much of the time available for military education is spent on the subject of military ethics and which tests are used to evaluate understanding.

In addition, we need to consider the agreement to try to make the entire population aware of the subject. The laws of warfare could certainly be taught to students at the secondary-school level, perhaps in connection with courses on government or international agreements. Understanding the nature of the international conventions—and the language in which they are phrased—requires no more than a secondary-school level of education, if that. Thinking about the combination of the obligation to serve one’s country, along with the obligation to disobey orders when required by higher morality, is a proper subject for people in their middle teens. The minimum age for military duty is seventeen; however, a young soldier may need several years of training on such a crucial and complicated subject before having to make any decision.⁵

The question of the limits of military obedience is involved in every chapter of this study and comes to a decisive focus in Chapter 8, “War Crimes, Remedies, and Retaliation (Dirty Warfare).” There we consider the nature of war crimes and the specific basis for the decision to obey or disobey an order.

Forbidden Weapons? Nuclear Weapons? Terrorism?

Nuclear bombs and nuclear weapons systems raise new questions in the history of warfare. Are they so terrible that they should be forbidden, as certain kinds of gas warfare have been forbidden?⁶ If not forbidden, do they make

“conventional warfare” obsolete? Can there be, at most, one more brief war that would bring about either the end of humankind or the rise of an international government? Does listing a weapon as forbidden mean that it should never be used, even in reprisal against its use by an enemy? Are there circumstances in which the decision to use such weapons can be morally defended? Is there an essential moral difference between small and large or tactical and strategic nuclear weapons? Chapter 4 deals with the issues involved in international agreements on forbidden weapons and tactics and develops the principles that apply. Chapter 9 considers the application of these principles to each of these questions.

Terrorism raises questions that go beyond the old concept of a war crime. In a fair study, we have to consider the arguments both for and against those military actions that we call terrorism.

The Good Soldier

The primary concept of the good soldier is that of an individual who agrees to sacrifice his or her own life, if necessary, for the welfare of others. The idea of military discipline is just this: The soldier will do as ordered, regardless of personal peril. Discipline means sacrifice—almost automatic sacrifice. The question arises immediately: Why would a rational individual accept the position of a soldier and become essentially a slave to a master’s goals? We have to consider this matter in some detail, but first we must add to the notion of obedience the equally dramatic notion of honesty.

Soldiers operate openly, publicly, wearing uniforms that announce their goals. The combination of sacrifice and of honesty—unselfishness and truthfulness—are the components of military honor. Because humans are so obviously selfish and dishonest, the romance associated with military honor is a heady source of excitement and appeal. To be able to look with superiority at civilians, to have the notion that they depend on you but not the converse, is to have achieved a certain value for your life. This aspect is not stressed in the literature, perhaps because it is embarrassing to discuss superiority and, thus, contempt. However, all values are contextual, requiring comparison with something else that does or might exist. So, it is perfectly natural for soldiers to compare their potential danger to that of civilians.⁷

Perhaps another reason for the lack of attention to the role of the soldier’s contempt for the non-soldier is that much of the writing about military ethics and the military profession seems to have been done by present or former officers rather than by enlisted personnel. Officers must be more discreet, or “gentlemanly.” They are the group that must persuade civilians to finance the enterprise.⁸ In military training, the problems of *leadership* are considered in great detail; the correlative problems and thinking of *followership* are not given the same attention.

Relations between Officers and Enlisted Personnel

Colonel Malham M. Wakin reminds his readers of some of the origins of military thinking in a very interesting article, “The Ethics of Leadership.”⁹ He mentions “the story of those peasants of southern Germany who fought for their emperor in 1078 against knights of the feudal armies who, upon defeating the peasants, castrated them for daring to bear arms, a privilege reserved for the aristocratic knights. . . . Military honor . . . involved the practices of chivalry, including duels, but extended only to aristocratic peers.”

