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Dying for the state: the missing just war question?

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Abstract. This article introduces the problem of having to risk one's life for the state in war, asking first why this question is no longer asked in the just war literature and then suggesting five issues that relate to this question: 1) that of individual consent, 2) whether or not any state can be justified in obliging its citizens in this regard and whether or not the type of government is important, 3) whether or not the problem of the obligation differs between conscript and volunteer armies, 4) the problem of political obligation and how any individual could be justifiably obliged to risk his or her life for the state in war, and 5) the question of whether a citizen may be obliged to go into any war. The argument is that these questions are no longer given much attention in the just war literature because of the way that the concept of proper authority has come to be understood. The article concludes by suggesting that the problem of the 'obligation to die' should be included in our understanding and use of just war theory and the ethics of war.

Introduction

On 16 December 2008, Frank Gaffney, the former Assistant Defense Secretary of the US, speaking about the war in Iraq and defending the decision to go war and send over four thousand American soldiers to their deaths, said on national television, 'It is regrettable that they had to die, but I believe they did have to die [. . .] The danger was inaction could have resulted in the death of a great many more Americans, more than 4000. And that's the reason I'm still delighted that we did what we did [. . .]'[1] Gaffney seems to believe that these soldiers had an obligation to die – 'they did have to die' – but was this obligation just? He tries to justify their deaths by claiming that they had to die for the greater good, that a few deaths of American soldiers is preferable to even more deaths of American citizens. These are highly questionable claims, particularly in light of the war he is defending. Indeed, how is one to explain the justifiability of these deaths when there is so much doubt over the actual reasons for the war, the costs of the war and its justifiability? If the war was unjustified, was the state justified in sending so many soldiers to their deaths? What if the war was justified? Does it matter that those who died were voluntary enlistees and not conscripted soldiers? What about those who enlisted, and their access to making an informed choice about the need for this war and thus of signing up for dangerous duty? While the death toll of American soldiers in Iraq has led to significant moral outrage in the US, it is

[1] MSNBC Hardball with Chris Mathews, 16 December 2008.

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unclear how to incorporate this moral discourse into our understanding of the ethics of war or of the justifiability of this particular war. During the Vietnam War, the combination of an unpopular war and a national draft encouraged political theorists to evaluate the problem of being sent into war. In this climate, Michael Walzer wrote the seminal article on the subject, 'The Obligation to Die'.[2] Since then there has been remarkably little analysis of the moral (and political) issues that involve either the ability of the state to justifiably oblige its citizens to risk their lives on its behalf, or the justifiability of risking one's life for the state or its equivalent by being sent into war.[3] The silence in the ethics of war literature on this subject is all the more surprising as the United States has found itself in another unpopular war, this time joined by the UK, in Iraq and many Nato countries are fighting another war in Afghanistan. It is all the more intriguing that the justifiability of this obligation has not been addressed considering the lengths to which the Bush Administration has tried to hide from view the coffins and funerals of American soldiers who died in Iraq.[4] Clearly the Bush Administration realised the potential moral fallout they could suffer by allowing the public to see the death toll of the war, a lesson they may have learned from the Vietnam War.

To be clear, at issue is not a general obligation to military service but an obligation to do so in war and be faced with risking one's life in the process. Indeed, it was on this point that Peter Paret calls for analysis of the obligation that Walzer called, with rhetorical flourish, the obligation to die.[5] The obligation to die is not really an obligation to die but an obligation to be sent into harms way in war. In this regard, Walzer notes that there is a difference between 'risking one's life in war [and] losing it [. . .]'[6] The difference is one of risk, but since Walzer is concerned with the moral problem of actually losing one's life in war the issue of risk is irrelevant to his argument. Yet, the risk factor may suggest that the problem is not really about obligation but of risk. However, while calculating the morality of dying according to risk analysis could mitigate the morality of being sent into harm's way, it does not by itself provide a justification for being in that situation in the first place. As it is used here, the term the obligation to die is shorthand and refers to a limited scope of political obligations related to what Samuel Pufendorf described as being obliged by the sovereign to be exposed to the danger of death in war.[7]

[2] Michael Walzer, *Obligations: Essays on Disobedience, War and Citizenship* (Cambridge, MA: Harvard University Press, 1970).

[3] This article raises questions that I address in greater length in, Ilan Zvi Baron, *Justifying the Obligation to Die: War Ethics, and Political Obligation with Illustrations from Zionism* (Lanham, MD: Lexington Books, 2009).

[4] See for example the American Civil Liberties Union's legal request for access to such information, noting that the Defense Department was, 'Banning photographers on US military bases from covering the arrival of caskets containing the remains of US soldiers killed overseas', *ACLU Releases Navy Files On Civilian Casualties In Iraq War* (7/2/2008), {http://www.aclu.org/natsec/foia/35878prs20080702.html} accessed on 17 October 2008). See also the National Security Archive at the George Washington University, {http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB152/index.htm} accessed 17 October 2008.

[5] Peter Paret, Understanding War: Essays on Clausewitz and the History of Military Power (Princeton, N.J.: Princeton University Press, 1992).

[6] Michael Walzer, *Obligations: Essays on Disobedience, War and Citizenship* (Cambridge, MA: Harvard University Press, 1970), p. 83.

[7] Samuel Pufendorf, in James Tully (ed.), *On the Duty of Man and Citizen*, trans. Michael Silverthorne (Cambridge: Cambridge University Press, 1991), p. 158. He uses the term 'compel' instead of obliged.

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Regardless of the slippage that his term suggests between obligations relating to the risk of death, to death itself and to going to war, Walzer's term offers a rhetorical power that is worth keeping and reflects the ultimate seriousness of the issue.

Moreover, this rhetorical force highlights the absence of this problem from the contemporary literature on the ethics of war and on just war theory. This literature recognises that since war is a human activity it should be subject to moral considerations. These considerations are distinguished by the two categories of *ius ad bellum* (the justice or laws of war) and *ius in bello* (the justice or laws in war). Falling within these two categories we find the general tenets of the just war tradition: Under what conditions may another human kill another human and not be guilty of murder? Why, if at all, would killing in war be justifiable? Under what conditions may a state be justified in declaring war on another state? What are the rules or norms for fighting a war? According to the tradition, a war is just if the criteria of 'just cause, right intention, proper authority, last resort, effectiveness, proportionality, [and] discrimination' are met.[8]

The theory thus outlines the application of morality to war, and the contemporary literature generally uses the just war tradition to form sets of guidelines for the moral evaluation of a particular conflict or a particular type of conflict; sometimes the literature critiques one or more of these guidelines or explains the contribution to the tradition of certain thinkers.[9] What is, however, absent in the way that *ius in bello* and *ius ad bellum* are being used is the question of having to risk one's life in war. Even the most recent books that address either just war thinking[10] or the ethics of war[11] pay scant attention to the morality of having to die for the state in war and Gaffney's misguided attempt at proportionality confuses proportionality into a kind of *ius in bello* body count,[12] whereas the problem of the obligation to risk one's life in war is primarily related to *ius ad bellum*.

