

**A Soldier's Rationale in Favor of the Uniform Perspective on Participation in  
Unjust Wars**

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## *Introduction*

My aim in this paper is to reflect on the claim that soldiers in the United States military are morally obliged to comply with legal orders to fight even in unjust wars. This claim elicits considerable disagreement and that disagreement divides along interesting lines. Granting the dangers of over-generalization, my experience is that civilians – or better, civilians who happen to be academics – tend towards skepticism: requiring soldiers to fight in unjust wars exacts too great a cost in the denomination of personal autonomy or moral integrity. Also in my experience, military professionals incline towards requiring soldiers to fight – often with considerable firmness. My main aim in this paper is to focus on the military side of this divide: I will articulate and assess the most powerful argument of which I am aware in favor of the claim that soldiers morally ought to fight even in unjust wars – an argument I will call “The Soldier’s Rationale.” Although this argument can be formulated far more credibly than is often assumed, I conclude that it is unsound.

### *Ethics Instruction for and with Military Professionals*

I’ll begin with some broad, context-setting reflections on the moral formation of soldiers and I will do so with reference to a pedagogical perplexity I have encountered while teaching future Navy and Marine Corps officers at the US Naval Academy.

For the past 10 years, my primary teaching obligation has been to deliver an ethics course – “Moral Reasoning for Naval Leaders” – that Congress requires the Naval Academy to offer to Midshipmen.<sup>1</sup> One of the main aims of that course is to urge Midshipmen to reflect on the military importance of moral formation. There are many excellent reasons for this aim, of which the following is the most obvious and important. Military violence profoundly affects the life prospects of human beings: lives are lost, property destroyed, traditions fractured, families sundered, churches desecrated, villages eviscerated, and so on. Uniformed officers play a very special role in the deployment of military violence – officers have the moral and legal authority to control its deployment. Plausibly, courageous, temperate and just officers are more likely to employ that authority well than are cowardly, intemperate, and rights-indifferent officers. Consequently, military organizations that produce officers, like the Naval Academy, have excellent reason to include moral formation as a central aim.

Although hardly an unbiased party, I regard this formative project as immensely important. As Richard Bassett remarks in his review of a recent book on the Second World War, “the moral formation of the officer class of any army remains to this day

1. Apparently, Congress passed the relevant legislation as a consequence, at least in part, of its dissatisfaction with the moral self-understanding of Oliver North, a Naval Academy graduate.

the one indisputable guarantee of any country's claim to civilisation.”<sup>2</sup> No doubt this is a bit overdrawn – a nation-state can surely have a morally inspiring officer corps and still pursue the most uncivilized projects. Nevertheless, Barrett's point is well-taken: it is of great moral importance that the very human beings who are tasked with directing military violence are committed to, and have the virtues conducive to, exercising their authority in a manner that is sensitive to relevant moral considerations.

This judgment about the military importance of moral formation has a civic correlate. That is, citizens of the United States have particularly powerful reason to care about the moral formation of its officer corps. Because we provide our military both with armaments and with the training necessary to use those armaments effectively, because the those armaments can be used to violate the human rights of innocents on a vast scale, we thereby incur an exceedingly powerful obligation to prevent our military from doing so. If we make the weapons, if we train others to use them, and if we then order others to use those weapons, then we are thereby strongly morally obliged to prevent them from using those weapons to violate others. Although those who wage war on our authority certainly have it within their power to direct military violence without proper moral qualms, and although they will sometimes be sorely tempted to do so, we are morally obliged to insist that they resist those temptations and take reasonable measures to help them to do so.

In my estimation, “Moral Reasoning for Naval Leaders” helps to achieve these formative aims, insofar as it does, primarily by virtue of the manner in which it is staffed. How so? In addition to a number of civilian philosophers who present familiar theoretical material – Aristotle on virtue, Kant on the Categorical Imperative, Mill on Utilitarianism, and so on, a whole bevy of senior military officers are tasked with applying that theory to the complexities of military service: small groups of Midshipmen are led by military service by officers with many years of professional experience in their reflections on the moral perplexities distinctive to the military profession. In my judgment, the contributions of those officers are absolutely crucial to the success of the course, for they are able to speak with authority to the many ways in which vice impedes officers from employing their authority well and they do so with a credibility unavailable to those outside of their guild.

Given its formative aims, it should hardly surprise that “Moral Reasoning for Naval Leaders” provides Midshipmen with an extended opportunity to reflect on the dominant conception of the morality of war in our culture – the so-called Just War Tradition (JWT). Now I think it fair to say that many of the officers with whom I teach encourage Midshipmen to accept some variant of that tradition. But I find this perplexing. Although I can readily understand why they want to *expose* Mids to the JWT, as they understandably want to expose Mids to Kant, Mill and Aristotle, I don't see

2. Richard Bassett, “Ethical Minefield of Combat,” *The Tablet*, May 27, 2010, accessible at <http://www.thetablet.co.uk/review/500>.

why they want Mids to *embrace* the JWT as a matter of personal conviction. Why not treat it as they do Kant, Mill, and Aristotle: interesting, thought-provoking, worthy of reflection, but, so far as the requirements of soldiering are concerned, ultimately a matter of indifference?

Now the answer to this question might seem obvious. In order to see why it's *not*, recall that the JWT is typically divided into two broad areas. First, a set of *ad bellum* principles specify whether the war one community wages against another is just. Standard accounts include the three principles canonically formulated by Thomas Aquinas, that is, that a just war requires a just cause, must be waged by a legitimate authority, and be conducted with 'right intention.' Second, a set of *in bello* principles specify whether particular acts of military violence within a given war pass moral muster. Standard accounts include two requirements: those who employ military violence must 'discriminate' between legitimate and illegitimate targets and military violence must be 'proportionate' to the human suffering it causes.

Now it's rather clear why one might sensibly want Midshipmen to embrace the JWT's *in bello* requirements, for they apply very directly to an officer's primary responsibilities. When Midshipmen enter 'the Fleet,' they will be subject to various legal constraints that bear on the manner in which they direct violence. It's common knowledge that combat sometimes tempts soldiers to violate those legal constraints.<sup>1</sup> Plausibly, they can better resist those temptations if they affirm reinforcing moral principles. Sincere affirmation of the JWT's *in bello* principles can help to achieve that aim: given rough and ready overlap between the JWT's *in bello* principles and extant legal constraints, a Midshipman who is committed as a matter of conscience to employ military violence in a discriminate and proportionate manner seems more likely to do so than he would otherwise be were he to believe that he is legally but not morally required required to employ discriminate and proportionate violence.

Fair enough – officers who have been charged with fostering the moral formation of Midshipmen sensibly encourage a sincere affirmation of the JWT's *in bello* principles. But what about the *ad bellum* criteria? Here the case for wanting future officers to embrace the JWT as a matter of moral principle is less than perspicuous. After all, no Midshipmen will ever be responsible for deciding whether and when the United States should wage war. That is, in their capacity as military professionals, they will be neither legally required nor legally authorized to do so. Much to the contrary, legal responsibility for any decision to wage war belongs exclusively to the relevant civilian authorities – the President and Congress. Given that distribution of decision-making authority, we naturally want the relevant civilian authorities to be firmly committed to the JWT's *ad bellum* requirements: since they are responsible for deciding whether and

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1. Recall the various controversies that have arisen in the U.S. military regarding what are perceived to be excessively restrictive rules of engagement imposed on soldiers fighting insurgents in Iraq and Afghanistan.

when the United States wages war, we should very much want them to affirm correct moral principles that bear on that decision. But then why should my military colleagues – or anyone else – care whether Midshipmen affirm correct *ad bellum* requirements?

There is an obvious and cynical answer to this question. Midshipmen are supposed to use the JWT as a recipe for *rationalizing* war: if ordered to fight in a given war, then the JWT will help a Midshipman to justify that war to himself, and so the order to fight, and so *his* fighting. This is an entirely understandable reason for officers to want Mids to affirm the JWT's *ad bellum* requirements. After all, a clean conscience is no mean achievement.<sup>1</sup> But such an 'achievement' would be deeply troubling. After all, some wars are just, others are unjust, and the JWT purports to help adherents distinguish between the two. Surely no Midshipman can reasonably be assured that the wars in which *he's* ordered to fight will square with the JWT. So, expecting Midshipmen to arrive at a uniform result, particularly when the result uniformly legitimates war, is a clear misuse of that tradition. Much more importantly, to hold Midshipmen to that expectation would encourage them to rationalize their participation in a grave moral injustice. But we shouldn't even slyly suggest that Mids should engage in such a rationalizing project. This would send an exceedingly troubling message to men and women who will later have the authority to determine how some of the most destructive weapons now in existence will be deployed.

