

ABSTRACT

Just and Unjust Soldiers

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In his book *Just and Unjust Wars*, Michael Walzer distinguishes between the just causes for going to war -*ius ad bellum*- and the just conduct of war itself -*ius in bello*. In order to articulate the system of permissions and prohibitions governing of *ius in bello*, Walzer relies on the concept of the moral equality of soldiers. Regardless of the justice of the cause for which they fight, soldiers on both sides of a conflict are responsible for the conduct of war. They are not responsible for its causes. In my thesis, I question this separation of responsibility, saying that soldiers do indeed bear some level of moral responsibility for *ad bellum* considerations. In the first chapter, I propose a modification of Walzer's delineation. In the second, I discuss my foundation for this proposal and some of its practical effects. In the third, I consider some of its moral and legal ramifications. Overall, I attempt to modify Walzer's system while respecting its general structure.

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JUST AND UNJUST SOLDIERS

Moral Equality in Michael Walzer's *Just and Unjust Wars*

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To my brothers and sisters in the United States Military. Your sacrifices sustain this country and much of the world. I pray that we may all concern ourselves with justice and never lose sight of why we fight.

INTRODUCTION

Just and Unjust Soldiers

Michael Walzer wrote *Just and Unjust Wars* in 1977 in an attempt to revive the ignored discussion concerning justice and war. The combined experience of two World Wars, the Cold War, interventions by superpowers around the globe, and the general lack of earnest academic inquiry into the topic spurred his decision to write the book. He does so in a thoroughly liberal fashion, expounding morality not “from the ground up”¹ or the top down, but from our perspective here in the middle. Our moral intuitions, expectations, and exclamations provide enough substance to make out a good enough sketch of a binding moral structure that we can hold one another to its standards, in normal life as well as war.

The book itself is a direct response to political Realism, articulated most notably in the writings of Thucydides and Thomas Hobbes. Based on the idea that we cannot have reliable epistemic access to truth concerning the highest good, this system maintains that we must base our political philosophy on other ordering principles, most notably radical self-interest and material gain. Concepts like “justice” are, seemingly, devoid of meaning in a Realistic conversation. The influence of this system is demonstrable. Europe in the early twentieth century indulged in power calculation and classic balancing behavior, typical of *realpolitik*. The checkerboard pattern of international relations across the continent along with the security dilemma faced by Germany and the Austro-Hungarian Empire led to a highly unstable system of relations between continental

¹ Walzer, Michael. *Just and Unjust Wars*. (New York, Basic Books; 1977). P. xxiii

powers and, eventually, World War I. The same pattern of thought led to a similar result twenty years later in World War II. The destruction wrought by this system of thought within the century of writing was phenomenal.

In the course of arguing, he differentiates between the system of permissions and prohibitions governing the resort to war –*ius ad bellum*– and the parallel system governing the actions within it –*ius in bello*. To articulate the latter, he relies on a concept called the moral equality of soldiers. Soldiers are morally equal because we cannot, for some reason, judge them according to the cause for which they fight. Their equality serves as the basis for an entire deontology governing their behavior – if soldiers are equal, they can only do as many types of violence to enemy soldiers as the enemy is allowed to do back at them.

The idea has roots in the liberal tradition. At times, Walzer’s argument looks positively Kantian in construction. At other times, he seems to have Rawls in mind or mentions Nozick in a footnote. The basic premise relies on the liberal tenet regarding the difficulty of apprehending truth concerning the highest good. The philosophical movement began as a response to the wars of religion following the Protestant Reformation. The horrible destruction wrought in that time required a reevaluation of our mode of government. Zealous adherence to a particular conception of the highest good, over and against others, led to violent and bloody wars in pursuit of transcendent concepts of justice. Dissonant hierarchical conceptions of justice and international political order produced a system not unlike Europe in the early twentieth century. To morally preempt the violence, liberal philosophers held that the highest good could not be relied upon to order state-level actions, in order to avoid ideological or religious

crusading. As a corollary, if states are morally equal, so are their soldiers. If we take soldiers to be morally equal, rejecting hierarchical constructions of justice and international order, no one can become a crusader.

Hobbes, writing in this time, seems to articulate the notion of moral equality first. He is, after all, in the liberal tradition himself. Moral equality among soldiers is a natural product of the moral equality among states. If all states were morally entitled to kill each other, then they had to order their actions in such a way that none of them did kill each other if they wanted to live in peace. Moral equality for soldiers seems to come directly from the Realist writer to which Walzer responds with this work.

If moral equality is, in fact, a holdover from the Realist tradition and predicated directly on our inability to possess sufficient knowledge regarding the highest good, then it seems to go hand in hand with moral equality of states such that, because there are no morally authoritative states to justify their actions, there are no morally authoritative soldiers. Moral equality fits well with Hobbesian liberalism. However, this is not the system Walzer supports. Indeed, there are morally authoritative states in Walzer's system. These are the ones fighting in support of a liberal conception of justice, identified according to the method referred to earlier. How then can we understand the continued existence of the moral equality of soldiers?

There seem to be many benefits to maintaining this equality. We can articulate a system of permissions and prohibitions from morally equal soldiers which roughly corresponds to the prior set of wartime rules derived from older, Catholic teaching. Insofar as the substance remains the same while the justification changes, it is easier for many states to accept. Furthermore, morally equal soldiers can neither slaughter innocent

civilians nor torture and kill their enemy forces based on some concept of the highest good. Finally, if all soldiers are moral equals, states can easily hold one another to similar standards based on reciprocity. There seem to be many benefits to this moral equality.

However, I want to question this equality. While useful, it does not accurately describe the moral situation in which soldiers actually find themselves. I want to evaluate the concept from Walzer's perspective, in order both to operate within an already articulated system and to investigate the deeper foundations for the concept which might alter the characterization I give. To do this, I will discuss the concept itself and its foundations, pertinent aspects of the soldier's participation in the political community, and the role of the will with respect to causal responsibility. Ultimately, I qualify Walzer's claim, saying that soldiers are, in fact, not moral equals. While there are certainly ramifications on his system if this thesis holds true, I maintain that they are not so great as to require altering much of it.

CHAPTER ONE

Soldiers and the *Ius ad Bellum*

Walzer draws a sharp distinction between *ius ad bellum* causes and *ius in bello* constraints when discussing soldiers' individual responsibilities near the beginning of his book. These categories are not unfamiliar in the just war tradition –the first determines why and when we can go to war, the second explains how we fight our wars properly. Walzer's delineation, however, is sharp. So sharp, in fact, that he seems to claim that *ad bellum* considerations cannot be allowed to affect *in bello* constraints. At least, he separates the two areas in such a way that only statesmen are responsible for *ad bellum* considerations while only soldiers are responsible for *in bello* constraints.

In the pages that follow, I question the acuity of this delineation and, to some degree, its placement. To do this, I separate this chapter into four broad sections. In the first, I present his justification of his separation of the two areas of justice. In the second, I examine Walzer's conception of the relationship between the individual and the community. In the third, I analyze his view of soldiery in particular and the problems it presents to his delineation. In the fourth, I discuss how he could resolve the issue with other parts of his work.

Walzer's Separation

Walzer justifies his separation of *ius ad bellum* considerations from *ius in bello* constraints, saying that “the moral status of individual soldiers on both sides is very much

the same: they are led to fight by their loyalty to their own states and by their lawful obedience.”² Broadly speaking, Walzer bases his consideration of *ius ad bellum* on respect and infringement of rights claims between political communities. The only justification for going to war is as a response to aggression, which he understands as the intended or actual use of force by one political entity to coerce another community. He relies on the domestic analogy to explain this concept, relating the justification of force internationally to the justification of force domestically. That is, when a citizen is threatened by a criminal in domestic society, put to the decision between “your rights or (some of) your lives,”³ he is permitted to use force to stop the aggression. In the same way, when a political community is put to that same choice, the use of force is similarly permitted.

The domestic analogy breaks down when considering the conduct of the war itself, however, because there is no equivalent activity in the domestic arena.⁴ War represents the breakdown of civil society, wherein there is an order imposed by a government which is, at times, violated by criminals. War lacks the hierarchical structure of domestic society. The justice of the cause has already been ignored by one or more parties in the war, so an appeal to such an authority does not readily make sense on the battlefield.

To illustrate this, Walzer presents us with two cases. In the first, a thief shoots an armed guard for drawing his weapon while the thief and his fellows are in the process of robbing a bank.⁵ While the thief may claim he acted in self-defense and his fellows may

² Walzer, Michael. *Just and Unjust Wars*. (Basic Books, New York; 1977). p. 127

³ Ibid. p. 51

⁴ Ibid. p. 127

⁵ Ibid. p. 128

commend him for his action, the shooting was nothing more than murder. Had there been no initial robbery, there would be no need for the thief to defend his life. It was the thief who presented the threat, “your money or your life.” According to Walzer, we do not differentiate between permissible violations of the law and impermissible ones. A thief who only shoots the armed guards is condemned in the same way as one who murders everyone in the bank.

However, we do not think of soldiers in war this way, which is Walzer’s second case.⁶ In the course of an aggressive war, if an invading soldier shoots a defending one who is similarly armed on the battlefield, we do not generally consider it murder. If the one who is defending his homeland from attack shoots the invader, the same is still true. After the war we do not generally call them criminal because they were not morally responsible for the whole war itself. If they violate the rules inherent to their conduct, we consider them criminals, to be sure, but we do not try to convict soldiers whose only condemnable characteristic was being on the (morally) wrong side of the war.

“The crucial point here,” Walzer says, “is that there are *rules* of war though there are no rules of robbery.”⁷ In order to judge the actions of those on the battlefield we must take them as moral equals. That is, we must judge them *without respect to the justice or injustice of the cause for which they fight*. The only soldiers who could possibly be held morally responsible for *ad bellum* considerations are generals, and even soldiers such as these might not be subject to such judgment. Without a view sharply abstracted in this way, war as a rule governed activity disappears.

⁶ Ibid. p. 128

⁷ Ibid. p. 128

Such is Walzer's argument, but I intend to demonstrate in the following that he is mistaken. Individual soldiers can be considered morally responsible for *ius ad bellum* to a certain degree. Indeed, it seems that much of Walzer's system supports such a claim.

Agency, the Individual, and the Community

Walzer bases the sharpness of his delineation between *ad bellum* and *in bello* in part on a relatively simple proposition, that "war itself isn't a relation between persons but between political entities and their human instruments."⁸ In order to understand this statement, we must first answer three questions regarding Walzer's system. First, what is a political entity? Second, what is the will of such an entity? And third, how is this will executed? Once we understand the progression of agency involved in the state, we can turn our attention more squarely on the rules of particular agencies, like soldiers and statesmen.

According to Walzer, rather than being an "organic whole or some sort of mystical union,"⁹ a political entity is a community and this community is nothing more than an aggregation of individual men. It possesses the rights of territorial integrity and political sovereignty. These two communal rights derive ultimately from the rights of individuals. Every human being possesses the rights of bodily integrity and self-determination. The community possesses these rights only insofar as its citizens do. Walzer explains that the territory of a state is determined by the free association of the individuals who live generally close to each other and consent to be a part of a community. That is, when men who live near each other decide to cooperate with one

⁸ Ibid. p. 36

⁹ Ibid. p. 53

another to ensure the protection of their individual rights, they create a political community. What happens next is more difficult to describe. Walzer puts it best, saying that:

Over a long period of time, shared experiences and cooperative activity of many different kinds shape a common life. “Contract” is a metaphor for the process of association and mutuality, the ongoing character of which the state claims to protect against external encroachment.¹⁰

He calls this two part process of initial cooperative activity and sustained sharing of experiences the process of collectivization. Men “collectivize” into communities freely, they cooperate with one another to achieve certain goals, and in so doing they create a history for those who inherit it or choose it after them. The continued identification of men with one another in the context of this history is the continued life of a political community. To answer the first question, a political entity is an association of individual men into a community which bears a collective form of these individuals’ rights and eventually has a history shared by these men.