For every person that dies on the battlefield, there are at least two fundamental moral issues at stake. The first is that of the individual who kills, and the other is that of the individual who is killed. For every person killed a person dies. This blatant truism is perhaps so obvious that most contemporary texts on the ethics of war do not even mention it. In some ways it is slightly absurd that this statement needs to be made. Yet, the absence of literature on this issue is staggering considering how much is written on the ethics of war. Why is there so little contemporary work on this subject, and what questions are not being asked? I argue that the answer to the first question has to do with the acceptance of war in the international system and of the way that the proper authority tenet in just war theory has come to be read as a justification of the state's authority to wage war. If the state has the proper (legitimate may be a better word) authority in this regard, then surely it follows that it has to be able to justifiably oblige at minimum certain segments of its population into war. If, however, this authority is not taken

[8] Chris Brown, *Sovereignty, Rights and Justice: International Political Theory Today* (Oxford; Malden, MA: Blackwell Publishers, 2002), p. 104.
[9] For examples of these different ways of using just war theory see, Jean Bethke Elshtain, (ed.), *Just War Theory* (Oxford: Basil Blackwell, 1992).
[10] Alex J. Bellamy, *Just Wars: From Cicero to Iraq* (Cambridge: Polity Press, 2006).
[11] Christopher Coker, *Ethics and War in the 21st Century* (London: Routledge, 2008).
[12] Proportionality is more complex then this. See, Thomas Hurka, 'Proportionality in the Morality of War', *Philosophy and Public Affairs*, 33:1 (2005).

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for granted, then a cascade of deeply moral, political and philosophical questions follow over the nature or type of the obliging authority, the justifiability of the war, the type of army (volunteer or conscript), and, perhaps most complex of all, the problem of political obligation itself.[13] In an article it is not possible to address all of these topics in the depth that they deserve, but there is also no text that provides an account of what questions are not being asked in this regard, why they are not being asked and why they should be asked.

Consequently, I argue how the problem of the obligation to die has come to be taken for granted in the literature while also demonstrating that it has not always been this way, thereby providing a philosophical and ethical exploration of the obligation to be sent into war and face the danger of death. Subsequently, I introduce and survey the ethical questions that we need to be asking in order to bring this deep political theory about obligation and death into applied ethical practice. I suggest that we take this obligation for granted because of the way that the tenet of proper authority has come to be understood. Consequently, this article provides a re-familiarisation of the claims that lie behind the proper authority tenet in classical just war thought, focusing on how this tenet relates to identity, theories of state and political obligation. Moreover, the approach taken here begins with problems of political philosophy and then moves into the applied ethical issues pertinent to war. As such, I suggest that it is important to understand the philosophical background to how ethical arguments are made and recognised to be somehow appropriate to contemporary conditions. In providing this normative re-engagement with some of the core assumptions contained in the ethics of war and just war theory, I address future research questions that ethics of war thinkers should be addressing.

Things aren't always obvious

For Aristotle it was a given that part of being a citizen involved going to war and possibly dying in the process. Socrates makes the connection quite clear between being a good citizen and risking one's life for the state in war.[14] Interestingly, what Aristotle does say is that it is glorious to die in battle, since to die in war is to become a hero, and heroes are remembered and it is better to be remembered than forgotten.[15] This warrior ethos, recognising the glory of death in battle,

[13] Some notable texts on political obligation are, James S. Fishkin, *The Limits of Obligation* (London: Yale University Press, 1982); Margaret Gilbert, *A Theory of Political Obligation: Membership, Commitment, and the Bonds of Society* (Oxford: Clarendon Press, 2006); John Horton, 'In Defense of Associative Political Obligations: Part One', *Political Studies*, 54 (2006), ———, 'In Defense of Associative Political Obligations: Part Two', *Political Studies*, 55:1 (2007); Carole Pateman, *The Problem of Political Obligation: A Critical Analysis of Liberal Theory* (Chichester: Wiley, 1979); Hanna Pitkin, 'Obligation and Consent', in Peter Laslett and W. G. R. Runciman and Quentin Skinner (eds), *Philosophy, Politics and Society (Fourth Series)* (Oxford: Basil Blackwell, 1972); ———, John Plamenatz, *Consent, Freedom and Political Obligation*, 2nd edn (London: Oxford University Press, 1968); A. John Simmons, *Moral Principles and Political Obligation* (Princeton: Princeton University Press, 1980).

[14] Plato, *The Last Days of Socrates: Euthyphro, Apology, Crito, Phaedo*, trans. Hugh Tredennick and Harold Tarrant (London: Penguin Books, 2003).

[15] Aristotle, *The Nicomachean Ethics*, J. L. Ackrill (ed.), and trans. J. O. Urmson and David Ross (Oxford: Oxford University Press, 1998).

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characteristic in Homer's *Iliad*, was the explanation behind why anybody would even consider dying in war. They died as citizens, but in dying they became heroes. Dying in war was an obvious possibility for the citizen, but Aristotle still felt some need to explain *why* anybody would want to die in war even though he does not seem to find it necessary to explain how the obligation is justifiable. The obligation simply exists by definition of being a citizen: a theory of obligation is not necessary.[16]

However, for St. Augustine, one of the founders of what became known as the just war tradition, the obligation was not so obvious. In fact, Augustine, and then Thomas Aquinas among other Christian just war thinkers, was greatly concerned with this problem, since it had to be explained how the sovereign could without prejudice to his soul send subjects to their possible death in war, and how those sent could risk their lives knowing that in doing so and in being sent to kill others at the same time, they would not be risking their souls either. The problem of being sent to risk one's life in war was, for Aristotle a problem relevant primarily to the politics of heroism, but for Augustine it was a serious problem of political obligation. Indeed, many of the classical just war theorists and numerous political philosophers took this obligation quite seriously, and did so in part by elaborating on the concept of proper authority, although in significantly different ways.

Augustine's account of the proper authority in relation to war is rooted in his overarching concern about individual salvation. He recognises war to be a horrifying event, even if the waging of war brings about peace.[17] Augustine argues that our lives must be lived in order to achieve salvation, and that obedience is important in this regard, even when war is concerned, and this is how he argues that anyone ordered into war by the proper authority must go. Augustine writes:

> But when a lawful soldier, obedient to the power under which he has been lawfully placed, slays a man, he is not guilty of murder according to the laws of his city. On the contrary, if he does not do so, he is guilty of desertion and contempt of authority. If he had done this of his own free will and authority, however, he would have fallen into the crime of shedding human blood.[18]

In this passage Augustine does many things. He implies that it is necessary to have the proper authority (that is, 'the power', which I take in this context to mean the same as authority) in order to wage war, because otherwise the war and the killing it involves would be wrong if not criminal. In addition, he states that nobody can go to war as an individual. This argument is traditionally assumed to mean that only states can fight a war, but in an Augustinian context, it also means that individuals do not have the moral ability to decide when one should fight. Augustine also emphasises that following the orders of the proper authority is an imperative. To disobey orders is just as much of a crime as if the soldier were to kill without orders. Consequently, Augustine makes no allowance for political

[16] Which is not to say that conscription in ancient Athens was unproblematic. See, Matthew R. Christ, 'Conscription of Hoplites in Classical Athens', *The Classical Quarterly, New Series*, 51:2 (2001). The problem of justifying an obligation to die is also taken up by Socrates in and immediately after his trial. See, Plato, *The Last Days of Socrates: Euthyphro, Apology, Crito, Phaedo*, trans. Hugh Tredennick and Harold Tarrant (London: Penguin Books, 2003).

[17] Augustine, *The City of God against the Pagans*, R.W. Dyson (ed.), trans. R.W. Dyson (Cambridge; New York: Cambridge University Press, 1998), p. 934, (Book XIX 12).

[18] Augustine, *The City of God*, p. 39, (Book I 26).