Appendix 2 includes a discussion of the relations between officers and enlisted men, as well as a discussion of whether two distinct classes are needed. The topic ends with the remark that ignoring the dignity of enlisted personnel may be a pattern that will have to be abandoned—that has already been abandoned in certain areas—in a world in which extremely technical positions are held by enlisted men. As Major Daniel M. Smith put it recently, “Enlisted soldiers are not subordinates or of a lower rank than officers; they are simply in a lesser pay grade.”¹⁰ We have come a long way since the story about the eleventh-century German knights. Enlisted men outnumber officers; they often take on the highest risks to life and the most difficult and technical jobs. In addition, just as all humans are, they are required to make moral decisions. Certainly the problems of military followership can stand some analysis.

The Moral Foundations of Soldiering

What makes something moral or immoral? Is it *action* that is to be judged, or is moral judgment properly restricted to the *intention* of an individual, because the consequences of one’s intentions may be beyond control? Chapter 2 develops four different ways of thinking about morality and ways of applying each to military situations.

There is an important distinction between *military morality* and a *moral military*. In the first term, *military morality*, the subject of morality is modified or made to fit the requirements of the military. But modified morality is no longer morality. In the second term, a *moral military*, the military is required to meet the demands of morality. That is a different matter; that is the application of morality to judging military questions—hence, the title of this book. Like others, I find myself using both *military morality* and *military ethics*, but these phrases are shorthand for our serious subject, the nature of a moral military.¹¹ (See the Preface of this edition for additional details about this matter.)

Before taking a detailed look at alternative theories of morality, we should take a general view. This study accepts a definition of the term *moral action* developed by American philosopher William James. His sense is that

moral action is “action in the line of the greatest resistance.”¹² The greatest resistance to moral action apparently comes from within the individual: There are within us both a moral and a selfish incentive. The moral battle takes place on the level of personal incentives—for example, a person chooses between what he or she thinks is right and what he or she thinks is safe. When an individual’s own personal selfish goals are clear and strong, it takes the greatest resistance from outside the individual to overcome selfishness. In this viewpoint, to act morally is to act for the benefit of someone or something other than the individual’s selfish advantage. In plain language, to act morally is to sacrifice some part of oneself. What part does one sacrifice, and for what? The next chapter deals with these questions.

In military terms, the question of morality—the matter of sacrifice—is this: “What, if anything, is worth dying for?” The soldier’s answer is clear: “My country.” However, the extent of the soldier’s sacrifice, or willingness to sacrifice, is hardly clear. One will offer his or her life, if necessary. Will the soldier also sacrifice personal honor? Honor requires honesty: Will a good soldier lie, cheat, kill women and children, and torture and mutilate for the sake of country? The answer that this study presses is “No. A soldier offers to sacrifice his or her life, but not honor.” One purpose of this study is to develop, argue for, and publicize that limit. Certain civilian misconceptions about the military may be eased by understanding this matter; certain patterns in the military may be corrected by attentively acting within those limits of acceptable action.

We must analyze the West Point motto, “Duty, Honor, Country,” so that we have a sense of the scope and the limits of each of these three concepts. Without a notion of the limits and the competing principles for each, we are left with fanaticism. A fanatic has a conception of his or her goal, his or her heaven, and takes this conception to be perfect in every way. A healthy human, a non-fanatic, must also have goals and priorities; however, healthy people understand that their goals are not perfect, and they can find some sympathy and appreciation for different goals. Healthy people understand that an enemy, who has different goals, is also human.

Returning to the West Point motto, the term *duty* is here understood as *obedience*, the term *honor* is taken to be *honesty*, and the concept of *country* leads to the notion of *sacrifice*. Of course, these one-word synonyms merely indicate the area of analysis. Each term needs full consideration and examples. And, as mentioned above, each of these terms stands for a concept that has to be understood in light of its rational and moral limits. None of these terms is absolute.

Chapter 3 discusses our dual duties to both country and morality. Morality is often understood as following the military code, and the duty to follow that code ranks with, and perhaps above, the duty to country. The three parts of the West Point motto are not always independent; there are moral costs involved.

One military version of the moral question is this: Is it better to lose a war morally or to win immorally? Chapter 2 contains an analysis of four different moral positions—religious, individualist, social, and universal—and the way each responds to this question.

The Order of Topics

The next chapter is devoted to the subject of morality, presenting a way of classifying all possible moral positions and considering the military implications of each. It also offers a novel way of relating moral theories based on an Aristotelian square of opposition. However, those readers who need no introduction to moral and ethical theory may skip Chapter 2.