In light of this process of collectivization, we can understand how the will of a political entity is formed. Simply put, it happens through the same aggregation that forms the community itself. The individual will of each citizen joins with all the others and shapes the character of the collective. I am not here talking about the formal mechanism by which this will is expressed, which would be the form of government. Regardless of whether a state is organized as a democracy, an aristocracy, or a monarchy, it always possesses a collective will. As Walzer explains it, part of the essential character of a political community is that it serves to protect the individual rights of its members and the communal life they create. The substance of this life, what the citizens love or hate

¹⁰ Ibid. p. 54

and how they celebrate or shun it, is entirely determined by the citizens themselves. A necessary aspect of the communal will seems to be protecting individual rights but this seem to be the only necessary aspect. The other components of the communal will are decided by the citizens. So, in the United States we see that part of the communal will has been the protection of democracy around the world and the propagation of a free market economy. In France, part of their will is practicing a degree of socialism and distributing wealth and resources fairly amongst its citizens. In Walzer's system, the communal will depends almost entirely on the community that makes it. The essential aspects of this will are that it seeks both its own preservation and the preservation of its citizens' rights.

By the same process of aggregation, the citizens' collective agreement determines the mechanism by which this will is executed. In every society, however, this is accomplished when some members of the community take it upon themselves to serve so as to preserve and protect this community life. Some subset of the whole population serves to safeguard the rest of the political community. These individuals form a government which, in a well ordered society, acts on behalf of the community and executes the communal will.¹¹ The various interests a community has determine the different roles that government workers can assume in the execution of this will. The differentiation of activities is important as each one serves as some part of the whole system of the will. While directed toward some separate aspect of the communal will, taken together the various activities of government serve the whole community. Thus, some individual citizens are charged with the execution of economic matters, others with

¹¹ If the government does not reflect the collective will of its citizens, it is an unrepresentative state. This is not to say anything about the particular form of government, however. Monarchs can represent the collective will of their citizens and thus be representative while democratically elected officials can easily misrepresent this will.

agricultural ones, and so on. The different activities in which these citizens engage determine the duties and rules which govern their particular actions along with the range of their authority. To answer the third question directly, the communal will is executed by individual citizens, invested with a certain level of authority and charged with certain duties, working in concert with other similarly entrusted citizens towards the same end.

In Walzer's conception of a state, individual wills are collectivized into a communal will, the execution of which is then entrusted to particular agents. Thus, war is the clash of various communal wills, the execution of which is entrusted to a particular class of individuals – soldiers – who have been commissioned by the state and authorized to use lethal force in the discharge of their duties. Understanding the progression of agency involved in government, we may now consider Walzer's understanding of soldiery more thoroughly.

The Nature of Soldiery

In explaining the moral responsibilities involved in war-making, Walzer maintains that two classes of people exist related to this activity: statesmen and soldiers. Statesmen articulate the will of the community and coordinate the various members of the government towards the same end. Soldiers actually engage in war on behalf of the political community, according to the political will defined by the statesmen. However, this account of war contains two issues: (1) the existence of soldiers as citizens and (2) the progression of agency involved in military service.

As explained above, every human being that lives in a political community participates in collectivization and helps to shape this community and the character of its

common life. Neither soldiers nor statesmen are exempt or separated from this existence. When not at war, soldiers are at home participating in the common life they have vowed to protect. Similarly statesmen, when not governing, participate in this life. As much as any other, members of these two groups exist as citizens who shape the collective will of their community.

That soldiers exist simultaneously as normal citizens seems to counter the sharpness of Walzer's distinction between *ad bellum* considerations and *in bello* constraints because, in some sense, soldiers are as culpable for the collective will of the political entity as any other citizen. Insofar as each citizen helps to form the will of his government, he provides the reasons for war accounted for in *ad bellum* considerations. When statesmen reflect this will *ad bellum*, if this will is malicious, it violates just principles. It seems that soldiers are as culpable as any other citizen with regard to *ad bellum* violations precisely because the authority of the statesmen proceeds from the community at large and soldiers are part of that community.

Obviously, the degree to which general citizens can be held accountable for *ad bellum* considerations depends directly on the degree to which their government reflects the citizens' collective will. Generally, this will aligns with the will of the statesmen in power enough that the type of culpability I described exists. When a state lacks such unity of will between citizens and statesmen, it is an unrepresentative state. In unrepresentative states, culpability for *ad bellum* violations can only rest on the statesmen in power, because it is their will alone –against that of their citizens'– which directs state

action.¹² Nonetheless, soldiers' moral agency with respect to *ius ad bellum* extends at least as far as the general run of citizens' moral agency for *ad bellum* violations does, because they are citizens themselves.

Walzer discusses this diffusion of responsibility *ad bellum* with respect to responsibility in democracies. Walzer states that "democracy is a way of distributing responsibility"¹³ and that, insofar as citizens are part of a political community, they are culpable for the decisions of that community because of the type of participation which they share and which I have described. He makes an exception, though, for certain dissenting individuals. This exception is based on the fact that an *ad bellum* violation

will be done in the name of [a citizen's] own political community – hence in some sense in [his] own name ... it looks as if [this] citizen is only blameless if he takes back his name.¹⁴

By the phrase "takes back his name," Walzer means that the citizen must distance or isolate himself from the decisions of the community. This does not mean that he must exile himself or become a revolutionary -though those options are not ruled out explicitly- but rather that the dissenting individual "must do all he can, short of accepting frightening risks, to prevent or to stop the war."¹⁵ Walzer discusses this diffusion of responsibility solely in reference to democracy. Democratic order diffuses moral responsibility in a special way for Walzer. I abstract his argument from applying only to democracies. All reasonably well functioning states possess some level of representation for their collective will. If a state does not represent the collective will of the people, it is

¹² The form of government is not here at issue. Monarchs can reflect the communal will of their people and thus have representative monarchies. Democratic officials can fail to reflect this will and thus be unrepresentative.

¹³ Ibid. p. 299

¹⁴ Ibid. p. 301

¹⁵ Ibid. p. 301

an unrepresentative state and moral responsibility only applies to the political leaders that have misappropriated their office.

However, he also applies this thinking to soldiers themselves and says that they are “not responsible as soldiers; but as citizens, they are.”¹⁶ The reason this is the case, he argues in a footnote, is that they vote as citizens but fight as soldiers. Citizens are individuals whose will is expressed inside of the political community and helps to shape it. They retain their individuality within the community. Soldiers, however, are executive agents of the political will, as I have said. Walzer claims that as particular agents of this will, *they are not culpable for the injustice of the communal will because the community itself is the moral agent*. This division of responsibility is the heart of Walzer’s sharp delineation between moral responsibility *ad bellum* and *in bello* and it is precisely the division that I reject. At the least, citizens do not cease to be citizens when they serve as soldiers and thus soldiers are still culpable with respect to *ad bellum* concerns to a limited extent. Walzer admits this. But soldiers possess a level of *ad bellum* moral responsibility over and above their responsibility as citizens, directly extending from their role as soldiers, as I shall now demonstrate.

Two fundamental characteristics separate soldiers from ordinary citizens, defined by the war-making activity in which they engage. First, soldiers are, themselves, willing to kill and help kill. Second, they do so at the behest of a political authority. If a man kills but lacks authority, he is a murderer. If he acts at the behest of such an authority but is unwilling to kill, he could be an administrative worker, a community organizer, or an aid worker, but he is no soldier.

¹⁶ Ibid. p. 300

By necessity, when men accept this role, they give over a certain level of individual agency in service of the desires of a political community. They permit the government to order their individual will for them, to a greater or lesser degree. This submission of will happens on a private level, not just the public. While ordinary citizens can limit their considerations to private interests, public servants cannot. Some of the animating considerations in their lives become identified with the interests of the public, over and above their private interests. All public servants align their will, to some degree or another, to the communal will. Its ends are their ends. That is, when they assume public office, citizens destroy some of the distinction between their private and public lives because that is the nature of public service. Walzer seems to confirm this conception to a certain degree with respect to soldiery in his treatment of the limits of consent:

What is important here is the extent to which war (as a profession) or combat (at this or that moment in time) is a personal choice that the soldier makes on his own and for essentially private reasons. That kind of choosing effectively disappears as soon as fighting becomes a legal obligation and a patriotic duty.¹⁷

Whenever governments commandeer individual citizen's lives for the sake of communal objectives, they coerce them into military service. "Legal obligations" and "patriotic duties" are essentially public reasons to fight, not private ones. If a fundamental characteristic of soldiers is that they fight in service of the political community, it seems that they fight to secure essentially public ends. Regardless of what animated ordinary citizens to become soldiers initially, they adopt public reasons for (continued) fighting on top of any private reasons they might have while they are soldiers. As soldiers, men truly are representatives of the community, not as instruments, but rather as *manifestations* of this will. Rather than slavishly and mechanically executing the will of some superior

¹⁷ Ibid. p. 28

entity, individual soldiers, perhaps through force of habit, identify their private good with the good of the community.¹⁸

It seems fitting, at this point, to discuss Walzer's distinction between men who become soldiers willingly and those who become soldiers unwillingly. Some men fight because they want to do it. It is a profession they choose not out of a necessity for employment or a sense of commitment to a common cause but as a matter of choice. Such men stand their ground and fight even when the option of running is open to them, and they will do so

not because of the necessity of their case, but freely... They seek out the excitement of battle, perhaps because they enjoy it, and their subsequent fate, even if it is very painful, can't be called unjust.¹⁹

These men are willing soldiers. On the other hand, those who fight because they are desperately impoverished and cannot find employment elsewhere, because it is the law, or because their culture imposes a certain mindset on them such that fighting is "a duty and not a free choice"²⁰ are unwilling soldiers. These men do not have the ability to live any other life. They do not make themselves into soldiers but are rather made that way by some other force.

This distinction is important to Walzer's thought because it helps assign various levels of moral responsibility. When soldiers fight freely, a war is not a crime. When they fight without freedom the war is not *their* crime.²¹ When free soldiers consent to war with one another, they revive what Walzer calls the "game of war" where the "elaborate

¹⁸ This argument applies to civil servants as well, but in a special way to soldiers. The job of a soldier is oriented towards the prosecution of war in a way that no other civil servant's is. Hence, while civil servants may possess some level of *ad bellum* responsibility, it is different in type and degree from that of soldiers.

¹⁹ Ibid. p. 26

²⁰ Ibid. p. 27

²¹ Ibid. p. 37

courtesies of chivalric warfare are revived with it.”²² War fought in this manner is no crime because the soldiers consent to it - it is an aspect of self-creation on the part of those fighting. So long as these warriors fight only each other –not noncombatants or unwilling soldiers- they engage in what John Ruskin commends as “creative war.”²³

What makes this kind of war permissible in Walzer’s account is that it is a highly rule-governed activity. The participants order their actions according to a strict code of conduct which defines their lethal game. Moral agency adheres to each and every one of such soldiers because they have the choice to fight or not. Any violation of the rules of war condemns the individual soldier. He can neither claim that he was forced to violate them in order to win nor that some external force permitted such a violation because he consented to the rules of the game from the outset. Furthermore, such wars are typically less violent because they are less absolute. If the soldiers can choose to fight, they can choose not to fight. The violence ends whenever one side admits defeat; no absolute or transcendent standard of justice mandates that the fighting continue. The soldiers involved may well fight to the death and die painfully, but, because moral responsibility lies with each of them, this is not unjust. No one forces them to fight. Finally, these types of soldiers internalize the communal will to a large degree, more than their unwilling counterparts. In giving their consent to the fight, they consent not only to the rules by which it is fought, but also to the reasons for it.²⁴

²² Ibid. p. 35

²³ Ibid. p. 25

²⁴ This is not so much the case for mercenary soldiers - their responsibility in the conflict more resembles the unwilling soldier, in part because mercenaries are driven by economic interest – perhaps economic necessity, though not of the same degree that the ‘peasant millions’ experience it. I consider them somewhat more free than the peasants, but not as free as Walzer’s aristocratic, willing soldiers.