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disobedience. Rebellion or civil war is not allowed for at least three reasons, which further contextualise why the proper authorities are to be obeyed. First, because individuals have no individual rights, there can be no individual right to rebel against any established order. Second, all humans are guilty (of sin) so it makes sense to follow those in authority and not try to replace them with others who are at best equally guilty. Just as there is no individual right to disobey or rebel there is no collective right. Third, life in the city of man is made possible by the plans of God, albeit plans concocted after the fall from grace (and the establishment of human guilt).[19] Consequently, individual subjects are to obey, or rather, are obliged to obey their proper authorities and thus to act according to the order established by God and to contribute to the possibility of achieving individual salvation by having a pure soul. Augustine is claiming that the death of the body is not as great of a concern as is the maintenance of one's soul.

Augustine's account of the proper authority is also about clarifying the roles of the religious authorities and secular ones while maintaining that even in the secular realm of material concerns it is the overarching belief in the soul and of eternal salvation that guides the normative conditions of life on earth. St. Augustine's political-theology was so influential that when centuries later St. Thomas Aquinas argued against Augustine's deeply negative account of human politics, Aquinas nevertheless and somewhat paradoxically claimed to be in general agreement with this master. One of the more important differences between the two is with their respective understanding of the conditions in what Augustine calls the 'City of Man'. Unlike Augustine, who perceives the need for human socio-political organisation to be a product of sin, Aquinas sees the city as a positive element corresponding to the laws of nature. He writes,

> It is natural for man to live in fellowship with many others, it is necessary for there to be some means whereby such a community of men may be ruled. For if many men were to live together with each providing only what is convenient for himself, the community would break up into its various parts unless one of them had responsibility for the good of the community as a whole, just as the body of a man and of any other animal would fall apart if there were not some general ruling force to sustain the body and secure the common good of all its parts.[20]

In its simplest form, Aquinas claims that the state exists because people need to live in a state in order to survive. He adopts, in another difference from Augustine's Platonism, Aristotle's teleological understanding of the human condition arguing that, 'Man is by nature a social and political animal, who lives in a community.'[21]

[19] For more on the political thought of St. Augustine see, Herbert A. Deane, *The Political and Social Ideas of St. Augustine* (New York: Columbia University Press, 1963); Augustine, *Political Writings*, E. M. Atkins and R.J. Dodaro (eds) (Cambridge: Cambridge University Press, 2001); R. W. Dyson, *Normative Theories of Society and Government in Five Medieval Thinkers: St. Augustine, John of Salisbury, Giles of Rome, St. Thomas Aquinas, and Marsilius of Padua* (Lewiston, N.Y.; Lampeter: Edwin Mellen Press, 2003); Jean Bethke Elshtain, *Augustine and the Limits of Politics* (Notre Dame, Ind.: University of Notre Dame Press, 1998); Paul Ramsey, in Jean Bethke Elshtain (ed.), 'The Just War According to St. Augustine', *Just War Theory* (Oxford: Basil Blackwell, 1992).

[20] Thomas Aquinas, *Political Writings*, R.W. Dyson (ed.), trans. R. W. Dyson (Cambridge: Cambridge University Press, 2005), p. 7 (*De Regimine Principum*).

[21] Aquinas, *Political Writings*, pp. 5–6 (*De Regimine Principum*). There is some debate as to the accuracy of Aquinas' translation of Aristotle's famous description of man as a political animal (a *zõon politikon*). Dyson argues that Aquinas' translation (which Aquinas takes from a Latin translation of Aristotle, but is apparently already used by Seneca) is more accurate in its inclusion

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Consequently, as this reference to nature attests to, Aquinas argues that obligations to obey the proper authorities are natural, and in a slight twist on Augustine's account, writes that, 'Therefore as man must obey God in all things, so too must he obey his superiors.'[22] With such a direct link between obeying God and obeying one's superiors, Aquinas' account is also clearly related to religious salvation. In this regard, A. P. D'Entrèves says that, 'It is enough to remember the main principle which St. Thomas develops, that, as the duty of obedience to authority is grounded both upon divine and natural order, its limits are necessarily fixed by the correspondence of human authority with divine and natural law, that is, with justice.'[23] The purpose of human laws may be to 'lead men to virtue',[24] but not all virtues can be led to by human law, and in any case, the reason for living a life of virtue is to live a life according to the will of God. This is why Aquinas can argue that a good king can take the sons of his subjects and send them to their possible death in war.[25]

What both Augustine and Aquinas demonstrate is, as D'Entrèves points out in relation to Aquinas but is true of Augustine as well,[26] that the problem of being obliged to obey human authority was a great concern in medieval political thought, a concern that remained constant throughout the history of political thought. The debates have changed, with individual rights and consent eventually supplanting the role of salvation and 'natural' obedience, but while their concern with the issue of being obliged into war played a significant part in their just war thinking, this focus has been somewhat lost. I say somewhat because while contemporary just war texts do not address this problem, related arguments over the problem of being obliged into war can be found in many notable philosophical works outside of the just war tradition. Spinoza, Rousseau, Kant, Hobbes and Hegel all mention this obligation in various ways and recognise the challenges that it poses to the normative conditions of life in the state. Consequently, how has it been that this obligation has become taken for granted?

One possible answer has to do with the false disciplinary boundaries that have existed between Political Theory and International Relations since the problem of being sent by the state to risk one's life is technically an issue of political obligation. Famously pointed out by Martin Wight, political theorists have by and large not been interested in questions of international relations.[27] Wight was wrong, but the argument is certainly consistent with the way that academia tends to distinguish between political theorists and international relations scholars, although this divide is becoming increasingly challenged. A more plausible answer could be with the way that the modern state has come to be identified.

of the word social than the 'literal' translation that uses only the adjective political to describe 'man'. Hannah Arendt, however, argues that the Latin translation is erroneous in that the 'word "social" is Roman in origin and has no equivalent in Greek language or thought.' Hannah Arendt, *The Human Condition* (London and Chicago: Chicago University Press, 1958), p. 23.

[22] Aquinas, *Political Writings*, p. 67.

[23] Alessandro Passerin d'Entrèves, *The Medieval Contribution to Political Thought: Thomas Aquinas, Marsilius of Padua, Richard Hooker* (New York: Humanities Press, 1959), p. 34.

[24] Aquinas, *Political Writings*, p. 141 (*Summa Theologiae IaIIae 96*).

[25] Aquinas, *Political Writings*. p. 56 (*Summa Theologiae IaIIae 105:1*).

[26] Passerin d'Entrèves, *The Medieval Contribution to Political Thought*.

[27] Martin Wight, 'Why Is There No International Theory', *International Relations*, 21:1 (1960).

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In just war terminology, both Augustine and Aquinas frame the problem of the obligation to risk one's life in war as one of proper authority. The obligation is justified when it comes from the proper or legitimate authority. Consequently, one reason why this issue is no longer addressed may be with how the understanding of 'proper authority' in the ethics of war literature has changed. In this regard, one major change in our thinking has been the acceptance of Weber's argument that the state owns the monopoly on the legitimate use of force.[28] Subsequently, it has become a conventional wisdom that the state is the only legitimate actor who may resort to international armed force. While classical just war theorists often found it necessary to address the complexity of proper authority, this tenet has become almost shorthand for the state. It is not an error to presume that just war theory supports this claim that only states have the legitimacy to resort to armed force, but it is a simplification with consequences, one of which is that we no longer ask such 'questions of state' that illuminate the conditions and questions that characterise modern international political life. Consequently, it has become acceptable to provide little explanation of the obligation to go into war, since war is a fundamental aspect of the modern state and as such is a definitional component of state sovereignty over the citizenry. If the state has the legitimate authority to use force then it must also be able to justifiably obligate those into using force and as a consequence, when sent into war, of risking their lives.