Suppose, however, that this cynical answer is wrong. Then some Midshipman might find himself in quite a difficult spot. Having graduated from the Naval Academy, and having embraced some variant of the JWT as the sober moral truth, he's ordered to fight. Entirely naturally, he consults the JWT. Suppose that he concludes he's been ordered to fight in a war that lacks a just cause. What's he to do in that case? Ought he soldier on, fighting in a war that he privately disavows but that he, as a public servant, must prosecute? Or is he morally permitted disobey, refusing to fight in an unjust war and so to collaborate in a war that should never have begun in the first place?

### *The Uniform Perspective on Indiscriminate Obedience*

Of course, we can extend the scope of these questions far more broadly – from Midshipmen to officers generally, to officers and enlisted, and so to soldiers generally ... every member of the Army, Navy, Air Force and Marines. That is, the preceding reflections on the moral formation of future officers naturally lead us to ask: what are soldiers generally morally required, permitted or forbidden to do when they are ordered to fight in an unjust war? Assuming, as I will throughout, that ordinary soldiers can be reasonably confident that they have been legally ordered to fight in an

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1. It can also be profoundly motivating. See, for example, Tim Collins eloquent moral appeal to the members of the unit he commanded prior to the onset of hostilities in Iraq: **Rules of Engagement: A Life in Conflict**, London: Headline Publishing, 2005), pp. 159-60.

unjust war, what are soldiers morally required, permitted, or forbidden to do when they have been ordered to prosecute a war that they reasonably believe to be unjust?

My experience is that military professionals uniformly believe that they ought to obey any and every legal order to participate in a given war, irrespective of their estimation of its moral propriety. From this “Uniform Perspective,” to disobey a legal order to fight is to violate an exceedingly important role obligation.<sup>1</sup> Indeed, in the judgment of one widely read officer-turned-ethicist, “to refuse a combat assignment is to commit the most serious offense against one’s military honor...”<sup>2</sup> It’s hard to overestimate the intensity of the emotion associated with this understanding of what makes for honorable conduct. Nor is it surprising that the few soldiers who have refused to fight have been accused by their comrades of a most dishonorable kind of betrayal.<sup>3</sup>

Let me formulate that Uniform Perspective with a bit of convenient terminology. If soldiers are morally required to fight even in unjust wars, then they are morally required to exercise what I’ll call *indiscriminate obedience*. If they may refuse to fight, then they are morally permitted to exercise what I’ll call *discriminating obedience*: they may evaluate the moral propriety of the wars in which they are ordered to fight and refuse to obey if they realize that they’ve been ordered to fight in an unjust war. Definitive of the *Uniform Perspective* is the claim that soldiers morally ought to exercise indiscriminate obedience, such that no soldier may take the injustice of a given war as his reason for disobeying a legal order to participate in that war. Although there might be other reasons that properly lead a soldier to disobey a legal order to fight, soldiers may not, according to the Uniform Perspective, refuse to fight for one broad category of reason – the justness of the war to be fought.

### *Distinctive Features of the Social Role of Soldier in the US Military*

The Uniform Perspective purports to identify a moral obligation that attaches to the

1. See George Lucas, “Advice and Dissent: ‘The Uniform Perspective,’” **Journal of Military Ethics** 8/2 (2009): 141-61.

2. Malham Wakin, **Integrity First: Reflections of a Military Philosopher**, (Lanham, MD: Lexington Books, 2000), p. 72.

3. Consider in this regard the case of Staff Sgt. Camilo Mejia. Mejia served for eight years in the Army and National Guard, participated in combat operations for six months in Ramadi, Iraq, and, partly as a consequence of his experiences there, concluded that there was not “a single good reason for having been [in Iraq] and having been shot at.” According to Mejia, not only was there no good reason for the war in Iraq, there were also powerful moral objections to that war: “I am not against the military. The military has been my family. My commanders are not evil but this war is evil. I did not sign up for the military to go halfway around the world to be an instrument of oppression.” So, while on furlough in the United States, he decided not to return to Iraq. Captain Ted Warfel, who was Mejia’s company commander, took a decidedly dim view of his conduct: “he told me he was coming back and he didn’t. And that makes me mad. And just that any soldier abandons his fellow soldier in a time of war ... I can’t think of anything worse.” (Interview with Dan Rather, <http://www.cbsnews.com/stories/2004/03/29/60II/main609216.shtml>.)

social role of soldier in the United States military. That role has a number of distinctive, and morally relevant, features. Three are worth noting now. Others will emerge later.

First, the United States military is now and will in the foreseeable future be an all-volunteer force; no-one is forced to enlist or accept a commission. Hence, any obligation that a person acquires when he becomes a soldier is binding on him by virtue of prior actions for which he presumably bears primary responsibility. Note, however, that although entry is voluntary, the conditions of entry into that social role are rigid and can not be altered by an individual's decision or act of will. No-one has to inhabit the social role of soldier, but if a person wants to, then he must satisfy a set of conditions that he cannot alter at will. (Some of these conditions are explicitly specified in law, but as we shall see, others are more amorphous, inchoate, and informal.)

Second, once a person voluntarily becomes a soldier, he has no moral right to exit that social role. He may request to exit, and his military superiors have the authority to grant that request. Sometimes they do. But they are under no obligation to do so.<sup>1</sup> Soldiering is distinctive in that regard, and particularly demanding as well. I take it that other important social roles have more generous exit rights: judges may resign at will should they be compelled to issue what they regard as a morally repugnant judgment. So also police, executioners, IRS agents, and so on. But not soldiers.

Third, soldiers are legally required to exercise indiscriminate obedience, such that government may coerce them to fight in wars that they sincerely believe to be unjust. So, a soldier who refuses to obey a legal order to fight is not only morally culpable, but can also be courts-martialed, dismissed or dishonorably discharged, incarcerated, fined, and so on. Some have been. Those who have been are aware, or should have been aware, that they voluntarily gave government this power over them.

The Uniform Perspective, then, is that soldiers in the United States military morally ought to exercise indiscriminate obedience, that this obligation is voluntarily assumed, that a soldier can be released from that obligation only at the discretion of others, and that government may force those who have not been released to fulfill their obligation to fight. Honorable conduct requires willing deference to authority: when and where a soldier fights is a decision others have the right to make for her – irrespective of her particular views regarding the strategic soundness or moral propriety of that decision. With respect to the justice of the wars they fight, soldiers must be willing to “immolate

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1. Consider the case of LT Ehren Watada, who refused to deploy to Iraq on the grounds that the United States' attack on Iraq was an illegal 'war of aggression.' Watada requested either to have his commission revoked or to be deployed to Afghanistan, which he did not regard as unjust. Both of his requests were denied.

their personal morality on the altar of the public good.”<sup>1</sup>

### *A Soldier's Rationale for the Uniform Perspective*

My intention is to articulate an argument credible enough to lead a morally serious and epistemically competent peer to affirm the Uniform Perspective. That “Soldier's Rationale” is not a demonstration and so some peers will reasonably demur. I will lay out a number of my own reservations at the conclusion of this paper. Nevertheless, it merits sustained articulation and assessment.

The Soldier's Rationale begins with an event that marks the transition from civilian to soldier – with the taking of a solemn oath. So, for example, a person can serve as an officer in the United States military only if he takes what's known as the Oath of Commissioning, in which he promises as follows:

“I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign or domestic, that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservations or purpose of evasion; and that I will well and faithfully discharge the duties of the office upon which I am about to enter; So help me God.”<sup>2</sup>

It is, of course, a moral truism that promises generate moral obligations: when a soldier takes an oath to “support and defend” the Constitution of the United States, then his oath renders him not only legally but also morally obliged to do so. If the US Constitution delegates to the President and Congress the exclusive authority to wage war, then a soldier who takes the Oath of Commissioning thereby assumes a moral obligation to obey the authoritative orders of the President and Congress generally and any authoritative order to participate in war more narrowly – full stop. But of course, the President and Congress might decide to wage an unjust war. Should that possibility be actualized, each and every soldier has promised to obey those demands, and thereby assumed an obligation to obey those demands. Soldiers ought to fight in unjust wars because they have, in effect, promised to do so. What could be more

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1. A.J. Coates, **The Ethics of War**, (Manchester: Manchester University Press, 1997), p. 34.

2. The promise required of enlisted personnel is as follows:

“I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. So help me God.”

For convenience sake, I'll focus on the Oath of Commissioning. Technically, this means that I will be focusing on the role-obligations of officers, though I will continue to refer to soldiers generally.

straightforward?

Well, this baseline version of the Soldier's Rationale must be complicated in important respects. Most particularly, we need to specify the distinctive *stringency* of the obligations engendered by the Oath of Commissioning? How so?