The case of unwilling soldiers is quite different, however. Walzer, quoting Ruskin again, claims that “[when you] urge your peasant millions into gladiatorial war.’ [t]hen battle becomes a ‘circus of slaughter’ in the midst of which no consensual discipline is possible.”²⁵ Coerced soldiers do not fight out of their own volition but rather as pawns in the game of more powerful men and ideas. Moral responsibility for the war and many of the actions inside of it do not lie with them because they have no choice but to be there.

Hell is the right name for the risks they never chose and the agony and death they endure, the men responsible are rightly called criminals.²⁶

It seems that Walzer here responds to Hobbes and his conception of moral responsibility and the legitimacy of coerced choices. Hobbes views coerced choices as freely made choices nonetheless; if men are put to the threat, “your rights or your life,” they are completely free to choose either one and their choice of one over the other means that they are morally responsible for that choice. Walzer disagrees. Some men do not have the ability to choose any life other than that of a soldier, either because of law or cultural force or some other coercive power. These men cannot be rightly called moral agents with respect to the ends sought in war, because the choice is not truly theirs. Without the threat imposed on them by other men, they would not need to make such a choice. By virtue of the fact that they are forced to make a decision they would not otherwise need to make, these men are not completely free. A forced choice is not a true choice. Some men, having the option to fight or not, are responsible for that choice. Others are not responsible because there is no alternative open to them. That said, even unwilling soldiers are morally responsible for their actions to some degree, particularly with regard

²⁵ Ibid. p. 27

²⁶ Ibid. p. 27

to their conduct *in bello*. Walzer, agreeing with Nozick, admits that “some buck stops with each of us,”²⁷ but I shall discuss that in a moment.

Walzer admits that the differentiation between willing and unwilling soldiers presents ideal types, different poles on a spectrum, rather than hard and fast classifications. There are “intermediate positions”²⁸ between these two which have moral import. Some men may be driven by a combination of public and private reasons to become a soldier. In this case, their moral responsibility is conditioned. To some degree they can be held accountable for the causes and conduct of war, but in others they cannot. This seems to be related directly to the degree to which these men freely choose to fight and how much they are, properly speaking, executive agents of the communal will. The more free their choice, the more moral responsibility they possess. The more agency invested in them by the government to execute the will of the community, the more morally responsible they are. Most men live somewhere along this continuum, rather than at one of its poles.

As indicated earlier, it seems that, regardless of the reasons for becoming a soldier, citizens who adopt this role assume a level of moral responsibility inherent to the role itself. Walzer confirms this view when discussing war crimes themselves at the end of his work.

Precisely because he [the soldier] himself, gun in hand, artillery and bombers at his call, poses a threat to the weak and unarmed, he must take steps to shield them. He must fight with restraint, accepting risks, mindful of the rights of the innocent.²⁹

²⁷ Ibid. p. 40

²⁸ Ibid. p. 27

²⁹ Ibid. p. 317

This moral responsibility extends farther than merely the conduct of war; it touches on the causes of the war itself. Invested with the authority of the political community to take lives and entrusted to achieve the end of the fight, soldiers have the dual moral responsibility both to win and to fight well. In becoming soldiers, even unwillingly, citizens assume these responsibilities. It is in the nature of soldiery. The mere fact that men are on the battlefield means that they have not done everything in their power to take back their name and renounce the cause for which the war is being waged. In fact, they have done the opposite. The only ground for absolution from guilt of the cause, in Walzer's system, is doing everything in one's power short of accepting frightening risk in order to stop the war from happening. However, even unwilling soldiers have accepted a level of frightening risk *in favor of the war's cause* by accepting the soldier's role rather than denying it. Furthermore, with respect to willing soldiers, if the rules of their conflict are justified by their free and mutual choice, they can freely choose to honor the considerations animating their conflict. If they can choose to fight or flee, the conflict is not forced. The choice to go to war is as much a matter of consent as the rules which govern it are. Thus, they are responsible for *ad bellum* considerations all the more due to their consent.

Soldiers' activity is aimed at achieving political goals, public goals. In so far as a soldier supports and prosecutes a war, his private will is conditioned, overridden, or in some other way shaped by the will of the community. The very fact that they participate in war means that –instead of distancing or alienating themselves from the will of a political community- they choose to fight and, in so doing, to support its cause. All soldiers' actions in war are based on this participation, both willing and unwilling. As

such, they can be held morally responsible with respect to *ad bellum* considerations both as citizens and as soldiers.

Walzer Resolves my Complaint

The considerations I articulated in the last section here present us with certain questions, a few of which I shall endeavor to answer. If soldiers are responsible for *ad bellum* considerations in the way I claim, how can we determine the level of this responsibility? Related to this, if Walzer's delineation between *ad bellum* and *in bello* responsibility is too sharp, how do I propose to recast the separation? Merely by disagreeing with Professor Walzer on the sharpness of the distinction between *ad bellum* and *in bello* moral responsibility, I do not mean to imply that no separation exists.

Walzer implies a standard by which we can determine soldiers' levels of responsibility for *ad bellum* considerations in his differentiation between willing and unwilling soldiers. Initially, he identifies willing soldiers as "aristocratic young men."³⁰ As I have admitted, these bear a greater level of this moral responsibility according to the level to which they internalize the communal will. Willing soldiers participate both as manifestations of the communal will and as free consenting parties to the activity. Giving their consent to the war, they adopt its causes as their own. Unwilling soldiers participate only as manifestations of the communal will. According to Walzer, they lack the capacity to freely direct their will towards the practice of soldiery. Hence, they are less morally responsible than willing soldiers.

This differentiation is not clear, though. If an *ad bellum* violation takes place which is so grave that this differentiation becomes practically important, could we

³⁰ Ibid. p. 25

determine who is a more willing participant? Perhaps, following Walzer's lead, we could try to examine their economic options for employment. This does not account for the coercive force of cultural norms, however, which Walzer also identifies. We would be hard pressed to demonstrate coercion or freedom along these lines. At a certain point, we need to accept that we may not be able practically to judge this type of culpability as third parties but this does not invalidate the differentiation itself.

There is a further standard which can provide some clear stratification for levels of moral responsibility, though. In the final chapter of his book, Walzer addresses the issue of command responsibility. In it, he ascribes certain moral responsibilities to officers over and above their enlisted personnel with explicit regard to “[taking] positive steps to limit even unintended civilian deaths”³¹ and to “[enforcing] the war convention and holding the men under their command to its standards.”³² This heightened level of responsibility is based on officers' greater level of investment in, control over, and internalization of the mission of the army – which is the mission of the community at large. This is the effect of the echelonment of military organizations. Military operations “belong” to a commander in a way that they cannot belong to ordinary soldiers. He has control of the plan and an overview of the sum of actions and effects he is ordering and is hoping for.³³ At higher and higher ranks -higher echelons of power- commanders have levels of interpretive control over the mission which their subordinate soldiers lack. They can process the higher unit mission and intent in such a way that they can radically alter or redefine the endstate of the operation. At a certain level, this control can be exercised over the war itself, which is to say, over the *ad bellum* reasons. The greater their

³¹ Ibid. p. 317

³² Ibid. p. 317

³³ Ibid. p. 317

command, the greater their moral responsibility for the causes of the operation. This is the ground for Walzer's earlier assertion that generals might theoretically straddle the line between soldiers and statesmen. A more clear method of assigning levels of moral responsibility for *ad bellum* considerations seems to correspond, simply enough, to rank.

To recast the line between *ius ad bellum* and *ius in bello* responsibilities, it seems that this secondary standard derived from Walzer's argument would place it along the line dividing officers from enlisted personnel, for the most part. Generally, this corresponds to what Walzer seems to have had in mind when separating willing and unwilling soldiers along with, clearly, his treatment of command responsibilities. Officers can be held more accountable for *ad bellum* violations than enlisted personnel because they possess the capacities both to choose to fight and to control their subordinates' actions. The higher a given officer's rank, the more he can be held accountable.

If Walzer's initial delineation in responsibility is too sharp and slightly misplaced, as I have argued, then it makes sense to set it here, though this is not without its own difficulties. First, this delineation may make it easier to assign guilt for injustice by pointing to the officers in charge, but it does not readily indicate which level is responsible for what. Was Lieutenant Calley to blame for the massacre at Mai Lai or was it Captain Medina?³⁴ Area of moral responsibility may extend from the responsibilities of the rank but it seems that the rank's responsibilities should be based on the moral ones, not the other way round. Second, this delineation calls into question the moral responsibility of senior noncommissioned officers (NCOs). While a second lieutenant might be an officer, he seems to exercise less operational control than a first sergeant or master sergeant. Relying more on the concept of echelonment than on explicit rank might

³⁴ Ibid. pp. 309-316

be a more definitive method of identifying moral responsibilities. Company level staff, both officers and NCOs, would then be less morally responsible for *ad bellum* violations than brigade level staff. However, this involves its own difficulties.

Conclusion

My central claim was that Michael Walzer's delineation between *ius ad bellum* and *ius in bello* responsibilities is too sharp and is slightly misplaced. I find that this is the case for a number of reasons. Soldiers are, first and foremost, citizens and as such they help determine the will of their political community. By having the capacity to form this will, they possess some level of responsibility directly related to their level of control. Furthermore, soldiers are inherently responsible for the concerns of the community at large. They are not machines, executing the will of the community, but rather they are representatives of it who adopt its concerns as their own. Their moral agency is linked to both their role as soldiers and their willing or unwilling acceptance of this role. Finally, soldiers hold *ad bellum* responsibility in direct proportion to their level of participation in the government – that is, their echelon of operation. Their level of responsibility can be measured by the level of power invested in them by the government.

If my assessment is true, then it presents another challenge to Walzer's theory. He claims that war, as a rule governed activity, disappears when considerations of *ad bellum* justice are allowed to affect *in bello* constraints. In short, what are the practical effects of my thesis? I submit that it does not radically alter the character of *ius in bello* as Walzer presents it – a claim to which I now turn.

CHAPTER TWO

The Strength of the *Ius in Bello*

Walzer claims that war as a rule-governed activity breaks down when *ius ad bellum* considerations and *ius in bello* constraints are not separated. In the last chapter, I called his separation of these two into question with specific regard to the moral responsibility of soldiers for these types of justice. I claim that his delineation between *ad bellum* and *in bello* responsibilities is too sharp and is slightly misplaced. As an alternative to his formulation, I suggest that soldiers at successively higher echelons of leadership -and officers in particular- hold successively greater levels of moral responsibility for *ad bellum* considerations, according to the range and extent of their authority.

In this chapter, I discuss the repercussions of this thesis, splitting the chapter into three broad sections. In the first section, I examine in greater detail Walzer's foundation for the moral equality of soldiers. In the second, I articulate the consequences of this moral equality *ad bellum* and *in bello*. In the third, I demonstrate that war as a rule-governed activity does not break down if my thesis is correct. Ultimately, I do not think that my thesis radically alters Walzer's formulation of the *ius in bello*. It merely increases certain soldiers' responsibilities.

The Foundation for Moral Equality

“In our judgments of the fighting, we abstract from all consideration of the justice of the cause. We do this because the moral status of individual soldiers on both sides is very much the same: they are led to fight by their loyalty to their own

states and by their lawful obedience. They are most likely to believe that their wars are just ... they face one another as moral equals.”³⁵

The above quotation succinctly summarizes Walzer’s most fundamental reasons for the moral equality of soldiers. There are at least three characteristics we can draw from it which demonstrate the unity of the soldier class on which Walzer bases this equality. I refer to these as the unity of activity, the unity of loyalty, and the unity of alienation. The first unity is one that I more or less covered in the previous chapter. The type of activity in which soldiers engage defines them as a particular class of people. There exists a class of human beings whose purpose is to kill and, possibly, to die. The mere existence of such a class engenders a commonality among those fighting. If we can ignore the particular reason why they are on the battlefield, we can perceive a more universal one. Soldiers are united by their common forfeiture of civilian life. They fight, they kill, they die, and we do not condemn them or their killers for it. As far as soldiers as soldiers are concerned, the killing that happens in war is justified on both sides. The community engendered by their war-making activity extends across the kill zone. Separated from their reason for being on the battlefield, soldiers are equally entitled to defend themselves and kill the opposing forces. If one side is not allowed to defend itself, Walzer says, war is indistinguishable from murder and massacre.³⁶ Those that share this belligerent purpose are justified in their killing to some degree or another. Thus, the first claim on which the commonality and moral equality of soldiers is based is their common activity.