Another possible answer, and which follows from this way of reading the proper authority tenet, is with the way that war has become increasingly treated in international law, and in particular with the project of trying to outlaw war. The international lawyer Yoram Dinstein notes that contemporary international legal literature does not engage with *ius ad bellum*. *Ius ad bellum*, along with its philosophical and theological referents, are not the kinds of issues that international lawyers engage with anymore.[29] According to Dinstein, one of the reasons for this absence within the international legal community has to do with how the issues behind the legality of war are of a philosophical, moral and possibly theological character. International law has, so it seems, solved the *ius ad bellum* problem by trying to outlaw war and claiming that any legal resort to violence has to be of a defensive nature. A war, consequently, can become justified provided that it is a response to an illegal act of aggression. Just war theorists thus have an excuse not to critique the *ius ad bellum* components. The philosopher Robert Holmes notes that, 'Most modern theorists [...] devote little attention to the question of *whether* a war is justified; they assume that it is and ask only under what conditions it is justified and how it is to be conducted justly.'[30] To a certain degree this assumption is not surprising, although post September 11th 2001, this assumption is becoming increasingly challenged (especially when debating the war in Iraq).[31] Such challenges notwithstanding, if war is rendered illegal by inter-

[28] Max Weber, 'The Profession and Vocation of Politics', in Max Weber, Peter Lassman, and Ronald Speirs (eds), *Political Writings* (Cambridge: Cambridge University Press, 1994), pp. 310–1.

[29] Yoram Dinstein, *War, Aggression and Self-Defence*, 3rd edn (Cambridge: Cambridge University Press, 2001), p. 63.

[30] Robert L. Holmes, *On War and Morality* (Princeton, N.J.: Princeton University Press, 1989), p. 163.

[31] Although post 9/11 and especially in regard to the war in Iraq the debate has broadened over the justifiable causes for war. See, James Turner Johnson, *The War to Oust Saddam Hussein: Just War and the New Face of Conflict* (Lanham, MD: Rowman & Littlefield Publishers, 2005); Lee Feinstein and Anne-Marie Slaughter, 'A Duty to Prevent', *Foreign Affairs*, 83:1 (2004); Neta C. Crawford,

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national law, then what matters is not the question of resorting to force or the problem of proper authority, but how responses to illegal resorts to force can be kept within the moral codes that led to the outlaw of war in the first place.

According to Dinstein, 'In the nineteenth and (and early part of the twentieth) century, the attempt to differentiate between just and unjust wars in positive international law was discredited and abandoned.'[32] W. E. Hall gives two reasons behind this abandonment in his famous *Treatise on International Law*. First, disputes or causes leading to war are usually not based in 'any fundamental principle of law',[33] and are consequently, 'too complex to be judged with any certainty [. . .].'[34] The rules which jurists have made in regard to a just cause have been, 'mere abstract statements of principles, or perhaps of truisms, which it is unnecessary to reproduce.'[35] Hall then references Ayala, Grotius, Vattel,[36] and a few others as sources of such truisms and vague statements of principle. Hall's second reason is that even if it were possible to determine which side in war was right and which side was wrong, it would still be futile to attempt to punish the aggressor since no enforcement mechanism exists. 'The obedience which is paid to law must be a willing obedience, and when a state has taken up arms unjustly it is useless to expect it to acquiesce in the imposition of penalties for its act.'[37]

First published in 1880, Hall's *Treatise* argues that any notion of just cause is not only legally useless, but also pointless. Even if it were possible to determine which side in war has the just cause, doing so does nothing to limit the possibilities for war. Moreover, because of the legal identity of states as parties of equal rights, it follows that any state has the legal right to wage war thus removing any legal need for a just cause. Hall writes,

> International law has consequently no alternative but to accept war, independent of its origin, as a relation which the parties to it may set up if they choose, and to busy itself only in regulating the effects of the relation. Hence, both parties to every war are regarded as being in an identical legal position, and consequently as being possessed of equal rights.[38]

In the 19th Century opinion was, as exemplified by Hall, that *ius ad bellum* issues were not a problem due to the practices of states, viewed as equal agents, which made such concerns irrelevant. After WWI, however, this opinion changed, as

'The Slippery Slope to Preventive War', *Ethics and International Affairs*, 17:1 (2003); Whitley Kaufman, 'What's Wrong with Preventive War? The Moral and Legal Basis for the Preventive Use of Force', *Ethics and International Affairs*, 19:3 (2005); Jeff McMahan, 'Just Cause for War', *Ethics and International Affairs*, 19:3 (2005); Jeff McMahan, 'War as Self-Defense', *Ethics and International Affairs*,18:1 (2004); Thomas M. Nichols, 'Just War, Not Prevention', *Ethics and International Affair*s, 17:1 (2003); Cian O'Driscoll, 'Negotiating the Just War Tradition: Anticipation, Punishment, Humanitarianism and the Right to War after Iraq' (University of Wales, 2006); Michael Walzer, *Arguing About War* (New Haven, CT; London: Yale University Press, 2004).

[32] Dinstein, *War, Aggression and Self-Defence*, p. 63. Dinstein references J. L. Brierly, 'International Law and Resort to Armed Force', *Cambridge Journal of Law*, 4 (1930–32), p. 308. In this article J. L Brierly, in turn, references William Edward Hall, in A. Pearce Higgins (ed.), *Treatise on International Law*, 8th edn (Oxford: Clarendon Press, 1924), p. 81.

[33] Hall, *Treatise on International Law*, p. 81.

[34] Ibid., p. 82.

[35] Ibid.

[36] Ayala's *De Jure et Officiis Bellicis* was published in 1582. Hugo Grotius lived from 1583–1645. Emmerich de Vattel lived from 1714–1767.

[37] Hall, *Treatise on International Law*, p. 82.

[38] Ibid.

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concerns about legitimate causes became a dominant issue. This shift is demonstrated by the international community's attempts to punish Germany and demand that Germany accept all culpability for the First World War.[39] This shift continued with the development of positive law about legal and illegal wars, the Kellogg/Briand pact of 1928, and the UN Charter of 1945.[40]

Modern international law has tried to outlaw war (with varying degrees of success). International law started to formally limit the legality of war with Article 2 of the Hague Convention (I) of 1899 as well as that of 1907. The convention called for states to resort to arms only after non-violent means had been attempted. In 1919 the Covenant of the League of Nations attempted to further limit the possibilities of war by giving the League some powers to prevent war from breaking out. In 1928, the Kellogg/Briand Pact declared war illegal in principle.[41] In 1945, the Charter of the United Nations continued this process of trying to outlaw war. Article 2 (Chapter 1) of the Charter states that, 'All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.'[42] Chapter VII provides the legal options under which a war can be waged, which other than a war of self-defence, requires a resolution of the Security Council (in which case one wonder whether the term 'war' is accurate).