Promises typically generate defeasible obligations – obligations that can be overridden by weightier moral considerations. So, for example, if I promise to return your lawnmower by noon, but find that I can fulfill my promise only at great risk to my life, then I'm not actually obliged to return your mower by the agreed deadline. My obligation to return the mower has been defeated by the fact that fulfilling it would threaten a sufficiently important moral good -- my life! As a consequence, I'm not morally required to return the lawnmower by the deadline and I'm not culpable for returning it later than we agreed, even though it was in my power to return it on time.

Now it's fairly clear that we have it within our power to shape the conditions in which our promises are defeated. So, suppose that I promise to return your lawnmower by noon, that we explicitly agree that my promise to return your mower binds me even should returning it prove difficult, and that returning your mower on time turns out to be difficult. Well, in that case, the fact that I find returning your mower difficult does not override, defeat, or otherwise cancel my obligation. That seems obvious. But suppose that we explicitly agreed that my promise to return your mower does *not* bind me should I find that it difficult to do so. Then the difficult circumstances in which I find myself defeat my obligation to return your mower. The reason my obligation is defeated in the latter case has everything to do with what we understood ourselves to be doing when promising: our agreement that my obligation to return the mower is defeated when difficult makes it the case that my obligation is defeated in just that condition.

We can, for example, make it quite easy for a given promise-generated obligation to be defeated. If you and I don't much care about what's promised, then we have it within our power to agree that the obligations generated by that promise can be defeated by morally trivial factors – in which case those obligations ... can be defeated by morally trivial factors. But we don't ordinarily do that. Typically, we're involved in promising because one of us cares enough about what's at stake that she'll insist that a given promise-generated obligation remain in force even at great cost. So the obligations generated by promising generally have very great moral weight.

Despite their very great normative weight, promises typically generate obligations that are defeasible in extreme conditions – when fulfilling a promise poses grave risk to great moral goods. Again, this is a matter of contingent fact, one that results, I surmise, from a widely shared and tacitly assumed ranking of the relevant moral goods. So, for

example, having a mower returned on time isn't nearly as important as the borrower's earthly existence and so we just assume that, should I find that fulfilling my promise to return your mower on time endangers my life, then neither you nor I intend that I follow through on my promise. Ordinarily, our (implicit and inchoate) understanding of the conditions that defeat a promise-generated obligation reflect a shared understanding of the goods implicated in a promise. We don't have to come to any explicit agreement; we assume some rough ranking of the relevant goods as a matter of course.

Nevertheless, sometimes what's at stake in a given promise is sufficiently important that we understand the obligation generated thereby to remain undefeated even in extreme conditions. Occasionally, we make promises regarding what we'll do even if, God forbid, fulfilling our promises threatens some great moral good.<sup>1</sup> And, if we make such a promise "precisely for and with a view to regulating conduct in situations of extremity," then we aren't released from the correlative obligation should we find ourselves so circumstanced.<sup>2</sup> The point is not, of course, that promises directed at conditions of extremity can't be defeated, but that they aren't defeated by a person's finding himself in the very conditions regarding which he's made a promise: if I promise to perform action A precisely in condition B, then my finding myself in B doesn't defeat my obligation to perform A in B, although that obligation might be defeated should I find myself in condition C with respect to which we have no (explicit or implicit) agreement.

### *Military Oaths and Conditions of Extremity*

Soldiers invariably understand their military oaths to bind them in certain conditions of extremity. This is undoubtedly the case regarding perhaps the paradigmatic condition of extremity, viz., a circumstance in which fulfilling a promise poses great risk to the promiser's life and well-being. So, for example, soldiers in the Third Reich were required to promise as follows: "I swear by God this sacred oath, that I will render unconditional obedience to Adolf Hitler, the Fuehrer of the German Reich and people, Supreme Commander of the Armed Forces, and will be ready as a brave soldier to risk my life at any time for this oath."<sup>3</sup> Unlike my promise to return your mower in

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1. My guess is that the practice of oath-taking is used to mark the normative weight of the obligations generated by a given promise. When we take an oath with reference to some great good, we specify the normative weight we attach to the promise we make.

2. John Finnis, "The Catholic Natural Law Tradition," **The Ethics of Wars and Peace**, Terry Nardin, ed., (Princeton, NJ: Princeton University Press, 1996), p. 29.

3. Telford Taylor, **Sword and Swastika: Generals and Nazis in the Third Reich**, (New York, NY: Barnes and Noble Books, 1995), pp. 87-8. Having taken this oath, it should hardly be surprising that many officers in the Wehrmacht took themselves to have an absolute obligation to obey the orders of the Fuhrer. See, for example, the testimony of General Alfred Jodl at the Nuremberg Trials, in Lawrence Rockwood, **Walking Away From Nuremberg: Just War and the Doctrine of Command Responsibility**, (Amherst, MA: University of Massachusetts Press, 2007), pp. 76ff.

timely fashion, this oath explicitly specifies that the obligation it generates cannot be defeated by great personal risk. That is, it is a promise made to bind precisely for those conditions in which compliance by the promisor risks personal extinction.

The oaths required of soldiers in the US Military differ in a number of important respects from that exacted from soldiers in the Wehrmacht: most relevantly, the former include no explicit reference to conditions in which a soldier's life is at risk. But that absence hardly implies that soldiers in the US military regard themselves as permitted to disobey legal orders when obedience poses grave risk to life. Far from it: as a matter of sociological fact, soldiers implicitly understand that by taking the Oath of Commissioning, they voluntarily assume an obligation to risk their lives when doing so is necessary to comply with a legal order. They are understood by relevant others to assume this obligation: by their comrades, the military hierarchy, the citizens of the United States, and so on. Given this shared understanding, taking the Oath of Commissioning makes it the case that soldiers are obliged to obey even when doing so poses great danger to their lives. It would obviously be a violation of his solemn oath for a soldier to refuse to comply with a legal order to fight on the grounds that doing so is too risky. Combat is always risky and so a promise to fight that was defeated by danger to self would be nearly worthless. Whatever else it involves, the Oath of Commissioning is understood to be, and thereby is, a promise that generates a moral obligation that remains undefeated even *in extremis*.

Just as the Oath of Commissioning nowhere explicitly specifies that soldiers promise to obey orders that will certainly result in their death, neither does it explicitly specify that soldiers promise to obey orders to fight in unjust wars. But let us suppose, as I believe to be the case, that this is how most soldiers understand their military oath. When so ordered, not only does a soldier face great risk to his own welfare, he does so for a cause he disavows. In fact, the sacrifice required by those who take either oath is partly constituted, I would imagine, by a willingness to risk life or health even in wars the soldier regards as unjust; presumably, it's harder to risk one's life and welfare for a cause one disavows than for a cause one embraces. Nevertheless, that's just what his taking the Oath of Commissioning is understood to require.

Given this informal understanding, we can formulate a simple and widely appealing rationale for the Uniform Perspective. Every soldier in the U.S. military must now take a solemn oath that is understood generate an obligation to obey the legal orders of the relevant civilian authorities. That oath generates a moral obligation on the part of each soldier to obey the legal orders of the relevant civilian authorities. This obligation is undertaken precisely for and with a view to a situation in which a soldier is ordered to fight in an unjust war: by taking the Oath of Commissioning, a soldier voluntarily accepts an obligation not to take the injustice of a given war as a reason to disobey a legal order to fight in that war. He voluntarily waives that defeating

condition, so to speak. Hence, each soldier morally ought to fight even in unjust wars. So much for an initial formulation of the Soldier's Rationale.

Note one complication. A promise that remains in force in some conditions of extremity needn't do so in all conditions. Similarly for the Oath of Commissioning. It does not remain in force in every extremity – say, a condition in which the government loses moral legitimacy.<sup>1</sup> Rather, it is implicitly understood to do so in two central cases of extremity – when obedience poses great personal risk and when obedience involves participation in an unjust war. So long as the United States government retains its legitimacy, soldiers who are ordered to fight in an unjust war are morally obliged to prosecute that war. (Of course, this assumes that the US government can retain its legitimacy even though it wages an unjust war.<sup>2</sup>)

### *A Prior Question: Why the Oath?*

In my experience, many soldiers take the Soldier's Rationale to be compelling. But it is at the very least seriously incomplete. How so?

It is no doubt natural for those whose moral identity has been deeply formed by a given social role to take for granted its fundamental moral assumptions. So it's natural for soldiers to take as a given that their oath obliges them to exercise indiscriminate obedience. Indeed, they might very well think that such a commitment is simply constitutive of military professionalism: the solemn promise that they undertook as a condition of becoming a soldier must generate obligations with which they must comply so long as they remain a soldier.

But the social role of soldier isn't a 'natural,' fixed reality; the normative contours of soldiering aren't limned by the fiery finger of God. Rather, that role is a social and political construction, an edifice built by those who have the capacity to alter what they've constructed. That role might have been, and can be, constructed differently than in fact it is. Most pertinently, the obligations now generated by those who take the Oath of Commissioning are a function of how that oath is understood -- and that understanding can be altered.