Second, soldiers on both sides of a conflict share the quality of loyalty. On either side of the battle-line, these men have sworn themselves into service of their country.

³⁵ Walzer, Michael. *Just and Unjust Wars*. (Basic Books, New York; 1977). p. 127

³⁶ *Ibid.* p. 42

Their “loyalty ... and lawful obedience”³⁷ is justified and commendable, regardless of the political community. We could not indict a German soldier in World War II for loyalty to his country any more than we could a British soldier for his. The same love of country that animates the soldiers on one side of a conflict animates the soldiers on the other. The state of being loyal is not, in itself, morally reprehensible – on the contrary, it is generally viewed as morally praiseworthy. Loyalty is not a basis for condemning a soldier as a war criminal – all soldiers are loyal to some degree or another. Therefore, there exists a unity in the class of people called soldiers based on the fact that they are loyal servants, regardless of the country to which they are loyal. There are issues with this, which I shall discuss in a moment, but for now this is enough.

The third characteristic which unifies soldiers as a group is the unity of alienation. Insofar as soldiers are loyal servants of a state, the conflicts they carry out are not wholly their own. Soldiers enact the will of their political communities. As I have explained before, Walzer views war as a relation between political entities, not between individual persons.³⁸ A soldier on one side of a conflict can say of the soldiers on the other that they are “‘poor sods, just like me’ trapped in a war they didn’t make.”³⁹ An enemy soldier is not an enemy in an altogether specific sense but rather is a representative of some larger entity to which a soldier opposed. This kind of unity differs between the unwilling participants of modern war and the willing combatants of chivalric war, but I shall discuss this difference and how these unifying characteristics combine later. For now, it is enough that I recognize them. Next, I discuss their purpose and origin.

³⁷ Ibid. p. 42

³⁸ Ibid. p. 36

³⁹ Ibid. p. 36

Walzer identifies these common characteristics of soldiers, drawn from the perceptions and opinions of soldiers from both soldiers and civilians historically, in order to construct the rules which govern their belligerent relationships. He focuses on these characteristics because they are universally applicable to soldiers - the qualities which bring them together as a group and determine the standards to which they can be held. Put more formally, these characteristics determine the war rights soldiers possess which, in turn, define the system of permissions and prohibitions which constitute the *ius in bello*. He seeks to articulate how we have “carved out a constitutional regime”⁴⁰ in the midst of war that determines the range of soldiers’ moral responsibility.

Here we have a view to Walzer’s broader methodological approach for articulating his system. Simply put, he derives it from experience, *a posteriori*. The way he wants us to view soldiers and their actions is the way we do in fact view them, but only when we view them from a moral standpoint. That is, he wants us to derive our understanding of the moral agency of soldiers from what we have said about their moral conduct in the past and the expectations we have regarding their actions in the future. Walzer says as much when discussing officers’ responsibilities, maintaining that

The appropriate standards [for judging soldiers’ actions morally] can emerge only through a long process of casuistic reasoning, that is, by attending to one case after another, morally or legally. ... Only by making such specifications, again and again, can we draw the lines that the war convention requires.⁴¹

Admittedly, he does this when discussing the level of moral responsibility that officers possess for their soldiers’ violating the laws of war in light of certain exonerating influences. However, he also takes this approach directly when examining five cases

⁴⁰ Ibid. p. 40

⁴¹ Ibid. p. 322

wherein soldiers refuse to kill enemy combatants who, at the point of opportunity, are not engaged in warlike activities.

These case studies confirm the importance of the unity of activity and the unity of alienation identified above. In each case, one or both of the principles is relied on as the unifying factor which, when absent, gives the studied soldiers pause and keeps them from killing an enemy. More prominent is the importance of the unity of activity. When a lone German soldier is running across a field with his head down or trying to hold his pants up in the process, he is not actively participating in a warlike activity. He poses no threat. Furthermore, when an enemy soldier is isolated like in one of these cases or when viewed through a sniper's scope smoking a cigarette, he no longer shares in the unity of alienation which defines him strictly as a soldier. Rather than continue existing as some caricatured manifestation of "the Enemy," the soldier is personalized somewhat back into the man he is.

The process at work in this latter scenario is integral to Walzer's understanding of soldiery, despite being less prominent. When a soldier engages in war, he alienates himself from the enemy he faces and from their "common humanity."⁴² That is, when soldiers are actively engaged in fighting one another, they separate and dehumanize themselves to a degree, forsaking their right to life in favor of their right to kill one another. With these case studies, Walzer examines what happens if these soldiers are not actively engaged in war, in order to illuminate this trade-off in rights. He concludes that, while naked soldiers do not regain their right to life, they reacquire some level of humanity in the mind of their enemy. A sniper targeting his enemy at long range can see

⁴² Ibid. p. 142

a man who, “because he is funny, naked, and so on ... is changed ... into a man.”⁴³ Walzer does not deny that this alienation is a necessary part of war and he is correct in doing so. He admits that enemy soldiers must be separated from people who possess a right to life and that, although the stereotypes through which they are seen are often grotesque, “they have a certain truth.”⁴⁴ An enemy is not a kinsman, he is not friend – he is an enemy, trained to kill and ordered to do so. However, there is a limit to this alienation.

The process of alienation is peculiar and it affects both modern and chivalric warfare. On the one hand, alienation drives men apart in terms of their humanity while, on the other, it binds them together as a class of individuals for whom killing is permitted. The war rights Walzer identifies are based on the alienation existing between soldiers. Furthermore, there are two aspects of this alienation. The first aspect is alienation by dehumanization. The second is alienation by willful opposition. In every war, soldiers alienate their enemy from themselves –and vice versa -in both ways. However, the importance of each type seems to vary according to the degree of moral agency for *ad bellum* considerations which a participant possesses. Soldiers in modern warfare are familiar with alienation by dehumanization whereas alienation by willful opposition is more characteristic of chivalric warfare.

In modern warfare, wars fought in state on state conflicts pit “hundreds against hundreds, thousands against thousands.”⁴⁵ The alienation to which these soldiers subject each other has a dehumanizing effect. Instead of men, these soldiers fight against a massed horde of enemy monsters. Soldiers in a mass army succumb to the influence of

⁴³ Ibid. p. 142

⁴⁴ Ibid. p. 142

⁴⁵ Ibid. p. 143

dehumanization because they rarely fight in isolated circumstances, wherein they are able to see the human element of their supposedly inhuman enemy. The reason why modern warfare is a “circus of slaughter” as Walzer describes is that an inordinate amount of people die and these deaths seem meaningless given their marginal impact on the course of the war itself.

Chivalric warfare, war between willing participants, takes place on a very personal level, though. Medieval knights or fighter pilots in World War I saw one other as individuals whose alienation is of a very different type than those of the “common serfs”⁴⁶ fighting current wars. The alienation at work in this manner of conflict depends rather on a difference in choice – a difference in will. The serfs in modern warfare make no choice as to who their enemy is or why they fight - they know only that they must kill him because they are told to do so. Chivalric warriors, however, do in fact get to choose their enemies. Rather than merely dehumanize, knightly warriors alienate one another in terms of their willful opposition and continued participation in the conflict. Their dividing line lies in their disagreement. For Walzer’s chivalric warrior, an enemy remains more of a human being, but one whose desired end in the contest differs from his own. This contest is not pointless, but the purposes of it are determined and agreed to by the participants. That is, these soldiers exercise some level of moral agency over the *ad bellum* considerations animating their disagreement. Soldier and enemy are united by their common consent to continue fighting yet alienated by their opposition to one another.

That said, alienation by dehumanization still exists in chivalric warfare and alienation by willful opposition exists in modern warfare. Chivalric warriors dehumanize

⁴⁶ Ibid. p. 35

each other in battle due to their willful opposition to one another. However, the greater part of this alienation lies in the latter element. Conversely, modern warriors willfully oppose each other insofar as they accept and support the causes of the conflict. However, the greater part of their mutual alienation lies in their dehumanized picture of the enemy. In order for the unity of alienation to make sense, however, it must be combined with the other forms of unity which characterize soldiers. Soldiers can just as easily alienate enemy civilians as they can enemy soldiers. To truly understand soldiers' moral equality, we must understand how these unifying characteristics combine.

Unity by loyalty is rather more simple than unity by alienation. As I explained above, this unity extends from the love of country common to all soldiers. Some soldiers may love their country more or less than other soldiers and they are certainly not all loyal to the same country, but they all nonetheless remain loyal⁴⁷ to something they find important and this unites them. Loyalty and alienation combine in a very peculiar manner. A loyal, patriotic citizen of one country can look at a similar citizen from another country and recognize that they are both loyal and patriotic, despite being loyal to different states. Moreover, such a citizen can see this commonality even when these countries are mutually opposed to each other and know that the other citizen has the same view of him. That is, a loyal, patriotic German soldier in the trenches can look across the lines at a loyal, patriotic British soldier and recognize that they *both* share a loyal character and *both* view each other with the same type of alienation.

The unity engendered among soldiers by their common activity of war making, in context with the others, provides the basis for the moral equality of soldiers. We see that there exist certain restraints on soldiers' particular actions extending from the activity of

⁴⁷ If they forsake their loyalty, they become deserters and forfeit their title of 'soldier.'

war itself. First and foremost among these restraints is that war, being a “legal condition which equally permits two or more (hostile) groups to carry on a conflict by armed force,”⁴⁸ includes specified, identifiable groups. The men and women whose purpose is to fight are the ones permitted to kill and die. It is necessary for soldiers on both sides of a war to recognize that they have put themselves into a situation in which they have no moral stance whereby they can demand that the enemy forfeit his right to life without similarly forfeiting their own. This is due to their divergent loyalty to different states and their resultant alienation away from each other. The psychological view of enemy soldiers is very much the same on both sides. Soldiers who recognize this see the common bonds that unite them into a coherent group, possessing similar ends and similar means. The community of the soldier class, with its internal stratifications according to the willingness or unwillingness of its members, is the foundation of Walzer’s moral equality and he exhorts us to recognize it.

The Consequences of Moral Equality

The community of the soldier class is the foundation for Walzer’s formulation of the *ius in bello* because “the moral equality of the battlefield distinguishes combat from domestic crime.”⁴⁹ Two precepts extend immediately from this equality. The first, as identified in the last section, is that soldiers have an equal right to kill each other. On this point, Walzer agrees with Napoleon in that soldiers are made to be killed.⁵⁰ The second is

⁴⁸ Wright, Quincy. *A Study of War*. (Chicago; 1942). p. 7 (Walzer’s quote, though he does not use the part in parentheses in his book)

⁴⁹ Walzer, Michael. *Just and Unjust Wars*. (Basic Books, New York; 1977). p. 128

⁵⁰ *Ibid.* p. 136

the converse of this statement -that “*no one else is made to be killed.*”⁵¹ Here, Walzer articulates the principle of non-combatant immunity. With these two principles as his foundation, he derives the whole system of prohibitions and permissions that morally regulate soldiers’ actions in war. To examine the consequences of moral equality, I look at two aspects of Walzer’s formulation of *ius in bello*. First, I discuss his qualification of noncombatant status and, second, his view of command responsibility.