The legal theorist Hans Kelsen illustrates this shift in international legal thinking by using the concept of aggression to identify the illegality of a war. He writes,

> The rules of international law by which 'war' is forbidden, and accordingly, a 'delict', refer only to the action of one state, not to the counteraction of the other. This is usually expressed by the statement that only a war of aggression, that is, the war on the part of the state which is the first to commit a hostile act of force, is forbidden, not the war waged by the state defending itself against the aggressor.[43]

Hedley Bull provides another example of this kind of theorising about war when he identifies a Grotian approach that seeks to distinguish when a war is sanctioned by international society and when it is not.[44]

The attempt to outlaw war has effectively altered how war is thought of. Michael Walzer's method in *Just and Unjust Wars* is to start with an account of

[39] Hans Kelsen, in Robert W. Tucker (ed.), *Principles of International Law*, 2nd edn (New York; London: Holt, Rinehart and Winston, Inc., 1966).

[40] See chapter XXX in, Josef L. Kunz, *The Changing Law of Nations: Essays on International Law* (Columbus: Ohio State University Press, 1968).

[41] Although Carl Schmitt argues that the Kellogg/Briand Pact actually sanctifies war. See, Carl Schmitt, *The Concept of the Political* (Chicago: University of Chicago Press, 1996), p. 50 fn. 21. Alternatively, Hans Kelsen does not claim that the Kellogg/Briand pact sanctions war; rather he argues that the pact differentiates between types of war. See, Kelsen, *Principles of International Law*, p. 27.

[42] Dinstein, *War, Aggression and Self-Defence*, p. 80. The UN Charter can also be accessed online at {http://www.un.org/aboutun/charter/}.

[43] Kelsen, *Principles of International Law*, p. 25. See also pages 29–39 for his discussion of just war doctrine.

[44] Bull's 'Grotian conception of international society' is presented in opposition to Oppenheim's approach that takes war to be a prerogative of the state and claims that international law is concerned with the conduct of war and not the legality of going to war. See, Hedley Bull, 'The Grotian Conception of International Society', in Herbet Butterfield and Martin Wight (eds), *Diplomatic Investigations: Essays in the Theory of International Politics* (London: George Allen & Unwin Ltd., 1966).

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aggression as the only real crime that exists between states. With a legal war requiring another to break the law with an act of aggression, to a significant degree *ius ad bellum* has in a sense been replaced by *ius contra bellum* (justice against war).[45] International law is, of course, not so straightforward. A war or a similar resort to force could be legal under other sections of the Charter, or may be justified solely by reference to the purposes of the Charter. However, while approaches to the justifiability and legality of war have changed, the presumption on the authority of the state to wage war has not. The claim in the 19th Century that war is a presumed prerogative of the state effectively meant that *ius ad bellum* issues were not a problem. In the 20th Century, this presumption was no longer accepted and positive international law became concerned with the legality or illegality of war. However, in both the 19th and 20th Centuries, as well as in the 21st Century, there was no debate about what it is about the state that makes it the authority that may justifiably, either because of convention or because of positive law, go to war.

Nevertheless, such questions are important, as the early just war theorists knew. They point out that in order to provide an ethical argument about applying morality to war we need to think philosophically about the political conditions that give such ethical arguments the sound of plausibility and applicability. The problem of the obligation to die is, however, not solely about political obligation, but also about a variety of related and equally moral and political considerations that the ethics of war literature takes for granted. Consequently, it is time to recall a lesson of the classical just war theorists and take a critical look at what moral, political and philosophical questions arise in relation to the problem of being obliged into battle by the state. There are at least five explicitly relevant questions to the moral problem of being obligated to be exposed to the danger of death in war:

1. That of *individual consent*;
2. Whether or not *any state* can be justified in obliging its citizens in this regard and whether or not the *type of government* is important;
3. Whether or not the problem of the obligation *differs between conscript and volunteer* armies;
4. How any individual could be presumed to have *a moral obligation to obey the law to be sent into war* and not resist this politico-legal obligation;
5. Whether a citizen may be obliged to go into *any war*.

These questions overlap and there are sub-questions and combination questions, including how membership involves an obligation that goes against the natural right to self-preservation, what makes the state an entity able to obligate its citizens to risk their lives on its behalf, how ideology serves as a justifying force for people who risk their lives in war, and does it matter who is obliged? There are surely other relevant considerations, but for now I am limiting myself to these five,

[45] Josef Kunz describes this shift as being from *bellum justum* to *bellum legale*. Kunz argues that the League of Nations Covenant replaced the justifiability and unjustifiability of war with formal legal rules about the legality or illegality of war. Thus a legal war could be fought by a state that had no just cause but had the formal approval of the League. The Kellog/Briand Pact furthered this distinction by declaring war to be, in principle, an illegal means to pursue foreign policy. See, Kunz, *The Changing Law of Nations*, p. 580.

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thereby making it possible to demonstrate how these questions are linked, what broader questions they raise, and why it is important to address the philosophical issues that contextualise our ethical thinking about the morality of obligation, death and war.

1. Consenting to risk one's life

In his account of sending individuals to war, Kant raises a paradigmatic problem. Considering that in a state of international anarchy states may wage war against each other, and that the sovereign has the prerogative to do so when in the state's best interest, by what moral justification could the sovereign send his subjects to war? Kant, the moral philosopher who says that humans must be treated as ends and not means states in *The Metaphysics of Morals* that,

> If we consider the original right of free states in the state of nature to make war upon one another (for example, in order to bring about a condition closer to that governed by right), we must first ask what right the state has *as against its own subjects* to employ them in a war on other states, and to expend or hazard their possessions or even their lives in the process. Does it not then depend upon their own judgement whether they wish to go to war or not? May they simply be sent thither at the sovereign's supreme command?[46]

Kant claims that the individual must be given the chance to consent to this obligation, although there is some trouble as to how this consent is presumed to take place since Kant also says that the subjects must obey the sovereign. Thus, Kant implies that to think about the obligation to die is to think about the conditions under which legitimate resistance to authority may take place.

There is much more that can be said here, but what should not escape notice is that Thomas Hobbes provides a surprisingly similar argument. According to the basic argument contained in *Leviathan* that postulates that people trade certain liberties for security, if the sovereign were to ask its citizens to risk their lives by going to war then two problems immediately arise. First, the citizen could refuse the demand and claim that it makes no sense to go to war for the sake of a contract that is supposed to avoid war. Second, the citizen would have a legitimate right to rebel against the sovereign who has clearly been unable to guarantee the terms of the contract in which the sovereign is supposed to protect the lives of its subjects or citizens. The obligation to die would be a concrete example of a failed contract. However, Hobbes in chapter 21 of *Leviathan* recognises that this obligation is crucial for sovereignty. He claims that the inhabitants are obliged to risk their lives if the commonwealth is threatened. If the community is at risk of being dissolved by a foreign threat and for the sake of the good provided by the commonwealth an obligation to risk dying emerges. Presumably, wars of aggression would not justify such an obligation, although this conclusion does not apply since Hobbes asserts that the sovereign may go to war if the sovereign deems it necessary for the security and prosperity of the commonwealth.[47]

[46] Immanuel Kant, *Kant: Political Writings*, ed. Hans Reiss, trans. H. B. Nisbet, 2nd edn (Cambridge: Cambridge University Press, 1991), p. 166. (emphasis in original).
[47] Thomas Hobbes, in Richard Tuck (ed.), *Leviathan,* Rev. student ed. (Cambridge: Cambridge University Press, 1996), p. 126 (ch. 18).