Not only can it be altered, but it's an open question whether it ought to be altered. Whatever the travails of the is/ought distinction, it remains the case that facts about

1. So, for example, Colonel Claus Schenk von Stauffenberg, primary architect of the July 20, 1944 assassination attempt on Hitler, properly defended his attempted coup on grounds that the Hitler regime lacked legitimacy and tried to convince fellow officers that they were therefore duty bound to disobey their oath of loyalty to Hitler. See Peter Hoffman, **Stauffenberg: A Family History, 1905-44**, (Cambridge: Cambridge University Press, 1995), p. 202; see also 283.

2. As I see it, a legitimate government can retain its legitimacy even if it wages war unjustly. Nevertheless, an otherwise legitimate government can wage certain kinds of war that undermine legitimacy – a genocidal war or a war aimed at the brutal exploitation of a subject population.

how a social role is constructed don't imply anything in particular about how that role ought to be constructed. So if we want to determine which responsibilities ought to be attached to soldiering, we can't just identify how that social role has in fact been constructed. More particularly, we can't appeal to the fact that soldiers are now required to take an oath understood to preclude discriminating obedience as a basis for the claim that soldiers should be required to take such an oath. Rather, we have to ask whether it is reasonable, wise, and just for us to demand that soldiers take such an oath, thereby encoding into the entry conditions of the social role of soldier that its inhabitants exercise indiscriminate obedience?

That question should be put more precisely. In our political system, the role of soldier is decisively shaped by the citizenry: although the legislative and executive branches of government play a crucial role in regulating the military, this regulatory role ultimately depends on compliance with the will of the citizens who elect them. As those who ultimately determine the responsibilities of soldiers, we – the citizens of the United States – must reflect on what it's reasonable and wise for us to demand of those vocationally dedicated to our protection. And if we decide that soldiers needn't promise to exercise indiscriminate obedience, then, of course, our longstanding commitment to the civilian control of the military implies that soldiers shouldn't be required so to promise. Moreover, if a soldier doesn't promise to exercise indiscriminate obedience, then, plausibly he has no role-specific obligation to exercise indiscriminate obedience.

So we citizens of the United States face the question: should we require soldiers to take an oath that's understood to require indiscriminate obedience? Is exacting such an extreme commitment consistent with the deepest values of our society, or with the moral law, or with God's will, and so in keeping with the kind of moral self-understanding appropriate to those vocationally dedicated to our protection?

### *Two Objections to the Soldier's Rationale*

Once we put the question at issue in this way, it's clear that there is excellent reason to answer in the negative. Although we clearly have the moral power to shape the obligations that our promises generate, there are nevertheless normative constraints on how we can exercise that power. Consider in this regard the Gospel account of the decollation of John the Baptist. Herod Antipas imprisons John for criticizing Herod's marriage to his brother's widow Herodias. At a celebration of Herod's birthday, Herodias' daughter dances so pleasingly that Herod promises to give her anything she wants ... up to half his kingdom. Daughter consults with mother, and daughter requests John's head. Herod takes himself to be bound by his promise, duly executes the unfortunate baptizer and presents his head on a platter to mother and child. Perhaps Herod rationalized his act by reference to his promise: "because of my

promise to Herodius and her daughter, I am morally required to bring them John's head." But of course, this rationalization would have been laughably inadequate. Herod committed simple murder: his execution of John was unjustified, wrongful, and not even slightly excused by his promise, solemn or otherwise. One human being's right to life cannot be overridden, much less defeated, by another human being's promise to violate it...

The application of this basic moral truth to the topic at hand is direct. Although soldiers can make promises that bind them *in extremis*, even when compliance results in their death, they cannot promise in such a way that they are actually permitted to violate the natural human rights of others. But participation in at least certain kinds of unjust wars – those unjust wars that lack a just cause – are such that their prosecutors violate precisely such rights. That is, to fight in a war that lacks a just cause is to participate in a project that kills human beings who have committed no wrong grave enough to forfeit their right to life. Plausibly, for soldier A to kill soldier B while prosecuting a war that lacks a just cause is for A to kill an innocent human being, even if that innocent human being is doing his best to kill him. No promise A makes can actually oblige him to kill those who are merely trying to fend off his country's unjust attack.

This objection to the Soldier's Rationale is reinforced by a further argument articulated by Jeff McMahan, one of the main philosophical critics of the Uniform Perspective: "If just war theory taught that it is seriously wrong to fight in a war that lacks a just cause and wrong to kill people who are merely defending themselves and other innocent people from unjust attack, many of those commanded to fight in unjust wars might be inspired to resist. And the prospect of significant conscientious refusal to fight might deter governments from putting the domestic perception of their legitimacy at risk by initiating an unjust war."<sup>1</sup> I understand McMahan's argument to be a broadly consequentialist argument: if soldiers were morally permitted to resist orders to fight in unjust wars, then soldiers would be more likely than they otherwise would to resist orders to fight in unjust wars; the more likely soldiers are to resist orders to fight in unjust wars, the less likely government would be to wage an unjust war (out of a concern for domestic legitimacy); hence, if soldiers are allowed to refuse to fight in unjust wars, then government will be that much less likely to wage unjust wars. But we should do what we can to support policies and practices that leads government to wage just and only just wars. Consequently, we have powerful reason to allow soldiers to exercise discriminating obedience, the more powerful, one would assume, the greater the deterrent effect.

### *Liberal Democracy and the Obligations of Soldiering*

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1. Jeff McMahan, "The Just Distribution of Harm Between Combatants and Noncombatants," **Philosophy and Public Affairs** 38/4 (2010): 356.

I believe that the Soldier's Rationale can be amplified in a way that greatly mitigates the probative force of these two objections. How so? Well, we need to fill an important lacuna in my earlier formulation of that rationale. More specifically, we need to articulate some moral rationale in favor of requiring soldiers to promise to exercise indiscriminate obedience that is sufficiently weighty to override the two countervailing considerations I have just elucidated. That is, we need to explain why it's so important that government requires soldiers to exercise indiscriminate obedience, despite the fact that a soldier who promises to do so thereby makes a promise that might oblige them to kill innocent human beings. Consider, then, the following argument.

- (1) The U.S. Government has a duty to protect the United States from unjust attack and so to maintain a sufficiently robust and properly subordinate military.
- (2) The US Government can fulfill this protective duty only by requiring soldiers to promise to exercise indiscriminate obedience.
- (3) The U.S. Government's protective duty has normative priority over the reasons that count against requiring soldiers to exercise indiscriminate obedience.
- (4) Therefore, the U.S. Government ought to require soldiers to exercise indiscriminate obedience.

Let me discuss these claims in order of presentation.

(Ad 1): I take as a given that the US government has a strict and weighty obligation to prevent the violation of its citizens' rights ... natural, human, and otherwise. A citizen's rights can be most egregiously violated by unjust aggression on the part of various collective agents – other nation-states, terrorist groups, and so on. The U.S. government thus has a strict duty to protect against such threats, which it can satisfy only by maintaining a sufficiently robust military. Therefore, the US government has a strict duty to maintain a sufficiently robust military. But this duty implies another, for any such military poses a threat to the rights of the citizens it's supposed to protect: the world over, military organizations have turned against the polities that they have been established to defend. Government ought to protect against that internal threat as well. In the United States, we do so by reserving for elected civilian authorities ultimate normative control over the US military's inner workings and external engagements, as well as by inculcating in soldiers a firm subordination to civilian authority. Plausibly, then, the civilian authorities in our government have a moral duty to maintain a robust and subordinate military.

(Ad 2): Now suppose that government can fulfill its protective duty only if soldiers are

firmly committed to exercising indiscriminate obedience. Well, in that case, the civilian authorities ought to do what they can to insure that soldiers exercise indiscriminate obedience. Suppose that the only effective way for government to achieve that end is to require soldiers to promise to exercise indiscriminate obedience – merely offering them various perks and benefits (college education, extra pay, decent health care, etc.) won't achieve the required end state. In that case, the civilian authorities ought to require soldiers to take an oath that binds them to fight when, only when, and as ordered to do so. In short, the U.S. Government has a duty to protect its citizens from unjust attack, and if it can fulfill its protective duty only by requiring soldiers to promise exercise indiscriminate obedience, then it ought to require soldiers to promise to exercise indiscriminate obedience.