Chapter 3 follows with a study of military honor and the laws of warfare. The term, “Geneva Conventions” is familiar to many people, but the Conventions are rarely read or understood outside of certain military training programs. The Hague Conventions are much less well known. While a few excerpts are widely used in basic training, that usage hardly provides an adequate philosophical analysis of their foundation and broad significance. Civilians without military experience ordinarily fail even a simple test (like the one found in Appendix 3) on their contents. In the last few years, military personnel have been given a much-improved set of materials and have spent more time training soldiers in the Conventions. But even more attention should be given to the morality involved.

The term *professional military ethics* is now well recognized. Military and other journals publish on the subject regularly. The U.S. Army established an Ethics Task Force at Fort Benjamin Harrison in Indianapolis (since reorganized and moved to an Ethics Division at Fort Leavenworth in Kansas) and has done an impressive job of producing teaching materials. I hope that this effort will continue to be supported. In 1982, the appearance of a brief but thoughtful book published by the Hastings Center, *The Teaching of Ethics in the Military*, was another helpful and promising development.¹³

The problem with these “enlightened” efforts is that thinking about ethics is both very important and very dangerous. It is important because the dignity of human beings requires that they think, that they know the reasons for their actions; it is dangerous because a serious effort to think may have an unpredictable outcome. Such efforts may lead to embarrassing conclusions. Ethics is a part of philosophy, and philosophy involves the art of raising the most basic questions. I think, however, that if we have the courage to take the risk, we will find acceptable answers—not perfect answers but, all things considered, acceptable ones.

My own experience with learning the Conventions in World War II was this: In basic training, if we were on a rain-day schedule, a noncom read something about the Geneva Conventions to a group of about one hundred

recruits. There was no discussion and no testing to check understanding. If it did not rain, even the minimal lecture was omitted. So, an introduction to the Conventions, their purpose and methods, seems appropriate. The concept of military honor depends on understanding both the written and unwritten “customary laws of warfare,” as we will see.

Chapters 4, 5, and 6 consider specific details of the military code, the laws of warfare. These three chapters follow the sequence found in FM 27-10, the Department of the Army Field Manual, *The Law of Land Warfare*.¹⁴ Starting with the procedure for declaring war, Chapter 4 considers many, but not all, battlefield situations and specifies acceptable and unacceptable actions. Chapter 5 deals with prisoners of war and Chapter 6 with spies—those not protected by all of the prisoner-of-war rules.

Chapter 7 goes on to nonhostile relations with an enemy. This topic involves the increasingly important subject of occupation forces, as well as the treatment of civilians, women, children, and the aged. Some wars end with and some end without an army of occupation; some political situations are now managed by outside forces occupying borders. While occupying forces have great advantages over those engaged in active hostilities, certain new problems need to be solved. However, because we are particularly interested here in the morality of combat, these topics are, for the most part, ignored. Chapter 7 deals with the process of ending hostilities, which means specifying the machinery of an armistice and some of the concepts involved in a surrender.

Chapter 8 analyzes the concept of a war crime, the central notion in the military code. This concept involves questions of whether war crimes can be avoided during a war, possible remedies to such crimes, and the law of retaliation, leading to some of the issues concerning terrorism. The relationship between terrorism and war crimes is but one obvious matter. Another is the delicate question of a possible moral defense for acts of terror. If we adopt a broad construction of terrorism, quite a bit of modern military history can be so classified. If we take a narrow view, we seem merely to be covering up our own history.

Chapter 9 presents the dirty-hands theory of command, the idea that it is impossible to govern a large institution properly without doing things that one knows to be immoral. This theory goes on to hold that those who are overly concerned with their own moral purity are too prissy to command effectively, presenting a serious moral challenge.

Chapter 10 considers the history and definition of torture. The chapter includes arguments both for and against the use of torture, and those arguments are judged by the war conventions and by moral matters.

Chapter 11 takes on questions about nuclear devices and low-intensity conflicts. Along with terrorism, these are topics of the day. Are tactical and strategic nuclear weapons different? Are nuclear weapons acceptable in some construction of the laws of war? The second section of this chapter

turns to the many moral problems involved in “special” kinds of warfare, covert warfare, and variations that are referred to as *low-intensity conflicts* and a *war against terrorism*. Some believe that these are new sorts of activities and so we need new moral categories and new rules of engagement in order to deal with them.