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The problem that Hobbes and the consent tradition has to resolve is why the contract makes an allowance for people to violate that basic and inviolable natural right of self-preservation.[48] Indeed, contra chapter 21, Hobbes could easily be assumed to say that under no conditions can the obligation to die be justified because nobody can give up their right to life without thereby entering the state of nature, and if the sovereign places them in this position they have no reason to obey. Empirically, however, we know that the state has been extremely successful, particularly in the 20th Century, in sending its citizens into war. Not only have various dictatorships, autocracies, monarchies and other non-democratic states been successful, but so have democracies. If consent is an important moral category in the construction of a just state, would a war be just if those sent into war are not given the chance to consent to going into war?[49] Consequently, from a moral standpoint it may be that one of the just war tenets should take into account the type of government that sends its citizens into war, or if not the type of government, the type of state.

2. The type of state

Does it matter whether or not any state can be justified in sending its inhabitants to risk their lives in war? The problem of any authority sending its subjects into war was one of the considerations that animated the just war thinkers who sought to restrict who could be justified in declaring war. This restriction is approached in the just war literature under the tenet of proper authority, with the argument being that only a proper authority may declare war, and, subsequently, only the proper authority can obligate members of the community to risk their lives in war. I suggested above that the proper authority tenet contributed to contemporary ethics of war literature ignoring the problem of the obligation to die. In contemporary just war literature this tenet serves to legitimise states as the only actors who could wage war and legitimises states with specific powers in relation to other states. The proper authority tenet came to be seen not as a foundation for justifying the authority of the state in relation to its inhabitants, but in relation to other states. By linking together the state with the ability to legitimately declare war, 'proper authority' establishes a community of agents with similar abilities in relation to each other, thus restricting who may enter into the community of nations, who may wage war, conduct relevant treaty negotiations and so on. Consequently, while it was important for early just war theorists such as St. Augustine and St. Thomas Aquinas to justify the authority in relation to its domestic constituents, this feature became overshadowed by a process of reading this tenet as a feature explaining an international system. This shift became increasingly pronounced in modern international law.

[48] Hobbes, *Leviathan*, pp. 93, 141, and 51. (Chapters 14, 20, and 21). In chapter 14 he claims that is preferable to be a slave than to die, and in chapter 21 he claims that the sovereign may not ask a subject to kill himself or another individual.

[49] Paul Stern has addressed the role of nationalism in over-riding motives of self-preservation in going to risk one's life in war. Paul C. Stern, 'Why Do People Sacrifice for Their Nations?', *Political Psychology*, 16:2 (1995).

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This reading of the proper authority tenet, however, leaves unanswered whether or not any authority is justified in going to war and thus sending its inhabitants into battle? Medieval just war works also include treatments on the issue of rebellion and resistance to the proper authority. Both Augustine and Aquinas heavily circumscribe any possibility for legitimate disobedience to authority, but the important point is that they addressed it as part of their exploration of political obligation to the proper authority. For example, Augustine's claim that since we all live in a world of sin it would be futile to overthrow one imperfect ruler with another indicates a concern with the character of the authority doing the obliging. Augustine further addresses this issue in regard to different types of authority. For example, he claims that a priest should not take charge over material issues of rule, although a priest could certainly counsel or guide a temporal ruler.[50] The outstanding question, however, which needs to be addressed, is whether or not any state has this proper authority. Some of the just war thinkers did in fact address this issue, such as Vitoria who asks whether or not the American Indians could be considered to have dominion over their land, and thus be justified in resisting the theft of their property.[51]

This issue has also been addressed, albeit indirectly, in some modern liberal thought on the problem of political obligation. A notable example of this turn is with the idea of 'hypothetical consent'. In a seminal two-part article on the problem of political obligation, Hannah Pitkin makes the case for what she terms, 'hypothetical consent'. The idea is to focus on the nature of government and whether or not the government ought to be obeyed. 'For a legitimate government, a true authority, one whose subjects are obliged to obey it, emerges as being one to which they *ought to consent*.'[52] Pitkin's account of 'hypothetical consent' is shorthand for defining the problem of political obligation as being obligated to consent and not consenting to be obligated, provided that the government is just. 'It is not so much your consent not even the consent of a majority that obligates you. You do not consent to be obligated, but rather are obligated to consent, if the government is just.'[53]

Taking this approach to the problem of the obligation to die the issue becomes whether or not any state can be just in obligating its citizens into war by virtue of whether or not the state or the government ought to be obeyed. It is in this regard that Barry Buzan suggests that in thinking about bombing populations as part of a humanitarian intervention, a decisive factor should be whether the population deserves their government.[54] The question remains, however, as to what kind of state can justifiably oblige its citizens into war. This question in turn leads to the thorny issue of disobedience and rebellion, since if the state goes to war and the citizenry refuse to fight the state has got a serious problem on its hands as its

[50] Augustine, in E. M. Atkins and R. J. Dodaro (eds), *Political Writings* (Cambridge: Cambridge University Press, 2001).
[51] Francisco de Vitoria, in Anthony Pagden and Jeremy Lawrance (eds), *Political Writings* (Cambridge: Cambridge University Press, 1991).
[52] Hanna Pitkin, 'Obligation and Consent – I', *The American Political Science Review*, 59:4 (1965), p. 999. See also, ———, 'Obligation and Consent – II', *The American Political Science Review*, 60:1 (1966).
[53] Pitkin, 'Obligation and Consent – I.'
[54] Barry Buzan, 'Who May We Bomb?', in Ken Booth and Tim Dunne (eds), *Worlds in Collision* (New York: Palgrave Macmillan, 2002).

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authority vaporises. At minimum the government would collapse. Nevertheless, it would be reasonable to suggest that there is more to this aspect of the obligation to die than to repackage it as one of rebellion or disobedience. In short, may any state justifiably obligate its citizens to risk their lives by being sent into war, why, and how come such states would be justified in doing so? It seems reasonable to suggest that to be just in this regard the state must respect the rights of its citizens, since it makes no sense to obligate people to risk their lives for the sake of a state that persecutes them. However, this in turn raises further questions about rights, as well as what forms of political structures best respect human freedoms or human values. This issue is complicated, but it is important and is worth further study in thinking about the ethics of war. For now, however, these questions about consent and about the type of state and type of government suggest another concern, that of how the state manages to populate its armed forces.

3. Conscripts or volunteers

Is the consent problem solved by whether or not those sent into war sign up voluntarily? Consent theory needs to explain how the rights of the individual are respected within the obligation to take part in war. This problem suggests categorising different types of soldiers: voluntary conscripts who sign up because the army provides a job, individuals who sign up for ideological reasons, or people who are drafted. Whether the force is voluntary or not suggests alternative models of the political obligation problem, and not specifically of the obligation to die. However, at issue here is not the issue of national service, but of such service in regard to war and the ethics of war and in this regard it is sensible to inquire into how those who are sent into battle come to find themselves in the armed forces. Serving in the army, air force, navy or other branch of the armed forces cannot be divorced from the possibility of also facing what Walzer called the obligation to die. Insofar as a volunteer force is concerned, volunteers would presumably have accepted at least the possibility of the obligation to die. However, in countries that institute a national draft, under what aegis does the obligation to serve and risk one's life become justifiable? Conventional approaches to this question would presumably turn on some account of consent theory, be it one framed on the type of government as in Pitkin's argument of 'hypothetical consent' already mentioned or some other logic of consent, of which there are many.[55]

However, whichever logic of consent is taken, the important point is that it does not matter how the army is populated since the state will presume the ability to send any kind of soldier into war. Being a volunteer does not necessarily excuse the state for demanding (even in a voluntary way) its citizens to risk their lives. The moral issue here is that the state can always oblige, if not enforce, its citizens to go to war regardless of the type of war or the type of conscript.[56] This point is made by Tim O'Brien in his account of the Vietnam War. O'Brien notes that the

[55] Some of these are surveyed in, George Klosko, *Political Obligations* (Oxford: Oxford University Press, 2005).