But is it really the case that the US government can fulfill its protective duty only if it requires soldiers to promise to exercise indiscriminate obedience? Well, it is logically possible that government can fulfill that duty absent such a requirement: there is no doubt some very distant possible world in which, for every war the US government justly fights, each and every soldier realizes that he will fight in a just war, and so willingly participates absent any promise to do so. But this merely logical possibility is beside the point. The question at issue is what government must do if it is to fulfill its protective duty in the actual world, in foreseeable circumstances, holding the human condition constant. In the actual world, we can't expect anything like a pre-established harmony between what government does, justice requires, and soldiers happen to believe to be just. We have to fashion the social role of soldier and its concomitant demands in view of widespread disagreement within government and society about the moral status of any war the United States wages, a bewildering diversity of arguments for and against the justice of those wars, not to mention selfishness, ignorance and pigheadedness on the part of the living breathing human beings who inhabit the social role of soldier. Given these far from ideal conditions, is it the case that government can do justice to its citizens only if it requires soldiers to exercise indiscriminate obedience?

We cannot reasonably adjudicate questions of this sort merely by armchair reflection. Given that any answer ranges over the mental states of some millions of diversely committed and differentially interested human beings, extends over long periods of time, and covers dizzyingly complex and difficult circumstances, we would need large amounts of empirical evidence to reach a sensible answer. I am unable to provide that evidence ... and doubt very much whether anyone else is able to either. This severely limits the dialectical options available to advocates of the Soldier's Rationale. Indeed, in the absence of evidence, I see only one rather unsatisfying dialectical option, viz., an appeal to the authority of the soldiers to whom the current topic most directly applies. How so?

As I mentioned at the outset, in my experience, civilians and soldiers who reflect on the topic at hand tend to diverge sharply in the conclusions they reach. My guess is that this divergence can be explained in significant part by widely differing estimates of the consequences of the alternatives. Civilians tend to believe that the military should be able to manage any problems that result from allowing soldiers to exercise discriminating obedience. Complications there will be and inefficiencies as well but nothing that good training and competent leadership cannot negotiate. By contrast, soldiers tend to believe that the envisioned change in the entry conditions to the social role of soldier would require a wide-ranging reconstitution of military culture and that this reconstituted culture would likely be militarily debilitating. To put the point autobiographically: in my experience, once it becomes clear in conversation that you believe that any and every soldier should be allowed to disobey a legal order to fight that has been issued by the duly elected civilian authorities, your military interlocutor is likely to proceed from polite toleration of another hare-brained scheme airily bandied about by an ivory tower intellectual to incredulity at the dangerous stupidity of the proposal to insouciant dismissal given that its never going to happen anyway. Frankly, the civilian perspective is so far outside the bounds of possibility that it takes a bit of effort to scare up interest in the topic. Why?

Consider the following illustrative concerns. The primary function of the US military is to wage war. Success in war is possible only if large numbers of diversely committed and differentially motivated human beings collectively enact a complex plan under the most difficult conditions. That kind of collective enactment is possible in the actual world only given widespread obedience to the orders of superiors who are guided by that plan. Obedience is a functional necessity – the “cement” that holds the military apparatus together when its enemies most assiduously try to take it apart.<sup>1</sup>

Given this functional necessity, willful disobedience of any sort is an extremely serious matter. No doubt isolated cases of disobedience needn't be debilitating. But a general, and generally recognized, right to disobey on matters that directly impinge on the military's very reason for being is institutionally suicidal. If Private Jones repudiates the orders of the President of the United States, the Secretary of Defense, The Joint Chiefs of Staff, all the way on down to his red-in-the-face Platoon Commander, if all of his fellow privates, corporals, sergeants, and so on are also permitted to do so, if recognition of this permission permeates military culture and doctrine, if the moral identities, mental habits and emotional attachments of Private Johnson and his comrades are shaped by that reconstituted culture, we cannot reasonably expect our military to act with the kind of coordinated purpose required for success in war.<sup>2</sup>

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1. See, for example, Orlando Figes' description of the role of military discipline and obedience to superior orders in the French, British and Turkish victory over the Russians at the River Alma during the Crimean War in **The Crimean War**, (New York, NY: Metropolitan Books, 2010), pp. 216ff.

2. See George. R. Lucas, “Advise and Consent,” p. 154.

A general permission on the part of soldiers to repudiate the legal demands of legitimate authority would likely engender a cascading series of very troubling secondary and tertiary effects. Soldiers who refuse to fight in unjust wars will find many other opportunities for principled disobedience. Disobedience metastacizes. This is not a matter of logic, but of fact. Although we might hope to quarantine the right to disobey so that it applies only to participation in unjust wars, we might find that we cannot achieve that result: a soldier might find a legal order that has nothing to do with participation in an unjust war to be far more palpably and egregiously unjust – and so more worthy of dissent – than he finds a legal order to participate in an unjust war. If a 19 year old private armed with a G.E. D. and access to the Huffington Post may refuse to fight in a war declared to be just and necessary by a democratically elected government, we should hardly be surprised when a 19 year old who watches Fox News refuses to comply with a policy that mandates him to room with a gay soldier, or rules of engagement that require him risk the lives of his comrades to avoid killing non-combatants, or an order to deploy for the next twelve months even though his distressed and lonely wife is due in six weeks, his beloved mother is terminally ill, and his only child disintegrates at the prospect of another long absence.

It's reasonable to fear that the cascading consequences of a generally recognized right to discriminating obedience would trickle into the innermost interstices of small unit relations – the very core of a modern military. After all, when Private Jones refuses to deploy, Private Smith has to take his place. This will make Private Smith very mad ... not only because he has to leave his wife, mother, and child for the next twelve months, but because he suspects that Private Jones's assertion of moral integrity is in fact a selfish or self-deceptive rationalization. Given that there is no way to prove him wrong, he is likely to persist in this suspicion. If there are lots of Private Joneses, then there will be many angry Private Smiths. There might be some dead Private Smiths as well, not to mention Johnsons, O'Connells, and so on. After all, Private Jones might possess necessary skills in which Private Smith is inexpert. In war, this kind of skill differential can have lethal consequences. So now Smith's family and the surviving members of Smith's platoon are both aggrieved and incensed. This is not good for morale. It is just as bad for recruitment and retention. It's a great way to break a military the effectiveness of which depends on the willingness of its soldiers to fight when, only when, and as the civilian authorities dictate.

Of course, this could all be a hyped fantasy, fear-mongering, nothing of the sort will happen. Once we have ensconced in military culture and doctrine general acceptance of a right to exercise discriminating obedience, soldiers will exercise that right responsibly and sincerely. Their replacements will be equally skilled. The family members of deceased replacements will be understanding. Nothing to see here, just move on. Perhaps. But then again, perhaps not. Plausibly, given this uncertainty, given the fragility of cultural norms that have been incrementally developed in

military institutions over decades, given the costs of getting the wrong result, we should respect the testimony of soldiers on this score. They are naturally far more attuned to the dangers of disobedience and insubordination than are, say, civilian philosophy professors whose experience with disobedience often extends no further than their adolescent children. If military professionals generally insist that permitting soldiers to exercise discriminating obedience would compromise morale, good order and discipline, and thereby military readiness, we have excellent reason to credit their testimony and so conclude that government cannot actually fulfill its protective duty without requiring soldiers to promise to exercise indiscriminate obedience.

(Ad 4): Note, however, that even if we grant that government has a duty to maintain a robust and subordinate military, and even if we stipulate that government can do so only if soldiers exercise indiscriminate obedience, it does not follow that government may *actually* require soldiers to promise to exercise indiscriminate obedience. For all I've argued so far, it's epistemically possible that the moral cost of a robust military is too high such that government has no moral option but to make do with a military that is compromised by debilitating morale problems and potentially rampant insubordination. As I see it, what advocates of the Uniform Perspective need to show is, not merely that government cannot fulfill its protective duty without requiring soldiers to exercise indiscriminate obedience, but that government's protective duty has normative priority over conflicting normative consideration. Granting at the outset the extreme difficulty in justifying any such priority,<sup>1</sup> I'll lay out the basics of a case for privileging government's protective duty.

Presumably, the greater the good one has a duty to protect, the greater the normative weight of that duty. If I have a duty to protect my child from being killed and a duty to prevent some work of art from being destroyed, and if the only way that I can protect my child is by destroying the work of art, then, other things equal, I ought to destroy the work of art. This is because any child has far greater worth than any work of art. (So far as I can tell, all cases of justified defensive violence include some such implicit reference to the comparative worth of what's defended.<sup>2</sup>)

It seems to me that advocates of the Soldier's Rationale must appeal to some (inevitably treacherous) claim about comparative worth – now applied to polities rather than individuals. How so?

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1. It would no doubt be most satisfying were advocates of the Soldier's Rationale to pull out of some dialectical bag of tricks an argument that *demonstrates* the priority of government's protective duty over its duty not to exact wrongful promises. I have no idea how they might pull that off. Indeed, I'm confident that epistemically competent and morally well-formed peers will reasonably differ as to how we ought to weigh the competing considerations. Similarly, however, for any other claim in this vicinity, e.g., the claim that government's protective duty must give way to the prohibition on exacting wrongful promises.