Finally, the concluding chapter reviews a number of questions that have appeared along the way. Are the laws of war a moral and an adequate basis for contemporary action? What is the reality and seriousness of military honor? The needs for certain kinds of publicity and certain kinds of education are stressed. Publicity is one of the mechanisms for encouraging obedience to the laws of war, and this publicity involves the military education of both sides in any potential war. The chapter argues that both civilians and military personnel must be educated in the laws of war.

In the history of philosophy, a great difference has been noted between the views of Thomas Hobbes and Immanuel Kant on warfare. Hobbes held that when peace is impossible, one may “use all helps and advantages of war.” For Kant, one must behave within certain bounds so as to make peace possible again. This controversy revolves around whether there are such things as war crimes. The concluding chapters offer an analysis of Hobbes and of Kant that brings their positions closer to each other. The analysis takes the Kantian position that a war crime is not a “help and advantage in war,” because the object of war is to have the enemy surrender and remain that way—surrendered. To behave in so vicious and cruel a manner as to cause the enemy never to forget and never to forgive is not to have won the war. To win a war, one must end the war on favorable terms, and the war must stay that way—ended. To have the war really end, the enemy must agree to surrender and remain surrendered. That resolution requires behavior with military honor, with some respect for the human rights of the enemy; otherwise, the war does not end. We have some of these situations in the modern world, such as in Northern Ireland and the Middle East.

This book started out as a philosophical commentary on FM 27-10, the Army’s presentation of the Hague and Geneva Conventions. I hope that it serves that purpose, as well as interesting the philosophical and the general public. Morality cannot be left to professional experts because, as Kant explained¹⁵, there are none.¹⁶

The Scope and Limits of This Study

There are many excellent histories of particular wars and many fine studies of almost every aspect of war, including military professionalism in its many ramifications. And, as mentioned above, the last decade has seen a great increase in attention to the teaching of ethics in the military. In the last few decades, the concept of the “just war” has been reconsidered from contemporary religious and historical viewpoints. The issues in nuclear deterrence

have provoked a great number of programs at meetings of professional philosophers and others and have led to some stimulating publications. The scope of this book is much more limited, and somewhat different, from those many important and useful developments.

This study is essentially confined to examining the Geneva and Hague Conventions in an effort to discover their philosophical structure. They purport to be the codification of the laws of warfare and to provide a standard for the morality of honorable combat. I will conclude that they are, indeed, an impressive basis for a moral military and that their principles cannot be ignored without great moral cost.

The Geneva and Hague Conventions were not the first efforts to limit military violence, and they are not fixed and established in detail for all time. A history of restrictions on military action would have to give a prominent place to a significant American development, the Lieber Rules and President Lincoln's role in promulgating them. However, this book is not a history of that subject; it is an analysis of the modern focus of thinking. Historians have noted that "Francis Lieber, while teaching Americans the Kantian moral philosophy, worked the premises of Kant's book, *Perpetual Peace*, into the code for the conduct of armies which President Lincoln commissioned. This last was only one of the ways that Kant's proposals were shepherded into the international law of the nineteenth and twentieth centuries."¹⁷ Because our interest is in the philosophy rather than in the history behind modern thinking about the subject, we will give special attention to the theories of Kant and ignore or slight the details of codes and conventions earlier than the twentieth century. Our discussion of the twentieth-century codes is far from complete; the various protocols added to the Geneva Conventions in the seventies and the recent conferences and statements on terrorism are also slighted. The protocols and the terrorism agreements certainly call for serious attention, but that must wait for future efforts.

The main object of this study, again, is to formulate the basic contemporary framework for moral military action. The second object is to offer some philosophic assistance to military personnel in their analysis of their own code, their own professional ethic.

Florence Nightingale once said that, at a minimum, hospitals should not spread disease. American logician Morris R. Cohen repeated her remark and added his own hope that his book, *A Preface to Logic*, would not spread fallacious thinking. If nothing else, I hope that this book does not spread casualness about war crimes.