As stated above, the moral equality of soldiers provides a philosophically hard and fast line separating those who can be justly killed in war and those who cannot. However, Walzer admits the influence of practice on the theoretical framework on this point. Effectively, he maintains that there is a gradation between combatants and noncombatants, between soldiers and civilians, according to the activity in which they engage. Soldiers, as I have said, engage in war activities –they pose a forceful threat to others- this is what permits them to be killed. Noncombatants pose no such threat and thereby retain their moral right not to be subject to violence. The noncombatant immunity from killing is qualified, however, by their participation in warlike activities. This participation permits them to be killed, despite the fact that they are noncombatants, because they support the war effort and contribute to the soldiers’ ability to do violence.

Walzer’s explanation is as follows. Obviously, a domestic society supports the effort of its soldiers in wartime. Some activities within the domestic arena provide for the service and support of soldiers with respect to their bodily requirements. Domestic farmers, medical equipment suppliers, tent manufacturers, clothing producers, and so on all serve to provide for the material, non-belligerent needs of soldiers. In effect, the goods and services supplied by these kinds of merchants are as necessary to soldiers in wartime

⁵¹ Ibid. p. 136 (*italics his*)

as they are to citizens in peace. On the other hand, there are some market activities which are so wholly devoted to the war effort that they could serve no nonmilitary purpose. Heavy weapons munitions producers, military research and development firms, and warship manufacturers all participate so much and so uniquely in the sustainment of the war effort that they could barely exist outside it.

The relevant distinction made here is “between those who make what soldiers need to fight and those who make what they need to live.”⁵² The latter set of civilians participates in activities immediately directed towards peaceful life. The domestic activities of the former set can hardly be considered peaceful. The result of this distinction is that peacefully oriented civilians are not legitimate targets of military force. More belligerently oriented civilians legitimately are such targets, given a certain level of military necessity. That is, if attacking a civilian munitions depot is deemed to be integral to attaining victory and lasting peace, it is not a violation of the rights of the depot workers to attack. Insofar as these workers participate in warlike activities, they forfeit their right to life in a way similar to soldiers. This permission to attack does not extend over workers who are not actively engaged in the belligerent activities, that is, workers in their homes. At the end of the day, munitions workers and the like are still civilians and ambushing civilians is always slaughter. Only when they are effectively engaged in war do they enter the arena of legitimate combat.

Furthermore, from this permission, we see that some civilians’ activities are more belligerent than others. This sets up the series or gradation between combatants and noncombatants referred to earlier, rather than just a few hard classifications. There exists something like a sliding scale between permissible and impermissible military targets

⁵² Ibid. p. 146

according to the belligerence of the domestic activity and the military necessity of its destruction. The more an activity supports the enemy's war effort and the more important its destruction is to victory, the more morally justified it is to destroy it.

The effect of moral equality on noncombatant immunity seems to be as follows: first, the moral equality of soldiers separates legitimate targets of military force from illegitimate ones. That is, it separates soldiers from civilians. However, by their domestic actions, some civilians assume a certain level of belligerent status and place themselves on equal footing with soldiers in war. The more equal –in terms of their contribution to the war effort- that these civilians are, the more justified it becomes for the other side to kill them. The moral equality of the battlefield then serves not only to define some of the rules of engagement, but also some of their exceptions.

Moral equality also determines the substance of command responsibility. Again, the fundamental principles of this equality are the equal permission to kill soldiers and the – now qualified – prohibition against killing civilians. As demonstrated in the last chapter, commanders' responsibilities are greater than those of their subordinates precisely because they are more willing participants in the conflict, along the lines of the aristocratic young men and the chivalric warriors discussed in other parts of this paper. Insofar as they are uniquely responsible for “everything the unit does or fails to do,”⁵³ they are responsible for enforcing the precepts of the *ius in bello*, having two morally crucial responsibilities. First, they

must take positive steps to limit even unintended civilian deaths ... [and second they] must take positive steps to enforce the war convention and hold the men under their command to its standards.⁵⁴

⁵³ Doty, Joe; Sowden, Walt. “Competency vs. Character: It Must Be Both!” *Military Review*. (November-December, 2009). 69.

⁵⁴ Walzer, Michael. *Just and Unjust Wars*. (Basic Books, New York; 1977). p. 317

That is, commanders must seriously attempt to engender in their subordinates behaviors which accord with the standards set by the moral equality of soldiers, if not to engender a proper understanding thereof in the ranks.

Once again, there are qualifications to this concept. If commanders are responsible for their subordinates' actions, how can we determine the level of this responsibility? An easy answer is to maintain strict liability, such that any massive violation of *in bello* constraints is the fault of the commander. Walzer cautions against this view, offering two qualifying standards. The first, effectively, is that we cannot reasonably expect commanders to do "everything they can"⁵⁵ to prevent *in bello* violations because that would "leave them little time for anything else"⁵⁶ – such as the discharge of their duties as soldiers. The second is that we cannot expect that reasonable efforts on the part of the commander to ensure compliance with *in bello* constraints will be successful.

To explain these, I refer back to the concept of echelonment developed in the first chapter. Commanders have a greater or lesser level of responsibility for the war according to the echelon at which they operate. The higher the echelon, the greater their moral and strategic responsibility. The first qualification listed above is related to the primary duty of all soldiers - they must fight and win wars. Commanders accomplish this by planning operations, coordinating with other various agents within their operational environment, and so on. Leading men is no easy task. If we want commanders both to lead their unit effectively and also to respect the war convention, we must take into account the fact that we also give them other duties to fulfill. To task them with more

⁵⁵ Ibid. p. 321

⁵⁶ Ibid. p. 321

duties than they can possibly execute is, in effect, to nullify some of the duties we give them due to the practical impossibility of fulfilling them all. Either we accept that some duties become wholly nullified by practical impossibility or these duties must be qualified enough that it becomes possible for the commanders to execute them.

Furthermore, we cannot hold commanders strictly liable for violations of justice by those under their command if they take reasonable precautions. I have already established the parallel between commanding officers, aristocratic young men, and chivalric warriors. This type of soldier leads in war because he wants to be there, he is not coerced. It is precisely because he wants to be there, and because some of his subordinates do not, that he cannot be held automatically accountable for their infractions. The view of the enemy which I have articulated above factors in greatly here. For a modern soldier, part of the mass army, alienation by dehumanization has always played a more significant role in his fight. Motivated by this more dehumanized view of his enemy, the subordinate soldier operates with a fundamentally different understanding of the conflict from the commander, who fights with those alienated by willful consent. There are only so many safeguards a commander can put in place that can ensure proper conduct – a radically different view of the enemy is difficult to change.⁵⁷

These two articles do not make up the sum and substance of Walzer's treatment of *ius in bello* but they serve to illustrate the pervasive influence of the moral equality of soldiers on it. Furthermore, these articles in particular illuminate soldiers' individual responsibilities. At this point, I must try to answer the question as to why this is

⁵⁷ For the record, I do not actually think that all enlisted soldiers view the enemy in what seems to be an utterly dehumanized way or that all officers or senior NCOs view the enemy from a standpoint of willful opposition. The alienating process I described is not that neat. I merely present what seem to be tendencies and correlations to Walzer's thinking which accord very generally with reality.

important. That is, what does this understanding of the inner mechanisms of soldiers' moral equality illuminate about Walzer's system? I submit that moral equality, understood this way, does not separate soldiers from the burden of *ad bellum* responsibility - rather, it requires it.

The exceptions Walzer admits to both noncombatant immunity and to command responsibility are connected to the types of soldierly unity I identified earlier. In order for a noncombatant to lose his rightful immunity to violence, he must first participate in warlike activities. Second, there must be some mandate of military necessity that such a noncombatant must be killed in order to win the war. Both of these provisos extend from *ad bellum* considerations. The noncombatant – the civilian heavy munitions manufacturer – would not be a heavy munitions manufacturer if there were no war. If his political community was forced into war by an act of aggression -the only just cause of war for Walzer- then his production of munitions serves to defend the rights that the aggressor attempts to deny him.

More importantly, the proviso allowing for him to be legitimately killed for this action extends from *ad bellum* justification as well. In order for there to exist a legitimate military necessity to destroy a civilian factory and kill the noncombatant workers there, they must be strategically important enough that their death is required. The necessity of victory is the only factor which can justify this exception. If victory is not necessary, which is to say if there is no just cause for war, then there can be no exception to the rule of noncombatant immunity.

Similar issues exist with the exceptions for command responsibility. We charge commanders with other duties than those of moral obligation. Chief among these is to

achieve victory. We make an exception for commanders, saying that they need only take reasonable steps towards limiting violations of the *ius in bello*. This exception is based on their duty to secure victory, the justice of which is essentially an *ad bellum* consideration. Furthermore, we seem to make an exception for the success or failure of the safeguards a commander puts in place to ensure respect for *in bello* restraints based on the disconnect between the commander's view of the enemy and that of his subordinates. The commander, being an officer and a more willing participant to the fight, alienates the enemy based on a mutual, willful opposition to their desired ends in the conflict. His subordinates alienate the enemy by dehumanizing them. He cannot be held accountable for their actions when there is a practical impossibility of controlling that disconnect, in certain instances. The need for an *ad bellum* justification here is based on our overall need for people who alienate one another in these ways. That is, without the cause for war, we would not need soldiers at all – the alienation to which they subject each other extends from the cause for the conflict. Only these considerations can answer the question as to why we need such people.

The connection between *ad bellum* and *in bello* justice goes beyond these exceptions, however. The core characteristics of soldiery, the same ones that serve as the foundation for Walzer's moral equality, testify to it as well. First and foremost, the common activity of soldiers and their purpose for existing is to fight and win wars. We need soldiers to win wars and wars are causally justified by *ad bellum* considerations. Furthermore, we rely on soldiers' loyalty when we ask them to fight in these wars. When we do this, we ask them to internalize the belligerent desires of the whole community to some degree or another. If the war is unjustified when we make this request, we are

effectively asking them to commit injustice and we have no right to do that to anyone. Finally, the common process of alienation by which soldiers distinguish themselves from enemies seems to be a natural consequence of the separation of our political communities. The cause of the separation between political communities seems to be the cause of soldiers' alienation. When political entities become hostile towards one another, their soldiers become similarly hostile. Hostility on the level of political communities is based on nothing but causal –that is, *ad bellum*- considerations.⁵⁸

That said, this connection exists in both directions. While state-level causes affect individual soldier's actions, individual soldier's action must be put in context with state-level causes. If a commander orders his soldiers to attack a munitions factory, filled with noncombatants, and to kill those inside, then he must be sure both that the attack is a necessary step for winning the war and that the war is justified. In a broader sense, if *ad bellum* justifications are important for the conduct of war, it complicates the justifications for individual service. That is, the justice of being a soldier is predicated on the justice of the cause for which he fights. The type of loyalty and conscious alienation of other human beings that is concomitant with the war-making activity ought not to be taken lightly. These three characteristics of soldiers, those outlined in the previous chapter, and the resulting *ad bellum* and *in bello* responsibilities extending from them are all required of those who would become soldiers. Possessing these characteristics identifies an otherwise normal human being as one who can kill and be killed – it thrusts him into hell. A man does not go into hell without good cause.

⁵⁸ These can be just or unjust. Merely that they are *ad bellum* reasons does not here imply that they are good reasons – they are state-level causes of war which induce hostility between individual soldiers.

The Strength of Ius in Bello

If my characterization of the underlying principles at work in Walzer's moral equality is accurate, then it seems that my thesis should dramatically alter his system of justice. In this final section, I examine why Walzer wants to maintain such a sharp separation of *ad bellum* and *in bello* justice and attempt to reconcile my characterization to the contrary with his system. To do this, I focus my discussion on his claim that

Without the equal right to kill, war as a rule governed activity would disappear and be replaced by crime and punishment, by evil conspiracies and law enforcement.⁵⁹

I do not think that this is the case and it seems that Walzer's system supports such a claim. To demonstrate this support, I examine his explanation of crusades, thick and thin moral systems, and difference. From this, I attempt to construct a plausible modification of Walzer's system that leaves it more or less intact.