2. See generally David Rodin, **War and Self-Defense**, (Oxford: Oxford University Press, 2005).

The normative weight of government's protective duty depends in some significant part on the moral status of the polity that government has a duty to protect. But, put bluntly and dogmatically, the United States is a comparatively well-functioning liberal democracy and so an exceedingly rare collective achievement. It realizes many very important rights for large numbers of human beings – the right to freedom of worship, to life, to democratic participation, and so on. Because the U.S. Government has a duty to protect a most excellent kind of polity, its protective duty has very great normative weight. Presumably, the greater the weight of that duty, the more demanding the commitment government may exact from the soldiers who are vocationally dedicated to its defense. So when we try to determine whether government's protective duty should take precedence over its obligation not to exact otherwise wrongful promises, we should bear in mind the normative importance of the rights that the U.S. government effectively protects, as well as the number of human beings whose rights the U.S. government protects. Our central question is whether the normative weight of the rights the U.S. government protects by requiring soldiers to promise to exercise indiscriminate obedience outweighs the normative weight of requiring soldier to make a promise that might require them to kill the innocent.

Note that this comparative judgment does not depend on the claim that the US government is a particularly reliable judge of the morality of war – more reliable, say, than the soldiers who wage that war. Correlatively, the Soldier's Rationale need not depend on the claim that soldiers should defer to government because doing so increases their likelihood of participating in just and only just wars. It certainly need not depend on the claim that the US government is a more reliable judge of the morality of war than alternative institutional agents like the U.S. Conference of Catholic Bishops, or some colloquy of professionals philosophers, or the International Criminal Court. Even if the US government is a very imperfect deliberator, its protective duty is very great and so counts heavily in favor of exacting demanding commitments from the soldiers who are vocationally dedicated to defending it.

Note as well that this formulation of the Soldier's Rationale enables us to neutralize one consideration that might seem to count against the Uniform Perspective. With some regularity, critics object to the Uniform Perspective on the grounds that it must extend to soldiers who serve morally corrupt regimes – Hitler's or Saddam's. But the Soldier's Rationale need have no such implication. Presumably, the lesser the moral status of the polity soldiers promise to defend, the less demanding the commitment government may exact from those soldiers. Presumably again, only a sufficiently rights-respecting government has a powerful enough protective duty to be permitted to require its soldiers to exercise indiscriminate obedience. Indeed, certain polities are barely worth defending at all, if at all – Nazi Germany or Communist North Korea. Those regimes may not require their soldier's to exercise indiscriminate obedience –

though of course they will. But then morally serious human beings will refuse to comply with such an unjust demand – as in the oft-mentioned case of Franz Jagerstatter.

Now it seems that one of the arguments that I earlier articulated against the Uniform Perspective directly rebuts this line of argument. As I mentioned earlier, McMahan holds out the hope that allowing soldiers to disobey legal orders to fight in unjust wars makes it more likely that the U.S. wages just and only just wars. If he's correct about that, it's very plausible to suppose that the balance of considerations tilts decisively in favor of discriminating obedience, for waging an unjust war is just about the worst thing governments can do. The government's duty to refrain from killing the innocent must trump its duty to protect against unjust attack, however excellent the polity it protects.

But it's doubtful that permitting soldiers to exercise discriminating obedience would have the happy consequence McMahan envisions. Why? Imagine a US military reconstituted in such a way that soldiers are firmly committed to fight only in just wars and morally permitted to refuse to fight in unjust wars. Those soldiers are then ordered to fight. They do their best to determine whether they have been ordered to fight justly. They cast about for relevant arguments, for and against. What will they actually find? A cacophony of voices confidently advocating a multiplicity of arguments that purport to vindicate widely divergent and contradictory conclusions. This blizzard of disagreement characterizes the run-up to every war with which I am acquainted and will likely do so for the foreseeable future. Do we have any reason to believe that soldiers so circumstanced will be able to find their way through the inevitable dialectical morass to solid moral ground? Can we reasonably expect that the conclusions those soldiers reach will reliably track the actual justice of the wars they are ordered to fight? I don't doubt that some soldiers will be able to do so. That is, I believe that it is possible for some soldiers justifiably and correctly to conclude that they have been ordered to fight in an unjust war. Soldiers need not be, as is sometimes asserted in this context, “invincibly ignorant” of the justice of the wars they fight.<sup>1</sup>

There is, however, no guarantee that soldiers will reach that happy state. Indeed, I don't see any reason to believe that soldiers have more reliable access to the moral truth than the population at large...which is to say that they will be no less divided than the rest of us. If we citizens invariably disagree about the morality of the wars in which we are embroiled, we can't expect a superior result from soldiers. Their conclusions will mirror our own. That is, for any war, *just or unjust*, some significant part of the military will disagree. But if disagreement among civilians is endemic to war, if disagreement among soldiers mirrors that among civilians, if allowing discriminating obedience promotes resistance, and if the prospect of resistance from

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1. Vitoria.

soldiers deters government from waging war, then government will *always* be deterred from waging war. But then allowing soldiers to exercise discriminating obedience will not help government wage just and only just wars. Rather, allowing soldiers to exercise discriminating obedience impedes government from waging any war, just or unjust. It's hard to see how this paralyzing result counts against the Uniform Perspective.<sup>1</sup>

If this is correct, then the second of the two arguments I earlier articulated against Uniform Perspective does not persuade. As I see it, if we reject the Uniform Perspective, we should not do so in order to cajole government into waging war more justly than it otherwise would. Allowing soldiers to disobey legal orders to fight will have no such consequence. Rather, we should do so for more ethereal reasons: if we should reject the Soldier's Rationale, then we should do so because of the inherent wrongness of promising to fight in unjust wars.

Let me comment for a moment, not on McMahan's argument but on the hope that seems to drive it. The hope that dissenting soldiers might might impede government from waging an unjust wars seems quite inapposite to a comparatively well-functioning liberal democracy like the United States. After all, if the arguments against a given war are compelling enough to persuade many soldiers to dissent, and if the prospect of significant dissent by soldiers deters government from waging war, then the same compelling arguments should persuade large numbers of citizens as well. Those citizens have various means, both formal and informal, by which they can impede government from launching an unjust war. There is of course no guarantee of success. Given the damage to the civilian control of the military that would surely be engendered by the refusal of large numbers of soldiers to fight in a war determined to be just and necessary by President and Congress, given that civilian control over the military is a cure for many very great evils, it seems far the better part of practical wisdom to leave the job of preventing government from waging unjust war to the population that elects the President and Congress. If we civilians cannot stop our government from waging war unjustly, we shouldn't expect the military to do so for us.

This argument raises one further consideration that bears on whether we should privilege government's protective duty over its duty not to exact from soldiers an otherwise morally wrongful promise. In my earlier discussion of the consequences of giving soldiers a general right to disobey orders to fight in unjust wars, I focused on the militarily dysfunctional consequences of disobedience. Of course, that discussion had a moral point: if according soldiers that right impedes government from fulfilling its protective duty, then we have powerful moral reason not to accord that right. Here I

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1. Recall that the morally desired end state is not that the US government never wages war, but that it wages just and only just wars. If we wanted to implement some policy that prevented the US government from waging war, then we'd simply turn our weapons into plowshares, not maintain a military but prevent it from fighting.

want to focus on a distinct consideration: there are more direct moral costs to the military dysfunctions engendered by a right to disobey. I will be very brief. In war, discipline is required for moral restraint: soldiers will exercise due moral restraint while waging war only if they are firmly committed to obeying the demands expressly imposed on them by their military and civilian superiors – those whose moral sensibilities have not been dulled by combat, or who are better positioned to take a broader view, or the like. (Of course, proper discipline by no means suffices for due restraint.) Now if a general right to disobey legal orders to fight in unjust wars elides into a general willingness to disobey legal orders on moral grounds, and so compromises military discipline, we cannot expect elevating moral results. Plausibly, a military free to disobey legal orders on moral grounds is more likely to wage war in an unjust manner than a military that is tightly bound to comply with the legal constraints imposed by elected representatives in a moderately well-functioning liberal democracy.

How could it be that greater latitude for morally grounded disobedience to legal orders lead to less restrained conduct in war? Well, soldiers are often tempted on moral grounds to disobey legal orders that constrain the manner in which they fight.<sup>1</sup> As recent news reports regarding the counter-insurgency now being waged in Afghanistan testify, many soldiers are much distressed by the fact that the current rules of engagement require them to assume great risk in order to avoid endangering noncombatants.<sup>2</sup> Many chafe under these rules, and some soldiers seem even openly to defy them. Nevertheless, we rightly expect soldiers to comply with those orders: if the President and Congress appoint General Petraeus to determine how the counter-insurgency in Afghanistan is to be waged, and if he orders his subordinates to risk their own lives in order to avoid 'collateral damage,' then they had better do so ... even if they regard those orders as morally flawed. That we can actually expect them to do so is one of the most important moral facts about our military and one very powerful reason to be concerned with the cascading consequences of discriminating obedience.