[56] The state's ability to enforce this obligation is, according to Cheyney Ryan, one of the defining characteristics of the obligation to die in war, as opposed to other situations where one might be

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state has always been able to send its youth into war and even those who do not want to go submit to the state, if only because they are afraid of incurring 'society's censure'.[57] For either conscripts or volunteers, there is no room for evaluating and then acting on the extent to which they agree with the war they are fighting. As O'Brien discovered first-hand, it does not matter if the war is just – they will still be sent into harm's way. Conscripts can be held accountable for refusing to relinquish their right to life, even in a just war, as in the extreme case of Private Eddie Slovik, who on General Dwight Eisenhower's orders, was executed for desertion in the Second World War.[58] Dubiously, and as Peter Paret notes, those who face the death of battle are rarely those who have declared war and yet these decision makers will take it for granted that they can send conscript or recruit soldiers to face the danger of death in war.[59]

Nevertheless, there may be an additional justifying factor in the case where those who go to war are volunteers. However, this factor would need to be mitigated by two additional concerns: that of the necessity of the war and of the *absolute* need to win the war (that is, in cases where Walzer's supreme emergency clause would be relevant),[60] and of the conditions under which people enlist. The second issue seems more serious since it challenges the assumption that the obligation to die would be justified in a volunteer army because those who sign up freely chose to do so. What if this free choice is not really free? What about those who sign up because otherwise they cannot afford university, or because it is a way to stay out of jail or a way to secure food, clothing and shelter? The volunteer army argument might work if there is a level playing field among those who have the option to volunteer.

This has become a particularly politicised issue in the US.[61] In a 2002 op-ed in *The New York Times* the Democratic Congressman from New York, Charles B. Rangel wrote, 'A disproportionate number of the poor and members of minority groups make up the enlisted ranks of the military, while the most privileged Americans are underrepresented or absent.'[62] This perspective about the American Armed Forces is repeated in a November 2005 article in *The Washington Post* that claimed that Army recruits were primarily poor and from rural areas.[63] The article implied that the Army effectively provided these individuals with a job, shelter and something to do. Another *New York Times* article claims that minorities feature heavily in the US Armed Forces,[64] unlike the British Military where in the UK

obliged to risk one's life. See, Cheyney C. Ryan, 'Self-Defense and the Obligations to Kill and to Die', *Ethics and International Affairs*, 18:1 (2004); Ryan, 'The State and War Making'.

[57] Tim O'Brien, *If I Die in a Combat Zone* (London, New York, Toronto and Sydney: Harper Perennial, 2006), p. 45.

[58] Cheyney Ryan, 'The State and War Making', in John T. Sanders and Jan Narveson (eds), *For and against the State: New Philosophical Readings* (Lanham, Md.; London: Rowman & Littlefield, 1996).

[59] Peter Paret, 'Justifying the Obligation of Military Service', *The Journal of Military History*, 57:5 (1993).

[60] Michael Walzer, *Just and Unjust War: A Moral Argument with Historical Illustrations*, 3rd edn (New York: Basic Books, 2000).

[61] It was not always political in the same way, for initially the politics surrounded the success of having a volunteer only force. See, Richard V. L. Cooper, 'The All-Volunteer Force: Five Years Later', *International Security*, 2:4 (1978).

[62] Charles B. Rangel, 'Bring Back the Draft', *The New York Times* (31 December 2002).

[63] Ann Scott Tyson, 'Youths in Rural US Are Drawn to Military; Recruits' Job Worries Outweigh War Fears', *The Washington Post* (4 November 2005).

[64] Bob Herbert, 'Someone Else's Child', *The New York Times* (20 June 2005).

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there remains a tradition of the upper classes enlisting in the Armed Forces.[65] In 2005 the right-wing think tank, The Heritage Foundation, countered these views of US Army demographics, claiming that the Army is in fact representative of the American population.[66] Moreover, the Heritage Foundation argued that in 1999 army recruits were more educated than the 'equivalent general population' and the 'household income of recruits generally matches the income distribution of the American population.'[67]

However, there are significant segments of the American public not growing up with any equality of opportunity. According to the US Army's 2004 Demographic Report, from 1990–2004, approximately half of all Active Duty Officers have a Bachelor's Degree (47.2 per cent-54 per cent), although this is not the case with the Active Duty Enlisted. In 1990 94.8 per cent of Active Duty Enlisted men and women had less than a Bachelor's Degree, although only 1.8 per cent had no High School Diploma. These figures remain relatively constant from 1990 until 2004. In 2004, 0.8 per cent had no High School Diploma and 93.7 per cent had less than a Bachelor's Degree. The Army Enlistees are generally with little post-secondary education. In the same period (1990–2004) 18.3 per cent of Active Duty members are Black or African American, 64.0 per cent are White; in 2000, the US Census showed that 12.3 per cent of the American population is Black or African American and 75.1 per cent are White.[68] In relation to other minorities, it is clear that they are proportionally over-represented in the US Military. Ultimately, there is doubt as to how much choice possible enlistees in the US Army face in their life prospects were they not to join the Army. In other words, it is possible that the voluntary force in the US is not so voluntary as it may appear. Many people may sign up because they have little other choices available to them and because, as the Christian Science Monitor reported in 2005, the Army offers the best economic opportunity.[69]

There has been work done on some of the moral issues involved in a volunteer army as opposed to national conscription,[70] and of the problem of the political obligation of military service.[71] One question suggested by this literature is the extent to which a state can ignore the difference between a conscript and a volunteer force, and send either type of soldier into battle. Indeed, if we are to have a better grasp of the ethics of war and the justifiability of the obligation to die, surely it is important to think about the demographics of those sent into war.

[65] Alan Cowell, 'Ideas and Trends: Class Wars; Britain's Upper Crust Still Soldiers On', *The New York Times* (7 September 2003).
[66] Tim Kane, 'Who Bears the Burden? Demographic Characteristics of US Military Recruits before and after 9/11', (Washington DC: The Heritage Foundation, 2005).
[67] Kane, 'Who Bears the Burden?'
[68] 'Profiles of General Demographic Characteristics', ed. Economics and Statistics Administration US Department of Commerce, U.S Census Bureau (US Census Bureau, 2000); '2004 Demographics', ed. United States of America Office of the Deputy Under Secretary of Defense (2004).
[69] Mark Sappenfield, 'Where Recruiting Runs Strongest', *The Christian Science Monitor* (19 July 2005).
[70] During the Vietnam War, there were many articles, often based on statistics that examined the lottery draft and examined a variety of issues ranging from salaries to demographics. A moral account of military service is addressed in Walzer, *Obligations*.
[71] Klosko, *Political Obligations*.