Walzer's sharp separation between *ad bellum* and *in bello* justice seems to extend from his desire to preempt any justification for war based on developed and articulated conceptions of the good. In particular, it seems that he has the crusades, or something like them, primarily in mind. He defines a crusade as a war

fought for religious or ideological purposes. It aims not at defense or law enforcement, but at the creation of new political orders and at mass conversion.⁶⁰

The Crusades of the Middle Ages, wars aimed at expanding the global Islamic Caliphate, or any other war wherein one party's desires are "coterminous with the boundaries of the system itself"⁶¹ are wars of this kind. Such wars are waged in order to re-create the world,

⁵⁹ Ibid. p. 41

⁶⁰ Ibid. pp. 113-114

⁶¹ Thayer, Bradley. "The Case for American Empire." *American Empire: A Debate*. (Taylor & Francis Group, New York; 2007). p. 3

or some large part thereof, through force by imposing on all its inhabitants some particular system of government or understanding of the highest good.

In a system such as this, war can easily be waged like a system of crime and punishment. However, Walzer seems to abhor this possibility and this seems largely due to his philosophical liberalism. In another book of his, Walzer develops the dual concept of a thick and a thin moral structure.⁶² A thick or maximal moral structure is one which possesses an articulated and developed system of understanding morality, justice, the highest good, and so on. A thin or minimal moral structure is less particular. It has a more universal appeal, precisely because it is vague. That is, it permits a greater degree of difference concerning its content than a thick moral structure does. Crusading states and political communities seek to impose their maximal conception of the moral life onto the world at large.

Walzer's theory of aggression seeks to limit the instances of war as much as possible. He relies on a thin conception of justice in order to articulate a moral structure by which most states could feasibly order their actions in such a way that they tend towards more peaceful relationships than belligerent ones. His attempt has two effects. On the one hand, it develops a conception of morality and justice broad enough that it could feasibly accomplish this goal. On the other hand, in the process of articulating such a moral system, he develops a liberal moral structure that relies on its own conception of justice, morality, the good, and so on.

The reason Walzer separates *ad bellum* considerations from *in bello* constraints is that he wants to retain a degree of difference concerning the highest goods in international society. Were he not to do so by perhaps founding his liberal system on a

⁶² Walzer, Michael. *Thick and Thin*. (Notre Dame Press, Notre Dame; 1994). entire

developed conception of human nature, Walzer would have ended up with a moral system that could feasibly justify crusading activity. The argument would go something like this: if this is a true conception of human nature and human flourishing, it can serve as the grounds for war because other political entities and political communities are harming themselves and others by not adhering to it. If he remains vague or minimal about his conception of the highest good, or the acceptable range of these goods, then he can appeal to the broadest possible audience.

The problem arises when statesmen and soldiers rely on maximalist conceptions of human flourishing to govern their actions *in bello*. The evil Walzer sees in crusading, beyond the forced imposition of a maximally developed system of understanding human activity, is that it can justify any means “necessary” to establish a world order that respects its system. He seeks to limit the legitimate causes for war to universal conditions, thus preempting any supposedly morally authoritative state from exerting its power over another related to a hierarchical system of justice. This is what he means by “war as a rule governed activity would disappear” in a system of crime and punishment. There would be no recourse for “criminal” states to defend themselves from attack by the “police” states. Any and every means of attack would be permitted to reestablish the order of that system. In effect, *in bello* constraints could feasibly disappear in such circumstances.

To guard against this, he identifies responding to aggression as the only just cause for war, so that all states possess the right to defend themselves. This, in turn is the basis for his moral equality of soldiers. If, in the morally anarchic arena of battle, every soldier has the same rights claims as every other, they can construct a system of prohibitions and

permissions equally binding on all and in which no amount of consequentialism could invalidate its structures (on the tactical level).

My fundamental issue with Walzer's system is that, in effect, he creates a thick liberalism. That is, he creates a type of liberalism that possesses a developed and articulated understanding of morality and justice. While this system may allow for difference concerning the highest good between states, state level action is largely justified or condemned on maximally liberal grounds. The only way to permissibly justify state action is from the liberal perspective. We force other states to adopt liberal principles to order interstate relationships. This coercion into liberalism seems quite similar to the type of coercion we could expect from a totalitarian regime attempting to force its conception of the highest good on us. That is, by coercing the adoption of liberalism in order to halt ideological crusading, we mimic the behavior of crusading ideologues. The United States, currently the preeminent power in the world, has to a greater or lesser degree determined the system by which states interact with one another for close to seventy years. We have forced liberalism on the world and we police it accordingly. Essentially, my claim is this: war as a rule governed activity does not disappear in a system of crime and punishment because we already exist in such a system, it seems.

The heart of Walzer's concern with letting *ad bellum* considerations affect *in bello* constraints is that he wants us to avoid ideological crusading. Again, he does not want the ends to utterly justify the means. I agree with him. If we begin to allow *ad bellum* considerations, based on maximal moral structures, to determine the justice or injustice of *in bello* activities, then we run the risk of permitting some level of ideological

crusading. That is, if we claim both that some states are justified *ad bellum* and others are not and that *ad bellum* justifications qualify *in bello* constraints, then soldiers are not morally equal. He fears that this type of inequality leads to the justification of horrible acts of violence, which we rightfully condemn. He wants to preempt these actions morally and his effort is commendable. However, the moral equality of soldiers cannot be dissociated from the causes which generate the need for them.

If soldiers are morally equal, we face a deontological system of permissions and prohibitions to our actions. Regardless of the end we desire, we are bound by this system. If soldiers are not morally equal, we face a consequential moral system. The ends we desire condition the system of permissions and prohibitions, and the morality of the end can be evaluated only in reference to the highest good. Walzer provides us with a deontological moral system to govern *in bello* activities. While useful, it does not realistically describe the moral situation in which soldiers find themselves. It is the task of moral philosophers to clarify this situation. On the one hand, we must avoid radical consequentialism while, on the other, we cannot rely on radical deontology. My proposed solution to this issue is somewhat simplistic but describes the situation in which we seem to find ourselves today – have both.

If my assessment is correct and we already live in a system wherein a maximal liberal morality governs international relations, then no ideological crusade is necessary to establish what has already been done. We already accept a type of maximal liberalism as the way to order international relations. Furthermore, this thick morality provides a workable system by which we can evaluate the “crimes” of aggressive political communities – what else would one call violations *ius ad bellum*? The “police” who

punish the offenders are those nations who intervene to halt the aggression and restore peace-with-rights. A system of crime and punishment does not presuppose a hierarchical authoritative structure amongst nations. We do not need the UN to serve as some government of states to know that some states commit crimes and to enable others to punish them for it. The maximal liberalism we currently possess and endorse can justify war to stop other maximal conceptions of morality from gaining international approval because these would require ideological crusades to establish them. That is, our maximal liberalism can rightly justify forceful opposition to the spread of ideologies like radical communism or Nazism. Finally, the moral equality of soldiers can still be maintained, albeit in a qualified manner, in light of the pluralism existing between warring countries. The influence of *ad bellum* considerations *in bello* is expressed only when there are exceptions, which are held by both sides of a conflict anyway and which are derived from the same *ad bellum* standards.

Explained correctly, the connection between *ad bellum* and *in bello* justice seems to require few changes to his system. First, we must recognize that certain soldiers possess a qualified level of moral responsibility for *ad bellum* concerns, which I detailed in the last chapter. Second, we must explicitly recognize the legitimacy of a system of crime and punishment -already extant between states- which is tacitly assumed in practice. Overall, Walzer's system remains intact. This assertion does not radically alter the practical effect of the *ius in bello*. It merely adds to the level of personal responsibility that soldiers at higher echelons of authority -and officers in particular- possess with respect to the *ius ad bellum*.

CHAPTER THREE

Responsibility and Punishment

In the first chapter, I established the qualified responsibility of certain soldiers for *ad bellum* violations based on their willful participation in the war. Officers' and enlisted personnel's responsibility *ad bellum* directly corresponds to their willful participation in the war. This willingness is expressed in their level of operation within the military force structure, that is, the echelon at which they serve. In the second, I demonstrated that the concept of moral equality itself contained principles that led to soldiers' responsibility *ad bellum* as well. However, I largely ignored the specific character of this responsibility, except to reaffirm the above concept. If soldiers at certain echelons of military power actually possess responsibility for *ad bellum* considerations, what form does this responsibility take? Related to this, what form of punishment, if any, could they deserve for violations? Or, conversely, what further permissions might they have *in bello*? To answer these questions, I shall examine Walzer's treatment of the cases of General Erwin Rommel, Sir Arthur Harris, and an unnamed German soldier in World War II.

I divide this chapter into four sections. First, I discuss the character of *ad bellum* responsibility, differentiating it into two types. Second, I examine Walzer's presentation of Rommel's case. Third, I consider his brief anecdote about a German private, attempting to derive a method of assigning punishment according to the two types of responsibility. Fourth, I consider Harris' case to test my formulation. I contend that there exist both moral and political levels of responsibility, the former being the prerequisite of the latter. Furthermore -as stated previously- there seems to be a direct correspondence

between echelon and political responsibility such that, the higher the soldier's echelon within the military, the more plausibly he could be held politically accountable for *ad bellum* violations. This correspondence seems to be the result of practical difficulty in assessing guilt and innocence.

Two Types of Responsibility

There are two types of responsibility which men can possess. The first and more fundamental is moral responsibility while the second and more particular is political responsibility. Discussing the moral reality of war at the outset of his book, Walzer says that, whenever we make moral judgments, we ask ourselves the question "what should we do?"⁶³ The prerequisite for moral activity, in Walzer's theory, is freedom. Without the ability to choose between courses of action, we cannot hold accountability for them. When we make moral choices, we decide between courses of action based on the philosophical concept of right. Following Walzer, I will not here attempt to defend the foundation of this concept. I have neither the space nor the acumen to give this its due treatment. Rather, I shall rely on the fact that we seem tacitly to use this concept when making moral judgments. I shall write with this concept as a basis for evaluating and revising Walzer's theory.

In Walzer's system, when a man is morally accountable for an action, he possesses some level of free choice concerning an action that directly affects or extends from some notion of right. People possess particular instances and forms of right, the articulations and differentiations of which help to shape our moral permissions and prohibitions. Moral courses of action respect particular rights, immoral ones violate such

⁶³ Walzer, Michael. *Just and Unjust Wars*. (Basic Books, New York; 1977). p. 8

rights. In line with his methodology, Walzer identifies the different rights that different types of people hold by examining what rights we say they hold. This does not, however, mean that rights are based on the fact that we say they exist. He merely demonstrates that we seem to act according to the idea that they do exist, saying

How these rights are themselves founded I cannot try to explain here. It is enough to say that they are somehow entailed by our sense of what it means to be a human being. If they are not natural, then we have invented them, but natural or invented, they are a palpable feature of our moral world.⁶⁴

A particular right is an expression of what we say is right – “rights” are connected to some notion of goodness. However, emphasis here lies primarily on the object, the particular rights respected or violated by certain courses of action, rather than on the subject doing the action himself. Hence, to counter St Augustine, what is to be abhorred in war is not (merely) the lust for domination, the desire for revenge, and other debasements of the person fighting in a war. Rather, we should abhor the fact that some men and women die who ought not to have been forced to choose between their rights or their life.

Men who violate particular rights bear moral responsibility for doing so. No one is duty bound to violate others’ rights in ordinary moral conditions. There are almost always alternatives to violating people’s rights. That is, men almost always possess freedom to choose or not to choose to respect others’ rights and, hence, whatever they happen to decide, they make a moral choice. The only exception Walzer identifies is the case of supreme national emergency, wherein the whole system of rights, is threatened in such a way that the continued respect for the rights of people the world over depends on violating the rights of some particular people. Walzer finds that this situation seems to

⁶⁴ Ibid. p. 54

have occurred only once in human history, when Nazi ideology threatened to annihilate the entire Western democratic order.