It seems to me that a judicious assessment of the various considerations I have

1. "That burden becomes ever greater in an insurgency, in which the "empty battlefield" of the World Wars becomes a crowded city street or marketplace where enemies and innocents intermingle, and the same aggression that produces victory one moment can create an atrocity the next. After the roadside bomb cost one of Powers's men his arm, he recalled, Iraqi civilians gathered to gawk and jeer. "The locals were clapping and cheering." A machine gunner on one of Powers's Humvees began to lose control. "He was getting ready to open up with the .50-caliber into a crowd of about two or three hundred," Powers said. "I had to yell and yell, but he was very angry, with tears in his eyes, and he couldn't hear very good because he had some liquids coming from his ear [from the concussion of the roadside bomb]. I had to hit him in the leg and pull him down out of the hatch to get him away from the weapon." Powers physically hauled the man off the machine gun, calmed him down, and then had to put him right back on the gun to watch for insurgents. "He was mad, he was shaking, but he didn't fire." "Intimate Killing," **National Journal**, 7/21/2007.

2. For a recent article exemplifying this fact, see "The Last Patrol," *The Atlantic Magazine*, November 2010, accessible at: <http://www.theatlantic.com/magazine/archive/2010/11/the-last-patrol/8266/>

discussed can lead an epistemically competent and a morally sensible peer to conclude that the government ought to require soldiers to exercise indiscriminate obedience. Government's protective duty has very great moral weight; the fact that the US government may require soldiers to exercise indiscriminate obedience does not imply that the just any government may do so as well; the main alternative will not lead the US government to wage war more justly than it otherwise would; soldiers who promise to exercise indiscriminate obedience needn't embrace the prospect of participating in an unjust war as a good but as a potentially tragic moral necessity; requiring soldiers to exercise indiscriminate obedience maintains the military discipline required to conduct war with due restraint. Weighing against this broad set of considerations is the fact that promising to exercise indiscriminate would under normal conditions be wrongful: those who promise to exercise indiscriminate obedience thereby assume an obligation that might require them knowingly to kill innocent human beings. If made seriously, this promise requires soldiers to form a very troubling conditional intention: at the time of entering the social role of soldier, and at every time thereafter, soldiers must be willing to fight in wars they know to be wrong if ordered to do so.

It's obvious that making a promise that might require one to kill innocents would normally be very wrong. Personally, the prospect of making a commitment that morally binds me knowingly to kill the innocent engenders moral vertigo. But we're not asking about a normal promise made under normal conditions. In normal conditions, making a promise that might bind one to kill innocents isn't a functional requirement of institutions that protect crucially important rights. But that's just what's at stake in this discussion. We're asking whether government may require that those who occupy a very distinctive social role to make a promise directed at unusual and extreme conditions.

Given the moral purpose served by such a promise, it's reasonable to conclude that it may: the rights that soldiers enable government to protect are very important, the numbers extensive, and the damage to their character need not be great, whereas it's uncertain that soldiers will actually be required to fight in wars they realize are unjust.<sup>1</sup> Given the normative weight of the rights government has a duty to protect, given the uncertainty of any soldier's actually having to fight in what she realizes is an unjust war, government may require soldiers to exercise indiscriminate obedience. Of course, there is no formulaic way to reach that conclusion, much less some argument that convinces all comers. All we can do is lay out the relevant considerations, make some difficult comparisons, and then judge as best we can. Some moral and epistemic peers will judge that the balance tilts in favor of indiscriminate obedience. Some will

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1. Why uncertain? Government might not wage any unjust war during their service, or it wages an unjust war but those who are ordered to fight believe it to be just, or those who realize that it's unjust aren't ordered to fight, or they are ordered to fight but granted a waiver, or they aren't granted a waiver but are exempted on other grounds – that they physically incapacitated, for example.

reasonably demur.

This fact of reasonable disagreement raises one final point in favor of the Uniform Perspective. In a liberal democracy, we do what we can to avoid forcing others to violate their sincerely held moral convictions – particularly when those moral convictions are reasonable. That is, we ought to accommodate each other as best we can even as we fulfill important moral obligations. Given this commitment to accommodation, we ought not force any citizen to inhabit a social role the entrance conditions of which require them to violate sincerely held moral convictions. More particularly, given that some citizens reasonably believe that they ought not promise to exercise indiscriminate obedience, we ought not require anyone to become a soldier. Conscription conjoined to indiscriminate obedience would constitute a grave injustice. As I earlier noted, this is entirely in keeping with the Uniform Perspective: military service is voluntary, and it ought to remain so in part by virtue of the morally treacherous obligations soldiers incur.

### *Critical Comments on the Soldier's Rationale for the Uniform Perspective*

I have articulated what I regard as the most powerful rationale for the Uniform Perspective. Nevertheless, there are excellent reasons to believe that this Soldier's Rationale is not compelling. I'll conclude by specifying several objections to the Uniform Perspective that most interest me. No doubt there are others worth discussing.

First, the Soldier's Rationale reinforces one of the most dangerous temptations raised by violent military conflict. When human beings wage war, communal membership powerfully shapes moral perception. When communal membership shapes moral perception, we are easily led to disregard or downplay the impact of our actions on those who belong to the relevant outgroups. When 'we' are unjustly attacked by 'them,' when those with whom we are bonded are brutalized and degraded by outsiders, the perpetrators can appear to have less than no worth and be treated accordingly. This dynamic pervades violent conflict, from the response of whole populations to external aggression to face-to-face combat between small units. (As James McDonough writes in his excellent memoir of the Vietnam War: combat "...is the suffering and death of people you know, set against the background of the suffering and death of people you do not."<sup>1</sup>)

No morally serious understanding of war can afford to downplay the distortions engendered by our tribal tendencies, our temptation to indulge in morally troubling manifestations of group egoism, and the difficulty of resisting those temptations when faced with mortal threats to our communal bondsmen. Unfortunately, the Soldier's

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1. James McDonough, **Platoon Leader**, (Novato, CA: Presidio Press, 1985), p. 138.

Rationale indulges this tendency to group egoism. After all, it appeals to the moral importance of protecting the polity of which we are members as a justification for requiring soldiers to make a solemn promise to inflict what would otherwise be the most egregious of moral wrongs on outsiders. It's 'us' against 'them,' and some of us are required to kill some of 'them' even when none of them have done anything wrong. To return to my initial reflections on the military importance of moral formation: if we want soldiers, and particularly officers, to take moral formation seriously, this is pretty much exactly the message we don't want to send, much less encode into the moral DNA of soldiering.

Second, if there is a moral message that we should send to our soldiers, it's that they may honorably disobey even legal orders on moral grounds, albeit only under very stringent conditions. That is, soldiers should regard themselves as honor bound to obey the legal orders of their superiors unless they are certain that they have been ordered to commit a grave injustice. This self-understanding should apply generally, from wrongful acts of military violence to participation in an unjust war. So, for example, if a soldier is issued an order that he thinks might be gravely unjust, but he's not sure that it is, he ought to obey. Consider a sailor ordered to launch a missile at certain coordinates, from which point it will be directed by someone else towards its final destination. That sailor must know that his compliance might result in a grave injustice, and he might even harbor suspicions, but he simply has no way to make a determination either way. Despite his suspicions, he ought to obey. Only if he is justifiably confident that compliance would result in a grave injustice would he be permitted to disobey. Indeed, if he is certain, then he ought to disobey. As I see it, this broad understanding enables the military to help government fulfill its protective duty without thereby effacing the moral standing of outsiders.

Third, the Soldier's Rationale includes a very strong claim about the functional necessity of obedience to superior orders. And I don't know anyone who denies that the presumption in favor of obedience to legal orders is very strong. But that presumption is not absolute: military functionality does not preclude soldiers from disobeying legal orders under certain conditions. Indeed, it seems to me that there are more leeway for morally grounded disobedience to legal orders than the Soldiers Rationale allows.