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4. The political obligation problem

The vast amount of literature that seeks to clarify and/or explain the problem of political obligation tends not to ask the question in relation to the obligation to die. One notable exception here is Michael Walzer's essay, in which he addresses the problem of being sent into war as a problem of political obligation. He ends his essay on the obligation to die by claiming that,

> All this comes dangerously near to suggesting that a man is obligated to die only if he feels or thinks himself obligated. That seems to be the consequence of arguing first, with Rousseau, that there are moral goods for which a man might well be bound to die, and arguing, secondly, against Rousseau, that it is never possible to say that a particular man is bound to die for a particular moral good (unless he has said so himself).[72]

To claim that the obligation to die exists only if it is presumed to exist by each citizen is true in a sense, since at issue are social constructions. Moreover, there is something comforting about presuming that this obligation exists in the minds of the citizens and not in the abilities of the sovereign or the remote halls of government. However, this conclusion is not especially helpful or illuminating. It is ironic that this is one of Walzer's conclusions considering that he wrote this essay in response to the Vietnam War, which involved a draft for a war that many did not support. Yet, so long as Walzer's conclusion is of this kind, then the draft in this war would be just, which would seem to run counter to the intent of Walzer's examinations on war and ethics. Furthermore, the lottery draft at this time surely lends some empirical doubt as to how far consent counts when the state decides to go to war. To be fair, Walzer's essay, *The Obligation to Die*, is exceptional in scope and detail, and the strengths of the essay are in his observations about some of the classical arguments that have served to justify this obligation. As an argument serving to explain how the obligation could be just, however, the essay is lacking for Walzer does not explain how the obligation to die can be justified. His final statement on the obligation is to claim that people will choose to accept the obligation to die because it is a part of choosing to live like a citizen.

One of Walzer's additional conclusions in the essay is that feeling obliged and being obliged are different, and that being obliged is in a sense contingent on being a good citizen, bound to the common life of the community. Hegel, Rousseau, and Socrates heavily influence this argument. Indeed, the death of Socrates is an important example of the obligation to die. Yet, what does it mean to be a good citizen? Does being a good citizen mean that one has to be prepared to die for the state? If so, why? How does being a good citizen explain why the sovereign may justifiably oblige its subjects (in this case, citizens) in this manner? Why does being a good citizen mean that the sovereign can be presumed to have the power to oblige in this way? Walzer is either curiously silent or overly brief in regard to these questions insofar as they serve to justify the obligation to die. His justification of the liberal egalitarian state could provide some headway into what is necessary for the obligation to be just, although this line of inquiry would lead to a debate about what sort of state could justifiably oblige, which is a different question from what is it about the state that gives it the ability to justifiably send its citizens to their

[72] Walzer, *Obligations*, p. 98.

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possible death in war and, subsequently, how this obligation is justified. If one were to take the consent argument at face value and presume that consent does take place, what would happen in a state where consent does not take place, or if people do not consent and are forced to go into war anyway? In this case, the obligation could not be morally justifiable, but in general remarkably little would be affected since the obligation would still stand and most citizens would still be sent or go into war, as was the case in the Vietnam War. In short, what Walzer does is repeat the Kantian dichotomy between individual morality demanding that those sent to war are given the choice and the reality that the state may compel its citizens into war if government decides to.[73]

5. War

Can the obligation be just in any war? This question suggests that there is a connection between the *ius in bello* and *ius ad bellum* requirements and the justifiability of the obligation to die. In normative terms there should be some relation, since it seems questionable to be just in risking one's life for an unjust war, although the classical just war theorists would claim that it would be just since the issue is one of obeying the authorities in order to have a pure soul. It was in regard to this problem that Vitoria provides his example of invincible ignorance, by which he means that one's soul is safe even if one commits an act of sin, provided that this person did everything possible to learn the truth, but since one cannot know everything it is often sufficient for one's soul to obey the proper authorities and thus act according to the law.[74] Aside from this issue, which gets us back to the problem of resistance (and it may be that the strongest argument for justifying the obligation to die would be to ask whether or not the obligation should be resisted), there is the additional problem of how the just war tenets would be used in justifying the obligation to die. Just war is not a shopping list, and so the application of just war tenets to the obligation to die would have to match the way that the tradition is used, assuming that one is comfortable with the tradition and its usage. There is such a vast amount of scholarship on this regard that repetition here is both unnecessary and would inevitably be grossly insufficient. It is worth noting, however, that George Kateb suggests that one condition for the obligation to be just is for the obligation to arise in relation to a war of self-defence.[75] Nevertheless, it may be worth thinking about the way that just war theory is used, and how the ethics of and in war could contribute to justifying the obligation to die.

[73] It is both noteworthy and curious that in his review of *Just and Unjust Wars*, Hedley Bull commented that Walzer's research on the just war needed and suggested further work on the topic of political obligation. It is noteworthy because Bull rightly spotted an important and unaddressed side to the ethics of war, but it is curious because Walzer had already written his essay on the obligation to die. See, Hedley Bull, 'Recapturing the Just War for Political Theory', *World Politics*, 31:4 (1979).

[74] Vitoria, *Political Writings*.

[75] George Kateb, *The Inner Ocean: Individualism and Democratic Culture* (Ithaca, N.Y.: Cornell University Press, 1992), p. 183.

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Conclusion

The problem posed by the obligation to die can be summed up with the following example. In the 18th Century, the English jurist William Blackstone wrote that, 'In free states [. . .] no man should take up arms, but with a view to defend his country and its laws; he puts not off the citizen when he enters the camp; but it is because he is a citizen, and would wish to continue to do so, that he makes himself for a while a soldier.'[76] However, Blackstone's optimism was not met with reality, for in England (and elsewhere) in the late 18th Century there was widespread public opposition and resistance, including riots, to serving in the military.[77]

By the 20th Century the situation had changed and there was no such problem in conscripting soldiers, as demonstrated by two World Wars. Due partly to this unparalleled ability to conscript citizens into fighting and dying for the state, but also from changes in international law that did not question the authority of the state, attempts in the 20th Century to justify the obligation to die diminished significantly. The state had, so it seemed, managed to consolidate its authority and could conscript with legal, moral and political impunity. Nevertheless, the problem of the obligation to die briefly resurfaced in the aftermath of the Vietnam War. As in Blackstone's day, the contrast in opinion and reality resurfaced, albeit with a modification, for it was no longer obvious that the citizen would wish to make himself or herself a soldier even while the state could count on the majority of citizens being obliged into military service. In either example, the obligation to die is a problem.

This article is one attempt to broaden our understanding of the ethics of war, to blur the divide between the political philosophy that lies behind ethics of war theory and its applied ethical side, to suggest some questions that should animate future research on ethics and war, and possibly revive or open up some of the tenets in the just war tradition. In addressing the moral problem of the obligation to die, it becomes evident that a full application of just war theory needs to go back and take into account the philosophical claims that characterise the tenets of the just war tradition. While many just war texts do this, the contemporary divorce between the morality of killing and the morality of death nevertheless exists as a result of taking for granted the philosophical assumptions that lie behind the *ius ad bellum* tenet of proper authority. While there may be good reasons for the historical shift of attention away from the problem of proper authority and the subsequent issue of being obligated into war, the problem of being obliged to risk one's life for the state by being sent into war is a problem that has and should continue to influence our understanding and use of the ethics of war and just war theory. This problem should continue to be of interest not only because the question of dying is the other side of the moral coin about killing in war, but because it is a serious moral issue in its own right.

[76] Peter Paret, *Understanding War: Essays on Clausewitz and the History of Military Power* (Princeton, N.J.: Princeton University Press, 1992), p. 40.
[77] Paret, *Understanding War*.

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