Furthermore, an aspect of fundamental importance to discussing moral responsibility is that this responsibility exists as an objective fact in reality.⁶⁵ Either a man can choose to honor and respect another's rights or he does not. An alleged criminal either violated someone's rights or he did not do so. Whether we know he has done it or not, a criminal is morally responsible for the crimes he commits. His criminality is fact. Responsibility can be expressed hypothetically in the following way: "if (and only if) a man violated this or that right, then he has committed a crime." The antecedent is either true or false. We need not demonstrate it for the man actually to be morally responsible for the action.

This last statement may lead us to assert, incorrectly, that moral responsibility is necessarily theoretical in character, though. I do not mean to say that moral responsibility exists only when we cannot prove political responsibility. I merely mean that a man can hold moral responsibility for an action without us needing to know it. We can, sometimes, demonstrate moral responsibility, though. We can clearly see that Admiral Doenitz is morally condemnable for issuing the "Laconia order" even if we did not condemn him politically. We know that Admiral Nimitz was wrong to rely on similar sink on sight tactics in prosecuting his part of the war as well, even though we do not try him in court.⁶⁶

Political accountability seems fundamentally different from moral responsibility. In order for us to judge a man to be politically accountable for a crime, we must be able

⁶⁵ Assuming a rights-based standpoint. Again, this assumption is part of his methodology. He wants to identify the moral structure by which we seem to operate.

⁶⁶ Ibid. pp. 147-151

both to demonstrate his causal responsibility for the act and to prove that it violates certain clear, posited laws. This is because “legal liability is a matter of definite rules, well-known procedures, and authoritative judges.”⁶⁷ Political responsibility must be practically, actually demonstrable. Returning to the syllogism above, we can hold a man politically accountable only if we can demonstrate that he has indeed violated this or that right. Our ability to identify political responsibility is limited by our practical ability to demonstrate the man’s guilt. In order for him to be politically accountable, we must actually prove it.

However, the need for demonstrability does not separate political accountability from moral responsibility. We often can and do demonstrate a man’s moral responsibility for a crime without demonstrating his political accountability. What primarily separates moral responsibility from political accountability is the existence of a set of articulated laws which govern certain activities. Political accountability entails some notion of moral responsibility, but one which is conditioned by a particular set of “definite rules.” When we prove that someone has violated this or that right, we are judging whether or not he has done something impermissible. We must first form the syllogism, the moral imperative, and explain that it pertains to this particular person in these circumstances, setting it out as a generally agreed upon rule, before we can go about proving that he has, in fact, violated this imperative. We must identify moral responsibility and articulate it inside a particular, binding framework in order to assign political accountability. Furthermore, the type of proof offered for moral responsibility can take a more metaphysical tone whereas the proof for political accountability is more focused on material. That is, we can prove that a person is morally responsible by explaining that he

⁶⁷ Ibid. p. 288

possesses the capacity either to violate or respect some right in given a situation. We can prove his legal guilt only by demonstrating, according to some set of epistemic criteria, that he actually violated this right.

Ultimately, my claim amounts to this: in our conception of responsibility, we differentiate between the more universal moral responsibility and the more particular political accountability. Moral responsibility can be discussed and demonstrated according to general moral positions, particularly as they extend from the concept of right. Political accountability is an expression of moral responsibility with reference to some particular set of articulated and agreed upon laws from a political authority. A man can be rightly held morally responsible for a crime while not being politically accountable. However, a man who is politically accountable for a crime is, by necessity, morally responsible. Moral responsibility is the more general form which may be easy to prove but harder to put in terms of existing legal structures. Political accountability is the more particular form which relies on these structures to determine its range and scope.

General Erwin Rommel

Erwin Rommel was a general in the German army during World War II. Walzer tells us that one biographer after another claim that:

While many of his colleagues and peers in the German army surrendered their honor by collusion with the iniquities of Nazism, Rommel was never defiled.⁶⁸

He was, apparently, such a professional soldier that he seemed not to participate in the horrendous evil executed by his government. He fought a bad war well, refusing to kill

⁶⁸ Ibid. p. 38

prisoners in spite of Hitler's Commando Order of 1942, and strove to maintain some semblance of order and morality to the war he was fighting.

If I am correct in my thesis that soldiers share a level of *ad bellum* responsibility corresponding to their echelon within the force structure, then it seems that, despite his efforts, Rommel is necessarily subject to a certain level of guilt. In fact, this is why Walzer discusses him in this section. He wants to illustrate that

It would be very odd to praise Rommel for not killing prisoners unless we simultaneously refused to blame him for Hitler's aggressive wars.⁶⁹

If the killing of combatants is justifiable only when the war itself is justifiable, then Rommel is little more than a reserved member of a rapacious robber-band. I want to agree with Walzer that Rommel fought a bad war well and that some of his actions were commendable, yet I want simultaneously want to blame him for Hitler's aggressive wars.

There are three morally significant factors to my assessment of Rommel's position. First, his war was unjust *ad bellum*. Second, he strove to fight justly *in bello*. Third, he is subject to necessity with regard to the war – he “was a servant, not a ruler, of the German state.”⁷⁰ These combine to support my thesis, demonstrating the precarious moral position in which soldiers can find themselves in reality.

Clearly, German aggression was not justified in World War II. Force is only justified in response to aggression and aggression is never justified. Following my thesis, there is an automatic presumption in favor of Rommel's guilt from this. This guilt is somewhat qualified because, as a servant not a ruler, his free range of choice over whether to fight this war or not is limited by this situation. It is not entirely up to him whether Germany aggresses or not. By necessity, the nature of his office is such that he

⁶⁹ Ibid. p. 38

⁷⁰ Ibid. p. 39

must obey the communal will or at least the will of his superior, Hitler. According to Walzer, the guilt he possesses *ad bellum* is mitigated by this limitation. However, as previously discussed, the mere fact that he stayed in command and helped Germany fight its unjust war means that he aided and abetted its criminal activity. Near the highest echelon of control in the Nazi regime, Rommel remained in power. He shared responsibility for the things they did. What form did this take? Clearly, he had moral responsibility, but was this also political accountability? The only way for him to mitigate his political accountability was to offer some demonstrable sign that he tried to “take back his name” – do everything in his power, short of accepting frightening risk, to separate himself from his government.

That he fought his war well and, specifically, that he dramatically and publicly burned the Commando Order, defying a direct command from the head of state, indicates Rommel’s will contrary to Hitler’s. Precisely because he sought to fight well and refused to do massive injustice by killing prisoners, we can see that he did not fully agree with the direction of his government. Furthermore, because he disagreed so dramatically, we can see that he had to accept some degree of risk to his safety. Nazi Germany was not a safe place for those who would defy Hitler, particularly so boldly. Rommel’s public disagreement served to qualify the degree to which his will participated in the unjust will of the community – it was a demonstration of his dissent. In effect, these acts helped Rommel to take back his name.

Whether or not this clears Rommel of moral responsibility *ad bellum*, I cannot say. That guilt is determined by however much he privately agreed or disagreed with Hitler and the Holocaust. I cannot know his private thoughts on the matter, so I cannot

determine beyond the shadow of a doubt that he is completely free from moral guilt. One thing does seem evident, however. Rommel is clear –or ought to be clear- of any political guilt. At risk to himself, he took reasonable steps to ensure that just practices and standards were enforced down his chain of command and, at the very least, refused to give public consent to parts of Hitler’s government. He gives us clear evidence that he wants to distance himself from Hitler.

Is this enough? Perhaps he ought to have resigned. Perhaps he ought to have tried to stop Hitler or join a resistance or an espionage group. Perhaps there is more he could have done to distance himself from evil and serve Germany better. These may well be the case but it seems rather unlikely. It is difficult to determine just how far one must go to reclaim innocence in this matter. Walzer says that a dissenting citizen can stop just short of accepting frightening risk to accomplish this, whereas Rommel did just that and more. In any case, these may well be supererogatory – morally praiseworthy but not morally required. We could attempt to judge Rommel now on the morality of his behavior, but I want to look at another German soldier, at the other end of the spectrum of echelonment, in order to gain perspective first. Then we can derive a standard of judgment for more soldiers than merely Rommel.

The Noble Private and the Spectrum of Responsibility

J. Glenn Gray recounts what Walzer calls a “paradigmatic example”⁷¹ of a soldier acting heroically in a way comparable to Rommel. Gray’s account is as follows:

In the Netherlands, the Dutch tell of a German soldier who was a member of an execution squad ordered to shoot innocent hostages. Suddenly he stepped out of rank and refused to participate in the executions. On the spot he was charged with

⁷¹ Ibid. p. 314

treason by the officer in charge and was placed with the hostages, where he was promptly executed by his comrades.⁷²

I include the long form of the quote because this story is beautiful. I agree with Walzer that this man demonstrated the utmost virtue and nobility. Regardless of my argument, his story ought to be retold. This act is clearly supererogatory – we cannot expect this of ordinary men. It serves to illustrate an important point, though.

Take this scenario as a microcosm of a war. The German soldiers are clearly a massively better armed aggressor state while the civilians are the victim. Utterly lacking just cause and being asked to kill civilians –violating *ad bellum* and *in bello* simultaneously- this soldier chose not to submit to necessity of allegiance to his “country.” He completely rejected their community, taking back his name in the most powerful way, choosing magnanimous virtue over his right to life. Because he did this, he was able to escape from moral culpability for killing innocents. His former fellows are not. Rather, they are all the more condemnable – morally and politically so- for not doing what they did.

This scenario helps establish a spectrum of action with moral responsibility at one end and political accountability at the other. There are three courses of action open to these soldiers and we see two of them actualized. At the far end, we have the noble private, choosing death before dishonor. He is clearly neither morally nor politically responsible for these civilians’ deaths. Close to the middle, we have the option to stay with the Germans but not to shoot. This course of action accepts some risk of retaliation from the fellow soldiers but escapes both death and directly shooting innocents. If a man took this middle option, he could reasonably be said not to be politically accountable for

⁷² Ibid. p. 314

the civilians' deaths. He may well be morally responsible for them, however, but that is more difficult to determine. Finally, we have those men who willingly participated in the slaughter. These men are clearly morally and politically accountable for their actions.

There seem to be two factors at work in determining placement along this spectrum of responsibility. First and foremost is the participation of the individual's will in the community. The more willing a man is to participate in the community; the more responsible he is for its actions. Hence, we have one man, courageously refusing to participate, who cannot be said to possess any responsibility over the community's actions. At the other end, we have those men, willingly shooting innocent civilians and their former comrade in arms. These men are clearly participants in the community's will. These men are clearly morally responsible. The second factor is the demonstrability of their participation, that is, the evidence for or against them. The noble private has good evidence that he was in no way politically accountable for the civilians' deaths. The shooters have tremendous evidence that they were. The man who stays but does not shoot finds himself in a precarious position. He might be (and probably is) morally culpable for their deaths but, given the lack of actual evidence –gunshot residue, recent carbon buildup, and so on- he may not be politically accountable for the deaths.

Applying this to a more broad case, say Rommel's, we can use the same spectrum. In a sense, Rommel stayed but tried to shoot well. Insofar as he freely stayed, he bears metaphysical guilt for *ad bellum* injustice. He can do justice *in bello* and, in so doing, provide evidence to counter the notion that he consented to what Hitler was doing – evidence like burning the Commando Order. He is not the courageous private but neither is he the death squad itself. He chose his life over magnanimous virtue. While he

may still dissent, it becomes more difficult for Rommel to demonstrate his innocence given that staying part of the regime necessarily gives credence to the notion that he does so willingly. The balance of evidence determining political accountability ought not to be overlooked.

We can see a further issue, here, if we discuss which way the balance of evidence hangs. The greater the evidence accrues to support guilt, the more powerful the evidence must be to prove innocence. That is, the more willingly one participates in the military, the more difficult it becomes to assume innocence from *ad bellum* violations. Again, the concept of echelonment comes to bear. In order for those at higher echelons in the force structure to demonstrate *ad bellum* innocence, they must give equally or more powerful testimony to the contrary. Rommel sits in a qualified position of justice by remaining on the general staff.