Consider a rather mundane case. A Commanding Officer (CO) orders a crew chief to fix a plane as it should not, for technical reasons, be fixed. Despite repeated attempts to change his mind, the CO is impervious to correction and refuses to relent – he's certain that he is correct. The CO's order is clearly a legal order, since government has given COs the authority to make such determinations. But he is afflicted by certain deficiencies – technical ignorance as it turns out and probably also arrogance or overconfidence. As a consequence he issues a foolish order, one the crew knows would

be extremely dangerous to obey. So they disobey: they repair the plane as they know that it should be repaired, but report that it has been repaired as ordered.<sup>1</sup>

Now I've never met any military professional who thinks that the crew acted even slightly dishonorably. Indeed, most of those with whom I've discussed this kind of case believe that, if the crew is certain that the CO is wrong and obedience potentially fatal, then they not only may but ought to disobey. It seems, then, that the testimony of soldiers regarding the functional necessity of obedience is more nuanced than my earlier discussion indicated. And perhaps that very grudging and hesitant toleration of morally grounded disobedience indicates that allowing soldiers to exercise indiscriminate obedience needn't be militarily debilitating.

Fourth, we can further mitigate concern about the dysfunctional consequences of the circumscribed permission I favor by distinguishing sharply between the moral and the legal standing of discriminating obedience. Although soldiers should be morally permitted to exercise discriminating obedience under appropriately stringent conditions, government may still punish them even should they flawlessly exercise that permission. Why? Well, of course, not because they have done anything wrong or dishonorable. Rather, because we thereby deter soldiers from deceptively exercising their moral right – pretending to believe they've been ordered to fight in an unjust war when in fact they believe no such thing. The assumption here, which I grant, is that we cannot reliably determine whether or not a given soldier is justifiably confident that he has been ordered to fight in an unjust war, such that we must hold out the prospect of punishing all in order to deter the deceptive some. As I see it, the fact that government might have to punish soldiers who act in morally admirable ways is just one manifestation of the much broader truth that soldiering can be a tragic vocation in which moral virtue directly leads to personal loss.

Note, however, that this solomonic settlement would risk devolving from tragic necessity to schizophrenic farce absent at least one change in current practice. Soldiers who now refuse to fight in unjust wars may be, and have been, dishonorably discharged from military service. But if we change the moral requirements of soldiering to permit discriminating obedience, disobedient soldiers need not act dishonorably. Although government may have excellent reason to fine, dismiss, or even incarcerate soldiers who properly exercise their moral permission to refuse to fight, it's hard to see how dishonorably discharging soldiers for acting in morally permissible ways advances any legitimate aim. We shouldn't dishonor soldiers who are led to disobey by the very moral courage we otherwise expect them to exhibit.

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1. This case was related to me by LtCol Gary Slyman.

Now the claim that soldiers ought to exercise indiscriminate obedience might appear to bear a more than merely superficial resemblance to another claim about the moral status of soldiers that has recently engendered considerable disagreement between a number of theorists, that is, the claim that soldiers are moral equals. Because these two claims are easily conflated, it will be helpful to specify how they differ. So, to begin, what is this 'moral equality of soldiers?'

According to Michael Walzer, whose *Just and Unjust Wars* most famously articulates the concept, soldiers who fight for warring nations are "moral equals" in the sense that they have symmetrical belligerent rights.<sup>1</sup> Soldiers have symmetrical belligerent rights just in case they "have an equal right to kill,"<sup>2</sup> and they are equally liable to be killed. More particularly, those who fight in unjust wars have the same right to employ military violence as do those who fight in just wars. So, if A is an American soldier and I is an Iraqi soldier, and if the United States unprovokedly and unjustly attacks Iraq, then A has a moral right to employ lethal violence against I and I has a moral right to employ lethal violence against A. This despite the fact that A is helping to prosecute an assault that ought never have been launched and I is merely helping to defend his country fend off that unjust attack.

Now the claim that soldiers are moral equals is similar in at least one morally salient respect to the claim that soldiers ought to exercise indiscriminate obedience: both presuppose a certain kind of 'detachment' between the moral status of a given war and the acts performed by the soldiers who prosecute that war. How so? Well, it seems that soldiers can have symmetrical belligerent rights and liabilities only if the rights and liabilities of soldiers are *independent* of the moral status of the wars they help to prosecute. That A helps to prosecute an unjust war and that I helps to prosecute a just war does not make it the case that A's belligerent rights

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1. *Just and Unjust Wars*, p. 34.

2. *Just and Unjust Wars*, p. 41.

and liabilities differ in the slightest from I's. It seems that the claim that soldiers ought to exercise indiscriminate obedience presupposes a comparable kind of independence. After all, it seems that a soldier can be morally required to obey a legal order to fight in an unjust war only if the acts he performs in compliance with that order are not unjust and so do not possess the normative status of the war in which those acts occur. That is, soldiers are morally permitted to perform the very acts that constitute a war that ought never have been fought. With respect to both claims, the moral status of a soldier's participation in a given war is 'detached from' or 'independent of' the moral status of the war in which those acts occur.

Despite this important similarity, the two claims are by no means identical. This is a very good thing, since the doctrine of soldierly equality has been subjected to withering criticism and I take some of those criticisms to be decisive.<sup>1</sup> But the objections that have been lodged against the moral equality of soldiers are typically formulated in such a way that they need not undermine the claim that soldiers ought to exercise indiscriminate obedience. So I think, at least.

Well, then, in what morally relevant respects do the two claims differ? Two are worth noting, though the second is of particular importance.<sup>2</sup> First, the core element of the claim that soldiers are moral equals is a

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1. So, for example, David Rodin articulates an argument of the following sort. A necessary condition of the permissible use of lethal violence in self-defense is that lethal violence protects goods of sufficiently great normative weight. So, if soldiers are morally permitted to use lethal violence to defend the 'political sovereignty and territorial integrity' of their nation-state, then the political sovereignty and territorial integrity of a nation-state must possess sufficiently great normative weight. But this is not generally the case. Some nation-states are not worth defending. Some nation-states are worth defending, but soldiers are supposed to have the right to employ violence to defend against relatively trivial encroachments of political sovereignty and territorial integrity (as when a nation-state uses military violence to prevent the hostile takeover of uninhabited sovereign territory). Hence, it is not the case that soldiers who serve just any nation-state have an equal right to kill.

2. Now it might seem that we can articulate an argument that runs from the claim that soldiers are moral equals to the claim that we may require soldiers to exercise indiscriminate obedience. As I see it, while the claim that soldiers are moral equals is not identical to the claim that we may require soldiers to exercise indiscriminate obedience, the first claim that soldiers seems to imply the claim the second. (Or, more cautiously, if we grant that the first is true, then we lack compelling reason to deny the second.) After all, if soldiers are morally permitted to kill one another irrespective of the justice or injustice of the wars they prosecute, then it is hard to see why we may not require soldiers to fight in wars irrespective of their justice or injustice.

matter of moral permission: soldiers are morally permitted to employ military violence against other soldiers irrespective of the permissibility of the war in which they participate. By contrast, the core element of the claim that soldiers should exercise indiscriminate obedience is a matter of obligation: soldiers are morally required to comply with a legal order to fight irrespective of the moral permissibility of the war in which they have been ordered to fight. In that respect, the claim that soldiers are moral equals is much weaker than the claim that soldiers should exercise indiscriminate obedience. Second, the claim that soldiers are moral equals has a very wide scope: it applies to the soldiers who serve in pretty much any nation-state, though not necessarily to any and every combatant (say, members of tribes engaged in a melee over a watering hole). By contrast, the claim that soldiers should exercise indiscriminate obedience has a very narrow scope: it applies to soldiers in the United States military, but not necessarily the soldiers who serve in other nation-states. Of course, in this respect, the moral equality claim is much stronger than the indiscriminate obedience claim.<sup>1</sup>

Because this second difference will turn out to play an important role in the Soldier's Rationale, let me clarify. The Uniform Perspective on indiscriminate obedience is that American soldiers are morally required to exercise indiscriminate obedience, not that soldiers who serve in, say, the North Korean military are so obliged, much less soldiers who served in Hitler's Wehrmacht. About these latter claims, advocates of the Uniform Perspective can afford to be agnostic: they need neither affirm nor deny any claim about the moral obligations of soldiers who serve other nation-states. Of course, they might believe that soldiers who serve in other military organizations are similarly situated; they might welcome a more ecumenical result. Nevertheless, they are not committed to any broader

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1. Of course, this narrow understanding might well seem both parochial and problematic – problematic because parochial. After all, what principled reason could justify requiring American soldiers to exercise indiscriminate obedience that does not thereby also justify a comparable requirement for soldiers in other military organizations? But here we need to be careful: advocates of the Uniform Perspective need not deny that soldiers in military organizations that serve other nation-states ought to exercise indiscriminate obedience, or much less that they are permitted to do so. Indeed, they may grant that it is highly likely that the scope of the requirement applies more broadly than to American soldiers and invite others to formulate some argument that has a more ecumenical result. Nevertheless, advocates of the Uniform Perspective rationale can afford to be agnostic about the prospects for that aspiration.

claim along those lines.