At any rate, from these two cases, we can see the spectrum of responsibility, with its moral and political poles. Furthermore, we see how echelonment and willing participation determine where one falls along this spectrum and, finally, the influence of evidentiary support for claims for and against political accountability. At this point, I shall turn to discuss Arthur Harris in order to evaluate a different sort of case. Rommel and the noble private had their *ad bellum* responsibilities negatively affect their moral situations, redeemed mostly by their *in bello* decision – at least for Rommel. Harris presents us with the opposite case. His *in bello* situation is completely impermissible given ordinary moral constraints, but his *ad bellum* responsibilities serve to ultimately justify his actions. Furthermore, Harris' dishonor at the hands of the British government

may indicate how we can respond to *ad bellum* violations for those who are morally responsible while perhaps not politically so.

The Dishonoring of Arthur Harris and Bomber Command

Arthur Harris was Bomber Commander in the RAF during World War II. In the course of that war, Britain faced a serious moral dilemma: it fought an enemy that rejected a right based conception of morality, preferring instead their Nazi ideology. For a time in 1940, Britain stood alone against a seemingly unstoppable German advance. It was the sole remaining defender of right based morality. What was at stake in the conflict was not merely national autonomy, but rather the whole conceptual framework of right as a moral foundation. If the Nazis won the war, they threatened to destroy our moral world. Walzer identifies this grim scenario as the case of supreme national emergency, wherein the war convention can be justifiably suspended for the sake of defending that which the war convention seeks to protect. As the Nazis grew in relative strength, the interests of the Allied cause became increasingly identified with and dependent upon the survival of Britain.

When the British stood alone against this overwhelming threat, they were justly permitted, Walzer claims, to use whatever means necessary in order to ensure their own survival. In accordance with this type of thinking, British high command ordered that Bomber Command begin to target civilian targets in Germany in order to distract from the German offensive and erode its domestic support. Arthur Harris led the planning and execution of these missions. He was Bomber Commander and held all the moral and political responsibilities connected with that unit. What Harris did was to facilitate the

systematic terroristic slaughter of thousands of civilians over the course of the war. This is a horrible evil. However, Harris did as he was asked by his country's leadership for the sake of defending justice.

At war's close, when most of the military leadership was given particular honors, land and titles and so on, Harris was not. In fact, even when praises and thanks were showered on other elements of the British military, Bomber Command was similarly treated. For having done what their country asked them to do, what had seemed necessary and just, they were disowned and dishonored because at the same time what they did was horrific and wrong. The motivations for this dishonor could cut across any range of causes. Walzer maintains that, insofar as it was a national movement dissociating Britain from a policy of terrorism, the dishonor had "moral significance and value."⁷³

The case of Arthur Harris and Bomber Command is a case of punishment. These men "have killed unjustly, let us say, for the sake of justice itself, but justice requires that unjust killing be condemned."⁷⁴ This punishment could possibly take different forms. Walzer claims that there is no question of political punishment, though he does not articulate why that is. I am inclined to agree with him, though. Harris and Bomber Command did what they did at the behest of the political community. They executed the community's will. The governing authority, having invested Harris with his office and commanded that he execute this mission, cannot put him on trial. Harris operated under the most extreme condition of necessity that Walzer admits; not only was he acting on the community's behalf, he was doing so under conditions of supreme emergency, which contains both moral and strategic necessities. He and the rest of the Bomber Corps were

⁷³ Ibid. p. 324

⁷⁴ Ibid. p. 323

more constrained in their actions than any other unit in the fight. Yet they had to be punished, subject once again to the necessity they helped defend, because justice cannot tolerate injustice. Evidential constraints did not bar Harris from legal culpability, and, in a way, he had to be culpable. It was merely prudence that led Churchill to punish the man, along with the rest of Bomber Command, in non-judicial ways. After winning a war, particularly of that magnitude, refusing to honor is the same as dishonor. This punishment is severe. While others will be thanked for their sacrifice and service for years to come, the men of Bomber Command will not. They were not heroes; they were men that did what their country asked of them. They did what they had to do.

Churchill's actions and policy of dishonor provide us with an example, however, of a way in which we could punish non-legal, moral culpability for some crime. In lieu of evidence, authority, legal structure, or practicality, systematic and pervasive dishonor could serve as a means of punishment for certain types of injustice. Most important, if we were to assign punishment to soldiers for *ad bellum* violations, we could rely on the spectrum of responsibility and the influence of willful participation alongside evidentiary concerns to determine who could feasibly receive what manner of punishment. Junior officers and similar echelon enlisted personnel could be merely dishonored for their willful participation in the war. Mid-level officers could be subject to greater dishonor or even certain legal action depending on the manner of their service to the war effort. Senior officers could be subject to legal punishment, authority and political structure permitting.

This is clearly not an explicit plan for establishing a political structure by which we can organize a court system but it might serve as a principled guide to the

establishment of one, if need be. If officers and some enlisted personnel are indeed responsible for *ad bellum* considerations, then we need an apparatus by which we can judge their level of responsibility and their corresponding punishment. Without one, we are left merely punishing those commanders who may or may not have effective control over their subordinates. The younger officers that will take his place are liable to fall victim to the same vices and mistakes without being held accountable as well.

Arthur Harris' case has an important point of difference from Erwin Rommel's, a difference I have admitted already but would like to examine in greater detail here. Arthur Harris and the Bomber Corps were culpable *in bello* but justified *ad bellum*; Erwin Rommel was the exact opposite. Culpable because of his role as a soldier on the unjust side of the war, a willing participant therein, and at a high enough echelon that any claim of coercion into service is ridiculous, Rommel is guilty for seeking an unjust end but innocent in the way he went about securing it. How can Arthur Harris' punishment illuminate the proper punishment for such a man?

Erwin Rommel's position is similar to that of Arthur Harris' in that both sit in a position of both highly-qualified justice and injustice for their wartime actions. These men preserved justice in their own way and demonstrated their desire to preserve it. The latter fought horribly to secure it, the former fought well to retain some semblance of it. Both men must be punished for their crimes, yet neither should be held politically accountable due to the fact that they both fought with a concern for justice. They operated in the midst of hell like few others – insofar as their situations are similar, their punishments can be similar.

Conclusion

Soldiers possess both moral and political responsibilities, particularly with respect to *ad bellum* considerations. These two types of responsibility exist along a spectrum. We can determine soldiers' relative placement on this spectrum with reference to both their willingness to participate in the military and the evidence that they agree or disagree with *ad bellum* policies. According to their placement along this spectrum, soldiers can be punished for violations in both legal and non-legal ways. That is, those soldiers for whom political accountability can be determined can be fined, put in prison, or even executed. If non-legal action is fitting, they could be dishonored like Arthur Harris and Bomber Command. That said, I endeavor here only to offer a rough sketch or an apparatus for guiding our further investigation into how we ought to govern and punish soldiers for this kind of injustice. I concur with Walzer that such a system should be the result of a long process of casuistic reasoning in order that we attain a proper understanding of justice.

CONCLUSION

Just and Unjust Soldiers

I claimed that Michael Walzer's assertion that soldiers are morally equal -that they are not responsible for *ad bellum* considerations- is incorrect. Soldiers do indeed possess a level of *ad bellum* responsibility. To prove this claim, I examined the concept of willing participation and the underlying principles of moral equality itself, eventually differentiating between moral and political responsibility for wartime justice. In the process, I relied on the concept of echelonment as an indicator both of willing participation and, correspondingly, of responsibility for *ad bellum* considerations. Furthermore, I claim that this alteration to Walzer's system of justice does not greatly affect its structure. I end with a suggestion regarding how men can be punished that have different mixtures of justice and injustice with respect to both *ad bellum* and *in bello* justice.

There exists a spectrum regarding soldiers' participation in war. Some are more willing participants, some are less. The degree to which they willfully participate in war determines, directly, their moral responsibility for its *ad bellum* justification. If a soldier, at any level, is fully committed to the cause and gives his full assent to it, he can be held accountable for an *ad bellum* consideration because he contributes all he can to the cause of the war. If the war is just, he should be commended; if unjust, condemned.

Willing participation is not readily clear, however, either for outside observers or, sometimes, to soldiers themselves. The standard I introduce to demonstrate, with

reasonable variance, the level of a soldier's willingness to participate in a war is the echelon at which he operates and contributes to the war effort. The higher the echelon, the more willing his participation. Hence, officers and administrative enlisted soldiers are, at higher levels, responsible for the *ad bellum* causes of a war. Men with rank have other options for employment –they can resign if they like- if they stay, they stay at their own moral and physical peril. Hence, if there are just and unjust sides of a war, there are just and unjust soldiers inside it. Soldiers that seek the just end freely and willingly are just soldiers, while free and willing unjust ones are not. Wherever they fall, soldiers are not morally equal if some seek justice. The willing participation of soldiers invalidates their moral equality to one another.

Furthermore, the concept of moral equality invalidates itself. Walzer claims that the common traits which bind the soldier class together engender an equality amongst them. Examining these traits, we can see that the activity in which they participate, the type of loyalty they share, and the alienation to which they subject each another are predicated on the moral divisions between them. The causes which separate them are the causes for wars. What soldiers share is an opposition to one another based on the end which their political communities desire. Insofar as these ends can be just and unjust, soldiers are not equal. Precisely because they exist as soldiers in service to a cause, they are not equals.

This state of inequality does not destroy the deontological system of prohibitions and permissions which governs actions *in bello*, however. All soldiers are still bound by their prohibition against killing noncombatants, unless those noncombatants propagate or sustain the forces on the unjust side of a war. They are still permitted to kill one another

because that is their job. Their responsibilities *ad bellum* entail a greater duty to consider earnestly the justice of the cause for which they fight – a duty which every leader ought to take seriously. Furthermore, we –the United States and other Western liberal countries- have already forced a liberal system of international governance onto the world, some would say unjustly. Effectively, we have fought unjustly for a just end. We need not be afraid of admitting that there are some just combatants and some unjust. This fear would extend from concern that we are justifying ideological crusading by admitting the qualifying effect of *ad bellum* considerations on *in bello* constraints. However, the only crusade that could be justified by this system is one that perpetuates the system itself. The only crusaders allowed are ones that wish to preserve the system of justice.

Furthermore, the responsibility which soldiers can hold is of two separate types. Some hold moral responsibility for *ad bellum* considerations – just or unjust, the soldiers are morally responsible according to their willing participation in the war. Others hold political accountability for these considerations. This type of responsibility is demonstrable and requires evidence provided within a political authority structure to prove culpability and assign punishment. Effectively, it requires an articulated legal system. All soldiers that are politically accountable are morally culpable.

However, some soldiers exist in complicated situations of justice. For instance, Erwin Rommel fought justly for an unjust cause while Arthur Harris fought unjustly for a just cause. They possess responsibility for their actions and the actions of their country. However, if they demonstrated a willing desire to separate themselves from their country's injustice, they can be free from political accountability, given sufficient

evidence. While it is more difficult to determine, it may also release them from moral responsibility for the community's malignant will as well.

Overall, I wanted to prove that soldiers are not full moral equals. I sought to demonstrate this from Michael Walzer's perspective without wholly rejecting his approach or greatly modifying his system. The argument I make in these pages seems accurately to reflect the complexity of their real-world situation. When there are just and unjust sides to a war, then the soldiers therein are either just or unjust. They bear responsibility according to the justice of their cause and their willing participation in it. However, this overarching moral inequality does not completely invalidate the moral rules which govern their actions with respect both to each other and to noncombatants. On the contrary, respect for justice on both sides can qualify their guilt in such a way that even unjust soldiers can be politically exonerated from punishment. In the final analysis, the inequality permitted by the system serves only to protect the system itself anyway, so wholesale injustice is still prohibited. Walzer's system –though modified- remains.

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